**UNIVERSITY OF MASSACHUSETTS**

**MATERIAL TRANSFER AGREEMENT**

(rev.08.04.2017)

 This Agreement (“Agreement”), effective as of **[INSERT DATE]** (the “Effective Date”), by and between the **University of Massachusetts**, a tax-exempt, public institution of higher education, established pursuant to Chapter 75 of the Massachusetts General Laws, located at One Beacon Street, Floor Thirty-one, Boston, Massachusetts 02114 (“**University**”)[, on behalf of its INSERT CAMPUS if desired], and **[INSERT NAME OF THE LEGAL ENTITY, E.G., A CORPORATION, COMPANY, PARTNERSHIP, OR INDIVIDUAL THAT WILL BE THE OTHER PARTY TO THIS AGREEMENT]**, having its principal place of business **[REPLACE “ITS PLACE OF BUSINESS” WITH “HIS/HER RESIDENCE” IF CONTRACTING WITH AN INDIVIDUAL]** located at **[INSERT ADDRESS]** (“**Company**”) (each University and Company hereinafter may be referred to as a “Party” or collectively as the “Parties”).

**RECITALS**

 WHEREAS, University has developed [ASSAY, OR OTHER PROJECT DESCRIPTION THAT IS NOTEWORTHY FUNDAMENTAL RESEARCH, OR MATERIAL] (Materials as described below);

 WHEREAS, Company has a desire to [INSERT ADDITIONAL INFORMATION/DESCRIPTION OF WHAT IS TO BE DONE] (as defined below); and

 WHEREAS, Company wishes to perform the Purpose using the Materials, and University is willing to grant access to such Material for the Purpose subject to the terms and conditions below;

 NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. RESEARCH AND TERM**

1.1 Purpose. Company shall use the Materials solely as set forth in **APPENDIX A** (collectively the “Purpose”), which Purpose shall be under the direct supervision of Dr. \_\_\_\_\_\_\_\_\_\_\_\_, and Company acknowledges and agrees that any other use shall require a written license from University. Company shall promptly, and in no event more than thirty (30) days after the Term of this Agreement, provide University with written reports of all results of Purpose and related data (“Results”). Company shall use the Materials in compliance with all applicable federal, state and local laws, rules, ordinances and regulations and, without limitation, shall not use the Materials in human subjects, in clinical trials, for diagnostic purposes involving human subjects, or otherwise in or for any *in vivo* experiments. Company represents and warrants that only employees of Company shall participate in the Purpose. Company shall not distribute Materials to any third party.

1.2 Publications. Company shall acknowledge University, in accordance with scientific and academic custom, in all published, written or oral communications concerning the Materials. Upon acceptance of any article, document or other writing for publication or public disclosure, Company shall provide University, at least thirty (30) days prior to actual publication or public disclosure, with a courtesy, advance copy of such article, document or other writing. University and its researchers and employees shall have the right to present or publish any Results and shall provide an early draft of any presentation or manuscript or abstract containing such Results for review by Company prior to its first public presentation or submission for publication, at least thirty (30) days in advance in the case of a presentation or manuscript, and at least seven (7) days in advance in the case of an abstract. At the end of such thirty (30) or seven (7) days, as the case may be, University or its researchers or employees shall have the right, in his/her discretion, to make such presentation or to submit such manuscript for publication.

1.3 Ownership. The Parties agree that this Agreement does not create or imply any license to any rights or property of the other Party existing prior to the Effective Date and further that, except as expressly set forth herein, this Agreement does not create or imply any license to any University rights or property which may be created or conceived of as a result of this Agreement. Company agrees to promptly (within thirty (30) days) inform University in writing, in strict confidence, of any invention or discovery, whether patentable or not, conceived or reduced to practice by Company in connection herewith.

1.4 Term. The period of performance for the Purpose (“Study Period”) shall commence on the Effective Date and continue for a period of [INSERT CONTEMPLATED PERIOD]. The period starting on the Effective Date and ending on the earlier of:

a) the end of the Study Period; or

b) termination of this Agreement;

shall be the “Term” of this Agreement.

