

CONFIDENTIAL



MEMORANDUM OF UNDERSTANDING

between

THE INSTITUTE OF PLANT GENETIC RESOURCES

and

THE AGRICULTURAL RESEARCH COUNCIL



1. DEFINITIONS AND INTERPRETATION

In this agreement:

- 1.1 clause headings are for convenience and shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention an expression which denotes any gender shall include the other genders, a natural person shall include an artificial person and vice versa, the singular shall include the plural and vice versa;
- 1.3 the following words and expressions bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings:-
 - 1.3.1 **"the Act"** means the Agricultural Research Act No. 86 of 1990, as amended;
 - 1.3.2 **"the Decree"** means the Decree No. 18/17.01.1977 of the Ministry of Agriculture and Food of Bulgaria, as amended;
 - 1.3.3 **"agreements"** means the terms and conditions of the agreements and all their annexures, to be concluded between the parties from time to time after the signature date;
 - 1.3.4 **"ARC"** means the Agricultural Research Council, a juristic person established in terms of the Act, of 1134 Park Street, Hatfield, Pretoria, 0083, herein represented by **Dr. Shadrack Ralekeno Moephuli** in his capacity as CEO/President of the ARC, duly authorised hereto;
 - 1.3.5 **"IPGR"** means the Institute of Plant Genetic Resources "K. Malkov", organization for scientific-applied research in the structure of the Agricultural Academy, established by Decree, based in the town of Sadovo, Bulgaria, 2

Drouzhba Str., herein represented by **Assoc. Prof. Dr. Katya Uzundzhalieva** in her capacity as Director of the IPGR, duly authorised hereto;

1.3.6 **“confidential information”** means, without limiting the generality thereof, any confidential information, including: =

1.3.6.1 marketing and business plans and strategies; research and development strategies and techniques of each party;

1.3.6.2 customers, potential customers and business associates;

1.3.6.3 confidential intellectual property including but not limited to discoveries, inventions, designs, processes, know-how, research, works of authorship, computer software, databases, trade or business names, domain names, patents and patent applications, trade marks and trade mark applications, plant breeder's rights (pending applications and registered rights), rights (registered or unregistered and applications for same) in any design, copyright (including rights in computer software and typography rights), confidential and proprietary knowledge and information and any rights protecting same;

1.3.6.4 trade secrets including but not limited to, contractual arrangements between each party and its business associates, financial details between each party and its business associates; and

- 1.3.6.5 matters which relate to the business of either party and in respect of which, information is not readily available in the ordinary course of business to a competitor of the parties, which information may be made or become available to the other party or any personnel thereof pursuant to this agreement.
- 1.3.7 **“Intellectual Property”** means all intellectual property, including but not limited to discoveries; inventions; designs; processes; know-how; research results; works of authorship; computer software; data, databases; trade or business names; domain names; patents and patent applications; trade marks and trade mark applications; rights in any design (registered or unregistered and applications for same); copyright (including rights in computer software and typography rights); plant breeder’s rights (pending applications and registered rights); confidential and proprietary knowledge and information and any rights protecting same; business goodwill and reputation and rights protecting same; database rights; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having an equivalent effect anywhere in the world;
- 1.3.8 **“MoU”** means this agreement set out in this document and in the annexures hereto;
- 1.3.9 **“parties”** means the ARC and IPGR;
- 1.3.10 **“signature date”** the date on which this MoU is signed by the last party signing.

2. OBJECT OF THE MoU

2.1. The object of the MoU is to enable the parties, from time to time, to negotiate and conclude agreements dealing with, inter alia, the following:-;

2.1.1. research projects to be undertaken by the ARC in collaboration with IPGR;

2.1.2. funding of all the identified projects, including the payment intervals as specified in the separate project agreements to flow from this MoU;

2.1.3. the format of the reports to be issued from time to time in respect of research projects;

2.1.4. the commencement and duration and, where appropriate, the option to renew;

2.1.5. the ownership of the Intellectual property rights emanating from the research projects.

2.2. In addition to the above, the agreements will deal with the following categories:

2.2.1. Conservation and use of local and traditional plant genetic resources

2.2.2. Field and vegetable crops; ornamental and medicinal plants

2.2.3. Plant protection

2.2.4. Organic farming

2.2.5. Exchange of academic and technical staff, capacity building, training programs

2.3. This MoU may be terminated by either party at any time by giving to the other not less than 30 (thirty) days written notice.

3. DOMICILIUM CITANDI ET EXECUTANDI

- 3.1. Each party chooses as its *domicilium citandi et executandi* ("domicilium") for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses: -

<u>Party</u>	<u>Physical Address</u>	<u>Postal Address</u>	<u>Facsimile</u>
The IPGR:	Bulgaria, 4122 Sadovo, Plovdiv district, 2 Drouzhba Str.		+359 32 629 026

<u>Party</u>	<u>Physical/Postal Address</u>		<u>Facsimile</u>
The ARC:	1134 Park Street Hatfield RSA 0083	PO Box 8783 Pretoria RSA 0001	+27(0)12 4305814

- 3.2. Any notice or communication required or permission to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

- 3.3. Either party may by notice to the other party change the physical address chosen as its *domicilium* another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) business day from the deemed receipt of the notice by the other party.

- 3.4. Any notice to a party: -

- 3.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium* to which post is delivered shall be deemed to have

been received on the 10th (tenth) business day after posting (unless the contrary is proved);

3.4.2. delivered by hand to a responsible person during normal business hours at the physical address chosen as its *domicilium* shall be deemed to have been received on the day of delivery; or

3.4.3. sent by telefax to its chosen telefax number stipulated in clause 19.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

3.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium*.

4. CONFIDENTIALITY

4.1. Each party shall ensure that all confidential information received from the other party is kept secure and confidential and that only persons who need to have utilised the confidential information be allowed access to such confidential information, after first being made aware of the confidentiality of such confidential information.

4.2. The foregoing obligations shall not apply to any information which:-

4.2.1. is lawfully in the public domain at the time of disclosure;

4.2.2. subsequently becomes available to any party from a source other than the other party, which source is lawfully entitled without any restriction on disclose of such confidential information;

4.2.3. is disclosed pursuant to a requirement or request by operation of law, regulation or order of competent court.

4.3. Each party hereby indemnifies the other and its hold harmless against any loss or damages that it may suffer as result of any breach of this clause.

4.4. This clause is severable from the rest of this agreement and shall remain valid and binding on the parties notwithstanding ay termination of this agreement.

5. **AUTHORITY**

The parties hereby warrant and represent that they are authorised to negotiate, conclude and implement this MoU.

6. **GOVERNING LAW**

This MoU shall be governed by and construed in accordance with the laws of the Republic of South Africa and of the Republic of Bulgaria.

7. **ENTIRE AGREEMENT**

This MoU constitutes the sole record of the agreement between the parties relating to the subject matter hereof and supersedes any other agreement, whether written or oral which may have been entered between the parties.


8. **NON-VARIATION**

No addition to, variation or agreed cancellation of this MoU shall be of any force and effect unless in writing and signed by the parties.

9. **COSTS**

Each party shall bear and pay its legal cost of and incidental to the negotiation, preparation and execution of this MoU.

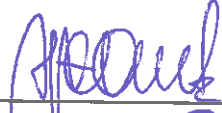

SIGNED Sadovo ON THIS 03 DAY OF April 2019


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Assoc. Prof. Dr. Katya Uzundzhalieva
Director of IPGR

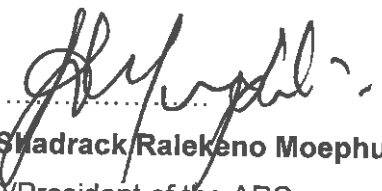


ON BEHALF OF THE INSTITUTE OF PLANT GENETIC RESOURCES

In the presence of the following witnesses:

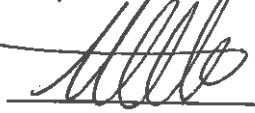

- 1. 
WITNESS Ms Zhivka Solakova - Accountant Manager IPGR Sadovo
- 2. 
WITNESS Dr Nikolaya Velcheva - International relations IPGR Sadovo

SIGNED PRETORIA ON THIS 18th DAY OF July 2019


.....
Dr. Shadrack Ralekeno Moephuli
CEO/President of the ARC

ON BEHALF OF THE AGRICULTURAL RESEARCH COUNCIL

In the presence of the following witnesses:

- 1. 
WITNESS
- 2. 
WITNESS