Material Transfer Agreement

THIS MATERIAL TRANSFER AGREEMENT (together with its Exhibits, the “Agreement”) is agreed to as of _________________ (the “Effective Date”) by and between the University of Delaware (UD) and _____COMPANY _____ are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”)

1. Background.
COMPANY desires to obtain, and UD agrees to provide, samples of the material described in Exhibit A (hereinafter “Material”) under the terms and conditions of this Agreement.

2. The Material and the Research.
COMPANY acknowledges that UD owns the Material. The research using the Material will be conducted by COMPANY at its facilities. None of the Material will be assigned or sold to third parties. COMPANY will not use the Material for testing in or treatment of human subjects. COMPANY will not conduct reverse engineering, decompile, or analyze the materials in any way to attempt to infringe upon UD’s rights in the Material. COMPANY acknowledges that use of the Material is experimental and will comply with all laws and regulations applicable to its handling and use.

3. “Field of Use”.
Field of Use means testing and evaluation of Material for the purpose of ____________________________.

4. License.
UD hereby grants a non-exclusive license for research purposes only to test and evaluate the Material or products derived from the Material used in the Field of Use during the term of this Agreement. No commercial use may be made of the Research Materials or any materials derived therefrom.

5. Inventions.
a. COMPANY 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 COMPANY under any currently existing patents, patent applications, trade secrets or other proprietary rights of UD.

b. Within thirty (30) days of discovery of an invention by COMPANY pertaining to inventions made during the conduct of this research by COMPANY employees, COMPANY will inform UD of any potentially patentable inventions arising out of research performed under this Agreement. Title to any invention or discovery conceived or reduced to practice solely by COMPANY personnel in the performance of this research shall remain with COMPANY provided, however, that COMPANY grants a nonexclusive, noncommercial, nontransferable (except to UD affiliates), royalty-free license for research purposes under any inventions
conceived or reduced to practice by COMPANY hereunder. Inventions created hereunder by UD personnel jointly with employees of COMPANY shall be jointly owned.

c. UD agrees to and does hereby grant a nonexclusive, noncommercial, nontransferable, royalty-free license for the practice by COMPANY in COMPANY’s continuing research efforts of any invention covered by claims of any patent arising from the research at COMPANY and licensed exclusively or assigned to UD.

6. Confidential Information.
If COMPANY and UD agree that confidential or proprietary information of UD is necessary for the research, the information should be submitted to the COMPANY in writing and clearly marked as such.

7. NO WARRANTY.
THE MATERIAL IS PROVIDED TO COMPANY AS-IS AND WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE.

To the extent permitted under governing law, COMPANY will indemnify and hold UD harmless from any claims or liability resulting from COMPANY’s use of the Material.

10. Term and Termination
After two (2) years, either COMPANY or UD may terminate this Agreement on thirty (30) days prior written notice to the other Party. Upon termination, all Parties shall immediately return to the other Parties its Confidential Information, with the exception of one copy that may be retained by the receiving Party’s counsel to confirm compliance with the non-use and non-disclosure provisions of this Agreement. COMPANY shall return to UD any unused samples of the Material, and all of COMPANY’s rights to use the Material shall end, other than those rights negotiated in accordance with section 4b of the Agreement. Following termination, neither Party shall have any further obligations under this Agreement, except that Sections 4b through 8 shall survive termination of the Agreement.

11. Miscellaneous.
   a. Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, written and oral, between the Parties. No modification of any of the terms of this Agreement shall be deemed to be valid, unless it is in writing and signed by the Party against whom enforcement is sought.
b. **Force Majeure.** No Party shall be held liable or responsible to the any other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes, beyond the reasonable control of the affected Party, including but not limited to fire, floods, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any court or governmental authority.

c. **Waiver.** No waiver by either Party of any default, right or remedy shall be effective unless in writing, nor shall any such waiver operate as a waiver of any other or of the same default, right or remedy, respectively, on a future occasion.

d. **Severability.** This Agreement and any amendment hereto may be executed in counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, such invalid term, condition, or provision will be severed from the remaining terms, condition, or provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

e. **Independent Parties.** This Agreement shall not be deemed to create any partnership, joint venture, or agency relationship between the Parties. Each Party shall act hereunder as an independent contractor.

f. **Relationship of the Parties.** Neither Party, nor any of its employees, customers or agents shall be deemed to be a representative, agent or employee of any other Party for any purpose, nor shall they or any of them have the right or authority to assume or create an obligation of any kind, either expressed or implied, on behalf of the others.

g. **Notices.** All notices or other communications required or permitted to be made or given hereunder shall be deemed so made or given when hand-delivered or sent in writing by registered or certified mail, postage prepaid and return-receipt requested or by a nationally-recognized courier service guaranteeing next-day delivery, charges prepaid, and properly addressed to such other Party as set forth above or at such other address as may be specified by either Party hereto by written notice similarly sent or delivered. Notices required to be sent to COMPANY under this Agreement shall be addressed to COMPANY at the address set forth in the first paragraph above.
IN WITNESS WHEREOF, COMPANY and UD have signed this Agreement as a document under seal as of the Effective Date.

UNIVERSITY OF DELAWARE

By: ______________________________

Print Name: Cordell Overby, D. Sc.

Title: Associate Provost for Research

Date: ____________________________

COMPANY

By: ______________________________

Print Name: _________________________

Title: ______________________________

Date: ______________________________