

MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (“**Agreement**”) is by and between the **National Institute of Standards and Technology** (“**NIST**”), having its principal place of business at Gaithersburg, Maryland 20899, and (“**Recipient**”), having its principal place of business at NIST and Recipient agree as follows:

1. The material concerned, which belongs to **NIST** and which is being provided to **Recipient**, is described as follows

(“**Material**”).

NIST is providing the Material to Recipient for the following purpose:

(“**Research Project**”). Recipient shall not use the Material for any commercial purposes, such as screening, production or sale, for which a commercialization license may be required.

2. Recipient shall not use the Material in human subjects or for any clinical purposes. Recipient agrees to comply with all Federal rules and regulations applicable to the Research Project and the handling of the Material.
3. In all oral presentations or written publications concerning the Research Project, Recipient will acknowledge NIST's contribution of the Material unless NIST requests otherwise.
4. To the extent permitted by law, Recipient agrees to treat in confidence, for a period of three (3) years from the date of its disclosure, any written information about the Material that is disclosed by NIST and that NIST marks as confidential (“**Proprietary Information**”), except for any information that was previously known to Recipient; that is or becomes publicly available; that is disclosed to Recipient by a third party under no obligation of confidentiality; or that is independently developed by Recipient or its agents or consultants who had no access to the Proprietary Information. Recipient may publish or otherwise publicly disclose the results of the Research Project, but shall not disclose any Proprietary Information.
5. The Material represents a significant investment on the part of NIST, and remains under development at NIST. Recipient therefore agrees to retain control over the Material, and not to transfer the Material to others without prior written approval by NIST. NIST reserves the right to distribute the Materials to others and to use it for its own purposes.
6. This Agreement shall be effective upon full execution by both parties (“**Effective Date**”) and shall expire year(s) after Effective Date, unless terminated earlier by either party after thirty (30) days advance notice to the other party. Upon completion of the Research Project, or upon expiration or earlier termination of this Agreement, whichever occurs first, Recipient will destroy or otherwise dispose of the Material as mutually agreed by NIST and Recipient.
7. The Material is provided as a service to the research community. IT IS BEING SUPPLIED TO RECIPIENT WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NIST makes no representations that the use of the Material will not infringe any patent or proprietary rights of third parties.

8. Recipient shall retain title to any patent or other intellectual property rights in inventions made by its employees in the course of the Research Project. Recipient agrees not to claim, infer, or imply endorsement by the U.S. Government of the Research Project, personnel conducting the Research Project or any resulting commercial product(s).

9. As an agency of the federal government, NIST's responsibility for the payment of claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement shall be governed by the Federal Torts Claims Act. Further, according to the proscriptions of the Anti-Deficiency Act, 31 U.S.C. §1341, NIST can only be responsible for the actions or omissions of its employees and cannot agree to specific, future (prospective) remedies or a limitation thereof.

10. Recipient will comply with all applicable United States and foreign export laws and regulations pertaining to the Material and any associated Proprietary Information disclosed by NIST. Without limitation, Recipient agrees it will not in any form export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, any product or technical data or software furnished under this Agreement or the direct product of such technical data or software to any country for which the United States Government or any agency thereof at the time of export or re-export requires an export license or other governmental approval without first obtaining such license of approval.

11. This Agreement shall be governed by and construed in accordance with the laws of the United States. All Actions concerning this Agreement shall be brought in the federal district courts of the United States.

IN WITNESS WHEREOF, NIST and Recipient have caused this Agreement to be executed by their duly authorized representatives.

FOR RECIPIENT

_____ Date

Mailing Address for Notices:

FOR NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Henry Wixon _____ Date
 Chief Counsel for NIST

_____ Date

Paul Zielinski _____ Date
 Director, Technology Partnerships Office

Mailing Address for Notices:

NIST Technology Partnerships Office,
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