

MATERIALS TRANSFER TEMPLATE

BETWEEN:

[Name of Institution], having an address at _____

(the “Provider” or “Transferor”)

AND:

[Name of Institution], having an address at _____

(the “Recipient Institution”)

BACKGROUND:

WHEREAS this Materials Transfer Agreement sets out the understanding of the parties with respect to the provision of Original Material by the Provider to the Recipient, who wishes to use the Original Material for the Purpose, subject to the terms and conditions of this Materials Transfer Agreement.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants and obligations contained in this Materials Transfer Agreement, and other good and valuable consideration, the parties agree as follows:

1. Definitions. In this Materials Transfer Agreement:

- (a) “**IP Toolkit**” means the set of standard form agreements developed by Company and intended to be used by the Parties in connection with transactions related to the unencumbered intellectual property disclosed to Company under the Disclosure and Standstill Agreement datedbetween Company, Institution and a principal investigator;
- (b) “**License Agreement Template**” means an agreement substantially the same as the then current standard form agreement entitled “License Agreement Template” included in the IP Toolkit;
- (c) “**Material**” means Original Material, Progeny and Unmodified Derivatives, but not New Intellectual Property;
- (d) “**Modifications**” means substances and other materials created by Recipient that contain or incorporate the Material;
- (e) “**New Intellectual Property**” includes (i) Modifications (but not the Material that is contained or incorporated therein), (ii) other substances and materials created by Recipient through the use of the Material or Modifications, but that are not Progeny,

Unmodified Derivatives or Modifications (i.e. do not contain the Original Material, Progeny or Unmodified Derivatives), (iii) any new use of the Material, Modifications, or the substances and materials described in (ii) herein, created by Recipient, and (iv) any new or improved process, method, or technique conceived or developed by Recipient through the use of the Material, Modifications, or the substances and materials described in (ii) herein;

- (f) “**Option Agreement Template**” means an agreement substantially the same as the then current standard form agreement entitled “Option Agreement Template” included in the IP Toolkit;
- (g) “**Original Materials**” means the materials described in the agreement, Description and amount of transferred material
- (h) “**Period of Use**” means the period commencing on the Effective Date and ending on the date set out in the agreement”;
- (i) “**Progeny**” means an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism;
- (j) “**Provider Information**” means the information described in section 2 below;
- (k) “**Purpose**” means the purpose described in agreement
- (l) “**Research Development Agreement Template**” means an agreement substantially the same as the then current standard form agreement entitled “Research Agreement Template” included in the IP Toolkit; and
- (m) “**Unmodified Derivatives**” means substances and other materials created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material, including subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.

2. Supply and Licence: Provider will deliver to Recipient the Original Material and any information relating to the Material which Provider considers appropriate, which may include, but not limited to, information on its use, durability, handling, storage, disposal, manufacturing, reproduction and shipping (the “**Provider Information**”). Subject to the terms and conditions of this Materials Transfer Agreement, Provider hereby grants Recipient a non-exclusive, royalty-free license to make and use the Materials and Provider Information for the Purpose, during the Period of Use unless terminated earlier in accordance with the terms of this Materials Transfer Agreement or unless extended by written mutual agreement of the parties.
3. Cost of Delivery: Upon receipt of an invoice from Provider, Recipient will pay or reimburse Provider the amount (if any) set out in agreement for costs incurred by Provider in packaging, shipping and otherwise delivering the Original Material to Recipient.
4. Technical Representatives: The individual authorized by a party to provide and/or receive the Original Material and Provider Information on its behalf as set out in the agreement, unless another individual is subsequently designated by that party in written notice to the other party.

