



Technology Development & Commercialization

UNIVERSITY HEALTH NETWORK

Material Transfer Agreement (“MTA”) Instructions for HUMAN TISSUE TRANSFER (including bodily fluids) NOT associated with a formal clinical trial

DO NOT TRANSFER MATERIALS UNTIL:

- (a) the REB has approved the proposed transfer and use of the materials to/by non-UHN parties; **and**
- (b) the MTA has been signed by UHN and the Recipient Institution/Recipient Scientist.

Document Completion Process:

NOTE: REB approval must be obtained prior to any MTA being formally signed and issued by UHN.

1) Please complete the following sections in the agreement which follows:

- Date
- “Recipient Institution” name & address
- “Recipient Scientist” name, shipping address, telephone, fax and e-mail
- Particulars of “Permitted Use” for the material
- Description of “Primary Material” to be transferred
- “Transferring Scientist(s)” name
- Particulars of “REB Approval Information”
- Modify (as required) Section 8 to reflect the appropriate or desired arrangement concerning report(s)/data provision and publication(s) related thereto.

- 2) Forward two (2) originals of the MTA to the TDC office (details below). The TDC will finalize the MTA contractual language with the Recipient Institution and obtain the necessary signatures from the Recipient Institution and Recipient Scientist.

Cheryl Adamo
University Health Network
Technology Development & Commercialization
101 College Street – Suite 150
Heritage Building – MaRS Centre
Toronto, Ontario M5G 1L7 Canada
T: 416-581-7400 F: 416-977-4765
E: cadamo@uhnresearch.ca

- 3) A copy of the fully executed MTA will be e-mailed to the UHN Transferring Scientist at which time s/he can release the Material.

MATERIAL TRANSFER AGREEMENT

(For human tissue; no clinical trial)

This Material Transfer Agreement (“**Agreement**”) for human tissue pursuant is made as of the ___ day of _____ 200_ (“**Effective Date**”) by and between the following Parties:

University Health Network

An Ontario not-for-profit corporation incorporated under the *University Health Network Act, 1997*, having a principal office 190 Elizabeth Street, R. Fraser Elliott Building – Room 1S-417, Toronto, Ontario, Canada M5G 2C4 (“**UHN**”)

AND

[INSERT INSTITUTION NAME AND CORPORATE ADDRESS]

(“**Recipient Institution**”)

AND

[INSERT SCIENTIST NAME AND SHIPPING ADDRESS]

(“**Recipient Scientist**”)

(As used in this Agreement, “**Recipient**” shall mean both Recipient Scientist and Recipient Institution collectively.)

WHEREAS the Recipient desires to obtain the Material from UHN for the Permitted Use and UHN is willing to allow the transfer of such Material to the Recipient in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the mutual covenants made in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the respective meanings set out below and

- a. “**Commercial Use**” means (i) the sale, lease or other transfer of the Material and/or Modification(s) to a for-profit organization, or (ii) use of the Material and/or Modification(s) by any organization, including the Recipient, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or (iii) to conduct research activities that result in any sale, lease, license or transfer of the Material and/or Modification(s) to a for-profit organization, or (iv) any activity which commercially exploits the Material and/or Modification(s). Industry-sponsored academic research shall not be considered a

Commercial Use of the Material and/or Modification(s) unless one or more of the above conditions of this definition are also met;

- b. "**Generated Data**" means all data, information and any other matter or deliverable arising from the performance of the Permitted Use by the Recipient;
- c. "**Material**" means the Primary Material and all Progeny and Unmodified Derivatives, *and further includes* any accompanying and/or related know-how, data or information (including, without limitation, personal and/or patient health information) that is transferred by UHN to the Recipient;
- d. "**Modification(s)**" means substances created by Recipient which contain or otherwise incorporate Material;
- e. "**Permitted Use**" means [insert a description of the REB approved permitted uses for the Material];
- f. "**Primary Material**" means [insert description of human tissue or bodily fluid to be transferred];
- g. "**Progeny**" means unmodified descendant(s) from the Primary Material, such as (for example) a cell from a cell, cells from tissue, cells from a xenotransplant, or an organism from an organism;
- h. "**Transferring Scientist(s)**": means [insert Name of UHN Transferring Scientist];
- i. "**Unmodified Derivative(s)**" means any substance constituting an unmodified functional or structural subunit or product expressed by, or derived from, the Primary Material or Progeny; and
- j. "**REB Approval Information**" means [insert appropriate information referencing/identifying REB approval (e.g. REB number/title of original REB-approved study under which Materials originally obtained, approval date and expiration date (if applicable)) pertaining to the transfer and use of Materials to/by the Recipient].

