

MATERIAL TRANSFER AGREEMENT

PREAMBLE

In reference to the Jordan-Netherlands collaboration regarding safeguarding and use of plant genetic resources native to Jordan, and the Memorandum of Understanding signed between the National Centre for Agricultural Research and Extension (NCARE) and the Centre for Genetic Resources, the Netherlands (CGN), the following agreement shall be signed in advance by any recipient of material conserved by CGN that is collected in Jordan and exchanged with CGN as part of the collaboration between NCARE and CGN.

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 This Agreement is:

BETWEEN, dr. ir. T.J.L. van Hintum, Head CGN-Plant, Centre for Genetic Resources, the Netherlands (CGN), Droevendaalsesteeg 1, 6708 PB Wageningen, the Netherlands (theo.vanhintum@wur.nl) (hereinafter referred to as “the Provider”),

AND:

.....
.....

.....(name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official) (hereinafter referred to as “the Recipient”).

1.2 The parties to this Agreement hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In this Agreement the expressions set out below shall have the following meaning:

“Available without restriction”: a Product is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in Article 5.1 of this Agreement.

“Genetic material” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“Plant Genetic Resources for Food and Agriculture” means any genetic material of plant origin of actual or potential value for food and agriculture.

“Plant Genetic Resources for Food and Agriculture under Development” means material derived from the Material, and hence distinct from it, that is not yet ready for commercialization and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the Plant Genetic Resources for Food and Agriculture under Development shall be deemed to have ceased when those resources are commercialized as a Product.

“Product” means Plant Genetic Resources for Food and Agriculture that incorporate the Material or any of its genetic parts or components that are ready for commercialization, excluding commodities and other products used for food, feed and processing.

“Sales” means the gross income resulting from the commercialization of a Product or Products, by the Recipient, its affiliates, contractors, licensees and lessees.

“To commercialize” means to sell a Product or Products for monetary consideration on the open market, and “commercialization” has a corresponding meaning. Commercialization shall not include any form of transfer of Plant Genetic Resources for Food and Agriculture under Development.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The Plant Genetic Resources for Food and Agriculture originating from Jordan and specified in Annex 1 to this Agreement (hereinafter referred to as the “Material”) and the available related information referred to in Article 4b and in Annex 1 are hereby transferred from the Provider to the Recipient subject to the terms and conditions set out in this Agreement.

ARTICLE 4 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The Provider undertakes that the Material is transferred in accordance with the following provisions:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the Plant Genetic Resources for Food and Agriculture provided;
- c) Access to Plant Genetic Resources for Food and Agriculture under Development, including material being developed by farmers, shall be at the discretion of the developer, during the period of its development;
- d) Access to Plant Genetic Resources for Food and Agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws.

The Provider shall periodically inform the Government of Jordan about the Material Transfer Agreements entered into, according to an agreed schedule.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

5.1 The Recipient undertakes that the Material shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

5.2 The Recipient shall not claim any intellectual property or other rights that limit the facilitated access to the Material provided under this Agreement, or its genetic parts or components, in the form received from the Provider.

5.3 In the case that the Recipient transfers the Material supplied under this Agreement to another person or entity (hereinafter referred to as “the subsequent recipient”), the Recipient shall

a) do so under the terms and conditions of this Material Transfer Agreement, through a new material transfer agreement; and

b) notify the Government of Jordan, through the Centre for Genetic Resources, the Netherlands, in accordance with Article 4c.

On compliance with the above, the Recipient shall have no further obligations regarding the actions of the subsequent recipient.

5.4 In the case that the Recipient transfers a Plant Genetic Resource for Food and Agriculture under Development to another person or entity, the Recipient shall:

a) do so under the terms and conditions of this Material Transfer Agreement, through a new material transfer agreement, provided that Article 4a of this Material Transfer Agreement shall not apply;

b) identify, in Annex 1 to the new material transfer agreement, the Material received from the Centre for Genetic Resources, the Netherlands, and specify that the Plant Genetic Resources for Food and Agriculture under Development being transferred are derived from the Material;

c) notify the Government of Jordan, through the Centre for Genetic Resources, the Netherlands, in accordance with Article 4c; and

d) have no further obligations regarding the actions of any subsequent recipient.

