

Tn5 ENZYME MATERIAL TRANSFER AGREEMENT

This Tn5 Enzyme Material Transfer Agreement (“**Agreement**”) is between Illumina, Inc., a Delaware corporation having offices at 5200 Illumina Way, San Diego, California 92122 (“**Illumina**”), and _____, having a place of business at _____ (“**Recipient**”), and is effective as of the date of last signature below (“**Effective Date**”). Illumina and Recipient may be referred to individually as a “**Party**” or collectively as “**Parties**.”

WHEREAS, Recipient is a non-profit institution and Illumina is a commercial entity that is the leader in next-generation sequencing (NGS);

WHEREAS, Illumina has an inventory of Tn5 transposase enzyme (“**Tn5 Enzyme**”) that is useful for generation of transposon-based nucleic acid sequencing libraries;

WHEREAS, Recipient is interested in receiving a quantity of Tn5 Enzyme for its internal research directed to generation of transposon-based nucleic acid sequencing libraries;

WHEREAS, Illumina has agreed to provide a quantity of Tn5 Enzyme to Recipient under the terms and conditions set forth herein and Recipient has agreed to receive the Tn5 Enzyme under such terms and conditions;

NOW THEREFORE, in consideration of the above premises and the mutual covenants contained herein, the Parties hereby agree as follows:

1. Research Project.

(a) The “**Research Project**” is the non-commercial internal research project described on Exhibit A. Notwithstanding any description of the Research Project on Exhibit A, the Research Project expressly excludes (i) research or collaboration with other Recipient scientists (other than those under the direct control of the Principal Investigator) or with any and all third parties (including any affiliates of Recipient), (ii) any research that is not specifically described in the Research Project on Exhibit A, and (iii) any use of the Tn5 Enzyme that results, or is intended to result, in functional recreation of a product commercially available from Illumina or its affiliates (“**Excluded Use**”).

(b) Subject to the terms and conditions of this Agreement, the cost, manner, mode, and schedule of performing the Research Project are solely the responsibility of, and at the discretion of, Recipient and the Principal Investigator. Recipient shall perform the Research Project in accordance with all applicable laws, rules, regulations, and guidelines including without limitation, those pertaining to research using human biological materials (if applicable).

2. Principal Investigator. The “**Principal Investigator**” is the lead scientist for the Research Project. The Principal Investigator is an employee of Recipient. The name and address of the Principal Investigator are set forth on Exhibit A.

3. Tn5 Enzyme.

(a) Illumina shall provide Recipient with Tn5 Enzyme in the quantity set forth on Exhibit A for use only for the Research Project under the terms and conditions of this Agreement and shall provide Recipient with an invoice for the Tn5 Enzyme. Recipient shall pay Illumina the invoiced amount for Tn5 Enzyme, including without limitation shipping costs, within thirty (30) days after the date of the invoice. The Tn5 Enzyme shall be delivered to the Principal Investigator. In the event Illumina authorizes a distributor to provide the Tn5 Enzyme to Recipient via a distributor, then Recipient shall make timely payment to the distributor for the Tn5 Enzyme.

(b) RECIPIENT ACKNOWLEDGES THAT THE Tn5 ENZYME IS BEING PROVIDED “AS IS”. ILLUMINA MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH REGARD TO THE Tn5 ENZYME. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF SAFETY, ACCURACY, UTILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF NON-INFRINGEMENT. RECIPIENT ASSUMES ALL RISK OF USE OF THE Tn5 ENZYME AND PERFORMANCE OF THE RESEARCH PROJECT.

4. Use and Restrictions of Use of Tn5 Enzyme.

(a) Subject to the terms and conditions of this Agreement, including without limitation Sections 4(b) and 4(c), payment to Illumina or its authorized distributor of an invoice pursuant to Section 3(a) shall confer upon Recipient the right for its Principal Investigator to use the Tn5 Enzyme only for the Research Project in accordance with Section 1(a) and only during the term of this Agreement.

(b) With respect to the Tn5 Enzyme that is transferred to Recipient by way of Principal Investigator hereunder: (i) the Tn5 Enzyme may be used only by the Principal Investigator, or individuals under his or her direct control, and used only for the Research Project; (ii) the Tn5 Enzyme shall not be transferred or provided to any third party or to any Recipient scientist other than the Principal Investigator or those under his or her direct control; (iii) the Tn5 Enzyme shall not be resold to any party; (iv) the Tn5 Enzyme shall not be used for any commercial purpose, including without limitation to provide any service; (v) the Tn5 Enzyme shall not be disassembled, reverse-engineered, separated/extracted/isolated from other components with which it was transferred, or analyzed to determine the methods of operation or to reveal proprietary properties; and (vi) the Tn5 Enzyme shall not be used for any Excluded Use.

(c) Recipient and Principal Investigator agree that as partial consideration for the delivery of and right to use Tn5 hereunder they shall not make Tn5 Enzyme themselves, nor have it made on their behalf, or obtain Tn5 from a source other than Illumina during the term of this Agreement.

(d) Recipient and Principal Investigator expressly agree to the terms and conditions of Section 4 and agree that use of the Tn5 Enzyme in violation of the terms of this Agreement, including Section 4, shall be a material breach of this Agreement.

5. Data, Results, Intellectual Property, Reports.

(a) Intellectual property arising from the Research Project that is directly related to the Tn5 Enzyme composition, including modifications and improvements thereto, is “**Tn5 IP**”. Recipient hereby assigns to Illumina all right, title and interest it has in Tn5 IP, subject to the last sentence in this Section 5(a). Recipient shall promptly provide Illumina written notice of any Tn5 IP that arises from the Research Project, and shall assist Illumina in finalizing any documentation required to further document this assignment. Upon Illumina’s request and agreement to reimburse applicable costs and expenses, Recipient shall make inventors of Tn5 IP available to assist Illumina in protecting Tn5 IP. In the event Recipient is prohibited from assigning Tn5 IP to Illumina by reason of a state or governmental regulation, then Recipient shall grant Illumina and its affiliates a perpetual, irrevocable, exclusive, worldwide, royalty-free, fully paid-up license and right to make, use, sell, offer to sell, import and otherwise commercialize products, processes, and services under Tn5 IP in all fields, and have such activities performed on its behalf.

(b) All data, results, inventions, intellectual property and information generated under the Research Project without intellectual contribution of Illumina, except for Tn5 IP, is “**Recipient IP**” and shall be owned by Recipient.

(c) In consideration of the transfer of Tn5 Enzyme and rights granted to Recipient herein, Recipient hereby grants Illumina and its affiliates a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid-

up license and right to make, use, sell, offer to sell, import and otherwise commercialize products, processes, and services under Recipient IP in all fields, and have such activities performed on its behalf.

(d) In further consideration of the transfer of Tn5 Enzyme and rights granted to Recipient herein, Recipient hereby grants Illumina an exclusive option to negotiate with Recipient for an exclusive license to Recipient IP in all fields of use (“**Exclusive Option**”). Recipient shall promptly provide Illumina written notice of Recipient IP subject to the Exclusive Option in sufficient detail to allow evaluation of the business and inventive aspects thereof. Illumina shall have the right to exercise its Exclusive Option during the term of this Agreement and six (6) months thereafter (“**Option Exercise Period**”) by providing written notice to Recipient, provided that if Illumina becomes aware of any Recipient IP for the first time after the Option Exercise Period has ended, then the Exclusive Option directed to that Recipient IP shall not have expired and Illumina shall have three months (3) after becoming aware of such Recipient IP to exercise its Exclusive Option for that Recipient IP. Upon timely exercise of an Exclusive Option, Illumina and Recipient shall enter into good faith negotiations, not to exceed six (6) months, for an exclusive, royalty- and/or fee-based license to that Recipient IP in the stated field.

(e) Within thirty (30) days after the end of the term of this Agreement (subject to shorter time period stated in Section 7(b)), Recipient shall provide Illumina with a written report describing in reasonable detail the results of the Research Project, Tn5 IP, and Recipient IP arising from or generated under the Research Project. Recipient shall not provide Illumina with any information in the report or otherwise that would permit Illumina to identify any human subject whose biological material was used in the Research Project.

(f) Except for the limited right of Recipient to use Tn5 Enzyme as set forth in this Agreement, Illumina reserves all intellectual property rights owned or controlled by it and its affiliates, including without limitation all rights in and to Tn5 Enzyme, methods of its use, and improvements to the foregoing.

6. Confidential Information. Any of a Party’s information marked in writing as "CONFIDENTIAL" and transferred to the other Party shall be “**Confidential Information.**” Any oral or visual disclosure which a Party intends to be treated as Confidential Information shall be identified as being confidential at the time of disclosure and then summarized in writing, marked as “CONFIDENTIAL,” and sent to the other Party within thirty (30) days after the date of the disclosure. Each Party agrees to not disclose Confidential Information it receives to any third party. Categories of information, even if marked in writing as “CONFIDENTIAL”, specifically excluded from the obligations of confidentiality and non-use of this Agreement include information which: (a) at the time of disclosure is already in the public domain; (b) the Party receiving Confidential Information (the “**Receiving Party**”) can demonstrate by written evidence, was in the possession of Receiving Party prior to disclosure by the other Party (the “**Disclosing Party**”) to the Receiving Party; (c) subsequently becomes part of the public domain through no action or inaction of the Receiving Party; (d) becomes known to the Receiving Party through a third party who is not under any obligation of confidentiality to the Disclosing Party; (e) is developed by or for the Receiving Party independent of any information received from the Disclosing Party as evidenced by written documentation; or (f) may be disclosed as required by court order, operation of law or government regulation, provided that the Receiving Party promptly notifies the Disclosing Party of the specifics of such requirement prior to the actual disclosure, and uses diligent efforts to limit such disclosure and to obtain confidential treatment or a protective order for the Confidential Information, and allows the Disclosing Party to participate in such process undertaken to protect the Confidential Information.

7. Term, Termination, Survival.

(a) The term of this Agreement shall begin on the Effective Date and continue until one (1) year thereafter or earlier as permitted by this Section 7.

(b) Recipient may terminate this Agreement at any time by providing written notice to Illumina and providing, at the same time, the final report in accordance with Section 5(e).

(c) Illumina may terminate this Agreement immediately upon any breach by Recipient of Section 4. Illumina may terminate this Agreement upon breach by Recipient of any term or conditions of this Agreement, other than a breach of Section 4, after providing written notice of the breach and thirty (30) days to cure the breach.

(d) Upon Illumina's instruction, Recipient shall return or destroy any remaining Tn5 Enzyme in its possession upon expiration of the Agreement or any early termination. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Sections 3(b), 4(b), 4(d), 5, 6, 7(d), and 8-10 shall survive the termination or expiration of this Agreement.

8. Indemnification, Liabilities

(a) Recipient shall indemnify, defend and hold harmless Illumina, its officers, directors, agents, employees, and affiliates from and against any and all third party claims, liabilities, judgments or other expenses, including reasonable attorneys' fees (collectively "**Claims**"), arising in any way from use of Tn5 Enzyme transferred hereunder or performance of the Research Project, except to the extent arising from the gross negligence or willful misconduct of Illumina, its officers, directors, agents, employees, or affiliates.

(b) Illumina shall indemnify, defend and hold harmless Recipient, its officers, directors, agents, and employees, from and against any and all third party Claims arising in any way from Illumina's exercise of the rights granted to Illumina under Sections 5(a) (assignment of Tn5 IP) or Section 5(c) (non-exclusive license to Recipient IP), except to the extent arising from the gross negligence or willful misconduct of Recipient, its officers, directors, agents, or employees.

(c) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). SUBJECT TO SECTION 8(a) and SECTION 8(b), ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED \$1,000,000.

9. Notice. Any notice given under this Agreement must be in writing and delivered to the addresses set forth below or to such other addresses of which the Parties may from time to time be notified in writing. Any notice will be deemed given on the delivery date set forth on a bona fide delivery receipt issued by the recipient or a nationally recognized delivery service, including without limitation the U.S. Postal Service and Federal Express.

If to Recipient:

Attention: Legal Department

If to Illumina:

Illumina, Inc.
5200 Illumina Way
San Diego, CA 92122
Attention: Andrew Carmen, Assoc. Dir., Business Development
Cc: General Counsel

10. General.

(a) Independent Agents. Each Party is an independent contractor and engaged in the operation of its own respective business and neither Party is an agent of the other nor has any authority to enter into any contracts or assume any obligations for the other.

(b) Publicity, Use of Names. The Parties will not publish or otherwise publicly disclose the terms of this Agreement, including in a press release, or the subject matter of this Agreement to any third Party without the prior written consent of the other Party. Neither Party will use the names or trademarks of the other Party or its affiliates without prior written consent of the owning Party.

(c) Severability. If any provision of this Agreement is held illegal, invalid or unenforceable by a court of competent jurisdiction, such decision shall in no way affect the validity or enforceability of any other provisions, which shall remain in full force and effect, and the Agreement shall be interpreted as if such provision were not included in this Agreement.

(d) Entire Agreement. This Agreement and the exhibits and appendices attached hereto represent the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the Parties.

(e) Assignment. This Agreement is not assignable or otherwise transferable by Recipient without the prior written consent of Illumina. Any purported assignment of this Agreement by Recipient without the prior written consent of Illumina will be void and of no effect. Illumina may assign this Agreement.

(f) Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, other than those provisions governing conflicts of law.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered by facsimile, electronic transmission, or by mail delivery, will be an original and all of which shall constitute one and the same instrument.

(h) Amendment, Waiver. This Agreement may not be amended except by a writing signed by both Parties. The failure of either Party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver of either Party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. No waiver will be effective unless in writing and signed by the Party who has the right to waive the right, condition or breach.

(i) Force Majeure. Neither Party shall be responsible for any delay or failure to perform that is attributable to any cause beyond its reasonable control. In the event of any such delay, the delivery date for performance shall be deferred for a period equal to the time lost by reason of the delay.

(j) Headings; Interpretation. Sections, titles and headings in this Agreement are for convenience only and are not intended to affect the meaning or interpretation hereof. Whenever required by the context, the singular term shall include the plural, the plural term shall include the singular, and the gender of any pronoun shall include all genders. As used in this Agreement except as the context may otherwise require, “include”, “includes”, “including”, and “such as” are deemed to be followed by “without limitation”, whether or not they are in fact followed by such words or words of like import, and “will” and “shall” are used synonymously. Except as expressly stated, any reference to “days” shall be to calendar days, and “business day” shall mean all days other than Saturdays, Sundays or a national or local holiday recognized in the United States. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall on a Saturday, Sunday, or national holiday, the Party having such privilege or duty shall have until 5:00 pm PST on the next succeeding business day to exercise such privilege or to discharge such duty. It is further agreed that no usage of trade or other regular practice between the Parties hereto shall be used to interpret or alter the terms of this Agreement. Ambiguities, if any, in this Agreement shall not be construed against any particular Party, irrespective of which Party may be deemed to have authored the ambiguous provision. Reference to a Section of this Agreement includes all subsections and subparts of that Section, except as the context may otherwise require.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

Recipient:

By:

Name:

Title:

Date:

Illumina:

By:

Name:

Title:

Date:

Acknowledged by:

Principal Investigator:

Name:

Title:

Phone:

Fax:

Email:

Contact for Illumina:

Name:

Title:

Phone:

Fax:

Email:

EXHIBIT A

1. Tn5 Enzyme:

Quantity to be delivered:
Special Considerations:

2. Principal Investigator:

Name:
Title:
Address:
Email:
Tel:

3. Research Project: Note that the Research Project does not include any Excluded Use set forth in Section 1(a).