LICENSE AGREEMENT
ON GEMMA Website & Database
47/2021/ÚKSÚP

BETWEEN

GROUPE D'ETUDES ET DE CONTRÔLE DES VARIÉTÉS ET DES SEMENCES, having its headquarters at 25, rue Georges Morel, CS 90024, 49071 Beaucouzé cedex, represented by its CEO, **Mr. Alain TRIDON**

Hereinafter referred to as **« GEVES »**

AND

The Central Control and Testing Institute in Agriculture (UKSUP) having its headquarters at Matúškova 21, 833 16 Bratislava represented by its Director, **Mr. Jan Berceli**,
Hereinafter referred to as **"Examination Office" or "EO" or as "Client"**

Each referred to as « Party », together referred as the "Parties".

PREAMBLE

Within the framework of its missions, in particular with the aim of the registration of all new varieties in the official French and European catalogues, the legal protection of new plant varieties and the characterization and the description of varieties in purposes of preservation of the genetic resources, GEVES develops for its internal needs several databases and human-machine interfaces adapted to the needs of data processing.

GEVES develops generic software which can be used by other entities. It is in this context that the collaboration between GEVES and public or private entities, and in particular transnational institutions as EO, UPOV and ISTA, should be considered.

After a first phase of cooperation between Germany, Spain and France in cooperation with CPVO about maize, GEVES, using internal previous works has developed a website named GEMMA, based on works realized within the framework of an EO program called "*Management of Peach Reference Collections*" piloted by France, in link with Spain, Hungary and Italy.

GEMMA is a platform that enables users to store, exchange and manage quantitative, qualitative and biomolecular data and images related to the plant varieties, by using a secure identifier and password. It also presents several interfaces to interrogate, display, generate or export data.

The creation of GEMMA has been achieved by GEVES on January the first, 2011, and the website is based on a computer-aided software engineering.

GEVES currently hosts GEMMA on a server it rents. GEVES is using GEMMA for its common activities of data exchanges; it ensures the maintenance and continuous development according to its own needs.

The EO declares itself interested by the website/database GEMMA and wishes to get an access to it in order to store and exchange variety related data ; this data being provided by European

Examination Offices and European technical qualified DUS bodies. The term "variety" overlaps varieties of plants and material described with the aim of preserving genetic resources as well.

IN WITNESS WHEREOF,

Article 1 - Definitions

Annual Period shall mean entire period of 12 months ended on 31 of December, with the first annual period beginning at the effective date of the present agreement.

Confidential information shall mean all confidential or protected information belonging to one of the Parties or jointly to the Parties with respect to the invention protected by the Patents, or relating to the Know-how enabling the Patent to be implemented in its written, oral or other form.

Domain shall mean plant varieties.

Products shall mean the GEMMA website & the database in its different and successive versions and its future improvements as well as its know-how, its documentation... described in Annex I. The Product is a platform of exchange of DUS data.

Territory means European Union.

User means people from the Client having access to the Product.

Article 2 – Object - Granted rights

2.1 The scope of this agreement is to define the conditions for the use of the Product and the terms of assistance which will be provided by GEVES to the EO.

More precisely, GEVES grants to EO, who accepts a **non-exclusive**, non-transferable license on the Product in the Territory and in the Domain of the agreement.

2.2 This agreement is made in consideration of the person of the EO. The rights conferred shall in no case be assigned or transferred in any manner whatsoever, temporarily or permanently, especially in case of merger, takeover, acquisition or recovery, without prior written consent of GEVES. Failure to do so may result in termination of the conditions laid down in Article 13.

2.3 The EO acknowledges that GEVES retains the property of the Product and may dispose of it as it wishes. As such, GEVES may contract directly with third parties (other Examination Office, technical qualified DUS bodies ...) for any purpose, territory or domain.

Article 3 – Term

The agreement shall take effect on 1st December 2021 (the "effective date") for duration of three (3) annual Periods. It is tacitly renewable for the same period.

Article 4 - Confidentiality

EO recognizes that GEVES, in its quality of supra-administrator, has the capacity and the means to have access to all the data stored in Product.

GEVES commits not to use, withdraw or spread any data provided by the EO within the framework of its activity of supra-administration of the website. It also commits not to consult those data apart from this activity, and to respect the data confidentiality of the EO.

Furthermore, GEVES commits not to mix the data of the EO with the data of the other examination offices with which GEVES is bounded by a same type of contract.

Article 5 – Intellectual Property

GEVES is the creator of the Product which is its full own intellectual property.

It cannot be reproduced permanently or temporary, modified, sold, given for free or decompiled *(except for purposes of interoperability in the conditions planned in the article L. 122-6-1. IV of the French Code of Intellectual Property)*.

It shall not be used as basis for the development of another website.

The translation or adaptation of the Product by another person than GEVES, is also forbidden without the preliminary express agreement from GEVES.

Article 6 - Liability – No contest

The EO is liable for its own data.

GEVES cannot be held responsible for any possible direct or indirect damage as a result of the Product's use or Product's malfunction. The agreement is granted under the sole guarantee of the material existence of the Product. Furthermore, no warranty is made, given or implied as to the absence of any infringement of any proprietary rights of third parties. EO is solely responsible for the use of the Product. EO will be solely responsible for any lost profits or other damages suffered by him because of the use of the Product.

The EO cannot be held responsible for any damage caused to the website due to force majeure. Force majeure will include any events characterized as such by French laws and courts.

Besides, the EO admits that it is impossible for GEVES to guarantee that the site will satisfy requirements of performance and that it will work ceaselessly nor without any bug. However, GEVES makes a commitment, as far as its means, to do everything it can to ensure the most effective level of service as possible.

The Parties make a mutual commitment to carry out the obligations lead by the present agreement in good faith, with all the necessary diligence. In the realization of its obligations, every Party makes a commitment to respect third parties rights, in particular intellectual property rights.

Furthermore, EO:
- agrees not to contest the value of the Product,
- acknowledges having read all documents and information relating to the Product.
- accepts this license agreement at its own risk with full knowledge of the facts.

In case the Product might fall into the public domain without the knowledge of the GEVES, EO shall not be entitled to any compensation or reimbursement of fees already paid to GEVES.

Article 7 – Financial provisions

7.1 In consideration of this agreement, EO agrees to pay to GEVES:

- For **usage**: an annual lump sum per species as specified in Annex 2, which may be reviewed annually.

- For **corrective maintenance**: free of charge for the Client,

- For **upgradeable maintenance:** GEVES shall send to EO an estimation of the required budget to carry out such developments. At the reception of the quotation by EO, the latter shall notify to GEVES its approbation or its refusal to finance such new development.

- **For Training:** an invoice will be sent separately. The training course is realised after demand and approbation by the Client, at the price, specified in Annex 2. The hotel and restaurant fees will be in charge of the Client.

For usage	See price indicated in Annex 2
For corrective maintenance	Free of charge
For upgradeable maintenance	On quotation
For training	On quotation

7.2 Payment modalities

- At any time of the year for the initial subscription subject to provide:
  - o The present Agreement duly signed and dated,
  - o Annex 2 with the identification of the species,
  - o And payment of the amount of the lump sum/specie specified on Annex 2.

- At any time of the year to add new species subject to provide:
  - o A new updated Annex 2 with the identification of all species for which a new access to the Product is requested,
  - o And payment of the amount specified in Annex 2. Whatever the time of the year when request is formulated, the annual lump sum/specie is due.

- Before the end of January of each year for the renewal of the access to the Product subject to provide:
  - o The updated Annex 2,
  - o And payment corresponding to the sum lump/specie.

Creation of accounts are subject to the respect of the present article.

EO shall pay the sums due to GEVES, on the current following account:

Holder : GIP GEVES, rue Georges Morel, 49071 BEAUCOUZE cedex
Domiciliation : CIC Saint Quentin Entreprises, 164 avenue Joseph Kessel, 78960
Voisins le Bretonneux
IBAN : FR76 3006 6108 7900 0100 2320 143

And specifying the references "**GEMMA - 2021 for UKSUP"**

Then, GEVES will send to EO the corresponding invoice.

Article 8 – Advertising and communication

EO agrees to name systematically GEVES as creator of the Product and to indicate clearly on its website, on any specification sheets and more generally on all advertising material relating to the Product the words "Proprietary of GEVES".

Non-observance of this provision by the EO will be considered a failure to perform its contractual obligations.

For its part, GEVES is allowed to indicate the existence of this agreement with EO in its relations with third parties and especially in its publications.

Article 9 –Unfair competition action / Infringement

The EO commits to inform immediately GEVES of any act of infringement committed against the Product he could be aware of.

In case of action for infringement or unfair competition from third party for the use of the Product prejudice to the EO, GEVES is committed to bringing him free technical assistance to cope with this action.

In case of infringement of the Product by a third party or unfair competition, GEVES and the EO shall consult to determine by mutual agreement the action to take.

GEVES is free to act in all instances as plaintiff or defendant. The EO is free to assist and to join GEVES in such lawsuit.

Article 10 - Termination

The EO reserves the right to end at any time and unilaterally the present agreement, by registered letter with recorded delivery sent to GEVES and effectiveness three (3) months after its date of presentation.

GEVES reserves the right to end the present agreement, in the same forms and deadlines, in particular for any breach of the EO concerning any obligations of the present agreement, such as the non-provision of Annex 2 in due time, for non-payment, ... In such cases, GEVES may decide to deactivate identifier and password of EO.

The exercise of this faculty of termination does not exempt the Parties of filling the obligations contracted until the date of effectiveness of the termination. The obligations bound to

confidentiality and intellectual property continue despite the termination of the present agreement.

The termination of the present agreement leads to the return to the EO of its data stored in the Product, then the deletion of his administrator account.

Article 11 – Intuitue personae

The present agreement is concluded by each party explicitly and decisively in the light of the characteristics of the other. Consequently, the agreement shall not be subject to any full or partial transfer or assignment, gratuitously or against consideration, without the prior written consent of the other party.

Article 12 – General provision

The provisions of the present agreement, including the appendices, constitute the entire agreement between the Parties and shall prevail over any other prior document.

Should one of the provisions of this agreement be declared null or without object by application of any law, regulation, or decision issued by a competent court, the other provisions of this agreement shall remain valid with due observance of the laws and regulations in effect.

Any further agreements regarding this agreement will be subject to the signature by the Parties of a covenant.

For the application of this agreement, the Parties declare that their residence is located at the address of their respective head offices mentioned at the head of this agreement. Each Party shall inform the other of any change regarding such address.

Article 13 – Applicable law - Jurisdiction

The Parties expressly agree that the present agreement shall be governed by French law.

The Parties agree to strive to settle out of court the disputes likely to arise from the interpretation and the execution of this agreement.

Should they fail to reach an agreement; the litigation will be submitted to the competent court in accordance with the French Law.

Article 14 - Miscellaneous

The Parties are bounded by the present agreement which is composed of:
-   The contract itself with its 14 provisions
-   Annex 1, the technical description of the Product
-   Annex 2, the annual summary of the Product's use

- Annex 3, the request of training course.

SIGNATURES AND SEALS:

Done at Bratislava, on ……………………………..

In two (2) originals.

Jan Berceli

Director General of the Institute

On behalf of GEVES   On behalf of UKSUP

"Read and approved"   "Read and approved"

ANNEX 1- TECHNICAL DESCRIPTION & SERVICES
offered by
GEMMA *(the "Product")*
A technical website to share DUS data
http://gem.geves.info

1   Scope and aim

This document is the technical and the organisational description of the use of GEMMA in order to provide a platform for data sharing to the Client.

Indeed, as explained in below paragraphs, GEMMA provides each Client with key-based features based on a couple of country and specie.

2   Product

2.1   Purpose

GEMMA is a technical web site with the aim of sharing data on variety descriptions. This platform enables users to store, exchange and manage quantitative, qualitative and biomolecular data and pictures related to the plant varieties.

All the information about varieties are organized by country and species, so it allows to identify each variety by using a key-based feature based on a couple of country and specie.

For each variety, GEMMA can store: qualitative data (characteristics observed in notes), quantitative data (measured characteristics), molecular data and digital pictures.

For consultation of data, different kinds of access rights are offered, according to the needed level of access and modification (explanations can be found below).

2.2   Functionalities

2.2.1   Variety functionalities
- Viewing a variety description:
    - o "Data tab": visualisation of guidelines, characteristics, and notes
    - o "Detail tab": administrative information (botanical name, trade mark, etc.)
    - o Pictures
- Sorting and exporting:
    - o Sort varieties according to the value of characteristics
    - o Create an export in Excel Format

2.2.2   Data functionalities
- Integration of new data
    - o Species (for the concerned country)
    - o Characteristics (guidelines, characteristics, levels of expression)
    - o Locus / Allele
- Creation of guidelines
- Management of data
    - o Qualitative data

- o Quantitative data
        - o Biomolecular data
    - Management of pictures
    - Linking varieties by similarity

2.2.3 Administration functionalities
- Managing administrators' data of a country and modifying their email address
- Managing the users of a country and granting their access right for each specie
- Managing the access right of foreign users for each variety

2.3 Multi languages
All screens of the website are proposed in French or in English, but GEMMA offers also the possibility to the data administrator to integrate information in another language. This option is available for guidelines, characteristics, levels of expression and species.

2.4 Users and rights

2.4.1 Access rights to the GEMMA database
- The supra administrator:
  There is only one supra administrator, who belongs to the IT department of GEVES.
    - o He is in charge to support the GEMMA website
    - o He creates accounts for data administrators.
- The administrator access:
    - o There is one data administrator per country and species with a specific Account/Password
    - o He can manage his own data
    - o He can display data from another country (same species) only with authorization
    - o He can create user accounts for his country
- The user access:
    - o It is a restricted access that require an account/password
    - o The user can display data only with authorization
- Public access:
    - o It is an access which does not require a specific account/password

2.4.2 Access rights for varieties
For each variety the data administrator must define the level of access and the type of data accessible.

There are 3 distinct levels of access:

- Public access level (1): everyone can see the data for the variety
- Restricted access level (2): only user and administrators accounts defined by the data administrator of the couple Species/Country, will see the variety
- Administrator access level (3): only administrators accounts defined by the data administrator of the couple Species/Country, will see the variety

2.5 Access
http://gem.geves.info/
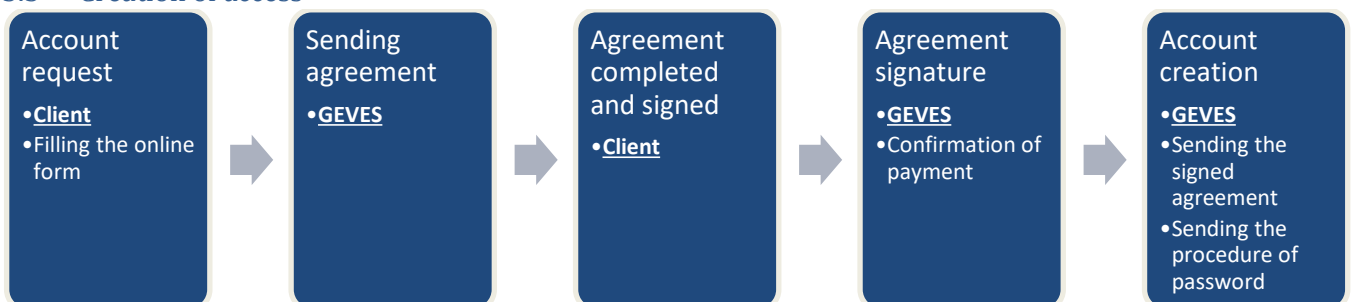
3   Organisation

3.1   Actors
- The Client
  - Administrators
  - Users
- GEVES
  - Supra Administrator

3.2   Deliverables
- Technical deliverables:
  - The GEMMA application
  - Users and Administrators accounts
  - The User Guide
  - Some Excel files templates
- Organisational deliverables:
  - Online Request Form Account
  - Agreement of utilisation
  - Quotation of evolution

