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**Agreement on Access and Benefit Sharing on Genetic Resources and Materials Between the Government of Saint Kitts And Nevis and Mr. Michael Lihan Yuan**

**AFFIRMING** the sovereign right of St. Kitts and Nevis over its biological resources

**CONSIDERING** the need for knowledge, information and the need to develop scientific, technical and institutional capacities to provide knowledge of biological resources and to inform policy in relation to same

**CONSCIOUS** of the importance of biological resources to the economic and social development and its importance in meeting food and health needs and maintaining life systems in the biosphere.

**ACKNOWLEDGING** the objections expressed by Article 1 of the United Nations Convention on Biological Diversity and the need to promote co-operation between countries in matters pertaining to biological diversity

**NOW THEREFORE** the Parties hereto agree as follows:

**1. Parties to the Agreement**

The Agreement is entered into this 18th day of January 2019 by and between:

**The Ministry of Agriculture, Marine Resources, Cooperatives, Environment and Human Settlement (AMRCE&HS), Government of Saint Christopher and Nevis** hereinafter referred to as the “Provider”.

The contact person responsible for the implementa­tion of the Agreement on behalf of the Provider: **Permanent Secretary, AMRCE&HS**

AND

**Michael Lihan Yuan** hereinafter referred to as the “User”.

Mr. Michael Lihan Yan is a graduate student at the University of California, Berkeley and a Smithsonian Institution Pre-doctoral Fellow studying the ecology and evolution of reptiles and amphibians. Mr. Yuan, while affiliated with the abovementioned Institutions, is acting in his personal capacity as a researcher.

**2. The Purpose and Objectives of the Agreement**

2.1 The purpose of the Agreement is to set out the conditions for the use of genetic resources, any associated Traditional Knowledge (TK) and the sharing of the resulting benefits between the parties concerned in accordance with the United Nations Convention on Biological Diversity (CBD) and particularly its Nagoya Protocol on access and benefit sharing of genetic resources of which St. Kitts and Nevis is party to.

2.2 This Agreement specifies the terms for:

 (i) Accessing genetic resources, materials and traditional knowledge,

(ii) Their utilization in accordance with this Agreement,

 (iii) Their possible transfer to third parties, and

 (iv) Sharing the benefits resulting from the utilization of genetic resources.

**3. Prior Informed Consent**

 The Provider hereby confirms that he has been informed on the research project by the User and consents to provide access to genetic resources to carry out the research in accordance with the research project attached to this Agreement.

**4. Terminology**

4.1 In this Agreement, the terms defined in the Nagoya Protocol shall have the same meaning and:

4.2 "Biological resources' includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

4.3 “Genetic Resources” means genetic material of actual or potential value.

4.4 “Genetic Material” means any material of plant, animal, microbial or other origin containing functional units of heredity and includes living and dead material.

4.5 “Commercialization” means the use of the Genetic Resource for the generation of any kind of actual or potential economic profit. It means in particular any sale, lease, licensing of the Genetic Resource, or Products generated from its use through actions such as filing a patent application, obtaining intellectual property rights or other tangible or intangible rights. It includes any transfer of the Genetic Resource to a For Profit Organization.

4.6 “Prior Informed Consent” means the unilateral declara­tion of the Provider that he or she has been informed about the planned research and that he or she is willing to provide the required access to the Genetic Resource. In this Agreement the Prior Informed Consent refers to the document outlined in Annex II of this Agreement.

4.7 “Third Party” means any person or institution other than the Provider, the User and any collaborator under their control or supervision.

4.8 “Unauthorized Person” means any person that comes into possession of the Genetic Resources without the authorization of the Provider.

**5. Genetic Resources to be accessed**

5.1 The User shall have access to and be allowed to take out of the jurisdiction samples of the following Genetic Resource(s), that is, ***Anolis (Lizards)****,* ***Thecadactylus rapicauda, Sphaerodactylus sputator, and Sphaerodactylus sabanus (local geckos) and******Eleutherodactylus johnstonei******(Lesser Antillean Whistling Frogs)*** subject to the conditions outlined below:

1. Provider is allowed to take pictures of the samples taken.

(b) A complete list of the collected samples shall be presented to the Provider within 1 month after the User has gathered the samples.

**6. Utilization**

6.1. Subject to Articles 6.3 and 8 the Genetic Resource, any genetic material derived therefrom, any research information including scientific study and Traditional Knowledge may be utilized for commercial or non-commercial pur­poses including for academic research and collections, and for training, teaching and education.

6.2 The User must comply with the User’s and Provider’s national regulations and with relevant international law and prevailing ethical guidelines in relation to the use of the Genetic Resource.

6.3 The Provider shall be notified in writing if the Genetic Resource, any genetic material derived therefrom, any research information including scientific study and Traditional Knowledge is to be used for commercial purposes.

**7. Transfer of Genetic Resources (and associated Traditional Knowledge) to Third Parties**

7.1 The User may with the written consent of the Provider transfer Genetic Resources or materials to Third Parties for the purposes of academic research and collections, and for training, teaching and education, or any other non-commercial activity on the condition that same is passed on subject to the same obligations outlined in this agreement and the Third Party undertakes, in writing, to comply with all the terms of this Agreement.

7.2 The User shall not transfer any Genetic Resources or Materials to any Third Party.

7.3 A Third Party to whom the Genetic Resources or Materials have been transferred pursuant to Article 7.1 shall be required to sign an agree­ment containing identical obligations on Use and Trans­fer of the Genetic Resources and associated Traditional Knowledge as set out in this Agreement.

7. The User shall maintain retrievable records of any trans­fer of the Genetic Resources or Genetic Materials to Third Parties under the conditions of this Agreement and shall share this record with the Provider on an annual basis.

**8. Benefit Sharing**

8.1 The benefits arising from the access and use of the Genetic Resources or Materials shall be shared fairly and equitably by the User with the Provider, in accordance with the principles established in the CBD.

* 1. The benefits to be shared include:
1. Inclusion of local researchers in the research activities, if such interest exists;
2. In the event that the Genetic Resource is used for display, full acknowledgement of the source of origin of the Genetic Resource;

(iii) In case of publications or oral presentation of the research results, full acknowledgement is to be given to the source of the Genetic Resource;

(iv) If TK associated to the Genetic Resources is involved, the research results published or presented orally will include full acknowledgement of the source of the Genetic Resources and the TK, if so required by the providers;

(v) Providing a copy of all publications to the Provider;

(vi) Sharing of research results with the Provider;

(vii) Sharing of two samples of each species collected in their finished form for display purposes

 (viii) Institutional capacity building: Presentation on the work of the reseachers, the method of collection in St. Kitts and Nevis as well as the use of specimens, establishing of programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of the genetic resource if applicable.

 (ix) If the User, in the course of the research, discovers any unforeseen commercial potential of the Genetic Resource or Material, he/she is obliged to share such information with the Provider prior to any publication of such information.

8.3 Should the Genetic Resource be used for commercial use the benefits to be shared shall include (as is applicable) in addition to the benefits stated:

1. Joint Ownership of patents and other intellectual property rights
2. Sharing in Royalties
3. Provision of applicable Training and Technology Transfer
4. Commercial products e.g. drugs at cost price for the National Health System
5. Provision of licenses (including sharing of licensing fees) by common consent

8.4 The Parties shall be required to negotiate and conclude agreements on the matters outlined in Articles 8.3 (i), (ii), (iii), (iv) and (v).

**9. Rights and Obligations of the Provider**

9.1 The Provider has the obligation to facilitate access to the Genetic Resources. This includes the facilitation of the acquisition of any permits, including export permits required in accordance with the relevant national laws in the Provider’s country.

9.2 Pursuant to the provisions of Article 5 and 9 herein, the Provider is entitled to supervise the collection of samples and to verify the samples to ensure compliance with the terms of this Agreement.

9.3 All Genetic Resources and Material and derivatives shall remain the property of the Provider.

9.4 The Provider shall designate the Access and Benefit Sharing Focal Point as the responsible contact point person for the entire duration of the present Agreement.

**10. Rights and Obligations of the User**

10.1 The User is entitled to assistance and guid­ance to facilitate the acquisition of the necessary per­mits required by the providing country.

10.2 The User is obliged to take all reasonable precautions to prevent the Genetic Resource coming into the posses­sion of any Unauthorized Person.

10.3 The User is obliged to inform the Provider about any research results that are of potential com­mercial interest or use, prior to any disclosure of this informa­tion to the public.

10. 4 The User shall comply with all the requirements of this Agreement.

**11. Confidentiality**

11.1 Each party shall hold as confidential any information which has been identified by the other party as Confidential.

11.2 A Party shall:

1. Not disclose confidential material except with the express consent of the other party or as required by law.
2. Only disclose such portion of the information as is legally required.
3. To the extent permitted by law provide the other Party with notice of the request for disclosure so as to allow the other party a reasonable opportunity to either seek a protective order or other appropriate remedy.

**12. Duration and Termination of the Agreement**

12.1 The present Agreement shall continue in force for such period as the Genetic Resources or Materials continue to be used by the User or any Third Party to whom the Genetic Resources or Materials has been transferred.

2. 2 This Agreement may be terminated at any time by mutual agreement of the Parties.

12.3 A party that wishes to terminate the Agreement shall give to the other party one month’s written notice in advance.

12.4 Either party may terminate this agreement for material breach or material default in the performance of any obligation under this agreement, and the Party in breach shall be entitled to compensate the other party for said breach and any damages, including reasonable legal costs arising therefrom, by way of damages, injunction or other appropriate legal remedy.

12.5 If the Agreement is terminated because of material breach or default on the part of the User the User shall return the genetic resources and materials and any derivatives.

12.6 This Agreement may be terminated immediately, in case of a breach of Articles 8 or 10.3.

12.7 Articles 7, 8, 10.3, 13 and 15 of this Agreement survive the termination of this Agreement and shall to the extent applicable have full force and effect.

**13. Handling of the Genetic Material after Termination of the Agreement**

13. 1 All Genetic Resources and Materials and derivatives shall be returned to the Provider on the termination of the agreement.

13. 1 On termination of this Agreement the User shall only be entitled to use the information garnered from the Genetic Resources, Materials and derivatives for non - commercial purposes with full acknowledgement to be given to the Provider of the Genetic Resource.

**14. NOTICES**

14. All notices, requests, demands and other communications required or permitted under this Agreement must be written and shall be deemed to have been duly given if

 a. delivered by hand to the then current address of the party

1. delivered by Fedex or other internationally recognized prepaid courier service to the then current address of the party; or
2. transmitted by reliable electronic system

14.2 Notices shall be deemed to have been delivered upon written confirmation of rejection or delivery of the communication by the delivering person. The current addresses of the parties are:

 Provider: Permanent Secretary

The Ministry of Agriculture, Marine Resources, Cooperatives, Environment and Human Settlement (AMRCE&HS),

Government of Saint Christopher and Nevis

c/o Government Headquarters

Church, Street, Basseterre

 User: Mr. Michael Lihan Yuan

 Department of Environmental Science, Policy, and Management

 130 Mulford Hall #3114

 University of California

 Berkeley, CA, USA 94720

**15. Settlement of Disputes**

The Parties agree to make attempts in good faith to negotiate the resolution of any disputes that may arise under this Agreement. If the Parties are not able to resolve a dispute within a period of two (2) months, such dispute shall be finally determined by a single Arbitrator and the Rules of the International Chamber of Commerce Rules of Arbitration shall apply for the purpose of the appointment of the Arbitrator and the conduct of the arbitration. The decision under such arbitration shall be final and binding on the parties.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Parties, have signed this Agreement.

Signed by:

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Mr. Alistair Edwards

Permanent Secretary

The Ministry of Agriculture, Marine Resources,

Cooperatives, Environment and Human

Settlement (AMRCE&HS),

Government of Saint Christopher and Nevis

Signed by:

…………………………………………….

Mr. Michael Lihan Yuan

PhD Candidate

Department of Environmental Science, Policy, and Management

University of California, Berkeley

130 Mulford Hall #3114

University of California

Berkeley, CA, USA 94720