5. Use: Recipient will use the Material and Provider Information for the Purpose only and in compliance with all applicable federal, provincial/state and local laws, rules, guidelines and regulations. Unless with the prior written approval of Provider (whose approval may be withheld at its sole discretion) or unless expressly permitted by the terms of a separate written agreement entered into between the parties, Recipient agrees that the Material and Provider Information:
- (a) are made available for investigational use only in laboratory animals or in *in vitro* experiments;
 - (b) will not be used in humans or in contact with any cells or other materials to be infused into humans, whether in clinical trials or whether for therapeutic, preventative, diagnostic or any other purposes;
 - (c) will be used only at the Recipient organization, except where Company is the Recipient, in which case Recipient may provide the Material and Provider Information to its collaborators at academic organizations and clinical research organizations in support of the Company's Purpose and on terms and conditions consistent with those in this Materials Transfer Agreement;
 - (d) must not be treated as if the Material is free of contamination, as biological materials have the potential for carrying viruses, latent viral genomes and other infectious agents in an unapparent state;
 - (e) must always be handled carefully by trained persons who follow all safety guidelines and protocols when working with the Material and under laboratory conditions which afford adequate biohazard containment; and
 - (f) will not be sold, leased, licensed or otherwise exploited for profit, including, but not limited to, performance of contract research, screening of compound libraries, and manufacture of products for general sale.
6. Recipient's Personnel: Recipient will limit provision and disclosure of Material and Provider Information to those directors, officers, employees, agents, consultants and professional advisors of Recipient who need to know or need to use the Material or Provider Information in order to assist Recipient in carrying out the Purpose. The Recipient will ensure that Recipient's directors, officers, employees, agents, consultants and professional advisors using the Provider Information, Material and Modifications agree to be bound by the terms of this Materials Transfer Agreement.
7. Progress Reports: During the Period of Use and unless otherwise set out in a separate written agreement entered into between the parties, Recipient will provide Provider with a written progress report every six (3) months on Recipient's use of the Material and Provider Information, which report will be kept confidential by Provider during the Period of Use and for five (5) years thereafter.
8. Publications: Recipient will provide appropriate acknowledgement of the source of the Material in all publications, and unless otherwise set out in a separate written agreement entered into between the parties, will send a copy of any such publications to Provider at least thirty (30) days prior to submission for publication.

9. Ownership: Provider retains ownership of the Material and the Provider Information, including any Material contained or incorporated in the Modifications. Recipient will own the New Intellectual Property (but not Material contained or incorporated in the Modifications).

10. Notification, Patent Applications and Use of New Intellectual Property: Recipient will promptly notify Provider in writing of any New Intellectual Property and will be free to use and exploit the New Intellectual Property (but not to assign or otherwise transfer the Modifications except with the written approval of Provider or as permitted under this Materials Transfer Agreement). Recipient may file patent application(s) claiming New Intellectual Property, but will give Provider at least thirty (30) days written notice prior to filing such patent application(s). In the case where Company is the Recipient, Recipient hereby grants Provider a non-exclusive, non-transferable, non-sublicensable, perpetual, royalty-free licence to use the New Intellectual Property for educational and non-clinical, non-commercial research purposes only, and in the case where Institution is the Recipient, Recipient hereby grants Provider a non-exclusive, non-transferable, sublicensable, perpetual, worldwide, royalty-free licence to use the New Intellectual Property for internal non-clinical research purposes only, including the right of Provider to sublicense the New Intellectual Property to its collaborators at academic organizations and clinical research organizations in support of Provider's internal research programs provided that such sublicense agreements are on terms and conditions consistent with the terms and conditions of this Materials Transfer Agreement.

11. Confidential Information:

(a) Provider considers the Material and Provider Information provided to Recipient hereunder to be confidential information of Provider except for:

- (i) material or information that is in the public domain at the time it is received by Recipient;
- (ii) material or information that after receipt thereof by Recipient enters the public domain other than through a breach of this Materials Transfer Agreement by Recipient;
- (iii) material or information that Recipient can show was, prior to receipt thereof from Provider, lawfully in the possession of Recipient and not then subject to any obligation on the part of Recipient to maintain the confidentiality thereof;
- (iv) material or information that Recipient can show was independently developed by employees, agents or consultants of Recipient without any knowledge or use of the information disclosed by Provider under this Materials Transfer Agreement; or
- (v) material or information that is approved in writing by Provider for disclosure, provided that such disclosure was made by Recipient in accordance with the terms of such approval.

