

***MATERIAL TRANSFER AGREEMENT***

This MATERIAL TRANSFER AGREEMENT (this “Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_, (the “Effective Date”), by and between Hiroshima University, a national university corporation duly organized under the laws of Japan, having its principal address at 1-3-2 Kagamiyama, Higashi-Hiroshima City, Hiroshima Pref., 739-8511, Japan (“University”) on the one hand, and \_\_\_\_\_, a corporation organized and existing under the laws of \_\_\_\_\_ having its principal address at \_\_\_\_\_ (“Recipient”) and Mr./Ms. \_\_\_\_\_ (the “Recipient Scientist”) on the other hand.

***RECITALS***

Recipient and Recipient Scientist wish to receive from University, and University is willing to supply Recipient and Recipient Scientist with certain research material requested by Recipient Scientist solely for scientific research/evaluation use, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

***ARTICLE I***

***DEFINITIONS***

***Section 1.01*** When used in this Agreement, except as otherwise expressly provided herein or unless the context herein otherwise requires, the following terms shall have the respective meanings indicated below:

“***Invention***” has the meaning ascribed thereto in Section 3.05.

“***Material***” means the Original Material, Progeny and Unmodified

Derivatives.

“**Modifications**” means substances or materials created by Recipient or Recipient Scientist which contain or incorporate any portion of the Material.

“**Original Material**” means \_\_\_\_\_ as set forth in Attachment I.

“**Party**” means either University on the one hand or Recipient and Recipient Scientist on the other hand, and “**Parties**” means collectively University on the one hand and Recipient and Recipient Scientist on the other hand.

“**Progeny**” means unmodified descendant from the Material made by Recipient or Recipient Scientist, the non-limiting examples of which include any material produced by amplification by whatever means of the Original Material, such as virus from virus, cell from cell or microorganism from microorganism.

“**Research Project**” means \_\_\_\_\_ as set forth in Attachment I.

“**Unmodified Derivatives**” means any substances or materials created by Recipient or Recipient Scientist from the Material that constitute an unmodified functional subunit or product not changed in form or character and expressed by the Original Material, the non-limiting examples of which include without limitation sub-clones of unmodified cell lines, purified or fractionated sub-sets of the Original Material, proteins expressed by DNA/RNA supplied by University, or monoclonal antibodies secreted by a hybridoma.

## **ARTICLE II**

### **MATERIAL TRANSFER AND SCOPE OF USE**

**Section 2.01.** Recipient and Recipient Scientist acknowledge that the Original Material will be made available to Recipient solely for scientific research/evaluation use

in the Research Project on an “as is” basis. The costs of the Original Material and any other costs associated with the delivery thereof and the quantity and delivery schedule of the Original Material shall be agreed upon by University and Recipient prior to each delivery depending on the conditions of University’s production and supply.

**Section 2.02.** Recipient and Recipient Scientist agree that (a) the Material and the Modifications shall be used only for scientific research/evaluation purpose and not for any profit making or commercial purposes; (b) the Material and the Modifications shall not be used in human subjects or clinical trials, or for diagnostic purposes involving human subjects without the written consent of University; (c) the Material and the Modifications shall be used only in Recipient Scientist’s laboratory under the direction of Recipient Scientist or another scientist working under his/her direct supervision; (d) the Material and the Modifications shall not be transferred or distributed to any third party, whether within Recipient organization or not, without the prior written consent of University; (e) the Material and the Modifications shall be used in compliance with all statutes, regulations or administrative guidance applicable to Recipient Scientist and the Research Project; and (f) Recipient and Recipient Scientist shall refer to University any request for the Material from anyone other than those scientists working under Recipient Scientist’s supervision.

### ***ARTICLE III***

#### ***OWNERSHIP OF MATERIAL AND MODIFICATIONS, ETC.***

**Section 3.01.** Recipient and Recipient Scientist acknowledge that (a) the Original Material is the property of University, (b) the ownership of any Progeny or Modified Derivatives vests in University immediately upon its creation, and (c) University retains the ownership rights to the Material contained or incorporated in the Modifications.

**Section 3.02.** University acknowledges that Recipient or Recipient Scientist retains the ownership of (a) the Modifications (except in the case of Section 3.01(c)) and (b) those materials or substances created through the use of the Material or Modifications, but which materials or substances do not contain the Material.

**Section 3.03.** Except as expressly provided in this Agreement, no express or implied licenses or rights are granted to Recipient or Recipient Scientist under any patents, copyrights or any other intellectual property rights of University relating to or in connection with the Material or the Modifications. No rights are provided to use the Material or the Modifications for profit making or commercial purposes.

**Section 3.04.** If Recipient desires to use the Material or Modifications for profit making or commercial purposes, and if required to do so by Recipient for such purposes, Recipient agrees to negotiate in good faith with University in advance of such use to establish the terms and conditions of an appropriate commercial license for Recipient. Nothing contained herein shall be construed, by implication or otherwise, an obligation on the part of University to enter into such a commercial license.

**Section 3.05.** If any discovery, invention or improvement (the “Invention”) is made by Recipient through use of the Material or the Modifications or as a direct result of the Research Project, Recipient agrees to disclose promptly the Invention to University on a confidential basis. The inventorship for patent applications for such Invention shall be determined in applicable law or mutual agreement between the Parties, taking into account the role and contribution of individuals involving development of the Invention. University shall at all times be entitled to use any Invention for non-commercial research purposes.

**Section 3.06.** Recipient shall provide University with semi-annual report detailing the result of the Research Project and any and all information that Recipient holds with respect to use of the Material or the Modifications.

#### **ARTICLE IV**

#### **CONFIDENTIALITY AND PUBLICATION**

**Section 4.01.** The receiving Party shall maintain in confidence any information of a confidential or proprietary nature in written or other tangible form and identified as “Confidential” or the equivalent thereof with respect to the Material or the Modifications, without prior written consent of the disclosing Party, shall not disclose any such

confidential information to any entity or person other than those scientists working under Recipient Scientist's supervision who have a need to know such confidential information for carrying out the purpose contemplated hereby and have agreed in writing to the same obligations of the confidentiality and restrictions on use as those to which the receiving Party is bound thereby, and shall not use any such confidential information for itself or others for any purpose other than in connection with purpose contemplated hereby. The receiving Party shall exercise the same degree of care with respect to maintaining the confidentiality of such confidential information as it exercises with respect to its own confidential and proprietary information of like importance. Any oral disclosure from the disclosing Party shall be identified as "Confidential" or the equivalent thereof by notice given to the receiving Party within thirty (30) days after the date of such oral disclosure.

**Section 4.02.** The receiving Party shall be relieved of any and all of the obligations under this Section concerning confidential information conveyed by the disclosing Party under the following circumstances: (a) such information was known by the receiving Party prior to disclosure to it by the disclosing Party; (b) such information is or becomes publicly known through no fault or omission attributable to the receiving Party; (c) such information is lawfully obtained by the receiving Party from a third party which is independent of the disclosing Party and is in lawful possession of the same; (d) such information is independently developed by the receiving Party without access to, or use of, any such confidential information disclosed hereunder; or (e) such information is required by law to be disclosed, provided that the disclosing Party is given a reasonable prior notice of the disclosure and reasonable opportunity to protect the confidential nature of such information.

**Section 4.03.** If Recipient and/or Recipient Scientist wishes to publish the results of the Research Project, Recipient and/or Recipient Scientist shall furnish University with a copy of the manuscript, abstract or any other publication disclosing such results prior to submission thereof to any publisher not less than thirty (30) days prior to publication to allow University the opportunity to protect any confidential information relating to the Material or the Modifications that might be contained in such disclosure.

**Section 4.04.** Recipient and Recipient Scientist shall acknowledge University as the source of the Material in any publication of results of the Research Project.

**ARTICLE V  
WARRANTY DISCLAIMER**

**Section 5.01.** The Material is experimental in nature and UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE MERCHANTABILITY OR FITNESS OF THE MATERIAL FOR A PARTICULAR PURPOSE, OR THAT THE APPLICATION OF THE MATERIAL OR THE MODIFICATIONS WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

**ARTICLE VI  
SAFETY AND COMPLIANCE WITH LAWS**

**Section 6.01.** The Material may have hazardous properties. Recipient assumes all risks and responsibilities in connection with the receipt, handling, storage, disposal, internal transfer and use of the Material and the Modifications by Recipient or Recipient Scientist including without limitation taking all appropriate safety and handling precautions to minimize health or environmental risk as well as for any adverse events resulting from the violation of security requirements or unauthorized dissemination of the Material or the Modifications by Recipient or Recipient Scientist.

**ARTICLE VII  
INDEMNIFICATION**

**Section 7.01.** Recipient shall at its own expense indemnify and hold harmless University and its present and former trustees, directors, officers or employees and their respective successors, heirs and assigns, from and against any and all demands, claims, proceedings, penalties, fines and liabilities (whether criminal or civil, in contract, tort, negligence, strict liability or otherwise) as well as losses, including without limitation

financial losses, damages, costs and expenses (including attorneys' and professional fees) arising from or in connection with the use of the Material or the Modifications or this Agreement, including without limitation arising from (a) injury to Recipient, Recipient Scientist, any scientists working under Recipient Scientist's supervision or any other employees of Recipient; (b) infringement of third party's intellectual property rights; and (c) use of the Material or the Modifications within or outside the scope of this Agreement.

**ARTICLE VIII**  
**LIMITATION OF LIABILITY**

**Section 8.01.** IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR NORMAL, SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFIT OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE MATERIAL OR THE MODIFICATIONS, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**ARTICLE IX**  
**DURATION OF AGREEMENT**

**Section 9.01.** This Agreement shall expire on the earlier to occur of (a) completion of the Research Project using the Material or the Modifications, (b) one (1) year from the Effective Date, which period may be extended by University's written consent, or (c) University's written notice to Recipient of early termination of this Agreement due to breach of any obligation by Recipient or Recipient Scientist hereunder. Recipient shall have the right to terminate this Agreement immediately on written notice to University for any reason.

**Section 9.02.** Upon expiration or termination of this Agreement, Recipient and Recipient Scientist shall immediately cease its use of the Material and the Modifications and return, or if University so requires, destroy, all Material and the Modifications in its

possession and provide University with written certification of their destruction.

**Section 9.03.** Articles III, IV, V, VII and VIII and Sections 9.02, 10.05 and 10.06 and this Section shall survive expiration or termination of this Agreement.

**ARTICLE X**  
**MISCELLANEOUS**

**Section 10.01.** All communications required or permitted to be given pursuant to this Agreement shall be in writing and in English, and shall be deemed to have been duly given upon the date of receipt if delivered by hand, recognized international overnight courier, confirmed facsimile transmission, or registered or certified mail, return receipt requested, postage prepaid to the addresses or facsimile numbers first written above.

**Section 10.02.** Recipient shall not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement, whether by operation of law or otherwise. Any attempt to assignment or transfer shall be void and of no force and effect.

**Section 10.03.** No modification or amendment hereof shall be valid or binding upon the Parties unless made in writing and duly executed on behalf of the Parties by their respective duly authorized officers or representatives.

**Section 10.04.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, express or implied, oral or written.

**Section 10.05.** This Agreement shall be governed by the laws of Japan without giving effect to conflict of law provisions.

**Section 10.06.** The Parties hereby submit to the exclusive jurisdiction of the Tokyo District Court in all matters concerning this Agreement.

**Section 10.07.** If the delivery of the Materials under this Agreement is prevented,

restricted or interfered with by reason of fire or earthquake, or other casualty or accident, strikes or labor disputes, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any government agency, or any other act or condition whatsoever beyond the reasonable control of University, University, upon giving prompt notice to Recipient shall be excused from such delivery to the extent of such prevention, restriction or interference and this Agreement shall be deemed suspended so long as and to the extent that any such cause prevents or delays the performance.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date written beneath their respective signatures.

Hiroshima University

[Recipient]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Tetsuji Okamoto

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

Title: Executive (Community Collaboration,  
Public Relations, Information)

Title: \_\_\_\_\_

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

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

[Recipient Scientist]

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

*Attachment I*

***I. Original Material***

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***II. Research Project***

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