2. PERMITTED USE.

Permitted Use of Material. The Recipient agrees to use the Material and Modification(s) solely for the Permitted Use and in accordance with all terms and conditions contained in this Agreement. Subject to the terms and conditions of this Agreement, all other uses of the Material are strictly prohibited. **UNLESS AN OTHERWISE EXPLICIT "PERMITTED USE", THE MATERIAL MAY NOT BE USED IN HUMANS, INCLUDING FOR PURPOSES OF DIAGNOSTIC OR ANY OTHER TESTING.**

Prohibited Uses. For purposes of certainty and clarity, other than as encompassed by the Permitted Use, the Recipient shall not engage in (i) any Commercial Use of the Material and/or Modification(s), (ii) any research that is subject to consulting or licensing obligations to any third party, (iii) the creation or generation of Modification(s), or (iv) otherwise any other research utilizing the Material and/or Modification(s), without the express written permission of, and an appropriate license from UHN. However, UHN shall be under no obligation to grant any such permission or execute any such license.

3. **LEGAL TITLE TO MATERIAL.** Legal title to the Material shall be unaffected by this Agreement or the transfer of any Material hereunder. As between UHN and the Recipient, UHN shall be the sole owner of all rights and title to the Material.
4. **NON-EXCLUSIVE LICENSE.** The transfer of the Material constitutes a non-exclusive license to use the Material solely for the Permitted Use. The transfer of the Material does not grant to the Recipient any additional rights in the Material or the Generated Data other than as specifically set forth in this Agreement.
5. **RETURN OF MATERIAL / PROVISION OF GENERATED DATA.** Upon the expiration or the termination of this Agreement, the Recipient shall destroy or return to UHN (at UHN's direction) all unused Material and shall forward to UHN a copy of all Generated Data.
6. **REPRESENTATIONS AND WARRANTIES.** The Recipient covenants that it will use the Material and the Generated Data in compliance with all applicable laws, governmental regulations and guidelines, including, without limitation, any laws, regulations or guidelines applicable to research with human materials or recombinant DNA and any applicable Canadian Institute of Health Research or National Institute of Health guidelines. In respect of the protection of personal information or personal health information, the Recipient covenants that it will comply with Ontario's *Personal Health Information Protection Act, 2004* ("PHIPA") and Canada's *Personal Information Protection and Electronic Documents Act, 2000* ("PIPEDA"), as appropriate. As such, the Recipient shall not collect, use or disclose any confidential personal information or personal health information for any purpose other than as required for the Permitted Use.
7. **DISCLAIMER. ANY MATERIAL DELIVERED PURSUANT TO THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE AND IS PROVIDED "AS IS". THE RECIPIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE MATERIAL MAY CONTAIN ONE OR MORE INFECTIOUS AGENTS AND MAY HAVE ADDITIONAL UNKNOWN AND HAZARDOUS PROPERTIES. THE RECIPIENT SHALL USE MATERIAL WITH PRUDENCE AND APPROPRIATE CAUTION AND SAFEGUARDS SINCE NOT ALL OF ITS CHARACTERISTICS ARE KNOWN. UHN MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, WHATSOEVER IN RESPECT OF THE MATERIAL. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SAFETY, EFFICIENCY, POTENCY, IDENTITY, COMPOSITION, PURITY AND ACTIVITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIAL, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY.**
8. **REPORTS AND DISCLOSURE & INTELLECTUAL PROPERTY.**

Reports. The Recipient agrees to furnish UHN with a report encompassing the Generated Data arising from the use of the Material at the conclusion of the performance of the Permitted Use. A copy of any publication containing the Generated Data shall be provided to UHN for review and comment prior to submission for publication or other proposed public disclosure. The Recipient shall

acknowledge UHN as the source of the Material in any publication or disclosure of Generated Data.

