

**Elements for an Interim Material Transfer Agreement
for Plant Genetic Resources for Food and Agriculture
European Cooperative Programme for Crop Genetic Resources Networks**

The (name of the institution) maintains a collection of plant genetic resources accessions under a mandate of / in agreement with (national mandating authority). The (name of the institution) seeks to conserve the genetic resources that it maintains and to promote the sustainable utilization and the fair and equitable sharing of the benefits arising out of the utilization of these genetic resources. This agreement aims to contribute to these objectives.

PREFERRED TEXT

In the interest of encouraging research and utilization of and yet not hamper further access to and use of the accessions held in its collection, the (name of the institution) holds the accessions in trust under the terms of an agreement between the (name of the institution) and (national mandating authority).

ALTERNATIVE TEXT

In the interest of keeping the accessions available for future research and utilization, the (name of the institution) holds legal ownership over the accessions held in its collection.

Access to the germplasm held in its collection will be granted according to the following two categories:

Category 1:

In case the accession(s) transferred concern(s) plant genetic resources for food and agriculture listed in Annex 1 of the International Treaty on Plant Genetic Resources for Food and Agriculture, access to such accessions shall be in accordance with the provisions of that Treaty, in particular its articles 12.3 and 13.2d(ii).

Category 2:

In case

- the accession(s) transferred concern(s) plant genetic resources for food and agriculture that are not listed in Annex 1 of the International Treaty on Plant Genetic Resources for Food and Agriculture and
- the accession(s) transferred was/were either developed by (name of the institution) and/or was/were acquired prior to the entry into force of the Convention on Biological Diversity or,
- if acquired after the entering into force of the Convention on Biological Diversity, the accession(s) transferred was/were obtained under an agreement that it/they could be made available unrestricted for any agricultural research or breeding purposes,

PREFERRED TEXT

access to such accessions shall be in accordance with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture, in particular its articles 12.3 and 13.2d(ii), and in addition to the conditions stated below.

ALTERNATIVE TEXT

access to such accessions shall be in accordance with the Convention on Biodiversity and with the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization of the Convention on Biological Diversity, and in addition to the conditions stated below.

This Material Transfer Agreement does not cover transfer of accessions acquired after the entry into force of the Convention on Biological Diversity, if this acquisition involved specific mutually agreed terms.

Recognizing the obligations and responsibilities referred to above, the (name of the institution) grants access to accessions from its collection under the conditions specified below:

The recipient hereby agrees

- to solely access the transferred accessions(s) for the purpose of utilization and conservation for research, breeding and training for food and agriculture, excluding chemical, pharmaceutical and/or other non-food/feed industrial uses;

- not to claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received, over the transferred accession;
- **to ensure that plant genetic resources for food and agriculture accessed under the Multilateral System and conserved shall continue to be made available to the Multilateral System by the recipient under the terms of the International Treaty on Plant Genetic Resources for Food and Agriculture**
- to ensure that any subsequent person or institution to whom he/she may make available samples of the transferred accession or material that was essentially derived¹ from the accession received, is bound by the same provisions of this agreement and undertakes to pass on the same obligations to future recipients;

ALTERNATIVE TEXTS

- in case he commercializes a product that is a plant genetic resource for food and agriculture and that incorporates germplasm under this Material Transfer Agreement, he is encouraged to pay to the mechanism referred to in Article 19.3f of the International Treaty on Plant Genetic Resources for Food and Agriculture, an equitable share of the benefits arising from the commercialization of that product;
- in case he commercializes a product that is a plant genetic resource for food and agriculture and that incorporates germplasm under this Material Transfer Agreement, he shall pay to the mechanism referred to in Article 19.3f of the International Treaty on Plant Genetic Resources for Food and Agriculture, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restrictions to others for further research and breeding, in which case the recipient who commercializes is encouraged to make such payment;
- to indemnify the (name of the institution) against any claims arising out of the use of the transferred accession;
- to furnish the (name of the institution) with the relevant performance data produced by the recipient arising from the characterization and evaluation of the accession, or its parts and components. Upon request of the recipient these data will only be made publicly available after an embargo period of

ALTERNATIVE TEXTS

three years/five years;

- if publications result from the use of the transferred accession or its parts and components, to acknowledge the (name of the institution) as the supplier of the accession and send copies of such publications to the (name of the institution);
- to send copies of intellectual property, in particular patent, protection application reference numbers citing use of the transferred accession to the (name of the institution);
- to assume full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules governing the import or release of genetic material.

The phytosanitary condition of the accession is warranted only if and as described in an attached phytosanitary certificate. The (name of the institution) makes no warranties as to the safety or title of the accession, nor as to the accuracy or correctness of any passport or other data provided with the accession. Neither does it make any warranties as to the quality, availability or purity (genetic or mechanical) of the transferred accession.

[The recipient shall defray the expenses for a phytosanitary declaration, if requested.]

In case of contractual disputes arising under this MTA, arbitration can be sought by any of the Parties to this Agreement according to the International Chamber of Commerce in Paris, France. Each party to the dispute shall appoint an arbitrator, and the two arbitrators shall designate by common agreement the third arbitrator who shall be the Chairman of the arbitration tribunal.

¹ Germplasm shall be deemed to be essentially derived from other germplasm (the initial accession) when (i) it is predominantly derived from the initial accession, or from germplasm that is itself predominantly derived from the initial accession, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial accession, (ii) it is clearly distinguishable from the initial accession and (iii) except for the differences which result from the act of derivation, it conforms to the initial accession in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial accession.

Samples of the following accession(s) are supplied expressly conditional on acceptance of the above terms of this agreement. The recipient's acceptance of the accession(s) constitutes such agreement to the conditions above.

.....
.....

The (name of the institute) requests the applicant to complete this agreement by authorised signature of ordering institute, corporation or person:

Name of recipient _____

Institution _____

Full address _____

Authorised signature _____

Date _____

Name and title _____

For the (name of the institution),

(position title) _____

Date _____