

MATERIALS TRANSFER AGREEMENT

This Agreement is entered into the ____ day of _____ 200_ by and between _____ at _____ ("Recipient"), and _____ at _____ ("Provider") (the "Parties").

WHEREAS, [Provider] [Recipient] Colorado State University (CSU) is an institution of higher education of the State of Colorado, with a mission that includes education, research, service and economic development, and is engaged in research and service activities in scientific fields of mutual interest to [Company]; and

WHEREAS, Recipient desires to use, and Provider is willing to supply, the following Materials under the terms and conditions as set forth below; and

WHEREAS, the Provider owns and/or has rights to such Materials;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. As used herein, the following defined terms shall have the meaning described below. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural.

"Confidential Information" shall mean any information which belongs to a Party to this Agreement, has value to that Party, and has generally been considered and treated by the Party as confidential and/or proprietary prior to the time of disclosure.

"Invention" shall mean any invention or patentable idea conceived, discovered or reduced to practice which involves the Materials.

"Materials" shall mean: (a) the things, substances and other materials described in Exhibit A, (b) any progeny (i.e., unmodified descendent from the Materials), (c) any unmodified derivative (i.e., substance created by the Recipient that is an unmodified functional subunit or a product expressed by the Materials), or (d) any reverse-engineered product of the Materials.

"Products" shall mean: (a) any tangible item (e.g., device or assay) developed by Recipient which contains and/or incorporates the Materials, or (b) any modified derivative of the Materials created by Recipient.

2. Provision of Materials Identified in Exhibit A. Provider agrees to supply to Recipient the Materials solely for the scope of use identified in Exhibit A, within ____ days after the execution of this Agreement and at such other times during the term hereof as may be agreed by the Parties. Provider will deliver to Recipient a quantity of Materials as specified in Exhibit A, or, if not so specified, the quantity shall be determined by Provider, within a reasonable period of time after execution of this Agreement by both parties. Materials will be provided to _____ (Recipient's Principal Investigator) from _____ (Provider's Principal Investigator).

3. Title to Materials. Provider shall retain all title and interest in and to the Materials, including any Materials incorporated into any Product developed or created by Recipient within the scope of use identified in Exhibit A; Recipient shall not represent to any person that it is the owner of the Materials. Recipient shall own any Product created by Recipient containing and/or incorporating the Materials or any modified derivative of the Materials, provided however that Provider retains ownership of any Materials incorporated into such Product.

4. Use of Materials.

4.1 Scope of Use. The Materials will be used only by Recipient's Principal Investigator, or by individuals working directly under Recipient's Principal Investigator's supervision, at Recipient's facilities for the scope of use identified in Exhibit A. The Materials will not be transferred, distributed or released to any other person or entity without first obtaining Provider's prior written consent.

4.2 Protocol. The Materials are only made available to Recipient for investigational use in laboratory animals or in *in vitro* experiments and will not be used in humans or in contact with any cells or other materials to be infused into humans. Recipient shall use the Materials in compliance with all applicable laws and regulations, including, without limitation, those relating to the handling and containment of the Materials and use in laboratory animals.

4.3 No Commercial Use. Recipient shall use the Materials and Products solely for research purposes and not for any commercial purpose. Nothing in this Agreement shall be construed as granting Recipient a license to use the Materials or Products for any other purpose.

5. Confidential Information.

5.1 No Disclosure. The Materials and any information related to the Materials provided by the Provider are the Confidential Information of Provider. Any other information supplied by a party shall be clearly identified as "Confidential" or "Proprietary" when disclosed to the Recipient in order to be considered Confidential Information (or, if initially disclosed orally or visually, shall be identified as such in a written memorandum within 30 days of such disclosure). A party receiving Confidential Information ("Receiving Party") agrees that it shall use all due care not to disclose to any third party any of the Confidential Information of the other party ("Disclosing Party") for a period of five (5) years following the termination of this Agreement. Notwithstanding the foregoing, the confidentiality obligations of a party shall not apply with respect to:

- (a) information that is or becomes, through no fault of Receiving Party, part of the public domain; or
- (b) information that is rightfully in Receiving Party's possession before receipt from Disclosing Party as evidenced by competent written records; or
- (c) information that is received from a third party without breach of confidentiality obligations to Disclosing Party; or
- (d) information that is independently developed by an employee or consultant of Receiving Party who has not had the particular information disclosed to him/her as evidenced by competent written records.

If the Receiving Party is required by law, court order or government agency to disclose the Disclosing Party's Confidential Information, the Receiving Party shall give the Disclosing Party reasonable prior written notice of the requirement and agrees to cooperate with the Disclosing Party to seek a protective order or other confidential treatment.

5.2 Research Information. Recipient shall, in accordance with established Provider's practices, keep complete accurate and authentic accounts, notes, data and records of the research performed using the Materials. Such accounts, notes, data and records shall be kept separate and segregated from Recipient's other personal property, including any work Recipient is doing for any other party. Provider shall have the right to inspect and make copies of such accounts, notes, data and records at reasonable times. During the term of the Agreement, Provider's representatives may consult informally with the Recipient's Principal Investigator regarding the use of the Materials, both personally and by telephone. Recipient shall furnish Provider with semi-annual reports detailing the results of research using the Materials promptly at the end of each six (6) month period. Research information shall be communicated under the confidentiality obligations set forth in Paragraph 4.1 above.

