



APPENDIX III: SAMPLE MATERIAL TRANSFER AGREEMENT FOR ABS IN KENYA

Article: 1.0 Preamble

Whereas the sovereign rights over biodiversity are vested in the State;

Aware of the letter and the spirit of the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1992 Convention on Biological Diversity (CBD), Nagoya Protocol (2010), the 2004 International Treaty on Plant Genetic Resources for Food and Agriculture, Biological and Toxins Weapon Convention (BTWC) 1972 UN resolution 1540 (2004),

Recognizing that Kenyan Government has put in place various legislative measures for sustainable utilization and conservation of biodiversity such as; the Constitution of Kenya (2010), Environmental Management Co-ordination Act (EMCA) 1999, the Wildlife conservation and Management Act, 2013, Science Technology and Innovation Act 2013, the Forest Act of 2005, Industrial Property Act 2001, Seeds and Plant Varieties Act 2012, the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations 2006.

Noting the diversity, varied origins and inherent value of Kenya's genetic resources and their contribution to environmental health and socio-economic development.

Acknowledging: The rights of local communities to associated traditional knowledge on biological resources and its contribution to science, technology and innovation:

The parties hereby agree as follows:

Article 2.0 –Parties to the Agreement

2.1 This Material Transfer Agreement hereinafter referred to as the agreement is the official document for transfer of biological/genetic materials for Kenya.

The party(ies) to the agreement shall be recognised legal entities.

Private resource owners, international research organizations and nongovernmental organizations shall become party through relevant national agencies.

2.2 This agreement is between;

Provider(*insert legal contacts of providing institution, names of authorized*





officers)

And

Recipient.....(*insert legal contacts of receiving institution, names of authorized officers*)

Article 3.0 Terms and Conditions of this Agreement

3.1 The purpose and objectives: State the purpose whether: Academic, Research or commercial, taxonomy, collection, and expected outputs; include the title of the project and the abstract

.....

3.1.1 Objectives

.....

.....

Indicate type of material, source and GPS points

.....

.....

3.1.2 Provide documentary evidence of the following (Attach as annex):

- a) Deposition of duplicate specimen in designated repository center
- b) PIC and MAT

3.1.3 Provide associated traditional knowledge and source (if any)

.....

.....

4.0 Rights and obligations of providers and recipients

- a) Both the provider and the recipient shall notify Designated National Authority and any other relevant lead agency on the MTA implementation, material transfer to Third party, any discoveries and further use of the material through reports
- b) TK, information and data disclosed and or generated during access to the GR shall not be disclosed to third parties without consent of the provider.
- c) Confidential or proprietary GR information shall not be disclosed unless the information is in the public domain or is disclosed in public interest.



4.1. Rights and obligations of the provider

- i. The provider retains ownership of the genetic material including any material contained or incorporated in modifications.
- ii. The provider may repatriate genetic resources held by recipient with adequate prior written notice.
- iii. The provider also retains rights to any intellectual property it owns in genetic resource.
- iv. The provider retains the right to access, audit and monitor the use and application of the genetic material provided under this MTA.
- v. No rights under any intellectual property or rights in any other material or confidential information provided 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.

4.2. Rights and obligations of the recipient

- i. The Recipient shall use the genetic resource(s) for the purpose stated in this agreement only
- ii. The Recipient is responsible for ensuring that all permits required for the movement of the material are obtained and that sufficient proof of such permits is provided whenever required.
- iii. In no circumstances shall the recipient collect materials in such a way that adversely affects the environment or in any way alter the genetic diversity of the source material
- iv. No commercialization shall take place without notice and a negotiated agreement with the provider.
- v. In the event of commercialization whether by the recipient, its servants and or agent or any party acting under it regardless of whether there was an act or omission on the part of the recipient resulting in the use and commercialisation of the GR without re-negotiation for the commercial license agreement the recipient will pay 50% of the gross income arising from the GR.
- vi. The Kenya Government shall have unrestricted access to the technologies and processes developed from the access and use of the GR and associated TK.
- vii. The recipient and provider shall jointly own any intellectual property rights for inventions arising from utilization of genetic resources accessed as agreed.



- viii. In the event of commercialization, the provider shall give a separate consent and the provider shall become the duly recognised supplier of the genetic resource.
- ix. The GR obtained under this agreement shall only be transferred by the recipient to a third party with prior written authorization from the provider and MTA between the recipient and the third party.
- x. The recipient shall indemnify and keep provider indemnified from any claim, action, and damage or cost deriving from or in connection with the recipient's use of the GR.

Article 5: Repatriation of Genetic Resources from Foreign Depositories

5.1 Due to national interests such as food or environmental security, the Government of Kenya may require the return of the remaining GR as required by the circumstances and recipient shall return such GR, to such institution as may be designated by Designated National Authority without any condition.

5.2 The recipient shall use the genetic resource and/or associated traditional knowledge for the purpose(s) contained in this agreement and/or continue to keep the genetic resource in safe custody in accordance with standard procedures and practice.

Article 6: Termination of Agreement

6.1 This agreement is binding throughout the existence of the accessed GR and its derivatives and products.

6.2 On termination of this agreement, the recipient shall destroy (unless requested by provider to return the said remaining material) and shall provide proof immediately to the provider

6.3 Any procedurally duplicated GR/biological material shall survive the lifetime of this agreement and should be freely accessible to the Kenya government and the provider upon request.

Article: 7.0 Warranty

a) The **Provider** makes no warranties as to the safety of or title to the **GR material**, nor as to the accuracy or correctness of any information provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished.

b) The phyto-sanitary condition of the **Material** is warranted only as described in any attached phyto-sanitary or animal health certificate. The **Recipient** assumes full



responsibility for complying with the recipient nation's quarantine regulations and rules as to import or release of **genetic material**.

Article 8: Applicable Laws

The applicable law shall be the domesticating national laws of Kenya, the relevant provisions of the Nagoya protocol, and, when necessary for interpretation, the decisions of the Designated National Authority.

Article 9: Dispute Resolution

Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Act No. 4 of 1995 of laws of Kenya and in accordance with the procedure laid down in part 1 of Annex II of the Convention on Biological Diversity.

Article 10: Force majeure

10.1 Neither party(ies) shall be liable to the other party(ies) for any delay or non-conformance of its obligations under this **Agreement** arising from any clause beyond its reasonable control, including, but not limited to, any of the following: government Act, war, fire, drought, explosion, civil commotion or industrial disputes of a third party or impossibility of obtaining gas or electricity or materials.

10.2 The affected party(ies) must promptly notify the other party(ies) in writing, but in no circumstances no later than fourteen (14) days, of the cause and likely duration of the cause.

10.3 Such notice having been given, the performance of the affected party's obligations, to the extent affected by the cause, shall be suspended during the period the cause persists.

10.4 Without prejudice to the above, the affected party(ies) must take all reasonable measures to minimize the impact of any force majeure on the performance of its obligations



under the **Agreement** and to ensure, as soon as practicable, the resumption of normal performance of the obligations affected by the force majeure.

Article 11: Notices

Any notice or other document to be served under this **Agreement** must be delivered by hand or sent by registered mail or by international courier service to be served at the addresses below:

Designated National Authority

Insert the name of the Institution and the address

Competent Authority

Insert the name of the Institution and the address

Provider

*Insert the name of the **Provider(s)** and the address*

Recipient

Insert the name of the Institution and the address

All notices or documents shall be deemed to have been served at the date and time of delivery of the said notices or documents to the recipient party.

Signature/Acceptance

For provider

Name and Signature of Head of institution-----

Name and signature of Authorizing officer:-----

For recipient:

Name and Signature of authorized official-----

Name and signature of principal investigator-----

Witnessed by-----





IN WITNESS WHEREOF the parties have appended their signatures (prints) and seals on the date and year mentioned above.

Executed as an Agreement

SIGNED on behalf of the

PROVIDER

(Insert the name of the provider)

By *(insert name of signatory)*

(Insert signatory position)

DATED

SIGNED on behalf of the

Witnessed by

(insert name of signatory)

(Insert signatory position)

RECIPIENT

(Insert the name of the user).....

By *(insert name of signatory)*

(Insert signatory position)

DATE

Witnessed by

(insert name of signatory)

(Insert signatory position)

COMPETENT AUTHORITY (Where necessary)

(Insert name of the institution)By.....

(insert name of signatory)

(Insert signatory position)





DATED

SIGNED on behalf of the **Witnessed by**

(insert name of signatory)

(Insert signatory position)

Annexes

1. List of accessed GR and GPS
2. Letters of acceptance of materials where it is to be deposited
3. Relevant permits (Access permit, PIC, Export permit, MAT, Phyto-sanitary certificates)

