# **MATERIAL TRANSFER AGREEMENT**

*Nomenclature : dispositions ajoutées et/ou modifiées –* en option ou à compléter *– commentaires/informations à supprimer de la version proposée au partenaire*

***Questions préliminaires essentielles :***

* *Choix du modèle type :*
* *S’agit-il d’un MATERIEL* ***ENTRANT*** *à INRAE ou* ***SORTANT****d’INRAE?*
* *S’il s’agit d’un MATERIEL* ***SORTANT d’INRAE****, il est nécessaire de prendre le MTA TYPE MATERIEL* ***SORTANT****.*

Le MTA concerne uniquement du matériel biologique/végétal/animal/microbien/génétique/autre (sol, substrat de culture, échantillon environnemental, échantillon et produits du corps humain…). Il ne peut pas être utilisé pour transférer des biens mobiliers ou des logiciels, des données et/ou des bases de données.

En cas de transfert de **logiciels, données et/ou bases de données**, il est nécessaire de signer une **licence**.

En cas de transfert de matériel mobilier non biologique (caméra, tracteur…), il est nécessaire de mettre en place un contrat de prêt de matériel (voir modèle DCSDAR sur flash3).

En cas de dépôt de matériel au sein d’une collection, il est nécessaire de mettre en place un contrat de dépôt de matériel.

* *Le présent modèle s’applique uniquement au MATERIEL* ***ENTRANT à INRAE****.*
* *En cas de transfert entre unités INRAE, une simple fiche de traçabilité suffit.*

* *Ne pas oublier de vérifier que nous détenons* ***les droits et autorisations*** *pour transférer le MATERIEL (à réaliser par le porteur de projet sous la responsabilité du DU) :*
* *Le MATERIEL provient-il d’un tiers ?*
* *Le MATERIEL a-t-il été utilisé ou obtenu dans un contrat ?*

*Si la réponse est oui à l’une de ces questions, il faut se référer au contrat de transfert ou de collaboration pour savoir si on a le droit de transférer le matériel.*

* *Ne pas oublier les* ***formalités APA*** *liées à l’utilisation du MATERIEL (à réaliser par le DU en cas de procédure de déclaration APA. Sinon à réaliser par le PC) :*

*L’ obtention et l’utilisation du MATERIEL sont-elles soumises à des autorisations préalables ou des obligations particulières au regard la législation APA du pays d’origine (accès et partage des avantages – Protocole de Nagoya) ?*

* *Ne pas oublier les* ***formalités réglementaires*** *liées à l’utilisation du MATERIEL (à réaliser par le PC ou le DU en fonction du cadre réglementaire concerné) :*

*Le MATERIEL nécessite-t-il des formalités de transfert particulières (liées aux réglementations concernant les activités scientifiques en lien avec sécurité et la sûreté biologiques) ?*

***Attention : Si le matériel est issu du corps humain, des formalités au titre du Codecoh, du Code de la santé publique et du RGPD sont à prévoir.***

* ***Pour en savoir plus :***
* [*https://intranet.inrae.fr/prevention/ACCES-PAR-THEME/Securite/Risque-biologique*](https://intranet.inrae.fr/prevention/ACCES-PAR-THEME/Securite/Risque-biologique)
* [*https://intranet.inrae.fr/daj/Activites-juridiques-du-soutien-a-la-recherche/Reglementation-relative-a-l-acces-aux-ressources-genetiques-APA-TIRPAA*](https://intranet.inrae.fr/daj/Activites-juridiques-du-soutien-a-la-recherche/Reglementation-relative-a-l-acces-aux-ressources-genetiques-APA-TIRPAA)

* *<https://intranet.inrae.fr/donnees-personnelles/Les-demarches-de-mise-en-conformite/Aide-au-choix-des-formalites/Recherche-en-sante-humaine>*
* *En cas de doute, le DU peut s’adresser à :*
* *L’équipe sécurité biologique via Ariane sécubio ou par mél. à* *contact.secubio@inrae.fr*
* *La cellule APA via le mél apa@inrae.fr*

