

**WHEAT WORKERS' MATERIAL TRANSFER AGREEMENT
MASTER AGREEMENT
30 January 2013**

I. Purpose of this Agreement:

Existing wheat germplasm and information exchange mechanisms have provided significant, long-term benefits to stakeholders. These mechanisms, based previously on the Wheat Worker's Code of Ethics, should be preserved and strengthened in development of future collaborations to maintain viability of public wheat breeding programs and maximize benefits to the entire wheat industry. This Material Transfer Agreement (MTA) for germplasm exchange is thereby constructed to promote and facilitate germplasm exchange between institutions.

This Agreement is entered into by Public Institutions that support and conduct wheat breeding and wheat variety development programs and wish to formally implement the principles of the Wheat Worker's Code of Ethics. A copy of this document is available on the Experiment Station Committee on Operations and Policy (ESCOP) website (<http://escop.ncsu.edu/>).

Following formal adoption of this agreement by an institution, indicated by signature of an authorized individual at that institution, please send a copy via email to the Webmaster of the ESCOP. Each institution adopting this MTA will be listed on the ESCOP website. For each participating institution, the ESCOP website will list the name, title, address, and email for the administrative contact and the technical contact, most likely the plant breeder.

For institutions that have signed the WWMTA Master Agreement, applicable materials can be transferred under the terms of the WWMTA upon execution of an Implementing Letter (see Exhibit A) for the particular transfer.

All institutions with wheat breeding and genetics programs are encouraged to consider adopting the WWMTA.

II. Definitions:

1. **ORIGINATING INSTITUTION:** Public Institution providing the MATERIAL. The name and address of this party will be specified in an Implementing Letter.

2. **ORIGINATING BREEDER:** The name and address of this party will be specified in an Implementing Letter.

3. **RECIPIENT INSTITUTION:** Public Institution receiving the MATERIAL. The name and address of this party will be specified in an Implementing Letter.

4. **RECIPIENT BREEDER:** The name and address of this party will be specified in an Implementing Letter.

5. **MATERIAL** is hereby defined as wheat germplasm, varieties, or parental lines and associated implementing information. Seed and plant parts from this experimental wheat

germplasm are also included in the definition of MATERIAL. The specific description of the MATERIAL will be identified in the Implementing Letter.

6. ESSENTIALLY DERIVED VARIETY (EDV) is hereby defined as:

- a. Varieties/germplasm provided by ORIGINATING INSTITUTION;
- b. Varieties/germplasm developed via selection of a natural or induced mutant or of a somaclonal variant originating from seed provided by ORIGINATING INSTITUTION;
- c. The selection of a variant individual plant originating from seed provided by ORIGINATING INSTITUTION;
- d. Varieties/germplasm developed from backcross breeding whereby the recurrent parent originates from seed provided by ORIGINATING INSTITUTION;
- e. Any mass or bulk reselection within ORIGINATING INSTITUTION's MATERIAL.
- f. Use of ORIGINATING INSTITUTION's MATERIAL as a recipient parent for asexual gene transfer, including gene transfer using molecular genetic techniques.

7. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of wheat germplasm to non-profit and for-profit organizations that have the intent to sell seed in the public marketplace. COMMERCIAL PURPOSES shall also include uses of the MATERIAL by any organization, including RECIPIENT INSTITUTION, to produce or manufacture products for general sale, or to conduct/perform contract research activities that result in any sale, lease, license, or transfer of the MATERIAL to a non-profit or for-profit organization. COMMERCIAL PURPOSES shall not include the use of the MATERIAL in breeding activities as provided in Section III, paragraph 3 below.

8. TESTS: Field performance testing and evaluation, and research for non-commercial purposes conducted at the field/canopy, whole-plant, biochemical, or molecular level under the RECIPIENT BREEDER'S control at RECIPIENT INSTITUTION.

III. Terms and Conditions of this Agreement:

1. The ORIGINATING INSTITUTION retains ownership of the MATERIAL. These rights are not waived with the distribution of the MATERIAL.

2. Neither the RECIPIENT INSTITUTION nor the RECIPIENT BREEDER is allowed to make secondary distributions of the MATERIAL without the express, prior, written permission of the ORIGINATING INSTITUTION and ORIGINATING BREEDER. The RECIPIENT INSTITUTION and the RECIPIENT BREEDER agree to refer to the ORIGINATING INSTITUTION any request for the MATERIAL from anyone other than those persons working under the RECIPIENT BREEDER's direct supervision.

3. The ORIGINATING INSTITUTION, in distributing the MATERIAL under this Agreement, grants permission to RECIPIENT INSTITUTION, under the RECIPIENT BREEDER's control, for its use in TESTS and breeding, defined as using the MATERIAL as a parent in controlled matings, excluding methods and materials defined as an EDV (as described above). Experimental progeny produced by the RECIPIENT INSTITUTION from controlled

mating(s) with the MATERIAL (excluding methods and materials defined as an EDV above) shall not be provided to any third party without the express, prior, written consent of the ORIGINATING INSTITUTION in the form of:

- a. Heterogeneous populations defined as bulked-selfing populations advanced en masse in the absence of single-plant selection,
- b. Homozygous lines produced via doubled haploidy for a period of 5 years from receiving the MATERIAL, or
- c. All other experimental progeny for a period of 5 years from receiving the MATERIAL.

RECIPIENT INSTITUTION may, however, transfer experimental progeny for third party testing under contract with RECIPIENT INSTITUTION solely for the conduct of TESTS and only as consistent with this Agreement.

4. RECIPIENT INSTITUTION and RECIPIENT BREEDER acknowledge that development of an EDV by RECIPIENT INSTITUTION from an ORIGINATING INSTITUTION's MATERIAL is prohibited. Furthermore, RECIPIENT INSTITUTION and RECIPIENT BREEDER will not use an ORIGINATING INSTITUTION's MATERIAL for either of the following without obtaining express, prior, written approval from the ORIGINATING INSTITUTION: a) testing in regional or international nurseries, and b) use as a parent of a commercial F1 hybrid, synthetic, or multiline cultivar.

5. If progeny derived from the use of an ORIGINATING INSTITUTION's MATERIAL, as described in Section III, paragraph 3 above, by the RECIPIENT INSTITUTION contains a proprietary trait that is the subject of an issued patent or a pending patent application, the RECIPIENT INSTITUTION must obtain permission from the entity holding or applying for the patent in order to continue TESTS and breeding with such progeny, or with the original MATERIAL. It is the responsibility of the ORIGINATING INSTITUTION to inform the RECIPIENT INSTITUTION of the presence of a proprietary trait that is the subject of an issued patent or a pending patent application at the time of the transfer of the MATERIAL or when the ORIGINATING INSTITUTION is informed of the presence of such proprietary trait.

6. ORIGINATING INSTITUTION hereby makes no ownership claims, by virtue of its provision of the MATERIAL, in new varieties created by a RECIPIENT INSTITUTION in its use of the ORIGINATING INSTITUTION's MATERIAL for breeding purposes as allowed for in Section III, paragraph 3 above.

7. The RECIPIENT INSTITUTION and the RECIPIENT BREEDER acknowledge that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT INSTITUTION under any patents, patent applications, trade secrets or other proprietary rights of the ORIGINATING INSTITUTION. In particular, no express or implied licenses or other rights are provided to use the MATERIAL for COMMERCIAL PURPOSES.

8. If the RECIPIENT INSTITUTION desires to use or license the original MATERIAL or an EDV of the MATERIAL for COMMERCIAL PURPOSES, the RECIPIENT

INSTITUTION agrees, in advance of such use, to negotiate in good faith with the ORIGINATING INSTITUTION to establish the terms of a commercial license. It is understood by the RECIPIENT INSTITUTION that the ORIGINATING INSTITUTION shall have no obligation to grant such a license to the RECIPIENT INSTITUTION, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature. The ORIGINATING INSTITUTION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, PLANT VARIETY PROTECTION, OR OTHER PROPRIETARY RIGHTS.

10. Each Party to this Agreement shall be solely responsible for any and all actions, suits, damages, liability or other proceedings brought against it as a result of the negligence, misconduct, error or omission of any of its officers, agents or employees. No party is obligated to indemnify another party or to hold another party harmless from costs or expenses incurred as a result of such claims; and each shall continue to enjoy all rights, claims and defenses available to it under law.

11. The RECIPIENT BREEDER agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications resulting from the use of the MATERIAL. This Agreement shall not be interpreted to prevent or delay publication of research findings by the ORIGINATING INSTITUTION.

12. The RECIPIENT INSTITUTION and RECIPIENT BREEDER agree to use the MATERIAL in compliance with all applicable statutes and regulations. To the extent not prohibited by law, the RECIPIENT INSTITUTION and RECIPIENT BREEDER shall bear all risk and liability from its use or misuse of the MATERIAL and/or compliance with applicable laws and regulations including, without limitation, Export Administration Regulations. Furthermore, RECIPIENT BREEDER will use the MATERIAL involving biotechnology-derived plants that may be received and/or transformed pursuant to this Agreement, in compliance with USDA-APHIS's 7CFR, Part 340 Regulations Governing Plant Biotechnology.

13. Either the ORIGINATING INSTITUTION or RECIPIENT INSTITUTION may terminate their participation in this Agreement, with or without cause, on thirty (30) days written notice. Termination of the Agreement for any reason shall not excuse any Party from the performance of any obligation outstanding on the date of termination. Upon termination of the Agreement for any reason, all MATERIAL in possession of the RECIPIENT INSTITUTION received from ORIGINATING INSTITUTION shall be destroyed by RECIPIENT INSTITUTION, unless otherwise agreed to under a separate Agreement.

14. Paragraphs 6, 9, and 10 of this Section III shall survive termination. In the event of termination, any MATERIAL exchanged and remaining in possession of a RECIPIENT INSTITUTION will be destroyed. For the avoidance of doubt, germplasm created by a

RECIPIENT INSTITUTION using the original MATERIAL of an ORIGINATING INSTITUTION as a parent in controlled matings prior to termination, as consistent with this Agreement, will survive termination of this Agreement.

15. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the ORIGINATING INSTITUTION for its preparation and distribution costs. If the ORIGINATING INSTITUTION requests a fee, the amount will be indicated in an Implementing Letter.

16. If any provision or covenant of this Agreement should be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, either in whole or in part, the validity, legality or enforceability of the remaining provisions or covenants of this Agreement shall be unaffected.

17. A failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. The invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions or portions thereof.

18. This Agreement shall remain in effect until terminated by the below signing institution.

19. Materials may be transferred under this Agreement through the execution of an Implementing Letter, in the form of Exhibit A, between an ORIGINATING INSTITUTION and a RECIPIENT INSTITUTION. The institutions listed on the Implementing Letter agree to be bound by the terms of this Wheat Workers' Material Transfer Agreement ("WWMTA").

20. This Agreement may be executed in any number of counterparts, including facsimile or scanned PDF documents. Each such counterpart, facsimile, or scanned PDF document shall be deemed an original instrument, and all of which, together, shall constitute one and the same executed Agreement.

IN WITNESS WHEREOF, an authorized representative of the institution named below has executed this Agreement on the date indicated.

Institution: Kansas State University

Authorized Signature:  _____

Name: Paul R. Lowe

Title: Assistant Vice President for Research

Date: 4/1/2013

Exhibit A: Implementing Letter

WWMTA Implementing Letter

The purpose of this letter is to provide a record of the transfer of wheat germplasm, to memorialize the agreement between the ORIGINATING BREEDER (identified below) and the RECIPIENT BREEDER (identified below) to abide by all terms and conditions of the Wheat Workers' Material Transfer Agreement ("WWMTA") executed on **date**, and to certify that the RECIPIENT INSTITUTION (identified below) has accepted and signed an unmodified copy of the WWMTA. The RECIPIENT BREEDER should sign both copies of this letter and forward both copies to the RECIPIENT INSTITUTION's intellectual property management office. The RECIPIENT INSTITUTION's intellectual property management office will obtain appropriate signature on the Certification section of this Letter and return one copy to the RECIPIENT BREEDER and one copy to the ORIGINATING INSTITUTION.

Please fill in all of the blank lines below:

1. ORIGINATING INSTITUTION: Public Institution providing the MATERIAL:

Organization: _____

Address: _____

2. RECIPIENT INSTITUTION: Public Institution receiving the MATERIAL:

Organization: _____

Address: _____

3. MATERIAL (Enter description):

4. Termination date for this letter (optional):

5. Transmittal Fee to reimburse the ORIGINATING INSTITUTION for preparation and distribution costs (optional). Amount: _____.

This Implementing Letter is effective when signed by both parties. The parties executing this Implementing Letter certify that their respective organizations have accepted and signed an unmodified copy of the WWMTA, and further agree to be bound by its terms, for the transfer specified above.

ORIGINATING BREEDER

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT BREEDER

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT INSTITUTION CERTIFICATION

Certification: I hereby certify that the RECIPIENT INSTITUTION has accepted and signed an unmodified copy of the WWMTA:

Authorized
Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____