

MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (“Agreement”) to govern the transfer of Material described herein and having an effective date (“Effective Date”) as of the date of the last signature hereto, is entered into by and between Bradley University, organized and existing under the laws of the State of Illinois and having offices at 1501 West Bradley Avenue (“Provider”/ “Recipient”); and XXXXXX, organized and existing under the laws of XXXXXX, and having offices at XXXXXX (“Provider”/ “Recipient”).

1.0. Definitions

1.1. **Provider Scientist:** The Provider Scientist for the Provider is:

[name, title, contact information]

1.2. **Recipient Scientist:** The Recipient Scientist for the Recipient is:

[name, title, contact information]

1.3. **Material:** The following describes the Material to be transferred under this Agreement:

[description of the material being transferred]

1.4. **Purpose:** (optional) The following describes the Recipient’s intended use of the Material:

2.0. Ownership.

The Provider retains ownership of the Material, progeny and unmodified derivatives. The Recipient retains ownership of substances developed by Recipient through the use of the Material (“Substance”).

3.0. Use of Material

The Recipient and the Recipient Scientist agree that the Material: (a) is to be used solely for Recipient’s non-commercial 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 in Recipient Scientist’s laboratory at the Recipient organization and only under the direction of the Recipient Scientist or others working under his/her direct supervision. The Recipient agrees to use the Material in compliance with all applicable statues and governmental regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

4.0 Transfer of Materials

4.1. **Remittance.** (optional) A transmittal fee of \$____ shall be paid by Recipient to Provider for preparation and distribution costs. Payment must be received within thirty (30) days of Effective Date and by check made payable to “Bradley University” and mailed to:

Bradley University
Office of the Controller
Attn: Dennis Koch
1501 West Bradley Avenue
Peoria, IL 61625
U.S.A.

4.2. **Transfer within Recipient organization.** The Recipient and the Recipient Scientist agree to not transfer the Material to anyone else within the Recipient organization without the prior written consent of Provider.

4.2. **Other Transfer Requests.** The Recipient and Recipient Scientist agree to refer requests for the Material from anyone other than those persons working under the Recipient Scientist’s direct supervision to the Provider. To the extent that the Provider is legally able to do so, and to the extent that supplies are available, the Provider and the Provider Scientist agrees to make the Material available through a separately executed agreement with similar terms to this Agreement to other universities or other institutions of higher education, or other nonprofit scientific or educational organization qualified under a federal, state, or local jurisdiction’s nonprofit organization status, including national, state, or local government agencies (“Nonprofit Organization”) whose scientists wish to replicate the Recipient Scientists research, provided that such other Nonprofit Organization reimburse the Provider for any costs relating to the preparation and distribution of the Material.

4.3 **Transfer of Substances.** The Recipient and the Recipient Scientist have the right, without restriction, to distribute Substances as described in Article 2.0 provided those Substances do not contain or incorporate the Material.

5.0. Intellectual Property

5.1. **Restrictions.** The Recipient acknowledges that the Material is or may be the subject of a patent or 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, or any related patents of the Provider for Commercial Purposes. For the purpose of this Agreement, the term “Commercial Purposes” is defined as the sale, lease, license, or other transfer of the Material to a for-profit organization, and includes use of the Material by any organization, including Recipient or Recipient Scientist, to perform contract research, 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 to a for-profit organization. Industrially sponsored research is permissible only if none of the conditions of this definition are met.

5.2. **Commercial Use.** If the Recipient desires to use or license the Material for Commercial Purposes, the Recipient agrees, in advance of such use, to notify the Provider no less than 90 days before such use, to negotiate in good faith with the Provider to establish the terms of a commercial license. It is understood by the Recipient and the Recipient Scientist 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.

5.3. **Patent provisions.** The Recipient is free to file patent application(s) claiming any inventions made by the Recipient through the use of the Material, but agrees to notify the Provider upon filing of any such patent applications claiming method(s) of manufacture or uses(s) of the Material.

5.4. **Publication.** This Agreement shall not be interpreted to prevent or delay publications of research findings resulting from the use of the Material. The Recipient Scientist agrees to provide appropriate acknowledgement of the source of the Material in all publications.

5.5. **Confidentiality.** (optional if applicable) To the extent permitted by Law, Recipient agrees to treat in confidence, for a period of [three (3)] years from the date of its disclosure, any of the Provider's written information about the Material that is stamped "Confidential" ("Confidential Information"). Any oral disclosures from Provider to Recipient shall be identified as being Confidential Information by notice delivered to Recipient within ten (10) days after the date of the oral disclosure. Confidential Information does not include information that: (a) is or later becomes available to the public through no breach of this Agreement; (b) is obtained from a third party who had the legal right to disclose the information; (c) as of the date of disclosure, was in the possession of or was readily available to the Recipient without being subject to a confidentiality obligation from another source; (d) recipient can demonstrate it was developed independently, or acquired without reference to or reliance upon Confidential Information; (e) is required to be disclosed by law, government regulations, or court order; or (f) is explicitly approved in writing for release by the disclosing party.

6.0. Warranties and Liabilities

6.1. **No Warranties.** Any material delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties as not all of their characteristics are known. THE 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, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

6.2. **Liabilities.** Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from its receipt, use, storage, or disposal of the Material. The Provider will not be held

liable for any loss, claim, or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of the Material by the Recipient, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the Provider.

7.0. Termination

7.1. **Termination for Completion.** This Agreement will terminate on completion of [select one: the Recipient Scientist's current research with the Material/specify date], at which time the Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material.

7.2. **Termination for Breach or Other Cause.** This Agreement may be terminated upon material breach provided that the breaching Party fails to cure the breach within 30 days after receipt of written notice. This remedy is in addition to any other remedies available by law. This Agreement may also be immediately terminated for cause such as an imminent health risk or patent infringement. Upon termination for breach or other cause, the Recipient will discontinue its use of the Material and will, upon direction of the provider, return or destroy any remaining Material.

7.3. **Termination for Convenience.** This agreement may be terminated for convenience by either upon thirty (30) days written notice by either party to the other. In the event the Provider terminates this Agreement for convenience, the Provider will defer the effective date of termination for a period of up to one year, upon request of the Recipient, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, the Recipient will discontinue its use of the Material and will, upon direction of the Provider, return or destroy any remaining Material.

7.4. **Survival.** All terms of this Agreement that are intended to survive termination or expiration in order to be effective shall survive such termination or expiration.

8.0. General Provisions

8.1. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but which counterparts shall together constitute one and the same instrument. Facsimile or electronic signatures shall constitute original signatures for all purposes.

8.2. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement.

8.3. **Amendments.** No modification to this Agreement will be effective unless confirmed in a written amendment signed by each Party's authorized representative.

8.4. **Waiver.** No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing and signed by each Party's authorized representative. No waiver

of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

8.5. **Notices.** Any notice given under this Agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile or electronic transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other addresses designated by a Party by written notice to the other Party in accordance with this section:

8.6. **Entire Agreement.** This agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to its choice-of-law doctrines. This Agreement, and any other documents executed in connection herewithin by authorized representatives of the parties, contains the entire agreement between the parties relating to the subject matter contained herein, and supersede all prior or contemporaneous agreements, written or oral, with respect hereto.

Agreed by:

Bradley University

XXXX

Gary Anna, Vice President
for Business Affairs

Date

XXXXXX

Date

Understood and Agreed Provider Scientist(s):

Understood and Agreed Recipient Scientist(s):

XXXXXXXX

Date

XXXXXXXX

Date