**BETWEEN:**

The National Institute for Agricultural Research, Food and Environment (INSTITUT NATIONAL DE RECHERCHE POUR L’AGRICULTURE, L’ALIMENTATION ET L’ENVIRONNEMENT), French public scientific and technological research establishment

Designated hereinafter: INRAE

Having its registered offices at:147 Rue de l’Université, 75338 PARIS CEDEX 07-FRANCE

Represented by Mr. Phillippe MAUGIN, acting in his capacity of President and by delegation by Mrs. / Mr **XX**, Director of the Resarch Unit called **XX**,

Hereinafter designated as “Recipient”

**AND**

XX [to complete], at **XX**, whose registered offices are located at [to complete], represented herein by Mrs. / Mr [Title],

Hereinafter designated as “Provider”

Individually called “the party” or collectively “the parties”.

**BEING UNDERSTOOD THAT**

The Provider has in its possession biological/plant/animal/microbe/genetic/other (soil, culture substrate, environmental sample, sample or products from the human body….) material , the “MATERIAL” consisting of: [à compléter en décrivant le MATERIEL ou renvoyer à l’ annexe 1].

Choisir une des deux dispositions ci-dessous selon si le MATERIEL a fait ou non l’objet d’un titre de propriété industrielle

This MATERIAL has been protected by a deed of industrial property [indiquer les référence du dépôt : exemple le n° de priorité d’un brevet]

**OU**

This MATERIAL has not been protected by a deed of industrial property.

The Recipient is interested in the MATERIAL held by the Provider to conduct research [indiquer : internal ou collaborative, c’est-à-dire menées en partenariat avec des tiers publics et/ou privés] on XX [décrire OBLIGATOIREMENT en quelques lignes l’objectif des travaux de recherche]

OPTION 1 : research

OPTION 2 : research [indiquer : internes ou collaboratives c’est-à-dire menées en partenariat avec des tiers publics et/ou privés] sur [décrire en quelques lignes l’objectif des travaux de recherche]

"CONFIDENTIAL INFORMATION" in this agreement shall mean any information, oral or written identified as confidential relating to the MATERIAL.

**IN CONSEQUENCE WHEREOF THE PARTIES AGREE AS FOLLOWS**

1. The MATERIAL is described in annex 1 attached to this Agreement. The Provider undertakes to supply to the Recipient a MATERIAL as described in Annex 1 following the signature of the agreement by both Parties. The Provider fulfil Annex 2 of the agreement with information and documentation concerning the MATERIAL in accordance with article 4.3 of regulation EU 511/2014. In case the Recipient would ask for complementary information, the Provider undertakes to communicate the requested information if available, subject to confidentiality commitments towards third parties.
2. The Provider warrants to the Recipient that the MATERIAL complies with what is described in Annex 1 and that, to the best of its knowledge and based on reasonable investigation, it does not contain any unmentioned elements likely to negatively impact its characteristics or to represent a potential danger to humans, animals or the environment, neither elements prohibited by regulations applicable to the Recipient.
3. Responsibility for the MATERIAL is transferred at the time of delivery.

The Provider retains entire responsibility for the MATERIAL during transport and until completion of sanitary formalities and, where applicable, custom clearance.

