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| **MATERIAL TRANSFER AGREEMENT** | | |
| Institut Pasteur (hereinafter referred to as “**Distributor**”) is a French not-for-profit foundation created in 1887 and whose missions, for public benefit, are mainly to contribute to the prevention and cure of diseases through research, teaching and actions of public health.  The “Collection de l’Institut Pasteur” (hereinafter referred as “**CIP**” or “**Collection**”) is a biobank infrastructure, a Unit of the “Centre de Ressources Biologiques de l’Institut Pasteur” (CRBIP), hosted in the Distributor’s premises. It is the custodian of microbial culture collections with the purpose to preserve microbial strains and their derivatives (e.g., DNA), and their associated data, and to make them available to the scientific community.  **The purpose of this Material Transfer Agreement is to establish the conditions of transfer to and use by the Recipient of the Material identified hereunder and in Annex 1. The General Terms and Conditions for Material transfer and use attached hereto, forms an integral part of this Material Transfer Agreement.**  The **institution** to which the Material is distributed is referred as the “**Recipient**”.  The Material will be provided by the Distributor to the Recipient on a nonexclusive basis, subject to the payment by the Recipient of all delivery charges, maintenance and handling fees, if any. This Material Transfer Agreement becomes effective on the date of signature thereof and terminates upon the completion of the Use, which shall not exceed **one hundred and twenty** (**120**) months.  The Distributor and the Recipient are hereinafter collectively referred to as the “**Parties**,” or individually, as a “**Party**”. | | |
| **RECIPIENT information**:  [**NAME OF THE ORGANIZATION**], [*…Legal status of the organization…]*, with its registered office/main office at [*…Address*…].  **[RECIPIENT SCIENTIST]** from the **[LAB NAME]**.  **Delivery address** (if different from the registered office/main office address):  [Mr/Ms *Surname/Name*]  Unit/Service: …  Address: …  Email: …@... | | |
| "**Use**” shall mean the type of activity, as ticked below, that will be performed by the Recipient with the Material | | |
| Research | ☐  Teaching | ☐  Quality control/Use as Reference Material |

“**Program**” shall mean, when Use is for Research purposes, the research program for which the Material will be used, as described in Annex 2.

By signing this Material Transfer Agreement, the Recipient express its full agreement with the terms and conditions set forth herein.

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| **[RECIPIENT]** | Read and Acknowledged by **[RECIPIENT SCIENTIST]** |
| … | … |
| Signature    Date: … | Signature  Date: … |
| Name and Title of Authorised Representative: … | Name and Title: … |

**CIP GENERAL TERMS AND CONDITIONS OF MATERIAL TRANSFER AND USE**

**1- Definitions**

1.1. In addition to the terms “CIP”, “Collection”, “Distributor”, “Party/Parties”, “Program”, “Recipient”, and “Use” defined in the front page, the following definitions shall apply for the purpose of this Material Transfer Agreement:

“**ABS Legislation**”: shall mean any biodiversity legislation governing the access to Genetic Resources and benefits-sharing, whether local or national rules, laws and regulations arising from the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity” (“Nagoya Protocol”) which entered into force on October 12th, 2014.

“**Commercial Purposes**”: means the use of the Material or associated data leading to a source of profit either directly through, without limitation, sale, license, lease, export, transfer, or indirectly through research and development purposefully leading to commercial products and/or services. For clarity, Uses as Reference Material shall not fall within this definition of Commercial Purposes.

“**Confidential Information**” is any information communicated by one Party to the other Party that can reasonably be considered confidential or was identified as such. It shall not include information for which the receiving Party can duly demonstrate that it was:

(i) generally known to the public at the time of disclosure, or thereafter through no act or failure on the part of receiving Party,

(ii) already in the receiving Party’s possession at the time of disclosure to by the disclosing Party,

(iii) disclosed to the receiving Party on a non-confidential basis by a third party having the right to make such disclosure,

(iv) independently developed by the receiving Party without the use of the disclosing Party’s Confidential Information,

(v) required to be disclosed by law or governmental rule or regulation or a judicial decision, provided the Party receiving the request attempts to give the disclosing Party prior notice of the request unless such notice could not reasonably be given.

“**Country of origin**” means the country where the original Material was taken from in-situ conditions, in a natural habitat or from its original non-natural source.

“**Genetic Resource**”: Genetic resources in the context of the ABS Legislation, includes any non-human genetic resource which can include, any material of plant, animal, microbial or other origin containing functional units of heredity which is of actual or potential value, or derivatives.

