

All provisions contained in this document are expressly non-binding, are set out for discussion purposes only and are part of the ongoing negotiations between North Carolina State University and Ciba Inc.. There is no legal or other commitment by any party as to any of the provisions in this document unless and until the necessary internal approvals have been given and a formal written agreement has been signed by authorized signatories of both parties.

NORTH CAROLINA STATE UNIVERSITY MATERIAL TRANSFER AGREEMENT

In accepting the following materials developed and owned by **NORTH CAROLINA STATE UNIVERSITY ("NCSU")**, provided by NCSU, and described as _____ (hereafter referred to collectively as the "Material"), _____ (the "Recipient") hereby agrees to the following terms and conditions:

1. All restrictions and obligations of this Agreement relate to the Material together with any progeny, mutants, derivatives, or replicated forms thereof, and all cells and tissues containing the Material, including any replicated forms and derivatives thereof, and any proprietary information regarding the Material, which, if provided in writing, shall be marked "Confidential", and if provided orally, shall be summarized in writing within 30 days of the disclosure, marked "Confidential" and provided to the Recipient.
2. The Material is to be used only at Recipient's facilities by Recipient's principal investigator, _____ (the "P.I."), and by individuals working under the P.I.'s direction. The Material will be used solely for the purpose of _____.
3. No specimen of the Material will be given or made available to any other person, institution, firm or corporation without the expressed written consent of NCSU.
4. This permission to use the Material shall be restricted to Recipient's internal research use only. The Material may not be used commercially or for research that is subject to consulting or licensing obligations to another commercial organization whether or not such obligations presently exist or are entered into in the future unless written permission is obtained from NCSU.
5. Recipient will use the Material in compliance with all Laws and regulations applicable to the use, storage and disposition of the Material. The Material is experimental in nature, is not for human use, and is provided by NCSU on an "as is" basis **WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY SORT, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**
6. Except as expressly provided for in Section 7 below, **RECIPIENT** shall not disclose proprietary information or know-how provided in the Material or make available the Material to any other person, institution or firm. Further, except as expressly provided for herein, the **RECIPIENT** shall not use the Material for any commercial benefit or any research purpose. The restrictions and obligations of provisions 6, 7, and 8 of this Agreement shall remain in full force and effect for a period of five (5) years from the date last entered herein below.
7. Any obligation of the **RECIPIENT** as set forth in the preceding paragraph shall not apply to any information, knowledge, data and/or know-how which is:
 - (a) already known to the receiving party at the time of the disclosure;
 - (b) publicly known without the wrongful act or breach of this agreement by the receiving party;
 - (c) rightfully received by the receiving party from a third party on a non-confidential basis;
 - (d) approved for release by written authorization of the disclosing party; or,
 - (e) required to be disclosed by law or judicial action.
8. The **RECIPIENT** agrees to obligate in writing its employees and/or consultants who shall have access to any portion of the Material to protect the confidential and proprietary nature of the Material under obligations at least as strict those contained in this Agreement.

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9. No right or license under any NCSU patent or patent application is granted hereby. Further, NCSU does not warrant that the use of the Material will not infringe any valid patent or other proprietary rights or that the Material is safe and without hazards. Recipient assumes all risks associated with their use of the Material.
10. Recipient will inform NCSU of research results related to the Material and will provide NCSU with a copy of any proposed publication describing the results or such research at the time the manuscript is submitted for publication. Upon written request to Recipient, any proprietary information belonging to NCSU and identified by NCSU will be deleted from said proposed publication.
11. If Recipient makes an Invention, whether patentable or not, as a result of its use of the Material, it will promptly inform NCSU of such Invention. Inventorship shall be determined in accordance with patent law (if patentable) or by mutual agreement between the parties (if not patentable), taking into account the role and contributions of individuals involved in the research and ownership follows inventorship. In the case of a Joint Invention, the owners of the Joint Invention agree to negotiate a joint invention agreement which shall provide, *inter alia*, for appropriate sharing of patent costs, income, and invention management responsibilities.
12. Except for provisions 6, 7, and 8, all obligations under this Agreement terminate 30 months from the latest date entered below (the "Termination Date"). On the Termination Date, Recipient must immediately stop using the Material. Within thirty (30) Days of the Termination Date and at NCSU's sole discretion, Recipient must either return the Material to NCSU or destroy all samples of the Material in Recipient's possession and certify in writing to NCSU that it has done so.
13. This Agreement is entered into in the State of North Carolina and must be interpreted in accordance with and its performance governed by the laws of the State of North Carolina, without reference to its conflicts of laws provisions. Any and all litigation relating to this Agreement or the parties' performance hereunder must be in the State Courts of North Carolina with the venue being Wake County. The parties consent to the jurisdiction of those courts.
14. This Agreement is subject to all of the United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities and technology. It is understood that NCSU is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations under this Agreement are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Company that the Company will not export data or commodities to certain foreign countries without prior approval of such agency. NCSU makes no promise or representation that a license is not required nor that, if required, it will be issued.
15. In the event an action or any proceeding is commenced regarding a breach, violation, or threatened breach or violation of any of the covenants, duties, or obligations under this Agreement, the prevailing party in any such action or proceeding shall be entitled to seek reasonable attorneys' fees and costs incurred in: (a) enforcing its rights hereunder, and (b) enforcing and/or collecting upon any judgment, decree, or order entered and for such other relief as may be awarded.
16. The failure of the disclosing party to require the performance by receiving party of any provision of this Agreement shall in no way affect the rights of the disclosing party to enforce the same in the future, nor shall the waiver by the disclosing party of any breach, violation, or threatened breach or violation of any provision of this Agreement be construed as a waiver of any subsequent breach,

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violation, or threatened breach or violation of the Agreement by receiving party. The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other breach of the same or any other term.

17. In the event any provision of this Agreement is found by any court or tribunal to be partially or wholly invalid or unenforceable, the remainder of the Agreement nevertheless shall be enforceable and binding, and the invalid or unenforceable provision shall be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or, if such provision cannot under any circumstances be so modified or restricted, it shall be excised from the Agreement without affecting the validity or enforceability of any remaining provisions. The parties agree that any such modification, restriction or excision may be accomplished by their mutual written agreement.

18. For the purpose of all written communications and notices between the parties, their addresses are:

NCSU Notice

RECIPIENT Notice

For delivery via the U.S. Postal Service

Office of Technology Transfer
North Carolina State University
Attn: Compliance Officer
Campus Box 8210
Raleigh, NC 27695-8210 USA

For delivery via courier

Office of Technology Transfer
North Carolina State University
Attn: Compliance Officer
Corporate Research I
1021 Main Campus Drive
Raleigh, NC 27606 USA

NCSU Technical/Scientific Contact

Raleigh, NC 27695 USA

19. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

The Undersigned, by signing this Agreement, represents that he/she is authorized on behalf of Recipient to enter into this Agreement for and on behalf of the Recipient.

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Approved for NCSU:

Billy B. Houghteling
Director
Office of Technology Transfer
Date: _____

(Recipient Name)
By: _____
(Authorized Representative)
Name: _____
Title: _____
Date: _____

*North Carolina State University
Office Of Technology Transfer
Campus Box 8210, Raleigh, N.C. 27695-8210
919.515.7199 919.515.3773(fax)*