

## MATERIALS TRANSFER AGREEMENT

This Materials Transfer Agreement is made and entered into as of the XX of XXXXX, 2011, by and between The University of Tennessee, a public higher educational institution of the State of Tennessee, having a place of business at 62 S. Dunlap, Memphis, TN 38163 ("UNIVERSITY"), University of Tennessee Research Foundation, having an office at 600 Henley St, Suite 211, Knoxville, TN 37996 ("UTRF"); and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("LICENSEE").

This agreement provides the terms and conditions under which UNIVERSITY will transfer to LICENSEE and UTRF will approve LICENSEE's use of the materials as specifically described on Appendix A (which may be amended from time to time by the parties), developed by \_\_\_\_\_ ("Investigator") at the UNIVERSITY, and which the UNIVERSITY has the right to transfer to LICENSEE (the "Material").

1. The Material shall include any direct replications, progeny, and unmodified derivatives of the Material, whether provided to or made by LICENSEE. The Material constitutes "Licensed Materials" as defined in the License Agreement entered into by UTRF and LICENSEE on even date herewith ("License Agreement"), and will be used by LICENSEE only for purposes authorized and established in the License Agreement. To the extent that the provisions of this agreement are inconsistent with those of the License Agreement, the provisions of this agreement shall control.
2. Except for such disclosure or transfer of Material as specifically allowed by the provisions of the License Agreement during the term thereof, Material shall be retained in confidence by LICENSEE and will not be transferred or disclosed to any person, corporation, or entity other than those employees of LICENSEE under LICENSEE's immediate and direct control and who have been made aware of this Agreement and who are bound by its terms. Upon the first-to-occur of termination of this agreement or the License Agreement, any remaining Material will be properly destroyed or returned to UNIVERSITY, at UNIVERSITY's option. For purposes of clarity, this paragraph does not prohibit LICENSEE from claiming the Materials in one or more patent applications (which shall be assigned to UTRF and shall constitute Licensed Patents under the License Agreement) or from referencing the Material in one or more regulatory applications for purposes authorized and established in the License Agreement.
3. LICENSEE will use the Material in compliance with all applicable laws, governmental regulations and guidelines, including current National Institutes of Health guidelines and any regulations or guidelines pertaining to research with animals or recombinant DNA. *The Material shall not be used in humans under any circumstances.*
4. LICENSEE agrees that it will promptly disclose to UNIVERSITY and UTRF all inventions, directly made based on the use of the Material pursuant to the License Agreement.
5. UNIVERSITY shall at all times retain ownership of the Material.
6. This agreement shall not be construed to grant to LICENSEE any express or implied option, license, or other right, title or interest in or to the Material except for the purposes authorized and established in the License Agreement, nor shall this agreement obligate UNIVERSITY or UTRF to enter into any agreement granting any such right.
7. The UNIVERSITY and UTRF shall be permitted to use the Material and transfer the Material to third parties in accordance with the terms and conditions of the License Agreement.
8. LICENSEE will indemnify, defend, and hold harmless UTRF and UNIVERSITY, as well as their respective employees, directors, or board members (each an "Indemnified Party"), from any claims or

liability resulting from LICENSEE's use of the Material except for damages, losses, liability, or costs resulting solely from the willful misconduct or misrepresentation by UTRF, UNIVERSITY, or their respective trustees, directors, officers, or employees, as adjudicated by decision of a court of competent jurisdiction, unappealable or unappealed within the time provided by law. LICENSEE shall not enter into any settlement without the prior approval of the Indemnified Party(ies) if such settlement contains an admission of fault or wrongdoing on the part of such Indemnified Party(ies).

9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. ANY MATERIAL SO SUPPLIED IS DONE SO WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES OR REPRESENTATIONS AS TO THE PURITY, ACTIVITY, SAFETY OR USEFULNESS OF THE MATERIAL OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.
10. LICENSEE accepts the Material with the knowledge and understanding that the hazardous and toxicological properties of the Material have not been completely investigated and are unknown and that the Material should be handled as if it is hazardous until its properties are fully investigated. LICENSEE will inform UNIVERSITY in writing of any adverse effects experienced by persons handling the Material.
11. LICENSEE shall not use the names or trademarks or UTRF, of the UNIVERSITY, nor any adaptation thereof, nor the names of any of their employees, directors, trustees, or board members in any advertising, promotional or sales literature without prior written consent obtained from UTRF, the UNIVERSITY, or said employee, director, trustee, or board member, in each case.
12. Upon any material breach or default of this agreement by LICENSEE, LICENSEE shall have thirty (30) days after the receiving of written notice of such default from UTRF or UNIVERSITY to correct such default. If such default is not corrected within the said thirty (30) day period, UTRF or UNIVERSITY shall each have the right, at its option, to cancel and terminate this agreement. The failure of either UTRF or UNIVERSITY to exercise such right of termination shall not be deemed to be a waiver or any right UTRF or UNIVERSITY might have, nor shall such failure preclude UTRF or UNIVERSITY from exercising or enforcing said right upon any subsequent failure by LICENSEE. LICENSEE may terminate this Agreement upon providing UNIVERSITY and UTRF thirty (30) days written notice. Upon the expiration or termination of the License Agreement, this agreement shall thereupon terminate automatically. The provisions of Paragraphs 1, 2, 8, 9, and 15 hereof shall survive termination of this agreement.
13. Neither UTRF nor UNIVERSITY shall incur any liability to LICENSEE if for any reason the Material is not available for use by LICENSEE.
14. LICENSEE hereby acknowledges that the export of goods and/or technical data from the United States may require some form of export control license from the U.S. Government. Failure to obtain such export control license is not a breach of this contract by the UNIVERSITY or UTRF. If an export license is required but is not obtained, the contract will terminate and no party will have any further duties to any other party. LICENSEE agrees to pay any fees or expenses incurred by UNIVERSITY or UTRF to obtain an export license, if required. LICENSEE agrees that it will not disclose or re-export any Material or technical data received under this agreement to any countries for which the U.S. Government requires an export license, unless the LICENSEE has obtained prior written authorization first with the U.S. Office of Export Control or other authority responsible for such matters. Neither UNIVERSITY nor UTRF represents that a license(s) shall not be required nor that, if required, it (they) shall be issued.

15. This Agreement is entered into in the State of Tennessee, United States of America, and shall be construed and the legal relations of the parties determined in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

| \_\_\_\_\_, INC.

THE UNIVERSITY OF TENNESSEE

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

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

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

Name: David M. Stern, MD

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

Title: Interim Vice Chancellor for Research

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

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

THE UNIVERSITY OF TENNESSEE  
RESEARCH FOUNDATION

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

Name: Richard Magid, PhD

Title: Vice President

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

## Appendix A.