

Memorandum of Understanding – Wisconsin Materials and Buck Materials

This Memorandum of Understanding (“MOU”) is made effective as of _____ (WiCell to fill in date), by and between _____ (“Institution”), having an address at _____, and WiCell Research Institute, Inc. (“WiCell®”), a Wisconsin nonprofit corporation having an address at 614 Walnut Street, Madison, Wisconsin 53726 USA.

WHEREAS, WiCell holds intellectual property rights in certain human embryonic stem cell lines developed by James A. Thomson, Su-Chun Zhang, Tim Kamp, and other researchers, all of the University of Wisconsin – Madison (“University”), working either alone or with other researchers at the University, and in certain human embryonic stem cell lines developed at the University, The Morgridge Institute for Research, Inc. (“Morgridge”), and/or WiCell (all of which are “Wisconsin Materials,” as further defined in the SLA); and

WHEREAS, the Wisconsin Alumni Research Foundation (“WARF”) holds certain intellectual property rights in certain human embryonic stem cell lines covered by U.S. Patent Nos. 5,843,780; 6,200,806; 7,005,252; various patents or patent applications (foreign and domestic) claiming priority thereto, and may hold rights in future patents and patent applications in other stem cell lines developed at the University or Morgridge, and/or WiCell, which may be covered by this MOU (collectively the “WARF Patent Rights”), and has afforded WiCell the right to grant sublicenses under the WARF Patent Rights to non-profit and academic research institutions in order to use the Wisconsin Materials; and

WHEREAS, the Buck Institute (“Buck”) has developed certain materials derived from the Wisconsin Materials (collectively, the “Buck Materials”) and appointed WiCell as its exclusive distributor of Buck Materials; and

WHEREAS, WARF and WiCell have a mission to serve the public good and desire to provide Institution researchers who desire to receive and use the Wisconsin Materials (“Institution Researchers”) the opportunity to use the Wisconsin Materials for non-commercial research purposes; and

WHEREAS, Institution agrees that any such research conducted by Institution Researchers using the Wisconsin Materials or Modifications to the Wisconsin Materials shall be in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, WiCell and Institution agree as follows (for clarity, unless expressly stated otherwise, all of the provisions and Institution’s and Institution Researchers’ obligations in this MOU with regard to the Wisconsin Materials apply equally to the Buck Materials, i.e., each reference to the “Wisconsin Materials” will be construed to mean the “Wisconsin Materials and Buck Materials, as applicable” all terms, restrictions and obligations below also apply to any Modifications to Wisconsin Materials, if any, as defined in the SLA):

1. Institution shall have the nontransferable right under the WARF Patent Rights to maintain and use the Wisconsin Materials within the laboratories of the Institution Researchers solely for non-commercial research purposes. As used herein, “Wisconsin Materials” will have the meaning set forth in the Simple Letter Agreement. Any and all use of the Wisconsin Materials must be in compliance with all applicable statutes, regulations, Institutional Review Board decisions, and consistent with applicable guidelines (including the NAS Guidelines). Specifically, Institution agrees that the research conducted by the Institution Researchers will exclude:

- (a) mixing of Wisconsin Materials or Modifications to the Wisconsin Materials with an intact embryo, either human or non-human;
- (b) implanting Wisconsin Materials or Modifications to the Wisconsin Materials or products of the

Wisconsin Materials or Modifications to the Wisconsin Materials in a uterus; and

- (c) attempting to make whole embryos with Wisconsin Materials or Modifications to the Wisconsin Materials by any method.
- (d) using Wisconsin Materials or Modifications to Wisconsin Materials for therapeutic or commercial purposes, including the performance of services (including diagnostic services), for consideration or the production or manufacture of products for sale or distribution.