“**Materia**l” shall mean any physical material*,* provided by the Distributor to the Recipient under this MTA, as listed and/or described in Annex 1, its Progeny, and any Unmodified Derivative.

**“MTA**” shall mean this Material Transfer Agreement, comprising the front page, these general terms and conditions and the appendices (Material, Program, Material’s access and benefit-sharing (ABS) information) and any future amendments that make an integral part of it. In case of contradiction between these general terms and conditions and the appendices, these general terms and conditions shall prevail.

“**Modifications**” are the materials or products obtained by the Recipient by transformation of the Material or that are created by the Recipient by incorporating the Material into other materials or products.

“**Progeny**” are unmodified descendants from a renewable Material. Examples include but are not limited to: virus from virus, cell from cell, and organism from organism.

**“Reference Material”** means a material, sufficiently homogeneous and stable with respect to one or more specified properties, which has been established to be fit for its intended use in a measurement process (source: ISO/Guide 35:2017).

**“Uses as Reference Material”**: means the specific quality control uses for which Reference Material, as appropriate, can be requested by a Recipient. These uses notably include the calibration of equipment, the validation of a measurement method, inter-laboratory comparisons and the assignment of qualitative or quantitative values to materials.

“**Sequence Data**” shall mean the whole genome sequencing data of the Material. All relevant provisions applicable to the Material, shall be applicable in the exact same way to Sequence Data.

“**Third Party**” shall mean any person or entity other than the Parties.

“**Unmodified Derivatives**” are substances that constitute an unmodified functional sub-unit or an expression product of the Material. Examples include but are not limited to: transcription and translation products (e.g., RNA and proteins synthesized on a template from provided DNA), reverse transcription and reverse translation products (e.g. DNA synthesized on a template using provided RNA).

**2-Scope of use of the Material and Confidential Information**

2.1. In the event the Material is delivered in an unusable or a non-viable condition upon first arrival only, and subject to (i) the receipt of a notification from the Recipient within forty-eight (48) hours following delivery for frozen strains or within one (1) month following delivery for freeze-dried cultures and (ii) the examination conducted by the Distributor of the cause of such an unusable or non-viable condition, the Distributor undertakes to send new Material to the Recipient at Recipient’s costs and expenses, except when such condition is due to the Distributor’s act or omission, in which case the Distributor will bear the costs and expenses of the transfer of new Material. For the sake of clarity, IP will not send additional Material if the first batch delivered to the Recipient is in a viable form.

2.2. The Material and Modifications, if any, shall be used by the Recipient solely to perform the Use, the scope of which cannot be extended without prior discussion with the Distributor. No other right or license is granted or implied herein, in particular, the Recipient is not authorized under this MTA to use the Material or Modifications, if any, for Commercial Purposes.

2.3. The Material and Modifications, if any, shall not be distributed to Third Parties without prior discussion with the Distributor, except to subcontractors who may perform services on behalf of the Recipient, as part of the Use. For the avoidance of doubt, Use of the Material by subcontractors on Recipient’s behalf, in conformance with the terms and conditions of this MTA, shall not constitute a Commercial Purpose.

2.4. Subject to Article 3, any Confidential Information shall be treated as confidential and maintained in confidence by the receiving Party during the term of this MTA and for a period of five (5) years after the termination or expiration of this MTA. The Recipient Scientist may only disclose Confidential Information to the Recipient’s personnel who need it to perform the Use.

**3- Price and terms of payment**

3.1. In consideration of the Distributor providing the Material, the Recipient agrees to pay the Distributor a one-time firm and non-refundable lump sum, the amount of which is indicated in the quote referred to in Annex 1 and in the corresponding invoice sent by the Distributor, billable on the date of signature of this MTA. It is expressly acknowledged and agreed that the costs for packaging and shipment of the Material shall be invoiced in addition to the abovementioned sum. The costs of shipment can vary in time.

3.2. The payment shall be made within thirty (30) days following receipt by the Recipient of the corresponding invoice, by bank transfer to the account designated by the Distributor in the invoice. Bank fees incurred in relation to such payments, if any, shall be borne by the Recipient until such time as sums shall have been transferred to the Distributor’s account.

3.3. Any VAT (Value Added Tax), if applicable shall be added to the invoiced amount at the then current rate and shall be borne by the Recipient.

