

MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement ("**Agreement**") is by and between PowerAmerica, on behalf of NC State University ("**PowerAmerica**"), having its principal place of business at (PA address), NC State University, Raleigh, NC , and _____ ("**Recipient**"), having its principal place of business at _____.

PowerAmerica and Recipient agree as follows:

1. The material, which belongs to PowerAmerica or a member of PowerAmerica, and which is being provided to Recipient, is described as follows:
[Describe device/material]

("Material"). The Recipient agrees that the receipt of the Material constitutes a bailment and Recipient may use the Material for the following purpose only:
[Describe how the Material may be used]

("Research Project").

2. Recipient shall not use the Material for any commercial purposes such as production for sale, consulting, or any purpose other than that included within the definition of "Research Project". Any such use will constitute a breach of this Agreement and may be an infringement of patent or other intellectual property right. Recipient shall not use the Material in human subjects or for any clinical purposes.
3. The Material may be used only by the Recipient's principal investigator and individuals working under the direction and control of the principal investigator in performing the Research Project at Recipient's facility.
4. Except as expressly provided herein, Recipient will not (a) reverse engineer or analyze samples furnished by PowerAmerica; (b) create duplicates or derivatives of samples for commercial purposes; or (c) file any patent application containing a claim to any subject matter derived from the Material or Confidential Information provided to Recipient.
5. Recipient agrees to treat in confidence, for a period of five (5) years from the date of its disclosure, any written information about the Material that is marked as "Confidential Information", or, if not in writing, is reduced to writing and marked "Confidential Information" within thirty (30) days of disclosure ("**Confidential Information**"), except for (a) any information that was previously known to Recipient; (b) that is or becomes publicly available; (c) that is disclosed to Recipient by a third party under no obligation of confidentiality; or (d) that is independently developed by Recipient's employee or agent who had no access to the Confidential Information.
6. 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. Except to the extent necessary to use the Material for the purpose set forth herein, no right or license under any patent or patent application is granted. PowerAmerica makes no representation that the use of the Material will not infringe any patent or proprietary rights of a third party. RECIPIENT ASSUMES ALL RISKS ASSOCIATED WITH THEIR USE OF THE MATERIAL.

7. This Agreement is subject to all of the United States laws and regulations controlling the export of technical data, devices, computer software, laboratory prototypes and other commodities and technology (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended.) The transfer of the Material may require a license from the cognizant agency of the United States Government. The Recipient agrees that it will not export Material in contravention of United States law and PowerAmerica makes no representation that a license is not required nor that, if required, it will be issued. **[Please ask Richard Best and Tinu to review this clause. I anticipate that we will establish a procedure to evaluate each device for export control requirements, in which case we may want to be more specific about constraints in this clause.]**
8. Recipient will use the Material in compliance with all laws, governmental regulations, and guidelines applicable to the Material. In no event shall PowerAmerica, NC State University, the State of North Carolina, Department of Energy (DOE), or any other federal governmental entity, be liable for any use by Recipient of the Material for any loss, claim, damage or liability, of whatsoever kind, which may arise from or in connection with this Agreement or the use, handling or storage of the Material. Except where limited by federal law, or by the constitution and laws of the state governing the Recipient, Recipient agrees to hold harmless PowerAmerica and its members, NC State University, DOE and their officers, agents and employees, from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activity to be carried out pursuant to this Agreement and the use of the results obtained from research.
9. Recipient will inform PowerAmerica, in confidence, of results of the Research Project related to the Material. If Recipient desires to publish results of the Research Project in a noncommercial scientific publication, Recipient will provide PowerAmerica with a copy of any manuscript or abstract disclosing Research Project results prior to submission to a publisher or to any third party at least forty-five (45) days prior to disclosure, for the purpose of protecting the Material and any proprietary and intellectual property of NC State or members that may be disclosed by such publication.
10. Both parties may release factual statements regarding the existence of this MTA such as "PowerAmerica/NC State" and Recipient have entered into a material transfer agreement for research purposes. Any other statement, advertisement, press release, promotional activity or otherwise by either party that uses the name of the other party requires prior written consent of the named party.
11. This Agreement is entered into in the State of North Carolina and must be interpreted in accordance with the laws of the State of North Carolina, without reference to its conflicts of laws provisions.
12. The failure of either party to require the performance by the other party of any provision of this Agreement shall in no way affect the rights of such party to enforce the same in the future, nor shall the waiver by such party of any breach, violation, or threatened breach or violation of any provision of this Agreement be construed as a waiver of any subsequent breach, violation, or threatened breach or violation of the Agreement by the other party.
13. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

All written communications and notices between the parties shall be sent to the addresses below:

PowerAmerica

RECIPIENT

By signing this Agreement, the executors represent that they are authorized on behalf of their respective parties to the Agreement, to enter into this Agreement for and on behalf of the parties.

[Signatures, titles, and date]