



## MATERIAL ACCESSION AGREEMENT (MAA)

This Material Accession Agreement (MAA) is executed on date of raising request for deposition by the DEPOSITOR and between:

**Agharkar Research Institute (ARI)**, established by the Maharashtra Association for the Cultivation of Science (MACS) and registered under the Bombay Public Trust Act of 1950, and an autonomous institute funded by the Department of Science and Technology, Government of India situated at GG Agarkar Road, Pune – 411004 and the **MACS Collection of Microorganisms (MCM)**, a repository operated by and located within ARI campus;

(Hereinafter COLLECTIVELY referred to as the “DEPOSITORY” which expression unless repugnant to the context or meaning thereof shall mean and include its successors-in-interest, executors and permitted assigns)

And

Person(s) or institution who deposits ORIGINAL MATERIAL in the custody of the DEPOSITORY, (Name of Researcher/Organization, Official Address as mentioned in the DEPOSIT FORM)

(Hereinafter referred to as the “DEPOSITOR” which expression unless repugnant to the context or meaning thereof shall mean and include its successors-in-interest, executors and permitted assigns)

**WHEREAS ARI** was established by MACS to undertake research across all areas of life sciences spread over six different themes, namely Biodiversity & Paleobiology, Bioenergy, Bioprospecting, Developmental Biology, Genetics & Plant Breeding, and Nanobioscience and offer related services to researchers/organization/industries;

**AND WHEREAS MCM** was established to act as a national depository of microorganisms, especially anaerobes and extremophiles, to supply authentic microbial cultures and to provide related services to the scientific community working in research institutions, universities and industries;

**AND WHEREAS** scientists, professors and other personnel affiliated with research, academic institutions and other Organizations, from time to time, facilitate scientific research by sharing biological Material with one another for scientific verification and other research purposes;

**AND WHEREAS** the depositor is intending to deposit certain biological materials and towards that end, the parties are executing the current Material Accession Agreement;



## 1. DEFINITIONS:

- 1.1. **AGREEMENT:** Agreement shall mean the present agreement with all the terms and annexes.
- 1.2. **COMMERCIAL PURPOSES:** The use of the MATERIAL for the purpose of profit; it includes the sale, leasing, exchange, license, or other transfer of MATERIAL for profit purposes. **COMMERCIAL USE** shall also include uses of MATERIAL to establish service business activities and to manufacture products.
- 1.3. **DEPOSIT FORM:** Form of the COLLECTION recording the minimum data set of administrative, technical, and scientific information enabling the unambiguous identification of the ORIGINAL MATERIAL. It is an integral part of the MATERIAL ACCESSION AGREEMENT.
- 1.4. **DEPOSITOR:** Person(s) or institution who deposits ORIGINAL MATERIAL in the custody of the DEPOSITORY.
- 1.5. **DEPOSITORY:** Means MACS Collection of Microorganisms (MCM), housed at Agharkar Research Institute (ARI), which is engaged in collection, maintenance, storage, propagation, quality control, ex situ conservation, sustainable use and in distribution of the Biological materials to scientific community, for advancement of knowledge in the field of biotechnology and life sciences.
- 1.6. **MATERIAL:** ORIGINAL BIOLOGICAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.
- 1.7. **MODIFICATION:** Substances or biological material created by the RECIPIENT or formed from the original biological material by using the MATERIAL which is not the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES and which have new or old properties. **MODIFICATION** includes, but is not limited to, recombinant DNA clones.
- 1.8. **ORIGINAL MATERIAL:** Biological material which was originally supplied to the depository by the Depositor, or subsequently as a result of a re-accession of the same strain or a modified strain.
- 1.9. **PROGENY:** Unmodified descendant (e.g. subculture or replicate) from the MATERIAL.
- 1.10. **RECIPIENT:** Legal entity or individual who purchases and/or uses the MATERIAL.
- 1.11. **“RESEARCH PURPOSES”** means activities undertaken for the advancement of knowledge. It specifically excludes use of MATERIAL or MODIFICATION, their Replicates, Products and Derivatives for any activity undertaken for commercial gain and any activity involving direct or indirect application in humans, including diagnostic testing and production of substances for end-use in human subjects.
- 1.12. **UNMODIFIED DERIVATIVES:** Substances created by the RECIPIENT, which constitute an unmodified functional subunit of the MATERIAL.

## 2. NOW THIS AGREEMENT WITNESSETH AS UNDER:

The Depositor understands that the DEPOSITORY accepts two types of deposits:

- 2.1. **Public Or Open Deposit:** Wherein the Depositor deposits the MATERIAL or MODIFICATION in the custody of the DEPOSITORY and grants the DEPOSITORY a non-exclusive license to preserve, to catalogue, to study/research and to supply the MATERIAL OR MODIFICATION to third parties for research purposes.
- 2.2. **Restricted Access Deposit:** Wherein the DEPOSITORY ensures that the MATERIAL or MODIFICATION will not be forwarded to third parties as long as they are maintained in this category that requires a special fee.



3. In consideration of the mutual promises in the Agreement, the Depositor grants the DEPOSITORY an irrevocable, perpetual, non-exclusive, royalty free, transferrable, worldwide license to:
  - 3.1. hold on deposit and store the MATERIAL or MODIFICATION;
  - 3.2. analyze, test and replicate any or all of the MATERIAL or MODIFICATION;
  - 3.3. incorporate any or all of the MATERIAL or MODIFICATION into additional Panels for research use, and;
  - 3.4. grant accession, market, and distribute any or all of the MATERIAL or MODIFICATION and Information associated therewith for Research Purposes.
4. The Depositor warrants to the DEPOSITORY that:
  - 4.1. it has the necessary rights in and title to the MATERIAL or MODIFICATION to deposit the MATERIAL or MODIFICATION with the DEPOSITORY, to enter into the Agreement and to authorize use and distribution of the MATERIAL or MODIFICATION by the DEPOSITORY as provided for in the Agreement;
  - 4.2. it has supplied the MATERIAL or MODIFICATION and Information to the DEPOSITORY in a manner that complies with all Applicable Laws;
  - 4.3. all Information provided to the DEPOSITORY is true, correct and complete and allows a reasonable assessment of the MATERIAL or MODIFICATION's nature and associated risks and omits nothing of a MATERIAL or MODIFICATION nature;
  - 4.4. it has obtained in writing all requisite consents from the donor of the MATERIAL or MODIFICATION for the use of the MATERIAL or MODIFICATION for Research Purposes;
  - 4.5. the MATERIAL or MODIFICATION has been legally and ethically obtained;
  - 4.6. use of the MATERIAL or MODIFICATION and Information by the DEPOSITORY, as proposed by the Agreement, will not infringe the Intellectual Property Rights or any other rights of any third party; and
  - 4.7. the MATERIAL or MODIFICATION is pure and viable at the time of deposit.
5. If at any time during the term of the Agreement a sample of the MATERIAL or MODIFICATION provided to the DEPOSITORY by the Depositor is determined by the DEPOSITORY, in its absolute discretion, to be impure, not viable or otherwise not of a satisfactory standard for a deposit of MATERIAL or MODIFICATION, the DEPOSITORY may decline to Accession the MATERIAL or MODIFICATION, may decline to distribute the MATERIAL or MODIFICATION and may provide seven (7) days written notice to the Depositor of its intention to destroy the MATERIAL or MODIFICATION. However, if the Depositor then provides written notice to the DEPOSITORY that it wishes to retain the MATERIAL or MODIFICATION and that notice is provided to the DEPOSITORY within seven (7) days of the date of the DEPOSITORY's notice, the Depositor may arrange to pick up the MATERIAL or MODIFICATION within a further fourteen (14) days but at the Depositor's cost. If the Depositor does not provide notice to the DEPOSITORY in accordance with this provision that it wishes to retain the MATERIAL or MODIFICATION or does provide that notice but does not pick up the MATERIAL or MODIFICATION within the time required by this provision, the DEPOSITORY has the right to destroy the MATERIAL or MODIFICATION twenty-



one (21) days after the date of the depositor's notice of intention to destroy the MATERIAL or MODIFICATION.

## 6. DEPOSITORY'S OBLIGATIONS

- 6.1. The DEPOSITORY will use its reasonable endeavors to handle the MATERIAL or MODIFICATION with due skill and care and in accordance with Applicable Law, considering the hazardous characteristics, if any, of the MATERIAL or MODIFICATION.
- 6.2. DEPOSITORY will use its reasonable endeavors to maintain and use the MATERIAL or MODIFICATION with appropriate precautions to minimize any risk of harm to persons and property, considering the hazardous characteristics of the MATERIAL or MODIFICATION and to safeguard the MATERIAL or MODIFICATION from theft and misuse.
- 6.3. The DEPOSITORY acknowledges that the MATERIAL or MODIFICATION is not intended for use in humans/animals, and it will not knowingly provide the MATERIAL or MODIFICATION to any RECIPIENT for use in, or with, human/animal subjects without the prior written consent of the Depositor and, where applicable, from any applicable professional ethics or regulatory authority.
- 6.4. The DEPOSITORY will make no attempt, and is under no obligation, to identify the donor of the MATERIAL or MODIFICATION apart from any scientific methods employed to authenticate the MATERIAL or MODIFICATION during its quality control.
- 6.5. The DEPOSITORY reserves the right to make further modifications in the MATERIAL or develop new media or process to maintain the MATERIAL or utilize a portion of the MATERIAL for testing. The DEPOSITORY will notify the DEPOSITOR of such activity as hereinabove at an appropriate time.

## 7. DISTRIBUTION OF MATERIAL or MODIFICATION

Notwithstanding any other clause in the Agreement,

- 7.1. The DEPOSITORY may distribute any of the MATERIAL or MODIFICATION to a Third-Party Distributor for subsequent distribution to RECIPIENTS, provided that the Third-Party Distributor contractually agrees under the Material Transfer Agreement with DEPOSITORY.
- 7.2. The Depositor acknowledges that any Third-Party Distributor to whom any of the MATERIAL or MODIFICATION is distributed by DEPOSITORY may seek handling and maintenance fee. The Depositor agrees that it will have no entitlement to receive any part of any fee that the Third-Party Distributor may charge.
- 7.3. The DEPOSITOR from the Countries party to the Convention on Biological Diversity (CBD) and the Nagoya Protocol (NP) should submit a valid document equated to Prior Informed Consent (PIC) fitting in to the framework of Nagoya Protocol along with DEPOSIT FORM to help the depository determine whether the MATERIAL is regulated by the CBD or the NP.
- 7.4. The DEPOSITORY shall not be held liable to the Depositor for any damage or loss to the MATERIAL or MODIFICATION due to any events caused during maintenance or storage of the MATERIAL or MODIFICATION.
- 7.5. The DEPOSITOR accepts the terms and conditions of this MAA by transferring the MATERIAL into the custody of the DEPOSITORY and completing the DEPOSIT FORM.
- 7.6. It is the DEPOSITOR's responsibility to ensure the MATERIALS were collected by following



biodiversity law of the country of origin and that the deposition of the MATERIAL in an open collection does not infringe any national obligations. In the absence of any information to the contrary, the COLLECTION will assume it is free to supply any newly deposited material to third parties.

## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. The Depositor has confirmed that all IP rights in the Biological Material and Modification thereto by Depositor to DEPOSITORY shall be the sole and exclusive property of Depositor.
- 8.2. The DEPOSITORY shall hold the IP rights on any further modification or further development of process or product done at its end and the DEPOSITOR will not hold any claim to such IP.

