

MATERIAL TRANSFER AGREEMENT

THIS MATERIAL TRANSFER AGREEMENT (this “Agreement”) is made and entered into effective as of [MONTH] [DAY], [YEAR] by and between **KEIO UNIVERSITY**, having its principal place of business at 2-15-45 Mita, Minato-ku, Tokyo 108-8345, Japan (“University”), and [NAME OF COUNTERPARTY], having its principal place of business at [ADDRESS] (“Recipient”). Each of University and Recipient may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

In consideration of the mutual covenants and promises herein contained, University and Recipient agree as follows:

Article 1 TRANSFER OF MATERIAL.

University agrees to transfer the following materials owned by University (including its progeny, propagations or derivatives if the material is DNA, cells, seeds or other propagative, proliferous material; collectively, the “Material”) for use by Recipient in a research project, subject to the terms and conditions set forth in this Agreement.

Name of Material: _____

Description of Material: _____

Amount/Quantity of Material: _____

Creator or Administrator of Material: _____

Consideration: _____

Due Date for Payment: _____

Article 2 PURPOSE AND TERMS OF USE.

2.1 Subject to Recipient’s continued compliance with the terms and conditions of this Agreement, University hereby grants to Recipient a non-exclusive license to use the Material during the term of this Agreement solely for the following purpose (“Purpose of Use”) and under the following terms of use.

Purpose of Use: _____

Terms of Use: _____

2.2 Recipient may not use the Material for any purpose other than the Purpose of Use. Recipient may not disclose or transfer the Material to any third party without the prior written consent of University.

2.3 Recipient may not use any Material that constitutes DNA, cells or drugs, or any derivatives thereof, for research or testing in humans or in animals intended for human consumption.

2.4 Recipient shall use the Material in compliance with all Japanese and foreign laws,

governmental regulations, guidelines that may be applicable to the transfer, use, handling, storage or disposition of the Material.

Article 3 RECIPIENT RESEARCHER; PLACE OF USE.

3.1 The Material shall be accessed and used only by the following person (the “Recipient Researcher”) and laboratory personnel under Recipient Researcher’s immediate and direct supervision and control, and only at the following place (“Place of Use”). Recipient may change the Recipient Researcher and Place of Use subject to the prior written consent of University.

Recipient Researcher: _____

Place of Use: _____

3.2 University may, in its sole discretion, provide Recipient with information regarding use, maintenance or control of the Material to the extent necessary to facilitate the Purpose of Use.

Article 4 CONSIDERATION; COST.

4.1 In consideration of University’s transfer of the Material hereunder, Recipient shall pay to University the consideration set forth in **Article 1** plus any applicable consumption tax thereon. Recipient shall pay such consideration and consumption tax (if any) on or prior to the due date set forth in **Article 1** via wire transfer to the bank account as separately designated by University. Any and all costs incurred in connection with the wire transfer shall be borne by Recipient.

4.2 Any and all costs and expenses incurred in connection with the delivery, maintenance, repair, modification, return or any other use or disposal of the Material shall be borne by Recipient.

4.3 Any late payment hereunder shall bear interest of 5% per annum from the due date until University’s receipt of full payment.

4.4 University will not be required to return any payment made hereunder for any reason whatsoever.

Article 5 TITLE TO MATERIAL; NO TRANSFER OF RIGHTS.

Legal title and all other ownership interests in and to the Material shall at all times remain with University. The transfer of the Material under this Agreement shall not grant or be deemed to grant to Recipient any rights, title or interest in or to the Material other than those specifically set forth in this Agreement. Without limiting the generality of the foregoing, University does not, expressly or impliedly, grant to Recipient any license to any rights under or associated with (i) patents, utility models, designs, trademarks, copyrights or applications therefor, or any similar, corresponding or equivalent rights to any of the foregoing, anywhere in the world, or (ii) knowhow (collectively, “Intellectual Property Rights”) in or to the Material as a result of the transfer of the Material hereunder.

Article 6 MODIFICATION.

Recipient may not, without University's prior written consent, (i) modify the Material, whether or not such modification is necessary for the Purpose of Use, or (ii) reverse-engineer or otherwise attempt to determine the chemical structure or sequence of the Material.

Article 7 LOSS OR DAMAGE.

If Recipient loses or damages the Material, University may require Recipient to submit a report regarding the loss of or damage to the Material and including any information related thereto that University may request. In case such loss or damage is caused by disaster, fire or theft, Recipient shall attach to the report a certificate issued by a governmental authority or insurance company evidencing the loss of or damage to the Material.

Article 8 RETURN AND DISPOSAL OF MATERIAL.

Upon expiration or termination of this Agreement, Recipient shall, in accordance with University's instructions, return, destroy or otherwise dispose of the unused Material and used Material.

Article 9 RESEARCH RESULTS.

9.1 If Recipient develops, conceives or reduces to practice any inventions, discoveries, improvements, developments, or other technology in connection with the use of the Material (collectively, "Inventions"), all such Intellectual Property Rights in and to the Inventions shall be jointly owned by the Parties. The Parties shall consult with each other to evaluate the degree of contribution of each Party to the Inventions in order to determine the proportion of ownership of the Intellectual Property Rights in the Inventions. Recipient shall promptly notify University of any Inventions conceived.

9.2 If either Party wishes to grant to a third party a license to the Inventions, the Parties shall consult with each other in advance as to the allocation of any license fees or royalties in connection with such license and other terms with respect to the proposed license.

9.3 Either Party may use the Inventions internally and solely for the purpose of its own non-commercial research and experiments. Recipient shall obtain the prior written consent from University prior to any use of the Inventions in connection with any collaborative research or similar project with a third party, or to use or exploit the Inventions for any commercial purpose.

Article 10 PUBLICATIONS.

Any publication of research results using the Material shall be subject to University's prior written consent as to the content, timing and manner of such publication. Recipient and Recipient Researcher shall, at the request of University, acknowledge University as the source of the Material in any such publication.

Article 11 NO WARRANTY.

UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE OWNERSHIP, NONINFRINGEMENT OF ANY MATERIAL OR ANY PATENT OR OTHER PROPRIETARY RIGHTS OF ANY PERSON, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIAL, OR THE ABSENCE OF LATENT OR OTHER DEFECTS IN

THE MATERIAL, WHETHER OR NOT DISCOVERABLE.

Article 12 INDEMNIFICATION; LIABILITY LIMITS.

Recipient shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold University, its trustees, directors, officers, employees, agents and students, harmless against all claims, proceedings, demands and liabilities of any kind or nature whatsoever, including reasonable attorneys' fees and legal expenses, (i) arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the use, handling, storage or disposition of the Material, or (ii) arising out of or in connection with the performance or breach by Recipient of any obligation of Recipient or Recipient Researcher hereunder. In no event shall University be liable for any use of the Material by Recipient, the Recipient Researcher or its laboratory personnel, or for any loss, claim, damage or liability of any kind or nature, that may arise from or in connection with this Agreement or the use, handling, storage or disposition of the Material.

Article 13 CONFIDENTIALITY.

13.1 For the purposes of this Agreement, the term "Confidential Information" means any and all technical information or materials, including, but not limited to, the Material, furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that (i) is in electronic, written or other tangible form and clearly marked as "Confidential," or (ii) is disclosed orally or visually and designated as confidential at the time of the oral or visual disclosure and, further, within thirty days after the oral or visual disclosure, the summary of which is furnished to Receiving Party in writing clearly marked as "Confidential".

13.2 The term "Confidential Information" does not, however, include information that (i) is or becomes within the public domain through no act of the Receiving Party or its Representatives (as defined below) in breach of this Agreement; (ii) is already in the Receiving Party's possession without obligation of confidentiality at the time of disclosure and the Receiving Party; (iii) has been lawfully obtained by the Receiving Party from a third party having the right to make the disclosure who places no obligation of confidence upon the Receiving Party; or (iv) is independently developed by the Receiving Party without access to or use of the Confidential Information of the Disclosing Party.

13.3 The Receiving Party shall keep the Confidential Information confidential and shall not, without the Disclosing Party's prior written consent, disclose any Confidential Information in any manner whatsoever, in whole or in part, to any third party; provided, however, that the Receiving Party may disclose the Confidential Information or portions thereof to its directors, officers, employees, advisors and, in the case of University, students (collectively, "Representatives") (i) who need to know the Confidential Information for the purposes of this Agreement and (ii) who have been advised of by the Receiving Party and have agreed to maintain the confidential nature of the Confidential Information. The Receiving Party agrees to be responsible for any and all breaches of this **Article 13** by its Representatives.

13.4 The Receiving Party shall use any Confidential Information of the Disclosing Party solely for the purposes of this Agreement and shall not use, directly or indirectly, any Confidential Information in whole or in part for any other purpose whatsoever. The Receiving Party shall protect all Confidential Information with at least the same degree of care with which the Receiving Party would treat Confidential Information of its own.

13.5 In the event that the Receiving Party or any of its Representatives are requested

pursuant to, or required by, applicable law, regulation or legal process to disclose any of the Confidential Information, the Receiving Party shall (unless prohibited by applicable law) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such request or requirement, and consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow the request. In the event that disclosure of any Confidential Information is legally required, the Receiving Party or its Representatives, as the case may be, shall furnish only that portion of the Confidential Information which is legally required and exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded to such Information.

13.6 At any time upon the request of the Disclosing Party, the Receiving Party shall, at its own expense, promptly deliver to the Disclosing Party, or at the Disclosing Party's request, destroy, all copies of the Confidential Information (whether in written, electronic or other tangible format) in the Receiving Party's or its Representatives' possession that was delivered to the Receiving Party by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party and its Representatives shall be permitted to retain Confidential Information that would be unreasonably burdensome to destroy (such as archived computer records) or to the extent required to comply with applicable law, rules and regulations, provided that any information so retained herein shall remain subject to the terms of this Agreement.

13.7 This **Article 13** will survive for two years after the termination of this Agreement.

Article 14 EXPORT CONTROL.

Recipient covenants that it will not disclose to University any information that contains information, technology or data of which use, export, release or transfer is subject to any governmental restriction or prohibitions, including the U.S. Export Administration Regulations, without University's prior written consent.

Article 15 TERM AND TERMINATION.

15.1 The term of this Agreement commences on [Month/Date], [Year] and continues in force and effect until [Month/Date], [Year], unless earlier terminated in accordance with this Agreement.

15.2 University may terminate this Agreement upon written notice to Recipient:

- (i) if Recipient has breached any of its covenants or obligations contained in this Agreement, and such breach has not been cured within a period of thirty days after written notice of such breach from University;
- (ii) in case of appointment of a trustee or receiver for all or any part of the assets of Recipient, insolvency, liquidation or dissolution of Recipient, filing of a petition in bankruptcy against or concerning Recipient, a general assignment by Recipient for the benefit of creditor(s), or suspension of payment or banking transactions by Recipient;
- (iii) in case of any change in control of Recipient, consolidation or merger of Recipient with or into a third party, the sale of all or substantially all of Recipient's assets to a third party, in each case that would render it infeasible to continue this Agreement; or
- (iv) in case of any other event that would render it infeasible to continue this Agreement.

15.3 Termination of this Agreement does not affect any of the Parties' respective rights accrued or obligations owed before termination, including the rights and obligations as to indemnification under **Article 12**.

15.4 **Article 5, Article 6, Articles 8 through 13, Article 15.4, Articles 16 through 18** shall survive expiration or termination of this Agreement unless otherwise provided in this Agreement.

Article 16 GOVERNING LAW.

This Agreement shall be governed in accordance with the laws of Japan.

Article 17 DISPUTE RESOLUTION.

Except with respect to actions seeking relief other than monetary compensation, any disputes, controversies or differences which may arise between the Parties out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Tokyo, Japan, in accordance with the Rules of the Arbitration of the International Chamber of Commerce. Any arbitration award granted shall be final and binding on the parties and shall not be subject to appeal and shall be enforceable in any court of competent jurisdiction. The language for the arbitration procedure shall be [Japanese] and there shall be three arbitrators. Each Party shall nominate an arbitrator. The two party-appointed arbitrators shall then nominate the third and presiding arbitrator in consultation with the Parties.

Article 18 GENERAL.

18.1 Any notice or communication required or permitted to be given hereunder shall be given in writing and either by personal delivery, by facsimile, by registered or certified mail (with all postage and other charges prepaid) or by e-mail to the address shown below. Any notice delivered by personal delivery, facsimile or e-mail shall be deemed given and effective at the time of delivery. Any notice delivered by registered or certified mail shall be deemed given at the end of the tenth business day after it is posted.

University:

[Title]

[Address]

Telephone: []

Fax: []

Email: []

Recipient:

[Title]

[Address]

Telephone: []

Fax: []

Email: []

18.2 No provision of this Agreement may be waived, amended or modified, in whole or in part, nor any consent given, unless approved in writing by a duly authorized officer of the Parties hereto.

18.3 Neither Party may assign, transfer or grant a security interest in, in whole or in part,

either this Agreement or any of its rights or interests hereunder, or delegate, in whole or in part, any of its obligations hereunder, without the prior written approval of the other Party.

18.4 This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any, written or oral, understandings, proposals, or representations by and between the Parties.

18.5 In the event that any provision of this Agreement is deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

18.6 The headings contained in this Agreement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Agreement.

18.7 This Agreement may be executed and delivered in separate counterparts, including by facsimile or other electronic transmission, each of which, when so executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date first above written.

University:

Keio University

Recipient:

[NAME OF COUNTERPARTY]

Name:

Title

Name:

Title