(b) During the Period of Use and for five (5) years thereafter, Recipient will use reasonable efforts to keep Materials and Provider Information confidential and will not, directly or indirectly, deal with, use, exploit or disclose them to any person or entity for any purpose except as expressly set out in this Materials Transfer Agreement or unless and until expressly authorized in writing to do so by Provider.

(c) If Recipient is required by a judicial, administrative or other legal process to provide or disclose the Materials or Provider Information, Recipient will promptly notify Provider

and allow Provider reasonable time to oppose the process before providing or disclosing same.

12. Return of Material and Provider Information: Upon expiration or earlier termination of the Period of Use, Recipient will cease use of the Material and Provider Information, and will, upon the direction of Provider, return or destroy any remaining Material and Provider Information.
13. Disclaimer of Warranties: Provider provides the Material and Provider Information to Recipient “as is”. Recipient agrees to assume the sole responsibility for their handling, storage, disposal, manufacturing, reproduction and use. Provider makes no representation, warranty, guarantee or condition, whether expressed or implied, with respect to the Materials and Provider Information, including, but not limited to, any representation as to the durability, handling, storage, disposal, manufacturing, reproduction, use, fitness for a particular purpose, merchantability, or non-infringement on the proprietary rights of a third party.
14. Indemnification: To the extent permitted by law, Recipient will indemnify, defend and hold harmless Provider, and its directors, officers, governors, employees and agents from and against any and all liability, loss, damage, cost, and expense (including reasonable attorneys’ fees), which they may incur, suffer or be required to pay resulting from or arising out of the use, handling or storage of Provider Information, Material or Modifications by Recipient or Recipient’s personnel, or the breach of any obligation of Recipient hereunder unless and to the extent that such liability, loss, damage, cost, or expense results from or arises out of the wilful or negligent act or omission of personnel of Provider during the performance of this Materials Transfer Agreement or the breach of any obligation of Provider hereunder.
15. Notices: All reports and notices or other documents that a party is required or may want to deliver to the other party will be in writing and delivered by (i) personal delivery or a nationally recognized courier service and deemed to have been received at the time of delivery, or (ii) registered or certified mail (with all postage and other charges prepaid) and deemed to have been received at the end of the fifth (5th) day after it is posted, except that in the event of a postal strike, such notice will be deemed to have been received upon actual receipt, to the address set out in Schedule “A” for each party or to such other address that such party may subsequently direct in writing.
16. Governing Law: This Materials Transfer Agreement is governed by, and will be construed in accordance with the laws of the jurisdiction in which Institution is situated and the laws of Sierra Leone applicable therein, without regard to any choice or conflict of laws, rule or principle, that will result in the application of the laws of any other jurisdiction.
17. Dispute Resolution: The parties agree that any and all disputes and controversies arising from, connected with, or relating to this Materials Transfer Agreement, including relating to the construction, meaning, performance or effect of this Materials Transfer Agreement or any breach thereof (collectively “**Disputes**”) will be resolved in accordance with the terms of this section 17 as follows:
 - (a) Informal Dispute Resolution. Prior to initiating formal dispute resolution procedures, the parties will first attempt to resolve any Dispute directly through good faith negotiations. Either party may deliver to the other a written notice requiring negotiation of the Dispute

