

UAMH CENTRE FOR GLOBAL MICROFUNGAL BIODIVERSITY - MATERIAL TRANSFER AGREEMENT

This MATERIAL TRANSFER AGREEMENT is between UAMH and the RECIPIENT of MATERIAL from the COLLECTION. It applies to the use, handling, supply and any disposition of the MATERIAL supplied by UAMH. UAMH hereby transfers the MATERIAL according to the terms and conditions specified below. By taking receipt of an order placed with UAMH, the RECIPIENT accepts and agrees to abide by these terms and conditions.

1. Definitions

- BIOLOGICAL RESOURCE CENTRE (BRC):** publically accessible service provider and repository of living, culturable microorganisms, genomes of organism, and information relating to heredity and the functions of biological systems operated according to the terms prescribed by the Organisation for Economic Co-operation and Development (OECD) and the World Federation of Culture Collections (WFCC).
- COMMERCIAL PURPOSES:** the use of the MATERIAL for the purpose of profit.
- DEPOSITOR:** person(s) or institution who provided UAMH with the ORIGINAL MATERIAL.
- END-USER:** person(s) or institution working with the supplied MATERIAL.
- GAGE RESEARCH INSTITUTE (GRI):** the owner and operator of UAMH Culture Collection.
- LEGITIMATE EXCHANGE:** the transfer of the MATERIAL, within the same Company or Institution or Research Group (including partners in different institutes collaborating on a defined joint project). LEGITIMATE EXCHANGE includes the transfer of MATERIALS between named BRCs for accession purposes, provided the further distribution by the receiving BRC is under comparable MTA conditions as those in place at the supplying collection. LEGITIMATE EXCHANGE also includes the transfer of PROGENY and UNMODIFIED DERIVATIVES for the purposes of proficiency testing.
- MATERIAL:** includes ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.
- MODIFIED DERIVATIVES:** substances created by the RECIPIENT by using the MATERIAL which are not the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES and which have new properties. MODIFIED DERIVATIVES include, but are not limited to, recombinant DNA clones.
- MATERIAL TRANSFER AGREEMENT (MTA):** this document.
- ORIGINAL MATERIAL:** that which was originally supplied to UAMH by the DEPOSITOR, or subsequently as a result of a re-accession of the same strain.
- PROGENY:** unmodified descendant (e.g., subculture or replicate) from the MATERIAL.
- RECIPIENT:** the party to whom UAMH sends the MATERIAL. In case this is not the END-USER but an INTERMEDIARY, this INTERMEDIARY agrees:
- to forward to the END-USER the present MTA and the MATERIAL in unchanged form and quantity as received from the COLLECTION, and,
 - to use proper packaging for shipping, a trained shipper, and an authorized carrier, according to the applicable laws and regulations.

UAMH CENTRE FOR GLOBAL MICROFUNGAL BIODIVERSITY (UAMH): a research partnership between the GAGE RESEARCH INSTITUTE and the Dalla Lana School of Public Health at the University of Toronto.

UAMH CULTURE COLLECTION (COLLECTION): a collection of living and preserved microorganisms wholly owned by the GAGE RESEARCH INSTITUTE. The Collection is housed within the UAMH Centre for Global Microfungal Biodiversity and operates as a BRC for the Collection operating under the provisions of the World Federation of Culture Collections and is denoted by the acronym, UAMH.

UNMODIFIED DERIVATIVES: replicates or substances 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.

2. Recipient Rights, Qualifications and Responsibility

- RECIPIENT shall not sell, distribute, lend, or otherwise transfer the MATERIAL to any others, save those involved in LEGITIMATE EXCHANGES as defined above.
- Subject to the terms and conditions of this MTA 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, quality control, proficiency testing or any such other purposes agreed in writing with UAMH.
- RECIPIENT declares that within their laboratory:
 - access to the MATERIAL will be restricted to personnel capable and qualified to safely handle said MATERIAL and,
 - RECIPIENT shall exercise the necessary care, taking into account the specific characteristics of the MATERIAL, to take the appropriate precautions to minimize any risk of harm to persons and property and to safeguard it from theft or misuse. RECIPIENT agrees that MATERIAL designated Biosafety Risk Group 2 (RG2) or above (as defined by the national regulations where UAMH is located) constitute known pathogens and that other MATERIAL, not so designated may be pathogenic to humans and terrestrial animals under certain conditions. Similarly, RECIPIENT agrees that MATERIAL designated Plant Pest Containment 2 (PPC-2) or above (as defined by the national regulations where UAMH is located) constitute known pathogens and that other MATERIAL, not so designated may be pathogenic to plants under certain conditions. 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. RECIPIENT is solely responsible for safe receipt, use, storage and disposal. RECIPIENT acknowledges that the risks represented by any MATERIAL received from UAMH should be assessed based on intended use and handling, and that under certain circumstances organisms normally considered non-pathogens may cause disease.
- RECIPIENT declares that all information provided to UAMH in connection with any purchase order for MATERIAL is true, correct and complete, including any information provided for use in obtaining any license, permit or other authorization with respect to orders hereunder; or otherwise complying with applicable laws and regulations. RECIPIENT agrees to comply with all restrictions on export from Canada 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 Canada,
 - 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,
 - RECIPIENT has advised UAMH when placing its order of any foreign legal or regulatory requirements pertaining to the requested shipment to be implemented within Canada prior to such shipment.

3. Intellectual Property Matters

- Nothing in this MTA grants RECIPIENT any rights under any patents, propriety, intellectual property, or other rights with respect to the MATERIAL.
- If the RECIPIENT desires to use the MATERIAL or MODIFIED DERIVATIVES for defined COMMERCIAL PURPOSE(S), it is the responsibility of the RECIPIENT, in advance of such use to negotiate in good faith with at least the appropriate authority in the Country of Origin [indicated by UAMH documentation] on the terms of any benefit sharing.
- RECIPIENT agrees to acknowledge UAMH and the Country of Origin as the source of the MATERIAL in any and all publications and patent applications that reference the MATERIAL using UAMH accession number(s).
- RECIPIENT shall indemnify UAMH and GRI, to the extent permitted by law, against any claims made against UAMH and GRI by third parties relating to any patent or other proprietary rights of such third parties and also against any claims or liabilities. 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.

4. Limited Warranty of Material

- UAMH hereby represents and warrants that the MATERIAL shall be viable and pure (as far as can be determined through UAMH test regimes) upon shipment from UAMH, and for a period, from shipment, of thirty (30) days (the "Warranty Period"). The primary remedy for breach of this warranty is replacement by UAMH of the MATERIAL free of charge if lack of viability or purity is reported upon receipt or within the applicable Warranty Period, provided that the claim is justified to the satisfaction of UAMH. Any expiration date specified on the MATERIAL shipment documentation does not constitute a warranty. The RECIPIENT may obtain a credit or full refund if UAMH fails to supply a viable replacement of any MATERIAL sold.
- Disclaimer of warranties. Except as expressly provided in this MTA, there are no representations or warranties by UAMH or its DEPOSITORS with respect to the items, expressed or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose. Neither UAMH 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 to the accuracy or correctness of the data.
- UAMH 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. UAMH makes no warranties of any kind, express or implied, with respect to the technical assistance or information provided. It is the RECIPIENT'S responsibility to assess the technical assistance and information in consideration of the use, selection, application or suitability of the items purchased.

5. Limitation of Liabilities

- RECIPIENT recognizes the potential hazard of utilizing the MATERIAL, the experimental nature of the MATERIAL and understands that the taking of appropriate precautions to minimize any health risk becomes fully their responsibility upon receipt of the MATERIAL. Neither UAMH nor any authorized supplier of UAMH MATERIAL is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling or use of the MATERIAL.
- Similarly, neither UAMH nor any authorized supplier, is liable from any misidentification, misrepresentation, lack of title, safety, purity, variation of properties of the MATERIAL supplied. Neither UAMH 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 willful misconduct of UAMH.
- Neither UAMH nor any authorized supplier shall have any liability to the RECIPIENT or the RECIPIENT'S 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 MTA or the subject hereof, even if UAMH has been advised of the possibility of such damages.
- The exclusive remedy against UAMH (including any agent) for any losses or damage of any kind whatsoever, whether in contract, tort or otherwise, shall be strictly limited to the fee provided to UAMH by the RECIPIENT in provision of such MATERIAL or other item or replacement of the MATERIAL.

6. Shipping

- UAMH will package the MATERIAL for shipping in accordance with IATA international safety 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 UAMH 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, UAMH will investigate the circumstances and at its discretion, replace such MATERIAL, including storage media, at no additional charge, provided that the RECIPIENT has reported damaged or lost shipments immediately to the applicable airline or freight forwarder and notified UAMH promptly upon discovery thereof.

7. Miscellaneous

- Certain contributors of MATERIAL to UAMH have requested, and UAMH has agreed, that they will be notified of the identity of transferees of MATERIALS hereunder. These MATERIALS are appropriately marked in UAMH documentation. RECIPIENT acknowledges that nothing prohibits UAMH from identifying RECIPIENT as a transferee of MATERIALS hereunder.
- RECIPIENT understands and accepts that UAMH may refuse further sales of its products should RECIPIENT willfully violate the terms of this MTA.
- The RECIPIENT may not assign or otherwise transfer this MTA or any rights or obligations under this MTA, 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 UAMH Terms and Conditions, constitute the entire MTA between UAMH and RECIPIENT'S with respect to all MATERIALS and supersedes all previous MTAs or representations. UAMH may revise this MTA at any time.
- This MTA shall be construed and enforced in accordance with and governed by the laws of the Canada.