

INSTITUTIONAL MATERIAL TRANSFER AGREEMENT

Between

Provider: EAST CAROLINA UNIVERSITY (“ECU”), a public university and constituent of the University of North Carolina, with offices located at 209 East 5th Street, Greenville NC, 27858

And

Recipient: Institution’s Name and address

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 ECU.
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): *Click here to enter text*
 - Research (Attach proposal describing research)
 - Evaluation
 - Other _____
7. FIELD (If the PURPOSE is to conduct internal research, then define the field of use or research): *Click here to enter text*
8. 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.
9. TERM: The TERM of this Agreement shall be for _____ days/months/years from the Effective Date.

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

II. Terms and Conditions:

10. This Agreement shall be effective and commence on the last signature date below (“Effective Date”).
11. ECU 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 making or commercial purposes.
12. ECU retains ownership of MATERIAL. ECU 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.
13. 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 PROVIDER; 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.

14. 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 ECU. In particular, no express or implied licenses or other rights are provided to use MATERIAL or MODIFICATIONS or any related intellectual property rights of ECU: (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.
15. 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 ECU 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 ECU confidential information. Further, RECIPIENT agrees to delay publication for an additional sixty (60) days upon request by ECU 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 ECU.
16. If RECIPIENT makes an invention, whether patentable or not, as a result of its use of MATERIAL, RECIPIENT will promptly inform ECU 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 ECU 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 ECU a non-exclusive royalty free license for internal use of any invention resulting from use of MATERIAL.
17. 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 ECU: (a) was in its knowledge or possession prior to disclosure by ECU; (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 the ECU; (d) was independently developed by RECIPIENT without reference to INFORMATION from ECU; or (e) is disclosed under a valid court order or by law provided RECIPIENT provides written notice to ECU of such obligation prior to any such disclosure.
18. ECU DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR UNDERTAKINGS WITH RESPECT TO UTILITY, EFFICACY, SAFETY, OR FITNESS FOR A PARTICULAR PURPOSE OF CONFIDENTIAL INFORMATION, THAT INFORMATION WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS, OR THAT USE OF INFORMATION WILL NOT REQUIRE AN EXPORT CONTROL LICENSE FROM A COGNIZANT AGENCY OF THE U.S. GOVERNMENT.
19. In no event shall ECU 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 ECU and any of its employees and hold it and 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.
20. RECIPIENT agrees to comply with all state and federal laws and regulatory requirements, including those applicable to the use, storage and disposition of MATERIAL, 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.
21. MATERIAL is provided at no cost to RECIPIENT, except that at the discretion of ECU, RECIPIENT will be responsible for shipping costs of MATERIAL.
22. 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 ECU 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 ECU's obligations under this Agreement are contingent on RECIPIENT's compliance with United States export control 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. ECU expressly disclaims any representation, certification or warranty that no governmental licenses or other approvals are required for export or that, if required, they will be.

23. To the extent that use of MATERIAL is necessary for joint research between ECU and RECIPIENT, this Agreement shall be considered a Joint Research Agreement as defined under the CREATE Act, 35 U.S.C. Section 103(c). Intellectual Property made in performance of activities described hereunder in the FIELD shall be deemed made as result of activities undertaken within the scope of this Agreement and subject to the CREATE Act.
24. The TERM may be extended upon mutual written agreement of ECU and RECIPIENT. Either party may terminate this Agreement prior to the expiration of the TERM by giving thirty (30) days written notice. The obligations of RECIPIENT shall survive termination. RECIPIENT shall return MATERIAL to ECU or destroy and certify to ECU the destruction of all MATERIAL in RECIPIENT's possession upon the expiration of this Agreement.
25. This Agreement is entered into in the State of North Carolina and shall be interpreted in accordance with and its performance governed by the laws of the State of North Carolina and the United States of America.
26. The failure of ECU to require the performance by RECIPIENT of any provision of this Agreement shall in no way affect the rights of ECU to enforce the same in the future, nor shall the waiver by ECU 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.
27. 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.
28. ECU and RECIPIENT agree that a copy of the original signature (including electronic copy) may be used for any and all purposes for which the original signature may have been used.

III. Signatures:

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

East Carolina University:

 Artie Carlyle Rogers, PhD
 Director
 Licensing and Commercialization
 :

 Date

Recipient:

 Authorized Signatory
 Print Name
 Title:

 Date

Read and Understood:

 ECU Representative
 Name
 Title

Read and Understood:

 Recipient Representative
 Name
 Title