

NCIMB MATERIAL TRANSFER AGREEMENT

For the sale or transfer of cultures

Definitions

- a. **NCIMB:** NCIMB Ltd. a biotechnology company having its principal offices at Ferguson Building, Craibstone Estate, Bucksburn, Aberdeen, AB21 9YA, UK
- b. **AGREEMENT:** This document
- c. **PROVIDER:** NCIMB
- d. **RECIPIENT:** Purchaser, end user, or any intermediaries in the chain of custody of the strain or strains supplied
- e. **DEPOSITOR:** person(s) who provided NCIMB with the ORIGINAL MATERIAL
- f. **ORIGINAL MATERIAL:** That which was originally supplied to NCIMB by the depositor, or subsequently as a result of a re-accession of the same strain
- g. **MATERIAL:** ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES. The MATERIAL shall not include MODIFICATIONS
- h. **PROGENY:** Unmodified descendant (e.g. sub-culture or replicate) from the MATERIAL
- i. **UNMODIFIED DERIVATIVES:** Replicates or substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the MATERIAL, such as, but not limited to, purified or fractionated subsets of the material, including expressed proteins or extracted or amplified DNA/RNA
- j. **MODIFICATIONS:** Substances created by the RECIPIENT by using the MATERIAL which are not the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES and which have new properties. MODIFICATIONS include, but are not limited to, recombinant DNA clones
- k. **COMMERCIAL PURPOSES:** The sale, leasing, license, or other transfer of the MATERIAL for the purpose of profit
- l. **EXCHANGE:** the transfer of the MATERIAL, within the same Company or Institution or Research Group. This also includes the gratis exchange of MATERIALS between named culture collections for accession purposes.

NCIMB LTD IS NOT WILLING TO TRANSFER MATERIAL TO YOU ON ANY TERMS OR CONDITIONS OTHER THAN THE FOLLOWING. PLACING AN ORDER WITH NCIMB LTD CONSTITUTES YOUR ACCEPTANCE OF THIS MATERIAL TRANSFER AGREEMENT.

This Material Transfer Agreement ("AGREEMENT") is between NCIMB and the purchaser ("RECIPIENT") of NCIMB MATERIALS.

Scope of AGREEMENT. This Agreement applies to the use, handling, sale, distribution and any disposition of the MATERIAL supplied by NCIMB.

1. Purchaser Rights, Responsibility and Safety

- (a) Purchaser shall not sell, lend, distribute, or otherwise transfer the MATERIAL to any others, save those involved in legitimate EXCHANGES as defined above.
- (b) Subject to the terms and conditions of this AGREEMENT and any statutory, regulatory or other restriction imposed by law or any third party interest, RECIPIENT may use the MATERIAL in any lawful manner for the purpose of scientific research, teaching or QC purposes or any such other purposes, **excluding propagation for re-sale, or re-branding, re-packaging and distribution**, unless agreed in writing with NCIMB or as part of a legitimate EXCHANGE. The use and distribution of patent cultures is covered by patent legislation.
- (c) RECIPIENT 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 utmost care, taking into account the unique characteristics of the MATERIAL, to maintain and use it with appropriate precautions to minimize any risk of harm to persons and property and to safeguard it from theft or misuse. RECIPIENT agrees that MATERIAL or PROGENY designated Risk group 2 or above (as defined by the national regulations of the country where the collection is located) constitute known pathogens and that other MATERIAL, not so designated may be pathogenic under certain conditions. **RECIPIENT, not NCIMB, assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, use and any misuse or other wrongdoing with respect to MATERIAL transferred hereunder.** RECIPIENT agrees that any handling or other activity undertaken in their laboratory with the MATERIAL will be conducted in compliance with all applicable laws and regulations. **No bacterial samples should be opened without the user first having read the hazard data sheets supplied with the cultures.**
- (d) RECIPIENT represents, warrants and covenants that all information provided to NCIMB in connection with any purchase order for MATERIAL is true, correct and complete, including, without limitation, any information provided for use in obtaining any license, permit or other authorization with respect to orders hereunder; or otherwise complying with

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applicable laws and regulations. RECIPIENT agrees to comply with all restrictions on export from the United Kingdom and re-export from other countries set forth in the export licenses and any other permit or authorization required by law for the MATERIAL supplied.

With respect to transfers of MATERIAL to destinations outside the United Kingdom, (i) RECIPIENT assumes all risk and responsibility in connection with complying with applicable foreign law and regulations concerning the import, handling, transportation, storage, use, and misuse or other wrongdoing with respect to MATERIAL and (ii) RECIPIENT has advised NCIMB when placing its order of any foreign legal or regulatory requirements pertaining to the requested shipment to be implemented within the United Kingdom in connection with such shipment.

2. Use of materials, Intellectual Property Matters and the CBD

- (a) Nothing in this AGREEMENT grants RECIPIENT any rights under any patents, propriety, intellectual property, or other rights with respect to the MATERIAL.
- (b) RECIPIENT agrees to acknowledge NCIMB and any contributor indicated by NCIMB as the source of the MATERIAL in any and all publications and patent applications that reference the MATERIAL. Except as required by the preceding sentence, RECIPIENT may not otherwise use or permit others to use NCIMB's name, trademarks or unique catalogue numbering system, without the advance written consent of NCIMB.
- (c) RECIPIENT shall indemnify NCIMB, to the extent permitted by law, against any claims made against NCIMB by third parties relating to any patent or other proprietary rights of such third parties and also against any claims or liabilities arising as a result of breach of Sections 1 or 2 of this MTA. This includes, without limitation, any claims relating to, the receipt, handling, storage, transfer, disposal, use and any misuse or other wrongdoing with respect to Material transferred hereunder.
- (d) If the RECIPIENT desires to **use the MATERIAL or MODIFICATIONS for defined COMMERCIAL PURPOSE(S), it is incumbent upon the RECIPIENT**, in advance of such use and providing that their Country of origin is a signatory to the Convention on Biological Diversity (CBD), **to negotiate in good faith with the DEPOSITOR or appropriate authority in the DEPOSITOR's country of origin, the terms of any benefit sharing in compliance with the CBD.**

3. Limited Warranty of Material

(a) NCIMB hereby represents and warrants, that the MATERIAL shall be viable and pure upon shipment from NCIMB, and for a period, from NCIMB's shipment, of ninety (90) days for freeze dried cultures and seven (14) days for active cultures (the "Warranty Period"). The primary remedy for breach of this warranty is replacement by NCIMB of the MATERIAL free of charge if lack of viability or purity is reported upon receipt or within the applicable Warranty Period. Any claim against the Warranty will have to be justified to NCIMB's satisfaction. Any expiration date specified on the MATERIAL shipment documentation does not constitute a warranty.

(b) Goods damaged or goods partially lost in transit must be reported to NCIMB within 3 days of receipt of the goods and goods which fail to appear must also be reported to NCIMB within 14 days of either notification of dispatch or receipt of invoice.

(c) In exceptional circumstances, and at the discretion of NCIMB, the RECIPIENT may obtain a credit or full refund if the PROVIDER fails to supply a viable replacement of any MATERIAL sold.

(d) Disclaimer of warranties. Except as expressly provided in this AGREEMENT, there are no representations or warranties by NCIMB or its DEPOSITORS with respect to the MATERIAL, express or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose. Neither NCIMB nor its DEPOSITORS makes any representation or warranty that use of the items will not infringe any patent, copyright, trademark or other proprietary right of third parties nor as to the accuracy or correctness of the data.

(e) NCIMB may, at its discretion, provide technical assistance and information with respect to the MATERIAL as well as other products and procedures associated with use of the MATERIAL. NCIMB makes no warranties of any kind, express or implied, with respect to the technical assistance or information provided. It is the RECIPIENTS responsibility to assess the technical assistance and information in consideration of the use, selection, application or suitability of the items purchased. In placing an order with NCIMB, it is assumed the RECIPIENT has the facilities, knowledge and technical skills required to culture the strain or strains supplied.

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4. Limitation of liabilities

- (a) RECIPIENT recognises the potential hazard of utilising the MATERIAL, the experimental nature of the MATERIAL and understands that the taking of appropriate precautions to minimise any health risk becomes fully their responsibility upon receipt of the MATERIAL. Neither NCIMB nor any authorized supplier of NCIMB cultures is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling or use of the MATERIAL.
- (b) Similarly, neither NCIMB nor any authorized supplier is liable from any misidentification, misrepresentation, lack of title, safety, variation of typicality of the MATERIAL supplied. Neither NCIMB nor its authorized suppliers will be liable to the RECIPIENT or the RECIPIENT's institution or any of its employees, representatives, or agents for any loss, claim or demand made by the RECIPIENT or the RECIPIENT's institution or such persons made against RECIPIENT or the RECIPIENT's institution by any other party, due to or arising from the use of the items by RECIPIENT, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of NCIMB.
- (c) Neither NCIMB nor any authorized supplier shall have any liability to you or your institution for any consequential (including lost profits), incidental, indirect, special, economic or punitive damages arising out of, or based upon the transactions contemplated by this AGREEMENT or the subject hereof, even if NCIMB has been advised of the possibility of such damages.
- (d) The exclusive remedy against NCIMB (including any agent) for any losses or damage of any kind whatsoever, whether in contract, tort or otherwise, shall be, at NCIMB's discretion, including refund of the fee paid to NCIMB for such MATERIAL or other item or replacement of the MATERIAL.

5. Shipping

NCIMB will package the MATERIAL for shipping in accordance with local, national and international safety regulations (including IATA regulations).

The RECIPIENT is responsible for ensuring that all permits required for the RECIPIENT to receive its order are obtained and that sufficient proof of such permits can be provided to NCIMB if requested. If special processing or packaging or shipment is necessary or is requested by the RECIPIENT, a special processing fee will be charged. If the MATERIAL is lost or damaged during shipment, NCIMB will investigate the circumstances and at its discretion, replace such MATERIAL, including storage media, at no additional charge, provided that the RECIPIENT has reported thawed, damaged or lost shipments immediately to the applicable airline or freight forwarder and notified NCIMB promptly upon discovery thereof (See "NCIMB conditions of sale.")

6. Miscellaneous

- (a) Certain contributors of MATERIAL to NCIMB have requested, and NCIMB has agreed, that they will be notified of the identity of transferees of MATERIALS hereunder. RECIPIENT acknowledges that nothing prohibits NCIMB from identifying RECIPIENT as a transferee of MATERIALS hereunder.
- (b) RECIPIENT understands and accepts that, NCIMB may refuse further sales of its products should RECIPIENT wilfully violate the terms of this AGREEMENT.
- (c) The RECIPIENT may not assign or otherwise transfer this AGREEMENT or any rights or obligations under this AGREEMENT, whether by operation of law or otherwise. Any attempted assignment or transfer will be void and have no force or effect. This Agreement, including all documents incorporated herein and in conjunction with NCIMB's Terms and Conditions, constitutes the entire AGREEMENT between NCIMB and RECIPIENTS with respect to all MATERIALS and supersedes all previous AGREEMENTS or representations. NCIMB may revise this Agreement at any time.
- (d) This Agreement shall be construed and enforced in accordance with and governed by the laws of Scotland, UK.
- (e) All other terms, including payment and banking details, are included in the "NCIMB conditions of sale" which are printed on the reverse of the sales invoice.

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