

## MATERIAL TRANSFER AGREEMENT

**BETWEEN:**

The Royal Institution for the Advancement of Learning/McGill University, **[for cases where the PI is affiliated with an affiliated hospital: and its affiliated hospitals]**

a Canadian university with its principal place of business located at 845 Sherbrooke Street West, Montreal, Quebec, H3A 2T5, Canada (hereinafter referred to as "**Provider Institution**") on behalf of the Provider Scientist identified in Schedule "A" hereto

(Provider Institution and Provider Scientist are collectively referred to as "**Provider**")

**AND:**

**[COMPANY NAME]**

a corporation under the laws of [JURISDICTION] with a place of business at [COMPANY ADDRESS] (hereinafter referred to as "**Recipient Institution**") on behalf of the Recipient Scientist identified in Schedule "A" hereto

(Recipient Institution and Recipient Scientist are collectively referred to as "**Recipient**")

(individually Provider and Recipient are each a "**Party**" and collectively the "**Parties**")

**WHEREAS** Provider wishes to provide Recipient, and Recipient wishes to obtain from Provider, certain proprietary information and biological materials on terms and conditions set out in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and covenants set out in this Agreement, the parties agree as follows:

1. **DEFINITIONS.** In this Agreement, the following words have the following definitions:

- 1.1 "**Agreement**" means this Material Transfer Agreement;
- 1.2 "**Commercial Purposes**" means the sale, lease, licence or other exploitation of the Material, Information or Inventions to a person for profit, including, but not limited to, use of the Material, Information or Inventions by Recipient or any individual or organization to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, licence or other exploitation of the Material, Information or Inventions to any individual or organization for profit. For greater certainty, academic research sponsored by government or industry does not fall within the definition of "commercial purposes" unless the sponsor retains rights, title or interests in and to the Material, Information or Inventions or unless the research activities result in any sale, lease, licence or other exploitation of the Material, Information or Inventions to any individual or organization for profit;
- 1.3 "**Disclosure**" means the publication of theses, articles, scholarly writings or oral or written presentations at lectures or seminars;

- 1.4 **"Effective Date"** means the date upon which the agreement becomes effective and corresponds to date of the last signature to the agreement;
  - 1.5 **"Information"** means any and all information provided to Recipient by Provider relating to the Material, and clearly marked "CONFIDENTIAL", or if related orally or visually, identified as CONFIDENTIAL at the time of disclosure and reduced to written form within a reasonable period (but no later than thirty (30) days following disclosure) following disclosure. Information includes, but is not limited to, all know-how, techniques, practices, data, specifications, plans, drawings, prototypes, recordings, instructions, manuals, papers or other materials in whatever form or nature;
  - 1.6 **"Inventions"** means any discoveries, improvements, processes or inventions made by Recipient through use of the Material, Modifications or Information;
  - 1.7 **"Material"** means the Original Material, any Progeny or Unmodified Derivatives;
  - 1.8 **"Modifications"** means substances created by Recipient, which contain or incorporate any form of the Material (including Original Material, Progeny or Unmodified Derivatives);
  - 1.9 **"Original Material"** means the original material being transferred to the Recipient as described in Schedule "A" hereto;
  - 1.10 **"Progeny"** means unmodified descendant from the Material (for example, virus from virus, cell from cell, or mouse from mouse, or mouse from stem cell);
  - 1.11 **"Research Project"** means the research described in Schedule "A" hereto; and
  - 1.12 **"Unmodified Derivatives"** means substances created by Recipient, which constitute an unmodified functional subunit or product expressed by the Original Material (for example, subclones of unmodified cell lines, purified or fractionated subsets of the original material, proteins expressed by DNA/RNA supplied by Provider, or monoclonal antibodies secreted by a hybridoma cell line).
2. **LIMITED LICENCE.** Subject to the terms and conditions of this Agreement, Provider hereby grants to Recipient a non-transferable non-exclusive licence to use the Material and Information for academic research purposes only as described in the Research Project, for a period commencing on the Effective Date and ending three (3) years thereafter unless terminated earlier in accordance with this Agreement.
  3. **RESTRICTIONS ON USE.** Recipient agrees that the Biological Material and Information:
    - 3.1 shall be used only under the Recipient Scientist's direct supervision and only for the purpose of performing the Research Project described in Schedule "A" hereto and for no other purpose;
    - 3.2 shall not be used directly or indirectly for Commercial Purposes;
    - 3.3 may be used for investigational use in laboratory animals and/or *in vitro* studies but shall not be used in human subjects or for diagnostic or prognostic purposes;
    - 3.4 will not be used in research that grants proprietary rights in the Material or Information to a third party; and
    - 3.5 will not be transferred or disclosed to any third party for any purpose whatsoever without the prior written consent of Provider.

