**MATERIAL TRANSFER AGREEMENT** (PolyU as transferor, English template)

Explanatory notes (this note should be deleted before sending to the other party for review):

I. This template is prepared for a staff member of PolyU when providing materials developed by himself or herself, or another staff of PolyU to another organization for research purpose. The recipient (“**Recipient**”) in the Agreement is the organization (such as another university) which receives the materials. The researcher receiving the materials (“**Researcher**”), who is an employee of the Recipient, will also sign the Agreement as a party.

II. This template is only applicable to the case in which the materials to be transferred are developed by himself/herself or another staff of PolyU. If the PolyU staff member would like to transfer materials not developed by himself/herself or another staff of PolyU, the PolyU staff member should first seek the permission of the developer of the material regarding the transfer and the approval of department head.

III. Depending on the nature of the materials, their transfer in and outside of Hong Kong may be subject to a number legislations. For example, Prevention and Control of Disease Regulation (Chapter 599A of the Laws of Hong Kong) and Import and Export Ordinance (Chapter 60 of the Laws of Hong Kong). The staff of the University shall ensure that the proposed transfer of materials is compliant with the applicable legislations.

IV. Please insert the particulars highlighted in yellow. After inserting the particulars, delete the square brackets.

Legal, Risk and Compliance Unit

May 2020

**Material Transfer Agreement**

This Agreement is made on [date]

**BETWEEN:**

(1) **PolyU: The Hong Kong Polytechnic University** having its principal office at 11 Yuk Choi Road, Hung Hom, Kowloon, Hong Kong;

(2) **Recipient:**  [**Name of the organization of the Researcher**] having its principal [office/ place of business] at [address]; and

(3) **Researcher:** [Name of researcher who receives materials] whose address is [please insert the researcher’s office address]. Researcher is [please insert title, for example, Professor or Associate Professor] of the Recipient.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

The Researcher and the Recipient seek to obtain the Materials (specified below) from PolyU. PolyU agrees to provide the Materials subject to the terms and conditions of this Agreement.

**Materials:** [Please insert description of material] and include all substances, documents and information that PolyU may provide to the Recipient and/or the Researcher under or in relation to this Agreement, and any derivatives, portions, progeny or improvements.

**Term**: This Agreement shall take effect from [date] to [date] (“**Term**”). Either the Researcher or Recipient on the one part, or PolyU on the other part may at any time and in its absolute discretion terminate this Agreement with not less than [please insert notice period] written notice to the other parties.

The Schedule forms part of this Agreement.

**IN WITNESS whereof** this Agreement has been executed the date and year first above written.

SIGNED by

on behalf of The Hong Kong Polytechnic University

SIGNED by

on behalf of [name of the Recipient]

SIGNED by [name of the Researcher]

**Schedule**

1. **Definitions and Interpretation**

1.1 “**Agreement**” means this Material Transfer Agreement.

1.2 “**Confidential Information**” means any written, oral or other tangible or intangible form of information disclosed by PolyU to the Recipient and/or the Researcher whether or not labelled as “Confidential” and includes but is not limited to any information relating to the Materials, which is not generally available to the public.

1.3 The obligations of confidence in this Agreement shall not extend to any part of the Confidential Information which:

1.3.1 is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the Recipient or the Researcher; or

1.3.2 can be demonstrated by the Recipient or the Researcher to have been in the Researcher’s possession prior to receipt under this Agreement; or

1.3.3 is explicitly approved for release by written authorization of PolyU; or

1.3.4 is independently developed by the Researcher by individuals who have not had either direct or indirect access to such information and such independent development can be shown by documentary evidence; or

1.3.5 was disclosed to the Recipient and the Researcher by a third party owing no duty of confidentiality towards PolyU; or

1.3.6 is required to be disclosed under operation of law or is legally required by order of a court of competent jurisdiction or other competent administrative body (in which case the Recipient and the Researcher shall provide PolyU notice of such possible disclosure prior to disclosure in order to give PolyU an opportunity to contest such disclosure) and the Recipient and the Researcher shall use reasonable efforts to obtain confidential treatment for any Confidential Information.

1.4 Unless the context otherwise requires, the liabilities and obligations of and applicable to the Recipient and Researcher under this Agreement shall be in every case (whether or not specifically so stated in each such case) joint and several in all circumstances.

**2. Restrictions on the use of Materials**

2.1 The Recipient and the Researcher shall use the Materials solely for the purpose of research in relation to the activities set out below in this clause (“**Purpose**”):

2.2 The Recipient and the Researcher shall not use the Materials for any commercial purpose or commercially-sponsored research without the prior written consent of PolyU even if those purposes are being pursued in the Researcher’s laboratory.

2.3 The Recipient and the Researcher shall not use the Materials in human subjects or for any clinical or diagnostic purposes without the prior written consent of PolyU.

2.4 The Recipient and the Researcher shall use the Materials at the Recipient and only in the Researcher’s laboratory under the direction of the Researcher or others working under his or her direct supervision. The Recipient and the Researcher shall keep the Materials secure at the Researcher’s laboratory and shall ensure that no one other than the Researcher and authorized staff have access to the Materials.

2.5 The Recipient and the Researcher shall use the Materials in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with any applicable laws and regulations governing the transportation, keeping or use of the Materials.

2.6 The Recipient and the Researcher shall acknowledge PolyU as the source of the Materials in any oral presentations or written publications which refer to the Materials. The Recipient and the Researcher shall send PolyU a copy of any reports or publications which describe work carried out using the Materials, and any raw data, and PolyU shall be entitled to use all such data, reports and publications and make them available to third parties. In the event of such use, PolyU will give proper acknowledgement.

2.7 PolyU retains ownership of the Materials and the right to distribute the Materials to others and to use it for its own purposes.

2.8 The Recipient and the Researcher shall comply with all applicable Hong Kong and foreign export laws and regulations relating to the Materials and Confidential Information disclosed by PolyU.

**3. Termination and return of the Materials**

3.1 Upon expiry or early termination of this Agreement, the Recipient and the Researcher shall immediately cease the use of the Materials, and shall return to PolyU, or destroy (as PolyU may direct), such of the Materials and any copies as are in the possession of the Recipient and the Researcher or under their control.

3.2 Upon PolyU’s request, the Recipient shall, when returning the Materials under this clause, provide to PolyU a written confirmation confirming that the Researcher has complied with all of the obligations under this clause.

3.3 This clause 3 shall survive the expiry or termination of this Agreement.

**4. Confidentiality**

4.1 The Recipient and the Researcher agree not to transfer, transmit or in any other way disclose the Materials or any related information to any third party without the written consent of PolyU.

4.2 To the extent permitted by law, the Recipient and the Researcher agree to treat the Confidential Information in confidence, for a period of two years from the date of its disclosure. This clause 4 shall survive the expiry or termination of this Agreement.

4.3 The Recipient and the Researcher shall not use or refer to this Agreement in any promotional activity, publication, news release, advertisement or website or use the name, abbreviation or logo of PolyU without the prior written consent of PolyU. Nothing in this clause will preclude the Researcher’s attribution of authorship in, and distribution of academic literature reporting the results of any research conducted with the Materials.

**5. Warranties and liabilities**

5.1 The Recipient and the Researcher acknowledge and agree that the Material is experimental in nature and may have hazardous properties. PolyU makes no warranties, express or implied, including without limitation any warranty or merchantability, non-infringement or fitness for a particular purpose. PolyU makes no representation that the use of the Material will not infringe any patent, copyright, trademark or other proprietary rights of third parties.

5.2 PolyU will not be liable to the Recipient and the Researcher for any loss, claim or demand made by the Recipient and/or the Researcher or made against the Recipient and/or the Researcher by any other party due to or arising from the use or misuse of the Materials by the Recipient and/or the Researcher except to the extent permitted by law when caused by the negligence or wilful misconduct of PolyU.

5.3 The Recipient and the Researcher agree to fully indemnify PolyU and to keep PolyU indemnified against all actions, demands, claims, proceeding, loss, damage, penalty, fine, costs, expenses and liability of whatsoever kind or nature, which may arise from, or in connection with this Agreement or the use, handling or storage of the Materials by the Recipient and/or the Researcher.

**6. Intellectual Property Rights**

6.1 The Materials shall at all times remain the property of PolyU. PolyU reserves the right to distribute the Material to any third party and use them for their own purposes.

6.2 The Recipient and the Researcher acknowledge that the Materials are or may be subject of a patent application. Nothing in this Agreement shall be construed as granting any licence or assignment of any intellectual property rights vested in PolyU or any right to use the Materials or any information of PolyU other than expressly granted under this Agreement.

**7. General**

7.1 PolyU will not charge for the Materials. The Recipient and the Researcher shall arrange for delivery and shipping of the Materials from PolyU in Hong Kong to their required location, and ensure that all applicable export, customs and other controls, clearance and compliance procedures are properly handled at their own costs and expenses.

7.2 Unless the context otherwise requires, references in this Agreement to the singular shall be deemed to include references to the plural and vice versa and references to one gender shall include all genders. References in this Agreement to persons include references to bodies corporate.

7.3 This Agreement, including any schedule or appendix, constitutes the entire agreement between the parties in relation to the subject matter under this Agreement and supersedes any prior agreements, oral or written between the parties.

7.4 The Recipient and the Researcher shall not be entitled to assign this Agreement or their rights or obligations under this Agreement to any third party without the prior written approval of PolyU.

7.5 This Agreement is not intended to be, nor shall it be construed as, a joint venture, partnership or agency. Nothing in this Agreement shall grant to the Recipient and/or the Researcher the right or authority to make any statements, representations or commitments of any kind for or, to take any action, on behalf of, PolyU.

7.6 Any failure or delay by any party to exercise all or any part of any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion.

7.7 If any provision of this Agreement shall be held invalid or unenforceable, such provision will be deemed deleted from this Agreement without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

7.8 All notices and other communications under or in connection with this Agreement shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by personal delivery during normal business hours of the recipient (and a signature or acknowledgment from an authorized recipient is obtained); when sent, if transmitted by facsimile transmission (electronic transmission report confirmed) during normal business hours of the recipient; or on the third business day following mailing, if mailed by ordinary or registered mail, postage prepaid; in each of the above cases to the address set out in this Agreement or fax number as may be notified by one party to the other party from time to time.

7.9 This Agreement may be signed in one or more counterparts, each of which shall be deemed one and the same original.

7.10 Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations or liabilities under or by reason of this Agreement.

7.11 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties agree in the event of any dispute or any other question as to interpretation, existence or validity of this Agreement to submit such matter to the non-exclusive jurisdiction of Hong Kong courts.