

Material Transfer Agreement

between Carnegie Mellon University (PROVIDER) and

_____ (RECIPIENT)

Date: _____

A. Specific Terms of Agreement (Implementing Section)

I. ORIGINAL MATERIAL: _____

II. PROVIDER of the ORIGINAL MATERIAL (Name and address):

Carnegie Mellon University

5000 Forbes Avenue

Pittsburgh, PA 15213

III. PROVIDER SCIENTIST (name):

IV. RECIPIENT ORGANIZATION (Name and address):

V. RECIPIENT SCIENTIST (Name and title):

VI. TRANSMITTAL FEE (due and payable within sixty days of execution):

VII. TERMINATION DATE:

B. General Terms and Conditions

I. Definitions:

1. MATERIAL shall mean ORIGINAL MATERIAL provided to the RECIPIENT under this Agreement. The term MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL.
2. MODIFICATIONS: Substances created by the RECIPIENT which contain or incorporate the MATERIAL or which are made using MATERIAL.
3. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any person or organization, including RECIPIENT, to perform contract research, to produce or manufacture products for sale, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL or MODIFICATIONS. However, industrially-sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

II. Terms and Conditions of this Agreement:

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.
2. The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL). If either 2 (a) or 2 (b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.
3. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:
 - (a) is to be used solely for research purposes;
 - (b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER; and
 - (c) is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision.
4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision.

5. Without written consent from the PROVIDER, the RECIPIENT may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.
6. The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.
7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.
8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL. Any patent application shall give full and proper credit to the inventors of the MATERIALS. Further, no patent application shall be filed by RECIPIENT so as to bar use of the MATERIAL by PROVIDER. If notwithstanding the foregoing, any such patent application is filed or granted, RECIPIENT hereby assigns any and all patent rights to make, use, or sell the MATERIAL to PROVIDER.
9. No warranties; Limitation on types of damages

ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY THE PROVIDER PURSUANT TO THIS AGREEMENT, INCLUDING THE ORIGINAL MATERIAL, ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. PROVIDER MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL

CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. THE MATERIAL PROVIDED PURSUANT TO THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE AND MAY HAVE HAZARDOUS PROPERTIES.

RECIPIENT IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF PROVIDER RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS, INCLUDING THE MATERIAL, GRANTED AND/OR PROVIDED BY PROVIDER PURSUANT TO THIS AGREEMENT.

PROVIDER SHALL NOT BE LIABLE TO RECIPIENT OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

10. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL and/or any MODIFICATIONS. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against from the use of the RECIPIENT by any other party, due to or arising from the use, storage or disposal of the MATERIAL and/or MODIFICATION by the RECIPIENT, except to the extent permitted by law or caused by the gross negligence or willful misconduct of the PROVIDER. RECIPIENT agrees to indemnify, defend and hold harmless PROVIDER and PROVIDER's trustees, officers, employees, and agents from any and all claims or demands made against them, including but not limited to claims of negligence, arising from RECIPIENT'S use, storage or disposal of the MATERIAL and/or any MODIFICATIONS, except when caused by the gross negligence or willful misconduct of the PROVIDER.
11. This Agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgment of the source of the MATERIAL in all publications.
12. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable laws and regulations, including Public Health Service and National Institutes of Health regulations and guidelines.
13. This Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written

notice by either party to the other, or (d) on the date specified in A. Implementing Section, provided that:

- (i) if termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available sources; and
- (ii) if termination should occur under 13(b) or (d) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Agreement as they apply to MODIFICATIONS; and
- (iii) in the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this Agreement, the PROVIDER will defer the effective date of termination for a period of up to three (3) months, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Agreement as they apply to MODIFICATIONS.

14. For purposes of this Agreement, "Confidential Information" shall mean any information relating to the MATERIAL, including patent applications, and all related foreign applications, continuations, continuation-in-part and divisional applications, or any of them, and oral communications relating to or regarding the MATERIAL or information not related to the MATERIAL that is disclosed to RECIPIENT in the manner set forth hereinafter. All such information shall be Confidential Information, including information disclosed to RECIPIENT prior to the date of this Agreement, unless such information (i) was already in RECIPIENT's possession prior to the disclosure thereof by PROVIDER, (ii) has been published or is published hereafter, unless such publication is a breach of this Agreement, (iii) is received by RECIPIENT from a third party not under any obligation of confidentiality with respect thereto, or (iv) is independently developed by RECIPIENT without reference to or incorporation of the Confidential Information, or (v) is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, but only to the extent so required; provided however that before making such disclosure, RECIPIENT shall give PROVIDER an adequate opportunity to interpose an objection and/or take action to assure confidential handling of such information. With respect to any information not related to the MATERIAL which is sought by PROVIDER to be Confidential Information subject to this Agreement, PROVIDER shall mark such information as "Confidential" prior to disclosing it to receiving party. With respect to any oral communication, not related to the MATERIAL, which is deemed by PROVIDER to be Confidential Information subject to this Agreement, PROVIDER shall notify RECIPIENT of such fact and within thirty (30) days thereafter PROVIDER shall send a memorandum to RECIPIENT outlining the information deemed to be Confidential Information. RECIPIENT shall maintain in confidence and shall not disclose to any

person not a party hereto nor shall RECIPIENT use or exploit in any way without PROVIDER's written agreement, any Confidential Information for a period of five (5) years from the date of such disclosure, unless such information ceases to be Confidential Information prior to the end of such five-year period through no fault of RECIPIENT or the RECIPIENT and PROVIDER enter into a written agreement authorizing same. RECIPIENT shall exercise all reasonable precautions to prevent the disclosure of Confidential Information by its employees or representatives, and in any event shall maintain with respect to such Confidential Information a standard of care which is no less than that standard which RECIPIENT maintains to prevent the disclosure of its own confidential information.

15. The provisions of this Agreement which by their nature survive termination of this Agreement, shall survive termination for any reason
16. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in A. Implementing Section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate counterparts, each of which shall be deemed to constitute an original, effective as of the date first above written.

The undersigned verify subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities that they have the authority to bind to this Agreement the party on behalf of which they are executing below.

PROVIDER ORGANIZATION:
CARNEGIE MELLON UNIVERSITY

By: _____ Date: _____

Robert A. Wooldridge

Title: Associate VP, Center for Technology Transfer and Enterprise Creation

Address for Notices: Carnegie Mellon University
Attention: Associate VP of Technology Transfer and Enterprise
Creation

4615 Forbes Avenue, Suite 302
Pittsburgh, PA 15213

Fax: 412-268-7395

RECIPIENT ORGANIZATION:

By: _____ Date: _____

Title: _____

Address for Notices: _____

Telecopier: _____

RECIPIENT SCIENTIST:

By: _____ Date: _____

Title: _____