



## **Apimondia Open Source Breeding Material (OSB) license agreement for *Apis mellifera* und *Apis cerana***

### **Preamble**

By acquiring and using the breeding material purchased under the terms and conditions of this license agreement you, as the Licensee, accept the provisions of this license agreement. The purpose of these provisions is the free use of breeding material. The Licensor is the natural or legal person who hands over these breeding material to you. The Beneficiary of the license agreement is: APIMONDIA, International Federation of Beekeepers' Associations, a registered association.

In order to achieve the objective of free use, enhancement, dissemination and propagation of breeding material, without there being a monopoly taken advantage of by individuals, any use of the breeding material is only permissible in accordance with these licensing provisions. As a Licensee, you undertake to limit the use of these breeding material or the propagation of them and enhancements vis-à-vis third parties exclusively to the manner stipulated in this license. You will in particular refrain from making any claim to honey bee race rights, patent rights or any other statutorily possible exclusivity rights of the breeding material or their propagation and enhancements.

Simultaneously, the licensing provisions oblige you, in turn, to subject any breeding material or enhancements of the breeding material obtained from the present breeding material to these licensing provisions, and only to pass them on to third parties on these conditions (“copyleft”). Should you infringe the obligations arising from this license agreement, you will forfeit your rights of use of the

breeding material or any breeding material or enhancements obtained therefrom. In addition, the Beneficiary shall, in such cases, be entitled to require you to cease and desist and make a payment, as stipulated in this agreement (agreement to the benefit of third parties).

## **1. Definitions**

The following definitions apply to this license:

**1.1 *Breeding material:*** Breeding material within the meaning of this agreement, shall mean, dormant generative reproductive organs, such as breeding material, eggs, larvae, or parts thereof, as well as any honey bee material from which whole honey bees can be generated – by whatever method –, as well as sperm, and all informational components therein, which have in each case been placed on the market under the terms and conditions contained in this license or has been obtained from such breeding material through propagation or has been enhanced.

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

**1.3 *Placing on the market:*** The offering, keeping in stock for distribution, keeping for sale, and any handing over of breeding material to another party.

**1.4 *Enhancements:*** Enhancements shall mean culture or breeding of new honey bees, in regard to which these breeding material have, under this license agreement, been involved, at least one point, in the course of the development – regardless of whether such enhancements concern races, populations or other honey bee groupings or individual honey bees or parts of honey bees.

**1.5 The *copyleft* principle:** obliges all future honey bee growers to grant users of their enhancements the same rights as those that they have

enjoyed themselves.

1.6 *Licensor*: The previous owner of the breeding material, who is rightfully handing them over to the Licensee under the terms of this License, conferring the rights of use of the breeding material according to Article 3.

1.7 *Licensee*: Anyone who takes possession of or utilizes the breeding material in accordance with these licensing provisions.

1.8 *Beneficiary*: : APIMONDIA, International Federation of Beekeepers' Associations, Corso Vittorio Emanuele 101, I-00186 Roma, Italy

## **2. Conclusion of the agreement**

- . (1) With these licensing provisions, the Licensor declares vis-à-vis everyone that she or he is making an offer to conclude a license agreement on the granting of rights of the use of the breeding material in accordance with the following provisions. The agreement shall materialize once the Licensee acquires the breeding material, or otherwise obtains them with the consent of the prior owner, however at the latest once he or she opens the package of breeding material. The declaration of acceptance does not need to be received by the Licensor.
- . (2) Upon concluding the license agreement, the Licensor hereby assigns his or her rights arising from the license agreement, in particular the cease and desist rights and compensation rights for damage in accordance with Article 6, to the Beneficiary.
- . (3) This license agreement is 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 breeding material or opening the packet, once the Licensee begins to make use of the breeding material, even if the Licensee contests the terms and conditions of the license agreement.

