# **MATERIAL TRANSFER AGREEMENT**

**THIS AGREEMENT** is made dated the XXX.

## BETWEEN:

1. **THE UNIVERSITY OF HONG KONG**, whose address is at Pokfulam Road, Hong Kong (“**HKU**”); AND
2. [Prof. Kathryn Cheah] whose address is at [Department of Biochemistry, 3/F Laboratory Block, 21 Sassoon Road, Hong Kong] (the “**Provider Scientist**”); AND
3. [XXX] whose address is at [XXX] (the “**Recipient**”); AND
4. [ XXX], whose address is at [XXX] (the “**Institution**”)

**WHEREAS:**

A. The Department of [Biochemistry ]of HKU has collected and/or developed the research materials as described in the Schedule attached hereto and includes any constructs, strains, derivatives obtained from or as a result of the use of the research materials (“**Research Materials**”).

B. The Recipient, who is an employee of the Institution, seeks to obtain the said Research Materials from HKU for non-commercial, academic research relating to [ XXX] (the “**Research Programme**”).

C. HKU agrees to provide the Research Materials for a period of [ ] year[s] (the “**Term**”) from the date hereof and on the terms and conditions set out below, and the Recipient and the Institution agree to comply with those terms and conditions.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. **USE OF RESEARCH MATERIALS**
	1. The Institution and the Recipient shall keep the Research Materials secure at the Recipient’s laboratory and the Research Materials shall not be removed from the Recipient’s laboratory. The Institution shall ensure that no one other than the Recipient and authorised co-workers have access to them. In this Agreement, the “**Research Materials**” shall include any and all materials, documents and information that HKU may provide to the Recipient and/or the Institution under or in connection with this Agreement, and any derivatives, portions, progeny or improvements.
	2. The Institution and the Recipient shall use the Research Materials only for the Research Programme and not for any commercial purpose or commercially-sponsored research without the prior written consent of HKU even if those purposes are being pursued in the Recipient’s laboratory.
	3. The Institution and the Recipient represent and warrant that the Research Materials will not be used for testing in or treatment of human subjects.
	4. The Research Materials shall at all times remain the property of HKU and HKU reserves the right to distribute the Research Materials to others and use them for their own purposes.
	5. Nothing contained herein shall be construed as granting any licence or assignment of any intellectual property rights vested in HKU or any right to use the Research Materials or any information of HKU other than as expressly granted herein.
	6. The Recipient shall use the Research Materials in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with any applicable laws and regulations governing the transportation, keeping or use of the Research Materials.
	7. The Institution and the Recipient shall acknowledge HKU as the source of the Research Materials in any oral presentations or written publication which mentions them. The Recipient shall send HKU a copy of any reports or publications which describe work carried out using the Research Materials, as well as any raw data, and HKU shall be entitled to use all such data, reports and publications and make them available to third parties.
	8. The Term may be extended with the written agreement of HKU. Permission to extend the Term must be sought by the Institution [3] months before the expiry of the Term.
2. **TERMINATION AND RETURN OF RESEARCH MATERIALS**
	1. Notwithstanding anything herein contained, HKU shall be entitled at any time and in its absolute discretion to terminate this Agreement and require the Institution and the Recipient to immediately cease all research activities and the use of the Research Materials, and upon being so required, the Institution and the Recipient shall act accordingly and shall return to HKU, or destroy (as HKU may direct), such of the Research Materials and any copies thereof as are in their possession or under their control.
	2. If HKU should so require, the Recipient shall, when returning the Research Materials under Clause 2.1, provide to HKU a statutory declaration duly executed by the Recipient confirming that the Recipient has complied with all of the obligations under Clause 2.1.
	3. Upon termination or expiration of this Agreement for whatever reasons, all rights or licenses granted to the Institution and the Recipient hereunder shall terminate forthwith.
	4. Clauses 3, 4 and 5 shall survive the termination of this Agreement for whatever reasons.
3. **CONFIDENTIALITY**
	1. The Institution and the Recipient agree not to transfer, transmit or in any other way disclose the Research Materials or any related information to any third party without the written consent of HKU.
	2. HKU recognises the desire of the Recipient to publish and disclose details of academic research in scientific journals or public presentation and it is hereby agreed that the Recipient shall submit the proposed disclosure to HKU for its review at least forty-five (45) days prior to the scheduled disclosure of the results to any third party. HKU will complete its review within forty-five (45) days of receipt of the submitted documents. HKU may request that the Recipient delete from the documents any reference to HKU’s confidential information. If, during its forty-five (45) day review period, HKU notifies the Recipient that it desires to file patent application on any inventions disclosed in the documents, the Recipient will defer publication/disclosure for up to sixty (60) additional days from the date of submission of the documents to HKU.
	3. To the extent permitted by law, the Institution and the Recipient agree to treat in confidence, for a period of five (5) years from the date of its disclosure, any of HKU’s written information about this Research Materials that is labelled or identified as “CONFIDENTIAL” (“**Confidential Information**”).
	4. The obligations of confidence referred to in this Clause 3 shall not extend to any information which:
4. is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the Recipient;
5. was known to the Recipient prior to disclosure by HKU, as proven by written contemporaneous records of the Recipient;
6. is disclosed to the Recipient by a third party who did not obtain the Confidential Information, directly or indirectly, from HKU subject to any confidentiality obligation;
7. is at any time independently developed by the Recipient, as proven by its contemporaneous written records;
8. is expressly authorised in writing by HKU; or
9. is required by law, court order, a government agency or a stock exchange to be disclosed (in which case the Institution and the Recipient shall give HKU as early notice of the requirement to disclose the Confidential Information as reasonably practicable and assist HKU to challenge such disclosure if appropriate), subject to confidentiality protection to the extent possible.

3.5 The Institution and the Recipient shall not use or refer to this Agreement in any promotional activity, news release, advertisement or website or use the name, abbreviation or logo of HKU without the prior written consent of HKU. However this paragraph shall not preclude the Recipient’s attribution of authorship in, and distribution of academic literature reporting the results of the Research Programme conducted with the Research Materials.

1. **WARRANTIES/LIABILITIES**
	1. The Institution and the Recipient understand and agree that owing to the experimental nature of the Research Materials, such Research Materials are provided without warranty of merchantability or fitness for a particular purpose or any other warranty, express or implied, and without any representation or warranty that the use or supply of the Research Materials will not infringe any patent, copyright, trademark or other proprietary rights of third parties.
	2. In no event shall HKU be liable for any use or misuse by the Recipient of the Research Materials transferred under this Agreement. The Institution and the Recipient agree to hold HKU harmless and indemnify HKU and keep HKU indemnified for any cost, loss, demand, claim, proceeding, penalty, fine, damage, or liability of whatsoever kind or nature, which may arise from, or in connection with this Agreement or the use, handling or storage of the Research Materials by the Recipient.

**5. INTELLECTUAL PROPERTY RIGHTS**

* 1. HKU shall retain title to any patent or other intellectual property rights in any discovery, improvement or invention (“**Invention**”) made by its staff, agents, students, researchers or employees. The Institution and the Recipient shall use their best endeavours to assist HKU in any patent or other intellectual property application procedures in any country pertaining to the Research Materials.
	2. The Recipient shall fully and promptly disclose to HKU any Invention relating to the Research Materials or as a direct result of the Research Programme. The Institution and the Recipient shall not make or seek to make actual commercial gain from such an Invention, nor make any patent application or secure any other proprietary rights to legally protect any such Invention except with the prior written consent of HKU. HKU shall, at all times, retain the right to use such Invention for non-commercial research purposes.

**6.** **MISCELLANEOUS**

* 1. The headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement. Unless the context otherwise requires, references in this Agreement to the singular shall be deemed to include references to the plural and vice versa and references to one gender shall include all genders. References in this Agreement to persons include references to bodies corporate.
	2. The Institution and the Recipient shall not be entitled to assign this Agreement or their rights or obligations hereunder to any third party without the prior written approval of HKU.
	3. The Research Materials are supplied without cost but the Institution shall reimburse HKU for any shipping and related costs that may be incurred when preparing and sending the Research Materials to the Recipient.
	4. It is expressly agreed that the relationship between the parties shall not constitute a partnership, joint venture or agency. Neither the Institution nor the Recipient shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on HKU.
	5. This Agreement, including the Schedule hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all oral and/or written communications or understandings relating to the subject matter hereof.

**7. GOVERNING LAW**

7.1 This Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region (“**HKSAR**”) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of HKSAR.

IN WITNESS whereof this Agreement has been signed the day and year first above written.

For and on behalf of For and on behalf of

The University of Hong Kong (“HKU”) [ ] (the “Institution”)

Name: Name:

Title: Title:

Date: Date:

By Provider Scientist: By Recipient:

Name: Prof. Kathryn Cheah Name:

Date: Date:

**SCHEDULE**

**(the “Research Materials”)**

**[please specify]**

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