

BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY

PROVIDER TRANSFER AGREEMENT

This Boston University Center for Molecular Discovery Provider Transfer Agreement (“**Provider-BU CMD Repository Transfer Agreement**”) is made by and between _____, a non-profit corporation organized under the laws of _____, having its principal place of business at _____ (“**Provider**”), and Trustees of Boston University, a non-profit corporation organized under the laws of the Commonwealth of Massachusetts, having a place of business at One Silber Way, Boston, Massachusetts 02215, USA (“**BU**”) on behalf of its Center for Molecular Discovery (“**BU CMD**”). Provider and BU are hereafter collectively referred to as the “**Parties**” or individually as a “**Party**.” This Provider-BU CMD Repository Transfer Agreement is effective as of the date of the last signature by a Party below (“**Effective Date**”).

WHEREAS, BU CMD operates and maintains the BU CMD Repository (as defined below) to facilitate research by receiving, storing, replicating, curating and transferring chemical compounds and associated data received from external academic and non-profit institutions as well as BU researchers; and

WHEREAS, Provider wishes to deposit certain of Provider’s chemical compounds and associated data into the BU CMD Repository so that these materials may be available as a service to the research community.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

1.01 **BU CMD Repository** shall mean the collected and maintained library of small molecule chemical entities as created, maintained, and operated by the BU CMD and supplemented, from time to time, with contributions which may come from BU, Provider and others, the purpose of which is to facilitate research by receiving, storing, replicating, curating and transferring chemical compounds and associated data received.

1.02 **BURTA** (Boston University Recipient Transfer Agreement) shall mean an agreement between a Recipient and BU, having terms substantially similar to the agreement as provided in Exhibit D.

1.03 **Commercial Purposes** shall mean the sale, lease, license, or other transfer of the Provider Material to a for-profit organization. Commercial Purposes shall also include uses of the Provider Material by any organization, including Recipient, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Provider Material to a for-profit organization. However, industry sponsored

BU will not accept any changes or modifications to this Agreement.

research shall not be considered a use of the Provider Material for Commercial Purposes per se, unless any of the above conditions of this definition are met.

1.04 **Deposit Fee** shall mean a fee that may be charged by BU to Provider to offset any expense for transferring, validating, storing, or replenishing Provider Material transferred hereunder as specified in Exhibit B. For the purposes of clarity, fee assessment and payment are not to be considered a “sale” or “offer for sale” under U.S. law.

1.05 **Nonprofit Organization(s)** shall mean 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.

1.06 **Provider** shall mean the Nonprofit Organization providing the Provider Material to the BU CMD Repository, the name and address of which is specified in the preamble of this Agreement and which has executed an accompanying SPMTA.

1.07 **Provider Material** shall mean Provider’s proprietary small molecule chemical compounds and associated data including the associated chemical structures as further described on Exhibit A attached hereto and incorporated herein by reference, and including such small molecule chemical material which may, from time to time, be replenished or otherwise replicated from such originally provided material pursuant to the grant of rights in this Provider-BU CMD Repository Transfer Agreement.

1.08 **Provider Scientist** shall mean the Provider’s scientist listed in Section 7.02.

1.09 **Recipient** shall mean any Nonprofit Organization which has executed: (i) a BURTA between it and BU, and (ii) a SPMTA between it and Provider as a condition of receiving Provider Material included in the transfer of Repository Material.

1.10 **Repository Material** shall mean, in whole or in any part or subsample, a collection of small molecule entities maintained in the BU CMD Repository, which may include Provider Material as well as material from BU and/or other institutions.

1.11 **SPMTA** (Standard Provider Material Transfer Agreement) shall mean an agreement between a Recipient and Provider, for the Provider Material being transferred to that Recipient, having terms substantially identical to the agreement as provided in Exhibit C.

1.12 **Transfer Fee** shall mean a fee that may be charged by BU to a Recipient to offset any costs for preparation and distribution of Repository Material transferred under the terms of a BURTA. For the purposes of clarity, fee assessment and payment are not to be considered a “sale” or “offer for sale” under U.S. law.

SECTION 2. DEPOSITS AND APPROVALS

2.01 Provider Deposit. Provider hereby submits Provider Material to the BU CMD Repository. Provider is responsible for the cost of preparation and shipment of the Provider Material to the BU CMD Repository. BU reserves the right to refuse to deposit to, or to remove from, the BU CMD Repository, Provider Material or any portion thereof at any time and for any reason. BU shall notify Provider of its decision to refuse to deposit or to remove such Provider Material, in which event, BU shall, at its election, either arrange the return to Provider or to dispose of all such unused Provider Material as chemical waste in accordance with all applicable regulations.

