MATERIALS TRANSFER AGREEMENT

The Research Foundation for The State University of New York
SUNY Upstate Medical University

The PROVIDER SCIENTIST (identified below) and the RECIPIENT SCIENTIST (identified below) desire to enter into a research collaboration, in the furtherance of which the PROVIDER SCIENTIST will be providing ORIGINAL MATERIALS, and information about them, to the RECIPIENT SCIENTIST. The parties agree by signature below that this Agreement constitutes a "joint research agreement" as that term is defined by the Cooperative Research and Technology Enhancement Act of 2004, 35 U.S.C. § 103(c)(3). In the event of any Inventions, the Parties will reasonably cooperate in invoking the CREATE Act and its companion regulations to overcome an obviousness rejection of a patent application.

The PROVIDER SCIENTIST, PROVIDER (identified below, RECIPIENT (identified below, and the RECIPIENT SCIENTIST hereby agree to abide by all terms and conditions of the Uniform Biological Material Transfer Agreement ("UBMTA") published in the Federal Register on March 8, 1995 and appended hereto as Exhibit A. The RECIPIENT SCIENTIST and the Authorized Official of RECIPIENT should sign both copies of this Agreement and return one signed copy to the PROVIDER (facsimiles sent by email or fax are acceptable). The PROVIDER SCIENTIST will forward the material to the RECIPIENT SCIENTIST upon receipt of the signed copy from the RECIPIENT organization.

In addition to the terms of the UBMTA in Exhibit A, RECIPIENT and the RECIPIENT SCIENTIST acknowledge that the PROVIDER SCIENTIST will share confidential information with RECIPIENT under this Agreement. Confidential Information ("Confidential Information") shall include the ORIGINAL MATERIAL, and any information about it, as well as any other information (a) disclosed by PROVIDER SCIENTIST in tangible form and clearly marked as confidential at the time of disclosure; or (b) disclosed by the PROVIDER SCIENTIST in non-tangible form, identified as confidential at the time of disclosure and, within 30 days following the initial disclosure, is summarized and designated as confidential in a written memorandum delivered to the RECIPIENT's or RECIPIENT SCIENTIST's representative. RECIPIENT and RECIPIENT SCIENTIST hereby agree that until three (3) years from the latest date of signature below, RECIPIENT and RECIPIENT SCIENTIST will:

(a) use the Confidential Information from the PROVIDER SCIENTIST only for the purpose of studying the contribution of glycoprotein I-specific gamma/delta T cells in the immune response to HSV-1 infection;
(b) protect the confidential information against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as they use to protect their own confidential information of a like nature;
(c) share Confidential Information only with officers, employees, and others who are legally obligated to preserve the confidentiality of such Confidential Information; and
(d) return the Confidential Information, including all copies or derivatives thereof, to PROVIDER SCIENTIST, or certify in writing that such Confidential Information, including ORIGINAL MATERIAL, has been destroyed.

This Agreement imposes no obligation upon RECIPIENT and RECIPIENT SCIENTIST with respect to Confidential Information that (a) was in the RECIPIENT's and RECIPIENT SCIENTIST's possession before its receipt from PROVIDER SCIENTIST; (b) is or becomes a matter of public knowledge through no fault of the RECIPIENT and RECIPIENT SCIENTIST; (c) is rightfully received by the RECIPIENT and RECIPIENT SCIENTIST from a third party without a duty of confidentiality; (d) is independently developed by the RECIPIENT and RECIPIENT SCIENTIST; or (e) is required to be disclosed by operation of law or court order provided RECIPIENT and RECIPIENT SCIENTIST agree to give the PROVIDER an adequate opportunity to interpose an objection or take action to assure confidential handling of such confidential information.

Please fill in all of the blank lines below:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL:

Organization: The Research Foundation for The State University of New York,

Upstate Medical University

Address: 750 E. Adams St.

Syracuse, NY 13210

2. RECIPIENT: Organization receiving the ORIGINAL MATERIAL:

Organization: _____

Address: _____

_____

_____

3. ORIGINAL MATERIAL (Enter description):

_____

_____

_____

4. Termination date for this letter (optional):

5. Transmittal Fee to reimburse the PROVIDER for preparation and distribution costs (optional). Amount:_____.

This Agreement is effective when signed by all parties. The parties executing this Agreement agree to be bound by its terms, for the transfer specified above.

PROVIDER: THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK, on behalf of SUNY UPSTATE MEDICAL UNIVERSITY

PROVIDER SCIENTIST

Name: _____

Title: _____

Address: _____

_____

_____

_____

Signature: _____

Date: _____

APPROVAL OF PROVIDER

Authorized Official: Matthew Mroz

Title: Director, Enterprise Technology Transfer

Address: The Research Foundation For SUNY

35 State St.

Albany, NY 12207

_____

Signature: _____

Date: _____

RECIPIENT: _____

RECIPIENT

Authorized Official: _____

Title: _____

Address: _____

_____

_____

Signature: _____

Date: _____

RECIPIENT SCIENTIST

Name: _____

Title: _____

Address:

Signature: _____

Date: _____

APPENDIX A

The Uniform Biological Material Transfer Agreement

March 8, 1995

I. Definitions:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

2. PROVIDER SCIENTIST: The name and address of this party will be specified in an implementing letter.

3. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

4. RECIPIENT SCIENTIST: The name and address of this party will be specified in an implementing letter.

5. ORIGINAL MATERIAL: The description of the material being transferred will be specified in an implementing letter.

6. MATERIAL: 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.

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

8. UNMODIFIED DERIVATIVES: Substances created by the 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 the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.

9. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

10. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL 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 or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

11. 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.

II. Terms and Conditions of this Agreement:

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

2. 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 either 2 (a) or 2 (b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

3. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:

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

(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 used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and

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

4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the [[Page 12774]] RECIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the MATERIAL available, under a separate implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate the RECIPIENT SCIENTIST's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.

5.

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

(b) Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute

MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.

(c) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the 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, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. 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.

7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the 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 to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The 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.

10. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the RECIPIENT 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 of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

11. This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications.

12. The RECIPIENT agrees to use the MATERIAL 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.

13. This Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, for example, though reagent catalogs or public depositories or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, or (d) on the date specified in an implementing letter, provided that:

(i) if termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available resources; and

(ii) if termination should occur under 13(b) or (d) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS;

and

(iii) in the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the 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 will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

14. Paragraphs 6, 9, and 10 shall survive termination.

15. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in an implementing letter.