

CECT MATERIAL TRANSFER AGREEMENT (English translation)

Object of the agreement

This Agreement applies to the use and handling of the MATERIAL supplied by Colección Española de Cultivos Tipos (CECT) to RECIPIENT

1. DEFINITIONS

- a) **CECT:** Colección Española de Cultivos Tipo.
- b) **COMMERCIAL USE:** Use of the MATERIAL for the purpose of profit generation.
- c) **COUNTRY OF ORIGIN:** The country where the original MATERIAL was taken from *in-situ* conditions, in a natural habitat or from its original non-natural source, according to the information available at the CECT.
- d) **DEPOSITOR:** Natural or legal person that provided the CECT with the original MATERIAL.
- e) **DESCRIPTION FORM:** Form recording essential and minimal information to fulfil the administrative, legal, technical and scientific requirements for the distribution of the MATERIAL.
- f) **LEGITIMATE EXCHANGE:** The transfer of the MATERIAL between scientists working in the same laboratory, or between partners in different Institutions collaborating on a defined joint project, for non-commercial purposes. This also includes the transfer of MATERIAL between public service culture collections and biological resource centers for deposit purposes. Legitimate exchange can only be conducted provided the further distribution is under conditions equivalent to this MTA and compatible with those in place at the supplying collection.
- g) **MATERIAL:** Biological material originally supplied to the CECT by the DEPOSITOR, and progeny of the original biological material. The MATERIAL shall not include MODIFICATIONS.
- h) **MATERIAL TRANSFER AGREEMENT (MTA):** This document, which consists of the TERMS AND CONDITIONS for the material supplied.
- i) **MODIFICATIONS:** Substances produced by the RECIPIENT by using the MATERIAL, which are not the original MATERIAL, progeny, or unmodified derivatives, and which have new properties. MODIFICATIONS include, but are not limited to, recombinant DNA clones.
- j) **NON-COMMERCIAL USE:** Use of the MATERIAL for purposes including, but not limited to, taxonomy, basic research, teaching or quality control, regardless the legal/commercial status of the RECIPIENT.
- k) **PARTIES:** The CECT and the RECIPIENT are referred together as PARTIES.
- l) **PRIOR INFORMED CONSENT (PIC) AND/OR MUTUALLY AGREED TERMS (MAT):** Records generated by the Competent National Authority of the COUNTRY OF ORIGIN that may be a permit or equivalent. This may also take the form of an Internationally Recognized Certificate of Compliance (IRCC) which is a document that contains the elements of PIC/MAT and is accessible through the ABS Clearing House, providing a unique identifier and link, as well as legal certainty about the origin of the genetic resources (<https://absch.cbd.int/>).
- m) **RECIPIENT:** The party signing the MTA and using the MATERIAL supplied by the CECT.
- n) **THIRD PARTIES:** Natural or legal persons not taking part of this MTA.

TERMS AND CONDITIONS

2. TRANSFER OF THE MATERIAL

- 2.1 RECIPIENT agrees that all information provided to CECT in connection with any order for MATERIAL is accurate and complete, and complies with applicable laws and regulations.
- 2.2 CECT will process, package and ship the MATERIAL ordered by RECIPIENT in accordance with applicable regulations described in section “Requirement and restrictions” of the CECT webpage, to the address as stated by RECIPIENT. RECIPIENT is responsible for ensuring that all permits required for the shipment of the MATERIAL are obtained.
- 2.3 RECIPIENT understands that MATERIAL designated Risk Group 2 or above (as defined by applicable laws in the Kingdom of Spain) may cause human disease, and that MODIFICATIONS, or other MATERIAL, not so designated, may cause human disease under certain conditions. Furthermore, RECIPIENT acknowledges that purchase of MATERIAL of Risk Group 2 or above indicates their compliance with domestic laboratory safety or other relevant laws.
- 2.4 RECIPIENT agrees that any handling or other activity undertaken in their laboratory with the MATERIAL will be conducted under their responsibility and in compliance with all applicable laws and regulations.
- 2.5 RECIPIENT therefore assures that within their laboratory (i) access to the MATERIAL will be restricted to personnel capable and qualified to safely handle said MATERIAL and (ii) RECIPIENT shall exercise the necessary care, taking into account the specific characteristics of the MATERIAL, to maintain and use it with appropriate precautions to minimize any risk of harm to persons, property, and the environment, and to safeguard it from theft or misuse.
- 2.6 RECIPIENT shall not sell, distribute or replicate for distribution, lend, or otherwise transfer the MATERIAL to THIRD PARTIES, except a RECIPIENT involved in LEGITIMATE EXCHANGES as defined in this MTA. Any breach of this obligation will be subject to a penalty of 50,000.00 euros, besides the costs of damages incurred, and entails immediate cessation of the forbidden activities. Parties agree to increase the penalty by 1,000.00 euros/day provided forbidden activities continue 5 days after notification from the CECT.

3. USE OF THE MATERIAL

- 3.1 CECT grants RECIPIENT a limited, non-exclusive right to NON-COMMERCIAL USE of the MATERIAL in any lawful manner. The MATERIAL is transferred only for NON-COMMERCIAL USE under biosafety conditions by qualified personnel in the Terms and Conditions of this MTA. Any unauthorized use of the MATERIAL by this MTA will be subject to a penalty of 50,000.00 euros, besides the costs of damages incurred, and entails immediate cessation of the forbidden activities. Parties agree to increase the penalty by 1,000.00 euros/day provided forbidden activities continue 5 days after notification from the CECT.
- 3.2 RECIPIENT will contact CECT before any COMMERCIAL USE of the MATERIAL, in order to negotiate the conditions of said use in a separate agreement to this MTA.
- 3.3 RECIPIENT will notify CECT at least 12 weeks before their intention to submit a patent application involving the MATERIAL or its use. Breaches of this clause will be subject to a penalty of 50,000.00 euros, besides the costs of damages incurred, and entails immediate cessation of the forbidden activities. Parties agree to increase the penalty by 1,000.00 euros/day provided forbidden activities continue 5 days after notification from the CECT.
- 3.4 For MATERIAL within scope of the Convention on Biological Diversity (CBD) or Nagoya Protocol, use may be limited even further and will be indicated in PIC/MAT or information available in the strain datasheet accessible through the public catalogue (see section 4). This MTA does NOT result in a transfer of ownership of the MATERIAL.

- 3.5 Use of the MATERIAL may be subject to THIRD PARTY's rights, such as, but not limited to, intellectual/industrial property rights and/or the permission of the competent authority or government of the COUNTRY OF ORIGIN.
- 3.6 No expressed or implied rights over the MATERIAL are provided herein to RECIPIENT, including under any patents, patent applications, trade secrets or other proprietary rights, such as a permission to use of the competent authority or government of the COUNTRY OF ORIGIN. Nothing in this MTA grants RECIPIENT any rights under any patents, propriety, intellectual property, or other rights with respect to the MATERIAL.
- 3.7 RECIPIENT agrees to refer to CECT, including the strain ID number(s) (unique identifier) referring to the MATERIAL as well as the COUNTRY OF ORIGIN of the MATERIAL in all publications, taking into account applicable national and international laws implementing the Nagoya Protocol to the Convention on Biological Diversity.

4. COMPLIANCE TO NAGOYA PROTOCOL AND THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

- 4.1 RECIPIENT shall act diligently regarding the CBD and the Nagoya Protocol, according to applicable domestic, regional, and international laws, and for European users, especially EU Regulation 511/2014. RECIPIENT shall use the MATERIAL in a legitimate, safe, legal, ethical and sustainable way, and in respect of the principles laid down in the CBD. Nothing in this MTA shall be construed as changing or affecting the rights and obligations of the PARTIES under the CBD.
- 4.2 RECIPIENT agrees to abide by the PRIOR INFORMED CONSENT (PIC) and MUTUALLY AGREED TERMS (MAT) and/or the Internationally Recognized Certificate of Compliance (IRCC) and any other condition under which the MATERIAL was originally acquired and will contact the competent authority in the COUNTRY OF ORIGIN prior to any activities that might conflict with the existing PIC and MAT or any other conditions.
- 4.3 Any copies of documentation relevant to Access and Benefit Sharing (ABS) with regard to the MATERIAL are part of this MTA, and may include a collecting permit, MAT, PIC, export permit, import permit, IRCC or other documents that CECT will display, if available, in the strain datasheet accessible through the public catalogue. However, the absence of documentation does not free RECIPIENT from due diligence obligations in terms of the seeking of documents under the EU Regulation 511/2014 or other applicable laws.

