FR3
Filariasis
Research Reagent
Resource Center

DO NOT WRITE IN THIS BOX
Date Received:_____
FR3 Number:
_____

MATERIAL TRANSFER AGREEMENT

This Filariasis Research Reagent Resource Center ("FR3") Molecular Resources Material Transfer Agreement ("FR3 MTA") is between the recipient ("RECIPIENT") having its principal business

at

and the Board of Regents of SMITH COLLEGE by and on behalf of Smith College ("PROVIDER"), in its capacity as sub-contractor on the Contract awarded to THE UNIVERSITY OF GEORGIA by the National Institute of Allergy and Infectious Disease ("NIAID"), an Institute of the National Institutes of Health ("NIH"), an agency of the U.S. Department of Health and Human Services ("HHS"), is managing the Filariasis Research Reagent Resource Center (FR3). FR3 is a U.S. Government-funded program.

TERMS AND CONDITIONS

DEFINITIONS

COMMERCIAL PURPOSES: For purposes of this Agreement:

(1) The term COMMERCIAL PURPOSES means the use of MATERIAL or MODIFICATIONS by a for-profit organization. COMMERCIAL PURPOSES also means the use of MATERIAL or MODIFICATIONS by any non-profit organization in exchange for financial consideration (a) to provide commercial services, such as by way of non-limiting example: screening or diagnostic testing; or (b) to produce or manufacture products for general sale, or products used in the manufacture thereof including but not limited to quality assurance or quality control.

(2) The term COMMERCIAL PURPOSES does NOT include the use of MATERIAL or MODIFICATIONS by any organization for a project funded by the U.S. Government through a grant, cooperative agreement or contract, and only for the purpose(s) of and during the term of that funding agreement. In any event, commercial sale of any product or service based on Material will require a commercial license from the Contributor if required by the Contributor at the time of deposit.

CONTRIBUTOR: Organization and/or individual providing ORIGINAL MATERIAL to PROVIDER for deposit into FR3.

CONTRIBUTOR LICENSE: Separate agreement between CONTRIBUTOR and RECIPIENT

stating terms and conditions for use of MATERIAL and/or MODIFICATIONS, as appropriate, for COMMERCIAL PURPOSES.

MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. MATERIAL does not include MODIFICATIONS.

FR3 MATERIAL REQUEST FORM: Form to be completed when ordering specific FR3 Materials

MODIFICATIONS: Substances created by RECIPIENT which contain/incorporate a significant or substantial portion of MATERIAL.

ORIGINAL MATERIAL: The material provided by CONTRIBUTOR to PROVIDER for deposit into FR3.

PRINCIPAL INVESTIGATOR: RECIPIENT's representative receiving and using MATERIAL.

PROGENY: Unmodified descendant from MATERIAL, such as by way of non-limiting example: virus from virus, cell from cell, or microorganism from microorganism.

RECIPIENT: Organization receiving ORIGINAL MATERIAL from FR3 through PROVIDER.

UNMODIFIED DERIVATIVE: Substance created by RECIPIENT that constitutes an unmodified functional subunit or product not changed in form or character and expressed by ORIGINAL MATERIAL. Such non-limiting examples include: subclones of unmodified cell lines, purified or fractionated subsets of ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by CONTRIBUTOR, or monoclonal antibodies secreted by a hybridoma cell line.

RECEIPT; SCOPE OF USE AND TRANSFER

Modifications. FR3 encourages RECIPIENT to deposit Modifications with FR3 through PROVIDER. PROVIDER agrees that RECIPIENT may request distribution restrictions for these MODIFICATIONS to the MATERIAL .

Scope of Use. The MATERIAL will be used solely for the proposed use described on the Filarial Research Material Requisition Form.

PRINCIPAL INVESTIGATOR AND RECIPIENT AGREE NOT TO DISTRIBUTE THE ORIGINAL MATERIAL(S) OR UNMODIFIED DERIVATIVES THEREOF TO ANY PERSONS EXCEPT THOSE ENGAGED IN RESEARCH AT RECIPIENT UNDER PRINCIPAL INVESTIGATOR'S DIRECT SUPERVISION AND WHO ACCEPT THESE RESTRICTIONS.

