



# The National Soils Archive of Scotland

## Access Policy

### **1. The aim and purpose of the National Soils Archive of Scotland**

The aim of the National Soils Archive of Scotland (NSA) is to steward a Scotland-wide collection of soil samples. Since the 1930s, the soils of Scotland have been extensively mapped, studied, and classified. The NSA holds over 47,000 soil samples from a range of national soil surveys, long term experiments and scientific research projects spanning more than 70 years of research.

The purpose of the NSA is to create a resource for the study of soils, their properties and interactions with the environment.

The James Hutton Institute (the **Institute**) is the steward of this resource and supports open access to and use of the samples for scientific studies and research. We are pleased to receive requests for access to the samples for research purposes and welcome offers to collaborate on projects which might make use of NSA material.

Requests for access to samples can be made by organisations, including but not limited to universities, academic research organisations, commercial research organisations, government agencies, non-governmental departmental bodies (or equivalent) and local authorities. Unfortunately, we are unable to accept requests from individuals not conducting scientific study and/or research for or on behalf of an organisation.

### **2. Management of NSA**

#### **2.1 Management of the archive**

The NSA is managed and curated by storing the samples in a secure and stable condition; by recording and tracking sample deposits and withdrawals; and by recording use and linking the sample identifiers to data in the Scotland's Soils database. Samples and their containers are routinely checked for their integrity and, when required or necessary, are sub-sampled and transferred to new containers.

#### **2.2 Access Committee**

This Committee, which comprises members from the Institute as well as external experts, is responsible for the smooth execution of this Access Policy. Its terms of reference are given in Appendix 1. The Committee's work is premised on fairness, reasonable use and transparency in the prioritisation of access to and use of the NSA. The Committee meets frequently (on a quarterly basis or as required) either in person or by teleconference to consider requests for use of the NSA. The current chair of the Committee is Allan Lilly, curator of the NSA ([nationalsoilsarchive@hutton.ac.uk](mailto:nationalsoilsarchive@hutton.ac.uk)).

If you would like the Committee to consider a proposal for use of NSA samples or inform it of published data arising from NSA samples please follow the guidance below and send your proposal or paper to [nationalsoilsarchive@hutton.ac.uk](mailto:nationalsoilsarchive@hutton.ac.uk).

### **3. Access to the resource**

#### **3.1 The resource**

The NSA is run as a resource primarily for the research community and it is anticipated that requests to use the resource will be made from academic collaborators, public bodies and commercial organisations.

The NSA is set up as a supported access resource rather than as an entirely open access resource. The NSA is a valuable collection and, as there are finite amounts of archived soil, there are limits and conditions on its use to safeguard the integrity of the remaining sample material and to ensure that use of this national resource is maximised for the benefit of all. If you wish to access the resource, consult the NSA website which contains details of the particular samples available (<http://www.hutton.ac.uk/about/facilities/national-soils-archive>).

We encourage prospective applicants to contact the Institute at any stage of their application to discuss potential projects and to learn more about the NSA and the terms of use of the samples contained within it. We are also happy to arrange for prospective applicants to visit the NSA and take a tour of the facility by prior agreement.

#### **3.2 Making an application to the NSA**

Please contact [nationalsoilsarchive@hutton.ac.uk](mailto:nationalsoilsarchive@hutton.ac.uk) to request an Archive Withdrawal Form, then return the completed form to [nationalsoilsarchive@hutton.ac.uk](mailto:nationalsoilsarchive@hutton.ac.uk). Please contact us if you are unsure of how to complete any part of the form as we are unable to consider incomplete forms which will be returned unconsidered to the applicant.

The Access Committee will assess the request at the next scheduled Committee meeting. The criteria used in the assessment will include:

1. Scientific robustness of the proposed work. Its aims, objectives, hypotheses, methods, potential benefits, impact and scientific value
2. Relevance to Scottish Government, EU and international policy
3. Availability of sample material
4. Value added to, and synergy with, existing knowledge and datasets

Please also consider the following before submitting a request:

1. Does the work need to be done on archived soil?
2. Can non-destructive methods be used first?
3. Does the work need to be done on key nationally significant resources e.g. the National Soil Inventory of Scotland or could alternative samples be used?
4. Is a pilot study possible before requesting a large number of samples?

The Access Committee will inform you in writing, no later than 30 days after the next scheduled Committee meeting, if the request is approved and to provide advice on the next stages. Once approval has been sent, you must confirm by reply within 30 days that they still wish to access the samples. Failure to respond in this period will mean that the request will be deemed to have been withdrawn.

Where requests are denied, the review panel will provide you with feedback and you will be free to resubmit a revised application.

If there is a possibility of overlap with other investigators or other groups who are working on related topics the Committee may put you in touch with these groups and invite you to discuss your ideas before you proceed with your request.

The Committee will also estimate the cost of the use of the NSA (see below).

While we will make every effort to review applications and process requests as quickly as possible, we cannot guarantee being able to approve requests or provide samples to meet proposal or funding deadlines. The Institute accepts no liability in cases where proposals for funding have been submitted which rely on applications to access samples from the soil archive, which are subsequently rejected by the review panel.

### **3.3 Transfer of samples**

As part of the conditions of access, applicants will be required to complete, sign and return a Material Transfer Agreement (MTA) for the samples. Each agreement is specific to an individual request and a study-specific appendix must be agreed before the agreement can be signed by either party. The MTA template is attached at Appendix 2.

Any changes to a study without prior discussion with the Institute will be treated as a breach of the MTA.

The Access Committee reserves the right to request the return of unused sample to the Institute.

The Access Committee reserves the right to impose additional restrictions it feels are appropriate.

### **3.4 Return of data**

Applicants must return an electronic/digital copy of all data generated from use of the samples along with derived variables and descriptions of these variables, including supporting data on QA/QC procedures (including blanks and standards), analytical procedures and instrumentation used, no later than six (6) months following the end of the project. These data will be made publically available via the most appropriate channel 12 months after the date of return or as required to meet agreed publication conditions.

### **3.5 Costs and fees**

The NSA has received and continues to receive funding from the Scottish Government to support core activities. These do not extend to support for individual studies by an organisation and applicants will be expected to meet any additional costs, which may include transportation and handling costs for delivery of the samples. Applications to the NSA from commercial organisations will be subject to pay a fee, together with transportation and handling costs as applicable. Costs and fees will be determined on a case by case basis and the applicant will be informed of how much it will cost. Any costs or fees connected with provision of the samples must be paid prior to samples being transferred.

#### **4. Acknowledgements in publications**

The NSA has agreed standard text for the Acknowledgements section that should be included in all publications emanating from the use of NSA samples, this text will be detailed in the MTA for the samples.

All publications emanating from use of the NSA have to be sent to the Access Committee for information in advance of publication and for approval no later than two (2) months prior to the proposed publication date. The Access Committee welcomes early engagement with the applicant on all publications in development, prior to submission to the Access Committee for information and approval. Upon submission of the publication to the Access Committee for information and approval the Institute expects to process all publications within 30 days after the Access Committee meeting at which they are discussed. All publications arising from use of the NSA are read to ensure that they do not breach any data protection requirements, have used methods and produced results that are sound and defensible and correctly and adequately describe the procedures used to collect the original samples. The Access Committee provides feedback to authors where it feels this may be helpful.

#### **5. Disclaimer**

The samples which comprise the National Soils Archive of Scotland have been collected over a number of years and locations. While we have used reasonable care to verify the accuracy of the location from which and date upon which the samples were gathered, we cannot guarantee this.

The nature of soil sample is such that it may contain harmful matter, including but not limited to toxins, chemicals, impurities and pathogens. When the samples are collected, we do not make any specific enquiry into any harmful matter that may be present (known or suspected) in the samples. While we may analyse some of the samples, such analysis will not be for the specific purpose of identifying harmful matter. Where harmful matter has been identified, we will use our reasonable endeavours to notify you of this.

We do not accept responsibility or liability for (i) the samples, the use and/or storage of the samples you, and/or any information relating to the use and storage of the samples; or (ii) any and all loss (direct or indirect) or damage as a result of errors arising in or in connection with the samples.