5. LIABILITY

- 5.1 NO liability is to be ascribed to CECT except to the extent that damages or losses have been caused by wilful intent or gross negligence.
- 5.2 CECT assumes no responsibility for the loss of viability of the MATERIAL or other adverse effects during transportation or delays. Consulting with the customs or competent authorities of the conditions for transport and provide CECT of any permit required for transit is the responsibility of RECIPIENT. RECIPIENT shall be responsible for any customs clearance costs.
- 5.3 Any further liability of CECT, especially for damages due to improper use of the MATERIAL or for damages due to force majeure, is excluded.

6. WARRANTY

- 6.1 CECT ensures viability, purity and authenticity of the strains from the public catalogue provided RECIPIENT has observed the handling instructions and the culture conditions displayed in the web page and in the strain datasheet accessible through the public catalogue. The information shown in this datasheet comes from different sources. Some of the properties may have not been tested by the CECT and are therefore excluded from the warranty.
- 6.2 If RECIPIENT is not satisfied about the quality of the MATERIAL received, it will be replaced by CECT free of charge, provided that RECIPIENT has observed the handling instructions of the MATERIAL and has filed a complaint following the procedure set out by CECT, within 30 days after receipt, unless a shorter timeframe is indicated in the parcel and/or the certificates of analysis of the MATERIAL. CECT will issue a credit for future orders or refund the amount paid for the MATERIAL if it fails to supply a replacement. In any event, CECT shall be liable for any damage or inconvenience caused by this circumstance.
- 6.3 MATERIAL has experimental nature and may have dangerous properties. MATERIAL shall be handled with caution. CECT offers no warranty of merchantability or fitness for a particular purpose. CECT does not warrant that use of the MATERIAL does not and will not infringe any patent, copyright, registered trademark or any other property rights.
- 6.4 Disclaimer of warranties. Except as expressly provided in this MTA and within the limits specified in clause 6.1 and in CECT's quality management system, there are no representations or warranties by CECT with respect to the MATERIAL.

7. TERMINATION

- 7.1 CECT may terminate this MTA concluded with RECIPIENT, if RECIPIENT breaches one or more of its obligations thereunder and fails to cure such breach within thirty (30) days after it has received a written notice by CECT specifying the breach.
- 7.2 Either party may unilaterally terminate this entire MTA at any time by giving the other party written notice not less than sixty (60) calendar days prior to the desired termination date.
- 7.3 After termination RECIPIENT shall immediately destroy the MATERIAL, provide evidence thereof to CECT and cease the use thereof. Breaches of this clause will be subject to a penalty of 50,000.00 euros, besides the costs of damages incurred, and entails immediate cessation of the forbidden activities. Parties agree to increase the penalty by 1,000.00 euros/day provided forbidden activities continue 5 days after notification from the CECT.

8. APPLICABLE LAW

- 8.1 This MTA shall be governed by and construed in accordance with Spanish laws unless otherwise indicated in the PIC/MAT and/or IRCC (see Section 4).
- 8.2 Both PARTIES accept the jurisdiction of the Courts of the city of Valencia (Spain) in the event of a dispute arising out of the interpretation or application of this MTA that cannot be solved amicably within three (3) months.
- 8.3 The Spanish version of this MTA shall always prevail in case of any discrepancy or inconsistency between Spanish version and its English translation.

Name of the Organization/Legal entity:

Name and Surname of the signatory:

ID number:

Position inside the Organization/Legal entity:

Date and signature, as the person responsible for working with the microorganisms: