



MATERIAL TRANSFER AGREEMENT FOR THE TRANSFER OF MATERIAL BETWEEN NOT FOR PROFIT ORGANISATIONS

This Agreement is made by and between the University of Ghana, on behalf of [Insert name of academic and delete parenthesis] from the *[Name of Department and College and delete parenthesis]* whose registered address is at P.O.Box LG25, which expression shall, where the context so admits or requires, include its successors in title and assigns of the one part (hereinafter referred to as the “Provider”) and *[Provide details of other institution and delete parenthesis]* on behalf of [Insert name of academic and Department] a not-for-profit organisation having its principal place of business at [provide address and delete parenthesis] which expression shall, where the context so admits or requires, include its successors in title and assigns of the other part (hereinafter referred to as the “Recipient”).

Each a “Party” and collectively “the Parties”

The Recipient intends to use the Material consisting of *[Provide details of Material and delete parenthesis]* solely for the purpose of *[Indicate the purpose of use of the Material and delete parenthesis]* (the Purpose).

Definitions

1. **Commercial use:** The use of the Material, any products or processes using, comprising or derived directly from the Material for a commercial purpose.
2. **Confidential Information:** This includes information, data, material, in written or other tangible form relating to the material, research findings, proprietary information, and certain technical information received from or disclosed to a third Party under an expressed or implied commitment of confidence.
3. **Material:** Refers to 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.
4. **Intellectual Property:** Refers to intellectual property of any description including but not limited to all inventions, designs, information, specifications, formulae, improvements, documented know-how, data, processes, methods, techniques and the intellectual property rights therein, including but not limited to, patents, copyrights, database rights, design rights (registered and unregistered), trade-marks, trade names and service marks, applications for any of the above.
5. **Progeny:** Refers to unmodified descendants of the Material, such as a virus from a virus.
6. **Unmodified derivatives:** Refers to substances created by the Recipient that constitute an unmodified functional sub unit or product expressed by the original material. This includes purified or fractionated sub unit or an expression product of the original material that was provided.
7. **Modifications:** Substances created by the Recipient which incorporate/ contain the Material.
8. **Not for profit organisation(s):** A university or other institution of higher education or a not- for-profit organisation, officially recognised or qualified under the laws of the country in which it is located.
9. **Provider:** The organisation providing the Material.
10. **Recipient:** The organisation receiving the Material.

Terms and Conditions of this Agreement:

1. The Recipient agrees to use the Material solely for research and academic purposes and will not use the Material for any commercial or production activities.
2. The Recipient agrees to use the Material only at the Recipient's organisation and in the Recipient Scientist's laboratory under the direction and supervision of the Recipient Scientist or others working under his/ her direct supervision, and in accordance with any and all applicable governmental rules and regulations relating to the use or handling of such Material.
3. The Recipient shall not use the Material in clinical trials, in human subjects, or for diagnostic purposes involving human subjects.
4. The Recipient shall not transfer, sell, lease or license the Material in whole or in part to third persons without the prior written consent of the Provider.
5. All Intellectual Property rights (including copyright) in the work to be performed under this agreement shall be vested in the Party creating the arising Intellectual Property, including without any limitations, the right to use, publish according to clause 13, translate, sell or distribute, privately or publicly, any item thereof, unless otherwise indicated. Where any arising Intellectual Property is jointly created or generated by the two Parties, and it is impossible to segregate each Party's intellectual contribution to the creation of the arising Intellectual Property, the arising Intellectual Property will be jointly owned by those Parties in equal shares.
6. The Provider retains the ownership rights to Materials included in Modifications. However, ownership of Modifications shall be discussed in good faith between the Provider and Recipient and determined on a case by case basis taking into consideration the participation of each Party in the development or creation of the Modifications.
7. Nothing in this Agreement grants the Recipient any rights over the Material (except as specifically granted by this Agreement) nor any right to use, or permit the use of any products or processes, for Commercial use. Where the Recipient wishes to use the Material or products derived directly from the Material for a Commercial Use, it agrees to negotiate with the Provider in good faith for the grant of an appropriate license or the execution of a revenue sharing agreement. Under such circumstances, the Provider will have no obligation to grant a license.
8. The Provider shall have the right to inventions made by the Recipient in the use of the Material for its own research and educational purposes.
9. The Provider makes no representations and extends no warranties of any kind, whether implied or expressed, to the Recipient, regarding the fitness of the Material for any specific purpose. Neither does it warrant that the Material will not infringe upon the intellectual property rights of third parties.
10. The Recipient agrees to maintain in confidence, for a period of five (5) years from the date of first disclosure of any information about the Material marked as "Confidential" ("Confidential Information") by the Provider. Any oral disclosures made by the Provider to the Recipient shall be reduced to writing and identified as Confidential Information by notice delivered via electronic or mailing system to the Recipient within ten (10) business days from the date of the oral disclosure. Any such notice delivered by electronic mailing system will normally be considered as having been delivered to the other Party.
11. Confidential information shall not include information:

- 11.1 Which can be established from written records as already known to it or made available to the Recipient from other sources or third parties not subject to any commitment of confidentiality prior to the disclosure; or
 - 11.2 In the public domain by use and/ or publication or which subsequently enters the public domain without fault on the part of the Party receiving the information; or
 - 11.3 Developed independently by the Recipient without reference to any Confidential Information received from the Provider;
 - 11.4 Obtained by the Recipient from the Provider which is not under any commitment to maintain such information or material confidential; or
 - 11.5 That the Recipient is required by law to disclose to a court of competent jurisdiction or any competent authority.
12. The Recipient assumes all liability for any and all third Party claims, losses, expenses and damages including reasonable litigation fees (collectively "Claims") arising out of or relating to Recipient's use, receipt, handling, storage, transfer and disposal, and other activities relating to Materials provided that Recipient's liability shall be limited to the extent that any such claim arises out of the Provider's gross negligence or willful misconduct. All non- monetary settlements or any such claim are subject to Provider's prior written consent, such consent not to be reasonably withheld.
 13. The Recipient is solely responsible for obtaining all permits, licenses or other approvals required by any governmental authority in connection with Recipient's receipt, handling, storage, disposal, transfer and use of the Material.
 14. The Recipient shall notify the Provider of its intention to publish the results of research obtained using the Materials and will make a copy of the proposed publication available to the Provider at least sixty (60) days prior to the intended publication date.
 - 14.1 The Provider will within thirty (30) days of receipt of this notice, review the proposed publication, provide any comments or require the Recipient to remove the Provider's Confidential Information, failing which the Recipient shall be free to assume the Provider has no objection to the proposed publication.
 - 14.2 The Provider may require the Recipient to delay publication for a reasonable period not longer than three (3) months in order to allow for filing of patent applications.
 - 14.3 The Recipient agrees to acknowledge the source of the Material in any publications.
 15. The Recipient agrees that any breach of this Agreement including but not limited to any breach of the provisions of this Agreement will entitle the Provider to immediately cease without notice to the Recipient further transfers of the Material and may create such irreparable injury as to entitle the Provider to seek preliminary or permanent injunctive relief.
 16. None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between the Provider or Recipient other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement.

17. This Agreement will terminate either a) upon completion of the use of the Material for the Purpose aforementioned; or b) upon three (3) months written notice by either Party to the other. Upon termination of this Agreement, the Recipient will either return the Material, any copies thereof, and any notes relating to it to the Provider, or destroy any remaining Material, as directed in writing by the Provider.
18. Paragraphs 6, 7, 8, 9, 10, 11 and 13 will survive the termination of this Agreement.
19. Any dispute arising out of or in connection with this Agreement that cannot be resolved through negotiation, including any question regarding its performance, validity or termination, shall be adjudicated in the courts of the Republic of Ghana.
20. This Agreement is governed by and construed in accordance with the laws of the Republic of Ghana. The Courts of Ghana will have exclusive jurisdiction to deal with any dispute which arises or may arise out of, or in connection with, this Agreement.
21. This Agreement shall be signed in duplicates, each of which shall be considered an original and both of which duly executed represent one entire document and shall enter into force and effect on the date on which the last of the two Parties signs this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement

**FOR AND ON BEHALF OF
UNIVERSITY OF GHANA**

FOR AND ON BEHALF OF
[Provide Name of Recipient]

Name:

Name:

Position:.....

Position:.....

Signature:

Signature:.....

Date:.....

Date:.....

WITNESS

Name:

Name:

Position:.....

Position:.....

Signature:

Signature:.....

Date:.....

Date:.....