

**WILLIAM MARSH RICE UNIVERSITY**

**MATERIALS TRANSFER AGREEMENT**

Agreement # \_\_\_\_\_

THIS MATERIALS TRANSFER AGREEMENT (“Agreement”), with an Effective Date of \_\_\_\_\_, is entered into by William Marsh Rice University, hereinafter referred to as “Rice”, a Texas non-profit corporation with principal address at 6100 Main Street, Houston, TX 77005, and \_\_\_\_\_, hereinafter referred to as “Recipient”, a \_\_\_\_\_ institution, with its principal address at \_\_\_\_\_ the signatories to this Agreement collectively referred to as the “Parties” and individually as a “Party” hereto.

**RECITALS**

- A. Rice intends to provide to Recipient certain materials consisting of Rice Network Interface Card hardware Description Source Files and FPGA Device Programming Bitfiles through Scott Rixner in the Computer Science Department at Rice. These files are referred to below as the "Data Files" or as "Materials." The Materials consist of only the Data Files. The Materials do not include any computer programs (software), or equipment since these will be either independently acquired by Recipient, or since in the case of computer programs will be provided by Rice to Recipient under one or more software license agreements, separate from this Agreement.
- B. Recipient intends to evaluate the use of the Materials for internal noncommercial research purposes (“Intended Use”).
- C. Rice intends to transfer, and Recipient desires to receive and use the Materials, subject to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the provisions set forth herein and the mutual benefits to be derived herefrom, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Rice and Recipient agree as follows:

**SECTION 1**    Limitation on Use and Disclosure

- 1.1    Internal Research. The Recipient shall use the Data Files provided by Rice solely for the Intended Use as described in the recitals above. The Recipient shall treat as confidential the Data Files provided by Rice, and shall not disclose or distribute the Data Files provided by Rice to any other person or entity. The Recipient shall not use the Data Files provided by Rice for any other purpose or in any manner other than as contemplated by this Agreement. The Recipient shall use, store, and dispose of the Materials provided by Rice in compliance with all applicable federal and state statutes and regulations.
- 1.2    Publications. The Recipient shall acknowledge the source of the Data Files provided by Rice in

any publications regarding the Recipient's use of the Data Files provided by Rice. The Recipient shall not publish the Data Files without prior written consent of Rice.

- 1.3 Ownership of Materials and Related Intellectual Property Rights. Nothing in this agreement shall transfer any right, title, or interest in any intellectual property in or to the Materials. Except as expressly provided in this Agreement, the Recipient is not granted any license, option, or other rights in or to the Materials provided by Rice or any related intellectual property rights. If interested after the use of the Data Files as contemplated by this Agreement, the Parties may if they desire discuss the possibility of entering into a development, licensing, or similar agreement regarding any commercial use or application of the Data Files or any related intellectual property rights.
- 1.4 Term. The term of this Agreement commences as of the date hereof and expires on five years from the Effective Date, unless sooner terminated by either party upon 30 days' written notice to the other party. Certification of the destruction of all Data Files by Recipient shall be provided to Rice upon expiration or termination of this Agreement or at the written request of Rice. Notwithstanding anything in this Agreement to the contrary, Sections 1.1, 1.2, and 1.3, above, and Sections 2.1 and 2.2, below, shall survive any expiration or termination of this Agreement.

## **SECTION 2** Limitations on Liability

- 2.1 **Disclaimer of Warranties. The parties expressly understand and agree that (i) the Materials are experimental in nature and may be hazardous, (ii) Rice makes no representations or warranties of any kind, express or implied, with respect to such Materials, including, but not limited to, representations and warranties as to non-infringement, merchantability and fitness for any particular purpose, and (iii) Rice shall not be liable for any direct, indirect, incidental, consequential, special, exemplary, or punitive damages in connection with the Recipient's use, storage, or disposal of the materials provided by Rice.**
- 2.2 INDEMNIFICATION. RECIPIENT SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND RICE (INCLUDING, BUT NOT LIMITED TO, ITS TRUSTEES, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES) FOR, FROM AND AGAINST ANY AND ALL DEMANDS, CLAIMS, SUITS, CAUSES OF ACTION, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS), RELATED TO ANY PROPERTY DAMAGE OR LOSS, BODILY INJURY, SICKNESS, OR DEATH, DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF OR IN CONNECTION WITH THE RECIPIENT'S USE, STORAGE, OR DISPOSAL OF THE MATERIALS PROVIDED BY RICE.

