

MATERIAL TRANSFER AGREEMENT

This Agreement made and entered into on this..... Day of 2020 ("Effective Date") by and between

The Open University of Sri Lanka, a university established under the universities Act No. 16 of 1978 and having its main address at No 21, Nawala, Nugegoda, Sri Lanka (Here in after referred to as "the OUSL" a "provider" which term shall mean and include the said Open University of Sri Lanka its successors and assigns) of the one party

AND

ABC (Pvt) Ltd a company duly incorporated under the laws of Sri Lanka bearing Company Registration Number and having its registered office at..... Sri Lanka (Here in after referred to as "ABC" or "recipient" which term shall mean and include the said ABC (Pvt)Ltd, its subsidiaries, affiliates, successors and permitted assigns) of the other party

WHEREAS:

- (a) The Recipient Scientist (as defined below) is conducting research for the Recipient, in connection with the Research Project and desires to obtain samples of the Material from the Provider (as defined below) solely for use in the Research Project; and
- (b) The Recipient agrees to accept the Material from the Provider for the Recipient Scientist to use in the Research Project under the following terms and conditions.

THEREFORE the Parties do hereby agree as follows:

1. DEFINITIONS

- 1.1 In this Agreement and in the Schedules to this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings

“**Commercial Purposes**” means the sale, lease, license, or other transfer of the Material or Modifications to a for-profit organisation. Commercial Purposes shall also include uses of the Material or Modifications by any organisation, including the 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 organisation.

“**Material**” means the 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.

“**Modifications**” means substances created by the Recipient which contain/incorporate the Material.

“**Original Material**” means the material being transferred to the Recipient under this Agreement and as described in **Schedule 1** to this Agreement;

“**Progeny**” mean unmodified descendants from the Material, such as virus from virus, cell from cell, or organism from organism;

“**Provider Scientist**” means

“**Recipient Scientist**” means

“**Representatives**” means employees, agents and other representatives of the Recipient (and includes the Recipient Scientist);

“**Research Project**” means the research which the Recipient Scientist has requested the Material for and as described in **Schedule 2** to this Agreement;

“**Supervised Persons**” has the meaning set out in Clause 4.1 (c); and

“**Unmodified Derivatives**” means substances created by the Recipient which constitute an unmodified functional subunit or an expression 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; and

- 1.2 References to Recitals, Clauses and Schedules are to recitals and clauses of, and schedules to, this agreement;
- 1.3 A reference to “person” includes an individual, corporation, company, partnership, firm, trustee, trust, executor, administrator or other legal personal representative, unincorporated association, joint venture, syndicate or other business enterprise, any governmental administrative or regulatory authority or agency (notwithstanding that “person” may sometimes be used herein in conjunction with some of such words), and their respective successors, legal personal representatives and assigns, and as the case may be, and pronouns shall have such similar extended meaning; and
- 1.4 The headings are for convenience only and shall not affect the interpretation hereof.

2. OWNERSHIP OF MATERIAL

- 2.1 The Provider retains ownership of the Material, including any Material contained or incorporated in Modifications (and any Progeny made by or in possession of or under the control of Recipient pursuant to this Agreement).

- 2.2 The transfer of the Material grants to Recipient and Recipient Scientist no rights in the Material other than those specifically set forth in this Agreement.
- 2.3 The Recipient retains ownership of: (a) Modifications (except that, the Provider retains ownership rights to the Material included therein), and (b) 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 the Recipient wishes to file patent application(s) for any inventions (“**Inventions**”) arising under Clause 2.3 (a) or 2.3 (b), the Recipient will disclose such inventions to the Provider, in confidence, and shall seek consent from Provider before any patent application is filed. If either Clause 2.3 (a) or 2.3 (b) results from the collaborative efforts of the Provider and the Recipient, the parties shall negotiate in good faith on the ownership (including without limitation joint ownership) of the patent(s).
- 2.4 The Provider shall, at all times, be entitled to a perpetual, non-exclusive, royalty-free license to use, make, have made, and otherwise practise, an Invention for non-commercial research purposes (and the right to grant a sub-license to its affiliates on such terms), and the Recipient shall execute or cause to be executed such instruments and give such further assurances, and perform such acts necessary to give effect to this Claus 2.4.

3. CONFIDENTIALITY

- 3.1 Recipient shall not, and shall procure that its Representatives do not, disclose to any third party or make public any information related to the Material disclosed to Recipient by Provider which information is maintained as confidential by Provider and is marked or otherwise identified as confidential when disclosed to the Recipient (the “Confidential Information”), and shall only use such Confidential Information for the purposes specifically set forth in this Agreement. Notwithstanding the foregoing:
 - (a) Recipient shall have the right to disclose Confidential Information as required by applicable law or regulation; and
 - (b) Recipient’s confidentiality obligations above shall not apply to such Confidential Information as:
 - (i) was publicly known prior to disclosure by Provider of such information to Recipient;
 - (ii) becomes publicly known, without fault on the part of Recipient, subsequent to disclosure by Provider of such information to Recipient;
 - (iii) is disclosed to Recipient at any time from a source, other than Provider, lawfully having possession of and the right to disclose such information;
 - (iv) was otherwise known by Recipient prior to disclosure by Provider to Recipient of such information as evidenced by written records; or

(v) is independently developed by Recipient without use of such information.

- 3.2 Provider retains all proprietary rights in the Confidential Information. No licences or any other rights are granted in respect of the Confidential Information other than those specifically set forth in this Agreement.
- 3.3 The obligations of confidentiality and non-disclosure imposed on the Recipient under this Agreement shall remain in effect for < > () months/years from the last date of signature below.

4. USE OF MATERIAL

- 4.1 The Recipient and the Recipient Scientist undertakes to the Provider that the Material:
- (a) is to be used solely for the Research Project;
 - (b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider;
 - (c) is to be kept securely and solely at the Recipient Scientist's laboratory under the direction of the Recipient Scientist or others working under his/her direct supervision (the “**Supervised Persons**”) and the Recipient shall ensure that no person other the Recipient Scientist and the Supervised Persons has access to the Material without the prior written consent of the Provider; and
 - (d) will not be transferred or released to any third party. The Recipient and the Recipient Scientist agree to refer to the Provider any request for the Material from anyone other than the Recipient Scientist and the Supervised Persons.
- 4.2 The Recipient 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 Recipient 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.
- 4.3 The Recipient shall not use the Material or Modifications for Commercial Purposes, the Recipient undertakes, in advance of such use, to negotiate in good faith with the Provider to establish the terms of a [revenue sharing agreement (under which the Provider will have a share of the revenue which are derived in connection with such Commercial Purposes)]. It is understood by the Recipient that the Provider shall have no obligation to grant permission for such use to the Recipient, and may grant permission for such uses to others, or sell or assign all or part of the rights in the Material to any third (3rd) party (ies), subject to any pre-existing rights held by others.

4.4 Recipient Scientist and Recipient represent and warrant that they are entitled to receive, use and store the Materials under all applicable laws and regulations. Recipient Scientist and Recipient shall be responsible for obtaining and maintaining any health, environmental and all approvals required for the receipt, possession and use of the Material contemplated under this Agreement.

4.5 The Recipient and the Recipient Scientist undertakes to use and store the Material in compliance with all applicable laws and regulations, and not to attempt to identify or contact the donor of the Material or to compromise or otherwise infringe the confidentiality of information on the donors.

4.6 * *For Academic*

*The Material is provided at no cost (subject to the Provider having the discretion to charge an optional transmittal fee of [*insert*] solely to reimburse the Provider for its preparation costs).

*The Recipient will be responsible for the costs of shipping or transporting the Material to the Recipient.

* *For Industry*

*The Recipient will be responsible for the costs of shipping or transporting the Material to the Recipient. The Materials will be charged at cost.

**Delete appropriately.*

5. NO LIABILITY FOR USE OF MATERIAL, AND INDEMNITY

5.1 The Recipient acknowledges that the Materials are experimental in nature and may have hazardous properties. In relation to the same, the Provider **MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. The Provider gives NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS OWNED BY THIRD PARTIES.**

5.2 The Provider will, to the extent permitted by law, not be liable to the Recipient or the Recipient Scientist 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, storage or disposal of the Material by the Recipient, except when caused by the gross negligence or wilful misconduct of the Provider.

5.3 To the extent prohibited by law, the Recipient assumes all liability which may arise from its use, storage or disposal of the Material, and the Recipient shall indemnify and hold harmless the Provider, the Provider's Representatives and the Provider Scientist from

and against all claims and losses arising from such supply, use or keeping, including without limitation all claims, demands and losses arising from:

- (a) any injury to the Recipient's employees and to third parties;
- (b) infringement of third party intellectual property rights; and
- (c) use of the Materials within or outside the scope of this Agreement.

6. ACKNOWLEDGEMENT OF SOURCE OF MATERIAL

[The Recipient Scientist agrees as soon as practicable, subject to the prior written approval of the Provider, to provide the data from the Research Project to the Provider Scientist.] The Recipient Scientist [further] agrees to provide appropriate acknowledgement of the source of the Material in all publications. For publication, which contains results obtained from the Research Project under this Agreement, both Providing Scientist and Recipient Scientist shall be co-authors. Each co-author should have the opportunity to review the manuscript before its submission. Co-authors have an obligation to provide prompt retractions or correction of errors in published works.

