

May 2009

ANNEX C

**Pro forma Agreement with Hosted Institutions at the BecA ILRI Hub**

between

**International Livestock Research Institute (ILRI)**

and

**Hosted Institution**

This agreement (the ‘Agreement’) is made by and between the International Livestock Research Institute (ILRI), an international research institute with its headquarters in Nairobi, Kenya and the “Hosted Institution” called, ....., an international, national or regional public research institute with its principal place of business in .....

ILRI and the “Hosted Institution” are together referred to as the “**Parties**” and the term “**Party**” shall refer to either as the context so permits and the terms “Party” and “Parties” shall refer to their respective and joint successor(s), personal representative(s) and assignee(s) as the case may be.

**Background**

- A) Biosciences eastern and central Africa (“BecA”) is one of four regional networks guided by NEPAD’s Comprehensive African Agricultural Development Program and the African Biosciences Initiative for Centers of Excellence for Science and Technology. BecA consists of a Hub, located on the campus of the International Livestock Research Institute (ILRI) in Nairobi, Kenya; a BecANet secretariat also located on the ILRI campus; regional nodes and other participating laboratories and organizations which are mobilizing biosciences for Africa’s development. It seeks to strengthen the capacity of scientists in eastern and central Africa to conduct bioscience research leading to improved products that can improve livelihoods of farmers in the region.
- B) A key principle the BecA concept is to build on existing institutions and capacities to achieve its objectives. In line with this, ILRI, under a BecA/ILRI Hub and Secretariat Hosting Agreement with the BecANet Steering Committee (January 2007) agreed to host the Hub and secretariat for BecANet activities and share ILRI’s research

facilities with BecANet members and participants as well as with ILRI's partners in Africa and in the international scientific community, as part of a shared research platform to support the increased applications of biosciences in Africa. The ILRI facilities are being refurbished under a contribution from CIDA and ILRI core funds through the BecA Project. Under the Hub and secretariat hosting agreement, ILRI's legal persona and host country agreement with Kenya are recognized as key factors in supporting BecANet activities, which is being established initially as an unincorporated joint venture.

- C) The need to ensure availability at the shared research platform of a critical mass of scientists and technical support staff covering the broad area of biosciences relevant for agriculture was recognized at inception of the BecA concept. Expertise in livestock sciences is available through ILRI and its partners. To ensure availability of expertise in crop sciences and related fields, ILRI has invited other research institutes, including sister CGIAR centres, to locate some of their crops research projects and scientists working in the eastern and central Africa region at the BecA Hub and Shared Research Platform. This arrangement provides an opportunity for the CGIAR System as a whole to make significant contributions both in enhancing the uptake and applications of biosciences in Africa and in strengthening the capacity of African scientists and national agricultural research systems and universities to undertake biosciences research and provide capacity building and training opportunities in Africa.
- D) ILRI is a BecANet member, having signed the BecA Establishment Agreement in January 2007. ILRI has also signed in January 2007 a 10 year BecA ILRI Hub and Secretariat hosting agreement with the BecA Steering Committee, which grants BecA Members, BecA Participants, BecA Stakeholders, and the BecA Secretariat, access to and use of ILRI premises and services. The BecA Hub provides access for these and other users to a shared biosciences research platform, research-related services, capacity building and training opportunities. The platform is also used by ILRI and its partners, including other international agricultural research centres and their partners in Africa.
- E) "Hosted Institution" has a mission to undertake development related activities in Africa. These include.....
- F) ILRI has invited "Hosted Institution", and "Hosted Institution" has agreed to locate at ILRI some of its research projects and scientific and technical staff as part of the shared research platform, to contribute to building a critical mass of expertise in plant biosciences available at the platform.

## 1 Definitions

- 1.1 **"Platform"** or **Shared research platform** means the Premises and services to which the User gains access to and uses on ILRI Nairobi campus under this Agreement.
- 1.2 **"Effective Date"** means the date of this Agreement.

