CABI Switzerland's Best Practice for Access and Benefit Sharing Compliance

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Contents

1. CABI's ABS Policy and Best Practices

CABI is an international, intergovernmental, not-for-profit organization that uses genetic material in its mission to improve people's lives by providing information and applying scientific expertise to solve problems in agriculture and the environment. This is achieved through knowledge sharing and the application of scientific research to improve global food security and safeguard the environment. CABI has developed a policy and best practices to ensure compliance with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (https://www.cabi.org/news-and-media/2018/conserving-and-using-genetic-resources-as-part-of-cabi-s-commitment-to-the-nagoya-protocol/). The policy was accepted in principle by representatives of CABI's 48 Member Countries at its 19th Review Conference held in the UK in July 2016, on the condition that CABI would seek appropriate National agreements. Subsequently, CABI developed a Best Practice for ABS Compliance as guidance for all staff, which was implemented at all CABI Centres, and in all programmes and projects that access genetic resources. A designated person, currently Dr. David Smith, was appointed to act as the point of contact for ABS issues within the organization. Each CABI Center assigned an ABS Champion, and all staff were informed about the implications of the Nagoya Protocol and CABI's Best Practice.

1.1 How CABI uses genetic material

In its work, CABI accesses genetic material and undertakes sampling and collection for:

- diagnosis and identification of pests and diseases, so that appropriate management recommendations can be made;
- rapid identification of newly introduced alien species to facilitate containment and management; CABI is aware of sensitive issues around finding new pests, invasive pathogens and works with national authorities on such issues;
- studies to assess impact of land-use and climate change on biodiversity and ecosystems services which often involves finding species new to science;

- developing microbial solutions to improve health and nutrition security;
- combatting threats to livelihoods, agriculture and the environment from pests and diseases;
- developing biological control agents for the management of invasive species, reduction of crop losses and minimisation of unnecessary pesticide use; and
- increasing and improving access to agricultural and environmental scientific knowledge.

1.2 Benefits CABI provides from its use of genetic material

CABI delivers benefits to farmers around the world through its mission-driven activities by helping them grow more and lose less of what they produce. CABI's aims in the use of biological and genetic resources of plant, animal or microbial origin are to engender trust, to facilitate science, and to ensure that benefits are shared fairly and equitably. When accessing or transferring biological and genetic resources CABI seeks to provide recipients with legal clarity in use. CABI will perform due diligence, i.e. take reasonable steps to ensure compliance with provider country requirements and National Law, regarding access and benefit sharing in all its activities involving those resources.

2. Swiss legislation in relation to Access and Benefit Sharing (ABS)

Switzerland is Party to the Nagoya Protocol and has appointed the Soil and Biotechnology Division, Federal Office for the Environment (FOEN), Bern as National Focal Point (NFP) and the Federal Department of the Environment, Transport, Energy and Communications DETEC, Federal Office for the Environment Soil and Biotechnology Division Biotechnology Section, Bern as the Competent National Authority (CNA). There are three legislative, administrative or policy measures on access and benefit-sharing listed on the Access and Benefit-Sharing Clearing-House (https://absch.cbd.int/); the Federal Act on Patents for Inventions (Patents Act, PatA) of 25 June 1954, the Ordinance on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Ordinance, NagO), entered into force on 1 Feb 2016, and the Federal Act on the Protection of Nature and Cultural Heritage (NCHA) from 1 July 1966.

It should be noted that the compliance measures in NCHA and NagO apply to research and development of genetic resources in general, and do not distinguish between commercial and non-commercial use. It should also be noted that according to the implementation of the Nagoya Protocol in Switzerland, utilization also includes the characterization of an organism, e.g. producing and publishing sequence data (SCNAT, 2016).

Articles 3-5 of the NagO lay out the requirements for the utilisation of genetic resources and associated traditional knowledge of other parties to the Nagoya Protocol, while article 8 regulates the access to genetic resources in Switzerland.

3. CABI's Best Practices and implementation in Switzerland

The CABI Centre in Switzerland developed and implemented best practices for all ABS actions that its staff undertake to comply with Swiss legislation (see above) based on CABI's general best practices.

CABI Switzerland has assigned an ABS Champion (Country Director, currently Dr. Hariet L. Hinz), and an ABS Officer (currently Dr. Philip Weyl). The ABS Champion has overall responsibility for all ABS actions and issues and ensures staff compliance with the best practices. He/She also acts as liaison between CABI Switzerland and providing/receiving countries. The ABS Officer ensures the recording and storage of all relevant data related to ABS actions on the CABI Switzerland central server, and acts as a point of information and advice for CABI Switzerland staff on ABS related regulations. Any contact with NFP's or CNA's is documented centrally on CABI's server (common/CABI Switzerland Centre/ABS/Country responses from 2016 onwards).

All CABI staff will abide by relevant laws and regulations in their work; that genetic resources are to be obtained with legal certainty; and if applicable CABI shares appropriate benefits arising from the use of genetic resources with the provider country of the genetic resources. CABI staff understand that genetic resources are acquired in two main ways: collecting in the field (*in situ*) and from *ex situ* sources such as collaborating scientists, institutions or collections in a provider country.

3.1 Accessing genetic resources for use (*in situ*)

All CABI dealings with genetic material including single uses, projects and programmes of work will comply with ABS requirements; CABI staff understand that the action necessary will vary depending which each countries requirements. As a general rule, CABI staff will ensure that the steps outlined in the following sections and summarised in Annex 2, are followed.

Before the work begins, for example at the project planning stage, check all relevant requirements for utilisation of a genetic resource and approvals needed if access and utilisation fall within the scope of the Nagoya protocol, which may include geographic, temporal and material scope (see Table 1 for details). This will be determined on a case by case basis for provider countries, consult ABS Champion or Officer if unsure.

Table 1. Overview of conditions for applicability of the Swiss compliance measures in accordance with Art. 23n NCHA.

		Within scope (cumulative conditions[a])	Outside of scope
Geographic scope (provenance of GR[b])	Access in …	Areas within a country's jurisdiction	Areas beyond national jurisdiction or covered by Antarctic Treaty System
	Provider country is …	Party to the Nagoya Protocol	Not a Party to the Protocol
	Provider country has …	Applicable access legislation	No applicable access legislation
Temporal scope	Access …	On or after 12 October 2014	Before 12 October 2014
Material scope	Genetic resources	Not covered by a specialised international ABS instrument[c]	Covered by a specialised international ABS instrument[c]
		Non-human	Human
		Obtained as commodities but subsequently subject to R & D[d]	Used as commodities
	Utilisation	R & D on genetic and/or biochemical composition	No such R & D

[a]To be within the scope, all conditions must be fulfilled.
[b]GR = genetic resource; to be read as also including 'traditional knowledge associated with genetic resources', where appropriate.
[c]International ABS instrument under Article 4 of the Nagoya Protocol
[d]R & D = Research and development

- In the case that the planned work with genetic resources is within the scope of the Nagoya protocol, inform the ABS champion prior to starting any collections of genetic material.
    - The ABS Champion will check information already available on CABI's server (common/CABI Switzerland Centre/ABS/Country responses from 2016 onwards) as well as the Access and Benefit-Sharing Clearing-House website (https://absch.cbd.int/) for any current access restrictions in place. Should the ABS Champion not be available, the ABS Officer will fill this role.
        - If the NFP and/or CNA have been contacted previously and information indicates that the country in question does not restrict access to or have specific national legislation for its genetic resources, then work can start as planned, but will still need to follow due diligence requirements as outlined below (for details see NagO Art. 3 and/or Art. 8);

        - If the NFP and/or CNA have not previously been contacted, the ABS Champion will take necessary steps;
        - If there is no NFP, work with an appropriate Ministry and/or government agency if possible through local collaborators to openly address ABS issues.
    - The ABS Champion will save all correspondence with NFP's, CNA's, other government agencies or local collaborators pertaining to ABS of a particular country on the CABI Switzerland Server (common/CABI Switzerland Centre/ABS/Country responses from 2016 onwards)
- Be aware that other legislation and international agreements are relevant for access to and export of genetic resources, apart from Nagoya, e.g. CITES, contract or property law, collecting of protected species and/or in protected areas and phytosanitary requirements. Make sure to obtain respective additional permits;
- Whenever possible work with a partner in the provider country, this will help ensure the sharing of monetary and non-monetary benefits and that local procedures are followed.

If the provider country is exercising their sovereign rights over genetic resources and have access regulations in place, the following steps are to be followed:

- The ABS Champion will guide staff in procedures that need to be followed to gain access to the genetic material legally and in compliance with country legislation and the Nagoya protocol.
- Where necessary, initiate negotiations for Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) with an Internationally Recognised Certificate of Compliance (IRCC) before making commitments to undertaking the work e.g. submitting project proposals; where time does not allow this or where the process is unclear at least make a statement in the project proposal that this will be secured before work begins.
- If the work planned is purely non-commercial (e.g. research based, identification only, for classical biological control etc.), then consider the non-monetary benefits listed below[1] for PIC and MAT:
    - sharing of research and development results;
    - joint authorship of publications and joint ownership of intellectual property rights;
    - exchange of visiting students and scientists;
    - joint supervision of graduate students on collaborative research projects;
    - institutional capacity-building.
- If it is the intention to take a product to market from the beginning or there is a serendipitous discovery of a new use, access for this purpose must be negotiated before the work starts or when the new use is discovered. In accordance with NagO, Art. 4, ensure notification of FOEN before obtaining market authorisation for a particular biological product.
- Acquire all necessary permissions before collecting the genetic resource.

CABI staff will determine whether intended use of genetic resources agreed in the MAT falls within the scope of the planned activity and will follow due diligence outlined below:

- In accordance with Art. 3 and 8 of NagO, all CABI Switzerland staff handling genetic resources must add all relevant information to the CABI Switzerland database (common/CABI Switzerland Centre/ABS/CABI CH/CABI CH collections and shipments 2016-present.xlsx), which includes details on where, which material was collected by whom and for which use (see Annex 3 for example). This database will be maintained for a minimum period of ten years after the end of utilisation of the genetic resources. The ABS Officer is responsible for checking the database at least once a year and making sure that all data has been entered correctly.

[1] Listed are some examples, the list is not exhaustive and can be adapted based on provider country needs and requirements.

- If there is a change in the use as specified in the MAT, negotiate change of use with the National Authority of the provider country.
- Information on genetic resources, and use and benefits shared, are to be reported to the provider country, in line with the MAT.

3.2 Receiving biological and genetic resources from collaborators, collections or other providers (*ex situ*)

- Ensure the genetic resources for utilization by CABI have been collected in compliance with the Nagoya Protocol by asking for evidence e.g. the IRCC, ABS Clearing House UID, copy of PIC and MAT, or permit or equivalent.
- Ensure that the planned activity is within the scope of the originally agreed MAT.

3.3 Transferring genetic material and/or resources outside of CABI

In accordance with Art. 3 of NagO, when providing samples to third parties in the course of CABI's work or service provision, CABI will provide all information on use and transfer rights (MAT) in the Material Transfer Agreement (MTA)[2] (Annex 4). Samples of material, sent to third parties solely for species identification or phylogenetic analysis will not be accompanied by an MTA. Details of all shipments of material accompanied by an MTA must be entered in the CABI Switzerland database (common/CABI Switzerland Centre/ABS/CABI CH/CABI CH collections and shipments 2016-present.xlsx; Annex 3). The ABS Officer is responsible for checking the database at least once a year and making sure that all data have been entered correctly.

3.4 Enforcement and compliance

CABI has assigned an ABS Champion (Country Director, currently Dr. Hariet L. Hinz) who is responsible that CABI Switzerland staff comply with the ABS Best Practice, and an ABS Officer (currently Dr. Philip Weyl), who ensures the correct recording of all data related to ABS actions.

The actions CABI will take to enforce its Best Practices are as follows:

Internally:

- CABI staff have been made aware of their responsibilities;
- Breach of CABI's Best Practices will be dealt with through staff disciplinary measures, as all other policy breaches are in CABI;
- The Best Practices have been circulated and country information on national practices made available to staff;
- Should Swiss regulations relating to ABS be amended, CABI would update it's Best Practices accordingly.

Externally:

- All collection and use data will be recorded regardless of a source country's status regarding the Nagoya Protocol (a party or not);
- Reports on access and use of all genetic resources will be made according to requests by provider countries;
- Materials will be exchanged under an MTA; a recipient will not be allowed to distribute the materials to third parties unless specifically mentioned in the MTA and it is in line with provider country requirements;

[2] note that the generic MTA in Annex 4 can be adapted to satisfy provider and/or receiving country requirements

Annex 1: A glossary of useful terms and their definitions

Access – The acquisition of Genetic Resources or of Traditional Knowledge associated with Genetic Resources from a 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. 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".

Access and Benefit Sharing Clearing House ***(ABSCH)*** – Information sharing mechanism developed under the Convention on Biological Diversity to make information available on national contacts, national legislation and other matters relevant to Access and Benefits-Sharing generally and the Nagoya Protocol in particular. It is on the internet at https://absch.cbd.int/.

Benefits arising from the use of genetic resources – Benefits may be monetary or non-monetary. They may include: (1) Monetary benefits when research and developments lead to a commercial product (e.g. royalties, milestone payments, licensing fees); (2) Non-monetary benefits (e.g. sharing of research and development results; joint authorship of publications and joint ownership of intellectual property rights; exchange of visiting students and scientists; joint supervision of graduate students on collaborative research projects; institutional capacity-building).

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 *biorepository* or *biobank* may also be used, to include specimens which are not necessarily of whole organisms.

Commercialisation and *Commercialise* – means selling products developed on the basis of utilised genetic resources or of utilised associated traditional knowledge, as well as other legal transactions in connection with utilised genetic resources or with utilised traditional knowledge that result in monetary benefits, in particular licences, pledge agreements or similar legal transactions (definition from Nagoya Ordinance or NagO).

Competent National Authority ***(CNA)*** – The body or individual in a country authorised to sign ABS agreements.

Data – Unless otherwise stated, information, including locality and other collecting information, permits and other agreements, and any other information provided by the supplier of genetic resources with the material.

Exchange – Also '*Transfer*', and '*Permanent supply*'. Permanent transfer of specimens to a Third Party to the original agreement; note that 'exchange' implies a receipt of items in return for providing or transferring items. This is somewhat different from a straight transfer.

Genetic material – Any material of plant, animal, microbial or other origin containing functional units of heredity (definition from Nagoya Ordinance or NagO).

Genetic Resources – Genetic material of actual or potential value (definition from Nagoya Ordinance or NagO).

Internationally Recognised Certificate of Compliance – means a permit or its equivalent issued at the time of access by a competent authority in accordance with Article 6 paragraph 3 letter e and Article 13 paragraph 2 of the Nagoya Protocol and registered with the international Access and Benefit-Sharing Clearing-House (definition from Nagoya Ordinance or NagO).

Material Transfer Agreement ***(MTA)*** – An agreement between two institutions stipulating the terms and conditions for transferring specimens or samples, including genetic material.

Mutually Agreed Terms ***(MAT)*** – An agreement reached between the providers of genetic resources and users on the conditions of access and use and the benefits to be shared between both parties.

National Focal Point ***(NFP)*** – is the person or institution designated by a government of a Party to provide information on procedures for obtaining PIC and establishing MAT and benefit-sharing to applicants interested in accessing genetic resources.

Prior Informed Consent ***(PIC)*** – The permission given by the Competent National Authority of a provider 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.

Provider Country – 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 Article 2 of the Convention on Biological Diversity).

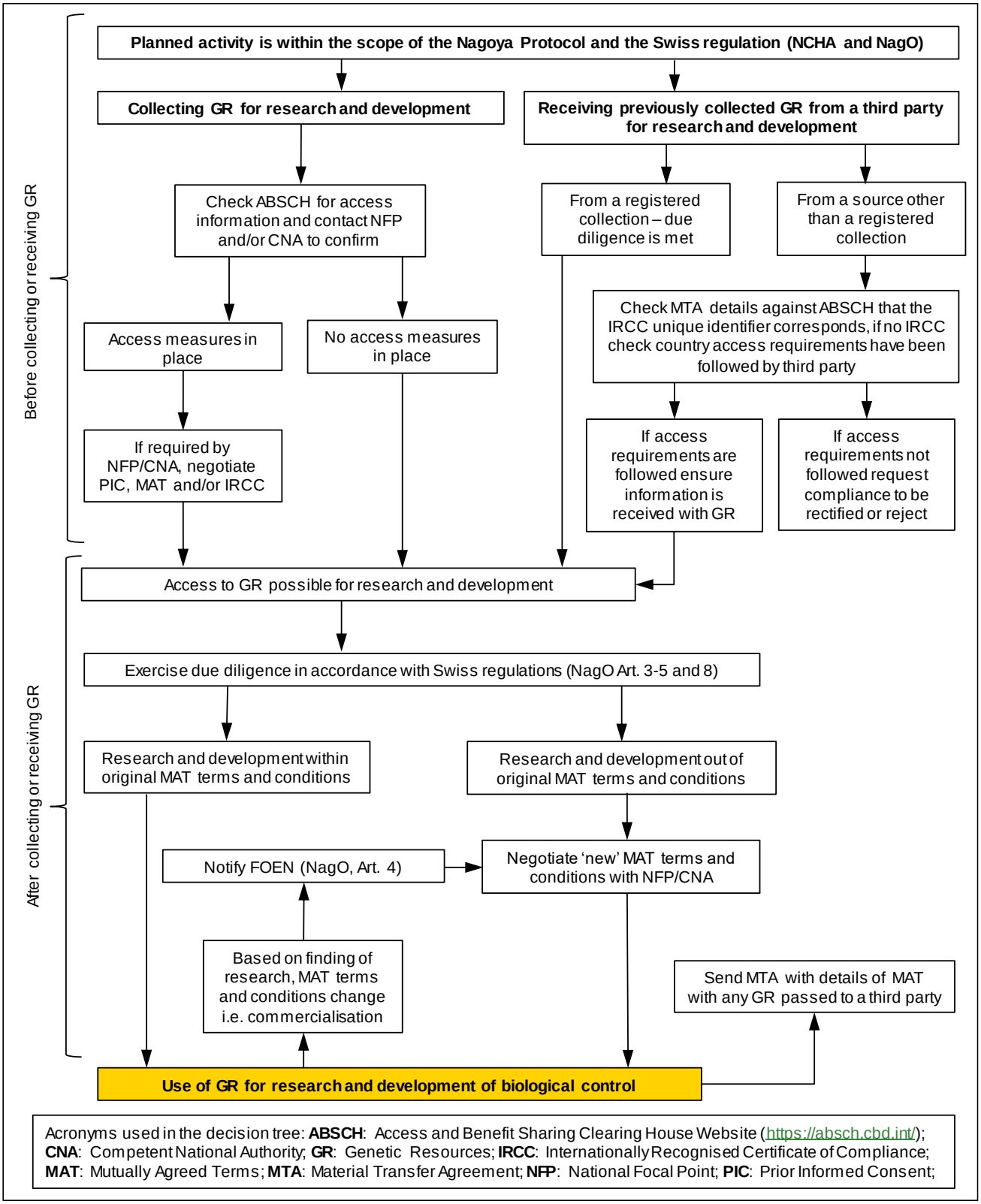
Research – The systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions. This does not include any development of commercial applications.

Use – The purposes to which samples and specimens (genetic material) are put, including but not limited to 'utilisation' in the sense of the Nagoya Protocol and Nagoya Ordinance.

User – Person or institution that uses or mandates uses of samples and material including but not limited to 'utilisation' in the sense of the Nagoya Protocol and Nagoya Ordinance.

Utilisation (of genetic resources) – means conducting research and development on the genetic or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention of 5 June 19923 on Biological Diversity (definition from Nagoya Ordinance or NagO).

Annex 2. Decision tree outlining the general steps of the CABI best practice.



Annex 3. CABI genetic resources database with an example entry

Genetic resources collections database

Year	CABI staff	Project	Country	Region/city (coordinates if possible)	Date / period of collection	Organisms collected	Quantity	Dead / alive	Purpose[3]	Country to which material is exported to	Any terms and conditions agreed with provider country or partner[4]
2017	Philip Weyl	VM01736	Germany	Kaiserstuhl, 48°05'58.3"N 7°39'39.0"E	Sep-17	Ceutorhynchus rusticus (adults)	150	alive specimens	study in house	N/A	See NFP response

Genetic resources shipments database

Year	CABI staff	Project	Source country and collection date[5]	Comments[6]	Recipient country	Recipient	Date shipped	Organism(s) shipped	Number	Purpose[7]	MTA[8]
2018	Philip Weyl	VM01736	Italy 2008	CABI rearing colony since 2008	USA	Mark Schwarzleander, University of Idaho	19 April 2018	Ceutorhynchus peyerimhoffi (adults)	200	Biological studies in confinement	MTA signed

[3] There are three options: 1) Identification, 2) Study in house and 3) Send to third party.
[4] The permit or its equivalent as evidence of the prior informed consent of the entitled Party to the Nagoya Protocol as well as information on use and transfer rights is linked for each entry to the appropriate folder on the CABI central server.
[5] The country and date of original collection since a particular species may have been in a rearing for several years at CABI.
[6] Any relevant information pertaining to the organism in question.
[7] There are two options: 1) Biological studies in confinement and 2) Rearing and field release.
[8] This cell is linked for each entry to the appropriate MTA folder on the CABI central server.

Annex 4. CABI generic MTA for supply of genetic resources

This Material Transfer Agreement ("MTA") governs the transfer of the Original Material from CAB International for research, teaching and identification purposes only.

This MTA constitutes a contract between you (the "Customer") and CAB International, an international governmental not-for-profit organisation ("CABI").

CABI and the Customer may be individually referred to as a Party or jointly, as the Parties.

1. **Definitions**

"Commercial Purposes" means the use or exploitation of the Material, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, use of the Material to provide a service, 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 or service development, conducting market research, and seeking regulatory approval.

"Effective Date" means the date of the last signature of this MTA by a Party.

"**Force Majeure**" means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this MTA, including but not limited to war, civil commotion or riots, war, threat of or preparation for war, armed conflict, natural disaster, transportation difficulties, labour or trade dispute, strikes, industrial action interruption or failure of utility service.

"Material" means Original Material, Progeny and Unmodified Derivatives. The Material shall not include Modifications.

"Modifications" means substances created by the Recipient which contain or incorporate all or any part of the Original Material, Progeny or Unmodified Derivatives.

"**Original Material**" shall mean any biological material transferred from CABI to Customer identified in Schedule 1.

"Prior Informed Consent" has the meaning set out in the Nagoya Protocol to the Convention on Biological Diversity. It refers to the requirement that a country which has ratified the Nagoya Protocol and which is providing access to a genetic resource provide its consent on the basis of mutually agreed terms before access to the said genetic resources is granted.

"Progeny" means all unmodified descendant from the Original Material, such as virus from virus, cell from cell, or organism from organism.

"Unmodified Derivatives" means any substance created by the Customer which constitutes (a) a substantially unmodified copy of the Original Material or Progeny or any of their components or (b) a product expressed or produced by the Original Material or Progeny. Some examples include: material produced by growth of a microorganism, purified or fractionated subsets of the Original Material, and proteins expressed by DNA/RNA supplied by CABI.

"Third Party" shall mean any person other than the Customer and CABI.

2. **Transfer of Material**

2.1 Subject to Clause 2.4 below, CABI agrees to transfer the Original Material to the Customer. CABI shall label, package, and arrange for transport of the Original Material in accordance with applicable laws and regulations.

2.2 The Customer shall be responsible for all duties, tax(es), tariffs and fees arising in connection with this MTA and the transfer of the Original Material. The Customer shall, upon demand, pay to CABI an amount equal to any such tax(es), duties, tariffs and permit fees actually paid or required to be

collected or paid by CABI.

2.3 If the Original Material is not viable on receipt by the Customer, and provided the Customer has handled and continues to handle the Original Material in accordance with instructions provided by CABI, CABI will provide (a) replacement of the Original Material or (b) a refund of the fee paid to CABI (if any).

2.4 Nothing in this MTA obliges CABI to supply the Original Material if (a) CABI is prohibited from doing so under any applicable legislation, including legislation relating to terrorism or threat of biological weapons or (b) CABI has reasonable grounds to suspect that the Customer intends to utilise the Material in any manner which contravenes the terms of this MTA or for any other prohibited or unethical purpose.

2.5 At CABI's request the Customer shall promptly and at its cost return or destroy (at CABI's option) all Material on termination or expiry of this MTA.

3. Conditions of Use

3.1 The Customer may use the Material solely for research, teaching and identification purposes and shall not use the Material for Commercial Purposes.

3.2 The Material is not intended for human in vivo use. The Customer shall not use the Material in human subjects, in clinical trials, or for diagnostic purposes involving human subjects.

3.3 The Customer shall not distribute, release, sell, lend or otherwise transfer the Material to a Third Party without CABI's prior written consent.

3.4 The Customer agrees to use the Material in compliance with all applicable laws, regulations, codes of practice and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

4. Compliance with the Convention on Biological Diversity

4.1 The Customer shall use the Material in a legitimate, safe, legal, ethical and sustainable way, and in respect of the principles laid down in the Convention on Biological Diversity ("CBD"). Nothing in this MTA shall be construed as changing or affecting the rights and obligations of the Parties under the CBD.

4.2 This MTA fully complies with Article 15 of the CBD, which recognises the sovereign rights of States over their natural resources.

4.3 The Original Material is provided under this MTA on the understanding that it was collected either before the CBD came into force or if collected after the CBD came into force with Prior Informed Consent, where procedures are in place and recognised authorities exist.

4.4 The Customer shall uphold the mutually agreed terms of the Prior Informed Consent and any other terms that CABI notifies to the Customer in Schedule 1.

4.5 To the extent any terms and conditions set out in Schedule 1 conflict with the terms of this MTA, the terms and conditions set out in Schedule 1 shall prevail.

5. Ownership and Intellectual Property

5.1 The transfer of the Original Material pursuant to this MTA does not affect the ownership of the Original Material or any intellectual property rights in or relating to it or its use.

5.2 In accordance with the CBD which recognizes that nations have sovereign rights over their own biological resources, the ownership of Material, including any Material incorporated in Modifications, or derivatives remains with the Provider Country, as defined in the CBD.

5.3 The Customer agrees to acknowledge CABI and any contributor indicated by CABI as the source of the Original Material in all publications. The Customer may not seek to patent the Material or protect it by any other intellectual property right.

5.4 Nothing in this MTA shall be interpreted as granting a licence to the Customer to use CABI's name or any of CABI's intellectual property rights, including its trade marks.

6. Liability

6.1 The Customer acknowledges that any Original Material designated as Hazard group 2 or 3 constitutes known human pathogens. The Material may be toxic, carcinogenic, mutagenic or pathogenic under certain conditions. The Customer assumes all risk and responsibility to ensure that the Material is used in a safe and appropriate manner. This includes the receipt, handling, (containment), storage and disposal.

6.2 CABI makes no representations and gives no warranties or conditions of any kind, either express or implied. There are no express or implied warranties or conditions of satisfactory quality or fitness for a particular purpose, or that the use of the Material will not infringe any intellectual property rights or other proprietary rights of any other person.

6.3 CABI shall not be liable for any failure of the Material to meet the objectives or requirements of the Customer. CABI shall have no liability under this MTA except as provided under clause 2.3. Under no circumstances will CABI be liable for any indirect, incidental or consequential loss or damage or for loss of profits or revenue (whether direct or indirect) in connection with or arising out of the use of the Material or this MTA, however caused (including as a result of negligence) including for any delays whether or not caused by Force Majeure, even if CABI has been advised of the possibility of such loss or damage.

6.4 The Customer shall indemnify and hold harmless CABI, its officers, agents, employees and any person acting on their behalf from and against: (1) any Third Party claims or demands for loss, liability or damage, including, but not limited to, claims for personal injury or death, arising from any act or omission of the Customer's officers, employees, agents, subcontractors or any person acting on the Customer's behalf in the performance of this MTA; and (2) all claims, suits, and damages, brought by any Third Party, by reason of the non-observance or non-performance by the Customer, or its officers, employees, agents, subcontractors, or any person acting on the Customer's behalf, of any of the terms and conditions of this MTA or any applicable laws, regulations, codes of practice or guidelines. The Customer shall reimburse CABI its officers, employees, agents and any person acting on CABI's behalf for all legal fees, costs, and expenses incurred in connection with the defence of any such Third Party claim.

7. Governing Law

7.1 This MTA is governed by, and is to be construed in accordance with, English law.

7.2 Any proceedings relating to any dispute or claim arising out of or in connection with this MTA or its subject matter or formation (including non-contractual disputes or claims) instituted against CABI by the Customer shall be brought in the courts of England and any such proceeding against the Customer by CABI shall be brought in the courts of the jurisdiction where the Customer is domiciled. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims, save that any counterclaim may be brought in any proceedings already commenced.

8. Term and Termination

8.1 This MTA will commence on the Effective Date and unless terminated earlier under clause 8.2 will terminate on the earliest of (a) completion of the Customer's use of the Material in accordance with Clause 2, and (b) [*NUMBER*] year(s) after the Effective Date.

8.2 CABI may terminate this MTA with immediate effect by giving notice to the other Party if:

8.2.1 The Customer is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after the Customer receives a written notice specifying the breach and requiring its remedy, or

8.2.2 CABI has reasonable grounds to suspect that the Customer intends or is utilizing the Material for any illegal or unethical purpose.

9. **Miscellaneous**

9.1 This MTA constitutes the entire agreement between CABI and the Customer and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

9.2 Nothing in this MTA creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

9.3 No variation or amendment of this MTA (including the Schedule) will be effective unless it is made in writing and signed by each Party's representative.

9.4 Failure to exercise, or any delay in exercising, or a single or partial exercise of any right or remedy provided under this MTA or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

9.5 A person who is not a Party to this MTA shall not have any rights under or in connection with it.

9.6 Each of the provisions contained within this MTA shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any of these provisions is void and would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

10. **Notices**

Any notice to be given under this MTA must be in writing and sent to the following addresses:

To CABI:

The Chief Executive Officer
Head Office
CAB International
Nosworthy Way
Wallingford
Oxon, OX10 8DE
UK

To the Customer: [INSERT CUSTOMER'S ADDRESS]

[NAME*] of [*ADDRESS] (the "Customer") hereby agrees to all of the terms and conditions of this MTA.

Signed: _____. Date_____.

Position:_____

Organisation and Address:

Signed on behalf of CABI by CABI Regional Director or their designate.

Signed: _____. Date_____

SCHEDULE 1

DESCRIPTION OF THE ORGINAL MATERIAL

Genetic Resource identifier(s):

…….. including scientific name (where known), country of origin, and date of collection

ADDITIONAL TERMS AND CONDITIONS, IF ANY

[Insert, as applicable, the Relevant International Recognized Certificate of Compliance (IRCC Mutually Agreed Terms (MAT), Prior Informed Consent or other verifying documentation of legal access, together with any additional terms and conditions of use where these differ from, or are additional to, those above have been appended for the above material.]