Material Transfer Agreement

 Between

|  |  |  |
| --- | --- | --- |
| PROVIDER (“App State”)Appalachian State UniversityDepartment/Office Boone, NC 28607App State Representative: | and | RECIPIENT:Name and Address:RECIPIENT REPRESENTATIVE: |

The Provider and Recipient identified above hereby agree to be bound by the terms set forth in the Exhibit A, and Exhibit B if applicable, to govern the transfer of the Original Material described herein. Each party represents that it has made no changes to the attached Exhibit A or Exhibit B as published by the Association of University Technology Managers and available on their website, except as modified by the checked boxes in Exhibit B.

[ ]  If checked, this Agreement is also subject to additional terms and conditions set forth on the attached Exhibit B. In the event of a conflict between any specific terms or conditions in Exhibit A and Exhibit B, Exhibit B shall govern.

**Exhibit A: Standard Terms and Conditions**

**I. Definitions:**

1. ORIGINAL MATERIAL (description and quantity of the material requested by RECIPIENT): Click here to enter text.
2. MATERIAL: ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES, MODIFICATIONS, associated know-how, data and other information received by RECIPIENT from App State.
3. MODIFICATIONS: Substances created by RECIPIENT which contain/incorporate MATERIAL or are otherwise created, derived or replicated from use of MATERIAL.
4. PROGENY: Unmodified descendant from ORIGINAL MATERIAL, for example virus from virus, cell from cell, organism from organism.
5. UNMODIFIED DERIVATIVES: Substances created by RECIPIENT, which constitute an unmodified functional sub-unit or product expressed by the ORIGINAL MATERIAL.
6. PURPOSE (Describe proposed use for Material; a proposal may be attached):

[ ] Research (Attach proposal describing research)

[ ] Evaluation

[ ] Other\_\_\_\_\_\_\_

1. FIELD (If the PURPOSE is to conduct internal research, then define the field of use):
2. CONFIDENTIAL INFORMATION: Information related to MATERIAL that is not generally known to the public, considered non-releasable without prior approval, and conveyed in written, graphic, oral, or physical form including but not limited to specifications, scientific knowledge, know-how, processes, inventions, techniques, formulae, products, data, materials or other records. CONFIDENTIAL INFORMATION consists of, but is not limited to, any innovative concepts/ideas or trade secrets, disclosure of which outside of the parties hereto would result in irreparable damage to the respective Party. Therefore, due to the sensitive nature of CONFIDENTIAL INFORMATION, dissemination of CONFIDENTIAL INFORMATION shall be restricted in accordance with the provisions of this Agreement.
3. TERM: The TERM of this Agreement shall begin on the Effective Date and continue through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The term may be extended in writing upon mutual agreement of the parties.

In accepting MATERIALS developed and owned by App State, RECIPIENT agrees to the following terms and conditions.

**II. Terms and Conditions:**

1. This Agreement shall be effective and commence on the last signature date below (“Effective Date”).
2. App State and RECIPIENT acknowledge that use of MATERIAL is provided solely for the PURPOSE defined herein, shall be used under the direct control of RECIPIENT REPRESENTATIVE, and shall not be used for any products or processes for profit or for any commercial purposes.
3. App State retains ownership of MATERIAL. App State retains the unrestricted right to distribute MATERIAL to other entities. This Agreement in no way alters any rights the U.S. government may have in MATERIAL.
4. RECIPIENT agrees and represents and warrants that MATERIAL and MODIFICATIONS: (a) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects; (b) will not be transferred to any third party without the prior written consent of App State; and (c) will be used for internal research or evaluation purposes that are not the subject of consulting or licensing obligations of a third party.
5. Except as provided in this Agreement, no express or implied licenses or other rights are provided to RECIPIENT under any patents, patent applications, copyrights, trademarks, trade secrets, or other proprietary rights of App State. In particular, no express or implied licenses or other rights are provided to use MATERIAL or MODIFICATIONS or any related intellectual property rights of App State: (a) in any product; (b) for the purpose of producing any product; or (c) for providing any service in which a product service is sold or otherwise made commercially available.
6. Subject to the confidentiality terms contained in Article 8 herein, RECIPIENT may publish, present, or use results arising out of performance of this Agreement for instructional, research, or publication objectives provided however, that RECIPIENT agrees to disclose to ASU drafts of manuscripts thirty (30) days, and posters and abstracts fifteen (15) days, in advance of submitting such results to a third party reviewer for the purpose of identification and removal of App State confidential information. Further, RECIPIENT agrees to delay publication for an additional sixty (60) days upon request by App State if preparation and filing of a patent application is necessary. RECIPIENT agrees that any publication, presentation or use of such data shall acknowledge support provided by App State.
7. If RECIPIENT makes an invention, whether patentable or not, as a result of its use of MATERIAL, RECIPIENT will promptly inform App State of such invention. Inventor ship shall be determined in accordance with U.S. patent law (if patentable) or by mutual agreement between the parties (if not patentable) taking into account the role and contributions of individuals involved. In the case of a joint invention, RECIPIENT and App State agree to negotiate a joint invention agreement which shall provide, *inter alia*, for appropriate sharing of patent costs, income, and invention management responsibilities. RECIPIENT agrees to give App State a non-exclusive royalty free license for internal use of any invention resulting from use of MATERIAL.

RECIPIENT agrees not to disclose or to use for any purposes other than for the performance of PURPOSE cited herein, any and all MATERIAL or other confidential information disclosed to RECIPIENT under this agreement. The obligation of non-disclosure shall not apply to information which RECIPIENT can demonstrate and document in writing to App State: (a) was in its knowledge or possession prior to disclosure by App State; (b) was public knowledge or becomes public knowledge through no fault of RECIPIENT; (c) was properly provided to RECIPIENT by an independent third party who has no obligation of secrecy to App State; (d) was independently developed by RECIPIENT without reference to INFORMATION from App State.

1. RECIPIENT shall not give or make available MATERIAL to any other person, institution, firm or corporation without the express prior written consent of App State.
2. APP STATE DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR UNDERTAKINGS WITH RESPECT TO UTILITY, EFFICACY, SAFETY, OR FITNESS FOR A PARTICULAR PURPOSE OF MATERIAL, THAT MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS, OR THAT USE OF MATERIAL WILL NOT REQUIRE AN EXPORT CONTROL LICENSE FROM A COGNIZANT AGENCY OF THE U.S. GOVERNMENT.
3. In no event shall App State be liable for any use by RECIPIENT, its employees or agents of the MATERIAL or any loss, claim, damage or liability, of whatsoever kind of nature, which may arise from or in connection with this Agreement or the use, handling, or storage of the MATERIAL. Furthermore, RECIPIENT agrees to indemnify App State and and its trustees, employees, representatives and agents and hold them harmless from any action, claim, or liability, including, without limitation, liability for death, personal injury, or property damage, arising directly or indirectly from RECIPIENT’s possession, testing, screening, distribution or other use of the MATERIAL provided under this Agreement, and from RECIPIENT’s publication or distribution of test reports, data, or other information relating to said MATERIAL. RECIPIENT assumes all risks associated with their use of the MATERIAL.
4. RECIPIENT will use the MATERIAL in compliance with all Laws and regulations applicable to the use, storage and disposition of the MATERIAL. RECIPIENT shall comply with all state and federal laws and regulatory requirements, including but not limited to, the following: NIH guidelines on the use of animals and recombinant DNA, the transfer of human MATERIAL and individual human donor derived information, and the control and export of technical data, computer software, laboratory prototypes and other commodities and technology.
5. MATERIAL is provided at no cost to RECIPIENT, except that RECIPIENT will be responsible for shipping costs of MATERIAL.
6. This Agreement is made subject to all United States laws and regulations which may be enacted or promulgated from time to time concerning the export of products, technical information, computer software, laboratory prototypes and other commodities and technology. It is understood that App State is subject to United States laws and regulations concerning the export of products, technical information, computer software, laboratory prototypes and other commodities and technology (including those implemented by the U.S. Department of Commerce through the Bureau of Industry and Security’s Export Administration Regulations (EAR) (trade and dual use protection); the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) (national security); and the U.S. Treasury Department through its Office of Foreign Assets (OFAC) (trade embargo)), and RECIPIENT shall comply with all United States export control laws and regulations and indemnify App State for any claim that may arise out of RECIPIENT’s lack of compliance with such laws and regulations. The export or deemed export of certain commodities and technical information may require a license or other approval from one or more agencies of the United States government. RECIPIENT will not export any such commodities or technical information without first obtaining necessary governmental licenses or other approvals. App State expressly disclaims any representation, certification or warranty that no governmental licenses or other approvals are required for export.
7. Either Party may terminate this Agreement prior to the expiration of the TERM by giving thirty (30) days written notice to the other Party. The obligations of RECIPIENT shall survive termination. Upon termination, RECIPIENT shall return MATERIAL to App State at RECIPIENT’s expense or destroy and certify in writing the destruction of the all MATERIAL in RECIPIENT’s possession to App State.
8. This Agreement shall be governed by the laws of the State of North Carolina. Any dispute hereunder shall be adjudicated in the state or federal courts located within the State of North Carolina.
9. The failure of App State to require the performance by RECIPIENT of any provision of this Agreement shall in no way affect the rights of App State to enforce the same in the future, nor shall the waiver by App State of any breach, violation, or threatened breach or violation of any provision of the Agreement be construed as a waiver of any subsequent breach, violation, or threatened breach or violation of this Agreement by RECIPIENT. The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other beach of the same or any other term.
10. In the event any provision of this Agreement is found by any court or tribunal to be partially or wholly invalid or unenforceable, the remainder of the Agreement nevertheless shall be enforceable and binding, and the invalid or unenforceable provision shall be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or, if such provision cannot under any circumstances be so modified or restricted, it shall be excised from the Agreement without affecting the validity or enforceability of any remaining provisions. The parties agree that any modification, restriction or excision may be accomplished by their mutual written agreement.
11. The undersigned, by signing this Agreement, represents that he/she is authorized on behalf of RECIPIENT to enter into this Agreement for and on behalf of the RECIPIENT.
12. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which constitute one and the same instrument. Facsimile or electronic versions of this Agreement shall have the same legal effect as originals, and all of which, when fully executed, shall constitute one and the same instrument.
13. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not included herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

**III. Signatures:**

In Witness Thereof, this AGREEMENT entered the day and the month indicated assigned below, App State and RECIPIENT hereby accept the terms and conditions of this AGREEMENT.

**Appalachian State University:** **Recipient:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fill-in with appropriate name Signature

Office of Research

 Print Name:

 Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**Read and Understood: Read and Understood:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

App State Representative Recipient Representative

**Exhibit B: Optional Terms**

If checked, the following terms apply to this Agreement:

[ ]  This Agreement shall terminate on \_\_\_\_\_\_\_\_\_\_\_\_ . Upon termination, the Recipient will either destroy any remaining Material or return it to the Provider, as directed by the Provider.

[ ]  A transmittal fee of ­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be paid by Recipient to ASU, for preparation and distribution costs.

[ ]  The Recipient intends to use the Material for purposes including but not limited to those described below:

[ ]  To the extent permitted by law, Recipient agrees to treat in confidence, for a period of three (3) years from the date of its disclosure, any of App State’s written information about the Material that is stamped “Confidential” (“Confidential Information”). Any oral disclosures from App State to Recipient shall be identified as being Confidential Information by notice delivered to Recipient within ten (10) days after the date of the oral disclosure. Confidential Information does not include information that:

1. Has been published or is otherwise publicly available at the time of disclosure to the Recipient;
2. Was in the possession of or was readily available to Recipient without being subject to a confidentiality obligation from another source prior to the disclosure;
3. Has become publicly known, by publication or otherwise, not due to any unauthorized act of the Recipient;
4. Recipient can demonstrate it developed independently, or acquired without reference to or reliance upon Confidential Information; or

[ ]  Additional binding terms: