

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS



GENERAL LIST NO. 303

**QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND BENEFIT
SHARING IN THE CONTEXT OF DE-EXTINCTION**

ANECOYON

(APPLICANT)

v.

RIDUS

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

30TH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

2025–2026

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TABLE OF ABBREVIATIONS

ABS	Access and Benefit Sharing
Agreement	2009 Loan Agreement between Ridus and Anecoyon
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CBD	Convention on Biological Diversity
DSI	Digital Sequencing Information
EIA	Environmental Impact Assessment
Guidelines	Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization
ICJ or this Honorable Court	International Court of Justice
GBF	Kunming-Montreal Global Biodiversity Framework
MNRA	Ministry of Natural Resources of Anecoyon
PIC	Prior Informed Consent
Programme	Ridus' De-Extinction and Rewilding Programme
Protocol	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity
NMR	National Museum of Riders
SAP	Sidney Animal Park
VCLT	Vienna Convention on the Law of Treaties

QUESTIONS PRESENTED

- I. WHETHER RIDUS LAWFULLY OBTAINED AND RELIED UPON PRIOR INFORMED CONSENT PURSUANT TO THE CBD AND NAGOYA PROTOCOL; AND
- II. WHETHER ANECOYON’S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS COUNTER TO THE CBD’S OBJECTIVES.
- III. WHETHER DSI USED FOR DE-EXTINCTION ACTIVITIES IS “BIOTECHNOLOGY” FOR PURPOSES OF THE CBD AND NAGOYA PROTOCOL; AND
- IV. WHETHER SIDNEY ANIMAL PARK IS A USER OF DSI AND ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED WITHIN CBD DECISION 16/2.

STATEMENT OF JURISDICTION

On 14 July 2025, Anecoyon and Ridus submitted, by Special Agreement, the following dispute to the ICJ, pursuant to Article 40(1) of the Statute of the Court.

The Registrar of the ICJ duly acknowledged receipt of the Special Agreement on 28 July 2025.

Anecoyon and Ridus have accepted the jurisdiction of the ICJ In accordance with Article 36(1) of the Statute and Article I of the Special Agreement, and request that this Honorable Court adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

STATEMENT OF FACTS

Anecoyon and Ridus are neighbouring sovereign States on the Passager Peninsula and Parties to the UN Charter, Statute of the Court, VCLT, CBD, Protocol, and CITES.¹

The Royal Panther (*Puma Royali*), a species once native to both States, and of cultural significance to the Indigenous Panthera People became extinct approximately six thousand years ago.² The most complete fossil, discovered in Anecoyon in 1901, was held by its Ministry of Natural Resources.³

In 2009, Anecoyon loaned the fossil to the NMR for twenty years for scientific and educational research.⁴ In 2020, the NMR extracted DNA to initiate a de-extinction programme. Anecoyon objected, asserting that new PIC was required under the CBD and Protocol. Ridus maintained that the 2009 Loan Agreement constituted valid consent and that the Protocol could not apply retroactively.⁵

Diplomatic exchanges failed, and in 2023, Anecoyon enacted legislation prohibiting de-extinction using its genetic resources and requested the fossil's return. Ridus complied but continued genome sequencing to advance biodiversity conservation.⁶

¹ R. at 2, ¶ 1.

² R. at 3, ¶ 2.

³ R. at 3, ¶ 3.

⁴ R. at 4, ¶ 6.

⁵ R. at 5 ¶ 10-11.

⁶ R. at 6, ¶ 13-15.

On 13 August 2024, Ridus completed and publicly released Royal Panther genome.⁷ Salols Co., a Ridus-based company, used the DSI to recreate two Royal Panthers, now housed at SAP.

At COP16, Parties adopted Decision 16/2, establishing the voluntary Cali Fund for benefit-sharing from DSI. Ridus pledged to encourage voluntary participation by commercial entities. In April 2025, Anecoyon demanded that Ridus require SAP to contribute, alleging it was a commercial DSI user. Ridus rejected this, maintaining that the Decision is non-binding and SAP's activities engages are non-commercial, conservation activities.⁸

The Parties agreed to submit the matter to the ICJ for determination.⁹

⁷ R. at 7, ¶ 16.

⁸ R. at 8, ¶ 19-20.

⁹ R. at 9, ¶ 21.

SUMMARY OF ARGUMENTS

I. RIDUS ACTED LAWFULLY BY OBTAINING AND RELYING ON VALID PRIOR INFORMED CONSENT

In 2009, Anecoyon authorised NMR to conduct scientific and educational research on the Royal Panther fossil. This sovereign consent, valid under the VCLT, satisfied Article 15 CBD and the Bonn Guidelines. Under Articles 26, 28 and 31 VCLT, it cannot be withdrawn, reinterpreted, or retroactively constrained by the Protocol. Anecoyon is estopped from denying the authorisation it granted. Ridus' continuing research and conservation activities remain lawfully grounded in enduring PIC and fully advance the objectives of the CBD.

II. RIDUS' DE-EXTINCTION PROGRAMME DOES NOT TRIGGER ACCESS AND BENEFIT-SHARING OBLIGATIONS

Ridus' Programme lies outside the scope of the Protocol and COP Decision 16/2. SAP is a non-commercial conservation institution, not a biotechnology actor within the commercial sectors targeted by Decision 16/2. ABS duties arise only where genetic resources are utilised through active research and development, which SAP does not conduct. Its conservation-focused activities fall within Article 8 CBD. Ridus therefore incurs no liability to benefit share.

ARGUMENTS ADVANCED

I. RIDUS ACTED LAWFULLY BY OBTAINING AND RELYING ON VALID PRIOR INFORMED CONSENT

The CBD¹⁰ seeks to conserve biodiversity, ensure its sustainable use, and promote fair benefit-sharing.¹¹ Ridus' Programme advances these objectives by restoring the Royal Panther, a keystone predator essential to ecosystem balance,¹² through non-destructive genomic research and phased reintroduction. The Programme exemplifies the CBD's object and purpose: the responsible and cooperative, use of genetic resources to enhance biodiversity.¹³

Ridus acted transparently, exercised due diligence, and used modern scientific tools strictly for conservation, not exploitation. Against this backdrop, Ridus acted lawfully and in good faith in obtaining and relying on valid PIC, which continues to provide the legal foundation for all subsequent research.

