

Amended and Restated Master Material and Data Transfer Agreement for the University of Texas System Member Institutions

This Amended and Restated Master Material and Data Transfer Agreement for The University of Texas System Institutions (this “Master MDTA”) is effective March 1, 2019 (“Effective Date”) and is entered into by and among the fourteen (14) member institutions of The University of Texas System (“UT System”):

The University of Texas at Arlington
The University of Texas at Austin
The University of Texas at El Paso
The University of Texas at Dallas
The University of Texas Permian Basin
The University of Texas at Tyler
The University of Texas at San Antonio
The University of Texas Rio Grande Valley
The University of Texas Health Science Center at Houston
The University of Texas Health Science Center at San Antonio
The University of Texas Health Science Center at Tyler
The University of Texas M. D. Anderson Cancer Center
The University of Texas Southwestern Medical Center and
The University of Texas Medical Branch at Galveston

Each referred to as Institution and collectively, Institutions. See **Exhibit A** for contact information for each Institution which will be used in each Implementing Letter (defined below).

Recitals

- A. The parties entered into a certain The University of Texas System Master Material Transfer Agreement on July 1, 2018 (“UT System Master MTA”). The parties now wish to amend and restate the UT System Master MTA to include the transfer of DATA (defined below).
- B. Each Institution desires to streamline the transfer of MATERIALS (defined below) and/or DATA (defined below) between RECIPIENT SCIENTIST (defined below) and PROVIDER SCIENTIST (defined below).
- C. MATERIALS and/or DATA can readily and efficiently be transferred between Institutions by issuing individual MDTA Implementing Letters (“Implementing Letter”) substantially in the form of Exhibit B (attached hereto) or the MATERIAL and/or Data Transfer Form (“Transfer Form”) substantially in the form of Exhibit C attached hereto. Each fully executed Implementing Letter or Transfer Form will be subject to the terms and conditions of this Master MDTA. No Institution is obligated to use this Master MDTA for the transfer of MATERIAL and/or DATA.

D. Each Institution wishes to enter into this Master MDTA in furtherance of its research mission.

Now therefore, upon execution of this Master MDTA, each Institution agrees as follows.

1. Definitions:

1.1. **PROVIDER:** Institution providing the ORIGINAL MATERIAL. The name and address of PROVIDER will be specified in the Implementing Letter.

1.2. **PROVIDER SCIENTIST:** Scientist at PROVIDER actually providing ORIGINAL MATERIAL. The name and title of PROVIDER SCIENTIST will be specified in the Implementing Letter.

1.3. **RECIPIENT:** Institution receiving the ORIGINAL MATERIAL. The name and address of RECIPIENT will be specified in the Implementing Letter.

1.4. **RECIPIENT SCIENTIST:** Scientist at RECIPIENT actually receiving ORIGINAL MATERIAL. The name and title of RECIPIENT SCIENTIST will be specified in the Implementing Letter.

1.5. **DATA:** DATA includes any factual information regardless of type, form, or format, including but not limited to, age, gender, diagnosis, biospecimen-related data, and electronic images. As used in this MDTA, DATA is intended to not include any Protected Health Information.

1.6. **ORIGINAL MATERIAL:** The MATERIAL being transferred by PROVIDER SCIENTIST to RECIPIENT SCIENTIST and as described in the Implementing Letter or the Transfer Form.

1.7. **MATERIAL:** MATERIAL includes, ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. MATERIAL *does not* include: (a) MODIFICATIONS; or (b) other substances created by RECIPIENT through the use of MATERIAL that are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.

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

1.9. **UNMODIFIED DERIVATIVES:** Substances created by RECIPIENT which constitute an unmodified functional subunit 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 PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.

1.10. **MODIFICATIONS:** Substances created by RECIPIENT that contain/incorporate the MATERIAL.

1.11. **COMMERCIAL PURPOSES:** The sale, lease, license, or other transfer of MATERIAL, DATA, or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES include uses of MATERIAL, DATA, 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, DATA, or MODIFICATIONS to a for-profit organization. Industrial sponsored academic research is not a use of the MATERIAL, DATA, or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

1.12. **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.

2. Terms and Conditions of this Master MDTA:

2.1. PROVIDER retains ownership of the MATERIAL and/or DATA, including any MATERIAL contained or incorporated in MODIFICATIONS.

2.2. RECIPIENT retains ownership of: (a) MODIFICATIONS (except that 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, or UNMODIFIED DERIVATIVES). Joint ownership may be negotiated.

2.3 RECIPIENT agrees that the MATERIAL will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of PROVIDER.

2.4. RECIPIENT agrees that the MATERIAL and/or DATA:

(a) are to be used solely for teaching and academic research purposes;

(b) are to be used only at RECIPIENT and only in RECIPIENT SCIENTIST's laboratory under the direction of RECIPIENT SCIENTIST or others working under RECIPIENT SCIENTIST's direct supervision; and

(c) will not be transferred to anyone else within RECIPIENT without the prior written consent of PROVIDER.

2.5. RECIPIENT agrees to refer to PROVIDER any request for the MATERIAL and/or DATA from anyone other than those persons working under RECIPIENT SCIENTIST's direct

supervision. To the extent supplies are available, PROVIDER agrees to make the MATERIAL and/or DATA available under: (a) a separate Implementing Letter or the Transfer Form; or (b) a separate agreement having terms consistent with the terms of this Master MDTA, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate RECIPIENT SCIENTIST's research; provided that in each such case the other proposed recipients reimburse PROVIDER for any costs relating to the preparation and distribution of the MATERIAL and/or DATA.

2.6. Transferring MATERIALS to a NONPROFIT ORGANIZATION(S) that is not an Institution:

(a) RECIPIENT and/or RECIPIENT SCIENTIST may, without restriction, distribute substances created by RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

(b) Under a separate agreement at least as protective of PROVIDER's rights as this Master MDTA, RECIPIENT may distribute MODIFICATIONS to a NONPROFIT ORGANIZATION for research and teaching purposes only.

(c) Without written consent from PROVIDER, RECIPIENT and/or RECIPIENT SCIENTIST may not provide or use MODIFICATIONS for COMMERCIAL PURPOSES. RECIPIENT recognizes that such COMMERCIAL PURPOSES may require a commercial license from PROVIDER and 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, prevents RECIPIENT from granting a commercial license to RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

2.7. RECIPIENT acknowledges that the MATERIAL and/or DATA is or may be the subject of a patent application. Except as provided in this Master MDTA, no express or implied licenses or other rights are provided to RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of PROVIDER, including any altered forms of the MATERIAL made by PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or DATA or any related patents of PROVIDER for COMMERCIAL PURPOSES.

2.8. If RECIPIENT desires to use or license the MATERIAL, DATA, or MODIFICATIONS for COMMERCIAL PURPOSES, RECIPIENT will, in advance of such use or license, negotiate in good faith with PROVIDER to establish the terms of a commercial license. RECIPIENT understands that PROVIDER has no obligation to grant such a license to 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 and/or DATA to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

2.9. RECIPIENT may file patent application(s) claiming inventions made by RECIPIENT through the use of the MATERIAL and/or DATA and will notify PROVIDER upon

filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

2.10. Any MATERIAL and/or DATA delivered pursuant to this Master MDTA 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.

2.11. To the extent authorized by the constitution and laws of the State of Texas, RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL and/or DATA. 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 and/or DATA by RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of PROVIDER.

2.12. PROVIDER will not disclose any Protected Health Information DATA to RECIPIENT under this Master MDTA and RECIPIENT will not require PROVIDER to disclose any Protected Health Information DATA. Notwithstanding the foregoing, if RECIPIENT comes into knowledge or possession of any "Protected Health Information" (as such term is defined under HIPAA) by or through PROVIDER or any information that could be used to identify any study subject or other PROVIDER patients or research subjects, RECIPIENT will maintain any such Protected Health Information or other information confidential in accordance with laws and regulations as applicable to PROVIDER, including without limitation HIPAA, will use any such Protected Health Information solely to the extent permitted by applicable laws, the IRB and the Consent/Authorization of the patient/research subject, and will not use or disclose any such Protected Health Information or other information in any manner that would constitute a violation of any applicable laws or regulation if such use or disclosure was made by PROVIDER.

2.13. This Master MDTA shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL, DATA, or the MODIFICATIONS. RECIPIENT SCIENTIST will provide appropriate acknowledgement of the source of the MATERIAL and/or DATA in all such publications.

2.14. RECIPIENT agrees to use the MATERIAL and/or DATA 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.

2.15. This Master MDTA shall become effective on the Effective Date and continue for a term ending February 1, 2029. This Master MDTA may be extended by written agreement signed by the Institutions. Termination or expiration of an Implementing Letter or Transfer Form shall not cause this Master MDTA to terminate or expire. An Implementing Letter or Transfer Form will terminate on the earliest of the following dates: (a) when the MATERIAL and/or DATA

becomes generally available from third parties, for example, through reagent catalogs or public depositories; or (b) on completion of RECIPIENT's current research with the MATERIAL and/or DATA; or (c) on thirty (30) days written notice by either RECIPIENT or PROVIDER to the other party; or (d) on the date specified in the Implementing Letter or Transfer Form, provided that:

(i) if termination should occur under subsection 2.15(a) above, RECIPIENT will be bound by the least restrictive terms applicable to the MATERIAL obtained from the then-available resources; and

(ii) if termination should occur under subsections 2.15(b) or (d) above, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of PROVIDER, return or destroy any remaining MATERIAL. RECIPIENT, at its sole discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Master MDTA as they apply to MODIFICATIONS; and

(iii) if termination should occur under subsections 2.15(c) above other than for breach of this Master MDTA or for cause such as an imminent health risk or patent infringement, PROVIDER will defer the effective date of termination for a period of up to one year upon written request from RECIPIENT to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and/or DATA and will, upon direction of PROVIDER, return or destroy any remaining MATERIAL and/or DATA. RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Master MDTA as they apply to MODIFICATIONS.

2.16. This Master MDTA, each Implementing Letter or Transfer Form, and any attachments hereto set out the entire agreement of the parties with respect to its subject matter and supersedes all prior agreements, including but not limited to, the UT System Master MTA, and understandings relating to the subject matter of this Master MDTA and each Implementing Letter or Transfer Form.

2.17 This Master MDTA and any Implementing Letters or Transfer Forms may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same agreement. A .pdf (portable document form) of this Master MDTA bearing a signature on behalf of a party shall be legal and binding on such party.

2.18. Paragraphs 2.7, 2.10, and 2.11 will survive termination.

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IN WITNESS WHEREOF, the parties have caused this Master MDTA to be executed by their duly authorized representatives.

**THE UNIVERSITY OF TEXAS
AT ARLINGTON**

By: _____
Name: Jeremy Forsberg
Title: Assistant Vice President for Research
Date: _____

**THE UNIVERSITY OF TEXAS
AT AUSTIN**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
AT DALLAS**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
AT EL PASO**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
PERMIAN BASIN**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
AT RIO GRANDE VALLEY**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
AT SAN ANTONIO**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
AT TYLER**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
HEALTH SCIENCE CENTER AT
HOUSTON**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
HEALTH SCIENCE CENTER AT
SAN ANTONIO**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
HEALTH SCIENCE CENTER AT
TYLER**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER**

By: _____
Name: _____
Title: _____
Date: _____

**THE UNIVERSITY OF TEXAS
MEDICAL BRANCH AT GALVESTON**

**THE UNIVERSITY OF TEXAS
SOUTHWESTERN MEDICAL CENTER**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
Administrative Contact Person and Address for Each Signatory Institution

