AGREEMENT ON TRANSFER AND USE OF BIOLOGICAL MATERIAL

FROM TECHNICAL UNIVERSITY OF DENMARK

THE

IBT CULTURE COLLECTION AT THE DEPARTMENT OF BIOTECHNOLOGY AND BIOMEDICINE

(hereinafter referred to as the “MTA”)

This Agreement (as defined) on the transfer and use of biological materials is entered into by and between

Technical University of Denmark, the IBT Culture Collection, Department of Biotechnology and Biomedicine, Anker Engelunds Vej 1, DK-2800 Kgs. Lyngby, Denmark, Company Identification No. (CVR No.) 30 06 09 46
(Hereinafter referred to as "Provider")

and

Recipient as identified in the Proforma Invoice (hereinafter referred to as "Recipient")

(Each hereinafter individually referred to as "Party" and jointly as "Parties")

1. Definitions

Academic Use shall mean non-commercial research, development and teaching.

Agreement shall mean (i) this MTA, (ii) the Terms and Conditions, (iii) the Proforma Invoice and (iv) the Final Invoice. Documents (i)-(iv) constitutes the entire contractual relationship between the Parties with respect to Providers transfer of the Original Material to Recipient, and Recipients use of the Material.

Material shall mean the Original Material, including Progeny and Unmodified Derivatives and any genetic resources as well as know-how in any form including information provided in written, oral or visual form. The Material shall not include Modifications.

Modifications shall mean substances created by the Recipient which contain and incorporate the Material.

Original Material shall mean the material identified in the Proforma Invoice, which Original Material, Provider intend to transfers to Recipient under the Agreement.

Permitted Use shall mean the area of research and use, within which the Recipient is allowed to use the Material. Permitted Use is identified in the Proforma Invoice and is always subject to approval by Provider. For clarity, Permitted Use is limited to Academic Use and does not include any commercial exploitation.

Progeny shall mean unmodified descendants from the Material, such as cell from cell, cell from organism or organism from organism.

Regulatory Protocols shall mean national and/or international laws, rules, regulations, conventions, pertaining to e.g. import, export, use and environment etc. Regulatory Protocols also include – but are not limited to – the Nagoya Protocol and the Convention on Biological Diversity.

Unmodified Derivatives shall mean substances created by the Recipient, which constitute an unmodified functional subunit or product expressed by the Original Material. Unmodified Derivatives include, but are not limited to, subclones of unmodified cell lines, purified or fractionated subsets of the Original Material, chemicals expressed by the Original Materials, proteins expressed by DNA/RNA supplied by the Provider.

2. Ownership of the Material and Modifications

2.1. The Material shall remain the property of Provider. The right of ownership to Modifications accrues to the Recipient. However, the Provider retains ownership of the Material included in Modifications.

2.2. The Recipient will not obtain or attempt to obtain patent coverage on the Material or any use hereof without the prior written consent of the Provider.

3. Recipient's use of the Material and Modifications

3.1. The Provider grants to the Recipient a limited, non-exclusive right to use the Material for non-commercial research within the Permitted Use.

3.2. The Recipient may not under any circumstances use the Material in human or animal subjects, in clinical trials, or for diagnostic purposes involving human or animal subjects. The Material shall at all times be used in compliance with Regulatory Protocols.

3.3. The Recipient shall limit access to the Material to those of its staff who need access to the Material for the Permitted Use, and shall secure that any such persons with access to the Material complies with this Agreement.

3.4. Any use of the Material or Modifications by the Recipient for other purposes than the Permitted Use requires an execution of an addendum to this Agreement.

3.5. Any distribution of the Material or Modifications to any third party by the Recipient, requires the execution of an addendum to this Agreement.

3.6 The Recipient should use the Material with caution and prudence, due to the potentially hazardous and experimental nature of the Material.

3.7 Upon completion of the Permitted Use, Recipient shall destroy or return the Material at the request of Provider.

4. Commercial Use of the Material

4.1 Recipient is restricted from making any commercial use of the Material. By commercial use is meant e.g. exploiting the Material and/or Modifications by modifying, using, manufacturing, marketing and selling the Material and/or Modifications for the purpose of generating revenue.

4.2 At the request of Recipient, Provider may enter into good faith negotiations on concluding an agreement on commercial use of the Material and/or Modifications.

5. Provider's use of Modifications

5.1. The Recipient grants to the Provider an unlimited non-exclusive royalty-free license to use Modifications for Academic Use.

