

MATERIAL TRANSFER AGREEMENT ("MTA")

Terms and conditions applicable to the use, handling, supply, distribution, sale, and any disposition of the material

DEFINITIONS

- a. SOURCE: VIB vzw, non-profit organisation with registered office at Rijvisschestraat 120, B-9052 Zwijnaarde, Belgium.
- b. PROVIDER: BCCM/GeneCorner (Ghent University) being the organisation authorised by VIB to preserve and to distribute the MATERIAL.
- c. RECIPIENT: legal entity representing the RESEARCH GROUP.
- d. DEPOSITOR: natural or legal person who deposits MATERIAL in the custody of the PROVIDER.
- e. RECIPIENT SCIENTIST: recipient researcher responsible for the use of the MATERIAL as specified in the order form.
- f. RESEARCH GROUP: team of entitled scientists supervised by the RECIPIENT SCIENTIST.
- g. MATERIAL: see <https://bccm.belspo.be/catalogues/plasmid-sets/openpichia>.

TERMS AND CONDITIONS

1. The PROVIDER is willing to transfer the MATERIAL to the RESEARCH GROUP represented by the RECIPIENT. The SOURCE and the PROVIDER grant RECIPIENT a limited non-exclusive license for the use of the MATERIAL by the RESEARCH GROUP under the terms and conditions specified in this Material Transfer Agreement.
2. The RECIPIENT shall not sell, lease, license, lend, supply, distribute or otherwise transfer the MATERIAL to any third party other than the RESEARCH GROUP.
3. The RECIPIENT agrees that the MATERIAL is to be used under the responsibility of the RECIPIENT, in compliance with all applicable laws and regulations.
4. Use of the MATERIAL may be subject to intellectual property rights. No express or implied licenses or other rights are provided herein to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights.
5. Without prejudice to the generality of article 4, the MATERIAL contains plasmid DNA containing annotated coding regions or elements, for which neither SOURCE or PROVIDER are aware of any patents actively prohibiting the use of those plasmids, apart from those listed below:
- for the element annotated as sfGFP, an active patent was identified at the time of establishment of this kit in the US (US8420390B2 and US8372635B2), which may thus be relevant for analysis of infringement for the user upon import in the US;
 - for the element annotated as mRFP, an active patent was identified at the time of establishment of this kit in Europe and the US (EP1494697, US7329735B2, US7005511B2), which may thus be relevant for analysis of infringement for the user upon import in a jurisdiction where said patent is still actively maintained.
6. Without prejudice to the generality of article 4, the MATERIAL has been generated based on the modular cloning system and methods disclosed in the patent family containing EP2580332B1 (rights owned by Icon Genetics GmbH; also pending US application), not active in the country of production (BE), though may be relevant for analysis of infringement for the user upon import in an EPC country where said patent is still actively maintained.
7. It is the RECIPIENT's sole responsibility to obtain any intellectual property licenses necessary for the use of the MATERIAL. The RECIPIENT agrees, in advance of such use, to negotiate in good faith with the intellectual property rights owner(s) to establish the terms of a commercial license.
8. The RECIPIENT agrees to mention the PROVIDER's catalogue number (1) in all publications, as recommended by the code of conduct MOSAICC and the TRUST system (2).
9. The use of the MATERIAL may be subject to specific restrictions which are mentioned in the catalogue description for the particular MATERIAL and are hereby acknowledged by RECIPIENT.
10. The PROVIDER will process, package and ship the MATERIAL in accordance with applicable laws and regulations. RECIPIENT is solely responsible for the import of MATERIAL into country of destination. RECIPIENT is responsible for ensuring that all permits required for RECIPIENT to receive its order are obtained.
11. Any MATERIAL delivered pursuant to this MTA is understood to be experimental in nature and may have hazardous properties. The MATERIAL is to be used with caution and prudence. The SOURCE and the PROVIDER makes no representations and extends no express or implied warranties, including any warranty of merchantability or fitness for a particular purpose, or that the use of the MATERIAL does not or will not infringe any patent, copyright, trademark, or other proprietary rights.
12. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages, which may arise from its import, use, storage or disposal of the MATERIAL.
13. Neither the SOURCE, nor the PROVIDER will be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT or by any other party, due to or arising from the import and/or use of the MATERIAL by the RECIPIENT, except to the extent caused by the wilful misconduct of the SOURCE or of the PROVIDER.
14. Neither this Agreement nor any rights or obligations contained herein are assignable, whether by operation of law or otherwise, without the prior written consent of the SOURCE and the PROVIDER.
15. The version of the MTA applicable to any MATERIAL ordered by the RECIPIENT shall be the version in effect at the time of order placement, as it can be found on the BCCM website <https://bccm.belspo.be/>.
16. Belgian laws, with exclusion of its conflict of law provisions, shall govern this Agreement. Belgian laws will pre-empt any conflicting or inconsistent provisions in this Agreement. The Brussels Courts are competent to judge any conflict arising out of this Agreement (3).

(1) The PROVIDER's catalogue number refers to the PROVIDER, to the MATERIAL, to the SOURCE and to the DEPOSITOR of the MATERIAL.

(2) For more information see MOSAICC and TRUST at <https://bccm.belspo.be/knowledge/links>

(3) For distribution outside the European Union Article 16 is not applicable and is replaced by the following provision:

16bis Any dispute or controversy in relation to, in connection with or resulting from this Agreement that cannot be solved amicably between the parties shall be subject to the jurisdiction of the appropriate national court of the party who would be the prospective defendant in legal action on the issue. The choice of law shall be that of said appropriate national court. Either party may bring proceedings for an injunction in any jurisdiction.