



GOVERNMENT OF ANTIGUA AND BARBUDA

MINISTRY OF HEALTH AND THE ENVIRONMENT

BIO-MATERIAL ACCESS AND TRANSFER AGREEMENT NO. _ OF 201_

THIS BIO-MATERIAL ACCESS AND TRANSFER AGREEMENT (“Agreement”) is made and entered into this ___ day of _____ 201_ by and between the **Department of Environment, Ministry of Health and the Environment** acting herein for and on behalf of the Government of Antigua and Barbuda (hereinafter called “**the Provider**”) having its principal place of business situate at #1Victoria Park Botanical Gardens, Queen Elizabeth Highway, St. John’s, Antigua of the **ONE PART** and _____, having its principal place of business situate at _____ (hereinafter called “**the Recipient**”) of the **OTHER PART**. Provider and Recipient are referred to herein as “**PARTY**” or collectively as “**PARTIES**”.

WHEREAS the Recipient is a university and has made a request (as described in Appendix 1) to collect specimen for research and analysis

WHEREAS the Provider has agreed to allow the Recipient to collect specimen and by giving the Recipient permission to access and collect specimen (as described in Appendix 2); an

WHEREAS the Recipient has collected specimen identified in the list (as described in Appendix 3);

WHEREAS the sovereign rights over biodiversity are vested in the State of Antigua and Barbuda;

- a) Biodiversity is conserved to offer optimum returns for the benefit of the Antiguan and Barbudan people;
- b) The biological intellectual assets are property and are subject to the laws of Antigua and Barbuda;
- c) The State of Antigua and Barbuda has ratified various multilateral environmental agreements governing biodiversity conservation, sustainable use and benefit-sharing including but not limited to the Convention on Biological Diversity and its associated protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- d) Access to biodiversity is granted pursuant to section 70 of the Environmental Protection and Management Act, 2015.

NOW THEREFORE, in consideration for the mutual promises set forth herein, the Parties hereto agree as follows:

ARTICLE 1
Parties to the Agreement

Provider – Department of Environment, Ministry of Health and the Environment, #1 Victoria Park Botanical Gardens P.O. Box W693, Queen Elizabeth Highway, St. John's, Antigua

And

Recipient –

ARTICLE 2
Rights and Obligations of the Provider

- 2.1. The Provider on behalf of the Government of Antigua and Barbuda is the owner of the biological material, genetic information, digital sequence data or an synthetic expressions hereinafter called the "Biomaterial"
- 2.2. The Provider also retains rights to research results.
- 2.3. The Provider retains the rights to access, audit and monitor the use and application of the biomaterials provided under this Agreement.
- 2.4. No rights under any intellectual property of Antigua and Barbuda or rights in any the biomaterial or confidential information provided by the Government of Antigua and Barbuda to the Recipient under this Agreement is granted or implied as a result of providing this biomaterial to the Recipient, other than as expressly set forth herein.

ARTICLE 3
Rights and Obligations of the Recipient

- 3.1. The biomaterial is to be analysed at _____ and subsequently destroyed after the assessment has been completed.
- 3.2. The Recipient shall remain in possession of the Biomaterial from the date of commencement of this Agreement until such time as the Provider terminates the contract.
- 3.3. The Recipient shall not use the biomaterial or its derivatives for any work sponsored by any interest, which creates a licensing obligation to any third party.
- 3.4. The biomaterial or its derivatives shall not be given, loaned or transferred in whole or in part to any third party without prior informed consent of the Provider. Any third party requesting a sample shall be first referred to the Provider for approval and express written permission.
- 3.5. All users of the biomaterial and its derivatives in the research laboratory or institution shall, before embarking on the research agree in writing not to transfer by work or deed any aspect or part of the Biomaterial. These non-disclosure agreements must be furnished to the Provider on a quarterly basis.

- 3.6. The biomaterial nor its derivatives shall not be used for commercial or profit-making purposes.
- 3.7. The Recipient shall supply the Provider with updates of the results of research obtained through their use of the biomaterial at six (6) month intervals.
- 3.8. The Recipient shall deliver to the Provider via email, any manuscript that describes the work with the biomaterial or its derivatives, thirty (30) days prior to its submission for review for any publication and will therein acknowledge the Provider's contribution to the work published or reported. This manuscript shall be in English.
- 3.9. If the research with the biomaterial or its derivatives is published in an online journal, a PDF copy of the final version shall be submitted to the Provider no later than fourteen (14) days after its publication. If the work with the biomaterial is published in print, then a hard copy of the final document shall be submitted to the Provider no later than twenty-one (21) days after its publication. The final research documents must be submitted in English.
- 3.10 The Recipient shall contribute to training and capacity building by the inclusion of local counterparts where possible and through the training of students at local centres of tertiary education.
- 3.11 The Recipient shall comply with all laws and regulations applying the use of the biomaterial and its derivatives and shall assume sole responsibility for any damages, claims or liabilities that may arise as a result of the Recipient's use of the biomaterial.
- 3.12 The Recipient shall obtain no proprietary interest, license, title or permission expressed or implied beyond the terms of this Agreement by mere use or storage of the biomaterial.
- 3.13 The Recipient shall meet with the representatives of the Provider to determine inventorship if an invention should arise during their work with the biomaterial.
- 3.14 Where specimens from Antigua and Barbuda are shared, the origin of the specimens must be quoted as well as the collecting authorities and institutions.