7. TERMINATION

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

- (a) on completion of the Research Project, and
- (b) on thirty (30) days written notice by either Party to the other;

7.2 Upon termination of this Agreement, the Recipient will discontinue use of the Material and the Confidential Information and will, upon direction of the Provider, return or destroy:

- (a) any remaining Material; and
- (b) all Confidential Information in any form and to any extent in the possession of the Recipient.,

and the Recipient shall, if requested by the Provider, unreservedly execute an undertaking confirming its compliance with this clause.

7.3 Clauses [2.3, 2.4, 3, 4, 5, 6, 7.2 and 7.3] will survive termination of this Agreement for whatever cause.

7.4 Termination of this Agreement shall not affect any accrued rights or remedies to which the Provider is entitled, and Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it

may have, the Provider shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

8. USE OF NAMES AND TRADE MARKS

Each Party agrees not to refer to this Agreement, or use the names or trade marks of the other without express prior written permission.

9. TERM OF AGREEMENT

This Agreement shall remain in force for < > < > months/years from the last date of signature below. It may be extended by written mutual agreement.

10. ASSIGNMENT

This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of Provider.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements in connection with the subject matter herein.

12. VARIATIONS

No variation or waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorised Representative of the Recipient and the Provider.

13. AUTHORISED REPRESENTATIVES

The Parties each represents and warrants that the following facts and circumstances are and at all times shall be true and correct:

- (a) That it has the requisite corporate power and authority to enter into this Agreement and that this Agreement does not conflict with any other agreement or obligation by which the respective Party is bound;
- (b) That there is no material suit, action, arbitration, legal, administrative or other proceeding or governmental investigation pending or to its best knowledge or belief, threatened against it or affecting its ability to perform its obligations under this Agreement; and

- (c) That the signatories for and on behalf of that Party are authorised and fully empowered to execute this Agreement on that Party's behalf.

14. GOVERNING LAW & DISPUTE RESOLUTION

14.1 This Agreement shall be deemed to be made in Sri Lanka, subject to, governed by and construed in all respects in accordance with the laws of the Sri Lanka for every intent and purpose.

14.2 The Parties hereby agree to submit irrevocably to the non-exclusive jurisdiction of the Courts of Sri Lanka to settle any and all disputes in connection with this Agreement.

IN WITNESS WHERE OF, the duly authorized representatives of the Parties have placed their hands here unto as of the date mentioned above.

The common seal of OUSL is affixed in the presence of.....
(Vice Chancellor) and..... (Registrar) who do here by at
test the sealing of

1..... 2.....

Witnesses

1.

2.

The common seal of the ABC (Pvt)Ltd is affixed in the presence of
..... (Designation) and
(Designation) who do here by at test the sealing of

1..... 2.....

Witnesses

1.

2

SCHEDULE 1

Original Material

[Insert description of materials being transferred]

Description of Materials

Date of Transfer	Provider	Name and signature of provider	Recipient	Name and signature of recipient	Description of Materials

SCHEDULE 2

RESEARCH PROJECT

[Insert description of research project that requested material will be used in]

SCHEDULE 3

ACKNOWLEDGEMENT

I acknowledge and agree that:

1. <Name of Institution> had provided me with < > of “MATERIAL” on < > (date of transfer).
2. The signed Material Transfer Agreement is for the purpose of carrying out the project titled “< >” (“Research Project”) governs the use of the MATERIAL.
3. The MATERIAL will be used solely for the purpose of the Research Project in < > with which I am affiliated to and will be under my direct supervision.
4. The MATERIAL will be used in compliance with all applicable statutes and regulations regulating the protection of human subjects in research, research involving the use of animals and/or recombinant DNA.
5. The MATERIAL will NOT be used for any Commercial Purpose (sale, lease, license, or other transfer of the MATERIAL to a for-profit organization).
6. I will assume all liability for damages that may arise from my use, storage or disposal of the MATERIAL.
7. The code of confidentiality as stipulated in the Material Transfer agreement will be observed at all times.

I have fully understood the contents of this undertaking. In the event of breach arising from this Acknowledgement, I will be liable for disciplinary action and may even face legal action commenced by <Name of Institution> to seek compensation for any damage or loss suffered by <Name of Institution> arising from such breach.

Recipient Scientist

Name: < >

Title: < >

Date: < >