



MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (this "Agreement"), as of _____, 20__ is entered into by and between _____, a Landscape Service Company, having an address at _____ (as hereafter defined "Recipient"), and God's Kudzu Killer, LLC, a Georgia company having an address at 4057 C Loggins Rd., Gainesville, GA 30506 ("Company").

RECITALS

A. Company and Recipient desire to collaborate in the controlling of Kudzu growth for its respective customers (the "Purpose"). Recipient agrees not to conduct any studies, chemical analysis or any other analytic method that would attempt to identify the active ingredients of God's Kudzu Killer formulation (the "Product").

B. In connection with the Purpose, it is anticipated that the Company will provide the Product to the Recipient to carry out the Purpose, and the Company is willing to do so, provided that Recipient agrees to use the Product pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the Company providing such Product based upon the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each party, intending to be legally bound, agrees as follows:

1. Definitions: the Company certifies the product is not a hazardous substance or mixture. The product contains no components considered to be either persistent, bioaccumulative or toxic. The Formulation has a biodegradable life cycle of 74 days after application and after which the residual elements become a fertilizer that restores the Ph levels of soil.

1.1 "Formulation" shall mean any and all formulation provided under this Agreement, including any derivatives, modifications, improvements, fragments, components, analogs or homologs thereof, any materials which could not have been discovered or made hereunder but for use of the Formulation or Confidential Information of the Company, and any materials that incorporate or are combined with any Formulation as described in this Section 1.1.

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1.2 “Data” shall mean any data, results, analysis, or other information arising or generated from or based on the research or studies undertaken pursuant to this Agreement by way of the use of the Formulation or Confidential Information furnished hereunder.

1.3 “Intellectual Property Rights” shall mean rights in Patents, Know-How, copyrights and software, including all applications for registration for the foregoing and all other similar proprietary rights as may exist anywhere in the world.

1.4 “Invention” shall mean any and all discoveries, developments, improvements, know-how, modifications, combinations, formulations, analogs or homologs, materials, compositions of matter, Data, processes and other inventions (whether or not patentable) conceived, reduced to practice, or otherwise made, either solely or jointly with others, that incorporate, include, use or claim, are based on, identified, generated or made through, refined or improved by the use of any of the Formulation or Confidential Information, or arise from the research or studies conducted pursuant to this Agreement, and all Intellectual Property Rights and protections arising from any of the foregoing.

1.5 “Know How” shall mean non-public materials and technical information, including techniques, methods, processes, technology, recipes, biological samples, and biological, chemical, pharmacological, toxicological, clinical, assay and related trade secrets, and manufacturing data, the specifications of ingredients, the manufacturing processes, formulation, specifications, sourcing information, quality control and testing procedures, and related know-how and trade secrets.

1.6 “Patents shall mean:

(a) patents and patent applications anywhere in the World.

(b) all divisionally, continuations, continuations in-part thereof or any other patent application claiming priority, or entitled to claim priority, directly or indirectly to:

(i) any such patents or patent applications; or (ii) any patent or patent application from which such patents or patent applications claim, or is entitled to claim, direct or indirect priority; and

(c) all patents issuing on any of the foregoing anywhere in the world, together with all registrations, reissues, re-examinations, patents of addition, renewals, substitutions, validations, and re-validations, supplemental protection certificates or extensions of any of the foregoing anywhere in the world, and

(d) all provisional and any other priority patent applications filed worldwide.

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2. General Rights and Obligations.

2.1 The Formulation is provided to Recipient for its existing customer base and to aide in the procurement new customers and shall be used solely to accomplish the Purpose. Formulation is NOT FOR USE IN HUMANS OR ANIMALS. No samples of the Formulation are to be given or made available to any other person, firm, or entity (other than Recipient employees to accomplish the Purpose) but are to remain under Recipient's immediate and direct control. Recipient agrees not to attempt, without the Company's prior written approval, to analyze the Formulation for their chemical or physical composition or to use the Formulation in any manner (including, without limitation, as a reference standard) to produce additional Formulations.