RECIPIENT may use MATERIAL and MODIFICATIONS for research purposes and in RECIPIENT'S facility only, unless otherwise agreed to by special arrangement and NIAID approval. If MATERIAL will be used under a U.S. Government grant, cooperative agreement or contract, the PRINCIPAL INVESTIGATOR must identify the number and title of the funding agreement.

RECIPIENT AGREES THAT NEITHER MATERIALS NOR ANY DERIVATIVES THEREOF WILL BE USED IN HUMAN SUBJECTS OR FOR ANY CLINICAL DIAGNOSIS.

RECIPIENT ACKNOWLEDGES THAT MATERIALS DESIGNATED AS BIOSAFETY LEVEL 2 OR 3 CONSTITUTE KNOWN PATHOGENS OR TOXINS AND THEREFORE REQUIRE APPROPRIATE FACILITIES FOR THEIR USE. RECIPIENT ALSO

ACKNOWLEDGES THAT OTHER MATERIALS NOT SO DESIGNATED AND MODIFICATIONS THEREOF MAY BE PATHOGENIC UNDER CERTAIN CONDITIONS.

OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY

Ownership of Material. CONTRIBUTOR retains ownership rights to MATERIAL, including MATERIAL contained or incorporated in MODIFICATIONS. CONTRIBUTOR also retains rights to any intellectual property it owns in MATERIAL. RECIPIENT retains ownership of: (a) MODIFICATIONS (except that CONTRIBUTOR retains ownership rights to MATERIAL included therein) and (b) those substances created through the use of MATERIAL or MODIFICATIONS, but which do not contain MATERIAL.

Inventions and Patents. RECIPIENT is free to file patent application(s) claiming inventions made by RECIPIENT through the use of MATERIAL or MODIFICATIONS. RECIPIENT will retain ownership of any inventions and patents or patent applications directed thereto that it makes using MATERIAL. RECIPIENT acknowledges that use of MATERIAL or MODIFICATIONS may be subject to the intellectual property rights of third parties other than CONTRIBUTOR, and PROVIDER MAKES NO REPRESENTATION OR WARRANTY THAT SUCH RIGHTS DO NOT EXIST. RECIPIENT shall have sole responsibility for obtaining any appropriate intellectual property license(s) required to use MATERIAL or MODIFICATIONS.

Commercial Purposes. If RECIPIENT desires to use MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES and, if required to do so by CONTRIBUTOR for such COMMERCIAL PURPOSES, RECIPIENT agrees to negotiate in good faith with CONTRIBUTOR in advance of such use to establish the terms of an appropriate commercial CONTRIBUTOR LICENSE. RECIPIENT also agrees to provide written proof of license to PROVIDER in order to receive MATERIAL. RECIPIENT understands that CONTRIBUTOR shall have no obligation to grant such a CONTRIBUTOR LICENSE to RECIPIENT.

Trademarks. Nothing in this Agreement shall be construed to affect PROVIDER's rights, title and interests in and to trademarks registered or owned by PROVIDER or the U.S. Government and any and all PROVIDER catalog numbers or PROVIDER-specific designations of biological materials sold by PROVIDER.

CONFIDENTIALITY; PUBLICATIONS

RECIPIENT agrees to treat in confidence, for a period of three (3) years from the date of its disclosure, any of FR3's or CONTRIBUTOR's written information about MATERIAL that is stamped "CONFIDENTIAL" except for information that was previously known to RECIPIENT or that is or becomes publicly available or which is disclosed to RECIPIENT without a confidentiality obligation. Any oral disclosures from FR3 or CONTRIBUTOR shall be identified as confidential by notice delivered to RECIPIENT within ten (10) days after the date of oral disclosure.

RECIPIENT may publish or otherwise publicly disclose the results of the work with MATERIAL. However, if RECIPIENT received CONFIDENTIAL information from FR3 or CONTRIBUTOR, then only after the source of the CONFIDENTIAL information has had thirty (30) days to review the proposed disclosure to determine whether it includes any CONFIDENTIAL information, except when a shortened time period under court order of the Freedom of Information Act, 5 U.S.C.§ 552, pertains. RECIPIENT agrees to provide a copy of

all publications relating to MATERIAL or MODIFICATIONS to PROVIDER.

In all publications and patent applications that reference MATERIAL or MODIFICATIONS, RECIPIENT agrees to acknowledge FR3, if applicable, and any CONTRIBUTOR indicated through FR3 as the source of ORIGINAL MATERIAL. RECIPIENT agrees that PROVIDER may inform CONTRIBUTOR of RECIPIENT'S identity if required to do so by law, by CONTRIBUTOR, or if MATERIAL is subject to an issued patent.

It is acknowledged that RECIPIENT will not receive individually identifiable personal data or the link connecting the encoded data with individual donors.

WARRANTY; WARRANTY DISCLAIMER

PROVIDER warrants that cells and organisms, excluding inactivated organisms, shall be viable upon shipment from PROVIDER for a period of twenty-four (24) hours ("WARRANTY PERIOD"). PROVIDER warrants that MATERIAL shall meet the specifications on the certificate of analysis. The exclusive remedy for breach of this warranty is, at PROVIDER's option, replacement of MATERIAL. The exclusive remedy applies under the condition that RECIPIENT handles and stores MATERIAL as described in any accompanying documentation. To obtain the exclusive remedy, RECIPIENT must report the lack of viability to FR3 Technical Service Department within the WARRANTY PERIOD. Any expiration date specified on shipment documentation for MATERIAL states the expected remaining useful life, but does not constitute a warranty or extend any applicable warranty period. **EXCEPT AS EXPRESSLY PROVIDED ABOVE, MATERIAL AND ANY TECHNICAL INFORMATION AND ASSISTANCE PROVIDED BY PROVIDER ARE PROVIDED "AS IS", WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TYPICALITY, SAFETY, ACCURACY AND NON-INFRINGEMENT.**

SAFETY; COMPLIANCE WITH LAWS

EXCEPT TO THE EXTENT PROHIBITED BY LAW, RECIPIENT ASSUMES ALL RISKS AND RESPONSIBILITY IN CONNECTION WITH RECIPIENT'S RECEIPT, HANDLING, STORAGE, DISPOSAL, INTERNAL TRANSFER AND USE OF MATERIAL AND MODIFICATIONS INCLUDING WITHOUT LIMITATION TAKING ALL APPROPRIATE SAFETY AND HANDLING PRECAUTIONS TO MINIMIZE HEALTH OR ENVIRONMENTAL RISK, AS WELL AS FOR ANY ADVERSE EVENTS RESULTING FROM RECIPIENT'S VIOLATION OF THE SECURITY REQUIREMENTS OR UNAUTHORIZED DISSEMINATION OF THE MATERIAL AND MODIFICATIONS. RECIPIENT IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ALL APPLICABLE FOREIGN AND DOMESTIC, FEDERAL, STATE AND LOCAL STATUTES, ORDINANCES, REGULATIONS AND GUIDELINES.

RECIPIENT hereby certifies that RECIPIENT shall (1) ensure that only qualified personnel work with MATERIAL and MODIFICATIONS in proper facilities; (2) provide sufficient internal security to assure access to MATERIAL and MODIFICATIONS only by those individuals authorized to work with them; (3) not transfer, export, resell, or otherwise dispose of any MATERIAL or MODIFICATIONS to any third party under any circumstances without express written authorization from PROVIDER and the appropriate government agencies or as explicitly provided for within this Agreement; (4) not permit access to MATERIAL or MODIFICATIONS by foreign entities or individuals when to do so would be in violation of export control laws; and (5) comply with all applicable federal, state, or local laws and regulations pertaining to MATERIAL

or MODIFICATIONS or their handling, storage, use, transportation; and (6) unless requested otherwise by FR3 destroy all MATERIAL according to accepted practices for destruction of biohazardous material upon completion of work or expiration or termination of this Agreement, whichever occurs first.

