

MATERIAL TRANSFER AGREEMENT

General conditions of material transfer

DEFINITIONS

- a. PROVIDER: BCCM™/ collection
- b. RECIPIENT: see addressee on invoice.
- c. PURCHASER: see addressee on invoice.
- d. PROVIDER CONTRIBUTOR: legal entity or individual that deposits ORIGINAL MATERIAL in the custody of the PROVIDER.
- e. ORIGINAL MATERIAL: see description on verso.
- f. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include MODIFICATIONS.
- g. PROGENY: Unmodified descendant from the MATERIAL, such as cell from cell, or organism from organism.
- h. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT or PURCHASER which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL, such as, but not limited to, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER.
- i. MODIFICATIONS: Substances created by the RECIPIENT or the PURCHASER by using the ORIGINAL MATERIAL, which are not ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES.
- j. COMMERCIAL PURPOSES: The sale, leasing, exchange, license, or other transfer for profit purposes. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organisation, including RECIPIENT or PURCHASER, to perform contract research or to conduct research activities that result in any sale, leasing, exchange, license, or other transfer for profit purposes. However, industrially sponsored academic research shall not be considered a use for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

TERMS AND CONDITIONS APPLICABLE TO TRANSFER OF MATERIAL TO BE USED FOR TEACHING OR ACADEMIC RESEARCH PURPOSES SOLELY.

- 1. The PROVIDER or the PROVIDER CONTRIBUTOR retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.
- 2. The RECIPIENT retains ownership of MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein). If MODIFICATIONS result from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.
- 3. The RECIPIENT agrees that the MATERIAL:
 - a) is to be used solely for teaching and academic research purposes;
 - b) is to be used only at the RECIPIENT organisation and only in the RECIPIENT laboratory under the direction of the addressee mentioned on verso or others working under his/her direct supervision.
 - c) is to be used in compliance with all applicable statutes and regulations.
- 4. The RECIPIENT agrees to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT direct supervision. To the extent supplies are available, the PROVIDER agrees to make the MATERIAL available to other scientists who wish to replicate the RECIPIENT research provided that such other scientists reimburse the PROVIDER for any costs relating to the distribution of the MATERIAL.
- 5. a) The RECIPIENT may not sell, lend, distribute or otherwise transfer the MATERIAL.
b) The RECIPIENT may not sell, lend, distribute or otherwise transfer MODIFICATIONS for COMMERCIAL PURPOSES. The RECIPIENT has the right to distribute MODIFICATIONS only for research and teaching purposes.
- 6. 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 or the PROVIDER CONTRIBUTOR, 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 or the PROVIDER CONTRIBUTOR for COMMERCIAL PURPOSES.
- 7. If the RECIPIENT desires to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL, the RECIPIENT agrees, in advance of such patent application, to negotiate in good faith with the PROVIDER and the PROVIDER CONTRIBUTOR to establish the terms of a commercial license. The PROVIDER and the PROVIDER CONTRIBUTOR have no

obligation to grant a commercial license to their ownership interest in the MATERIAL incorporated in the MODIFICATIONS. The PROVIDER and the PROVIDER CONTRIBUTOR may grant exclusive or non-exclusive commercial licenses to others than the RECIPIENT, 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 government of Belgium.

- 8. 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.
- 9. 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 wilful misconduct of the PROVIDER.
- 10. The RECIPIENT agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications, more specifically to mention the country of origin and PROVIDER reference what is recommended by the Convention on Biological Diversity and in the code of conduct MOSAICC (*); taking also into account specific national laws regarding TRIPS article 29 as to the conditions on patent applicants concerning invention disclosure.
- 11. This Agreement will terminate on the earliest of the following dates: (a) on completion of the RECIPIENT current research with the MATERIAL, or (b) on thirty days written notice by either party to the other, or (c) on the date specified in an implementing letter, provided that:
 - (i) if termination should occur under (a) or (c) 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;
 - (ii) in the event the PROVIDER terminates this Agreement under (b) 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, 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.
- 12. These aforesaid rights are not assignable, whether by operation of law or otherwise, without the prior written consent of the PROVIDER.
- 13. Belgian laws as applied in the Brussels Courts shall govern the validity and effect of this agreement. Belgian laws will pre-empt any conflicting or inconsistent provisions in this agreement.
- 14. This transfer of custody does not constitute a sale of goods. The MATERIAL is provided with a fee solely to reimburse the PROVIDER for its preparation and distribution costs. Payment is due within 60 days of the invoice date.

TERMS AND CONDITIONS APPLICABLE TO TRANSFER OF MATERIAL TO BE USED FOR COMMERCIAL PURPOSES.

- 15. The PROVIDER is willing to transfer the MATERIAL and the PURCHASER is willing to purchase the MATERIAL under the terms and conditions specified hereafter.
- 16. The PURCHASER agrees that the MATERIAL:
 - a) is to be used only at the PURCHASER organisation mentioned on verso and only in the PURCHASER laboratory under the direction of the PURCHASER or others working under his/her direct supervision.
 - b) is to be used in compliance with all applicable statutes and regulations.
- 17. a) The PURCHASER may not sell, lend, distribute or otherwise transfer the MATERIAL.
b) The PURCHASER may supply MODIFICATIONS for COMMERCIAL PURPOSES. Yet, PURCHASER is advised that such COMMERCIAL PURPOSES may require a

commercial license from the PROVIDER or from the PROVIDER CONTRIBUTOR.

- 18. If the PURCHASER desires to use the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the PURCHASER agrees, in advance of such use, to negotiate in good faith with the PROVIDER and the PROVIDER CONTRIBUTOR to establish the terms of benefit sharing, including terms of commercial license. These benefit sharing terms should preferably be designed according to the recommendations of the MOSAICC(*) code of conduct.
- 19. If the PURCHASER desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the PURCHASER agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. The PROVIDER and the PROVIDER CONTRIBUTOR have no obligation to grant a commercial license to their ownership interest in the MATERIAL incorporated in the MODIFICATIONS. The PROVIDER and the PROVIDER CONTRIBUTOR may grant exclusive or non-exclusive commercial licenses to others than the PURCHASER, 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 government of Belgium. Nothing in this paragraph, however, shall prevent the PURCHASER from granting commercial licenses under the PURCHASER intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.
- 20. No express or implied licenses or other rights are provided to the PURCHASER under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER or the PROVIDER CONTRIBUTOR, 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 or any related patents of the PROVIDER or the PROVIDER CONTRIBUTOR for COMMERCIAL PURPOSES.
- 21. The PURCHASER is free to file patent application(s) claiming inventions made by the PURCHASER 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.
- 22. 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.
- 23. Except to the extent prohibited by law, the PURCHASER assumes all liability for damages, which may arise from his/her use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the PURCHASER for any loss, claim or demand made by the PURCHASER, or made against the PURCHASER by any other party, due to or arising from the use of the MATERIAL by the PURCHASER, except to the extent permitted by law when caused by the wilful misconduct of the PROVIDER.
- 24. The PURCHASER agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications, more specifically to mention the country of origin and PROVIDER reference what is recommended by the Convention on Biological Diversity and in the code of conduct MOSAICC (*); taking also into account specific national laws regarding TRIPS article 29 as to the conditions on patent applicants concerning invention disclosure.
- 25. These aforesaid rights are not assignable, whether by operation of law or otherwise, without the prior written consent of the PROVIDER.
- 26. Belgian laws as applied in the Brussels Courts shall govern the validity and effect of this agreement. Belgian laws will pre-empt any conflicting or inconsistent provisions in this agreement.
- 27. Payment is due within 60 days of the invoice date.

(* See <http://www.belsgo.be/bccm/mosaic>