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| **MATERIAL TRANSFER AGREEMENT (MTA)**    [INSERT PARTNER LOGO] |

**AGREEMENT DETAILS**

1. **Agreement Dated** as of this ${DATE\_GENERATED}.
2. **Provider:** The International Livestock Research Institute. P.O Box 30709-00100 Nairobi, Kenya with headquarters in Kabete, Naivasha Road. (hereinafter referred to as “ILRI”).Research Unit: The Azizi Biorepository Unit (ILRI).

**The Azizi Biorepository** is a research service unit at ILRI tasked with ensuring safe, secure and efficient storage of biological materials and their related data. The unit aims at developing a collaborative network of partners who share their samples and the associated data, by encouraging the use of common protocols and systems hence creating a virtual, distributed resource for probing the diversity of African livestock.

1. **Recipient:** ${PI\_NAME} (hereinafter referred to as “the Recipient”).
2. **Commencement Date:** The date of receipt of materials or signature of the MTA by the Recipient, whichever is the earlier.
3. **Description of material and associated data:**

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| Material Required: | ${MATERIAL\_REQUIRED} |
| Quantity: | ${MATERIAL\_QUANTITY} |
| Format: | ${MATERIAL\_FORMAT} |
| Handling, storage & safety | ${STORAGE\_SAFETY} |
| Data: | ${ASSOCIATED\_DATA} |

1. **Scientist, ILRI:**

**Name:** ${ILRI\_SCIENTIST\_NAME}

**Email:** ${ILRI\_SCIENTIST\_EMAIL}

**Administrative contact:**

**Name**: ${AZIZI\_MANAGER\_NAME}

**Email:** ${AZIZI\_MANAGER\_EMAIL}

1. **Principle Investigator (PI), Recipient:**

**Name:** ${PI\_NAME}

**Email:** ${PI\_EMAIL}

The Recipient agrees that the transfer and delivery of the Material by ILRI to the Recipient’s Principal Investigator shall constitute valid delivery and the terms of this Agreement shall apply as if the Material had been transferred and delivered to the Recipient directly.

The Principal Investigator shall be the prime mover of the Research contemplated in this Agreement and the acts and decisions of the Principal Investigator shall be deemed to be the acts and decisions of the Party appointing him.

1. **Definition of Material**: Material will include all that material defined in E above including progeny, unmodified derivatives and any accompanying know how or data.
2. **“Party or Parties”** means ILRI and the Recipient.

**PURPOSE:**

1. The Recipient is engaged in Research titled “${RESEARCH\_TITLE}” (the**“Research”**).
2. ILRI agrees to provide the material to support the Researchin accordance with the terms set forth in this Agreement and the Recipient agrees to abide by the said terms.
3. The Parties are desirous of recording their mutual understanding and agreement on the terms governing the transfer of the Material as set out in this Agreement.

**Article 1. Transfer**

1. ILRI shall, subject to the terms contained in this Agreement, transfer the Material to the Recipient at the location specified in clause 1.2 below and the Recipient agrees to abide by the terms governing the transfer of the Material as provided in this Agreement.
2. The Material shall be delivered by ILRI to the Recipient based on instruction from the Recipient.
3. The transfer of the Material by ILRI is conditional upon the acceptance of the terms of this Agreement by the Recipient. The Recipient’s acceptance of the Material shall constitute acceptance of the terms of this Agreement.

**Article 2. Undertakings by ILRI**

ILRI will:

* 1. Transfer the Material required at the cost of the Recipient.
  2. Provide the Recipient with any protocols concerning the handling, storage and safety of the Material as required.

**Article 3. Undertakings by Recipient**

Recipient shall:

* 1. Use the Material and associated data only for the purposes of the Researchand in accordance with the terms and conditions of this Agreement and any other relevant agreement entered into between the Parties. The Material may not be used for administration to human subjects.
  2. Use the Material exclusively within United States of America (the “Territory”).
  3. Use the Material solely for non-commercial purposes. If the Recipient wishes to carry out any research beyond that described in the Purpose,it shall seek ILRI’s written permission which shall not be unreasonably denied or withheld.
  4. Use the Material strictly in compliance with all the applicable statutes and regulations including, without limitation, those relating to research involving the use of human and animal subjects or recombinant DNA.
  5. Not distribute the Material to other parties without the written permission of ILRI.
  6. Acknowledge the source of the Material in any documents or publications reporting the use of it in accordance with Article 5.3.
  7. The Recipient undertakes to comply fully with all the relevant government regulations and guidelines applicable to the Recipient’s use of the Material and to indemnify ILRI against any liability that may arise from such non-compliance.

**Article 4.IP Rights and Data Ownership**

1. ILRI’s research management is governed by the **CGIAR Principles on the Management of Intellectual Assets**([**CGIAR IA Principles**](http://www.cgiarfund.org/sites/cgiarfund.org/files/Documents/PDF/cgiar_principles_management_intellectual_assets_7march_2012.pdf)) and the [ILRI IA[[1]](#footnote-1) Policy](https://cgspace.cgiar.org/handle/10568/34091). Accordingly the following shall apply to this Agreement:-
2. The Recipient acknowledges and accepts that all Intellectual Proprietary rights, including but not limited to patent rights in and to the Material and associated Data accompanying the material at the time of transfer (“Intellectual Property Rights”) are and shall at all times remain vested in ILRI absolutely.
3. The Recipient undertakes not to assert or permit anyone else to assert or claim any right of ownership whatsoever in the Intellectual Property Rights, whether directly or indirectly.
4. The Recipient shall own the research outputs directly associated with and resulting from their conduct of the Research relating to this Agreement and agrees to grant ILRI an automatic, perpetual, world-wide, non-exclusive, royalty-free license including the right to sub-license in and to the resulting outputs for research purposes.
5. ILRI retains ownership of the Analysis or Reportsresulting from the Research, directly relating to the Material provided to the Recipient.
6. The Recipient agrees that the resulting data shall be deposited into the Azizi Biorepository to form part of the virtual shared resource for probing the diversity of African livestock, in keeping with the mission of the Azizi Biorepository as described in Article B.
7. **New Discoveries:**In the event that the Recipient makes or observes any new discovery, improvement or invention(“Invention”) relating to the Material or as a direct result of conducting the Research, the Recipient shall in writing bring the Invention to the attention of ILRI at the earliest opportunity. The Recipient shall own the Invention and agrees to grant ILRI an automatic, perpetual, world-wide, non-exclusive, royalty-free license including the right to sub-license in and to the resulting outputs for research purposes.
8. The Recipient shall notify ILRI immediately should the Recipient become aware of any unauthorized use of the Material.

**Article 5. Publication**

1. The Recipient undertakes that it shall not submit for publication any manuscripts that would pre-empt ILRI's intellectual property rights relating to the Material and therefore shall provide ILRI with an advance manuscript at least thirty (30) days in advance of any written submission (abstract or paper) or oral presentation for ILRI’s review and approval.
2. The Recipient upon request from ILRI may delay the submission of a manuscript by an additional thirty (30) days (for a total of sixty (60) days from the date an advance copy is provided to ILRI) where ILRI deems such extension necessary for the protection of intellectual property rights or other proprietary rights.
3. In accordance with scientific custom, the contributions of those who have made the Material available or of collaborators, if any, from ILRI will be reflected expressly in all written or oral public disclosures concerning research using the Material or otherwise covered by the Research by acknowledgment or co-authorship, as appropriate.
4. The Recipient warrants and undertakes that Personal Data shall remain protected from any disclosure or publication.
5. Personal Data which could identify groups or individuals, includes but is not limited to:-
6. data which relates to a living individual who can be identified a) from that data, or b) from that data and other information, and includes any expression of opinion about the individual.
7. any indication of the intentions of the individual or any other person in respect of the individual.
8. such personal data as name; address; case history; a unique reference number if that number can be linked to other information which identifies the data subject or sensitive personal data which relate to the data subject’s racial or ethnic origin.

**Article 6. Confidentiality**

1. 1. The Recipient shall not distribute, release, or disclose the Material or any portion thereof or the related information to any other person or entity, other than persons working under the Recipient’s direct supervision and who have signed confidentiality agreements, incorporating the confidentiality obligation contained in this clause, and shall ensure that the Material together with the related information is not transferred to any other location outside the Territory without the prior written permission of ILRI.
   2. The Recipient shall seek and obtain the prior written approval of ILRI for any vendors, contractors, or subcontractors that the Recipient may propose to use to accomplish the purpose contemplated in this Agreement. The Recipient shall procure all such vendors, contractors, or subcontractors to be bound by a confidentiality agreement containing terms equivalent to those contained herein.
   3. The Recipient shall maintain the confidentiality of the Material and its proprietary content as well as any information received from ILRI regarding the Material.
   4. The obligation of confidentiality contained in this Clause shall not apply to any Material or information received from ILRI which is:-
      1. possessed by the Recipient, other than through prior disclosure by ILRI, prior to the commencement of dealings between the Parties as evidenced by the Recipient’s written records and which was not acquired directly or indirectly from ILRI;
      2. in the public domain at the time of disclosure;
      3. already published or available to the general public after disclosure, otherwise than through a breach of this Agreement;
      4. obtained by the Recipient from a third party with a valid right to disclose such information, provided that the said third party is not under a confidentiality obligation to ILRI or any other third party;
      5. Independently developed by employees of the Recipient which had no knowledge of ILRI’s information as shown by relevant documentary evidence; or required to be disclosed via a competent legal process.
   5. Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions given in Article 6.4 above merely because individual features are published or available to the general public or in the rightful possession of the Recipient unless the combination itself and principle of operation are published or available to the general public or are in the rightful possession of the Recipient

**Article 7. Warranties and Liabilities**

1. ILRI warrants that the Material was developed by ILRI and that it is not under any restriction from a third party whatsoever in freely transferring the Material to the Recipient.
2. The Material is experimental in nature and the Recipient acknowledges that the Material is provided without any warranties expressed or implied, including any warranty of merchantability or fitness for a particular purpose. All conditions, warranties and other terms implied by statute or common law are excluded to the fullest extent permitted by law.
3. The Recipient acknowledges that the Material is provided WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. FURTHER, ILRI MAKES NO REPRESENTATION WHATSOEVER THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. THE RECIPIENT AGREES THAT SHOULD ANY SUCH LIABILITY ARISE, IT SHALL NOT HOLD ILRI LIABLE FOR ANY DAMAGE OR LOSS WHICH THE RECIPIENT OR ANY OTHER PERSON CLAIMING UNDER OR THROUGH THE RECIPIENT MAY SUFFER AS A RESULT OF SUCH INFRINGEMENT AND IN PARTICULAR THE RECIPIENT ACCEPTS THAT IT SHALL NOT SEEK ANY INDEMNITY FROM ILRI IN CONNECTION WITH SUCH LOSS OR DAMAGE.

**Article 8. Indemnities**

1. Under no circumstances shall ILRI be liable for any use of the Material by the Recipient.
2. Subject to other provisions of this Agreement, each Party shall indemnify and hold harmless the other Party, its employees, representatives, and executive officers, from and against any liability, damages, costs or expenses, or any claim, action, suit or other proceeding arising out of the execution or implementation of this Agreement, except to the extent that:
3. such liability, damage, claim, action,suit or other proceeding is caused willfully by the Party being held liable; or
4. such liability, damages, costs or expenses, claim, action, suit or other proceeding is caused by or results from negligence on the part of such a Party.

**Article 9.Termination**

* 1. Either Party may terminate this Agreement by giving to the other a thirty (30) days written notice without the necessity of giving any reasons thereof.
  2. Either Party may terminate this Agreement forthwith if the other Party is in breach of any of the terms hereof which it has failed to remedy (if capable of remedy) within Ten (10) days from the date of notice to that effect.
  3. **Force Majeure:** Neither party shall be liable for delay or failure results from: Acts of Government; Fire, flood or explosion; Acts of God including disasters/calamities; war/riots/civil commotion; Strikes/industrial disputes.

**Article 10. Dispute Resolution, Governing Law & Jurisdiction**

* 1. This Agreement shall be governed and interpreted by Kenyan Laws and the general Principles of contract law, established under the 2010 UNIDROIT Principles.
  2. The Parties agree to make every effort to settle amicably any dispute that may arise between or amongst them in connection with this Agreement.
  3. If the Parties cannot resolve a dispute, they may agree to request that a qualified third-party mediator be appointed. The identity of the mediator shall be mutually agreed. Any resolution reached through mediation would be based on consensus of Parties based on an agenda item properly tabled for decision before the Parties and affirmative written consent of any Party not present or electronically by affirmative written consent of each Party, a decision by no objection not being sufficient.
  4. If resolution is not reached through mediation, the dispute may be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be in Nairobi, Kenya. The Parties shall accept the arbitral award as final.
  5. No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right.

**Article 11. Change of Name or Address**

* 1. Any such change by either Party should be notified immediately in writing and acknowledged as received to be effective.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized representatives, have caused this MOU to be signed in their respective names.

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| **International Livestock Research Institute** | |
| **Signed:** |  |
| **Name:** | ${ILRI\_SCIENTIST\_NAME} |
| **Title:** | ${ILRI\_SCIENTIST\_TITLE} |
| **Date:** |  |

|  |  |
| --- | --- |
| **REQUESTING\_ORG**  **(Authorised signatory)** | |
| **Signed:** |  |
| **Name:** |  |
| **Title:** |  |
| **Date:** |  |

1. *Intellectual Assets includes any results or products of research and development activities including, but not limited to, knowledge, publications and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software, and distinctive signs, whether or not they are protected by IP Rights* [↑](#footnote-ref-1)