Institut Pasteur

Centre de Ressources Biologiques
de l'Insitut Pasteur

General Terms and Conditions of Transfer and Use

The "Collection de l'Institut Pasteur" (CIP), hosted at Institut Pasteur, Paris ("IP") aims to preserve microbial culture collections, including the Material, with the purpose of making microbial strains and its associated material (e.g. DNA) available to the scientific community.

The purpose of these General Terms and Conditions of Transfer and Use ("Agreement") is to govern the conditions of transfer to and use by Recipient of the Material in the Program (as defined hereunder).

The Material will be provided to Recipient on a nonexclusive basis by IP subject to the payment by Recipient of all delivery charges, and maintenance and handling fees, if any, and subject to the Terms and Conditions attached hereto. This Agreement becomes effective on the date of signature thereof and terminates upon the completion of the Program which shall not exceed **sixty** (**60**) months.

IP and Recipient are hereinafter collectively referred to as the "Parties," or individually, as a "Party."

RECIPIENT INFORMATION: NAME OF THE INSTITUTION, located at **HQ ADDRESS** ("Recipient"), and in particular, Dr. **SCIENTIST** ("Recipient Scientist") from the **LAB NAME**.
Delivery address (if different from the HQ address):

"Program" shall mean the activity as ticked below and described in Annex 2:

☐ Research purposes ☐ Teaching purposes ☐ Quality control purposes

RECIPIENT INSTITUTION

Signature Date

Name and Title of Authorised Representative

Read and Acknowledged by **RECIPIENT SCIENTIST**

Signature Date

Name and Title

CIP GENERAL TERMS AND CONDITIONS OF TRANSFER AND USE

1- Definitions

1.1. In addition to the term "Program" defined above, the following definitions shall apply for the purpose of this Agreement:

"**Confidential Information**" is any information communicated by one Party to the other Party that can reasonably be considered confidential or was identified as such. It shall not include information for which the receiving Party can duly demonstrate that it was:

(i) generally known to the public at the time of disclosure, or thereafter through no act or failure on the part of receiving Party,

(ii) already in the receiving Party's possession at the time of disclosure to by the disclosing Party,

(iii) disclosed to the receiving Party on a non-confidential basis by a third party having the right to make such disclosure,

(iv) independently developed by the receiving Party without the use of the disclosing Party's Confidential Information,

(v) required to be disclosed by law or governmental rule or regulation or a judicial decision, provided the Party receiving the request attempts to give the disclosing Party prior notice of the request unless such notice could not reasonably be given.

"**Invention**" is any invention, whether or not patentable, made by Recipient through the use of the Material and within the scope of Program.

"**Materia**l" shall mean any physical material provided by IP to the Recipient under this Agreement, as listed and/or described in Annex 1, its Progeny, and any Unmodified Derivatives.

"**Modifications**" are the materials or products obtained by Recipient by transformation of the Material or that are created by the Recipient by incorporating the Material.

"**Progeny**" are unmodified descendants from the Material. Examples include but are not limited to: virus from virus, cell from cell, and organism from organism.

"**Unmodified Derivatives**" are substances that constitute an unmodified functional sub-unit or an expression product of the Material. Examples include but are not limited to: purified or fractionated sub-sets, subclones or unmodified cell lines, transcription and translation products (e.g., RNA and proteins synthesized on a template from provided DNA), reverse transcription and reverse translation products (e.g. DNA synthesized on a template using provided RNA), monoclonal antibodies secreted by a hybridoma cell line, and chemically synthesized copy or copies.

2-Scope of use of the Material and Confidential Information

2.1. In the event the Material is delivered in an unusable or a non-viable condition upon first arrival only, subject to (i) the receipt of a notification from Recipient within forty-eight (48) hours following delivery for frozen strains or within a (1) month following delivery for freeze-dried cultures and (ii) the examination conducted by IP of the cause of such an unusable or non-viable condition, IP undertakes to send new Material to the Recipient at Recipient's costs and expenses, except when such condition is due to IP's act or omission, in which case IP will bear the costs and expenses of the transfer of new Material. For the sake of clarity, IP will not send additional Material if the first batch delivered to the Recipient is in a viable form.

