**Instructions for Executing a Material Transfer Agreement**

**Sending Materials from University of Guelph to a collaborating Recipient Scientist at another Institution**

**Please read ….. Improper signatures or incomplete information will DELAY your request!**

1. Download the latest copy of this template Material Transfer Agreement (MTA) from:

<https://www.uoguelph.ca/research/innovation/university-community/forms-and-templates>

1. Read the entire agreement and provide the necessary information in all the open fields on the first page of the MTA. **Note: if any fields are not completed…we will not execute the MTA. This is a legal agreement.**
2. The Provider Scientist (UofG) must complete their contact information and the Description of the Original Material and then send the MTA to the Recipient Scientist.
3. The Recipient Scientist must complete their contact information and how the Material will be used in te Recipient’s Research Project. This should explain more than just “for research”. The Recipient Scientist must be an employee of the Recipient institution acting in as Principle Investigator or Faculty (ie supervisory role) who will take personal responsibility to ensure the Material is used according to the terms of this agreement. Students or post-docs are not eligible.
4. The Recipient Scientist must send this completed MTA to his/her technology transfer office (or contracts, legal or upper administration office) for review, completion and execution. The MTA must be signed/executed by an employee who has the authority to legally bind their Institution. This is usually an official from the Technology Transfer Office or Grants/Contracts Office. Verifiable electronic signatures are acceptable.
5. The Recipient’s Technology Transfer Office must then email a pdf of the partially signed MTA to Research Innovation Office (ie. UofG’s Tech Transfer Office) at ipadmin@uoguelph.ca and please write MTA in the email subject line. Normally, we do not use hardcopies, however if you require a hardcopy, please request so and we will send you a hardcopy with original signatures. Please specify the exact person and address to receive the hardcopy!
6. If the legal terms of the MTA are not acceptable to the Recipient’s Technology Transfer Office then please contact the Technology Transfer and Agreements Assistant at 519.824.4120 x58882 or ipadmin@uoguelph.ca with your suggested edits using tracked changes in a separate word document who will then coordinate review by the UofG legal team.
7. Once the UofG Research Innovation Office has received a fully completed and partially executed MTA, an authorized official from the Research Innovation Office will execute the MTA within 48 hours of receipt.
8. As soon as we have executed the MTA, we will send a pdf copy to the Recipient Scientist, Recipient’s Technology Transfer Office, and the Providing Scientist indicating that you are free to exchange the Materials.
9. Once the MTA is executed, the Research Innovation Office does not need to be copied on arrangements for the shipping or distribution of the Material or payment of transfer fees to the Provider Scientist. This can be coordinated directly by the Scientists.
10. Lastly, both Scientists should check with your institution to understand all restrictions and approvals related to Import/Export, Biosafety or Use of Animals, that may apply to the Material.
11. All University of Guelph employees are encouraged to be familiar with the [Guidelines for Categorization and Security of Research Data & Information](https://www.uoguelph.ca/ccs/sites/uoguelph.ca.ccs/files/Categorization%20%26%20Security%20of%20Research%20Data_Final.pdf) as well as [Information Security](https://www.uoguelph.ca/ccs/category/service-category/information-security) tips and tools.

 **BIOLOGICAL MATERIAL TRANSFER AGREEMENT -**

 **OUTGOING**

This Agreement between PROVIDER and RECIPIENT is made effective on the (day-month-year) 2020 (“Effective Date”) and shall terminate no later than three (3) years following the Effective Date, unless terminated sooner by RECIPIENT.

PROVIDER agrees to transfer Material to RECIPIENT under the following terms.

**PROVIDER** is University of Guelph,which is an academic not-for-profit institution with administrative offices at Research Innovation Office, 50 Stone Road East, Guelph, Ontario, Canada, N1G 2W1. Phone 1.519.824.4120 x58882, Email: ipadmin@uoguelph.ca

*(Legal Notices should be sent to this address)*

**PROVIDER SCIENTIST** is who is a professor of University of Guelph with an office in the Department of: , Phone: 519.824.4120 x

Email: @uoguelph.ca  *(Original Material will be sent by this person)*

**Original Material** to be transferred is uniquely described as:

**RECIPIENT** is which is a research institute or corporation with administrative offices is at:

Person at RECIPIENT managing this agreement and legal review is

Phone: Email:  *(Legal Notices will be sent to this address)*

**RECIPIENT SCIENTIST** is who is an employee of RECIPIENT with an office in the Department of: Phone: Email:

 *(Original Material will be sent to this address unless directed otherwise)*

**RECIPIENT’s Research Project:** The Original Material will be used by RECIPIENT SCIENTIST: To

Following execution of this Agreement, RECIPIENT or RECIPIENT SCIENTIST shall send to PROVIDER SCIENTIST a transfer fee of $ Canadian Dollars, payable to the University of Guelph. RECIPIENT may also be required to pay costs for shipping and handling of Material. Prepayment for shipping can be coordinated directly by the collaborating scientists.