4. **CONSIDERATION.** As consideration for use of the Material, Recipient agrees to pay McGill the indicated amount before taking delivery of the Material. Shipping and related expenses will be paid by Recipient.

**Amount:** \$  
**Recipient's Courier Provider:**  
**Account Number:**

5. **OWNERSHIP, REPORTING AND INVENTIONS.**

- 5.1 Provider retains all rights, title and interest in and to the Information and the Material in whole or in-part(s) contained within Modifications;
- 5.2 Recipient will provide Provider (Researcher) with a written report on the progress of the Research Project within sixty (60) days of the end of each Anniversary year of this Agreement;
- 5.3 Recipient will promptly notify Provider in writing within thirty (30) days of any Inventions. Ownership of inventions will be determined by inventorship, and inventorship will be determined according to U.S. patent law. Where Recipient is the sole owner of Inventions Recipient hereby grants to Provider a royalty-free, non-exclusive licence to use the Inventions for academic research and scholarly purposes only. The parties agree to negotiate in good faith an agreement governing the administration and commercialization of jointly-owned Inventions; and
- 5.4 Upon request, Recipient will send Provider samples of Modifications for academic research and scholarly purposes only.

6. **REPRESENTATIONS AND WARRANTIES.** The Material and Information are being provided by Provider to Recipient on an "as is" basis and the Material is understood to be experimental in nature. Any use of the Material or Information by Recipient will be at the sole risk and liability of Recipient, whether or not Provider has consented or acquiesced to such use. PROVIDER MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE MATERIAL AND INFORMATION, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE DURABILITY, STORAGE, DISPOSAL, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TO THE NON-INFRINGEMENT OF THE MATERIAL AND INFORMATION ON THE PROPRIETARY RIGHTS OF A THIRD PARTY. ALSO, PROVIDER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS ARISING OUT OF OR RELATED TO THE FOREGOING EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

7. **LIABILITY.** The Recipient assumes all liability for damages, which may arise from its use, storage or disposition of the Material. 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, arising from the use of the Material by the Recipient, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of the Provider.

8. **CONFIDENTIALITY.** Subject to Section 9 hereof, during the term of this Agreement and for a period of [NUMBER] (•) years after the termination of this Agreement, Recipient will use reasonable efforts to maintain the confidentiality of the Material and Information and to prevent any unauthorized access, reproduction, disclosure and/or use of the Material and Information. Confidentiality obligations will not apply to information that:

- 8.1 was demonstrably in the possession of Recipient prior to the date of disclosure of the Information by Provider to Recipient; or
  - 8.2 is publicly known at the time of the disclosure; or
  - 8.3 is required to be disclosed under applicable laws, regulations or orders of any governmental authority; or
  - 8.4 is furnished by Provider to others without restrictions on its use or disclosure; or
  - 8.5 is demonstrably developed independently by Recipient without reference to the Information.
9. **PUBLICATION.** Recipient agrees to provide Provider with a copy of any proposed Disclosure of research conducted using the Material or Information at least thirty (30) days prior to submission for publication. If Provider does not respond to the Recipient by the end of the thirty (30) day period, Recipient will be free to present or publish the information. If Provider responds to the Recipient within the thirty (30) day period and identifies Information or patentable subject matter of either the Provider or Recipient within the Disclosure, Recipient shall delay publication for an additional sixty (60) days to allow Provider an opportunity to file patent applications. The parties agree that any publication made pursuant to this agreement shall be made in accordance with the custom of scientific research and shall acknowledge the contribution of the parties' scientists, as appropriate.
10. **TERMINATION.** This Agreement terminates immediately upon the occurrence of any one of the following events:
- 10.1 Recipient notifies Provider in writing that the Research Project has been completed or terminated; or
  - 10.2 Recipient becomes bankrupt or insolvent or a receiver is appointed to take possession of Recipient's business or property or Recipient has assigned its interest to creditors; or
  - 10.3 Recipient is more than thirty (30) days in arrears of any monies that are due to Provider under this Agreement; or
  - 10.4 Recipient commits a breach of section 3, 8 or 9; or
  - 10.5 Recipient terminates the non-exclusive licence granted to Provider under section 5; or
  - 10.6 Thirty (30) days have elapsed following written notice by one party to the other of its intention to terminate this Agreement in the absence of a breach of any of the provisions of this Agreement.
11. **DISPOSAL OF MATERIAL AND INFORMATION.** On the expiration or earlier termination of this Agreement, Recipient will, on the direction of Provider, promptly return or destroy the Material and Information. However, at the request of Recipient and for additional consideration, Provider may extend the term of this Agreement with respect to provisions governing Modifications so that Recipient can continue to use the Material contained or incorporated in the Modifications.

12. **NOTICES.** All payments, notices, reports, requests, consents and other communications between the parties pertaining to matters related to this Agreement will be given in writing and delivered by person, registered mail, or by fax, addressed to the Party as follows:

**Provider:** Office of the Vice-Principal (Research and International Relations)  
1555 Peel Street, 11<sup>th</sup> Floor  
Montreal, Quebec H3A 3L8  
Canada

Attention: [NAME OF OFFICER]  
Tel: 514.398.4200  
Fax: 514.398.1482

**Recipient:**

Any notice personally delivered or sent by fax will be deemed to have been given or received at the time of delivery or transmission. Registered or certified mail will be deemed to have been received on the fifth (5<sup>th</sup>) day after it is posted.

13. **HEADINGS.** The headings used in this Agreement are for convenience and reference only and do not define or limit the scope, or affect the interpretation of the provisions of this Agreement.
14. **NO WAIVER.** No waiver or failure to enforce the strict performance of this Agreement shall be deemed to prevent the parties from subsequently enforcing their rights. No waiver of a provision of this Agreement will be construed effective unless presented in writing and signed by an authorized representative of the party granting the waiver or consent. No waiver of a provision of this Agreement will be construed to be a waiver of any subsequent breach of this Agreement.
15. **ASSIGNMENT.** Recipient will not assign this Agreement, in whole or in part, without the prior written consent of Provider, whose consent may not be unreasonably withheld.
16. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior proposals, negotiations, agreements, understandings, representations and warranties of any form or nature, whether oral or written, and whether express or implied, which may have been entered into between the parties relating to its subject matter.
17. **SURVIVAL.** Sections 3, 5, 6, 7, 8, 9 and 11 will survive the expiration or earlier termination of this Agreement.
18. **SEVERABILITY.** If any provision of this Agreement is deemed to be invalid or unenforceable, such provision or provisions will be deemed modified to the extent necessary to render the same valid or enforceable, or if such modification is not possible, the remaining terms and provisions of this Agreement will be construed and enforced as if the invalid or unenforceable provision or provisions did not exist.
19. **FURTHER ASSURANCES.** Each party will execute and deliver such further agreements and other documents and do such further acts and things as the other parties reasonably request to evidence, carry out or give full force and effect to the intent of this Agreement.
20. **USE OF NAME.** Neither party shall have the right to use the name of the other party without the specific written permission of the authorized representative of the other party.

21. **GOVERNING LAW AND ARBITRATION.** This Agreement will be governed by and construed under the laws of Province of Quebec and the applicable laws of Canada without reference to its conflict of law rules. Nothing in the foregoing sentence will prevent Provider from applying to a court of competent jurisdiction for injunctive relief for any actual or threatened breach of confidentiality obligations by Recipient.
22. **LANGUAGE.** The parties confirm hereby that they each required that this Agreement and all documents and notices in connection therewith be drawn up in English. *Les parties reconnaissent par les présentes que chacune d'elles a exigé que cette convention et tout document ou avis y afférent soient rédigés en anglais.*

[THE REMAINDER OF THIS PAGE REMAINS BLANK]

[SIGNATURE PAGE FOLLOWS]

Example Only  
Please contact a Research Contracts  
& Agreements Officer

**IN WITNESS THEREOF** Provider and Recipient have caused this Agreement to be executed in duplicate by their respective duly authorized representatives.

**ACCEPTED AND AGREED TO:**

**The Royal Institution for the  
Advancement of Learning/MCGILL  
UNIVERSITY**

**[COMPANY NAME]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Technology Transfer Officer  
Date: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

Having read and understood this Agreement, I hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all Recipient and Provider participants are informed of their obligations under said terms and conditions.

**PROVIDER SCIENTIST**

**RECIPIENT SCIENTIST**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Example Only  
Please contact a Research Officer  
& Agreements Officer*

## Schedule "A"

### 1. Description of Recipient and Provider Scientists

#### Provider Scientist

Name:  
Title:  
Department:  
Address:

#### Recipient Scientist

Name:  
Title:  
Department:  
Address:

Phone:  
Fax:  
Email:

Phone:  
Fax:  
Email:

### 2. Description of Original Material

Please provide a detailed description of the Original Material, which Provider will be providing to the Recipient.

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### 3. Description of the Research Project

Please provide a detailed description of the research project: (use additional pages as needed).

Example Only  
Please contact a Research Officer  
& Agreements Officer