Consortium of European Taxonomic Facilities (CETAF)

ANNEX 6.3 to the CETAF CoC for ABS

MTA 3

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

Preamble

a) This AGREEMENT covers the permanent transfer of MATERIAL containing GENETIC RESOURCES for non-commercial UTILISATION [1] with change in ownership / permanent custodianship.

b) CETAF's activities 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 Utilization (ABS)[3]. MATERIAL is transferred between both parties to this AGREEMENT 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, whilst recognising the terms on which the SUPPLIER acquired the MATERIAL.

c) The conditions and clauses set out in MUTUALLY AGREED TERMS with the PROVIDING COUNTRY for the access of the GENETIC RESOURCES transferred under this AGREEMENT 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 other uses with the intention of probable or potential commercial UTILISATION or application by the recipient or researchers associated to or mandated by the recipient institutions is not the subject matter of this AGREEMENT and is not authorised.

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

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

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:

RESPONSIBLE PROJECT LEADER[4]:

The SUPPLIER will supply the MATERIALS listed on the List 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. The SUPPLIER acknowledges the ownership of the RECIPIENT in the MATERIAL and shall indicate and disclose information on the original PROVIDING COUNTRY of the GENETIC RESOURCES, the date of ACCESS and the source of the transferred MATERIAL and any associated DATA upon request.

5. Copies of relevant documentation[5], as indicated below, is annexed to this document if relevant to the MATERIAL, and forms part of the AGREEMENT.

4) To be filled in if applicable or needed

- ☐ Collecting Permit
- ☐ 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[6]
- ☐ Prior to the entering into force of the NP[6]
- ☐ Original access to the GENETIC RESOURCES was free (no documents have been issued)[7]

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

7. To the extent that the SUPPLIER owns the copyright or any other intellectual property rights in the Items, the SUPPLIER hereby assigns such rights to the RECIPIENT

8. Unless otherwise agreed in writing between the parties, the SUPPLIER hereby assigns to the RECIPIENT the copyright and any other intellectual property rights in the MATRIAL, DATA and METADATA.

9. The RECIPIENT is allowed to use the DATA or METADATA without restrictions for PUBLIC DOMAIN USES (provided General Data Protection Regulation-GDPR- requirements are met) and to disseminate research results, DATA or, METADATA resulting from research activities conducted on the MATERIAL transferred under this AGREEMENT, for example through online media, or print media, and to make it publicly available at no more than the incremental costs of dissemination.

5) Where there is more than one document of a single type attached, or the attached document covers nly some of the specimens, please make it clear to which specimens each refers

6) This condition does not invalidate ABS obligations of the USER or the RECIPIENT

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

Benefit-sharing related to acquisition and UTILISATION of the material detailed in the annex to this AGREEMENT

10. 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, agrees to acknowledge the PROVIDING COUNTRY as the source of the MATERIAL in any and all publications arising from its UTILISATION and will contact the PROVINDING COUNTRY prior to any activities that might conflict with the PIC and MAT and any other conditions.

11. The RECIPIENT shall, if applicable, share fairly and equitably the benefits arising from their UTILISATION 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[8].

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

Risks and Warranties

13. The SUPPLIER warrants that the MATERIAL has not been:

a. stolen or looted from their rightful owners or country of origin;
b. obtained by violent means (including during an armed conflict in the country of origin);
c. obtained in violation of the legislation of their country of origin (i.e. obtained without the necessary permits);
d. exported illegally or illicitly from their country of origin; or
e. imported illegally or illicitly into the country of the RECIPIENT.

14. The SUPPLIER warrants that it will make no subsequent claim to ownership of the MATERIAL following the execution of this Agreement.

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

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

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

18. 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:

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

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

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

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

Agreement

21. TRANSFER of MATERIAL by the RECIPIENT to third parties is only permissible provided the third party agrees with the RECIPIENT in writing to be bound by the terms of this AGREEMENT, specifically to clauses 10-12.

22. 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.

This AGREEMENT is governed by and shall be construed in accordance with the law of the home country of the RECIPIENT (please specify)

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Signatures of Parties to the AGREEMENT

Authorized signatory for the SUPPLIER:

…….

Name in block letters:

…….

Date:

Place:

Authorized signatory for the RECIPIENT:

……

Name in block letters:

……

Date:

Place

ANNEX (a) to MTA 3. 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).

EU REGULATION – Where used in this document, this refers to Regulation (EU) No 511/2014 of the European Parliament and of the 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, which entered into force for Europe on 6 Jun 2014.

GDPR-General Data Protection Regulation: the EU regulation (EU) 2016/679 enforced on 25 May 2018 to harmonize data privacy laws across Europe, and protect citizens from privacy and data breaches across Europe.

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

GENETIC RESOURCES: GENETIC MATERIAL of actual or potential value (definition 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).

PUBLIC DOMAIN USE: means scientific research that aims at making analytic results and knowledge publicly available at no more than incremental costs for dissemination, and without protecting or aiming to protect such results under patent, intellectual property or similar rights.

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 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).