

## **MATERIAL TRANSFER AGREEMENT (MTA)**

### **Terms and conditions applicable to the use, handling, supply, sale, and disposal of the material**

This Material Transfer Agreement (hereinafter "Agreement"), is entered into as of the date of the last electronic signature (the "Effective Date"), by and between the UNIVERSIDAD DEL PAIS VASCO/EUSKAL HERRIKO UNIBERTSITATEA with registered address Barrio Sarriena s/n, Leioa, Bizkaia, SPAIN, (hereinafter UPV/EHU or "Transferor") and **xxxxxx** (hereinafter "Recipient").

The University of the Basque Country intervenes as the Entity responsible for the BMCC Basque Microalgae Culture Collection (hereinafter "THE COLLECTION"), in Barrio Sarriena, s / n, 48940 Leioa, Bizkaia, Spain.

The COLLECTION and the RECEIVER may be referred to jointly in this AGREEMENT as "the PARTIES", or individually each of them as a "PARTY".

Recognizing both PARTS sufficient legal capacity, they sign this document, and to that effect.

### **EXPOSES**

- I. That UPV/EHU owns the material described in Exhibit 1 (hereinafter "MATERIAL"),
- II. **That Mr./Mrs.** has contacted the Basque Microalgae Culture Collection to request the transfer of a sample of the material (hereinafter, the "MATERIAL") described in the "Definitions" section of this document.
- III. That this agreement (hereinafter, the "AGREEMENT") has been written up following the recommendations of the European Culture Collections' Organization, and it is formalized in response to a request from the RECIPIENT for the COLLECTION to transfer a sample of the MATERIAL.
- IV. That, before making the aforementioned transfer, the PARTIES agree to sign this AGREEMENT whose OBJECT is to establish the terms and conditions that regulate the transfer of the COLLECTION's MATERIAL, according to the following CLAUSES:

## 1. DEFINITIONS

- a) **AGREEMENT:** this document.
- b) **NON-COMMERCIAL:** UTILIZATION of the MATERIAL for purposes including but not limited to taxonomy, basic research, education, or quality control purposes independent of the legal/commercial status of the RECIPIENT.
- c) **COUNTRY OF ORIGIN:** the country where, according to information of COLLECTION, the ORIGINAL MATERIAL was taken from *in situ* conditions, in a natural habitat, or from its original non-natural source.
- d) **END-USER:** a scientist working with the supplied MATERIAL.
- e) **INTERMEDIARY:** a third-party entity that makes an order on behalf of the END-USER, and to which the COLLECTION addresses the MATERIAL but that will not engage in UTILIZATION of the MATERIAL. These can be wholesalers, importers, or other types of intermediary agents, unrelated to the END-USER's institution.
- f) **PRIOR INFORMED CONSENT AND/OR MUTUALLY AGREED TERMS:** records generated by the Competent National Authority of a Providing Country that may be a permit or equivalent. This may also take the form of an Internationally Recognized Certificate of Compliance (IRCC), which is a type of PIC/MAT found on the ABS Clearing House. This results in a unique identifier and link and provides legal certainty about the origin of the genetic resources. (<https://absch.cbd.int/>).
- g) **LEGITIMATE EXCHANGE:** the transfer of the MATERIAL between scientists working in the same Laboratory, or between partners in different Institutions collaborating on a defined joint project, for non-commercial purposes. This also includes the transfer of MATERIAL between public service culture collections and biological resource centers (BRCs) for deposit purposes. Legitimate exchange can only be conducted provided the further distribution is under MTA conditions equivalent and compatible with those in place at the supplying collection.

- h) **RESEARCH GROUP:** graduate scientists who work in the same laboratory or who are contractually obligated to work on the same research topic.
  
- i) **MATERIAL:** biological material originally supplied to the COLLECTION by the DEPOSITOR, and progeny of the original biological material. The MATERIAL shall not include MODIFICATIONS.
  
- j) **PROGENIE:** any unmodified descendant of the ORIGINAL MATERIAL, such as cell to cell or organism to organism.
  
- k) **UNMODIFIED DERIVATIVES:** substances created by the RECIPIENT that constitute an unmodified subsample of the MATERIAL.
  
- l) **MODIFIED DERIVATIVES:** substances produced by the RECIPIENT through the use of the MATERIAL, which are not ORIGINAL MATERIAL, progeny, or UNMODIFIED DERIVATIVES, and which have new properties. MODIFICATIONS include, but are not limited to, recombinant DNA clones.
  
- m) **PARTY:** COLLECTION and RECIPIENT (Intermediary and End-user) are referred to together as PARTIES.
  
- n) **RECIPIENT:** the party to whom the COLLECTION sends the MATERIAL. In case this is not the END-USER but an INTERMEDIARY, this INTERMEDIARY has the responsibility to ensure that the END-USER has appropriate and legally compliant facilities for working with the material.
  
- o) **COLLECTION:** Basque Microalgae Culture Collection (BMCC). Department of Plant Biology and Ecology, Faculty of Science and Technology of the University of the Basque Country, Sarriena auzoa, s/n, 48940 Leioa, Basque Country (Spain).
  
- p) **UTILIZATION:** to conduct research and development on the genetic and/or biochemical composition of the MATERIAL, including through the application of biotechnology.

- q) CBD (Convention on Biological Diversity):** United Nations Convention on Biological Diversity signed in June 1992 in Rio de Janeiro, with three main objectives: the conservation of biological diversity, the sustainable use of its components, and the fair distribution and equitable benefits obtained (ABS) from the use of genetic resources.
- r) NP (Nagoya Protocol):** international treaty that develops the third objective of the CBD, the fair and equitable sharing of the benefits derived from the use of genetic resources, which entered into force on October 12, 2014.

## 2. TRANSFER OF MATERIAL

2.1. The ORIGINAL MATERIAL transferred through this AGREEMENT includes:

BMCC XXXXXXXXXX

2.2. RECIPIENT agrees that all information provided to the COLLECTION or INTERMEDIARY in connection with any order for MATERIAL is accurate and complete, and complies with applicable laws and regulations.

2.3. The COLLECTION and the INTERMEDIARY will prepare, pack and the MATERIAL requested by the RECEIVER for shipment in accordance with the laws and regulations applicable to the address indicated by the RECEIVER. It will be the RECEIVER's responsibility to organize the collection of the MATERIAL, agreeing with the COLLECTION the time and day of shipment. The shipping cost will be paid by the RECEIVER. The RECEIVER is also responsible for ensuring that they obtain all the necessary permits for sending the MATERIAL.

Payments related to said shipment will be made in advance, after sending the corresponding invoice for a total amount of XXXX euros+ the corresponding VAT.

The shipment will be made after confirmation of the order, as well as receiving the present signed MTA.

2.4. The RECIPIENT assumes any risk and responsibility related to the reception, handling, storage, elimination, and use of the MATERIAL.

The RECIPIENT agrees any manipulation or other activity carried out in their laboratory with the MATERIAL will be carried out under their responsibility and in accordance with all applicable laws and regulations related to the reception, manipulation, storage, elimination and use of the material.

2.5. The RECIPIENT, therefore, assures that within their laboratory (i) access to the MATERIAL will be restricted to personnel capable and qualified to safely handle said MATERIAL and (ii) RECIPIENT shall exercise the necessary care, taking into account the specific characteristics of the MATERIAL, to maintain and use it with appropriate precautions to minimize any risk of harm to persons, property, and the environment, and to safeguard it from theft or misuse.

2.6. Unless agreed in writing with the COLLECTION, the RECIPIENT will not sell, distribute or propagate the MATERIAL for distribution, loan or transfer to any other, except to a RECEIVER involved in the LEGITIMATE EXCHANGES as defined in this AGREEMENT. In that case, the RECEIVER will keep a record of any LEGITIMATE EXCHANGE carried out, leaving said information at the disposal of the COLLECTION, and must be delivered at the request of the same.

In the event of a LEGITIMATE EXCHANGE, the RECEIVER agrees to transfer the same terms and conditions of this Agreement to the third party, so that they will be subject to the obligations and rights contained therein.

In particular, if the LEGITIMATE EXCHANGE had the purpose of using Spanish genetic resources, its use may require the authorization of access to Spanish genetic resources by virtue of Royal Decree 124/2017, of February 24, regarding access to genetic resources of genetic taxa from wild taxa and the control of utilization.

### **3. USE OF MATERIAL**

3.1. COLLECTION grants RECIPIENT a limited, non-exclusive right to NON-COMMERCIAL UTILIZATION of the MATERIAL in any lawful manner. The MATERIAL is transferred for for the sole purpose of performing the research specified in Exhibit 2.

Recipient agrees to use the Materials for research purposes only. If recipient may use the Materials for a commercial uses or other purposes not described in Exhibit 2, a new agreement must be signed .

This Agreement does not restrict the right of the COLLECTION to transfer, supply, or distribute the MATERIAL to other entities, for Commercial Uses or not, nor to continue with its own research and development work in relation to the MATERIAL, nor to publish, disseminate or disclose information related to said MATERIAL. If recipient needs exclusivity, this would be included in other agreement.

3.2. 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.

3.3. This Agreement does not exonerate the authorized person from complying with any type of applicable regulations. In particular, if the purpose of acquiring the MATERIAL is access for the use of Spanish genetic resources (Royal Decree 124/2017, of February 24) regarding access to genetic resources from wild taxa and to the utilization control.

The RECIPIENT agrees to refer to the COLLECTION, including the strain ID number(s) (unique identifier) referring to the MATERIAL as well as 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.

**The RECIPIENT will provide the COLLECTION with the doi of the publications that include the MATERIAL.**

The RECIPIENT specifies the use that will have the MATERIAL in the Exhibit 2.

## **4. RESULTS AND INTELLECTUAL PROPERTY RIGHTS.**

4.1 The Recipient acknowledges that all intellectual property rights of the material including any extract or replicas thereof are the exclusive property of the Transferor.

4.2 The Parties agree that this Agreement may not be interpreted as a transfer of intellectual property rights related to the Material in favor of the Recipient or any third party, including, but not limited to, property rights over patents, utility models, industrial designs, trade secrets and any other tangible or intangible rights related to the Material belonging to the Transferor, and that are not expressly granted in this Agreement.

4.3 UPV/EHU does not warrant that the use of the Material does not or will not infringe any IPR (including but not limited to patents).

4.4 Recipient shall promptly disclose to Transferor any IPR (including but not limited to patents) containing or relating to the Material subject to be legally protected.

4.5 In addition, Recipient shall provide Transferor with written reports summarizing the results of any use of the Materials in the Research or any results obtained in any other use of the Materials at mutually agreed intervals (not more than every 6 months) during the term of this Agreement, including upon expiration or termination of this Agreement. Such reports shall include a summary of all data, and all information, inventions (other than Inventions previously disclosed to Transferor), discoveries, know-how, or any other intellectual property made or generated by or on behalf of Recipient relating to the Materials. At Transferor's request and reasonable expense, Recipient shall provide to Transferor a copy of all such data.

4.6 The Intellectual Property ownership of (i) any patentable inventions that are made by or on behalf of Recipient in connection with the use of the Materials in the Research ("Inventions"), and (ii) any data, results, know-how, and other intellectual property that are not Inventions and that are generated by or on behalf of Recipient in connection with the use of the Materials in the Research ("Know-How") will be shared among the Parties in a percentage defined by mutual agreement taking into account the role and contributions of each Party.

## **5. COMPLIANCE WITH APPLICATION REGULATIONS**

5.1. The RECIPIENT should exercise due diligence under the CBD and NP according to relevant domestic, regional, and international law, and for European users, especially EU Regulation 511/2014. The RECIPIENT shall use the Material in a legitimate, safe, legal, ethical, and sustainable way, and in respect of the principles laid down in the CBD. Nothing in this MTA shall be construed as changing or affecting the rights and obligations of the Parties under the CBD.

