

Biological Material Transfer Agreement

between _____ (PROVIDER) and

_____ (RECIPIENT)
regarding _____ (ORIGINAL MATERIAL).

Date: _____

A. Specific Terms of Agreement (Implementing Section)

- I. ORIGINAL MATERIAL:
- II. PROVIDER of the ORIGINAL MATERIAL (Name and address):
- III. PROVIDER SCIENTIST (Name, title, address):
- IV. RECIPIENT ORGANIZATION (Name and address):
- V. RECIPIENT SCIENTIST (Name, title, address):
- VI. TRANSMITTAL FEE:
None
- VII. TERMINATION DATE:
No specific date other than under the Terms and Conditions #13 of this Agreement.

B. General Terms and Conditions

- I. Definitions:
 1. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party will be specified in A. Implementing Section.
 2. PROVIDER SCIENTIST: The name and address of this party will be specified in A. Implementing Section.
 3. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in A. Implementing Section.

4. RECIPIENT SCIENTIST: The name and address of this party will be specified A. Implementing Section.
5. ORIGINAL MATERIAL: The description of the material being transferred will be specified in A. Implementing Section.
6. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not PROGENY or UNMODIFIED DERIVATIVES.
7. PROGENY: Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.
8. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: 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.
9. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.
10. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, 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, license, or transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.
11. NONPROFIT ORGANIZATION(S): A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

II. Terms and Conditions of this Agreement:

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

2. The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those 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 2 (a) or 2 (b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.
3. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:
 - (a) is to be used solely for teaching and academic research purposes;
 - (b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;
 - (c) is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and
 - (d) will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER.
4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the MATERIAL available, under a separate implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate the RECIPIENT SCIENTIST's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.
5.
 - (a) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.
 - (b) Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.
 - (c) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting

commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. 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.
7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.
8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL. Any patent application shall give full and proper credit to the inventors of the MATERIALS. Further, no patent application shall be filed by RECIPIENT so as to bar use of the MATERIAL by PROVIDER or any other entity. If notwithstanding the foregoing, any such patent application is filed or granted, RECIPIENT hereby assigns any and all patent rights to make use or sell the MATERIAL to PROVIDER.
9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. Any MATERIAL is on an as is basis. PROVIDER makes no warranties of any kind, either express or implied as to any matter including but not limited to, warranty of fitness for purpose, or merchantability, exclusivity or results obtained from use of any material nor shall PROVIDER be liable to RECIPIENT for indirect, special or consequential damages, such as loss of profits or inability to use material or any modifications, derivatives, progeny or any applications. PROVIDER does not make any warranty of any kind with respect to freedom from patent, trademark, or copyright infringement, or theft of trade secrets nor does provider assume any liability for same.
10. 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. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against from the use of the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER. RECIPIENT agrees to indemnify, defend and hold harmless PROVIDER

and PROVIDER's trustees, officers, employees, and agents from any and all claims or demands made against them, including but not limited to claims of negligence, arising from RECIPIENTS use, storage or disposal of the MATERIAL, except for claims of gross negligence or willful misconduct of the PROVIDER.

11. The agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgment of the source of the MATERIAL in all publications.
12. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.
13. This Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories, or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, or (d) on the date specified in A. Implementing Section, provided that:
 - (i) if termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available sources; and
 - (ii) if termination should occur under 13(b) or (d) above, 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 the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS; and
 - (iii) in the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this Agreement or for cause such as an imminent health risk of or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, 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 the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.
14. Paragraphs 6, 9, and 10 shall survive termination.
15. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in A. Implementing Section.

(The balance of page intentionally left blank)

CTT Sample Form

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate counterparts, each of which shall be deemed to constitute an original, effective as of the date first above written.

The undersigned verify subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities that they have the authority to bind to this Agreement the party on behalf of which they are executing below.

PROVIDER ORGANIZATION:
CARNEGIE MELLON UNIVERSITY

By: _____
Robert A. Wooldridge

Date: _____

Title: Associate VP, Center for Technology Transfer and Enterprise Creation

Address for Notices: Carnegie Mellon University
Attention: Associate VP of Technology Transfer and
Enterprise Creation 4615 Forbes Avenue, Suite 302
Pittsburgh, PA 15213
Fax: 412-268-7395

RECIPIENT ORGANIZATION:

By: _____

Date: _____

Title: _____

Address for Notices: _____

Telecopier: _____

RECIPIENT SCIENTIST:

By: _____

Date: _____

Title: _____