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# Consortium of European Taxonomic Facilities (CETAF)

## ANNEX 6.1 to the CETAF CoC for ABS

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### MTA 1

## Material Transfer Agreement for PROVISION OF MATERIAL, with no change in ownership

### Preamble

- a) This AGREEMENT covers the **temporary transfer** of MATERIAL containing GENETIC RESOURCES for non-commercial utilisation (analyses and research)<sup>1</sup> with no change in ownership / permanent custodianship.
- b) The activities of our institution are guided by the Convention on Biological Diversity (CBD)<sup>2</sup> and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS)<sup>3</sup>. MATERIAL is transferred between both contractual partners on the condition that users agree to use MATERIALS and DATA in compliance with international laws and conventions. This AGREEMENT is designed to promote and facilitate non-commercial scientific research and transfer of GENETIC RESOURCES by research institutions and researchers that are associated to such institutions.
- c) The conditions and clauses set out in MUTUALLY AGREED TERMS with the original PROVIDING COUNTRY for the access of the GENETIC RESOURCES transferred under this contract remain valid for the RECIPIENT and the subsequent utilisation of this MATERIAL. The SUPPLIER reserves the right not to supply any MATERIAL if such supply would be contrary to any terms attached to the MATERIAL and/or is not consistent with provisions of the CBD.
- d) This MTA is exclusively designed to cover non-commercial uses of GENETIC RESOURCES. Any commercial utilisation or uses with the intention of probable or potential commercial uses by the recipient or researchers associated to or mandated by the recipient institutions is not the subject matter of this contract and is not authorised.
- e) Definitions of terms are provided in the **Annex (a)** to this AGREEMENT.

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<sup>1</sup> This MTA is an advanced version of the Material Transfer Agreement that was developed jointly with the Global Genome Biodiversity Network (GGBN)

<sup>2</sup> <http://www.cbd.int/convention/text/>

<sup>3</sup> <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

## Parties to AGREEMENT

SUPPLIER:

RECIPIENT (receiving Institution):

USER of transferred GENETIC RESOURCES:

Principle Investigator / assigned Project Leader<sup>4</sup>:

**The SUPPLIER will supply the MATERIALS listed on the List A attached to this AGREEMENT (“MATERIAL”) under the following terms and conditions:**

### Ownership of MATERIAL and relevant information

1. The SUPPLIER warrants that it is not aware of third party rights in the MATERIAL that would preclude it from supplying the MATERIAL to the RECIPIENT in accordance with this AGREEMENT.
2. The MATERIAL and DATA do not enter into ownership of the RECIPIENT, but the RECIPIENT is free to use the MATERIAL under the terms of this AGREEMENT.
3. Nothing in this AGREEMENT shall or may be construed as granting the RECIPIENT any right or license to the MATERIAL for any use other than the purpose described herein.
4. The SUPPLIER shall be free, at its sole discretion, to distribute the MATERIAL to others for any USE and to USE the MATERIAL for its own purposes.
5. The RECIPIENT shall acknowledge the SUPPLIER as the source of the MATERIAL in all written and electronic publications and reports, including repository data, such as unique sample IDs or voucher numbers where available.
6. The RECIPIENT shall make associated genetic information resulting from his UTILIZATION publicly available.

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<sup>4</sup>) To be filled in if applicable or needed

7. The RECIPIENT must submit sequence data to INSDC data repositories such as GenBank/EMBL/DDBJ with assigned unique tissue or DNA identifiers provided by the SUPPLIER and provide the SUPPLIER with a list of such deposits including GenBank/EMBL/DDBJ Accession numbers. Any additional data sent to GenBank/EMBL/DDBJ must remain linked to the original specimen and accession number provided by the SUPPLIER.
8. In any publication, or with submission to a public database, the RECIPIENT should include the following data USE statement: “[Data on genetic material contained in this paper / These data] are published for non-commercial use only. Utilisation for purposes other than non-commercial scientific RESEARCH may infringe the conditions under which the genetic resources were originally accessed, and should not be undertaken without contacting the [corresponding author of the paper / depositor of the sequence data] and/or seeking permission from the original provider of the genetic material.”
9. The RECIPIENT agrees to acknowledge the PROVIDING COUNTRY as the source of the MATERIAL in any and all publications arising from its UTILIZATION.
10. The RECIPIENT will provide the SUPPLIER with copies of the publications resulting from the UTILIZATION.
11. Unless otherwise indicated, no proprietary claims (e.g. copyright, patent rights, trade secrets) or ownership can be claimed by the RECIPIENT on the MATERIAL, its encoded properties or on the DATA supplied with the MATERIAL. The RECIPIENT may use these DATA on condition that they are used solely for scholarly, education or not-for-profit research purposes; that they are not used for commercial purposes.
12. In general, DATA / METADATA shall not be modified in publications without permission from the SUPPLIER. Substantive modification should be agreed with the SUPPLIER prior to publication.
13. The MATERIAL may not be transferred wholly or partially by the RECIPIENT to third parties, without prior written authorization from the SUPPLIER.
14. The RECIPIENT retains ownership of:
  - i. MODIFICATIONS (excluding rights to the MATERIAL included therein), and
  - ii. those substances created through the use of the MATERIAL or
  - iii. MODIFICATIONS without UNMODIFIED DERIVATIVES or
  - iv. MODIFICATIONS without ORIGINAL MATERIAL.

Note: If i) - iv) results from the collaborative efforts of the SUPPLIER and the joint ownership may be negotiated under a separate agreement.
15. Copies of relevant documentation<sup>5)</sup>, as indicated below, is annexed to this document if relevant to the MATERIAL, and forms part of the AGREEMENT.

Collecting Permit \_\_\_\_\_

<sup>5)</sup> Where there is more than one document of a single type attached please make it clear to which specimens each refers

- Mutually-Agreed terms \_\_\_\_\_
- Prior Informed Consent \_\_\_\_\_
- Export permit \_\_\_\_\_
- Import permit \_\_\_\_\_
- Letter informing Providing Country of third-Party Transfer \_\_\_\_\_
- CITES Registry code of SUPPLIER \_\_\_\_\_
- Other (please specify) \_\_\_\_\_
- The Internationally-Recognized Certificate of Compliance number(s) is/are: \_\_\_\_\_  
\_\_\_\_\_
- No such documentation is attached because the GENETIC RESOURCES were accessed
  - Prior to the entering into force of the CBD<sup>6</sup>
  - Prior to the entering into force of the NP<sup>6</sup>
  - Original access to the GENETIC RESOURCES was free (no documents have been issued)<sup>7</sup>

**16.** The RECIPIENT shall maintain retrievable records linking the MATERIAL to these terms of acquisition and to any accompanying DATA provided by the SUPPLIER.

## Use of MATERIAL

**17.** The RECIPIENT may only use the MATERIAL and resulting derivatives for non-commercial, not-for-profit purposes in scientific research, education, and conservation; the RECIPIENT shall not sell, distribute or use for profit or any other commercial application the MATERIAL, related derivatives or any direct or indirect results obtained from analysis or use of the MATERIAL.

## Benefit-sharing

**18.** The RECIPIENT shall share fairly and equitably the benefits arising from their utilisation of the MATERIAL, its progeny or derivatives in accordance with the CBD with original PROVIDING COUNTRIES. A non-exhaustive list of non-monetary and monetary benefits is given at Appendix II to the Annex to the Nagoya Protocol<sup>8</sup> (**Annex 4** to the CETAF CoC on ABS).

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<sup>6)</sup> This condition does not invalidate ABS obligations of the USER or the RECIPIENT

<sup>7)</sup> i.e. not restricted under national access laws at the date of original in-situ access

<sup>8)</sup> <http://www.cbd.int/abs/text/articles/default.shtml?sec=abs-37>

19. If, at any time, any product or process derived from MATERIALS shipped under the terms of this AGREEMENT, whether or not such product or process is subject to any proprietary protection claims, is identified as having potential commercial use not previously discussed with the SUPPLIER, the RECIPIENT shall immediately cease all further research and activity undertaken in connection with the Materials and shall promptly notify the SUPPLIER. The RECIPIENT shall be prohibited from continuing to engage in the activity for which the commercial potential was identified until it has entered into a written agreement with the SUPPLIER and a bilateral agreement with the PROVIDING COUNTRY has been reached.

## Risks and Warranties

20. The RECIPIENT is solely responsible for safe receipt, use, storage and disposal of MATERIALS and DERIVATIVES.
21. The RECIPIENT indemnifies the SUPPLIER, its officers, employees and agents ('those indemnified') against all expenses, losses, damages and costs (including legal costs on a full indemnity basis) incurred by or awarded against those indemnified arising out of a claim by any person in relation to:
- (a) the RECIPIENT's use of the MATERIAL and its derivatives, and any other exercise of rights under this AGREEMENT; and
  - (b) breach of this AGREEMENT by the RECIPIENT.
22. The SUPPLIER makes no representation or warranty of any kind, either express or implied, as to the identity, safety, merchantability or fitness for any particular purpose of the MATERIAL, its progeny or derivatives, or as to the accuracy or reliability of any DATA supplied.
23. The SUPPLIER is not liable for failures in any molecular analysis (DNA extraction, PCR product, sequencing reaction, etc.).

