

## **MATERIAL TRANSFER AGREEMENT** (hereinafter referred to as 'AGREEMENT')

For materials ordered from Westerdijk Fungal Biodiversity Institute

This Material Transfer Agreement is between Westerdijk Fungal Biodiversity Institute, hereinafter referred to as 'CBS' and the RECIPIENT of CBS MATERIALS. It applies to the use, handling, supply and any disposition of the MATERIAL supplied by CBS. CBS will transfer the MATERIAL under the terms and conditions specified below. The RECIPIENT accepts these terms and conditions by placing an order with CBS.

### **GENERAL TERMS AND CONDITIONS REGARDING MATERIAL TRANSFERS**

Westerdijk Fungal Biodiversity Institute, hereinafter referred to as 'CBS', is a not-for-profit Research Institute and Biological Resource Centre of the Royal Netherlands Academy of Arts and Sciences (KNAW), with the mission to collect, study, preserve and distribute biological resources for purpose of education and research in the life sciences. The Netherlands is a Party to the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit Sharing (ABS). The policy of CBS is to distribute genetic resources and foster their use while respecting the interests of countries who wish to exercise their sovereign rights over the genetic resources originating from their territories, this in accordance with the conditions of the CBD and the Nagoya Protocol on ABS, as implemented *inter alia* via EU Regulation 511/2014 (PbEU 2014, 150).

These General Terms and Conditions are applicable to the transfer of MATERIAL by CBS to RECIPIENT and to the subsequent use, handling, supply, distribution, sale, and any disposition of the MATERIAL by RECIPIENT.

#### **1. DEFINITIONS**

- 1.1 AGREEMENT: this document.
- 1.2 RECIPIENT: the legal entity who will be provided with MATERIAL from CBS pursuant to an order by RECIPIENT. If the RECIPIENT is ordering on behalf of an end user of another legal entity and is acting solely as a transferee, then the identity of the end user is made known to CBS. Such end user's legal entity will also be regarded as RECIPIENT of the MATERIAL and will also sign this AGREEMENT.
- 1.3 COUNTRY OF ORIGIN: the country where, according to information of CBS, the ORIGINAL MATERIAL was taken from in-situ conditions, in a natural habitat or from its original non-natural source.
- 1.4 DEPOSITOR: natural or legal person who deposited ORIGINAL MATERIAL in the collections of living fungi, yeasts and bacteria of CBS.
- 1.5 MATERIAL: ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES, and any genetic resources contained therein, including traditional knowledge associated with the MATERIAL as far as provided by CBS. The MATERIAL shall not include MODIFICATIONS.
- 1.6 ORIGINAL MATERIAL: living material that was supplied to CBS by the DEPOSITOR, that has been deposited in the collections of living fungi, yeasts and bacteria of CBS.
- 1.7 PROGENY: Unmodified descendant from the ORIGINAL MATERIAL, such as subculture or replicate.
- 1.8 UNMODIFIED DERIVATIVES: replicates or substances which constitute an unmodified functional subunit or product expressed by the MATERIAL, such as, but not limited to, purified or fractionated subsets of the MATERIAL, including expressed proteins or extracted or amplified DNA/RNA.
- 1.9 MODIFICATIONS: Substances created by the RECIPIENT using the MATERIAL, which are not ORIGINAL MATERIAL, PROGENY or UNMODIFIED DERIVATIVES, and which have new properties.
- 1.10 LEGITIMATE EXCHANGE: The transfer of the MATERIAL among members of staff of the same legal entity as the RECIPIENT, provided that further distribution by the RECIPIENT is compliant with the provisions agreed between CBS and RECIPIENT on the transfer of that MATERIAL.
- 1.11 COMMERCIAL PURPOSE: The use of the MATERIAL for the purpose of making profit. COMMERCIAL PURPOSE includes but is not limited to the placing on the market, the sale, exchange, leasing, licensing, or other transfer of MATERIAL as well as research, development and service activities for profit purposes.
- 1.12 PARTY: each of CBS and RECIPIENT; together they are referred to as PARTIES.

#### **2. APPLICABILITY**

- 2.1 These General Terms and Conditions apply to and constitute part of all agreements between CBS on behalf of the Royal Netherlands Academy of Arts and Sciences [Koninklijke Nederlandse Akademie van Wetenschappen] and RECIPIENT, regarding the transfer of MATERIAL by CBS to RECIPIENT.
- 2.2 Should any conflict arise between a provision of the Agreement and these General Terms and Conditions, the Agreement shall prevail.

**3. TRANSFER CONDITIONS**

- 3.1 RECIPIENT declares that all information provided to CBS in connection with the transfer of MATERIAL by CBS to RECIPIENT is true, correct and complete, including any information provided for use in obtaining any license, permit or other authorization with respect to orders placed by RECIPIENT.
- 3.2 CBS will process, package and ship the MATERIAL ordered by RECIPIENT in accordance with applicable laws and regulations to the address as stated by RECIPIENT, after receipt of the payment RECIPIENT is responsible for ensuring that all permits required for the shipment of the MATERIAL are obtained.
- 3.3 If RECIPIENT is not satisfied about the quality of the MATERIAL received, it will be replaced by CBS free of charge, provided that RECIPIENT has filed a substantiated complaint at CBS within thirty (30) days after receipt of the MATERIAL and that the claim is justified to CBS's satisfaction. Any expiration date specified on the MATERIAL shipment documentation does not constitute a warranty. The RECIPIENT may obtain a credit or full refund if CBS fails to supply a viable replacement of the MATERIAL transferred.
- 3.4 MATERIAL transferred by CBS may have hazardous properties. RECIPIENT recognizes the potential hazard of utilizing the MATERIAL and understands that the taking of appropriate precautions to minimize any health risk becomes fully their responsibility upon receipt of the MATERIAL.
- 3.5 CBS makes no representations and extends no express or implied warranties, including any warranty of merchantability or fitness for a particular purpose, or that the use of the MATERIAL, also in compliance with the terms of the relevant material transfer agreement agreed between CBS and RECIPIENT, does not or will not infringe any patent, copyright, trademark, or other proprietary rights.
- 3.6 The RECIPIENT shall not sell, lease, license, lend, supply, distribute or otherwise transfer the MATERIAL to any others, save those involved in LEGITIMATE EXCHANGES as defined in Article 1 of these General Terms and Conditions.
- 3.7 RECIPIENT warrants that it is capable and qualified to safely handle and store the MATERIAL and to safeguard it from theft and misuse, in compliance with all applicable laws and regulations. This includes provision of appropriate containment for its safe handling, as determined by any risks known to be associated with the MATERIAL.
- 3.8 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.

**4. USE OF THE MATERIAL**

- 4.1 CBS grants RECIPIENT a limited non-exclusive right to use the transferred MATERIAL in any lawful manner for research, education or quality control purposes, excluding the use for a COMMERCIAL PURPOSE. Terms that have already been mutually agreed by CBS or by its DEPOSITORS for the subsequent use of MATERIAL, shall be binding upon RECIPIENT, provided that these have been made part of the relevant material transfer agreement concluded between CBS and RECIPIENT, e.g. as Annex(es) signed by both Parties.
- a. Any use by RECIPIENT of the MATERIAL for a COMMERCIAL PURPOSE requires the specific prior written authorization of CBS. Such approval will not be unreasonably withheld.
- b. RECIPIENT will inform CBS before RECIPIENT files a patent application for an invention (or a similar intellectual property right) involving the use of the MATERIAL.
- 4.2 Use of the MATERIAL may be subject to third party's rights, such as, but not limited to, intellectual property rights and the permission of the competent authority or government of the COUNTRY OF ORIGIN.
- Except for the limited rights of use granted under Article 4.1 of these General Terms and Conditions no express or implied licenses or other rights are provided herein to the 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.
- 4.3 Provided that such information is available to CBS, it will provide RECIPIENT with the identifier of an internationally recognized certificate of compliance (hereafter abbreviated to: 'IRCC'); OR, if the IRCC is not available to CBS, other available information relevant to access and benefit sharing under the CBD.
- 4.4 Notwithstanding any information or documentation provided by CBS in relation to the transfer of MATERIAL, it is the RECIPIENT's sole responsibility to verify its need to obtain any intellectual

property licenses and/or any other rights of use, including the permission of the appropriate authority of the COUNTRY OF ORIGIN, necessary for the use of the MATERIAL. If required, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the intellectual property rights owner(s) and/or appropriate authorities to establish the terms of a (commercial) license and/or permission to use MATERIAL; taking also into account specific national laws implemented due to the CBD and the Nagoya Protocol on ABS. In case the RECIPIENT enters into an agreement with the competent authority of the COUNTRY OF ORIGIN, it will inform CBS about its IRCC number or other unique identifier.

- 4.5 RECIPIENT agrees to use the MATERIAL with caution and prudence, due to the potentially hazardous and experimental nature of the MATERIAL, which may be specified in the catalogue description or other documentation provided by CBS.
- 4.6 RECIPIENT is allowed to multiply the documentation delivered by CBS, only for the purpose of any lawful manner for research, development or quality control purposes. RECIPIENT is not allowed to disclose the documentation to third parties, save those involved in LEGITIMATE EXCHANGES.
- 4.7 RECIPIENT agrees to refer to the Westerdijk Fungal Biodiversity Institute, including the CBS- or NCCB-strain accession number(s) referring to the MATERIAL and 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.

## **5. LIABILITY**

- 5.1 CBS and DEPOSITORS will not be liable to the RECIPIENT for, and RECIPIENT shall indemnify CBS and DEPOSITORS and hold them harmless from, any and all damages and/or losses claimed or demanded by the RECIPIENT or by any third party (whether in contract, tort or otherwise), arising from the use of the MATERIAL by RECIPIENT, except to the extent that such damages and/or losses have been caused by the willful intent or gross negligence of CBS.

## **6. MISCELLANEOUS**

- 6.1 Unless explicitly agreed otherwise, no rights or obligations contained herein or in any material transfer agreement between CBS and RECIPIENT, are assignable, whether by operation of law or otherwise, without the prior written consent of CBS.
- 6.2 Certain DEPOSITORS have requested, and CBS has agreed, that they will be notified of the identity of recipients of MATERIAL hereunder. These MATERIALS are appropriately marked in CBS's documentation. RECIPIENT acknowledges that CBS is allowed to notify these DEPOSITORS about the identity of RECIPIENT as a transferee of MATERIAL.

## **7. TERMINATION**

- 7.1 CBS may terminate a material transfer agreement 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 CBS specifying the breach. After termination by CBS of a material transfer agreement concluded between CBS and RECIPIENT in relation to a MATERIAL, RECIPIENT shall immediately destroy that MATERIAL, provide evidence thereof to CBS and cease the use thereof. Terms of or applicable to the relevant material transfer agreement that are intended to survive termination, including Articles 5 (Liability) and 8 (Applicable Law and Jurisdiction) of these General Terms and Conditions, shall survive termination.

## **8. APPLICABLE LAW; JURISDICTION**

- 8.1 All material transfer agreement(s) between CBS and RECIPIENT and these General Terms and Conditions shall be governed by and construed in accordance with the laws of the Netherlands. In the event of a dispute arising out of a material transfer agreement, the Parties shall seek to resolve such dispute amicably. In case the Parties fail to settle the dispute amicably within four (4) weeks after the dispute has been raised by one Party to the other Party in writing, the dispute may be brought in the competent courts of Amsterdam, who shall have exclusive jurisdiction.