- (“**Notice to Negotiate**”). The parties will seek to resolve Disputes through negotiations, but may escalate the resolution of any Dispute internally as necessary or appropriate at the executive level. If the Dispute has not been resolved within 15 days after the delivery of a Notice to Negotiate, either party may by written notice (“**Notice to Mediate**”) require the other to mediate the Dispute in accordance with section 17(b). To the fullest extent permitted by law, the parties will conduct the negotiations in confidence.
- (b) Mediation. The parties agree to retain the services of a mutually acceptable third party mediator to mediate the resolution of the Dispute. Unless the parties otherwise agree in writing, the mediator will be resident in the city in which the Recipient is situated, and all meetings regarding the mediation will be held either by video or telephone conference or by in-person meetings held in such city. No party will unreasonably withhold acceptance of a mediator, and the selection of a mediator will be made within 15 days following the conclusion of direct negotiations regarding a Dispute pursuant to section 17(a) above. If a mediator is not appointed, or if, following the appointment of a mediator, the Dispute is not resolved within 30 days, or such extended period that the parties may agree to in writing, after the delivery of the Notice to Mediate, then any party may elect to commence litigation pursuant to section 17(c) below. To the fullest extent permitted by law, the parties agree to maintain the mediation proceedings in confidence; and share the costs of the mediator and the mediation facilities equally. All communications during the mediation referred to in section 17(b), including any documents or information prepared and exchanged solely for the purposes of that mediation, will be considered to be “without prejudice” and will not be admissible in any subsequent litigation.
- (c) Litigation. Any party may seek (i) interim measure of protection, including injunctive relief, prior to or during the negotiation or mediation of Disputes, and (ii) final resolution, from the courts sitting in the city in which the Institution is situated regarding any Dispute, and each party irrevocably and unconditionally attorns to the exclusive jurisdiction of such courts, and all courts competent to hear appeals there from, for that purpose.
18. Headings: The headings and subheadings in this Materials Transfer Agreement are inserted for convenience of reference only and will not be used in interpreting or construing the provisions of this Materials Transfer Agreement.
19. Independent Contractor: The relationship between the parties is that of independent contractors and nothing in this Materials Transfer Agreement will be construed as establishing an agency, partnership, joint venture, or employment relationship between the parties. No party has the authority to act on behalf of the other party, or to commit the other party in any manner at all or cause any other party’s name to be used in any way not specifically authorized by this Materials Transfer Agreement.
20. Entire Agreement: The parties hereto acknowledge that this Materials Transfer Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and replaces and supersedes all prior discussions, agreements and writings in respect hereto, unless expressly set out in Agreement.

21. Amendment: No amendment or variation to this Materials Transfer Agreement will operate to change or vary the terms, obligations or conditions hereof except upon mutual agreement by both parties signed by an authorized representative of each party.
22. Severability: In the event that any provisions of this Materials Transfer Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction in any jurisdiction, the remainder of the Agreement will remain in full force and effect without said provision in said jurisdiction and such determination will not affect the validity or enforceability of such provision or the Agreement in any other jurisdiction. The parties will in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which will most nearly approximate the intent of the parties in entering this Materials Transfer Agreement.
23. Waiver: No condoning, excusing or overlooking by any party of any default, breach or non-observance by any other party at any time(s) regarding any terms of this Materials Transfer Agreement operates as a waiver of that party's rights under this Materials Transfer Agreement. A waiver of any term or right under this Materials Transfer Agreement will be in writing signed by the party entitled to the benefit of that term or right, and is effective only to the extent set out in the written waiver.
24. Further Assurances: The parties will promptly do such acts and execute and deliver to each other such further instruments as may be required to give effect to the intent expressed in this Materials Transfer Agreement.
25. Enurement: This Materials Transfer Agreement will enure to the benefit of and be binding upon the parties hereto, and their respective administrators, successors, and permitted assigns.

IN WITNESS WHEREOF, the duly authorized officers of the parties have executed this Materials Transfer Agreement to be effective as of the Effective Date noted below:

Effective Date: _____

Transferor's institution by its authorized signatory:

Name: _____

Title: _____

Date: _____

Recipient's Institution by its authorized signatory:

Name: _____

Title: _____

Date: _____

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