2.2 This Agreement does not restrict the Company's right to distribute the Formulation to other commercial or non-commercial entities.

2.3 The provision of the Formulation to Recipient in no way prevents or restricts the Company's right to publish any document relating to the Formulation, except as provided in Section 4 below.

2.4 Recipient agrees to use the Formulation in a safe manner and in compliance with applicable laws, orders, regulations and guidelines.

2.5 Recipient acknowledges and agrees that, as between the parties, notwithstanding any other provisions of this Agreement, the Company holds all right, title, and interest in and to the Formulation and Confidential Information. No option, license, or conveyance of rights, express or implied, is granted by the Company to Recipient in connection with any Formulation or Confidential Information, except the right to use the Formulation and Confidential Information in accordance with the terms of this Agreement solely to the accomplish the Purpose.

2.7 Recipient agrees not to use the Formulation in any fashion in research that is subject to consulting, licensing or similar obligations¹⁴ to any third party without the prior written consent of the Company.

3. Confidentiality.

3.1 "Confidential Information" shall mean all information concerning products, technology, business plans, financials, data, test results, methods, protocols, development

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strategies, processes, formulations, compounds and any other confidential or proprietary information whether of a written, oral, electronic or visual nature furnished by one party (the "Disclosing Party") to the other party (the "Receiving Party")¹⁸ in connection with this Agreement or the research contemplated herein, regardless of whether such information is specifically designated as confidential and regardless of whether such information is in oral, written, electronic or other form. All materials, documents, Data, information, combinations, reports, updates and suggestions of every kind and description supplied to Recipient directly or indirectly by the Company or generated pursuant to this Agreement shall be the sole and exclusive property of the Company and be deemed Confidential Information¹⁹, subject to Section 4. Confidential Information shall not include information that:

(a) is generally available in the public domain or thereafter becomes available to the public through no act of the Receiving Party; or

(b) was independently known to the Receiving Party prior to receipt thereof or was discovered independently by an employee of the Receiving Party who had no access to the information supplied by the Disclosing Party under this Agreement, as evidenced by written records; or

(c) was made available to the Receiving Party as a matter of lawful right by a third party who had no obligations of confidentiality to the Disclosing Party.

3.2 The obligations of the Receiving Party under this Section 3 shall survive and continue for seven (7) years after expiration or termination of this Agreement.

3.3 Obligations. The Receiving Party agrees that it shall not, without the prior written consent of the Disclosing Party, directly or indirectly:

(a) make any use, including but not limited to any research, commercial or potentially commercial use thereof, of any portion of the Confidential Information of the Disclosing Party for purposes other than the Purpose;

(b) duplicate, disseminate, disclose or transfer any portion of the Confidential Information to any person or entity, except that the Receiving Party may disclose or permit the disclosure of Confidential Information to its employees who are obligated to maintain the confidential nature of such Confidential Information pursuant to this Agreement and who need to know such Confidential Information for the performance of this Agreement;

(c) duplicate, disseminate, disclose or transfer any portion of the Confidential Information to any other person or entity, including, but not limited to, a government agency, firm or

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business;

or

(d) make or use any notes or memoranda relating to any Confidential Information except for the Purpose.

Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party when required by applicable laws, subpoenas, court orders, or government regulations; provided, however, that the Receiving Party advises the Disclosing Party as far in advance of the need for such disclosure as practicable to enable the Disclosing Party to seek a protective order or other appropriate remedy. Upon the Disclosing Party's request, the Receiving Party will use reasonable efforts to assist the Disclosing Party to obtain assurances that confidential treatment will be accorded to the Confidential Information disclosed pursuant to this Section 3.3. The Receiving Party shall give the Disclosing Party written notice of any Confidential Information to be disclosed pursuant to this Section 3.3

3.4 The Receiving Party acknowledges that the Disclosing Party (or any third party entrusting its confidential information to the Disclosing Party) claims ownership of the Confidential Information disclosed by the Disclosing Party and all Intellectual Property Rights in or arising from, such Confidential Information. No option, license, or conveyance of such rights, express or implied, is granted to the Receiving Party in connection with any Confidential Information disclosed by the Disclosing Party.

3.5 In the event of any unauthorized use or transfer of the Formulation or the Company's Confidential Information (i.e., any use or transfer beyond that expressly permitted under this Agreement), the Company may terminate this Agreement upon written notice to the Recipient with immediate effect, and Recipient thereafter will no longer have the right to use the Formulation or the Confidential Information for any purpose.

3.6 The Receiving Party agrees that money damages will not be a sufficient remedy for any breach of this Section 3 by it or its employees, and the Disclosing Party shall be entitled to specific performance and injunctive relief and any other appropriate equitable remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

4. Publication.

4.1 Recipient shall have the right, consistent with academic standards, to publish or present the results of research performed under this Agreement. To balance this right with the Company's proprietary interests, Recipient shall submit the proposed publication to the Company for its review at least ninety (90) days prior to the submission to any journal

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for review or in the case of proposed public oral disclosures, Recipient shall submit an abstract of the proposed disclosure at least fifteen (15) days prior to public disclosure. The Company will complete its review within ninety (90) days or fifteen (15) days of receipt of the submitted documents. The Company may require that the Recipient delete from its publication, presentation, abstract or similar documents or disclosure any of the Company's Confidential Information. If, during the ninety (90) or fifteen (15) day, as applicable, review period, the Company notifies Recipient that it desires to have a patent application filed on any Invention disclosed in the publication, presentation, abstract or similar documents or disclosure, Recipient will defer publication or public disclosure for up to ninety (90) additional days from the date of notice by Company to permit Company or Recipient to prepare and file a patent application. The Company will make a good faith effort to file any such patent application(s) on a prompt basis.

4.2 Recipient agrees that, if it publishes or presents the results of any research or study performed under this Agreement, Company is hereby granted a non-exclusive, worldwide, full paid-up, non-transferable royalty-free license to make and distribute copies of such publication or presentation results under any copyright privileges that Recipient may have. The Recipient shall, in any agreement with a journal or other publisher to publish any study or services performed under this Agreement, use reasonable efforts to reserve expressly all copyright rights necessary to grant Company the license and rights contained herein.

5. Report.

5.1 Not later than three (3) months after the date of delivery of Formulation and at least every three (3) months thereafter, the Recipient will update the Company in writing in reasonable detail regarding the titles of all studies being conducted or contemplated pursuant to this Agreement using any Formulation, the progress and results of the studies hereunder, and any information on safety-related findings.

5.2 In exchange for use of the Formulation, the Recipient agrees that it will provide the Company with a written report within thirty (30) days of completion of the Purpose or earlier termination of this Agreement of the results of the work performed under this Agreement, including all Data, in the form of a research report of sufficient quality and detail to support the submission of a publication in a scientific journal ("Report"). The Recipient shall not disclose or provide to for-profit third parties the research report, results, Data and updates provided pursuant to Section 5.1, except as provided in Section 4. The Company shall have the right to use the research report, results, Data and updates in any manner it deems appropriate to its business interests, and as required by legal and/or business obligations, including to support patent filings, in submissions for the product approval process to governmental regulatory authorities, to comply with securities law or to satisfy other requirements of any governmental agency.

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6. Inventions.

6.1 Any discoveries, developments, improvements, know-how, modifications, combinations, formulations, compositions of matter, data, processes and other inventions (whether or not patentable) solely made, conceived or reduced to practice by the Recipient or the Company prior to such party performing its obligations hereunder, are and shall remain sole property of the Recipient or the Company, as applicable. The Recipient shall own all right and title to Inventions made, conceived or reduced to practice solely by the Recipient's researchers. The Company shall own all right and title to Inventions made, conceived or reduced to practice solely by the Company researchers. The Recipient and Company shall own jointly Inventions made, conceived or reduced to practice jointly by the Recipient's and the Company's researchers. Inventorship shall be determined by United States Patent Law.

6.2 The Recipient will promptly disclose to the Company in writing any Inventions made, conceived or reduced to practice solely or jointly by the Recipient's employees or researchers. Such disclosure shall be sufficiently detailed for the Company to assess the patentability of the technology. Upon the written request of the Company, the Recipient will promptly file a patent application(s) on Inventions solely owned by the Recipient after due consultation with the Company regarding the claims and content of such application(s). The Company shall reimburse Recipient for all reasonable out-of-pocket costs incurred in connection with the filing of such application(s). The Company shall have the sole right to file patent application(s) on Inventions that are jointly owned after due consultation with the Recipient regarding the claims and content of such application(s). Each party shall provide reasonable assistance to the other in such other party's efforts to seek protection of Inventions owned by such party.

6.3 All Inventions that are owned or jointly owned by the Recipient shall be subject to the following licensing terms. The Recipient agrees to grant and hereby grants to the Company a non-exclusive, royalty-free, perpetual, irrevocable, transferable, fully paid-up, worldwide license with right to sublicense to make, have made, use, sell, offer to sell and import such Inventions. If the Recipient decides to discontinue patent prosecution or maintenance of Inventions licensed under such non-exclusive license, the Recipient will notify Company in writing at least ninety (90) days in advance of such discontinuance, and Company will have the right, at its option, to prosecute and maintain any such patents at its expense in the name of the Recipient and, at that time, will have six (6) months, which period can be extended upon mutual written agreement, to negotiate with the Recipient for an exclusive,

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royalty-bearing⁴⁵ license under such Inventions on reasonable terms (which shall include a right of the Company, at the Company's sole expense, to control the prosecution, maintenance, and defense of all patents to which the license relates). In the event that the Company does not enter into an exclusive, royalty-bearing license with the Recipient with respect to such Inventions in such time period,

(A) The Recipient shall be entitled to negotiate in good faith with one or more third parties a license under such Inventions (subject to the Company's non-exclusive license rights therein and the Company's right to prosecute and maintain patents related to such Inventions); provided however, that the Recipient may only offer such rights to third parties on terms and pricing no more favorable than those last offered to the Company, unless the more favorable terms and pricing have first been offered to the Company and either the Company declined in writing to accept the terms and pricing or did not respond after a period of forty-five (45) days, and

(B) The Company will continue to have the right to prosecute and maintain any patents covering such Inventions at its expense in the name of the Recipient; provided that, in the event that the Recipient has one or more other licensees to such Inventions, the patent costs shall be pro-rated equally amongst all such licensees.

6.4 In addition to the rights in Section 6.3, for Inventions determined to be solely owned by the Recipient or jointly owned by the Company and the Recipient, the Company is granted an exclusive option to negotiate an exclusive license, including the right to sublicense, on reasonable terms (which shall include a right of the Company, at the Company's sole expense, to control the prosecution, maintenance, and defense of all patents to which the license relates), to such Inventions or, as applicable, the Recipient's rights in such jointly owned Inventions, such option to be exercised within six (6) months of disclosure of the Inventions to the Company. The Company shall have upon election six (6) months to negotiate a license, which period can be extended by mutual written agreement. In the event the parties fail to reach a mutually acceptable license agreement within the above specified time period, the Recipient shall be entitled to negotiate in good faith with one or more third parties a license under any Inventions solely owned by the Recipient or the Recipient's rights in Inventions jointly owned by the Company and the Recipient (subject to the Company's non-exclusive license rights therein); provided however, that the Recipient may only offer such rights to third parties on terms and pricing no more favorable than those last offered to the Company, unless the more favorable terms and pricing have first been offered to the Company and either the Company declined in writing to accept the terms and pricing or did not respond after a period of ninety (90) days.

6.5 The Recipient represents that all employees and researchers performing work pursuant to this Agreement have executed agreements assigning any Intellectual Property Rights to the Recipient.

7. Terminations.

7.1 At the earlier to occur of one year from the Effective Date or the completion of the Purpose this Agreement will terminate.

7.2 Either party may terminate this Agreement (i) at any time upon thirty (30) days' prior written notice to the other party for convenience; (ii) as provided in Section 3.5 upon written notice after unauthorized use or transfer of the Formulation or Confidential Information; (iii) upon any other material breach by the other party of the terms or conditions of this Agreement, which breach cannot be, or is not, cured within fifteen (15) days after the breaching party receives written notice by the non-breaching party regarding such breach, or (iv) with immediate effect upon the other party becoming insolvent or bankrupt or making an assignment for the benefit of its creditors, upon appointment of a trustee or receiver for the other party or all or substantially all of its property, or upon the filing of a voluntary or involuntary petition by or against the other party under any bankruptcy or insolvency law, the reorganization or rearrangement provisions of the United States Bankruptcy Code, or any similar law.

7.3 Upon expiration or earlier termination of this Agreement, the Recipient at the direction of the Company shall promptly destroy or return (a) all Formulations (unless instructed by the Company in writing to assign Formulations to a different protocol or study), (b) all copies of the Company Confidential Information (except that the Recipient may retain one (1) copy of Company Confidential Information received hereunder in the possession of its legal counsel, solely for monitoring its obligations under this Agreement), and (c) any other plans, drawings, papers, and other documents, samples, biological materials and models pertaining to the subject matter hereof. The obligation to return Confidential Information shall survive after termination of this Agreement until this obligation is fulfilled.

8. No Warranties.

The Formulations are the subject of patents and/or patent applications owned by the Company. Because the use of the Formulations and combinations thereof are experimental in nature, THEY ARE PROVIDED TO THE RECIPIENT AS IS WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT,

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MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY MAKES NO REPRESENTATION THAT THE USE OF THE MATERIAL(S) WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS OF ANY THRD PARTY. In no event shall the Company be liable for any use of the Formulations by the Recipient, including loss of profits or other direct or indirect damages. The Recipient hereby agrees to defend, indemnify and hold the Company harmless from any loss, claim, damage, or liability which may arise from the Recipient's use, storage and disposal of the Formulations in a manner inconsistent with this Agreement, except to the extent such loss, claim, damage or liability is the direct result of the Company's negligence or legal wrongdoing.

9. Failure to Comply.

9.1 In the event that the Recipient fails to comply with the restrictions set forth in this Agreement governing the use of the Formulations or the Confidential Information, in addition to any other remedies that the Company may have at law or in equity or by contract, The Recipient agrees to assign to the Company all of Recipient's right, title, and interest, if any, to any and all information, results, Data, Formulations and Inventions, arising from the prohibited use of the Formulations or the Confidential Information.

10. Irreparable Harm.

10.1 The Recipient further acknowledges that, were the Recipient to breach any of the covenants or restraints in Sections 3, 4 or 6, the damage to the Company will be irreparable and the Company will not have an adequate remedy at law⁷⁴. The Company therefore will be entitled to an injunction enforcing those covenants and restraints in the event of a breach and to its costs and attorneys' fees in obtaining such relief.

11. Miscellaneous.

11.1 Any notice, report, update, approval or consent under this Agreement will be in writing, and will be deemed given (a) when delivered personally or transmitted by email (with receipt of email confirmed), (b) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification or receipt. All such communications will be sent to the address set forth below or such other address as either party may designate from time to time in accordance with this Section 11.1:

If to the Company:

Email: rick@godskudzukiller.com

Attn: Rick Araujo

If to the Recipient:

Email:

Attn:

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11.2 This Agreement will be governed by and construed according to the internal laws of the Commonwealth or State Georgia, without regard to the conflicts of law principles. The Recipient hereby expressly consents to the personal jurisdiction of the state and federal courts located in Forsyth County for any lawsuit filed in such court against the Recipient by the Company arising from or relating to this Agreement.

11.3 This Agreement (including the CDA incorporated hereto) hereto sets forth the final, complete and exclusive agreement and understanding between the Company and the Recipient relating to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by each of the parties hereto. No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

11.4 The Company may assign this Agreement or any rights hereunder at its sole discretion. The Recipient may not assign this Agreement or any rights hereunder without the prior written consent of the Company. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. Sections 3-6 and 8-11 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

[Recipient]

By: _____

Name:

Title:

God's Kudzu Killer, LLC

By: _____

Name: Rick Araujo

Title: Owner

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