Agreement On Access And Benefit Sharing on Genetic Resources and Materials Between The Government Of Saint Kitts And Nevis And The Smithsonian National Museum Of Natural History

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 day of January 2018 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

Smithsonian National Museum of Natural History of the State of Washington DC, USA hereinafter referred to as the "User".

The representative of the User responsible for the implementation of the Agreement on behalf of the Smithsonian National Museum of Natural History of the State of Washington D.C: **Museum Specialist.**

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 (the 'CBD'), particularly in respect with the principles established under its Articles 1, 8(j), 15, and the Bonn Guidelines.

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 Agreement is based on the Prior Informed Consent (PIC) issued beforehand by the Provider to the User for the access to the genetic resources concerned. The PIC document is attached to this Agreement as Annex II and is considered an integral part of the Agreement.

4. Terminology

4.1 In this Agreement, the terms defined in Article 2 of the CBD 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 amounting to no more than two hundred (200) in number of the following Genetic Resource(s), that is, ***Rodentia (rodents)*** and ***Chiroptera (bats)*** subject to the conditions outlined below:

(a) 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.

5.2 Some of the species/strains available for collection are given in Annex 1.

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.

8.2 The benefits to be shared include:

(i) Inclusion of local researchers in the research activities, if such interest exists;

(ii) 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 Provide;

(vi) Sharing of research results with the Provider;

(vii) Sharing of at least one of each sample collected in museum display or other finished condition with the Provider (including the St. Christopher National Trust, the Department of Environment and the Department of Agriculture in Nevis) in accordance with good scientific practice;

(viii) Institutional capacity building: Presentation on the work of the Smithsonian National Museum of National History, the method of collection in St. Kitts and 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:

(i) Joint Ownership of patents and other intellectual property rights
(ii) Sharing in Royalties
(iii) Provision of applicable Training and Technology Transfer
(iv) Commercial products e.g. drugs at cost price for the National Health System
(v) Provision of licences (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:

(i) Not disclose confidential material except with the express consent of the other party or as required by law.
(ii) Only disclose such portion of the information as is legally required.
(iii) 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

14.1All 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;

b. delivered by Fedex or other internationally recognized prepaid courier service to the then current address of the party; or

c. 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

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:

……..
Mr. Allistair Edwards
Permanent Secretary
The Ministry of Agriculture, Marine Resources,
Cooperatives, Environment and Human
Settlement (AMRCE&HS),
Government of Saint Christopher and Nevis

Signed by:

…….
Ms. Nicole Edmison
Museum Specialist
Smithsonian National Museum of Natural
History of the State of Washington DC, USA

Annex 1 - Species/strains Most Likely to be Collected

Rodentia (rodents)	**Chiroptera (bats)**
Rats (Rattus rattus)	Pig-faced, Rat, or Brown Flower, Bat (Brachyphylla cavernarum)
Rats (R. norvegicus)	Long-tongued fruit Bat (Monphyllus plethodon)
Mouse (Mus muscalus)	Brazilian Free-tailed Bat (Tadarida brasiliensis)
	Fishing Bat (Noctilio leporinus)
	Lesser Antillean Tree Bat (Ardops nichollsi)
	Myotis dominicensis
	Velvety House Bat (Molossus molossus)

Annex II - Prior Informed Consent

SAINT CHRISTOPHER AND NEVIS

MINISTRY OF AGRICULTURE, MARINE RESOURCES, COOPERATIVES, ENVIRONMENT & HUMAN SETTLEMENT

Tel: (869) 465-2521 Ext. 1025/1017
Fax: (869) 465-2635
E-mail: psagriculturekn@gmail.com

GOVERNMENT HEADQUARTERS
P O BOX 186 CHURCH STREET
BASSETERRE
ST KITTS * WEST INDIES

5th January 2018

To Whom It May Concern

Consent is granted to Ms Nicole Edmison of the Smithsonian National Museum of Natural History and her team to carry out ecological research and collect research specimens in the Federation of St. Kitts & Nevis and to export these specimens to the USA.

Specimens should only be collected from the Orders list below and will be deposited in the research collection of the Smithsonian Institution's National Museum of Natural History:

- Rodentia (rodents)
- Chiroptera (bats)

No more than 20 individuals of the same species will be taken per sampling site and no more than 200 total specimens will be collected.

Species protected by the US Endangered Species Act (ESA) and/or the Convention on International Trade in Endangered Species (CITES) will not be collected.

All exported specimens should be fixed in formalin and preserved in ethanol to mitigate the potential for pathogen transfer. Research may take place on both St Kitts and Nevis throughout 2018.

The research should be conducted in conjunction with the Ministry of Agriculture et al specifically the Department of Environment who in turn will provide a local counterpart team.

Ms Edmison and by extension the Smithsonian National Museum are reminded of the rules governing research according to the ABS protocol

Sincerely,

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E. Alistair Edwards (Mr)
Permanent Secretary