OUTGOING HUMAN MATERIAL TRANSFER AGREEMENT

This Human Material Transfer Agreement for the transfer of human biological materials ("Agreement") is made and entered into as of _____, 201_ (the "Effective Date"), by and between The Chordoma Foundation having offices at 512 S. Mangum Street, 1st Floor, Durham, NC 27701 ("Recipient"), and [specify entity], with offices at [_____] ("Provider").

WHEREAS, Provider collects or intends to collect samples of human biological materials such as chordoma tumors or other tissue or samples from its patients; and

WHEREAS, Provider has the right to provide such samples for research; and

WHEREAS, the Recipient wishes to establish a biorepository for distribution of biological materials to universities, nonprofits, and for-profit organizations to promote faster discovery and development of new cancer therapies; and

WHEREAS, the Provider wishes to contribute human biological materials to Recipient in return for certain benefits.

NOW, THEREFORE, Provider and Recipient hereby agree to the following terms and conditions in this Agreement:

1. DEFINITIONS

"Field of Use" means the use of Materials and Modifications for research and development purposes, and the distribution and transfer of Materials and Modifications to Third Party Recipients for use for research and development purposes.

"Material(s)" means the human chordoma and related tumors, fluids, tissue samples and other biospecimens acquired by Provider under this Agreement, and any progeny or unmodified derivatives isolated or acquired therefrom.

"Modifications" means substances which contain or incorporate the Materials.

"Third Party Recipients" means universities, nonprofits and for-profit organizations who receive Materials or Modifications under this Agreement.

2. RESPONSIBILITY OF PROVIDER

The Materials to be provided pursuant to this Agreement were collected or will be collected by Provider in accordance with applicable laws, regulations, patient consent forms and authorizations pursuant to Institutional Review Board (IRB) approval, as applicable, and will be de-identified in accordance with the Health Insurance Portability and Accountability Act (HIPAA).

Provider agrees to properly label, package, and transport the Materials in accordance with all applicable State and Federal laws and regulations.

3. GRANT

3.1 Provider represents that it has the legal right to grant, and Provider hereby grants to the Recipient a worldwide, non-exclusive, sublicensable right and license to possess, use, make (propagate), distribute, transfer, have made and have used the Materials and any Modifications, in the Field of Use.

3.2 For clarity, the foregoing grant shall not restrict Provider's rights to conduct any activities with respect to any Materials retained by Provider.

3.3 Provider shall use reasonable efforts to provide Recipient with Materials as they become available. Provider is not required to provide all of its Materials to Recipient.

3.4 Provider will procure, document and store the Materials in a manner approved by both parties.

3.5 Provider represents that it shall not knowingly provide the Material to Recipient without having obtained all consents that may be required by the applicable IRB or under applicable laws or regulations.

3.6 Recipient will arrange transportation of the Materials at its own cost and will be responsible for any shipping and handling charges.

3.7 To the extent it has the legal right to do so, Provider will provide Recipient with appropriate clinical information including the pathology report and tumor source, tumor stage and relevant tumor markers if known. To the extent it has the legal right to do so, Provider will provide patient history with age, gender, race, and cancer therapeutic treatment history. This information will be stored by or on behalf of Recipient and used to select tumors for subsequent study.

3.8 For the avoidance of doubt, Recipient and any third parties who conceive, create, develop, or generate any information, data, know-how, discoveries or inventions through the use of the Materials or any Modifications as permitted by this Agreement shall have the right to freely exploit all such information, data, know-how, discoveries and inventions without any accounting or other obligations to Provider.

4. CONFIDENTIALITY

"Confidential Information" shall mean proprietary or confidential information communicated by one party to the other in writing, marked as "Confidential" or, in the case of oral disclosures, identified at the time of such oral disclosure as confidential, and reduced to writing and identified as "Confidential" within thirty (30) days of disclosure. The receiving party shall use reasonable efforts not to disclose the disclosing party's Confidential Information to third parties without the prior written consent of the disclosing party except for the purposes of the activities contemplated by this Agreement. The receiving party will use the Confidential Information only in the conduct of the activities contemplated by this Agreement. The obligations of confidentiality set forth herein shall remain in effect for a period of five (5) years from the expiration or earlier termination of this Agreement or such longer period as may be required by law. The receiving party shall have no obligations under this paragraph with respect to information which:

a. was known to it prior to receipt hereunder, as demonstrated by written records;
b. at the time of disclosure was generally available to public, or which after disclosure becomes generally available to the public through no fault attributable to receiving party;
c. is hereafter made available to receiving party for use or disclosure by disclosing party from any third party having a right to do so;
d. is required to be disclosed by law, governmental rule or regulation or order of a court with competent jurisdiction; or
e. is independently developed by receiving party without reference to the Confidential Information.

This section is not intended to limit any publication rights of either party.

5. INTELLECTUAL PROPERTY

Inventorship of inventions first conceived and first reduced to practice in performance of the activities contemplated by this Agreement shall be determined according to U.S. patent law and ownership will vest in the applicable inventor or the party to whom the inventor has an obligation to assign all right, title and interest in the invention.

6. WARRANTIES AND LIMITATION OF LIABILITY

The Material may not be used in, or for the treatment or diagnosis of, human subjects. The Material is understood to be experimental in nature and may have hazardous properties.

THE MATERIALS ARE BEING SUPPLIED TO RECIPIENT WITH NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. IN PARTICULAR, PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE MATERIALS WILL NOT INFRINGE OR VIOLATE ANY PATENT OR PROPRIETARY RIGHTS OF THIRD PARTIES.

To the extent permitted by law, Recipient assumes all risk of damages which may arise from its use, storage or disposal of the Materials, and the Provider (including, but not limited to, its directors, trustees, officers, employees, representatives, students and agents, as applicable) will not be liable to the Recipient for any loss, claim or demand made by or against the Recipient, due to or arising from the use of the Material by the Recipient, except in each case to the extent caused by the gross negligence or willful misconduct of the Provider or the Provider's failure to comply with applicable law and regulations, including without limitation as required by Section 2.

7. CONSIDERATION

In consideration for receiving the Materials, Recipient will reimburse Provider [Specify Amount].

8. TERM AND TERMINATION

This Agreement will continue until Recipient notifies Provider in writing of completion of all activities of Recipient and all Third Party Recipients with respect to the Materials and Modifications. Recipient has the right to terminate this Agreement at any time, and Provider has the right to terminate this Agreement if Recipient has materially breached this Agreement and has not cured such breach within sixty (60) days of written notice of such breach from Provider, and in each case Recipient will discontinue within thirty (30) days after notice of termination its use of the Material in its possession.

Upon termination or expiration of this Agreement, any provisions herein which are intended to continue and survive such termination or expiration (including without limitation, Sections 1, 3, 4, 5 and 6) shall survive the termination of this Agreement.

9. MISCELLANEOUS

9.1 This Agreement represents the entire understanding of the parties and supersedes any prior or contemporaneous agreements or understandings between Provider and Recipient with respect to the subject matter hereof. Furthermore, no modification, supplement, or new agreement may be executed, prior to the expiration of this Agreement, between Provider and Recipient with respect to the subject matter hereof, without formal written amendment to this Agreement, signed by both parties.

9.2 If any one or more of the provisions contained in this Agreement shall be held invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such provision had never been contained herein.

9.3 This Agreement may be executed in one or more counterparts. Delivery of an executed counterpart of this Agreement by facsimile or a .pdf data file or other scanned executed counterpart by email shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Each duplicate and counterpart shall be equally admissible in evidence, and each shall fully bind each party who has executed it. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties agree they will have no rights to challenge the use or authenticity of this document based solely on the absence of an original signature.

9.4 This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. Any assignment in violation of this provision shall be null and void.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date first set forth above.

Agreed and Accepted By:

THE CHORDOMA FOUNDATION ("RECIPIENT"):

By: _____

Name: _____

Title: _____

[ENTITY] ("PROVIDER"):

By: _____

Name: _____

Title: _____