THE UNIFORM BIOLOGICAL MATERIAL TRANSFER AGREEMENT

The purpose of this letter is to provide a record of the Research Material transferred as identified in the email with which this agreement is attached, to memorialize the agreement between the PROVIDER SCIENTIST and the RECIPIENT SCIENTIST to abide by all terms and conditions of the Uniform Biological Material Transfer Agreement ("UBMTA") published in the Federal Register on March 8, 1995, and to certify that the RECIPIENT organization has accepted by use the terms of the UBMTA.

PROVIDER (Organization providing the ORIGINAL MATERIAL)

a. Name of Organization: The University of Texas M.D. Anderson Cancer Center
b. Street Address: 1545 Holcombe Blvd.
c. City/State/Zip: Houston, Texas 77030
d. Signature: Wesley Harrot, Executive Director, Office of Research Administration

I. DEFINITIONS*:  

A. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party is provided for above.

B. PROVIDER SCIENTIST: The name of this party will be specified in the communication email under which this UBMTA is provided.

C. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name of this party will be specified in the communication email under which this UBMTA is provided.

D. RECIPIENT SCIENTIST: The name of this party will be specified in the communication email under which this UBMTA is provided.

E. ORIGINAL MATERIAL: The description of the material being transferred will be specified in the communication email under which this UBMTA is provided.

F. MATERIAL: 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.

G. PROGENY: Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.

H. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional sub-unit 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.

I. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

J. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL 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 or MODIFICATIONS to a for-profit organization. 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.

K. NONPROFIT ORGANIZATION(S): A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

*Specific data for Definitions B-E are listed in the communication email under which this UBMTA is provided.

II. TERMS AND CONDITIONS OF THIS AGREEMENT

A. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

B. The RECIPIENT retains ownership of:

1. MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and

2. 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 1. or 2. results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

C. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:

1. is to be used solely for teaching and academic research purposes;
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;

3. is to be used only at the RECEIPIENT organization and only in the RECEIPIENT SCIENTIST's laboratory under the direction of the RECEIPIENT SCIENTIST or others working under his/her direct supervision; and

4. will not be transferred to anyone else within the RECEIPIENT organization without the prior written consent of the PROVIDER.

D. The RECEIPIENT and the RECEIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECEIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST 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 ORGANIZATION(S)) who wish to replicate the RECEIPIENT SCIENTIST's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.

1. The RECEIPIENT and/or the RECEIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECEIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

2. Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECEIPIENT may distribute MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.

3. Without written consent from the PROVIDER, the RECEIPIENT and/or the RECEIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECEIPIENT 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 RECEIPIENT from granting commercial licenses under the RECEIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

E. The RECEIPIENT 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 RECEIPIENT 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.

F. 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.

G. 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.

H. Any MATERIAL delivered pursuant to the 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.

I. 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.

J. 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 publication.

K. 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.

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

1. when the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories, or
2. on completion of the RECEPIENT's current research with the MATERIAL, or

3. on thirty (30) days written notice by either party to the other, or

4. on the date specified in an implementing letter, provided that:

   a. if termination should occur under L.1 the RECEPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available sources; and

   b. if termination should occur under L.2. or 4. above, the RECEPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECEPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS; and

   c. in the event the PROVIDER terminates this Agreement under L.3. 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 one year, upon request from the RECEPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECEPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECEPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

M. Paragraphs E, H and I shall survive termination.

N. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in an implementing letter.