Material Transfer Agreement Template for University of Groningen Biomolecular Sciences & Biotechnology Institute (GBB)

Changes made by the Providing Institution to the standard European Plasmid Repository MTA Template

1.Definitions 5 (ORIGINAL MATERIAL) and 11 (NONPROFIT ORGANIZATION) have been modified.

2. Terms 4 and 5(a) have been modified.

3. Terms 11-26 are either added or different.

Material Transfer Agreement

I. Definitions:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party are specified in the implementing letter.

2. PROVIDER SCIENTIST: The name and address of this party are specified in the implementing letter.

3. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party are specified in the implementing letter.

4. RECIPIENT SCIENTIST: The name and address of this party are specified in the implementing letter.

5. ORIGINAL MATERIAL: The description of the material being transferred is specified in the implementing letter which is also an integral part of this agreement.

6. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.

7. PROGENY: Unmodified descendant from the ORIGINAL MATERIAL, such as virus from virus, cell from cell, or organism from organism.

8. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.

9. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

10. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

11. NONPROFIT ORGANIZATION(S): A university or other institution of higher education or any nonprofit scientific or educational organization under public law. As used herein, the term also includes government agencies.

II. Terms and Conditions of this Agreement:

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

2. The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES). If either 2 (a) or 2 (b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

3. The RECIPIENT agrees and the RECIPIENT SCIENTIST acknowledges that the MATERIAL:

(a) is to be used solely for teaching and academic research purposes;

(b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;

(c) is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and

(d) will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER;

4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision.

5. (a) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT to NONPROFIT ORGANIZATION(S) through the use of the ORIGINAL MATERIAL only if those substances are not ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

(b) Under a separate Material Transfer Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.

(c) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.

7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

10. 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. The PROVIDER 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 use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of the PROVIDER.

11. To the extent permitted by law, RECIPIENT shall indemnify and hold harmless University of Groningen, its agents and its successors and their respective directors, officers, members, employees, and agents, from and against any and all losses, claims, damages, expenses and liabilities arising at any time as a result of RECIPIENT's use and disposal of the ORIGINAL MATERIAL, RECIPIENT's breach of this Agreement, except when caused by the gross negligence or willful misconduct of PROVIDER.

12. Information shall be subject to the confidentiality and use restrictions of this provision it is either: (a) disclosed in written form and at the time of disclosure marked "Confidential" or "Proprietary", or (b) initially disclosed orally or visually, stated at the time of disclosure as being Confidential or Proprietary, and the substance of which is, within thirty (30) days, reduced to writing by the DISCLOSING PARTY, marked as "Confidential" or "Proprietary", and sent to the RECEIVING PARTY, or (c) is of such a character that the RECEIVING PARTY should have known that it is of a confidential nature.

13. The obligations of confidence referred to in this provision shall continue for a period of five (5) years after termination but not extend to any information which:

(a) is in the public domain at the time of disclosure or becomes generally available to the public;

(b) is known to the RECEIVING PARTY and which can be shown by written records that were in its possession at the time of disclosure and was not acquired directly or indirectly from the DISCLOSING PARTY;

(c) is subsequently disclosed to the RECEIVING PARTY without obligations of confidence by a third party owing no such obligations to the DISCLOSING PARTY in respect thereof;

(d) is ordered by a court of competent jurisdiction to be disclosed, but only after the DISCLOSING PARTY has been given prior notice of such order in a timely fashion to allow for an objection to be made or protection obtained.

14. If RECIPIENT wishes to publish results regarding the MATERIAL, it will supply PROVIDER with a draft of said publication at least thirty (30) days before submission. PROVIDER will decide within 30 days upon receipt of the draft publication whether the draft may be published. If PROVIDER determines that the proposed publication or presentation contains patentable subject matter and/or any of its confidential information, PROVIDER may require RECIPIENT to delay the publication or presentation for a period of time not to exceed ninety (90) days from PROVIDER's receipt of the proposed publication for the purpose of deleting such confidential information and/or filing appropriate patent applications relating to such subject matter. Permission will not be unreasonably withheld. The RECIPIENT SCIENTIST

agrees to provide appropriate acknowledgment of the source of the MATERIAL in all publications according to academic standards.

15. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, such as, for example, those relating to research involving the use of animals or recombinant DNA.

16. The term of this Agreement is sixty (60) months from its Effective Date;

17. This Agreement will terminate on the earliest of the following dates: (a) on completion of the RECIPIENT's current research with the MATERIAL, or (b) on thirty (30) days written notice by either party to the other, provided that:

(i) if termination should occur under 13(a) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS;

and

(ii) in the event the PROVIDER terminates this Agreement under 13(b) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

18. Articles 6, 9, and 10, 11, 12, 13 and 14 shall survive termination.

19. PROVIDER and RECIPIENT are not entitled to assign or otherwise transfer its rights and obligations under this Agreement in whole or in part to any third party without the prior written consent of the other PARTY.

20. This Agreement sets forth the entire Agreement between PROVIDER and RECIPIENT and supersedes all previous agreements, written or oral regarding the subject matter hereof. This Agreement may be amended only by an instrument in writing duly executed on behalf of the PROVIDER and RECIPIENT.

21. If the performance by either PROVIDER and/or RECIPIENT of any of its obligations under this Agreement is delayed or prevented by circumstances beyond its reasonable control, that PARTY will not be in breach of this Agreement because of that delay in performance. However, such PARTY shall promptly give to the other PARTY written notice claiming force majeure and shall use its best efforts to eliminate the effect of such force majeure, insofar as is possible and with all reasonable dispatch. If the period of delay or failure should extend for more than three (3) months then either PROVIDER and/or RECIPIENT shall have the right to terminate this Agreement forthwith upon written notice at any time after expiration of said three (3) month period.

22. The invalidity of any provision of this Agreement or any loophole in this Agreement shall not affect the validity of any other provision hereof. PROVIDER and RECIPIENT undertake to replace the invalid provision or close the loophole in the Agreement with another provision which reflects legally the originally intended objectives of PROVIDER and RECIPIENT as closely as possible.

23. The PARTIES shall perform their obligations under this Agreement as independent contractors and nothing contained in this Agreement shall be construed to be inconsistent with such relationship or status. This Agreement shall not constitute, create or in any way be interpreted as a joint venture or a partnership of any kind.

24. PARTIES will comply with EU General Data Protection Regulation and other applicable legislation and regulations concerning the processing of Personal Information. PARTIES will determine in good faith how they will apply these laws and the data processing principles cooperating within the Parties.

The definition 'Personal Information' as mentioned above shall have the same meaning as it has in the EU General Data Protection Regulation (GDPR), applicable since 25 May 2018, and other applicable legislation and regulations concerning the processing of Personal Information which at the date of this Agreement means information (including information forming part of a database), whether true or not, and whether recorded in material form or not, about a natural person whose identity is apparent, or could reasonably be ascertained, from the information.

25. Any notices required or permitted hereunder shall be given to the appropriate PARTY at the address specified in the implementing letter or at such other address as the PARTY shall specify in writing. Such notice shall be in writing and shall be deemed given (i) upon personal delivery to the appropriate address, (ii) upon delivery by facsimile transmission with receipt confirmed, (iii) if sent by certified or registered mail, postage prepaid, three (3) days after the date of

mailing, or (iv) if sent by overnight courier, the next business day such courier regularly makes deliveries

26. The PROVIDER and RECIPIENT hereto shall attempt to settle any dispute arising from or relating to this Agreement in an amicable way. This Agreement is governed by and construed in accordance with Dutch law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, and including negotiations, existence, validity or enforceability shall be shall be settled by the competent court in Groningen, the Netherlands.