**Biological Material Transfer Agreement**

This Agreement, effective as of the last date set forth below, is by and between <Recipient name>, having a place of business at <street address, city, state zip> (“RECIPIENT”), and Iowa State University of Science and Technology (“ISU”), with offices at 1138 Pearson Hall, Ames, IA 50011-2207. This Agreement sets forth the conditions under which ISU is willing to provide RECIPIENT with a certain Biological Sample, as defined below, under the control of Dr. <name> (“Investigator”) at ISU.

1. DEFINITIONS. The following definitions shall apply to this Agreement:

1.1 **Biological Sample**: <describe>, and all information related to the Material disclosed by ISU to RECIPIENT.

1.2 **Progeny**: Unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism, and any immediate or remote progeny or descendant from organisms or cell lines containing the same genetic mutations or lesions as Material.

1.3 **Unmodified Derivatives**: Substances created by RECIPIENT that constitute an unmodified functional sub-unit or product expressed by the Biological Sample. Some examples include, but are not limited to: subclones of unmodified cell lines, purified or fractionated sub-sets of Material, proteins expressed by DNA/RNA supplied by ISU, monoclonal antibodies secreted by a hybridoma cell line, or sub-sets of Material such as novel plasmids or vectors.

1.4 **Material**: The Biological Sample plus Progeny and Unmodified Derivatives.

1.5 **Modifications**: Substances created by RECIPIENT or results generated by RECIPIENT that contain or incorporate Material.

1.6 **Commercial Purposes**: The sale, lease, license or other transfer of Material or Modifications to a for-profit organization. Commercial Purposes also includes uses of Material or Modifications by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license or transfer of Material or Modifications to a for-profit organization.

1. Optional: RECIPIENT acknowledges that ISU created the Materials using government/commodity /industry/third party university funding (National Institutes of Health … ) funds and, therefore, the Materials are being made available subject to pre-existing rights and requirements of the government. Subject to these pre-existing rights and obligations, ISU owns Material and Material contained, included or incorporated in Modifications. RECIPIENT shall own substances created and results generated by it from its use of Material or Modifications, to the extent the substances or results are not Material or ISU’s portion of Modifications.
2. RECIPIENT shall use Material or Modifications only for teaching and academic or internal research and NOT for Commercial Purposes. RECIPIENT shall use Material or Modifications only in its laboratories and only by laboratory personnel under its immediate and direct control. RECIPIENT shall not transfer Material or Modifications to others without ISU’s prior written permission.
3. RECIPIENT shall receive, handle, store, use, transport and dispose of Material or Modifications in compliance with all applicable laws, regulations and guidelines, and in accordance with safe and prudent practices. RECIPIENT shall not use Material or Modifications in human subjects or clinical trials, or for diagnostic purposes involving human subjects. RECIPIENT acknowledges that it has adequate systems, procedures and personnel to review and oversee arrangements for the receipt, handling, storage, use, transport and disposal of experimental materials of the nature of Material or Modifications and that it will ensure that all persons involved in receiving, handling, storing, using, transporting or disposing of Material or Modifications are adequately qualified by training and experience to do so safely and legally.
4. Should any of the Biological Sample be identified as “confidential” or “proprietary” by ISU, RECIPIENT agrees to use efforts at least as stringent as it follows with respect to its own confidential or proprietary information to preserve its confidentiality during and for five (5) years after expiration or termination of this Agreement. Confidentiality obligations shall not apply to information that:

 (a) when disclosed to RECIPIENT, was general public knowledge;

(b) after being disclosed to RECIPIENT, is published or otherwise disseminated to the public other than through RECIPIENT’s unauthorized disclosures;

(c) when disclosed to RECIPIENT, is established by RECIPIENT documentation that it was already in its possession;

(d) is established by RECIPIENT documentation that it was independently developed by RECIPIENT; or

(e) is required by law to be disclosed, provided RECIPIENT promptly informs ISU of the request for the information so that ISU might challenge the request should it so choose.