5.5 Entering into a material transfer agreement under paragraph 5.4 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.

5.6 In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material as referred to in Article 3 of this Agreement, and where such Product is not available without restriction to others for further research and breeding,

the Recipient shall pay a fixed percentage of the Sales of the commercialized Product to the Government of Jordan, in accordance with Annex 2 to this Agreement.

5.7 In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material as referred to in Article 3 of this Agreement and where that Product is available without restriction to others for further research and breeding, the Recipient is encouraged to make voluntary payments to the Government of Jordan, in accordance with Annex 2 to this Agreement.

5.8 The Recipient shall make available to the Government of Jordan, through the Centre for Genetic Resources, the Netherlands, all non-confidential information that results from research and development carried out on the Material, and is encouraged to share non-monetary benefits that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a Product that incorporates the Material, the Recipient is encouraged to place a sample of this Product into a collection that is identified by the Government of Jordan, for research and breeding.

5.9 A Recipient who obtains intellectual property rights on any Products developed from the Material or its components, obtained through this Material Transfer Agreement, and assigns such intellectual property rights to a third party, shall transfer the benefit-sharing obligations of this Agreement to that third party.

ARTICLE 6 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004.

ARTICLE 7 — DISPUTE SETTLEMENT

7.1 Dispute settlement may be initiated by the Provider or the Recipient .

7.2 Any dispute arising from this Agreement shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the

arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 8 — ADDITIONAL ITEMS

Warranty

8.1 The Provider makes no warranties as to the safety of or title to the Material, nor as to the accuracy or correctness of any passport or other data provided with the Material. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the Material being furnished. The phytosanitary condition of the Material is warranted only as described in any attached phytosanitary certificate. The Recipient assumes full responsibility for complying with the recipient nation’s quarantine and biosafety regulations and rules as to import or release of genetic material.

ARTICLE 9 — SIGNATURE/ACCEPTANCE

The Provider and the Recipient herewith sign this Agreement.

I, (Theo van Hintum), represent and warrant that I have the authority to execute this Agreement on behalf of the Provider and acknowledge my institution’s responsibility and obligation to abide by the provisions of this Agreement, both by letter and in principle, in order to promote the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture.

Signature..... Date

I, (Full Name of Authorized Official), represent and warrant that I have the authority to execute this Agreement on behalf of the Recipient and acknowledge my institution’s responsibility and obligation to abide by the provisions of this Agreement, both by letter and in principle, in order to promote the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture.

Signature..... Date

Annex 1

LIST OF MATERIALS PROVIDED

This Annex contains a list of the Material provided under this Agreement, including the associated information referred to in Article 4b.

This information is either provided below or can be obtained at the following website:
www.cgn.wur.nl .

The following information is included for each Material listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

See Appendix 1

Annex 2

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 5.6 OF THIS AGREEMENT

1. If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes a Product or Products, then the Recipient shall pay one point-one percent (1.1 %) of the Sales of the Product or Products less thirty percent (30%); except that no payment shall be due on any Product or Products that:

(a) are available without restriction to others for further research and breeding in accordance with Article 2 of this Agreement;

(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;

(c) are sold or traded as a commodity.

2. Where a Product contains a Plant Genetic Resource for Food and Agriculture accessed from the Material originating from the territory of Jordan under two or more material transfer agreements only one payment shall be required under paragraph 1 above.

3. The Recipient shall submit to the Government of Jordan, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the Sales of the Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due; and

(c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the Government of Jordan shall be payable in United States dollars (US\$) of the following account established by the Government of Jordan:

Account holder: The National Center for Agricultural Research and Extension (NCARE)

Bank Name: ARAB BANK PLC

Bank address: AMMAN-BAQA BRANCH, PO BOX 144186, ZIP CODE: 11814 Amman

Bank contact details: tel: 00962-6-4725743, 00962-6-4725741, 00962-6-5371147;

Fax: 00962-6-4725742; Swift code: ARABJOAX100

Account Number: 142/181960-7/510

IBAN JO55 ARAB 1420 0000 0014 2181 9605 10