3.3   Creation of access

Account request	Sending agreement	Agreement completed and signed	Agreement signature	Account creation
•**Client**	•**GEVES**	•**Client**	•**GEVES**	•**GEVES**
•Filling the online form			•Confirmation of payment	•Sending the signed agreement
				•Sending the procedure of password

3.4   Corrective maintenance
The correction making is only the responsibility of GEVES, in his role of Supra Administrator. Such corrections, changes or updates should not disrupt, if possible, the normal use of the Product, and should fit onto user's needs.

- Resolution delay: 2 open days
- Contact:
  - christelle.lavaud@geves.fr

3.5   Upgradeable maintenance
IT development can be performed upon the request of a Client. GEVES will look at the feasibility and decide whether to perform the development. GEVES shall send an estimation of the required budget to carry out such development.
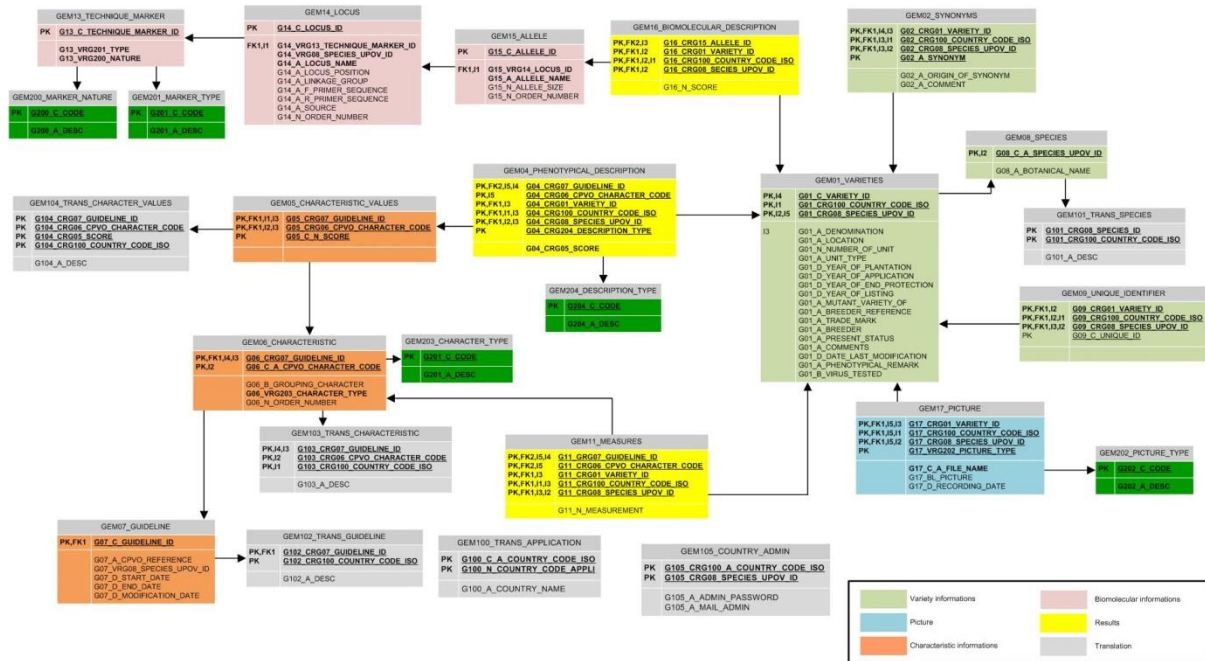
Examination delay: 7 open days

- Contact:
  - christelle.lavaud@geves.fr

The timeline of the development shall be agreed beforehand between GEVES and the Client.

Finally, GEVES reserves the exclusive right to refuse to carry out such actions.

4   Data

4.1   Structure

Content:

- Green: varieties
- Yellow: results (measures, biomolecular and phenotypical results)
- Pink: information on biomolecular techniques, marker, locus and allele
- Orange: characteristics
- Blue: picture
- Grey: translation (species, characteristic, guideline) and management of user's accounts

4.2   Property and privacy

The data used by the Client are his property. The export functionalities enable him to store his data in his own IT system. The confidentiality of the Client's data will be respected by GEVES.

5   Implementation

5.1   Location

The server is implemented into the infrastructure of the company Oceanet.

5.2   Availability

The availability is supplied by Oceanet and is of 99%.

5.3   Capability

The capability is given for 1 Client:

- 1 user simultaneously connected
- 1 Administrator
- 5 users
- 10.000 varieties
- 20.000 pictures of 500Ko

FOR INFORMATION: PERFORMANCE TESTS SHALL BE CARRIED OUT BEFORE EACH NEW SUBSCRIPTION TO THE AGREEMENT.

5.4   Security

There are 2 kinds of back-up:

- The application database is backed-up every night by GEVES, with a retention of 7 days.
- The entire server is backed-up every night by Oceanet, with a retention of 30 days.

The protection against attacks (virus, etc.) is ensured by Oceanet.

In addition, data of every couple "country-species" stored on GEMMA database must be stored in a backup file within the information system of the EO.

6   Training course

GEVES can deliver one day of effective training course in the location of the Client.

The training period will be adapted to the persons, and could concerns administrators and users. The content would concern this kind of subjects:

1. GEMMA theoretical
   - Presentation
   - Website approach
2. Data
   - Model
   - Integrity
   - Access rights, etc.
   - Excel Import / Export
3. GEMMA practical presentation
   - Using and exercises

In case of multiple demands from his users, the Client must collect them before forwarding to GEVES.

7   Financial provisions

For usage	See price indicated in Annex 2
For corrective maintenance	Free of charge
For upgradeable maintenance	On quotation
For training	On quotation

**ANNEX 2- ANNUAL SUMMARY OF GEMMA's USE
for year 2021**

LICENSE AGREEMENT
ON GEMMA Website & Database

To be sent to GEVES at the initial subscription, when new species are added and before 31st of January of each year for renewal (provision of Article 7.2 of the license Agreement)

Between GEVES and The Central Control and Testing Institute in Agriculture ("EO"), bounded by the **LICENSE AGREEMENT ON GEMMA Website & Database,** signed on .... *(date of signature).*

This Annex is drawn up, signed and sent to GEVES, in order to identify the species for which the EO requires the access to the Product in the framework of the license Agreement.

The elements given below shall be taken into account to issue the annual invoice according to article 7.

The annual lump sum shall be **312 euros excluding VAT per species**. It may be reviewed annually.

Identification of the species for which the EO gets access to the Product:

- Cucumis melo L.	-
- Solanum tuberosum L.	-
-	-
-	-

Number of species: 2

Total amount = 2 *(number of species)* x 312€ = **624€**

Present Annex 2 is sent to GEVES <u>along with</u> the payment of the Total amount specified above according provisions of article 7 of the license Agreement.

Made on the .... *(date).*

Signature

ANNEX 3 – REQUEST OF TRAINING COURSE

LICENSE AGREEMENT
ON GEMMA Website & Database

Between GEVES and ……………………………………………………........ ("EO"), bounded by the **LICENSE AGREEMENT ON GEMMA Website & Database,** signed on …………………. *(date of signature).*

Organizational details
The EO wishes to follow a training course on the Product for …… *(number of staff)* persons/User. The training period will be adapted to the persons, and could concerns administrators and users.

Name & e-mail address of persons following the training:

……………	

Desired date of training: …………………….
Address of training: ……………………………

Price
The price of one day training courses in the location of the EO is of **1 084€** for year 2020. This price can be updated each year. The hotel, restaurant and trip fees for GEVES trainer are in charge of the Client.

Date of request: ………………………….

Signature (name, first name)