

Biological Material Transfer Agreement

This Agreement effective as of the last signature date below is between <company name> and its Affiliates having a place of business at <street address, city, state zip> (“Company”), and Iowa State University Research Foundation (“ISURF”) having an address at 310 lab of Mechanics, Ames, IA 50011-2131. This Agreement shall govern the conditions of disclosure by ISURF to Company of certain biological materials identified below (Materials) under the control of Dr. <name> (“Investigator”) at Iowa State University (“University”).

ISURF, as designated patent management organization for the University, holds, or may hold, a proprietary interest relating to the Materials by assignment. It is ISURF’s understanding that the Investigator may provide to Company a sample of the below identified Biological Sample. Company agrees to receive the Biological Sample subject to the following terms and conditions:

- A. DEFINITIONS. The following definitions shall apply to this Agreement:
1. Biological Sample: <describe>
 2. Progeny: Unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism.
 3. Unmodified Derivatives: Substances created by Company 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 the Materials, proteins expressed by DNA/RNA supplied by ISURF, monoclonal antibodies secreted by a hybridoma cell line, or sub-sets of the Materials such as novel plasmids or vectors.
 4. Material(s): The Biological Sample plus Progeny and Unmodified Derivatives.
 5. Modifications: Substances created by Company that contain or incorporate the Materials.
 6. Commercial Purposes: The sale, lease, license, or other transfer of the Materials or Modifications to a for-profit organization. Commercial Purposes shall also include uses of the Materials or Modifications by any organization, including Company, 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 the Materials or Modifications to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the Materials or Modifications for Commercial Purposes per se, unless any of the above conditions of this definition are met.
 7. Affiliate: Any corporation, firm, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with either of the parties.
 8. Information: Results of any study of the Materials or information relating to the Materials received by Company from ISURF or the Investigator.

B. OWNERSHIP and USE OF MATERIALS.

1. All Information and Materials, including any Materials contained or incorporated in Modifications, supplied by ISURF or Investigator shall be deemed to belong to ISURF and to have been disclosed or provided to Company in confidence. Except as may be authorized in advance in writing by ISURF, Company shall not transfer Materials or Modifications to any others (except to its employees who are bound to Company by like obligations conditioning and restricting access, use, and continued use of Materials). Company agrees to exert its best efforts to preserve the confidential status of the Materials and Information following procedures with regard thereto at least as stringent as it follows with respect to its own proprietary information. These confidentiality obligations shall not apply to any information that:

- (a) at the time it was disclosed was in the general public knowledge;
- (b) after being disclosed is published or otherwise disseminated to the public other than through the Company's unauthorized disclosures;
- (c) can be shown to have been in Company's possession by documentation existing at the time the information was disclosed;
- (d) can be shown by documentation to have been independently developed by Company; or
- (e) with respect to the Information other than the Materials, five (5) years have elapsed from the later of the date of this Agreement or the disclosure of the Information to Company.

2. Company shall receive and use the Materials for the sole purpose of research and evaluation and NOT for any Commercial Purposes. The Materials will be used only in Company laboratories and only by laboratory personnel under Company's immediate and direct control. Company shall 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. Company acknowledges that it has adequate systems, procedures and personnel to review and oversee arrangements for the receipt, handling, storage, use and disposal of experimental materials of the nature of Materials and that it will ensure that all persons involved in receiving, handling storing, using or disposing of Materials are adequately qualified by training and experience to do so safely and legally.

3. Company agrees *<insert any specific prohibited activity pertinent to the materials being transferred, such as: that the gene sequence of the Material will not be entered into any Company gene library for use in gene screening for third parties>*;

4. Company agrees that the Information will not be used by Company or its employees or agents as the basis for any patent application disclosing or claiming any of the same without ISURF's written consent. If the Company's research involving the Material results in an invention or Modification that may be commercially useful, Company may file patent applications claiming inventions made solely by Company through the use of the Material but agrees to notify ISURF and Investigator upon filing a patent application claiming Modifications or methods of manufacture or use(s) of the Material.

5. Company acknowledges that the Materials are or may be the subject of a patent application. The furnishing of Materials to Company shall not constitute any implied or expressed license to Company under any legal rights now or later held by ISURF. The provision of the Material to Company shall not alter any pre-existing right of ISURF to the Materials. It is recognized by Company that any Commercial Purposes may require a commercial license from ISURF and ISURF has no obligation to grant a commercial license to its ownership interest in Materials incorporated in any Modifications.

6. Company shall acknowledge the source of Materials in any descriptions of experiments and/or results involving Materials. However, neither Company nor its personnel will otherwise use, or authorize or permit the use of, the name of ISURF, University, or any of their personnel in connection with any commercial or promotional activities relating to Materials, nor in such a way as to imply any endorsement by ISURF, University or their personnel of any Material, product or method.

C. CONSIDERATION. In consideration of making the Biological Sample available to Company under this Agreement:

1. Company shall *<fill in appropriate consideration; for example, \$ to send material, \$ fee—be sure to verify with ISURF that this is not an offer for sale, supply of modifications or derivatives they plan on producing, reports>* Despite the payment of any such fee, the transfer of the Biological Sample shall not be construed as a sale of the Materials to Company.

2. Company will inform Investigator of research results related to the Materials by providing copies of manuscripts describing the results of such research at the time the manuscripts are submitted for publication.

D. WARRANTIES. Company acknowledges that Materials are experimental products of research that may not have been fully characterized, and will accept Materials as is and entirely at its own risk.

ISURF, UNIVERSITY, AND INVESTIGATOR MAKE NO REPRESENTATIONS AND EXTEND 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 THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR TRADEMARK OR OTHER PROPRIETARY RIGHT.

E. INDEMNIFICATION. Except to the extent prohibited by law, Company shall indemnify ISURF, University, Investigator, their employees, members, boards, and agents against any claims, costs, or other liabilities which may arise as a result of Company's use of Materials.

F. TERM. ISURF may terminate this Agreement for material breach and require return or destruction of the Materials by Company upon thirty (30) days written notice. Company shall otherwise, upon request from ISURF, destroy all copies of Materials within three (3) years of the effective date of this Agreement, unless:

1. this deadline is extended by ISURF in writing; or

2. Company has indicated to ISURF in writing its desire to obtain a license to Materials and negotiations to that end have begun.

G. ENTIRE AGREEMENTS. This Agreement reflects the entire agreement between ISURF and Company, and the Agreement may be modified or altered only in writing.

H. INTERPRETATION AND JURISDICTION. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the State of Iowa.

<Company name>

ISURF

By: _____

By: _____

Name:

Name: Kenneth Kirkland, Ph.D.

Title:

Title: Executive Director

Date: _____

Date: _____

SAMPLE DOCUMENT