Consortium of European Taxonomic Facilities (CETAF)

Standard MATERIAL TRANSFER AGREEMENT (MTA 1) *for PROVISION OF MATERIAL with no change in ownership*

Preamble

1. This AGREEMENT is for temporary transfer of MATERIAL containing GENETIC RESOURCES for non-commercial analyses and research, with no change in ownership / permanent custodianship[1]. At the end of the AGREEMENT, MATERIAL not consumed for analysis will [have been destroyed / will be returned] (delete as necessary).
2. 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 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 scientific research and transfer of GENETIC RESOURCES, whilst recognising the terms on which the SUPPLIER originally acquired the 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.
3. Definitions of terms are provided in the ANNEX A to this AGREEMENT.

Parties to AGREEMENT

SUPPLIER:	RECIPIENT:

4. The SUPPLIER will supply the MATERIALS listed in the ANNEX B attached to this AGREEMENT ("MATERIAL") under the following terms and conditions:

1 This MTA agrees with the Material Transfer Agreement of 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

Ownership of MATERIAL and relevant information

5. 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.
6. The MATERIAL and DATA remain the property of the SUPPLIER (subject to conditions set out in MUTUALLY AGREED TERMS with the PROVIDING COUNTRY).
7. 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.
8. 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.
9. Unless otherwise indicated, copyright in all information or DATA supplied with the MATERIAL is owned by the SUPPLIER. The RECIPIENT may use these DATA on condition that they are used solely for scholarly, education or research purposes; that they are not used for commercial purposes; and that the RECIPIENT always acknowledges the source of the DATA with the words "With the permission of [*SUPPLIER*]".
10. In general, DATA / METADATA should not be modified in publications without permission from the SUPPLIER. Substantive modification should be agreed with the SUPPLIER prior to publication.
11. The MATERIAL may not be transferred wholly or partially by the RECIPIENT to third parties, without prior written authorization from the SUPPLIER.
12. The RECIPIENT retains ownership of:
    i. MODIFICATIONS (except that the SUPPLIER retains ownership rights to the MATERIAL included therein), and
    ii. those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL or UNMODIFIED DERIVATIVES).

    Note: If either i) or ii) results from the collaborative efforts of the SUPPLIER the joint ownership may be negotiated under a separate agreement.

13. Copies of relevant documentation[4], as indicated below, are annexed to this document in ANNEX C, if relevant to the MATERIAL, and forms part of the AGREEMENT.
    - ☐ Collecting Permit
    - ☐ Mutually Agreed Terms (MAT)
    - ☐ Prior Informed Consent (PIC)
    - ☐ 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: _____

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

14. 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

15. The RECIPIENT may only use the MATERIAL and resulting derivatives for non-commercial 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

16. 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 to the Annex to the Nagoya Protocol[5].

17. 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 intellectual property protection, 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 pertaining to the use of the MATERIAL

18. 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 or respective accession number of specimens / samples where available.

19. The RECIPIENT must submit sequence data to GenBank/EMBL/DDBJ with the corresponding unique identifier 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 should be linked to the original specimen and accession number provided by the SUPPLIER.

20. 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. utilization by third parties 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."

21. The RECIPIENT agrees to acknowledge the PROVIDING COUNTRY as the source of the MATERIAL in any and all publications arising from its UTILIZATION.

22. The RECIPIENT agrees to acknowledge the PROVIDING COUNTRY as the source of the MATERIAL in any and all patent applications arising from its UTILIZATION.

23. The RECIPIENT will provide the SUPPLIER with copies of the publications resulting from the UTILIZATION.

Risks and Warranties

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

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

25. 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.

26. 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.

27. The SUPPLIER is not liable for failures in any molecular analysis (DNA extraction, PCR product, sequencing reaction, etc.).

Transport of MATERIAL

28. The RECIPIENT shall take all appropriate and necessary measures to import the MATERIAL in accordance with relevant laws and regulations.

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

Agreement

30. 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.

31. 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.

32. This AGREEMENT will terminate on the earliest of the following dates:

    a. on completion of the RECIPIENT's current research with the MATERIAL; or

    b. on thirty (30) days written notice by either party to the other; or

    c. On the predetermined closure of this Contract / Material Transfer Agreement [*date: DD/MM/YYYY*].

33. If termination occurs under 32(a), the RECIPIENT will discontinue its use of the MATERIAL, upon direction of the SUPPLIER, 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, enabling the SUPPLIER to determine the starting point of the 20 year reporting obligation laid down in EU (No) 511/2014,

☐ or to destroy any unconsumed MATERIAL but remains bound by the terms of this AGREEMENT as they apply to DERIVATIVES.

34. In the event that the SUPPLIER terminates this AGREEMENT under 32(b), other than for breach of this AGREEMENT or conflict with prior MUTUALLY AGREED TERMS, the SUPPLIER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, 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.

35. The expiration or termination of this AGREEMENT, shall not affect the obligations contained in this AGREEMENT.

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

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:

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 samples and specimens 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).

ANNEX B to MTA 1. MATERIAL

List of MATERIALS supplied by the SUPPLIER that fall under this AGREEMENT. This List will form part of the AGREEMENT.

ANNEX C to MTA 1. RELEVANT DOCUMENTATION

List of attached copies of documentation if relevant to the MATERIAL, When there is more than one document of a single type, it shall be clear to which specimens each refers. All those referred documents will form part of the AGREEMENT