



Australian Government
Director of National Parks



**Australian National
Botanic Gardens**

Agreement for Supply of Biological Material for Non-Commercial Use Constituted by the following letter and Schedules

DNP Reference:

Recipient Name
Address

Dear **Name**

The Director of National Parks (DNP) offers to supply to the Recipient the Material listed in **Schedule 1** to this letter, being such of the Biological Material requested by the Recipient as is, in DNP's sole judgement, reasonable and appropriate, to be used for the purposes specified in that Schedule, on the terms and conditions set out in **Schedule 2** to this Agreement.

DNP intends to honour the letter and spirit of the Convention on Biological Diversity, and to manage access to biological resources in the Australian National Botanic Gardens in accordance with the purposes of Part 8A of the *Environment Protection and Biodiversity Conservation Regulations 2000*. Accordingly, the supply of any and all Biological Material by DNP to the Recipient, including any Material to be supplied under this Agreement, will be subject to the terms and conditions in **Schedule 2** to this letter. The Recipient should ensure that they carefully read and understand all conditions.

A duplicate copy of this letter is enclosed with an endorsement that provides for notification of acceptance of the terms of the Agreement. If you, being the Recipient or their lawful representative, agree to accept Biological Material in accordance with this Agreement your acceptance must be notified by signing, dating and returning the endorsement in the duplicate letter.

On receipt of your notification of acceptance, this letter and the attached Schedules:

- Schedule 1 – Biological Material to be Supplied and Purposes of Use
- Schedule 2 – Terms and Conditions

will constitute the entire Agreement between DNP and the Recipient.

The duplicate copy of this letter must be signed personally by the Recipient (if the Recipient is an individual) or by a duly authorised officer or agent of the Recipient (if the recipient is an incorporated body, organisation or institution).

Yours Sincerely

.....

Anne Duncan, Director of the Australian National Botanic Gardens
for and on behalf of the Director of National Parks

Australian National Botanic Gardens
Clunies Ross Street
Acton ACT 2601

ACCEPTANCE OF AGREEMENT

Insert name of Recipient and ABN (if any) agrees to accept the supply of the Biological Material listed in Schedule 1, to be used for the purposes specified in Schedule 1, on the terms and conditions set out in Schedule 2

Dated

Delete whichever of the following signature blocks is not appropriate-

(a) If the Recipient is an individual

Signed by the Recipient

.....

(signature)

in the presence of: **name of witness**

.....

(signature)

(b) If the Recipient is an incorporated body, organisation or institution

Signed for and on behalf of **insert name of Recipient** by its duly authorised officer or agent who warrants that he/she has authority to sign this Acceptance.

.....

(Signature)

Full Name:

Authority to Sign:

in the presence of: **name of witness**

.....

(Signature of Witness)

Full Name:

Schedule 1 - Biological Material to be Supplied and Purposes of Use

Supply period

Access to the supply of the biological materials listed below is only permitted until **date**. After this date, you will need to reapply to the Director of the Australian National Botanic Gardens (ANBG) as outlined on the ANBG website.

Material

Itemise all Material to be supplied to the Recipient, including Prop ID and amount of material to be taken

Purposes of Use

Set out the purposes for which the Recipient can use the material

Schedule 2 - Terms and Conditions of Agreement

- 1) The following words and phrases contained in this Agreement, and its Schedules, shall be interpreted as set out below:
 - a) **Access to Biological Resources** has the meaning given by regulation 8A.03 of the *Environment Protection and Biodiversity Conservation Regulations 2000* namely the taking of Biological Resources of native species for research and development on any Genetic Resources, or biochemical compounds, comprising or contained in the Biological Resources.
 - b) **Biological Material** includes but is not limited to, plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves), Biological Resources, fungi or other fungal material, and any other material of plant, animal, fungal, microbial or other origin and the Genetic Resources contained therein.
 - c) **Biological Resources** has the meaning given by section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* namely that it includes Genetic Resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.
 - d) **Country of Origin** of Genetic Resources means the country which possesses those Genetic Resources in *in situ* conditions.
 - e) **Derivatives** include, but are not limited to, modified or unmodified extracts and any compounds or chemical structures based on or derived from Genetic Resources and their Progeny, including analogues.
 - f) **Genetic Resources** has the meaning given by section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* namely that it includes any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.
 - g) **Progeny** has the meaning given by section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* namely that it includes offspring produced by any means from the Biological Material:
 - i. in relation to an animal—any animal reproductive material (as defined in section 528) of that animal or of any progeny of that animal; and
 - ii. in relation to a plant—any plant reproductive material (as defined in section 528) of that plant or of any progeny of that plant; and
 - iii. in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and
 - iv. in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant,and to avoid doubt includes a reference to any descendant of that animal or plant.
 - h) **Recipient** means the person (individual, incorporated body, organisation or institution) supplied with Material under this Agreement.
 - i) **The Material** means any Biological Material supplied to the Recipient under this Agreement and listed in Schedule 1.
- 2) Subject to condition 3 the Recipient will use the Material and any Progeny or Derivatives thereof (such as modified or unmodified extracts) for the purposes specified in Schedule 1 only. The Recipient will not use the Material or any Progeny or Derivatives thereof for commercial purposes or potential commercial purposes.

- 3) The recipient will not carry out, or allow others to carry out, research or development for commercial purposes (or potential commercial purposes) on any Genetic Resources or biochemical compounds comprising or contained in the Material unless a benefit-sharing agreement (in accordance with Division 8A.2 of the *Environment Protection and Biodiversity Conservation Regulations 2000*) has been entered into with DNP.
- 4) Subject to condition 5, the Recipient will not give the Material or any sample of the Material or any Progeny or Derivatives of the Material to any other person without the prior consent in writing of DNP, which may be given subject to conditions including that the transferee has entered into a legally binding written agreement with DNP containing terms no less restrictive than those contained in this Agreement.
- 5) If the Material includes undescribed taxa:
 - a) holotypes of the plant kingdom must be offered to the Centre for Plant Biodiversity Research (CPBR);
 - b) holotypes of the Class Insecta must be offered to the Australian National Insect Collection; and
 - c) all other holotypes must be offered to the Australian Museum.
- 6) The Recipient will give a written report on the results of any research on Biological Resources contained in the Material to DNP as soon as possible.
- 7) The Recipient will acknowledge DNP and, where determinable, the Country of Origin, in all research publications resulting from the use of the Material.
- 8) DNP makes no representation or warranty of any kind, either express or implied, as to the identity, safety, merchantability or fitness, for any particular purpose, of the Material or its Progeny or Derivatives.
- 9) The Recipient will at all times (during and after the expiration of the agreement) indemnify DNP (including DNP's officers, employees and agents) from and against any:
 - a) costs or liability incurred by DNP;
 - b) loss of, or damage to, DNP property; or
 - c) loss or expense incurred by DNP in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by DNParising from either:
 - d) a breach by the Recipient of the Agreement; or
 - e) an act or omission involving fault (negligent or unlawful act or omission or wilful misconduct) on the part of the Recipient or its Personnel in connection with the Agreement.
- 10) The Recipients liability to indemnify DNP under this Agreement will be reduced proportionately to the extent that any act or omission involving fault on the part of DNP contributed to the relevant cost, liability, damage, loss or expense.
- 11) The right of DNP to be indemnified under this agreement is in addition to, and not exclusive of, any other right, power or remedy provided by law, but DNP is not entitled to be compensated in excess of the amount of the relevant cost, liability, damage, loss or expense.
- 12) The Recipient's obligation to indemnify DNP under this Agreement will survive the expiration or termination of the Agreement.

- 13) Where the Recipient fails to satisfy any of its obligations under this Agreement and DNP considers that the failure is:
 - a) not capable of remedy, then DNP may by written notice terminate this Agreement immediately;
 - b) capable of remedy, then DNP may by written notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 14) If this Agreement is terminated by DNP the Recipient will not thereafter use, or cause, permit or allow to be used any of the Material or any Progeny or Derivatives for any purpose. The operation of this condition survives the termination of this Agreement.
- 15) The laws of the Australian Capital Territory apply to this Agreement and the courts of the Australian Capital Territory shall have non-exclusive jurisdiction in respect to any dispute under this Agreement.
- 16) Only personnel named on the permit are authorized to work at the ANBG.
- 17) The permit holder must advise the Curator of the Australian National Botanic Gardens (ANBG) on ph: 02 6250 9522 before starting work in the Gardens for the first time, and give details of the vehicle(s), equipment and activities to be undertaken.
- 18) Vehicles and plant must not be taken beyond the public car park without prior permission of the Curator. Permission will normally be granted only to transport necessary equipment. Vehicle used for this purpose must keep to sealed roads and they must not be parked on garden beds or in a manner that blocks roads for other vehicle users. A vehicle identification pass will be issued and this must be displayed on the vehicle at all times whilst it is in ANBG.
- 19) Safety and security require that all 'out of hours' access must be notified in advance. Permit holders are responsible for the security and use of any keys issued for this purpose. Keys must not be given or lent to any other person and must be returned when the permit expires.
- 20) While working in the ANBG an identification badge and white laboratory coat must be worn at all times and the permittees must identify themselves to ANBG staff working in the same area.
- 21) Recognising that the ANBG is a public place, visitors and other users and employees must always be treated courteously.
- 22) Permit holders must not enter areas that are fenced or barricaded and must obey reasonable directions given by ANBG staff. Any dispute over directions given by ANBG staff must be referred to the Curator for resolution and not the ANBG staff member.
- 23) In the event of an emergency requiring the evacuation of the site the permit holder must immediately follow the instructions of ANBG staff. Frequent visitors must acquaint themselves with the emergency evacuation procedures.
- 24) The permit holder is required to cause the least possible environmental interference to the ANBG.
- 25) While in the Gardens the permittee must abide by the provisions of the Environment Protection and Biodiversity Conservation Act and Regulations, and is expected to be familiar with their requirements. The permittee must also comply with any legislation, regulations and/or code of practice relating to animal welfare and wildlife protection in the ACT.
- 26) Permittees are required to conduct themselves at all times with due diligence to maintain the safety of themselves and others.

- 27) Wherever possible research is to be conducted out of view of the general public.
- 28) Permittees must satisfy ANBG that they have adequate personal accident and public liability.
- 29) From the date that you sign acceptance of this Agreement and before November 1 each year, you must provide a brief annual report (summary only) on the work carried out under this agreement to the Director of the Australian National Botanic Gardens. This report should include the quantities and identity of the specimens removed in the previous 12 months.
- 30) Copies of all other reports and publications arising from this work must be provided to the ANBG library as they become available.
- 31) The permittee and a witness shall sign and attest this agreement and return one copy to the Director, ANBG prior to commencing activities in the Gardens under this permission.
- 32) These conditions apply to all those people associated with the permitted activities.