

Supply of Materials from the BSAC Resistance Surveillance Project

Terms and Conditions

1. Supply of Materials by BSAC

- 1.1. BSAC agrees to supply the Materials set out in Annex A to the Applicant, in the timeframe and manner set out in that Annex, subject to the provisions of this Material Transfer Agreement (MTA).
- 1.2. The Applicant acknowledges that the Materials are provided on an "as is" basis without any warranty of satisfactory quality or fitness for a particular purpose or use or any other warranty, express or implied. Bacterial Isolates have been previously tested by standard methods, but no guarantee of the accuracy of the information is given and no liability for errors is accepted. It is the Applicant's responsibility to confirm the identity and properties of any isolate.

2. Use of Materials by the Applicant

- 2.1. The Applicant agrees that the Materials may only be used for the Permitted Purpose, namely:
 - 2.1.1. solely to conduct the Approved Research Project in the manner and timeframe set out in the Approved Research Project; and
 - 2.1.2. by the Applicant PI and related Applicant Researchers.
- 2.2. The Applicant shall ensure that the Applicant Researchers are made aware of, and will be bound by, the terms of this MTA. Any act or omission of any Applicant Researcher will be deemed to be an act of the Applicant for which the Applicant is fully responsible.
- 2.3. This MTA confers on the Applicant only those rights that are expressly granted to the Applicant. For the avoidance of doubt nothing in this MTA shall prevent BSAC from supplying the same Materials (or other data and/or isolates from the BSAC Resource) to another third party.

3. Grant of rights to the Applicant

Provision of Isolates

- 3.1. BSAC is the owner of the property in the Isolates.
- 3.2. BSAC will grant the Applicant a limited revocable non-exclusive licence (but not any ownership rights) to use the Isolates for the Permitted Purpose.

Provision of Data

- 3.3. BSAC is the owner of the Intellectual Property Rights in the Data.
- 3.4. BSAC will grant the Applicant a limited revocable non-exclusive licence (but not any ownership rights) to use the Data for the Permitted Purpose.
- 3.5. In the event that an Applicant creates a separate dataset as a result of their use of the Materials (an Applicant-generated Dataset) then, subject to the license-back provisions below, the Intellectual Property Rights in the Applicant-generated Datasets will belong to the Applicant.
- 3.6. Applicants are obliged to grant a licence back to BSAC for use of any such Applicant-generated Datasets (including any Results) on an irrevocable, perpetual, global, royalty-free, non-exclusive, fully sub-licensable basis provided that such sublicenses contain similar terms and conditions to this MTA. These datasets will, therefore, be available for use by other researchers who are granted access to use the Resource.

Inventions, Developments and Intellectual Property Rights

- 3.7. The Intellectual Property Rights in any inventions, findings or developments arising out of the Applicant's use of the BSAC Materials (Applicant-led Inventions) will be owned by the Applicant PI, Applicant Researchers and their respective Institution(s) if it was generated without

contribution by BSAC, and otherwise jointly by them and BSAC in proportion to their contributions.

- 3.8. The owner of the rights in the Applicant-led Invention will promptly inform the other party of any patents granted.
- 3.9. In the case of commercial benefit arising from Applicant-led Inventions, those parties that fund the development and commercialisation of the invention are entitled to recoup their costs before any further benefits are shared. The BSAC and other parties involved in the research and commercialisation will then negotiate over the sharing of any further profits, but no single party will be entitled to take more than 60% without the express agreement of all other parties concerned.
- 3.10. Notwithstanding the ownership provisions of clause 3.7, Applicant-led Inventions may not be used to restrict health-related research and/or access to healthcare unreasonably anywhere in the world. (For example, without limitation, BSAC would consider it unreasonably restrictive for naturally-occurring genetic sequences, biomarkers, proteins or biochemical processes to be made the exclusive preserve of one party.) In the event that BSAC considers conduct to be unreasonably restrictive, the Applicant is automatically deemed to grant a licence back to BSAC for the use of any such inventions and intellectual property rights on an irrevocable, perpetual, global, royalty-free, non-exclusive, fully sub-licensable basis so that other researchers who are granted access to use the Resource can exercise such rights to the extent necessary to conduct their research project. Without prejudice to the foregoing, BSAC will notify the Applicant promptly as soon as it becomes aware that the provisions of this clause apply.

Sub-licensing

- 3.11. Expressly excluded from any grant of rights under this MTA is any ability (direct or indirect) to sub-license or re-publish the Materials.

4. Confirmations from the Applicant

General

- 4.1. The Applicant hereby confirms to BSAC that all work using the BSAC materials will be carried out in compliance with all applicable laws, regulations, guidelines and approvals, including without limitation the Data Protection Act 1998, the Human Tissue Act 2004, and any approvals required from a Research Ethics Committee.

Security

- 4.2. The Applicant will retain the Materials in an appropriate and secure location as regards Isolates or a secure network system as regards Data at such standard as would be reasonably expected for the storage of valuable and proprietary samples and/or data.

5. Data

- 5.1. The Applicant will make no attempt to identify patients from whom Isolates have been obtained, and will safeguard their anonymity in publications. For example, geographically-linked data will be published only at regional or higher level such that the results for a single clinical centre cannot be identified.

6. Isolates

- 6.1. The Applicant acknowledges that the Isolates are infectious and pathogenic, and may contain infectious contaminants such as viruses and latent viral genomes. The Applicant will ensure that Isolates are handled in suitable laboratory facilities with adequate biohazard containment, using suitable procedures and equipment, by appropriately trained and qualified staff. They will in no case be applied to human subjects. From the time of receipt, the Applicant is fully responsible for the safe and appropriate handling of the Isolates and any products derived from them.

- 6.2. The Applicant confirms that the Isolates will be kept on the premises of the Applicant and not transferred (in whole or part) to any other location without the prior written approval of BSAC.

7. Return and publication of Results

Publication of Results

- 7.1. The Applicant will use its best endeavours to publish the findings within 6 months after the date on which it has represented to BSAC that the Research Project will be completed:
 - 7.1.1. in an academic journal; or
 - 7.1.2. on an open source publication site.
- 7.2. On the earlier of 6 months after the publication of the findings or 12 months after the date on which the Applicant has represented to BSAC that the Approved Research Project would be completed, the Applicant shall provide to BSAC a copy of:
 - 7.2.1. the Results themselves in such form and format as BSAC shall reasonably require;
 - 7.2.2. the raw data behind the Results in such detail and in such form and format as BSAC shall reasonably requireafter which the BSAC can make this information available for use by others.
- 7.3. BSAC will consider reasonably any written requests (containing an appropriate explanation) for an extension of the time limits set out in this clause.

Notification to BSAC

- 7.4. The Applicant is primarily responsible for publication, and is not required to clear any report of its Results and Findings with BSAC.
- 7.5. Nonetheless, the Applicant will use reasonable endeavours to provide the text of any proposed publication to BSAC before submitting it for publication and will allow a reasonable length of time for BSAC to review the text before submission. The Applicant will consider in good faith such changes as are suggested by BSAC arising from BSAC's review of the text.
- 7.6. In some circumstances, co-authorship with investigators from the BSAC Resistance Surveillance Project may be appropriate, and will be agreed according to prevailing norms of academic conduct and publication ethics.

Credit to BSAC

- 7.7. Any publication of the Results and Findings will include a credit to the BSAC as the source of Isolates and/or Data e.g. "This research was conducted using isolates from the BSAC Resistance Surveillance Project".
- 7.8. Individual Isolates that are studied and described in detail should be identified by their BSAC project number/code.

Publication of summary on BSAC's websites

- 7.9. After BSAC has supplied the Materials agreed for the Approved Research Project, BSAC may publish on any of its websites:
 - 7.9.1. A summary of the Approved Research Project.
 - 7.9.2. Summary details of the Applicant Institution and the Applicant PI.

8. Charges

- 8.1. The Applicant agrees to pay the Charges set out in Annex A to the recipient and in the manner set out in that Annex.
- 8.2. Charges may be due to BSAC or to a contractor holding the Materials on BSAC's behalf.
- 8.3. Where applicable the Charges will include VAT, which will be shown on any invoice.
- 8.4. Failure to pay the Charges promptly when due and properly requested will constitute a material breach of this MTA, whether the payment is due to BSAC or to its contractor.

9. Confidentiality

- 9.1. BSAC and the Applicant will not disclose any confidential information supplied to it (the receiving party) by the other party (the disclosing party) to any person, other than in accordance with this

MTA. The receiving party will restrict disclosure of such information to Applicant Researchers, staff directly concerned with the BSAC Resistance Surveillance Project, and such of its other employees, agents, consultants and subcontractors as need to know for the purpose of discharging its obligations to the disclosing party, and will ensure that such other employees, agents, consultants and subcontractors are subject to corresponding obligations of confidentiality.

9.2. Notwithstanding the provisions of clause 9.1, the recipient party may disclose confidential information as set out in this MTA (including but not limited to publishing a summary of the Approved Research Project) where such disclosure would otherwise be prohibited by this clause if and to the extent that:

9.2.1. it is required to be disclosed by law, by any governmental or other regulatory authority, by a court or other authority of competent jurisdiction; or

9.2.2. it was known by the receiving party and at its free disposal before disclosure to it by the disclosing party, or was subsequently lawfully disclosed to the receiving party by a third party who did not impose any restrictions on its disclosure;

9.2.3. it was in (or enters into) the public domain other than by reason of a breach of this clause by the receiving party; or

9.2.4. it is independently developed by a person or persons with no access to the confidential information disclosed to the receiving party; or

9.2.5. BSAC and the Applicant agree, acting reasonably, that such information is trivial or obvious, or they agree in writing that such disclosure may be permitted.

10. Term

10.1. The term of this MTA commences on the Effective Date and ends on the date on which the Applicant has asserted to BSAC that the Results from the Approved Research Project will be published.

10.2. This term may be extended by BSAC, in its reasonable discretion, on application to BSAC by the Applicant.

11. Termination

11.1. BSAC shall be entitled forthwith to terminate this MTA by written notice to the Applicant if:

11.1.1. The Applicant commits any breach of a material provision of this MTA and, in the case of a breach capable of remedy, fails to remedy the same within 10 days after receipt of a written notice giving particulars of the breach and requiring it to be remedied;

11.1.2. The Applicant PI ceases to be employed or otherwise engaged by the Applicant Institution and the Applicant Institution fails to provide a suitable substitute; or

11.1.3. The Applicant ceases, is likely to cease or threatens to cease, to carry on business.

11.2. For the purposes of clause 11.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance, provided that time of performance is not of the essence.

11.3. Any waiver by BSAC of a breach of any provision of this MTA shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

11.4. The rights to terminate this MTA given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned, if any, or any other breach.

12. Consequences of termination

12.1. Upon expiry of the MTA pursuant to clause 10 above or termination of this MTA by BSAC pursuant to clause 11, the grant of rights to the Applicant shall be automatically terminated.

- 12.2. Without prejudice to the foregoing and to any other rights that BSAC may have in relation to termination under clause 11, BSAC may take the following steps:
- 12.2.1. It may prohibit the Applicant PI and other researchers from the Applicant's Institution from accessing any further materials from within the BSAC Resource; and/or
- 12.2.2. It may inform relevant personnel within the Applicant PI's Institution, funders of the Applicant and/or governing or other relevant regulatory bodies of the Applicant.
- 12.3. On termination of this MTA (however arising) the accrued rights, liabilities and obligations of the parties as at termination shall survive and continue in full force and effect.

13. Notices

- 13.1. Any notice or other document to be given under this MTA shall be in writing in the English language and shall be delivered by hand, e-mail, mail, or facsimile to BSAC or the Applicant at the address set out in this MTA or such other address as the recipient party may from time to time designate by written notice to the other party. Notices will be deemed to have been duly given:
- 13.1.1. in the case of delivery by hand, when delivered; or
- 13.1.2. in the case of delivery by e-mail, upon receipt at the recipient's email server (unless an undeliverable message is received); or
- 13.1.3. in the case of delivery by mail, on the third working day following the day of posting; or
- 13.1.4. in the case of facsimile, on acknowledgement by the recipient facsimile machine.

14. Assignment and sub-contracting

- 14.1. Neither party shall be entitled to assign this MTA or any of its rights or obligations hereunder without having first received the written approval of the other party, which approval shall not be unreasonably withheld or delayed.
- 14.2. The Applicant shall not sub-contract the performance of any of its obligations under the MTA or any part thereof without having first obtained written consent from BSAC, which consent shall not be unreasonably withheld.
- 14.3. The Applicant shall be responsible for the acts, defaults and omissions of its sub-contractors, whether consent has been given to their appointment under this MTA or not, as if they were its own and any consent given under this MTA shall not relieve the Applicant of any of its obligations under this MTA.

15. Force majeure

- 15.1. If any party is prevented from, hindered or delayed in performing any of its obligations under this MTA by reason of a Force Majeure Event, such party shall promptly notify the other of the date of its commencement and the effects of the Force Majeure Event on its ability to perform its obligations under this MTA. If mutually agreed by the parties, then the obligations of the party so affected shall thereupon be suspended for so long as the Force Majeure Event may continue.
- 15.2. The party affected by a Force Majeure Event shall not be liable for any failure to perform such of its obligations as are prevented by the Force Majeure Event provided that such party shall use every reasonable effort to minimise the effects thereof and shall resume performance as soon as possible after the removal of such Force Majeure Event. If the period of non-performance exceeds 28 days from the start of the Force Majeure Event then the non-affected party shall have the option, by written notice to the other party, to terminate this MTA.
- 15.3. For the purpose of this clause "Force Majeure Event" means any event beyond the reasonable control of a party and arising without its fault or negligence including, without limitation, acts of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm. For the avoidance of doubt, strike, industrial action, failure of technology systems, third party insolvency and failure of any third party shall not be considered to be Force Majeure Events.

15.4. The provisions of this clause 15 shall not affect any other right which either party may have to terminate this MTA.

16. Dispute resolution

16.1. Either party may give the other party written notice of any dispute arising out of or in connection with this MTA (a "Dispute") not resolved in the normal course of business. Within five working days following delivery of such notice (a "Notice of Dispute"), a BSAC Representative and an Applicant Representative shall discuss by telephone or meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve such Dispute.

16.2. If any Dispute raised pursuant to clause 16.1 is not resolved by the parties' respective representatives within five working days of the Notice of Dispute, or such further period as the Parties shall agree in writing, then the Dispute shall be referred to appropriate senior executives of BSAC and the Applicant Institution. These senior representatives shall convene as soon as reasonably practicable (in person or by telephone) after such referral to discuss the Dispute in an attempt to resolve it.

16.3. If any Dispute remains unresolved ten working days following such referral, or such further period as the Parties shall agree in writing, either party may initiate non-binding mediation of the dispute in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

16.4. The mediation will take place in London and the language of the mediation will be English. All negotiations related to this mediation are confidential and shall be treated as compromise and settlement negotiations. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with the substantive law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the mediation.

16.5. If the dispute is not settled by mediation within 30 days of commencement of the mediation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by the Courts of England and Wales.

16.6. Nothing in this clause 16 shall serve to prevent either party from (a) seeking interim relief in the High Court of England and Wales or (b) from terminating this MTA.

17. General

17.1. This MTA governs the relationship between the parties to the exclusion of any other terms and conditions and, together with any other document referred to in this MTA, constitutes the whole agreement between the parties in relation to the subject matter hereof.

17.2. If there is any conflict between the provisions of this MTA and any of the Annexes or related documents then the provisions of this MTA will apply.

17.3. Neither party shall assign the benefit and/or burden of this MTA or sub-contract any of its obligations hereunder without the prior written consent of the other, except as otherwise provided in this MTA.

17.4. Neither party shall be deemed to have waived any of its rights or remedies whatsoever unless the waiver is made in writing and signed by a duly authorised representative of that party. In particular, any delay or forbearance by either party, whether express or implied, in enforcing or exercising any of its rights or remedies hereunder, or any partial enforcement or exercise of any of its rights or remedies, shall not constitute a waiver of such right or remedy, nor shall it preclude or impair any other enforcement or exercise of that right or remedy.

17.5. No provision of this MTA is intended to be enforceable by any person who is not a party to this MTA and nor are any rights granted to any third party under statute or otherwise.

17.6. Nothing in this MTA shall create a partnership, joint venture or relationship of agency between the parties.

17.7. If any provision of this MTA (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the MTA (or apply with the minimum modification necessary to make it legal, valid and enforceable where this is preferable for the parties) and the validity and enforceability of the other provisions of the MTA shall not be affected.

17.8. This MTA shall be governed by and construed in accordance with English law and, subject to clause 16 above, the parties irrevocably agree that the English courts shall have exclusive jurisdiction over any suit, action, proceedings or dispute arising out of, or in connection with, this MTA.

17.9. All variations to this MTA must be agreed, set out in writing and signed on behalf of the parties before they take effect.

18. Definitions

The following expressions used in this MTA shall have the meanings attributed to them below.

Applicant: the Applicant Institution and the Applicant Principal Investigator.

Applicant Institution: the institution making the Application for access in respect of the Approved Research Project.

Applicant Principal Investigator (PI): the Principal Investigator of the Approved Research Project.

Applicant Researcher: a researcher who is working with the Applicant PI on the Approved Research Project.

Approved Research Project: the research project initiated by the Applicant and approved by BSAC (specifically including any conditions or stipulations made by BSAC), summarised in Annex B.

BSAC Resource: the collection of bacterial isolates gathered in the BSAC Resistance Surveillance Project, and data related to those isolates which is owned by or licensed to the BSAC and available at the BSAC's discretion to the scientific and wider community.

Charges: the charges payable by the Applicant (which may include VAT) to access the Materials.

Completion of Approved Research Project: the date on which the Applicant represents that the findings of the Approved Research Project will be published (or as such date may be extended by BSAC).

Data: the data that are being supplied to the Applicant by BSAC pursuant to the Approved Research Project.

Effective Date: the date on which this MTA becomes effective, being the date when a fully-executed copy is received by BSAC.

Findings: the findings obtained by the analysis, synthesis and interpretation of the Results generated by the Applicant pursuant to the Approved Research Project.

Intellectual Property Rights: all present and future intellectual property rights including but not limited to patents, trade and service marks, design rights, copyright, database rights, trade secrets and know-how, in all cases whether registered or not or registerable, and including all registrations and applications for registrations of any of these and rights to apply for the same as well as any renewals, extensions, combinations or divisions thereof, rights to receive remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.

Isolates: the bacterial isolates that are being supplied to the Applicant by BSAC pursuant to the Approved Research Project.

Materials: the Data and/or Isolates supplied by BSAC to the Applicant under this MTA.

MTA: this Material Transfer Agreement for the supply of Materials to the Applicant by BSAC.

Permitted Purpose: the purpose for which the Materials can be used by the Applicant, as set out in the summary of the Approved Research Project in Annex B, and subject to the provisions of this MTA.

Results: results generated by the Applicant's tests and experiments pursuant to the Approved Research Project.

Term: the period starting on the Effective Date and ending at the time and on the basis set out in this MTA and as may be extended or terminated in accordance with the terms of this MTA.

VAT: value added tax chargeable under English law for the time being and any similar, additional tax.