5.3 Publications and Patent Filings. Each party agrees not to use or refer to this Agreement in any promotional activity, or use the names or marks of the other without express written permission of the other party. Recipient may present or publish findings of research relating to the use of Materials, but shall provide a copy of any proposed presentation or publication to Provider for its confidential review at least forty-five (45) days prior to any such presentation or publication. At Provider's reasonable request, Recipient will, for a reasonable period up to sixty (60) days from initial delivery to Provider, delay revealing any patentable subject matter in the disclosure in order to permit the filing of patent applications. Recipient shall provide appropriate acknowledgement of the source of the Materials in all publications. No disclosure of the Materials in a patent application will be made by Recipient without first giving Provider an opportunity of forty-five (45) days to review the application and to supply comments. Provider may require Recipient to include an acknowledgement of the Provider's role in any such publication.

6. Inventions. Recipient agrees to notify Provider in a timely manner of any Inventions. All rights and title to Inventions developed under this Agreement solely by Provider shall belong to Provider. All rights and title to Inventions developed under this Agreement solely by Recipient shall belong to Recipient. Except as otherwise provided in any separate research or service agreement executed by the Parties, all rights and title to Inventions developed under this Agreement jointly by Provider and Recipient shall belong to the parties jointly. The rights granted herein are at all times subject to any rights of individual inventors pursuant to the pre-existing agreements, policies and practices of the Party by whom they are employed.

7. Disclaimer of Warranties. Any Materials delivered pursuant to this Agreement may be experimental in nature and may have hazardous properties. Any Materials delivered pursuant to this Agreement is provided AS IS AND WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY THIRD PARTY PROPRIETARY RIGHTS, OR ANY OTHER WARRANTY EXPRESS OR IMPLIED.

NEITHER PARTY MAKES ANY WARRANTY OR REPRESENTATION OTHER THAN AS EXPRESSLY PROVIDED FOR ABOVE. PROVIDER SHALL NOT BE LIABLE FOR ANY USE OF THE MATERIALS BY RECIPIENT NOR FOR ANY LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND OR NATURE WHICH MAY ARISE FROM OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE, HANDLING OR STORAGE OF THE MATERIALS.

8. Damage Limitation. The Recipient agrees to use the Material in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA. In no event shall Provider be liable for indirect, special, incidental, exemplary or consequential damages including, without limitation, lost profits or business interruption related to this Agreement, resulting from Recipient's use of the Materials or arising from any cause of action whatsoever.

9. Term and Termination.

9.1 Term. This Agreement shall be effective upon the date first written above and shall continue for one (1) year after such date. This Agreement may be extended beyond such initial term upon the mutual written agreement of the Parties.

9.2 Termination. Either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

9.3 Effect of Termination. Upon the written request of Provider, Recipient shall return all remaining Materials to Provider or shall deliver written notice certifying that all remaining Materials have been destroyed. Termination shall not relieve a Party of its obligations arising prior to the effective termination date. The parties' obligations under Sections 4, 5, 6 and 7 shall survive the expiration or termination of this Agreement.

10. Miscellaneous.

10.1 Entire Agreement. The Parties agree that this Agreement contains the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all previous communications, proposals, representations and agreements, whether oral or written, relating to the subject matter hereof. This Agreement may only be amended or modified by a writing signed by both Parties. The Parties hereby represent and warrant that the officials signing this Agreement have the power to do so on behalf of the Parties. The Principal Investigator, while not a party to this Agreement, hereby acknowledges that he/she has read the Agreement and understands his/her obligations as an employee of the respective Party hereunder.

10.2 Successor and Assigns. Neither Party shall assign this Agreement or any rights hereunder without the prior written consent of the other Party; provided, however, that no consent shall be required for any assignment in connection with the sale of all or substantially all of the business of a Party to which this agreement relates. Subject to the foregoing, this

Agreement shall be binding upon and inure the benefit of the Parties hereto and their respective successor and assigns.

10.3 Governing Law. This Agreement shall be governed by the laws of the State of Colorado and no effect shall be given to the principles of conflicts of law. Each section shall be independent and separable from all other sections, and the invalidity of a section shall not affect the enforceability of any of the other sections.

10.4 Headings. The headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the parties.

Provider: _____ Recipient: _____

By: _____ By: _____

Typed Name: _____ Typed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Provider's Principal Investigator

Recipient's Principal Investigator

By: _____ By: _____

Typed Name: _____ Typed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT A

Description of Materials:

Scope of Use of Materials:

[Note: If the scope of use does not include the right to modify or analyze the Materials, include the following clause: Recipient agrees not to analyze the chemical composition of the Materials, modify, disassemble or otherwise reverse engineer the Materials.]

Payment for Materials:

Materials to be sent to:

SIGNED:

Provider: _____ Recipient: _____

By: _____ By: _____

Typed Name: _____ Typed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Provider's Principal Investigator

Recipient's Principal Investigator

By: _____ By: _____

Typed Name: _____ Typed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____