¹⁰ U.N. Convention on Biological Diversity, *opened for signature* June 5, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993) [hereinafter CBD].

¹¹ *id.*, art. 1.

¹² Camilla Ekblad et al., *Living with the enemy: the return of an apex predator is associated with habitat shifts in a common but rapidly declining prey population*, 40 *Landscape Ecology* 139 (2025), <https://doi.org/10.1007/s10980-025-02152-7>.

¹³ Tammy E Steeves, Jeff A Johnson and Marie L Hale, *Maximising evolutionary potential in functional proxies for extinct species: a conservation genetic perspective on de-extinction* 31 *Functional Ecology* 1032 (2017), <https://doi.org/10.1111/1365-2435.12843>.

A. THE 2009 FOSSIL LOAN PROVIDED BINDING PRIOR INFORMED CONSENT

(i) *The Loan Agreement Constitutes a Binding Treaty*

Anecoyon and Ridus are both parties to the VCLT.¹⁴ Under Article 2(1)(a), any written agreement between the Parties governed by international law constitutes a treaty, regardless of its form or nominal designation.¹⁵

In 2009, the MNRA loaned the Royal Panther fossil to the NMR for scientific and educational purposes.¹⁶ This arrangement, concluded between two State organs acting with sovereign authority, qualifies as an international agreement under the VCLT.¹⁷

The Agreement satisfies all VCLT criteria: it was a written instrument, concluded between competent state organs,¹⁸ acting with the requisite authority,¹⁹ and intended to create mutual legal rights and obligations regarding the fossil's custody and use.

Accordingly, the Agreement possesses binding legal force, establishing continuing obligations for both Parties, including Anecoyon's authorisation of consent and Ridus' compliance with the agreed conditions of use, on which Ridus is entitled to rely.

¹⁴ Vienna Convention on the Law of Treaties, *adopted* May 22, 1969, 1155 U.N.T.S 331 (entered into force Jan. 27, 1980) [Hereinafter VCLT].

¹⁵ Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahr.), Judgment, 1994 I.C.J. 112, ¶ 23-24 (July 1).

¹⁶ R. at 7, ¶ 15.

¹⁷ Jan Klabbbers, *The 1969 Vienna Convention's Definition*, in *The Concept of Treaty in International Law* (1996).

¹⁸ VCLT, *supra* note 14, art. 6.

¹⁹ *id.*, art. 7.

(ii) *The Agreement Satisfied PIC*

Through the Agreement, Anecoyon, as the providing state, granted Ridus PIC to access the fossil as a genetic resource, in accordance with Article 15 CBD.

The Agreement operationalises Article 15 and aligns with the Bonn Guidelines,²⁰ which establish the prevailing international standards for implementing PIC.²¹ These Guidelines prioritise three requirements: (i) authorisation by a competent national authority, (ii) specification of the intended use, and (iii) adherence to clear procedural timelines.²²

The Agreement incorporates all three: it was authorised by Anecoyon's competent authority, defined the purposes of access, specified the permitted use, and established a fixed twenty-year loan period. These safeguards ensured that consent was informed and obtained prior to any access to the fossil, in line with the Guidelines' emphasis on authority oversight, clarity of use, and procedural certainty.²³

The Agreement created valid PIC under the Convention, aligned with the best international standards. Thereby, providing a transparent, legally binding framework that continues to authorise Ridus' research and conservation work.

²⁰ CBD Secretariat, 'Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization' (2002) [Hereinafter Guidelines].

²¹ Thomas Greiber et al, *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing* 1, 19 (IUCN Env'tl. Pol'y & L. Paper No. 83, 2012), <https://portals.iucn.org/library/efiles/documents/eplp-083.pdf>.

²² Guidelines, *supra* note 8, ¶ 27.

²³ Gurdial Singh Nijar, *Incorporating Traditional Knowledge in an International Regime on Access to Genetic Resources and Benefit Sharing: Problems and Prospects*, 21 Eur. J. Int'l L. 457, 472-474 (2010).

(iii) *Consent Once Granted Cannot be Unilaterally Revoked*

As Parties to a VCLT-governed agreement, Anecoyon and Ridus are bound by Articles 26 and 31, which require treaties to be performed in good faith and interpreted with their ordinary meaning, object and purpose.²⁴ Once granted, consent cannot be unilaterally revoked or redefined in manner that frustrates the agreed objectives, any such attempt constitutes an abuse of rights under international law.²⁵

The ABS framework protects the purpose of an activity, not specific techniques used to pursue it. A purpose-based consent is technologically neutral by design, and interpreting it otherwise would render ABS agreements obsolete every time scientific capacity advances. Therefore, restricting Ridus' use of modern scientific techniques, such as genome reconstruction or de-extinction, contravenes Anecoyon's VCLT obligations and the cooperative spirit underpinning the CBD.²⁶

Comparative state practice, including the Hoodia and San Peoples case study, recognises that PIC can encompass new methodologies as long as it remains within the authorised purpose.²⁷

²⁴ Donald H. Regan, *Understanding What the Vienna Convention Says About Identifying and Using 'Sources for Treaty Interpretation'*, in *The Oxford Handbook on the Sources of International Law* (Samantha Besson & Jean d'Aspremont eds., 2017).

²⁵ Steven Reinhold, *Good Faith in International Law*, 2 UCL J.L. & Jurisprudence 40, 49-50 (2013); World Trade Org., Appellate Body, United States — Import Prohibition of Certain Shrimp and Shrimp Products, AB-1998-4, WT/DS58/AB/R ¶ 158 (Oct. 12, 1998).

²⁶ Cf. Roger Brownsword, *The Age of Regulatory Governance and Nanotechnologies*, in *International Handbook on Regulating Nanotechnologies* ch. 4 (Graeme A. Hodge, Diana M. Bowman & Andrew D. Maynard eds.), reprinted in *Environmental Regulation* 671, 686–689 (John McEldowney & Sharron McEldowney eds., 2014).

²⁷ WIPO, *Leveraging Economic Growth through Benefit Sharing*, (Aug. 31, 2010), <https://www.wipo.int/en/web/ip-advantage/w/stories/leveraging-economic-growth-through-benefit-sharing>; Obligations of States in respect of Climate Change, Advisory Opinion, 2025 I.C.J., at 87, 92, 103 (July 23); and Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 140 (Sep. 25).

Similarly, Ridus' Programme, confined to the original conservation and research purposes, reflects valid good-faith reliance on the consent, which remains operative under Article 15 CBD.

B. THE PROTOCOL DOES NOT APPLY RETROACTIVELY TO THE AGREEMENT

(i) The Protocol Cannot Apply Retroactively

As a Party to the VCLT, Anecoyon is bound by Article 28, which codifies the principle of non-retroactivity pursuant to Article 28: treaties apply only to acts occurring after their entry into force, unless a contrary intention is expressed.²⁸ The Protocol contains no retroactive clause,²⁹ and draft proposals extending its temporal scope were abandoned, confirming its prospective operation.³⁰

In *Phosphates in Morocco*³¹ and *Ambatielos*,³² the Permanent Court held that treaty obligations arise only from the date of consent. More recently, in *CERD*, this Honorable Court reaffirmed

²⁸ Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, [2012] 2 I.C.J. 457, ¶ 100 (July 20); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Judgment, [2015] 1 I.C.J. 49, ¶ 95-96 (Feb. 3).

²⁹ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, *adopted* Oct. 29, 2010, 3008 U.N.T.S. 3 (entered into force Oct. 12, 2014) [Hereinafter Protocol].

³⁰ Evanson Chege Kamau et al., *The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What Is New and What Are the Implications for Provider and User Countries and the Scientific Community?*, 6(3) *Law, Env't. & Dev. J.* 246, 254–255 (2010), <http://www.lead-journal.org/content/10246.pdf>; International Union for Conservation of Nature, *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing* 26 (IUCN Environmental Law Centre 2012).

³¹ *Phosphates in Morocco* (It. v Fr.), Judgment, 1938 P.C.I.J. (ser. A/B) No. 74, ¶ 30 (June 14).

³² *Ambatielos* (Greece v U.K.), Judgment, 1952 I.C.J. 28, 40–41 (July 1).

that treaties bind States only with respect to post-entry-into-force conduct.³³ Applying the Protocol to conduct predating 2014 would violate Article 28.

This Honorable Court is urged to extend its established jurisprudence on non-retroactivity to the Protocol, preserving legal certainty for all CBD Parties and confirming PIC remains binding and authorises Ridus' ongoing research and conservation.

(ii) Consent Lawfully Granted Remains Valid

Ridus' access to the fossil is secured through the PIC Anecoyon granted in 2009. This consent remains operative despite the Protocol's subsequent entry into force in 2014. The Agreement created binding rights and obligations governing all subsequent activities.

Article 10 of the Protocol acknowledges situations in which obtaining PIC may be impossible, for example, pre-Protocol accessions. Thus, the Protocol operates prospectively and does not displace pre-existing consent authorised under the CBD. Accordingly, the Agreement remains governed by the original CBD consent.

By relying on this consent, Ridus acted within the limits of lawful consent. Under the Articles on State Responsibility, no wrongdoing arises so long as Ridus' activities remain consistent with the consent received.³⁴

(iii) The Protocol Applies Prospectively Only

³³ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azer. v Arm.), Preliminary Objections, 2024 General List No. 181, ¶ 43 (I.C.J. Nov. 12, 2024) (Advance Copy) [Hereinafter CERD].

³⁴ G.A. Res. 56/83, at 5, art. 20 (Jan. 28, 2002).

Ridus' fossil acquisition lies beyond the Protocol's temporal scope, as obligations trigger at the point of access, not utilisation.³⁵

Implementation by CBD Parties confirm this temporal approach. Both the EU³⁶ and UK identify the moment of access as the operative trigger, ensuring that obligations apply prospectively.

Treating utilisation as the trigger would retroactively impose obligations on pre-Protocol activities, violating Article 28 VCLT and legal certainty. It would compel reconstructing historic access records, creating administrative impossibility and undermining the Protocol's objective of predictable and cooperative ABS.

Accordingly, Ridus' access, obtained five years before the Protocol's entry into force, remains governed solely by the CBD, and all post-Protocol activities continue lawfully within the scope of the original consent.

C. ANECOYON IS ESTOPPED FROM REVOKING OR RESTRICTING ITS PIC

(i) Ridus Relied in Good Faith on Anecoyon's Consent

By loaning the fossil to Ridus for scientific and educational research, Anecoyon provided clear and unequivocal consent that reasonably induced reliance.

³⁵ Protocol, art. 6(1); and Bart Van Vooren & Yuliya Gevrenova, *Resolving Access and Benefit-Sharing from Biodiversity*, 19(6) *Biosci. L. Rev.* 211, 219 (2025).

³⁶ Regulation (EU) No. 511/2014 of the European Parliament and of the Council of 16 Apr. 2014 on Compliance Measures for Users from the Nagoya Protocol on Access to Genetic Resources, 2014 O.J. (L 150) 59, art. 3(4).

A State that induces such reliance through clear representations cannot subsequently alter its position. In *Temple of Preah Vihear*,³⁷ this Honorable Court affirmed that a State which has accepted and acted upon a representation is precluded from later resiling from it. Similarly, in the *North Sea Continental Shelf* cases,³⁸ consistent conduct was recognised as generating binding legal expectations.

Ridus' sustained reliance on Anecoyon's consent reflected a reasonable belief in its validity and enduring effect, unequivocally establishing a legitimate expectation under international law. Thereby, compelling recognition of Ridus' ongoing activities as lawful.

(ii) Anecoyon is Estopped from Revoking Its Consent

Having induced Ridus' reliance, Anecoyon is estopped from retroactively withdrawing or reinterpreting its consent in a manner that harms Ridus.

Estoppel applies where (i) a clear and unambiguous representation is made; (ii) another State reasonably relies on it; (iii) detriment results from that reliance; and (iv) subsequent conduct contradicts the original representation.

Each element is satisfied: the Agreement unambiguously authorised scientific and educational research; Ridus reasonably relied in good faith by committing substantial scientific, financial, and institutional resources; revocation would inflict concrete detriment on over a decade of

³⁷ *Temple of Preah Vihear (Cambodia v Thai.)*, Judgment (Merits), 1962 I.C.J. 6, at 32 (Jun. 15).

³⁸ *North Sea Continental Shelf (Federal Republic of Ger. v Den.; Federal Republic of Ger. v Neth.)*, Judgment, 1969 I.C.J. 3, ¶ 28–30 (Feb. 20).

investment; and Anecoyon's attempt to restrict or revoke consent contradicts its prior representation.

Revoking consent by invoking obligations under a treaty not yet in force further contravenes Article 26 VCLT. Good faith requires Anecoyon to honor commitments voluntarily undertaken and refrain from conduct that defeats legitimate reliance.

Designed to enhance rather than expand the CBD, the Protocol operationalises ABS obligations prospectively, leaving pre-existing consent unaffected. Its *travaux préparatoires* confirms that the Protocol implements the CBD without extending its scope or altering rights exercised prior to entry into force.

Accordingly, the doctrine of estoppel prevents Anecoyon from revoking or reinterpreting its PIC. In doing so, it upholds legal certainty and ensures Ridus' lawful investment remains protected from arbitrary alteration, safeguarding the predictability essential for its ongoing activities.

D. RIDUS' USE OF THE FOSSIL ADVANCED THE OBJECTIVES OF THE CBD

(i) Ridus' Activities Constitute Permissible Research

Ridus' Programme constitutes good-faith scientific research, consistent with the CBD. In *Whaling in the Antarctic*,³⁹ this Honorable Court held that that activities pursued with genuine

³⁹ *Whaling in the Antarctic* (Austl. v Japan: N.Z. intervening), Judgment, 2014 I.C.J. 226, ¶¶ 127–227 (Mar. 31).

scientific intent are permissible under international law. Ridus meets this standard through conservation-driven research aligned with the CBD's objectives.

Anecoyon's refusal to cooperate frustrates Article 15(2) CBD, which requires access measures to facilitate, not obstruct, its objectives. As affirmed in *Gabčíkovo-Nagymaros*, sovereign prerogatives must be exercised compatibly with cooperative obligations; Anecoyon's obstruction breaches this duty.⁴⁰

(ii) *The GBF Supports Ridus' Conservation Measures*

Ridus conducts its Programme consistently with the GBF, the leading expression of international best practice in biodiversity conservation and restoration. Although non-binding, the GBF reflects global consensus on science-based management, ecosystem restoration, and inclusive engagement with Indigenous peoples.⁴¹

The Programme advances these objectives: restoring the Royal Panther enhances ecosystem balance and genetic diversity, while collaboration with the Panthera people ensures equitable participation and sustainable livelihood opportunities. Further, controlled zoological housing prior to reintroduction reflects the GBF's emphasis on phased, risk-managed, and precautionary restoration.

⁴⁰ *Gabčíkovo–Nagymaros*, *supra* note 27, ¶ 140–142.

⁴¹ Conference of the Parties to the Convention on Biological Diversity, *Kunming–Montreal Global Biodiversity Framework*, UNEP/CBD/COP/15/5/Add.1, Goals A–D adopted 19 December 2022).

(iii) *Ridus Exercised Due Diligence*

Ridus consistently fulfils international standards of environmental due diligence. Its Programme reflects vigilance, foresight, and effective risk-management in line with the CBD and this Honorable Court's jurisprudence.

As affirmed in *Pulp Mills* and *Gabčíkovo-Nagymaros*, States must take appropriate and reasonable measures where risks may be serious or irreversible.⁴² Ridus complied by conducting a comprehensive EIA consistent with *Certain Activities* and the ILC Draft Articles, through non-destructive sequencing, phased captive management, and continuous ecological monitoring.⁴³

Ridus also fulfilled the participatory dimension of due diligence by ensuring informed involvement of the Panthera community.⁴⁴ Its inclusive model aligns with evolving practice, reflecting India's community consent⁴⁵ and New Zealand's co-management regimes.⁴⁶ By centring indigenous participation in its governance, Ridus meaningfully advances an equitable model of biodiversity stewardship.

⁴² Int'l Law Comm'n, *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities with Commentaries*, 2 Y.B. Int'l Law Comm'n 392, art. 3, cmt. 7 (2001); *Pulp Mills on The River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14, ¶ 197 (Apr. 20); *Gabčíkovo–Nagymaros*, *supra* note 27, ¶ 140.

⁴³ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicar.)*, Judgment, 2015 I.C.J. 665, 104.; Int'l Law Comm'n, *supra* note 42, art. 7.

⁴⁴ CBD, *supra* note 10, art. 10(c); Rumiana Yotova, *The Principles of Due Diligence and Prevention in International Environmental Law* 75(3) *Cambridge L.J.* 445 (2016).

⁴⁵ Panchayats (Extension to Scheduled Areas) Act, 1996 (Act No.40/1996) (India); Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No.2/2007) (India); and *Orissa Mining Corporation v. Ministry of Environment and Forests*, [2013] 6 S.C.C. 476 (India).

⁴⁶ *Te Urewera Act, 2014* (Act No.51/2014) (N.Z.); *Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017* (Act No.7/2017) (N.Z.).

The Programme operationalises the precautionary principle under Principle 15 of the Rio Declaration.⁴⁷ As applied in *Pulp Mills*⁴⁸ and *Southern Bluefin Tuna*,⁴⁹ this requires anticipatory action amid scientific uncertainty. Ridus' phased implementation, adaptive management, and transparency with Anecoyon satisfies this standard.⁵⁰

Accordingly, Ridus demonstrates adherence to the procedural and substantive requirements of due diligence, positioning its Programme as a leading model of precaution-based conservation

E. ANECOYON BREACHED ITS DUTY TO COOPERATE UNDER THE CBD AND THE PROTOCOL

(i) Sovereignty is Subject to Good Faith and Cooperation

Article 3 of the Protocol affirms Anecoyon's sovereignty over genetic resources, however, this sovereignty is not absolute.⁵¹ Therefore, rights must be exercised in good faith,⁵² with restraint,⁵³ and in line with the 'common concern of humankind'.⁵⁴

⁴⁷ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (1992), Principle 15.

⁴⁸ *Pulp Mills*, *supra* note 42.