2. Institution agrees that it shall require each Institution Researcher requesting Wisconsin Materials, or Modifications to Wisconsin Materials, whether provided by WiCell hereunder or by a third party authorized by WiCell to provide Wisconsin Materials or Modifications to Wisconsin Materials to Institution Researcher, to enter into and execute a WiCell **“Simple Letter Agreement”**. Institution and Institution Researchers will be also required to execute any additional agreements containing terms and obligations that apply to the particular Wisconsin Materials or Modifications to Wisconsin Materials being requested (“Ancillary Agreements”), the terms and obligations of which will be incorporated and made part of this MOU as it applies to the particular Wisconsin Materials or Modifications to the Wisconsin Materials requested. WiCell shall cause the requested Wisconsin Materials or Modifications to the Wisconsin Materials to be shipped to the Institution Researcher upon WiCell’s receipt and approval of an executed Simple Letter Agreement requesting such Wisconsin Materials or Modifications to the Wisconsin Materials and any applicable transmittal fee (see Paragraph 3 below).

3. Institution acknowledges that a transmittal fee may be requested by WiCell to cover the preparation and distribution costs for each sample of Wisconsin Materials transferred by WiCell to each Institution Researcher. Such fees will be the responsibility of the requesting laboratory/Institution. Despite the payment of any such fee, the transfer of the Wisconsin Materials shall not be considered a sale of the Wisconsin Materials.

4. Wisconsin Materials are the property of WiCell and are being made available to Institution Researchers as a service of WiCell. Ownership of all Wisconsin Materials shall remain with WiCell, regardless of whether such Wisconsin Materials are received from WiCell or an authorized third party. Any Wisconsin Materials provided to any Institution Researcher hereunder shall be returned to WiCell or destroyed, at WiCell’s direction, upon a material breach of any terms of this MOU or the Simple Letter Agreement.

5. Institution Researchers shall have the right to transfer, but not to distribute, Wisconsin Materials, or Wisconsin Materials contained in Modifications to Wisconsin Materials, to other academic researchers (**“Recipients”**), provided that:

- (a) prior to any such transfer, WiCell provides Institution Researcher written confirmation that such Recipient has entered into and executed a Simple Letter Agreement, a transfer fee (if applicable) was paid to WiCell, and Recipient’s Institution has entered into and executed a Memorandum of Understanding relating to the Wisconsin Materials or Modifications to Wisconsin Materials to be transferred;
- (b) the transfer of the Wisconsin Materials or Modifications to Wisconsin Materials to Recipient shall be made for no consideration (i.e., commercial grantback rights, ownership interest in inventions created by the Recipient, or royalties from the Recipient due to the commercialization of inventions created using the Wisconsin Materials), however, Institution may request a transmittal fee solely to cover preparation and distribution costs;
- (c) the transfer of the Wisconsin Materials or Modifications to Wisconsin Materials to Recipient shall be subject to the terms of a MOU and Simple Letter Agreement between WiCell and such Recipient; and
- (d) Institution Researcher provides written notice to the Recipient that the Wisconsin Materials or Modifications to Wisconsin Materials are not being provided by or on behalf of WiCell and have been maintained by the Institution Researcher in conditions which may not be consistent with those utilized by WiCell.

6. WiCell recognizes that the technology of the WARF Patent Rights may be used by Institution Researchers in research that may result in patentable discoveries (“**Institution Patent Rights**”), which may eventually provide commercial products that benefit the public health. Institution agrees that WiCell, the Morgridge Institute for Research, and the University of Wisconsin and other like non-profit and/or academic research institutions shall have the right under the Institution Patent Rights to use the technology of the Institution Patent Rights for non-commercial research purposes.

7. The rights provided hereunder do not grant Institution the right to grant sublicenses under the WARF Patent Rights, or the right to develop and/or use Wisconsin Materials for any therapeutic or commercial purpose, including the right to use the Wisconsin Materials to perform services (including diagnostic services) for consideration, or for the production or manufacture of products for sale or distribution to third parties. Any license needed by a third party under the WARF Patent Rights for the manufacture, production, use or commercialization of any Institution Patent Rights shall be provided by a separate written agreement with WARF. Nothing herein shall be construed to require WARF to enter into any such agreement, or to hinder WiCell or WARF from entering into any other agreement with any third party which may limit the grant of any license under the WARF Patent Rights necessary for the practice of the Institution Patent Rights.

8. Institution and Institution Researchers agrees to communicate to WiCell all publications and/or research results made public by Institution or Institution Researchers which are based on research using the Wisconsin Materials. In addition, any reports, publications, or other disclosure of results obtained with the Wisconsin Materials will acknowledge WiCell and the provider scientist as the original source of the Wisconsin Materials or, in the event that the Wisconsin Materials were received from an authorized third party, the name of such third party (e.g., the providing scientist and providing scientist’s institution), and the conditions in which such Wisconsin Materials were maintained prior to their transfer.

9. Any Wisconsin Materials delivered pursuant to this MOU are understood to be experimental in nature and may have hazardous properties. WICELL AND BUCK MAKE NO REPRESENTATIONS AND EXTEND 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 WISCONSIN MATERIALS OR BUCK MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Except to the extent prohibited by law, Institution assumes all liability for damages which may arise from the use, storage, handling or disposal of the Wisconsin Materials or Buck Materials by Institution or Institution Researchers. WiCell and Buck will not be liable to Institution, Institution Researchers or any Recipients for any loss, claim or demand made by Institution, Institution Researchers or Recipients, or made against Institution, Institution Researchers or Recipients by any other party, due to or arising from the use, storage, handling or disposal of the Wisconsin Materials or Buck Materials by Institution, Institution Researchers or Recipients, except to the extent permitted by law when caused by the gross negligence or willful misconduct of WiCell or Buck.

10. The provisions of this MOU, and the obligations hereunder, shall continue as long as the Wisconsin Materials continue to be used by Institution or any Institution Researcher. Nothing contained herein shall be construed to be a waiver by WiCell or WARF of any rights under the WARF Patent Rights.

11. This MOU shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws principles. If the enforcement of any provisions of this MOU are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this MOU, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this MOU shall remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms as similar in effect to the present terms of this MOU as may be allowed under the applicable laws and regulations.

12. This MOU is not intended to be for the benefit of and shall not be enforceable by any third party. Nothing in this MOU, express or implied, is intended to or shall confer on any third party any rights (including third-party beneficiary rights), remedies, obligations or liabilities under or by reason of this MOU. This MOU shall not provide third parties with any remedy, claim, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this MOU. No third party shall have any right, independent of any right that exists irrespective of this MOU, to bring any suit at law or equity for any matter governed by or subject to the provisions of this MOU.

13. This MOU constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, except as provided for elsewhere in this Paragraph 13, made prior to or at the signing hereof, shall vary or modify the written terms of this MOU. Neither party shall claim any amendment, modification, or release from any provisions of this MOU by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this MOU. In the event of a conflict between the provisions of this MOU and any provision contained in an Ancillary Agreement, the provisions stated in this MOU will control and prevail.

14. The persons signing on behalf of WiCell and Institution hereby represent that they have authority to execute this MOU on behalf of the party for whom they have signed.

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. PDF copies of this Agreement will be enforceable as an original.

IN WITNESS WHEREOF, WiCell and Institution agree to the foregoing and have caused this MOU to be executed by their duly authorized representatives.

WiCell Research Institute, Inc.

Institution

By: _____
Robert J. Drape, CEO

By: _____
(Signature)

Date: _____

Date: _____

Name: _____

Title: _____

Order Reference No. _____

WiCell Agreement No.: _____

Simple Letter Agreement – Wisconsin Materials – Buck Materials

Institution: _____

Institution Researcher: _____

Wisconsin Materials Cell Line(s) Requested:

WA09 (H9), Provider Scientist, James A. Thomson, University of Wisconsin – Madison

WA14 (H14), Provider Scientist, James A. Thomson, University of Wisconsin – Madison

Wisconsin Materials Derived Buck Materials (Neural Cells) Cell Line(s) Requested:

NSC-H9, Provider Scientist, Xianmin Zeng, Buck Institute – Novato, CA

NSC-H14, Provider Scientist, Xianmin Zeng, Buck Institute – Novato, CA

NSC-H14iPSZeng, Provider Scientist, Xianmin Zeng, Buck Institute – Novato, CA

Wisconsin Materials Derived Buck Materials (Human iPS Cells) Cell Line(s) Requested:

Zeng01i-iPSH9, Provider Scientist, Xianmin Zeng, Buck Institute – Novato, CA

Zeng02i-iPSH14, Provider Scientist, Xianmin Zeng, Buck Institute – Novato, CA

If the Wisconsin Materials are being provided to Institution/Institution Researcher by a party other than WiCell, name such party here (e.g. name of provider scientist and provider scientist’s institution):

Title of Institution Researcher’s Research Program: _____

This Simple Letter Agreement (this “SLA”) dated and effective as of _____ (WiCell to fill in date), is between the above-named Institution and Institution Researcher, and the WiCell Research Institute, Inc., a Wisconsin nonprofit corporation (“WiCell®”). Institution Researcher is an employee of Institution. For clarity, unless expressly stated otherwise, all of the provisions and Institution’s and Institution Researchers’ obligations in this SLA with regard to the Wisconsin Materials apply equally to the Buck Materials, i.e., each reference to the “Wisconsin Materials” will be construed to mean the “Wisconsin Materials and Buck Materials, as applicable.”

It is WiCell’s understanding that Institution Researcher desires to obtain samples of the Cell Line(s) listed above (hereinafter referred to as “**Wisconsin Materials**,”) for use in the research described above to be conducted in Institution Researcher’s laboratory located at Institution. Wisconsin Material also includes any unmodified and undifferentiated progeny or Unmodified Derivatives (as used herein “**Unmodified Derivatives**” mean substances created by the Institution Researcher which constitute an unmodified functional subunit or product expressed by the Wisconsin Material including but not limited to: subclones of unmodified cell lines, purified or fractionated subsets of the Wisconsin Material, or proteins expressed by DNA/RNA supplied by WiCell). As used herein, the Wisconsin Material(s) shall further include any Wisconsin Material(s) to the extent contained or incorporated, whether in whole or in part, in any Modifications to Wisconsin Materials created by Institution Researchers. As used herein, a “**Modification to Wisconsin Material(s)**” shall mean substances resulting from Institution

Researcher's use of Wisconsin Material(s) which contain or incorporate in whole or in part the Wisconsin Material(s), but only if such substances remain a pluripotent stem cell. Institution shall retain ownership of the substances it incorporates into the Modifications to Wisconsin Material and WiCell shall own the Wisconsin Material(s) contained in the Modifications to Wisconsin Material. Any and all use of the Wisconsin Material and Modifications to Wisconsin Material must be in compliance with all applicable statutes, regulations, Institutional Review Board decisions and consistent with applicable guidelines (including the NAS Guidelines). Pursuant to the terms and conditions of the Memorandum of Understanding between WiCell and Institution dated

_____ (the "MOU"), any additional agreements containing terms and obligations that apply to the particular Wisconsin Materials being requested ("Ancillary Agreements"), the terms and obligations of which are incorporated and made part of the MOU and this SLA _____ (*WiCell to fill in*), and the requirement that WiCell pass on terms and conditions found in the consent agreements signed by WiCell and pre-implantation embryo donors, Institution and Institution Researcher hereby agree to the following (all terms, restrictions and obligations below also apply to any Modifications to Wisconsin Materials, if any, as defined in this SLA):

1. Institution Researcher acknowledges and agrees that the research conducted by him or her will not include:

- (a) mixing of Wisconsin Materials or Modifications to the Wisconsin Materials with an intact embryo, either human or non-human;
- (b) implanting Wisconsin Materials or Modifications to the Wisconsin Materials or products of the Wisconsin Materials or Modifications to the Wisconsin Materials in a uterus;
- (c) attempting to make whole embryos with Wisconsin Materials or Modifications to the Wisconsin Materials by any method; or
- (d) using Wisconsin Materials or Modifications to the Wisconsin Materials for therapeutic or commercial purposes, including the performance of services (including diagnostic services), for consideration or the production or manufacture of products for sale or distribution.

2. Institution Researcher agrees that on or before June 1 of each year in which this SLA is in effect, WiCell will send an annual notice reminding him or her of the restrictions noted above in paragraph 1.

3. Institution Researcher agrees that if he or she leaves the employ of Institution or relocates to another institution, he or she shall provide WiCell, within thirty (30) days of such change, one of the following statements: (a) a statement indicating that Institution Researcher has destroyed the Wisconsin Materials; (b) a statement indicating that Institution Researcher has transferred the Wisconsin Materials to another researcher who has received a SLA signed by WiCell (including the name of said researcher); or (c) a statement indicating that Institution Researcher has taken the Wisconsin Materials to his or her new lab at another institution (including the name and address of the institution where said lab is located). In the event Institution Researcher's contact information at the Institution changes, Institution Researcher agrees to provide updated contact information to WiCell.

4. Wisconsin Materials are the property of WiCell and are being made available to Institution Researcher as a service of WiCell. Ownership of all Wisconsin Materials, including any progeny and further modified versions thereof, shall remain with WiCell, regardless of whether such Wisconsin Materials are received from WiCell or an authorized third party. Any Wisconsin Materials provided hereunder shall be returned to WiCell or destroyed, at WiCell's direction, upon a material breach of any terms of this SLA or the MOU.

5. Institution Researcher agrees to communicate to WiCell all publications and/or research results made public by Institution Researcher which are based on research using the Wisconsin Materials. In addition, any reports, publications, or other disclosures of results obtained with the Wisconsin Materials will acknowledge WiCell

and the provider scientist as the original source of the Wisconsin Materials or, in the event that the Wisconsin Materials were received from an authorized third party, the name of such third party (e.g., the providing scientist and providing scientist's institution), and the conditions in which such Wisconsin Materials were maintained prior to their transfer.

6. Institution Researcher may transfer (but not distribute) Wisconsin Materials or Modifications to Wisconsin Materials to other academic researchers ("**Recipients**") for the purpose of validating scientific data, provided that:

- (a) prior to any such transfer, WiCell provides Institution Researcher written confirmation that such Recipient has entered into and executed a Simple Letter Agreement, a transfer fee (if applicable) was paid to WiCell, and Recipient's Institution has entered into and executed a Memorandum of Understanding relating to the Wisconsin Materials or Modifications to Wisconsin Materials to be transferred;
- (b) the transfer of the Wisconsin Materials or Modifications to Wisconsin Materials to Recipient shall be made for no consideration (i.e., commercial grantback rights, ownership interest in inventions created by the Recipient, or royalties from the Recipient due to the commercialization of inventions created using the Wisconsin Materials or Modifications to Wisconsin Materials), however, Institution may request a transmittal fee solely to cover preparation and distribution costs;
- (c) the transfer of the Wisconsin Materials or Modifications to Wisconsin Materials to Recipient shall be subject to the terms of a MOU and Simple Letter Agreement between WiCell and such Recipient; and
- (d) Institution Researcher provides written notice to the Recipient that the Wisconsin Materials or Modifications to Wisconsin Materials are not being provided by or on behalf of WiCell and have been maintained by the Institution Researcher in conditions which may not be consistent with those utilized by WiCell.

7. Wisconsin Materials delivered pursuant to this SLA are understood to be experimental in nature and may have hazardous properties. WICELL AND BUCK MAKE NO REPRESENTATIONS AND EXTEND 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 WISCONSIN MATERIALS OR BUCK MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Except to the extent prohibited by law, Institution assumes all liability for damages which may arise from the use, storage, handling or disposal of the Wisconsin Materials or Buck Materials by Institution or Institution Researchers. WiCell and Buck will not be liable to Institution, Institution Researchers or any Recipients for any loss, claim or demand made by Institution, Institution Researchers or Recipients, or made against Institution, Institution Researchers or Recipients by any other party, due to or arising from the use, storage, handling or disposal of the Wisconsin Materials or Buck Materials by Institution, Institution Researchers or Recipients, except to the extent permitted by law when caused by the gross negligence or willful misconduct of WiCell or Buck.

8. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws principles. Without limiting any party's rights under the MOU, this SLA or the Ancillary Agreements, Institution and Institution Researcher understand and agree that to the extent the terms of the MOU and this SLA restricting Institution's rights with respect to the Wisconsin Materials conflict with the restrictions in an Ancillary Agreement, the most restrictive applicable terms will apply.

9. 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. PDF copies of this Agreement will be enforceable as an original.

Institution Researcher and Institution must sign one original of this SLA and return to WiCell, along with any applicable transfer fees, before the Wisconsin Materials may be provided to Institution Researcher.

Institution Researcher

By: _____
(Signature)

Name: _____

Date: _____

Lab Address: _____

E-mail Address _____

Phone Number: _____

Institution

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

WiCell Research Institute, Inc.

By: _____
Robert J. Drape, CEO

Date: _____