**2. MATERIAL TRANSFER**

2.1 The materials transferred pursuant to this Agreement are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Original Materials” and as may be further described in **APPENDIX B**). For purposes of this Agreement, “Progeny” shall mean any unmodified descendant of the Original Materials; “Replicates” shall mean any copy or duplicate of the Original Materials; “Cross-bred Progeny” shall mean any modified descendant of the Original Materials derived from breeding or crossing the Original Materials with another animal or material; “Simple Derivatives” shall mean any substance or material created that constitutes an unmodified functional subunit of, or unmodified product expressed by, the Original Materials; and “Modification” shall mean new substances created by Company that contain, incorporate, are based on or result from the Original Materials, Progeny, Replicates, Cross-bred Progeny or Simple Derivatives or any combination of same, which are not themselves Progeny, Replicates, Cross-bred Progeny or Simple Derivatives. All of the foregoing, shall be referred to as the “Materials.” The Parties agree that all rights therein and thereto Materials, including but not limited to intellectual property rights of Materials or methods of use thereof, are and shall be the exclusive property of University. **[CAN ALSO LIMIT COMPANY FROM MAKING ANY OF THE ABOVE VARIATIONS, i.e. Company shall refrain, is prohibited from, and hereby agrees not to, make Progeny…etc…, should any such actions or activities occur, such Progeny…etc…shall be owned by University]**

*[****ALTERNATIVE LANGUAGE*** *- The materials transferred pursuant to this Agreement are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Original Materials” and as may be further described in* ***APPENDIX B****). For purposes of this Agreement, “Progeny” shall mean any unmodified descendant of the Original Materials; “Replicates” shall mean any copy or duplicate of the Original Materials; “Cross-bred Progeny” shall mean any modified descendant of the Original Materials derived from breeding or crossing the Original Materials with another animal or material; “Simple Derivatives” shall mean any substance or material created that constitutes an unmodified functional subunit of, or unmodified product expressed by, the Original Materials; and “Modification” shall mean new substances created by Company that contain, incorporate, are based on or result from the Original Materials, Progeny, Replicates, Cross-bred Progeny or Simple Derivatives or any combination of same, which are not themselves Progeny, Replicates, Cross-bred Progeny or Simple Derivatives. All of the foregoing, shall be referred to as the “Materials.” University reserves all rights therein and thereto Materials exclusive of Modifications.]*

*[****INSTANCES WHERE OWNERSHIP OF ELEMENTS ARE CONFERRED TO COMPANY*** *– Company hereby grants University a fully paid-up, royalty-free, non-exclusive, sub-licensable, license under any intellectual property developed pursuant to, or resulting from, this Agreement.]*

2.2 [INSERT HOW THEY WILL BE TRANSFERRED/SHIPPED]

2.3 Reimbursement. Company agrees to reimburse University the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_) which shall be paid immediately upon execution of this Agreement. This payment shall not constitute a sale of the Materials or consideration of any license.

**3. NOTICES**

3.1 Any notices required to be given or which shall be given under this Agreement shall be:

a) in writing and be addressed to the Parties as follows:

If to University:

[INSERT CONTACT PERSON & TITLE]

**University of Massachusetts**

[INSERT CAMPUS]

[INSERT ADDRESS]

[INSERT CITY], MA [INSERT ZIP CODE]

Fax Number: [INSERT FAX NUMBER]

Reference Agreement Number: [INSERT AGREEMENT NUMBER]

If to Company:

[INSERT CONTACT PERSON & TITLE]

**[INSERT COMPANY NAME]**

[INSERT ADDRESS]

Fax Number: [INSERT FAX NUMBER]

b) shall be: i) delivered by certified or registered first class mail (air mail if not domestic) or commercial courier service and shall be deemed to have been given or made as of the date received; or ii) delivered by facsimile and shall be deemed to have been given or made as of the same day such facsimile was sent only if the delivery is confirmed in writing by the Party receiving the delivery through facsimile, first class mail, air mail or courier service.