⁴⁹ *Southern Bluefin Tuna (N.Z. v. Japan; Austl. v. Japan)*, Provisional Measures, 1999 I.T.L.O.S. Rep. 280, 38 I.L.M.1624, ¶ 79 (Aug. 27).

⁵⁰ Alessandra Guida, *Walking Through Silent Forests: Genetic Engineering and the Guiding Hand of the Precautionary Principle*, 29 *Envtl. Liab. L. & Pol'y Prac.* 46, 53–55 (2025).

⁵¹ Stockholm Declaration on the Human Environment, UN Doc. A/CONF.48/14/Rev.1 (1973), Principle 21; Rio Declaration, *supra* note 45, Principle 2.

⁵² Alexandra Carleton, *International Law of Abeyance: Our Sovereign Wild*, 2 *Global Ecology & L.* 25, 11–16 (2025).

⁵³ Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, 125 (1st ed. 1953).

⁵⁴ David M. Ong, *International Environmental Law Governing Threats to Biological Diversity*, in *Research Handbook on International Environmental Law* 519, 534–35 (Malgosia Fitzmaurice et al. eds., 2010); Carlos M Correa, *Sovereign and Property Rights over Plant Genetic Resources*, 12(4) *Agriculture and Human Values* 57, 61–63 (1995).

This Honorable Court asserted in *Gabčíkovo-Nagymaros* that States may not invoke sovereignty to evade treaty-based duties of cooperation.⁵⁵ The CBD and Article 11 of the Protocol adopt this model,⁵⁶ requiring States to cooperate where genetic resources span borders.

The Royal Panther's historic transboundary range creates shared ecological stewardship between the Parties.⁵⁷ By invoking sovereignty to obstruct previously authorised research, Anecoyon disregarded the Protocol's cooperative framework and the CBD's principles of equity and sustainable use.⁵⁸

Anecoyon and Ridus must exercise discretion reasonably,⁵⁹ proportionately, and in good faith. Anecoyon breached these duties by unilaterally obstructing non-commercial scientific research.

(ii) *Anecoyon Breached Its Duty to Cooperate*

The CBD and Protocol impose a continuing duty to cooperate, requiring communication, consultation, and participation.⁶⁰ As this Honorable Court emphasised in *Pulp Mills*,

⁵⁵ *Gabčíkovo–Nagymaros*, *supra* note 27, ¶¶ 112-114, 135, 142; Nico J. Schrijver, *Role of State Sovereignty in Securing the Planetary Future: Some Reflections*, 54(4–6) *Envtl. Pol'y & L.* 258, 259–264 (2025).

⁵⁶ *Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, Inter-Am. Ct. H.R. (ser. A) No. 32, ¶¶ 252-253 (May 29, 2025).

⁵⁷ Elisa Morgera, *Justice, Equity and Benefit-sharing under the Nagoya Protocol to the Convention on Biological Diversity*, BENELEX Working Paper No. 5, Edinburgh Sch. of L. Research Paper No. 2015/16 (2015).

⁵⁸ CBD, *supra* note 10, arts. 3, 5, 14.

⁵⁹ *Immunities and Criminal Proceedings (Eq. Guinea v. Fr.)*, Judgment, 2020 I.C.J. 300, ¶ 51 (Dec. 11).

⁶⁰ Neil Craik, *The Duty to Cooperate in the Customary Law of Environmental Impact Assessment*, 69 *ICLQ* 239 (2020).

cooperation entails notifying and engaging in meaningful consultations where activities may have transboundary implications.⁶¹ The ILC Draft Articles similarly require information exchange and feasible measures to prevent or minimise harm.⁶²

Anecoyon failed to meet these obligations. Its engagement was superficial, tainted by minimal dialogue and refusal to consider reasonable proposals despite Ridus' openness to transparent negotiations.⁶³ Restrictive measures must rest on demonstrable risk under the precautionary and proportionality principles,⁶⁴ yet Anecoyon provided no scientific basis for its objections. Ridus, by contrast, completed an EIA showing clear ecological benefit.

Cooperation, therefore, requires substance, not form.⁶⁵ By imposing a unilateral prohibition without prior consultation, scientific evaluation or joint assessment, Anecoyon breached Article 11 of the Protocol and Article 5 CBD. Its unilateralism and disregard for scientific evidence constitute a “manifestly excessive”⁶⁶ and bad-faith exercise of sovereignty.

⁶¹ Pulp Mills, *supra* note 42, at 197.

⁶² Int'l Law Comm'n, *supra* note 42, art. 9.

⁶³ Neil Craik, *The International Law of Environmental Impact Assessment: Process, Substance and Integration*, 68–77 (1st ed. 2008).

⁶⁴ IUCN, *Guidelines for Applying the Precautionary Principle to Biodiversity Conservation* (2007).

⁶⁵ Nkechinyelu Patricia Oranye & Abimbola W. Aremu, *The Duty to Cooperate in State Interactions for the Sustainable Use of International Watercourses*, 2(1) *Discover Sustainability* 45, 3 (2021).

⁶⁶ Caroline E. Foster, *Due Regard for Future Generations? The No Harm Rule and Sovereignty in the Advisory Opinions on Climate Change*, 13(3) *Transnational Environmental Law* 588, 593–600 (2024).

II. DSI USED FOR THE PROGRAMME DOES NOT TRIGGER ABS OBLIGATIONS UNDER THE CBD, PROTOCOL OR DECISION 16/2

Ridus' Programme was built entirely on DSI extracted from a fossil that contained no functional genetic material. Once sequenced, the data became non-biological information and was released into open scientific databases. All biological reconstruction occurred solely within Ridus, using modern cougar cells. SAP functions as a custodial conservation institution providing habitat and care.

Under the CBD and the Protocol, ABS obligations arise where a user utilises viable genetic material. Decision 16/2 regulates commercial actors deriving economic value from DSI. Ridus and SAP satisfy neither threshold. Their conservation-based use of non-viable, publicly disclosed DSI cannot trigger ABS obligations.⁶⁷

A. DSI USED FOR THE PROGRAMME DOES NOT CONSTITUTE “BIOTECHNOLOGY” UNDER THE CBD AND PROTOCOL

(i) *DSI is Not Biotechnology or a Derivative*

Article 2 CBD defines “biotechnology” as technological applications acting upon living organisms, biological systems or biochemical directives. Its ordinary meaning and negotiating history confine this definition to tangible, functional biological material.⁶⁸ DSI, a

⁶⁷ Conference of the Parties to the CBD, *Decision 16/2: Digital sequence information on genetic resources*, U.N. Doc. UNEP/CBD/COP/DEC/16/2 (2024).

⁶⁸ CBD, *supra* note 10, art. 2; Frank Irikefe Akpoviri et al., *Digital Sequence Information and the Access and Benefit-Sharing Obligation of the CBD*, 17 *Nanoethics* 1, 2 (2023).

dematerialised informational output, falls outside this framework⁶⁹ and is not a biological resource or derivative.⁷⁰

Digitisation severs the connection between biological material and the sequenced data,⁷¹ which is then deposited in open databases and circulates internationally as informational output.⁷² Ridus handled the DSI accordingly, releasing it publicly and within an accessible scientific environment.

The CBD Secretariat recognises that DSI's legal status remains unresolved,⁷³ and subsequent COP decisions have not treated it as biotechnology.⁷⁴ CBD Parties, including Japan and Switzerland similarly maintain that the CBD and the Protocol govern tangible genetic

⁶⁹ Airton Guilherme Berger Filho & Bruna Gomes Maia, *The Inclusion of the Digital Sequence Information (DSI) in the Scope of the Nagoya Protocol and Its Consequences*, 19 *Braz. J. Int'l L.*, 242, 244–246 (2022).

⁷⁰ Margaret A Bagley et al., *What is DSI and What is It Not?*, ABS Biotrade and Emory University, (2019), https://archive.abs-biotrade.info/fileadmin/media/ABS_Simply_explained/Webinar_DSI/What_is_DSI_and_What_is_it_Not_Margo_A_Bagley.pdf.

⁷¹ Charles Lawson & Michelle Rourke, *Digital Sequence Information as a Marine Genetic Resource Under the Proposed UNCLOS Legally Binding Instrument*, 122 *Marine Pol'y* 103878, 103879– 103880 (2020).

⁷² R. at 10, ¶ 28; Stuart J Smyth et al., *Implications of Biological Information Digitization: Access to and Benefit-Sharing of Genetic Resources*, 23(9) *J. World Intell. Prop.* 267, 268 (2020).

⁷³ Ad Hoc Technical Expert Group on DSI on Genetic Resources, *Digital Sequence Information on Genetic Resources: Concept, Scope and Current Use*, U.N. Doc. CBD/DSI/AHTEG/2020/1/3 (Jan. 29, 2020), 2 and 44–45.

⁷⁴ *Study of the Committee on Environment, Public Health and Food Safety on Issues at Stake at COP 16 to the Convention on Biological Diversity*, at 8 (Oct. 2024), [https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754217/IPOL_STU\(2024\)754217_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754217/IPOL_STU(2024)754217_EN.pdf); Global Core Biodata Resource, *Briefing on Benefit-Sharing from Use of Digital Sequence Information (DSI) on Genetic Resources*, Nodes Guidance (Sep. 23, 2024), <https://www.gbif.org/article/asp3RhYr7clY8Bpdxarr/briefing-on-benefit-sharing-from-use-of-digital-sequence-information-on-genetic-resources-dsi>; Informal Advisory Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources, *Informal intersessional work on DSI in 2023/2024*, CBD Secretariat (June 19, 2024), <https://www.cbd.int/dsi-gr/iag-2024.shtml>.

resources, not dematerialised data.⁷⁵ The treaty text, institutional guidance and State practice converge that DSI lies outside the CBD's material scope and cannot trigger ABS obligations.⁷⁶

(ii) *ABS Obligations Apply Only to the Utilisation of Genetic Resources*

ABS obligations arise only where “genetic material” containing functional units of heredity are utilised under Article 2 CBD and Article 2(c) of the Protocol.⁷⁷ “Genetic resources” refers to material of actual or potential value,⁷⁸ including value derived from its capacity to enable further biological use.⁷⁹ Decision X/1,⁸⁰ by adopting the Protocol, operationalises the definition of “utilisation” as research and development on the biochemical and genetic composition of genetic material.⁸¹

The fossil did not contain functional units of heredity: fossilised DNA is non-viable, degraded, and incapable of replication or genetic exchange.⁸² Thereby, rendering it biologically inert and unsuitable for any genetic manipulation.

⁷⁵ Akpoviri et al., *supra* note 68, 4.

⁷⁶ Lawson & Rourke, *supra* note 71.

⁷⁷ Filho & Bruna Gomes Maia, *supra* note 69; CBD, *supra* note 10, art. 2; Protocol, *supra* note 29, art. 2(c).

⁷⁸ CBD, *supra* note 10, art. 2.

⁷⁹ Love Dalén et al., *Deep-time paleogenomics and the limits of DNA survival*, 382(6666) *Science* 48 (2023), <https://www.science.org/doi/10.1126/science.adh7943>.

⁸⁰ Conference of the Parties to the CBD, *Decision X/1: Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*, U.N. Doc. UNEP/CBD/COP/DEC/X/1 (2010).

⁸¹ Protocol, *supra* note 29, art. 2(c).

⁸² China Williams et al., *The CBD For Botanists: An Introduction to the Convention on Biological Diversity for People Working with Botanical Collections*, Royal Botanic Gardens and Darwin Initiative, (2003), https://absch.cbd.int/api/v2013/documents/43FDEEDB-C8FF-02CB-4832-1BA9548EDE4C/attachments/204704/CBD_for_Botanists_V2.pdf.

The Royal Panther embryo was derived solely from modern biological material. The incorporation of non-viable extinct DNA mirrors established de-extinction research, such as the mammoth-elephant model,⁸³ where ancient fragments are integrated to yield organisms compatible with current ecosystems.⁸⁴

Article 15 of the Protocol links “utilisation” to the access and technological application of viable, biological material.⁸⁵ *Ridus* relied exclusively on living cougar cells; no biological material from *Anecoyon* was used or even capable of being used. The DSI involved, including the released fragments, is solely informational and cannot replicate, transfer heredity, or be manipulated without a living host.⁸⁶

Extending “genetic resources” to non-viable or digital information would undermine legal certainty and stretch the CBD beyond its intended scope.⁸⁷ Fossilised DNA contains no viable functional units of heredity; neither it nor the DSI derived from it can constitute a genetic resource or be “utilised” in the biological sense required to trigger ABS obligations. *Anecoyon*, cannot invoke ABS obligations for material that, by its very nature, falls outside the CBD and the Protocol.

