MATERIAL TRANSFER AGREEMENT

[Instructions: Please replace the italicized areas with the appropriate information and then delete this instruction before submitting to Recipient and the Director, KEMRI for authorisation.]

This Material Transfer Agreement (hereafter “MTA”) is effective on the date of the latter of the two authorized signatures of parties. The parties of this agreement are:

**PROVIDER:** Kenya Medical Research Institute

 P.O. Box 54840 00200 Off Mbagathi Road,

 Nairobi, Kenya.

***(Provider’s Scientist)***

 ***(Laboratory)***

 ***(Provider’s Laboratory Head)***

**RECIPIENT:** Institution receiving the Original MATERIAL: ***(Enter name and address here)***

 Recipient’s Scientist: ***(Enter name and address here)***

Laboratory: ***(Enter name of lab)***

Under this MTA, the provider agrees to transfer material to the recipient, collectively referred to as the “Parties” and individually referred to as a “Party”, under the following terms and conditions:

1. The Material. The material being transferred to Recipient is defined as: *(specify material here and give a description).* (together with all analogs, formulations, mixtures or compositions thereof, the “Material”).
2. The Research Program. The Material is provided to Recipient for the following use(s) only: *(Specify what the material will be used for*) and described in detail in the Protocol that is attached to and made part of this Agreement (the “Research Program”).
3. Use of the Material. The Material is not for use in humans, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider. The Material is not to be given or made available to any third party or person, except Recipient’s employees, consultants, contract research organizations or collaborators that are bound by terms and conditions similar to the terms and conditions that are contained herein, and shall not be used for any purpose other than for the Research Program. All requests for the Material from a third party other than Recipient’s employees, consultants, contract research organizations or collaborators will be referred to the Provider. Recipient agrees to use the Material and conduct the Research Program in a safe manner and in compliance with all applicable Federal, State, and local laws and regulations, including relevant National Institutes of Health guidelines.
4. Ownership. The ownership of the Material shall remain with Provider, including intellectual property rights of Provider embodied in the Material. Except as specifically provided in this Agreement, no express or implied licenses or other rights are provided to Recipient under any intellectual property rights of the Provider in respect of said Material.
5. Reports. Recipient shall keep Provider reasonably informed about the progress of the Research Program and shall provide reports to Provider on the results of the Research Program as outlined in the research plan. Provider may use and allow others to use the research results for any and all lawful purposes.
6. Inventions. Recipient will promptly and fully disclose in writing to Provider any and all developments, inventions and know-how (whether or not protectable under state, federal, or foreign intellectual property laws) related to the Material or its use, or developed using the Material, which are conceived and/or reduced to practice by Recipient, alone or jointly with others, in the performance of the Research Program (the “Inventions”). Inventions will be owned in accordance with inventorship as determined under KEMRI Intellectual property policy. Recipient grants to Provider (a) a non-exclusive, royalty-free license to Recipient’s interest in all Inventions to use the Inventions for research purposes and to make, have made, use, have used, sell and have sold, any products that are covered by or incorporate any such Inventions and (b) a first right to negotiate an exclusive, royalty-bearing license to Recipient’s interest in all Inventions (the “Right of First Negotiation”). Such non-exclusive license and license obtained under the Right of First Negotiation shall be irrevocable and shall include the right to grant sublicenses. For each Invention, Provider’s Right of First Negotiation may be exercised in writing (the “Notice”) within ninety (90) days of disclosure of that Invention to Provider by Recipient. The royalty payable to Recipient and other terms of the license pursuant to the Right of First Negotiation will be negotiated by the Parties in good faith for a period of up to ninety (90) days after the date of the Notice (the “Negotiation Period”). During the Negotiation Period, Recipient shall not engage in any negotiations or discussions with any third party regarding a license to the Invention. This Agreement does not restrict Provider’s right to distribute the Material to other commercial or noncommercial entities.
7. Patent Filings. Any patent applications necessary to protect the interests of the Parties in any Inventions made solely by Recipient will be prepared, filed and prosecuted by Recipient, solely in Recipient’s name, with the expenses paid by Recipient. Any patent applications necessary to protect the interests of the Parties in any Inventions made jointly by Recipient and Provider will be prepared, filed and prosecuted by Provider, jointly in its and Recipient’s names, with expenses paid by Provider. If Provider exercises its Right of First Negotiation and executes an exclusive royalty-bearing commercialization license to an Invention under Section 6 above, Provider will reimburse Recipient for its reasonable patent expenses related to such Invention.
8. Term/Expiration. The term of this Agreement shall be for a period of one (1) year from the Effective Date (the “Term”). At the end of the Term, any remaining Material shall be returned to Provider or destroyed, as instructed by Provider. The Term of the Agreement may be extended for an additional specified period upon the written agreement of authorized representatives of the Parties. Sections 5, 6, 7, 8 (last sentence only), 9, 10, 11, 12, 13 and 16 through 18 shall survive the expiration or earlier termination of this Agreement.
9. Confidentiality. “Confidential Information” means any and all proprietary or confidential scientific, technical, financial or business information in whatever form (written, oral or visual) that is furnished or made available to a party (the “Receiving Party”) by or on behalf of the other party (the “Disclosing Party”). During the Term and for a period of five (5) years from expiration of the Term, Receiving Party agrees not to disclose any of Disclosing Party’s Confidential Information nor use such information other than in connection with the Research Program. This obligation of confidentiality shall not extend to Disclosing Party’s Confidential Information which (a) at the time of disclosure is in the public domain; (b) after disclosure becomes part of the public domain, except by breach of this Agreement by Receiving Party; (c) was in the possession of Receiving Party at the time of disclosure and was not acquired, directly or indirectly, from Disclosing Party under an obligation of confidentiality, as established by competent written evidence; (d) Receiving Party received or may receive from a third party who is not, directly or indirectly, under an obligation of confidentiality to Disclosing Party with respect to such information; or (e) is approved for public release by written authorization of Disclosing Party. Receiving Party may disclose Disclosing Party’s Confidential Information if required by court order or otherwise by operation of law, provided that Receiving Party provides prior written notice of such disclosure to Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.
10. Publication. The Parties contemplate that the results of research performed with the Material may be published. Publication includes dissemination in a presentation or in any other way, provided the information has not previously been released to the public. Acknowledgement shall be made for the contributions of each Party, including the origin of the Material.

Notwithstanding the above, Recipient shall provide a copy of any proposed publication resulting from the Research Program to Provider at least thirty (30) days in advance of the submission of such publication to a journal or editor. Provider shall have thirty (30) days after receipt of said copy (the “Review Period”) to review the submitted documents. Provider may require that Recipient delete from its documents any reference to Provider’s Confidential Information. If, during the Review Period, Provider notifies Recipient that it desires to file a patent application on any Invention disclosed in the documents, Recipient will defer publication/presentation for up to sixty (60) additional days from the date of such notification to permit Provider to prepare and file a patent application. Failure of Provider to respond within the Review Period shall constitute *de facto* agreement of Provider that no revisions or delay in publication is necessary.

1. NO WARRANTY. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. 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.
2. Indemnification. Recipient agrees to indemnity, defend and hold Provider harmless from any third party claim, (including, without limitation, reasonable attorneys’ fees and other costs and expenses of defense) (collectively, “Claims”), to the extent based upon, arising out of, or otherwise relating to Recipient’s use of Material. The previous sentence will not apply to any Claim that results from the negligence or willful misconduct of Provider.
3. Except to the extent prohibited by law, RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. PROVIDER will not be liable to RECIPIENT for any loss, claim or demand made by RECIPIENT, or made against RECIPIENT by any other party, due to or arising from the use of the MATERIAL by RECIPIENT, except to the extent caused by the gross negligence or wilful misconduct of PROVIDER.
4. Modifications/Severability. This Agreement may only be modified by written amendment signed by an authorized representative of each Party. If any provision of the Agreement is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect.
5. Assignment. No obligations or rights under this Agreement may be assigned or delegated by Recipient without the prior written consent of Provider (which consent shall not be unreasonably withheld). This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective heirs, legal and personal representatives, successors and permitted assigns.
6. Remedies. The provisions of this Agreement are necessary for the protection of the business and goodwill of the Provider and are considered by the Parties to be reasonable for such purpose. Recipient agrees that any breach of this Agreement may cause Provider substantial and irreparable harm and, therefore, in the event of any such breach, in addition to other remedies that may be available to Provider, Provider shall have the right to seek specific performance and other injunctive and equitable relief without the necessity of posting a bond.
7. RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
8. The MATERIAL is provided at no cost, or with an optional fee to reimburse the

 PROVIDER for its preparation and shipping costs.

Fee for MATERIAL:

1. This MTA constitutes the entire agreement between the PROVIDER and RECIPIENT concerning the MATERIALS and supersedes any prior understanding or written or oral agreement.

###### **[Each party shall sign three (3) identical copies of this MTA, one of which shall be kept by PROVIDER, one by RECIPIENT and another by KEMRI/SERU]**

*(Signatures begin on the following page.)*

Acknowledged and agreed to by:

For Provider:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

For Recipient:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**PROTOCOL**

Material Transfer Agreement with *name of the recipient* (Recipient)

1. The following samples will be collected and transferred to the *(Insert name and address of the laboratory the material is going to)*:

*Provide description of the samples as per the protocol*;

1. The following tests and frequency will be performed at the *xxxx* Laboratory:

| **Sample** | **Type** | **Assessments** |
| --- | --- | --- |
|  |  |  |