

**MATERIAL TRANSFER AGREEMENT
INCOMING MATERIALS**

THIS MATERIAL TRANSFER AGREEMENT (“Agreement”) is dated as of _____, 2008 (“Effective Date”), and is by and between **The Cleveland Clinic Foundation** (“CCF”), an Ohio nonprofit corporation located at 9500 Euclid Avenue, Cleveland, Ohio 44195, and _____ (“UNIVERSITY”), located at _____.

The materials identified below (the “Materials”) are the result of the research efforts of UNIVERSITY, which holds a proprietary interest relating to the Materials by assignment. For purposes of this Agreement, the following definitions will apply:

Original Materials: Original Materials means the Materials being transferred, which are:

Materials: Original Materials plus Progeny and Unmodified Derivatives.

Progeny: Unmodified descendant from the Materials, such as virus from virus, cell from cell, or organism from organism.

Unmodified Derivatives: Substances created by CCF which constitute an unmodified functional sub-unit or product of the Original Materials. Some examples include: subclones of unmodified cell lines, purified or fractionated sub-sets of the Original Materials, proteins expressed by DNA or RNA, supplied by the provider, or monoclonal antibodies secreted by a hybridoma cell line.

Modifications: Substances created which contain/incorporate any form of the Materials (Original Materials, Progeny or Unmodified Derivatives).

Information: Information shall mean all proprietary and/or confidential information which is related to the Materials disclosed to CCF by UNIVERSITY.

It is understood that _____, a researcher at UNIVERSITY (“Providing Scientist”), may provide to CCF a sample of the Materials. CCF agrees to receive the Materials subject to the following obligations and provisions:

1. CCF shall receive and use the Materials solely for application of the Materials in research in the CCF Department of _____, and shall be conducted by _____ (“CCF Researcher”) and under his direct supervision. **Said research shall consist of studying** _____.

2. The Materials shall not be used in research or testing involving human subjects. CCF shall use, handle, and store the Materials in compliance with any and all applicable governmental rules and regulations relating to the handling or use of such Materials, including

applicable laws and regulations regarding protected health information. Access to the Materials will be limited to CCF Researcher and staff under his direct supervision. The Materials are potentially biohazardous and shall be handled in compliance with applicable safety regulations, including the Occupational Safety and Health Act (“OSHA”).

3. Except as may be authorized in advance in writing by UNIVERSITY, CCF shall retain all Materials in its secure possession and will not transfer possession of such Materials to any third party for any purpose

4. In the event that (a) CCF is not using and does not intend to use the Materials, or (b) this Agreement is terminated or upon the earlier request of UNIVERSITY, the Materials shall be returned to UNIVERSITY per UNIVERSITY instructions or otherwise disposed of in accordance with instructions from UNIVERSITY.

5. All Information supplied by UNIVERSITY or Providing Scientist shall be deemed to belong to UNIVERSITY and will be disclosed or provided to CCF in confidence. CCF agrees to exert its best efforts to preserve the confidential status of the Information, following procedures with regard thereto at least as stringent as it follows with respect to its own proprietary information. CCF shall not disclose to any third party, any Information without the prior written consent of UNIVERSITY. CCF may disclose Information to those of its employees, agents, and all others acting on its behalf (“Representatives”) who have a need to know such Information in the course of the performance of the research as set forth herein; provided all such Representatives, agree to be bound by this Agreement to protect the confidentiality of such Information. These confidentiality obligations shall not apply to any Information that:

- (a) was known to CCF prior to the receipt of the Information or that is developed independently of the Information as evidenced by written documentation;
- (b) becomes known to the public not as a result of any action or inaction by CCF;
- (c) CCF acquires from a third party who has the right to disclose to CCF; or
- (d) is required to be disclosed by CCF pursuant to law or by order of a court of competent jurisdiction, provided that prompt notice is given to UNIVERSITY of the requirement of such disclosure to afford UNIVERSITY adequate opportunity, to the extent legally permissible, to review and if UNIVERSITY deems appropriate, to contest such disclosure.

The obligations of confidentiality under this Section 5 shall extend for a period of five (5) years after the effective date of this Agreement.

6. None of the Materials will be manufactured by or for CCF in commercially significant quantities or offered for sale to others without a license to do so from UNIVERSITY. It is understood that under this Agreement, no implied or express license is granted by UNIVERSITY to CCF for any of the Materials or Information.

7. It is understood and agreed that both CCF and UNIVERSITY may have inventions, discoveries, innovations, copyrights, trade secrets, or other intellectual property rights, whether patentable or not, prior to engaging in this Agreement, or developed independently of this Agreement, and that such inventions, discoveries, innovations, copyrights, trade secrets, or intellectual property rights remain the sole property of CCF and UNIVERSITY, respectively. Inventorship of all other inventions will be determined according to U.S. patent law. Ownership shall follow inventorship.

8. CCF acknowledges that the Materials are experimental and are supplied to CCF WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING INFRINGEMENT OF THIRD PARTY

INTELLECTUAL PROPERTY RIGHTS. CCF agrees to rely solely upon its own opinion of the Materials with regard to their safety and suitability for any purpose.

9. CCF agrees to assume all liability for all claims and/or damages which may arise from CCF's use, storage or disposal of the Materials. UNIVERSITY shall not be liable to CCF for any loss, claim or demand made by CCF or made against CCF by any other party, due to or arising from the use of the Materials by CCF, except to the extent permitted by law when such loss, claim or demand is caused by the gross negligence or willful misconduct of UNIVERSITY. UNIVERSITY makes no representations that the use of the Materials will not infringe any patent or proprietary rights of any third parties.

10. CCF agrees that any reports, publications, or other disclosure of results obtained with the Materials will acknowledge their use by an appropriate citation, and will acknowledge the respective involvement of Providing Scientist and CCF Researcher according to scientific custom. The appropriate reference for the Materials is "Materials were provided by UNIVERSITY. All rights, title, and interest in these materials are owned by UNIVERSITY."

11. To the extent permitted by law, CCF agrees to communicate to UNIVERSITY all publications and/or research results made public by CCF based on CCF's research using the Materials.

12. This Agreement is nonassignable, and may be amended only with the mutual written consent of both parties. If one or more of the provisions of this Agreement shall be found to be invalid, it shall not affect the validity of any of the remaining provisions.

13. Neither party will, without the prior written consent of the other party, use in advertising, publicity, or in any manner, the name, trademark, logo, symbol, or other image of the party or that party's employee or agent, or disclose the existence of this Agreement or the status of any discussions or negotiations with the other party.

14. This Agreement will expire ____ (____) years from the Effective Date, unless extended by written agreement between the parties. At the end of the term, this Agreement shall expire; provided however, either party may earlier terminate this Agreement at any time prior to expiration, following thirty (30) days written notice of such termination to the other party. Upon expiration or such termination, whichever occurs first, CCF shall, at University's written direction, return or destroy any remaining MATERIAL.

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Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first written above.

THE CLEVELAND CLINIC FOUNDATION:

By: _____ Date: _____

Name: **Paul E. DiCorleto, Ph.D.**

Title: **Chairman, Lerner Research Institute
The Cleveland Clinic Foundation**

UNIVERSITY:

By: _____ Date: _____

Name: _____

Title: _____

READ AND ACKNOWLEDGED BY:

CCF Recipient Scientist:

By: _____ Date: _____

Name:

Title: _____

UNIVERSITY Providing Scientist:

By: _____ Date: _____

Name:

Title: _____