2.02 Provider Rights in Provider Material. Provider retains all rights in the Provider Material not expressly granted under this Provider-BU CMD Repository Transfer Agreement.

2.03 Right to Withdraw. Upon written notice from Provider requesting removal of any Provider Material, BU shall remove such Provider Material from the BU CMD Repository, and BU shall, at its election, either arrange the return to Provider or to dispose of all unused Provider Material as chemical waste in accordance with all applicable regulations. However, BU may honor any request for transfer of Provider Material to a Recipient(s) that it received before or within thirty (30) days following BU’s receipt of a Provider’s written notice requesting removal of any such Provider Material.

SECTION 3. USE AND TRANSFER RIGHTS AND CONDITIONS OF TRANSFER

3.01 License Grant. Provider hereby grants to BU, acting through its BU CMD, a non-exclusive, royalty-free, fully-paid up, worldwide license to make, to use, to store, and to transfer to a Recipient, Provider Material for not-for-profit research and academic purposes.

3.02 SPMTA Grant. Provider hereby agrees to any and all transfer of Provider Material by BU from its BU CMD Repository to any current or future Recipient(s) under the terms of the SPMTA. In furtherance thereof, Provider agrees that it will execute the SPMTA concurrently with its execution of this Provider-BU CMD Repository Transfer Agreement, and that Provider’s executed SPMTA will be reproduced and provided by BU CMD to all prospective Recipients for execution with respect to the applicable Provider Material to be transferred. Upon execution by a Recipient, the SPMTA will constitute a binding contract between Provider and that Recipient. BU will provide Provider with a copy of a Recipient’s fully executed SPMTA. The Parties agree that BU shall not be responsible for monitoring a Recipient’s use of Provider Material, ensuring compliance with the SPMTA, or reporting impermissible uses of Provider Material or any other breach of the SPMTA.

3.03 Conditions Precedent to Provider Deposit. Prior to Provider transferring Provider Material to BU, Provider shall have executed this Provider-BU CMD Repository Transfer Agreement and the SPMTA.

3.04 Conditions Precedent to BU Transfer to Recipients. Prior to BU transferring Provider Material to a Recipient: (1) BU and each such Recipient shall have executed a BURTA; and (2) Provider and each such Recipient shall have executed a SPMTA, for all applicable Provider Material to be transferred to that Recipient.

3.05 BU CMD's Right to Use the Provider Material. BU CMD and its researchers may use the Provider Material (alone or in combination with other BU and/or third party materials) for research which may include Provider, Recipient(s) and/or other third parties provided the Provider Material is not used for Commercial Purposes. Ownership of substances created by BU CMD researchers through any such use of the Provider Material will be negotiated in good faith by the Parties and any other participating collaborators depending upon: (a) their relative contribution to the creation of said substances; and (b) any applicable U.S. laws and regulations relating to inventorship. BU may distribute substances created by BU CMD through the use of the Provider Material on such terms as BU determines appropriate provided that such substances will not, without the approval of Provider, contain or incorporate any Provider Material.

3.06 For-Profit-Entities. This Provider-BU CMD Repository Transfer Agreement does not extend to deposits from, nor transfers to any entity that does not satisfy the criteria of a Provider or a Recipient as defined herein. Provider represents that it is a Nonprofit Organization. If BU receives a request for Provider Material from a for-profit entity, BU shall direct such request to Provider. In connection with meeting its obligations hereunder, BU is entitled to rely on the representations of the requesting entity in determining whether such entity is a Nonprofit Organization.

3.07 Right to Withhold Transfer. BU reserves the right, in its sole discretion, to withhold transfer of Provider Material to any Recipient or any other third party at any time and for any reason.

SECTION 4. LIABILITY

4.01 Except to the extent caused by BU's willful misconduct or gross negligence or prohibited by law, Provider assumes all liability for, and Provider agrees to not hold BU responsible for any loss, damage, cost or expense (1) which may arise from BU's receipt, storage, replication, curation or transfer of the Provider Material; (2) related to claims that use of the Provider Material violates any intellectual property or other rights of a third party, (3) related to Provider's breach of any material term of this Provider-BU CMD Repository Transfer Agreement; and (4) related to Provider's breach of the applicable SPMTA. BU's total, aggregate liability to Provider shall be limited to actual damages not to exceed the total amount of the Deposit Fee paid to BU by Provider. Provider agrees that the limitations of liability and

remedies under this Provider-BU CMD Repository Transfer Agreement, and Provider's corresponding acceptance of risk, are fair and reasonable, given, among other things, the relatively small transmittal fee for Repository Material in comparison to the potential risks associated with the use thereof and BU's non-profit status and role as a mere repository.

SECTION 5. ACKNOWLEDGEMENTS AND WARRANTIES

5.01 Authorized Grant. Provider represents that to the best of Provider's knowledge the Provider Material is not subject to any rights that would adversely affect BU's performance under this Provider-BU CMD Repository Transfer Agreement. Provider avers that nothing has come to its attention that may impair its rights to transfer the Provider Material for the purposes contemplated herein.

5.02 Provider Acknowledgement of BU's role. Provider acknowledges that BU operates as a non-profit entity and is providing the BU CMD Repository as a convenience to Provider for transfer of Provider Material as a service to the research community and in furtherance of the Parties' charitable purposes.

5.03 Fee Assessment. Provider acknowledges that BU may assess Provider a reasonable Deposit Fee for transferring, validating, storing, or replenishing Provider Material and other costs relating to the preparation and transfer of Provider Material under the terms of this Provider-BU CMD Repository Transfer Agreement. Provider further acknowledges that BU may assess Recipient a reasonable Transfer Fee to offset costs for preparation and distribution of Repository Material transferred. Provider acknowledges the fee assessment and payment are to offset repository expenses only, and are not to be considered a "sale" or "offer for sale" under U.S. law.

5.04 Experimental Material. The Parties agree that any Provider Material deposited, stored and transferred pursuant to this Provider-BU CMD Repository Transfer Agreement is understood to be experimental in nature and may have hazardous properties. Provider shall notify BU CMD of any known or suspected physical and/or toxicological properties/hazards of any Provider Material that require special storage or handling and in each such case, identify the applicable instructions prior to depositing the Provider Material with the BU CMD Repository. When available, Provider shall provide BU CMD with a Safety Data Sheet (SDS) for the Provider Material.

5.05 Export Control. Provider represents that Provider Material is classified as EAR99 and Provider conducted proper classification analysis of Provider Material under the Export Administration Regulations. Moreover, Provider certifies that Provider Material is not controlled under the International Traffic in Arms Regulations and acknowledges that BU is relying on Provider's representations to this effect.

5.06 Provider Reserves. Provider agrees that BU may replicate and replenish Provider Material in furtherance of maintaining the BU CMD Repository. BU agrees to use reasonable efforts not

to modify Provider Material. Notwithstanding the foregoing, Provider understands and agrees that Provider shall not rely on BU to act as the sole custodian of Provider Material, and that it is Provider's sole responsibility to maintain sufficient reserves of Provider Material to account for the possibility that all of Provider Material in the BU CMD Repository may be lost or destroyed. Provider agrees that BU shall not be responsible to Provider or any third party for any actions, claims, liabilities, suits, proceedings, demands, costs and expenses resulting from the loss of Provider Material.

5.07 Disclaimer of Warranties. Except as expressly provided in this Provider-BU CMD Repository Transfer Agreement, NEITHER PARTY MAKES ANY REPRESENTATIONS NOR EXTENDS ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, VALIDITY, ENFORCEABILITY AND SCOPE OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

IN NO EVENT SHALL BU, ITS AGENTS, AND ITS SUCCESSORS, AND THEIR RESPECTIVE TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER THE PARTY WAS ADVISED, HAD REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OR LIKELIHOOD OF THE FOREGOING.

Nothing contained in this Provider-BU CMD Repository Transfer Agreement shall be deemed by implication, estoppel or otherwise to grant Provider any rights in any inventions, copyrightable material, improvements, discoveries, data or know-how or any patents or intellectual property or proprietary interest owned or controlled by BU which may be used in performance of this Provider-BU CMD Repository Transfer Agreement. Without limiting the foregoing, BU retains all of its rights in BU's materials including those that may be deposited by BU into the BU CMD Repository, including without limitation, the right to make BU's materials available to others, both profit and non-profit, on such terms as BU determines appropriate.

SECTION 6. TERMINATION

6.01 Termination. This Provider-BU CMD Repository Transfer Agreement shall remain in effect unless terminated by either Party upon sixty (60) days' prior written notice to the other Party. In the event that BU is threatened with or becomes subject to any lawsuit with respect to such Provider Material, BU shall have the right to terminate this Provider-BU CMD Repository Transfer Agreement immediately.

6.02 Effects of Termination. At the time of termination of this Provider-BU CMD Repository Transfer Agreement, BU shall at BU's election either arrange the return to Provider or disposal of all unused Provider Material as chemical waste in accordance with all applicable regulations. Notwithstanding the foregoing, in the event of termination of this Provider-BU CMD Repository

Transfer Agreement for any reason, BU may, at its election, honor any request for transfer of Provider Material to a Recipient(s) that was received before or within 30 days following the effective date of termination. The following sections, as well as any other provisions that by their nature extend beyond termination hereof, shall survive termination: 1.01-1.12, 2.02, 3.01, 3.02, 3.05, 4.01, 5.01, 5.02, 5.04, 5.05, 5.06, 5.07, 6.02, 6.03, 7.01, 7.02, 8.01, 8.02, 8.03, 8.04, 8.05, 8.06 and 8.07.

