## Shaded Area - Internal University Use Only

**OTC Agreement No.:**

**OTC Docket No.(s):**

**Origination Date:**

**Document Revision Date:**



MATERIAL TRANSFER AGREEMENT

**THIS MATERIAL TRANSFER AGREEMENT** (the “Agreement”) is dated and effective as of the date of last signature (the “Effective Date”), and is made by and between Regents of the University of Minnesota, a constitutional corporation under the laws of the state of Minnesota having a place of business at McNamara Alumni Center, 200 Oak St. SE, Suite 280, Minneapolis, MN 55455 (the “University”), and [Enter Entity Name], a [Enter Entity Type, i.e. Corporation, L.L.C. Etc.], under the laws of the [Enter Either Word State or Word Country]of [Enter Name of the State or Country] having a place of business at [Enter Primary Address of Entity] (the “Recipient”).

**Purpose**

 The University possesses, and is willing to deliver to the Recipient, **[Enter Description of Material Being Transferred]** (the “Material”) and, in certain instances, the confidential information defined in section 5.1 of this Agreement (the “Confidential Information”) on the terms and conditions set forth below.

 **NOW, THEREFORE**, the parties agree that:

**1. Delivery of the Material.** Subject to the terms of this Agreement, the University shall deliver the Material to the Recipient at the Recipient’s address described above.

**2. The Recipient’s Use of the Material and the Confidential Information.**

 2.1 The Recipient shall use the Material and the Confidential Information only for the purpose indicated below (such purpose, the “Permitted Use”):

 [ ]  The Recipient may use the Material and the Confidential Information to evaluate the Material for commercial development; provided, however, the Recipient is not permitted under this Agreement to sell, lease or otherwise transfer to a third party any product or process derived from or encompassing all or any part of the Material or Confidential Information.

 [x]  The Recipient may use the Material and the Confidential Information for non-commercial academic and research purposes. In all its publication and other public announcements concerning the Material, Recipient shall identify the source of the Material.

 2.2 The Recipient shall furnish the Material and the Confidential Information only to its employees who have a need to use the Material and know of the Confidential Information in connection with the Permitted Use. The Recipient shall direct each of its employees having access to the Confidential Information or Material to use, hold and protect the Material and Confidential Information on terms at least as restrictive as those contained in this Agreement. The Material shall not be further distributed to others without the University’s prior written consent.

 2.3 No provision of this Agreement grants the Recipient any right under any patent or other intellectual property right in or to the Material or the Confidential Information, including, without limitation, the right to make any commercial products or processes derived from or with the Material or Confidential Information. The Recipient shall obtain a license from the University prior to making any use of the Material or Confidential Information other than the Permitted Use. The University shall have no obligation to grant any such a license to the Recipient.

**3. The University’s Use of the Material**. The parties acknowledge and agree that no provision of this Agreement limits, conditions or otherwise affects the University’s right (i) to use the Material or the Confidential Information, (ii) to deliver the Material or the Confidential Information to a third party, or (iii) to grant a third party an exclusive or nonexclusive license or other right to the Material.

**4. Third Party’s Rights in the Material.** The parties acknowledge and agree that no provision of this Agreement limits, conditions or otherwise affects the United States of America's or any other third party’s rights and interests in the Material or the Confidential Information.

**5. Confidentiality and Non-Disclosure.**

 5.1 The term “Confidential Information” Confidential Information means any of the following: (i) written or tangible information disclosed by the University, which at the time of disclosure is clearly and conspicuously labeled “Confidential” or “Proprietary”; (ii) oral and visual information disclosed by the University which is identified as confidential at the time of such disclosure and which is confirmed and summarized in writing by the University within fifteen (15) days of the disclosure, provided that the absence of written confirmation does not necessarily imply that the disclosed information is non-confidential or non-proprietary; and (iii) the information set forth below, whether or not marked “Confidential” or “Proprietary” and (if disclosed orally or visually) whether or not summarized in a subsequent writing:

 sNone or Technical and proprietary information including, but not limited to, concepts, research, data, test results, training materials, processes, methodologies, applications, knowledge, know-how, cell lines, compounds, formulae, structures, schematic diagrams, drawings, models, software, source code, algorithms, non-published patent applications, business plans, market research and analysis, related to the following University Docket No. Z0XXX, entitled, “ENTER DOCKET TITLE HERE”.

 5.2 The Recipient shall hold the Material and the Confidential Information in strict confidence except as permitted under this Agreement. Until the third (3rd)anniversary of the Effective Date, the Recipient shall not, and shall require each of its employees not to, (a) disclose the Confidential Information to any person not employed by the Recipient or (b) use the Confidential Information for any purpose other than Permitted Use.

