

AGREEMENT
between the
NATIONAL PARK SERVICE
and the
CULTURE COLLECTION OF SWITZERLAND AG

This Agreement (the “Agreement”), effective as of the date of the last approving signature ("Effective Date") is made and entered into between the Culture Collection of Switzerland AG (“CCOS”) and the United States of America, United States Department of the Interior, National Park Service (“NPS”).

I BACKGROUND AND OBJECTIVES

NPS Specimens that are microorganisms collected in NPS units pursuant to permits issued under 36 CFR 2.5, and Material derived from such NPS Specimens, are periodically deposited in culture collections. Culture collections are institutions that receive, preserve, and distribute biological samples and related information, technology, and intellectual property to research scientists in academia, government, and industry. Distribution of Material to and by custodians requires NPS approval in accordance with the NPS Scientific Research and Collecting Permit General Conditions (available at <https://www.nps.gov/subjects/science/general-conditions-for-scientific-research-and-collecting-permits.htm>).

This Agreement allows CCOS to accept and maintain a living collection of NPS Specimens and Material designated as the U.S. National Park Service Special Collection (the “Collection”) and distribute NPS Material to the scientific community under the terms and conditions of the applicable NPS Scientific Research and Collecting Permit (“Research Permit”) and the terms of an NPS Material Transfer Agreement.

II DEFINITIONS

- A. **“CCOS MTA”** shall mean the then current Material Transfer Agreement that CCOS provides to customers in the course of its business. A copy of this MTA is available at CCOS’s web site (https://www.ccos.ch/bio_resources/how_to_deposit_strains).
- B. **"Bankruptcy Event"** shall mean either (a) commencement of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to CCOS or its debts under any bankruptcy, insolvency or other similar law now or hereinafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or consenting to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or making a general assignment for the benefit of creditors, or failing generally to pay its debts as they become due, or taking any corporate action to authorize any of the foregoing; or (b) an involuntary case or other proceeding seeking liquidation, as they become due, or shall take any corporate action to authorize any

of the foregoing; or (c) an involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to CCOS or its debts under any bankruptcy, insolvency or other similar law now or hereinafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or (d) an order for relief being entered against CCOS under the U.S. federal bankruptcy laws as now or hereafter in effect.

- C. **“Catalog Record”** shall mean an official record that identifies and describes a museum specimen or living collection item and lists a unique catalog number for tracking.
- D. **“Collected Specimen”** shall mean the item collected by the permittee under the authority of an NPS Scientific Research and Collecting Permit, and portions thereof. Collected specimens are natural products.
- E. **“Confidential Information”** shall mean any information or material in tangible form that is marked as confidential or proprietary by the furnishing party at the time it is delivered to the receiving party, and information that is furnished orally if the furnishing party identifies such information as confidential or proprietary when it is disclosed and promptly confirms such designation in writing after such disclosure. Confidential Information does not include:
 - 1) information that is publicly known or available from other sources who are not under a confidentiality obligation to the source of the information; or
 - 2) information that has been made available by its owners to others without a confidentiality obligation; or
 - 3) information that is already known by or available to the receiving party without a confidentiality obligation; or
 - 4) information that relates to potential hazards or cautionary warnings associated with the production, handling, use or disposal of NPS Specimens or Material; or
 - 5) information that is required by other applicable law or by this Agreement to be disclosed.
- F. **“Deaccession”** shall mean the withdrawal of NPS Specimens or Material from the U.S. NPS Special Collection at CCOS.
- G. **“Derivative”** shall mean a creation, other than progeny, that is based on a collected specimen or Material.
- H. **“Distribution”** shall mean the CCOS provision of Material to third parties as set forth in Section IV(A)(3).
- I. **“Material” (when capitalized)** shall mean progeny and unmodified derivatives of collected specimens, museum specimens, living collection items, and multiple generations thereof. The Material does not include a) modifications or b) other substances created by a person through use of the Material that are not modifications, progeny, or unmodified derivatives. See also definition for modification.

- J. **“Material Transfer Agreement”** shall mean an agreement that establishes the terms by which one party both provides Material to another party for research use and tracks disposition of the Material.
- K. **“Modification”** shall mean a human-created substance that contains or incorporates Material (progeny and/or unmodified derivatives).
- L. **“NPS Permittees”** shall mean researchers that collect NPS Specimens in NPS units pursuant to permits issued under 36 CFR 2.5.
- M. **“NPS Specimens”** and **“Material”** shall equally mean cells, cell lines, bacteria, viruses, related information, and other Material derived from living or dead organisms collected in NPS units including but not limited to NPS Specimens and Material specifically identified in Appendix 1.
- N. **“Natural products”** shall mean naturally occurring items collected from a park. Collected specimens are natural products. Natural products from parks may not be sold or commercially used. Note: The prepared collected specimen and its component parts remain a “natural product.”
- O. **“Progeny”** shall mean an unmodified descendant from a collected specimen or Material, such as virus from virus, cell from cell, or organism from organism.
- P. **“Research results”** shall mean Material (including Material retained in a living collection), modifications, intellectual property, inventions, data, discoveries, and/or other knowledge, processes, products, or applications resulting from research activities of researchers or their institutions or companies.
- Q. **“Specimen”** shall mean a collected specimen or a museum specimen.
- R. **“Transfer”** shall mean the provision of NPS Specimens and Material to CCOS and from CCOS to researchers using a Material Transfer Agreement at the time of distribution.
- S. **“Unmodified derivative”** shall mean a human-created substance that is not a portion of the collected specimen and, instead, constitutes an unaltered copy of a functional subunit or of a product expressed by the collected specimen or Material. Some examples include: copies of cells of the collected specimen, purified or fractionated subsets of the Material, proteins expressed by DNA/RNA extracted from the collected specimen or Material.

Note: NPS and CCOS occasionally shall be referred to as **“Parties”** in singular or plural usage as indicated by the context.

III AUTHORITY

- A. NPS is authorized to enter this Agreement pursuant to the authority contained in the National Park Service Organic Act, 54 USC 100101, the National Parks Omnibus Management Act of 1998, 54 USC 100705, and 54 USC 102501-102504, (Management of Museum Properties).

IV SCOPE OF WORK (ROLES AND RESPONSIBILITIES)

A. Pursuant to this agreement NPS will:

1. Encourage NPS Permittees to request that NPS deposit NPS Specimens and Material in the U.S. NPS Special Collection at the CCOS using the CCOS Deposit Forms approved by NPS for deposits to the U.S. NPS Special Collection;
2. Make available on the NPS permit website under Science and Researcher Resources at <https://www.nps.gov/nature/science-and-research-resources.htm> a copy of this Agreement and links to the CCOS web site and the NPS Special Collection at CCOS.
3. Authorize CCOS to distribute NPS Material that CCOS maintains to requesting researchers through CCOS's MTA as amended and supplemented by an approved NPS MTA (attached as Appendix 2) as set forth in Sections V(C) and V(D), in accordance with CCOS standard operating procedures including fee arrangements. Said fee arrangements cover costs of authentication, accessioning, preservation, storage, distribution and other operating costs associated with transferring the Material and do not include profit; and
4. Authorize CCOS to complete and issue the NPS MTA on behalf of NPS.

B. Pursuant to this agreement CCOS will:

1. Create and curate an NPS Special Collection page on the CCOS web site at <https://www.ccos.ch/home> with instructions for making a deposit of NPS Specimens or Material consistent with IV.B.6 and instructions for using the NPS MTA for distributions consistent with IV.A.3.
2. Accept deposits of NPS Specimens and Material only from NPS officials and consistent with IV.B.1, IV.B. 6, and CCOS standard procedures;
3. Distribute NPS Material currently and in the future maintained by CCOS (listed in Appendix 1) to requesting researchers under CCOS's MTA as amended and supplemented by an approved NPS MTA addendum (attached as Appendix 2) as set forth in Sections V(C) and V(D);
4. Annually, or more frequently if NPS so requests, provide copies of the recently executed CCOS and NPS MTAs for distribution, to the NPS Key Official for Administrative and

- Collections Management matters. Keep permanently on file copies of the NPS MTAs executed by scientists requesting distributions consistent with this Agreement, and make available to NPS upon NPS reasonable request copies from these permanent files at other times;
5. Comply with all applicable laws, rules and regulations pertaining to the development, testing, manufacture, storage, marketing, import or export, and disposal of the NPS Specimens and Material. Without limiting the foregoing, CCOS acknowledges that the transfer of certain commodities and technical data is subject to certain United States laws and regulations controlling the export of such commodities and technical data, including all Export Administration Regulations of the United States Department of Commerce, and accordingly, CCOS will comply with and be solely responsible for any violation of all such laws and regulations;
 6. Require and maintain on the Deposit Form for NPS Specimens and Material, in addition to the obvious data identified on the CCOS Deposit Form at https://www.ccos.ch/bio_resources/how_to_deposit_strains, the following information in
 - a. “Depositor data”:
 - i. Identify as the Depositor the NPS unit where the specimen was originally collected and provide the contact information.
 - ii. Identify as the Depositor Scientist, the researcher who is submitting the deposit under the authority of the NPS unit and NPS Scientific Research and Collecting Permit or other authorization, and provide the contact information.
 - iii. Provide the NPS permit number(s) for the collected Specimen.
 - iv. Provide the NPS Catalog Number for the specimen/Material
 - b. “Strain history”
 - i. “Isolation location”
 1. Identify the NPS unit where the specimen originated (from which the Material is derived)
 2. Identify the place name or coordinates for the collection location within the NPS unit.
 - ii. “Origin of the sample”
 1. Describe the environment where collected
 2. If the Depositor Scientist or the Depositor Scientist’s project did not collect the original specimen directly from the NPS unit, state the source, cite documents authorizing possession, dates, and relevant catalog or other identifying numbers.
 7. Provide to NPS by December 31 an annual report for the period October 1 through September 30 as detailed in Appendix 3 under **Annual Report**.
 8. Implement all CCOS Procedures included in the Collections Management Procedures set forth in Appendix 3.

V OPERATIONAL PROCEDURES

- A. CCOS shall not accept into the NPS Special Collection any NPS Specimens or Material that NPS has not previously accessioned and cataloged into the NPS catalog.
- B. Except as otherwise agreed in writing by NPS and CCOS, all NPS Material deposited with CCOS under this Agreement shall be made available for distribution by CCOS through CCOS's catalog.
- C. NPS Material shall be distributed pursuant to Section IV.B(3) to CCOS qualified recipients only upon prior execution of the NPS MTA addendum and supplement to the CCOS MTA.
- D. The Parties agree that the NPS Specimens and Material will not be used in humans without the written consent of NPS.

VI KEY OFFICIALS AND CONTACTS

For purposes of mailings of notices or other communications, the addresses of the Parties are given below. A Party may change its address by giving written notice to the other Party.

A. For NPS:

- 1. Key Official for Scientific matters:
John Dennis
Deputy Chief Scientist
National Park Service
1849 C Street, NW (2648)
Washington, DC 20240
Tel: 202-513-7174
E-mail: John.Dennis@nps.gov
- 2. Key Official for Administrative and Collections Management matters:
Ann Hitchcock
Curator, Senior Advisor for Scientific Collections and Environmental
Safeguards
National Park Service
1849 C Street, NW (7348)
Washington, DC 20240
Tel: 202-354-2271
E-mail: Ann.Hitchcock@nps.gov

B. For CCOS:

1. Key Official for Administrative matters:

Dr. Gottfried H. Dasen
CEO/Co-Founder
Culture Collection of Switzerland AG
Einsiedlestr.34
CH-8820 Waedenswil
Switzerland
Tel: +41 44 552 24 25
Email: dasen@ccos.ch

2. Key Official for Collections Management matters:

Dr. Gottfried H. Dasen
CEO/Co-Founder
Culture Collection of Switzerland AG
Einsiedlestr.34
CH-8820 Waedenswil
Switzerland
Tel: +41 44 552 24 25
Email: dasen@ccos.ch

VII CONFIDENTIALITY OF INFORMATION ABOUT NPS SPECIMENS AND MATERIAL

- A. Confidential Information, as defined in Section II above, includes information concerning the nature and specific location (including exact collection site) of National Park System resources, including NPS Specimens and derivative Material, which are endangered, threatened, rare, or commercially valuable, and which must be withheld from the public.
- B. Protection of Confidential Information. Except as required under court order or the Freedom of Information Act (5 U.S.C. 552), CCOS must withhold Confidential Information from any form of release to non-NPS entities. Confidential Information shall not be disclosed, copied, reproduced or otherwise made available to any non-NPS person or entity without the consent of NPS.

VIII INTELLECTUAL PROPERTY

- A. Ownership: NPS Specimens and Material are the property of the United States Government.
- B. Enforcement of Rights: Any future action or lawsuit to enforce intellectual property rights involving NPS Specimens and Material distributed by CCOS pursuant to Sections IV and

V above, shall be initiated solely at the discretion of NPS. CCOS agrees to advise NPS of any events that cause CCOS to suspect that the transfer of NPS Material to a third party is or may be violating CCOS's MTA or the NPS MTA addendum.

- C. License: Any transfer of NPS Specimens or Material from NPS to deposit with CCOS shall constitute a nonexclusive worldwide royalty-free license to use the NPS Material in accordance with Sections IV and V above. CCOS agrees that the transfer of NPS Specimens and Material does not imply in any way a grant of any rights under any patents claiming the NPS Specimens or Material or any right to use the NPS Specimens or Material for commercial purposes or any other rights to the NPS Specimens except as stated herein.
- D. Benefits-Sharing Arrangements: On a case-by-case basis, and consistent with terms in NPS Permits and the NPS MTA for distribution, NPS may enter into separate benefits-sharing agreements with recipients proposing commercial applications for the Material and research results from using the Material.
- E. Nothing in this Agreement shall be construed to affect CCOS's rights, title and interests in trademarks registered or owned by the CCOS and any and all CCOS catalog numbers or CCOS specific designations of biological Materials distributed by the CCOS.
- F. The Parties agree to cite in publications referencing NPS Specimens and Material the following terms: "National Park Service," park name, specimen/Material name, NPS catalog number, "Culture Collection of Switzerland" and CCOS catalog number.

IX WARRANTY, LIABILITY AND INDEMNIFICATION

- A. Each party accepts full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law.
- B. No indemnification for any loss, claim, damage, or liability is intended or provided by any party under this Agreement. The NPS shall be liable for the acts or omissions of its employees, acting within the course and scope of their employment, to the extent provided under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-80. To the extent permitted by applicable law, CCOS shall be liable for the negligent or wrongful acts or omissions of its employees, acting within the course and scope of their employment.
- C. Any specimens and Materials transferred from one party to the other under this Agreement shall be provided AS IS; furthermore, the Parties make no representations whatsoever as to the Materials. They are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE PARTIES MAKE NO REPRESENTATION OR WARRANTY THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT. CCOS warrants that all distribution of

Material by CCOS as contemplated by this Agreement shall be in substantial compliance with all applicable U.S. Federal laws and regulations.

- D. CCOS shall provide proof of public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million U.S. Dollars (\$1,000,000) for any one claim, and an aggregate limitation of Two Million U.S. Dollars (\$2,000,000) from any number of claims arising from one incident.
- E. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party (hereinafter, a Force Majeure event), including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), insurrections, acts of terrorism, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority (including regulatory and advisory bodies) or the other Party. Upon the occurrence of any Force Majeure event, the affected Party shall give written notice of such event to the other Party and shall use reasonable efforts to overcome such Force Majeure event.

X TERM OF AGREEMENT

- A. This Agreement shall be in force for a period of ten (10) years from the date of the last approving signature. The Agreement may be renewed for an additional term upon written consent of the Parties.

XI TERMINATION

- A. This Agreement will terminate when the ten (10) year term has expired, unless renewed in writing by the Parties.
- B. Either Party may terminate this Agreement without any legal process whatsoever by giving the other party sixty (60) days written notice of termination, effective at the end of the sixty (60) day period, i) for no cause or ii) upon occurrence of any of the events set forth below, except that in the case of (c) or (d) such termination shall occur automatically and without the necessity of notice to the other Party.
 - (a) If either party fails to observe any of the material terms and conditions of the Agreement, and after sixty (60) days from receipt of written notice fails to cure such default.
 - (b) In the case of NPS, if CCOS violates the laws, regulations or other legal authority in any jurisdiction relating to the development, use, or storage, of the NPS Specimens and Material, or distribution of Material in a way that NPS deems it reasonable judgment to constitute a public safety or health hazard.

- (c) If CCOS becomes insolvent, makes an assignment for the benefit of creditors, or becomes subject to a Bankruptcy Event. CCOS must give NPS immediate notice (within five (5) days) of the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act, or making any assignment for the benefit of creditors. For purposes of the bankruptcy statutes, NPS considers this Agreement an executory contract exempt from inclusion in the assets of CCOS pursuant to 11 U.S.C. 365.
 - (d) In case of the dissolution or cessation of operations by CCOS.
 - C. Notwithstanding the foregoing, the NPS may terminate this Agreement for the convenience of the Government, at any time, when it is determined to be in the best interest of the public to do so. CCOS shall be notified in writing within five (5) working days following the termination;
 - D. Surviving any termination or expiration are:
 - a) Any cause of action or claim of CCOS or NPS, accrued or to accrue, because of any breach or default by the other Party; and
 - b) Any provisions in this Agreement that by their nature are intended to survive. This shall specifically include Sections VII, VIII, IX, and Sections XI(D) and XII(B),(C).
 - E. Except under Section XI(C), upon termination or expiration of this Agreement, NPS shall have the option of either:
 - a. In the best interest of the scientific community, granting CCOS the rights to store, replicate and distribute certain NPS Material under CCOS's General Collection; or
 - b. Permitting CCOS to continue, for a period of one (1) year following the date of termination, to distribute only NPS Material that is in stock and to complete outstanding orders for such NPS Material only to the end of such one-year period, subject to all applicable provisions in the Agreement. At the conclusion of such one (1) year period, CCOS agrees to cease immediately the distribution of all NPS Material in the U.S. NPS Special Collection and follow NPS instructions for disposal.

XII REQUIRED AND STANDARD CLAUSES

- A. Non-Discrimination: The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, age disability, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d) *et seq.*)

- B. Anti-Deficiency Act: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), nothing contained in this Agreement shall be construed as binding the United States to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.
- C. Compliance with Applicable Law: The Parties shall comply with all applicable laws and regulations. This Agreement is subject to all laws, regulations and rules governing NPS property and interests, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property and interests under such applicable laws, regulations, and rules.
- D. Advertising and Endorsements: CCOS may use the terms “NPS” and “National Park Service” to identify NPS Specimens and Material and the NPS Special Collection on CCOS’s website, brochures and associated documentation, such as packing receipts, product sheets, specimen labels and invoices. Any use of the NPS Arrowhead requires prior approval for each specific use. CCOS shall not otherwise publicize or circulate promotional material (such as advertisements, sales brochures, or press releases) which states or implies NPS endorsement of a product, service, or position which CCOS represents, unless approved in advance by NPS. No release of information relating to this Agreement may state or imply that the NPS approves of the work product of CCOS to be superior to other products or services.

XIII ASSIGNMENT

- A. No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all the parties.

XIV ADDITIONAL TERMS

- A. The Agreement may be modified by written consent of all of the Parties to cover the need for any alterations that may arise subsequent to the Effective Date of this Agreement.
- B. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions.
- C. No term or provision of this Agreement shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach. Failure by either Party to enforce, or delay in exercising, or partial exercise of any covenants or rights or remedies under this Agreement shall not be deemed or construed as a waiver of such rights, nor shall waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other or subsequent instances.

- D. In the event that further lawful performance of this Agreement or any part hereof by either Party shall be rendered impossible by or as a consequence of any law, regulation, order, rule, direction, priority, seizure, allocation, requisition, or any other official action by any department, bureau, board, administration, or other instrumentality or agency of any government or political subdivision thereof having jurisdiction over such Party, such Party shall not be considered in default hereunder by reason of any failure to perform occasioned thereby.
- E. Except as expressly stated herein, neither Party has the right or authority to assume or create any obligation, accept legal process, make commitments, incur any charges or otherwise bind or act on behalf of the other or limit the other in any manner whatsoever. Neither this Agreement nor any act hereunder shall be construed as constituting the foundation of a partnership, association, agency, joint venture or any other entity.
- F. The NPS and CCOS acknowledge that failure to perform the obligations and agreements set out herein and/or failure to amicably and quickly resolve disputes may result in irreparable injury to either Party. Accordingly, the Parties agree to use their best efforts to settle all disputes between them, and if and when that fails, the Parties agree to arbitrate any dispute in accordance with the rules of the American Arbitration Association as an alternative to litigation which both Parties pledge their best efforts to avoid, with any arbitration proceeding being nonbinding unless otherwise agreed to in advance by the Parties. The Parties acknowledge and agree that arbitration is frequently expensive and time consuming, and thus, the Parties agree that in advance of any arbitration hereunder each shall use its mutual best efforts to negotiate a comprehensive set of procedures designed to ensure that such arbitration is conducted expeditiously and at the lowest possible cost.
- G. Appendices. This Agreement includes Appendices 1 through 3, which are hereby incorporated by reference.
- H. This Agreement constitutes and contains the entire Agreement of the Parties respecting its subject matter and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether written or oral, between the Parties respecting its subject matter.
- I. Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. The Agreement may be executed by transfer of an originally signed document by facsimile, e-mail, or other electronic means, any of which will be as fully binding as an original document.

XV AUTHORIZING SIGNATURES

Agreed between the Parties:

National Park Service



Raymond M. Sauvajot, Ph.D.
Associate Director, Natural Resource
Stewardship and Science

7/30/2019

Date

Culture Collection of Switzerland

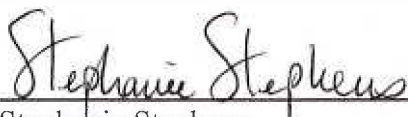


Gottfried H. Dasen
CEO

July 31 2019

Date

Concurred:



Stephanie Stephens
Chief Curator and Manager, Park
Museum Management Program

7/29/2019

Date

APPENDIX 1

LIST OF NPS SPECIMENS

APPENDIX 1 CONSTITUTES THE CATALOG OF THE NPS SPECIAL COLLECTION

CCOS Cat. #	Item Description	Product Line	Quantity	NPS Unit	NPS Cat. #	Date of Deposit	Status/ Comments
CCOS 1900	<i>Staphylococcus ursi</i>	MI10-15 53T	15 vials MCB	Great Smoky Mountains NP	GRSM 195058		Deposit pending
CCOS 1900	<i>Staphylococcus ursi</i>	MI10-15 53T	10 vials WCB	Great Smoky Mountains NP	GRSM 195059		Deposit pending

U.S. NATIONAL PARK SERVICE SPECIAL COLLECTION

AT

CULTURE COLLECTION OF SWITZERLAND

MATERIAL TRANSFER AGREEMENT (MTA # _____)

The Culture Collection of Switzerland (CCOS) is providing to the Recipient Organization and Recipient Scientist biological material (Material) that requires authorization from the U.S. National Park Service (NPS) prior to distribution. NPS has authorized CCOS to execute this agreement on its behalf. If any Terms herein conflict with the CCOS General Terms and Conditions or the CCOS Material Transfer Agreement (MTA) Terms and Conditions, the Terms herein shall prevail.

NOTE! Delete cautions and instructions in *[brackets and italics]* before executing the agreement.

I. Definitions and Identifications:

1. PROVIDER: NPS unit supplying the PROVIDED ITEMS(S). The Provider is “National Park Service *[Enter full name of NPS unit].*”
2. PROVIDER ORGANIZATION: Culture Collection of Switzerland AG, Einsiedlerstr. 34
CH 8820 Waedenswil, Switzerland, Phone: +41 44 552 24 28, Fax: +41 44 552 24 27, Email:
3. RECIPIENT ORGANIZATION: Organization receiving the PROVIDED ITEMS(S). The name of this party is: *[Enter institution/organization name, address, telephone.]*
4. RECIPIENT SCIENTIST: *[Enter name, title, address, telephone, and email of recipient scientist, who must be affiliated with the Recipient Organization.]*
5. RECIPIENT ORGANIZATION/SCIENTIST: The RECIPIENT ORGANIZATION and the RECIPIENT SCIENTIST.
6. PROVIDED ITEM(S):

MATERIAL: The MATERIAL provided to the RECIPIENT ORGANIZATION is:

Scientific Name or description:

Container type, size/volume, quantity:

NPS Scientific Research and Collecting Permit number:

Applicable park-specific permit conditions:

Locality where COLLECTED SPECIMEN was collected: *[Enter full name of NPS unit, and specific locality. Do not provide specific locality if Confidential.]*

NPS Catalog Number:

CCOS Catalog Number:

7. COLLECTED SPECIMEN—The item collected by the permittee under the authority of an NPS Scientific Research and Collecting Permit, and portions thereof. COLLECTED SPECIMENS are natural products.

8. MATERIAL: PROGENY and UNMODIFIED DERIVATIVES of COLLECTED SPECIMENS, museum specimens, living collection items, and multiple generations thereof. The MATERIAL does not include a) MODIFICATIONS or b) other substances created by a person through use of the MATERIAL that are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.

9. PROGENY: Unmodified descendant from the COLLECTED SPECIMEN or MATERIAL, such as virus from virus, cell from cell, or organism from organism.

10. UNMODIFIED DERIVATIVE: A human-created substance that is not a portion of the COLLECTED SPECIMEN and, instead, constitutes an unaltered copy of a functional subunit or of a product expressed by the COLLECTED SPECIMEN or MATERIAL. Some examples include: copies of cells of the COLLECTED SPECIMEN, purified or fractionated subsets of the MATERIAL, proteins expressed by DNA/RNA extracted from the COLLECTED SPECIMEN or MATERIAL.

11. MODIFICATION: Substance created by the RECIPIENT ORGANIZATION that contains or incorporates MATERIAL.

12. COMMERCIAL PURPOSE: Use of MATERIAL or MODIFICATIONS or RESEARCH RESULTS in a product, service, or process that results in a product or service that is sold, leased, licensed, or otherwise transferred for value received. [Note: COLLECTED SPECIMENS, including COLLECTED SPECIMENS that are permanently retained in museum and living collections may not be used for COMMERCIAL PURPOSES.]

13. RESEARCH RESULTS: MATERIAL (including MATERIAL retained in a living collection), MODIFICATIONS, intellectual property, inventions, data, discoveries, and/or other knowledge, processes, products, or applications resulting from research activities of the RECIPIENT ORGANIZATION.

II. Terms and Conditions of this Agreement

1. The RECIPIENT ORGANIZATION/SCIENTIST agree that PROVIDED ITEMS and MATERIAL:

(a) are to be used solely for non-commercial scientific and/or educational purposes, as described in Attachment 1;

(b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER and PROVIDER ORGANIZATION;

(c) are to be used only at the RECIPIENT ORGANIZATION and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and

(d) will not be transferred to anyone else within the RECIPIENT ORGANIZATION or to other Third Parties without the prior written consent of the PROVIDER and execution of an appropriate NPS agreement.

2. The RECIPIENT ORGANIZATION/SCIENTIST agree to annually notify the PROVIDER of any and all MATERIAL and MODIFICATIONS that result from the research described in Attachment 1.
3. The RECIPIENT ORGANIZATION/SCIENTIST agree to refer to the PROVIDER any third-party request for the PROVIDED ITEMS or MATERIAL other than requests from those persons working under the RECIPIENT SCIENTIST's direct supervision in the RECIPIENT SCIENTIST'S laboratory.
4. Under a separate agreement, the PROVIDER may allow the RECIPIENT ORGANIZATION to distribute MODIFICATIONS to third parties for non-commercial scientific and educational purposes only. Such agreement will be subject to Condition 7 below.
5. The RECIPIENT ORGANIZATION/SCIENTIST agree to notify the PROVIDER of every discovery or invention that relates in any respect to RESEARCH RESULTS, including MODIFICATIONS, derived from study of PROVIDED ITEMS prior to any public disclosure, within thirty (30) days of making an invention disclosure to the person(s) responsible for patent matters in the inventing organization, and within thirty (30) days of filing any type of application for a patent or other intellectual property claim in the United States or other country. Parties that elect not to file patent applications on such subject inventions must so advise PROVIDER no less than thirty (30) days prior to any disclosure to the public and within (90) days from the date of notifying PROVIDER of the subject inventions.
6. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT ORGANIZATION/SCIENTIST under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER or PROVIDER ORGANIZATION, including any altered forms of the COLLECTED SPECIMEN or MATERIAL made by the PROVIDER or PROVIDER ORGANIZATION. In particular, no express or implied licenses or other rights are granted to use the PROVIDED ITEMS, MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER or PROVIDER ORGANIZATION for COMMERCIAL PURPOSES.
7. If the RECIPIENT ORGANIZATION/SCIENTIST desires to use or license MATERIAL or MODIFICATIONS or RESEARCH RESULTS they create from the PROVIDED ITEMS for COMMERCIAL PURPOSES, the RECIPIENT ORGANIZATION and RECIPIENT SCIENTIST agree, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial use agreement, benefits-sharing agreement, or license. The RECIPIENT ORGANIZATION/SCIENTIST understand that the PROVIDER shall have no obligation to grant such a license or agreement to the RECIPIENT ORGANIZATION/SCIENTIST and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the PROVIDER'S rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the federal government. If RECIPIENT ORGANIZATION/SCIENTIST are party to a current benefit-sharing or other equivalent agreement or either RECIPIENT ORGANIZATION or RECIPIENT SCIENTIST is a licensee or sub-licensee of a third party with a current benefit-sharing or other equivalent agreement, this condition applies only to commercial uses of MATERIAL, MODIFICATIONS, or other RESEARCH RESULTS other than those uses identified in the aforementioned agreement(s).
8. Any PROVIDED ITEM delivered pursuant to this Agreement is understood to be as deposited at CCOS or as prepared by CCOS, to be experimental in nature, and to potentially have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF

MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

9. Except to the extent prohibited by law, the RECIPIENT ORGANIZATION/SCIENTIST assume all liability for damages that may arise from their use of the PROVIDED ITEM or MATERIAL or RESEARCH RESULTS, or from their storage or disposal of the PROVIDED ITEM. RECIPIENT ORGANIZATION/SCIENTIST agrees to hold harmless and indemnify PROVIDER for any claim asserted by a third party related to RECIPIENT ORGANIZATION/SCIENTIST use, storage, or disposal of the PROVIDED ITEM, MATERIAL OR RESEARCH RESULTS. The PROVIDER will not be liable to the RECIPIENT ORGANIZATION/SCIENTIST for any loss, claim or demand made by the RECIPIENT ORGANIZATION/SCIENTIST, or made against the RECIPIENT ORGANIZATION/SCIENTIST by any other party, due to or arising from the use of the PROVIDED ITEM or MATERIAL or RESEARCH RESULTS by the RECIPIENT ORGANIZATION/SCIENTIST, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

10. This agreement shall not be interpreted to prevent or delay publication of findings and RESEARCH RESULTS from the use of the PROVIDED ITEM or MATERIAL or MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the PROVIDED ITEM in all publications and other references including patent applications. The credit shall include the full name of the PROVIDER, the full name of the PROVIDER ORGANIZATION, the Permit number, the scientific name of the PROVIDED ITEM, the scientific name of any other MATERIAL, and, as applicable, NPS and CCOS catalog number(s). RECIPIENT ORGANIZATION/SCIENTIST agree to give PROVIDER a copy of any final reports, publications, or, in the absence of final reports and publications, other findings and RESEARCH RESULTS from use of the PROVIDED ITEMS and MATERIAL.

