**MATERIAL DEPOSIT AGREEMENT**

Institut Pasteur (hereinafter referred to as “**Distributor**”) is a French not-for-profit foundation created in 1887 and whose missions, for public benefit, are mainly to contribute to the prevention and cure of diseases through research, teaching, actions of public health, valorization and technology transfer.

The “Collection de l’Institut Pasteur” (hereinafter referred to as “**CIP**” or “**Collection**”) is a Biobank infrastructure, a Unit of the “Centre de Ressources Biologiques de l’Institut Pasteur” (CRBIP), hosted in the Distributor’s premises. It is the custodian of microbial culture collections with the purpose to preserve microbial strains and their derivatives (e.g., DNA), and their associated data, and to make them available to the scientific community.

**The purpose of this Material Deposit Agreement is to establish the terms and conditions according to which the “Depositor” (as described hereunder and defined in article 1 of this agreement) deposits the biological material described in Appendix 1A or 1B hereunder to the CIP for the purposes defined hereafter (Article 5). The General Terms and Conditions for Material deposit attached hereto, form an integral part of this Material Deposit Agreement.**

**DEPOSITOR information**:

[**NAME OF THE ORGANIZATION]**, [Legal status of the organization…], with its registered office/main office at [Address …].

[**DEPOSITOR SCIENTIST]** of [**LABORATORY** **NAME]**.

Contact information (if different from the registered office/main office):

Surname/Name: …

Unit/Service: …

Address: …

Email: …

Distributor and Depositor are hereinafter collectively referred to as the “**Parties**” or individually, as a “**Party**”.

By signing this Material Deposit Agreement, the Depositor express its full agreement with the terms and conditions set forth herein.

|  |  |
| --- | --- |
| **[DEPOSITOR]** | Read and Acknowledged by **[DEPOSITOR SCIENTIST]** |
| … | … |
| Signature Date … | Signature Date … |
| Name and Title of Authorised Representative  … | Name and Title  … |

**CIP GENERAL TERMS AND CONDITIONS FOR MATERIAL DEPOSIT**

**Article 1. Definitions**

In addition to the terms “CIP”, “Collection”, “Distributor”, “Party” and “Parties” defined in the front page, the following definitions shall apply for the purpose of this Material Deposit Agreement:

“**ABS Legislation**” means any biodiversity laws and/or regulations governing the access to genetic resources and benefits-sharing, whether local or national rules, especially those arising from the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity”, which entered into force on October 12th, 2014.

“**Authorized Personnel**”” means all directors, employees, students, agents and consultants or advisors of the Distributor. Authorized Personnel might also include employees of other academic research institutions, whether public or private entities, working on a regular basis within the Distributor’s laboratories (whether as part of a mixed research unit or under secondment agreement or any other contractual arrangements).

“**Biobank**”: means a legal entity or part of a legal entity that performs biobanking which consists in the process of acquisitioning and storing, together with some or all of the activities related to collection, preparation, preservation, testing, analyzing and distributing defined biological material as well as related information and data.

**“Certified Reference Material”** means Reference Material characterised by a metrologically valid procedure for one or more specified properties, accompanied by a Reference Material certificate that provides the value of the specified property, its associated uncertainty, and a statement of metrological traceability (source: ISO/Guide 35:2017).

**“Collaborative Research”** means a scientific collaboration between the “Depositor” and the “Distributor” that extends beyond the simple transfer of “Material” or “Material”-associated whole genome sequencing (“WGS”) data.

“**Commercial Purposes**”: means the use of the Material or associated data leading to a source of profit either directly through, without limitation, sale, license, lease, export, transfer, or indirectly through research and development purposefully leading to commercial products and/or services. For clarity, Specific Uses of Reference Material / Specific Uses of Certified Reference Material shall not fall within this definition of Commercial Purposes.

“**Country of Origin**”: means the country where the original Material was taken from in-situ conditions, in a natural habitat or from its original non-natural source.

“**Depositor**”: means the legal entity described in the front page and whose affiliated scientist (“**Depositor Scientist**”) provides the Collection with the original Material and is responsible for completion of the Deposit Form.

“**Deposit Form**” means the form including information about the Material set forth in Appendix 1A or 1B.

“**Effective Date**” means the date of signature of the MDA by the Depositor.

“**Material**” means any biological material or part of it provided by the Depositor and identified in the specific Deposit Form.

“**MDA**” means this Material Deposit Agreement, comprising the front page, these general terms and conditions and the appendices (Deposit Form, Personal Data Collection and Processing information) and any future amendments that make an integral part of it. In case of contradiction between these general terms and conditions and the appendices, these general terms and conditions shall prevail.

**“MTA”** means the standard material transfer agreement to be concluded by Distributor with any future Recipient willing to use the Material for Standard Non-Commercial Purposes, the current version of which is accessible on the CRBIP website ([https://crbip.pasteur.fr](https://crbip.pasteur.fr/)), or any future modified version thereof.

“**Recipient**” means any Third Party requesting the Material to the Distributor and obtaining it by signature of either an MTA or a specific dedicated contract as set forth in Article 5.1.

**“Reference Material**” means amaterial, sufficiently homogeneous and stable with respect to one or more specified properties, which has been established to be fit for its intended use in a measurement process (source: ISO/Guide 35:2017).

**“Specific Uses of Reference Material / Certified Reference Material”:** means the specific quality control uses for which Reference Material or Certified Reference Material, as appropriate, can be requested by a Recipient. These uses notably include the calibration of equipment, the validation of a measurement method, inter-laboratory comparisons and the assignment of qualitative or quantitative values to materials.

“**Standard Non-Commercial Purposes**” means the use of the Material or associated data for research, teaching or quality control purposes. For clarity purposes, quality control purposes in this definition shall expressly include Specific Uses of Reference Material. On the contrary, Specific Uses of Certified Reference Material are expressly excluded.

“**Third Party**” means any person or entity other than the Parties.

**Article 2. Purpose**

The Distributor accepts to receive free of charge in its Collection the Material that the Depositor requests to deposit under the terms and conditions of this MDA.

**Article 3. Deposit of the Material**

**3.1.** The Depositor shall communicate any and all relevant information related to the Material and necessary for its proper maintenance and handling by the Distributor by filling the Deposit Form. No deposit can be made before receipt by the Distributor of the Deposit Form duly completed by the Depositor. It is understood between the Parties that no confidential information is exchanged under this MDA. To comply with its obligations under this MDA, the Distributor may publicly disclose (e.g. on its catalogue <https://catalogue-crbip.pasteur.fr>or to the Recipients) information and documentation provided by the Depositor, e.g. for Nagoya Protocol due diligence.

**3.2.** The Depositor shall transfer in the shortest delay following the Effective Date, at its costs and risks, the Material to the Distributor’s premises.

**3.3.** The Depositor shall pack and ship the Material according to international transportation rules and regulations and according to export rules and regulations applicable in the territory of the Depositor.

**3.4.** TheDepositor agrees to make its best effort to replace, at its costs and risks, the Material transmitted hereunder in the event it is found to be nonviable, impure, or atypical by the Distributor. The Distributor will be free to destroy such defective Material.

**Article 4. Personal Data Collection and Processing**

**4.1.** For the performance of this MDA, the Parties agree to comply with applicable provisions of (i) the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) and (ii) the French Law 78-17 of 6 January 1978.

**4.2.** As such, the Depositor acknowledges that the Distributor collects and processes personal data as detailed in Appendix 2.

**4.3.** The Depositor shall cooperate with and help the Distributor to comply with its legal requirements and to respect the rights of any data subjects concerned.

**Article 5. Use of Material – Grant of rights**

**5.1.** The Depositor grants the Distributor a non-exclusive, royalty-free, non-transferrable, non-sub-licensable, worldwide right, for the term of the MDA, to:

* hold on deposit and store the Material;
* use it for quality control purposes, including whole genome sequencing (“WGS”), deposit of genomic sequences in public databases (e.g. ENA, GenBank, DDBJ), and provision of services related to quality assurance and quality control;
* replicate it for storage and distribution;
* produce Reference Material and, subject for Distributor to obtain the necessary accreditations for such production, Certified Reference Material. For clarity, nothing herein shall be construed as an obligation for Distributor to obtain such accreditations and/or produce such Certified Reference Material;
* distribute the Material to Third Parties for the following purposes:

(i) Standard Non-Commercial Purposes;

(ii) Specific Uses for Reference Material / Specific Uses of Certified Reference Material subject to the abovementioned regarding Certified Reference Material; and

(iii) Commercial Purposes.

The right to distribute the Material is subject to the conclusion between the Distributor and the Recipient of (i) an MTA for Standard Non-Commercial Purposes or Specific Uses of Reference Material or (ii) a dedicated contract for Commercial Purposes or Specific Uses of Certified Reference Material, as applicable.

The WGS data can be made publicly available by the Distributor for the sake of “open science” unless the Depositor has opted out in the Deposit Form; in this case, distribution of WGS data from the Distributor to the Depositor requires a Data Transfer Agreement (DTA). The conduct of Collaborative Research between the Depositor and the Distributor requires a collaboration agreement. Notwithstanding the abovementioned provisions, the Distributor may also distribute the Material internally to its Authorized Personnel in accordance with the conditions set forth in Section 6.4.

* 1. It is expressly acknowledged that the Country of Origin retains sovereign rights concerning downstream utilizations of the Material by Recipients, if and when applicable in the scope of the relevant ABS Legislation.
  2. The Depositor claims no intellectual property rights on the deposited Material. If the Depositor decides to file any patent application related to the Material, the Depositor shall inform the Distributor and provide written instructions for potential withdrawal.
  3. Each Party reserves the right to withdraw the Material from the Collection at any time and for any reason during the term of this MDA. The Party willing to withdraw the Material shall inform the other Party of its decision within a reasonable time prior to such withdrawal. The MDA shall be deemed to have been terminated for the Material that was withdrawn (see 9.3, 9.4). Notwithstanding the foregoing, the withdrawal of the Material does not affect MTAs entered into with Recipients before the effective date of such withdrawal. The use of such Material will continue to be governed by the relevant MTA, for the duration thereof.

The Depositor acknowledges that the Distributor may keep in its records all information contained in the Deposit Form relating to the withdrawn Material for archiving purposes, except for personal data, which shall be processed according to Appendix 2.

* 1. It is understood by the Depositor that the Recipients are required to pay a fee under any contract set up by Distributor for distribution of Material as set forth in Article 5.1, notably to cover the Distributor’s expenses for the storing, quality control, maintenance, and distribution of said Material.
  2. In the case the Material is a type strain, as defined by the International Code of Nomenclature of Prokaryotes (ICNP), the Depositor allows the Distributor to deposit the Material in other Biobanks, provided that the recipient Biobank shall maintain, store and distribute the Material to Third Parties in conditions substantially similar to the ones set forth in this MDA.

**Article 6. Distributor’s obligations**

**6.1.** The Distributor shall keep the Material in its Collection for the term of the MDA, in premises suitable for its preservation.

**6.2.** The Distributor will handle the Material with due skill and care, considering the potentially hazardous characteristics of the Material. The Distributor will use its reasonable endeavours to maintain and use the Material with appropriate precautions to minimise any risk of harm to persons and property and to safeguard the Material from theft and misuse. In order for the Distributor to fulfill this obligation, the Depositor undertakes to transmit all the information in its possession concerning the risks and potential dangerousness of the Material in the Deposit Form. If the Depositor acquires new information in this respect following deposit of the Material, it shall communicate such new information to the Distributor as soon as possible.

**6.3.** The Material shall be used and stored in compliance with any and all applicable laws, rules and regulations or professional standards in force.

**6.4.** In the case the Distributor uses the Material for research, quality control or teaching purposes, such use shall be made in conditions substantially similar to the ones set forth in the MTA and performed under suitable conditions by the members of its Authorized Personnel.

**6.5.** When distributing the Material in accordance with the provisions of Article 5, the Distributor communicates to the Recipients any information and documentation on the origin of the Material provided by the Depositor in the Deposit Form, in order for Recipients to comply with any applicable ABS Legislation.

**Article 7. Warranties**

**7.1.** The Depositor warrants to the Distributor that:

1. it has the necessary rights in the Material to deposit the Material at the Distributor’s Collection, to enter into the MDA and to authorize the use and distribution of the Material by the Distributor as provided for in the MDA;
2. the Material has been legally and ethically obtained;
3. it has supplied the Material and related information to the Distributor in a manner that complies with all applicable laws and regulations;
4. to the best of its knowledge, all information provided to the Distributor is true, correct and complete and allows a reasonable assessment of the Material’s nature and associated risks, and omits nothing of the Material nature;
5. the Material is pure at the time of deposit.

**7.2.** NO WARRANTIES, EXPRESSED OR IMPLIED, ARE OFFERED AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OF THE MATERIAL PROVIDED TO THE DISTRIBUTOR UNDER THIS MDA.

**7.3.** The Depositor declares that the deposit of the Material, in accordance with and for the purposes set forth in this MDA, does not infringe any rights of the Country of Origin or other Third Parties, including intellectual property rights, or any terms of agreements to which the Material is subject.

**7.4.** The Distributor is not a pharmaceutical establishment according to Articles L.5124-1 et seq. of the French Code of Public Health (CSP, *Code de la Santé Publique*) and Article 2 third paragraph of the European directive number 2003/94/CE of October 8th, 2003. Subject to the exceptions listed in Article L. 5124-10 of the French Code of Public Health, the Distributor cannot be considered by the Depositor as a drug manufacturer as defined in Article L.5111-1 of the CSP and/or provider of a drug, a medical or veterinary device or a diagnostic test as defined in Article L.5138-2 of the CSP.

**Article 8. Liability**

**8.1.** In no event shall a Party be liable in case of breach by the other Party of any applicable laws and regulations.

**8.2.** The Distributor will not be liable for any damage suffered by the Depositor which may arise from use, handling, storage or disposal of the Material by the Distributor under this MDA, except when and to the extent caused by the gross negligence or willful misconduct of the Distributor. In particular, the Depositor waives any recourse against the Distributor in case of accidental loss of the Material.

**8.3.** To the maximum extent possible, the Distributor and the Depositor will not be liable for any causes of action, including any special indirect or consequential damages arising out of any use, storage or disposal of the Material by the Recipients.

**8.4.** The Depositor hereby agrees to indemnify, defend, and hold harmless the Distributor against any contingent or actual loss incurred by the Distributor arising from or in connection with any breach of the MDA by, or the negligence of, the Depositor.

**Article 9. Term of this MDA**

**9.1.** This MDA is effective as of the Effective Date.

**9.2.** A Party may terminate this MDA at any time, without indemnity, in case of a material breach by the other Party of its obligations pursuant to the MDA, apart from a force majeure event as defined by Article 12.7. Such termination shall become effective thirty (30) days following the receipt of the written termination notice addressed to the breaching Party by registered letter with acknowledgment of receipt, if such breach is not cured within the said thirty (30)-day period, without prejudice of any other rights or actions the non-breaching Party may have as a consequence of the breach.

**9.3.** A Party may terminate this MDA at any time and for any reason, without indemnity. Such termination shall become effective sixty (60) days following the receipt of the written termination notice addressed to the other Party by registered letter with acknowledgment of receipt.

**9.4.** Termination of this MDA shall not end any provision of this MDA providing expressly or by implication the survival of a right or an obligation. For the avoidance of doubt, termination of this MDA shall not be deemed to be a cause for termination of the MTAs or other commitments to use the Material concluded prior to the termination of this MDA.

**Article 10. Destruction or return of the Material**

**10.1.** As directed by the Depositor, the Distributor shall promptly stop using the Material and shall return or destroy any remaining Material upon termination of this MDA, at the Distributor’s costs and expenses and in compliance with all relevant laws and regulations, unless otherwise agreed in writing between the Parties. If destruction of the Material is directed by the Depositor, a certificate of destruction shall be sent to the Depositor following such destruction.

**Article 11. Applicable law and dispute**

**11.1.** This MDA shall be governed by the laws of France, without reference to its conflict of law provisions.

**11.2.** The Parties shall attempt in good faith to settle any disputes relating to this MDA, its validity, interpretation, enforceability or termination. Should this attempt fail to resolve amicably the dispute within two (2) months from the notification of said dispute by a Party to the other Party, the Parties agree that such dispute shall be subject to the exclusive jurisdiction of the competent courts of Paris, France, and agree to submit to the personal and exclusive jurisdiction and venue of these courts.

**Article 12. Miscellaneous**

**12.1.** **Entire Understanding.** This MDA contains the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any previous understanding, commitment or agreement, oral or written, regarding such subject matter. The provisions of this MDA delete and replace, in particular, any general conditions of purchase or use of the Depositor. This MDA may be amended only by a duly executed written amendment.

**12.2.** **Relationship of the Parties.** Nothing in this MDA shall be construed to create any partnership, joint venture or agency relationship between the Parties. Neither Party is granted any authority under this MDA to act on the other’s behalf, or to bind or obligate the other in any manner to a Third Party.

**12.3.** **No public announcement.** Except as may be required by law, no press release or public announcement or statement, written or oral, pertaining to the terms and conditions of this MDA shall be made, directly or indirectly, by either Party, without the other Party’s express prior written consent. A Party shall not use the name, trademarks or any other distinctive sign of the other Party for any promotional purposes without the other Party’s express prior written consent.

**12.4.** **No Assignment.** Neither this MDA nor any right or obligation hereunder may be assigned or otherwise transferred without the prior express written consent of the other Party.

**12.5.** **Notice.** Any notice required or permitted to be given under this MDA shall be sufficient if sent by commercial courier or certified mail (return receipt requested) addressed to the relevant Party’s contact as follows:

* If to Depositor:

The contact information stated on the first page of the MDA.

* If to Distributor:

Responsable de la Collection de l’Institut Pasteur

28 rue Docteur Roux

75015 Paris, France

[cip@pasteur.fr](mailto:cip@pasteur.fr)

**12.6. Severability.** If any term, provision or condition of this MDA shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this MDA shall remain in full force and effect between the Parties.

**12.7.** **Force Majeure.** Neither Party shall be liable to the other for any default under this MDA due to a force majeure event, which the Parties agree to define for the purpose of this clause as an event which (i) is beyond the reasonable control of the defaulting Party, (ii) could not reasonably be foreseen when this MDA was executed and (iii) the effects of which cannot be avoided by appropriate measures, recognized as such by the courts of competent jurisdiction. The affected Party shall communicate in the shortest delay and in writing to the other Party that the performance of its obligations is prevented by a force majeure event. If the affected Party is unable to perform its obligations under the MDA for more than thirty (30) consecutive days, the other Party may terminate the MDA immediately upon notice without incurring any liability.

**12.8.** **No Waiver.** The failure of or neglect by a Party at any time, to require performance of the other Party of any provision herein, shall not in any way affect the right to require such performance at any time thereafter. The waiver by a Party of any breach of any provision hereof shall not be held to be a waiver of any subsequent breach of the same provision or of any other provisions hereof.

**12.9.** **Headings.** Headings used in this MDA are provided for convenience only and shall not be used to construe meaning or intent.

**12.10.** **Signature.** The Depositor shall sign this MDA either (i) with wet ink signature in as many original copies as there are Parties with a distinct interest, or (ii) electronically in a single original copy that each Party undertakes to keep on a durable medium.

If the Depositor uses an electronic signature process, it undertakes to make available to the Distributor the certificate of completion containing the signature verification-data (identity of the signatory and link between the signature and the act to which such signature relates).

**For bacterial strain deposits, please refer to:**

**APPENDIX 1A – DEPOSIT FORM FOR BACTERIA.xlsx**

**For fungal strain deposits, please refer to:**

**APPENDIX 1B – DEPOSIT FORM FOR FUNGI.xlsx**

**APPENDIX 2– PERSONAL DATA COLLECTION AND PROCESSING INFORMATION**

In its legitimate interest of monitoring and preserving the Material deposited and preserved within its CRBIP collections, Institut Pasteur collects and processes personal data related to the person who collected original Material and/or the person who deposited the Material at any of the Units of CRBIP, such as identification, professional, and contact data, in order to ensure compliance with the requirements of the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization (Convention on Biological Diversity).

As part of the CRBIP databases, the data are accessible to CRBIP members, and the name of the Depositor and its institution is published on the CRBIP catalogs. These data are kept for a minimum period of 20 years from the date of the deposit (in accordance with the Nagoya Protocol), or for the entire duration of the deposit plus 5 years, in application of the legal prescription period.

For more information or to exercise your rights of access, rectification, opposition and, where applicable, your rights of limitation or deletion, you may contact the Institut Pasteur's Data Protection Officer by e-mail at the following address: [dpo@pasteur.fr](mailto:dpo@pasteur.fr).

In case of lack of response or dispute, you have the right to lodge a complaint with the Commission Nationale de l'Informatique et des Libertés (CNIL).