

## NAIST MATERIAL TRANSFER AGREEMENT

This NAIST Material Transfer Agreement (“this Agreement”) is made as of [ ], 2004 (“Effective Date”) by and between Nara Institute of Science and Technology (hereinafter “NAIST”), having its address at 8916-5 Takayama-cho, Ikokama-shi, Nara-ken, Japan, and AAA (hereinafter “RECIPIENT”), having its address at \_\_\_\_\_; (hereinafter NAIST and RECIPIENT are referred to individually as “ Party”, and collectively as “Parties”).

### 1. Supply of Material:

Promptly after the Effective Date, NAIST shall supply RECIPIENT, free of charge, with the material called [ ] (hereinafter “Material”) in the quantity of [ ] milligrams, sending by courier to RECIPIENT’s address stated hereinabove.

### 2. RECIPIENT’s agreement:

In receiving the Material from NAIST, RECIPIENT agrees to the following terms and conditions:

2.1. RECIPIENT shall use the Material solely for the following non-commercial and non-profit making purpose (hereinafter “Purpose”):

[ ]

2.2. RECIPIENT shall use the Material only at its own facilities by and under the direction of RECIPIENT's principal investigator, [ ] and by individual persons working under the principal investigator's supervision. The Material shall not be made available to any other person, institution, firm or corporation without the prior written consent of NAIST.

2.3. RECIPIENT understands that the Material received under this Agreement is experimental in nature, is for laboratory research use only and has not been approved for use in humans. RECIPIENT shall restrict the use of the Material to its internal research purpose only and shall have the Material not administered to humans in any manner or form.

2.4. RECIPIENT shall ensure that the Material will not be used in commerce or research that is subject to any consulting or licensing obligation to any third party, nor in commercial or non-commercial

work on behalf of any third party, regardless of whether or not such an obligation presently exists or previously existed or may be entered into in the future, without the express prior written consent of NAIST.

- 2.5. RECIPIENT shall ensure that the importation, transport, use, storage, maintenance and disposition of the Material by or on behalf of RECIPIENT will be conducted in strict accordance with all applicable laws, regulations and guidelines.
- 2.6. Promptly after the completion or termination of the Purpose, RECIPIENT shall submit to NAIST a report on all results and data obtained by the use of the Material under this Agreement (hereinafter "Results").
- 2.7. In the event that RECIPIENT intends to publish or otherwise disclose to any third party any portion of the Results, RECIPIENT shall submit to NAIST the contents of such intended publication or disclosure in advance and shall obtain NAIST's prior written approval for the contents, timing and method of such publication or disclosure, which approval shall not be unreasonably withheld or delayed by NAIST. If NAIST so requests, RECIPIENT shall include in such publication or disclosure the fact of the use of the Material and the name of NAIST as the supplier of the Material.
- 2.8. RECIPIENT shall bear all costs, expenses and risks associated with the use of the Material and shall be responsible for any claims or liabilities whatsoever that may arise as a result of the use of the Material and shall indemnify NAIST from such claims or liabilities.

### 3. Derivative:

RECIPIENT may produce and use for the Purpose any Derivative that means any cell, DNA, RNA, protein product or progeny produced by the replication or derivation of the Material. All terms, conditions and provisions applicable to the Material under this Agreement shall be applied to such Derivative as if such Derivative were the Material transferred and used hereunder.

### 4. Mutual Agreement:

- 4.1. Either Party may disclose to the other Party certain proprietary or confidential information, including without limitation, information relating to the Material or contained in the report on the Results (hereinafter "Confidential Information"). Each Party shall hold the Confidential Information disclosed by the other Party in strict confidence, shall use the same for the sole purpose of performing the objectives of this Agreement and shall not publish or disclose the same

to any third party without the prior written consent of the other Party, except such portion of the Confidential Information that is:

- (1) already known to or possessed by the obligated Party at the time of its knowing under this Agreement as shown by its written records; or
- (2) already publicly known at the time of the obligated Party's knowing under this Agreement, or thereafter becomes publicly known except due to the obligated Party's breach or fault; or
- (3) disclosed to the obligated Party by a third party having no obligation of confidentiality to the other Party as shown by the obligated Party's written records.

- 4.2. All the rights to the Results shall be owned jointly by NAIST and RECIPIENT, and the share of the ownership shall be fairly and reasonably agreed upon by the Parties in consideration of the degree of each Party's contribution, reflecting also the contribution of the background patent (if any) and the Confidential Information. If the Results include any patentable invention, the Parties shall conclude a joint patent application agreement which shall set forth the sharing of costs and income, filing, prosecution, registration and maintenance responsibilities, licensing rights and other necessary matters.
- 4.3. Any right or license under any NAIST's patent or patent application is not granted hereby. NAIST does not warrant that the use of the Material does not or will not infringe any third party patent. NAIST is under no obligation to obtain or provide licenses that may be required for the use of the Material by RECIPIENT.
- 4.4. NAIST MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, SAFETY, NON-HAZARDNESS, NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR FITNESS FOR A PARTICULAR PURPOSE.
- 4.5. This Agreement shall become effective as of the Effective Date first above written and shall expire upon NAIST's receipt of the report on the Results pursuant to Section 2.6. Unless otherwise agreed by the Parties, immediately after the Purpose is completed, RECIPIENT shall discontinue its use of the Material and, upon request of NAIST, shall promptly destroy or return, at NAIST's sole election, all the remaining quantities of the Material to NAIST. All other rights and obligations shall survive the expiration or termination of this Agreement.
- 4.6. This Agreement shall be governed by and construed and interpreted in accordance with the laws of Japan, without reference to principles of

conflicts of law.

4.6. All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Nara, Japan, in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association.

In signing this Agreement, the signatories confirm that they have the competent authority of their respective organizations to enter into this Agreement.

ACCEPTED AND AGREED TO:

For: Nara Institute of Science and Technology

By: \_\_\_\_\_

Date: \_\_\_\_\_

For AAA:

By: \_\_\_\_\_

Date: \_\_\_\_\_