

MATERIAL /MODIFICATION ACCESSION AGREEMENT (MAA)

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

The **National Centre for Cell Science (NCCS)**, a society registered under Society Registration Act, 1860 and an autonomous organization aided by the Department of Biotechnology, Government of India situated at NCCS Complex Savitribai Phule Pune University Campus, Ganeshkhind Road, Pune – 411007 and the **National Centre for Microbial Resource(NCMR)**, a repository operated by NCCS and having its office at First floor, Central Tower, Sai Trinity Building Garware Circle, Sutarwadi, Pashan, Pune, Maharashtra 411021;

(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 ACCESSION 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 NCCS was established with mandate of serving as a national repository of animal cell cultures, Undertaking research in cell biology and Human resource development and the services offered by NCCS include cell line establishment, maintenance and distribution to researchers/organization/industries on Non-profit basis;

AND WHEREAS NCMR was established to act as a national depository of microorganisms, 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/Modification 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/Modification 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 include 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. DEPOSITOR: person(s) or institution who deposits ORIGINAL MATERIAL in the custody of the DEPOSITORY;
- 1.4. DEPOSITORY: National Centre for Microbial Resource, National Centre for Cell Science (NCMR-NCCS), 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.
- 1.5. ACCESSION 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.
- 1.6. MATERIAL: ORIGINAL BIOLOGICAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.
- 1.7. MODIFICATIONS: 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. MODIFICATIONS include, but are 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/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 three types of deposits:

- 2.1. **Public Or Open Deposit:** Wherein the Depositor deposits the MATERIAL/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/MODIFICATION to third parties for research purposes.

- 2.2. Restricted Access Deposit:** Wherein the DEPOSITORY ensures that the Material/Modification will not be forwarded to third parties as long as they are maintained in this category that requires a special fee.
- 2.3. Deposit for Patent Purposes:** The DEPOSITORY shall deposit the Material/Modification regulated by the Budapest treaty for Patent purposes. The Depositor has read and understood the terms and conditions and has agreed to deposit the biological material for Patent purposes.
3. In consideration of the mutual promises in the Agreement, the Depositor grants the DEPOSITORY an irrevocable, perpetual, non-exclusive, royalty free, transferrable, worldwide licence to:
- 3.1. hold on deposit and store the Material/Modification;
 - 3.2. analyse, test and replicate any or all of the Material/Modification;
 - 3.3. incorporate any or all of the Material/Modification into additional Panels for research use, and;
 - 3.4. grant accession, market and distribute any or all of the Material/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/Modification to deposit the Material/Modification with the DEPOSITORY, to enter into the Agreement and to authorise use and distribution of the Material/Modification by the DEPOSITORY as provided for in the Agreement;
 - 4.2. it has supplied the Material/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/Modification's nature and associated risks and omits nothing of a Material/Modification nature;
 - 4.4. it has obtained in writing all requisite consents from the donor of the Material/Modification for the use of the Material/Modification for Research Purposes;
 - 4.5. the Material/Modification has been legally and ethically obtained;
 - 4.6. use of the Material/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/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/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/Modification, the DEPOSITORY may decline to Accession the Material/Modification, may decline to distribute the Material/Modification and may provide seven (7) days written notice to the Depositor of its intention to destroy the Material/Modification. However, if the Depositor then provides written notice to the DEPOSITORY that it wishes to retain the

Material/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/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/Modification or does provide that notice but does not pick up the Material/Modification within the time required by this provision, the DEPOSITORY has the right to destroy the Material/Modification twenty-one (21) days after the date of the depositor's notice of intention to destroy the Material/Modification.

6. DEPOSITORY'S OBLIGATIONS

- 6.1. The DEPOSITORY will use its reasonable endeavors to handle the Material/Modification with due skill and care and in accordance with Applicable Law, taking into account the hazardous characteristics, if any, of the Material/Modification.
- 6.2. DEPOSITORY will use its reasonable endeavors to maintain and use the Material/Modification with appropriate precautions to minimize any risk of harm to persons and property, taking into account the hazardous characteristics of the Material/Modification and to safeguard the Material/Modification from theft and misuse.
- 6.3. The DEPOSITORY acknowledges that the Material/Modification is not intended for use in humans/animals and it will not knowingly provide the Material/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/Modification apart from any scientific methods employed to authenticate the microbial culture 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 microorganism or utilize a portion of the microorganism for testing. The DEPOSITORY will notify the DEPOSITOR of such activity as hereinabove at an appropriate time.

7. DISTRIBUTION OF MATERIAL/MODIFICATION

Notwithstanding any other clause in the Agreement,

- 7.1. The DEPOSITORY may distribute any of the Material/Modification to a Third Party Distributor for subsequent distribution to Recipients, provided that the Third Party Distributor contractually agrees under Material Transfer Agreement with DEPOSITORY.
- 7.2. The Depositor acknowledges that any Third Party Distributor to whom any of the Material/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 ACCESSION 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/Modification due to any events caused during maintenance or storage of the Material/Modification.
- 7.5. The DEPOSITOR accepts the terms and conditions of this MAA by transferring the MATERIAL in the custody of the DEPOSITORY and completing the ACCESSION FORM.
- 7.6. It is 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 or Material/Modification that has or could have any value or utility pertaining to Restricted Access Deposit of Deposit for Patent purposes.
- 10.2. That, read along with clause 10.1, the Depositor has agreed not to disclose the any information related to 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/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 remain 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/Modification.
- 11.2. Any party can terminate this agreement by giving 30 days' notice to the other Party. Upon termination, 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 Biological 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 Biological Material/Modifications coming from the countries outside India must comply with all applicable foreign laws, and related regulations including the Budapest Treaty 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

The version of the MAA applicable to any MATERIAL shall be the version in effect at the time of the date of raising request for deposition, on signature of the FORM by the DEPOSITOR.