

Supply of Genetic Resources MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement ("MTA") governs the transfer of the Original Material from CAB International for research, teaching and identification purposes only.

This MTA constitutes a contract between you (the "Customer") and CAB International, an international governmental not-for-profit organisation ("CABI").

CABI and the Customer may be individually referred to as a Party or jointly, as the Parties.

1. Definitions

"Commercial Purposes" means the use or exploitation of the Material, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, use of the Material to provide a service, applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product or service development, conducting market research, and seeking regulatory approval.

"Effective Date" means the date of the last signature of this MTA by a Party.

"Force Majeure" means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this MTA, including but not limited to war, civil commotion or riots, war, threat of or preparation for war, armed conflict, natural disaster, transportation difficulties, labour or trade dispute, strikes, industrial action interruption or failure of utility service.

"Material" means Original Material, Progeny and Unmodified Derivatives. The Material shall not include Modifications.

"Modifications" means substances created by the Recipient which contain or incorporate all or any part of the Original Material, Progeny or Unmodified Derivatives.

"Original Material" shall mean any biological material transferred from CABI to Customer identified in Schedule 1.

"Prior Informed Consent" has the meaning set out in the Nagoya Protocol to the Convention on Biological Diversity. It refers to the requirement that a country which has ratified the Nagoya Protocol and which is providing access to a genetic resource provide its consent on the basis of mutually agreed terms before access to the said genetic resources is granted.

"Progeny" means all unmodified descendant from the Original Material, such as virus from virus, cell from cell, or organism from organism.

"Unmodified Derivatives" means any substance created by the Customer which constitutes (a) a substantially unmodified copy of the Original Material or Progeny or any of their components or (b) a product expressed or produced by the Original Material or Progeny. Some examples include: material produced by growth of a microorganism, purified or fractionated subsets of the Original Material, and proteins expressed by DNA/RNA supplied by CABI.

"Third Party" shall mean any person other than the Customer and CABI.

2. Transfer of Material

2.1 Subject to Clause 2.4 below, CABI agrees to transfer the Original Material to the Customer. CABI shall label, package, and arrange for transport of the Original Material in accordance with applicable laws and regulations.

- 2.2 The Customer shall be responsible for all duties, tax(es), tariffs and fees arising in connection with this MTA and the transfer of the Original Material. The Customer shall, upon demand, pay to CABI an amount equal to any such tax(es), duties, tariffs and permit fees actually paid or required to be collected or paid by CABI.
- 2.3 If the Original Material is not viable on receipt by the Customer, and provided the Customer has handled and continues to handle the Original Material in accordance with instructions provided by CABI, CABI will provide (a) replacement of the Original Material or (b) a refund of the fee paid to CABI (if any).
- 2.4 Nothing in this MTA obliges CABI to supply the Original Material if (a) CABI is prohibited from doing so under any applicable legislation, including legislation relating to terrorism or threat of biological weapons or (b) CABI has reasonable grounds to suspect that the Customer intends to utilise the Material in any manner which contravenes the terms of this MTA or for any other prohibited or unethical purpose.
- 2.5 At CABI's request the Customer shall promptly and at its cost return or destroy (at CABI's option) all Material on termination or expiry of this MTA.

3. **Conditions of Use**

- 3.1 The Customer may use the Material solely for research, teaching and identification purposes and shall not use the Material for Commercial Purposes.
- 3.2 The Material is not intended for human in vivo use. The Customer shall not use the Material in human subjects, in clinical trials, or for diagnostic purposes involving human subjects.
- 3.3 The Customer shall not distribute, release, sell, lend or otherwise transfer the Material to a Third Party without CABI's prior written consent.
- 3.4 The Customer agrees to use the Material in compliance with all applicable laws, regulations, codes of practice and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

4. **Compliance with the Convention on Biological Diversity**

- 4.1 The Customer shall use the Material in a legitimate, safe, legal, ethical and sustainable way, and in respect of the principles laid down in the Convention on Biological Diversity ("CBD"). Nothing in this MTA shall be construed as changing or affecting the rights and obligations of the Parties under the CBD.
- 4.2 This MTA fully complies with Article 15 of the CBD, which recognises the sovereign rights of States over their natural resources.
- 4.3 The Original Material is provided under this MTA on the understanding that it was collected either before the CBD came into force or if collected after the CBD came into force with Prior Informed Consent, where procedures are in place and recognised authorities exist.
- 4.4 The Customer shall uphold the mutually agreed terms of the Prior Informed Consent and any other terms that CABI notifies to the Customer in Schedule 1.
- 4.5 To the extent any terms and conditions set out in Schedule 1 conflict with the terms of this MTA, the terms and conditions set out in Schedule 1 shall prevail.