 5.3 The Recipient’s obligation not to use or disclose the Confidential Information shall not apply to those portions of the Confidential Information that:

 (i) was generally available in the public domain at the time the University disclosed it to Recipient, or after the University’s disclosure of it to the Recipient, was placed in the public domain through no act or fault of the Recipient or its employees, agents or representatives;

 (ii) Recipient had actual knowledge of as evidenced by written records, provided the Recipient acquired such knowledge in conformance with all applicable laws and not as the recipient, directly or indirectly, of such information in violation of a valid and enforceable confidentiality agreement;

 (iii) Recipient obtains in good faith from a third party not bound by confidentiality obligations to the University; or

 (iv) Recipient develops independently, for which Recipient can demonstrate by written records that independent development occurred without knowledge or use of the Confidential Information.

 5.4 The Recipient shall have the right to disclose the Confidential Information as required by law or a governmental agency or body, including under a valid subpoena or court order issued by a court of competent jurisdiction over the Recipient and its properties. In such event, the Recipient shall deliver written notice to the University of its obligation and intention to disclose Confidential Information at least thirty (30) days prior to the intended date of disclosure.

**6. Ownership.** The Recipient acknowledges and agrees that the Material and the Confidential Information shall remain the property of the University. Within ten (10) days after its receipt of a written request, the Recipient (i) shall deliver to the University all materials comprising the Material in its or its employees’, agents’ or representatives’ possession and all written, electronic, or computerized materials in its or its employees’, agents’ or representatives’ possession containing or reflecting the Confidential Information or (ii) shall certify to the University the destruction of all Material and Confidential Information, and the Recipient shall retain no more than one copy, extract, or other reproduction of such written, electronic, or computerized material evidencing Confidential Information to be used solely by Recipient to evidence the performance of its obligations under this Agreement.

**7. Export Controls and Sanctions.** The parties shall comply with export controls and sanctions statutes and regulations, including the Export Administration Regulations (EAR, 15 C.F.R. pts. 730-774), the International Traffic in Arms Regulations (22 C.F.R. pts. 120-130), and the Foreign Assets Control Regulations (31 C.F.R. pts. 500-599), to the extent such statutes and regulations are applicable to the parties' activities. Recipient shall not use any University-furnished technology, technical data, commodity, software, or other material contrary to the requirements in Part 744 of the EAR, Control Policy: End-Use and End-User Based (15 C.F.R. pt. 744).

**8. No Warranties or Liability.** The Recipient acknowledges its understanding that the Material and Confidential Information are experimental in nature. **The Recipient accepts the Material AND CONFIDENTIAL INFORMATION “as is, with all faults.” The Recipient acknowledges that it has not relied upon any statements made by the University concerning the material OR THE CONFIDENTIAL INFORMATION. The university disclaims all WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, AND OF NON-INFRINGEMENT OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS AND OTHER RIGHTS. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PECUNIARY, EXPECTANCY OR COMPENSATORY DAMAGES, INCLUDING LOST PROFITS** **OR LOST BUSINESS OPPORTUNITY.**

**9. Release.** The Recipient, for itself and its employees and agents, releases the University and its regents, employees, agents and representatives from any claim, suit, action or liability arising out of this Agreement, including, without limitation, the use of the Material.

**10. Indemnification.** The Recipient shall defend, indemnify, and hold the University and its regents, employees, agents and representatives harmless from any loss, claim, damage, or liability, of whatsoever kind or nature, that may arise from or in connection with this Agreement or the use of the Material.

**11. General Terms.** This Agreement shall constitute the entire understanding of the parties with respect to the subject matter hereof, and shall supersede all prior agreements and understandings of the parties on such subject matter. This Agreement shall be amended only in a writing duly executed by all the parties. No party may assign or delegate any right or duty under this Agreement unless the other party has consented in writing to such assignment or delegation. An assignment or delegation made in violation of this section 10 shall be void and shall not bind the other party. The provisions of sections 2 and 5 - 9 shall survive termination or expiration of this Agreement. This Agreement shall be interpreted in accordance with the laws (with the exception of conflicts of laws provisions) of the state of Minnesota.

 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed by their respective authorized representatives.

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| **Regents of the University of Minnesota** | **[Enter Company Name]** |
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| By: |  |  | By: |  |  |
| Name: |   | Name: | [Enter Signatory Name] |
| Title: | Associate Director | Title: | [Enter Signatory Title] |
|  | Office for Technology Commercialization |  |  |