MATERIAL TRANSFER AGREEMENT (MTA)

This Agreement is dated 31st March 2020

PARTIES

(1) **NHS Blood and Transplant**, a Special Health Authority established under SI 2005 No 2529 whose registered address is 500, North Bristol Park, Filton, Bristol, BS34 7QH (the "Sender")

(2) **Public Health England, an Executive Agency of the Department of Health and Social Care** with offices at Public Health England, Porton Down, Salisbury, Wiltshire SP4 0JG ("Recipient") which expression shall include its successors in title; and

BACKGROUND

(A) The Sender has agreed to supply up to 3500 units per week of clinical samples of whole blood, or derived fractions, from convalescent plasma donors who are 28 days post COVID-19 symptoms (the "Materials") to the Recipient. In this Agreement, the "Materials" shall include, any and all materials, documents, know-how and information that the Sender may provide to the Recipient under or in connection with this Agreement, and any constructs, strains, derivatives, portions, progeny or improvement obtained from or as a result of the use of the Materials, including, but not limited to, any information as described on Schedule 1, and the "Agreement" shall mean this material transfer agreement and any accompanying schedules.

(B) This MTA supports a collaboration agreement dated 21st April 2020 (the "Collaboration Agreement) between the parties.

(C) The Sender will send the Materials to two different sites of the Recipient as described in Schedule 1. Clause 1 below shall apply to each of the Recipient's site separately.

IT IS AGREED as follows:

1. The Recipient shall keep the Materials secure at the Recipient's laboratory and the Materials shall not be removed from the Recipient's address. The Recipient shall ensure that no-one other than the Recipient and authorised co-workers have access to them. The Recipient undertakes to ensure that the Materials are appropriately safeguarded to prevent theft or unauthorised access.

2. The Recipient shall use the Materials in accordance with good laboratory practice and the highest standards of skill and care and shall ensure compliance with all applicable laws, regulations and administrative guidelines governing the transportation, storage, use or disposal of the Materials, including but not limited to the Human Tissue Act,

2004. The Recipient must have a policy to ensure adherence to all applicable laws and guidance issued by the Department of Health, Health Research Authority Human Tissue Authority and any relevant authorities regarding use, storage, transport and disposal of materials for research purposes.

3. The Recipient shall not supply the Materials to any other party without the prior written agreement from the Sender.

4. The Recipient shall use the Materials only for carrying out the testing as further set out in Schedule 1 (the "Testing") and according to the Project Schedules of the Collaboration Agreement and not for any other purpose whatsoever, including (but not limited to) any commercial purpose or commercially-sponsored research, even if those purposes are being pursued in the Recipient's laboratory, without the prior written consent of the Sender.

5. The Recipient shall not acquire any proprietary rights in the Materials therein and no licence under any Sender's intellectual property is granted or implied by this Agreement.

6. In the event that the Recipient makes or observes any new discovery, improvement or invention (an "Invention") relating to the Materials or as a direct result of the Testing then the Recipient will promptly bring this to the attention of the Sender. The Recipient shall not make or seek to make actual commercial gain from such an Invention, nor assign, transfer, licence, make any patent application or secure any other proprietary rights to legally protect any such Invention except with the prior written consent of the Sender. In any event, prior to any commercial exploitation of such Inventions, the Recipient agrees to enter into good faith negotiations with the Sender to execute a separate agreement including terms reflecting the contribution of the Materials to the Invention provided that the Sender does not unreasonably delay the execution of such an agreement. The Sender will, at all times, retain the right to use any Inventions for non-commercial research purposes.

7. In the event that the Recipient wishes to submit for publication the results of the Testing referring to the use of the Materials, the Recipient shall provide the Sender a copy of the final proposed publication at least thirty (30) days prior to its submission. The Sender shall within fifteen (15) days of receipt provide in writing any reasonable objections it has to the proposed publication and the Recipient shall give due regard to any amendments required by the Sender and shall refrain from publication of any information in respect of the Materials which in the Sender's reasonable opinion is damaging to its interests. In the event that the Recipient does not receive a response from the Sender with respect to the proposed publication within the time frames stated in this clause 7, the Recipient shall be free to publish the publication. For the purposes

of this clause 7, the Recipient shall send a copy of all correspondence, including the proposed publication, by email to contracts@nhsbt.nhs.uk.

8. The Recipient shall acknowledge the Sender as the source of the Materials in any publication which mentions them. Before any publication, the parties will agree on the wording regarding such acknowledgement. The Recipient shall send the Sender a copy of any reports or publications which describe work carried out using the Materials, as well as any raw data upon the Sender's reasonable request.

9. The Materials are supplied at the Recipient's risk and without cost.

10. The Materials are experimental in nature and the Sender makes no representation and gives no warranty or undertaking, in relation to them. As examples, but without limiting the foregoing, the Sender gives no warranty: (i) that it owns all necessary property and other rights in the Materials and that their use will not infringe any patent, copyright, trade mark or other right owned by any third party; or (ii) that the Materials are of merchantable or satisfactory quality or fit for any particular purpose, have been developed with reasonable care and skill or tested, for the presence of pathogens or otherwise, or are viable, safe or non-toxic.

11. The Sender shall have no liability to the Recipient, whether in contract, tort or otherwise, in relation to the supply of the Materials to the Recipient or their use or keeping by the Recipient or by any other person, or the consequences of their use, to the maximum extent permitted under applicable law.

12. Either Party may terminate this Agreement immediately by notice in writing if the other Party commits a material breach of this Agreement and, in the case of a breach capable of remedy, shall not have been remedied within 30 (thirty) days of the receipt by it of a notice identifying the breach and requiring its remedy.

13. The Materials and any copies thereof made by or in the possession of or under the control of the Recipient pursuant to this Agreement shall be immediately returned (i) on termination of this Agreement, or (ii) in the event that the Recipient is in breach of any of the conditions of this Agreement, and (iii) at any other time on the request of the Sender. If the Sender so dictates the Materials should be destroyed under the circumstances that might arise under this clause 13 and authenticated certificates of destruction shall be provided to the Sender. Notwithstanding this clause 13, the Recipient shall not use the Materials, or any associated data or results, for any commercial purposes, or commercial sponsored research, without the consent of NHSBT.

14. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

15. This Agreement does not create any right enforceable by any person not a party to it.

16. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

17. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

AGREED by the parties through their authorised signatories:

Signed by:

For and on behalf of **PUBLIC HEALTH ENGLAND, AN EXECUTIVE AGENCY OF THE DEPARTMENT OF HEALTH AND SOCIAL CARE**

Name: Neil Woodford

Position: Deputy Director NIS Laboratories

Signed by:

For and on behalf of **NHS Blood and Transplant**

Name: Leanne Roberts

Title/Position: Head of Contracts

SCHEDULE 1

The Materials will be separately shipped by Sender to either of the following Recipient's sites:

1) The Rare and Imported Pathogens Laboratory (RIPL) based at Public Health England, Porton Down, with the address of: Public Health England, Porton Down, Salisbury, Wiltshire SP4 0JG and the Recipient will carry out the following on the Materials as further described in the Collaboration Agreement:

    a. The SARS-CoV-2 IgG antibody testing service.

2) The Virus Reference Department (VRD) based at Public Health England Colindale, with the address of: Public Health England, 61 Colindale Ave, London NW9 5EQ and the Recipient will carry out the following Testing on the Materials as further described in the Collaboration Agreement:

    a. The SARS-CoV-2 PCR testing service.

    b. The SARS-CoV-2 antibody quantification and neutralisation.