

STANDARD PENN STATE BIOLOGICAL MATERIAL TRANSFER AGREEMENT

I. Definitions:

1. PROVIDER: The Pennsylvania State University.
2. PROVIDER SCIENTIST: Dr. Song Tan.
3. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in the implementing letter (the "Letter") from Recipient pursuant to the form attached as Appendix A and available at <http://bmb.psu.edu/about-us/pst44-plasmids>.
4. RECIPIENT SCIENTIST: The name and address of this party will be specified in the Letter.
5. ORIGINAL MATERIAL: The description of the material being transferred hereunder, as specified in the 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, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, 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. Industrially sponsored academic research under the terms of an unrestricted grant 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; however, in all such instances, RECIPIENT shall disclose the existence and terms of this agreement to any such sponsor.
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 of this Agreement

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 academic or other non-commercial research purposes but not for COMMERCIAL 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 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 without the prior written consent of the PROVIDER.

4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the MATERIAL available, under a separate Implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate the RECIPIENT SCIENTIST's research; provided that such other scientists submit a completed Letter and make the required payment, as set forth at <http://bmb.psu.edu/about-us/pst44-plasmids>.

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) Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute MODIFICATIONS or proteins expressed by the MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only, provided

that the PROVIDER is informed in writing within 30 days of such distribution.

(c) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and 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, so long as they do not imply any license or rights to PROVIDER's MATERIAL.

6. The RECIPIENT acknowledges that the MATERIAL may be the subject of a patent application. Except as provided in this 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 of the MATERIAL, and to provide a non-enabling summary thereof to PROVIDER.

9. Any MATERIAL delivered pursuant to this 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 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 acknowledgment 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 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) on the date specified in an Implementing letter, 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) or (d) 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 agreement as they apply to MODIFICATIONS; and

(iii) in the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this 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 agreement as they apply to MODIFICATIONS.

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

15. The MATERIAL is provided in consideration for the monies paid in U.S. dollars pursuant to the signed Implementing letter submitted by RECIPIENT

Appendix A: Implementing Letter

The purpose of this letter is to provide a record of the biological material transfer, to memorialize the agreement between the PROVIDER and the RECIPIENT to abide by all terms and conditions of the attached Standard Penn State Biological Material Transfer Agreement (available at <http://bmb.psu.edu/about-us/pst44-plasmids>). The Authorized Official of RECIPIENT should sign this letter and return one signed copy as indicated below to the PROVIDER. The PROVIDER SCIENTIST will forward the material to the RECIPIENT SCIENTIST upon receipt of the signed copy from the RECIPIENT organization, and receipt of payment.

Please fill in all of the blank lines below:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL:

Organization: The Pennsylvania State University
Address: Old Main
University Park, PA 16802

2. RECIPIENT: Organization receiving the ORIGINAL MATERIAL:

Organization: _____
Address: _____

3. SHIPPING INFORMATION *(please provide appropriate information for express shipping)*

Name: _____
Address: _____

Telephone: _____

4. BILLING INFORMATION *(please provide contact information for billing, typically your finance or business office, usually not the principal investigator contact information)*

Name: _____
Address: _____

Telephone: _____
Purchase Order #: _____

5. ORIGINAL MATERIAL: pST44 suite of expression plasmids (75 plasmids total)

6. This constitutes an invoice and a legal obligation to pay when submitted. Transmittal Fee to reimburse the PROVIDER for preparation and distribution costs shall be in the following amount.

Amount: \$577.96

This implementing letter is effective when signed below by RECIPIENT and transmittal fee is received by PROVIDER. RECIPIENT certifies that it has accepted the terms of the attached Standard Penn State Biological Material Transfer Agreement, and further agrees to be bound by its terms, for the transfer specified above. Transmittal of a signed copy of this letter by .pdf (or by facsimile or mail) to PROVIDER shall be considered binding when the transmitted fee is received.

RECIPIENT SCIENTIST (*typically the laboratory principal investigator*)

Name: _____
Title: _____
Address: _____

Signature: _____
Date: _____

RECIPIENT ORGANIZATION CERTIFICATION

Authorized
Official: _____
Title: _____
Address: _____

Signature: _____
Date: _____

Please return completed form to:

by mail: pST44 Plasmid Distribution
ATTN: Lorraine Lewis
107L Althouse Lab
Penn State University
University Park, PA 16802

by fax: 814-863-7024

by email: pst44plasmids@bmb.psu.edu (pdf of scanned completed form)

