

## ANNEX XII: MATERIAL TRANSFER AGREEMENT



### MATERIAL TRANSFER AGREEMENT FOR ACCES TO KENYAN BIODIVERSITY

The Sample Standard Material Transfer Agreement shall form the basis of developing MTAs for purposes of access to Kenya's wildlife resources.

#### Preamble

#### WHEREAS

- a) Management of Kenya's wildlife is vested to Kenya Wildlife Service; and further mandated to coordinate and administer biodiversity related Multilateral Environmental Agreements (MEAs) that the country has ratified;
- b) The sovereign rights over biodiversity are vested in the State;
- c) Biodiversity is conserved to offer optimum returns for the benefit of Kenyan People;
- d) The biological intellectual assets are property and are subject to the laws of the country;
- e) The country has ratified various MEAs governing biodiversity conservation, sustainable use and benefit-sharing including and not limited to CBD, CITES, ITPGRFA and UN resolution 1540;
- f) There is need to establish appropriate biodiversity resource governance structures for improved monitoring and management;

#### Article 1 –Parties to the Agreement

- 1.1 The present material transfer agreement is the Standard Material Transfer Agreement for biological materials in Kenya
- 1.2 Parties to the agreement shall be Kenya Wildlife Service as the designated government agency responsible for wildlife resources as the resource provider and the approved recipient
- 1.3 This agreement is between;

*Provider* (Director, Kenya Wildlife Service, P. O Box 40241-00100 NAIROBI on behalf of the providing institution)

And

*Recipient* (Legal contacts of receiving institution, names of authorized officers)

- 1.4 Definitions

In this Material Transfer Agreement, the following expressions shall have the following meaning;

**Designated government agencies** shall mean legally mandated government agencies in which duplicates

or voucher specimens of the transferred materials shall be deposited and maintained.

**Designated depository centres** shall mean legally mandated national centers in which duplicates or voucher specimens of the transferred materials shall be deposited and maintained.

Biomaterials

**Provider** shall mean the person(s) providing the genetic resources and / or associated knowledge e.g. competent lead agency, individual or community.

Recipient

**Derivatives** shall mean substances created by recipients that contains /incorporate /are derived from research specimen, progeny or unmodified derivatives.

Party

Parties

Third party

Progeny

Commercial purpose

Academic purpose

Modifications

Derivatives

Product

PIC

Sales means the gross income resulting from the commercialization of a product by the recipient

1.5 Terms and Conditions of this agreement

1.5.1 Purpose (Academic or commercial)

1.5.2 Type of biological material (Annex/list )

1.5.3 Documentary evidence of duplicate or holotype deposit in designated repository center.

1.5.4 PIC certificate number

1.5.5 Bio-safety regulations

- a. Materials will be packaged and shipped in accordance with applicable laws and regulations including but not limited to International Air Travel Association (IATA) regulations, Phytosanitary requirements.
- b. MTAs for live animals or custom antibodies shall have protocol(s) reviewed and approved by the designated Kenya government Animals Care and Use committee.
- c. MTAs for hazardous materials and/or bio-risk agents shall be subject to Environment Health and Safety compliance procedures

1.5.6 Rights and obligations of the provider

Kenya Wildlife Service on behalf of the State retains ownership of the biomaterial including any material contained or incorporated in modifications.

Kenya Wildlife Service also retains rights to any intellectual property it owns in the Material.

Kenya Wildlife Service retains the right to access, audit and monitor the use and application of the biomaterials provided under this MTA.

*No rights under any intellectual property of Kenya or rights in any other material or confidential information provided by the State to the recipient under this agreement is granted or implied as a result of providing this material to the recipient, other than as expressly set forth herein.*

#### **1.5.7 Rights and obligations of the recipient**

- i. The Recipient shall use the material(s) for the described and permitted uses only.
- ii. The Recipient shall be responsible for ensuring that all permits required for the movement of the material are obtained and that sufficient proof of such permits is provided to Kenya Wildlife Service
- iii. In no circumstances shall the recipient collect a sample in such a way that will threaten or be detrimental to the survival of the specimen or depletes the supply of that material in the wild.
- iv. No commercialization or transfer of the material to a third party shall take place without consent from and negotiated agreement with Kenya Wildlife Service
- v. In case of commercialization without consent and agreement with Kenya Wildlife Service, the recipient shall pay 50% of the gross value of the product based on internationally accepted audited accounts
- vi. The recipient shall pay 10% of the commercialized product into the mechanism established by KWS for this purpose in accordance with the benefit-sharing scheme as provided in Annex to this agreement
- vii. Technologies and processes developed on the use of the biomaterial shall be accessed freely by Kenya Wildlife Service on behalf of the Government of Kenya.
- viii. The recipient agrees that Kenya shall be the preferred country of supply in event of commercialization of the biomaterial
- ix. The material obtained under this agreement shall only be transferred by the recipient to a third party with prior written authorization from the Director Kenya Wildlife Service
- x. The recipient shall acknowledge this agreement and contribution of Kenya Wildlife Service and where applicable, local communities and stakeholders in all and any publications, patents or presentations involving the use of the material.
- xi. The recipient will indemnify and keep Kenya Wildlife Service and the State harmless from any claim, action, and damage or cost deriving from or in connection with the recipient's transfer or use of the material.

#### **1.4.8 Duration of Agreement**

- i. This agreement is binding throughout the existence of the biomaterials;
- ii. The Recipient may terminate this agreement by a written notice to Kenya Wildlife Service at least 3 months in advance of the desired date of termination.
- iii. Kenya Wildlife Service may without assigning any reason thereof, suspend or terminate this

agreement at any time with written notice to recipient.

- iv. On termination of this agreement, recipient agrees that any remaining material upon verification will be destroyed (unless requested by Kenya Wildlife Service to return remaining material) and to provide proof thereof to Kenya Wildlife Service no later than 30 days from the date of expiry or termination, which ever comes first.
- v. The above sections on ownership of material and intellectual property, confidentiality, publications, warranty disclaimer, limitation of liability and indemnification shall survive expiration or earlier termination of this agreement.

**1.4.9 Penalties**

Failure of recipient to comply with this agreement shall attract the following penalties and fines

Minimum of three years in jail,

Fine not less than United States Dollars Ten thousand (USD 10,000) or Kenya shillings equivalent.

Blacklisting of the recipient/company under global biodiversity campaign.

**1.5.0 Applicable law**

Kenyan law

**1.5.1 Dispute Resolution**

**1.6.0 Signature/Acceptance**

a) Signature of PI.....

Name of PI.....Date.....

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**FOR: RECIPIENT INSTITUTION**

a) Signature ..... (Head of institution)

Name.....

Date.....

**FOR: KENYA WILDLIFE SERVICE**

Director’s Signature.....

Name.....

Date.....

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