

Upon execution of an Implementing Letter in the form attached which specifies the materials to be transferred, this organization agrees to be bound by the terms of the attached Inter-BRC Material Transfer Agreement ("IBRC-MTA"). This Agreement is for the sole purpose of research collaborations between or among those Parties who are Member Institutions of the Joint BioEnergy Institute ("JBEI") Great Lakes BioEnergy Research Center ("GLBRC") or the BioEnergy Science Center ("BESC") teams.

Attachments:

- IBRC-MTA
- Implementing Letter

Organization: The Board of Regents of the University of Wisconsin System

Address: 21 North Park Street, Suite 6401, Madison, WI 53715

Authorized Official: Michael Morris

Title: Contracts Coordinator

Signature:



Date: 09/15/08

Please return an executed copy of this Master Agreement to: _____ The U.S. Department of Energy will maintain signed originals and the official list of signatory organizations.

I. DEFINITIONS:

1. PROVIDER: The JBEI, GLBRC or BESC Member Institution providing the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter (see attached form).
2. PROVIDER SCIENTIST: The name and address of this party will be specified in an implementing letter.
3. RECIPIENT: The JBEI, GLBRC or BESC Member Institution receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter. The Regents of the University of California through the Ernest Orlando Lawrence National Laboratory ("Berkeley Lab") may enter into material transfer agreements for the receipt of materials on behalf of all Member Institutions of JBEI pursuant to the JBEI Inter-Institutional Agreement, and the designation of Berkeley Lab as the RECIPIENT in an implementing letter shall be for the benefit of and shall bind all Member Institutions of JBEI under this Agreement unless otherwise specified in the implementing letter.
4. RECIPIENT SCIENTIST: The name and address of this party will be specified in an implementing letter.

5. ORIGINAL MATERIAL: The description of the material being transferred will be specified in an implementing letter.

6. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.

7. PROGENY: Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.

8. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.

9. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

10. COMMERCIAL PURPOSES: The sale, lease, or license of the MATERIAL or MODIFICATIONS to a for-profit organization or, the transfer of the MATERIAL or MODIFICATIONS to a for-profit organization that is not a Member Institution of JBEI, GLBRC, or BESC. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, or to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. However, industrial research conducted as part of work funded under the JBEI, GLBRC, or BESC shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

11. NONPROFIT ORGANIZATION(S): A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

II. TERMS AND CONDITIONS:

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

2. The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES). If either 2(a) or 2(b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

3. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:

- (a) is to be used solely for teaching and research purposes;
- (b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;
- (c) is to be used only at the RECIPIENT organization and, unless transferred to anyone else within the RECIPIENT organization under the conditions of 3(d), only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and
- (d) will not be transferred to anyone else within the RECIPIENT organization unless any such individual specifically agrees to be bound by this Material Transfer Agreement as a RECIPIENT SCIENTIST.

4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone outside of the RECIPIENT organization.

5. (a) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

(b) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST shall not distribute ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS to anyone outside the RECIPIENT organization. It is recognized by the RECIPIENT that the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Material Transfer Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.

7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

9. Any MATERIAL delivered pursuant to this Material Transfer Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO

REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

10. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

11. This Material Transfer Agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications.

12. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

13. This Material Transfer Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories or, (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, or (d) the date when either the PROVIDER or the RECIPIENT ceases to be a JBEI, GLBRC, or BESC Member/Member Institution, provided that:

(i) if termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available resources; and

(ii) if termination should occur under 13(b) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Material Transfer Agreement as they apply to MODIFICATIONS;

and

(iii) if termination should occur under 13(d) above or in the event the PROVIDER terminates this Material Transfer Agreement under 13(c) other than for breach of this Material Transfer Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this Material Transfer Agreement as they apply to MODIFICATIONS.

14. Paragraphs 6, 9, and 10 shall survive termination.

15. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in an implementing letter.

16. The terms of this Material Transfer Agreement may only be modified in writing in an Implementing Letter that is signed on behalf of both the PROVIDER and the RECIPIENT. This Material Transfer Agreement is subject to the funding agreements with the Department of Energy for the BESC (prime contract No. DE-AC02-00OR22725 in connection with Funding Opportunity Announcement number DE PS02-06ER64304), the JBEI (prime contract No. DE-AC02-OSCH11231 in connection with Funding Opportunity Announcement number DE PS02-06ER64304), and the GLBRC (Cooperative Research Agreement No. DE-FC02-07ER64494), the terms of which shall control and supersede any inconsistent terms of this Material Transfer Agreement. The rights and obligations of the parties hereto are also subject to federal law.

**Inter-BRC
Material Transfer Agreement
Implementing Letter**

The purpose of this Implementing Letter is to provide a written record of the transfer of the ORIGINAL MATERIALS identified below and as provided under the terms and conditions of the Inter-BRC Material Transfer Agreement in connection with the activities of JBEI, GLBRC and BESC.. RECIPIENT should complete this Implementing Letter and forward one executed copy to PROVIDER. The PROVIDER SCIENTIST will forward the requested ORIGINAL MATERIALS, if s/he is so able, to RECIPIENT SCIENTIST upon receipt of the completed Implementing Letter.

Please fill in all of the blank lines below:

1. **PROVIDER:** Organization providing the ORIGINAL MATERIAL:

Organization: _____

Address: _____

2. **RECIPIENT:** Organization receiving the ORIGINAL MATERIAL:

Organization: _____

Address: _____

3. **ORIGINAL MATERIAL** (enter description):

4. Termination date for this letter (optional): _____

5. Transmittal Fee to reimburse the PROVIDER for preparation and distribution costs (optional).

Amount: _____.

continued on next page

6. Other Provisions the PROVIDER and the RECIPIENT wish to include:

This Implementing Letter is effective when signed by all parties. The parties executing this Implementing Letter certify that their respective organizations have accepted the Inter-BRC Material Transfer Agreement, and further agree to be bound by its terms, for the transfer specified above.

PROVIDER

Name of Authorized Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____

PROVIDER SCIENTIST

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT

Name of Authorized Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT SCIENTIST

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____