Academic and Non-Commercial Research Use Software License and Terms of Use

Contained is a software package to perform analysis of MERFISH data according to specific algorithms (the "Software"). The Software is designed to perform various aspects of the alignment, processing, and decoding of MERFISH data.

The Software was developed by Jeffrey Moffitt, Alistair Boettiger, and Xiaowei Zhuang. It is distributed for free academic and non-commercial research use by the President and Fellows of Harvard College ("Harvard"). Dr. Zhuang is an employee of the Howard Hughes Medical Institute ("HHMI") and faculty member at Harvard. Under an agreement between Harvard and HHMI, inventions and software made by Dr. Zhuang in the course of her employment with HHMI are assigned to Harvard subject to HHMI retaining a non-exclusive, irrevocable right to use such inventions and software for HHMI's research purposes.

Using the Software indicates your agreement to be bound by the terms of this Academic and Non-Commercial Research Use Software License and Terms of Use (this "License"). Absent your agreement to the terms below, you (the "End User") have no rights to hold or use the Software whatsoever.

Harvard agrees to grant hereunder the limited non-exclusive non-transferable license to End User for the use of the Software in the performance of End User's internal, non-commercial research and academic use at End User's academic or not-for-profit research institution ("Institution") on the following terms and conditions:

- 1. **NO REDISTRIBUTION.** The Software remains the property of Harvard, and except as provided in Section 4 below, End User shall not publish, distribute, or otherwise transfer or make available the Software to any other party.
- 2. NO COMMERCIAL USE. End User shall not use the Software for commercial purposes and any such use of the Software is expressly prohibited. This includes, but is not limited to, use of the Software in fee-for-service arrangements, core facilities or laboratories or to provide research services to (or in collaboration with) third parties for a fee, and in industry-sponsored collaborative research projects where any commercial rights are granted to the sponsor. If End User wishes to use the Software for commercial purposes or for any other restricted purpose, End User must execute a separate license agreement with Harvard.

Requests for use of the Software for commercial purposes, please contact:

Office of Technology Development Harvard University Smith Campus Center, Suite 727E 1350 Massachusetts Avenue Cambridge, MA 02138 USA Telephone: (617) 495-3067 Facsimile: (617) 495-9568 E-mail: otd@harvard.edu

- 3. **OWNERSHIP AND COPYRIGHT NOTICE.** Harvard owns all intellectual property in the Software. End User shall gain no ownership to the Software. End User shall not remove or delete and shall retain in the Software, in any modifications to Software and in any Derivative Works, the copyright, trademark, or other notices pertaining to Software as provided with the Software.
- 4. **DERIVATIVE WORKS.** End User may create and use Derivative Works, as such term is defined under U.S. copyright laws, provided that any such Derivative Works shall be restricted to non-commercial, internal research and academic use at End User's Institution. End User may distribute Derivative Works to other Institutions solely for the performance of non-commercial, internal research and academic use on terms substantially similar to those set forth in this License.
- 5. **FEEDBACK.** In order to improve the Software, comments from End Users may be useful. End User agrees to provide Harvard with feedback on the End User's use of the Software (e.g., any bugs in the Software, the user experience, etc.). Harvard is permitted to use such information provided by End User in making changes and improvements to the Software without compensation or an accounting to End User.
- 6. NON ASSERT. End User acknowledges that Harvard may develop modifications to the Software that may be based on the feedback provided by End User under Section 5 above. Harvard shall not be restricted in any way by End User regarding its use of such information. End User acknowledges the right of Harvard to prepare, publish, display, reproduce, transmit and or use modifications to the Software that may be substantially similar or functionally equivalent to End User's modifications and/or improvements if any. In the event that End User obtains patent protection for any modification or improvement to Software, End User agrees not to allege or enjoin infringement of End User's patent against Harvard, or any of its researchers, medical or research staff, officers, directors and employees.
- 7. **PUBLICATION & ATTRIBUTION.** End User has the right to publish, present, or share results from the use of the Software. In accordance with customary academic practice, End User will acknowledge Harvard as the provider of the Software and may cite the following publication:

Chen, K.H., Boettiger, A.N., Moffitt J.R., Wang, S., and Zhuang, X. *RNA Imaging*. *Spatially resolved, highly multiplexed RNA profiling in single cells*. **Science** 348, aaa6090 (2015).

http://www.ncbi.nlm.nih.gov/pubmed/25858977

8. **NO WARRANTIES.** THE SOFTWARE IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, HARVARD HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR OTHERWISE) REGARDING THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OWNERSHIP, AND NON-INFRINGEMENT. HARVARD MAKES NO WARRANTY ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS, SUFFICIENCY OR QUALITY OF THE SOFTWARE. HARVARD DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE WITHOUT ERROR OR INTERRUPTION.

- 9. LIMITATIONS OF LIABILITY AND REMEDIES. USE OF THE SOFTWARE IS AT END USER'S OWN RISK. IF END USER IS DISSATISFIED WITH THE SOFTWARE, ITS EXCLUSIVE REMEDY IS TO STOP USING IT. IN NO EVENT SHALL HARVARD BE LIABLE TO END USER OR ITS INSTITUTION, IN CONTRACT, TORT OR OTHERWISE, FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, EVEN IF HARVARD IS NEGLIGENT OR OTHERWISE AT FAULT, AND REGARDLESS OF WHETHER HARVARD IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10. **INDEMNIFICATION.** End User shall comply with all applicable laws, including, without limitation, all applicable export control laws and regulations, in its use of the Software. To the extent permitted by law, End User shall indemnify, defend, and hold harmless Harvard and HHMI, including their respective corporate affiliates, current or future directors, trustees, officers, faculty, medical and professional staff, employees, students and agents and their respective successors, heirs and assigns (the "Harvard Indemnitees" and "HHMI Indemnitees," respectively) from and against any and all claims, actions, damages, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) incurred by or imposed upon any Harvard Indemnitee or HHMI Indemnitee, respectively, in connection with any claims, suits, actions, demands, or judgments based upon, arising out of, or otherwise relating to End User's use of the Software or End User's breach of any obligation or representation in this License (collectively, "Harvard Claims" or "HHMI Claims," respectively). The previous sentence will not apply to any Harvard Claim or HHMI Claim that is determined with finality by a court of competent jurisdiction to result solely from the gross negligence or willful misconduct of a Harvard Indemnitee or HHMI Indemnitee, respectively. End User agrees, at its own expense, to provide attorneys reasonably acceptable to Harvard or HHMI to defend against any action brought or filed against any Harvard Indemnitee or HHMI Indemnitee, respectively, with respect to the subject of this indemnity, whether or not such action is rightfully brought. This Section 10 shall survive expiration or termination of this License. .
- 11. **GOVERNING LAW.** This License shall be construed and governed by the laws of the Commonwealth of Massachusetts regardless of otherwise applicable choice of law standards. Each party hereby submits to the exclusive jurisdiction and venue of the state or federal courts sitting in the metropolitan area of Boston, Massachusetts with respect to any claim, suit, or action arising out of this Agreement.

- 12. **NON-USE OF NAME.** Nothing in this License shall be construed as granting End Users or their Institutions any rights or licenses to use any trademarks, service marks or logos associated with the Software. End User may not use the term "Harvard" or "HHMI" (or a substantially similar term) in any way that is inconsistent with the permitted uses described herein. End User agrees not to use any name, logo, emblem or other trademark of Harvard or HHMI or any of their respective subdivisions for any purpose, or to falsely suggest any relationship between End User (or its Institution) and Harvard or HHMI, in any manner that would infringe any of their rights.
- 13. End User represents and warrants that it has the legal authority to enter into this License on behalf of itself and its Institution.
