

MATERIAL TRANSFER AGREEMENT

To protect North Dakota State University proprietary interest with respect to the material provided, this AGREEMENT is made between NORTH DAKOTA STATE UNIVERSITY, a land-grant institution of higher learning located in Fargo, North Dakota (hereinafter referred to as NDSU), and _____, located at _____ (hereinafter referred to as RECIPIENT). WHEREAS, RECIPIENT has requested the following: _____ (hereinafter "MATERIAL"); and WHEREAS, NDSU is willing to supply the MATERIAL to the RECIPIENT for the purposes as stated below; THEREFORE, NDSU and RECIPIENT hereby mutually agree to the following terms and conditions:

1. NDSU will provide to RECIPIENT the MATERIAL for the following purpose and use ("USE").

2. RECIPIENT is specifically prohibited from:

3. RECIPIENT agrees to keep complete records relating to the USE of the MATERIAL and to provide a final written report to NDSU within sixty (60) days of completion of the USE. All such records shall be available for inspection by NDSU at reasonable times provided that the RECIPIENT is not required to disclose confidential information used in evaluation of the MATERIAL.

4. RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL: a) will not be used in human subjects, clinical trials, or for diagnostic purposes involving human subjects without the written consent of NDSU; b) is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST'S laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and c) will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of NDSU; d) the RECIPIENT and the RECIPIENT SCIENTIST agree to refer to NDSU any request for the MATERIALS from anyone other than those persons working under the RECIPIENT SCIENTIST'S direct supervision.

5. RECIPIENT will not provide any MATERIALS to any third party. RECIPIENT will not send any MATERIALS outside of the United States.

6. RECIPIENT and/or the RECIPIENT SCIENTIST may not provide modifications for commercial purposes without written consent from NDSU. It is recognized by the RECIPIENT that such commercial purposes may require a commercial license from NDSU and NDSU has no obligation to grant a commercial license to its ownership interest in the MATERIALS, incorporated in the modifications.

7. RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent or plant variety protection application. No express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets, or other proprietary rights of NDSU, including any altered forms of the MATERIAL made by NDSU. In particular, no express or implied licenses or other rights are provided to use the material modifications, or any related patents or plant variety protection of NDSU for commercial purposes.

8. If the RECIPIENT desires to use or license the MATERIAL or modifications for commercial purposes, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with NDSU to establish the terms of a commercial license. It is understood by the RECIPIENT that NDSU shall have no obligation to grant such a license to the RECIPIENT and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

9. Any MATERIAL delivered pursuant to this AGREEMENT is understood to be experimental in nature and may have hazardous properties. The MATERIAL is provided "AS IS" and NDSU MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, including NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS.

10. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage, or disposal of the MATERIAL. NDSU will not be liable to the RECIPIENT for any loss, claim, or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of NDSU.

11. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including, but not limited to, those relating to:

12. The MATERIALS will be used solely for the USE stated and will not be used for any other USE other than that described. Upon completion of your USE, any remaining MATERIALS must be returned to NDSU.

13. Each party agrees not to use or refer to this AGREEMENT in any promotional activity, or use the names or trademarks of the other without express, written permission.

14. The MATERIAL is provided at no charge. RECIPIENT shall be responsible for the following expenses:

15. This AGREEMENT shall be interpreted according to the laws of the State of North Dakota.

16. This AGREEMENT constitutes the entire AGREEMENT between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this AGREEMENT. To confirm agreement with the above terms, please sign and date the AGREEMENT. Return both originals to NDSU. One fully executed copy will be returned to you for your files. The MATERIALS will be sent to you following receipt of this signed AGREEMENT and approval by an authorized representative of NDSU.

AGREED BY:

NORTH DAKOTA STATE UNIVERSITY

Signature
Dr. R. Craig Schnell, Ph.D.
Vice President for Academic Affairs

Date:

RECIPIENT SCIENTIST

Signature

Name and Title:

Date:

RECIPIENT

Signature

Name and Title:

Date: