MATERIAL TRANSFER AGREEMENT

 **THIS MATERIAL TRANSFER AGREEMENT** ("Agreement") effective this **[DATE]** day of **[MONTH, YEAR]** (“Effective Date”)by and between **THE** **UNIVERSITY OF MISSISSIPPI,** **[DEPARTMENT NAME],** **("**MISSISSIPPI**")** having a principal address at P.O. Box 1848, 100 Barr Hall, University, Mississippi 38677 and **[ORGANIZATION NAME]. ("NAME")** having a principal address at **[ORGANIZATION PHYSICAL ADDRESS]**.

 WHEREAS, MISSISSIPPI agrees to provide **NAME** with **[MATERIAL DESCRIPTION]** solely for use in **[SCOPE]** as specified in the attached Exhibit A (the “Research Plan”), and incorporated herein by reference.

 NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, **NAME** and MISSISSIPPI hereby agree as follows:

1. Materials. "Materials" as used herein refers to any and all of the information listed in Exhibit B ("Transferred Materials"), 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 Transferred Materials.
2. Use in Accordance with Agreement. **NAME** will not provide to third persons or entities access to the Materials, and will use the Materials solely for the purposes specified in this Agreement and in compliance with all applicable laws and regulations. **NAME** agrees not to attempt to modify in any way the physical or structural characteristics provided in the Materials. **NAME** agrees to send MISSISSIPPI the results of all testing within 30 days of completion of such testing.
3. 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, any Transferred Materials or any information accompanying or relating to the Transferred Materials (hereinafter "MISSISSIPPI 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, the Research results and data (hereinafter "**NAME** Confidential Information"). For purposes of this Agreement, **NAME** and MISSISSIPPI are 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 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 Confidential 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.

All of MISSISSIPPI’s intellectual property rights to the Transferred Materials and Confidential Information in existence prior to this Agreement, including without limitation issued patents, filed patent applications, or demonstrable trade secrets, shall remain the property of MISSISSIPPI. If an invention, new use, or a product (collectively, an “Invention”) results from the **NAME’s** Research under this Agreement, **NAME** agrees promptly to disclose the invention to MISSISSIPPI 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.

1. Publication. It is anticipated that no public disclosure of information related to the Transferred Materials and the resulting product(s) will occur until the appropriate patent applications have been filed and that such public disclosure will be a joint effort of **NAME** and MISSISSIPPI. **NAME** will not present at seminars, symposia, national, regional or local professional meetings, or publish or otherwise publicly disclose any information relating to MISSISSIPPI Confidential Information without MISSISSIPPI’s prior written consent. MISSISSIPPI will not present at seminars, symposia, national, regional or local professional meetings, or publish or otherwise publicly disclose any information relating to **NAME** Confidential Information without **NAME’s** prior written consent.
2. Disclaimer of Warranties. THE MATERIALS ARE BEING SUPPLIED TO **NAME** FOR EXPERIMENTAL USE ONLY AND IS PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. Term; Termination; Surviving Rights. The term of this Agreement will commence on the Effective Date and will terminate three (3) 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, **NAME** will promptly return or, upon written request by MISSISSIPPI, destroy any Materials related to this Transfer. 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 a validity beyond the termination of this Agreement.
4. No Conflicts. Both parties represents 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.
5. 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.
6. Governing Law. This Agreement will be governed by the laws of the State of Mississippi. **[STRIKE IF MISSISSIPPI IS UNACCEPTABLE]**

1. Signed 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.
2. 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.
3. 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 13 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

**[INSERT DETAILED RESEARCH PLAN]**

EXHIBIT B

Transferred Materials

**[INSERT DETAILED DESCRIPTION OF TRANSFERRED MATERIALS]**