

MATERIAL TRANSFER AGREEMENT FOR THE RECEIPT OF MATERIALS FROM THE UNIVERSITY OF DUNDEE

This Agreement contains the terms and conditions on which we supply the material referred to below.

Please read these terms and conditions carefully before ordering these materials. Before placing your order, you will be asked to confirm that you have read, and agree to be bound by, these terms and conditions. By placing your order, you agree to be bound by the terms of this Material Transfer Agreement.

After placing an order, you will receive an e-mail from us acknowledging receipt of your order. Please note that this does not mean that your order has been accepted. Your order constitutes an offer to us to use the Material. All orders are subject to acceptance by us and we will confirm such acceptance to you by sending you an e-mail that confirms that we have accepted your order. The contract between us will only be formed when we send you such acceptance e-mail.

Please understand that if you refuse to accept these terms and conditions, you will not be able to order these materials from this website.

You should print a copy of these terms and conditions for future reference.

THE UNIVERSITY OF DUNDEE IS NOT WILLING TO AMEND THE TERMS OF THIS AGREEMENT OR TRANSFER THE MATERIAL ON ANY TERMS AND CONDITIONS OTHER THAN THE FOLLOWING:

1.
 - 1.1. The following terms shall have the following meanings:
 - 1.1.1. Agreement means the terms and conditions contained in this material transfer agreement;
 - 1.1.2. Commencement Date means the date on which the Provider confirms, by e-mail to the Recipient, that the Provider has accepted the Recipient's offer to use the Material;
 - 1.1.3. Commercial Purposes means the sale, lease, license, or other transfer of the Material or Modifications to a for-profit organisation. Commercial Purposes shall also include uses of the Material or Modifications by any organisation, including Recipient, to perform contract research, to screen compound libraries, 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 or Modifications to a for-profit organisation. However, industrially sponsored academic research shall not be considered a use of the Material or Modifications for Commercial Purposes per se, unless any of the above conditions of this definition are met;
 - 1.1.4. Material means Original Material, Progeny and Unmodified Derivatives. The Material shall not include: (a) Modifications, or (b) other substances created by the Recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives;
 - 1.1.5. Modifications means substances created by the Recipient which contain/incorporate the Materials;
 - 1.1.6. Nonprofit Organisation(s) means a university or other institution of higher education, which includes government agencies.
 - 1.1.7. Original Material means the [];

- 1.1.8. Party means either the Provider or the Recipient and Parties means both the Provider and the Recipient;
- 1.1.9. Progeny means Unmodified descendant from the Material, such as virus from virus, cell from cell or organism from organism;
- 1.1.10. Provider means The University of Dundee, established by Royal Charter dated 20 July 1967 and a registered Scottish charity (charity number SC015096) and having its principal office at 149 Nethergate, Dundee DD1 4HN, Scotland, UK;
- 1.1.11. Recipient means the legal entity on behalf of which the terms and conditions contained in this Agreement have been accepted;
- 1.1.12. Recipient Scientist means []; and
- 1.1.13. Unmodified Derivatives means substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.
- 1.2. In this Agreement, unless the context otherwise requires:
 - 1.2.1. references to recitals, clauses and sub-clauses are to recitals, clauses and sub-clauses to this Agreement;
 - 1.2.2. words importing the singular shall include the plural and vice versa;
 - 1.2.3. references to one gender shall include a reference to the other genders;
 - 1.2.4. any phrase introduced by any of the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding such terms.
2. The Provider retains ownership of the Material, including any Material contained or incorporated in Modifications.
3. The Recipient retains ownership of: (a) Modifications (except that, the Provider retains ownership rights to the Material included therein), and (b) those substances created through the use of the Material or Modifications, but which are not Progeny, Unmodified Derivatives or Modifications (i.e., do not contain the Original Material, Progeny, Unmodified Derivatives). If either 3 (a) or 3 (b) results from the collaborative efforts of the Provider and the Recipient, joint ownership may be negotiated.
4. The Recipient and the Recipient Scientist agree that the Material:
 - 4.1. is to be used solely for teaching and academic research purposes;
 - 4.2. will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider;
 - 4.3. is to be used only at the Recipient organisation and only in the Recipient Scientist’s laboratory under the direction of the Recipient Scientist or others working under his/her direct supervision; and

- 4.4. will not be transferred to anyone else within the Recipient organisation without the prior written consent of the Provider.
5. The Recipient and the Recipient Scientist agree to refer to the Provider any request for the Material from anyone other than those persons working under the Recipient Scientist's direct supervision. To the extent supplies are available, the Provider agrees to make the Material available, under a separate implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at Nonprofit Organisation(s)) who wish to replicate the Recipient Scientist's research; provided that such other scientists reimburse the Provider for any costs relating to the preparation and distribution of the Material.
- 6.
- 6.1. The Recipient and/or the Recipient Scientist shall have the right, without restriction, to distribute substances created by the Recipient through the use of the Original Material only if those substances are not Progeny, Unmodified Derivatives, or Modifications.
- 6.2. 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 Organisation(s) for research and teaching purposes only.
- 6.3. Without written consent from the Provider, the Recipient and/or the Recipient Scientist may NOT provide Modifications for Commercial Purposes. It is recognized by the Recipient that such 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.
7. 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, Modifications, or any related patents of the Provider for Commercial Purposes.
8. If the Recipient desires to use or license the Material or Modifications 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.
9. 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.
10. Any Material delivered pursuant to this 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.

11. 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.
12. 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 Scientist agrees to provide appropriate acknowledgement of the source of the Material in all publications.
13. The Recipient agrees to use the Material in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.
14. This Agreement shall commence on the Commencement Date and will terminate on the earliest of the following dates: (a) when the Material becomes generally available from third parties, for example, through reagent catalogues or public depositories or (b) on completion of the Recipient's current research with the Material, or (c) on 30 days written notice by either Party to the other, or (d) on the date specified in an implementing letter, provided that:
 - 14.1. if termination should occur under 14 (a), the Recipient shall be bound to the Provider by the least restrictive terms applicable to the Material obtained from the then-available resources; and
 - 14.2. if termination should occur under 14 (b) or (d) 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
 - 14.3. in the event the Provider terminates this Agreement under 14 (d) 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 1 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.
15. Clauses 1, 7, 10, 11, 14, 16 and this Clause 15 shall survive termination.
16. Any notice, request or consent under this Agreement shall be in writing and shall either be sufficiently served if sent by email or recorded delivery post to the following addresses:

In the case of notices to the Provider:

the email address you will need to use is RIS-notices@dundee.ac.uk;

Research and Innovation Services
The University of Dundee
11 Perth Road
Dundee
DD1 4HN

and marked for the attention of the Director of Research and Innovation Services or such other address as may be intimated from time to time in writing by the Provider to the Recipient.

In the case of notices to the Recipient:
the email address you will need to use is

[_____];