3.4. Any sum received by the Distributor shall remain definitively retained.

**4- Results, Publications and Intellectual Property**

4.1. The Recipient agrees to acknowledge the Distributor as the supplier of the Material by the following acknowledgment: “The strain(s) [*CRBIP / CIP / CFIP reference, e.g.* CIP 57.68, CRBIP21.200, or CFIP 42]] was/were obtained from the *Collection de l’Institut Pasteur* (CIP, Paris, France)”. The same obligation for acknowledgment applies if the Distributor has provided Sequence Data with or without any Material: “The sequence data of the strain(s) [*CRBIP / CIP / CFIP reference, e.g.* CIP 57.68, CRBIP21.200, or CFIP 42] was/were obtained from the *Collection de l’Institut Pasteur* (CIP, Paris, France)”.

4.2. Nothing in this MTA shall be interpreted as granting to the Recipient expressly or by implication, any ownership right over the Material. The Material is transferred for the Use only as specified in this MTA.

The Recipient acknowledges that the Material is or may be the subject of intellectual property rights.

4.3. Any result obtained through the use of the Material or Sequence Data shall be owned by the Recipient

4.4. The Recipient undertakes not to file a patent or publicly disclose or commercialize a product or service comprising the Material and/or Modifications, without first fulfilling all applicable obligations relative to the ABS Legislation (section 6.4 and Annex 3).

**5- Waivers and Representations**

5.1. The Material is provided to the Recipient for the sole purpose of performing the Use. The Material is experimental in nature, may not be safe and may have unknown characteristics. The Distributor makes no representation and provides no warranties, expressed or implied, regarding the Material or Modifications, including without limitation, warranties of merchantability and fitness for a particular purpose. The Distributor disclaims all expressed or implied warranties that the Material, or Modifications, if any, does not infringe patents or other proprietary rights of third parties or that the Material, or Modifications, if any, or the results of the Program can be subject to intellectual property protection. To the extent permitted by applicable law, (i) the Recipient assumes all liability for damages that may arise from the use, handling, storage, or disposal of the Material or Modifications, if any, and (ii) the Distributor 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 same, except when and to the extent caused by the gross negligence or willful misconduct of the Distributor.

5.2. THE MATERIAL SHALL NOT BE USED IN HUMANS, clinical trials, NOR for animal food. THE MATERIAL shall not be discharged nor released in the environment.

5.3. The Distributor is not a pharmaceutical establishment according to Articles L.5124-1 et seq. of the French Code of Public Health (CSP, *Code de la Santé Publique*) and Article 2 third paragraph of the European directive number 2003/94/CE of October 8th, 2003. Notwithstanding the exceptions listed in Article L. 5124-10 of the French Code of Public Health, the Distributor cannot, under this MTA, be considered by the Recipient as a manufacturer or supplier of a drug for human or veterinary use, raw material for direct pharmaceutical use, direct use in medical devices or in vitro diagnostic medical devices in the meaning of the French Code of Public Health.

5.4. The Recipient shall comply with all formalities relating to the importation of the Material and agrees to use the Material in compliance with all applicable laws and regulations, notably regarding dual-use items and export control. In particular, the Recipient shall have the appropriate installations and equipment to use, store and dispose the Material with regard to its level of pathogenicity. If the Use is performed in the European Union (E.U.), the Recipient shall follow the provisions for the acquisition, detention and manipulation of *Select Agents and Toxins*; the regulations applicable to Genetically Modified Organisms (European Directives 90/219/EEC and 2001/18/EC); and, in case of *in vivo* use of the Material and Modifications, the laws and regulations relative to experimental animals (ethics, care and veterinary practice), notably the European Directive n°2010/63/E.U.

The Recipient shall perform its Use in accordance with any applicable biodiversity legislation governing the access to genetic resources and benefits-sharing, notably ABS Legislation. Subsequently, the Recipient shall fulfill all requirements pertaining to such applicable legislation.

As such, the Distributor will communicate to the Recipient the information related to the Material in its possession at the date of signature of this MTA, as specified in Annex 3.

**6- Termination and Dispute Resolution**

6.1. The effective date of this MTA and its duration are set forth on the front page.

6.2. Either Party shall have the right to terminate this MTA upon thirty (30) days written notice if the other breaches any of the terms, covenants or conditions of this MTA and if such breach is not cured within the said thirty (30)-day period, without prejudice of any other rights or actions the non-breaching Party may have as a consequence of the breach.

6.3. Upon termination or expiration of this MTA, the Recipient shall immediately discontinue its use of the Material and return it to the Distributor or destroy any remaining Material, if any. The Recipient, at its discretion, shall also either destroy the Modifications or remain bound by the terms of this MTA as they apply to Modifications. At the Distributor’s request, a certificate of destruction shall be sent to the Distributor duly signed by the Recipient’s authorized representative. Confidential Information must also be returned or destroyed, except for one archival copy.

6.4. This MTA shall be governed by the laws of France, without reference to its conflict of law provisions. The Parties shall attempt in good faith to settle any disputes relating to this MTA, its interpretation or enforceability. Should this attempt fail to be amicably settled within three (3) months from the notification of the dispute by a Party to the other Party, the Parties agree that such dispute shall be subject to the competent courts of Paris, France, and agree to submit to the personal and exclusive jurisdiction and venue of these courts.

6.5. Articles 2.4, 3.4, 4 to 5, and 6.3 to 6.5 shall survive the termination of this MTA.

6.6. This MTA contains the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any previous understanding, commitment or agreement, oral or written, regarding such subject matter including any general sale conditions of the Distributor and any general purchase conditions of the Recipient. Upon termination or expiration of this MTA, any use of the Material shall be subject to the execution of new MTA as well as the payment of a new fee, the amount of which will be indicated in the annex thereof and in the corresponding invoice sent by the Distributor.

6.7 Neither Party shall be liable to the other for any default under this MTA due to a force majeure event, which the Parties agree to define for the purpose of this clause as an event which (i) is beyond the reasonable control of the defaulting Party, (ii) could not reasonably be foreseen when this MTA was executed and (iii) the effects of which cannot be avoided by appropriate measures, recognized as such by the courts of competent jurisdiction. The affected Party shall communicate in the shortest delay and in writing to the other Party that the performance of its obligations is prevented by a force majeure event. If the affected Party is unable to perform its obligations under the MTA for more than thirty (30) consecutive days, the other Party may terminate the MTA immediately upon notice without incurring any liability.

7**. Miscellaneous**

The Recipient shall sign this MTA either (i) with wet ink signature in as many original copies as there are Parties with a distinct interest, or (ii) electronically in a single original copy that each Party undertakes to keep on a durable medium.

If the Recipient use an electronic signature process, it undertakes to make available to the Distributor, the certificate of completion containing the signature verification-data (identity of the signatory and link between the signature and the act to which such signature relates).

**ANNEX 1 – MATERIAL**

**According to our quote [*quote number*] dated from YYYY-MM-DD and your order [*order number*] dated from YYYY-MM-DD.**

The Recipient having taken knowledge of the applicable biosafety conditions, as indicated in the CIP catalogue, acknowledges having the appropriate installations and equipment to use, store and dispose of the Material:

Yes  No

The Material requires a dual-use export authorization:

Yes  No

**ANNEX 2 – PROGRAM**

*(For research purposes, please describe the research project in 250 words maximum)*

**ANNEX 3 – Material Access and Benefit-Sharing (ABS) Information**

The Nagoya Protocol (NP) has created a legal framework that regulates the implementation of the third objective of the Convention on Biological Diversity (CBD). Any Genetic Resource (excluding human samples), i.e. plants, animals or microorganisms or parts thereof (including DNA), is under the sovereign rights of its country of origin. Appropriate permits [Internationally Recognised Certificate of Compliance (IRCC); Prior Informed Consent (PIC); Mutually Agreed Terms (MAT); or others] from the country of origin may be required, at the discretion of each country, for the access to Genetic Resources in view of their utilization. This applies not only to commercial utilization, but also to non-commercial utilization in research and development.

The Recipient agrees to abide by the ABS permits 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 conditions of existing PIC and MAT or any other equivalent documents.

The Distributor will provide to the Recipient any information regarding the provenance of the Material, such as the country of origin and date of collection, and copies of ABS permits, when these are required and available.

**However, under the EU Regulation 511/2014, it is the responsibility of users (not of the Distributor) of Genetic Resources to exercise due diligence to ascertain that the access to the resources they are using is in compliance with ABS rules of the country of origin of such resources.**

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| Information about supplied Material | | | | | |
| Strain reference number (e.g. CIP 57.68, CRBIP21.200, CFIP 42) | Organism species | Country of origin | Year of in situ collection | ABS records from the country of origin (Y/N)\* | Type of record, if applicable (IRCC/PIC/other)§ |
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\* If “NO”: Institut Pasteur has no ABS records related to the Material for one of the following reasons: the collection of the Material was in High seas or region covered by the Antarctic Treaty, or in a unknown country of origin; OR the country of origin provides free access to their genetic resources, is non-party to the CBD, has no applicable biodiversity law, or has no ABS procedures in place.

§IRCC: Internationally Recognized Certificate of Compliance; PIC: Prior Informed Consent