11. By accepting the PROVIDED ITEM, RECIPIENT ORGANIZATION/SCIENTIST agree to comply with all applicable terms and conditions of the NPS Scientific Research and Collecting Permit General Conditions available on the NPS Research Permit and Reporting System web site at <https://www.nps.gov/subjects/science/general-conditions-for-scientific-research-and-collecting-permits.htm> and with park-specific permit conditions, if any, applicable to the permit(s) cited under Section I.6 that are available from the PROVIDER.

12. The RECIPIENT ORGANIZATION/SCIENTIST agree to use the PROVIDED ITEM and any MATERIAL and RESEARCH RESULTS in compliance with all applicable U.S. statutes and regulations, including Department of Agriculture, Public Health Service and National Institutes of Health regulations and guidelines, such as those relating to research involving the use of animals or recombinant DNA. RECIPIENT ORGANIZATION/SCIENTIST are responsible for compliance with all applicable foreign and domestic federal, state and local statutes, ordinances and regulations. Any shipment of the PROVIDED ITEMS and/or MATERIAL to countries outside the United States must comply with all applicable U.S. laws, including the U.S. export control laws and related regulations.

13. This Agreement will terminate on the earliest of the following dates: (a) when the RECIPIENT ORGANIZATION/SCIENTIST return the PROVIDED ITEMS and all MATERIAL to the PROVIDER or follow the PROVIDER'S written instructions for disposition; (b) when the RECIPIENT ORGANIZATION/SCIENTIST notify and provide written evidence to the PROVIDER that the PROVIDED ITEMS and MATERIAL have been consumed in analysis or destroyed, consistent with any paragraph 17 below, and nothing remains; (c) on completion of the RECIPIENT ORGANIZATION/SCIENTIST's research described in Attachment 1; (d) on thirty (30) days written notice by either party to the other; or (e) on the date, if any, herein specified—*[enter termination date, if any]*, provided that:

(i) if termination should occur under 13(a), (b), or (c), above, the RECIPIENT ORGANIZATION/SCIENTIST will discontinue use of the PROVIDED ITEMS and MATERIAL and will, upon direction of the PROVIDER or PROVIDER ORGANIZATION, return or destroy any remaining PROVIDED ITEM or MATERIAL. The RECIPIENT ORGANIZATION, at its discretion, will also either destroy the MODIFICATIONS it has developed or remain bound to the PROVIDER by the terms of this agreement as they apply to MODIFICATIONS and RESEARCH RESULTS; and

(ii) in the event the PROVIDER terminates this Agreement under 13(d) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT ORGANIZATION, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT ORGANIZATION/SCIENTIST will discontinue their use of the PROVIDED ITEMS and MATERIAL and will, upon written direction of the PROVIDER, return or destroy any remaining PROVIDED ITEMS and MATERIAL, or follow other written disposition instructions that the PROVIDER may issue. The RECIPIENT ORGANIZATION/SCIENTIST, at their discretion, will also either destroy the MODIFICATIONS or remain bound to the PROVIDER by the terms of this agreement as they apply to MODIFICATIONS and RESEARCH RESULTS.

14. Under Section II, paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 shall survive termination.

15. The PROVIDED ITEMS are supplied at no charge by the PROVIDER. The PROVIDER ORGANIZATION may charge a fee to cover certain costs.

16. Both the RECIPIENT ORGANIZATION and the RECIPIENT SCIENTIST must agree to the terms of this Agreement by signing below. The RECIPIENT SCIENTIST must sign on his/her own behalf; the RECIPIENT ORGANIZATION's signature must be on behalf of both the RECIPIENT ORGANIZATION and the RECIPIENT SCIENTIST.

BY SIGNING BELOW, EACH PARTY, OR EACH PARTY'S DULY AUTHORIZED REPRESENTATIVE ON BEHALF OF HIS/HER RESPECTIVE PARTY, ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS NATIONAL PARK SERVICE AGREEMENT AND UNDERSTANDS AND AGREES TO ITS TERMS AND CONDITIONS.

RECIPIENT ORGANIZATION:

[Insert name and title of Responsible Official who can legally bind the organization and Recipient Scientist] **Date**
[Insert name of Recipient Organization]

RECIPIENT SCIENTIST:

[Insert name and title] **Date**
[Insert name of Recipient Organization]

PROVIDER ORGANIZATION:

[Insert name and title of Responsible Official] **Date**
Culture Collection of Switzerland