1. The Provider is responsible for planning and financing a customs freight forwarder to secure the arrival of the package in the country of destination.
2. The Recipient undertakes to use the MATERIAL and the CONFIDENTIAL INFORMATION according to the national and international laws and regulations and will make its business of obtaining all authorisations needed to the conduct of its research and experiments.
3. The MATERIAL is supplied to the Recipient on a non-exclusive basis and for the sole purpose of the research and experiment described above. Consequently, the Recipient undertakes to use the MATERIAL only to this end, to the exclusion of any other use.
4. The Provider is recognized as the exclusive owner of the MATERIAL or as being authorized, in particular under the international conventions in force to supply the MATERIAL to the Recipient, as well as any line, strain, reproduced element, by-product, derivative (modified or not) thereof and, CONFIDENTIAL INFORMATION provided to the Recipient, as well as industrial and intellectual property rights relating thereto. Save further express and written agreement, the Provider does not grant to the Recipient any right, title deed, right of license or exploitation right of the MATERIAL and CONFIDENTIAL INFORMATION.
5. Except for the foregoing and subject to the right of the Provider on the MATERIAL, the results, that are independent from said MATERIAL, obtained by the Recipient for the use of the MATERIAL and the CONFIDENTIAL INFORMATION as mentioned in the preamble, hereinafter designated “Results” shall be owned by the Recipient. The Recipient shall not include the MATERIAL or any part of it or/and CONFIDENIAL INFORMATION in any patent application or other deed of industrial property without the preliminary written agreement of the Provider.
6. The Recipient will not proceed to manipulations or alterations, which could affect the rights of the Provider or of the owner of the MATERIAL and the CONFIDENTIAL INFORMATION, without the written and preliminary agreement of the Provider. The Recipient is not authorised to combine, to mix or to incorporate the MATERIAL with another material (biological or not) except for the needs of the research as defined in preamble or in case the MATERIAL is protected by a Plant Variety Certificate (PVC) to obtain a new plant variety within the meaning of the UPOV Convention.
7. The Recipient acknowledges the confidential nature of the MATERIAL and the CONFIDENTIAL INFORMATION and agrees:
* to supply the MATERIAL and CONFIDENTIAL INFORMATION only to members of his permanent and non permanent staff and (choisir parmi les options) ……, who agree with the provisions of this agreement, and who need the said MATERIAL and CONFIDENTIAL INFORMATION to carry out the research as defined in preamble;
* to take all reasonable measures to avoid that his staff reveals to third parties, even for free, without written and preliminary agreement of the Provider, all or any of the MATERIAL and CONFIDENTIAL INFORMATION.

The Recipient assumes the entire responsibility for implementing the obligations of this agreement towards every person having access to the MATERIAL and / or to the CONFIDENTIAL INFORMATION.

The obligations of confidentiality of the parties in this agreement do not apply to the CONFIDENTIAL INFORMATION and to the MATERIAL:

* which is in the public domain at the time of its disclosure by one of the parties;
* which fall in the public domain without any breach of this agreement;
* which was legally supplied by a third party not being submitted to obligations of confidentiality;
* which is already known by the the Recipient before the coming into force of this agreement without having been communicated, directly or indirectly, by a third party being submitted to an obligation of confidentiality,
* which is required to be disclosed in order to comply with applicable laws or regulations or with a court or administrative order.

11. The Results obtained by the Recipient through the use of the MATERIAL and the CONFIDENTIAL INFORMATION refered to in the preamble shall not be disclosed without the written prior agreement of the Provider. Prior notice of any planned disclosure shall be given to the Provider at least thirty (30) calendar days before the disclosure. If no response is given within the time limit stated above, its consent shall be deemed to have been given. In accordance with actual scientific practices, all publications or communications relating to the use of the MATERIAL and the CONFIDENTIAL INFORMATION will mention their source.

Similarly, the contribution of the Provider staff to making the MATERIAL and the CONFIDENTIAL INFORMATION accessible shall be expressly mentioned (as defined in annex 1) in any and all publications or communications, either by acknowlegment, or by mentioning them as co-authors .

12. When Results including genetic information relating to the MATERIAL give rise, subject to the provisions of Articles 7, 9 and 10, to a deposit in a database, a publication and/or a patent application by the Recipient, the latter undertakes to communicate to the Provider the accession number in the database, the DOI and/or the patent application number, so that the Provider can include them in the accession data of MATERIAL.

13 The MATERIAL supplied here is of experimental nature. the Provider gives no warrantee or representation as for its utility, efficiency, merchantability, non-toxicity, safety, fitness for a particular use. The Provider declines any liability or responsibility concerning any and all damages caused by the MATERIAL and / or the CONFIDENTIAL INFORMATION, and by the use which could be made of it. the Provider makes no representation or warranty that the use of the MATERIAL and / or the CONFIDENTIAL INFORMATION will not infringe any patent or other proprietary right.

14. Personal data in the context of the contractual relationship

The parties acknowledge that they may be required to collect and process categories of personal data related to the identity and professional contact details of their respective staff (e.g. name, professional telephone number, professional address, title) for the sole purpose of management of the current agreement, in particular their staff involved in the negotiation, the signature and the implementation of this agreement. The processing is based on the parties’ legitimate interest.

In this context, each party recognizes and guarantees the compliance with the regulations regarding personal data protection. Further information on personal data processing by INRAE ​​is available at the link below: <https://www.inrae.fr/collaborer/partenariat-innovation> .

In order to preserve their rights on data, concerned persons shall contact the staff of the party who has managed this agreement, and in the event of difficulties, it is possible for them to contact the Data Protection Officer (DPO) designated by the concerned party.

For INRAE: cil-dpo@inrae.fr

For XXX:

15. Personal data linked to the MATERIEL

15.1 The Parties undertake, in the framework of the transfer of the MATERIAL, to comply with the legal and regulatory provisions relating to the protection of personal data.

15.2 In this respect, the Recipient undertakes to:

\*complete legal and regulatory procedures relating to the protection of personal data and to the use of samples and products from the human body,

• implement appropriate technical and organizational measures so as to be able to demonstrate that the processing is carried out in accordance with the requirements of the protection of personal data.

In this respect, the Provider:

• guarantees that it holds all the noties, authorizations and/or approvals required by legislation relating to the initial processing of personal data and the holding of samples and products of the human body,

\*transfers personal data and samples and products from the human body under cover of a unique identifying number,

\*regularly updates personal data, in order to respect the rights of individuals (right of information, access, correction, opposition and right to withdraw consent) as well as the applicable storage period, and communicates the necessary information to the Recipient,

\*undertakes to exclude from transfer the samples and data of people who have objected to their use for research purposes,

\* undertakes to notify the Recipient in the event of refusal or withdrawal of consent occurring after the transfer of Material. This will only apply to research that began after this withdrawal date (due to aggregation of results).

15.3 In addition, the Parties mutually undertake to:

• take all measures to avoid any misappropriation or fraudulent use of computer files relating to personal data,

• take all security measures, particularly material and organizational, to ensure the confidentiality, conservation and integrity of personal data.

15.4 No communication or publication relating to the Agreement shall contravene the obligations of confidentiality, security or protection of personal data. Consequently, no personal data collected or processed (in particular the Supplier's unique identifier number) within the framework of the Agreement may be disseminated in the context of open data.

**15** This agreement will come into effect in the date of its signature, for a duration of **XX** [indiquer la durée appropriée en fonction du délai de réalisation des travaux de recherche mentionnés en préambule] months. At expiry of this agreement, the Recipient (choisir une option)……. MATERIAL as well as any derived MATERIAL except in case of derivated MATERIAL protected by a PVC.

In any case, the obligations of confidentiality contained in this agreement will be maintained as long as the MATERIAL and / or the CONFIDENTIAL INFORMATION is not released in the public domain.

**16** This agreement is submitted to the French law. The parties will do their best to resolve amicably any dispute as for the interpretation or the performance of this agreement. In case of persistent disagreement, the parties will submit this one to the French courts.

In witness whereof, this agreement has been drawn up in two original copies.

Done in\_\_\_\_\_\_ originals, on \_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **THE RECIPIENT**Name :Title(s) :**$$ZONESIGNER1$$** | **THE PROVIDER**Name :Title(s) :**$$ZONESIGNER2$$** |

**ANNEX 1 – MATERIAL AND CONFIDENTIAL INFORMATION DESCRIPTION**

*(Nouvelle annexe à intégrer ou à compléter en cas de modèle proposé par le fournisseur).*

Il est nécessaire de décrire le MATERIEL qui sera transmis dans le cadre de ce MTA.

|  |  |
| --- | --- |
| *Ownership of the MATERIAL\** |  |
| *Description of the MATERIAL\** |  |
| *Origin of MATERIAL (Country)\** |  |
| *Intellectual property rights (references), if applicable\** |  |
| *INFORMATIONS concerning MATERIAL\** | [ ]  The MATERIAL does not contain radioactive elements.[ ]  The MATERIAL is not or does not contain GMOs or genetically edited organisms.If this box is not checked, please specify the transformation event(s) (sequences, insertion loci, vectors, hosts, etc.)………………………………………………………………………………………………………………………………………………………………☐ If the MATERIAL is a human or animal pathogen, an organism harmful to plants, another conventional or non-conventional pathogen, an invasive, harmful or protected species, a sample or product from the human body, a non-indigenous micro-organism, the Provider guarantees that it is fully in compliance, where applicable, with the rules of the WHO, the WOAH, the FAO, the Cartagena Protocol, or any applicable national or international convention / rule, as well as the rules applicable to packaging, transport and, where applicable, customs entry point requirements. |
| *CONFIDENTIAL INFORMATIONS[[1]](#footnote-1)* |  |
| *Date and place of delivery and delivery modalities \** |  |

|  |  |  |
| --- | --- | --- |
|  | **Delivered by\*** | **Received by\*** |
| **Laboratory director** |  |  |
| **Institution** |  |  |
| **Signature** |  |  |

**\*** Compulsory Informations

**ANNEX 2 - INFORMATION AND DOCUMENTS REQUIREDBY ARTICLE 4.3 OF EU REGULATION N°511/2014**

*(Nouvelle annexe à intégrer ou à compléter en cas de modèle proposé par le fournisseur).*

 ▪️ **Genetic resource**

|  |  |
| --- | --- |
| Taxonomic identification of the genetic resource |  |
| Country of origin of the genetic resource |  |
| References (N° de collection, etc.) |  |
| Date of access by the Provider |  / /  |
| Place of access by the Provider |  |
| Description of technical conditions related to access and collection conditions |  |
| Source from which it has been obtained  |  |
| List of previous users | …… |

 ▪️ **Associated traditional knowledge** (where applicable)

|  |  |
| --- | --- |
| Description of the associated traditional knowledge |  |
| Date of access by the Provider |  / /  |
| Source from which it has been obtained  |  |
| List of previous users | … |

**DOCUMENTS to be communicated:**

 ▪️ **Proof of access** (check one of the boxes below) :

[ ]  Written agreement from the landowner or, where applicable, the stockbreeder, farmer, nature park, etc. attached with written consent to the provision of personal data (name, GPS coordinates, etc.) in accordance with the GDPR.

[ ]  No document or information available or required (e.g. if the resource was taken from the land belonging to the Provider)

 › *Additional information (if relevant):*

**▪️ Access permits** (check one of the boxes below) :

[ ]  Internationally Recognised Certificate of Compliance (IRCC) or any equivalent document (e.g. access permits)

[ ]  Unregulated access or no access procedure provided by the legislation of the country of origin

[ ]  No document or information available

› *Additional information (if relevant):*

▪️ **Benefit-sharing arrangements** (check one of the boxes below) :

[ ]  Mutual agreed terms

[ ]  Applicable texts containing the rights and obligations relating to access and benefit-sharing : (*ex : indiquer L412.3 et s. du Code de l’environnement pour les ressources françaises relevant du régime de déclaration*)

[ ]  The access is not regulated.

[ ]  No document or information available

› *Additional information (if relevant):*

1. Liste non exhaustive, d’autres informations confidentielles peuvent être échangées entre les Parties. [↑](#footnote-ref-1)