

*The Department of Energy has opted to utilize the following agreement for Designated Non-Proprietary User Facilities transactions. Because these transactions are widespread across Departmental facilities, uniformity in agreement terms is desirable. Except for the *** provisions, minor modifications to the terms of this agreement may be made by CONTRACTOR, but any changes to the *** provisions or substantive changes to the non *** provisions will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY YOUR ACCESS TO THE USER FACILITY. In instances where DOE Contracting Officer approval for substantive changes cannot be obtained, Strategic Partnership Projects (SPPs) and Cooperative Research and Development Agreements (CRADAs) may be more appropriate due to the increased flexibility such agreements afford. Where this agreement is to be used as an umbrella agreement for multiple transactions it may be modified to reflect such usage.*

Federal Agency Non-Proprietary User Agreement

No. _____

BETWEEN

The Regents of the University of California

("CONTRACTOR")

Facility Operator of Ernest Orlando Lawrence Berkeley National Laboratory (hereinafter "Laboratory") under U.S. Department of Energy ("DOE") Contract No. DE-AC02-05CH11231

AND

("USER")

(Collectively, the "Parties")

The obligations of the above-identified DOE Contractor may be transferred to and shall apply to any successor in interest to said Contractor continuing the operation of the DOE Non-Proprietary User Facility involved in this User Agreement.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR shall make available to employees, consultants and representatives of USER (hereinafter called "USER Personnel") the Joint Genome Institute (hereinafter "JGI" or "User Facility"), which may include equipment, services, information and other material, with or without Laboratory scientist collaboration, for purposes as described in individual proposals approved by CONTRACTOR or by DOE for execution at the User Facility and described in an Appendix which is attached to and made a part of this Agreement. In each Appendix, the Parties will agree to a Scope of Work that shall set forth the technical scope of work, including a biological materials description and deliverables (hereinafter, the "Work"), to be performed pursuant to this Agreement and can be modified as necessary without amending this Agreement. Additional future Appendices under this Agreement may be submitted by USER for additional purposes and Work. Such additional Appendices will be considered to be part of this Agreement upon acceptance by CONTRACTOR. The Work shall not be considered proprietary information and shall be publicly releasable. The Parties agree that an initial abstract of the Work to be performed shall be a deliverable under this Agreement.

IF THE USER REQUIRES ACCESS TO OTHER FACILITIES AT THE LABORATORY, A DIFFERENT AGREEMENT WILL NEED TO BE EXECUTED.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five (5) years from the effective date. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties. Unless terminated by either Party in accordance with Article XVI., or as directed by DOE, this Agreement shall automatically renew on a year-to-year basis after the initial five year term expires.

ARTICLE III. COST

Each Party will bear its own costs and expenses associated with this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement.

ARTICLE IV. ADMISSION REQUIREMENTS—JGI SITE ACCESS

If USER Personnel consult with JGI staff on site or otherwise access JGI, USER Personnel must complete all JGI Site Access documentation and requirements. USER Personnel must comply with all applicable requirements including safety, health, access to information, security and environmental requirements of the JGI. In the event that USER fails to comply with said regulations or requirements, CONTRACTOR may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of USER's activities at the User Facility. USER Personnel will not be considered employees of CONTRACTOR or DOE for any purposes.

ARTICLE V. PROPERTY AND MATERIALS***

- A. If USER needs to furnish equipment, tooling, test apparatus, or assist in performance of sequencing tasks at the JGI, the Agreement or Appendix will be amended accordingly.
- B. The Parties understand that under the Work, materials may be exchanged, including without limitation, biological materials that can be replicated or reproduced, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cells, etc. While every effort at JGI will be made to properly handle the materials, USER acknowledges that any material supplied by USER or to the USER may be damaged, consumed or lost. USER materials (including biological materials, vectors, nucleotide constructs, residues and/or other contaminated material) remaining at JGI after performance of the Work or analysis will be removed in their then condition and handled in accordance with the Work.
- C. USER asserts that it has either title or sufficient legal rights if USER provides material and information to the JGI and its vendors, suppliers or providers of biological materials, in accordance with the Work and this User Agreement. USER shall inform CONTRACTOR if USER knows of any infringing action or misappropriation of third party intellectual property rights in the materials or sequences under the Work.

ARTICLE VI. SCHEDULING***

USER understands that CONTRACTOR will have sole responsibility and discretion for allocating and scheduling usage of the User Facilities and equipment needed for or involved under this Agreement.

ARTICLE VII. INDEMNITY AND LIABILITY***

A. Personnel Relationships

USER shall be responsible for the acts or omissions of its Personnel. USER's responsibility for the payment of claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement shall be governed by the Federal Torts Claims Act.

B. General Disclaimer -

THE GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE USER FACILITY FURNISHED HEREUNDER. IN ADDITION, THE GOVERNMENT, CONTRACTOR AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT, CONTRACTOR AND/OR USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

ARTICLE VIII. RIGHTS IN PATENTS, TECHNICAL DATA, AND COPYRIGHTS***

USER is a U.S. Government agency. Accordingly, rights in and to patents and copyrights shall be governed by the policies and regulations pertaining to USER and its employees. The Government, USER, and CONTRACTOR shall have unlimited rights (as defined in 48 CFR 52.227-14) in technical data first produced in the performance of this Agreement and unlimited rights in technical data not first produced in the performance of this Agreement which is incorporated in technical data delivered under this Agreement or which is not removed from the facility at the termination of this Agreement.

A. Release of Biological Materials Information

1. Sequencing Data: The permitted use of the materials will be limited to that which is described in the Work. Substantive changes in the Work will require execution of a new Appendix. JGI will not transfer the biological materials it receives for sequencing to other parties without the consent of USER. Sequence data from the biological materials JGI receives for sequencing will be posted to GenBank or will otherwise be made publicly available for use by anyone for any purpose. Such release of sequencing data to Genbank will not be delayed unless as otherwise stated in the JGI Data Release Policy. The USER understands that the JGI cannot limit how the sequence data will be ultimately used after posting to GenBank.
2. Synthesis Data: Upon project completion or end date, whichever is later, detailed information on the biological materials created, synthesized and generated in the course of the Work will be posted to GenBank and/or will otherwise be made publicly available to the public subject to the terms and conditions of an executed Material Transfer Agreement. Such release of sequencing data or the biological materials will not be delayed unless as otherwise stated in the JGI Data and Genetic Resource Release Policy. The USER understands that the JGI cannot limit how the synthesis data will be ultimately used after posting to GenBank.

ARTICLE IX. RESERVED

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH*--
RESERVED**

ARTICLE XI. PERSONNEL RELATIONSHIPS*--RESERVED**

ARTICLE XII. EXPORT CONTROLS***

USER acknowledges that the export of goods, material or Technical Data may require some form of export control license from the US Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XIII. PUBLICATIONS***

- A. For collaborative work, USER and CONTRACTOR will coordinate review of publication in accordance with the standard scientific publication review procedures.
- B. USER will not use the name of CONTRACTOR or the US Government or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the US Government and CONTRACTOR.

C. Acknowledgements

- 1. Any external publication using data or biological materials and/or resulting from a joint JGI-EMSL proposal should contain the following statement in the acknowledgments:

“(A portion of) This research was performed under the JGI-EMSL Collaborative Science Initiative and used resources at the DOE Joint Genome Institute and the Environmental Molecular Sciences Laboratory, which are DOE Office of Science User Facilities. Both facilities are sponsored by the Office of Biological and Environmental Research and operated under Contract Nos. DE-AC02-05CH11231 (JGI) and DE-AC05-76RL01830 (EMSL).”

- 2. All other external publications using JGI data or biological materials and/or resulting from the proposal under the Work should contain the following statement in the acknowledgments:

“The work conducted by the U.S. Department of Energy Joint Genome Institute, a DOE Office of Science User Facility, is supported by the Office of Science of the U.S. Department of Energy under Contract No. DE-AC02-05CH11231.”

ARTICLE XIV. DISPUTES***

The Parties will attempt to jointly resolve all disputes arising under this Agreement. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, either Party may contact the Laboratory's Technology Transfer Ombudsman (TTO) to provide assistance. The TTO may work directly to resolve the dispute or, upon mutual agreement of the Parties, contact a third party neutral mediator to assist the Parties in coming to a resolution. The costs of the mediator's services will be shared equally by the Parties. In the event that an agreement is not reached with the aid of the ombudsman or mediator, the Parties may agree to have the dispute addressed by neutral evaluation. The decision rendered by the neutral evaluator shall be nonbinding on the Parties, and any costs incurred there from shall be divided equally between the Parties. Upon mutual agreement, the Parties may request a final decision by the DOE Contracting Officer. Absent resolution, either Party may seek relief in a court of competent jurisdiction.

ARTICLE XV. CONFLICT OF TERMS***

This Agreement constitutes the primary document which governs the Work described in the attached Appendices. In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XVI. TERMINATION***

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

FOR USER

By: _____
Name: _____
Title: _____
Date: _____

FOR CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____