## 9. COMMERCIAL EXPLOITATION

- 9.1. If the material is commercially exploited by the DEPOSITOR, the DEPOSITOR will pay the cost of maintaining the culture, including the period prior to the commercial exploitation and any subsequent period after the commercial exploitation during which the material was maintained/will be maintained by DEPOSITORY. The accumulated costs incurred prior to the commercial exploitation shall be deposited during commercial exploitation and subsequent costs for future maintenance may be deposited annually, in advance.
- 9.2. If the material is further developed by the DEPOSITORY and such development leads to commercial exploitation, such exploitation would be a subject of separate agreement. Nothing in this agreement may be construed to restrict the scope of further agreements.

## 10. CONFIDENTIAL INFORMATION.

- 10.1. **Definition.** For purposes of this Agreement, Confidential Information; shall include all information of MATERIAL or MODIFICATION that has or could have any value or utility pertaining to Restricted Access Deposit.
- 10.2. That, read along with clause 10.1, the Depositor has agreed not to disclose any information related to the deposit to any third party and/or not to use them in any which way without written consent of the DEPOSITORY, which information has been or shall be disclosed to the Depositor. All right, title, and interest of every kind and nature whatsoever in and to the Proprietary Information made, written, discussed, developed, secured, obtained, or learned by Depositor, during or subsequently, during process of depositing MATERIAL or MODIFICATION or after, shall be the sole and exclusive property of the DEPOSITORY for any purpose or use whatsoever.
- 10.3. It is Depositor's duty to hold Proprietary and Confidential Information in confidence shall re-main in effect until DEPOSITORY sends Depositor written notice releasing Depositor from this Agreement, or before the authority established by law for legal purposes.
- 10.4. The Depositor recognizes and acknowledges that any breach or threatened breach of this Agreement may cause the DEPOSITORY irreparable harm for which monetary damages may be inadequate. Depositor agrees, therefore, that DEPOSITORY shall be entitled to an injunction and monetary relief to restrain Depositor from such breach or threatened breach.

## 11. TERM AND TERMINATION



- 11.1. The Agreement commences when signed and will continue in force for so long as the DEPOSITORY continues to hold any part of the MATERIAL or MODIFICATION.
- 11.2. Any party can terminate this agreement by giving 30 days' notice to the other Party. Upon termination, the Depositor may claim remaining materials from DEPOSITORY provided intellectual rights in modifications/result in furtherance of the research by using material procured from the DEPOSITORY shall vest with the DEPOSITORY. The DEPOSITORY shall have the right to retain at least a part of the MATERIAL for purposes of public information and access in accordance with prevailing laws.
- 11.3. This agreement shall be governed in accordance with the laws of India. Without limiting the generality of the foregoing, any shipment of MATERIAL or MODIFICATION coming from the countries outside India must comply with all applicable foreign laws, and related regulations including the Nagoya Protocol and related provisions.
- 11.4. That subject to the above, the parties are agreed that in case of dispute arising about the interpretation, application and operation of any of the Articles of this Agreement or any dispute touching the intended activity of the parties to this Agreement the parties shall endeavor to sort out the dispute themselves and in the event of the failure to do so the parties shall resort to arbitral process in accordance with the Arbitration and Conciliation Act, 1996 at Pune only and the Arbitral award shall be final and binding on the parties.
- 11.5. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained herein. All prior and contemporaneous negotiations and agreements between the Parties are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedents to the effectiveness of this Agreement other than those expressly stated herein.

IN WITNESS WHEREOF, the parties have set their hands on these presents on day and date first above mentioned.

\_\_\_\_\_  
**For DEPOSITORY**

**Name:**

**Designation:**

**Address:**

**Email:**

**Contact Tel. No.**

\_\_\_\_\_  
**For DEPOSITOR**

**Name:**

**Designation:**

**Address:**

**Email:**

**Contact Tel. No.**