5. **Ownership and Intellectual Property**

- 5.1 The transfer of the Original Material pursuant to this MTA does not affect the ownership of the Original Material or any intellectual property rights in or relating to it or its use.
- 5.2 In accordance with the CBD which recognizes that nations have sovereign rights over their own biological resources, the ownership of Material, including any Material incorporated in Modifications, or derivatives remains with the Provider Country, as defined in the CBD.
- 5.3 The Customer agrees to acknowledge CABI and any contributor indicated by CABI as the source of the Original Material in all publications. The Customer may not seek to patent the Material or protect it by any other intellectual property right.
- 5.4 Nothing in this MTA shall be interpreted as granting a licence to the Customer to use CABI's name or any of CABI's intellectual property rights, including its trade marks.

6. **Liability**

- 6.1 The Customer acknowledges that any Original Material designated as Hazard group 2 or 3 constitutes known human pathogens. The Material may be toxic, carcinogenic, mutagenic or pathogenic under certain conditions. The Customer assumes all risk and responsibility to ensure that the Material is used in a safe and appropriate manner. This includes the receipt, handling, (containment), storage and disposal.
- 6.2 CABI makes no representations and gives no warranties or conditions of any kind, either express or implied. There are no express or implied warranties or conditions of satisfactory quality or fitness for a particular purpose, or that the use of the Material will not infringe any intellectual property rights or other proprietary rights of any other person.
- 6.3 CABI shall not be liable for any failure of the Material to meet the objectives or requirements of the Customer. CABI shall have no liability under this MTA except as provided under clause 2.3. Under no circumstances will CABI be liable for any indirect, incidental or consequential loss or damage or for loss of profits or revenue (whether direct or indirect) in connection with or arising out of the use of the Material or this MTA, however caused (including as a result of negligence) including for any delays whether or not caused by Force Majeure, even if CABI has been advised of the possibility of such loss or damage.
- 6.4 [The Customer shall indemnify and hold harmless CABI, its officers, agents, employees and any person acting on their behalf from and against: (1) any Third Party claims or demands for loss, liability or damage, including, but not limited to, claims for personal injury or death, arising from any act or omission of the Customer's officers, employees, agents, subcontractors or any person acting on the Customer's behalf in the performance of this MTA; and (2) all claims, suits, and damages, brought by any Third Party, by reason of the non-observance or non-performance by the Customer, or its officers, employees, agents, subcontractors, or any person acting on the Customer's behalf, of any of the terms and conditions of this MTA or any applicable laws, regulations, codes of practice or guidelines. The Customer shall reimburse CABI its officers, employees, agents and any person acting on CABI's behalf for all legal fees, costs, and expenses incurred in connection with the defence of any such Third Party claim.]

7. **Governing Law**

- 7.1 This MTA is governed by, and is to be construed in accordance with, English law.
- 7.2 Any proceedings relating to any dispute or claim arising out of or in connection with this MTA or its subject matter or formation (including non-contractual disputes or claims) instituted against CABI by the Customer shall be brought in the courts of England and any such proceeding against the Customer by CABI shall be brought in the courts of the jurisdiction where the Customer is domiciled.

Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims, save that any counterclaim may be brought in any proceedings already commenced.

8. Term and Termination

8.1 This MTA will commence on the Effective Date and unless terminated earlier under clause 8.2 will terminate on the earliest of (a) completion of the Customer's use of the Material in accordance with Clause 2, and (b) [NUMBER] year(s) after the Effective Date.

8.2 CABI may terminate this MTA with immediate effect by giving notice to the other Party if:

8.2.1 The Customer is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after the Customer receives a written notice specifying the breach and requiring its remedy, or

8.2.2 CABI has reasonable grounds to suspect that the Customer intends or is utilizing the Material for any illegal or unethical purpose.

9. Miscellaneous

9.1 This MTA constitutes the entire agreement between CABI and the Customer and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

9.2 Nothing in this MTA creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

9.3 No variation or amendment of this MTA (including the Schedule) will be effective unless it is made in writing and signed by each Party's representative.

9.4 Failure to exercise, or any delay in exercising, or a single or partial exercise of any right or remedy provided under this MTA or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

9.5 A person who is not a Party to this MTA shall not have any rights under or in connection with it.

9.6 Each of the provisions contained within this MTA shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any of these provisions is void and would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

10. Notices

Any notice to be given under this MTA must be in writing and sent to the following addresses:

To CABI:

The Chief Executive Officer
Head Office
CAB International
Nosworthy Way
Wallingford
Oxon, OX10 8DE
UK