

National Collection of Plant Pathogenic Bacteria

MATERIAL TRANSFER AGREEMENT

FERA IS NOT WILLING TO TRANSFER MATERIAL ON ANY TERMS OR CONDITIONS OTHER THAN THE FOLLOWING. RECEIPT OF CULTURES VIA PLACEMENT OF AN ORDER WITH FERA (OR VIA ANY OTHER ROUTE SUCH AS REPLACEMENT UNDER WARRANTY, AS A GIFT OR SIMILAR) CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

This Material Transfer Agreement ("Agreement") is between:

The Department for Environment, Food & Rural Affairs of Nobel House, 17 Smith Square, London SW1P 3JR ("the Secretary of State") acting through The Food and Environment Research Agency ("Fera"), Sand Hutton, York, YO41 1LZ, UK which houses the National Collection of Plant Pathogenic Bacteria (NCPBP) and the Recipient (as detailed on New Recipient Application Form, Order Forms and Packing Notes) acquiring Material (as defined hereinafter) under this Agreement. Fera will only transfer Material to Registered Recipients in good standing. Fera is willing to transfer the Material and the Recipient is willing to receive the Material under the terms and conditions specified herein and in the Fera Warranty of Material.

Scope of Agreement

This Agreement applies to the use, handling, sale, distribution and any disposition of the Material, Replicates, and Derivatives.

Interpretation

"Material" means any material or portion thereof shipped to the Recipient, as detailed on individual Order Forms. In the case of replacement of cultures under warranty or sending of cultures as a gift or similar, this will be as detailed in the Packing Note.

"Replicates" means any biological or chemical material that represents a substantially unmodified copy of the Material. Replicates include but are not limited to material produced by growth of cells or microorganisms or amplification of Material.

"Derivative" means material created from the Material that is substantially modified to have new properties. Derivative includes, but is not limited to, recombinant DNA clones made using a vector purchased from Fera.

This Agreement is subject to the Fera Standard Terms and Conditions which are available from the Fera website at www.fera.defra.gov.uk/terms.cfm or upon written request to NCPBP/Fera at the above address.

1. Recipient Rights, Qualifications and Responsibility

(a) Recipient shall not sell, lend, distribute, or otherwise transfer the Material or Replicates to any others.

(b) Subject to the terms and conditions of this Agreement and any statutory, regulatory or other restriction imposed by law or any third party interest, Recipient may use the Material, Replicates, or Derivatives in any lawful manner for scientific research purposes only. Notwithstanding the foregoing, Recipient may not distribute or sell the Material or Replicates.

(c) Recipient represents that within their laboratory

- (i) access to the Material, Replicates or Derivatives will be restricted to personnel capable and qualified to safely handle the Material, Replicates, or Derivatives and
- (ii) Recipient shall exercise the utmost care, taking into account the unique characteristics of the Material, to maintain and use the Material, Replicates, or Derivatives with appropriate precautions to minimise any risk of harm to persons and property and to safeguard them from theft or misuse.

Recipient agrees that Material or Replicates designated Class II constitute known pathogens and that other Material, not so designated, or Derivatives, may be pathogenic under certain conditions. In addition, the Material or Derivatives may pose additional hazards. Recipient, not Fera, assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, use and any misuse or other wrongdoing with respect to Material transferred hereunder, the Replicates, and any Derivatives. Recipient agrees that any handling or other activity undertaken in their laboratory with the Material, Replicates, or Derivatives will be conducted in compliance with all applicable laws and regulations. Recipient will supply to Fera upon request a copy of any necessary licence, permit or other authorisation.

(d) Recipient acknowledges, agrees and represents that the material is not intended for use in humans, and agrees not to conduct research in humans without the advance written consent of all applicable regulatory authorities.

(e) Recipient represents, warrants and covenants that all information provided to Fera in connection with the request for culture(s) is true, correct and complete, including, without limitation, any information provided for use in obtaining any licence, permit or other authorisation with respect to requested cultures hereunder or otherwise complying with applicable law and regulations.

Recipient agrees to comply with all restrictions on export from the United Kingdom and re-export from other countries set forth in the export licenses and any other permit or authorisation required by law for the Material, Replicates, and Derivatives and/or any information provided therewith or derived therefrom, and are responsible for obtaining any re-export authorisation before transferring the Material, Replicates, or Derivatives provided hereunder or derived therefrom to another country or national thereof.

With respect to transfers of Material, Replicates, or Derivatives to destinations outside the United Kingdom,

- (i) Recipient assumes all risk and responsibility in connection with complying with applicable foreign law and regulations concerning the import, handling, transportation, storage, use, and misuse or other wrongdoing with respect to Material, Replicates or Derivatives and
- (ii) Recipient has advised Fera when placing its request for culture(s) of any foreign legal or regulatory requirements pertaining to the requested shipment to be implemented within the United Kingdom in connection with such shipment.