⁸³ Beth Shapiro, *Mammoth 2.0: Will Genome Engineering Resurrect Extinct Species?*, 16 *Genome Biology* 228, 581-582 (2015).

⁸⁴ Alicia A. Okuno, *Frankenstein’s Mammoth: The Future of De-Extinction and the International Treaty Framework*, 43 *Ecology L.Q.* 581, 592 (2016).

⁸⁵ Protocol, *supra* note 29, art. 1; CBD, *supra* note 10, arts. 15 and 16.

⁸⁶ Peter Johan Schei & Morten Walløe Tvedt, *Genetic Resources in the CBD: The Wording, the Past, the Present and the Future*, Fridtjof Nansen Inst. Report No. 4/2010, 2–4 (2008).

⁸⁷ Morten Walløe Tvedt & Peter Johan Schei, *The Term “Genetic Resources” Flexible and Dynamic While Providing Legal Certainty?*, in *Global Governance of Genetic Resources: Access and Benefit Sharing after the Nagoya Protocol* 18 (Sebastian Oberthür & G. Kristin Rosendal eds., 2013).

(iii) *SAP's Activities Fall Outside the Scope of ABS Obligations*

Decision 16/2 limits monetary contributions to commercial actors deriving economic benefit from the utilisation of DSI.⁸⁸ Accordingly, ABS obligations do not apply as SAP does not commercially utilise DSI.⁸⁹ It received living animals, not genetic data, and its role is entirely custodial.

In line with the CBD's architecture,⁹⁰ conservation and sustainable use are its primary objectives, while ABS is complementary.⁹¹ This cannot be construed in a way that impedes species protection.⁹² Consequently, imposing ABS obligations on a conservation institution, such as SAP, erode the CBD's fundamental foundations.⁹³

The modest entry and viewing fees generated by SAP are reinvested entirely into animal care, habitat restoration, and public education.⁹⁴ Any revenue generated is incidental to conservation, not commercial profit.

⁸⁸ Decision 16/2, *supra* note 67, ¶ 34-35; Lyle Glowka et al., *A Guide to the Convention on Biological Diversity* 1, 96–97 (IUCN Env'tl. Pol'y & L. Paper No. 30, 2012), <https://portals.iucn.org/library/efiles/documents/EPLP-no.030.pdf>.

⁸⁹ Molly R. Bond & Deborah Scott, *Digital Biopiracy and the (Dis)assembling of the Nagoya Protocol*, 117 *GeoForum* 24 (2020).

⁹⁰ *id.*, Glowka et al., 96–97.

⁹¹ CBD, *supra* note 10, Preamble and art. 1; Richard Caddell, *International Law and the Protection of Marine Biodiversity*, 108 *Marine Pol'y* 103627(2019).

⁹² Silke Greiber (ed), *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing* (IUCN 2012).

⁹³ Glowka et al., *supra* note 87.

⁹⁴ Decision 16/2, *supra* note 87.

As this Honorable Court affirmed in *Whaling in the Antarctic*, conservation-focused activities do not lose their character merely because they generate ancillary tourism revenue.⁹⁵ Likewise, SAP's viewing fees support conservation and do not convert it into a commercial DSI user.

(iv) Technological Neutrality Limits ABS to Genetic Resources

The CBD and Protocol cannot be interpreted to cover DSI.⁹⁶ The principle of technological neutrality prevents extending treaties beyond the context the Parties agreed to regulate.⁹⁷ The CBD and Protocol govern physical, functional biological matter,⁹⁸ the fossil lacks such material. No biological substrate regulated by these treaties was ever present.

The CBD and Protocol cannot be interpreted to cover DSI.⁹⁹ The principle of technological neutrality prevents extending treaties beyond the context the Parties agreed to regulate.¹⁰⁰ As the CBD and Protocol apply solely to living or otherwise viable genetic material,¹⁰¹ the fossil's lack of viable genetic material mean that none of the biological substrate regulated by these treaties was ever present.

This Honorable Court has held that treaties must be applied according to their ordinary meaning.¹⁰² A regime crafted for living, replicable material cannot be recast to govern abstract

⁹⁵ *Whaling in the Antarctic*, *supra* note 39, ¶ 97.

⁹⁶ Bond & Scott, *supra* note 87.

⁹⁷ Sondre Torp Helmersen, *Evolutionary Treaty Interpretation: Legality, Semantics and Distinctions*, 6(1) *Eur. J. Legal Stud.* 161, 170–73, 188 (2013).

⁹⁸ Gerd Winter, *Problems and Solutions of Access to Genetic Resources and Benefit Sharing: A Theoretical Perspective - Part I*, 17(1) *Law, Env't. & Dev. J.* 72, 79–83 (2021), <http://www.lead-journal.org/content/a1705.pdf>.

⁹⁹ Bond & Scott, *supra* note 87.

¹⁰⁰ Sondre Torp Helmersen, *Evolutionary Treaty Interpretation: Legality, Semantics and Distinctions*, 6(1) *Eur. J. Legal Stud.* 161, 170–73, 188 (2013).

¹⁰¹ Winter, *supra* note 98, 79–83.

¹⁰² *Kasikili/Sedudu Island (Bots./Namib.)*, Judgment, 1999 I.C.J. 1045, 1063–1072 (Dec. 13).

digital data.¹⁰³ Categorising reconstructed sequences as “genetic resources” is precisely the technological leap neutrality forbids.

Accordingly, extending ABS to the Agreement violates technological neutrality and imposes obligations CBD Parties deliberately chose not to create.¹⁰⁴

B. SAP IS NOT A “USER” OF DSI NOR ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR LISTED IN DECISION 16/2

Under Decision 16/2, monetary contributions arise only where a user of DSI operates in a DSI-commercial sector, and earns sustained DSI-based revenue.¹⁰⁵ SAP does not satisfy these conditions: it neither uses DSI nor earns DSI-related income.