LIMITATION OF LIABILITY

IN NO EVENT WILL PROVIDER, THE U.S. GOVERNMENT OR CONTRIBUTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS FR3 MTA, MATERIAL, AND MODIFICATIONS (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE) EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RECIPIENT agrees that the limitations of liability set forth in this Agreement shall apply even if a limited remedy provided hereunder fails of its essential purpose.

SHIPPING

MATERIAL will be packaged and shipped in accordance with applicable laws and regulations. Recipient agrees to comply with all analogous public health and safety laws and regulations in the country where Recipient is performing research including the regulations regarding providing necessary permits and documents required to import materials into that country. Recipient shall be solely responsible for any delays or damage caused by Recipient's lack of appropriate documentation. A processing fee will be charged if special processing or packaging is necessary. MATERIAL is provided free of charge via carrier of PROVIDER's choice, but RECIPIENT is responsible for cost of shipping and handling.

If MATERIAL is damaged or lost during shipment, PROVIDER will replace such MATERIAL, subject to availability, provided RECIPIENT has reported lost or damaged shipments to the applicable carrier and notified FR3's Customer Service Department.

INDEMNIFICATION

RECIPIENT shall be liable for any loss, claim, damage, or liability that RECIPIENT incurs as a result of its activities under this Agreement, except that the U.S. federal government assumes liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.*

It is understood that the U.S. federal government and U.S. states cannot and will not provide indemnification. Unless RECIPIENT is the U.S. federal government or a U.S. state, RECIPIENT agrees to indemnify and hold harmless the United States, the FR3, their suppliers and CONTRIBUTORS of materials, from any claim, cost damage, or expense resulting from any injury, damage, or loss that may arise from the possession and use of the MATERIAL or any unmodified derivative thereof by the RECIPIENT.

DURATION OF AGREEMENT

This FR3 MTA will be effective for five (5) years from the date of registration into FR3. RECIPIENT may terminate this Agreement by written notice to PROVIDER at least thirty (30) days in advance of the desired date of termination. RECIPIENT understands that PROVIDER

may terminate this Agreement at any time with written notice to RECIPIENT and PRINCIPAL INVESTIGATOR. On expiration or earlier termination of this Agreement, RECIPIENT agrees that any remaining MATERIAL will be destroyed (unless requested by FR3 to return remaining MATERIAL) and to provide written proof thereof to FR3 no later than thirty (30) days from the date of expiration or termination.

MISCELLANEOUS

RECIPIENT may not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement, whether by operation of law or otherwise. Any attempted assignment or transfer will be void and of no force or effect. This FR3 MTA, the FR3 Registration Form and the FR3 Filarial Research Materials Requisition Form constitute the entire agreement between PROVIDER and RECIPIENT with respect to MATERIAL and supercedes all previous agreements or representations.

The above sections on OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY, CONFIDENTIALITY; PUBLICATIONS, WARRANTY; WARRANTY DISCLAIMER, LIMITATION OF LIABILITY, and INDEMNIFICATION shall survive expiration or earlier termination of this Agreement**.**

REQUIRED SIGNATURES

THE UNDERSIGNED SIGNATORY OF RECIPIENT CERTIFIES THAT HE OR SHE HAS THE AUTHORITY TO MAKE THE ABOVE CERTIFICATIONS AND REPRESENTATIONS ON BEHALF OF RECIPIENT AND FURTHER WARRANTS THAT HE OR SHE IS LEGALLY AUTHORIZED TO ENTER INTO THIS BINDING AGREEMENT ON BEHALF OF RECIPIENT.

DULY AUTHORIZED SIGNATORY OF RECIPIENT

Signature _____

Printed Name _____

Recipient Institution _____

Title _____

Date _____

READ AND UNDERSTOOD BY RECIPIENT's PRINCIPAL INVESTIGATOR

Signature _____

Printed Name _____

Recipient Institution _____

Title _____

Date _____

FOR PROVIDER (to be signed by SMITH COLLEGE)

Signature _____

Printed Name _____

Recipient Institution _____

Title _____

Date _____

Hard copy of the signed MTA should be sent to:

Sue Haynes
Department of Biological Sciences
Smith College – Clark Science Center
44 College Lane
Northampton, MA 01063