6.03 Existing SPMTAs. Provider's obligations to any Recipient(s) shall survive termination as provided in the terms and conditions of the SPMTA.

SECTION 7. NOTICES

7.01 Notices. Any notice given hereunder shall be in writing and shall be deemed effective upon the earlier of personal delivery, receipt of electronic mail, receipt from an internationally recognized overnight courier, with all fees prepaid, or the third day after mailing by certified or registered mail, postage prepaid, to the addresses set forth below or to such other address as a Party may have furnished in writing to the other Party in the manner provided above.

7.02 Party Contacts.

For Provider:

Name:

Address:

Email:

Provider Scientist name and contact information (email, phone number):

For BU:

Name: Lauren E. Brown, Ph.D.

Assistant Director, Center for Molecular Discovery

Address: Boston University

Department of Chemistry

590 Commonwealth Avenue

Boston, MA 02215

Email: brownle@bu.edu

With a copy to: Office of the General Counsel

Trustees of Boston University

125 Bay State Road

Boston, MA 02115

SECTION 8. MISCELLANEOUS

8.01 Use of Name. Neither Party shall use the name, symbol, logo or trademark of the other Party or of any staff member, officer, employee or student of the other Party or any adaptation thereof in any advertising, promotional or sales literature, publicity or in any document employed to obtain funds or financing without the prior written consent of the Party or individual whose name is to be used. Notwithstanding the above, both BU and Provider shall have the right to make factual public statements identifying Provider as a depositor of Provider Material in the BU CMD Repository, including but not limited to appropriate websites and other materials that list or identify materials made available by the BU CMD Repository.

8.02 Successors and Assigns. This Provider-BU CMD Repository Transfer Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

8.03 Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby, to be included in this Provider-BU CMD Repository Transfer Agreement, are hereby incorporated herein by reference.

8.04 Entire Agreement. This Provider-BU CMD Repository Transfer Agreement including any exhibits, appendices and schedules attached hereto as well as any Depositor instructions provided by the BU CMD on its BU CMD Repository website (<http://bu.edu/cmd/mta>), as the same may be updated and/or modified from time to time, constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained herein.

8.05 No Oral Amendments or Waivers. The Parties may not amend, modify or waive this Provider-BU CMD Repository Transfer Agreement or any of its provisions except pursuant to a written instrument executed by both Parties. Failure to exercise, or any delay in exercising, any right or remedy provided under this Provider-BU CMD Repository Transfer Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

8.06 No Assignment. No Party may assign any of its rights under this Provider-BU CMD Repository Transfer Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner without the prior written approval of the other Party. Any purported assignment of rights is void.

8.07 Severability. If any provision of this Provider-BU CMD Repository Transfer Agreement or its application to any party or circumstance is held invalid, illegal or unenforceable to any extent, the remainder of this Provider-BU CMD Repository Transfer Agreement and the application of that provision to the other Party or to other circumstances is not affected and is to be enforced to the fullest extent permitted by applicable law.

8.08 Execution. This Provider-BU CMD Repository Transfer Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or PDF copies of this Provider-BU CMD Repository Transfer Agreement will be enforceable as originals. This Provider-BU CMD Repository Transfer Agreement may be executed electronically/digitally in compliance with the Massachusetts Uniform Electronic Transactions Act (MUETA) Mass. Gen. Laws ch. 110G and/or The Electronic Signatures In Global And National Commerce Act (ESIGN) 15 USC ch. 96. Persons signing this document agree that, if used, electronic/digital signatures are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, Provider and BU, intending to be legally bound, have caused this Provider-BU CMD Repository Transfer Agreement to be executed by their respective duly authorized representatives.

Accepted **Trustees of Boston University**
by:

By: _____
Name: William Segarra
Title: Director of Contracting/Office of
Sponsored Programs
Date: _____

Acknowledged by BU CMD:
Signature: _____
Print Name: Lauren E. Brown, Ph.D.
Title: Assistant Director, Center for
Molecular Discovery
Date: _____

Insert name of Provider

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

Acknowledged by Provider Scientist:
Signature: _____
Print Name: _____
Title: _____
Date: _____

Exhibit A

Provider Material:

Provider's chemical compounds identified on the attached Index of chemical structures and any associated data.

