Global Genome Biodiversity Network

Standard Material Transfer Agreements (MTAs)

Introductory notes

GGBN's original requirements were for an MTA that would:

- cover both temporary and permanent transfer (including material to be destroyed during analysis or at the end of the agreement).
- be for use between members of the GGBN, not between members of the GGBN and other bodies.
- deal with non-commercial USE, with COMMERCIALISATION only permitted with permission from the supplier.
- be restricted in coverage to genomic samples and analyses.

It became apparent that a single MTA would not cover all requirements. For outgoing material, the requirements for temporary transfer of material (loans) and permanent transfer are very different.

- Temporary transfer / loan refers to material where there is no change of ownership in the transaction. The Material may not be returned in whole or in part if it is consumed by analysis.
- Permanent transfer refers to material where there is a change in ownership, the new owner taking on the rights and responsibilities attendant on the material.

In addition to MTAs covering outgoing material it was decided that one covering incoming material would be useful.

Consequently three documents are presented below:

MTA 1 - GGBN Standard Material Transfer Agreement for provision of Genomic samples with no change in ownership

MTA 2 - GGBN Standard Material Transfer Agreement for provision of Genomic samples with change in ownership

MTA 3 – GGBN Standard Material Transfer Agreement for receipt of Genomic samples with change in ownership

Compilation of the documents

The GGBN Policies and Practices Task Force constructed these MTAs by drawing upon documents in use by a number of GGBN members, CETAF members and others. These example MTAs were examined and tabulated to identify clauses in common (see "MTAs used as a basis" below). Contact the GGBN Secretariat or Chair of the Policies and Practices Task Force with any questions on how the GGBN MTAs were developed.

Use of the documents

We recognise that institutions within GGBN may have clear and established protocols for transfers already in place, in some cases including MTAs, e.g. for molecular analysis. The documents below contain clauses which we believe to be appropriate for genomic samples and together form a complete MTA. Institutions may wish to use these in part or entirety, or to inform their current documents. Members could review the documents against their current documentation to check for duplications or inconsistencies, and amend the latter as required. The document for transaction without change in ownership (MTA1) could, with appropriate modification, be used as an annex to existing loan agreements.

As of November, 2014, GGBN has not received legal advice on these documents. We recommend that each institution obtain legal advice and, because the legal jurisdiction will depend on the location of the Supplier institution, each institution may wish to do this separately within their country. European members are advised to consider the implications of the EU Regulation No. 511/2014 on Access to GENETIC RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILIZATION in the Union, which entered into force in October 2014, the European Implementing Act, which is expected to enter into force in October 2015, and their own national legislation.

The document might usefully be translated into the language of each country for legal scrutiny and general employment.

The document should be signed by both Parties; this is most likely to be of importance for change of ownership, but this should probably be discussed when seeking legal advice.

Distinction between GGBN members and non-GGBN members

The original intent was to have a specific MTA for GGBN members in order to facilitate transfer between them. However, the GGBN MoC, although stating that the members will adhere to ethical standards / codes of conduct, is not binding ("Nothing in GGBN's Code of Conduct should be viewed as contradicting or superseding institutional codes and/or standards of conduct").

This situation can be contrasted by the much more formal agreement between IPEN members, which sets up a common structure among members, and is intended to provide clarity and confidence in suppliers about the UTILIZATION and benefit-sharing arrangements of members.

The MTA will be effective in the context of persistent provisions in any legal agreement between the Providing Country and the original body or individual that accessed the material from that country. The MTA is also a legal agreement, transferring not only the material but also the legal responsibilities that accompany it. Given the lack of legal certainty of the GGBN members it appears that an MTA between members of GGBN will not differ from one between members and non-members.

Additional (optional) clause for EU members.

The NHM includes the following clause on its Transfer of Title form, which may be helpful for some.

"The [Institute] has obligations under UK and EU law (e.g. the Data Protection Act 1998 & Freedom of Information Act 2000). Therefore the NHM is hereby permitted to disclose to third parties any information that it may hold in relation to the item(s) specified below."

Such a clause could be added to any of the MTAs.

