## MedallionSM1

## Material Transfer Agreement Instructions:

## There are two parts of this agreement template.

## First, below is the agreement form. This carries the terms and conditions of the agreement.

## Second is the agreement cover letter. This letter identifies the players, and provides a place for them to sign.

## Both parts must be fully completed.

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## MATERIAL TRANSFER AGREEMENT

## PROVIDER – Brigham Young University

## RECIPIENT –

### I. DEFINITIONS:

A. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

B. PROVIDER CONTACT: The name and address of this party will be specified in an implementing letter.

C. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

D. ORIGINAL MATERIAL or MATERIAL: The description of the material being transferred will be specified in an implementing letter.

E. MODIFICATIONS: Substances or products created by RECIPIENT which contain/incorporate the MATERIAL.

F. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL by the RECIPIENT organization to perform internal research, 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 to another for-profit organization

### II. TERMS AND CONDITIONS OF THIS AGREEMENT

 A. The PROVIDER retains ownership of the MATERIAL.

 B. The RECIPIENT retains ownership of:

 1. MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein)

If MODIFICATIONS result from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

 C. The RECIPIENT agrees that the MATERIAL:

 1. is to be used solely for internal research purposes;

OR..................... (choose from 1 above or 2 below)

 2. will be used for COMMERCIAL PURPOSES

AND..................

 3. will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;

 AND.................

4. is to be used only at the RECIPIENT organization and only in the facility under the direction of the RECIPIENT or others working under his/her direct supervision;

AND..................

 5. will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER.

D. The RECIPIENT agrees to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT’s direct supervision.

1. The RECIPIENT shall have the right, without restriction, to distribute MODIFICATIONS created by the RECIPIENT through the use of the ORIGINAL MATERIAL.

 2. 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.

3. It is recognized by the RECIPIENT that 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.

E. 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, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.

F. If the RECIPIENT desires to use or license the MATERIAL 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.

 G. 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.

H. Any MATERIAL delivered pursuant to the Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

 I. 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 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.

J. This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. The RECIPIENT agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publication.

 K. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.

 L. This Agreement will terminate on the earliest of the following dates:

 1. when the MATERIAL becomes generally available from third parties, or

 2. on completion of the RECIPIENT's current research with the MATERIAL, or

 3. on thirty (30) days written notice by either party to the other, or

 4. on the date specified in an implementing letter, provided that:

 a. if termination should occur under L.1 the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available sources; and

b. if termination should occur under L.2. or 4. 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

 c. in the event the PROVIDER terminates this Agreement under L.3. other than for breach of this Agreement or for cause such as an imminent health risk 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.

 M. Paragraphs F, I and J shall survive termination.

 N. 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 an implementing letter.

Signatures are found on the Cover Letter

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## Material Transfer Agreement Implementation Cover Letter

The purpose of this letter is to provide a record of the material transfer, to memorialize the agreement between the PROVIDER CONTACT (identified below) and the RECIPIENT (identified below) to abide by all terms and conditions of the Material Transfer Agreement (MTA).

The PROVIDER CONTACT will forward the material to the RECIPIENT upon receipt of the signed copy from the RECIPIENT organization. This Implementing Letter is effective when signed by all parties. The parties executing this Implementing Letter certify that their respective organizations have accepted and signed an unmodified copy of the MTA, and further agree to be bound by its terms, for the transfer specified above. Please fill in all of the blank lines below:

1. ORIGINAL MATERIAL (Enter description):

2. Optional Termination Date:

3. Optional Transmittal Fee (to reimburse the PROVIDER for preparation and distribution costs)

|  |
| --- |
| Amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date by its duly authorized representative.

 (**PROVIDER Organization Name**) (**RECIPIENT Organization Name**)

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

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

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

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

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **ACKNOWLEDGEMENT**

I have read this Agreement and understand, accept, and will abide by the terms and conditions of this Agreement.

 Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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