Material Transfer Agreement
between
The University of Southern Mississippi
and
__________________________________________

This Material Transfer Agreement (Agreement”), effective as of the date of execution by both parties, ("Effective Date") is made by and between The University of Southern Mississippi, a state public institution of higher learning, organized and existing under the laws of the State of Mississippi and having its principal office at principal office at 118 College Drive #5012, Hattiesburg, MS, 39406, U.S.A. ("Provider” or “USM”), and ____________________________________________, a __________________ [INSERT TYPE OF ENTITY and STATE OF ENTITY CREATION] located at __________________________ [INSERT ADDRESS] ("Recipient”).

I. Definitions

1. Provider: Organization providing the Original Material.
   University of Southern Mississippi
   Office of Technology Development
   118 College Drive #5012
   Hattiesburg, MS 39406

2. Provider Scientist: ____________________________________________________________


4. Recipient Scientist: ____________________________________________________________

5. Original Material: (Description of original material to be transferred)

6. Material: Original Material, Progeny, and Unmodified Derivatives. The Material shall not include:
   (a) Modifications, or (b) other substances created by the Recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives.

7. Progeny: Unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism.
8. **Unmodified Derivatives**: Substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.

9. **Modifications**: Substances created by the Recipient which contain/incorporate the Material.

10. **Commercial Purposes**: The sale, lease, license, or other transfer of the Material or Modifications to a for-profit organization. Commercial Purposes shall also include uses of the Material or Modifications by any organization, including Recipient, 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 Material or Modifications to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the Material or Modifications for Commercial Purposes per se, unless any of the above conditions of this definition are met.

11. **Nonprofit Organizations(s)**: A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

II. Terms and Conditions of this Agreement:

1. The Provider retains ownership of the Material, including any Material contained or incorporated in Modifications.

2. The Recipient retains ownership of: (a) Modifications (except that, the Provider retains ownership rights to the Material included therein), and (b) those substances created through the use of the Material or Modifications, but which are not Progeny, Unmodified Derivatives or Modifications (i.e., do not contain the Original Material, Progeny, Unmodified Derivatives). If either 2 (a) or 2 (b) results from the collaborative efforts of the Provider and the Recipient, joint ownership shall be negotiated.

3. The Recipient and the Recipient Scientist agree that the Material:

   (a) is to be used solely for \( \text{(Briefly describe purpose/nature of use)} \) or teaching and academic research purposes;

   (b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider;

   (c) 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 the direct supervision of the Recipient Scientist;

   (d) will not be transferred to anyone else within the Recipient organization without the prior written consent of the Provider; and

   (e) the results obtained from research conducted by Recipient will be shared with Provider.

4. The Recipient and the Recipient Scientist agree to refer to the Provider any request for the Material from anyone other than those persons working under the Recipient Scientist's direct supervision.

5. The Recipient and/or the Recipient Scientist shall have the right, without restriction, to distribute substances created by the Recipient through the use of the Original Material only if those substances are not Progeny, Unmodified Derivatives, or Modifications.

6. The Recipient acknowledges that the Material is or may be the subject of a patent application.
Except as provided in this Agreement, 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 the Provider, including any altered forms of the Material made by the Provider. In particular, no express or implied licenses or other rights are provided to use the Material, Modifications, or any related patents of the Provider for Commercial Purposes.

7. 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 the Provider to establish the terms of a commercial license. It is understood by the Recipient that the Provider 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.

8. The Recipient is free to file patent application(s) claiming inventions made by the Recipient through the use of the Material but agrees to notify the Provider upon filing a patent application claiming Modifications or method(s) of manufacture or use(s) of the Material.

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 Provider makes no representations and extends no warranties of any kind, either expressed 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 rights. In no event shall the Mississippi Board of Trustees of State Institutions of Higher Learning, Provider, the Trustees, or any officers, agents or employees thereof be liable for the incidental or consequential damages of any kind, including economic damage or injury to property and loss of profits, regardless of whether USM shall be advised of, shall otherwise have reason to know, or in fact shall know of the possibility thereof.

10. Recipient shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold Provider, the State of Mississippi, the trustees of the Board of Trustees of Institutions of Higher Learning, the Board of Trustees of Institutions of Higher Learning, their officers, employees and affiliates, both in their official and personal capacities, harmless against all claims and expenses, including legal expenses and reasonable attorney's fees, whether arising from a third party claim or resulting from Provider's enforcing this indemnification clause against Recipient, or arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the use of the Material or arising from any obligation of Recipient hereunder.

11. This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the Material or the Modifications. The Recipient Scientist agrees to provide appropriate acknowledgement of the source of the Material in all publications.

12. 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.

13. This Agreement will terminate on the earliest of the following dates: (a) when the Material becomes generally available from third parties, for example, though reagent catalogs or public depositories or (b) on completion of the Recipient’s current research with the Material, or (c) on thirty (30) days written notice by either party to the other, provided that:

   (i) if termination should occur under 13(a), the Recipient shall be bound to the Provider by the least restrictive terms applicable to the Material obtained from the then-available resources; and

   (ii) if termination should occur under 13(b), the Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material. The Recipient, at its discretion, will also either destroy the Modifications or remain bound by the terms of this agreement as they apply to Modifications; and
(iii) in the event the Provider terminates this Agreement under 13(c) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the Provider will defer the effective date of termination for a period of up to one year, upon request from the Recipient, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material. The Recipient, at its discretion, will also either destroy the Modifications or remain bound by the terms of this agreement as they apply to Modifications.

14. Paragraphs 6, 9, and 10 of Section II shall survive termination.

15. Notwithstanding any provision to the contrary contained herein, it is recognized that Provider is a university and a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §25-61-1, et seq., as amended. If a public records request is made for any Information provided to University pursuant to this agreement, University shall promptly notify the disclosing Party of such request. The disclosing Party shall promptly institute appropriate legal proceedings to protect its Information. No Party to this agreement shall be liable to the other Party for disclosures of Information required by Court order or required by law.

16. This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the State of Mississippi, U.S.A. without regard to its choice of law or conflicts of law rules or principles.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

The University of Southern Mississippi

____________________________________
Gordon C. Cannon
Vice President for Research
Date: ________________________________

Recommended by Provider’s Scientist

By: ________________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

Recipient

____________________________________
Signatory
Title: ______________________________
Date: ______________________________

Acknowledged by Recipient’s Scientist

By: ________________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________