<p>The University of Texas at Arlington Jeremy Forsberg Daniel Vincenzo Office of Research Administration PO Box 19145 Arlington TX 76019-0145 Email: ogcs@uta.edu Phone: 817-272-2105</p>	<p>The University of Texas at Austin Mark Featherston Office of Sponsored Projects 3925 West Braker Lane Bldg. 156, Suite 3.340 Austin, Texas 78759-5316 Email: mark.featherston@austin.utexas.edu Phone: 512-232-6087</p>
<p>The University of Texas at Dallas Brian Scott Office of Technology Commercialization 800 West Campbell Rd., AD15 Richardson, TX 75080 Email: brian.scott@utdallas.edu Phone: 972-883-4552</p>	<p>The University of Texas at El Paso Athena Fester Office of Research & Sponsored Projects 500 W. University Avenue Administration Bldg., Room #209 El Paso, TX 79968 Email: afester@utep.edu Phone: 915-747-8841</p>
<p>The University of Texas Permian Basin Sandra D. Garcia Office of Sponsored Programs Research, Graduate Studies & Research 4901 E. University Blvd. Mesa Building 1208 Odessa, TX 79762 Email: Garcia_s@utpb.edu Phone: 432-552-2530</p>	<p>The University of Texas Rio Grande Valley Glorimar Colón Research Liaison Officer Fernando Gonzalez Director Technology Commercialization Division of Research, Innovation and Economic Development 1201 West University Drive Edinburg, TX 78539 Email: glorimar.colon@utrgv.edu Phone: 956-665-3008 Email: Fernando.gonzalez@utrgv.edu Phone: 956-665-3006</p>
<p>The University of Texas at San Antonio Jessica Fernandez Joe Evans Office of Sponsored Project Administration One UTSA Circle San Antonio, TX 787249 Email: Jessica.fernandez2@utsa.edu Phone: 210-458-8575 Email: joe.evans@utsa.edu Phone: 210-458-6589</p>	<p>The University of Texas at Tyler Carla Reichard Office of Research & Scholarship 3900 University Blvd Tyler, TX 75799 Email: creichard@uttyler.edu Phone: 903-565-5670</p>

<p>The University of Texas Health Science Center at Houston Valerie Bomben John Nelson Office of Sponsored Projects Administration Fannin Street, UCT1002 Houston, TX 77030 Email: Valerie.C.Bomben@uth.tmc.edu Phone: 713-500-3174 Email: john.nelson@uth.tmc.edu Phone: 713-500-3043 <i>Overnight address is:</i> 7000 Fannin Street, Suite UCT 1007-2 Houston, TX 77030</p>	<p>The University of Texas Health Science Center at San Antonio Chris G. Green Rae Schofield Office of Sponsored Programs 7703 Floyd Curl Dr, Mail Code 7828 San Antonio, TX 78229-3900 Email: contracts@uthscsa.edu Phone: 210-567-2340</p>
<p>The University of Texas Health Science Center at Tyler Dena Walton Director, Office of Pre-Award Services 11937 U.S. Hwy. 271 Tyler, TX 75708-3154 Email: dena.walton@uthct.edu Phone: 903-877-7486</p>	<p>The University of Texas M. D. Anderson Cancer Center Associate Vice President, Research Administration 1515 Holcombe Blvd. – Unit 1676 Houston, TX 77030-3907 Email: materialtransferagreements@mdanderson.org Phone: 713-563-3886</p>
<p>The University of Texas Medical Branch at Galveston Frances Streeter Legal Officer Office of Technology Transfer 301 University Blvd. Galveston, TX 77555-0376 Email : frstreet@utmb.edu Phone: 409-772-0376</p>	<p>The University of Texas Southwestern Medical Center The Office for Technology Development Cooperative Research 5323 Harry Hines Blvd. Dallas, TX 75390-9105</p> <p>Overnight Address: 2330 Inwood Road, Suite EB1.200 Dallas, TX 75235</p> <p>Phone: 214-648-4456 Fax: 214-951-0935 Email: CooperativeResearch@utsouthwestern.edu</p>

EXHIBIT B **MDTA Implementing Letter**

This MDTA Implementing Letter (“Implementing Letter”) is issued on _____, 20XX (Implementing Letter Effective Date) and is pursuant to that certain **Amended and Restated Material and Data Transfer Agreement** for the University of Texas System Member Institutions dated effective of February 1, 2019, made and entered into among The University of Texas System Institutions identified therein (the “Master MDTA”).

The purpose of this Implementing Letter is to:

- (i) provide a record of the transfer of research MATERIAL or DATA transferred between PROVIDER SCIENTIST and RECIPIENT SCIENTIST;
- (ii) memorialize the agreement between PROVIDER and RECIPIENT to abide by all terms and conditions of the Master MDTA with respect to the ORIGINAL MATERIAL or DATA described in this Implementing Letter; and
- (iii) certify that RECIPIENT (identified below) has accepted and signed a copy of the Master MDTA.

Capitalized terms have the meaning assigned in the Master MDTA.

Please complete all blank lines (if applicable) below:

1. PROVIDER:

Institution Name:

Address:

2. PROVIDER SCIENTIST:

Provider Scientist Name and Title:

3. RECIPIENT: Institution receiving the ORIGINAL MATERIAL or DATA:

Institution Name:

Address:

4. RECIPIENT SCIENTIST:

Recipient Scientist Name and Title:

5. a. ORIGINAL MATERIAL (Enter Name and Description):

b. DATA (Enter Type, Name and Description):

- 6. **TERM OF IMPLEMENTING LETTER:** as shown on Appendix A
- 7. **OPTIONAL: Handling and Storage Restrictions for ORIGINAL MATERIAL:**
- 8. If box is checked, this Implementing Letter is also subject to additional terms set forth on the attached Appendix 1.
- 9. In the event of a conflict between any specific terms or conditions in the Master MDTA and Appendix 1, Appendix 1 will govern.

This Implementing Letter is effective when signed by all parties. The Institutions executing this Implementing Letter certify that they have accepted and signed an unmodified copy of the Master MDTA, and specifically agree to be bound by its terms, for the transfer specified above.

RECIPIENT

PROVIDER

Name:
Title:

Date _____

Name:
Title:

Date _____

Read and Understood:

RECIPIENT SCIENTIST

Name:
Title:

Date _____

Appendix 1 Additional Terms

If checked, the following terms apply:

- This Implementing Letter shall terminate on _____. Upon termination, RECIPIENT will either destroy any remaining MATERIAL and/or DATA or return it to PROVIDER, as directed by PROVIDER.

- RECIPIENT will pay a transmittal fee of \$ _____ to PROVIDER for preparation and transfer costs.

- RECIPIENT SCIENTIST intends to use the MATERIAL and/or DATA for purposes described below:

- To the extent permitted by law, RECIPIENT agrees to treat in confidence, for a period of three (3) years from the date of the Implementing Letter, any of PROVIDER'S written information about the MATERIAL and/or DATA that is marked "Confidential" ("Confidential Information"). Any oral disclosures from PROVIDER to RECIPIENT will be identified as being Confidential Information by notice delivered to RECIPIENT within ten (10) days after the date of the oral disclosure. Confidential Information does not include information that:
 - a. has been published or is otherwise publicly available at the time of disclosure to RECIPIENT;
 - b. was in the possession of or was readily available to RECIPIENT without being subject to a confidentiality obligation from another source prior to the disclosure;
 - c. has become publicly known, by publication or otherwise, not due to any unauthorized act of RECIPIENT;
 - d. RECIPIENT can demonstrate it developed independently, or acquired without reference to or reliance upon Confidential Information; or
 - e. is required to be disclosed by law, regulation, or court order.

- Additional binding terms:

EXHIBIT C
Material and Data Transfer Form
(See external document attached)