**MATERIAL TRANSFER AGREEMENT**

BETWEEN

**The INSTITUTE OF RESEARCH FOR DEVELOPMENT**, hereinafter referred to as the “IRD”, a public institution of a scientific and technological nature, n° SIRET 180006025 00159, code APE 7219Z, the head office of which is located at “le Sextant” 44 bd de Dunkerque, CS 90009, 13572 Marseille Cedex 02, France,

Represented by its Chairwoman, Mrs Valérie VERDIER, who has delegated his signature for the purposes hereof to Mr XXXXXX, (position)

The IRD acting both in its own name and on behalf of the Joint research / service unit no. and logo, led by Mr. XXXXX, hereinafter referred to as “**the LABORATORY**”,

**THE PARTY OF THE FIRST PART,**

AND

[**Name of the partner organisation**], hereinafter referred to as “**XXXX**”,

Legal status of the organisation, with its headquarters at address

Represented by Mr. name and position of the legal representative

**THE PARTY OF THE SECOND PART,**

The IRD and XXXXXXXX being hereinafter referred to individually as “the Party” and collectively as “the Parties”,

RECITALS:

The LABORATORY possesses [material description = biological samples/chemical samples/plant specimens/etc.], hereinafter referred to as the “MATERIAL”.

XXXX is interested in using the MATERIAL for its ……….. work [to be completed - for example: its research and development work].

The IRD agrees to supply the MATERIAL to XXXX, as well as all the information needed to carry out its work, in accordance with the conditions defined in this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

**Article X – compliance with the Nagoya protocol when transferring Genetic Material**

**X.1.** For the purpose of this Agreement, the terms and expressions below have the following meanings:

*Genetic Resource(s)* means plant, animal, fungal, microbial or other material of a biological origin containing functional units of heredity and with an actual or potential value, as well as by-products, i.e. all biochemical compounds that exist in a natural state resulting from the gene expression or metabolism of biological or genetic resources, even if they do not contain functional units of heredity.

*Use* means any research and/or development work, for a commercial or non-commercial purpose, carried out on the genetic or biochemical composition of animal and plant material, including fungal (or algal) or microbial (including viruses) material, as well as all study and exploitation of traditional knowledge associated with resources.

*Mutually Agreed Terms and Conditions* are negotiated with the Competent National Authority and specifically comprise the conditions for access, use and transfer, and the terms for sharing benefits, pertaining to the Related Genetic Resources and/or Traditional Knowledge.

The *Competent National Authority* is the body in the country of origin of the genetic resource with the power to authorise access to and the transfer of Genetic Resources, as well as to negotiate the Mutually Agreed Terms and Conditions.

*Genetic Material* means the Genetic Resources that are contained in the MATERIAL, where they form the subject of use for the purposes of research and development work on the genetic and/or biochemical composition.

**X.2***.* The Parties are committed to complying with the Convention on Biological Diversity, the Nagoya protocol on access to genetic resources and the fair and equitable sharing of benefits, and the legal framework applicable in [country of origin of the genetic resource]. In this context, the Parties recognise the exclusive ownership of [country of origin of the genetic resource] of the Genetic Material as well as the recognised rights of indigenous and local people to the Related Traditional Knowledge.

**X.3**. [the Party that supplies the Genetic Material] undertakes to:

1. comply with the Access procedure in [country of origin of the genetic resource] and have received authorisation to proceed with the transfer of Genetic Material,
2. failing this, to properly obtain Access, and request prior authorisation from the Competent National Authority to transfer theGenetic Material,
3. enclose supporting documents with this agreement (Appendix 3),
4. transfer the Genetic Material in accordance with the terms agreed with the Competent National Authority.

**X.4.** Notwithstanding the specific provisions governing Access and the sharing of benefits in[country of origin of the genetic resource], [the Party that receives the Genetic Material] undertakes to:

1. comply with the terms for transfer imposed by the Competent National Authority, as set out in Appendix 3,
2. comply with the Mutually Agreed Terms and Conditions, as set out in Appendix 3, in particular the conditions of use and the terms for sharing benefits,
3. In the case of a subsequent transfer of Genetic Material to a third party, and/or a change in the purpose of use, [the Party that receives the Genetic Material] undertakes to:

* notify the Competent National Authority and obtain its prior authorisation,
* transfer to the aforementioned third party the obligations arising from Mutually Agreed Terms and Conditions, as set out in Appendix 3.

X.5. Where no national legislation exists, the Parties undertake to contact the Competent National Authority and/or the focal point, in order to notify them, in advance, of the transfer of Genetic Material to a third party. In this context, the Parties undertake to comply with any possible terms and conditions stipulated.

Should there be no response and applicable national legislation, the Parties undertake to demonstrate due diligence and to ensure the traceability of uses and transfers of Genetic Resources and/or the related traditional knowledge.

In the event of a change in legislation, the Parties undertake to comply with this and to properly obtain Access.

Article 1 – Subject

**1.1.** The IRD undertakes to supply the MATERIAL to XXXX within a period of XXXX from the date on which this Agreement is signed, and grants XXXX, which accepts it, a temporary and non-exclusive right to use the MATERIAL, for not-for-profit purposes, with the aim of XXXX carrying out the programme of work set out in Appendix 1 to this Agreement, and excluding any other use.

The precise description of the MATERIAL supplied appears in Appendix 2.

**1.2.** XXXX is not authorised to use the MATERIAL beyond the term of this Agreement and/or for other purposes, except with the new prior written agreement of the IRD.

The MATERIAL cannot specifically be used within the framework of activities involving the participation of a third party, except with the prior written authorisation of the IRD.

**1.3.** The MATERIAL will not be passed on to any third parties other than the employees involved in carrying out the programme of work and working under the direct authority of the Manager of the recipient laboratory, in accordance with Appendix 1 to this Agreement; XXXX guarantees acceptance of and compliance with the stipulations of this Agreement by its employees.

**1.4.** No person is authorised to transport or send the MATERIAL to a destination other than the recipient laboratory or the authorised laboratories listed in Appendix 1.

The list of laboratories named initially may possibly be modified on the request of XXXX, by means of an amendment agreed between the Parties.

Article 2 – Costs - Transport

This Agreement is concluded free of charge.

XXXX shall bear all the costs and take charge of all the formalities relating to shipping, importing and, where applicable, returning the MATERIAL.

Article 3 – Chief Scientists - Notifications

Communication between the Parties within the framework of this Agreement must be in writing and be sent to the following addresses:

For the IRD For XXXX

Mr. [name, position] Mr. [name, position]

Address Address

Article 4 – Reporting obligation

**4.1.** XXXX shall inform the IRD, in a regular and confidential manner, of the results of its work obtained using or on the basis of the MATERIAL.

A final report on the work carried out and the results obtained during the term of the Agreement shall be issued to the IRD at the latest two (2) months after the date on which this Agreement expires or is terminated.

**4.2.** In the case of publication or communication relating to the MATERIAL, the work carried out and/or the results obtained, whatever the nature and the medium, the draft text for this publication or communication shall be submitted to the IRD for written authorisation at the latest thirty (30) days prior to the disclosure of this information or the submission of the text for this publication to the publisher.

**4.3.** In accordance with current scientific practice, all publications or communication relating to use of the MATERIAL shall make reference to the origin of the MATERIAL by explicitly mentioning the LABORATORY, as well as the contribution of the LABORATORY’s personnel that made the MATERIAL accessible. Where applicable, in the case of co-publication, the LABORATORY’s personnel shall appear as co-authors.

**4.4.** Each Party undertakes not to use the other Party’s name, logo or any other distinctive sign without the latter’s express permission.

The Parties shall consult with each other in order to define the terms of use for these various items in publications and communication relating to use of the MATERIAL or the results obtained.

**4.5.** The stipulations of this article shall remain in effect notwithstanding the expiry or termination of this Agreement.

Article 5 – Ownership of the Material

**5.1.** The IRD is recognised as the sole owner of the MATERIAL and the holder of the related intellectual property rights.

**5.2.** It is expressly agreed between the Parties that the right to use the MATERIAL granted in accordance with this Agreement cannot be interpreted, in any way, as granting XXXX, expressly or implicitly, any ownership rights of any kind, or a licence option for the MATERIAL supplied.

**5.3.** XXXX is expressly prohibited from handling, transforming or damaging the MATERIAL, without the prior written agreement of the IRD.

**5.4.** All combining, mixing or incorporation of the MATERIAL by XXXX with another material is prohibited, except for the purpose of the work set out in Appendix 1.

Article 6 – Results produced by using the Material

**6.1.** Broadly speaking, the Parties shall consult with each other to determine, by mutual agreement, the ownership of results obtained by XXXX, whether they can be protected, or not, by an intellectual property right, as well as the terms for their possible use and fair financial compensation for the IRD.

