GUIDELINES FOR THE DEVELOPMENT OF MATERIAL ACQUISITION AGREEMENTS (MAA)

1. OBJECTIVE

The aim of this document is to help Genebanks in the process to develop MAA for Material intended to be stored in a Genebank for conservation, sustainable use, research and development of Animal Genetic Resources. These guidelines provide a potential set of elements, which could be incorporated in a MAA. They could be considered as "tool box" to facilitate process of developing own MAA to be used by a given Genebank.

Each Genebank could consider developing their own MAA model in consultation with relevant stakeholders that provide Material to the Genebank. The MAA model can be further amended for individual acquisition of animal genetic resources.

2. POSSIBLE CONSIDERATIONS BEFORE DEVELOPING MAA

- The Genebank policy and objectives, including on acquisition.
- The national law and internal rules of the institution hosting the Genebank and of individuals/organizations providing the Material
- ABS (Access and Benefit Sharing) legislation and regulatory measures, if relevant.
- Relevant national and international veterinary and animal breeding regulations.
- The regulation about general data protection.
- The ownership of the Material.

A review of the MAA by a legal expert is highly recommended.

3. ELEMENTS FOR DEVELOPMENT OF MAA

This chapter of the guidelines aims to summarize the elements, which could be used in the development of each MAA.

Part 1. IDENTIFICATION OF THE PARTIES.

Provider: Any legal/private person (from the same country or from abroad) that will provide animal biological Material to the Genebank.
Provider data:

- Name:
- Represented by, if relevant:
- Address:
- Country:
- Power of signature:

Recipient: Genebank
Recipient data:

- Name:
- Represented by:
- Address:
- Country:
- Power of signature:

Part 2. PREAMBLE

Parties may want to agree on the objectives of the agreement and make references to:

- Relevant specific national laws, regulations or derogations for acquisition and use of Genebank Material;
- The national law and internal rules of the institution hosting the Genebank and organization providing the Material;
- The Genebank policy and objectives, including the relevant acquisition procedures implemented by the Genebank and criteria for using Material for conservation of animal genetic resources and/or for animal breeding, research and development;
- The Convention on Biological Diversity (CBD);
- The FAO Global Plan of Action (GPA) for Animal Genetic Resources;
- Relevant national and international veterinary and animal breeding regulations;
- The European Genebank Network EUGENA governed by the European Regional Focal Point on Animal Genetic Resources;
- The Nagoya Protocol, and in particular Article 8 (Special Considerations), Art.19 (Model Contractual Clauses) and Article 20 (Codes of Conduct, Guidelines and Best Practices and/or Standards);

Part 3. DEFINITIONS

- **Material**: Any animal biological material that can be used for reproduction or for research;
- **Genebank**: Repository for ex situ conservation, sustainable use, research and development of animal genetic resources held by a host institution;
- **Provider**: Any legal entity or private person(s) who provides animal genetic resources for the collection held by the Genebank, either from the country or from abroad. Provider signs the MAA either as the owner of a donor animal or on behalf of the owner of a donor animal. The representative of the owner (e.g. breed association) should also have a written agreement with the owner of a donor animal, which might be included in an Annex of the MAA. It is important especially in case where the owner of a donor animal would like to continue to execute his ownership over provided biological Material in any way.
- **Recipient**: Genebank
- **Owner**: Any legal entity or private person (s) who have the ownership rights over the Material provided.

Part 4. SPECIFIC OBJECTIVES OF THE MAA

This part should give a specific description of the objectives of the MAA, which may include:

- To enhance/initiate the collection of the genetic/biological Material of a breed in the Genebank to support its conservation.
- To support research activities.
- Reference to services/compensations in return of the Material provided to the Genebank to the Provider of the Material, if relevant.

Part 5. DESCRIPTION OF THE MATERIAL

- Information about the type and amount of the Material acquired from the Provider to the Genebank should be provided in Annex I;

- Information about the Material may include, inter alia:
  - ✓ Identification of the material (sample/animal/breed),
  - ✓ Type of the material (semen, embryos, etc.),
  - ✓ Quantity and quality of the material,
  - ✓ ID of the donor animal, genealogical data, recordings or genetic/genomic values of the donor animal,
  - ✓ Sanitary/health status/certificates of the material and their donors in the moment of the collection,
  - ✓ Place and date of collection,
  - ✓ Technical specifications on type of straw/vial etc.,
  - ✓ The owner of the Material before entering in the Genebank.

Part 6. FINANCIAL ARRANGEMENTS AND OWNERSHIP

- The Provider and the Genebank should establish financial arrangements on acquisition and storage of the Material (preparation of donors animal, collection of materials, evaluation of Material, delivery and storage)

- Regarding financial arrangements, there are different possibilities. The Genebank acquires the Material for collection from the Provider:
  i. Free of charge
  ii. Covering some costs (i.e. collection, delivery, veterinary)
  iii. Buying Material on commercial basis
  iv. In exchange of services provided by the Genebank to the Provider
  v. In exchange of storing a part of the Material by the Genebank for provider own use

- The Provider and the Genebank can agree an embargo period of use, and can also establish access criteria or restricted scope of uses of Material (i.e. use for the conservation of the breed, use only in the breeding programme, use only in case of extinction of the breed for their recovery, use as duplicate in case of destruction of the Genebank of origin).

- Regarding ownership of the Material, there are different options:
  i. Full transfer of the ownership from the Provider to the Genebank.

  ii. The ownership is transferred to the Genebank but the Provider maintains rights to participate in the decision making on the use of his/her Material.

  iii. The ownership remains with the Provider:
    - ✓ Provider pays for the storage in the Genebank and is free to use the Material.
    - ✓ Provider doesn't pay for the storage, and is free to use some of the Material.
    - ✓ Provider doesn't pay for the storage, and the Genebank has certain rights on the Material (i.e make it available for transfer in case of extinction of the breed).

- There are different options regarding arrangements on the ownership of the Material. The Material may belong to:
  i. the Genebank
  ii. the state, and the Genebank is receiving funds for storing the Material
  iii. the owners of donor animals
  iv. the representative of the owner(s)

Part 7. RIGHTS AND DUTIES OF THE PROVIDER

The rights and duties of the Provider depends on the specific arrangements included in the standard model MAA, and could contain the following elements:

- The Provider enables access or provides samples of biological/genetic Material from donor animals he/she owns or which belong to the owner/s he/she represents;
- The Provider follows the policy of the Genebank on selection of donor animals, if requested;
- The Provider provides detailed information on donor animals (origin of the donor animals and/or the biological Material, owner, farm site);

- The Provider provides detailed information on type and quantities of biological Material (semen, embryos, tissue, etc.; number of samples, etc.) as well as their sanitary status, if the Provider is conducting the collection of the Material;
- The Provider is responsible for accuracy of information on provided biological Material included in the Annex to the MAA;
- The Provider maintains all relevant documentation on Material for X number of years from the date of entering Material into Genebank;
- In the case when Material originated from a country regulating access to genetic resources the Provider has to transfer relevant ABS documentation (PIC, MAT IRCC) together with the Material to the Genebank;
- The Provider must comply with national and, if it is the case, European and international veterinary regulation on the movement of germinal products;
- The Provider is obliged to clarify the ownership of the biological Material when the Material enters into the Genebank. In case the Provider (e.g. breed association) acts on behalf of the owner of Material, the Provider should have a written agreement with the owner of the Material, which might be included in an Annex.

Part 8. RIGHTS AND DUTIES OF RECIPIENT

The rights and duties of the Recipient depends on the specific arrangements negotiated in each MAA, and could include the following elements:

- The Genebank:
  - ✓ Will store the acquired Material and allocate it into a given collection category in accordance with the policy of the Genebank;
  - ✓ Ensure storing the acquired Material in adequate conditions according to the type of the Material and good laboratory practices and the national, European or international veterinary regulation on the movement of germinal product;
  - ✓ Will store all the information related to the Material, donor and ownership in adequate secure databases.
- The Genebank makes publicly available Genebanks policies, rules and procedures related to acquisition and transfer of Material.
- The Genebank is obliged to inform the Provider about
  - ✓ decisions to remove Material from the storage, if relevant;
  - ✓ requests of access to the stored Material, if relevant.
- If the Genebank is unable to provide the storage any longer and no successor organization can be found by mutual agreement the stored Material is returned to the Provider.
- In case the owner of the Material (legal or private person) or their legal successor does not exist anymore, the Genebank [or the State] will become the owner of the stored Material.
- The Genebank must comply with the access conditions settled by the Provider country in case of the transfer of Material to third parties.

Part 9. WARRANTY

There is no warranty for the Material. The genetic / biological Material is understood to be experimental in nature and may have unstable properties.

Part 10. LIABILITY

- The Recipient Genebank will store the Material in compliance with all relevant national and international laws applicable to the Material, especially sanitary/veterinary laws and requirements.
- In no event, the Provider will be liable for any use of the Material by the Recipient Genebank.
- The liability during shipping from the Provider to the Recipient Genebank lies with the carrier service Provider.
- In the case of any further transportation of the Material by the Recipient Genebank (e.g. secondary location) all risks rest with the Recipient.

Part 11. GOVERNING LAW

Specific/relevant laws and regulatory measures of the Provider's country.

Part 12. DISPUTE SETTLEMENT

- Dispute settlement will be conducted according to the domestic law of the Provider's country.
- This Agreement shall be interpreted, governed and enforced exclusively in accordance with the law of the Provider, unless it is decided otherwise.
- Parties hereto shall attempt to settle any dispute arising from or relating to this agreement in an amicable way. All disputes which arise under this Agreement shall be judged exclusively by the competent court [ ] in the country of the Provider.

Part 13. ARRANGEMENTS ABOUT GENERAL DATA PROTECTION

The inclusion and use of personal data in the MAA, will be treated in accordance with the regulation on General Data Protection.

Part 14. EFFECTIVE DATE AND VALIDITY

- This agreement will enter into effect on the date established by the national regulation for the effect of contracts or MoU, and in case that there is not any law for this issue on the date both Parties have signed this agreement.

- The validity of the MAA (in the event that the ownership has not been totally transferred) is for X numbers of years.

- Nothing in this agreement shall be construed as the granting of rights between the Parties, and neither Party hereto shall be obliged to enter into any further agreements.

SIGNATURE (for Agreement)

- *Provider* *Date*

- *Recipient* *Date*

ANNEX 1
TECHNICAL INFORMATION ON THE ACQUIRED BIOLOGICAL MATERIAL AND ITS LEGAL STATUS

ANNEX 2
PIC / MAT AND IRCC, IF RELEVANT