MTAs used as a basis of proposed MTAs 1 and 2:

The MTAs were from:

- Australian Tree Seed Centre (ATSC) (http://www2.sl.life.ku.dk/dfsc/Extensionstudy/Forest%20Reproductive%20Material%20website/FRM-2844.htm)
- CBS (a CETAF member) (http://www.cbs.knaw.nl/pdf/MTA-CBS.pdf)
- Center for Molecular Biodiversity, Zoologisches Forschungsmuseum A. Koenig, ZFMK
- Danida Forest Seed Centre (DFSC) (http://www2.sl.life.ku.dk/dfsc/Extensionstudy/Forest%20Reproductive%20Material%20website/FRM-2844.htm)
- DNA Bank Network (GGBN) (http://ggbn.org/ggbnDocuments.html)
- International Poplar Commission (IPC) (Working Party on Genetics, Conservation and Improvement)

(http://www2.sl.life.ku.dk/dfsc/Extensionstudy/Forest%20Reproductive%20Material%20website/FRM-2844.htm)

- Kew BDN Bank (GGBN member) (http://apps.kew.org/dnabank/MTA.html)
- NYBG (http://sciweb.nybg.org/Science2/pdfs/Material_Transfer_Agreement.pdf)
- Ocean Genome Legacy (GGBN) (http://www.oglf.org/MTA.htm)
- Oxford Forestry Institute (OFI) (http://www2.sl.life.ku.dk/dfsc/Extensionstudy/Forest%20Reproductive%20Material%20website/FRM-2844.htm)
- Senkenberg (GGBN) (http://ggbn.org/ggbnDocuments.html)
- Smithsonian (NMNH – Brazil)
- STRI (GGBN) (http://www.stri.si.edu/english/research/applications/permits/anam/export_req.php)
- University of Copenhagen: (http://www.ku.dk//MTA_general_PST.doc). See also http://healthsciences.ku.dk/phd/current/supervision_and_research_environments/collaboration/University_of_Copenhagen_Guide_to_Reseachers_and_External_Partners.pdf/

MTAs used as a basis of proposed MTA 3:

- AMNH
- BIO, Canadian Centre for DNA Barcoding
- NHM UK – Transfer of Title to the Natural History Museum; Transfer of Title to the Natural History Museum Of Illicitly or Illegally Acquired Material
- RBG Kew - Donation of materials to the Royal Botanic Gardens, Kew (v1.0 2012)
- Smithsonian Institution, NMNH (Brazil)
- University of Guelph
- ZFMK Biobank

1. Global Genome Biodiversity Network

Standard Material Transfer Agreement 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 between members of the Global Genome Biodiversity Network (GGBN), with no change in ownership/permanent custodianship. At the end of the AGREEMENT MATERIAL not consumed by analysis will [*have been destroyed / will be returned*] (delete as necessary).
2. GGBN's activities are guided by the Convention on Biological Diversity (CBD)[1] and the Nagoya Protocol on Access to GENETIC RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILIZATION (ABS)[2]. MATERIAL is transferred between partners on the condition that users agree to USE MATERIALS & DATA in compliance with international laws and conventions. This AGREEMENT is designed to promote scientific RESEARCH and EXCHANGE, 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 Annex 1 to this AGREEMENT.

Parties to AGREEMENT

SUPPLIER:

RECIPIENT Institution:

RECIPIENT Scientist:

4. The SUPPLIER will supply the MATERIALS listed on Annex 2 attached to this AGREEMENT ("MATERIAL") under the following terms and conditions:

OWNERSHIP of MATERIAL and relevant information

5. The SUPPLIER warrants that it is not aware of any 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 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*]";

[1] http://www.cbd.int/convention/text/
[2] http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

10. In general, DATA should not be changed in publications without permission from the SUPPLIER (other than as required for editorial compliance etc.). 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 PROVIDER 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 PROVIDER and the joint ownership may be negotiated under a separate agreement.

13. Relevant documentation, 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
- ☐ Export permit
- ☐ Import permit
- ☐ Letter informing Providing Country of third-Party Transfer
- ☐ CITES Registry certificate of SUPPLIER _____
- ☐ Other (please specify) _____

The Internationally-Recognised Certificate of Compliance number(s) is/are: _____

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 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 the Annex to the Nagoya Protocol[3].

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 Receiving Institution shall immediately cease all further RESEARCH and activity undertaken in connection with the MATERIALS and shall promptly notify the SUPPLIER. The Receiving Institution shall be prohibited from continuing to engage in the

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

activity for which the commercial potential was identified until it has entered into a written agreement with the SUPPLIER pertaining to the USE of genetic heritage and benefit-sharing

18. The RECIPIENT will provide the SUPPLIER with copies of the publications resulting from the UTILIZATION.
19. 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 voucher number where available.
20. The RECIPIENT should submit sequence data to GenBank/EMBL/DDBJ with the appropriate 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.
21. 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 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."
22. The RECIPIENT agrees to acknowledge the Providing Country as the source of the MATERIAL in any and all publications arising from its utilisation.
23. The RECIPIENT agrees to acknowledge the Providing Country as the source of the MATERIAL in any and all patent applications arising from its utilisation.

Risks and Warranties

24. The RECIPIENT is solely responsible for safe receipt, USE, storage and disposal of MATERIALS and derivatives.
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 analysis (e.g., DNA extraction, PCR product, sequencing reaction, etc.).

Transport of MATERIAL

28. The RECIPIENT shall take all appropriate and necessary measures to import (and return, where appropriate) 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 should 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 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

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

☐ notify the supplier in written form about the disposal of unconsumed MATERIAL and all related DERIVATIVES, such as 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.

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]

2. Global Genome Biodiversity Network

Standard Material Transfer Agreement for provision of material with change in ownership

Preamble

1. This AGREEMENT is for permanent transfer of MATERIAL containing genetic resources for non-commercial analyses & research between members of the Global Genome Biodiversity Network (GGBN), with a change in ownership / permanent custodianship.
2. GGBN's activities are guided by the Convention on Biological Diversity (CBD)[4] and the Nagoya Protocol on Access to GENETIC RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILIZATION (ABS)[5]. MATERIAL is transferred between parties on the condition that users agree to USE MATERIAL & DATA in compliance with international laws and conventions. This AGREEMENT is designed to promote scientific RESEARCH and EXCHANGE, whilst recognising the terms on which the SUPPLIER 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 Annex 1 to this AGREEMENT.

Parties to agreement

SUPPLIER:

RECIPIENT Institution:

RECIPIENT Scientist:

4. [The SUPPLIER] supplies the SPECIMENs or samples listed on Annex 2 attached to this AGREEMENT ("MATERIAL") under the following terms and conditions:

Ownership of MATERIAL and relevant information

5. The SUPPLIER warrants that it is not aware of any third party rights in the MATERIAL that would preclude it from supplying the MATERIAL to the RECIPIENT in accordance with this AGREEMENT.
6. 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 provided MATERIAL. The RECIPIENT acknowledges his responsibility to verify if the MATERIAL is or may be the subject of a patent or patent application.
7. Relevant documentation, 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
- ☐ Export permit
- ☐ Import permit
- ☐ Letter informing Providing Country of third-Party Transfer
- ☐ CITES Registry certificate of SUPPLIER _____

[4] http://www.cbd.int/convention/text/
[5] http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

☐ Other (please specify) _____

The Internationally-Recognised Certificate of Compliance number(s) is/are: _____

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

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

9. 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 PIC and MAT.
10. The MATERIAL is transferred for USE only as specified in the accompanying terms and conditions.
11. The RECIPIENT shall 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 the Annex to the Nagoya Protocol[6].
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 RECIPIENT is solely responsible for safe receipt, USE, storage and disposal of MATERIAL and derivatives.
14. The RECIPIENT acknowledges that the risks represented by any MATERIAL received from the SUPPLIER should be assessed on the basis of intended USE.
15. The RECIPIENT acknowledges that it uses the MATERIAL and its derivatives and exercises its rights under this AGREEMENT at its own risk.
16. 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

17. The RECIPIENT shall take all appropriate and necessary measures to import the MATERIAL in accordance with relevant laws and regulations;
18. The RECIPIENT is responsible for ensuring that it can provide all required permits to the SUPPLIER if requested.

Agreement

19. 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 should agree in writing to be bound by the terms of this AGREEMENT.

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

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

3. Global Genome Biodiversity Network

Standard Material Transfer Agreement for Receipt of MATERIAL with change in ownership

Preamble

1. This agreement covers acceptance of material by a member of the Global Genome Biodiversity Network (GGBN).
2. GGBN's activities are guided by the Convention on Biological Diversity (CBD)[7] and the Nagoya Protocol on Access to GENETIC RESOURCES and the Fair and Equitable Sharing of Benefits Arising from their UTILIZATION (ABS)[8] .
3. The [RECIPIENT] reserves the right not to accept any material and to revoke this AGREEMENT if such acceptance would be contrary to any terms attached to the material and/or national or international law or regulation.
4. Definitions of terms are provided in Annex 1 to this AGREEMENT.

Parties to agreement

SUPPLIER:

RECIPIENT Institution:

RECIPIENT Scientist:

5. The SUPPLIER will supply the SPECIMENs or samples listed on Annex 2 attached to this agreement ("MATERIAL"), and the RECIPIENT accepts the MATERIAL subject to the following terms and conditions:

Ownership of MATERIAL and relevant information

6. The SUPPLIER warrants that it is not aware of any third party rights in the MATERIAL that would preclude it from supplying the MATERIAL to the RECIPIENT in accordance with this agreement;
7. The SUPPLIER certifies that the MATERIAL has been obtained, exported and imported in accordance with the applicable statutory regulations, with special consideration of the CBD.
8. Relevant documentation is annexed to this agreement:

- ☐ Collecting Permit
- ☐ Mutually-Agreed terms
- ☐ Prior Informed Consent
- ☐ Export permit
- ☐ Import permit
- ☐ Letter informing Country of Origin of third-Party Transfer
- ☐ CITES Registry certificate of SUPPLIER _____
- ☐ Other (please specify) _____

The Internationally-Recognised Certificate of Compliance number(s) is/are: _____

[7] http://www.cbd.int/convention/text/
[8] http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

9. The RECIPIENT shall maintain retrievable records linking the MATERIAL to these terms of acquisition and to any accompanying DATA provided by the SUPPLIER.
10. The SUPPLIER irrevocably and unconditionally transfers, free of charge, title in the item(s), including any rights, including copyright or any other USE and commercial rights, that may reside with the legal owner to [the RECIPIENT], and confirms that the SUPPLIER will make no subsequent claim as to ownership or indemnity for transfer of the said item(s) or ownership of said item(s) rights against the recipient. This includes the unrestricted right of the RECIPIENT to handle, process, publish or pass on the material or DATA, as far as held by the SUPPLIER to the extent permissible in the conditions under which the MATERIAL was accessed (permits, PIC, MAT, etc.) and subsequent modifications to this, and any restriction annexed to this agreement under Paragraph 13 below.

Conditions of acceptance

11. The RECIPIENT accepts the MATERIAL in the understanding that:
    a. The SPECIMENs have to be relevant to and consistent with the purposes and activities of the RECIPIENT.
    b. The RECIPIENT is in principle willing, but not obliged, to accept MATERIAL and DATA.
    c. Simultaneously with the samples, the SUPPLIER will submit to RECIPIENT full collecting DATA and as deep a taxonomic determination as possible, by using a valid digital format provided by RECIPIENT. If only a molecular subsample of the full SPECIMEN is donated to RECIPIENT, respective voucher information is to be supplied (i.e. the deposition data of the morphological voucher, incl. voucher ID).

USE of MATERIAL

12. Should the SUPPLIER wish to block access by third parties to the MATERIAL or in other ways restrict its USE they should declare this in writing in an annex to this AGREEMENT at the time of donation. Otherwise the SUPPLIER loses this right.

Benefit-sharing

13. 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 conflict with the PIC and MAT.

Agreement

14. This agreement is governed by and shall be construed in accordance with the law of [country of RECIPIENT]

Annex 1 to MTAs. Definitions of terms

ACCESS: Permission to collect / sample GENETIC RESOURCES as granted by the country that has sovereign right over those resources (Providing Country). 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 organisations. 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 collection, preservation, storage and supply of typically non-human, biological samples and associated data, which follows standardized operating procedures and provides material for scientific USE. Examples include natural history museums, herbaria, botanical gardens, culture COLLECTION, seed banks, and gene banks.

COLLECTION: a group of SPECIMENs or samples that can be seen, studied, and kept together. 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. The term biodiversity biobank may also be used, to include SPECIMENs which are not necessarily of whole organisms.

COMMERCIALISATION AND COMMERCIALISE: applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market RESEARCH, and seeking pre-market approval and/or the sale of any resulting product based on UTILIZATION of the original genetic resource. Handling fees (e.g. for providing DNA samples), entrance charges etc., fall under the scope of management and/or administration of public RESEARCH facilities, do not involve the UTILIZATION of GENETIC RESOURCES, and are not considered as a commercialization of RESEARCH activity on GENETIC RESOURCES.

COMMERCIAL PURPOSES:

For the purposes of this AGREEMENT, commercial application shall mean: applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner; commencement of product development; conducting market RESEARCH; seeking pre-market approval; and/or the sale of any resulting product or any data resulting from analysis of this MATERIAL or DERIVATIVES.

Or

the sale, lease, or license of MATERIAL, PROGENY, or DERIVATIVES; or USEs of MATERIAL, PROGENY, or DERIVATIVES by any organization, including RECIPIENT, to perform contract RESEARCH, to screen compound libraries, to produce or manufacture products for general sale; or to conduct RESEARCH activities that result in any sale, lease, license, or transfer of the MATERIAL or PROGENY or DERIVATIVES to a for-profit organization.

The following are not considered Commercial USE:

Industrially sponsored academic RESEARCH, unless any of the above conditions of this definition are met.

Handling fees (e.g. for providing DNA samples), entrance charges etc, fall under the scope of management and/or administration of public RESEARCH facilities, do not involve the UTILIZATION of GR, and are not considered as a commercialization of RESEARCH activity on GR.

DATA: unless otherwise stated, information, including locality and other collecting information, permits and other agreements, and any other information provided by the SUPPLIER with the MATERIAL.

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).

EXCHANGE: also '*Transfer*', and '*Permanent supply*'. Permanent transfer of SPECIMENs to a Third Party to the original agreement.

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 EXCHANGE 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.

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.

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 organisation 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 applications.

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.

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.

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).