Exhibit B

Deposit Fee: *[insert amount or "none", as applicable]*

Exhibit C

See attached:

**BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY
STANDARD PROVIDER MATERIAL TRANSFER AGREEMENT
BETWEEN PROVIDER AND RECIPIENT (SPMTA)**

BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY
STANDARD PROVIDER MATERIAL TRANSFER AGREEMENT
BETWEEN PROVIDER AND RECIPIENT (SPMTA)

This Boston University Center for Molecular Discovery Standard Provider Material Transfer Agreement (the “Standard Provider Material Transfer Agreement” or “**SPMTA**”) is entered into by and between the Provider and Recipient identified below for the transfer of the Provider Material (as defined below) from the BU CMD Repository.

I. Definitions:

1. **BU CMD Repository** shall mean the collected and maintained library of small molecule chemical entities as created, maintained, and operated by the Boston University Center for Molecular Discovery (“**BU CMD**”) and supplemented, from time to time, with contributions which may come from BU, Provider and others, the purpose of which is to facilitate research by receiving, storing, replicating, curating and transferring chemical compounds and associated data received.
2. **Provider-BU CMD Repository Transfer Agreement** shall mean an agreement between Provider and Trustees of Boston University (“**BU**”) for the transfer of the Provider Materials to the BU CMD Repository.
3. **BURTA** (Boston University Recipient Transfer Agreement) shall mean an agreement executed between and among a Recipient and BU for the transfer of Repository Material to Recipient from the BU CMD Repository.
4. **Provider** shall mean the Nonprofit Organization providing the Provider Material, the name and address of which is set forth below in the signature block of this Agreement, and which has entered into a Provider-BU CMD Repository Transfer Agreement.
5. **Provider Material** shall mean those certain Provider proprietary small molecule chemical compounds and associated data including the associated chemical structures as further described in the Index appended to Appendix A attached hereto and incorporated herein by reference, which Recipient has requested be transferred from the BU CMD Repository, to the extent the Provider Material is reasonably available for transfer from the BU CMD Repository, including the Index itself.
6. **Provider Scientist** shall mean the Provider’s scientist specified below.
7. **Recipient** shall mean the Nonprofit Organization receiving the Provider Material from the BU CMD Repository, the name and address of which is set forth below in the signature block of this Agreement and which entity has also agreed and executed a BURTA with BU.
8. **Recipient Scientist** shall mean the Recipient’s scientist specified below.

Provider will not accept any changes or modifications to this Agreement.

9. **Repository Material** shall mean, in whole or in any part or subsample, a collection of small molecule entities maintained in the BU CMD Repository, which may include Provider Material as well as material from BU and/or other institutions.
10. **Research** shall have the meaning set forth in Section II.2.(a.) of this SPMTA.
11. **Transfer Fee** shall mean a fee that may be charged by BU to a Recipient to offset any costs for preparation and distribution of Repository Material transferred under the terms of a BURTA. For the purposes of clarity, fee assessment and payment are not to be considered a “sale” or “offer for sale” under U.S. law.
12. **SPMTA** (Standard Provider Material Transfer Agreement) shall mean an agreement executed between and among Recipients and Providers, as determined by the nature of the Repository Material being transferred to the Recipient, having terms and provisions substantially identical to this Agreement.
13. **Commercial Purposes** shall mean the sale, lease, license, or other transfer of the Provider Material to a for-profit organization. Commercial Purposes shall also include uses of the Provider Material by any organization, including Recipient, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Provider Material to a for-profit organization. However, industry sponsored research shall not be considered a use of the Provider Material for Commercial Purposes per se, unless any of the above conditions of this definition are met.
14. **Nonprofit Organization(s)** shall mean 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 Provider Material. Ownership of substances created by Recipient through the use of the Provider Material will be negotiated in good faith by the parties hereto depending upon: (a) their relative contribution to the creation of said substances; and (b) any applicable U.S. laws and regulations relating to inventorship.

2. The Recipient agrees that Provider Material:

- (a) is to be used solely for not-for-profit research and academic purposes and only as a research tool for screening for biological activity (the “**Research**”);

(b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of Provider and BU;

(c) is to be used only at Recipient organization and only in Recipient Scientist's laboratory under the direction of 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 Provider.

3. Recipient agrees to refer to Provider any request for Provider Material from anyone other than those persons working under Recipient Scientist's direct supervision.

4. Recipient shall have the right, without restriction, to transfer substances created by Recipient through the use of Provider Material only if those substances do not contain or incorporate Provider Material.

5. Recipient acknowledges that Provider 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 Recipient under any patents, patent applications, trade secrets or other proprietary rights of Provider, including any altered forms of Provider Material made by Provider. In particular, no express or implied licenses or other rights are provided to use Provider Material or any related patents of Provider for Commercial Purposes.

6. If Recipient desires to use or license Provider Material for Commercial Purposes, Recipient agrees, in advance of such use, to negotiate in good faith with Provider to establish the terms of a commercial license. It is understood by Recipient that Provider shall have 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 Provider Material to any third party(ies), subject to any pre-existing rights held by others.