We also cannot give any warranty (either express or implied) as to (i) the fitness of the samples for a particular purpose or that the use of the samples will provide specific, expected or anticipated results; and/or (ii) the geographical or historical status or trueness to type of any of the samples.

Applicants must ensure that they take appropriate measures before handling or carrying out any work on the samples, including undertaking all safety measures as are required by law and/or accepted scientific and good laboratory practice. This will include, but will not be limited to use of gloves, safety goggles, face masks and extraction hoods in handling or carrying out any work on the samples. Applicants must also ensure that any party (including but not limited to employees, students, agents and contractors) authorised to handle the samples are inoculated with an up-to-date tetanus vaccination.

## **6. Intellectual property**

The intellectual property related to the use of NSA samples in the study will be governed by the MTA, but the following principles apply:

- intellectual property in the NSA samples is owned by the Institute;
- results arising from the study making use of the NSA samples shall be owned by the party generating them;
- the Institute shall be granted a licence to use any results for non-commercial research and teaching purposes; and
- income derived from commercial exploitation of the results shall be shared with the Institute for investment in the NSA

## **7. Confidentiality**

Any information provided by applicants in connection with an application to use the NSA will be treated in confidence and not released to third parties. However, please note that the Institute is subject to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and may be required to release information under those acts in certain circumstances.

## **8. Data protection**

Personal information supplied to the Institute (Personal Data) will be processed in accordance with the Data Protection Legislation (defined below). The Institute shall store the Personal Data by secure electronic means for use only in connection with an application to use the NSA.

For the purposes of this policy, "Data Protection Legislation" means, while they remain in force, the Data Protection Act 1998, the European Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003, once it comes into force the General Data Protection Regulation (GDPR) and any other laws and regulations relating to the processing of personal data and privacy which apply to a party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority.

## APPENDIX 1

### TERMS OF REFERENCE FOR THE NATIONAL SOILS ARCHIVE OF SCOTLAND ACCESS COMMITTEE

1. To provide the management of the approaches to National Soils Archive of Scotland (NSA) to use samples.
2. To approve, process and coordinate on behalf of the NSA all requests to use samples via the NSA Archive Withdrawal Form.
3. To receive, process, scrutinise, assess and approve or not: Archive Withdrawal Forms, Material Transfer Agreements and publications emanating from use of the NSA.
4. To report regularly to the James Hutton Institute and the Scottish Government on the archive, requests received and their progress, the progress of publications and compliance with Material Transfer Agreements.
5. To ensure the archive is not brought into disrepute.

#### **Membership:**

The membership includes representation from the James Hutton Institute as well as external experts. The Access Committee is considered quorate if 3 or more members take part in a meeting.

APPENDIX 2

THE NATIONAL SOILS ARCHIVE

MATERIAL TRANSFER AGREEMENT

For the purposes of this Agreement, the following terms shall have the following meanings:

<b>PROVIDER:</b>	The James Hutton Institute, a company limited by guarantee (Registered Company Number SC374831) and also a registered charity (registration number SC041796) and having its registered office at Invergowrie, Dundee DD2 5DA, acting in its capacity as the custodian of the National Soils Archive of Scotland.
<b>RECIPIENT:</b>	<b>[DETAILS TO BE INSERTED]</b>
<b>Archive Withdrawal Form</b>	The form submitted by the Recipient to the Provider requesting access to Materials held in the National Soils Archive of Scotland.
<b>PROJECT</b>	The project to be undertaken by the Recipient, as further detailed in the Archive Withdrawal Form attached as Schedule to this Agreement.
<b>MATERIALS:</b>	<b>[DETAILS TO BE INSERTED] (“Original Material”)</b> and includes any constructs, strains, derivatives (being substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Original Material), portions, progeny (being unmodified descendant from the Original Material), modifications (being substances created by the Recipient which contain/incorporate the material), information and improvements.
<b>FEE</b>	£[ ] including VAT / <b>[NOT APPLICABLE]</b>
<b>Transport and Handling Costs</b>	£[ ] including VAT / <b>[NOT APPLICABLE]</b>
<b>CONFIDENTIAL INFORMATION:</b>	Information disclosed by the Provider to the Recipient relating to the Materials and/or this Agreement which is either designated as confidential or which ought to be reasonably regarded as confidential.
<b>PARTY</b>	The Provider and/or the Recipient
<b>RESULTS</b>	The results arising from the use of the Materials in the Project, including but not limited to electronic/digital copy of all data generated from use of the samples of Materials along with derived variables and descriptions of these variables, including supporting data on quality assurance/quality control procedures (including blanks and standards), analytical procedures and instrumentation used.

