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| GRDC Generic Material Transfer Agreement2024 version 1GRDC CONTRACT CODE: *[INSERT HERE]***GRDC CONTRACT TITLE: [INSERT HERE]****PROVIDER MTA ID: [*if any*]** [Insert name of the research organisation who is providing the Material](Provider)[insert name of the recipient of the Material](Recipient)  |

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MATERIAL TRANSFER AGREEMENT

PARTIES

[Insert name of research organisation who co-owns IP and who will transfer the Material]
(**Provider**)

AND

[Insert name of the Recipient of the Materials] ACN/ABN[insert] (**Recipient**)

RECITALS

1. The Provider is a Co-Owner of the Intellectual Property in the Material and Project Data listed in Schedule 1, arising from a GRDC-funded Research Project.
2. The Research Project was undertaken with the intent that Material and Project Data developed would be made available to the Australian grains industry for the benefit of Australian grain growers.
3. The Provider is in possession of the Material and Project Data and has agreed to provide them to the Recipient on the terms and conditions of this Agreement.
4. The Provider has obtained consents from all Co-Owners to transfer the Material and Project Data to the Recipient.
5. The Recipient has agreed to deal with the Material and Project Data for the Approved Purpose and on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

* 1. DEFINITIONS AND INTERPRETATION
		1. Definitions

## **Agreement** means this Material Transfer Agreement, including the Schedules and any other attachments or documents incorporated herein, as amended or replaced by agreement of the parties in writing from time to time.

## **Approved Purpose** means the approved purpose specified in Schedule 1.

**Associated Information** means the information referred to in Article 5b and in Annex 1 of the SMTA.

## **Commencement Date** means the date specified in Item 6 of Schedule 1, or if no such date is specified, the date on which this Agreement was signed by the last party to sign it.

## **Commercialisation** means, in relation to the Material or Project Data:

* + 1. to manufacture, sell, hire or otherwise exploit the Material or Project Data for commercial gain;
		2. if a product or process incorporates or is derived from the Material or Project Data, to manufacture, sell, hire or otherwise use the product or process for commercial gain;
		3. if a service uses the Material or Project Data, to provide that service for commercial gain; or
		4. to license a third party to do any of those things

and **Commercialise** has a corresponding meaning.

## **Confidential Information** means all information disclosed by or on behalf of one Party (**Discloser**) to the other Party (**Recipient**):

* + - 1. which is indicated in writing by the Discloser to be confidential; or
			2. which might otherwise reasonably be regarded by the Discloser as confidential,

## and includes the Material, Project Data and any information disclosed by the Provider to the Recipient in relation to the Material, as well as, any technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, including any permitted copies of such information, except for information that:

* + - 1. is in the public domain, or comes into the public domain, other than as a result of the breach of this Agreement; or
			2. is rightfully known by the Recipient and is not subject to an obligation of confidentiality before the date of receipt or has been independently developed or acquired by the Recipient.

## **Co-Owner** means the entities with an ownership interest in the Material or Project Data and listed in Schedule 1.

## **Delivery Address** means the delivery address specified in Schedule 1.

**Genetically Modified Organism (GMO)** means an organism which has been modified by gene technology, and which falls within the meaning of genetically modified organism under the *Gene Technology Act* 2000 (Cth).

## **GRDC** means the Grains Research and Development Corporation a Corporate Commonwealth entity incorporated under the *Primary Industries Research and Development Act 1989* (Cth) ABN 55 611 223 291 located at Level 4, East Building, 4 National Circuit, Barton, Australian Capital Territory 2600.

## **Improvement** means any Intellectual Property that arises from the Recipient’s use of the Material or Project Data.

## **Intellectual Property** (or **IP**) means any registered or unregistered intellectual property rights including any:

* + - 1. patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);
			2. trade marks, business names or trading styles (whether registered or not);
			3. copyright material and similar or neighbouring rights;
			4. registered or registrable designs;
			5. plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes;
			6. trade secrets and know-how;
			7. eligible layouts or protectable computer programs, as well as any right to seek registration of, or to take action for infringement of, any such rights.

## **Material** means the material specified in Schedule 1.

## **Personnel** means a Party’s employees, representatives, agents, officers, contractors and subcontractors;

## **PGRFA under Development** means Plant Genetic Resource for Food and Agriculture under Development as defined in the SMTA.

## **Project Data** means results and information developed within the Research Project and provided to the Recipient as specified in Schedule 1, and if the SMTA applies it also includes any Associated Information.

## **Research Project** has the meaning given in Schedule 1.

**SMTA** means the Standard Material Transfer Agreement in the form required from time to time under the International Treaty on Plant Genetic Resources for Food and Agriculture, available at: <https://www>.fao.org/plant-treaty/areas-of-work/the-multilateral-system/smta/en/.

## **Special Condition** means any special conditions specified in Schedule 1.

## **Term** means the period of time from the Commencement Date until the Termination Date or the date the Agreement is terminated under clause 6 if terminated earlier.

## **Termination Date** means the termination date specified in Schedule 1.

**Territory** means the territory specified in Schedule 1.

* + 1. Interpretation

In this Agreement unless the context otherwise requires:

* + - 1. the singular includes the plural and vice versa;
			2. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust or government;
			3. a reference to either Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
			4. where an expression is defined, another part of speech or grammatical form has a corresponding meaning;
			5. a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body;
			6. a reference to any document or agreement includes a reference to that document or agreement as properly amended, novated, supplemented, varied or replaced from time to time;
			7. a reference to any legislation or regulation includes a reference to any amendment, modification or replacement to that legislation or regulation which may be made from time to time;
			8. "includes" or "including" are not words of limitation;
			9. all monetary amounts are in Australian currency;
			10. where any Party is constituted by more than one legal entity, they will be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this Agreement and jointly entitled to enjoy any rights granted by this Agreement;
			11. it is to be interpreted in accordance with the rules for the interpretation of Acts set out in the *Acts Interpretation Act 1901* (Cth);
			12. all references to Minister are to be interpreted in accordance with the relevant Commonwealth, State or Territory interpretation of acts legislation; and
			13. all references to a Department, Government agency and statutory bodies are to be interpreted in accordance with the applicable Commonwealth, State or Territory interpretation of acts legislation.
		1. Headings

In this Agreement, headings are for convenience only and do not affect interpretation.

* + 1. Constitution of agreement and inconsistency
			1. This Agreement will be constituted by:
				1. Schedule 2 - the SMTA (if applicable);
				2. any Special Conditions;
				3. these terms;
				4. Schedule 1 (other than the Special Conditions).
			2. If there is any inconsistency amongst the provisions in any of the documents listed in (i) to (iv) above, the provision in the earlier listed document will prevail over the provision in the later listed document to the extent of the inconsistency.
	1. Transfer
		1. Transfer
			1. The Provider represents and warrants that it has obtained the necessary approval from the other Co-Owners for the transfer of the Material and Project Data to the Recipient under the terms of this Agreement.
			2. Within 14 days of the date of this Agreement, the Provider will make the Material and Project Data available to the Recipient at the Delivery Address, subject to the terms of this Agreement.
		2. Recipient requirements

The Recipient must:

* + - 1. reimburse the Provider within 30 days of receiving an invoice from the Provider for any reasonable costs incurred by the Provider in transferring the Material and Project Data to the Recipient;
			2. use the Material and Project Data in the Territory and solely for the Approved Purpose;
			3. protect the Material and Project Data from misuse, interference, loss and unauthorised access, modification or disclosure;
			4. not Commercialise the Material or Project Data;
			5. not provide or disclose the Material or Project Data to any third party without the written approval of the Co-Owners;
			6. not seek any form of registration of Intellectual Property or other statutory protection of the Material or Project Data;
			7. comply with all applicable laws and codes of conduct in relation to use of the Material or Project Data, including appropriate industry standards for the handling, management and disposal of the Material or Project Data (if relevant);
			8. obtain all ethical or legal clearances, consents or authorisations that are necessary or desirable to use the Material or Project Data for the Approved Purpose;
			9. co-operate with the Provider and act reasonably in connection with this Agreement and receipt, use and handling of the Material or Project Data; and
			10. for the term of this Agreement, provide the report in accordance with clause 7.2.
		1. Recipient Acknowledgement

The Recipient acknowledges and agrees that the Co-Owners, at all times retain full ownership and title to the Intellectual Property rights and Confidential Information in relation to the Material and Project Data provided to the Recipient under this Agreement; and

* + 1. Application of SMTA

If the Material is PGRFA under Development, the Parties agree that:

* + - 1. the terms and conditions of the SMTA apply in relation to that Material in addition to this Agreement;
			2. a copy of the SMTA is attached at Schedule 2 to this Agreement.
	1. WARRANTIES
		1. Provider warranties

The Provider warrants that, to the best of its knowledge, having made all reasonable enquiries, subject to any restrictions specified in Schedule 1:

1. there are no impediments or restrictions on the use of the Material or Project Data for the Approved Purpose; and
2. the Material does not contain any Genetically Modified material.
	* 1. Exclusion of warranties with respect to Material and Project Data

The Recipient acknowledges and agrees that subject to clause 3.1:

* + - 1. the Material and Project Data is experimental in nature, and may contain inherent defects and deficiencies;
			2. the Co-Owners make no representation and give no warranty that the Material or Project Data is fit for any particular purpose;
			3. the Co-Owners make no representation and give no warranty that the use of the Material or Project Data by the Recipient will not infringe the Intellectual Property or other rights of any third party; and
			4. the Material and Project Data is provided on an “as is” basis.
		1. Reliance warranty

The Recipient represents and warrants, and it is a condition of this Agreement that the Recipient did not rely on any representation made to the Recipient by any Co-Owner prior to entry into this Agreement.

* + 1. Rights on trust

The Provider holds the benefit and the rights of the Co-Owners under this clause 3 on trust and may enforce those rights on behalf of the Co-Owners.

* 1. INTELLECTUAL PROPERTY
		1. Improvements
			1. The Recipient must notify the Provider in writing of any Improvements upon their creation.
			2. If requested by the Provider in writing, the Recipient must provide a report to the Provider within 30 days of the request, detailing any Improvements created.
			3. Unless otherwise specified in Schedule 1, the Parties agree that all right, title and interest in any Improvements vest in the Co-Owners on and from creation and this Agreement will apply to Improvements in the same way it applies to Material and Project Data.

(d) The Parties must execute all documents and do all things necessary to give effect to the intention of the Parties and its obligations as set out in clause 4.1(c).

* 1. CONFIDENTIALITY
		1. Confidential treatment

The Recipient must, subject to this Agreement:

* + - 1. treat as confidential the Confidential Information disclosed to it by tor on behalf of the Discloser;
			2. only use or copy Confidential Information for the purposes of fulfilling its obligations under this Agreement;
			3. take reasonable steps to protecttheConfidential Information and keep it secure from misuse, interference, loss and unauthorised access, modification or disclosure; and
			4. promptly notify the Discloser if it becomes aware of, or suspects any unauthorised copying, use or disclosure of any Confidential Information.
		1. Permitted disclosure

The Recipient must not, without the prior written consent of the Discloser, disclose the Confidential Information except to the extent required to:

* + - * 1. disclose Confidential Information to its Personnel and legal and financial advisors who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided that the Recipient uses reasonable efforts to ensure that:
				2. its Personnel and advisors who acquire access to Confidential Information keep the Confidential Information confidential and only use the Confidential Information for the purpose for which it was disclosed; and
				3. any of the abovementioned Personnel and advisors who cease to be Personnel or advisers continue to be bound by such obligations of confidentiality; or
			1. comply with requirements of a court, parliamentary, governmental or administrative authority or applicable law or regulation to disclose Confidential Information, provided that the Recipient must:

##### promptly notify the Discloser and consult with it about the form and content of any disclosure required; and

##### only disclose that part of the Confidential Information as is necessary to comply with the relevant requirements.

* 1. TERMINATION
		+ 1. This Agreement will commence on the Commencement Date and will continue for the Term.
			2. If either Party:
				1. commits a breach of this Agreement which is not capable of remedy; or
				2. commits a remediable breach of this Agreement which is not remedied within 14 days after receiving notice of the breach requiring rectification of the breach; or
				3. engages in any negligent act or omission, or engages in any wilful misconduct, in relation to this Agreement,

### then the other Party may immediately terminate this Agreement by notice in writing to the defaulting Party.

* + - 1. The Parties agree and acknowledge that if at any time during the Term of this Agreement, a Co-Owner withdraws its consent given to the Provider to transfer to and permit the Recipient to use the Material or Project Data under this Agreement, either Party may by written notice to the other Party immediately terminate this Agreement.
			2. The Parties agree and acknowledge that at any time during the Term of this Agreement, the Recipient may by written notice to the Provider immediately terminate this Agreement.
			3. On expiry or termination of this Agreement:
				1. accrued rights or remedies of a Party are not affected;
				2. the Recipient must immediately cease using all Material, Project Data and Improvements that remain Confidential; and
				3. the Recipient must destroy or deliver to the Provider (at the direction of the Provider), all Material, Project Data and Improvements.
			4. The provisions of clauses 2.3, 2.4, 3, 4, 5, 6(e), 6(f), 7, 8, 9, 12.12 and 12.13 and any other term which, by its nature, is intended to survive expiry or termination of this Agreement will survive expiry or termination of this Agreement.
	1. PUBLICATION AND REPORTING

7.1 **Publication of research results**

* + - 1. Subject to compliance with clause 7.1(b), the Recipient may publish any results relating to its use of the Material or Project Data under this Agreement.
			2. Prior to submitting any results relating to the Material or Project Data for publication, the Recipient must:
1. provide a copy of the proposed publication to the Provider at least 30 days prior to the intended submission date; and
2. amend the proposed publication or delay submission and publication if the Provider notifies the Recipient in writing that a potential Intellectual Property protection application may be prejudiced, or Project Data or Confidential Information would be disclosed by that publication.
	* + 1. If the Recipient is permitted to publish under clause 7.1(b), the Recipient must:
				1. acknowledge the Co-Owners, and acknowledge any staff notified by the Provider as being involved in the development of the Material and/or Project Data; and
				2. provide a copy of the publication to each Co-Owner.
		1. Reporting

The Recipient must provide each Co-Owner with a report in the manner, form and timeframe as set out in Schedule 1.

* 1. LIMITATION OF LIABILITY

A Co-Owner is not liable to the Recipient for any loss or damage suffered or incurred by the Recipient however caused (except to the extent that the loss or damage was caused by the negligence, wilful misconduct or omission of that Co-Owner) in connection with the Recipient’s use or possession of the Material or Project Data.

* 1. INDEMNITY

9.1 The Recipient is liable for, and indemnifies the Provider (including for and on behalf of the Co-Owners) from and against, all loss or damage suffered or incurred by the Co-Owners however caused, including but not limited to:

* + - 1. any breach of this Agreement by the Recipient;
			2. any negligent act or omission, or any wilful misconduct, of the Recipient in connection with this Agreement;
			3. use or possession of the Material or Project Data by the Recipient; or
			4. any claim or allegation that the Recipient’s use of the Material or Project Data infringes the Intellectual Property or other rights of any third party.
		1. The indemnity under clause 9.1 is reduced to the extent that the loss or damage was caused by the negligence or wilful misconduct of the Provider.
		2. The Provider holds the rights of the Co-Owners under this clause 9 on trust and may enforce those rights on behalf of the Co-Owners.
	1. NOTICES
		1. All notices or communications given pursuant to this Agreement must be:
			1. in writing;
			2. signed by a person who has authority to give such notice on behalf of the sender; and
			3. delivered by hand, sent by pre-paid express post or transmitted by email to the recipient’s nominated representative(s) at the nominated address specified in Schedule 1, or the representative’s address last notified in writing by the recipient to the sender.
		2. A notice or communication will be deemed to be received:
			1. if delivered by hand, upon delivery;
			2. if sent by pre-paid express post within Australia, within 5 days of the date on which it was sent; and
			3. if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).
	2. DISPUTE RESOLUTION
		1. If any dispute arises out of or in connection with this Agreement, the Parties involved in the dispute must first, before commencing any legal action, attempt to resolve the dispute through discussions between the Parties’ authorised representatives.
		2. If the dispute is not resolved by the Parties within 30 days of the commencement of those discussions, the Parties must refer the dispute to the Australian Disputes Centre Limited (ADC) for mediation in accordance with the Mediation Guidelines of ADC.
		3. Nothing in clause 11 prevents a Party from seeking urgent interlocutory relief.
	3. GENERAL
		1. Further assurances

Each party must do all things necessary or desirable to give effect to the provisions of this Agreement including by signing all documents and performing all acts.

* + 1. Assignment

(a) Except as otherwise expressly specified in this Agreement, neither Party may assign, novate, charge, transfer, encumber or otherwise deal with its rights under this Agreement without the prior written consent of the other Party.

(b) The Recipient acknowledges and agrees that the Provider may transfer its rights and obligations under this Agreement to one or more Co-owners by written notice to the Recipient.

* + 1. Relationship

This Agreement does not create any partnership, agency or trust relationship or confer on any Party the authority to bind the other Party in any way.

* + 1. Costs

Each Party must pay its own legal and other costs in connection with the negotiation, preparation and signing of this Agreement.

* + 1. Amendment

Except as expressly provided for by this Agreement, a term of this Agreement may not be varied except in writing and signed by the Parties.

* + 1. Construction

This Agreement (or any term of it) is not to be construed to the disadvantage of one Party for the reason that that Party was responsible for its preparation or seeks to rely on it.

* + 1. Entire agreement

This Agreement constitutes the entire Agreement between the Parties, and supersedes any and all prior representations, conduct and agreements, as to its subject matter.

* + 1. Waiver

A waiver will not be binding unless it is in writing and signed by the Party granting it. The non-exercise of or delay in exercising any power or right conferred on a Party by this Agreement does not operate as a waiver of that power or right.

* + 1. Remedies cumulative

The rights, powers and remedies provided to a Party under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity.

* + 1. Counterparts

This Agreement may consist of a number of copies, each signed by one or more Parties to the Agreement. If so, each signed copy is deemed an original and all signed copies together constitute one document. Executed counterparts of this Agreement may be exchanged by email or other means of electronic communication (as that term is defined in the *Electronic Transactions Act 1999* (Cth)).

* + 1. Discretion

Unless otherwise expressly contemplated, where a provision of this Agreement contemplates that a Party may exercise its discretion then that Party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.

* + 1. Severance

If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.

* + 1. Governing law and jurisdiction

This Agreement is governed by the laws in force in the Jurisdiction in Item 12 of Schedule 1 and the Parties submit to the non-exclusive jurisdiction of the courts of that Jurisdiction and any courts that may hear appeals from those courts.

EXECUTION PAGE

**EXECUTED BY THE PARTIES AS AN AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the**[INSERT NAME OF THE PROVIDER]**by a duly authorised delegate, in the presence of |  |  |
|  |
| Signature of witness |  | Signature of delegate |
| Name of witness (print) |  | Name of delegate (print) |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of**[INSERT FULL LEGAL NAME of THE RECIPIENT]** by its duly authorised representative\* in the presence of:  |  |  |
| Signature of witness |  | Signature of authorised representative\* |
| Name of witness (print) |  | Name of authorised representative (print) |
| Title of witness (print) |  | Title of authorised representative (print) |
| Date |  | Date |

***\*By signing this agreement, the authorised representative represents and warrants that he/she is duly authorised to execute this document on behalf of the Recipient.***

1.

INFORMATION TABLE

|  |  |  |
| --- | --- | --- |
| 1 | Research Project  | The GRDC Contract titled *[****insert the GRDC contract code and contract title****]* under the GRDC’s research agreement dated *[****insert date****]*  |
| 2 | Co-Owners | Grains Research and Development Corporation (GRDC)***[Insert name of Provider],*** ***[List all other co-owners of the Material and Project Data]***  |
| 3 | Approved Purpose | ***[Provide detailed description of what the Recipient can do with the Material and Project Data, including whether the use is for Research Purposes or Evaluation of the outputs. The Approved Purpose should not include commercialisation of the Material and/or Project Data]*** |
| 4 | Restrictions | ***[Specify any restrictions on the use of the Material or Project Data that may apply. Examples include where the Material or Project Data incorporates third party IP that carries restrictions]*** |
| 5 | Territory | Australia |
| 6 | Commencement Date |  |
| 7 | Termination Date | ***[note that the Termination Date should be a date that is after the date the last Report is due]*** |
| 8 | Material and Project Data | ***[Insert detailed and accurate description of the Material and Project Data being transferred to the Recipient]*** |
| 9 | Reports | ***[Insert Reporting requirements, including report content, frequency and due dates]*** |
| 10 | Recipient Delivery Address |  |
| 11 | SMTA applies to the Material (see clause 2.4 and Schedule 2) | ***[Yes or No]*** |
| 12 | Jurisdiction | ***[Insert the applicable jurisdiction]*** |
| 13 | Address for Notices | ***[Insert name of Recipient, authorised representative and address for notices]******[insert name of Provider, authorised representative and address for notices]*****GRDC,** **GRDCApprovedMTA@grdc.com.au****East Building, Level 4****4 National Circuit, Barton, ACT 2600 Australia*****[List other co-owners of the Material and Project Data, contact name and address for notices]*** |
| 14 | Special Conditions  |  |

COPY OF SMTA IF APPLICABLE