**6.2.** In the event that the results obtained could potentially be subject to protection by an intellectual property right, in particular in the case of the improvement or identification of a new effect or a new potential use, XXXX shall immediately inform the IRD of this. In this case, the Parties shall decide, by mutual agreement, on the strategy to be implemented in terms of the protection and use of these results and, where applicable, the people authorised to apply for this kind of protection and/or to avail themselves of this kind of use.

**6.3.** Supplying the MATERIAL to XXXX within the framework of this Agreement cannot be interpreted, in any way, as granting XXXX, expressly or implicitly, a licence to use the MATERIAL. As a result, in the event that a licence for the MATERIAL should be necessary for commercial use of the results set out in paragraphs 6.1 and 6.2, the Parties shall negotiate the conditions of this licence, in good faith, prior to any use.

Article 7 – Confidentiality

**7.1.** Each Party undertakes to treat as confidential all information provided by the other Party, verbally, in writing or in any other way, within the framework of this Agreement, including specifically information relating to the MATERIAL passed on by the LABORATORY.

**7.2.** The existence and implementation of this Agreement shall be treated as confidential by the Parties and shall not be disclosed by one or other of them without the prior written agreement of the other Party.

**7.3.** This information may not be disclosed to third parties without the prior written agreement of the issuing Party.

**7.4.** This information shall be stored by the receiving Party with the same level of care as it applies to its own confidential information by taking suitable measures to protect it.

**7.5.** This confidentiality obligation does not apply to information for which the receiving Party is able to provide evidence:

* that it was already aware of the aforementioned information on the date on which it was communicated by the Party from which it originated,
* that the information was developed by the receiving Party independently and in good faith by members of its personnel who did not have access to the information and the MATERIAL,
* that this information formed the subject of a publication or communication or that it arrived in the public domain, without this Agreement being breached,
* that this information was subsequently received from a third party with the right to be in possession of it.

**7.6.** This confidentiality obligation shall remain in force for the entire term of the Agreement and for five (5) years after this Agreement has expired or been terminated.

Article 8 – Guarantee - Liability

**8.1.** Within the framework of this Agreement, the IRD is only bound by an obligation of means and it shall not be liable, in particular in the event of a misidentification of the MATERIAL supplied and the possible consequences of this.

**8.2.** As the MATERIAL is experimental in nature, its use may involve risks and the IRD gives no guarantee regarding its use, properties or intrinsic value and, specifically, regarding its action, utility, effectiveness, purity, harmlessness, non-toxicity, safety, commercial value or fitness for a particular purpose, or that its use does not infringe any third party intellectual property rights.

**8.3.** XXXX is solely responsible for all risks or damage that may result from the implementation of this Agreement, in particular in the event of injury, death, material damage or any other incident or harm that may result from the use, storage, testing or handling of the MATERIAL.

**8.4.** XXXX undertakes to use the MATERIAL in accordance with current legislation in the country of use.

Article 9 – Term

*Option 1:* This Agreement comes into force on xxxxxxxxx for a term of [number of years and/or months].

*Option 2:* This Agreement comes into force on xxxxxxxxx and remains in force until xxxxxxxxx.

It can be modified or extended by means of an amendment.

Article 10 – Termination

**10.1.** This Agreement may be terminated as of right by either one of the Parties should the other Party fail to fulfil one or more of the obligations contained in its various clauses. This termination shall become effective three (3) months after a formal notification stating the reasons for the complaint is sent by the complaining Party to the defaulting Party by registered mail, unless the defaulting Party has fulfilled its obligations or provided proof of an impediment caused by an act of God (force majeure) within this period.

**10.2.** In the event that XXXX should form the subject of a safeguarding procedure, judicial administration or judicial liquidation, this Agreement may be terminated as of right, under the conditions set out in French commercial code.

This Agreement may also be terminated as of right , in the event of the closure, winding-up or voluntary liquidation of XXXX, from the date on which this event occurs.

**10.3.** The options outlined in paragraphs 10.1 and 10.2 shall be exercised without prejudice to compensation to which one of the Parties may be entitled as the result of possible losses suffered because of the early termination of the Agreement.

**10.4.** Either one of the Parties may terminate this Agreement at any time subject to [number] months written and duly justified notice sent by registered mail or delivered personally to the other Party.