## **SECTION 3** Additional Provisions

- 3.1 Legal Compliance. Recipient shall comply with all prevailing laws, rules and regulations pertaining to the development, testing, manufacture, marketing, sale, use, import or export of product(s). Recipient shall use the Materials in compliance with all applicable laws and regulations. Without limiting the foregoing, it is understood that the Materials may be subject to United States export laws and regulations. The transfer of certain technical data and commodities

may require approval or a license from an agency of the United States Government and/or written assurances by Recipient that Recipient shall not export data or commodities to certain foreign countries without prior approval of such agency. Rice neither represents that such governmental approval or license is not required nor that, if required, such approval or license will issue.

- 3.2 Power and Authority; Due Authorization; No Conflict; Enforceability; Binding Effect. Each party represents and warrants to the other party that (i) such party has the power and authority to execute, deliver and perform its obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by such party and does not and shall not conflict with any agreement or instrument to which it is bound, (iii) this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, and (iv) this Agreement, and the interests, rights, duties and obligations hereunder, shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- 3.3 Entire Agreement; Further Assurances. This Agreement constitutes the entire agreement between the parties, and supersedes any prior or contemporaneous negotiations, understandings and agreements, with respect to the subject matter hereof.
- 3.4 No Assignment; No Amendment; No Waiver. This Agreement (i) may not be assigned or transferred, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party, and (ii) may not be amended or modified, by course of conduct or otherwise, except in a writing duly executed by each of the parties. Any waiver of any provision of this Agreement shall be in writing duly executed by the waiving party. The failure or delay by either party to seek redress for any breach or default under this Agreement, or to insist upon the strict performance of any provision of this Agreement, shall not constitute a waiver thereof or of any other provision of this Agreement, and such party shall have all remedies provided herein and at law and in equity with respect to such act and any subsequent act constituting the same.
- 3.5 Force Majeure; Remedies Cumulative. In the event either party's performance under this Agreement is in any way prevented or delayed as a result of causes or conditions (other than inability to pay) beyond such party's reasonable control, such party shall be excused without liability with respect to such performance or nonperformance for the duration of such cause or condition. The rights and remedies provided in this Agreement are cumulative in nature and shall be in addition to any such other rights and remedies available at law and in equity.
- 3.6 Resolution of Disputes. In the event of any dispute or disagreement between the parties either in interpreting any provision of this Agreement or about the performance of either party and upon the written request of either party, each of the parties will appoint a designated representative to attempt to resolve such dispute or disagreement. The designated representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without any formal proceedings. The specific format of such discussion shall be left to the discretion of the designated representatives. No litigation for the resolution of such dispute may be commenced until the designated representatives have met and either party has concluded in good faith that amicable resolution through continued negotiation does not appear likely (unless either party fails or refuses to appoint a designated representative and schedule a meeting of such representatives

within thirty (30) days after a request to do so by the other party).

- 3.7 Governing Law; Dispute Resolution; Jurisdiction and Venue; Attorneys' Fees. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States and the laws of the State of Texas (without regard to the conflicts or choice of law principles thereof). Sponsor and Rice irrevocably consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in Harris County, Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Agreement. In the event either party commences any proceeding against the other party with respect to this Agreement, the prevailing party (as determined by the authority before whom such proceeding is commenced) shall be entitled to recover reasonable attorneys' fees and costs as may be incurred in connection therewith in addition to any such other relief as may be granted.
- 3.8 Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable, it is desire and intention of the Parties that such invalidity or unenforceability not invalidate or render unenforceable the remainder of the Agreement and that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed valid and enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 3.9 Construction of Agreement. The Parties acknowledge and agree that both Parties substantially participated in negotiating the provisions of this Agreement; therefore, both Parties agree that this Agreement shall not be construed more favorably toward one Party than the other Party, regardless of which Party primarily drafted the Agreement.
- 3.10 Headings; Counterparts. This Section and other headings in this Agreement are for convenience of reference only and shall not affect, expressly or by implication, the meaning or interpretation of any of the provisions hereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 3.11 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties hereto or their permitted assigns, any benefits, rights or remedies.

IN WITNESS WHEREOF the parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

WILLIAM MARSH RICE UNIVERSITY

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Nila D. Bhakuni  
Director, Office of Technology Transfer

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_