7. Recipient is free to file patent application(s) claiming inventions made by Recipient through the use of Provider Material but agrees to notify Provider upon filing a patent application claiming method(s) of manufacture or use(s) of Provider Material.

8. Any Provider 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.

9. Except to the extent prohibited by law, Recipient assumes all liability for damages which may arise from its use, storage or disposal of Provider Material. 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 Provider Material by Recipient, except to the extent permitted by law when caused by the gross negligence or willful misconduct of Provider.

10. This Agreement shall not be interpreted to prevent or delay publication of Research findings resulting from the use of Provider Material. Without limiting the foregoing, Provider acknowledges and agrees that data and results generated by a Recipient using the Provider Material may be deposited into PubChem or other database in accordance with any data sharing requirements of any government agency funding the Research. Recipient agrees to provide appropriate acknowledgement of the Provider and the BU CMD Repository as the source of Provider Material in all publications. Notwithstanding the foregoing, the BU CMD requests that the parties will comply with the BU CMD's requests regarding public disclosure of Research results.

11. The Parties shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and directives, including but not limited to Public Health Service and National Institutes of Health regulations and guidelines.

12. This Agreement is effective as of the date of the last party to sign below, and will terminate on the earliest of the following dates: (a) on completion of Recipient's current Research with Provider Material, or (b) on thirty (30) days written notice by either party to the other, provided that:

(i) if termination should occur under 12(a), Recipient will discontinue its use of Provider Material and will, upon direction of Provider, return or dispose of all unused Provider Material as chemical waste in accordance with all applicable regulations; and

(ii) if Provider terminates this Agreement under 12(b) other than for breach of this Agreement 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 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 Provider Material and will, upon direction of Provider, return or dispose of all unused Provider Material as chemical waste in accordance with all applicable regulations.

13. Paragraphs 1, 2, 5, 6, 7, 8, 9, 10 and 11, as well as any other provisions that by their nature extend beyond termination hereof, shall survive termination.

14. Provider Material may be subject to a Transfer Fee. If a Transfer Fee is requested by BU, the amount will be indicated in a BURTA.

15. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or PDF copies of this Agreement will be enforceable as originals. This Agreement may be executed electronically/digitally in compliance with the Massachusetts Uniform Electronic Transactions Act (MUETA) Mass. Gen. Laws ch. 110G and/or The Electronic Signatures In Global And National Commerce Act (ESIGN) 15 USC ch. 96. Persons signing this document agree that, if used, electronic/digital signatures are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, and have duly delivered and executed this Agreement under seal.

Accepted by: [insert name of Provider Organization]

Signature:

Name:

Title:

Date:

Name of Provider Scientist: _____

Accepted by: [insert name of Recipient Organization]

Signature:

Name:

Title:

Date:

Name of Recipient Scientist: _____

Appendix A to
BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY
STANDARD PROVIDER MATERIAL TRANSFER AGREEMENT
BETWEEN PROVIDER AND RECIPIENT

Provider Material: Provider's chemical compounds identified on the attached Index of chemical structures and any associated data, including the Index itself.

Exhibit D

See attached

**BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY
RECIPIENT TRANSFER AGREEMENT
BETWEEN BU AND RECIPIENT
(BURTA)**

BOSTON UNIVERSITY CENTER FOR MOLECULAR DISCOVERY

RECIPIENT TRANSFER AGREEMENT

BETWEEN BU AND RECIPIENT

(BURTA)

This Boston University Center for Molecular Discovery Recipient Transfer Agreement (the “**Boston University Recipient Transfer Agreement**” or “**BURTA**”) is entered into by and between Trustees of Boston University, a non-profit corporation organized under the laws of the Commonwealth of Massachusetts, having a place of business at One Silber Way, Boston, Massachusetts 02215, USA (“**BU**”) on behalf of its Center for Molecular Discovery (“**BU CMD**”), and the Recipient Institution identified on the signature page below (“**Recipient**”) in the interest of the Recipient scientist identified on the signature page below. Recipient and BU are hereafter collectively referred to as the “**Parties**” or individually as a “**Party**.” This Boston University Recipient Transfer Agreement is effective as of the date of the last signature by a Party below (“**Effective Date**”).

WHEREAS, BU CMD operates and maintains the BU CMD Repository (as defined below) to facilitate research by receiving, storing, replicating, curating and transferring chemical compounds and associated data received from external academic and non-profit institutions as well as BU researchers; and;

WHEREAS, Provider(s) (as defined below) have deposited certain Provider Material (as defined below) with the BU CMD Repository for transfer by BU on Provider’s behalf and at Recipient’s request as a service to the research community; and

WHEREAS, Recipient desires to obtain certain Repository Material (as defined below) for use in research and has entered into a SPMTA with Provider(s) in furtherance of this request.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

- 1.01 **BU CMD Repository** shall mean the collected and maintained library of small molecule chemical entities as created, maintained, and operated by the BU CMD and supplemented, from time to time, with contributions which may come from BU, Provider(s) and others, the purpose of which is to facilitate research by receiving, storing, replicating, curating and transferring chemical compounds and associated data received.
- 1.02 **Provider-BU CMD Repository Transfer Agreement** shall mean an agreement executed between a Provider and BU.

BU will not accept any changes or modifications to this Agreement.

- 1.03 **Deposit Fee** shall mean a fee that may be charged by BU to a Provider to offset any expense for transferring, validating, storing, or replenishing Provider Material transferred under the terms of this Boston University Recipient Transfer Agreement. For the purposes of clarity, fee assessment and payment are not to be considered a “sale” or “offer for sale” under U.S. law.
- 1.04 **Nonprofit Organization(s)** shall mean 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.
- 1.05 **Provider** shall mean a Nonprofit Organization which has entered into a Provider-BU CMD Repository Transfer Agreement and an accompanying SPMTA with Recipient if such Provider’s Provider Material will be transferred to Recipient as part of Repository Material.
- 1.06 **Provider Material** shall mean a collection of the small molecule chemical entities as originally provided by a Provider to the BU CMD Repository, and including such small molecule chemical material which may, from time to time, be replenished or otherwise replicated from such originally provided material pursuant to the grant of rights in the Provider-BU CMD Repository Transfer Agreement between such Provider and BU to the extent the Provider Material is reasonably available for transfer from the BU CMD Repository.
- 1.07 **Recipient** shall mean the Nonprofit Organization receiving Repository Material from the BU CMD Repository, the name and address of which is set forth below in the signature block of this Boston University Recipient Transfer Agreement and which entity has also agreed and executed a SPMTA with each Provider whose materials are included in the Repository Material to be transferred to Recipient.
- 1.08 **Repository Material** shall mean those certain materials specified in Schedule One of this Boston University Recipient Transfer Agreement which Recipient has requested be transferred from the BU CMD Repository to Recipient, to the extent reasonably available for transfer from the BU CMD Repository.
- 1.09 **Transfer Fee** shall mean a fee that may be charged by BU to a Recipient to offset any costs for preparation and distribution of Repository Material transferred under the terms of this BURTA as specified in Schedule Two of this Agreement. For the purposes of clarity, fee assessment and payment are not to be considered a “sale” or “offer for sale” under U.S. law.
- 1.10 **SPMTA** (Standard Provider Material Transfer Agreement) shall mean an agreement executed by Recipient and any and all Providers, as determined by the nature of the Repository Material being transferred to the Recipient.

SECTION 2. Terms and Conditions of this BURTA

- 2.01 Recipient has requested that BU transfer the Repository Material from the BU CMD Repository to Recipient, and BU is amenable to doing so as a service in furtherance of Recipient's research and BU's mission as an academic research institution, subject to the terms and conditions set forth in this Boston University Recipient Transfer Agreement, to the extent the Repository Material is available at the BU CMD Repository. Recipient acknowledges that BU operates as a non-profit entity and is providing the BU CMD Repository as a convenience to Providers and Recipients for transfer of Repository Material and in accordance with the SPMTA executed between and among Recipient and identified Providers as a service to the research community and in furtherance of all Parties' charitable purposes.
- 2.02 Recipient represents and warrants that it is a Nonprofit Organization and otherwise satisfies the criteria of a Recipient as defined herein. Recipient agrees to provide appropriate acknowledgement of the Provider and the BU CMD Repository as the source of Provider Material in all publications.
- 2.03 Each Provider has agreed to transfer its Provider Material to Recipient through the BU CMD Repository under the SPMTA. Recipient acknowledges and agrees that each SPMTA is a contract between Recipient and the respective Provider.
- 2.04 Upon Recipient's execution of a SPMTA with each Provider, and Recipient and BU executing this BURTA, BU will transfer Repository Material to Recipient.
- 2.05 Upon Recipient's receipt of Repository Material, Recipient shall remit a Transfer Fee, if any, as specified in Schedule Two, to BU in accordance with BU's payment instructions.
- 2.06 Recipient acknowledges that Repository Material is experimental in nature and may have hazardous properties. Recipient agrees to rely solely on its own evaluation of Repository Material in regard to its safety and suitability for any purpose. Potential exposures should be controlled through the implementation of prudent laboratory practices for handling chemical substances of unknown toxicity. Without limiting the foregoing, BU expressly disclaims any responsibility or liability for determining if there are any restrictions on Recipient's use of Repository Material as a result of any third party rights including without limitation, patents or other intellectual property or proprietary rights. No right or license, express or implied, is granted to Recipient under any patents, patent applications, copyrights or other intellectual property or proprietary rights of BU or any third party.
- 2.07 Recipient represents that: (a) Recipient has the knowledge and ability to safely handle Repository Material and will use prudence and care in the use, handling, storage, transportation and containment of Repository Material, with all costs and expenses associated with such protective measures to be borne by Recipient; and (b) that, after