(f) Certain contributors of Material to Fera have requested and Fera has agreed that they will be notified of the identity of transferees of Materials hereunder. Recipient acknowledges that nothing prohibits Fera from identifying Recipient as a transferee of Materials hereunder.

2. Intellectual Property/Exploitation

(a) Nothing in this Agreement grants Recipient any rights under any patents, propriety, intellectual property, or other rights with respect to the Material, Replicates or Derivatives.

(b) The Agreement grants the Recipient the non-exclusive non-assignable right to use the Material, Replicates or Derivatives for scientific research purposes only. Use for commercial purposes is specifically excluded without prior consultation with Fera.

(c) Recipient agrees to acknowledge NCPPB/Fera and any contributor indicated by Fera as the source of the Material in any and all publications and patent applications that reference the Material. Except as required by the preceding sentence, Recipient may not otherwise use or permit others to use Fera's name or trademarks without the advance written consent of Fera.

Indemnification of Fera and contributor

Recipient shall indemnify, to the extent permitted by law, Fera and contributor against any claims made against Fera by third parties that sale or use of the Material, Replicates, or Derivatives by Recipient and/or production of Replicates or Derivatives by Recipient infringes any patent or other proprietary rights of such third parties or of contributor and against any claims or liabilities arising as a result of breach of this agreement, including, without limitation, any claims relating to, the receipt, handling, storage, transfer, disposal, use and any misuse or other wrongdoing with respect to Material, the Replicates, Derivatives, transferred hereunder.

Assignment

This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of Fera. Otherwise, this Agreement is binding upon the successor(s) and assignee(s) of the parties.

Convention on Biological Diversity

NCPPB seeks to conform with the spirit of the Convention on Biological Diversity (CBD). Nothing in this agreement shall be construed as changing the rights and obligations of Parties under the CBD. The agreement fully complies with Article 15 of the CBD, which recognises the sovereign rights of States over their natural resources. The CBD requires users of genetic resources to share benefits accruing from their use with the country of origin. In the case of subsequent exploitation, suitable and adequate sharing of income must be negotiated with the country concerned.

3. Limited Warranty of Material

Fera hereby represents and warrants that the Material shall be viable upon shipment from Fera, and for a period, from Fera's shipment, of thirty (30) days (the "Warranty Period").

The sole remedy for breach of this warranty is one (1) replacement by Fera of the Material free of charge if Recipient reports the lack of viability upon receipt or within the applicable Warranty Period. Any expiration date specified on the Material shipment documentation states the expected remaining useful life, but does not constitute a warranty.

Disclaimer of warranties

Except as expressly provided in this agreement, there are no representations or warranties by Fera or its contributors with respect to the items, express or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose.

Neither Fera nor its contributors makes any representation or warranty that use of the items will not infringe any patent, copyright, trademark or other proprietary right of third parties nor as to the accuracy or correctness of the data.

Fera may at its discretion provide technical assistance and information with respect to the material as well as other products and procedures associated with use of the material. Fera makes no warranties of any kind, express or implied, with respect to the technical assistance or information provided. It is the Recipient's responsibility to assess the technical assistance and information in consideration of the use, selection, application or suitability of the items.

4. Limitation of liabilities; remedies

(a) Recipient recognises the potential hazard of utilising the Material and Replicates, the experimental nature of the Material and Replicates, and understand that the taking of appropriate precautions to minimise any health risk becomes fully Recipient's responsibility upon receipt of the Material. Neither Fera nor any contributor is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling or use of the Material, Replicates, or Derivatives, and/or, except as expressly provided in this agreement or any certificate of analysis provided herewith, from any misidentification, misrepresentation, lack of title, safety, purity, typicality, or viability of the items. Neither Fera nor contributor will be liable to Recipient or Recipient's institution or any of its employees, representatives, or agents for any loss, claim or demand made by Recipient or Recipient's institution or such persons made against Recipient or Recipient's institution by any other party, due to or arising from the use of the items by Recipient, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of Fera.

(b) neither Fera nor any contributor shall have any liability to Recipient or Recipient's institution for any consequential (including lost profits), incidental, indirect, special, economic or punitive damages arising out of, or based upon the transactions contemplated by this Agreement or the subject hereof, even if Fera has been advised of the possibility of such damages.

(c) the exclusive remedy against Fera (including any contributor) for any losses or damage of any kind whatsoever, whether in contract, tort or otherwise, shall be, at Fera's option, refund of the fee paid to Fera for such Material or other item or replacement of the Material.

5. Shipping

Fera will package the Material for shipping in accordance with IATA international safety regulations. If special processing or packaging is necessary, a special processing fee will be charged. If the Material is lost or damaged during shipment, Fera will replace such Material, including storage media, at no additional charge, provided that Recipient has reported thawed, damaged or lost shipments immediately to the applicable airline or freight forwarder and notified Fera promptly upon discovery thereof.

6. Miscellaneous

This Agreement shall be construed and enforced in accordance with and governed by the laws of England.