ARTICLE 4 **Reports**

- 4.1 A copy of all field notes will be deposited with the Department of Environment prior to the Recipient's departure.
- 4.2 An interim report will be prepared by the Recipient prior to their departure and submitted to the Provider. The report should contain a complete list of the number of specimens and the amounts of biomaterial collected. Those species which were not identified should be allocated a reference number along with a full description.
- 4.3 The interim report should also include a complete, up-to-date list of sightings in the project area, the frequency of sightings of individual species, and a complete description of these sightings within the framework of the sample design. (This information may be included in or appended to the field notes).

- 4.4 If applicable, the final, edited copy of any relevant scientific audio or audio-visual material or a set of representative photographic material of specimens taken by members of the research team must be deposited at the Department of Environment;
- 4.5 Two copies of the final report must be submitted by the research team to the Provider within six (6) months of the conclusion of the research project.

ARTICLE 5

Return of Species

- 5.1 All biomaterials taken from Antigua and Barbuda shall be regarded as being on loan from the Government of Antigua and Barbuda. In the case of live specimens being removed from Antigua and Barbuda, breed and propagation are strictly prohibited.

ARTICLE 6

Duration of Agreement

- 6.1 This Agreement is binding throughout the existence of the biomaterials and any derivatives
- 6.2 The Recipient may terminate this Agreement by a written notice to the Department of Environment at least three (3) months in advance of the desired date of termination
- 6.3 The Department of Environment may without assigning any reason thereof, suspend this Agreement and any rights of the Recipient at any time with written notice to the Recipient.
- 6.4 On termination of this Agreement, the Recipient agrees that any remaining biomaterial will be repatriated to the Government of Antigua and Barbuda no later than thirty (30) days from the date of expiry or termination, whichever comes first.
- 6.5 The above sections on ownership of biomaterial and intellectual property, confidentiality, publications, warranty disclaimer, limitation of liability and indemnification shall survive expiration or earlier termination of this Agreement.

ARTICLE 7

Penalties

- 7.1 A fine not less than Ten Thousand United States Dollars (USD \$10,000) or the Eastern Caribbean Dollar equivalent for any breach of this Agreement

7.2 Blacklisting of the Recipient in the national and international media and shall be reported by the Competent National Authority to the Secretariats of relevant international governments and regional bodies.

ARTICLE 8 Miscellaneous

8.1 This document, together with all subordinate and other documents incorporated by reference herein, will constitute the entire Agreement between the Parties with respect to the subject matter contained herein and may only be modified by an amendment executed in writing and signed by both Parties.

8.2 This Agreement shall be governed by and construed in accordance with the laws of Antigua and Barbuda.

8.3 Should any dispute arise concerning for any reasons pertaining to the provisions of this Agreement, the Parties agree that, except for disputes and claims that may be brought in the Courts of Antigua and Barbuda and for which a Party is not entitled to a trial by jury, and except as necessary to enforce the mediation obligation of this Article, all disputes or claims arising out of this Agreement shall be resolved through mediation as the exclusive remedy for resolving such disputes or claims. The Parties shall agree on a mediator chosen from the High Court list of Mediators.

8.4 If any Party commences an action based on a dispute or claim to which this section applies without first attempting to resolve the matter through mediation, that party shall not be entitled to recover legal fees even if they would otherwise be available to that party in any such action.

8.5 The Parties agree that any mediation brought pursuant to this Article shall be confidential and no details, descriptions, settlements or other facts concerning such mediation shall be disclosed or released to any third party without specific written consent of the other Party or Parties unless required by law or court order in connection with enforcement of any decision in such mediation.

ARTICLE 9 Notices

9.1 Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be determined to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, electronic transmission i.e. email, or delivery by a professional courier service or the time when sent by certified or registered mail addressed to the party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

Notices shall be directed to the following:

Provider: Chief Environment Officer

Department of Environment
Ministry of Health and the Environment
1 Victoria Park Botanical Gardens
P.O. Box W693
Factory Road
St. John's
Antigua
antiguaenvironmentdivision@gmail.com

Recipient:

IN WITNESS WHEREOF the parties have hereunder set their hands the 9th March 2018 first herein above written.

For and on behalf of the Provider

For and on behalf of the Recipient

Chief Environment Officer
Date: 9th March 2018

Date: 9th March 2018

Witness

Witness

Date: 9th March 2018

Date: 9th March 2018

AN AGREEMENT

BETWEEN

GOVERNMENT OF ANTIGUA AND BARBUDA

AND

MINISTRY OF HEALTH AND THE ENVIRONMENT
BIO-MATERIAL ACCESS AGREEMENT
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