**MATERIAL TRANSFER AGREEMENT**

This Material Transfer Agreement (**MTA**) is entered into by and between:

1. **Supplier**;

and

1. **MEDICINES DISCOVERY CATAPULT LIMITED**, a limited company incorporated and registered in England and Wales with company number 09928547 whose registered office is at Mereside, Alderley Park, Macclesfield, Cheshire, SK10 4TG (**MDC**)

and

1. **ONCIMMUNE HOLDINGS PLC**, a company incorporated and registered in England and Wales with company number 09818395 whose registered office is at MediCity D6 Building, 1 Thane Road, Nottingham NG90 6BH (**Oncimmune**)

WHEREAS:

1. The Supplier owns certain biological and/or chemical materials or has rights to transfer such materials to Oncimmune on behalf of MDC;
2. Medicines Discovery Catapult Services Limited (**MDC**) has selected the Supplier following a procurement process for the purposes of this MTA (**Tender**).
3. MDC desires to procure the biological and/or chemical materials in order to enable Oncimmune to conduct the research project entitled “IMmunity Profiling of pAtients with Covid-19 for Therapy and Triage (IMPACTT)**”** funded by Innovate UK (**Project**) and the Supplier desires to permit Oncimmune to use the materials for the purposes of Project and for any other legitimate purposes Oncimmune may desire on the terms and conditions set forth below.
4. MDC has entered into a collaboration agreement with Oncimmune (**Collaboration Agreement**) for the purposes of the Project.
5. The Parties therefore agree that this MTA is required to set out the rights and obligations of the Parties in relation to the Materials which will pass directly between the Supplier and Oncimmune.

The Supplier and MDC and Oncimmune may each be referred to herein as a “Party” and collectively as the “Parties”. References to Oncimmune shall include its Affiliates as appropriate.

NOW, THEREFORE, in consideration of the provision of such biological and/or chemical materials by the Supplier, the mutual premises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Supplier and MDC and Oncimmune agree as follows:

1. Definitions.
	1. The following words and phrases shall have the meanings given below:

“Affiliate”: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

“Authorised Officer” means a MDC employee authorised either generally or specifically by MDC to enter into the MTA and act on behalf of MDC.

“Confidential Information” shall mean any information disclosed by that Party to any of the other Parties for use in the Project and, any of the Developments in which that Party owns the Intellectual Property Rights and any other information disclosed by that Party to any of the other Parties for use in the Project or under this Agreement and identified as confidential before or at the time of disclosure or which, by its nature or from the circumstances of its disclosure, should reasonably be presumed to be confidential.

“Contract” means the tender (including contract terms and specification) issued by MDC to which this Agreement relates and the Supplier's tender submission subsequently accepted by MDC.

“Developments” means inventions, improvements, discoveries, methods, progeny, conjugates, variants, developments, software, and works of authorship, whether or not patentable by Oncimmune or under direction or supervision or jointly with others that arise directly from Oncimmune’s use of the Materials.

“Information” shall mean any and all information, data or know-how, whether technical or non-technical, oral or written, that is disclosed by one Party (**Disclosing Party**) to the other Party (**Receiving Party**).

“Intellectual Property Rights” shall mean patents, rights to inventions, trade marks, service marks, registered designs, copyrights and related rights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above, and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

“Materials” shall mean the materials described at Appendix A.

“Purchase Order” means MDC’s written instruction to buy the Materials.

“Research” means use of the Materials, described at Appendix A, for the purposes of the Project.

“Term” shall mean the duration of the Project.

1. Supply, Acceptance and Quality of the Materials.
2. During the Term of this MTA the Supplier will supply to Oncimmune and Oncimmune will take ownership of the Materials in such quantities and of such purity as may be required for Oncimmune to undertake the Research. The Materials will be delivered by the Supplier at its own risk to Oncimmune and as directed by Oncimmune at the address specified in Appendix A (or to a destination as may be notified to the Supplier by Oncimmune).
3. The Supplier shall ensure that each delivery to Oncimmune is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of the Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
4. Unless otherwise stipulated by MDC in the Purchase Order, deliveries shall only be accepted by Oncimmune on Business Days during normal business hours. If Materials are delivered to Oncimmune in excess of the quantities ordered, MDC shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier’s risk and shall be returnable at the Supplier’s expense.
5. The Supplier shall ensure that the Materials:
	1. are inspected prior to delivery to Oncimmune and correspond with the description set out at Appendix A;
	2. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Oncimmune, expressly or by implication, and in this respect, Oncimmune relies on the Supplier's skill and judgment;
	3. are free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
	4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Materials;
	5. are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
6. The Supplier shall ensure that the Materials are deactivated from any virus, including but not limited to SARS-CoV-2, following approved protocols prior to transfer to Oncimmune.
7. The Materials shall be at the risk of the Supplier until delivery to Oncimmune. The Supplier shall off-load the Materials at its own risk as directed by Oncimmune.
8. The passing of ownership in the Materials is without prejudice to any right of rejection to which Oncimmune or MDC may be entitled.
9. Notwithstanding clause 2.5, where the Materials comprise or include substances hazardous to health, the Supplier will supply to Oncimmune prior to the delivery of the Materials with all data necessary to allow Oncimmune to form a suitable and sufficient assessment of the risks and of the steps that need to be taken in order to meet the requirements of all relevant applicable laws.
10. Unless MDC and the Supplier have, before or at the same time as this MTA, agreed in writing (signed by the Authorised Officer) additional conditions regarding preparation of or environmental requirements at the site at which the Materials are to be installed, the Supplier acknowledges and agrees that the Materials are suitable to be installed and used at the premises at which Oncimmune intends to use them and that there are no additional conditions regarding site preparation or environmental requirements.
11. In relation to installation and acceptance tests, where applicable:
	1. except where Clause 2.10(e) applies, the Supplier shall, without further charge to MDC, install the Materials at the premises at which Oncimmune intends to use them and subject the Materials to its standard installation and acceptance tests;
	2. if the Materials pass those tests, Oncimmune will issue an acceptance certificate to that effect to the Supplier (with a copy to MDC), but receipt by the Supplier of such an acceptance certificate will not constitute legal acceptance by Oncimmune;
	3. if the Materials do not (on any attempt) pass those tests, the Supplier will (without affecting MDC other rights and remedies) promptly and at its expense carry out all necessary remedial work and re-submit the Materials to the tests as set out in clause 2.10(a) and clause 2.10(b);
	4. if all the tests have not been successfully completed within thirty (30) days after delivery, MDC shall have the same rights as it would have had if the Supplier had not performed its obligations under clause 2.10(a);
	5. if the MDC and the Supplier have, before or at the same time as the Purchase Order, agreed otherwise in writing (signed by the Authorised Officer), then MDC (itself or through Oncimmune) will be responsible for installing the Materials and clauses 2.10(a) to 2.10(d) shall not apply.
12. Oncimmune shall not be deemed to have accepted any Materials until it has had thirty (30) Business Days following delivery to inspect them, or, in the case of a latent defect in the Materials, following the latent defect becoming apparent.
13. If the Parties have agreed that that the Materials are not to be installed immediately, MDC shall notify the Supplier and Oncimmune shall store the Materials in their original packaging. The Parties shall agree suitable terms in relation to extending the warranty period of such Materials to allow for the period in storage.
14. The provisions of this clause 2 shall survive any delivery, inspection, acceptance, payment or performance pursuant to this MTA and shall extend to any replacement, repaired, substitute or remedial Materials provided by the Supplier.
15. Use of and Access to the Supplier Materials.
	1. The Materials will be used for the purpose of the Research, and the establishment of a publicly available COVID-19 sample biobank and associated database that will be promoted to UK SMEs to aid their R&D efforts in the fight against COVID-19.
	2. Oncimmune shall not use the Materials in humans, in clinical trials, or for diagnostic purposes involving humans nor in anything destined for human consumption, under any circumstances. MDC shall use the Materials and perform the Research in compliance with all statutes, laws and regulations applicable to the Research. Except as required to undertake the Research, under no circumstances will MDC engineer, re-engineer, reverse engineer, modify, deconstruct, design around or in any way determine the structure or composition of any the Materials.
	3. Subject to clause 3.4, Oncimmune acknowledges that the Materials are supplied on an "as is" basis. To the maximum extent permitted at law, all representations, undertakings, warranties, terms and conditions that might but for this clause have been implied or incorporated into this agreement with respect to the Materials, whether by statute, common law or otherwise, are expressly excluded (including any implied terms that the Materials are of satisfactory quality or fit for purpose). MDC acknowledges that the Materials are experimental in nature and may have unknown hazardous characteristics, that there are risks of working with the same and shall ensure that its employees and any individuals who handle the Materials follow all directions provided by the Supplier regarding the safe handling, use, transfer and storage of the Materials and adhere to all applicable laws, rules and regulations.
	4. The Supplier shall deliver the Materials to Oncimmune (or to a destination as may be notified to the Supplier by Oncimmune) at the time and date specified by Oncimmune in Appendix A, or if no such date is specified then delivery shall take place within twenty-eight (28) days of the date specified in the Purchase Order. Time for delivery shall be of the essence.
	5. Oncimmune shall have the right to attach to, or install into or onto the Materials any other items, equipment or goods which Oncimmune considers to be appropriate and necessary to enable the Materials to be utilised to the fullest extent as required by Oncimmune.
	6. Oncimmune shall be wholly responsible for the safe use of the Materials after delivery and all, if any, substance being derived therefrom whilst in its possession and control and for that purpose it shall be Oncimmune’s obligation to comply with all applicable legislation, regulations, standards or the like, in whatever jurisdiction, affecting such use, possession or control.
16. Ownership.

4.1 Title to the Materials shall pass to Oncimmune on the earlier of (a) payment for the Materials by MDC, or (b) delivery of the Materials to Oncimmune.

4.2 The Supplier shall transfer to Oncimmune the title to the Materials and all related Intellectual Property Rights, including, without limitation, patents, patent applications, and copyrights.

4.3 In accordance with the terms of the Contract, MDC shall pay the price of the Materials as stated in the Purchase Order within thirty (30) days of receipt of an undisputed invoice. The Supplier must quote the Purchase Order number on all invoices. Failure to do so may result in delay in payments.

4.4 In the event of conflict between the provisions of clauses 4.2 and 4.3 of this MTA and the Contract, the Parties agree that the terms of the Contract shall prevail.

1. Confidentiality.
	1. The obligations set out at this clause 5 shall apply during the Term of this Agreement and shall continue to apply for 5 years after the end of the Project. None of the Parties shall disclose to any third party nor use for any purpose, except as expressly permitted by this Agreement, any other Party's other Confidential Information.
	2. The Receiving Party will not be in breach of any obligation to keep any information confidential or not to disclose it to any third party to the extent that:
		1. if it is received from the Disclosing Party, is known to the Receiving Party or any of the Receiving Party’s Affiliates (demonstrable by written records) before its receipt from another Party, and it is not already subject to any obligation of confidentiality to the Disclosing Party;
		2. it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
		3. it has been obtained by the Receiving Party or any of the Receiving Party’s Affiliates from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of an obligation of confidentiality to the Disclosing Party;
		4. it has been independently developed by the Receiving Party or any of the Receiving Party’s Affiliates without reference to the Disclosing Party’s Confidential Information; or
		5. it is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, none of the exceptions to that Act or those Regulations (as the case may be) applies to the information disclosed) or the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority and that, in each case where the law permits, and the party required to make that disclosure has informed the Party whose information it is, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or
		6. it is approved for release in writing by an authorised representative of the Party whose information it is.
	3. None of the Parties will be in breach of any obligation to keep another Party’s information, confidential or not to disclose them to any third party, by making them available to any of its Affiliates or any person working for or on behalf of it or any of its Affiliates, who needs to know the same in order to exercise the rights granted to it in or pursuant to this Agreement provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that information confidential.
	4. No Party will be in breach of any obligation to keep any other Party’s Confidential Information, confidential or not to disclose it to any third party by disclosing it to any external funding body.
	5. If any Party which is subject to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 receives a request under that Act or those Regulations to disclose any information which, under this Agreement, is the Confidential Information of another Party, it will notify that other Party and will consult with it promptly and, before making any disclosure under that Act or those Regulations, it will take legal advice regarding the availability and applicability of any exemptions and any other options available, and will notify that other Party of the intended response to that request. That other Party will respond to the Party that received the request within 10 days after receiving the notice if that notice requests that other Party to provide information to assist the Party which received the request to determine whether or not an exemption to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 applies to the information requested under that Act or those Regulations. That other Party may make representations in relation to that request and the proposed response and may request amendments to the proposed response.
	6. None of the Parties will use another Party's name or the name of any of the employees provided by another Party, or another Party’s logo, in any press release or product advertising, or for any other promotional purpose, without first obtaining that other Party's written consent.
2. Indemnification.
	1. Each of the Parties warrants to each of the other Parties that, to the best of its knowledge and belief any information given by it or any of its employees or students who work on the Project, and the content or use of any Developments or materials, works or information provided in connection with the Project, will not constitute or result in any infringement of third party rights.
	2. Each Party will indemnify and hold harmless the other Party (including their respective officers, directors, and employees) from and against any and all third party actions, suits, claims, demands, judgments, liabilities and expenses, including legal expenses and reasonable attorneys’ fees, arising from, out of, or in connection with a Party’s wilful misconduct, gross negligence, or breach of its obligations under this MTA.
	3. Neither Party shall be liable for any special, indirect, or consequential loss, claim, demand or damages.
	4. Nothing in this Agreement limits or excludes any party's liability for:
		1. death or personal injury caused by negligence;
		2. any fraud or for any sort of liability which, by law, cannot be limited or excluded; or
		3. any loss or damage caused by a deliberate breach of this Agreement.
	5. Subject in each case to clause 6.4, the aggregate liability of each Party to the other Party will not exceed in total the value of this MTA.
3. The Supplier warrants all necessary subject consent and ethics approval has been obtained to use the samples for the purpose of the Research and the establishment of the biobank
4. Use of Animals.

Throughout the performance of the Research, all animals used shall be maintained and handled in accordance with relevant professional standards and all applicable laws, rules and regulations concerning the use, care and treatment of experimental animals used in laboratory research. Upon request, MDC or one of its Affiliates shall provide the Supplier with copies of all relevant animal use protocols and documentation of approval of such protocols by the animal use oversight committee.

1. Publicity.

Except as otherwise provided herein, each Party agrees not to use or refer to this MTA, or use the names or marks of the other Party, without the written permission of the other Party; provided, however, a Party may disclose the existence of and terms of this MTA solely as required to comply with applicable laws rules or regulations.

1. Relationship of the Parties.

The Parties hereto are independent contractors and nothing contained in this MTA will be deemed to create a partnership, agency, distributorship, fiduciary, employment, joint venture or other relationship between the Parties. Further, nothing in this MTA shall be deemed to obligate either Party to enter into any further agreement or arrangements with the other Party, or to furnish any information or materials to the other Party.

1. Disclosure Requirements.

The Parties acknowledge and agree that each of them may have certain disclosure and reporting obligations pursuant to laws rules and regulations and institutional policies, including, without limitation, the disclosure/reporting of any and all transfers of value under this MTA, and each hereby authorizes the other to make such disclosures without prior notice.

1. Term and Termination.
	1. This MTA shall commence on the Effective Date and shall continue for the duration of the Project unless earlier terminated in accordance with the terms of this clause 12.
	2. Either Party may terminate this Agreement with immediate effect by giving written notice to the other party if:
		1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;
		2. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
	3. Without prejudice to any other rights and obligations in the Agreement, both Parties shall co-operate and provide all assistance reasonably required by the other Party to ensure an orderly transition in the event of termination or expiry of this Agreement.
2. Miscellaneous.
	1. This MTA constitutes the entire agreement, and supersedes all prior agreements, whether written or oral, among the Parties hereto with respect to the subject matter hereof.
	2. This MTA shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
	3. This MTA may not be amended or modified, in whole or in part, except by an agreement in writing signed by the parties hereto.
	4. This MTA shall be construed and interpreted in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction in respect thereof.
	5. This MTA may be executed by the Parties in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which shall constitute one and the same agreement. Signed copies of this MTA may be electronically transmitted between the Parties in place of original signatures. All signatories to this MTA agree to be bound by the signatures on the electronically transmitted MTA.
3. Notices

 All notices or other communications required or permitted to be made or given hereunder shall be deemed so made or given when hand-delivered, three (3) days after being sent in writing by registered mail, postage prepaid, return receipt requested, or two (2) days after being deposited with a nationally recognized courier service guaranteeing next day delivery, charges pre-paid and properly addressed to the other Party as set forth above or at such other address as may be specified by either Party hereto by written notice similarly sent or delivered.

IN WITNESS WHEREOF, the Parties have set forth their signatures below on the dates indicated beneath their respective signatures.

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| --- | --- |
| **MDC:** | **ONCIMMUNE LIMITED:** |
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| Name:Title:  | Name:Title:  |
|  |  |
|  |  |
| Date:  | Date:  |
|  |  |
| **SUPPLIER:** |  |
|  |  |
|   |  |
| Name:Title: |  |
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| Date:  |  |