Attachment 1
Proposed Research/Use Plan

STANDARD PROCEDURE	NPS Procedure	CCOS Procedure
Permit	<ul style="list-style-type: none"> -Collector contacts park research coordinator and curator for instructions. -Collector applies for permit, and may propose CCOS as “repository” (i.e., Biological Resource Center [BRC]) in App. A of permit application, citing this Agreement in lieu of CCOS signature. -NPS (park) issues permit. 	
Deposit and Cataloging	<ul style="list-style-type: none"> -Depositor Scientist notifies NPS unit of recommendation to permanently retain and deposit specimen/Material at CCOS. -NPS unit official authorizes deposit. -NPS unit accessions and catalogs specimen/Material (Catalog number format: PARK #####, where “PARK” is the acronym of the park and is part of the NPS catalog number). -NPS unit official coordinates with Depositor Scientist to complete Deposit Form. -NPS unit submits approved Deposit Form to CCOS. -Depositor Scientist ships NPS Specimen/Material to CCOS 	<ul style="list-style-type: none"> -Depositor Scientist contacts CCOS to propose deposit. -CCOS authorizes deposit and accepts Deposit Form from NPS. -CCOS checks viability. -CCOS assigns CCOS catalog number. -CCOS sends completed deposit information to Depositor and Depositor Scientist. -CCOS posts information on NPS Specimen/Material (including NPS unit name and NPS. catalog number) on web page for NPS Special Collection
Product sheets		<ul style="list-style-type: none"> -CCOS will include CCOS catalog number, NPS catalog number, “National Park Service,” NPS unit name on the product sheet.
NPS Loan Documentation	<ul style="list-style-type: none"> -For tracking purposes, NPS unit completes outgoing loan record to CCOS showing: -loan purpose as “storage and 	<ul style="list-style-type: none"> -As set forth in Sections IV and V

STANDARD PROCEDURE	NPS Procedure	CCOS Procedure
	<p>collections management”.</p> <p>-termination date as the termination date of this agreement.</p> <p>-authorization for third party loans</p> <p>-authorization for destructive sampling.</p> <p>-CCOS signature is not required on loan as loan is governed by this Agreement.</p> <p>-Note: NPS unit may maintain a single loan to CCOS that it amends as specimens are added/removed, or it may record a separate loan for each transmission to CCOS.</p>	
CCOS Distribution to Qualified Recipients	<p>-NPS relies on CCOS to authorize distributions with the CCOS MTA as amended and supplemented by the NPS MTA, and document and track such distributions.</p>	<p>-CCOS uses its MTA for distribution amended and supplemented by the NPS MTA completed by the Recipient to document distributions as set forth in Sections IV and V of the Agreement.</p>
Annual Physical Inventory	<p>-For cataloged items at CCOS that appear on an NPS unit’s annual inventory, the unit will note on the inventory “On repository loan to CCOS.”</p>	<p>-CCOS does random sample inventory of its total collection witnessed by at least two CCOS employees annually.</p> <p>-CCOS will randomly select and annually inventory all, or at least 5 NPS items, whichever sample includes fewer items.</p> <p>-CCOS reports its annual inventory findings to NPS as part of the Annual Report</p>
Deaccession	<p>-When CCOS notifies the NPS unit that all items under an NPS catalog number have been discarded or destroyed, NPS deaccessions the item(s).</p>	<p>-Under this agreement, CCOS is authorized to fully dispose of Material in the following cases: lack of viability, redundancy, misidentification resulting in no scientific value, and contamination.</p> <p>-CCOS notifies the NPS unit when all Material under an NPS catalog number has been discarded or destroyed.</p>

STANDARD PROCEDURE	NPS Procedure	CCOS Procedure
Destructive testing	-Under this Agreement, NPS units give CCOS blanket authorization to do destructive testing.	-CCOS reports such destruction in the Annual Report.
Loss	-NPS unit records loss on catalog record.	-CCOS reports total of specimens and Material loss to NPS unit within five (5) days of discovery, providing the NPS catalog number and the circumstances of the loss.
Annual Report	<p>-NPS unit files a copy of this report in the outgoing loan file.</p> <p>-NPS updates catalog record, as needed.</p> <p>-For third party distributions using MTA, NPS units record recipient organization, recipient scientist, contact name, address, telephone number, date of order (start date of loan), and number of items in “loans out” supplemental record for each cataloged item.</p>	<p>-CCOS provides by December 31, an Annual Report per IV.B.7 for the period October 1 through September 30 to NPS. Report will be provided electronically. The contents of the Annual Report shall be:</p> <ul style="list-style-type: none"> • A brief summary of key activities at CCOS and activity pertaining to NPS Specimens and Material. • An updated Appendix 1 listing all NPS Deposits to CCOS for all years through September 30 and current quantities and Status/Comments, which may include “deaccessioned.” • Copies of all Deposit Forms, showing applicable NPS and CCOS catalog numbers, for the reporting period. • A recapitulation of all distributions of NPS Material from October 1 of previous calendar year to September 30 of the then current calendar year, indicating: <ul style="list-style-type: none"> ○ Requesting organization, contact name, address, telephone number ○ End Recipient Organization and Recipient Scientist, contact name,

STANDARD PROCEDURE	NPS Procedure	CCOS Procedure
		<p>address, telephone number</p> <ul style="list-style-type: none">○ Date of order○ NPS catalog number○ Distribution/Order number <p>-Report also includes:</p> <ul style="list-style-type: none">• An annual physical inventory report stating dates(s) inventory was completed and the findings.• If applicable, a list of damaged specimens/Material by NPS catalog number.• If applicable, a list of any changes to identification or description of specimens/Material by NPS catalog number.• If applicable, a list of deaccessioned specimens/Material by NPS catalog number and reason for deaccession.