

**U. S. Department of Agriculture
Agricultural Research Service**

MATERIAL TRANSFER AGREEMENT

PARTIES:

ARS: USDA, ARS, South Atlantic Area
Coastal Plain Experiment Station
Crop Genetics and Breeding Research Unit
P.O. Box 748, 2747 Davis Road
Tifton, GA 31793-0748
Tel: 229.386.3189
Fax: 229.391.3701
E-mail: jeff.wilson@ars.usda.gov

Recipient: BioDimensions
20 South Dudley, Suite 802
Memphis, TN 38103

Recipient's Scientist: Michael Gong
Tel: 901.448.1724
Fax: 901.448.8850
E-mail: mgong@biodimensions.net

PURPOSE:

To provide Recipient with thirty (30) g of seed of experimental pearl millet (*Pennisetum glaucum*) germplasm known as 2304, LHB08, 506Ax2304, 606Ax2304, 506Ax1866, 606Ax1866, 707Ax1866, 506Ax428, 606Ax428, and 707Ax428, and associated know how, hereinafter collectively referred to as the Material.

The Material is released to Recipient under the following conditions:

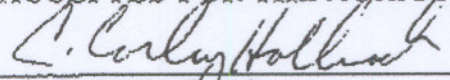
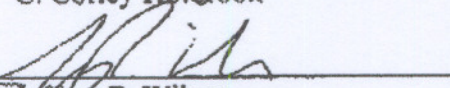
1. The Material shall only be used to evaluate pearl millet for adaptation, diseases and pests, grain yield, and quality in Tennessee. The Material shall not be used for breeding.
2. Recipient shall not transfer the Material, in whole or in part, to a third party without the express written consent of ARS. Any third party requesting a sample shall be referred to ARS.
3. The Material shall remain the property of ARS and shall not be used for commercial or profit making purposes without an appropriate license or other permission from ARS.

4. Recipient shall keep ARS informed of the results obtained through use of the Material, provide ARS with a copy of any manuscript that describes work with the Material prior to submission for publication, and acknowledge ARS' contribution to the work reported.
5. Recipient shall not in any way state or imply that this Agreement or the results of this Agreement is an endorsement by ARS of its organizational units, employees, products, or services except to the extent permission is specifically granted by an authorized representative of ARS.
6. The Parties acknowledge and agree to comply with all applicable laws and regulations of the Animal and Plant Health and Inspection Service, the Centers for Disease Control, and/or the Export Control Administration pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.
7. Recipient shall assume sole responsibility for any claims or liabilities that may arise as a result of the Recipient's use of the Material.
8. ARS GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
9. Material shall be returned, destroyed, or otherwise disposed of, as instructed by ARS, no later than the expiration of this Agreement.
10. Recipient shall meet with U.S. Department of Agriculture representatives to determine inventorship if an invention should arise from Recipient's work with the Material.
11. Confidentiality:
 - a. Recipient shall not disclose Material marked "Confidential" or "Proprietary" to any third party nor use such Confidential Information for any purpose other than that given above without written permission from ARS.
 - b. Recipient shall use the same degree of care to protect Confidential Information received under this Agreement as it uses to protect its own information of a similar nature, but in any event not less than reasonable care under the circumstances.
 - c. The Confidential Information shall be excluded from confidentiality if Recipient can demonstrate that (a) it had possession of the information prior to disclosure, or (b) the information generally is available to the public at the time of disclosure, or becomes generally available, after disclosure, through no fault of Recipient; or (c) Recipient receives the information from a third party having the right to the information and who does not impose confidentiality.

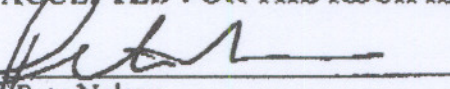
- d. It shall not be a breach of this Agreement if Recipient is required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement; PROVIDED THAT Recipient shall provide prompt prior notice thereof to ARS to enable ARS to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.
- 12. If the Parties hereto decide, at some future date, to engage in a cooperative research project or program using the Material, a formal Cooperative Research and Development Agreement, or other research Agreement, must be negotiated and entered into between the Parties.
- 13. This Material Transfer Agreement shall be construed in accordance with United States of America Federal Law as interpreted by the Federal Courts in the District of Columbia.

This Material Transfer Agreement shall become effective upon date of final signature and shall continue in effect for a period of two (2) years; provided, however, that the obligations assumed by Recipient, regarding the maintenance of confidentiality, under this Agreement shall remain in effect for two (2) years from the expiration of this Agreement.

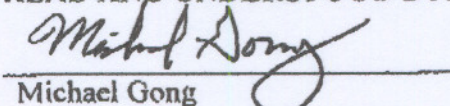
ACCEPTED FOR THE AGRICULTURAL RESEARCH SERVICE:

 C. Corley Holbrook	<u>Research Leader</u> Title	<u>4/9/09</u> Date
 Jeffrey P. Wilson	<u>Research Plant Pathologist</u> Title	<u>4-7-09</u> Date

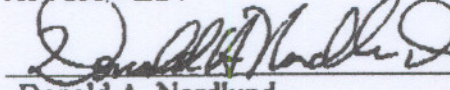
ACCEPTED FOR THE RECIPIENT:

 Pete Nelson	<u>Co-Founder, BioDimensions</u> Title	<u>4/13/2009</u> Date
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READ AND UNDERSTOOD BY:

 Michael Gong	<u>New Crops and Biodiversity Specialist</u> Title	<u>04/13/2009</u> Date
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APPROVED:

 Donald A. Nordlund	<u>Technology Transfer Coordinator</u> Title	<u>04/02/2009</u> Date
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