Material Transfer Agreement Template for Ludwig-Maximilians-Universität München (LMU)

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

This MTA is entirely different from the European Plasmid Repository template because it is the standard MTA used by the Ludwig-Maximilians-Universität München.

Material Transfer Agreement

PROVIDER agrees to provide RECIPIENT, both also referred to as “Party” or “Parties”, with plasmids deposited at EPR subject to the terms and conditions set forth in this Material Transfer Agreement (“MTA”) and, as may be the case, in the Additional Terms set out in the implementing letter for this MTA.

1. Definitions

“Donor” means, if applicable, the person from the body of whom ORIGINAL MATERIAL has been obtained and the persons entitled to exercise their rights post mortem.

“EPR” means the European Plasmid Repository GmbH, Amtsgericht Mannheim, HRB 741277.

“Material” means ORIGINAL MATERIAL, any Progeny, Unmodified Derivatives, ORIGINAL MATERIAL contained in Modifications and proprietary information concerning ORIGINAL MATERIAL.

“Modifications” means any substances created by RECIPIENT which contain at least a part of Material, including, but not limited to, crosses, breeding varieties, cell fusions and subclones.

“New Material” means any substance created by RECIPIENT through the use of Material or Modifications, but which are not and do not contain Material or Modifications.

“New Technology” means any invention, improvement, Modification or New Material, whether patentable or not, containing information on or incorporating or based on the Material.

“ORIGINAL MATERIAL” is the material specified in the implementing letter and any inherent and accompanying data.

“Progeny” means any unmodified descendant from ORIGINAL MATERIAL, such as virus from virus, cell from cell, or organism from organism

“PROVIDER” is the organization providing the ORIGINAL MATERIAL as specified in the implementing letter.

“PROVIDER SCIENTIST” is the person specified in the implementing letter.

“RECIPIENT” is the organization receiving the ORIGINAL MATERIAL as specified in the implementing letter.

“RECIPIENT SCIENTIST” is the person specified in the implementing letter.

“Research” means RECIPIENT SCIENTIST’s non-commercial scientific research.

“shall” is used in this MTA with the meaning of “is/are required to”, “is/are obligated to”, “has/have to”, “needs/need to”.

“Unmodified Derivatives” means any substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by ORIGINAL MATERIAL, such as subclones of unmodified cell lines, purified or fractionated subsets of ORIGINAL MATERIAL, proteins expressed by DNA/RNA, or monoclonal antibodies secreted by a hybridoma cell line.

2. Scope

ORIGINAL MATERIAL has been created by PROVIDER SCIENTIST as an employee of PROVIDER. This MTA applies to the transfer of ORIGINAL MATERIAL for use in RECIPIENT SCIENTIST’s Research.

3. Use and Handling

3.1. RECIPIENT and RECIPIENT SCIENTIST shall transport, store, handle and use Material and Modifications responsibly, only in locations and with equipment specifically designed for the storage or handling of experimental biological or chemical material with unknown properties, and in compliance with all applicable laws and regulations, especially those regarding safety, ethics and data protection. RECIPIENT and RECIPIENT SCIENTIST declare that they have all permits and equipment necessary to work with Material and Modifications and to perform the Research.

3.2. The transfer of Material constitutes a non-exclusive license to use Material and Modifications solely for the Research. Material and Modifications must not be used for any other purpose, especially not in human subjects, in clinical trials, for diagnostic purposes, for screening, for drug development or for any commercial purpose. Except where indispensable for the performance of the Research, Material must not be analyzed, decomposed, decompiled or reverse engineered.

3.3. Material and Modifications must only be accessible to and used by professionally and specifically trained personnel under the RECIPIENT SCIENTIST’s immediate and direct control. RECIPIENT shall refer any third-party request for Material or Modifications to EPR and send Material or Modifications only to such third parties that have signed a material transfer agreement with PROVIDER.

3.4. No person authorised to use the Material or Modifications is allowed to take or send the Material or Modifications to any location other than RECIPIENT SCIENTIST’s laboratory without PROVIDER’s prior written consent. In case of Modifications, such consent will not be unreasonably withheld.

4. Donor’s Rights

4.1. At all times, RECIPIENT and RECIPIENT SCIENTIST shall treat Material, if of human origin, with dignity and shall respect Donor’s (post-mortal) rights, especially their right of personality.

4.2. Material, if of human origin, is provided anonymized and shall therefore not contain any information that allows for the identification or re-identification of Donors or that could otherwise be considered personal data according to the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive

95/46/EC (General Data Protection Regulation). RECIPIENT and RECIPIENT SCIENTIST shall refrain from any act with the potential to discover or disclose Donor's civil identity. If they come to suspect that a re-identification of any Donor or relative might be possible, RECIPIENT and RECIPIENT SCIENTIST shall immediately abstain from using Material and Modifications, inform PROVIDER and PROVIDER SCIENTIST without delay and co-operate in finding a solution.

5. Tangible and Intangible Property

5.1. The Material, including the inherent intellectual property rights, is and remains the exclusive property of PROVIDER. This MTA does not restrict PROVIDER's right to distribute the Material to third parties. Legal title to the Material shall be unaffected by this MTA or the transfer made hereunder. Except as provided in this MTA, no express or implied licenses or other rights are provided to RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of PROVIDER. Nothing in this MTA alters any rights the Donor or any third party may have with respect to the Material. RECIPIENT will hold the Material in trust solely for the purposes set forth in this MTA.

5.2. RECIPIENT acknowledges that the Material, including any altered forms of the Material made by PROVIDER, is or may be the subject of a patent application and pledges to abstain from any act that might compromise the obtention of patent protection. Except as otherwise provided in this MTA, RECIPIENT and RECIPIENT SCIENTIST shall maintain the confidentiality of proprietary information concerning the Material.

5.3. Without prejudice to provisions of mandatory law protecting RECIPIENT employees' freedom not to disclose their inventions, should RECIPIENT SCIENTIST or any other RECIPIENT employee make or contribute to make New Technology, RECIPIENT shall promptly bring such New Technology and any patent application filed thereon to the attention of PROVIDER. PROVIDER and RECIPIENT will have sole or joint ownership of the New Technology, depending on and taking due account of their respective contributions to its creation. In case of joint ownership, PROVIDER and RECIPIENT shall negotiate and conclude in good faith a separate agreement on use, protection, patenting, publication and commercialization of such jointly owned New Technology. Regardless of ownership, the Parties grant each other an irrevocable, non-exclusive, royalty-free license to use such sole or joint New Technology for non-commercial scientific research and educational purposes.

6. Warranty and Liability

6.1. Material is experimental in nature, is not merchantable, may not be fit for the Research or any other particular purpose, and may have pathogenic, infectious, hazardous or other unknown properties. RECIPIENT and RECIPIENT SCIENTIST shall use and handle Material in compliance with all applicable regulations, with appropriate care and caution, apply all necessary safety measures, use protective equipment and instruct their staff accordingly.

6.2. PROVIDER makes no representation or warranty that the use of Material, Modifications or New Material will not infringe any patent or other right of a third party.

6.3. PROVIDER's contractual and extra-contractual liability towards RECIPIENT is excluded to the extent legally possible for any loss, claim, damage, injury or liability, of any kind or nature, that may arise from or in connection with this MTA or the use, handling, or storage of Material, Modifications or New Material. Regarding Material, this limitation of liability does neither apply to personal injuries nor to fundamental breaches of contract nor to damages caused intentionally or by gross negligence.

6.4. RECIPIENT assumes all risks arising out of the use or disposition of the Material, Modifications or New Material by the RECIPIENT and/or RECIPIENT SCIENTIST. To the extent allowed by law, RECIPIENT agrees to defend and hold harmless PROVIDER and PROVIDER's president, vice-presidents, board members, officers, employees and agents from any liability, loss, or damage they may suffer as a result of claims or judgments made against them arising out of the use or disposition of Material, Modifications or New Material by the RECIPIENT or RECIPIENT SCIENTIST.

6.5. Where the applicable law contains mandatory liability regimes, in particular concerning liability for defective and medicinal products, PROVIDER's liability towards RECIPIENT is limited only to the extent allowed by such mandatory law. However, RECIPIENT agrees to defend and hold harmless PROVIDER and PROVIDER's president, vice-presidents, board members, officers, employees and agents from any liability, loss, or damage they may suffer as a result of claims made against them by third parties arising out of the use or disposition of Material, Modifications or New Material by RECIPIENT.

7. Publication

7.1. RECIPIENT shall provide PROVIDER, on a yearly and confidential basis, with a description of the results generated with Material. If RECIPIENT SCIENTIST and RECIPIENT wish to publish or publicly present results of the Research, RECIPIENT SCIENTIST or RECIPIENT shall make available to PROVIDER a copy of the publication or presentation disclosing such results not less than thirty days prior to their intended public presentation or submission to any publisher in order to allow PROVIDER an opportunity to protect their intellectual property relating to Material and to safeguard Donor's rights. At PROVIDER's request, RECIPIENT shall withhold publication for up to thirty days.

7.2. PROVIDER and PROVIDER SCIENTIST shall be acknowledged as the source of Material. Any publication should cite the appropriate papers according to the applicable standards of good scientific practice, including, but not limited to, the papers specified in the "How to cite"-section of the description of the ORIGINAL MATERIAL on the EPR website.

8. Term

8.1. This MTA will become effective when the order is placed with EPR and expire after two years. Each Party can terminate this MTA earlier on thirty days' notice in text form. Accrued rights and obligations will survive as long as their purpose implies.

8.2. After expiration or termination of this MTA, RECIPIENT and RECIPIENT SCIENTIST shall abstain from using Material, ask PROVIDER whether Material should be returned or destroyed, and act accordingly.

8.3. RECIPIENT will also either destroy Modifications or remain bound by the terms of this MTA as they apply to Modifications.

9. Applicable law and dispute resolution

9.1. This MTA is governed by the laws of Germany.

9.2. Disputes arising out of or in connection with this MTA which the Parties have not been able to settle amicably can be brought, at the discretion of the claimant Party, either before the ordinary courts of the district of Munich or before the competent courts of the defendant Party's jurisdiction. The Parties agree to abstain from requiring that English language documents be produced in a German translation except to the extent their meaning is in dispute. As long as there is an action pending, any further action or counter-claim arising in connection with this MTA shall be brought before the same court.

10. Miscellaneous

10.1. Assignment of this MTA requires PROVIDER's consent.

10.2. This MTA constitutes the entire agreement and understanding relating to the subject matter hereof.

10.3. Should any provision of this MTA be or become invalid or should there be an unintended omission in the MTA, this does not affect the validity of the remaining provisions. Any invalid provision will be replaced and any unintended omission will be completed by a stipulation that comes as close as possible to the actual or presumed original intent of the Parties at the time RECIPIENT signed the implementing letter for this MTA.

10.4. Unless otherwise stipulated in this MTA, the place of performance for all obligations arising out of or in context with this MTA is at Geschwister-Scholl-Platz 1, 80539 München, Germany.

10.5. PROVIDER shall not bear any costs linked to the transfer of Material, including, but not limited to, the costs of packaging, freight, insurance, export, import and transport permits.