Disclosure. Neither the Recipient, nor any other person authorized to use the Material under this Agreement shall make available or disclose any portion of the Material to any person or entity other than laboratory personnel or contractors under the immediate and direct control of the Recipient Scientist. No person authorized to use the Material shall be allowed to take, send or otherwise provide the Material to any location other than the Recipient Scientist's laboratory without UHN's prior written consent.

New Intellectual Property. Recipient shall promptly inform UHN of the creation of any intellectual property arising from the Permitted Use or otherwise from any other use of the Material (including, without limitation, the creation of Modification(s)). Recipient shall grant UHN a non-exclusive, perpetual, royalty-free license to use any such intellectual property for teaching and/or academic research purposes.

9. WAIVER AND INDEMINIFICATION. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THE RECIPIENT ASSUMES ALL LIABILITY FOR DAMAGES WHICH MAY ARISE FROM THE RECIPIENT'S ACCEPTANCE, USE, HANDLING, STORAGE AND/OR DISPOSAL OF THE MATERIAL AND IN RESPECT OF ALL MATTERS ASSOCIATED WITH THE GENERATED DATA. UHN WILL NOT BE LIABLE TO THE RECIPIENT FOR ANY LOSS, CLAIM OR DEMAND MADE BY THE RECIPIENT OR ANY OTHER PARTY, OR MADE AGAINST THE RECIPIENT BY ANY OTHER PARTY, DUE TO OR ARISING FROM ANY ACCEPTANCE, USE, HANDLING, STORAGE AND/OR DISPOSAL OF THE MATERIAL BY THE RECIPIENT, OR IN ANY MATTER ASSOCIATED WITH THE GENERATED DATA, EXCEPT TO THE EXTENT PERMITTED BY LAW WHEN CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF UHN. THE RECIPIENT INSTITUTION AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS UHN AND CORPORATE AFFILIATES OF UHN AND THEIR RESPECTIVE BOARDS OF GOVERNORS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STAFF, REPRESENTATIVES AND AGENTS AGAINST ALL LIABILITY, DAMAGES, EXPENSES (INCLUDING WITHOUT LIMITATION LEGAL EXPENSES), CLAIMS, DEMANDS, JUDGEMENTS, AWARDS OR OTHER LOSSES BASED UPON OR ARISING FROM THE RECIPIENT'S ACCEPTANCE, USE, HANDLING, STORAGE AND/OR DISPOSAL OF THE MATERIAL, AND IN RESPECT OF ALL MATTERS ASSOCIATED WITH THE GENERATED DATA.

10. TERM AND TERMINATION. This Agreement shall expire at the conclusion of the performance of the activities conducted pursuant to Permitted Use. This Agreement may be earlier terminated by either party upon fourteen (14) days' notice to the other party. Upon the expiration or earlier termination of the Agreement, the Recipient's rights to use the material shall end.

11. GENERAL.

11.1 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party

consents to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

11.2 This Agreement is not alterable or assignable without the prior written consent of UHN.

11.3 Sections 1 through 11 in their entirety shall survive termination of this Agreement until such time as the parties agree to the release of the obligations contained therein.

IN WITNESS WHEREOF, the parties or the duly authorised officers of the parties have executed this Agreement

UNIVERSITY HEALTH NETWORK

RECIPIENT INSTITUTION

Authorised Official: **Brian H. Barber, PhD**

Authorised Official: _____

Title: **Director, Technology Development & Commercialization**

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

ACKNOWLEDGMENT

I have read and understood this Agreement and agree to be bound by the terms and conditions herein.

RECIPIENT SCIENTIST

Name: _____

Title: _____

Signature: _____

Date: _____

Telephone: _____

Fax: _____

E-mail: _____