Consortium of European Taxonomic Facilities (CETAF)

ANNEX 6.4 to the CETAF CoC for ABS

MATERIAL TRANSFER AGREEMENT -MTA 4

Agreement for guest researchers BRINGING BIOLOGICAL MATERIAL to facilitate their own research at hosting institutions

Preamble

a) This AGREEMENT is between an external researcher not employed by or otherwise working for [*institution*] and using RESEARCH MATERIALs containing GENETIC RESOURCES

☐ for research that does not include utilisation in the sense of the Nagoya Protocol[1]

☐ for research and utilisation in the sense of the Nagoya Protocol[2]

It grants permission to conduct RESEARCH in the labs of the HOSTING INSTITUTION.

b) The Activities of the HOSTING INSTITUTION are guided by the Convention on Biological Diversity (CBD)[3] and the Nagoya Protocol on Access to BIOLOGICAL RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILISATION (ABS)[4] and the CETAF Code of Conduct, the CETAF Use Statement and CETAF Best Practice on use and utilisation of objects containing GENETIC RESOURCES. Researchers bringing and using any MATERIAL must be compliant with international laws and conventions as well with established internal procedures and policies when using our facilities. We reserve the right not to grant allowance to bring MATERIAL into our institution if its use would be contrary to our institutional ABS policies and/or is not consistent with provisions of the CBD, the NP or other relevant laws.

c) Definitions of terms are provided in the **Annex (a)** to this AGREEMENT.

1) such as morphological investigation, stable isotope analysis, ct-scanning, 3-d reconstructions, etc.
2) such as DNA-extractions and any sequencing activities or investigations on the genomes of biological materials
3) http://www.cbd.int/convention/text/
4) http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

Parties to AGREEMENT

GUEST RESEARCHER (name and institution):

HOSTING INSTITUTION (*name and Department*):

USER OF THE GR (name and institution):

RESPONSIBLE PROKECT LEADER[5]

For the purposes of this AGREEMENT RESEARCH MATERIALs and/or DERIVATIVES would include tissues, samples, subsamples, and BIOLOGICAL RESOURCES such as, inter alia, DNA and/or PCR products.

The MATERIAL/DERIVATIVES I am transporting into [*enter name of research facility*] are the SPECIMENS brought to the HOSTING INSTITUTION as stated on the attached list (attached as **List A**) (hereinafter referred to as "RESEARCH MATERIALs") for the specific and limited purpose of study and analysis.

Warranty for bringing external research materials to the facilities of the hosting institution, for analytical purposes

In consideration of the opportunity to study and analyse these RESEARCH MATERIALs in this research institution, **I make, on behalf of myself and my institution, the following representations and warranties**:

☐ I am / I am ☐ not bringing in unregistered BIOLOGICAL MATERIAL[6]

☐ I am / I am ☐ not bringing in registered BIOLOGICAL MATERIAL[7]

☐ I am / I am ☐ not authorized to have custody of and to conduct RESEARCH upon the RESEARCH MATERIALs in my possession

5) Person that may have or is appointed with ABS-reporting obligations
6) e.g. unregistered field samples
7) e.g. accessioned museum material

☐ I am / I am ☐ not using BIOLOGICAL MATERIAL of [enter *Institution name*]

☐ I am / I am ☐ not bringing in MATERIAL/DERIVATIVES for utilisation in the sense of the NP.

☐ I am / I am ☐ not bringing in sequence / genomic data.

AND,

to my knowledge, all applicable laws and regulations regarding the collection, possession, transportation, exportation and importation of these research specimens have been observed and fully satisfied in all relevant jurisdictions; I acknowledge that I have full responsibility ensuring that this has been done.

I take the responsibility for making, as a result of my research activities, any declaration of due diligence or other report under Nagoya Protocol / ABS compliance laws or regulations, including Regulation 511/2014 of the European Parliament and Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union.

Agreement

I understand that I am expected to take any external RESEARCH MATERIALs (original and/or newly generated) with me when I leave the facilities of [enter *Institution name*]

If any external RESEARCH MATERIALs remain at [enter *Institution name*] with permission of the hosting institution, I understand that I am ceding authority for acquiring or disposing of the RESEARCH MATERIALs at the institutions discretion, according to terms of the applicable Collections Management and ABS Policies. I further represent and warrant that I am fully authorized to make these decisions regarding use or disposal of these MATERIALs.

☐ I agree to abide by institutional policies including ABS policies and procedures of my HOSTING INSTITUTION.

☐ I agree to forward information on the MATERIAL on request of my HOSTING INSTITUTION and relevant national authorities.

Duration of the Agreement and applicable law

1. 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.
2. 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.
3. This AGREEMENT will terminate on the earliest of the following occasions[8]:

   ☐ on completion of GUEST RESEARCHERS current research at the HOSTING INSTITUTION

8) Multiple selections possible

- ☐ on the leave of GUEST RESEARCHER from the HOSTING INSTITUTION
- ☐ 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].

The expiration or termination of this AGREEMENT, shall not affect other legal obligations of the GUEST RESEARCHERS entered into with the HOSTING INSTITUTION. This AGREEMENT is governed by and shall be construed in accordance with the law of European Union and the home country of the HOSTING INSTITUTION.

Name (in block letters) signature Guest Researcher:

…… ……

The following signatures grant permission to utilise and conduct research at:

Name of HOSTING INSTITUTION:

……

Confirmed by:

…….

Date:

Place:

ANNEX (a) to MTA 4. 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 UTILISATION 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.

BIOLOGICAL 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: BIOLOGICAL 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).