5.2 The Recipient shall keep Provider informed about Modifications which are conceived or reduced to practice by Recipient. Upon request from the Provider, the Recipient shall supply a sample of any Modifications to the Provider.

5.3 Genome data on the Material or Modification may be shared in good faith and subject to obligations of confidentiality, if so requested by Recipient, with Provider.

6. Acknowledgement

6.1. The Recipient agrees to provide appropriate acknowledgement of the source of the Material in all types of publications and communications by citing ''The IBT Culture Collection", hereunder the "IBT no." as listed in the Proforma Invoice.

7. Confidentiality

7.1 Information related to the Material shall be considered confidential information (hereinafter "Confidential Information"), subject to being marked "confidential" (or similar marking), or if disclosed orally, subsequently being confirmed in writing no later 60 (sixty) days after disclosure as being confidential, or if apparent from the circumstances that the information is of a confidential nature.

7.2 The duty of confidentiality under Section 0 shall not apply to Confidential Information which:

- at the time of receipt is or later becomes available to the public other than through the Recipient's breach of the duty of confidentiality as set forth in this Agreement;
- was lawfully in the Recipient's possession at the time the Material was received without any confidentiality restrictions; or
- was received from a third party who appeared to be entitled to lawfully disclose the Confidential Information.

7.3 In the event of disagreement between the Parties, the Recipient has the burden of proof that the Confidential Information received is comprised by Section 7.2.

7.4 In the event that the Confidential Information transferred under the Agreement becomes subject to legislation or executive orders, public law decisions, judgments, awards, etc. requiring the Recipient to pass on the Confidential Information in whole or in part, the Recipient shall inform the Provider hereof without delay. The Recipient's compliance with any such required transfer of the Confidential Information shall not constitute any breach of the duty of confidentiality under this Agreement.

7.5 Obligations of Confidentiality shall terminate 3 (three) years after the date of the Proforma Invoice, cf. Section 10.1.

8 Limitation of liability

8.2 The Material is provided "AS IS" and the Provider expressly disclaims all warranties of any kind concerning the Material, express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement of third party intellectual property rights and non-compliance with Regulatory Protocols.

8.3 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 Recipient will at all times during the term of this Agreement and thereafter, indemnify, defend and hold the Provider harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death or injury to any person or persons or out of any damage to property, resulting from the use, handling, storage or disposition of the Material or arising from any obligation of the Recipient hereunder non-compliance with Regulatory Protocols.

8.4 The Recipient accepts that the Provider shall be entitled to seek injunctive relief in any applicable jurisdiction to prevent breach of the Agreement and to seek specific performance of the Agreement in addition to all other available remedies.

9 Warranties and Representations

9.1 Recipient warrants and represents to use the Material in compliance with (i) national guidelines regarding Regulatory Protocols for the use of bio resources and (ii) handling of the Material according to applicable safety classifications and safety measures.

9.2 Recipient shall in no circumstances pass on the Material to any third party, including, but not limited to, companies which may form part of the same group as Recipient.

10 Term and termination

10.1 The Agreement shall enter into force on the date of the Final Invoice and shall terminate upon completion of the activity covered by the Permitted Use. Further the Agreement may be terminated at any time by Provider by serving a three (3) months' notice to Recipient. Certain provisions of the Agreement are by their nature meant to survive termination.

10.2 Provider may terminate the Agreement without notice, subject to Recipient being in breach. In such case, e.g. Recipient's use of the Material shall cease.

11. Miscellaneous

11.1 The Agreement may not be assigned to any third party without the prior written consent of the Provider.

11.2 If any section of the Agreement is deemed unenforceable or invalid for any reason, the remaining parts of the Agreement shall not be affected hereby. The Parties shall enter into negotiations for the purpose of substituting such section with a corresponding, valid and enforceable wording, if possible.

11.3 The Parties shall inform each other of any conflict of interest. In the event that a Party becomes aware of or suspects that a conflict of interest has emerged, such Party shall inform the other Party hereof without delay for the purpose of finding a joint solution. Provider may be required to provide information about conflicts of interest. The Recipient accepts that Provider complies with such request.

12. Governing Law and Venue

12.1 The Agreement shall be governed by the laws of Denmark. This applies whether or not the application of international private law and choice of law rules may lead to the application of another country's laws.

12.2 Should a dispute arise between the Parties in connection with the Agreement, including its interpretation and use, the Parties shall enter into negotiations in good faith in order to solve the dispute.

12.3 Any dispute shall be settled by the District Court of Lyngby, Denmark, as the court of first instance.