Biological Material Transfer Agreement

for Research Purposes

This Agreement is made between

**The Governing Council of the University of Toronto**

(the **“Provider”**)

- and -

< Insert full legal name of individual or corporation >

 (the **“Recipient”**)

effective the last date of execution below (the “**Effective Date**”).

## Background

1. The parties entered into a Material Transfer Evaluation Agreement dated < insert date > for the sole purpose of enabling the Recipient to evaluate the Material for Recipient’s Research, as defined herein; *Note: Typically, the evaluation MTA would precede a research MTA. However, if the Recipient has ommitted the evalution stage and wishes to proceed directly to a Research MTA, this recital may be deleted.*
2. The Recipient wishes to continue (delete “continue” if no evaluation MTA entered into) using the Material for Research; and
3. The Provider wishes to permit the continued use of the Material for Research by the Recipientsubject to the terms and conditions of this Agreement.

## Definitions

The following words have the following meanings in this Agreement:

* 1. **“Commercial Purposes”** means the sale, lease, license, or other transfer of the Material or Modifications for any commercial purpose or for the direct benefit of any for-profit entity, including use of the Material or Modifications by any organization, including Recipient, to perform research for third parties who obtain rights in research results, to screen compounds, to produce or manufacture products for general sale, or to conduct any research activities that result in any sale, lease, license, or transfer of the Material or Modifications to a for-profit entity.

* 1. **“Confidential Information”** means information that a party identifies in writing at the time of transmittal as confidential, but does not include information that:
		1. is already known by the party to which it is disclosed;
		2. is or becomes part of the public domain without breach of this Agreement;
		3. is obtained from third parties that have no obligation to keep confidential to the parties to this Agreement;
		4. is independently developed by the receiving party or its parent corporation or their respective subsidiaries and/or affiliates without the aid, application or use of the Confidential Information (and such independent development can be properly demonstrated by the receiving party; or,
		5. is required by law, regulation, rule, act or order of any governmental authority or agency to be disclosed by the receiving party, provided, however, that such receiving party (A) gives the disclosing party sufficient advance written notice to permit it to seek a protective order or other similar order with respect to such Confidential Information and (B) thereafter discloses only the minimum information required to be disclosed in order to comply, whether or not a protective order or other similar order is obtained by such disclosing party.
	2. **“Material**” means Original Material, Progeny and Unmodified Derivatives, but does not include Modifications or other substances created by the Recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives.
	3. **“Modifications”** means substances created by the Recipient which contain or incorporate the Material.
	4. **“Original Material”** means: < insert >;
	5. **“Patent Rights”** means any patents, patent applications, trade secrets or other proprietary rights of the Provider having claims relating to the Original Material, including any altered forms of the Material made by the Provider, and any substitutions, divisions, continuations, continuations-in-part, reissues, renewals, registrations, confirmations, re-examinations, extensions, supplementary protection certificates or the like, or provisional applications of any such patents and patent applications, or foreign equivalents thereof.
	6. **“Progeny”** means an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism.
	7. **“Provider’s Scientist”** means < insert > of the Department of < insert >, University of Toronto.
	8. **“Research”** means the research project described in Appendix “A”.
	9. **“Researcher”** means < insert >, of the Recipient.
	10. **“Unmodified Derivatives”** means substances 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.

## Material Transfer

* 1. **License.** Subject to the terms and conditions herein, the Provider grants to the Recipient a royalty-free, non-exclusive license to use the Material solely in performance of the Research. The Recipient agrees that the Material:
		1. will not be used for Commercial Purposes;
		2. will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the Provider’s prior written consent;
		3. will be used only at the Recipient organization and only in the Researcher’s laboratory under the direction of the Researcher or others working under his or her direct supervision; and,
		4. will not be further transferred without the Provider’s prior written consent.
	2. **Replication of Research.** The Recipient will refer any request for the Material from anyone other than those persons working under the Researcher’s direct supervision to the Provider’s Scientist. To the extent supplies are available; the Provider may make the Material available, under a separate agreement, to other scientists at non-profit organizations who wish to replicate the Research. In no event shall the Recipient transfer the Material to any third party without prior consent of the Provider.
	3. **Research Results.** The Recipient will provide a summary the results of the Research to the Provider’s Scientist annually during the term of this Agreement.
	4. **Consulting.** During the term of this agreement the Provider Scientist shall make him/ herself (select one) available to provide advice and guidance to the Recipient Scientist regarding use of the Material via phone or email to a maximum of < insert number > hours. [NOTE: Clause is optional. To remove, contact IPO.]
	5. **Fee.** The license to use the Material for the Research is provided for a fee of CDN/ USD$ (select one) < insert amount >.
	6. **Payment.** Upon receipt by the Provider of the fee stipulated in 2.5, which will be payable by cheque made payable to the University of Toronto and addressed to Innovations & Partnerships Office, Banting Institute, 100 College St., Suite 413, Toronto, ON, M6P 2H3 Canada, the Material will be transferred to the Recipient.
	7. **Compliance with Laws.** The Recipient will use the Material and Modifications in compliance with all laws and governmental regulations and guidelines applicable to the Material and Modifications, and when the Material and Modifications are used in the United States, the Recipient will comply with then current N.I.H. guidelines and other applicable guidelines.
	8. **Recipient’s Personnel.** The Recipient shall ensure that the Recipient’s employees, students and agents using the Material and Modifications agree to be bound by the terms of this Agreement.

## Intellectual Property

1. **Ownership.** The Provider retains ownership of the Material, including any Material contained or incorporated in Modifications. The Recipient will own (a) Modifications (except that the Provider retains ownership of Material included therein), and (b) substances created through the use of the Material or Modifications, but which are not Progeny, Unmodified Derivatives or Modifications (*i.e.*, do not contain the Original Material, Progeny, Unmodified Derivatives). If either 3.1(a) or (b) result from the collaborative efforts of the Provider and the Recipient, joint ownership may be negotiated**.**
2. **Further Distribution.** The Recipient may distribute substances created by the Recipient through the use of the Original Material only if those substances are not Progeny, Unmodified Derivatives, or Modifications with prior written notice to the Provider.
3. **Patent Rights.** The Recipient acknowledges that the Material is or may be the subject of the Patent Rights. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the Recipient under the Patent Rights. In particular, no express or implied licenses or other rights are provided to use the Material, Modifications, or any related patents of the Provider for Commercial Purposes.
4. **Commercial Use.** If the Recipient wishes to use the Material or Modifications for profit-making or Commercial Purposes, the Recipient will, in advance of such use, negotiate in good faith with the Provider to establish the terms of a commercial license. The Recipient acknowledges that the Provider has no obligation to grant such a license to the Recipient, and may grant commercial licenses to others, or sell or assign all or part of the rights in the Material to any third party, subject to any pre-existing rights held by others. However, nothing in this paragraph shall prevent the Recipient from granting commercial licenses under intellectual property rights claiming Modifications, or methods of their manufacture or their use, that are solely owned by the Recipient.
5. **Patent Applications.** The Recipient may file patent application(s) claiming inventions made by the Recipient through the use of the Material, but will give at least thirty (30) days written notice to Provider before filing a patent application claiming Modifications or method(s) of manufacture or use(s) of the Material.
6. **Publications.** Recipient’s Scientist will provide appropriate acknowledgement of Provider’s Scientist in all publications involving the Material, and will send a copy of any such publications to the Provider at least thirty (30) days prior to submission for publication.
7. **Confidential Information.** The parties may disclose Confidential Information one to another to facilitate the performance of the Research. Confidential Information will be safeguarded and not disclosed to third parties by the receiving party. The Recipient may disclose the Provider’s Confidential Information to the Recipient’s parent corporations, affiliates and subsidiaries only if such parent corporations, affiliates and subsidiaries agree to be bound by confidentiality and non-use provisions at least as protective of the Provider’s rights as those contained in this Agreement.

## Limitation of Liability

* 1. **Limitation of Liability.** Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from its use, storage or disposal of the Material and Modifications. The Provider will not be liable to the Recipient for any loss, claim or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of the Material or Modifications by the Recipient, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of the Provider.
	2. **Indemnity.** To the extent permitted by law, the Recipient shall indemnify, defend and hold harmless the Provider, and its employees, officers, governors 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 in connection with the use, handling or storage of Material or Modifications by the Recipient or the Recipient’s personnel, or the breach of any obligation of the Recipient hereunder.
	3. **No Warranties.** The Material is experimental in nature and is provided without warranty, term or condition of merchantability or fitness for a particular purpose, or any other warranty, express or implied. The Provider makes no representation or warranty that the use of the Material will not infringe any patent, copyright, trademark or other proprietary rights.

## Term and Termination

* 1. **Termination.** This Agreement will enter into force as of the Effective Date and will terminate on the earliest of the following dates:
		1. when the Material becomes generally available from third parties, for example, though reagent catalogues or public depositories;
		2. on completion of the Research;
		3. on thirty (30) days written notice by either party to the other; or
		4. immediately by Provider if the Recipient has not cured a breach of this Agreement within seven (7) days of being notified of such breach.
	2. **Effect of Termination.** If termination occurs:
		1. under paragraph 5.1(a), the Recipient shall be bound to the Provider by the least restrictive terms applicable to the Material obtained from the then-available sources; or,
		2. under paragraph 5.1(b) or (c), upon the effective date of termination, or if deferred under subsection 5.2, such deferred date of termination of this Agreement, the Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material. The Recipient, at its discretion, will also either destroy any Modifications or remain bound by the terms of this Agreement as they apply to Modifications
	3. **Survival.** The provisions of sections 3, 4, 5, and 6, together with any necessary definitions, will survive termination or expiration of this Agreement.

## Miscellaneous

* 1. **Notices.** Communication between the parties shall be given in writing and may be given by personal delivery, express delivery service, certified or registered mail, postage prepaid, or facsimile transmission, addressed to:

 (a) if to the **Provider**

|  |  |  |
| --- | --- | --- |
|  | For Legal and Administrative Matters: | For Technical and Scientific Matters: |
| **Name:** |  | < Insert PI name > |
| **Department:** | Innovations & Partnership Office | < Insert PI department > |
| **Address:** | 108 College Street, Suite W540 | < Insert PI address > |
| **City, Province/State:** | Toronto, Ontario  |  |
| **Postal/Zip Code, Country:** | M5G 0C6, Canada |  |
| **Tel:** | (416) 978-5557 | < Insert PI telephone > |
| **Email:** | innovations.partnerships@utoronto.ca | < Insert PI email > |

 (b) if to the **Recipient**

|  |  |  |
| --- | --- | --- |
|  | For Legal and Administrative Matters: | For Technical and Scientific Matters: |
| **Name:** | < Insert > | < Insert > |
| **Department:** | < Insert > | < Insert > |
| **Address:** | < Insert > | < Insert > |
| **City, Province/State:** | < Insert > | < Insert > |
| **Postal/Zip Code, Country:** | < Insert > | < Insert > |
| **Tel:** | < Insert > | < Insert > |
| **Email:** | < Insert > | < Insert > |

* 1. **No Assignment.** The Recipient shall not assign any or all of its rights and obligations under this Agreement without the Provider’s prior written consent, which may not be unreasonably withheld.
	2. **Governing Law.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. The parties agree to attorn to the exclusive jurisdiction of the Courts of the Province of Ontario and Federal Courts of Canada
	3. **Successors.** This Agreement will bind and enure to the benefit of the parties and their respective heirs, successors and permitted assigns.
	4. **Entire Agreement.** This Agreement is the entire agreement of the parties and no change or modification will be valid unless it is in writing and signed by all parties.
	5. **Headings.** Paragraph headings in this Agreement are for purposes of convenience only and will not be used to interpret this Agreement.
	6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute one and the same instrument. For the purposes of this Agreement, the signature of any party hereto evidenced by a telecopy showing such signature shall constitute conclusive proof for all purposes of the signature of such party to this Agreement.

**IN WITNESS WHEREOF** by signature of their respective authorized officers, the parties agree to be bound by the terms of this Agreement.

|  |  |  |
| --- | --- | --- |
| **THE GOVERNING COUNCIL OF****THE UNIVERSITY OF TORONTO** |  | < Insert full legal name of individual or corporation > |
|  |  |  |
| Name: |   |  | Name: | < Insert > |
| Title: |  Director, Partnerships |  | Title: | < Insert > |
| Date: | < Insert > |  | Date: | < Insert > |

**Recipient Researcher:**

Having read this Agreement, I hereby agree to act in accordance with all the terms and conditions herein and applicable University of Toronto policies, and, if applicable, further agree to inform all participants of their obligations under such terms and conditions.

|  |
| --- |
|  |
| Name: | < Insert > |
| Date: | < Insert > |