

PRIVATE PARTY MATERIAL TRANSFER AGREEMENT
(Research, Testing, and Experimentation Only) -- March 11, 2008 Version

PARTIES:

Institution: University of Idaho, Jim Whitmore Tetonia Research & Experiment Station 888 W Highway 33 Newdale, Idaho 83436 Tel: 208 456 2879 FAX: 208 456 2359 Fax E-Mail: whitmore@uidaho.edu	Distributor: [Distributor Name] [Distributor Address] [Distributor Address] [City, State Zip] Tel: [Telephone #] FAX: [FAX #] E-mail: [E-mail Address]
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Recipient: [Entity Name]
[Entity Address]
[Entity Address]
[City, State Zip]
Tel: [Telephone #]
FAX: [FAX #]
E-mail: [E-mail Address]

MATERIAL REQUESTED: _____

PURPOSE/AGREEMENT:

University of Idaho is the designated lead institution ("Institution"). The Material is owned by Institution and shall be used only for research, testing and experimental purposes. The purpose of this Material Transfer Agreement ("Agreement") is for Institution to release and Recipient to receive the plant materials listed above together with associated know-how (collectively referred to as the "Material") for certain research, testing, and experimental purposes, subject to the terms and conditions set on the following pages:

1. All intended uses of Material are described below. This includes but is not limited to information as to how seed will be increased and by whom; where tubers will be produced for testing and by whom; where tubers will be processed and by whom; where processed material will be evaluated and by whom. In accordance with Section 11 of this Agreement, Recipient is solely responsible for the transfer and use of Material to any person or entity listed below. Entities or persons listed below receiving Material from Recipient are hereinafter referred to as "Transferee(s)." Transferees who are employees of Recipient do not need a separate Private Party MTA. Transferees who are not employees of Recipient must sign a separate Private Party MTA. Sale of Material is strictly prohibited under this Agreement without the written approval of Institution either as part of this Agreement or as an amendment to this Agreement.

Recipient shall not, by any action or inaction, cause or allow Material to be transferred to any Third Party or transported outside of the Authorized Territory. "Third Party" means any entity not bound by the terms of this Agreement and named in it. "Authorized Territory" shall mean the land, fields, greenhouses, laboratories, and storage buildings where Material that is in the possession of Recipient, will remain during testing, and is located at the following addresses:

Institution or its designee shall be permitted by Recipient to enter the Authorized Territory from time to time in order to: a) inspect the Material, b) obtain Material for test purposes, c) collect data, and d) determine compliance by Recipient with the terms of this Agreement.

2. Material provided to Recipient is owned by Institution and all subsequent plants from generations created by propagation are owned by Institution and are for research, testing and experimental purposes only.
3. The Recipient agrees not to claim ownership of the Material, or its genetic components, in the form received, or over material that is essentially derived (as defined in the International Convention for the Protection of New Varieties of Plants Act) from the Material received, nor to seek intellectual property rights over such derived germplasm or related information. Recipient agrees that all inventions (any new or useful discovery, contribution, finding, or improvement including, without limitation, any propagation, vegetative reproduction, identification, and/or characterization of any of the provided plants, or of any sport, giant hill, mutant, or other portion of any of the Material) and patents, prepared or conceived by Recipient or Recipient's employees, either alone or with others, based on Material provided or generated while testing, belong to Institution.
4. Recipient is prohibited from isolating, sequencing, modifying or reproducing genetic material (genes or DNA) from Material by biotechnology processes including but not limited to mutagenesis or transformation.

5. Recipient shall not abandon any Material. Should Recipient sell, or otherwise relinquish, any part of the Authorized Territory, Recipient must destroy, at Recipient's own expense, the Material located there before any third party acquires said part of Authorized Territory. No exceptions are permitted under this Agreement.
6. No intellectual property right or license is granted by this Agreement. The Material shall remain the property of Institution. The Institution does not warrant that use of the Material will not infringe any Plant Variety Protection Act, patent, or other proprietary rights.
7. Recipient shall provide Institution performance data as agreed to by the parties at least annually. Failure to provide annual performance data may result in termination under this Agreement. Recipient shall not describe or include any photographs or other images of the Material in any publication in any medium, including but not limited to, any catalog, brochure, price list, or website. Recipient shall not disclose any information regarding the Material to any Third Party. Recipient shall not publish or otherwise disclose to any Third Party any proprietary information of Institution.
8. Notwithstanding any other term of this agreement, Institution's obligations under the agreement are subject to the limitations and conditions of the Idaho Public Records Law (IC Sections 9-337 through 9-350).
9. Recipient shall not in any way state or imply that this Agreement or the results of this Agreement is an endorsement of its organizational units, employees, products, or services.
10. Recipient shall comply with all laws, regulations, and/or guidelines applying to the use of the Material and assume sole responsibility for any claims or liabilities which may arise from or as a result of Recipient's or Transferee(s)'s use of the Material. Without limitation, Recipient agrees 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 acknowledges and agrees that the Material is experimental and is provided by Institution on an "AS-IS" basis. INSTITUTION GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, OR WARRANTIES OF VIGOR, YIELD QUALITY, GERMINATION, PURITY, INCIDENCE OF OFF-TYPES OR TOLERANCE TO DISEASES, INSECTS, OR GROWING CONDITIONS. The Institution and its affiliates, employees, and agents shall have no liability in connection with the Material or its use.
12. Recipient agrees to indemnify, hold harmless, and defend Institution, and its officers, employees, students, and agents, whether current or former, against any and all claims, including court costs and attorney fees, arising out of use of the Material.
13. Upon completion of the activities performed using the Material, all Material shall be returned, destroyed, or otherwise disposed of as instructed by Institution, and Recipient shall certify in writing to Institution that it has done so.
14. Institution reserves the right to abandon, discard or cease to develop the Material. Unless otherwise approved by the Institution, within thirty (30) days of notification, Recipient must either return the Material or destroy all samples of the Material in Recipient's possession and certify in writing to Institution that it has done so.
15. Institution may release the Material as named varieties under the Plant Variety Protection Act and these varieties may be licensed, either exclusively or nonexclusively, by Institution for domestic and/or international markets. This Agreement provides no rights to the Recipient in regard to licensing or ownership of the Material. Within thirty (30) days of release of the Material as a named variety by Institution, unless otherwise approved by the Institution, Recipient must either return the Material or destroy all samples of the Material and certify in writing to Institution that it has done so.
16. Recipient and its employees and agents shall keep confidential and not publish or otherwise directly or indirectly disclose any proprietary information or know-how provided in the Material, including but not limited to items marked "Confidential" or "Proprietary" by Institution, except any information which: (1) is already known to the Recipient prior to the information being provided by Institution; (2) is or becomes generally available to the public at the time of disclosure without any wrongful act or breach of this Agreement by Recipient; or (3) is rightfully received by Recipient from a third party on a non-confidential basis.
17. If the parties hereto decide, at some future date, to engage in a cooperative research project or program using the Material, a formal Cooperative Research and Development Agreement, or other research Agreement, must be negotiated and entered into between the parties.
18. This Agreement shall be construed in accordance with the laws of the State of Idaho. Any legal proceeding instituted between the parties shall be in the courts of the County of Latah, state of Idaho. If Recipient violates any of the terms of this agreement, Institution shall be entitled to damages resulting from such violations.
19. This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties made prior to or at the signing hereof, whether orally or in writing, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from

any provisions of this Agreement by mutual agreement, acknowledgement, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

20. This Agreement shall become effective upon the last date set forth below and shall terminate one (1) year thereafter (the "Termination Date") unless another Termination Date is indicated below. Institution may terminate this Agreement if Recipient does not furnish annual performance data as required under Section 8 of this Agreement. On the Termination Date or upon termination for lack of performance reporting, Recipient must immediately stop using the Material. Within thirty (30) days of the Termination Date or termination, and at Institution's sole discretion, Recipient must either return the Material or destroy all samples of the Material in Recipient's possession and certify in writing to Institution that it has done so.

Alternative Termination Date: _____

ACCEPTED FOR RECIPIENT:

_____ Signature-- (Recipient)	_____ Date
_____ Printed/Typed Name	_____ Title

ACCEPTED FOR BREEDING PROGRAM:

_____ Signature-- (Institution Scientist)	_____ Date
_____ Printed/Typed Name	_____ Title

RECOMMENDATION OF PVMI: Approved as requested Denied for the following reason(s): _____

_____ Signature—Executive Director PVMI	_____ Date
_____ Printed/Typed Name	

DECISION BY TECHNOLOGY TRANSFER OFFICE FOR INSTITUTION: Approved as requested Denied for the following reason(s): _____

_____ Signature—Institution TT Office	_____ Date
_____ Printed/Typed Name	