

THIS **GENESYS DATA PROVIDER AGREEMENT** dated¹ is made BETWEEN:

(1) **THE GLOBAL CROP DIVERSITY TRUST** with its address at Platz Der Vereinten Nationen 7, 53113 Bonn, Germany

and

(2) with its address at

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BACKGROUND

- (1) This Agreement concerns the collaboration between the Crop Trust and the Data Provider for release of Data from the Data Provider for publication on GENESYS.
- (2) GENESYS is an online portal and database that provides information about genebank accessions to facilitate their use.
- (3) Any Data supplied by the Data Provider for use on GENESYS will be made available by the Data Provider through GENESYS and their source will be cited.
- (4) GENESYS is managed in accordance with the principle that it only contains Data that can be made publicly available.

1. DEFINITIONS

In this Agreement the following words and expressions have the following meanings:

‘Agreement’	the terms and conditions hereby entered into between the Crop Trust and the Data Provider
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¹ To be provided by the party that signs last, i.e. the Crop Trust usually.

'Crop Trust'	the Global Crop Diversity Trust an international fund with its own legal personality established under the Agreement for the Establishment of the Global Crop Diversity Trust which entered into force on 21 October 2004 and headquartered in Bonn, Germany;
'Data'	passport, characterization, evaluation, and associated information including environmental information that can be derived for accessions that include collection site geo-references as provided directly by the Data Provider or already stored in GENESYS;
'Data Provider'	;
'End User'	any entity browsing, downloading, or in any other way accessing Data stored in GENESYS, including anonymous users, registered users and automated computer crawlers (robots);
'GENESYS'	the database and information portal through which the Crop Trust makes available to End Users the Data provided by the Data Provider under the terms of this Agreement;
'Metadata'	information concerning when, where, how and by whom Data was collected to facilitate the use of that Data;
'Parties'	the parties to this Agreement, namely the Crop Trust and the Data Provider;
and	
'Terms and Conditions of Use'	the terms and conditions of use of GENESYS for End Users made available on the GENESYS internet portal.

2. THE CROP TRUST'S OBLIGATIONS

2.1. The Crop Trust agrees to:

- 2.1.1. display and include the Terms and Conditions of Use and the relevant copyright notifications with any Data and Metadata available for download from GENESYS;

- 2.1.2. provide a revocable, worldwide, royalty free, non-exclusive and non-transferrable license to End Users to access and use Data and Metadata stored in GENESYS under the Terms and Conditions of Use;
- 2.1.3. not alter, modify, or otherwise change, the Data and Metadata in any way;
- 2.1.4. not make any copy of the Data and Metadata outside GENESYS, nor to transfer the Data and Metadata outside GENESYS. The Crop Trust further agrees not to transfer Data and Metadata to other organizations for the purpose of their further distribution or use except where provided under the Terms and Conditions of Use;
- 2.1.5. not express any opinion on the Data when making it publicly available on GENESYS;
- 2.1.6. acknowledge that the Data Provider is the source of the Data and Metadata and owner of any copyright or related rights in the Data;
- 2.1.7. display citation guidelines in the Terms and Conditions of Use which will require that End Users give appropriate acknowledgement of the source of the Data; and
- 2.1.8. seek prior written permission from the Data Provider in case of planning or wishing to disclose or publish in any other way, form or media Data and Metadata provided by the Data Provider for download from GENESYS.

3. DATA PROVIDER'S OBLIGATIONS

- 3.1. The Data Provider agrees to:
 - 3.1.1. upload, control and manage Data and Metadata on GENESYS including managing the timing, content and versioning of the Data published using mechanisms available in GENESYS. In doing so, previous version(s) of the Data and Metadata in Genesys will be replaced with their most recent version(s) or removed;
 - 3.1.2. make reasonable efforts to ensure that the Data and Metadata is correct;
 - 3.1.3. obtain all necessary permissions and licenses from third parties, including in relation to copyright and database rights, to allow the Data and Metadata provided directly by the Data Provider to the Crop Trust to be made publicly available on GENESYS;

- 3.1.4. provide only non-confidential Data that is not subject to any restrictions and be responsible for any liability incurred if the Data has been provided in breach of such confidentiality obligations, with or without the Data Provider's knowledge;
- 3.1.5. provide the documents and information in its power to the Crop Trust and such assistance as the Crop Trust may reasonably request to resolve any action claim or demand with respect to a breach of confidentiality or proprietary rights associated with the Data and Metadata provided directly by the Data Provider for inclusion in GENESYS that may be brought by third parties and shall indemnify the Crop Trust from and against all losses including the costs of defending or settling any such action claim or demand;
- 3.1.6. license the Crop Trust under a perpetual, worldwide, royalty free, non-exclusive license which permits any acts with the Data and Metadata for the purposes of building and operating a Global Database on Plant Genetic Resources namely GENESYS, without prejudice to the right of the Data Provider to withdraw the license in accordance with Clause 6.1.

4. INTELLECTUAL PROPERTY

- 4.1. The Crop Trust acknowledges that its permission to use the Data and Metadata is limited to the rights expressly conferred by this Agreement.
- 4.2. The Crop Trust agrees that it shall not claim any copyright or other intellectual property rights or other proprietary interest in any Data and Metadata provided by the Data Provider.
- 4.3. The Crop Trust agrees to include the same condition as Clause 4.2 above when making available Data and Metadata provided by the Data Provider to any third party.

5. WARRANTIES AND LIABILITY

- 5.1. The Data Provider will use its best endeavors to obtain all necessary licenses and authorizations for the reproduction, communication to the public and publication of the Data and Metadata available on GENESYS and will resolve any disputes that might arise from these issues. This level of assurance will be provided in writing to the Crop Trust if requested.
- 5.2. The Data Provider will exert reasonable care in ensuring that the Data, and Metadata provided under this Agreement is of good quality, taking into account their limitations and conditions of use. Notwithstanding this the Data Provider makes no representation, condition or warranty of any kind with respect to the accuracy, usefulness, completeness or currency of the Data licensed. The Data is being made available on an “as is, with all defects” basis. The Data Provider disclaims any express or implied condition or warranty of merchantability or fitness for a particular purpose of the Data and Metadata.
- 5.3. The Crop Trust shall have no liability to the Data Provider in contract, tort or otherwise for any loss or damage which the Data Provider may suffer (whether direct consequential or any other form of loss) as a result of any acts under this license and whether caused by any fault on the part of the Crop Trust or not. This exclusion of liability includes, but is not limited to, any special, incidental, consequential, punitive, or exemplary damages such as loss of revenue, data, anticipated profits, and lost business. To the extent liability may not be excluded by law, it is limited to actual and direct financial loss to the extent it is caused by proved negligence on the part of the Crop Trust.
- 5.4. The Data Provider and the Crop Trust will not provide any warranties to End Users for Data content, accuracy or the use of the Data and disclaim all responsibility in this regard.

6. MISCELLANEOUS

- 6.1. **Right of withdrawal:** At any time the Data Provider has the right to request the Crop Trust to remove the Data and Metadata previously supplied by it for the purpose of publication on GENESYS. Such a request shall be made to the Crop Trust in writing by hard copy letter sent by special delivery to the Executive Secretary of the Crop Trust. The Crop Trust will delete Data and Metadata previously supplied by the Data Provider from Genesys within three (3) calendar months of the date of receipt of the Data Provider's written request provided such request complies with the formalities set out in this Clause.
- 6.2. **Assignment:** Neither party shall have the right to assign this Agreement or any of its rights or obligations to a third party and be released from its own obligations under the Agreement without the prior written consent of the Parties.
- 6.3. **Amendment:** This Agreement may only be amended in writing signed by duly authorized representatives of the Parties.
- 6.4. **Invalid Clauses:** If any provision or part of this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.
- 6.5. **Entire Agreement:** This Agreement, including its Annexes, sets out the entire agreement between the Parties relating to the Data and Metadata and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term or condition that is not set out in this Agreement.

- 6.6. **Language:** This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version shall prevail. Any notice given under or in connection with this Agreement shall be in the English language. All other documents provided under or in connection with this Agreement shall be in the English language. If such document is translated into any other language, the English language version shall prevail.

7. TERM AND TERMINATION

- 7.1. This Agreement shall commence on the date the last Party has signed the Agreement, and shall continue whilst GENESYS is operated or until terminated in advance in accordance with Clause 7.2.
- 7.2. Either Party may terminate this Agreement by giving six months' written notice to the other Party.
- 7.3. In the event that this Agreement is lawfully terminated pursuant to Clause 7.2 above, Data and Metadata will be removed as set out at Clause 6.1 above.
- 7.4. For the avoidance of doubt, in the event that this Agreement is terminated pursuant to Clause 7, any person or entity that has already received Data from GENESYS under the Terms and Conditions of Use will not have their licenses terminated provided their use of data is in full compliance with the said Terms and Conditions of Use.
- 7.5. In the event that the Crop Trust discontinues GENESYS or transfers GENESYS to another entity, by the date of such an event, the Crop Trust will remove all Data and Metadata and delete any copies of Data and Metadata that it holds.

8. GOVERNING LAW AND JURISDICTION

- 8.1. This Agreement shall be governed by general principles of law to the exclusion of any single national system of law.

8.2. Any dispute related to the interpretation or execution of this Agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the Parties, or, in the absence of agreement, finally settled under the Rules of Arbitration of United Nations Commission on International Trade Law (UNCITRAL) ("the Rules") by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be determined by agreement between the Parties and, in the event of failure to agree, finally settled under the Rules. The Parties shall accept the arbitral award as final.

9. COUNTERPARTS

9.1. This Agreement may be signed in any number of counterparts and this has the effect as if the signatures on the counterparts were only a single copy of this Agreement. Each counterpart when executed shall constitute an original of this Agreement, but all executed counterparts shall together constitute a single instrument.

Signed by the duly authorized representatives of the Parties:

Signed on behalf of the

Signed on behalf of

Global Crop Diversity Trust:

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Name

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Name

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Position

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Position

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Signature

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Date

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Date