Consortium of European Taxonomic Facilities (CETAF)

ANNEX 6.2 to the CETAF CoC for ABS

MTA 2

Material Transfer Agreement for PROVISION OF MATERIAL, with change in ownership

Preamble

a) This AGREEMENT covers the **permanent transfer** of MATERIAL containing GENETIC RESOURCES for non-commercial utilisation (analyses and research)[1] with change in ownership / permanent custodianship.

b) The activities of our institution are guided by the Convention on Biological Diversity (CBD)[2] and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (ABS)[3]. MATERIAL is transferred between both contractual parties on the condition that users agree to use MATERIAL 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 said 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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1) This MTA is an advanced version of the Material Transfer Agreement that was developed jointly with the Global Genome Biodiversity Network (GGBN), used for transfer with a change in ownership / permanent custodianship.

2) http://www.cbd.int/convention/text/

3) http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

Parties to AGREEMENT

SUPPLIER:

RECIPIENT (receiving institution):

USER of transferred GENETIC RESOURCES
and/or RESPONSIBLE PROJECT LEADER:

The SUPPLIER supplies the specimens or samples listed on the annex 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 SUPPLIER hereby transfers ownership in the MATERIAL to the RECIPIENT.
3. The SUPPLIER makes no representation or warranty that the use of the MATERIAL will not infringe any third party patent or other proprietary right directly or indirectly linked with the provided MATERIAL. The RECIPIENT acknowledges his responsibility to verify if the MATERIAL is or may be the subject of a patent or patent application.
4. Copies of relevant documentation[4], as indicated below, is annexed to this document if relevant to the MATERIAL, and forms part of the AGREEMENT.

   ☐ Collecting Permit

   ☐ Mutually-Agreed terms

   ☐ Prior Informed Consent

4) Where there is more than one document of a single type attached please make it clear to which specimens each refers

☐ 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[5]
- ☐ Prior to the entering into force of the NP[5]
- ☐ Original access to the GENETIC RESOURCES was free (no documents have been issued)[6]

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

6. The RECIPIENT shall make associated genetic information resulting from his UTILISATION publicly available.

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, unique sample IDs, voucher numbers and/or accession number provided by the SUPPLIER.

Benefit-sharing related to acquisition and utilisation of the material detailed in the annex to this contract

8. The RECIPIENT agrees to abide by the PRIOR INFORMED CONSENT (PIC) and MUTUALLY AGREED TERMS (MAT) and any other conditions under which the MATERIAL was originally acquired, providing this is made available, and will contact the PROVIDING COUNTRY prior to any activities that might conflict with the existing PIC and MAT or any other conditions.

9. 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, new bilateral contracts between the RECIPIENT and PROVIDING COUNTRY shall be established covering the intended utilisation or product development.

5 this condition does not invalidate ABS obligations of the USER or the RECIPIENT

6) i.e. not restricted under national access laws at the date of original in-situ access

10. The RECIPIENT shall, according on the original access conditions, share fairly and equitably the benefits arising from their USE of the MATERIAL, its progeny or DERIVATIVES in accordance with the CBD. A non-exhaustive list of non-monetary and monetary benefits is given at Appendix II and the Annex to the Nagoya Protocol[7].

11. The SUPPLIER will forward information on the MATERIAL supplied on request to the relevant national authority in PROVIDING COUNTRY.

Risks and Warranties

12. The RECIPIENT is solely responsible for safe receipt, use, storage and disposal of MATERIAL and DERIVATIVES.

13. The RECIPIENT acknowledges that the risks represented by any MATERIAL received from the SUPPLIER should be assessed on the basis of intended use.

14. The RECIPIENT acknowledges that it uses the MATERIAL and its derivatives and exercises its rights under this AGREEMENT at its own risk.

15. 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.

Transport of MATERIAL

16. The RECIPIENT shall take all appropriate and necessary measures that the import importation, storage and UTILISATION of the MATERIAL complies with all applicable laws and regulations.

17. The RECIPIENT is responsible for ensuring that it can provide all required permits to the SUPPLIER if requested.

Agreement

18. 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.

19. 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.

20. This AGREEMENT is governed by and shall be construed in accordance with the law of [country of SUPPLIER]

7) http://www.cbd.int/abs/text/articles/default.shtml?sec=abs-37

21. This AGREEMENT will terminate on the earliest of the following occasions[8]:

- ☐ 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].

22. This AGREEMENT terminates immediately if the RECIPIENT willingly or unwillingly violates the clauses and conditions of this contract, especially paragraphs (a) to (d), 1-19 (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.

23. If termination occurs under 22, the RECIPIENT I is obliged to discontinue the use of the MATERIAL, which is no longer valid under this contract, and destroy any unconsumed MATERIAL and all DERIVATIVES.

24. This AGREEMENT is governed by and shall be construed in accordance with the law of

- ☐ the European Union
- ☐ the home country of the SUPPLIER
- ☐ the home country of the RECIPIENT (please specify) _____

Signatures of Parties to the AGREEMENT

Authorized signatory for the SUPPLIER:	Authorized signatory for the RECIPIENT:
…….	……
Name in block letters:	Name in block letters:
…….	…….
Date:	Date:
Place:	Place:

8) Multiple selections possible

ANNEX (a) to MTA 2. 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 UTILISATION 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.

RESPONSIBLE PROJECT LEADER: This is the person that has the obligation to carry out due diligence and any reporting on the utilisation including under the EU ABS regulation.

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 "UTILISATION" 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 "utilisation" in the sense of the Nagoya Protocol.

UTILISATION (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).