- 1.3 **“Background Intellectual Property”** means all intellectual property conceived or reduced to practice by ILRI and/or hosted Institution before the Effective Date.
- 1.4 **“Intellectual Property”** means all intellectual property, including but not limited to patents, copyright, rights in circuit layouts, plant breeders rights, registered designs, trade marks, and any right to have confidential information kept confidential.
- 1.5 **“Joint Intellectual Property”** means the Intellectual Property created jointly by the researchers of the Parties pursuant to this Agreement.

## **2 Purpose of Agreement:**

- 2.1 This Agreement clarifies the relationship as well as the strategic roles and responsibilities of both ILRI as the host institution and “Hosted Institution” in providing the required critical mass of plant biosciences technical expertise at the Platform. Roles and responsibilities as well as key principles of engagement are detailed in clauses 3 to 5 of this Agreement while specific clauses relating to the relationship between ILRI and “Hosted Institution” are detailed in clause 6 through 19.

## **3 Operations of the Shared Platform**

- 3.1 The Shared Platform comprises the facilities and services available on the ILRI Nairobi campus for the conduct of biosciences research and capacity building activities.
- 3.2 ILRI is responsible for management of the Platform. The Platform management unit comprises the Platform Research Director, research support scientists and technicians, ILRI Lab Manager, Bioinformatics Unit, SEGOLIP Group, Central Core, and the ILRI Environmental Health and Safety Officer.
- 3.3 Users of the Platform are primarily partners from the eastern and central African region. Some Users’ participation is facilitated by the BecANet Secretariat. Other Users access the Platform directly through ILRI. ILRI’s biotechnology research programmes and other international, regional and national research institutions are also Users.

## **4 Roles and Responsibilities**

- 4.1 **ILRI’s role:** ILRI has roles in three types of functions: as Host and Platform Manager; as a research partner in research and capacity building activities; and in resources mobilization.
  - 4.1.1 ***ILRI as Host Institution and Platform Manager:*** ILRI’s role as host and platform manager includes the hosting of the BecA Hub and Secretariat. ILRI also hosts other institutions including CGIAR Centres that have chosen to locate staff and activities at the platform to provide essential partnerships for research and capacity building activities. As a host ILRI will:
    - 4.1.1.1 provide and maintain facilities, equipment and operational support at its Nairobi campus for all platform Users
    - 4.1.1.2 provide administrative support to all hosted institutions.
  - 4.1.2 ***ILRI as research partner:*** ILRI will contribute to research and capacity building, including through backstopping of hosted projects and supervision of trainees and young scientists, especially in livestock-related areas.

- 4.2 ***ILRI in resource mobilization:*** ILRI has a responsibility for mobilising resources to underpin the platform operations, as well as resources to facilitate research and capacity building activities conducted by ILRI and by other users at the Platform, including BecANet users. ILRI will facilitate joint resource mobilization with partners to support research projects and capacity building activities at the Platform. The expertise of hosted institutions will be critical in this process when joint resource mobilization is planned. It is expected that hosted institutions will identify resource mobilization opportunities and engage with ILRI and African partners as appropriate. In some cases requests to participate in research or capacity building at the Platform will come to the platform management team and/or the BecANet secretariat from African institutions or individuals; relevant partners would then be identified, including forming partnerships with hosted institutions at the platform.
- 4.3 **Role of Hosted Institution:** The main role of “Hosted Institution” is to provide expertise in their respective mandate crops and related crops, as well as the generic expertise of their staff that is required for the platform to meet its research and capacity building objectives. This will include contribution to individual and group training as well as provision of scientific and technical backstopping and supervision of projects. In addition, scientists of hosted institutions will be asked to participate in mobilization of resources to support both research projects and capacity building activities, and contribute to annual reports to investors who are supporting platform operations.

## **5 Key Principles Governing Relations Between ILRI and Hosted Institutions**

- 5.1 A key principle is to establish a culture of advance consultation and clear communication. As the roles and responsibilities are closely interlinked, it will be important for each party to play its role in ensuring close advanced consultation. Related to this, it will be important that decisions and actions are clearly documented and communicated as appropriate.
- 5.2 The broad principles currently in operation within the CGIAR system with regard to hosting of other CG Centres (financial management, human resources procedures, etc) will apply as appropriate to the “Hosted Institution”.
- 5.3 “Hosted institution” undertakes to contribute to capacity building through hosting of African scientists in their projects, and to provide resource persons or supervisors for group and individual training at the platform. Advanced consultation will be made between the platform management and “Hosted Institution” in terms of reaching mutual agreement on the timing and time commitment of “Hosted institution” staff to contribute to capacity building and training activities at the platform that are beyond the host’s own research and training activities. (see also Clause 5.4, 5.5)
- 5.4 Hosted institution will be asked on occasion to contribute scientific advice and technical expertise to research projects that which fall within the scope of BecANet and other partners who are users at the Platform but which are not necessarily within their own mandate. In such cases the projects or individuals seeking assistance from the hosted institutions would be expected to cover the costs of supervision and other associated services. Advanced consultation will be made between the platform management and hosted institution in terms of reaching mutual agreement on the timing and time commitment of host institution staff to contribute to research

activities at the platform that are beyond the host's own research projects. (see also Clauses 5.3,5.5) .

- 5.5 BecA ILRI Hub management and “Hosted Institution” will reach an annual agreement as to the time commitment and services of scientific and technical staff, as nominated by the “Hosted Institution”, who will contribute to backstopping research and capacity building activities at the platform that are beyond the scope of the research program of the “Hosted Institution” (Clause 5.3 and 5.4 above). This contribution of “Hosted Institution” staff services will be recognised as a contribution towards the fixed costs of platform operations, and may be in lieu of up to 50% of the annual platform fees, based on full cost recovery. (The schedule of charges, including platform fees are given in Annex A attached).
- 5.6 “Hosted institution” will be asked to contribute to joint resource mobilization activities with the platform on occasion. These may include capacity building initiatives or research projects to be conducted at the platform. The hosted institution may charge staff time to these project proposals, under mutual agreement between hosted institution and platform management, and where this staff time would be additional to their agreed contribution to platform operations (Clause 5.5).
- 5.7 The “Hosted Institution” shall keep platform management informed of research proposals or concept notes in the pipeline, to aid advance planning and as part of the culture of advanced consultation and mutual support at the platform and BecA Hub.
- 5.8 The “Hosted Institution” will provide an annual list of their full-time and part-time employees and post graduate students who will work at the shared research platform managed by ILRI, and update the list should any changes occur (Appendix 1).
- 5.9 The “Hosted Institution” is responsible to take appropriate insurance to cover all liabilities arising out of accidents or otherwise coverage for its staff and property at its costs. ILRI has no liability for the hosted institution's staff, students and property on the ILRI campus.
- 5.10 The hosted institution staff is required to observe health and safety standards as set out in ILRI's OHSE policies. No hazardous material can be brought inside the complex without the prior approval of the Lab. manager.

## **6 Personnel**

- 6.1 “Hosted Institution” will, in consultation with the Platform Research Director, assign to work at the biosciences shared Platform based at ILRI Nairobi the scientists named in Appendix 1 (hereinafter referred to as ““Hosted Institution” Staff” or “Staff”)
- 6.2 “Hosted Institution” Staff will be managed in accordance with “Hosted Institution” Institution's rules and “Hosted Institution” will be responsible for determining the administrative status of the staff member. However, during the assignment at the BecA ILRI Hub, “Hosted Institution” staff will comply with ILRI's General Administration Policy and other policies such as biosafety policies as set out in the Terms and Conditions for Platform Users (Annex B). “Hosted Institution” staff based at the Platform will work in close collaboration with the BecA ILRI Hub Director on a day to day basis.

- 6.3 “Hosted Institution” agrees to provide full salary and salary-related benefits of all nature for the “Hosted Institution” Staff in accordance with its personnel policy, including insurance coverage throughout the period of assignment at the BecA ILRI Hub.

## **7 Participation and Budget**

- 7.1 “Hosted Institution” agrees to provide the Staff member with a yearly working-budget (personnel and operations), sufficient to promote the implementation of the research activities described in the individual’s annual work plan.
- 7.2 ILRI agrees to make available to “Hosted Institution” the necessary support services and facilities needed for the implementation of the research activities. The facilities and services shall be provided under the terms and conditions detailed in this Agreement and the Annexes that are an integral part of this Agreement.
- 7.3 “Hosted Institution” Staff are expected to participate in various Platform staff professional activities which may entail participation in research, capacity building and other program activities (as described in Clauses 5.3-5.5 above).
- 7.4 “Hosted Institution” Staff undertake to contribute to short term (in service- training or participation in teaching courses) and long term training (graduate student supervision) at the Platform in his/her area of expertise or related fields. The annual time commitment of the staff member to Platform training activities will be determined by mutual agreement between “Hosted Institution” team leader at the platform and the Platform Research Director (as described in Clause 5.3- 5.5)

## **8 Payments**

All applicable payment and charges are detailed in Annex A of this Agreement. “Hosted Institution” is designated as a Category 2 User for the purposes of platform management and determining platform fees and service charges (as set out in Annex A).

## **9 Publications**

- 9.1 “Hosted Institution” is free to publish results of its research done under this Agreement, while recognizing the contribution of the host and other collaborating institutions, individuals and the funding agencies.
- 9.2 All publications shall contain the full addresses of both the hosted institution and Shared Research Platform.
- 9.3 Press releases that come out of collaborative research and capacity building activities conducted at the Platform shall be reviewed and agreed upon by both Parties before release.

## **10 Intellectual Property Rights**

- 10.1 Each Party shall own its respective Background Intellectual Property exclusively.
- 10.2 Any rights and title to Intellectual Property acquired solely by the effort of one Party’s researchers shall be owned by the Party employing such researcher and the Party owning such Intellectual Property shall be free to file or have filed any applications thereon, and to sell, license or otherwise commercialize its rights

thereunder.

- 10.3 The Parties shall have joint rights and title to any Joint Intellectual Property subject to the terms and conditions of this Agreement.
- 10.4 In the case of the Joint Intellectual Property, the Parties shall discuss in good faith whether applications relating thereto should be prepared and filed, and who should be responsible for the expenses of the preparation, filing and maintenance of such applications and any resulting rights taking due care to ensure that all applications are filed before the public disclosure of the relevant data.

## **11 Term and Termination**

- 11.1 The term of this Agreement shall be five [ 5 ] years from the Effective Date subject to termination as herein provided (the “Term”)
- 11.2 The Parties may in writing extend the Term under mutually agreeable terms and conditions for such additional periods as may be desired.
- 11.3 Either Party may terminate this Agreement upon six (6) months prior written notice to the other Party without the necessity of giving any reasons for such termination
- 11.4 In the event that either Party commits a breach of or default of any of the terms or conditions of this Agreement, and fails to remedy such default or breach (if capable of remedy) within fourteen (14) days from the date of a written notice of such breach or default from the other Party, the non-offending Party giving notice may forthwith, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party to such effect, such termination to be effective as at the date of service of such notice.
- 11.5 Expiry or termination of this Agreement by either Party for any reason shall not affect the rights and obligations of the Parties accrued prior to the effective date of expiry or termination.

## **12 Amendments**

- 12.1 The terms of this Agreement may be amended by mutual consent of both Parties. No variation or amendment to this Agreement shall be effective unless in writing and signed on behalf of each Party by a director or other duly authorized person (as the case may be).

## **13 Warranties and Indemnities**

- 13.1 Neither “Hosted Institution” nor ILRI makes any warranties, express or implied, regarding its research or results, the proprietary rights therein, intellectual property, and the commercial potential thereof, including or fitness for a particular purpose. Without limitation, any warranties of accuracy, completeness or non-infringement, merchantability or fitness for a particular purpose are hereby excluded.
- 13.2 Notwithstanding the provisions of Clause 13.1 above, the Parties undertake to carry out their responsibilities and obligations under this Agreement in good faith, in a professional manner and within the acceptable standards and ethics of the industry.
- 13.3 Subject to other provisions of this Agreement, each Party shall indemnify and hold harmless the other Party, its employees, representatives, and executive officers, from

and against any liability, damages, costs or expenses, or any claim, action, suit or other proceeding arising out of the execution or implementation of this Agreement, except to the extent that:

- 13.3.1 Such liability, damage, claim, action, suit or other proceeding is caused wilfully by the Party being held liable; or
- 13.3.2 Such liability, damages, costs or expenses, claim, action, suit or other proceeding is caused by or results from negligence on the part of such a Party

#### **14 Assignment**

- 14.1 This Agreement may not be assigned by either Party without the prior written consent of the other.

#### **15 Independence of Parties**

Neither Party shall be considered a partner of the other, nor can a Party act as an agent for the other for any purposes whatsoever. No Party has the authority, either expressed or implied, to enter into any agreement, incur any obligations on behalf, or commit the other Party in any manner whatsoever, except as may be provided in this Agreement and as may be agreed upon from time to time in writing.

#### **16 Governing Law and Jurisdiction**

- 16.1 The validity, enforcement, construction and performance of this Agreement shall be governed by the English laws and the Parties submit to the exclusive jurisdiction of the courts of Kenya.

#### **17 Dispute Resolution**

- 17.1 In the event of a dispute arising between the Parties in respect of any matter contained in this Agreement the aggrieved Party shall notify the other in writing about the existence and nature of the dispute within Fourteen (14) days of the dispute arising. The Parties shall negotiate in good faith to settle the dispute in question as expeditiously as possible through the Parties' chief executives but in any event within a period of Fourteen (14) days of the matter being referred to them.
- 17.2 If within fifteen (15) Business Days following the date in which such notice is given the dispute cannot be resolved, the Parties agree to submit the matter to a single arbitrator to be appointed by the Parties jointly and failing agreement, to be appointed in accordance with the provisions of the Rules of the International Chamber of Commerce which Rules shall govern the arbitration.
- 17.3 The decision of the arbitrator shall be final and binding upon the Parties to the fullest extent permissible by law.
- 17.4 Notwithstanding the above provisions of this clause, any Party is entitled to seek preliminary injunctive relief or interim measures from any court of competent jurisdiction pending the final decision or award of the arbitrator

**18 Entire Agreement**

18.1 This Agreement includes the following Annexes that are an integral part of the Agreement

**Annex A Schedule of charges for platform users 2008/09**

A 1 General costs for platform users (2008)

A 2 Schedule of variable costs for research project activities

A 3 Platform fees applicable for Category 2 Users (Hosted Institutions)

**Annex B Terms and conditions for platform use**

**Annex D General Provisions for ILRI hosting of institutions**

18.2 The Agreement including its Annexes represents the entire understanding between the Parties, and supersedes all prior agreements, written or oral, between the Parties relating to the subject matter of this Agreement. This Agreement may be executed simultaneously in any number of counterparts and may be executed by facsimile. All counterparts shall collectively constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties authorized representatives have agreed and executed this document in English in two originals.

International Livestock Research Institute (ILRI)

Hosted Institution

\_\_\_\_\_  
Carlos Sere

Director General

Date: \_\_\_\_\_

\_\_\_\_\_

Director

Date : \_\_\_\_\_

## **Attachments that form part of this Agreement**

### **Annex A Schedule of charges for platform users**

- A 1 General costs for post graduate students and visiting scientists (2009)
- A 2 Schedule of variable costs for research project activities
- A 3 Platform fees as a contribution towards platform operations fixed costs

### **Annex B Terms and Conditions for Platform Use**

### **Annex D General Provisions for ILRI hosting of institutions**