(i) SAP Is Not a User of DSI

Decision 16/2 limits contribution obligations to users accessing or applying DSI in research or development involving the analysis, modification, or utilisation of genetic information of digital genetic data.¹⁰⁶

SAP performs none of these activities. DNA extraction, sequencing, genome reconstruction and CRISPR editing was completed by the NMR and Salols Co. SAP’s custodial role does not amount to “utilisation” under the CBD and Protocol.

¹⁰³ Lawson & Rourke, *supra* note 71, 5–8.

¹⁰⁴ Helmerssen, *supra* note 95.

¹⁰⁵ Decision 16/2, *supra* note 67, 2–3.

¹⁰⁶ Catharina Caspari, ‘*DSI – What?! Why Those Three Letters Are Not Only at the Heart of CBD COP 16, but Also Matter to Minority Rights and Systemic Change*’, *Völkerrechtsblog*, ¶ 4 (Nov. 11, 2024), <https://voelkerrechtsblog.org/dsi-what/>; Charles Lawson et al., *Challenging the existing order of knowledge sharing governance with digital sequence information on genetic resources*, 19(4) *J. Intell. Prop. L. & Prac.* 337, 339–341 (2024).

Decision 14/20¹⁰⁷, the IUCN Guidelines¹⁰⁸ and UNEP/CBD Technical Series¹⁰⁹ treat ex-situ conservation institutions as non-DSI users as they neither extract, sequence nor manipulate genetic material.¹¹⁰ SAP, therefore, falls outside Decision 16/2; only Salols Co. qualifies as a “user”.

(ii) *SAP is Not a Commercial User of DSI Under Decision 16/2*

Under Decision 16/2, only commercial DSI users in specified DSI-intensive sectors such as biotechnology and animal and plant breeding¹¹¹ must contribute to the Cali Fund.¹¹² SAP conducts no sequencing, analysis, or DSI-based development and operates solely as a conservation institution.

SAP’s ISIC 9103 classification confirms its non-commercial conservation role.¹¹³ It performs no DSI-dependent breeding or genome-assisted reproduction, all of which occurred upstream

¹⁰⁷ Conference of the Parties to the CBD, *Decision 14/20: Mainstreaming Biological Diversity Across Sectors*, U.N. Doc. UNEP/CBD/COP/DEC/14/20 (2018).

¹⁰⁸ IUCN/SCC, *Guidelines for Reintroductions and Other Conservation Translocations*, IUCN Species Survival Commission, (2013), <https://portals.iucn.org/library/efiles/documents/2013-009.pdf>.

¹⁰⁹ CBD Secretariat, *Synthetic Biology*, Technical Series No. 82, 39–42 (2020).

¹¹⁰ Stephanie Switzer et al., *Navigating the Global Landscape of Access and Benefit-Sharing (ABS) on Digital Sequence Information (DSI): Dealing with Scope Confusion through Mutual Supportiveness*, (forthcoming 2025), <http://dx.doi.org/10.2139/ssrn.5286043>.

¹¹¹ Decision 16/2, *supra* note 67, Enclosure I ¶ 1(d) and (e); Annex I and ¶ 5;

¹¹² *id.* Annex I, ¶ 1, 3.

¹¹³ U.N. Dep’t of Econ. & Soc. Affs., Statistics Div., *Statistical Papers: International Standard Industrial Classification of All Economic Activities (ISIC) (Series M, No. 4)*, U.N. Doc. ST/ESA/STAT/SER.M/4/Rev.4, 60 and 259 (2008).

at the NMR and Salols Co. CBD¹¹⁴ and CITES¹¹⁵ guidance characterise ex-situ institutions as biodiversity custodians rather than commercial actors.¹¹⁶ Decision 16/2 mirrors this by applying the Cali Fund to DSI-intensive industries, not institutions like SAP.

(iii) Decision 16/2 Does Not Impose Monetary Obligations on SAP

Decision 16/2 is soft law, and does not amend the CBD or Protocol, nor extends ABS obligations to DSI.¹¹⁷ Rather, it creates a prospective mechanism incapable of imposing retroactive duties.

The temporal requirement alone defeats Anecoyon's claim. Decision 16/2 requires three years of DSI-based revenue.¹¹⁸ The panther exhibition has existed for less than a year and has no DSI-related income. Consequently, no contribution can arise.

Decision 16/2 contemplates only non-monetary contributions for non-commercial entities. SAP already provides these through public education, ex-situ conservation, and scientific outreach, activities Decision 16/2 is designed to incentivise, not monetise.

¹¹⁴ Ad Hoc Technical Expert Group on DSI on Genetic Resources, *Fact-Finding Study on How Domestic Measures Address Benefit-Sharing Arising from Commercial and Non-Commercial Use of Digital Sequence Information on Genetic Resources and Address the Use of Digital Sequence Information on Genetic Resources for Research and Development*, U.N. Doc. CBD/DSI/AHTEG/2020/1/5 (2020).

¹¹⁵ CITES Resolution Conf. 5.10 (Rev. COP19) *Definition of "Primarily Commercial Purposes"* (2019); World Association of Zoos and Aquariums, *WAZA: Supporting Conservation Strategy* (WAZA 2015).

¹¹⁶ Kamau et al., *supra* note 30, 256–257 and 259.

¹¹⁷ Malgosia Fitzmaurice, *Legal Character of Compliance Mechanisms, Int'l Envtl. L.-Making & Diplomacy Rev* 47, (2016).

¹¹⁸ *id.* Annex ¶ 3.

CONCLUSION

The Respondent, Ridus, respectfully requests this Honorable Court to adjudge and declare that:

1. Ridus acted lawfully and complied with the PIC provisions of the CBD, and the Protocol does not apply to this case;
2. Anecoyon breached international obligations by withholding consent for Ridus' Programme;
3. DSI does not constitute "biotechnology" under the CBD or Protocol;
4. SAP is not a user of DSI and is not engaged in commercial activity within the sectors listed in Decision 16/2; and
5. Ridus bears no obligation to require SAP to contribute to the Cali Fund.

Respectfully submitted,

Agents for the Respondent