



## NATIONAL BOTANICAL RESEARCH INSTITUTE

### AGREEMENT FOR THE SUPPLY OF BIOLOGICAL MATERIAL FROM THE REPUBLIC OF NAMIBIA FOR COMMERCIALISATION PURPOSES

The National Botanical Research Institute (NBRI) is a subdivision within the Directorate of Agricultural Research and Training (DART) of the Ministry of Agriculture, Water and Forestry (MAWF) of the Government of the Republic of Namibia and its mission is "to promote the understanding, conservation and sustainable use of Namibian plants for the benefit of all".

In its work, the NBRI intends to honour the letter and spirit of the 1992 Convention on Biological Diversity, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, the 2004 International Treaty on Plant Genetic Resources for Food and Agriculture, all other relevant international instruments to which Namibia is a signatory, and all national laws concerning biodiversity.

On receipt of a copy of this Agreement **signed by the Recipient below** and because the Recipient has agreed to comply with the terms and conditions set forth in this Agreement, the NBRI will supply to the Recipient such of the biological material (the Material)<sup>1</sup> requested by the Recipient as is, in the NBRI's judgement, reasonable and appropriate for the Purpose<sup>2</sup>.

Such biological Material as is supplied to the Recipient shall be accompanied by a copy of this Agreement and an itemised list ("the Schedule") of the biological material being supplied, clearly stating the identity and quantity of Material supplied, the Purpose for which it is supplied, and any additional conditions that might apply to the supply of the Materials.

The Recipient acknowledges that he/she is acting as a duly authorised representative of the institution he/she represents, and that the terms of this Agreement shall be binding on all present and future employees of his/her organisation, for as long as this Agreement remains in force.

The supply of any and all Biological Material by the NBRI to the Recipient, including any Material to be supplied under this agreement, will be subject to the following conditions:

1. Subject to clauses 2 and 4 below, the Recipient may use the Material and progeny or derivatives thereof (such as modified or unmodified extracts) only for the Purpose(s) stated in the Schedule(s).
2. The Recipient will in good faith negotiate with NBRI and/or its duly designated agent to provide Namibia with a fair and equitable share of any benefits obtained by the Recipient arising out of any utilisation by the Recipient of the Material or its progeny or derivatives, including non-material benefits such as research results, copies of papers, and/or acknowledgement of the NBRI as the Source of the Material.

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<sup>1</sup> "Biological Material" shall include plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves) fungi or other fungal material and any other material of plant, microbial, fungal or other origin and the genetic resources contained therein.

"Genetic Resources" shall mean any biological material of actual or of potential value containing functional units of heredity including DNA, transferred under this Agreement and its progeny and derivatives, including modified or unmodified extracts and purified compounds

<sup>2</sup> "The Purpose" shall mean the Purpose stated in the Schedule appended to this agreement, and such further Schedules referring to this Agreement as may be agreed from time to time in writing between the NBRI and the Recipient in terms of clause 3.

3. **Under this Agreement, the Recipient may not commercialise<sup>3</sup> the Material or any progeny or derivatives thereof except to the extent clearly stated under “the Purpose”** in the accompanying Schedule, or such additional Schedules to this Agreement as may be agreed between the NBRI and the Recipient in future. Such additional Schedules shall be in writing and duly signed by both Parties, and shall make reference to this Agreement.
4. To avoid a situation in which Namibia loses control over the development opportunities inherent in its Genetic Resources, the Recipient agrees not to publish or otherwise place in the public domain any information about Namibian Genetic Resources without prior written authorisation from the NBRI.
5. **Except as stipulated in the Purpose(s) of the Schedule(s) contemplated in clause 3, the Recipient may not transfer** the Material or any progeny or derivatives thereof to any third party<sup>4</sup> other than the Recipient or NBRI without the prior informed consent, in writing, of NBRI and then only under legally binding written agreement containing terms no less restrictive than those contained in this Agreement unless otherwise agreed in writing by NBRI. The Recipient agrees to take every reasonable precaution to prevent the material coming into the possession of any unauthorised third party.
6. NBRI makes no representation or warranty of any kind whether express or implied:
  - (a) as to the identity, safety, saleability or fitness for any particular purpose of the Material or its progeny or derivatives or
  - (b) that the Material provided to the Recipient under this Agreement is or will remain free from any further obligation to obtain prior informed consent from, to share benefits with or to comply with restrictions on use imposed by the national or local authorities. The Recipient will indemnify NBRI from any and all liability arising out of the Material or its progeny or derivatives and their use.
7. The biological Material is provided at no cost, or with an optional transmittal fee solely to reimburse the NBRI for its collection, preparation and distribution costs. If a handling fee is requested the amount will be indicated here:

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**I understand that any Material supplied to me by NBRI pursuant to this Agreement will be subject to, and I agree to comply with, the conditions above, and the additional conditions in the Schedule attached.**

SIGNED: .....  
for and on behalf of *[Insert name of the Recipient institution]* (“the Recipient”)

.....

Name of Signatory:

Title:

Date:

Address of the Recipient:

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<sup>3</sup> “Commercialise” and “Commercialisation” shall include but not be limited to any of the following: sale, filing a patent application, obtaining or transferring intellectual property rights or other tangible or intangible rights by the sale or licence or in any other manner, commencement of product development, conducting market research and seeking pre-market approval.

<sup>4</sup> “Third Party” shall mean any person other than the NBRI and the Recipient.

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SIGNED BY: .....  
for and on behalf of the NBRI

Name:

Title:

Date:

## **MATERIAL TRANSFER AGREEMENT SCHEDULE**

**Material supplied to:**

**By:**

NBRI  
Ministry of Agriculture, Water and Forestry  
Private Bag 13184  
Windhoek  
Namibia

**On behalf of:**

in terms of Material Transfer Agreement dated:

Collector's Number	Species	Material (seeds, bark etc)	Amount / volume	Purpose

**Additional conditions:**

### **ANNEXURE**

The following Laboratories will be used: