

**Joint Genome Institute (“JGI”) DNA Synthesis Community Science (“CSP”) Program
Bilateral DOE Laboratory Utilization Agreement No.**

BETWEEN

The Regents of the University of California (“CONTRACTOR A”)

Facility Operator of the Ernest Orlando Lawrence Berkeley National Laboratory under DOE Prime Contract No. DE-AC02-05CH11231

AND

_____ (“CONTRACTOR B”)

Facility Operator of the _____ Laboratory under DOE Prime Contract No. DE-
(Collectively, “the Parties”)

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR A shall make available to employees, consultants and representatives of CONTRACTOR B (hereinafter called CONTRACTOR B 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 A or by DOE for execution at JGI 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 CONTRACTOR B for additional purposes and Work. Such additional Appendices will be considered to be part of this Agreement upon acceptance by CONTRACTOR A. 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.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five (5) years from the effective date, which shall be effective as of the date on which it is signed by the last of the Parties (“Term”). 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. LABORATORY SITE ACCESS, SAFETY AND HEALTH

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

ARTICLE IV. SCHEDULING

CONTRACTOR B understands that CONTRACTOR A 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 V. PROPERTY AND MATERIALS

- A. If CONTRACTOR B 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 created, generated and 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. In addition, while every effort at JGI will be made to properly handle the materials, CONTRACTOR B acknowledges that any material supplied by CONTRACTOR B or to CONTRACTOR B may be damaged, consumed or lost. CONTRACTOR B 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. CONTRACTOR B asserts that it has, or has obtained from its collaborators for the Work, either title or sufficient legal rights in the material, sequences, and information to be provided to the JGI and its vendors, suppliers or providers of biological materials, in accordance with the Work and this Utilization Agreement, and that CONTRACTOR B will not knowingly infringe or misappropriate any third party intellectual property rights in the materials or sequences under the Work.
- D. CONTRACTOR A retains title to any CONTRACTOR A biological materials generated by CONTRACTOR A in the course of the Work. Any biological materials provided to CONTRACTOR B by CONTRACTOR A during this Agreement or as a deliverable, including permitted uses of such biological material, will be governed by a separately executed Material Transfer Agreement (MTA) between CONTRACTOR B and CONTRACTOR A.

ARTICLE VI. INDEMNITY AND LIABILITY

A. Personnel Relationships

Each CONTRACTOR A and CONTRACTOR B shall be responsible for the acts or omissions of its Personnel. Each CONTRACTOR A's and CONTRACTOR B's responsibilities 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, including any act or omission under Article V of this Agreement, shall be governed by each CONTRACTOR's respective Prime Contracts.

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 A AND CONTRACTOR B 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 A AND/OR CONTRACTOR B 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 VII. RIGHTS IN PATENTS, TECHNICAL DATA AND INTELLECTUAL PROPERTY

With regard to patent and technical data rights, CONTRACTOR B Personnel will follow their Party's Prime Contract for Work performed at JGI. However, if Work performed at JGI is subject to an agreement with a third party (for example, SPP or CRADA), the intellectual property provisions of that third party agreement shall supersede this section.

A. Disclosure of Proprietary Data

CONTRACTOR B shall not send or disclose Proprietary Data or material to the User Facility except at CONTRACTOR B's own risk. Any such data or material, regardless how it is marked, shall be deemed Technical Data and CONTRACTOR A shall have Unlimited Rights in the data.

B. Release of Biological Materials Information

1. Sequencing or Metabolomics 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 CONTRACTOR B. Sequence data from the biological materials JGI receives for sequencing will be posted to an outside public repository (e.g. NCBI SRA or GenBank) or will otherwise be made publicly available for use by anyone for any purpose. Such release of sequencing or metabolomics data to an outside public repository will not be delayed unless as otherwise stated in the JGI Data Policy. CONTRACTOR B understands that the JGI cannot limit how the sequence or metabolomics data will be ultimately used after posting to an outside public repository.
2. Synthesis Data: Detailed information on the biological materials created, synthesized and generated in the course of the Work will be posted to a public repository 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 synthesis data or the biological materials will not be delayed unless as otherwise stated in the JGI Data Policy and JGI Genetic Resource Release Policy. CONTRACTOR B understands that the JGI cannot limit how the synthesis data will be ultimately used after posting to a public repository.

ARTICLE VIII. PUBLICATIONS

A. CONTRACTOR A and CONTRACTOR B will provide each other copies of articles or publications of information generated pursuant to this Agreement for review and comment 14 days prior to publication.

B. Acknowledgements

In addition to any notices or acknowledgements required under CONTRACTOR B's prime contract, CONTRACTOR B shall include in any publication one or both of the following as applicable:

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.”

FOR CONTRACTOR B

FOR CONTRACTOR A

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

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