[3.2 For all fees and payments due hereunder:

For Checks, all payments due to University under this Agreement shall be made payable to the “University of Massachusetts” and addressed as set forth below:

[INSERT CONTACT PERSON & TITLE]

**University of Massachusetts**

[INSERT CAMPUS]

[INSERT ADDRESS]

[INSERT CITY], MA [INSERT ZIP CODE]

Fax Number: [INSERT FAX NUMBER]

Reference Agreement Number: [INSERT AGREEMENT NUMBER]

Payments via wire transfer should be made as follows:

[INSERT CONTACT PERSON & TITLE]

**University of Massachusetts**

[INSERT CAMPUS]

[INSERT ADDRESS]

[INSERT CITY], MA [INSERT ZIP CODE]

Fax Number: [INSERT FAX NUMBER]

Reference Agreement Number: [INSERT AGREEMENT NUMBER]]

**4. TERMINATION**

4.1 If either Party fails to meet any of its material obligations under this Agreement and shall fail to remedy these failures within Thirty (30) calendar days after receipt of written notice thereof, the non-breaching Party shall have the option of terminating this Agreement upon written notice to the other Party thereof.

4.2 In the event of termination by University for material breach by Company, Company shall cease all work and dispose of Materials as prescribed below.

4.3 Upon conclusion of the Purpose, or termination of this Agreement for any reason upon thirty (30) days written notice by either Party, or immediate termination of this Agreement by University for breach by Company or on account of Company’s insolvency (reasonably perceived by University or otherwise anticipated), Company agrees to discontinue all use of the Materials and return remaining Materials to University, or lawfully dispose of them (and provide written notice of same). Notwithstanding the foregoing, this Agreement shall terminate no later than two (2) years from the Effective Date, unless extended or renewed in writing by an amendment signed by the Parties.

**5. INDEMNIFICATION, DISCLAIMER, AND LIMITATIONS**

5.1 Indemnification.

(a) Company shall be responsible for and shall defend, indemnify, and hold University, or any of its affiliates or contractors, their respective trustees, officers, medical or professional staff, faculty, employees, or agents, and respective successors, heirs and assigns, (“University Indemnitees”) harmless from and against any injury to persons or damage to property, to the extent that such injury or damage is caused by the Materials, or protocols associated therewith.

(b) Company shall further defend, indemnify, and hold harmless University Indemnitees against any and all actions, claims, costs, damages, demands, disbursements, expenses, judgments, liabilities, penalties, prosecutions, suits, and reasonable attorney’ and experts’ fees that may be brought or instituted against University and/or any University Indemnitee based on or arising out of any use by Company, its affiliates or licensees of any use of the Materials or results thereof, including but not limited to any infringement of third party intellectual property rights or any such use in the manufacture, use, sale or other distribution of any product or process by Company, its affiliates or licensees, excepting any such action, suit, claim, demand or prosecution to the extent directly resulting from the gross negligence or reckless or intentional misconduct of University and/or the University Indemnitees in the use of any such product or process.

(c) Any party entitled to indemnification under this Section 5 shall give the indemnifying party prompt notice of any covered claim, shall provide the indemnifying party with the opportunity to defend against the claim, and shall reasonably cooperate in such defense at the indemnifying party’s expense.

5.2 No Warranties. THE ORIGINAL MATERIALS ARE PROVIDED “AS IS” AND UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE MATERIALS, INTELLECTUAL PROPERTY RIGHTS, AND/OR ANY RIGHTS GRANTED HEREUNDER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, VALIDITY OF INTELLECTUAL PROPERTY RIGHTS, OR THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AND HEREBY DISCLAIMS THE SAME. SPECIFICALLY, AND NOT TO LIMIT THE FOREGOING, UNIVERSITY MAKES NO WARRANTY OR REPRESENTATION (a) REGARDING THE, SAFETY OF ANY MATERIALS; (b) THE VALIDITY OR SCOPE OF ANY OF THE CLAIM(S) OF INTELLECTUAL PROPERTY RIGHTS PROPERTY RIGHTS; or (c) THAT THE EXPLOITATION OF THE INTELLECTUAL PROPERTY RIGHTS, MATERIALS, OR ANY PRODUCT WILL NOT INFRINGE ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF UNIVERSITY OR OF ANY THIRD PARTY. COMPANY ACKNOWLEDGES AND AGREES THAT NOT ALL THE CHARACTERISTICS OF THE MATERIALS ARE KNOWN AND IT IS POSSIBLE THE MATERIALS ARE VOLATILE OR DANGEROUS.