1. Material is or may be the subject of a patent application. No express or implied license or other right is provided RECIPIENT for any purpose under any rights ISU has now or may have in the future to a patent, patent application, trade secret or other proprietary right to Material or Modifications.
2. RECIPIENT agrees to obtain a license from ISU or its representative before pursuing Commercial Purposes. Neither ISU nor its representative is obligated to grant RECIPIENT a commercial license to Material or Modifications. ISU or its representative may grant exclusive or non-exclusive licenses to others, or sell or assign all or part of the rights in Material to third parties.
3. If RECIPIENT’s research using Material or Modifications results in a discovery, invention, new use or product (“Invention”), RECIPIENT agrees to disclose the Invention promptly to ISU or its representative on a confidential basis. Inventorship shall be determined in accordance with United States patent law, if patentable, and by mutual agreement, if not patentable, taking into consideration the role and contribution of individuals involved in the development of the Invention. In the event the parties are determined to be co-inventors, they shall negotiate a fee and/or royalty-bearing license in good faith that reflects their respective contributions and relevant industry standards. If a party is an educational institution, it may use the other party’s Inventions for its internal research purposes without payment of license or royalty fees.
4. RECIPIENT shall acknowledge the source of Material or Modifications in descriptions of experiments or results involving Material or Modifications. However, RECIPIENT shall not otherwise use, authorize or permit the use of the name of ISU or ISU personnel or representatives in connection with any commercial or promotional activities relating to Material or Modifications, or in such a way as to imply any endorsement by ISU or ISU personnel or representatives of RECIPIENT’s use of Material or Modifications, or any product or method of RECIPIENT.
5. RECIPIENT agrees to inform ISU of research results related to Material or Modifications by providing copies of manuscripts describing the results of such research at the time manuscripts are submitted for publication. RECIPIENT agrees not to include ISU’s confidential or proprietary information or patentable inventions in manuscripts.
6. RECIPIENT acknowledges that Material is the experimental product of research that may not have been fully characterized, and accepts Material “AS IS” and entirely at its own risk. ISU MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF MATERIAL OR MODIFICATIONS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT.
7. To the extent permitted by law, RECIPIENT assumes all liability for injuries or damages that may arise from its receipt, use, storage, handling, transport or disposal of Material or Modifications, and agrees to indemnify, defend and hold harmless ISU, its Board of Regents, the State of Iowa, and its representatives, employees and agents from and against any claims, costs, or other liabilities for injuries or damages that may arise as a result of or in connection with RECIPIENT’s receipt, use, storage, handling, transport or disposal of Materials or Modifications.
8. This Agreement shall expire one (1) year [max of 2 years] after the date of the last signature set forth below. Otherwise, either party may terminate this Agreement upon thirty (30) days prior written notice. Upon expiration or termination of this Agreement, RECIPIENT shall destroy or return Material and Modifications.
9. This Agreement reflects the entire understanding regarding the subject matter of the Agreement between the parties, and may only be modified, altered or amended in writing signed by both parties.
10. RECIPIENT may not assign its rights or delegate its duties under this Agreement without ISU’s prior written consent, which consent shall not be unreasonably withheld.
11. Sections 6 - 12 shall survive expiration or termination of this Agreement for six (6) years.
12. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the State of Iowa, without giving effect to its choice of law provisions.

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1. This Agreement may be executed in any number of counterparts, including facsimile or scanned PDF documents. Each such counterpart, facsimile or scanned PDF document shall be deemed an original instrument, and all of which, together, shall constitute one and the same executed Agreement.

**IN WITNESS WHEREOF,** the parties have caused their authorized representatives to execute this Agreement.

**IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY**

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Laura E. Carabillo Date Date

Manager of Industry Contracts ISU Investigator

Office of Sponsored Programs Administration

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515-294-5525

515-294-8000 fax

lec@iastate.edu

RECIPIENT:

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