reasonable investigation, Recipient has verified that its receipt, use, storage, and disposition of Repository Material will not violate any third party rights, or any applicable laws, regulations or institutional policies, and that it has satisfied all such requirements, including by securing such regulatory, institutional, and third party approvals as are required.

- 2.08 Recipient shall comply with all applicable laws and regulations. It is understood that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling both actual and deemed exports, including the Export Administration Regulations of the United States Department of Commerce, the International Traffic in Arms Regulations of the Department of State, and the Office of Foreign Assets Control of the Department of Treasury. Recipient hereby agrees and gives written assurance that it will comply with all applicable United States laws and regulations controlling the export of commodities and technical data, that it will be solely responsible for any violation of such by Recipient, and that it will defend and hold BU harmless in the event of any legal action of any nature occasioned by such violation.
- 2.09 BU MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO REPOSITORY MATERIAL OR OTHERWISE. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT RECIPIENT'S RECEIPT OR USE OF REPOSITORY MATERIAL, OR ANY DERIVATIVES OR MODIFICATIONS OF REPOSITORY MATERIAL, WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS. RECIPIENT ACCEPTS REPOSITORY MATERIAL "AS IS" AND BU DOES NOT OFFER ANY GUARANTEE OR ASSURANCE OF ANY KIND.
- 2.10 With respect to the economic importance of the use of Repository Material, and the potential consequences of faulty result, it is the Recipient's responsibility to analyze Repository Material for any contamination or abnormalities, check the plausibility and validity of the results of use of Repository Material, and to conduct any appropriate testing or retesting. Except to the extent caused by BU's willful misconduct or gross negligence, or prohibited by law, Recipient assumes all liability for, and Recipient agrees to not hold BU responsible for any loss, damage, cost or expense (1) which may arise from the use, storage, handling or disposal of Repository Material by Recipient; (2) that Recipient's use of Repository Material violates any intellectual property or other rights of a third party, (3) related to Recipient's breach of any material term of this Boston University Recipient Transfer Agreement; and (4) related to Recipient's breach of the applicable SPMTA. BU's total, aggregate liability to Recipient shall be limited to actual damages not to exceed the total amount of the Transfer Fee paid to BU by Recipient. Recipient agrees that the limitations of liability and remedies under this Boston University Recipient Transfer Agreement, and Recipient's corresponding acceptance of risk, are fair and reasonable, given, among other things, the relatively small transmittal

fee for Repository Material in comparison to the potential risks associated with the use thereof and BU's non-profit status and role as a mere repository.

- 2.11 This Boston University Recipient Transfer Agreement including any exhibits and schedules attached hereto as well as any Recipient instructions provided by the BU CMD on its BU CMD Repository website (<http://bu.edu/cmd/mta>), as the same may be updated and/or modified from time to time, constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained herein.

- 2.12 This Boston University Recipient Transfer Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or PDF copies of this Boston University Recipient Transfer Agreement will be enforceable as originals. This Boston University Recipient Transfer Agreement may be executed electronically/digitally in compliance with the Massachusetts Uniform Electronic Transactions Act (MUETA) Mass. Gen. Laws ch. 110G and/or The Electronic Signatures In Global And National Commerce Act (ESIGN) 15 USC ch. 96. Persons signing this document agree that, if used, electronic/digital signatures are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Boston University Recipient Transfer Agreement to be executed by their respective duly authorized officers, and have duly delivered and executed this Boston University Recipient Transfer Agreement under seal.

Accepted Trustees of Boston University
by: By:

Name: William Segarra
Title: Director of Contracting/Office of
Sponsored Programs

Date: _____

Insert name of Recipient
By: _____

Name: _____
Title: _____

Address: _____

Date: _____

Certification of Recipient scientist: I have read and understood the conditions outlined in this Boston University Recipient Transfer Agreement.

Recipient scientist Name: [Click here to enter recipient scientist name.](#)
Date: _____

Schedule One to BURTA

Repository Material:

Chemical compounds identified on the attached Index of chemical structures and any associated data, including the Index itself.

Schedule Two to BURTA

Transfer Fee: *[insert amount or "none", as applicable]*