5.3 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL UNIVERSITY, OR ANY OF ITS AFFILIATES OR CONTRACTORS, THEIR RESPECTIVE TRUSTEES, OFFICERS, CONTRACTED MEDICAL OR PROFESSIONAL STAFF, FACULTY, EMPLOYEES, OR AGENTS BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE RIGHTS GRANTED HEREUNDER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, REGARDLESS OF WHETHER SUCH PARTY SHALL BE OR HAVE BEEN ADVISED, SHALL HAVE REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING.

**6. MISCELLANEOUS**

6.1 Amendment, Severability, and Waiver. Amendment of, waiver or alteration of, the terms of this Agreement may only be done by accomplished by written instrument executed by an authorized signatory each Party. If any provision of this Agreement is held invalid or unenforceable for any reason, the Parties intend that the invalidity or unenforceability shall not affect any other provision of this Agreement. The waiver of any rights or failure to act in a specific instance relates only to that instance and is not an agreement to waive any rights or fail to act in any other instance.

6.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no amendments to the Agreement shall be effective unless made in writing and signed by authorized representatives of both Parties.

6.3 Survival. Sections 1.3, 2.1, 5, and 6, as well as any other provision that expressly states or by its nature implies that it should survive termination of this Agreement, shall survive any expiration or termination hereunder.

6.4 No Joint Venture. Notwithstanding anything to the contrary herein, under no circumstances is this Agreement to be interpreted as the formation of a joint venture between the Parties. Neither Party may represent to be the agent of the other nor bind the other to any contract or agreement. The rights and obligations of the Parties towards each other are as specified in this Agreement.

6.5 Use of Name. Neither Party shall use the name, logo or trademarks of the other Party, or the names of any of University’s trustees, officers, faculty, students, employees, contractors or agents, or adaptation of any thereof, in any press release, advertising, promotional or sales literature, publicity or in any document employed to obtain funds or financing without the prior written approval of the Party or individual whose name is to be used, without the written consent of the other Party.

6.6 Headings & Interpretation. All headings are for convenience only and shall not affect the meaning of any provision of this Agreement. The parties hereto are sophisticated, have had the opportunity to consult legal counsel with respect to this transaction and hereby waive any presumptions of any statutory or common law rule relating to the interpretation of contracts against the drafter.

6.7 Tax Exempt Status. Company acknowledges that University is a tax-exempt State Agency under the United States Internal Revenue Code of 1986, as amended. Company also acknowledges that the University facilities may have been financed through offerings of tax-exempt bonds. If the Internal Revenue Service determines, or if counsel to University reasonably determines, that any terms of this Agreement jeopardizes the tax-exempt status of University or the bonds used to finance the facilities, the relevant term shall be void & invalid.

6.8 Governing Law. This Agreement is governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Massachusetts irrespective of any choice of law principles that would propose or require the application of the law of another jurisdiction. The Parties agree to submit to the exclusive jurisdiction of the State Superior Courts of Suffolk County located in the Commonwealth of Massachusetts and waive any defense of *forum non conveniens* or inconvenient forum to the maintenance of any action or proceeding in such courts.

***[Signature Page Follows]***

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

**COMPANY UNIVERSITY**

[INSERT NAME OF COMPANY] UNIVERSITY OF MASSACHUSETTS

BY: BY:

NAME: NAME:

TITLE: TITLE:

DATE: DATE:

***[Remainder of Page Intentionally Left Blank]***

**APPENDIX A**

**Purpose**

***[Remainder of Page Intentionally Left Blank]***

**APPENDIX B**

**Original Materials**

***[Remainder of Page Intentionally Left Blank]***