2.2. The Material and Modifications, if any, shall be used by Recipient solely to perform the Program, the scope of which cannot be extended without prior discussion with IP. No other right or license is granted or implied herein.

2.3. The Material and Modifications, if any, shall not be distributed to third parties without prior discussion with IP. The Recipient shall not use the Material or Modifications, if any, for commercial purposes. Recipient further agrees not to use, or offer to use, the same for research collaboration or services of any kind with any for-profit entity. Recipient shall promptly inform IP of any request or offer from any for-profit entity to have the Material or Modifications, if any, used for research collaboration or services of any kind.

2.4. Subject to Article 3, any Confidential Information shall be treated as confidential and maintained in confidence by the receiving Party during the term of this Agreement and for a period of five (5) years after the termination or expiration of this Agreement. Recipient Scientist may only disclose Confidential Information to those Recipient personnel who need it to perform the Program.

3- Price and terms of payment

3.1. In consideration of IP providing the Material, the Recipient agrees to pay IP a one-time firm and non-refundable lump sum, the amount of which is indicated in Annex 1 and in the corresponding invoice sent by IP, billable on the date of signature of this Agreement. It is expressly acknowledged and agreed that the costs for packaging and transferring the Material shall be invoiced in addition to the abovementioned sum.

3.2. The payment shall be made within thirty (30) days following receipt by the Recipient of the corresponding invoice, by check or bank transfer to the account designated by IP in the invoice. Bank fees incurred in relation to such payments, if any, shall be borne by the Recipient until such time as sums shall have been transferred to Institut Pasteur account.

3.3. Any VAT (Value Added Tax) shall be added to the invoiced amount at the then current rate and shall be borne by the Recipient.

3.4. Any sum received by IP shall remain definitively retained.

4- Results and Publications

4.1. The results obtained by the Recipient through the use of Material shall be communicated, in confidence, to the head of the collection from which the Material is being obtained. In the event Recipient chooses to publish or in any way publicly disclose Program results, the Recipient shall provide IP with a copy of a manuscript or presentation at least thirty (30) days prior to submitting the said manuscript for publication or presentation in order to allow IP an opportunity to protect its Confidential Information or intellectual property rights. IP's failure to respond within thirty (30) days shall constitute consent for the purpose of this article.

4.2. Recipient agrees to acknowledge IP as the supplier of the Material and shall credit all IP contributions to the Program and results by the following reference "The strain(s) [*CRBIP / CIP reference, e.g.* CIP 57.68 or CRBIP21.200]] was obtained from the *Collection de l'Institut Pasteur* (CIP, Paris, France)", including by co-authorship where appropriate.

5- Property

5.1. The Recipient acknowledges that this Agreement does not affect the property of the Material, including of any Material contained or incorporated in the Modifications or Inventions, and that the Material is or may be the subject of intellectual property rights,

5.2. Any result obtained through the use of Material shall be owned by Recipient. Recipient shall promptly inform IP, in confidence, of any Modification or Invention and shall grant to IP a perpetual, royalty-free, non-exclusive, non-sublicensable, and non-transferable license to use such Modification or Invention for academic research purposes only.

5.3. Recipient undertakes not to file a patent or publicly disclose or commercialize a product or service comprising the Material and/or Modifications, without first discussing in good faith and agreeing with the Material's owner in writing on the conditions of any such filing, claim, disclosure or commercialization.

6- Waivers and Representations

6.1. The Material is provided to the Recipient for the sole purpose of performing the Program. The Material is experimental in nature, may not be safe and may

have unknown characteristics. IP makes no representation and provides no warranties, express or implied, regarding the Material or Modifications, including without limitation, warranties of merchantability and fitness for a particular purpose. IP disclaims all express or implied warranties that the Material, or Modifications, if any, do not infringe patents or other proprietary rights of third parties or that the Material, or Modifications, if any, or that the results of the Program can be subject to intellectual property protection. To the extent permitted by applicable law, (i) the Recipient assumes all liability for damages that may arise from its use, storage, or disposal of the Material or Modifications, if any and (ii) IP 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 same except when and to the extent caused by the gross negligence or willful misconduct of IP.

Recipient makes no representation and provides no warranties, express or implied, regarding the Modifications and Inventions, including without limitation, warranties of merchantability and fitness for a particular purpose. To the extent permitted by applicable law, IP assumes all liability for damages that may arise from its use, storage, or disposal of the Modifications and Inventions.

6.2. MATERIAL SHALL NOT BE USED IN HUMANS, CLINICAL TRIALS, FOR ANIMAL FOOD, NOR FOR DIAGNOSTIC PURPOSES INVOLVING HUMAN SUBJECTS. MATERIAL SHALL NOT BE DISCHARGED NOR RELEASED IN THE ENVIRONMENT.

6.3. IP is not a pharmaceutical establishment according to Articles L.5124-1 et seq. of the French Code de la Santé Publique (CSP) and Article 2 third paragraph of the European directive number 2003/94/CE of October 8th, 2003. Accordingly, IP cannot be considered by the Recipient as a drug manufacturer as defined in Article L.5111-1 of the CSP or a raw material manufacturer and/or provider of a drug, a medical device or a diagnostic test as defined in Article L.5138-2 of the CSP.

6.4. Recipient shall comply with all formalities relating to the importation of the Material and agrees to use the Material in compliance with all applicable laws and regulations, notably regarding dual-use items. In particular, Recipient shall have the appropriate installations and equipment to use, store and dispose of the Material with regards to its level of pathogenicity. If the Program is performed in the E.U., these include in particular the provisions for the acquisition, detention and manipulation of *Select Agents and Toxins*, regulations applicable to Genetically Modified Organisms (European Directives 90/219/EEC and 2001/18/EC), and in case of *in vivo* use of the Material and Modifications, if any, laws and regulations relative to experimental animals (ethics, care and veterinary practice), notably the European Directive n°2010/63/E.U.

Recipient shall perform its Program in accordance with any applicable biodiversity legislation governing the access to genetic resources and benefits-sharing, notably any local or national rules, laws and regulations arising from the "*Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*" entered into force on October 12th 2014. Subsequently, Recipient shall fulfill all requirements pertaining to such applicable legislation.

As such, IP will communicate to Recipient the information related to the Material, in its possession at the date of signature of the present Agreement, as specified in Annex 3.

7- Termination and Dispute Resolution

7.1. Either Party shall have the right to terminate this Agreement at any time if the other breaches any of the terms, covenants or conditions of this Agreement.

7.2. Upon termination or expiration of this Agreement, Recipient shall immediately discontinue its use of the Material and return to IP or destroy any remaining Material, if any. Recipient, at its discretion, shall also either destroy the Modifications or, if not, remain bound by the terms of this Agreement as they apply to Modifications. At IP's request, a certificate of destruction shall be sent to IP duly signed by Recipient's legal representative. Confidential Information must also be returned or destroyed, except for one archival copy.

7.3. The Parties shall attempt in good faith to settle any disputes relating to this Agreement, its interpretation or enforceability. Should this attempt fail to be amicably settled within three (3) months from the notification of the dispute by a Party to the other Party, such dispute shall be submitted to the court of the defendant's domicile having jurisdiction over the subject matter at stake.