The Parties may also reach an agreement, at any time, to terminate this Agreement early.

In either case, they shall decide by mutual agreement on the conditions for termination.

**10.5.** The termination of this Agreement, for whatever reason, shall not affect the obligations already due. Furthermore, the Parties shall remain bound by obligations entered into until the effective date of termination.

**10.6.** Notwithstanding the termination of the Agreement, XXXX shall still be obliged to provide the IRD with a report on the work carried out and the results obtained during the term of this Agreement, in accordance with the stipulations of article 4.1 above.

Article 11 – Fate of the MATERIAL

*Option 1:* On expiry of the Agreement or in the event of its termination, XXXX undertakes to dispose of or destroy the MATERIAL and all the information relating to it in its possession, at its own expense, within the next 15 days, and not to retain any copies or duplicates and to provide the IRD with a certificate of destruction.

*Option 2:* On expiry of the Agreement or in the event of its termination, XXXX undertakes to return the MATERIAL to the IRD in perfect condition, by a means that guarantees its proper delivery and its perfect preservation, with proof of return being provided by an acknowledgement of receipt issued by the carrier.

Article 12 – Entire Agreement

All the stipulations of this Agreement and its Appendices constitute the entire agreement between the Parties. It supersedes and cancels possible previous commitments, declarations, negotiations, verbal or written communication, arrangements and agreements between the Parties relating to the same subject.

Article 13 – Assignment

This Agreement is concluded *intuitu personae* and therefore, neither of the Parties may transfer in any way whatsoever the rights and obligations relating to it without the prior consent of the other Party.

In the event of the merger, absorption or conversion of XXXX or the transfer of activities to another structure, this Agreement may only be transferred with the prior written agreement of the IRD.

Article 14 – Invalidity of a clause

Should one or more stipulations of this Agreement be deemed invalid or declared as such pursuant to a treaty, a law or a regulation, or even following a final decision from a competent court, the other stipulations shall retain their full force and scope. In this case, the Parties shall immediately make the necessary changes while respecting, as far as possible, the balance of each Parties rights and obligations in accordance with the goodwill agreement in place at the time when this Agreement is signed.

Article 15 – Applicable law – Dispute resolution

This Agreement is governed, as regards its validity and interpretation and in the event of disputes regarding its implementation, by French legislation.

In the event of a dispute, the Parties shall seek an amicable solution prior to any legal action; to this end, the Chief Scientists and/or the representatives of each Party shall propose conciliation solutions.

Should no amicable solution be found within a period of one (1) month of it being reported by one of the Parties to other Party by registered mail, the dispute shall be definitively settled by the competent courts for the legal domicile of the headquarters of the defending Party.

Article 16 – Contract documents

This document and its appendices, namely:

|  |  |
| --- | --- |
| Appendix 1: | Description of the programme of work |
| Appendix 2:  Appendix 3: | Description of the MATERIAL and information provided  Supporting documents relating to compliance with the Nagoya Protocol |

form an integral part of the Agreement, which the Parties initial and which they declare they have read.

Drawn up in [number] original copies, including [number of copies in French] and [number of copies in [language]], with each version being equally authentic.

|  |  |  |
| --- | --- | --- |
| In xxxxxxxxx, on [date]  **For the IRD** | In xxxxxxxxx, on [date]  **For [partner organisation]** |  |
|  |  |  |

**[Name, position] [Name, position]**

Signatures of each Party’s Chief Scientists:

**APPENDIX 1**

**Programme of work**

Recipient laboratory:

Authorised laboratories,

**APPENDIX 2**

**Description of the MATERIAL and information provided**

**APPENDIX 3**

**Supporting documents relating to compliance with the Nagoya Protocol**

**Or, failing this, the traceability of Genetic Material**

The documents to be enclosed are:

The prior authorisation to access and transfer the aforementioned genetic resources issued by the Competent National Authority

All other document formalising the “Prior consent granted in full knowledge of the facts” of suppliers, and the “Mutually Agreed Terms and Conditions” setting out specifically the conditions for access, use, transfer and sharing of benefits, issued by the National Authority

Failing this, enclose any other document providing proof of the traceability of Genetic Material including, specifically, the following information:

* Communication, or attempts to communicate with the focal point and/or the Competent National Authority
* The date and place of access
* The description of the Genetic Material and/or CTA
* The source from which the Genetic Material was obtained
* The existence or absence of rights and obligations relating to access and the sharing of benefits