MATERIAL TRANSFER AGREEMENT FOR TRANSFERS INVOLVING HUMAN TISSUE

**THIS AGREEMENT** is made this day of 20

**BETWEEN**

1. **BRIGHTON AND SUSSEX UNIVERSITY HOSPITAL NHS TRUST**, whose administrative offices are at [Royal Sussex County Hospital Eastern Road, Brighton, BN2 5BE ] (“Provider”); and
2. **THE UNIVERSITY OF SUSSEX**, whose administrative offices are at Sussex House, Falmer, Brighton, East Sussex BN1 9RH (“the Recipient”).

The Provider is willing to provide the Materials and related Confidential Information to the Recipient and the Recipient will receive the Materials and Confidential Information on the Terms and Conditions for Provision of Materials and Confidential Information attached.

In this Agreement, the following words will have the meanings set out below:

|  |  |
| --- | --- |
|  |  |
| Act  Agreement  Applicable Laws  Arising IP  Authorised Co-worker  Confidential Information  Donor  Intellectual Property  the Location | means the Human Tissue Act 2004 as amended from time to time.  means this initial page, the execution page on page 2, the Terms and Conditions and the Schedule.  means all laws, rules, regulations, codes of practice, research governance or ethical guidelines, or other requirements of any regulatory authority, that may apply to the use of the Materials by the Recipient from time to time, including but not limited to the Human Tissue Act 2004 or the Human Tissue (Scotland)\_Act 2006, the Human Tissue (Quality and Safety for Human Application) Regulations 2007, the Human Fertilisation and Embryology Act 1990 (as amended), the EU Tissues and Cells Directive (2004/23/EC) and Commission Directives 2006/17/EC and 2006/86/EC. The Human Tissue Authority Directions and Codes of Practice, and the Medicines for Human Use (Clinical Trials) Regulations 2004, as updated and amended from time to time and, where relevant, the national implementations of the same.  means any Intellectual Property generated, created or derived by the Recipient from the Materials in the Research Programme.  means such authorised employees of the Recipient who are under the direct and immediate supervision of the Recipient Scientist.  means all information relating to the Materials provided by the Provider to the Recipient Scientist or the Recipient in oral or documentary form (including all notes, extracts or copies of the same) or by way of models, biological or chemical materials or other tangible form, whether or not it is stated to be confidential at the time it is provided.  means the person (if any) from whose body the Materials, or any part thereof, has come.  means patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.  means the University of Sussex, Falmer, Brighton, East Sussex. |
| the Materials | the materials described in the Schedule including any constructs, strains, replications, progeny, unmodified derivatives, portions, improvements or components obtained from them or as a result of their use, together with any related data. |
| the Research Programme or Project | the programme of research described in the Schedule. |
| the Recipient Scientist | means the person named in the Schedule who is an employee of the Recipient and has overall responsibility for the Research Programme. |
| The Provider’s Representative | means:  Scott Harfield, Research Office, Brighton & Sussex University Hospitals NHS Trust, Royal Sussex County Hospital, Eastern Road, Brighton, BN2 5 BE. |
| the Provider Scientist | means the Chief or Principal Investigator named in the Schedule who is providing the Materials and is an employee of the Provider and has overall responsibility for the Material. |
| the Term | means the period detailed in the Schedule. |

**AGREED** by the parties through their authorised signatories:-

|  |  |  |
| --- | --- | --- |
| For and on behalf of the **Provider** |  | For and on behalf of the **Recipient** |
|  |  |  |
| Signed |  | Signed |
|  |  |  |
| Print name |  | Print name |
|  |  |  |
| Title |  | Title |

|  |
| --- |
| Read and acknowledged by the **Recipient Scientist** |
|  |
| Signed |
|  |
| Print name |
|  |
| Title |

# **Terms and Conditions for Provision of Materials and Confidential Information**

## The Provider shall, as soon as is reasonably practical following the execution of this Agreement, make the Materials available to the Recipient.

## The arrangements for delivery of the Materials to the Recipient and the responsibilities and obligations of the parties in respect thereof shall be as provided for in the Schedule. Delivery of the Materials to the Recipient shall be entirely at the risk of the Recipient. The party responsible for any shipment of the Materials shall safely transport the Material in accordance with all Applicable Laws.

## The Recipient shall keep the Materials secure at the Location and ensure that no-one other than the Recipient Scientist and Authorised Co-workers have access to them. The Recipient shall provide the Providers Scientist with written confirmation of the safe receipt of the Materials promptly after their delivery to the Location and shall notify the Provider’s Representative in writing if at any time the Materials are moved to a new Location. The Recipient also undertakes that the facilities at the Location are compliant with all Applicable Laws.

## The Recipient shall not supply the Materials to any other party or allow them to be removed from the Location, without the prior written consent of the Provider’s Representative.

## The Recipient shall use the Materials only during the Term and only for the Research Programme. The Recipient shall not use the Materials for any commercial purpose without the prior written consent of the Provider.

## The Recipient undertakes to comply with all Applicable Laws relevant to the Research Programme and relating to the use, storage, transportation and disposal of the Materials.

## Unless otherwise agreed in writing between the Provider and the Recipient, the Materials may only be used for research purposes, and are not to be used for any other purpose including (but not limited to) *in vitro* diagnostic purposes, *ex vivo* or *in vivo* therapeutic purposes, in foods, drugs or cosmetics of any kind, or for consumption or use in connection with or administration or application to humans.

## The Recipient shall ensure that its employees use the Materials in accordance with good laboratory practice and the highest standards of skill and care. The Recipient shall also ensure that all necessary safety practices and procedures are in place and shall ensure that its employees abide by such practices and procedures when using or handling the Materials.

## The Recipient shall keep the Confidential Information confidential at all times and will not disclose it or allow it to be disclosed in whole or in part to any third party nor use it for any purpose other than the Research Programme without the Provider’s prior written consent. This obligation will continue in force for a period of 5 (five) years from the date of this Agreement but will not apply to any information which the Recipient can show by written records: (i) was known to and at the free disposal of the Recipient before it was provided by the Provider or is in or subsequently comes into the public domain (through no fault on the Recipient’s part); (ii) is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Recipient without such restrictions; or (iii) is developed by any of the Recipient’s employees who have not had any direct or indirect access to or use or knowledge of the Confidential Information provided by the Provider.

## The Recipient shall not be in breach of its obligation in clause 9 to the extent that it is required to disclose any Confidential Information by or to a court or other public or regulatory body that has jurisdiction over it provided that: (i) the Recipient gives the Provider written notice of the requirement to disclose any Confidential Information prior to disclosing it; (ii) disclosure is made only to the extent required and for the purpose of complying with that requirement; and (iii) the Recipient takes all reasonable measures to avoid further disclosure.

## The Provider shall not supply the identity of any Donor or any information which may, in the Provider’s reasonable opinion, lead to the identification of any Donor. Both Parties agree that they shall at all times comply with all applicable provisions of the Data Protection Act 2018 as amended from time to time.

## The Provider warrants that where required by the Act, the Materials have been obtained from humans with the appropriate consent as required by the Act and with ethical approval.

## The Recipient shall acknowledge the Provider as the source of the Materials and give appropriate credit to the Provider’s scientists in all publications which include any reference to the Materials or include any data arising from the use of the Materials or the Confidential Information. The Recipient shall provide the Provider with a copy of all such publications (or transcript of oral presentations) promptly after they are published.

## The Materials and Confidential Information shall remain the property of the Provider and the Recipient shall immediately dispose of or store them as required by the Schedule: (i) at the end of the Term, (ii) in the event of any early termination of this Agreement under clauses 15 and 16, or (iii) at any other time at the request of the Provider.

## Either Party may terminate this Agreement immediately by notice in writing if:

## a party is in material breach of this Agreement and, in the case of a breach which is capable of being remedied, is not remedied within 30 (thirty) days of the receipt by the Party in breach of a notice identifying the breach and requiring its remedy; or

## the other party becomes insolvent, or a petition of bankruptcy or similar action under relevant bankruptcy or insolvency proceedings is filed by or against it, or a receiver is appointed with respect to any asset of the other Party or liquidation proceedings are commenced by or against it (except solvent and voluntary liquidation for reorganisation purposes).

## The Provider may terminate this Agreement immediately and without liability:

## if the Provider is unable to provide the Materials, or any part of them, to the Recipient for any reason; or

## if the Provider is unable to permit the continued use of the Materials by the Recipient for any reason.

## No licence of any Intellectual Property owned or controlled by the Provider is granted or implied by this Agreement other than the right to have possession of and use Materials and Confidential Information in accordance with the terms of this Agreement.

## The Recipient shall own the Intellectual Property in the Arising IP.

## The Recipient shall disclose to the Provider any Arising IP.

## The Recipient grant to the Provider a non-exclusive, non-transferable, fully paid-up and royalty-free licence (without the right to sub-licence) to use the Arising IP for academic research and teaching purposes.

## If any commercial revenues result from the Recipient’s use of the Arising IP or otherwise accrue from the use of the Materials and/or Confidential Information, the Provider shall be entitled to an equitable share of such revenues that accrue to the Recipient on reasonable terms and conditions to be agreed.

## The Provider shall grant to the Recipient a non-exclusive, non-transferable, fully paid-up and royalty-free licence (without the right to sub-licence) to use Provider Arising IP for the Recipient’s academic research and teaching purposes. The obligations set out in this agreement regarding the Recipient’s use, storage and disposal of the Materials shall apply equally to the Recipient’s use of Provider Arising IP.

## The Materials are experimental in nature and the Provider makes no representation and except as expressly stated in this Agreement gives no warranty or undertaking, in relation to them. As examples, but without limiting the foregoing, the Provider gives no warranty:- (i) that it owns all necessary property and other rights in the Materials and that their use will not infringe any patent, copyright, trade mark or other right owned by any third party; (ii) that the Materials are of satisfactory quality or fit for any particular purpose; iii) that the Materials have been developed with reasonable care and skill; iv) that the Materials have been tested for the presence of pathogens or otherwise; or v) that the Materials are viable, safe, non-toxic, not infectious or non-hazardous. The Provider gives no warranty or representation as to the accuracy or completeness of any Confidential Information provided.

## The liability of the Provider to the Recipient, whether in contract, tort (including negligence) or otherwise, in relation to the supply of the Materials and Confidential Information to the Recipient or their use or keeping by the Recipient or by any other person, or the consequences of their use, is excluded to the maximum extent permitted under applicable law. The Recipient shall indemnify and hold harmless the Indemnified Parties from and against all Claims and Losses arising from such supply, use or keeping, including without limitation Claims and Losses arising from:- (i) injury to the Recipient's employees (including the Scientist) and third parties; (ii) infringement of third party intellectual property rights; and (iii) use of the Materials and/or Confidential Information within or outside the scope of this Agreement.

## For the purposes of this Agreement:- (i) “Indemnified Parties” shall mean the Provider and its officers, employees, representatives and associated undertakings; (ii) “Claims” shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and (iii) “Losses” shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

## This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.

**Schedule**

**The Materials**

1. **DETAILS OF MATERIALS REQUESTED (type of material, quantity, numbers of material): [ ]**
2. **Arrangements for delivery of the Materials to the Recipient**
3. The [Provider]/[Recipient] shall be responsible for shipping the Materials to the Recipient at the Location] **OR** Recipient shall collect the Materials from Provider at Recipient’s own expense
4. The[Recipient]/[Provider] shall be responsible for any shipping and related costs that may be incurred when procuring, preparing and sending the Materials to the Recipient.
5. **CONDITIONS OF STORAGE**

**[ ]**

1. **DESTRUCTION OR STORAGE OF SURPLUS MATERIALS ON COMPLETION OF STUDY**

## At the end of the Term or in the event of any early termination of this Agreement under clauses 15 and 16, the Recipient shall in accordance with the Donor’s consent form promptly destroy or store all unused Material for unspecified use under the Recipient’s research licence from the Human Tissue Authority. (at the Recipient’s own cost).

## Any disposal of the Materials required under this clause will be at all times undertaken in compliance with any reasonable directions of Provider and all Applicable Laws.

## **5. THE RESEARCH PROGRAMME OR PROJECT TITLE**

## **[ ]**

## **6. IRAS NUMBER**

## **7. THE RECEIPIENT SCIENTIST**

## **[ ]**

## **8. THE CHIEF OR PRINICIPAL INVESTIGTOR**

## **[ ]**

## **9. THE TERM OF ETHICAL APROVAL**

[ ]