

BIOLOGICAL MATERIALS TRANSFER AGREEMENT

This Agreement made as of the ____ day of _____, _____.

BETWEEN:

BRITISH COLUMBIA CANCER AGENCY BRANCH, having offices at 600 West 10th Avenue,
Vancouver, British Columbia, V5Z 4E6 (the "BCCA")

AND: _____

(the "Recipient")

WHEREAS, The BCCA wishes to provide to the Recipient certain biological materials and information concerning a certain subject which is the confidential and proprietary property of the BCCA, provided that the Recipient maintains the confidentiality of all such materials and information and uses same only for the purposes as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth, the parties hereto covenant and agree as follows:

1. In this Agreement, "Information" shall mean any and all knowledge, know-how, information, and/or techniques disclosed by the BCCA to the Recipient relating to the Materials _____, including, without limiting the generality of the foregoing, all research, data, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, or other materials of any nature whatsoever, whether written or otherwise, relating to same, as well as the existence of this Agreement and its terms and conditions. However, such disclosures shall not be considered "Information" for the purposes of this Agreement if and when it:

- (a) is made subject to an order by judicial or administrative process requiring the Recipient to disclose any or all of the Information, provided however that the Recipient shall promptly notify the BCCA and allow, where legally possible, the BCCA reasonable time to oppose such process before disclosing any of the Information; or
- (b) is published or becomes available to the general public other than through a breach of this Agreement; or
- (c) is obtained by the Recipient or any of its Affiliates from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the BCCA; or
- (d) is independently developed by employees, agents or consultants of the Recipient or any of its Affiliates who had no knowledge of or access to the BCCA's Information as evidenced by the

Recipient's business records or other competent proof; or

(e) was possessed by the Recipient or any of its Affiliates prior to receipt from the BCCA, other than through prior confidential disclosure by the BCCA, as evidenced by the Recipient's business records or other competent proof.

For purposes of this Agreement, an "Affiliate" of Recipient means any entity controlled by, controlling, or under common control with the Recipient, with "control" meaning ownership of at least fifty percent (50%) of the voting equity interests of such entity.

2. In this Agreement, "Materials" shall mean any and all cell lines, vectors, plasmids, clones, micro-organisms, antibodies, antigens, biologics, test plates, reagents, chemicals, compounds, physical samples, models, and specimens delivered by the BCCA to the Recipient pursuant to this Agreement, as well as any and all progeny and derivatives thereof. Without limiting the generality of the foregoing, Materials shall include the following: _____

3. The parties hereby acknowledge and agree that the BCCA owns any and all right, title and interest in and to the Information and the Materials. In addition, the Recipient shall pay to the BCCA, at the time of signature of this Agreement, the amount of \$200.00 US Dollars per clone (payable to BC Cancer Agency) to reimburse BCCA for the cost of producing the Materials. The cost for shipping of the Materials is the responsibility of the Recipient.

4. The Recipient shall not, without the BCCA's prior written consent, use the Information or the Materials, directly or indirectly, for any purpose other than internal research and drug development. Without limiting the generality of the foregoing, the Recipient shall not manufacture or sell the Information or the Materials or any device or means incorporating any of the Information or the Materials.

5. Notwithstanding anything else in this Agreement, the Recipient shall not apply, directly or indirectly, any of the Information or the Materials to any human use. Without limiting the generality of the foregoing, the Recipient shall not utilize any of the Information or the Materials for any human research, treatment, or diagnosis, provided that the foregoing shall not preclude Recipient from conducting pre-clinical evaluation of the Information and the Materials and from using the Materials for in vivo testing of drug candidates.

6. The Recipient shall keep and use all of the Information and the Materials in confidence and shall not, without the BCCA's prior written consent, disclose any part of the Information or provide any part of the Materials to any person, firm, corporation, or other entity, other than to Affiliates of the Recipient who agree to be bound by the terms of this Agreement.

The Recipient covenants and agrees that it has and shall maintain an appropriate internal program limiting the internal distribution of the Information and the Materials to those of officers, employees, or agents of Recipient or its Affiliates who require said Information and Materials so that the Recipient may use them for the purpose set forth in Article 4. Notwithstanding Article 6, the Recipient may disclose the Information but may not provide the Materials to third-party consultants but such disclosure of Information shall only be permitted to the extent that said third-party consultants require access to the Information in order to enable the Recipient to carry out the purpose set forth in Article 4. The Recipient covenants and agrees that before making any Materials or Information available to said officers, servants, agents, or third-party consultants, it shall ensure they are under obligations of confidentiality which are equivalent to or greater than those set forth in this Agreement.

8. The Recipient acknowledges and agrees that any and all disclosures of Information and provisions of Materials pursuant to this Agreement are on a non-exclusive basis and that The BCCA is free to make similar or other disclosures to third parties. Nothing in this Agreement shall create, or be construed to create, any licence to the Recipient except as set forth in Article 4 or any obligation on either party to enter into a licence or other agreement with respect to the Information or the Materials. Furthermore, nothing contained herein shall be deemed or construed to create between the parties hereto an agency relationship, partnership or joint venture. Neither party shall be liable for any act, omission, representation, obligation or debt of the other party, even if informed of such act, omission, representation, obligation or debt.

9. The BCCA makes no representations or warranties, either express or implied, with respect to the Information or the Materials and specifically disclaims any implied warranty of non-infringement or merchantability or fitness for a particular purpose. The

BCCA shall in no event be liable for any loss of profits, be they direct, consequential, incidental, or special or other similar or like damages arising from any defect, error or failure to perform with respect to the Information or the Materials, even if the BCCA has been advised of the possibility of such damages. The Recipient hereby acknowledges that it has been advised by the BCCA to undertake its own due diligence with respect to the Information and the Materials.

10. The Recipient represents and warrants that it has the expertise necessary to handle the Information and the Materials with care and without danger to the Recipient, its employees, the BCCA, or the public. The Recipient shall not accept delivery of the Information or the Materials until it has first requested and received from the BCCA all necessary information and advice to ensure that it is capable of handling the Information and the Materials in a safe and prudent manner.

11. The Recipient hereby indemnifies, holds harmless and defends the BCCA, its Board of Governors, directors, officers, employees, faculty, students, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising from or out of the receipt or use of the Information or the Materials by the Recipient including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of the receipt or use of the Information or the Materials by the Recipient, howsoever the same may arise; provided that the foregoing shall not apply to liability arising out of the gross negligence or intentional misconduct of BCCA or to any breach of a contractual obligation that BCCA may have to any third party. The Recipient represents and warrants that it has public liability insurance in reasonable amounts with a reputable and secure insurance carrier and shall maintain same for the term of this Agreement.

12. The Recipient shall not assign, transfer, mortgage, charge or otherwise dispose of any or all of the rights, duties or obligations granted to it under this Agreement without the prior written consent of the BCCA; provided, that said consent shall not be unreasonably withheld and shall not be required for any merger, consolidation, reorganization or sale of the assets of the Recipient under which the successor organization or transferee is bound by the terms of this Agreement.

13. This Agreement shall continue indefinitely, unless and until terminated (i) by mutual written agreement, (ii) by Recipient upon written notice to BCCA or (iii) by material breach that is not cured within thirty (30) days after receipt of written notice by the breaching party from the non-breaching party describing the breach and providing notice of termination if not cured within such 30-day period. Notwithstanding any early termination of this Agreement, the obligations created in this Agreement shall survive and continue to be binding

upon the Recipient, its successors and assigns for five (5) years from the date first above written. Forthwith upon the termination of this Agreement, the Recipient shall cease to use the Information or the Materials in any manner whatsoever and deliver up to the BCCA all of the Information and Materials in its possession or control, together with a certificate certifying that no copies or progeny or derivatives, as the case may be, have been made or retained or that one copy of the Information and one set of the Materials has been retained for the sole purpose of ensuring compliance with the ongoing obligations created in this Agreement.

14. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada in force therein without regard to its conflict of law rules. All parties agree that by executing this Agreement they have attorned to the jurisdiction of the Supreme Court of British Columbia. Subject to paragraph 15, the Supreme Court of British Columbia shall have exclusive jurisdiction over this Agreement.

15. In the event of any dispute arising between the parties concerning this Agreement, its enforceability or the interpretation thereof, the same shall be settled by a single arbitrator appointed pursuant to the provisions of the *International Commercial Arbitration Act*, or any successor legislation then in force. The place of arbitration shall be Vancouver, British Columbia. The language to be used in the arbitration proceedings shall be English. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for interim protection such as, by way of example, an interim injunction.

16. All notices or other documents that either of the parties hereto are required or may desire to deliver to the other party hereto may be delivered only by personal delivery, by courier, or by registered or certified mail, all postage and other charges prepaid, at the address for such party set forth above or at such other address as that party may hereinafter designate in writing to the other.

17. No condoning or overlooking by any party of any default or breach by any other party in respect of any terms of this Agreement shall operate as a waiver of such party's rights under this Agreement in respect of any continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by such party, save only an express waiver in writing.

18. No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

19. In the event that any part, section, clause, paragraph or subparagraph of this Agreement shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

20. This Agreement sets forth the entire understanding between the parties and no modifications hereof shall be binding unless executed in writing by the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement on the dates set forth below but effective as of the date first above written.

Signed for and on behalf of the BRITISH COLUMBIA CANCER AGENCY BRANCH by its duly authorized officer:

Samuel Abraham, Ph.D., Director
Technology Development

Date:

Signed for and on behalf of _____
by its duly authorized officer:

Name:
Title:
Date: