

# **Memorandum of Agreement on Scientific & Technological Cooperation**

Between

**Consiglio per la Ricerca e la  
Sperimentazione in Agricoltura,  
Roma, Italy**

and

**South African Agricultural Research  
Council (ARC)  
Pretoria , South Africa**

This Memorandum of Agreement (MOA) is between the Consiglio per la Ricerca e la sperimentazione in Agricoltura, Public Research Organization, C.F. n. 97231970589, with legal offices in Roma, Via Nazionale n. 82, herein represented by Prof. Giuseppe ALONZO, born in Palermo on 23/09/1946, in his capacity as President and Legal Representative, hereinafter referred to as "CRA"

and

the Agricultural Research Council, a non-profit organization, with principal offices at 1134 Park Street, Hatfield, Pretoria, 0083, herein represented by Dr. Shadrack Ralekeno Moephuli in his capacity as CEO/President of the ARC, hereinafter referred to as "ARC".

hereinafter referred to as "**The Parties**";

**CONSIDERING** that CRA is the main agricultural research organization in Italy, operating under the supervision of the Italian Ministry of Agriculture, Food and Forest Policies, and has overall competence in the areas of agriculture, food, agroindustry, fisheries and forestry;

**CONSIDERING** that ARC is the main agricultural research organization of South Africa, and conducts fundamental, applied and development research on agriculture, with a view to solving major scientific and technical problems in the agricultural economy;

**CONSIDERING** that both CRA and ARC are involved in a broad range of scientific fields of common interest, including crop research, plant nutrition, plant breeding, genetics and genomics, plant biotechnologies, plant protection, animal husbandry, veterinary science, environmental resources, meteorology, bioenergies, soil science and protection, agricultural engineering and economics, collectively, but not exclusively hereinafter referred to as "agricultural science and technology";

**CONSIDERING** that CRA and ARC have signed a Material Transfer Agreement (MTA) for evaluating Lachenalia cultivar material for suitability for pot plant production in Italy (approved by CEO ARC on the 1st of April 2009 and transferred from CRA-FSO on the 16th of July 2009 prot. N. 09I0780) and a Memorandum of Agreement (MOA) for development of technology and materials and researcher exchange in the field of Ornamentals (approved and transferred to South Africa on the 3rd march 2011, prot. CRA-FSO 11I-0197);

**BEING AWARE** of the rapid expansion of scientific knowledge and its positive contribution in promoting bilateral and international co-operation;

**WISHING** to broaden the scope of scientific and technological cooperation in a number of areas of common interest through the creation of a productive partnership for mutual benefits;

**NOTING** that such cooperation and the application of the results of such cooperation will contribute to the economic and social development of Italy and South Africa;

**WISHING** to establish a formal framework to implement the overall cooperative activities that will strengthen scientific cooperation between the Parties;

## **HAVE AGREED AS FOLLOWS**

### **Article 1 – PURPOSE**

1. The Parties shall encourage, develop and facilitate cooperative activities under this Agreement in the areas of agricultural science and technology, in accordance with this Agreement and the laws and regulations of both Parties.

### **Article 2 - PRINCIPLES**

1. The cooperative activities under this Agreement shall be carried out on the basis of the following principles:

- Mutual and equitable contributions and benefits;
- Mutual access of the research and technological development programmes, projects and facilities of each Party by visiting researchers of the other Party;
- Timely exchange of information which may concern cooperative activities;
- Promotion of a knowledge-based society for the benefit of an economic and social development of the Parties;
- Protection of intellectual property rights in accordance with Annex I of this Agreement; and
- Material transfer agreements shall be based on the template attached as Annex II.

### **Article 3 – COOPERATIVE ACTIVITIES**

1. The cooperative activities under this Agreement may include:

- Meetings of various forms, including those of experts, to discuss and exchange information on agricultural scientific and technological topics of a general or specific nature and to identify research and development projects and programmes that may be undertaken on a cooperative basis;
- Exchange of information on activities, policies, practices, laws and regulations concerning agricultural research and development;
- Visits and exchanges of scientists, technical personnel and other experts on general or specific subjects;
- Short-term special research programs / projects or training activities.
- Implementation of cooperative projects and programmes which may be decided upon by the Coordination Committee, referred to in Article 5 in accordance with the respective laws and regulations of the Parties; and
- Any other activities of interest for the parties and which are consistent with the parties' objectives.

#### **Article 4 – IMPLEMENTATION**

Each specific cooperation program or project between the parties shall require a Specific Agreement containing the following:

- Objectives of the Program or Project.
- Description of the program activities, including an outline of the different phases and the relevant schedule.
- Statement of the total approved budget and, if required, the corresponding budget allotment.
- Description of the people involved.
- In case of joint research activities, the conditions for the publication of results, as well as the specific aspects related to the applicable copyright, official secrecy, among others, shall be stated.
- Any other aspects of interest for both parties.

#### **Article 5 – COORDINATION COMMITTEE**

For the purpose of ensuring the effective implementation of this Agreement, the Parties shall establish a Coordination Committee on Scientific and Technological Cooperation (hereinafter referred to as "the

Coordination Committee"). This Committee shall be set up within a term of no more than 30 business days, as of the execution date hereof, consisting of an incumbent and an alternate member of each party. This Committee shall be in charge of planning, tracking and evaluating the acts resulting from this Memorandum of Agreement. Such Committee shall hold meetings, face to face or online, at least once a year, upon request of any of the parties, and its reports and proposals shall be submitted to the executive levels of both parties.

#### **Article 6 – FUNDING**

The performance of scheduled and approved activities shall remain subject to the budgetary available funds of both institutions and / or acquisition of funds from third parties. It is hereby suggested that the Entities employing the participants should bear and pay for transport expenses to the recipient Institution and per diem and accommodation expenses as well.

#### **Article 7 – OTHER AGREEMENTS**

This Memorandum does not exclude any such agreements that with the same purpose may be entered into by and between the CRA or ARC and other public or private entities, either domestic or foreign. In this case, either party shall notify the other in advance, so as to coordinate any possible joint assignments.

#### **Article 8 – REPORTS, PUBLICATIONS AND PROPERTY RIGHTS OF RESULTS**

Each party hereby agrees not to disclose, under any circumstances, the scientific or technical information resulting from the projects and/or activities to be developed, and shall keep any such information in strict confidentiality. Where either party intends to use the partial or final results, either in part or in whole, for publishing or communication purposes, such party shall request the other party's consent, and shall, in every case, acknowledge the authors of the work. Should the results obtained from the agreement give rise to property rights, the parties shall become holders thereof on a pro rata to be duly agreed, but in any case, special reference to this Memorandum shall be made.

#### **Article 9 – DISPUTE SETTLEMENT**

Should any controversy arise between CRA and the ARC, which may lead to legal actions, both parties shall make reasonable efforts to settle any such controversy by friendly negotiations. Where any such controversy is not friendly settled, the undersigned shall submit to the arbitral award issued by an independent arbitrator to be appointed by

mutual consent of both parties, except the case in which specific provisions are made in subsequent agreement.

**Article 10 – ENTRY INTO FORCE AND TERMINATION**

This Memorandum shall have a term of 5 (five) years from the date of the last signature, and it shall be renewed for the same period with the consent of the parties, and may be terminated by either party, provided that, it notifies the another (in writing) for consideration, with an advance of no less than 60 days before the desired date of rescission. This agreement may be amended through letters exchanged between both institutions. Once approved by both institutions, such amendments shall be made part hereof.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by the Consiglio per la Ricerca e la Sperimentazione in Agricoltura and the Agricultural Research Council, respectively have signed two (2) counterparts, each of which shall be deemed an original, in the place and date indicated below.

Agricultural Research Council  
(ARC),

South Africa

Dr Shadrack Ralekeno Moephuli  
President/CEO

Date and place \_\_\_\_\_

Consiglio per la Ricerca e la  
Sperimentazione in Agricoltura  
(CRA),

Italy

Prof. Giuseppe Alonzo  
President

Date and place \_\_\_\_\_

## Annex I

### Principles concerning the allocation of intellectual property rights

#### 1. DEFINITION

For the purpose of this Agreement, "intellectual property" shall have the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.

#### 2. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES IN DIRECT COOPERATIVE ACTIVITIES

**A.** Except if otherwise specifically agreed by the Parties, the following rules shall apply to **intellectual property rights**, except copyrights and related rights, generated by the Parties in the course of cooperative activities carried out under this Agreement:

a. The Party generating intellectual property shall have full ownership. In case the intellectual property has been jointly generated and the respective share of the work by the two Parties cannot be ascertained, the Parties shall have joint ownership of the intellectual property;

b. The Party owning the intellectual property shall grant the other Party the access rights to carry out any direct cooperative activities. Such access rights shall be granted on a royalty-free basis.

**B.** Except if otherwise specifically agreed by the Parties, the following rules shall apply to **copyrights** and related rights of the Parties:

a. When a Party publishes scientific and technical data, information or results by means of journals, articles, reports, books or in other forms, including video tapes, CD, DVD, other digital media and software, arising from and relating to cooperative activities under this Agreement, the Party shall make utmost efforts to obtain, for the other Party, non-exclusive, irrevocable, royalty-free licences in all countries where copyright protection is available, in order to translate, reproduce, adapt, transmit and publicly distribute such works;

b. All publicly distributed copies of a copyrighted work under the provisions of paragraph B.a. shall indicate the name(s) of the author(s) of the work unless the author(s) explicitly declines to be named. They shall also display a clearly visible acknowledgement of the cooperative support of the Parties.

**C.** Except if otherwise specifically agreed by the Parties, the following rules shall apply to the **undisclosed information** of the Parties:

a. When communicating to the other Party on the information necessary to carry out direct cooperative activities, each Party shall identify the information which it wishes to remain undisclosed;

b. The Party receiving the information may, under its own responsibility, communicate undisclosed information to its agencies or persons employed through these agencies for the specific purposes of implementing this Agreement;

c. With the prior written consent of the Party providing the undisclosed information, the other Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3. b. The Parties shall cooperate with each other in developing procedures to request and obtain prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its laws and regulations;

d. Information arising from seminars, meetings, assignments of staff and of the use of facilities arranged under this Agreement shall remain confidential when the recipient of such information is requested by its provider to protect its confidential or privileged character at the time such communication is made, according to paragraph C.a.;

e. If one Party becomes aware that it will be, or may be reasonably expected to become, unable to meet the restrictions and conditions of dissemination of Article 2.C., it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.



## Annex II

### Material Transfer Agreement (MTA)

**This agreement (hereinafter referred to as the "MTA") is entered into by and between:**

Consiglio per la ricerca e la sperimentazione in agricoltura whose registered office is located at Via Nazionale 82, 00184 ROMA RM, Italy and operational office at \_\_\_\_\_ duly represented by \_\_\_\_\_, hereinafter referred to as the **"Supplier"**

**and**

Agricultural Research Council, whose registered office is located at 1134 Park Street, Hatfield, Pretoria, 0083, duly represented by \_\_\_\_\_, in his capacity as \_\_\_\_\_, hereinafter referred to as the **"Recipient"**.

(or vice versa)

#### **Section 1. Scope of the MTA**

The purpose of this MTA is to set out the terms and conditions under which the Supplier is to supply to the Recipient the Material defined in section 2 hereunder.

#### **Section 2. Description of the Material**

The biological resources covered by this MTA are varieties of \_\_\_\_\_ (or other related botanical genera - such as \_\_\_\_\_) in the form of \_\_\_\_\_ (seed, cuttings, plants, in vitro plants, ....), for which a list is given and the characteristics are described in the accompanying annexes, which form an integral part of this agreement.

These biological resources, as well as any related documentation or information, are hereinafter referred to as the **"Material"**.

#### **Section 3. Status of the Material and Intellectual Property Rights**

The Material is the property of CRA/ARC, having being bred by CRA/ARC staff. CRA/ARC has obtained Intellectual Property Rights in \_\_\_\_\_ (or has filed a request for the issue of Intellectual Property Rights in \_\_\_\_\_) (or reserves the right to file a request for the issue of Intellectual Property Rights in \_\_\_\_\_). The Material shall not be protected by any

intellectual property rights whatsoever, by the Recipient or any third party in any other Country or territory.

#### **Section 4. Authorized Use of the Material**

The Material is transferred from the Supplier to the Recipient for the sole purpose of assessing its agricultural performance under the Recipient's local conditions, to identify varieties that can be used in the context of \_\_\_\_\_[place/type of use].

The varieties supplied may only be used commercially within the limits of an express permission granted in writing by CRA/ARC. In particular, for varieties whose use for commercial purposes is not specified, the Recipient is committed not to use them for commercial purposes without obtaining the prior, written authorization of CRA/ARC.

#### **Section 5. Subsequent Transfer of the Material by the Recipient**

The Material shall not be transferred by the Recipient to any third party without the prior, written consent of CRA/ARC, and subject to the said third party respecting all the conditions of this MTA.

#### **Section 6. Duty to Inform**

The Recipient shall, within a reasonable time span, send information back to CRA/ARC regarding the agricultural performance of the varieties introduced at the Recipient's site. This information will enable CRA/ARC to more effectively characterize these varieties.

#### **Section 7. Publications**

The Recipient agrees to indicate the identity of the Material Supplier in any publication mentioning the Material or concerning work in which the Material was used, and to send the Supplier a copy of each publication.

#### **Section 8. Property and Application of Derived Results**

The research results obtained or derived from the Material by the Recipient (hereinafter referred to as "**Derived Results** ") shall be the property of the Recipient, who may protect them by intellectual property rights and use them commercially, provided that it negotiates beforehand with CRA/ARC the just and equitable sharing of the advantages resulting from such commercial use.

The Recipient agrees to pass on the Derived Results to the CRA/ARC, which may use them freely for research purposes, alone or with its partners.

#### **Section 9. Warranties and Obligations of the Supplier**

The Supplier warrants the sanitary condition of the Material solely for the elements described in the accompanying official certificate, which certifies that the Material complies with the sanitary requirements of the

country of the Recipient on the date of transfer (Phytosanitary Certificate issued by the national organization in charge of plant protection for plant biological resources, equivalent certificates or declarations for animal or microbial biological resources). However, the guarantee provided by the quarantine certificate and by the phytosanitary certificate accompanying the varieties when they are shipped to the Recipient is limited by the detection thresholds of the tests carried out.

The Material is experimental by nature and is supplied without any warranty or commitment as to its quality, viability or purity (genetic or physical), or as to its performance or fitness for any particular purpose.

The Supplier shall in no way be held responsible for any loss or damage, of any nature whatsoever, that might result from the supply of the Material to the Recipient, its intentional or unintentional dissemination, or its use by the Recipient. In particular, CRA shall not be held responsible for the appearance of diseases or pests on the supplied varieties once they have been shipped to the Recipient.

#### **Section 10. Rights and Obligations of the Recipient**

The Recipient shall be held solely responsible for complying with regulations, in particular the sanitary (quarantine, etc.) and biosafety regulations, as well as the rules governing the import and dissemination of biological material, applicable in the country or countries where the Material is introduced or disseminated under this MTA.

The Recipient shall ensure that the Material is handled by persons with the necessary skills, knowledge, experience and abilities, on appropriate premises and with appropriate equipment, befitting the nature of the Material. The Recipient shall be held solely responsible for any loss, damages, claims or other obligations resulting from the use of the Material, whatever the cause.

#### **Section 11. Term and Termination**

This MTA shall come into force on the date of its signature by the last signatory, for a duration of \_\_\_\_\_ years (or, for an undetermined duration).

#### **Section 12. Applicable Law and Jurisdiction**

This MTA is subject to the Italian law. The Supplier and the Recipient shall endeavour to resolve amicably any dispute in connection with the interpretation, performance or validity of this MTA. Only in case no settlement be reached within a period of three months, shall the parties submit to the Courts.

Signed in two original copies.

On behalf of Agricultural Research  
Council (ARC)

On behalf of Consiglio per la  
Ricerca e la Sperimentazione in  
Agricoltura (CRA)

Name, Surname

Name, Surname

Position

Position

Date and place, \_\_\_\_\_

Date and place, \_\_\_\_\_

**Annex to the MTA: List and characteristics of the Material**

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