**U. S. Department of Agriculture**

**Agricultural Research Service**

**DATA TRANSFER AGREEMENT**

**Data in this Agreement is governed by the terms of the Federal Technology Transfer Act (15 U.S.C. 3710a (b) (3) (A)).**

**PARTIES:**

 ARS: USDA, ARS, Midwest Area

Research Unit

Scientist Address

City, State Zip

Tel: Telephone # of Scientist

E-mail: E-mail address of Scientist

 Recipient: Company/University Name

Address

City, State Zip

 Tel: Telephone # of Recipient

 E-mail: E-mail address of Recipient

Recipient’s Scientist: Company/University Name

Address

City, State Zip

 Tel: Telephone # of Recipient Scientist

 E-mail: E-mail address of Recipient Scientist

**PURPOSE:**

ARS will provide Recipient with [insert description of data] and associated know-how, hereinafter referred to as DATA. The DATA has been collected from [mention source of data].

The DATA will be used by Recipient only for internal research purposes only and use is restricted to the following Research Project: [insert use]

Recipient agrees to the following before ARS transmits the DATA:

1. The above DATA is the property of the ARS and is made available as a service to the research community.
2. THIS DATA SHALL NOT BE USED FOR COMMERCIAL OR OTHER PROFIT MAKING PURPOSES. Any and all commercial or profit making uses of this DATA require the Recipient to obtain in advance an appropriate license or other written permission from ARS. Some examples of prohibited commercial or other profit making uses that are not permitted include, but are not limited to, developing algorithms, etc. [recite other contemplated or desired limitation on use]. If the Parties hereto decide, at some future date, to engage in a cooperative research project or program using the DATA (i.e., to for instance jointly develop algorithms), a formal Cooperative Research and Development Agreement (CRADA), or other research Agreement, must be negotiated and entered into between the Parties.
3. The DATA will not be further distributed to others without ARS’ written consent. The Recipient shall refer any request for the DATA to ARS.
4. Subject to Section 8, the Recipient cannot present the DATA or use the DATA for any public purpose including teaching or publication without the express written consent of ARS. The Recipient agrees to acknowledge the contribution of ARS in all written or oral public disclosures concerning Recipient’s research using the DATA. Recipient agrees to supply ARS with copies of public materials based on the use of the DATA. Recipient grants ARS a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the public materials for Federal purposes, and to authorize others to do so.
5. ARS GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL/DATA, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Unless prohibited by law, Recipient assumes all liability for Claims or damages against it by third parties which may arise from the use, storage or disposal of the DATA.
6. The Recipient agrees to use the DATA in compliance with all applicable statutes, regulations, and policies.
7. The DATA is provided at no cost.
8. All DATA provided by ARS is deemed Confidential Information, except for DATA that:
9. Have been published or otherwise publicly available at the time of disclosure to the Recipient;
10. Were in the possession of or were readily available to the Recipient without being subject to a confidentiality obligation from another source prior to the disclosure;
11. Have become publicly known, by publication or otherwise, not due to any unauthorized act of the Recipient;
12. The Recipient can demonstrate it developed independently, or acquired without reference to, or reliance upon, such Confidential Information; or

e. Are required to be disclosed by law, regulation, or court order.

f. Information deemed confidential under this Agreement shall be clearly marked “CONFIDENTIAL” by ARS and maintained in confidence by the Recipient for a period of five (5) years from Recipient’s receipt of the Confidential Information. Any Confidential Information that is orally disclosed must be reduced to writing and marked “CONFIDENTIAL” by ARS and such notice must be provided to the Recipient within thirty (30) calendar days of the oral disclosure.

g. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

1. Recipient shall discuss with ARS’ representative(s) to determine inventorship if an invention should arise during Recipient’s work with the DATA.
2. The provisions of this Agreement are to be deemed severable and the invalidity, illegality or unenforceability of one or more of such provisions shall not affect the validity, legality or enforceability of the remaining provisions.
3. This Agreement shall be construed in accordance with United States of America Federal Law as interpreted by the Federal Courts in the District of Columbia.
4. This Agreement is effective for a period of insert the term of the agreement - one (1) to five (5) years years from the date of final signature. Either Party may terminate this Agreement with thirty (30) days written notice to the other Party.  In the event this Agreement is terminated, the Recipient shall promptly return to ARS or, at ARS’ option, destroy all copies of DATA.  Upon ARS’ request, Recipient shall confirm in writing as to such destruction. Obligations under paragraphs 2, 3, 4, 5, 6, and 8 shall survive the termination of this agreement.

**ACCEPTED FOR THE RECIPIENT:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Title of Authorized Rep |  |  |
| Typed Name  |  | Title |  | Date |

**READ AND UNDERSTOOD BY RECIPIENT SCIENTIST:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Title of Recipient Scientist |  |  |
| Typed Name |  | Title |  | Date |

[ADDITIONAL SIGNATURE LINES ON FOLLOWING PAGE]

**ACCEPTED FOR THE AGRICULTURAL RESEARCH SERVICE:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Technology Transfer Coordinator |  |  |
| Kenneth M. Doll |  | Title |  | Date |

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**By signing below, the ARS Scientist and ARS Research Leader acknowledge that they have read, understood, and agreed to the terms and conditions of this Agreement.**

**ACCEPTED FOR THE AGRICULTURAL RESEARCH SERVICE:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Title of ARS Scientist  |  |  |
| Typed Name |  | Title |  | Date |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Research Leader |  |  |
| Typed Name |  | Title |  | Date |