In particular, if the purpose of the RECIPIENT is the acquisition and use of the MATERIAL of Spanish origin (Royal Decree 124/2017, of February 24) regarding access to Spanish genetic resources from wild taxa and the control of the utilization.

For MATERIAL from COUNTRIES OF ORIGIN that have not signed the PN, the RECIPIENT must be informed and comply with the guidelines, laws, and regulations in force in that COUNTRY.

5.2. The RECIPIENT agrees to abide by the PRIOR INFORMED CONSENT (PIC) and MUTUALLY AGREED TERMS (MAT), and/or IRCC 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 existing PIC and MAT or any other conditions.

5.3. Any copies of documentation relevant to ABS with regard to the MATERIAL are part of the agreement, and may include a collecting permit, MAT, PIC, export permit, import permit, IRCC, or other documents and will be delivered by the COLLECTION if available. However, the absence of documentation does not free RECIPIENT from due diligence obligations in terms of the seeking of documents relevant to access and benefit-sharing, unless the material is received from a Registered Collection.

## **6. LIABILITY**

6.1. NO liability is to be ascribed to the COLLECTION except to the extent that damages or losses have been caused by the wilful intent or gross negligence of it.

6.2. COLLECTION assumes no responsibility for the loss of viability of the biological material or other adverse effects during transportation or delays. Consulting with the customs or postal authorities of the respective transit and destination countries in case of impending adverse events is the responsibility of the RECIPIENT.

6.3. Any further liability of COLLECTION, especially for damages due to improper use of the MATERIAL or for damages due to force majeure, is excluded.

## **7. WARRANTY**

7.1. If the MATERIAL is lost or damaged during shipping, the COLLECTION will replace it at no additional charge provided that the RECIPIENT reports and justifies the loss or damage within fifteen (15) calendar days following the date of shipment of the MATERIAL.

7.2. Except as expressly provided in this AGREEMENT and within the limits of the scope of the COLLECTION's quality system, there are no representations or warranties by the COLLECTION with respect to the MATERIAL.

## **8. TERMINATION**

8.1. COLLECTION may terminate this 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 the COLLECTION specifying the breach

8.2. Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice not less than sixty (60) calendar days prior to the desired termination date.

8.3. Upon termination of the AGREEMENT, the RECIPIENT will cease to use the MATERIAL, return or destroy it (in this case providing evidence of it) to the COLLECTION at its decision.

## **9. APPLICABLE LAW AND JURISDICTION**

9.1. This Agreement will be governed and interpreted in accordance with Spanish law, unless otherwise indicated in the PIC linked to the MATERIAL.

9.2. In the event of a dispute arising out of a material transfer AGREEMENT, the PARTIES will seek to resolve it amicably. In case that the Parties do not resolve 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 the Basque Country (Spain).

## 10 NOTICES

The Parties shall send all notices in writing, referencing this Agreement.

Notices concerning the material transfer, confidential information, and any other information concerning the ordinary execution of the agreement shall be given to:

UPV/EHU	Recipient
Name: Sergio Seoane Parra Department; Biología Vegetal y Ecología Adress: B°Sarriena S/N 48940 Leioa SPAIN Email: sergio.seoane@ehu.eus Telephone: 946015299	Name: [Recipient Investigator] Department Adress Email telephone

Notices concerning legal aspects, particularly the ones related with the breach of this agreement shall be given to:

UPV/EHU	Recipient
TTO Vice-Chancellor of Transfer and Internationalisation B/Sarriena s/n Edificio Rectorado 48940, Leioa, Bizkaia email: iproperty.otri@ehu.eus Tel:+34946012203	

Accepted by

**UPV/EHU:**

Authorised Legal Representative	Transferor Investigator
Mrs. Miren Gotzone Barandika Argoitia Vice Chancellor for Transfer and Internationalisation	Sergio Seoane Parra Title: Director of Basque Microalgae culture Collection

**RECIPIENT:**

Authorised Legal Representative	Recipient Investigator
Name Title	Name Title

Exhibit 1 Materials

Exhibit 2 Research