



TERMS AND CONDITIONS FOR OPEN-SOURCE SEED USE IN KENYA

PREAMBLE:

We acknowledge the seed as commons with deep rooted cultural identity and management system as recognized by the Kenya's 2010 Constitution. By acquiring and using seeds under these terms and conditions, you, as the user accept the provisions Terms and Conditions (T&Cs) herewith.

This T&Cs promotes freedom to save, use, exchange, share, reshare, enhance, cultivate and propagate seeds.

As a user, you commit to adhere to the T&Cs as enlisted in this document. In particular, we prohibit any claim to plant variety rights, patent rights or any other statutory possible with exclusivity rights of the seeds or their propagation and enhancements.

Non-compliance to the T&Cs enlisted herewith, shall attract a legal action in accordance with the Kenyan law/s. Further, you will forfeit your rights of use of the seed or any seed or enhancement obtained thereof.

1. DEFINITIONS

Seed: This refers to a part of a plant, which is or is intended to be used for propagation. It includes any seed, seedling, corm, cutting, bulb, bulbil, layer, root, runner, scion, set, split, stem, stump, sucker or tuber so used or intended to be so used.

Propagation: This mean any type of reproduction, i.e., the new or further generation of seeds. Propagation shall also include technical methods of genetic information for the purpose of generating seeds with certain characteristics, including any methods that are unknown today.

Enhancements: This shall mean culture or breeding of new plants in regard to which these seeds have, under this T&Cs, been involved at least one point and in the course of the development-regardless of whether such enhancements concern varieties, populations or other plant groupings or individual plants or part of plants.

Farmer: This refers to the previous owner of the seeds who is rightfully handing them over to the user under these T&Cs, conferring the rights of use of the seeds to the custodee.

User: This refers to anyone who takes possession of or utilizes the seeds in accordance with these T&Cs.

Custodee: This refers to whom the custody of these seeds to be guarded under T&Cs under the stewardship given on behalf of the farmers. In this case, it is the Seed Savers Network (SSN), Kenya.

2. SCOPE OF THE TERMS AND CONDITIONS

1. These T&Cs shall materialise once the user acquires the seeds or otherwise obtains them with the consent of the prior owner. However, it materializes once he or she opens the package of seeds. The declaration of acceptance does not need to be received by the custodee.
2. Upon concluding these T&Cs, the custodee hereby assigns his or her rights on the seeds to the user with and open-source conditions.
3. These T&Cs are to be understood as a contract under civil law. It shall be deemed to have been accepted as being legally mandatory by all parties, from the moment of acquiring the seeds or opening the packet, even if the user contests the T&Cs.
4. These T&Cs shall be applicable on both documented and undocumented seed.
5. These T&Cs shall apply for benefit sharing with communities when their seeds are used for commercial gains to incentivize conservation.

3. PLANT MATERIAL INDEX

1. The custodee may provide own material index, in which all groupings of seeds identified according to characterization criteria and their enhancements are included. Any enhancements undertaken by the user have to be provided to the custodee in the form of a viable and propagatable seed sample for incorporation into the plant material index.
2. The use of any varieties and enhancements that are included in this plant material index may not be limited in any way other than through the provisions of these T&Cs.

3. The origins and properties of the material will be prepared by the custodee in the plant material index and can be reviewed at any time.
4. The plant material index will be published by the custodee on website once it has been prepared.

4. RIGHTS OF THIRD PARTIES AND GOVERNMENTAL PROHIBITIONS

Should the user be obliged to deviate from these T&Cs based on the rights of third parties or governmental prohibitions, in whole or in part, when utilising the seeds, he or she may only use the seeds and propagations thereof for personal, non-commercial purposes.

5. LAPSE OF THE RIGHTS UPON INFRINGING THE T&Cs

1. Should the user infringe these provisions, his or her rights of use of the seeds or their enhancements will lapse immediately. A claim may, in particular, be made against the user by the custodee, to cease and desist from disseminating the seeds, propagation of the seeds or enhancement of the seeds and to compensate damages.
2. The expiry of the rights of use in accordance to paragraph 6(1) shall not have any influence upon the rights of other users, as long as the latter do not infringe the T&Cs themselves.

6. APPLICABLE LAW, PLACE OF JURISDICTION, ANY OTHER PROVISIONS

1. These T&Cs shall be subject to Kenyan Law.
2. In the event any one or more of the clauses contained in these T&Cs, shall for any reason, be held invalid, illegal or unenforceable by a court of law, that invalidity, illegality or unenforceability shall not affect any other clause in these T&Cs.
3. The custodee reserves the rights to review these T&Cs.

7. Access and Benefit Sharing

The user commits to the spirit of the ratified international, regional and national laws and policies on fair and equitable benefit sharing such as the 1992 Convention on Biological Diversity (CBD), International Treaty on Plant

Genetic Resources for Food and Agriculture (ITPGRFA), Declaration on the Rights of Peasants (UNDROP), the NAGOYA Protocol, Traditional Knowledge and Cultural Expression Act (.....) and the Kenya Constitution 2010.

APPENDIX

To be able to provide anyone with the rights to free use of the seeds in accordance with these T&Cs, every time the seeds are passed on, the following or a substantially equivalent reference to the applicability of these T&Cs and its source is to be displayed clearly and attached.

T&Cs FOR OPEN SOURCE SEED IN KENYA

This seed is availed under terms and conditions of Open Seed Source (OSSS), Kenya. Nobody shall claim plant breeders' rights or any other forms of exclusive ownership of the seeds or their derivatives.

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Farmers, environmentalists, Inter-sectoral Forum on Agrobiodiversity and Agroecology (ISFAA), Department of Agriculture Nakuru County, National Museums of Kenya, National Gene bank, African Biodiversity Network (ABN), Seed Savers Network (SSN), Slow Food, Biodiversity and Biosafety Association of Kenya (BIBA), ActionAid, Smart Initiative Participatory Ecological Land Use Management (PELUM), Maendeleo Endelevu Program (MEAP), Grow Biointensive Agriculture of Kenya (GBIAK) and

REFERENCE

Kotschi, J. and Rapf, K. (2016): Liberating seeds with an Open Source Seed (OSS) Licence. Working Paper. AGRECOL. Guggenhausen.