**U. S. Department of Agriculture**

**Agricultural Research Service**

**DATA TRANSFER RESEARCH AGREEMENT - OUT**

**Research conducted under this Agreement is authorized and governed by the terms of Cooperative Research Projects; Agreements with & Receipt of Funds from State & other Agencies (7 U.S.C. 3318a) & Data used in this Agreement is governed by the terms of the Federal Technology Tranfer Act (15 U.S.C. 3710a (b) (3) (A)).**

**PARTIES:**

ARS: USDA, ARS, Area

Research Unit

Address

City, State Zip

Tel: Telephone # of Scientist

FAX: FAX # of Scientist

E-mail: Scientist E-mail Address

RECIPIENT Company/ University Name

Address

City, State Zip

RECIPIENT’s Scientist: Name

 Tel: Company/University Scientist's Telephone #

 FAX: Company/ University Scientist's FAX #

 E-mail:

**PREAMBLE:**

It is understood under this Agreement that ARS will provide Data to the RECIPIENT. It is understood that under this Agreement both parties will be engaged in coolaborative research on the exchanged Data.

**PURPOSE:**

ARS will provide RECIPIENT with [insert description of data] and associate knowhow, hereinafter DATA. The DATA has been collected from [mention source of data]. The research conducted with the DATA is described in Appendix 1: Statement of Work.

The DATA is released by ARS to the RECIPIENT under the following conditions:

1. The above DATA is the property of the ARS.
2. The DATA will not be further distributed to others without ARS’S written consent. The RECIPIENT shall refer any request for the DATA to ARS.
3. 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 the 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].
4. Subject to Section 12, 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 supplyARS 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. Neither Party shall in any way state or imply that this Agreement or the results of this Agreement is an endorsement by the Other Party’s organizational units, employees, products, or services except to the extent permission is specifically granted by an authorized representatives of the Parties.

6. The Parties acknowledge and agree to comply with all applicable laws and regulations of the Animal Plant Health and Inspection Service, the Center for Disease Control, and /or Export Control Administration pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.

7. ARS GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FORTHE MATERIAL/DATA, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Unless prohibited by law, RECIPIENT assumes all liability for claims for damages against it by third parties which may arise from the use, storage or disposal of the DATA.

9. DATA in all forms shall be returned, destroyed, or otherwise disposed of or stored, as instructed by ARS, no later than the expiration of this Agreement.

10. Recipient shall meet with ARS’S representatives to determine inventorship if an invention should arise from RECIPEINT’S work with the DATA. All rights, title, and interest in inventions made under this Agreement solely by employees of ARS shall be owned by ARS. Any invention made jointly under this Agreement by at least one employee of the RECIPEINT and at least one employee of ARS shall be jointly owned. Any invention made under this Agreement solely by individuals employed by the RECIPIENT shall be owned by the RECIPIENT, provided ARS is granted a royalty-free, nonexclusive, irrevocable license to use the invention for U.S. Government purposes.

11. 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.

12. Confidentiality provisions restricted to the DATA:

a. The RECIPIENT shall not disclose DATA marked “Confidential” or “Proprietary” to any third party nor use such Confidential Information for any other purpose than that given above without the written permission of ARS.

b. RECIPIENT shall use the same degree of care to protect Confidential Information received under this Agreement as it uses to protect its own information of a similar nature, but in any event not less than reasonable care under the circumstances.

c. Confidential Information shall be excluded from confidentiality if the receiving Party can demonstrate that (a) it had possession of the information prior to disclosure, or (b) the information generally is available to the public at the time of disclosure, or becomes generally available, after disclosure, through no fault of RECIPIENT; or (c) RECIPIENT receives the information from a third party having the right to the information and who does not impose confidentiality obligations on the RECIPIENT.

d. It shall not be a breach of this Agreement if the RECIPIENT is required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement; PROVIDED THAT the RECIPIENT shall provide prompt prior notice thereof to ARS to enable ARS to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

e. ARS will treat all information generated or gathered under this agreement in accordance with the Freedom of Information Act.

f. 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.

