MATERIAL TRANSFER AGREEMENT

Provider:

Recipient: The National Cancer Institute ("NCI")

BACKGROUND

The Clinical Proteomic Technologies for Cancer (CPTC) initiative supported by the National Cancer Institute is working to optimize proteomic technologies and reagents for the entire cancer community, to accelerate the identification and validation of cancer biomarkers and potential drug targets that can dramatically improve the detection, treatment, and ultimately the prevention of cancer. In an effort to produce and distribute the highest quality and most useful resources to the scientific community, this MTA will be used to transfer materials to NCI for the purpose of producing highly-characterized proteomic resources for wide distribution to the research community.

Definitions

Material: antigen material provided to NCI by the Provider and as listed in Section 1.

Proteomic Resources: affinity reagents produced from the Material including but not limited to hybridomas, DNA clones, transfected cell lines, monoclonal antibodies or recombinant engineered reagents including but not limited to aptamers, CPTC Clones and Reagents

CPTC Clones: replicating or viable Proteomic Resources including but not limited to hybridomas, ascites, DNA clones and stable transfected cell lines

Reagents: non-replicating and non-viable substances made from the Proteomic Resources (e.g. tissue culture supernatants, purified antibody, or concentrate).

Commercial Purposes shall include the sale, lease, license, or other transfer of the Reagents to a for-profit organization for sale or provision of any products or services. Commercial purposes shall also include use of the Reagent by any organization 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 Reagents to a for-profit organization. However, industrially sponsored academic research shall not be considered a use for Commercial Purposes per se, unless any of the above conditions of this definition are met.

1. Provider agrees to transfer to NCI the following Material:

2. This Material will be used by NCI in connection with the following project ("Project") described with specificity as follows:

The Material will be used by NCI to produce Proteomic Resources. Reagents will be made available for widespread distribution to the research community as described herein which is consistent with the goals of the CPTC. An aliquot of the CPTC Clones will be returned to Provider.

3. THIS MATERIAL MAY NOT BE USED IN HUMAN SUBJECTS OR TO TREAT OR DIAGNOSE HUMAN SUBJECTS. The Material will only be used by NCI for the Project described above, under suitable containment conditions and in compliance with all Federal rules and regulations applicable to the Project and the handling of the Material. All Parties acknowledge and agree that the Material provided to NCI may be shared with NCI's consultants, contractors or agents to complete the Project. It is agreed among the Parties that Provider is providing no sensitive or proprietary information that may accompany the Material.

4. NCI agrees to retain control over this Material and further agrees not to transfer the Material to third-parties without advance written approval of Provider except as so noted in this Agreement. NCI will also retain for archive purposes CPTC Clones it successfully generates against the Material.

5. Distribution of Reagents

(a) All Parties acknowledge and agree that Reagents will be widely distributed by the University of Iowa Hybridoma Bank ("DSHB"), for non-Commercial Purposes to nonprofit, academic and commercial organizations.

(b) For the avoidance of doubt**,** DHSB will not distribute (i) viable cell lines, hybridomas, cDNA (isolated or with a background vector), compositions, formulae, materials (biological or chemical) of the CPTC Clone, (ii) sequence information (such as cDNA, DNA, RNA, or amino acid sequences) whether through electronic means or transmitting written documents of the CPTC Clones, and (iii) any material that enable the expression, purification, manufacture, or reverse engineering to third parties (e.g. academic, nonprofit and for-profit entities) without the prior written consent of the Provider.

6. Permitted uses of CPTC Clones.

Under this Material Transfer Agreement, an aliquot of CPTC Clones will be returned to Provider. Provider is permitted to use the CPTC Clones for research purposes consistent with the objectives of the CPTC program. Additionally, Provider is free to use CPTC Clones for Commercial Purposes such as production, screening, and sale, subject to the following conditions:

a) CPTC CLONES PROVIDED UNDER THIS AGREEMENT MAY NOT BE USED (BY PROVIDER OR ANY COMMERCIAL PARTNER/LICENSEE) IN HUMAN SUBJECTS RESEARCH OR FOR THE TREATMENT OR DIAGNOSIS OF HUMAN SUBJECTS. However, nothing in this Agreement precludes the further development of the CPTC Clones for clinical purposes in accordance with applicable laws and regulations.

b) For any research use of CPTC Clones, or for any commercial use of CPTC Clones (either by Provider or by any commercial partner/licensee of Provider), Provider and/or commercial partner/licensee shall include the unique CPTC identifier(s) (i.e., CPTC-IL 18-2) in all down-stream products/services or publications.

c) For all commercial uses of CPTC Clones, and unless prohibited by law from doing so, Provider agrees to hold NCI harmless and to indemnify NCI for all liabilities, demands, damages, expenses and losses arising out of Provider's commercial use of the CPTC Clones. For all commercial uses of CPTC Clones by Provider's commercial partner/licensee, Provider shall include in that commercial arrangement language which specifies that commercial

partner/licensee shall hold NCI harmless and to indemnify NCI for all liabilities, demands, expenses and losses arising out of commercial partner/licensee's use of the CPTC Clones.

d) NCI is to be notified of any commercial activity by Provider or Provider's commercial partner/licensee so that the CPTC program can track how CPTC Clones are being used in commercial settings.

NCI retains all rights it may have in the Proteomic Resources. Notwithstanding the permitted commercial use of CPTC Clones by Provider under this Article 6, and for the avoidance of doubt, Provider understands that NCI retains the independent right to negotiate agreements with commercial entities for the release of CPTC Clones through the University of Iowa Hybridoma Bank or by other methods of distribution as it deems necessary to meet the objectives of CPTC for wide-spread distribution of Proteomic Resources and as so articulated in the background section of this Agreement. NCI has no plans to pursue this option except in exceptional circumstances.

7. THE MATERIAL IS BEING SUPPLIED TO NCI WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Provider makes no representations that the use of the Material will not infringe any patent or proprietary rights of third parties.

8. NCI MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE RESULTING PROTEOMIC RESOURCES MADE USING THE MATERIAL AS PART OF THE PROJECT. Furthermore, NCI makes no representations that the resulting Proteomic Resources made using the Material will not infringe any patent or proprietary rights of third parties.

9. Provider confirms that Provider's organization holds no background intellectual property rights either to the Materials or any use thereof.

10. Each Party shall retain title to any patent or other intellectual property rights in inventions made by its employees in the course of the Project. No indemnification for any loss, claim, damage or liability is intended or provided by any Party under this Agreement. The NCI, as an agency of the United States Government, assumes liability only to the extent provided under the federal Tort Claims Act, 28 U.S.C. 2671 et seq. Without limiting the foregoing, Provider will exclusively own all right, title, and interest in and to the tangible CPTC Clone(s) provided to Provider by NCI pursuant to Article 2 and, for the avoidance of doubt, such ownership interest of Provider will not affect NCI ownership interest in CPTC Clones.

11. In the event that DSHB can no longer fulfill the distribution of the Proteomic Resources as described herein, NCI reserves the right to distribute the Proteomic Resources itself or have another entity do so on its behalf under terms consistent with this Agreement.

12. NCI cannot guarantee that any CPTC Clones provided under prior CPTC agreements have not been distributed to the scientific community.

13. Articles 5-8, 10-13 will survive termination or expiration of this Agreement.

(Signatures Begin on the Following Page)

For the National Cancer Institute

_____ _____
Henry Rodriguez, PH.D., MS, MBA Date
Director, CPTC, NCI

_____ _____
Tara Hiltke, PH.D. Date
Office Deputy Director, CPTC, NCI

Clinical Proteomic Technologies for Cancer
National Cancer Institute
Division Cancer Treatment and Diagnosis
Office of Cancer Clinical Proteomics Research
Email: cancer.proteomics@mail.nih.gov
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_____ _____
Jeffrey W. Thomas, PH.D., TTC, NCI Date
Authorized NCI Official

NCI Technology Transfer Center
8490 Progress Drive
Riverside 5, Suite 400
Frederick, MD 21701

For PROVIDER

_____ _____
(Scientific or Business Contact) Date

_____ _____
Authorized Official Date

Address: