

## MATERIAL DEPOSIT AGREEMENT

Between

- ◆ **INSTITUT PASTEUR**, a French non-profit foundation with recognized charitable status, located at 25-28, rue du Docteur Roux 75015 Paris, France, TVA FR 65 775 68 48 97, represented by [Mr or Mrs/Ms ...Surname Name] acting in his/her capacity of [...Title...], duly authorized,

Hereinafter referred to as “**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 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 and actions of public health. Distributor has an international network with 32 Institutes spanning all continents.
2. As such, the “Collection de l’Institut Pasteur” (CIP), hosted at the Distributor, aims to preserve microbial culture collections with the purpose of making microbial strains and its associated material (e.g. DNA) available to the scientific community.
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 ToxDetect consortium project. Distributor and Depositor are parties to the Consortium Agreement dated of January, 1st 2018.

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

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**Commenté [U1]:** This can be amended as needed with CIRM or BVR information

**Commenté [U2]:** This can be amended as needed with CIRM or BVR information

**Commenté [U3]:** CARE

**Commenté [U4]:** January, 1st 2020

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 12<sup>th</sup>, 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 academic research institutions, whether public or private entities, working on a regular basis within Distributor’s teams (whether as part of a mixed research unit or under secondment agreement or any other contractual arrangements). 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.

**Commenté [U5]:** @Depositor: For the sake of clarity, Institut Pasteur has many research units which are either mixed research units or host researchers from other academic institutions under various status (secondment agreement, etc.). People working within Institut Pasteur’s teams are not all employees of Institut Pasteur.

## 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

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Material to the Distributor's premises.

- 3.3. Depositor shall proceed to the packing of the Material, according to the rules and regulations applicable in the territory of Depositor.
- 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 Distributor's expenses. In the case the Recipient is a party to the ToxDetect Consortium Agreement, such Recipient will benefit from a discount on the total amount of the fee to be paid.
- 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.
- 4.6. Depositor allows the Distributor to deposit the Material in other centres of biological resources in the framework of routine exchanges of biological material between them provided that the recipient centre of biological resources shall maintain, store, use and distribute the Material to Third Parties in conditions substantially similar to the ones set forth in this Agreement.

Commenté [U6]: CARE

#### 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.

Initials

- 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) the Material has been legally and ethically obtained;
  - (c) it has supplied the Material and related information to Distributor in a manner that complies with all applicable law and regulation;
  - (d) 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;
  - (e) the Material is pure at the time of deposit;
- 6.2. NO WARRANTIES, EXPRESS OR IMPLIED, ARE OFFERED AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OF THE MATERIAL PROVIDED TO DISTRIBUTOR UNDER THIS AGREEMENT, OR THAT THE MATERIAL MAY BE EXPLOITED WITHOUT INFRINGING THE PATENT RIGHTS OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTIES.
- 6.3. Distributor is not a pharmaceutical establishment according to Articles L.5124-1 et seq. of the French Code de la Santé Publique (CSP) and Article 2 third paragraph of the European directive number 2003/94/CE of October 8<sup>th</sup>, 2003. Accordingly, Distributor cannot be considered by the Depositor as a drug manufacturer as defined in Article L.5111-1 of the CSP or a raw material manufacturer 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.

**Commenté [U7]:** This section is specific to Institut Pasteur. It can be deleted when this template is used by CIRM or BVR.

## 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 territory of 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,

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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 sixty (60) 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: \_\_\_\_\_
- 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

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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]

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**APPENDIX 1 – DEPOSIT FORM**

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**APPENDIX 2 - MTA**

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