**MATERIAL TRANSFER AGREEMENT**

 **THIS MATERIAL TRANSFER AGREEMENT** ("Agreement") effective this the XX DAY of MONTH, YYYY (“Effective Date”) by and between **THE UNIVERSITY OF MISSISSIPPI, [INSERT UNIT NAME],** **("**MISSISSIPPI**")** having a principal address at P.O. Box 1848, 100 Barr Hall, University, Mississippi 38677 and [**INSERT ORGANIZATION NAME] ("NAME")** having a principal address at **[INSERT Street, City, State, Zip]**.

 WHEREAS, **NAME** agrees to provide MISSISSIPPI with one or more Materials (as hereinafter defined) solely for ***research use in biological assays*** as specified in the attached Exhibit A herein the ("Research”), and incorporated herein by reference.

 NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, **NAME** and MISSISSIPPI (individually “Party”; collectively “Parties”) hereby agree as follows:

1. Materials. ”Material” or “Materials” as used herein refers to any and all of the substances listed in Exhibit B , incorporated herein by reference, including any derivative or modification thereof that is substantially based upon or incorporates one or more essential elements of any of the Materials.
2. Use in Accordance with Agreement. MISSISSIPPI will not provide to third persons or entities access to the Materials and will use the Materials solely for the research purposes specified in this Agreement and in compliance with all applicable laws and regulations. MISSISSIPPI acknowledges and agrees that the Materials may have biological and/or chemical properties that are unpredictable and unknown and that such Materials should be used with caution and prudence. MISSISSIPPI WILL NOT USE THE MATERIALS IN HUMAN SUBJECTS OR FOR CLINICAL OR DIAGNOSTIC PURPOSES.
3. Confidential Information. Except as provided below, MISSISSIPPI agrees to treat in confidence and not disclose to any third Party for a period of five (5) years from the Effective Date any Materials or any information accompanying or relating to the Materials (hereinafter “**NAME** Confidential Information”). Except as provided below, **NAME** agrees to treat in confidence and not disclose to any third Party, for a period of five (5) years from the Effective Date the Research results and data (hereinafter "MISSISSIPPI Confidential Information"). For purposes of this Agreement, **NAME** and MISSISSIPPI is each “Recipient” as to Confidential Information. Notwithstanding the aforementioned requirements of confidentiality, **NAME** Confidential Information and MISSISSIPPI Confidential Information do not include:
4. Information subsequently disclosed to Recipient by a third Party who has a right to disclose such information; or
5. Information that is now in the public domain or which subsequently enters the public domain through no fault or omission on the part of Recipient; or
6. Information independently discovered by the Recipient without any reference to MISSISSIPPI Confidential Information or **NAME** Confidential Information as evidenced by its written documents; or
7. Information that is required by law, regulation or a court of competent jurisdiction to be disclosed.

Notwithstanding any provision to the contrary contained herein, it is recognized that MISSISSIPPI is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, §§25‑61‑1, et. seq., Miss. Code Ann. If a public records request is made for any Confidential Information provided to MISSISSIPPI pursuant to this agreement, MISSISSIPPI 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 Confidential Information required by Court order or required by law.

1. Intellectual Property.

**[Option 1: Joint Ownership to New Inventions]**

All of MISSISSIPPI’s intellectual property rights to the biological assays and Confidential Information in existence prior to this Agreement, including without limitation issued patents, filed patent applications or demonstrable trade secrets, and shall remain the property of MISSISSIPPI. All of **NAME’s** intellectual property rights to the Materials and Confidential Information in existence prior to this Agreement, including without limitation issued patents, filed patent applications or demonstrable trade secrets, and shall remain the property of **NAME**. The Parties will have joint ownership, right, title and interest in and to any and all information, data, and results and any invention, method, process or other know-how, tangible or intangible, conceived or first reduced to practice concerning, using or based on the Research, the Research results, and the Materials. The Parties will also have joint ownership of any modifications, substances, compounds, or extracts created by **NAME** that contain or incorporate the Materials. Absent a further agreement by the Parties with respect to joint development of the Compound or Extract or with respect to licensing of discoveries and inventions, neither Party will obtain, attempt to obtain, or allow their employees to attempt to obtain any patent coverage with respect to the Research results. **NAME** and MISSISSIPPI agree to cooperate in the filing of any patents related to inventions arising out of the results. This Agreement will not, by implication or otherwise, be construed as a grant of a license or any other right or interest beyond that expressly set forth herein.

**[Option 2: Inventor Keeps Rights and Joint Ownership] [Default]**

All of MISSISSIPPI’s intellectual property rights to the biological assays and Confidential Information in existence prior to this Agreement, including without limitation issued patents, filed patent applications or demonstrable trade secrets, and shall remain the property of MISSISSIPPI. All of **NAME’s** intellectual property rights to the Materials and Confidential Information in existence prior to this Agreement, including without limitation issued patents, filed patent applications or demonstrable trade secrets, and shall remain the property of **NAME**. If an invention, new use, or a product (collectively, an “Invention”) results from the MISSISSIPPI’S Research under this Agreement, MISSISSIPPI agrees promptly to disclose the invention to **NAME** on a confidential basis. Inventorship under this Agreement shall be determined in accordance with United States patent law (if patentable) or by mutual agreement between the Parties hereto (if not patentable), taking into account the role and contributions of individuals involved in the development of the Invention. Any Invention made solely by employees of one of the Parties hereto shall be owned by the Party making the Invention. Any Invention made jointly by the Parties hereto shall be owned jointly by them.

**[Inclusion of an Option to License –** *may be used with 1-3 above***]**

MISSISSIPPI hereby grants to the **NAME** an exclusive option to acquire an exclusive worldwide license to any Invention in which the MISSISSIPPI has ownership rights under this Agreement on terms to be negotiated in good faith by the Parties hereto. The period of such option shall be for ninety (90) days following completion of the Research under this agreement. This option period may be extended by agreement of the Parties hereto.

**[Inclusion of an Automatic License –** *may be used with 1-3 above***]**

MISSISSIPPI hereby grants to the **NAME** an exclusive, royalty-free worldwide license to any Invention in which the UM has ownership rights under this Agreement.

1. Publication. It is anticipated that no public disclosure of information related to the Materials and the Research will occur until the appropriate patent applications have been filed and that such public disclosure will be a joint effort of **NAME** and MISSISSIPPI. Neither Party will present at seminars, symposia, national, regional or local professional meetings, or publish or otherwise publicly disclose any information or results relating to the Research without the other Party’s prior written consent.
2. Collection. **NAME** agrees that the Materials will be collected using best practices regarding all applicable laws and international treaties including the Convention on Biological Diversity, the Convention of International Trade in Endangered Species of Fauna and Flora (CITES), or any other international, regional, national and local laws concerning biodiversity. Upon request from MISSISSIPPI, **NAME** will provide MISSISSIPPI with documentary evidence of the **NAME’s** compliance with such laws, including evidence that the Materials were obtained based on informed consent and appropriate benefit sharing. **[DELETE WHEN APPROPRIATE]**
3. Disclaimer of Warranties. The MATERIALS ARE being supplied to MISSISSIPPI for experimental use only and ARE provided "as is" with no warranties of any kind, express or implied, including any warranty of merchantability or fitness for a particular purpose.
4. Term; Termination; Surviving Rights. The term of this Agreement will commence on the Effective Date and will terminate two (2) years from the Effective Date, provided, however, that either Party may terminate this Agreement upon thirty (30) days written notice to the other. Upon any termination of this Agreement, MISSISSIPPI will promptly return or, upon written request by **NAME**, destroy any unused Materials. The following provisions will survive the termination of this Agreement: Paragraphs 2 through 7 and Paragraph 9, as well as any other provisions that by their intent or meaning are intended to have validity beyond the termination of this Agreement.
5. No Conflicts. Both Parties represent that they are authorized to enter into this Agreement and that no other contract or other obligation conflicts with the obligations to be assumed under this Agreement.
6. Liability. MISSISSIPPI is an agency of the State of Mississippi under the management and control of the Board of Trustees of the State Institutions of Higher Learning (IHL). As authorized by law, IHL maintains a program of self-insurance for purposes of workers’ compensation and general liability, pursuant to the Mississippi Tort Claims Act as set forth in Chapter 46, Title 11, Mississippi Code 1972, as amended. Accordingly, any liability of MISSISSIPPI for any damages, losses, or costs arising out of or related to acts performed by MISSISSIPPI or it employees under this Subcontract is governed by the Tort Claims Act.
7. Governing Law. This Agreement will be governed by the laws of the State of Mississippi. **[STRIKE IF MISSISSIPPI IS UNACCEPTABLE]**
8. Executed Counterpart. Delivery of an executed counterpart of a signature page to this Agreement by e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.
9. Official Capacity. **NAME** acknowledges that the individual executing this Agreement on behalf of the University of Mississippi is doing so only in his/her official capacity only, and to the extent that any provision contained in this Agreement exceeds his/her authority, **NAME** agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.
10. Entire Understanding. This Agreement constitutes the entire understanding between **NAME** and MISSISSIPPI and supersedes all prior agreements and understandings with respect to the Materials, and may be modified only with written permission of both Parties. **[IF THERE IS A RELATED MOU , REFERENCE IN SECTION 14 AND IN RECITALS]**

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by the proper officers as of the Effective Date.

|  |  |
| --- | --- |
| **PARTY FULL NAME** | **THE UNIVERSITY OF MISSISSIPPI** |
|  |  |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| DATE | DATE |
| Name: | PARTY SIGNEE NAME | Name: | Allyson M. Best |
| Title: | PARTY SIGNEE TITLE | Title: | Director, Office of Technology Commercialization Office of Research & Sponsored Programs |
|  |  |
| **Acknowledged (optional):** | **Acknowledged:** |
|  |  |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| DATE | DATE |
| Name: |  | Name: | UM WITNESS NAME |
| Title: |  | Title: | UM WITNESS TITLE |

EXHIBIT A

Research Plan

EXHIBIT B

Materials