**Agreement for the Transfer of Biological Resources for Commercial Research**

THIS AGREEMENT is made and entered into at \_\_\_\_\_\_\_\_\_\_\_\_\_\_on this \_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_ in the year Two Thousand\_\_\_\_\_\_\_\_(201\_\_) by and between *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*(*Name of the provider),\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Address of the provider)* of the Government of the Democratic Socialist Republic of Sri Lanka ( hereinafter called and referred to as “PROVIDER”, which term or expression as herein used shall where the context so requires or admits mean and include the said *provider* and his successors in office) on ONE PART and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*Name & and address of the recipient*) (hereinafter called and referred to as “RECIPIENT”, which term or expression as herein used shall where the context so requires or admit mean and include the said *recipient*) on the OTHER PART.

**WITNESSETH**

**NOW THIS AGREEMENT WITNESSETH** and it is hereby mutually covenanted and agreed by and between the PROVIDER and the RECIPIENT Party to the following terms and conditions:

1. Definitions
	* 1. “COMMERCIAL BENEFITS”: Economic benefits arising from the RECIPIENT’s use of the MATERIAL for the COMMERCIAL PURPOSE.
		2. “COMMERCIAL PURPOSE”: The COMMERCIAL PURPOSE specified in Form A of Schedule I attached hereto.
		3. “CONFIDENTIAL INFORMATION”: Information, data or material in written or other tangible form related to the MATERIAL that is identified as confidential at the time of disclosure. CONFIDENTIAL INFORMATION does NOT include information that is:
			1. generally known to the public at the time of disclosure to the RECIPIENT;
			2. already in the RECIPIENT’s possession at the time of disclosure by the PROVIDER;
			3. disclosed to the RECIPIENT on a non-confidential basis by a third party having the right to make such disclosure;
			4. independently developed by the RECIPIENT without the use of the CONFIDENTIAL INFORMATION disclosed by the PROVIDER as evidenced by written records;
			5. required to be disclosed by law or governmental rule or regulation in Sri Lanka.
		4. “DERIVATIVES”: Substances created by the RECIPIENT that constitute a functional sub-unit or an expression product of the ORIGINAL TRANSFERRED MATERIAL.
		5. “MATERIAL”: ORIGINAL TRANSFERRED MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.
		6. “MODIFICATIONS”: Substances created by the RECIPIENT that either contain or incorporate the MATERIAL or were created through the use of MATERIAL.
		7. “ORIGINAL TRANSFERRED MATERIAL”: The physical material actually delivered to the RECIPIENT by the PROVIDER, as identified in Form B of Schedule I attached hereto.
		8. “PROGENY”: Descendant from the MATERIAL. Examples include but are not limited to: virus from virus; cell from cell; and organism from organism.
		9. “RECIPIENT INVESTIGATOR(S)”: The RECIPIENT’s scientific investigators(s) specified in Form A of Schedule I attached hereto.
		10. “UNMODIFIED DERIVATIVES”: Substances created by the RECIPIENT that constitute an unmodified functional sub-unit or an expression product of the ORIGINAL TRANSFERRED MATERIAL. Examples include but are not limited to: purified or fractionated sub-sets of the ORIGINAL TRANSFERRED MATERIAL; PROGENY or products thereof; subclones or unmodified cell lines; transcription and translation products (e.g., RNA and protein derived from provided DNA); reverse transcription and reverse translation products (e.g., DNA synthesized on a template using provided RNA); monoclonal antibodies secreted by a hybridoma cell line; and chemically-synthesised copy or copies.
2. The PROVIDER agrees to transfer to the RECIPIENT the MATERIAL for a sum of …….. (equivalent in US$).
3. The MATERIAL will be used solely for the COMMERCIAL PURPOSE. THE MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS, UNLESS SPECIFICALLY APPROVED BY THE RELEVANT ETHICAL AND OTHER TECHNICAL COMMITTEES.
4. The PROVIDER confirms that the RECIPIENT has obtained from the relevant authorities the requisite approvals and permits, in all cases where the MATERIAL is governed by laws and/or regulations requiring approvals or permits for the use, possession, trade, import, export or any other activity related to the MATERIAL;

Provided that this Agreement shall not expressly or impliedly be equated with or mandate the granting of such approvals or permits.

1. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable laws, regulations and guidelines in the country of the PROVIDER and the RECIPIENT, including, but not limited to, the Code of Ethics specified in Schedule II attached hereto and any regulations or guidelines pertaining to animal welfare, biomedical research and the disposal of biomedical waste. Subject to the COMMERCIAL PURPOSE, the RECIPIENT will not analyse the MATERIAL for chemical composition or physical structure or have or allow any component of the MATERIAL analysed or made use of for any such analysis.
2. The MATERIAL and any MATERIAL contained or incorporated in MODIFICATIONS, is the property of the PROVIDER;

Provided that if MODIFICATIONS or those substances created through the use of MATERIAL or MODIFICATIONS, but which substances do not contain the MATERIAL, result from the collaborative efforts of the PROVIDER and the RECIPIENT, they shall be jointly owned; and

Also provided that ownership of MODIFICATIONS or those substances created through the use of MATERIAL or MODIFICATIONS and which substances contain the MATERIAL in either the original form or the modified form, will be negotiated in good faith by the PARTIES hereto depending upon (a) their relative contribution to the creation of said MODIFICATIONS or substances; and (b) any applicable laws and regulations relating to intellectual property in Sri Lanka.

1. Subject to the Government of the Democratic Socialist Republic of Sri Lanka determined in terms of the provisions of clause 4, no cross-licensing agreements in respect of MODIFICATIONS or any substances created through the use of the MATERIAL or MODIFICATIONS and which substances contain the MATERIAL in either the original form or the modified form will be entered into between the RECIPIENT and a third party, without the prior consent of the PROVIDER. No negotiations in respect of such cross licensing shall take between the RECIPIENT and a third party, without the participation of the PROVIDER.
2. Subject to the Government of the Democratic Socialist Republic of Sri Lanka determined in terms of the provisions of clause 4, the RECIPIENT shall not transfer the MATERIAL or MODIFICATIONS or any substances created through the use of the MATERIAL or MODIFICATIONS and which substances contain the MATERIAL in either the original form or the modified form to a third party other than to anyone who works under the direct supervision of the RECIPIENT within the COMMERCIAL PURPOSE as specified in Form A of Schedule I attached hereto, without the prior written consent of the PROVIDER.
3. This Agreement and the resulting transfer of the MATERIAL constitute a non-exclusive license to use the MATERIAL and MODIFICATIONS, solely for the COMMERCIAL PURPOSE.
4. Any CONFIDENTIAL INFORMATION disclosed by the Provider to the RECIPIENT shall be treated as confidential and maintained in confidence by the RECIPIENT. The RECIPIENT shall not disclose any CONFIDENTIAL INFORMATION of the PROVIDER, except to its own personnel who have a need to know. Without limiting the foregoing, the RECIPIENT agrees to take the same steps and use the same methods to prevent the unauthorised use or disclosure of CONFIDENTIAL INFORMATION of the PROVIDER as it takes to protect its own CONFIDENTIAL INFORMATION or proprietary information.
5. The RECIPIENT shall keep the PROVIDER updated on a regular basis which will be determined by the mutual agreement of the PARTIES as to the progress of the research;

Provided that the RECIPIENT shall promptly notify the PROVIDER of any potentially patentable discoveries or inventions made through the use of the MATERIAL or MODIFICATIONS, whether or not made within the specified limits of the approved COMMERCIAL PURPOSE. The RECIPIENT shall promptly supply the PROVIDER with a copy of the invention disclosure.

1. Inventorship and assigneeship shall be determined according to intellectual property law in Sri Lanka;

Provided that, if the collaborative efforts of the PROVIDER and the RECIPIENT create inventorship or assigneeship rights under intellectual property law in Sri Lanka as well as under the law of any applicable jurisdiction in which a party or the PARTIES may elect to file patent application(s), each party shall own its undivided interest in joint inventions and PARTIES may file joint patent applications. The PARTIES shall cooperate in discussing and securing intellectual property rights to protect potentially patentable inventions.

1. The RECIPIENT acknowledges that the MATERIAL, including any altered forms of the MATERIAL made by the RECIPIENT, is or may be the subject of a patent application. Except as provided in the Agreement, no express or implied license or other rights in such MATERIAL are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS or any related patents of the PROVIDER for a research purpose or any other purpose other than the COMMERCIAL PURPOSE.
2. The RECIPIENT agrees to acknowledge the source of the MATERIAL in all publications and presentations containing any data or information about the MATERIAL. The RECIPIENT agrees to supply the PROVIDER with a copy of any proposed manuscript which contain experimental results obtained from the use of the MATERAL at least thirty (30) days prior to the publication or presentation thereof. The PROVIDER shall review such manuscript for CONFIDENTIAL INFORMATION or patentable material and may request a delay of the proposed publication or presentation for up to an additional thirty (30) days to allow for the removal of confidential information or the filing of patent application(s).
3. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABLILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE USE OF MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS.
4. The RECIPIENT agrees to indemnify, defend and hold harmless the PROVIDER against all damages, expenses, including but not limited to legal expenses, claims, demands, suits or other actions arising from the RECIPIENT’s acceptance, use, handling, storage and disposal of the MATERIAL, DERIVATIVES and MODIFICATIONS by the RECIPIENT and use of the RECIPIENT’s research results. This indemnification shall indefinitely survive the termination date of this Agreement.
5. All COMMERCIAL BENEFITS will be shared between the RECIPIENT and the PROVIDER in accordance with the benefit-sharing mechanism specified in Schedule III attached hereto.
6. This Agreement is not assignable and will terminate \_\_\_\_\_\_\_\_\_\_\_\_years (*maximum* *05 years. Renewable*)from the date of last signature or upon completion or termination of the research project for which the MATERIAL has been supplied, whichever occurs first. In the event the RECIPIENT desires to transfer the MATERIAL, DERIVATIVES or MODIFICATIONS to another institution, this Agreement shall be terminated and a new MATERAL Transfer Agreement shall be executed.
7. This Agreement may be terminated by either party during the term of this Agreement by giving thirty (30) days written notice to the other party. In the event of such termination the RECIPIENT undertakes to return the MATERIAL, DERIVATIVES and MODIFICATIONS including that used and/or still to be used for the COMMERCIAL PURPOSE or, if directed by the PROVIDER, destroy such MATERIAL, DERIVATIVES and MODIFICATIONS on or before the date when the Agreement is due to terminate.
8. Subject to the Government of the Democratic Socialist Republic of Sri Lanka determined in terms of the provisions of clause 4, upon completion of this Agreement, the MATERIAL, MODIFICATIONS and DERIVATIVES in the possession of the RECIPIENT shall be returned to the possession of the PROVIDER or to any authorized body named by the PROVIDER for such purposes.
9. Obligations with regard to ownership of property, confidentiality, distribution, disclosure, inventorship and intellectual property rights, assigneeship, warranty and licenses, liability, publications of research results and this Section shall survive termination of the Agreement.
10. The RECIPIENT agrees to accept the MATERIAL under the above conditions and with the clear understanding that no other right or license to the MATERIAL, other than provided herein, is granted or implied as a result of transmission of the MATERIAL to the RECIPIENT.
11. This Agreement shall be governed and interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.
12. Any notice required under this Agreement will be considered properly given and effective from the date of the postmark if mailed; on the date of delivery if delivered in person; or on the date of receipt if mailed by any global express carrier service that requires the recipient to sign the documents demonstrating the delivery of such notice; or on the date of receipt if sent by electronic mail or facsimile. Notice shall be given to the designated authorized official at the address provided below:

FOR THE PROVIDER:

Authorised Official:

Address:

FOR THE RECIPIENT:

Authorised Official:

Address:

1. This Agreement together with Schedules I, II and III constitute the entire agreement between the parties regarding the subject matter hereof, and may not be modified without the expressed written consent of both parties.

**IN WITNESS WHEREOF** the parties to this Agreement have set their signatures hereunto along with two others of the same tenor and date as these presents at \_\_\_\_\_\_\_\_\_\_ aforesaid on this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_ \_\_\_\_\_ 201\_\_\_).

 **PROVIDER RECIPIENT**

Name: ……………………………… Name:………………………………..

Authorized official:………………… Authorized official:………………….

Address:………………………......... Address:………………………………

Date:……………………………….. Date:………………………………….

Witnesses,

1. Signature ………………. 1. Signature ……………………….

Name ………………. Name ………………………..

ID No ………………. ID No ………………………..

Address ………………. Address ……………………….

Date ……………….. Date ……………………….

1. Signature ………………. 2. Signature ……………………….

Name ………………. Name ………………………..

ID No ………………. ID No ………………………..

Address ………………. Address ……………………….

Date ……………….. Date ……………………….

**SCHEDULES**

**I - Application Form and Approval Form**

**II - Code of Ethics**

**III - Benefit Sharing Mechanism**

**Schedule I**

**Form A**

**Details provided by the Applicant**

**(Details of the Requested Material)**

1. Description of requested MATERIAL

 1.1 Scientific name of the species -

 1.2 Common name of the species (if any) -

 1.3 Conservation status (Red data book) -

1.4 Status of the legal protection -

1. Place/s of collection -

 District -

 Village -

1. Duration of collection -
2. Land ownership/Custodianship of the MATERIAL -

 5.1Type of MATERIAL -

 5.2 Form of MATERIAL

6. Amount of MATERIAL -

1. COMMERCIAL PURPOSE -
2. Scientific Investigators(s) -

**Form B**

**Details provided by the Provider**

**(Details of Material Approved for Transfer)**

1. ORIGINAL TRANSFERRED MATERIAL

 1.1 Approved type

 1.2 Approved form -

 1.3 Approved amount -

 1.4 Approved duration of collection -

 1.5 Approved places of collection -

2. Other conditions as required -

**Schedule II**

Code of Ethics

**Schedule III**

Benefit-sharing mechanism providing for fair and equitable sharing of **economic** benefits arising from the use of the MATERIAL for the COMMERCIAL PURPOSE. To be formulated on a case-by-case basis.