

## MATERIAL TRANSFER AGREEMENT

**THIS MATERIAL TRANSFER AGREEMENT** (the "MTA"), effective as of \_\_\_\_\_ ("Effective Date"), by and between The Regents of the University of California which manages the Joint Genome Institute for the U.S. Department of Energy as a consortium with Lawrence Berkeley National Laboratory ("Berkeley Lab"), Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory and HudsonAlpha Institute for Biotechnology ("JGI"), having a place of business at 2800 Mitchell Drive, Walnut Creek, CA 94598, and the entity listed below ("Recipient"), together, the "Parties":

Company/University/Institution ("Recipient"): \_\_\_\_\_

Name of responsible Recipient employee: \_\_\_\_\_

Title or position: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

**"Material"** means any material provided by the JGI to Recipient on or after the Effective Date, as described in a Material Transfer Record (as defined below) which has been synthesized for the Recipient by the JGI in accordance with the Purpose, consisting of DNA constructs and their progeny, derivatives, or fragments thereof.

**"Recipient Scientist"** means the name and signature of the person specified on the Signature Page of the MTA.

**"Material Transfer Record"** means Exhibit A-1 and any subsequent exhibits (i.e., A-2, A-3, A-4, etc.), each describing Material shipped under a project described in the Purpose, each attached hereto and hereby incorporated by reference.

**"User Agreement"** means Non-Proprietary User Agreement No. \_\_\_\_\_.

**"Purpose"** means the use of the Material in connection with the project approved under Appendix \_\_\_\_\_ to User Agreement and described in JGI Proposal number \_\_\_\_\_ entitled "\_\_\_\_\_", which is hereby incorporated by reference.

**"Term"** means for as long as the Recipient is using or in possession of the Material, but in no case longer than five (5) years from the Effective Date unless extended by the written consent of the JGI.

With regard to Material, Recipient hereby agrees:

(1) to use Material (a) only to the extent required to accomplish the Purpose, (b) solely for non-commercial internal research purposes and not for diagnostic uses; (c) only for civil end-uses and by civil end-users; and the Material shall not be used in activities related to the development or the production of chemical or biological weapons;

(2) not to transfer Material to others (except to its employees with a need to know and who are bound by the terms of this MTA) without the prior written consent of the JGI;

(3) to safeguard Material against disclosure and transmission to others with the same degree of care as it exercises with its own materials of a similar nature;

(4) to inform JGI within sixty (60) days of research results related to the Material;

(5) to disclose to JGI within thirty (30) days any invention that results from research involving the Material that may be commercially useful;

(6) to comply with all applicable statutes and regulations pertaining to the Material or their handling, storage, use, or transportation;

(7) that it shall not transfer, export, re-export or otherwise dispose of the Material to any third party without the prior written approval of Berkeley Lab.

(8) The JGI retains ownership of the Material.

(9) In view of its management by an institution of higher education operating under the Fundamental Research Exclusion, Berkeley Lab hereby notifies Recipient that it has many non-U.S. Persons who are students or employees to whom a transfer of proprietary export controlled information and/or material may be in violation of U.S. export laws. Accordingly, when complying with paragraphs 4 and 5, Recipient should not transfer to Berkeley Lab any information and/or material that is export controlled other than information and/or material classified as EAR99 under the Export Administration Regulations without prior written authorization from Berkeley Lab Export Control. Berkeley Lab bears no responsibility for unauthorized exports of non-EAR99 export controlled information and/or material by a party under this Agreement to Berkeley Lab foreign students or employees when such written authorization is not obtained.

(10) Upon expiration of this Agreement, the Recipient shall return or destroy all Materials and shall *certify* to Berkeley Lab that it has done so..

(11) *that the Material is experimental in nature, and is provided by JGI and Berkeley Lab "as is" without warranty of any kind, express or implied. JGI and Berkeley Lab make no representation that the use of the Material will not infringe any patent or other proprietary right. Recipient hereby agrees to defend, indemnify and hold harmless JGI, Berkeley Lab and the U.S. Government and its agencies from any claims or liabilities which might arise as a result of Recipient's use, storage, or disposal of the Material;*

(12) that the furnishing of Material to Recipient constitutes neither any transfer of ownership nor any grant or license to Recipient under any patent or other proprietary rights now or in the future held by JGI or Berkeley Lab.

(13) Any publication resulting from research conducted using the Material shall acknowledge the scientist at JGI who provided the Material. Any external publication resulting from research conducted using the Material shall contain the two Acknowledgement Statements in ARTICLE XIII.C of the User Agreement.

(14) This MTA and the User Agreement, including its applicable Appendix, embody the entire and final understanding of the parties on this subject. Together they supersede any previous representations, agreements, or understandings, whether oral or written. In case of conflict between this MTA and the User Agreement, the User Agreement will control. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by an authorized representative on behalf of each party.

RECIPIENT

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
WHICH MANAGES THE JOINT GENOME INSTITUTE

By: \_\_\_\_\_  
(Authorized Representative Signature)

By: \_\_\_\_\_

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

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

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

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

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

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

RECIPIENT SCIENTIST

By: \_\_\_\_\_  
(Signature)

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

Title: Principal Investigator/RECIPIENT SCIENTIST

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

**ACKNOWLEDGEMENT OF RECIPIENT PRINCIPAL INVESTIGATOR**

I have read and understand the Material Transfer Agreement between \_\_\_\_\_ and The Regents Of The University Of California, which manages The Joint Genome Institute, having an Effective Date of \_\_\_\_\_. I AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS AND CERTIFY THE FOLLOWING:

I will comply with all applicable federal, state, or local laws and regulations pertaining to the Material or its handling, storage, use, or transportation.

I will not transfer, export, re-export or otherwise dispose of the Material if doing so would constitute a violation of applicable export control laws

The Material will be used for research purposes only and will not be used for diagnostic use, or for clinical trial purposes.

The Material will not be used in activities related to the development or the production of chemical or biological weapons, and the Material will only be used for civil end-users.

In particular, I certify that the requested Material (1) is not associated with the pathogenicity of a regulated agent; and/or (2) in itself or through its transcribed or translated products, the gene(s) does not represent a significant hazard to human, animal or plant health; and/or (3) the gene(s) is (are) not known to enhance the ability of an agent or any other organism into which they may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health or the environment.

By: \_\_\_\_\_  
(Recipient PI Signature)

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

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

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

**Exhibit A**  
**(Material Transfer Record)**