



SPANISH TYPE CULTURE COLLECTION (CECT)



MATERIAL TRANSFER AGREEMENT ("MTA") CECT

This MTA¹ has been developed according to the recommendations of MOSAICC².

This MTA will be printed on the reverse side of CECT delivery notes and invoices. The reception of this MTA implies the acceptance of the CECT policy.

The CECT uses microorganisms³ or MGRs⁴ in different ways: it receives MGRs from individuals or institutions that can be culture collections or not, it supplies or sells MGRs, and it uses MGRs for its own research. The dominant activity is the transfer of MGRs. The CECT may also receive or distribute derivatives⁵

There are two types of transfer:

- Transfer where further distribution is excluded: the recipient⁶ or purchaser⁷ cannot distribute the MGR to anybody outside his/her institution.
- Transfer where further distribution is allowed.

The choice between these two types of transfer is determined by the capacity of the users as well as of the suppliers for keeping records of the individuals or institutions from where or where to they transfer MGRs.

Except when the MGRs are transferred to a recipient that is a culture collection, or when both recipient and provider⁸ are culture collections, the present MTA excludes distribution to 3rd parties.

The transfer of MGRs can be done in two directions:

1.- CECT as RECIPIENT of MGRs

CECT is a major public source of microbial biodiversity and accepts microorganisms according to the CBD⁹ and to its expertise. CECT accepts three types of deposits:

- Public or open deposit. The microorganisms under this type of deposit appear in the catalog/web page, and can be supplied to third parties.
- Restricted deposit/custody. The CECT ensures the depositor¹⁰ that the microorganisms will not be forwarded to third parties as long as they are maintained in this category, that requires a special fee. The microorganisms under this type of custody do not appear in the catalog/web page.
- Deposit for patent purposes, regulated by the Budapest treaty (more information at the web page of CECT).

NOTICE TO DEPOSITORS: According to the CBD, it is your responsibility as depositor to ensure the MGRs were collected with the PIC (see MOSAICC) of the country of origin and that the deposit of the samples in an open collection does not infringe any national obligations. In the absence of any information to the contrary, CECT will assume it is free to supply any newly deposited material to third parties.

(There are specific forms for each type of deposit)

2.- CECT as PROVIDER of MGRs

CECT can provide microorganisms for different purposes according to the CBD. There are three possibilities:

- For test, reference, bioassay, control and training purposes: No commercial application¹¹; no Intellectual Property Rights (IPR) related to MGRs, derived technology and information; recipient has to follow the standard test and reference procedures.
- For teaching or academic research: No commercial application; no IPR related to MGRs, derived technology and information.
- For commercial applications: Terms on IPR, information feedback about patent application; precise terms for benefit-sharing. Prior to use the MGRs for commercial applications, the purchaser agrees to negotiate in good faith with the Provider and/or the depositor to establish the terms of benefit sharing, including terms of commercial license.

Scope of use

The Recipient agrees that Material designated as biosafety level 2 or 3 constitutes known pathogens and that other Material not so designated and replicates or modifications may be pathogenic under certain conditions.

The recipient assumes all risk and responsibility related with the receipt, handling, storage, disposal, transfer and use of the Material. Recipient agrees that any activity undertaken with the MGRs will be conducted in compliance with all applicable guidelines, laws and regulations.

The CECT does not take any responsibility for the MGRs forwarded by the recipient to other scientists not working under the recipient direct supervision.

Recipient agrees to acknowledge CECT and any provider indicated by CECT as the source of the MGRs in all publications, more specifically to mention the country of origin and provider according to CBD.

Payment, Shipping

Payments may be made by check or bank transfer. Unless payment is required in advance by CECT, payments due to CECT shall be due within 60/90 days of the invoice date.

CECT will package the MGRs for shipping in accordance with applicable laws and regulations. Recipient/Purchaser is responsible for ensuring that

all permits required for recipient/purchaser to receive its order are obtained and that sufficient proof of such permits is provided to CECT.

If the MRGs are lost or damaged during shipment, CECT will replace them at no additional charge, provided that the report on lost or damage arrives within fourteen (14) days from invoice date.

Warranty

CECT warrants that MGRs shall be viable upon shipment from CECT for a period of thirty (30) days ("warranty period") unless otherwise stated in the delivery note. Lack of viability must be reported within the warranty period. CECT will return the fee paid or resend the MGRs only if the recipient/purchaser handles and stores the MGRs as described in the forms sent with the material. For replacement of the MGRs in case of lack of viability, the recipient/purchaser must report the lack of viability to CECT within the warranty period.

Any expiration date specified in the shipment states the expected remaining useful life, but does not mean a warranty or extend the warranty period.

Definitions

1 MTA: MATERIAL TRANSFER AGREEMENT: Is a generic term that can cover either a very short shipment document, a simple standard delivery notice, a standard invoice containing minimal standard requirements or a more detailed specific contract including tailor-made mutually agreed terms.

2 MOSAICC: Microorganisms Sustainable Use and Access Regulation International Code of Conduct within the framework of the Convention of Biological Diversity. It is a voluntary Code of Conduct aimed to facilitate access to microbial genetic resources (MGRs), and combines the need for easy transfer of MGRs and the need to monitor the transfer of MGRs.

The two operating principles are:

- The in situ origin of the MGRs is identified via initial Prior Informed Consent (PIC: A document that officially identifies the in situ origin of MGRs and authorises the access to in situ MGRs) providing authorisation for sampling. The in situ origin of the MGRs is always mentioned when transfer occurs.

- The transfer of MGRs is monitored and occurs under Material Transfer Agreement (MTA) which terms are defined by both recipient and provider. (More information in: <http://www.belspo.be/bccm/mosaicc>)

3 MICROORGANISMS: Filamentous fungi, yeasts, bacteria and archaea.

4 MICROBIAL GENETIC RESOURCES (MGRS) microorganisms and/or genetic material that has not been modified.

5 DERIVATIVE: MGR created from the original MGR that is substantially modified to have new properties such as, but not limited to, recombinant DNA clones.

6 RECIPIENT: Legal entity or individual that receives Material from the PROVIDER

In the case of culture collections as providers, these can ask for a fee to reimburse the preparation and distribution costs.

7 PURCHASER: Legal entity or individual that receives Material from the PROVIDER for a payment.

8 PROVIDER: Legal entity or individual that transfers MGRs to another person or institution

9 CBD: Convention on Biological Diversity (Rio de Janeiro, June 1992). It has three main objectives: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources" (art.1). (see MTA policy related to CBD) (More information in: <http://www.biodiv.org>)

10 DEPOSITOR: Legal entity or individual that deposits MGRs in the custody of the CECT

11 COMMERCIAL APPLICATION: The sale, leasing, exchange, license, or other type of transfer for profit purposes. COMMERCIAL APPLICATIONS shall also include uses of the MGR OR DERIVATIVES by any organisation, including recipient or purchaser, to perform contract research or to conduct research activities that may result in any type of the mentioned commercial transactions. However, industrially sponsored academic research shall not be considered a use for COMMERCIAL APPLICATIONS per se, unless any of the above conditions of this definition are met.