**MATERIAL TRANSFER AGREEMENT**

This Agreement is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“Recipient”), having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(the “Facility”) and Bowling Green State University, an institution of higher education and instrumentality of the State of Ohio, established and existing under Chapter 3341 of the Ohio Revised Code (“Provider”). This Agreement shall govern the conditions of transfer by Provider to Recipient of certain materials (the “Materials”) described and identified as follows:

The Materials include all samples provided to Recipient and any related documentation. Provider retains full ownership of the Materials, which are provided to Recipient solely for use by Recipient in the Facility in accordance with this Agreement.

**A. Use of Materials**. Recipient agrees:

1. To use the Materials for the sole purpose of evaluating the Materials to determine Recipient’s interest in licensing the Materials from Provider under a separate agreement. Recipient will not use the Materials for any other purpose, whether commercial or non-commercial.

2. To use the Materials only in the Facility, and only by personnel under Recipient’s direct and immediate control.

3. Not to use the Materials as the basis for a commercial product or service, reverse engineer the Materials, or adapt the Materials for any use not specified in this Agreement, without Provider’s prior express written consent.

4. Not to use the Materials in connection with life support systems, human implantation, medical devices, nuclear systems, weapons, aviation, mass transit, or any application where failure or malfunction could lead to possible loss of life or catastrophic property damage, without Provider’s prior express written consent.

5. To receive, handle, store, use, and dispose of the Materials in compliance with all applicable laws, regulations and guidelines, and in accordance with safe and prudent practices.

6. To have and maintain adequate systems, procedures and personnel to review and oversee arrangements for the receipt, handling, storage, use and disposal of the Materials.

7. To ensure that all persons involved in receiving, handling, storing, using or disposing of the Materials are adequately qualified, by training and experience, to do so safely and legally.

**B. No Further Transfer of Materials**. Recipient is strictly prohibited from transferring the Materials to any third party or to any person outside the Facility without Provider’s prior express written consent.

**C. Recipient’s Compliance with Laws.**

1. The Materials may be subject to regulation by United States government. Recipient agrees to comply with all applicable United States laws and regulations, including laws and regulations controlling the export of goods, technology, software, and services (“Export Control Laws”). Applicable regulations include, without limitation, the International Traffic in Arms Regulations, the Export Administration Regulations, and the regulations administered by the Office of Foreign Assets Control at the U.S. Department of the Treasury. The transfer of goods, technology, software, or services, including technical data, whether within or outside the U.S., to a foreign person, may require a license from the pertinent agency of the United States Government and/or written assurances by Recipient to such agency. Recipient acknowledges that it will take all necessary steps to comply with export regulations, including obtaining export licenses, if necessary

2. Recipient will be solely responsible for any violation by Recipient of any laws, including Export Control Laws, and will hold Provider harmless if any legal action of any nature results from the violation.

3. Recipient represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to Export Control Laws.

**D. No Representations or Warranties.**

1. Recipient understands and agrees that the Materials are experimental products of research that may not be fully characterized. Recipient agrees to accept and use the Materials as-is, at Recipient’s sole risk, and without reliance on any statement by or on behalf of Provider about the Materials.

2. For avoidance of doubt, Recipient agrees that it has not relied on any information or representation as to:

a. the composition, characterization, purity, stability, safety or utility of the Materials;

b. the applicability, efficacy or safety of any method of preparing, handling, storing, using or disposing of the Materials;

c. claims by others of intellectual or other property rights in the Materials or in any such method.

3. Provider makes no warranty as to the Materials. Provider disclaims all warranties, express or implied, including warranties of merchantability and of fitness for any particular purpose.

**E. Limitation on Liability for Damages.** Provider will not be liable for any of the following:

1. Indirect or consequential damages attributable in any way to the subject matter of this Agreement, whether or not Recipient had actual or constructive notice of the potential for such damages.

2. Direct damages attributable in any way to the subject matter of this Agreement that exceed the amount of any payment that Recipient made to Provider under this Agreement.

3. Failure to deliver or delays caused by acts of God, labor or transportation difficulties, laws, government regulations or requests, or any other cause beyond Provider’s control.

**F. Indemnification by Recipient.** To the fullest extent permitted by law, Recipient will indemnify Provider and hold Provider harmless against any claims, costs, or other liabilities that may arise because of Recipient’s possession and use of the Materials.

**G. No Use of Provider’s Name.** Recipient will not use, or authorize or permit the use, of Provider’s name in connection with any commercial or promotional activity, or in such a way as to imply any endorsement by Provider.

**H. Provider’s Rights to the Materials.** Provider’s transfer of the Materials to Recipient does not constitute any grant or license to Recipient, under any legal rights now or later held by Provider, other than as stated in this Agreement. Provider retains all title and interest in and to the Materials and related documentation, including all intellectual property rights. The provision of the Materials to Recipient does not alter any existing right to the Materials. Recipient will not reverse engineer the Materials to circumvent Provider’s rights or to avoid the need to obtain a license from Provider.

**I. Training.** This Agreement does not include any training by Provider. If Recipient wishes to receive training, it will be the subject of a separate agreement.

**J. Commencement, Term and Termination, and Return of Materials.**

1. This Agreement will become effective on the date when the last party to sign has executed it and will expire \_\_\_\_\_\_\_\_\_\_\_\_ months from its effective date.

2. If Recipient is in default in the performance of any material obligation under this Agreement, and does not remedy the default to Provider’s satisfaction within thirty (30) days after Provider gives notice of the default, Provider may terminate this Agreement by written notice.

3. Within thirty (30) days of the termination or expiration of this Agreement, Recipient shall return all Materials to Provider, unless the parties have executed a license with respect to the Materials.

**K. Entire Agreement; Amendment; Severability; Waiver.** This Agreement contains the entire agreement of the parties. It supersedes any prior oral or written understanding related to its subject matter. Any amendment must be in a writing signed by both parties. If a court of competent jurisdiction finds any provision to be unenforceable, it may modify that provision to the extent necessary to render it enforceable or sever that provision from the Agreement, and no other provision will be affected by that change. Provider’s waiver of any term or condition of this Agreement in any instance is not a waiver of that term or condition in the future, or of any subsequent breach.

**L. Applicable Law and Jurisdiction.** This Agreement is governed by the law of the State of Ohio without regard to choice of law and conflicts of law principles. Any dispute arising under or relating to this Agreement will be decided by an Ohio court.

FOR PROVIDER:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Michael Ogawa, Ph.D.  Vice President for Research  and Economic Engagement  Bowling Green State University  Bowling Green, OH 43403  Phone: (419) 372-2481  e-mail: ospr@bgsu.edu | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

FOR RECIPIENT:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |