

## **PLASMID DEPOSIT AGREEMENT**

THIS PLASMID DEPOSIT AGREEMENT (the “**Agreement**”), effective as of [REDACTED], 2007 (the “**Effective Date**”), is entered into by and between XXX, an academic institution, non-profit organization, for-profit company at ADDRESS (the “**Depositor Institution**”), and President and Fellows of Harvard College on behalf of Harvard’s Institute of Proteomics (“**HIP**”), located at 320 Charles St., Cambridge, MA 02141 (“**Harvard**”) each individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

### **RECITALS**

**WHEREAS**, HIP received a grant from the National Institutes of Health (the “**Grant**”) to form a new repository of Plasmids (the “**Repository**”);

**WHEREAS**, the goal of the Repository is to store, maintain, and facilitate the collection and exchange of Plasmids among researchers at academic, profit, and non-profit institutions for non-commercial, basic biological and biomedical research; and

**WHEREAS**, the Depositor Institution wishes to deposit certain Plasmids into the Repository and to authorize HIP to receive, store, replicate and distribute such Depositor Material pursuant to the terms of this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1** **Definitions**

1.1 Defined Terms. Capitalized words and expressions in this Agreement shall have the meanings set forth herein and in this Article 1.

- 1.1.1 “Depositor Material” means Proposed Material that is accepted by HIP for inclusion in the Repository as set forth in Section 3.2.3.
- 1.1.2 “Depositor Scientist” means any scientist affiliated with the Depositor Institution wishing to deposit Depositor Material.
- 1.1.3 “Depositor Authorized Representative” means individual[s] identified by the Depositor Institution to authorize dispositions of Depositor Material on the Depositor Institution’s behalf into the Repository.
- 1.1.4 “Encumbered Material Transfer Agreement” means the material transfer agreement to be used when the Proposed Material meets the specifications of Section 3.3.

- 1.1.5 “Expedited Process Agreement” shall mean the agreement set forth as Exhibit A-1 for Plasmids subject to the Standard Plasmid Transfer Agreement or the agreement set forth as Exhibit A-2 for Plasmids subject to an Encumbered Plasmid Transfer Agreement.
- 1.1.6 “Plasmids” means non-toxic, non-hazardous, non-infectious plasmids that are de-identified or not identifiable in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996, and their implementing regulations (“**HIPAA**”) as well as any unmodified derivatives (including substances which constitute an unmodified functional subunit or biological product expressed by the original material) or replications thereof and their progeny.
- 1.1.7 “Proposed Material” means Plasmids provided by the Depositor Institution to HIP for HIP’s consideration for inclusion in the Repository.
- 1.1.8 “Recipient Institution” means any institution that wishes to order and receive Depositor Material from the Repository.
- 1.1.9 “Recipient Scientist” means any scientist affiliated with the Recipient Institution wishing to order and receive Depositor Material from the Repository.
- 1.1.10 “Standard Plasmid Transfer Agreement” shall mean the material transfer agreement set forth as Exhibit B.

## **ARTICLE 2**

### **Obligations of the Depositor Institution**

- 2.1 Depositor Institutions Representations. As of the Effective Date and throughout the term of this Agreement, the Depositor Institution represents and warrants that:
- 2.1.1 The execution and delivery of this Agreement and the performance of the Depositor Institution’s respective obligations hereunder do not conflict with any obligation of the Depositor Institution.
- 2.1.2 The execution and performance of this Agreement has been duly authorized by all necessary officials of Depositor Institution.
- 2.1.3 It (a) possesses the legal right and authority to enter into this Agreement, (b) possesses all of the necessary rights to transfer the Proposed Material to HIP for reproduction, use, and distribution as contemplated under this Agreement; and (c) has authorized the individual[s] listed on Exhibit C (which may be updated from time to time) to authorize dispositions of Depositor Material on Depositor Institution’s behalf into the Repository.
- 2.1.4 It will not submit for deposit any toxic, hazardous, pathogenic, infectious or identifiable, as that term is understood by HIPAA, Proposed Material without the prior written consent of HIP.

- 2.1.5 Depositor Material is not subject to a licensing requirement under U.S. export laws. If there is any possibility that Depositor Material is or may become subject to the licensing or other authorization requirements of U.S. export laws and regulations, Depositor Institution shall advise HIP and shall be responsible for the cost of determining whether a license is required, and, if so, shall also be responsible for the expense of any licenses or authorizations that HIP is required to obtain in order to comply with the U.S. export laws. If Depositor Institution does not advise HIP of the possibility of the export-controlled status of Depositor Material at the time of Proposed Material Assessment (further detailed in Section 3.2) and HIP is held liable for violating the U.S. export laws for exporting such material, or HIP agrees to a settlement of charges of unauthorized export of such material, Depositor Institution shall reimburse HIP for the full amount of any penalties, settlement, and/or the costs of defense against or settlement of such charges, including reasonable attorneys fees.

### **ARTICLE 3** **Deposit Process**

3.1 Deposit Submission. From time to time, Depositor Scientists may identify Proposed Material that they wish to store in the Repository. In order to store any Depositor Material in the Repository, the Depositor Authorized Representative or Depositor Scientist must first submit a completed Plasmid Deposit Form, in a form set forth as Exhibit C, to HIP. Upon receipt of a Plasmid Deposit Form, HIP will send the Depositor Authorized Representative an e-mail alert requesting permission for HIP's receipt, testing, replication, and distribution of the Proposed Material identified in the Plasmid Deposit Form.

3.2 Proposed Material Assessment. Upon receipt of the Depositor Authorized Representative's written permission (which may be provided via email), HIP will notify the Depositor Scientist and/or Depositor Authorized Representative who submitted the Plasmid Deposit Form that he/she may submit the Proposed Material to the Repository to be assessed by HIP. Upon receipt of the Proposed Material, HIP will, in accordance with its policies, procedures, and standard laboratory practices:

- 3.2.1 review the Proposed Material that it receives to confirm that the Proposed Material received matches the sample labels. HIP will notify the Depositor Scientist if (a) unexpected samples were received; or (b) if expected sample containers were not received. If unexpected samples were received, HIP will either return the samples at Depositor Institution's expense or destroy them. If expected sample containers were not received, HIP will notify the Depositor Scientist, so that she can send a replacement;
- 3.2.2 perform a diagnostic analysis of each Plasmid to confirm a partial or complete nucleotide sequence identity of the Proposed Material submitted by Depositor Scientist; HIP will return or destroy any Proposed Material that does not pass the diagnostic analysis at Depositor Scientist's request and expense;

- 3.2.3 following completion of steps in Sections 3.2.1 and 3.2.2, notify the Depositor Scientist and/or Depositor Authorized Representative that the Proposed Material was accepted and has become Depositor Material or rejected in whole or in part; and
- 3.2.4 replicate samples of the Depositor Material for subsequent distribution and archival storage.

3.3 Special Proposed Material. From time to time, Depositor Institution may wish to provide Proposed Material to the Repository that is subject to (a) material transfer agreements with third parties, (b) license agreements with third parties, or (c) other limitations such as time limits for testing by Recipient Institution of the pursuant to which the Depositor Material can only be provided to Recipient Institutions subject to an Encumbered Material Transfer Agreement, rather than the Standard Plasmid Transfer Agreement attached as Exhibit B. In such cases, the Depositor Institution shall request the use of an Encumbered Material Transfer Agreement in the Plasmid Deposit Form, described in Section 3.1. HIP and the Depositor Institution shall work in good faith to reach an agreement regarding the specific terms of the Encumbered Material Transfer Agreement, provided, however, that such terms are consistent with HIP's obligations to NIH with respect to the Repository and the Grant.

- 3.3.1 If the Parties are able to agree upon an appropriate Encumbered Material Transfer Agreement, and such Proposed Material has become Depositor Material as set forth in Section 3.2.3, HIP shall flag the specific Depositor Material in the Repository that is subject to the Encumbered Material Transfer Agreement and shall only transfer such Depositor Material to Recipient Institutions who agree to execute, in writing, the applicable Encumbered Material Transfer Agreement.
- 3.3.2 If the Parties are unable to agree upon an appropriate Encumbered Material Transfer Agreement, such Proposed Material shall not be deposited in the Repository.

3.4 Withdrawal of Depositor Material. The Depositor Institution may request, in writing, the withdrawal or return of the Depositor Material in HIP's possession in the Repository. In the event of such a request, HIP will within:

- 3.4.1 thirty (30) days of the receipt of such request, cease distributing the specified Depositor Material and remove the specified Depositor Material from the distribution website for the Repository;
- 3.4.2 ninety (90) days of the receipt of such request, destroy the specified Depositor Material, or return the Depositor Material to the Depositor Institution at the Depositor Institution's expense; and
- 3.4.3 one-hundred and eighty (180) days of such request, destroy or return the specified Depositor Material maintained in HIP's off-site archive, at Depositor Institution's expense.

3.4.4 Notwithstanding the foregoing, once HIP has provided the Depositor Material to a Recipient Institution, the future use of Depositor Material shall be governed by the terms of the Standard Plasmid Transfer Agreement or Encumbered Material Transfer Agreement, as applicable. Upon request, HIP will provide Depositor Institution with a list of Recipient Institutions who have received Depositor Material.

3.5 Disclaimer of Warranty. Depositor Institution acknowledges that HIP's ability to replicate Depositor Material is dependent on the accuracy of the information included in the Plasmid Material Deposit Form. HARVARD EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE REPLICATION OR DISTRIBUTION OF THE DEPOSITOR MATERIAL. EXCEPT AS PROVIDED IN SECTION 2.1, DEPOSITOR INSTITUTION EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DEPOSITOR MATERIAL.

## **ARTICLE 4**

### **HIP Obligations**

4.1 Generally. HIP will:

4.1.1 Store Depositor Material in such a way that it can be identified, isolated, and removed from the Repository, and in accordance with guidelines standard to storage of materials in the nature of Depositor Materials.

4.1.2 Produce unmodified replications of Depositor Material for use by Recipient Institutions and distribute the Depositor Material to Recipient Institutions under the Standard Plasmid Transfer Agreement or Encumbered Material Transfer Agreement, as applicable.

4.2 Standard Plasmid Transfer Agreement. In order for a Recipient Scientist to receive Plasmids, including Depositor Material, such Recipient Institution shall execute the Standard Plasmid Transfer Agreement, attached as Exhibit B. Unless the Recipient Institution elects the expedited process set forth in Section 4.4, the Recipient Institution must execute a Standard Plasmid Transfer Agreement for each order of Plasmids placed by a Recipient Scientist from such Recipient Institution.

4.3 Encumbered Material Transfer Agreement. In the event that a Recipient Scientist and/or Recipient Institution submits a request for Depositor Material that is governed by Section 3.3, HIP will notify the Recipient Scientist /Institution that such Depositor Material requires the execution of an Encumbered Material Transfer Agreement. If the Recipient Institution enters into an Encumbered Material Transfer Agreement, HIP shall transfer the Depositor Material.

4.4 Expedited Process Agreement. HIP has established an online expedited process whereby Recipient Scientists may place orders for Depositor Materials and electronically agree to the terms of such transfer. In order to participate in the expedited online process, the Recipient Institution must execute the following:

4.4.1 an Expedited Process Agreement, attached hereto as Exhibit A-1, including the Standard Plasmid Transfer Agreement included as a schedule thereto, pursuant to which the Recipient Institution acknowledges and agrees that all Plasmids in the Repository, including Depositor Material, with the exception of special Plasmids described in Section 3.3, subsequently ordered by Recipient Scientists from such Recipient Institution through the expedited electronic order and approval process, shall be subject to the terms of the Standard Plasmid Transfer Agreement. Thereafter, Recipient Scientists from such Recipient Institution will be permitted to place orders for Plasmids, including Depositor Materials, that are subject to the Standard Plasmid Transfer Agreement electronically; in placing such order Recipient Scientist will also be requested to electronically accept and agree to be bound by the terms of the Standard Plasmid Transfer Agreement already agreed to and accepted by their institution.

4.4.2 in the case of certain Plasmids described in Section 3.3 which Harvard decides to make available through the expedited process, an Expedited Process Agreement, attached hereto as Exhibit A-2, including the relevant Encumbered Material Transfer Agreement included as a schedule thereto, pursuant to which the Recipient Institution acknowledges and agrees that all Plasmids in the Repository, including Depositor Material, that are to be distributed subject to such Encumbered Material Transfer Agreement in accordance with Section 3.3, subsequently ordered by Recipient Scientists from such Recipient Institution through the expedited electronic order and approval process, shall be subject to the terms of such Encumbered Material Transfer Agreement. Thereafter, Recipient Scientists from such Recipient Institution will be permitted to place orders for Plasmids, including Depositor Materials, that are subject to such Encumbered Material Transfer Agreement electronically; in placing such order Recipient Scientist will also be requested to electronically accept and agree to be bound by the terms of such Encumbered Material Transfer Agreement already agreed to and accepted by their institution.

4.5 Limitations. The Parties agree that HIP, in providing the services set forth in this Article 4, without more, is not acting as an investigator, IRB or other oversight body over the activities undertaken by Depositor Institution to prepare the Depositor Material or otherwise comply with this Agreement.

## **ARTICLE 5**

### **Term and Termination**

5.1 Term. This Agreement shall commence on the Effective Date and continue until otherwise terminated (the “**Term**”).

5.2 Termination Without Cause. Either Party may terminate this Agreement without cause upon sixty (60) days prior, written notice.

5.3 Termination for Cause. This Agreement will immediately terminate if a Party is unable to meet its obligations under this Agreement within thirty (30) days of being notified in writing

of a breach by the non-breaching Party. If the Grant expires or terminates, HIP shall have the right to terminate this Agreement upon thirty (30) days written notice.

5.4 Effect of Termination. In the event of termination or expiration of this Agreement for any reason, the Depositor Institution can direct the future use, withdrawal or removal of the Depositor Material in accordance with Section 3.4.

5.5 Remedies in Addition. The termination provisions of this Article 5 shall be the sole and exclusive remedy for the Depositor Institution.

## **ARTICLE 6**

### **Ownership of Depositor Material**

6.1 Ownership of Depositor Material. The Depositor Institution will own all Depositor Material.

## **ARTICLE 7**

### **Insurance**

7.1. Generally. Each Party shall, at its own cost, procure and continue in effect during the Term of this Agreement and for five (5) years thereafter, comprehensive general liability insurance that includes coverage for claims related to the research using the Depositor Material, with limits of not less than one million dollars (\$1,000,000.00) per occurrence for death or bodily injury and not less than five hundred thousand dollars (\$500,000.00) for property damage. Evidence of such insurance and its renewal shall be provided to the requesting Party upon request. A Party shall notify the other Party in writing no less than thirty (30) days prior to any cancellation, reduction in coverage, or non-renewal of such policy.

## **ARTICLE 8**

### **Liability**

8.1 Generally. Each Party (the “Indemnifying Party”) hereby agrees to defend, indemnify and hold harmless, the other party and its officers, directors, employees, agents, successors and assigns (the “Indemnified Party”) from and against any third party claims arising out of the negligence, gross negligence, or willful misconduct of the Indemnifying Party, except to the extent such amounts are attributable to the Indemnified Party’s negligence, gross negligence, or willful misconduct, to the extent their state law allows.

8.2 Condition Precedent. It is a condition precedent to the Parties’ respective obligations under Section 8.1 that the Indemnified Party must (i) notify the Indemnifying Party of the assertion of any such claim against it, (ii) permit the Indemnifying Party to conduct and exercise control of the defense and disposition (including, without limitation, all decisions relative to litigation, appeal or settlement) of such claims, and (iii) fully cooperate with the Indemnifying Party regarding any such claims. Subject to the foregoing, each Party may participate in any such claims at its own expense. The Indemnifying Party shall not make any settlement admitting fault or incur any liability on the part of the Indemnified Party without its written consent, such consent not to be unreasonably withheld.

8.3 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY ECONOMIC LOSS OR LOSS OF PROFITS SUFFERED BY THE OTHER PARTY, EXCEPT FOR LIABILITY TO THE EXTENT ANY SUCH DAMAGES ARE REQUIRED TO BE PAID TO A THIRD PARTY IN ACCORDANCE WITH SECTION 8.1.

## **ARTICLE 9**

### **Standard Business Terms & Conditions**

9.1 Relationship of the Parties. The Parties acknowledge that this Agreement does not create a fiduciary relationship between them, that each Party shall be an independent contractor of the other, and that nothing in this Agreement is intended to make either Party an agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose whatsoever. Neither Party has the authority to bind the other Party.

9.2 Assignment. This Agreement shall not be assignable by any Party to any third party hereto without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Depositor Institution shall have the right to assign this Agreement to its affiliates or the successor of its business without such consent.. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

9.3 Construction. The language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly for or against any Party nor for or against its drafter.

9.4 Entire Agreement. This Agreement, together with all Exhibits and Schedules constitute the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and that all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, are merged and canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and duly executed on behalf of both Parties.

9.5 Execution. This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original and both of which together shall constitute one instrument.

9.6 Force Majeure. No Party shall lose any rights hereunder or be liable to the other Party for damages or losses on account of failure of performance by a defaulting Party if the failure is occasioned by war, strike, fire, Act of God, earthquake, flood, lockout, acts of terrorism, embargo, governmental acts or orders or restrictions, failure of suppliers or third parties, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence or misconduct of the nonperforming Party and the nonperforming Party has exerted reasonable efforts to avoid or remedy such force majeure.

9.7 Governing Law and Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without giving effect to any



choice of laws or conflict of law provision. Each Party consents to service of process in any Action by mailing a copy of such process by United States mail, registered or certified, postage prepaid, return receipt requested, to the addresses as provided under Section 9.9 herein.

9.8 Information. Subject to applicable law, each Party shall furnish to the other Party any information requested or required by that Party during the Term of this Agreement or any extensions hereof to enable the requesting Party to comply with the requirements of any United States or foreign federal, state and/or government agency.

9.9 Notices. All notices under this Agreement shall be in writing and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered or certified mail, return receipt requested, postage prepaid, in each case to the respective address specified below. Any notice given by mail shall be deemed effective three (3) days after the time when deposited in the United States mail if sent by registered or certified mail, and if given by other means shall be deemed given when received. Any Party may, by notice to the other pursuant to this Section, specify additional or different addresses for notice purposes.

To Harvard:  
President and Fellows of Harvard College  
Holyoke Center, Suite 727  
Cambridge, MA 12350  
Attention: Nadav Shichor

To Depositor Institution:  
ADDRESS  
Attention: XXX

9.10 Severability. In the event that any provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect without that provision. In such event, the Parties shall in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which shall most nearly approximate the intent of the parties in entering this Agreement.

9.11 Survival. The following Sections of this Agreement shall survive its Term and termination for as long as necessary to permit their full discharge: Sections 2.1.5, 3.4, 3.5, Articles 5, 6, 7, 8 and 9.

9.12 Waiver. The waiver of or failure to enforce by any Party any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent or similar breach of the same or any other term, covenant, representation, warranty, or condition.

**IN WITNESS WHEREOF**, the Parties have set their hands and seals to this Agreement by their respective duly authorized representatives.

**PRESIDENT AND FELLOWS OF XXX  
HARVARD COLLEGE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Exhibit A-1

### Expedited Process Agreement

#### Background/Overview:

The Harvard Institute of Proteomics (“HIP”) received a grant from the National Institutes of Health (the “Grant”) to form a new repository of plasmids (the “Repository”) to store, maintain, and facilitate the collection and exchange of plasmids (the “Plasmids”) among researchers at academic, profit, and non-profit institutions for non-commercial, basic biological and biomedical research. Plasmids were shared with HIP by researchers at one or more institutions (each, a “Depositor Institution”) for distribution in accordance with a Standard Material Transfer Agreement. HIP has established a process, which is more fully detailed below, to effectuate the most efficient distribution of the Plasmids. An institution wishing to be eligible to receive Plasmids from the Repository (a “Recipient Institution”) by this more efficient distribution process is required to complete and submit this document to HIP.

#### General Information:

Organization Name:	(“Recipient Institution”)
Contact:	Title:
Address:	Address 2:
City:	State/Province:
Country:	Postal Code:
Phone & Extension (inc. country code):	FAX:
Email:	Website URL:

#### Material Transfer Process:

HIP has established an online process for request of Plasmids that will permit scientists affiliated with the Recipient Institution (i.e. with a lab address at the Recipient Institution) (each a “Recipient Scientist”) to place orders for Plasmids online and agree to the terms of such transfer electronically. In order to participate, the Recipient Institution must first complete and execute, in writing, this Plasmid Transfer Application and Agreement, attached as Schedule 1, thereby acknowledging that all transfers of Plasmids, except as otherwise agreed to in writing between HIP and Recipient Institution, shall be subject to the process described herein and provided under the terms and conditions set forth in the

Standard Plasmid Transfer Agreement, attached as **Schedule 1**. Thereafter, Recipient Scientists from such Recipient Institution will be permitted to place orders for Plasmids online; and upon placing the order will electronically accept and agree to be bound by the terms and conditions of the Standard Plasmid Transfer Agreement already agreed and accepted by their institution. If, however, a Recipient Institution does not agree to the expedited process, but wishes to receive Plasmids, then in order for a Recipient Scientist from such Recipient Institution to receive Plasmids, such Recipient Institution will have to approve in writing the Standard Plasmid Transfer Agreement for each order of Plasmids by a Recipient Scientist.

**Recipient Institution Authorization:**

Recipient Institution represents and agrees that:

1. The information provided in this document is current, complete and accurate.
2. The execution of this Plasmid Transfer Application and Agreement shall bind the Recipient Institution to the expedited Material Transfer Process (described above); Recipient Institution further agrees that all orders for Plasmids by Recipient Scientists, except as otherwise agreed in writing by HIP and Recipient Institution, will be subject to the Standard Plasmid Transfer Agreement.
3. The execution and performance of the obligations contemplated herein have been duly authorized by all appropriate necessary officials, and Recipient Institution possesses the legal right and authority to assume the obligations contained herein and to be bound by the terms of this Plasmid Transfer Application and Agreement.

Organization Official's Name (print)		Title
Organization Official's Signature		Date

The Plasmid Transfer Application and Agreement shall both be completed and signed with original ink signatures by an official capable of legally binding the Recipient Institution and together shall be deemed and constitute a binding agreement.

**Schedule 1**  
**Standard Plasmid Transfer Agreement**

**Note:** Schedule 1 to the Expedited Process Agreement will be identical to the Exhibit B of the Plasmid Deposit Agreement, except that the following signature block shall appear at the bottom:

<b>Recipient Institution acknowledgment of the Standard Plasmid Transfer Agreement:</b>
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BY SIGNING BELOW, I, THE DULY AUTHORIZED REPRESENTATIVE OF THE RECIPIENT INSTITUTION, ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE PLASMID TRANSFER AGREEMENT AND AGREE TO ITS TERMS AND CONDITIONS AND THAT THE RECIPIENT INSTITUTION SHALL BE BOUND BY SUCH TERMS AND CONDITIONS WITH RESPECT TO ALL PLASMIDS ORDERED BY SCIENTISTS AFFILIATED WITH THE RECIPIENT INSTITUTION (I.E. WITH A LAB ADDRESS AT THE RECIPIENT INSTITUTION) USING THE EXPEDITED ELECTRONIC MATERIAL TRANSFER PROCESS.
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Printed Name _____ Position/Title _____
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Signature _____ Date _____
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## Exhibit A-2

### Expedited Process Agreement for Encumbered MTA Plasmids

#### Background/Overview:

The Harvard Institute of Proteomics (“HIP”) received a grant from the National Institutes of Health (the “Grant”) to form a new repository of plasmids (the “Repository”) to store, maintain, and facilitate the collection and exchange of plasmids among researchers at academic, profit, and non-profit institutions for non-commercial, basic biological and biomedical research. Certain such plasmids (“Subject Plasmids”) were shared with HIP by researchers at one or more institutions (each, a “Depositor Institution”) for distribution in accordance with the Material Transfer Agreement, attached hereto as Schedule 1, (“Encumbered Plasmid Transfer Agreement”) which contains additional terms not included in the Standard Material Transfer Agreement under which most of the plasmids distributed by HIP are distributed or terms that are difference from other encumbered plasmid transfer agreements under which certain plasmids distributed by HIP are distributed, which your institution may have already signed. HIP has established a process, which is more fully detailed below, to effectuate the most efficient distribution of the Subject Plasmids. An institution wishing to be eligible to receive Subject Plasmids from the Repository (a “Recipient Institution”) by this more efficient distribution process is required to complete and submit this document to HIP.

#### General Information:

Organization Name:	(“Recipient Institution”)
Contact:	Title:
Address:	Address 2:
City:	State/Province:
Country:	Postal Code:
Phone & Extension (inc. country code):	FAX:
Email:	Website URL:

#### Material Transfer Process:

HIP has established an online process for request of Subject Plasmids that will permit scientists affiliated with the Recipient Institution (i.e. with a lab address at the Recipient Institution) (each a “Recipient Scientist”) to place orders for Such Plasmids online and agree to the terms of such transfer electronically. In order to participate, the Recipient Institution must first complete and execute, in writing, this Plasmid Transfer Application and Agreement, attached as Schedule 1, thereby

acknowledging that all transfers of Subject Plasmids, except as otherwise agreed to in writing between HIP and Recipient Institution, shall be subject to the process described herein and provided under the terms and conditions set forth in the Encumbered Plasmid Transfer Agreement, attached as **Schedule 1E**. Thereafter, Recipient Scientists from such Recipient Institution will be permitted to place orders for Subject Plasmids online; and upon placing the order will electronically accept and agree to be bound by the terms and conditions of the Encumbered Plasmid Transfer Agreement already agreed and accepted by their institution. If, however, a Recipient Institution does not agree to the expedited process, but wishes to receive Subject Plasmids, then in order for a Recipient Scientist from such Recipient Institution to receive Subject Plasmids, such Recipient Institution will have to approve in writing the Encumbered Plasmid Transfer Agreement for each order of Subject Plasmids by a Recipient Scientist.

**Recipient Institution Authorization:**

Recipient Institution represents and agrees that:

4. The information provided in this document is current, complete and accurate.
5. The execution of this Plasmid Transfer Application and Agreement shall bind the Recipient Institution to the expedited Material Transfer Process (described above); Recipient Institution further agrees that all orders for Subject Plasmids by Recipient Scientists, except as otherwise agreed in writing by HIP and Recipient Institution, will be subject to the Encumbered Plasmid Transfer Agreement.
6. The execution and performance of the obligations contemplated herein have been duly authorized by all appropriate necessary officials, and Recipient Institution possesses the legal right and authority to assume the obligations contained herein and to be bound by the terms of this Plasmid Transfer Application and Agreement.

Organization Official's Name (print)	Title
Organization Official's Signature	Date

The Plasmid Transfer Application and Agreement shall both be completed and signed with original ink signatures by an official capable of legally binding the Recipient Institution and together shall be deemed and constitute a binding agreement.

## Schedule 1E

### **Encumbered Plasmid Transfer Agreement for Plasmids HIP Catalog Numbers [ ], [ ], [ ], [ ] [to be inserted]**

This Encumbered Plasmid Transfer Agreement (this “Agreement”) is by and among you (“Recipient Institution” or “You”), and the President and Fellows of Harvard College on behalf of the Harvard Institute of Proteomics (“HIP”). You are being provided with certain plasmids identified by the numbers set forth above (the “Plasmids”) that were developed by researchers (“Depositor Scientists”) working at one or more originating institutions (each, a “Depositor Institution”). The Depositor Institutions are the beneficiaries of, and may independently enforce, this Agreement. The Plasmids, together with any replicas and unmodified derivatives thereof, shall be referred to as the “Plasmids.”

Recipient Institution hereby agrees as follows with respect to the Plasmids:

1. The Plasmids are the property of the Depositor Institution and are made available as a service to the research community.
2. The Plasmids may be used solely for teaching or internal, non-commercial, educational or research purposes.
3. THE PLASMIDS MAY NOT BE USED IN HUMAN SUBJECTS.
4. The Plasmids will not be further distributed to others without the Depositor Institution’s prior written consent, and in any event shall not be distributed in violation of any of the U.S. export control laws or regulations.
5. You shall refer any third party request for the Plasmids to HIP or the applicable Depositor Institution. To the extent supplies are available, HIP or the Depositor Institutions agree to make the Plasmids available, under a separate material transfer agreement to other scientists solely for teaching or internal, non-commercial biomedical research purposes.
6. You agree to acknowledge, or ensure that your scientists acknowledge, the Depositor Institution and respective Depositor Scientists as the source of the Plasmids and HIP as the provider of the Plasmids in any publications reporting use of Plasmids.
7. You understand that the Plasmids are experimental in nature and may have hazardous properties. HARVARD AND THE DEPOSITOR INSTITUTIONS MAKE NO REPRESENTATIONS AND DISCLAIM ANY WARRANTIES OF ANY KIND WITH REGARD TO DEPOSITOR MATERIALS, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE PLASMIDS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
8. Recipient Institution assumes all liability for claims for damages against it by third parties which may arise from its or its scientists’ use, storage, or disposal of the Plasmids, except that, to the extent permitted by law, the Depositor Institution shall be liable to the Recipient Institution to the extent damage is caused by the gross negligence or willful misconduct of



Depositor Institutions. Unless prohibited by law from doing so, Recipient Institution agrees to hold Harvard and the Depositor Institutions harmless from and to indemnify Harvard and the Depositor Institution for all liabilities, demands, damages, expenses and losses arising out of Recipient Institution's or its Recipient Scientists' use for any purpose of Plasmids.

9. If the Depositor Scientist is an HHMI employee/funded lab, then the following provisions shall also apply [to be provided and approved by HHMI].
10. You undertake to use the Plasmids only in compliance with all applicable laws and governmental regulations. Recipient Institution will have safety and security procedures and policies in place to ensure compliance with all obligations hereunder.
11. Additional requirements with respect to the Plasmids are set forth in the Addendum attached to this Agreement. Such requirements are incorporated into and made a part of this Agreement.

### **ADDENDUM**

*[Note: special terms to be included]*

<b>Recipient Institution acknowledgment of the Encumbered Plasmid Transfer Agreement:</b>
---

BY SIGNING BELOW, I, THE DULY AUTHORIZED REPRESENTATIVE OF THE RECIPIENT INSTITUTION, ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ENCUMBERED PLASMID TRANSFER AGREEMENT AND AGREE TO ITS TERMS AND CONDITIONS AND THAT THE RECIPIENT INSTITUTION SHALL BE BOUND BY SUCH TERMS AND CONDITIONS WITH RESPECT TO ALL PLASMIDS AS DEFINED HEREIN ORDERED BY SCIENTISTS AFFILIATED WITH THE RECIPIENT INSTITUTION (I.E. WITH A LAB ADDRESS AT THE RECIPIENT INSTITUTION) USING THE EXPEDITED ELECTRONIC MATERIAL TRANSFER PROCESS.
--

Printed Name _____ Position/Title _____
---

Signature _____ Date _____
----------------------------

**Note:** when this document is used on-line as part of the expedited process, the site will require the Recipient Scientist to scroll through the document before click-accepting. In addition, the following will appear at the bottom of the document:

You acknowledge that you have read and understood the conditions outlined in this Agreement  
You understand that your Institution has agreed to be bound by the conditions set forth in this Agreement and you also agree to abide by them in the receipt and use of the Plasmids.

## **Exhibit B**

### **Standard Plasmid Transfer Agreement**

Standard Plasmid Transfer Agreement is by and among you ("Recipient Institution" or "You"), and the President and Fellows of Harvard College on behalf of the Harvard Institute of Proteomics ("HIP"). You are being provided with Plasmids that were developed by researchers ("Depositor Scientists") working at one or more originating institutions (each, a "Depositor Institution"). The Depositor Institutions are the beneficiaries of, and may independently enforce, this Agreement. The Plasmids, together with any replicas and unmodified derivatives thereof, shall be referred to as the "Plasmids."

Recipient Institution hereby agrees as follows with respect to the Plasmids:

1. The Plasmids are the property of the Depositor Institution and are made available as a service to the research community.
2. The Plasmids may be used solely for teaching or internal, non-commercial, educational or research purposes.
3. THE PLASMIDS MAY NOT BE USED IN HUMAN SUBJECTS.
4. The Plasmids will not be further distributed to others without the Depositor Institution's prior written consent, and in any event shall not be distributed in violation of any of the U.S. export control laws or regulations.
5. You shall refer any third party request for the Plasmids to HIP or the applicable Depositor Institution. To the extent supplies are available, HIP or the Depositor Institutions agree to make the Plasmids available, under a separate material transfer agreement to other scientists solely for teaching or internal, non-commercial biomedical research purposes.
6. You agree to acknowledge, or ensure that your scientists acknowledge, the Depositor Institution and respective Depositor Scientists as the source of the Plasmids and HIP as the provider of the Plasmids in any publications reporting use of Plasmids.
7. You understand that the Plasmids are experimental in nature and may have hazardous properties. HARVARD AND THE DEPOSITOR INSTITUTIONS MAKE NO REPRESENTATIONS AND DISCLAIM ANY WARRANTIES OF ANY KIND WITH REGARD TO DEPOSITOR MATERIALS, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE PLASMIDS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
8. Recipient Institution assumes all liability for claims for damages against it by third parties which may arise from its or its scientists' use, storage, or disposal of the Plasmids, except that, to the extent permitted by law, the Depositor Institution shall be liable to the Recipient

Institution to the extent damage is caused by the gross negligence or willful misconduct of Depositor Institutions. Unless prohibited by law from doing so, Recipient Institution agrees to hold Harvard and the Depositor Institutions harmless from and to indemnify Harvard and the Depositor Institution for all liabilities, demands, damages, expenses and losses arising out of Recipient Institution's or its Recipient Scientists' use for any purpose of Plasmids.

9. If the Depositor Scientist is an HHMI employee/funded lab, then the following provisions shall also apply [to be provided and approved by HHMI].
10. You undertake to use the Plasmids only in compliance with all applicable laws and governmental regulations. Recipient Institution will have safety and security procedures and policies in place to ensure compliance with all obligations hereunder.

**Note:** when this document is used as a stand-alone MTA (i.e. not in the context of the expedited process), the following signature block will appear.

**RECIPIENT INFORMATION and AUTHORIZED SIGNATURE**

Recipient Scientist: \_\_\_\_\_

Recipient Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Authorized Official: \_\_\_\_\_

Title of Authorized Official: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

Certification of Recipient Scientist: I have read and understood the conditions outlined in this Agreement and I agree to abide by them in the receipt and use of the Plasmids.

\_\_\_\_\_  
Recipient Scientist

\_\_\_\_\_  
Date

**Note:** when this document is used on-line as part of the expedited process, the site will require the Recipient Scientist to scroll through the document before click-accepting. In addition, the following will appear at the bottom of the document:

You acknowledge that you have read and understood the conditions outlined in this Agreement. You understand that your Institution has agreed to be bound by the conditions set forth in this Agreement and you also agree to abide by them in the receipt and use of the Plasmids.

## Exhibit C

### Plasmid Deposit Form

#### C.1. Scientific information about the Proposed Material.

The following information is to be provided by the Depositor Scientist to HIP. HIP will subsequently notify and await written permission (to be sent to: Harvard Institute of Proteomics, Attn. Dr. Catherine Cormier, 320 Charles St., Cambridge, MA 02141) from the Depositor Authorized Representative, as described in Article 3, Section 3.1.

*Please Note: The PSI-MR defines a “plasmid” as comprising a “vector” that may or may not include a gene “insert.”*

##### C.1.A. Vector Information

Vector information will include at least the following:

1. Vector Name.
2. Vector description and/or list of significant features.
3. Vector author(s) (PSI site, researcher or organization).
4. If applicable, the PubMed ID(s) of relevant published references describing the vector.

##### C.1.B. Plasmid and Plasmid Insert Information

The following information should be provided by the Depositor Scientist to the Depository Authorized Representative for each *plasmid* (in writing or as a digital file).

Plasmid & Plasmid Insert information will include at least the following:

1. Any Unique Plasmid Identifier (e.g. the lab’s internal plasmid ID or name).
2. Name of the vector for this plasmid (using the same names used in Section C.1.A).
3. If applicable, the PubMed ID(s) of relevant published references describing the plasmid sample (excluding references that describe only the vector).
4. An indication that insert is present, *Yes* or *No*; noting that
  - a. **if Yes**, items B.5., B.6. and B.7. are also required.
  - b. **if No**, items B.5., B.6. and B.7. are not required.
5. The name of the species from which the insert was derived, designed or generated.
6. One or more applicable gene or protein identifiers for the insert (e.g. a gene name or gene symbol, NCBI GenBank Accession Number).
7. Plasmid Author(s) (PSI site, researcher or organization).

After review by the Depositor Authorized Representative, authorization to be sent to: Harvard Institute of Proteomics, Attention: Catherine Cormier, 320 Charles St., Cambridge, MA 02141.

**Exhibit D****Depositor Authorized Representatives**

**List of persons, along with their mailing addresses, telephone and fax numbers, and email addresses, who are authorized by the Depositor Institution to review and approve Proposed Material as outlined in Section 3.1:**

<b>Name</b>	<b>Title</b>	<b>Mailing Address</b>	<b>Phone</b>	<b>Fax</b>	<b>Email</b>