The Parties hereby agree the following:

## **1. MATERIALS**

- 1.1 **[Upon payment of the [Fee] [and] [Transportation and Handling Costs]],by the Recipient to the Provider],** the Provider shall provide the Materials to the Recipient for the purpose of undertaking the Project only, subject to the terms and conditions of this Agreement.
- 1.2 The Recipient warrants that:-
  - 1.2.1 it will not transfer the Materials to any third party without the prior written consent of the Provider;
  - 1.2.2 it will not use the Materials for any clinical or commercial purpose or other use outside the Project without the prior written consent of the Provider;
  - 1.2.3 it will not propagate or incorporate the Materials into any other matter other than as part of the research necessary for performance of the Project, without the prior written consent of the Provider;
  - 1.2.4 it will retain the Materials in a secure location on its premises; and
  - 1.2.5 it will use the Materials in compliance with all laws and regulations applicable to such Materials in the Recipient's place and country.
- 1.3 Risk in the Materials shall pass to the Recipient immediately upon delivery and/or collection of the Materials to or by the Recipient or its agent.
- 1.4 The Recipient shall be responsible for:-
  - 1.4.1 the proper and safe handling, storage and use of the Materials; and
  - 1.4.2 procuring and paying for all necessary clearance and consents required by any regulatory authority, government (local or national) or organisation in connection with use of the materials in the research conducted by the Recipient. No warranty is given by the Provider that any such consents will be granted.
- 1.5 The Provider reserves the right to:-
  - 1.5.1 impose any other restrictions and/or limitations on the use of the Materials as it deems necessary to protect the integrity of the Materials. Such restrictions and/or limitations will be notified to the Recipient in writing; and
  - 1.5.2 request the immediate return of any samples of Materials that are unused during the Project.
- 1.6 Upon termination of this Agreement, or at the request of the Provider, the Recipient shall immediately (i) cease use of the Materials; (ii) return the Materials to the Provider or destroy the Materials in accordance with applicable laws and certify that it has done so; and (iii) certify to the Provider that it has retained no copies of the Materials.

## **2. CONFIDENTIALITY**

- 2.1 Subject to Clause 2.2 below, the Recipient shall keep confidential and shall not make any use of or disclose to any third party the Confidential Information.



- 2.2 Information shall not be deemed to be confidential if a) it is and can be shown through written documentation to the reasonable satisfaction of the Provider to be already known to the Recipient prior to its receipt from the Provider; or b) the Provider has given its written consent to disclosure of such information; or c) it enters into the public domain other than through the fault of the Recipient; or d) it is required to be disclosed by law.
- 2.3 Upon termination of this Agreement for any reason, the Recipient shall immediately, at the request of the Recipient, return to the Recipient or destroy any and all Confidential Information provided by the Provider to the Recipient under this Agreement.

### **3. OWNERSHIP OF MATERIALS**

The Materials shall remain the exclusive property of the Provider at all times and no part of this Agreement shall be deemed to be any transfer of title or any licence to the Materials or to any rights in and to the Materials.

### **4. INTELLECTUAL PROPERTY RIGHTS AND PUBLICATION**

- 4.1 The Parties agree that any and all rights in and to the Results shall vest in the Recipient.
- 4.2 The Recipient grants to the Provider a non-exclusive, worldwide, royalty free licence to use the Results for non-commercial, research and teaching purposes.
- 4.3 The Recipient shall return an electronic/digital copy of all Results no later than six (6) months following the end of the Project. The Results will be made publically available via the most appropriate channel 12 months after the date of return or as required to meet agreed publication conditions.
- 4.4 In the event the Recipient wishes to commercially exploit the Results, the Recipient agrees that enter into an agreement, with the Provider on fair and reasonable terms to share any income derived from such commercial exploitation. The Provider agrees to grant to the Recipient a non-exclusive licence to the use the Materials as is necessary for the commercial exploitation of the Results, on terms to be agreed. Both parties shall exercise good faith and act reasonably in any negotiations regarding income share and the grant of licence.
- 4.5 The Recipient shall submit for information and approval all publications emanating from use of the Materials to the Provider for review and assessment by the National Soils Archive of Scotland Access Committee, no later than two (2) months prior to the proposed date of publication. The Provider shall use reasonable endeavours to process all publications within 30 days after the Access Committee meeting at which publications are discussed. All publications arising from use of the Materials are read to ensure that they do not breach any data protection requirements, have used methods and produced results that are sound and defensible and correctly and adequately describe the procedures used to collect the original samples. The Access Committee may, at its discretion, provide feedback to the Recipient where it feels this may be helpful. The Access Committee will provide the Recipient with its approval or rejection of the publication, together with any proposed redactions or amendments, at the end of the 30 day period.
- 4.6 Any and all publications emanating from use of the Materials shall contain the following acknowledgement:-

The soil samples used in this work are from the National Soils Archive which is maintained by the James Hutton Institute and funded by the Rural & Environment Science & Analytical Services Division of the Scottish Government.

## **5. WARRANTIES, INDEMNITIES AND LIABILITY**

- 5.1 Each Party warrants that it is free to enter into this Agreement and is not under any obligation to any third party which would or might conflict or interfere with the full and proper discharge of its obligations under this Agreement.
- 5.2 The Recipient acknowledges and agrees that:-
- 5.2.1 the Materials represent a sample of soil from the National Soils Archive of Scotland. While the Provider has used reasonable care to verify the accuracy of the location from which and date upon which the Materials were gathered, the Provider gives no warranties in this regard; and
  - 5.2.2 due to the nature of the Material, it may contain harmful matter, including but not limited to toxins, chemicals, impurities and pathogens. The Provider has not undertaken specific enquiry into any harmful matter that may be present (known or suspected) in the Materials upon collection. While analysis of the Materials may have been undertaken by the Provider, such analysis will not be for the specific purpose of identifying harmful matter. Where harmful matter has been identified, the Provider will make reasonable endeavours to notify the Recipient, but gives no warranties in this regard;
  - 5.2.3 it must take appropriate measures before handling or carrying out any work on the Materials. The Recipient warrants that it will undertake all safety measures as are required by law and/or accepted scientific and good laboratory practice, including but not limited to use of gloves, safety goggles, face masks and extraction hoods in handling or carrying out any work on the Materials. The Recipient shall also ensure that any party (including but not limited to employees, students, agents and contractors) authorised to handle the Materials are inoculated with an up-to-date tetanus vaccination.
- 5.3 To the fullest extent permitted by law, the Provider excludes all liabilities for:-
- 5.3.1 the Materials, the use and/or storage of the Materials by the Recipient, and/or any information relating to the use and storage of the Materials; or
  - 5.3.2 any and all loss (direct or indirect, including but not limited to loss of profit, loss or corruption of data, loss of income, loss of goodwill, loss of business or loss of anticipatory savings or for any indirect, consequential or special loss howsoever arising) or damage as a result of the Recipient's use of the Materials.
- 5.4 The Provider makes no representations and gives no warranty (either express or implied) as to the Materials including (i) the fitness of the Materials for a particular purpose or that the use of the Materials will provide specific, expected or anticipated results; and/or (ii) the geographical or historical status or trueness to type of any of the Materials.
- 5.5 The Recipient shall indemnify and hold harmless the Provider, its employees, agents and contractors from and against any and all losses, claims, proceedings, costs and damages and all real costs or expenses in relation thereto, in each case arising out of (i) the Recipient's negligence; or (ii) any

breach of obligations under this Agreement, including breach of warranties, or any claim by any third party based on any facts which, if substantiated, would constitute such a breach.

## **6. TERM AND TERMINATION**

6.1 This Agreement shall commence on the last date of signature and shall continue for the duration of the Project unless otherwise terminated in accordance with this Agreement.

6.2 Either Party may terminate this Agreement immediately by notice in writing to the other Party in the event:-

6.2.1 of any material breach by the other Party of this Agreement which has not been remedied (where it is capable of remedy) within thirty (30) days following written notice requiring the same; or

6.2.2 the other Party becomes apparently insolvent, bankrupt or in the event that a receiver, administrator, administrative receiver or similar officer is appointed over the whole or any part of the assets of the other Party, enters into any compound agreement with its creditors or in the event that the non-defaulting Party reasonably apprehends that the other Party shall cease trading; or

6.2.3 a Force Majeure Event occurs (as set out in Clause 7).

6.3 For the avoidance of doubt, any changes to the Project made by the Recipient, which do not have the prior written consent and approval of the Provider shall be deemed a material breach of this Agreement.

## **7. FORCE MAJEURE**

If either Party is prevented or delayed in the performance of its obligations under this Agreement arising from or attributable to acts, events, omissions or circumstances beyond its control, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority including acts of local government and parliamentary authority; breakdown of equipment; telecommunication failures; war; terrorism; adverse weather conditions; epidemic; and labour disputes of whatever nature and for whatever cause arising including, without prejudice to the generality of the foregoing, work to rule, overtime, strikes and lockouts (a "Force Majeure Event"), then the defaulting Party shall service notice of such event on the non-defaulting Party and the defaulting Party shall be excused from the performance or the punctual performance as the case may be of its obligations from the date of such notice for a period of ninety (90) days. In the event a Force Majeure Event continues for longer than ninety (90) days, the non-defaulting party may terminate this Agreement in accordance with Clause 6.2.

## **8. GENERAL**

8.1 Any notice, request or consent under this Agreement shall be sent by recorded delivery post to the address of the Parties noted on page 1 of this Agreement. Notices shall be deemed served 2 working days after posting. For these purposes the term "working day" shall mean Monday to Friday only, excluding bank holidays.

8.2 This Agreement is not evidence of any joint venture or partnership between the Parties. The Parties are not agents of each other and neither Party shall have the authority to bind the other.

- 8.3 The terms of Clauses 1, 2, 3, 4, 5, 8.3 and 8.9 shall survive termination of this Agreement.
- 8.4 This Agreement constitutes the entire understanding of the Parties and supersedes any prior agreements, arrangements or understandings between the Parties whether oral or written regarding the subject matter of this Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. This Agreement may only be amended by the written agreement of both Parties. Nothing in this Clause 9.4 shall operate to limit or exclude any liability for fraud.
- 8.5 In the event that any part of this Agreement is deemed to be invalid or unenforceable, the same shall not affect the remaining terms of the Agreements which shall remain in full force and effect.
- 8.6 No part of this Agreement may be assigned or sub-licensed by the Recipient without the prior written consent of the Provider.
- 8.7 This Agreement shall be governed by the laws of Scotland. The parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding 5 pages, together with the Schedule attached are signed as follows:-

\_\_\_\_\_

Signed for and on behalf of the  
Recipient (Authorised Signatory)

\_\_\_\_\_

Full Name Full Name

\_\_\_\_\_

Designation

\_\_\_\_\_

Date

\_\_\_\_\_

Full Name of Witness

\_\_\_\_\_

Address of Witness

\_\_\_\_\_

Signed for and on behalf of the  
Provider (Authorised Signatory)

\_\_\_\_\_

Designation

\_\_\_\_\_

Date

\_\_\_\_\_

Full Name of Witness

\_\_\_\_\_

Address of Witness

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MATERIAL TRANSFER AGREEMENT

**THE PROJECT**

**[ATTACH THE ARCHIVE WITHDRAWAL FORM]**