## **3. Scope of the license rights**

- . (1) Upon the materialization of the license agreement, the Licensee will be granted the right to use all the breeding material, as he or she has received them, under the terms and conditions of this license.
- . (2) The breeding material may be used for any purpose, and by anyone who accepts the terms and conditions of this license, in particular also for enhancement.
- . (3) The Licensee may pass on the breeding material to others, propagate it, enhance it and disseminate propagated or enhanced breeding material, however only on the condition that he or she provides a copy of this license agreement to all other parties to whom he or she disseminates such breeding material, which will also legally bind any third parties to this license agreement, and provides the Beneficiary, with evidence of having done so up- on request. This legal binding of said parties may be carried out in writing or verbally, or by way of an implicit declaration of consent on the part of such third party. Enhancements are, after being disseminated, to be regarded as “breeding material” within the meaning of this license.
- . (4) The copyleft principle obliges the Licensee to impose the same rights and obligations on the future owners of the breeding material, any breeding material propagated from the latter or enhancements of the breeding material as he or she personally acquired and assumed. Any limitation of the rights in the breeding material vis-à-vis third parties going beyond that, in particular any limitation based on statutorily granted special protective rights (honey bee race rights, patent rights, trademark rights, copyrights, etc.) is prohibited and illegitimate.

#### **4. Honey bee breeding material index**

- . (1) The Beneficiary may provide its own honey bee material index, in which all groupings of breeding material (identified according to characterization criteria) and their enhancements are included. This may be implemented as a meta index over databases

maintained by 3<sup>rd</sup> party breeding programs. Licensees are encouraged to register their breeding lines with the Beneficiary or 3<sup>rd</sup> party databases covered by the index to ensure maximum applicability of the licensing provisions

Any enhancements undertaken by the Licensee have to be provided to the Beneficiary in the form of a viable and propagatable material sample upon request. It is up to Beneficiary or a 3<sup>rd</sup> party authorized by Beneficiary to take the sample together with the Licensee.

- . (2) The honey bee material index will be published by the Beneficiary on its website once it has been prepared.
- . (3) The use of any races and enhancements that are included in this honey bee material index may not be limited in any way other than through the provisions of this license agreement.
- . (4) The origin and properties of the material will be published by the Beneficiary in the honey bee material index, and can be reviewed there at any time.

## **5. Rights of third parties and governmental prohibitions**

Should the Licensee be obliged to deviate from these licensing provisions, based on rights of third parties or governmental prohibitions, in whole or in part, when utilizing the breeding material, he or she may only use the breeding material and propagations thereof for personal, non-commercial purposes.

## **6. Lapse of the rights upon infringing the licensing provisions**

- . (1) Should the Licensee infringe these licensing provisions, his or her rights of use of the breeding material or their enhancements will lapse immediately. A claim may in particular be made against the Licensee by the Beneficiary, to ceasing and desisting from disseminating the breeding material, propagating the breeding material or enhancing the breeding material as well as to

compensate damages.

- . (2) The expiry of the rights of use in accordance with paragraph 1 shall not have any influence upon the rights of other users, as long as the latter do not infringe the licensing provisions themselves.

## **7. Applicable law, place of jurisdiction, any other provisions**

- . (1) These licensing provisions shall be subject to European Law.
- . (2) Should one of the above clauses transpire to be invalid, it shall not affect the validity of the remainder of these licensing provisions.
- . (3) Should the Licensee be a trader, legal person under public law or special public law funds, the place of jurisdiction shall be Rome.
- . (4) The Beneficiary shall be entitled to assign its rights arising from this agreement in writing to third parties at any time.
- . (5) Should one of the provisions of this license agreement be or become invalid, ineffective or unenforceable, this shall not affect the validity of the remaining licensing provisions. Rather, the provision concerned shall be replaced by a valid and effective provision which comes closest to the economic intention of the contracting parties, in particular the objectives of the license agreement laid down in the recitals.

### **Appendix to the Open Source Breeding Material (OSB) license**

In order to be able to provide anyone with the rights to freely use the breeding material in accordance with these licensing provisions, every time the breeding material is passed on the following or a substantially equivalent reference to the applicability of this license and its source is to be displayed clearly and attached.

#### **Open Source Breeding Material License – text for the package**

Breeding material with the same rights and obligations for all

By acquiring or opening the packet of this breeding material you accept, by way of an agreement, the provisions of a license agreement where no costs shall be incurred to you. You especially undertake not to limit the use of the breeding material and the enhancements, for instance by making a claim to bee race rights or patent rights on the breeding material components. You shall pass on the breeding material, and propagations obtained therefrom, to third parties only on the terms and conditions of this license. You will find the exact licensing provisions inside the packet and at unter <http://www.apimondia.com/awg/10/license.pdf>. If you do not wish to accept these provisions, you need to refrain from acquiring and using this breeding material.

19. Juli 2016