## Transport of MATERIAL

24. The RECIPIENT shall take all appropriate and necessary measures that the importation, storage and UTILIZATION of the MATERIAL complies with all applicable laws and regulations.
25. The RECIPIENT is responsible for ensuring that it can provide all required permits to the SUPPLIER if requested.

## Agreement

26. Neither party may assign or otherwise transfer this AGREEMENT and the rights acquired hereunder without the written consent of the other party. Any permitted assignee must agree in writing to be bound by the terms of this AGREEMENT.

27. Each party will ensure that its officers, employees and agents comply with the obligations imposed on it by this AGREEMENT as if personally bound by those obligations.
28. This AGREEMENT will terminate on the earliest of the following occasions<sup>9)</sup>:
- on completion of RECIPIENT's current research with the MATERIAL
  - on the termination of the USERS's research project or project funding
  - on a thirty (30) days written notice by either party to the other
  - On the predetermined closure date of this Contract [date: DD/MM/YYYY].
29. This AGREEMENT terminates immediately if the RECIPIENT willingly or unwillingly violates the clauses and conditions of this contract, especially paragraphs (a)-(d), 1-15, 17-24 and 27-28 (breach of this AGREEMENT) or violates the prior MUTUALLY AGREED TERMS that pertains to the transferred MATERIAL that were established with the original PROVIDER OF THE MATERIAL.
30. If termination occurs under 28 or 29, the RECIPIENT shall discontinue its use of the MATERIAL, which is no longer valid under this contract, and
- return any unconsumed MATERIAL and related derivatives
  - destroy any unconsumed MATERIAL and all DERIVATIVES
  - notify the SUPPLIER in written form about the disposal of unconsumed MATERIAL and all related DERIVATIVES, such as of PCR products, cycle-sequencing products or similar by-products.
31. In the event that the SUPPLIER terminates this AGREEMENT under 29, other than for breach of this AGREEMENT or conflict with prior MUTUALLY AGREED TERMS, upon written request from the RECIPIENT the effective date of termination may be prolonged for a period of up to one year, to permit completion of RESEARCH in progress.
- Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the SUPPLIER, return or destroy any unconsumed MATERIAL and related DERIVATIVES. The RECIPIENT, at its discretion, also will either destroy the DERIVATIVES or remain bound by the terms of this AGREEMENT as they apply to DERIVATIVES.
32. The expiration or termination of this AGREEMENT, shall not affect the legal obligations of the RECIPIENT contained in this AGREEMENT.
33. This AGREEMENT is governed by and shall be construed in accordance with the law of
- the European Union
  - the home country of the SUPPLIER (please specify)
- \_\_\_\_\_.
- \_\_\_\_\_.

<sup>9)</sup> Multiple selections possible



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## Signatures of Parties to the AGREEMENT

Authorized signatory for the SUPPLIER:

Authorized signatory for the RECIPIENT:

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Name in block letters:

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Name in block letters:

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Date:

Date:

Place:

Place:

## ANNEX (a) to MTA 1. DEFINITION OF TERMS

**ACCESS:** Acquisition of GENETIC RESOURCES with permission as granted by the country that has sovereign right over those resources (PROVIDING COUNTRY), or other relevant entity. Note that this term has not been defined in the Convention on Biological Diversity or the Nagoya Protocol, and may be used differently by some countries or organizations. An agreed definition should be included in all legal documents. The EU Regulation defines ACCESS as ‘the acquisition of GENETIC RESOURCES or of traditional knowledge associated with GENETIC RESOURCES in a Party to the Nagoya Protocol’.

**AGREEMENT:** this document.

**BIODIVERSITY BIOBANK:** A facility for preservation and storage of typically non-human, GENETIC RESOURCES and associated DATA, which follows standard operating procedures and supplies material for scientific USE. Examples include culture collections, DNA banks and tissue collections.

**COLLECTION:** A group of SPECIMENS or SAMPLES that are managed for the purpose of preservation and study. They are generally associated through sharing some feature, e.g. being of the same taxon (e.g. mammals, insects, sharks), from the same general locality or ecosystem, or collected by the same collector or on the same expedition. COLLECTIONS are maintained by COLLECTION-holding institutions, for example natural history museums, herbaria, botanical gardens, seed banks or BIODIVERSITY BIOBANKS.

**COMMERCIALISATION, COMMERCIALISE, COMMERCIAL PURPOSES:** Applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or license or in any other manner, commencement of product development, conducting market assessments, and seeking pre-market approval and/or the sale of any resulting product based on UTILIZATION of the original GENETIC RESOURCE or screening of compound libraries. Also the sale, lease, or license of MATERIAL, PROGENY, or DERIVATIVES; or USEs of MATERIAL, PROGENY, or DERIVATIVES by any organization, including the RECIPIENT, to screen compound libraries in order to produce or manufacture products for general sale. Handling fees (e.g. for providing DNA samples), analytical cost recovery, entrance charges etc., fall under the scope of management and/or administration of public facilities, do not involve the UTILIZATION of GENETIC RESOURCES, and are not considered as a commercialization of RESEARCH activity on GENETIC RESOURCES.

**DATA:** Any information associated with a specimen and/or collection which are provided to the RECIPIENT by the SUPPLIER, including but not limited to: provenance information, biological information, taxonomic information, chain of custody information, and images.

**DERIVATIVE:** Means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or GENETIC RESOURCES, even if it does not contain functional units of heredity (definition from Nagoya Protocol Art 2).

**EVALUATION:** means both the formulation of the MATERIAL and the testing of the MATERIAL.

**GENETIC MATERIAL:** Any material of plant, animal, microbial or other origin containing functional units of heredity (definition from Nagoya Protocol, repeated from Article 2 of the Convention on Biological Diversity).

**GENETIC RESOURCES:** GENETIC MATERIAL of actual or potential value (definition from Nagoya Protocol, repeated from Article 2 of the Convention on Biological Diversity).

**GLOBAL GENOME BIODIVERSITY NETWORK (GGBN):** A global network of well-managed COLLECTIONS of genomic tissue samples from across the Tree of Life, benefiting society through biodiversity



RESEARCH, and long-term conservation of the archived materials. This network will foster collaborations among BIODIVERSITY BIOBANKS in order to ensure quality standards, improve best practices, secure interoperability, and harmonize transfer of GENETIC RESOURCES, of material in accordance with national laws and best practices.

**MATERIAL**: Refers to the items listed on the reverse of this AGREEMENT.

**MATERIAL TRANSFER AGREEMENT (MTA)**: An agreement between two institutions stipulating the terms and conditions for transferring SPECIMENS or samples, including GENETIC MATERIAL.

**METADATA**: Any data associated with the MATERIAL that describes the origin or identifies the original provenience of the MATERIAL.

**MODIFICATIONS**: Substances created by the RECIPIENT by using the MATERIAL which are not the ORIGINAL MATERIAL, PROGENY, or UNMODIFIED DERIVATIVES and which have new properties. MODIFICATIONS include, but are not limited to, recombinant DNA clones.

**MUTUALLY AGREED TERMS (MAT)**: An agreement reached between the Providing Country of GENETIC RESOURCES and users on the conditions of ACCESS and USE and the benefits to be shared between both parties.

**ORIGINAL MATERIAL**: That which was originally supplied to the SUPPLIER by the depositor.

**OWNERSHIP**: Property of a person or institution including all legal rights associated with that property; in some countries also indicated by Transfer of Title or similar documents confirming legal transfer.

**PRIOR INFORMED CONSENT (PIC)**: The permission given by the Competent National Authority of a PROVIDING COUNTRY to a user prior to accessing GENETIC RESOURCES, in line with an appropriate national legal and institutional framework, i.e. what a user can and cannot do with the material.

**PROGENY**: Unmodified descendant (e.g. subculture or replicate) from the MATERIAL.

**PROVIDING COUNTRY / PROVIDER OF MATERIAL**: (or "Country providing GENETIC RESOURCES") Means the country supplying GENETIC RESOURCES collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country (Definition from CBD Art 2).

**RECIPIENT**: The organization to whom the SUPPLIER sends the MATERIAL.

**RESEARCH**: The systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions. This does not include any development of commercial or non-commercial applications.

**SAMPLE**: See also SPECIMEN.

**SPECIMEN**: This includes any type of biological material. The term "SPECIMEN" is usually synonymous with "material" or "samples" or "subsamples" in this context. The concept can include associated SPECIMENS or materials such as but not limited to parasites and gut content.

**SUPPLIER**: The party supplying the MATERIAL.

**TRANSFER**: To convey MATERIAL temporarily or permanently from one person or institution to another.

UNMODIFIED DERIVATIVES: Replicates or substances which constitute an unmodified functional subunit or product expressed by the MATERIAL, such as, but not limited to, purified or fractionated subsets of the MATERIAL, including expressed proteins or extracted or amplified DNA/RNA.

USE: The purposes to which samples and SPECIMENS (biological and genetic material) are put, including but not limited to 'UTILIZATION' in the sense of the Nagoya Protocol.

USER: Person or institution that uses or mandates uses of samples, specimens and MATERIAL including but not limited to 'utilization' in the sense of the Nagoya Protocol.

UTILIZATION (OF GENETIC RESOURCES): To conduct RESEARCH and development on the genetic and/or biochemical composition of GENETIC RESOURCES, including through the application of biotechnology as defined in Article 2 of the Convention (definition from the Nagoya Protocol).