

MATERIAL TRANSFER AGREEMENT FOR EVALUATION ONLY

WRWN WESTERN REGIONAL WHEAT NURSERIES

PARTIES

THIS **MATERIAL TRANSFER AGREEMENT** (“Agreement”) is made and entered into this 1st day of July, 2017 (“Effective Date”) and constitutes a binding agreement on the Parties to this Agreement, collectively referred to as “Parties” or individually as “Party.” The Party sending Material is referred to as the “Depositor” and the Party receiving Material is designated as the “Recipient.”

By signing this Agreement, the Recipient and any personnel working with the Material under Recipient's supervision agree to be bound by all terms and conditions of this Agreement.

PURPOSE: To transfer the Material to a Regional Breeders Testing Network participant (“WRWN Transfer”) for the collection of performance data, characterization, and identification of areas of adaptation.

DEFINITIONS:

MATERIAL is hereby defined as experimental wheat germplasm and associated know how. Seed and plant parts from this experimental wheat germplasm are also included in the definition of Material.

TRAIT is hereby defined as a characteristic that is described in writing that is owned by an individual, institution, or company (hereinafter defined as OWNER). TRAIT may include non-transgenic traits or transgenic traits.

LAW OF RECIPIENT'S STATE is hereby defined as any law, regulation, statute, state constitution or other law that imposes obligations, limitations, or requirements on the Recipient. In the case of the USDA WRWN Cooperators, this definition also encompasses United States Federal Laws, the United States Constitution, and all Federal Regulations, Statutes and other laws without forfeiture of the Eleventh Amendment to the United States Constitution providing sovereign immunity of the state.

WRWN COOPERATORS participating in the WRWN (“WRWN Party”) are designated in Appendix A. The USDA – Agricultural Research Service (USDA-ARS) in Pullman, WA has the role of serving as the WRWN Coordinator. WRWN Party (including all employees associated with named Party) has hereby legally bound by and agreed to the following terms and conditions regarding the use and disposition of MATERIAL submitted by other Parties.

TERM

This Agreement supersedes and replaces the Breeding-Material Transfer Agreement used by the WRWN Cooperators since 2003 and shall continue in force for five (5) years from the Effective Date. For the removal of doubt, the WRWN Parties agree that all MATERIAL received in the past shall be governed by the agreement enforce at the time of transfer.

TERMS AND CONDITIONS

MATERIAL is transferred by Depositor(s), and received by Recipient(s), under the following terms and conditions:

1. The MATERIAL shall only be used for field, greenhouse, or laboratory screening and/or performance testing ("Authorized Use"). Any other use of the Material, such as use as a parent in controlled crossing in a breeding program by the Recipient(s) requires expressed written approval of the Depositor.
2. MATERIAL shall remain the property of the Depositor and shall not be used for commercial or profit making purposes without an appropriate license or other written permission from the Depositor and any unused seed, progeny from this seed or seed from progeny shall be returned to the Depositor, or certified as destroyed at the termination or expiration of the Agreement, unless otherwise agreed to by the Depositor and Recipient in writing. Mixing the seed or seed from the progeny with other seed in such a way as to make the MATERIAL difficult to separate is considered an acceptable method of destroying the seed or seed from the progeny, provided that the mixed seed is not replanted.
3. MATERIAL submitted by a Depositor pursuant to this Agreement shall not be sold, transferred or distributed to any third party by Recipient without explicit written permission from the Depositor. Recipient shall take reasonable precautions to prevent third parties from gaining access to any Material. **Notwithstanding the foregoing, a sample of the seed or seed from the progeny can be sent to the USDA-ARS Wheat Health, Genetics and Quality research unit in Pullman, WA for quality testing and molecular marker analysis at the USDA-ARS Western Wheat Quality Laboratory and at the Western Small Grains Genotyping Laboratory. The Depositor can decide not to have their samples analyzed by the USDA-ARS laboratory by indicating such when the MATERIAL is submitted to the WRWN. Recipient will ensure that the sample will be destroyed during this testing.**
4. MATERIAL submitted by a Depositor pursuant to this Agreement shall not be used other than for Authorized Use including but not limited to: for the purpose of seed increases in quantities greater than the amount necessary for testing purposes or for any other purpose that does not directly contribute to the objectives of the WRWN without explicit written permission of the Depositor.
5. Wheat MATERIAL carrying TRAITS may be part of the WRWN Transfer under the following conditions:
 - a. The Party making the submission has authority to do so.

b. The OWNER of the TRAIT has been informed in writing of the submission of the MATERIAL containing the TRAIT to the WRWN Transfer and a copy of the letter to the OWNER has been sent to the USDA-ARS WRWN representative.

c. The TRAIT contained within the MATERIAL must not be a transgenic trait regulated by USDA-APHIS. For avoidance of doubt, de-regulated TRAIT by USDA-APHIS is allowed to be part of the WRWN Transfer.

6. Recipient will use reasonable efforts to supply all results of Recipient's Authorized Use of the Material to USDA-ARS' designated trial originator and the Depositor within ninety (90) days from the completion of the experiment but in no case later than December 31 of the year of the completion of the experiment. At Depositor's request, Recipient shall provide more details on any aspects of the summarized information that Depositor may reasonably request. The results in the report shall include a summary of tests and experiments performed, data obtained, and other data and information developed by Recipient that are relevant to evaluating the commercial potential of the Materials.

6.1 Prior to any submission for publication, the Recipient shall keep the Depositor informed of the results obtained through the use of the Material and shall provide the Depositor with a copy of any manuscript that describes the work with the Material and acknowledge Depositor's contribution to the work reported.

6.2 Subject to the requirements of confidentiality in the obligations of Article 7, Depositor may use any data transmitted by Recipient as it deems appropriate, except the Depositor agrees not to use the name of the Party conducted the work in promotions or advertising.

6.3 The reports provided by Recipient shall also be subject to the confidentiality provisions of Article 7 below if marked as "CONFIDENTIAL INFORMATION," at the time of disclosure of the report as provided for in that section.

6.4 The Parties agree that the MATERIAL, data and associated knowhow transmitted under this Agreement is not intended and shall not be construed as a public disclosure for patent purposes.

7. CONFIDENTIALITY: Recipient shall maintain the confidentiality of proprietary information respecting the Material.

7.1 "Confidential Information" shall mean: (1) any information contained within written communications between the Parties concerning the Materials that is clearly marked as "confidential" or "proprietary" at the time of disclosure and (2) any oral communications between the Parties concerning the Materials, provided that the substance of the oral communication is reduced to writing with the writing clearly marked "confidential" or "proprietary" in conspicuous locations, and with the writing thus marked delivered to all personnel of the receiving Party to whom the oral disclosure

was made within thirty (30) days of the initial oral disclosure.

7.2 Except as otherwise provided in this Agreement, each Party agrees to hold in confidence all Confidential Information disclosed by the other Party. Neither Party shall be obligated to maintain the confidentiality of its own Confidential Information.

7.3 Recipient agrees to protect the Material and Depositor's Confidential Information with at least the same degree of care as Recipient protects its own confidential, proprietary information and shall promptly advise Depositor, in writing, of any misappropriation or misuse of Confidential Information, by any person, which may come to its attention.

7.4 These obligations of confidentiality shall apply for the TERM of this Agreement unless or until such Confidential Information: (a) is in the public domain or thereafter becomes part of the public domain through no fault or act of the receiving Party; or (b) is known by the receiving Party prior to disclosure by the disclosing Party; or (c) is subsequently disclosed to the receiving Party by a third Party having a legal right to do so, without restriction; or (d) is independently developed by employees of the receiving Party without access to or use of the Confidential Information as shown by documentary evidence; or (e) is required to be disclosed by a court or government agency, provided that the disclosing Party is given reasonable notice under the circumstances and the opportunity to contest the required disclosure.

8. This Agreement does not confer any license, right, interest or title in or to the Material or in or to Depositor's Confidential Information to Recipient or any other Party by implication or otherwise, other than as expressly set forth in this Agreement. Parties further acknowledges that this Material may be the subject matter of patent application(s) and/or other intellectual property protection(s), and Parties are advised that it is the right of such intellectual property owner to pursue and/or enforce rights afforded by such protections on the Material.

9. If the Parties hereto decide, at some future date, to engage in activities other than Authorized Use for the Material, a separate agreement must be negotiated and executed between the Parties. Such an agreement shall supersede this Agreement with relation to the Material that is the subject to the separate agreement.

10. The Parties shall comply with all laws, regulations, and/or guidelines applying to the use of the Material. The Parties acknowledge and agree to comply with all applicable laws and regulations of the Animal Plant Health and Inspection Service, the Center for Disease Control, and /or Export Control Administration pertaining to possession or transference of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.

11. RECIPIENT UNDERSTANDS THAT THE MATERIALS ARE EXPERIMENTAL IN NATURE AND HAVE NOT BEEN FULLY CHARACTERIZED. THE DEPOSITOR GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED, IMPLIED, OR

STATUTORY, FOR THE MATERIAL, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. TO THE EXTENT ALLOWABLE BY THE LAW OF THE RECIPIENT'S STATE, RECIPIENT WARRANTS AND REPRESENTS THAT RECIPIENT WILL USE THE MATERIAL ONLY PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND RECIPIENT FURTHER WARRANTS THAT THE MATERIAL PROVIDED HEREUNDER WILL NOT BE ALTERED, CHANGED OR MODIFIED IN ANY WAY WITHOUT THE PRIOR WRITTEN CONSENT OF THE DEPOSITOR OR HIS AUTHORIZED REPRESENTATIVE.

12. In no event shall Depositor be liable for any use by Recipient of the Material or for any loss, claim, damage, or liability, of any kind or nature that may arise from or in connection with this Agreement or the use, handling, or storage of the Material. Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts of that party and the officers, employees, and agents thereof.

13. Any one WRWN Party may terminate its 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, the terminating Recipient shall promptly notify all Depositors and shall either return all Material to Depositors or destroy all Material with a written certification, unless otherwise agreed to under a separate Agreement. All Material submitted, prior to this termination, into the WRWN Transfer under this Agreement by the terminating Party will not be returned by the WRWN Cooperator or other Depositors to the terminating Party.

14. This Agreement constitutes the entire understanding of the Parties concerning its subject matter and supersedes all prior understandings whether written or oral. Any modification or amendment to this Agreement shall not be effective unless and until reduced to writing and signed on behalf of all Parties.

15. 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.

26. A Party may not assign, transfer, or sublicense any rights under this Agreement, unless in writing and signed on behalf of all Parties.

27. Any notices or other correspondence to the Depositor of Material under this Agreement shall be mailed as designated by the Depositor upon the delivery of the Material. Any notices or other correspondence to the Recipient of Material under this Agreement shall be mailed as designated in Appendix A.

As the Party duly authorized to sign on behalf of the WRWN Cooperaotor acting as both Recipient and Depositor, I hereby agree to the terms of this Agreement..

For Authorized Agent:	Scientific Contacts	Address
Signature Date:	_____ Signature Date:	PH:
	Approved:	
	_____ Signature Date:	

APPENDIX A WRWN MEMBERSHIP

Colorado State University
Limagrain Cereal Seeds
Monsanto Company
Montana State University
Limagrain Cereal Seeds
Oregon State University
Syngenta AG
University of California at Davis
University of Idaho
Utah State University
Washington State University
USDA - Agricultural Research Service