13. Exchange and release of data or information collected (hereinafter results) from the use of the DATA under the Statement of Work found in Appendix 1:

1. Results will be released by the Party performing the research according to uniform procedures such that the other Party receives such results not later than other interested parties and that there is no subsequent restriction on release by either Party to this agreement.
2. Any public information released concerning work carried out under this Agreement will describe the contributions of both Parties to the work effort.
3. Results which are compiled from the DATA under this Agreement shall be shared and mutually interchanged by both Parties and the reults are Results. Results of the undertaking will be made available to both Parties. The Party performing the research has the right to publish in scientific literature the results of this project. The Party performing the research will make available to the other Party manuscript copies of any publication for review and comment. In case of disagreement, the Party performing the research has the right to publish giving acknowledgment of this cooperative effort. Requests for confidentiality will be considered pursuant to and in accordance with the provisions of the Freedom of Information Act.

d. Any publication developed as a result of this Agreement shall besubmitted by the performing party to the other party to the other for advice and comment. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

14. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature by facsimile shall also bind each of the parties to this Agreement.

15. ARS is an agency of the U.S. Government and any rights or obligations created under this Agreement are freely transferable within the U.S. Government and shall not be deemed an “transfer.”

16. 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.

18. Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice not less than sixty (60) calendar days prior to the desired termination date. Sections 2, 3 and 13 of this AGREEMENT survive and is enforceable after termination of this Agreement.

This Material Transfer Agreement shall become effective upon date of final signature and shall continue in effect for a period of [insert the term of the Agreement - one (1) to five (5) years]; provided, however, that the obligations assumed by a receiving Party, regarding the maintenance of confidentiality, under this Agreement shall remain in effect for two (2) years from the expiration of this Agreement.

**Appendix 1**

**Statement of Work**

**Title:**

**Objective:** (This information will be entered in to ARIS)

**Approach:** (This information will be entered into ARIS and populated to AIMS)

Be sure to cover the activities of both ARS and Provider.

**Statement of Mutual Interest:** (This information will be entered in to AIMS)

**RECIPIENT Agrees To**:(This information will be entered in to AIMS)

1. Conduct these portions of the research project or perform the following tasks:
2. (LIST)
3. Pay $ to ARS.

a. The payment schedule is:

 (1) $ by .;

 (2) $ on before \_\_\_\_\_\_\_\_\_\_; etc.

b. Make checks or money orders out to the "Agricultural Research Service," cite Agreement No. XXX thereon, and send to:

 USDA, ARS, Budget and Fiscal Office

**ARS Agrees To:** (This information will be entered in to AIMS)

1. Provide RECIPIENT with (amount and description of the specific material), and associated know how, hereinafter collectively referred to as the Material
2. Conduct these portions of the research project or perform the following tasks:

 a. (LIST)

**ARS & RECIPIENT Joint Responsibilities:**

1. Jointly conduct these portions research project or jointly perform the following tasks:

 a. (LIST)

**Estimated Budget**

**Total Years (? years)**

|  |  |  |  |
| --- | --- | --- | --- |
|  | ARS Receive Funds for | ARS In-House | COOPERATORIn-House |
| A. Salaries and Wages(list # FTEs hired, GS level and # years as footnote, e.g. 2 GS 3 Students, 2 years each) |  |  |  |
| B. Equipment  |  |  |  |
| C. Materials and Supplies |  |  |  |
| 1. Travel
2. Domestic
3. Foreign
 |  |  |  |
| E. Facilities |  |  |  |
| F. Other Direct Costs |  |  |  |
| G. TOTAL DIRECT COSTS  |  |  |  |
| H. Indirect Costs(11.1%) |  |  |  |
| I. TOTAL COSTS…….…$ |  |  |  |

**ACCEPTED FOR THE AGRICULTURAL RESEARCH SERVICE**

 Typed Name

Signature above (Technology Transfer Coordinator) Date

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_**

 Typed Name

Signature above (ADO) Date

**ACCEPTED FOR THE COOPERATOR:**

 Signature Date

 Typed Name

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

**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.**

 Typed Name

Signature above Signature (ARS Scientist) Date

 Typed Name

Signature above Signature (ARS Research Leader) Date