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Representatives authorized to legally bind PROVIDER and RECIPIENT, have executed this Agreement.

Signed by RECIPIENT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title:

Signed by PROVIDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Steve DeBrabandere, Director, Technology Transfer & Industry Liaison

1. **DEFINITIONS**

**Original Material**: means the substance first described as Original Material above and transferred from Provider to Recipient.

**Material**: means all Original Material, Progeny and Unmodified Derivatives but does not include Modifications or other substances created by RECIPIENT through the use of the Material which are not Progeny or Unmodified Derivatives.

**Progeny**: means an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism;

**Unmodified Derivatives**: means substances created by RECIPIENT, which constitute an unmodified functional or structural subunit or product expressed by the Original Material or derived from Progeny. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, proteins expressed by DNA/RNA, monoclonal antibodies secreted by a hybridoma cell line, or sub-sets of the Original Material such as plasmids.

**Modifications**: substances created by RECIPIENT which contain or incorporate the Material.

**Commercial Purposes**: means the sale, lease, license, or other transfer of the Material and/or Modifications to a for-profit organization and includes any use of the Material and/or Modifications by any organization, 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 and/or Modifications to a for-profit organization or any activity otherwise for the purposes of commercial exploitation. However, industrially sponsored academic research will not be considered a use of the Material and/or Modifications for Commercial Purposes per se, unless any of the above conditions of this definition are met.

1. **PERMITTED and PROHIBITED USES OF MATERIAL**

RECIPIENT and RECIPIENT SCIENTIST:

* + 1. May only use the Material for research purposes as part of the RECIPIENT’s Research Project described above;
		2. May use the Material only at RECIPIENT’s organization and only in RECIPIENT SCIENTIST’s laboratory under the direction of RECIPIENT SCIENTIST or others working under his/her direct supervision and control;
		3. May use the Material for analysis purposes only and must not undertake, directly or indirectly, any efforts to duplicate or reverse engineer the Material; however
		4. Must not use the Material in human subjects, in clinical trials or for diagnostic purposes involving human subjects without the prior written consent of PROVIDER and confirmation of all regulatory and ethics approvals; and
		5. Must not transfer the Material to anyone else within RECIPIENT’s organization not under RECIPIENT SCIENTIST’s supervision or control or to any third party without the prior written consent of PROVIDER.
1. **COMMERCIAL USE**

If RECIPIENT wishes to use or license the Material or Modifications for Commercial Purposes, RECIPIENT must obtain a commercial license from PROVIDER and any other party having rights to benefit from the use of the Material for Commercial Purposes. RECIPIENT acknowledges that PROVIDER has no obligation to grant such license to RECIPIENT. PROVIDER is free to grant exclusive or non-exclusive licenses to others 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 any obligations to government agencies.

1. **THIRD PARTY REQUESTS FOR MATERIAL**

RECIPIENT must refer to PROVIDER any request for the Material from anyone other than those working under RECIPIENT SCIENTIST’s direct supervision and control.

1. **COST & DELIVERY OF MATERIAL**

RECIPIENT may be required to pay a transfer fee (see page one) or pre-pay for delivery charges by providing its billing account information to PROVIDER SCIENTIST. PROVIDER SCIENTIST will send the Material to RECIPIENT SCIENTIST upon confirmation of a fully executed Agreement and if needed billing account information for shipping purposes.

1. **OWNERSHIP**

PROVIDER owns, or has the right to provide to RECIPIENT, the Material, including any Material contained within or incorporated into any Modifications. Modifications or other substances created by RECIPIENT or in collaboration with PROVIDER shall be owned solely or jointly as dictated by inventorship consistent with US patent laws, in which case both parties will negotiate in good faith to enter into ownership and benefit sharing arrangements as appropriate.

1. **NO LICENSE TO PROPRIETARY RIGHTS**

RECIPIENT acknowledges that the Material is or may be the subject of a patent application, plant breeders’ rights or other forms of proprietary rights. Except as provided in this Agreement, no express or implied licenses or other rights are provided to RECIPIENT in respect of such rights, including any altered forms of the Material made by PROVIDER.

1. **NEW INTELLECTUAL PROPERTY**

If RECIPIENT SCIENTIST’s use of the Material results in an invention or substance which he/she discloses to RECIPIENT for commercialization purposes (‘**New Intellectual Property**’), RECIPIENT will promptly disclose the invention or substance to PROVIDER (Associate Director - Research Innovation Office) and notify PROVIDER of the role of the PROVIDER SCIENTIST and any other person affiliated with PROVIDER in the creation of the New Intellectual Property. PROVIDER will keep confidential any information provided by RECIPIENT relating to the New Intellectual Property. RECIPIENT grants to PROVIDER a non-exclusive, non-transferable, perpetual, royalty-free license to use the New Intellectual Property for teaching and academic research purposes.

1. **PUBLICATION**

This Agreement does not prevent or delay publication of research findings resulting from use of the Material provided that RECIPIENT does not include in any oral presentation or written publication any information identified as confidential by PROVIDER without the prior written consent of PROVIDER. RECIPIENT must provide appropriate acknowledgement of PROVIDER and PROVIDER SCIENTIST in any publication and must forward a pre-print copy of the publication to PROVIDER SCIENTIST, which shall be held in confidence until publication.

1. **WARRANTIES**

PROVIDER makes no representation or warranty of any kind, expressed or implied, with respect to the Material, including but not limited to any representation or warranty with respect to the utility, efficacy, non-toxicity, safety, merchantability, title, or fitness for a particular purpose, that the use of the Material will not infringe any patent, copyright or other proprietary rights of a third party or that there is no third party which might also have rights to benefit from the use of the Material for Commercial Purposes.

1. **ASSUMPTION OF RISK**

RECIPIENT acknowledges that the Material is experimental in nature, that all of its characteristics, as well as hazards associated with its use, may not be known. RECIPIENT assumes all risk and responsibility for its use, storage or disposal of the Material as well as the risks of transport, loss or damage to or by the Material upon the Material leaving the custody and premises of PROVIDER.

1. **LIMITATION OF LIABILITY & INDEMNITY**

TO THE FULL EXTENT OF THE LAWS OF THE PROVINCE OR STATE AND COUNTRY BY WHICH THE RECIPIENT IS GOVERNED, THE RECIPIENT ASSUMES ALL LIABILITY FOR DAMAGES, WHICH MAY ARISE FROM RECIPIENT’S ACCEPTANCE, USE, HANDLING, STORAGE AND/OR DISPOSAL OF THE MATERIAL AND IN RESPECT OF ALL MATTERS ASSOCIATED WITH THE RESEARCH RESULTS ARISING FROM THE USE OF THE MATERIAL OR IN RESPECT OF ANY MODIFICATIONS. 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 WHEN CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PROVIDER. THE RECIPIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE PROVIDER AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AND REPRESENTATIVES AGAINST ALL LIABILITY, DAMAGES, EXPENSES (INCLUDING WITHOUT LIMITATION LEGAL EXPENSES), CLAIMS, DEMANDS, JUDGEMENTS, AWARDS OR OTHER LOSSES BASED UPON OR ARISING FROM THE RECIPIENT’S ACCEPTANCE, USE, HANDLING, STORAGE AND/OR DISPOSAL OF THE MATERIAL AND IN RESPECT OF ALL MATTERS ASSOCIATED WITH THE RESEARCH RESULTS ARISING FROM THE USE OF THE MATERIAL OR IN RESPECT OF ANY MODIFICATIONS.

1. **TERM & TERMINATION**

This Agreement will terminate on the earliest of the following dates:

* + 1. when the Material becomes generally and unconditionally available from third parties, for example, though reagent catalogues or public depositories;
		2. on completion of RECIPIENT's Research Project;
		3. on thirty (30) days written notice by either party to the other;
		4. if RECIPIENT materially breaches the Agreement, immediately upon written notice from PROVIDER to RECIPIENT of RECIPIENT’s breach of this Agreement; or
		5. the date indicated as the maximum term at the beginning of this Agreement.

Other than termination for causes such as an imminent health risk, alleged patent infringement or breach of this agreement by RECIPIENT,upon request from RECIPIENT, PROVIDER may defer the effective date of termination for a period of up to one year, 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 PROVIDER, return or destroy any remaining Material.

1. **GENERAL PROVISIONS**
	1. **Notices** – All notices given under this Agreement must be in writing and delivered by hand, courier or registered mail, or confirmed email with return receipt requested, to the address of the Party set out on page one of this Agreement. Notices will be deemed to have been received on the date of delivery, if delivered by courier, on the fifth business day following receipt, if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission, if sent by confirmed email.

* 1. **Remedies/No Waiver** – PROVIDER will be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement. Failure of a party to enforce its rights on one occasion will not result in a waiver of those rights on any other occasion.
	2. **Assignment** – Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
	3. **Regulatory compliance** – Each party must comply with all applicable laws, regulations and rules in its jurisdiction, including but not limited to those relating to those involving the use of animals or recombinant DNA.
	4. **Entire Agreement/Severability** – This Agreement represents the entire agreement between the parties with regard to the Material and supersedes any previous understandings, commitments or agreements, whether written or oral. If any provision of this Agreement is wholly or partially unenforceable for any reason, all other provisions will continue in full force and effect.
	5. **Survival** – The obligations contained in clauses 6, 7, 8, 10, 11 and 12 will survive termination of this agreement.
	6. **Authority to Bind/Execution** – Each party represents that it is permitted to enter into this Agreement, to consent to its conditions and that each has authority to sign this Agreement. The parties agree that this Agreement may be executed in counterparts and that scanned signatures are enforceable. This Agreement may also be created as an electronic document and executed by electronic signature.
	7. **Governing Law** – This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada and the parties submit to the exclusive jurisdiction of the courts of the Province of Ontario.

End of terms.