

SOFTWARE TRANSFER AGREEMENT

Provider: **NATIONAL INSTITUTES OF HEALTH CENTER FOR INFORMATION TECHNOLOGY (NIHCIT)**

Recipient:

WHEREAS, Provider has certain proprietary software and associated material described below (hereinafter, collectively referred to as "Software")(Describe all items being transferred; software, documentation, data and all other associated materials): **Global Unique ID (GUID) Client software** and Provider agrees to transfer such Software to Recipient's investigator, to be used solely in connection with the following research activity and for the following reasons (hereinafter "Project") (Describe with specificity the scope of use of Software under this agreement): **connect to GUID server to acquire an unique ID.**

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Provider and Recipient agree as follows:

1. SOFTWARE MAY NOT BE USED FOR TREATING OR DIAGNOSING HUMAN SUBJECTS. Recipient will not license or sell or use Software for commercial purposes or applications. Recipient's investigator shall retain control over Software and further will not transfer the Software to individuals not under Recipient investigator's direct supervision without express advance written approval of Provider. Recipient agrees to comply with all Federal regulations applicable to research projects and handling of research materials.
2. Recipient agrees to use Software at single location, (hereinafter "Site") which is: Recipient agrees not to copy Software, in whole or in part, except as required for use by Recipient's investigator at the designated Site for the Project defined in this Agreement.
3. Information deemed confidential under this Agreement shall be clearly marked "CONFIDENTIAL." Any information that is orally disclosed must be reduced to writing and marked "CONFIDENTIAL" by the provider of the information within thirty (30) days of such disclosure.
4. To the extent permitted by law, the Recipient agrees to employ all reasonable efforts to safeguard Provider's Confidential Information to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure or distribution, in whole or in part, in any form shall be made. Such efforts to be no less than the degree of care employed by Recipient to preserve and safeguard its own confidential information. Confidential Information shall not be disclosed, revealed, or given to anyone except employees who have a need to have the Confidential Information in connection with Project, and who have assumed an obligation to maintain the Confidential Information in confidence at least to the extent that such party is bound hereunder, and such employees shall be advised by such other party of the confidential nature of the Confidential Information and that the Confidential Information shall be treated accordingly. In all oral presentations or written publications concerning the Project, Recipient will acknowledge Provider's contribution of Software unless requested otherwise. Recipient may publish or otherwise publicly disclose the results of the Project, but if Provider has given Confidential Information to Recipient, such public disclosure may be made only after Provider has had 30 days to review the proposed disclosure, except when a shortened time period under court order or the Freedom of Information Act pertains.

5. The obligations of Recipient under paragraph 4 above shall not extend to any part of the Confidential Information:

(a) that can be demonstrated to have been publicly known at the time of disclosure; or

(b) that can be demonstrated to have been properly in the Recipient's possession or that can be demonstrated to have been readily available to the Recipient from another proper source prior to the disclosure; or

(c) that becomes part of the public domain or publicly known by publication or otherwise, not due to any unauthorized act by the Recipient or its subsidiaries; or

(d) that can be demonstrated as independently developed or acquired by the Recipient without reference to or reliance upon such information; or

(e) that is required to be disclosed by law, provided that the Recipient takes reasonable and lawful actions to avoid and/or minimize such disclosure.

6. The Recipient's obligations under Paragraphs 4 and 5 shall extend for a period of three (3) years from the date of this Agreement, unless Provider informs Recipient that the Confidential Information is still confidential, in which case the obligations of Paragraph 4 and 5 shall extend for a further period of two (2) additional years.

7. Title in the Software shall remain with the Provider. It is understood that nothing herein shall be deemed to constitute, by implication or otherwise, the grant to either Party by the other of any license or other rights under any patent, patent application or other intellectual property right or interest. Provider reserves the right to distribute Software to others and to use it for Provider's own purposes.

8. When the Project is terminated, completed or when three (3) years have elapsed, whichever occurs first, Recipient will destroy or otherwise dispose of Software and all copies of Software as directed by Provider. Recipient will dispose of Provider's Confidential Information as directed by the Provider.

9. This Agreement may be terminated by either Recipient or Provider on 30 days notice.

10. Report regarding the application of the Software will be generated by the Recipient and forwarded to the Provider. The report will outline the effectiveness and problems encountered in using the Software, without disclosing the Recipient's confidential information. The information from the report may be used by Provider to enhance the capabilities of the Software.

11. The SOFTWARE is the property of the PROVIDER and is made available as a service to the research community. Title to the SOFTWARE shall remain with the PROVIDER. Nothing herein shall be deemed to constitute, by implication or otherwise, a grant to the RECIPIENT of any license or other rights under any patent, patent application, or other intellectual property right or interest.

12. When Provider is NIH: Recipient agrees to hold the United States Government harmless and to indemnify the Government for all liabilities, demands, damages, expenses and losses arising out of Recipient's use for any purpose of Software. Recipient agrees not to claim, infer, or imply Governmental endorsement of the Project, the Recipient or Recipient's personnel conducting the Project or any resulting product(s).

When Recipient is NIH: It is the intention of the NIH that Provider not be liable to NIH for any claims or damages arising from NIH's use of Software; however, no indemnification is provided or intended.

13. Software is supplied AS IS, without any accompanying services or improvements from Provider. SOFTWARE IS SUPPLIED TO RECIPIENT WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Provider makes no representations that the use of Software will not infringe any patent or proprietary rights of third parties.

14. It is understood and agreed by both Provider and Recipient that each represents and warrants to the other, that the Official signing this Agreement on behalf of the Provider and Recipient has authority to do so.

15. The illegality or invalidity of any provision of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

16. The construction, validity, performance and effect of this Agreement shall be governed by Federal law, as applied by the Federal Courts in the District of Columbia.

For Recipient:

Recipient Scientist: _____ Date: _____

Print Name

Affiliation

Authorized Official for Recipient: _____ Date: _____

Print Name

Affiliation

For Provider:

Provider Scientist: _____ Date: _____

Matthew McAuliffe, Ph.D.
CIT, NIH

Authorized Official: _____ Date: _____

Kevin Sullivan, Chief
Administrative Officer, CIT, NIH