MATERIAL TRANSFER AGREEMENT

Academic Institution

 Effective as of the date of last signature (the “Effective Date”), the University of North Dakota, an institution of higher education and an arm of the State of North Dakota, having a place of business at Grand Forks, North Dakota (the “University”), and [Enter Institution's Legal Name], a [Enter Entity Type, i.e. Corporation, L.L.C. etc.], under the laws of the [Enter Either Word State or Word Country] of [Enter State or Country Name], having a place of business at [Enter Address of Recipient] (the “Recipient”), agree that:

**1. Delivery of the Material.** Subject to the terms of this Agreement, the University shall deliver to the Recipient, at the Recipient’s address described in section 1 of attached Exhibit A, the material described below (the “Material”):

 [Enter Description of the Material]

**2. The Recipient’s Use of the Material.**

 2.1 The Recipient expects the following individual (and Recipient employees working under the direct supervision of such individual) to use the Material as provided under this Agreement:

 [Enter Name of Recipient]

 2.2 The Recipient shall use the Material solely for its non-commercial academic and research purposes. The Recipient shall not deliver the Material to any person not employed by the Recipient unless the University has consented, in writing, to such delivery. The Recipient shall furnish the Material only to its employees who have a need to use the Material. The Recipient shall direct each of its employees having access to the Material to use, hold and protect the Material on terms at least as restrictive as those contained in this Agreement. In all publications and other public announcements concerning the Material, the University shall be identified as the source of the Material.

 2.3 No provision of this Agreement grants the Recipient any right under any patent or other intellectual property right in or to the Material, including, without limitation, the right to make any commercial products or processes derived from or with the Material. The Recipient shall obtain a license from the University prior to making any use of the Material other as permitted under this Agreement. The University shall have no obligation to grant any such a license to the Recipient.

2.4 Recipient acknowledges that any export, re-export, transfer or use of the item(s) being received under this agreement is/are subject to U.S. export control laws and regulations. The regulations include, but are not limited to, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR) and regulations administered by the Treasury Department’s Office of Foreign Assets Control (OFAC). Recipient agrees to comply with U.S. export control laws and regulations; obtain the appropriate export license(s) or other authorizations; be solely responsible for any violation of such laws and regulations; and to defend and hold University harmless if any legal action of any nature results from the violation of U.S. export control laws and regulations.

**3. The University’s Use of the Material**. No provision of this Agreement limits, conditions or otherwise affects the University’s right (i) to use the Material, (ii) to deliver the Material to a third party, or (iii) to grant a third party an exclusive or nonexclusive license or other right to the Material.

**4. Third Party’s Rights in the Material.** The parties acknowledge and agree that no provision of this Agreement limits, conditions or otherwise affects the United States of America's or any other third party’s rights and interests in the Material.

**5. Ownership.** The Recipient acknowledges and agrees that the Material shall remain the property of the University. Within ten (10) days after its receipt of a written request, the Recipient (i) shall deliver to the University all materials comprising the Material in its or its employees’, agents’ or representatives’ possession or (ii) shall certify to the University the destruction of all the Material.

**6. No Warranties or Liability.** The Recipient acknowledges its understanding that the Material is experimental in nature. **The Recipient accepts the Material “as is, with all faults.” The Recipient acknowledges that it has not relied upon any statements made by the University concerning the material. The university disclaims all WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, CONCERNING THE MATERIAL, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS AND OTHER RIGHTS. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PECUNIARY, EXPECTANCY OR COMPENSATORY DAMAGES, INCLUDING LOST PROFITS** **OR LOST BUSINESS OPPORTUNITY ARISING OUT THIS AGREEMENT.**

**7. Release.** The Recipient, for itself and its employees and agents, releases the University and its regents, employees, agents and representatives from any claim, suit, action or liability arising out of this Agreement.

**8. General Terms.** This Agreement shall constitute the entire understanding of the parties with respect to the subject matter hereof, and shall supersede all prior agreements and understandings of the parties on such subject matter. This Agreement shall be amended only in a writing duly executed by the parties. No party may assign or delegate any right or duty under this Agreement unless the other party has consented in writing to such assignment or delegation. An assignment or delegation made in violation of this section 8 shall be void and shall not bind the other party. The provisions of sections 2, 6 and 7 shall survive termination or expiration of this Agreement.

 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed by their respective authorized representatives.

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| **University of North Dakota****Center for Innovation** | **University of North Dakota****Vice President of Research** |
|  |  |
| By: |  |  | By: |  |
| Name: | [Grant D. Adkins] | Name: | [Michael Sadler] |
| Title: | [Tech Transfer and Licensing] | Title: | [Export Control Manager] |
|  |  |  |
| Date: |  |  | Date: |  |

|  |  |
| --- | --- |
| **University of North Dakota****Institutional Biosafety Committee****(Biological Materials Only)** | **[Recipient Organization]** **[Department]** |
|  |  |
| By: |  |  | By: |  |
| Name: | [Enter Title] | Name: | [Enter Name] |
| Title: | [Enter Title] | Title: | [Enter Title] |
|  |  |  |
| Date: |  |  | Date: |  |

|  |
| --- |
| **[Recipient Organization]** **[Department]** |
|  |
| By: |  |
| Name: | [Recipient Scientist Name] |
| Title: | [Recipient Scientist Title] |
|  |
| Date: |  |

**EXHIBIT A**

**MATERIAL TRANSFER AGREEMENT SCHEDULE**

**1. The Recipient's Shipping Address:**

[Enter Entity Name]

Attn: [Enter Shipping Contact Name]

[Enter Shipping Address Line 1]

[Enter Shipping Address Line 2]

[Enter City], [Enter State] [Enter Zip Code]

Phone: (     )      -

Fax: (     )      -

Email:

[ ]  Check here, if you desire express shipping. (University will send via common carrier at its discretion, unless you direct otherwise).

Indicate your Express Shipper and Account Number:

Shipper:

Account No.:

Account No.: