



CIRM COLLECTION
(Centre International de Ressources Biologiques)

MATERIAL DEPOSIT AGREEMENT
N°XXXXXX

Between

L'INSTITUT NATIONAL DE RECHERCHE POUR L'AGRICULTURE, L'ALIMENTATION ET L'ENVIRONNEMENT (INRAE)

Public scientific and technological institute
Support unit responsible for managing the CIRM collection
Having its head office at 147 rue de l'Université, Paris 7e, France
Represented herein by **Mr Philippe Mauguin**

In their capacity as CEO of INRAE

And by delegation, by **Mrs Emmanuelle Helloin** acting in his/her capacity of Manager of CIRM-BP, duly authorized,

Hereinafter referred to as the **"Distributor"**

On the one hand,

And

[**NAME OF THE ENTITY**], [*...Legal status of the entity...*], with its registered office at [*...Address...*], represented by [*Mr or Mrs/Ms...Surname Name*] acting in his/her capacity of [*...Title...*], duly authorized,

Hereinafter referred to as the **"Depositor"**,

On the other hand.

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

Recitals

1. Distributor is France's new National Research Institute for Agriculture, Food and Environment, created on January 1, 2020, It was formed by the merger of INRA, the National Institute for Agricultural Research, and IRSTEA, the National Research Institute of Science and Technology for the Environment and Agriculture.
2. The "Centre International des Ressources Microbiennes" (CIRM), hosted at the Distributor, is a scientific interest group (GIS) dedicated to understanding and exploiting Biodiversity. As such, it manages a collection of microbial strains distributed over five conservation sites each with its own specific field:
 - Yeasts of technological interest (CIRM Levures)
 - Bacteria of agro-food interest (CIRM-BIA)
 - Filamentous fungi of agro-industrial interest (CIRM-CF)

Initials

- Pathogenic bacteria for animal or human (CIRM-BP)
- Plant associated bacteria (CIRM-CFBP)

The CIRM has the following missions:

- Identification, conservation, characterisation and distribution of microbial strains (bacteria, yeasts and fungi);
 - Performance of services (identification, characterisation and conservation in safe deposits, etc.);
 - Participation in research contracts that involve the use of microbial resources held by the CIRM.
3. Depositor intends to deposit Material into the collection of the Distributor for the sole purposes of identifying, conserving, characterizing, using and distributing the Material to Recipients (as defined hereunder) for research, quality control or teaching purposes, subject to the terms and conditions of this Agreement.
 4. This deposit takes place in the framework of the EJP One Health CARE consortium project. Distributor and Depositor are parties to the Consortium Agreement dated of January, 1st 2020.

Now, therefore, the Parties hereby agree as follows:

Article 1. Definitions

For the purpose of this Agreement, the capitalized terms used herein, in singular or in plural, shall have the respective meanings set forth below:

- **“ABS Legislation”** shall mean any biodiversity legislation governing the access to genetic resources and benefits-sharing, whether local or national rules, laws and regulations 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.
- **“Agreement”** shall mean this material deposit agreement, together with its appendices (Deposit Form and MTA) and any future amendment which make an integral part of it. In case of contradiction between the terms of this material deposit agreement and its appendices, the terms of this material deposit agreement shall prevail.
- **“Authorized Personnel”** shall mean all directors, employees, students, agents and consultants or advisors of each Party. As for Distributor, Authorized Personnel might also include employees of other public academic research institutions working on a regular basis within Distributor’s teams as part of a mixed research unit. Authorized Personnel act on behalf of the Party from which they depend to exercise its rights or perform its obligations under this Agreement.
- **“Deposit Form”** shall mean the form indicating data of the Depositor, the Material, any limitation of use and any other note relating to the nature of the Material and transfer, set forth in Appendix 1.
- **“Effective Date”** shall mean the date of last signature of this Agreement by the Parties.
- **“Material”** shall mean any biological material or part of it provided by the Depositor and identified in the specific Deposit Form (attached hereto).
- **“MTA”** shall mean the material transfer agreement or general terms and conditions of use to be

concluded with any Recipient, set forth in Appendix 2.

- “**Recipient**” shall mean any Third Party requesting the Material to the Distributor and obtaining it by signature of an MTA.
- “**Third Party**” shall mean any person or entity other than the Parties.

Article 2. Purpose

- 2.1.** Distributor accepts to receive in its repository free of charge the Material that the Depositor requests to deposit under the terms and conditions of this Agreement.
- 2.2.** The Agreement is formed by the following documentation:
 - this document,
 - Appendix 1: Deposit Form
 - Appendix 2: MTA

Article 3. Deposit of the Material

- 3.1.** Depositor shall communicate any and all relevant information related to the Material and necessary for its proper maintenance and handling by the Distributor, by completing all mandatory fields of the Deposit Form. It is understood between the Parties that no confidential information are exchanged under this Agreement. Distributor may therefore publicly disclose (e.g. on its online catalog or to Recipients) any data, information and documentation provided by the Depositor in order for the former to perform its obligations under this Agreement.
- 3.2.** 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.** Depositor shall proceed to the packing of the Material, according to rules of the two countries of exportation and importation as well as with International Air Transport Association (IATA) and international transport of Dangerous Goods by Road (ADR) regulations.
- 3.4.** Depositor 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 otherwise atypical by Distributor.

Article 4. Use of Material – Grant of rights

- 4.1.** Depositor grants the Distributor a non-exclusive, royalty-free, non-transferrable, non-sub-licensable, worldwide right, for the term of the Agreement, to hold on deposit and store the Material, use it for research and educational purposes and provision of services and distribute the Material to Third Parties for quality control, teaching or research purposes only. The right to distribute the Material is subject to the conclusion between the Distributor and the Recipient of a MTA. Any other use is prohibited without the prior written consent of the Depositor.
- 4.2.** Depositor retains ownership of the Material at all times, and no rights, titles or interests in or to the Material is hereby granted to Distributor except as expressly provided for herein.

- 4.3.** It is understood by the Depositor that Recipients be required to pay a fee under the MTA to cover a part of Distributor's expenses.
- 4.5.** Each Party reserves the right to withdraw the Material from the repository at any time and for any reason during the term of this Agreement. The Party willing to withdraw the Material shall inform the other Party of its decision within a reasonable time prior to such withdrawal. The Agreement shall be deemed to have been terminated for the Material that was withdrawn.

Article 5. Distributor's obligations

- 5.1.** Distributor shall keep the Material in its repository for the term of the Agreement, in premises suitable for conservation.
- 5.2.** Distributor will handle the Material with due skill and care, taking into account the hazardous characteristics of the Material. 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, taking into account the hazardous characteristics of the Material and to safeguard the Material from theft and misuse.
- 5.3.** The Material shall be used and stored in compliance with any and all applicable laws, rules and regulations or professional standards in force.
- 5.4.** In the case the Distributor uses the Material for research or teaching purposes, the research shall be conducted in conditions substantially similar to the ones set forth in the MTA, at the Distributor's premises and performed under suitable conditions by the members of its Authorized Personnel and only to the extent necessary to carry out the research.
- 5.5.** Any request received by the Distributor to use Material for a commercial activity shall be referred to the Depositor. To avoid any doubt, the Distributor shall not be involved in any negotiations between the Depositor and any Recipient wishing to use Material for any commercial activity. Transfer of the Material by the Distributor for any commercial activity shall occur only after receiving the prior written consent of the Depositor.
- 5.6.** As stated in the MTA, the Distributor will communicate to 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 6. Warranties

- 6.1.** The Depositor warrants to Distributor that:
- (a) it has the necessary rights in and title to the Material to deposit the Material within Distributor's repository, to enter into the Agreement and to authorize use and distribution of the Material by Distributor as provided for in the Agreement;
 - (b) it does not infringe the rights of third parties concerning the deposited MATERIAL.
 - (c) the Material has been legally and ethically obtained;
 - (d) it has supplied the Material and related information to Distributor in a manner that complies with all applicable law and regulation;

- (e) to the best of its knowledge, all information provided to Distributor is true, correct and complete and allows a reasonable assessment of the Material's nature and associated risks and omits nothing of a material nature;
- (f) the Material is pure at the time of deposit;

Article 7. Liability

- 7.1. In no event shall a Party be liable in case of breach by the other Party of any applicable laws and regulations, except that Depositor shall remain liable for compliance with the laws of the territories of export and import of the Material in accordance with the provisions of Article 3.3.
- 7.2. Distributor will not be liable for any damage to the Material which may arise from use, handling, storage or disposal of the Material by Distributor, except when and to the extent caused by the gross negligence or willful misconduct of Distributor.
- 7.3. To the maximum extent permitted by law and notwithstanding any other provision of the Agreement, Distributor is not liable in respect of any indirect, consequential or special loss, loss of revenue or loss of profit howsoever arising whether under contract, in tort, in equity, under statute or otherwise.
- 7.4. Distributor and 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 Recipients.
- 7.5. The Depositor hereby agrees to indemnify, defend and hold harmless Distributor against any contingent or actual loss incurred by Distributor arising from or in connection with any breach of the Agreement by, or the negligence of, the Depositor.

Article 8. Term of this Agreement

- 8.1. This Agreement is effective as of the Effective Date.
- 8.2. A Party may terminate this Agreement at any time, without indemnity, in case of a material breach by the other Party of its obligations pursuant to the Agreement, apart from a *force majeure* event as defined by Article 11.7. 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.
- 8.3. A Party may terminate this Agreement at any time and for any reason, without indemnity. Such termination shall become effective ninety (90) days following the receipt of the written termination notice addressed to the other Party by registered letter with acknowledgment of receipt.
- 8.3. Any renewal of this Agreement shall be subject to the signature of a corresponding amendment as further detailed in Article 11.1. Termination of this Agreement shall not end any provision of this Agreement providing expressly or by implication the survival of a right or an obligation.

Article 9. Destruction or return of Material

- 9.1.** 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 Agreement, 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, which shall have been duly certified by a duly authorized representative of the Distributor, shall be sent to the Depositor within one (1) month following such destruction.

Article 10. Applicable law and dispute

- 10.1.** This Agreement shall be governed by the laws of Belgium, without reference to its conflict of law provisions.
- 10.2.** The Parties shall endeavour to settle their disputes amicably. WIPO Mediation Followed, in the absence of a settlement, by WIPO Expedited Arbitration or by Court Litigation:
- Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

WIPO Mediation Followed, in the absence of a settlement, by Court Litigation:

- If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, the courts of Brussels shall have exclusive jurisdiction.

Article 11. Miscellaneous

- 11.1.** **Entire Understanding.** This Agreement 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 Agreement delete and replace, in particular, any general conditions of purchase or use of the Depositor. This Agreement may be amended only by a written amendment duly executed by the authorized representatives of both Parties.
- 11.2.** **Relationship of the Parties.** Nothing in this Agreement shall be construed to create any partnership, joint venture or agency relationship between the Parties. Neither Party is granted any authority under this Agreement to act on the other's behalf, or to bind or obligate the other in any manner to a Third Party.
- 11.3.** **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 Agreement 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.

- 11.4. No Assignment.** Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred without the prior express written consent of the other Party.
- 11.5. Notice.** Any notice required or permitted to be given under this Agreement 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:
 - Company
 - [Mr or Mrs/Ms ...Surname Name]
 - Unit / Service
 - Address
 - Email: ...@...
 - If to Distributor:
 - CIRM-BP
 - Mrs Emmanuelle Helloin
 - UMR ISP 1282, bâtiment 311
 - INRAE Centre Val de Loire
 - 37380 Nouzilly
 - Email : emmanuelle.helloin@inrae.fr
- 11.6. Severability.** If any term, provision or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement shall remain in full force and effect between the Parties.
- 11.7. Force Majeure.** Neither Party shall be liable to the other for any default under this Agreement 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 Agreement 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 Agreement for more than thirty (30) consecutive days, the other Party may terminate the Agreement immediately upon notice without incurring any liability.
- 11.8. 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.
- 11.9. Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- 11.10. Signature.** Except as may be prohibited by applicable law or regulation, this Agreement may be executed in two or more counterparts, or by facsimile, .pdf or other electronic means, each of which will be deemed an original and all of which when taken together will constitute one Agreement. Facsimile and electronic signatures will be binding for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized respective representative.

DISTRIBUTOR

[NAME OF THE DEPOSITOR]

Date

Date

[Name]
[Title]

[Name]
[Title]

Initials

APPENDIX 1 – DEPOSIT FORM**Description of material (part A: passport information; part B: complete information)**

Indicate the country of origin (no strain can be accepted without this information)

Indicate whether this country has ratified the Nagoya Protocol and whether it has access and benefit-sharing or “ABS” legislative or regulatory provisions.

If yes, indicate whether a collecting agreement (Prior informed consent or PIC) has been obtained. If so, indicate:

- the agreement reference
- the name and address of the person or organization that issued the PIC
- details of the Mutual Agreed Terms (MAT) or other form of agreement
- attach the corresponding documents to the deposit agreement

VOLET A: Passport information

Depositor registration number or strain name:

Alternate collection number (*if applicable*):

Genus/species:

Sample data (place and date of collection):

Data on the origin of the strain (place of isolation, date of isolation):

Data on the origin of the strain (original host/biotope):

Risk/hazard group:

Culture conditions (medium, temperature):

VOLET B : Informations complémentaires

Isolated from:

By

Isolation context (nature of the sample, type of pathology, healthy subject, etc.):

Method(s) of identification implemented:

Related sequencing data:

Other:

Documentation:



APPENDIX 2 – MTA

ATM XXXXXX-X

MATERIAL TRANSFER AGREEMENT

BETWEEN: **INSTITUT NATIONAL DE RECHERCHE POUR L'AGRICULTURE, L'ALIMENTATION ET L'ENVIRONNEMENT**, a Public corporation of science and technology, hereinafter called "INRAE", whose registered offices are located at 147, rue de l'Université, 75338 PARIS CEDEX 07, France, represented herein by **Mrs Nathalie Winter, director of the joint research unit ISP 1282, and Mrs Emmanuelle HELLOIN, manager of the Tours (Nouzilly) preservation site.**

AND: ¹ _____, hereinafter called "**the Recipient**" whose registered offices are located at _____, represented herein by _____,

Individually called "the party" or collectively "the parties".

BEING UNDERSTOOD THAT

- INRAE (CIRM-Pathogenic Bacteria, Infectiology and Public Health Research Unit) has in its possession material biological, the "MATERIAL", consisting of _____

This MATERIAL has been/ has not been² protected by a deed of intellectual/industrial property³:

- The Recipient is interested in the MATERIAL held by INRAE to lead researches on⁴

- "INFORMATION" in this agreement shall mean any information, oral or written of a confidential nature relating to the MATERIAL.

IN CONSEQUENCE WHEREOF THE PARTIES AGREE AS FOLLOWS

DEFINITIONS :

¹ To be completed by the partner

² Make a choice.

³ Clarify if the material is already protected by an intellectual property or industrial property (patent,...) right

⁴ Mention has to be completed by a brief description.

Initials

INFORMATIONS: any oral or written information related to the MATERIAL.

Original material: The material as provided by INRAE.

MATERIAL: Original material, progeny and unmodified Derivatives.

Progeny: Unmodified descendants from Original Material.

Unmodified Derivatives: substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material.

- 1 INRAE undertakes to supply the MATERIAL to the Recipient after the signature of this agreement by both parties. The MATERIAL is supplied to the Recipient on a non-exclusive basis for research, quality control or teaching purposes, as described above. Consequently, the Recipient undertakes to use the MATERIAL only for these purposes.
- 2 **Option 1: 2.1** The Recipient acknowledges that INRAE has been mandated by X, hereafter the Proprietary Party, the exclusive owner of the MATERIAL and INFORMATION provided to the Recipient and rights of industrial and intellectual property relative to them.
Option 2: 2.1 The MATERIAL is recognized as belonging to public domain (type strains)
2.2 Any results generated by the Recipient from the MATERIAL which are related to a development or an identification of a new effect or a possible new use, patentable or not, or to the obtaining of a material, or of chemical, biochemical, biological substances which do contain or incorporate said MATERIAL, the parties will work cooperatively at an appropriate time to establish by agreement the sharing of intellectual property rights, the conditions of protection by an industrial property right and exploitation on the basis of the MATERIAL scale included in results.
On that point, the Recipient will inform INRAE of the results of the research obtained using the MATERIAL.
- 3 The Recipient undertakes to use the MATERIAL according to the national and international laws and regulations and will make his business of obtaining all authorisations needed to the conduct of its research and experiment.
- 4 INRAE, by this agreement, does not grant any right, title deed, right of license or exploitation right, implied or express, to the Recipient by the transfer of the MATERIAL, save express and written agreement of **The Proprietary Party.**
- 5 **In all the publications/communications concerning the use of the MATERIAL and/or the INFORMATION, the Recipient should make reference to the source of the MATERIAL: **The Proprietary Party (please specify the text you wish to see written when the recipients of the strains will mention their use in publications)** and to the CIRM Collection.**
- 6 The MATERIAL supplied here is of experimental nature. INRAE gives no warranty or representation as for its utility, efficiency, merchantability, non-toxicity, safety, fitness for a particular use. INRAE declines any liability or responsibility concerning any and all damages caused by the MATERIAL and the INFORMATION, and by the use which could be made of it. INRAE makes no representation or warranty that the use of the MATERIAL and/or INFORMATION will not infringe any patent or other proprietary right.
- 7 This agreement will come into effect in the date of its signature, for a duration of five (5) years. When this Agreement ends, the Recipient undertakes, during the following days, to either return or destroy, at its expense, the MATERIAL and all the INFORMATION relating thereto which it possesses, not to keep any and all reproduction or copy.
- 8 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 Nouzilly, on.....

The recipient

INRAE

Name

In the capacity of

Name

In the capacity of Director of the UMR
ISP

**For information :
Do not complete.**

Name

In the capacity of manager of the
preservation site

Initials