7.4. Articles 2.4, 3.4, 4 to 6, and 7.2 to 7.4 shall survive the termination of this Agreement

7.5. This Agreement contains the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any previous understanding, commitment or agreement, oral or written, regarding such subject matter including any general sale conditions of Institut Pasteur and any general purchase conditions of Recipient. Upon termination or expiration of this Agreement, any use of the Material shall be subject to the execution of new General Conditions of Transfer and Use as well as the payment of a new fee, the amount of which will be indicated in the annex thereof and in the corresponding invoice sent by IP.

7.6 Neither Party shall be liable to the other for any default under this Agreement due to a force majeure event, which the Parties agree to define for the purpose of this clause as an event which (i) is beyond the reasonable control of the defaulting Party, (ii) could not reasonably be foreseen when this Agreement was executed and (iii) the effects of which cannot be avoided by appropriate measures, recognized as such by the courts of competent jurisdiction. The affected Party shall communicate in the shortest delay and in writing to the other Party that the performance of its obligations is prevented by a force majeure event. If the affected Party is unable to perform its obligations under the Agreement for more than thirty (30) consecutive days, the other Party may terminate the Agreement immediately upon notice without incurring any liability.

7.7. The Parties expressly acknowledge and agree that this Agreement may be signed either (i) with wet ink signature in as many original copies as there are Parties with a distinct interest, or (ii) electronically in a single original copy that each Party undertakes to keep on a durable medium.

The Party using an electronic signature process undertakes to make available to the other Party, the certificate of completion containing the signature verification-data (identity of the signatory and link between the signature and the act to which such signature relates).

ANNEX 1 – MATERIAL

According to our quotation dated from xxxx and your order xxxxxxxxx dated from xxxxxx

The Recipient acknowledges to have the appropriate installations and equipment to use, store and dispose of the Material
☐ Yes ☐ No

The Material requires a dual-use export authorization
☐ Yes ☒ No

ANNEX 2 – PROGRAM

(For research purposes, please describe in 250 words maximum)

ANNEX 3 – MATERIAL'S ACCESS AND BENEFIT-SHARING INFORMATION

The Nagoya Protocol (NP) has created a framework under an international treaty that regulates the implementation of the objectives of the Convention on biological Diversity (CBD). Any biological resource (except human samples), i.e. plants, animals or microorganisms or parts thereof (including DNA), belongs to the country from which it originates. Appropriate permits (Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT)) from the country of origin may be required (at the discretion of each country) for the collection, export and use of resources. This applies not only to commercial use, but also to non-commercial (including scientific and educational) use.

It is the responsibility of users (not providers) of biological resources to prove that the resources they are using are compliant with Access and Benefit Sharing (ABS) rules of the country of origin of such resources.

In order to help users to fulfil this obligation, the provenance of strains (country of origin, date of collection) and copies of ABS permits, when these are required and available, are provided.

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Material (CRBIP reference, e.g. CIPXXX):

Due diligence information

Country of origin of the Material:	Year of Material's collect:

1. National authorization and conditions of use

<table>
<tr><td rowspan="4">Authorization to use the Material from the country of origin</td><td>☒ No*</td><td colspan="3">☐Yes
Authority having issued the authorization:</td></tr>
<tr><td rowspan="2">NA</td><td rowspan="2">Authorization</td><td colspan="2">☐IRCC (Internationally Recognized Certificate of Compliance)
☐PIC (Prior Informed Consent)
☐Other: XXX</td></tr>
<tr><td colspan="2">Date of issuance:
Reference number:</td></tr>
<tr><td>NA</td><td>Conditions of use</td><td colspan="2">Scope of authorized utilization (e.g. commercial purpose):
Transfer right (e.g. the right to transfer to a third-party):</td></tr>
<tr><td>NA</td><td>Mutually Agreed Terms (MAT)</td><td>☐Yes</td><td>☐No</td></tr>
</table>

* Institut Pasteur has no authorization related to the Material for one of the following reasons: country of origin of the Material is not a Party to the Nagoya Protocol, has no applicable biodiversity law, no authorization is needed or no response has been received to Institut Pasteur's access request.

More information on : https://absch.cbd.int/