

March 2011



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 23 of the Provisional Agenda

FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

DRAFT RESOLUTIONS OF THE FOURTH SESSION OF THE GOVERNING BODY

Note by the Secretary

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- i) *Rule 8.1 of the Rules of Procedure of the Governing Body provides that*
- At each session, the Governing Body shall approve a report embodying its decisions, views, recommendations and conclusions. Such other records, for its own use, as the Governing Body may on occasion decide, shall also be maintained.
- ii) *At its third meeting, the Bureau of the Fourth Session of the Governing Body suggested that the Secretariat should compile all the draft Resolutions for the Fourth Session of the Governing Body in one single document.*
- iii) *Accordingly, this document compiles the draft Resolutions for the consideration of the Governing Body at its Fourth Session. These draft Resolutions are organized according to the provisional agenda for the meeting. It includes those elements of the various recommendations that have been made by the respective subsidiary bodies and, where appropriate, additional elements developed by the Secretary in light of previous decisions of the Governing Body or recommendations of its subsidiary bodies. The basis for these elements is provided in the documentation prepared for the respective agenda items. However, draft Resolutions are not provided for a number of agenda items, either because of the nature of the issues for discussion, or where it is anticipated that the Resolution on the relevant issues will be prepared on the basis of discussions during the session.*
- iv) *The Governing Body is being invited to consider these possible elements of draft Resolutions for adoption.*
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AGENDA ITEMS 1 – 6

No draft Resolutions have been prepared under Items 1 – 6 of the provisional agenda, which includes procedural items such as opening of the meeting, Election of the *Rapporteur*, and the establishment of the Credentials and Budget Committees. However, the Governing Body may wish to note the reports of the Chairperson of the Governing Body and the Secretary of the Governing Body, as they are for the information of the Governing Body. Any issues of a substantive nature that may have been raised under these reports may be reflected as the Governing Body sees fit.

AGENDA ITEM 7 Financial Rules of the Governing Body

No draft Resolution has been prepared for this agenda item. A Resolution would be prepared on the basis of discussions during the session, should the Governing Body so decide.

AGENDA ITEM 8 Adoption of Procedures and Operational Mechanisms to Promote Compliance and to Address Issues of Non-Compliance

The following draft Resolution was developed by the Ad Hoc Working Group on the Procedures and operational mechanisms to promote compliance and to address issues of non-compliance, in accordance with the request of the Governing Body (See document IT/GB-4/11/7)

DRAFT RESOLUTION **/2011

**PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE
AND ADDRESS ISSUES OF NON-COMPLIANCE**

The Governing Body,

Recalling Article 21 of the International Treaty,

1. **Hereby decides** to adopt the procedures and operational mechanisms included in the *Annex* hereto;
2. **Affirms** that these procedures and mechanisms are separate from and without prejudice to any other procedures and mechanisms, including the settlement of disputes under Article 22 of the International Treaty;
3. **Decides** that the Compliance Committee shall develop further rules of procedure relevant to its work, including rules on confidentiality, conflict of interest of Committee members, electronic decision making, replacement of Committee members and the format for submissions by the Governing Body, and submit them to the next Session of the Governing Body for its consideration and approval;
4. **Further decides** that the Committee, in accordance with Section [...] of the procedures and operational mechanisms referred to in paragraph 1 above, shall develop a succinct standard reporting format for adoption by the Governing Body at its next Session;
5. **Further decides** that each of the seven regions of the FAO submit to the Bureau, no later than six months after this Session of the Governing Body, nominations of two members for the Committee; and that the Bureau appoint such members for an interim period until the next Session of the Governing Body, at which Session members of the Committee will be elected in accordance with Section [...] of the procedures and operational mechanisms referred to in paragraph 1 above;
6. **Recommends** that funds be made available through the *Special Fund to Support the Participation of Developing Countries* to facilitate participation in relevant meetings of the Committee by representatives of developing country Contracting Parties and Contracting Parties with economies in transition regarding whom a submission has been made.

**DRAFT PROCEDURES AND OPERATIONAL MECHANISMS TO
PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE**

I. OBJECTIVES

The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of the International Treaty and to address issues of non-compliance. These procedures and mechanisms include monitoring, offering advice or assistance, including legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.

II. PRINCIPLES

1. The compliance procedures and mechanisms shall be simple, cost-effective, facilitative, non-adversarial, non-judicial, legally non-binding and cooperative in nature.
2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, accountability, fairness, expeditiousness, predictability, good faith, and reasonableness[.] [and shall take into account capacities of Contracting Parties.][It shall pay particular attention to the special needs of developing country Contracting Parties, in particular the least developed and small island developing States among them, and Contracting Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the International Treaty.]

III. INSTITUTIONAL MECHANISMS

1. The Compliance Committee established by the Governing Body on 16 June 2006 by Resolution 3/2006, hereinafter referred to as “the Committee”, shall carry out the functions specified herein.
2. The Committee shall consist of a maximum of 14 members, being two from each of the FAO regions and not more than one from a Contracting Party. The members shall be elected by the Governing Body on the basis of two nominations from each of the seven FAO regions.
3. Members of the Committee shall have recognized competence in the field of genetic resources or other fields relevant for the International Treaty, including legal or technical expertise, and they shall serve objectively and in their individual capacity.
4. Members shall be elected by the Governing Body for a period of four years, this being a full term, commencing on January 1st of the first year of the financial period of the International Treaty following their election. At its [...] session, the Governing Body shall elect up to seven members, one from each FAO region, for half a term, and up to seven members for a full term. Thereafter, the Governing Body shall elect, as appropriate, new members for a full term to replace those whose term has expired or for the remainder of a term to fill any vacancy. Members shall not serve for more than two consecutive terms.
5. The Committee shall hold meetings as necessary, preferably in conjunction with meetings of other International Treaty bodies, subject to the availability of financial resources. The Secretariat shall service the meetings of the Committee. The presence of members representing a two-thirds majority of the membership of the Committee shall be necessary to constitute a quorum at any meeting of the Committee.

6. Bearing in mind Rule I of the Rules of Procedure of the Governing Body, the Committee shall develop and submit any further rules of procedure, as appropriate, including rules on confidentiality, to the Governing Body for its consideration and approval.
7. The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions.

IV. FUNCTIONS OF THE COMMITTEE

The Committee shall, with a view to promoting compliance and addressing issues of non-compliance, and under the overall guidance of the Governing Body, have the following functions:

- a) Consider information submitted to it regarding matters relating to compliance and issues of non-compliance;
- b) [Offer advice and/or facilitate assistance, as appropriate, to the Contracting Party concerned, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;]
- c) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections [V to VII] below;
- d) [Monitor the implementation of the Treaty by Contracting Parties on the basis of reports in accordance with Section IX below;]
- e) [Review the state of compliance by Contracting Parties with their obligations under the International Treaty, taking into account the information submitted [by the Contracting Parties] to it and following the guidance of the Governing Body [, in accordance with Section VI below];]
- [f *bis*] [Address questions related to the implementation of the International Treaty, in accordance with Sections V to VII below;]
- f) Carry out any other functions as may be assigned to it by the Governing Body pursuant to Article 21 of the International Treaty;
- g) Submit a report to each regular session of the Governing Body reflecting:
 - i) the work that the Committee has undertaken;
 - ii) the conclusions and recommendations of the Committee; and
 - iii) the future programme of work of the Committee.

V. PROCEDURES [REGARDING SUBMISSIONS RELATING TO ISSUES OF NON-COMPLIANCE]

1. The Committee shall receive, through the Secretariat, any submissions relating to [issues of non-]compliance from:
 - a) Any Contracting Party with respect to itself;
 - b) Any Contracting Party with respect to another Contracting Party; or
 - c) The Governing Body.

The Contracting Party in respect of which the concern is raised is hereinafter referred to as “the Contracting Party concerned”.

2. Any submission [shall]/[is to] be addressed in writing to the Secretariat and set out:

- a) The matter of concern;
 - b) The relevant provisions of the International Treaty; and
 - c) Information substantiating the matter of concern.
- 2.*bis* The Secretariat shall forward any submission under paragraph 1a above to the Committee within 30 calendar days of receipt.
3. The Secretariat shall, within 30 calendar days of receipt of a submission under paragraph 1b or 1c above, forward any such submission to the Contracting Party concerned.
4. When the Contracting Party concerned has received a submission it should respond and, with recourse to the Committee for assistance if required, provide relevant information preferably within three months and in any event not later than six months. This period of time commences on the date of the receipt of the submission by the Contracting Party concerned as confirmed by the Secretariat.
- 4.*bis* Once it has received a response and any information from the Contracting Party concerned, the Secretariat shall transmit the submission, the response and such information to the Committee. In the case where the Secretariat has not received any response or information from the Contracting Party concerned within the six months as referred to above, it shall forward the submission to the Committee forthwith.
5. The Committee may reject to consider any submission made pursuant to paragraph 1b above that is *de minimis* or ill-founded, bearing in mind the objectives of the International Treaty.
- 5*bis*. The Contracting Party concerned may participate in the consideration of the submission and present responses or comments to the Committee, but it may not participate in the elaboration and adoption of a recommendation of the Committee.
- [6. Confidentiality will be a requirement of the consideration of the submission.]

VI. INFORMATION

1. The Committee shall consider relevant information from:
 - (a) The Contracting Party concerned;
 - (b) The Contracting Party that has made a submission with respect to another Contracting Party;
 - (c) The Governing Body[;
 - (d) An International Agricultural Research Centre of the Consultative Group of the International Agricultural Research Centres;
 - (e) any natural or legal person that are users of Standard Material Transfer Agreements].
2. The Committee may seek or receive and consider relevant information from the Secretariat and other sources.
3. The Committee may seek expert advice.
- [4. The Committee [shall]/[could] receive, through the Secretariat, any communication concerning questions related to the implementation of the International Treaty from:
 - (a) the Governing Body;
 - (b) a Contracting Party;

- (c) an International Agricultural Research Centre or the Consultative Group of the International Agricultural Research Centres;
- (d) the Secretariat.]

[5. Any communication shall be addressed in writing to the Secretariat and shall set out:

- (a) the question raised by the communication;
- (b) the relevant provision of the International Treaty; and
- (c) any relevant supporting information clarifying the question raised by the communication.]

[6. The Committee may make recommendations to the Governing Body concerning questions related to the implementation of the International Treaty.]

VII. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

1. The Committee, with a view to promoting compliance and addressing issues of non-compliance, which are raised in accordance with Section V and taking into account such factors as the cause, type, degree, and frequency of non-compliance, may:

- (a) Provide advice or facilitate assistance, including legal advice or legal assistance, to the Contracting Party concerned, as appropriate;
- (b) Request or assist, as appropriate, the Contracting Party concerned to develop a compliance action plan regarding the achievement of compliance with the International Treaty within a timeframe to be agreed upon between the Committee and the Contracting Party concerned [,taking into account its existing capacity to comply]; and
- (c) Invite the Contracting Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the International Treaty.

2. The Governing Body may, upon the recommendations of the Committee, decide to:

- (a) Provide assistance, including, as appropriate, legal, financial and technical assistance, to the Contracting Party concerned [subject to budgetary considerations];
- (b) Issue a [caution]/[notification] to the Contracting Party concerned;
- (c) [Request the Secretariat to place on the website [closed issues]/[findings] of non-compliance.]
- (d) [d] Take any other actions it deems appropriate [for capacity-building] in accordance with the International Treaty and for the fulfilment of the Treaty's objectives.]

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

The Governing Body [shall], within six years of adoption and periodically thereafter, [is to] review the effectiveness of these procedures and mechanisms and take appropriate action.

[IX] [IV bis].**MONITORING AND REPORTING**

1. Each Contracting Party [shall]/[is to] submit to the Committee, through the Secretariat, a report on the measures it has taken to implement its obligations under the International Treaty in one of the six languages of the United Nations. [The first report [shall]/[is to] be submitted three years after the adoption by the Governing Body of a standard reporting format, developed by the Committee. Subsequent reports [shall]/[are to] be submitted every five years thereafter or periodically in accordance with any further decisions of the Governing Body on the submission of such reports.]

2. The Committee shall consider the reports that it has received up to 12 months before the next session of the Governing Body taking into account any guidance of the Governing Body.

3. The Committee shall submit a synthesis report on the basis of the reports that it has considered to the Governing Body[, which may include recommendations to the Governing Body on possible decisions to solve identified problems][, including on the invitation to Contracting Parties to make a submission in accordance with Section V.1a].

[3bis. Subject to any guidance of the Governing Body, and on the basis of the reports submitted to it, the Committee shall conduct a systemic review of the state of compliance by the Contracting Parties with their obligations under the International Treaty and report thereon to the next regular session of the Governing Body. The report may include recommendations on possible solutions to identified problems.]

4. The Committee may develop and submit any further [procedures and operational mechanisms on monitoring and reporting, including a] review of the standard reporting format, to the Governing Body for its consideration and approval.

AGENDA ITEM 9 Implementation of the Funding Strategy

The following draft Resolution is based on the requests of the Governing Body at its Third Session, including elements developed on the basis of advice received from the Ad Hoc Advisory Committee on the Funding Strategy (see documents IT/GB-4/11/8, IT/GB-4/11/9)

**DRAFT RESOLUTION **/2011
IMPLEMENTATION OF THE FUNDING STRATEGY OF THE TREATY**

THE GOVERNING BODY,**PART I: RESOURCE MOBILIZATION FOR THE BENEFIT-SHARING FUND**

Recalling Resolution 1/2004 by which the Governing Body adopted the Funding Strategy;

Recalling that the aims of the Funding Strategy pursuant to Article 18 of the Treaty are the development of ways and means by which adequate resources become available for the implementation of the International Treaty, and the transparent, efficient and effective utilization of all resources made available under the Funding Strategy;

Recalling that the effective implementation of the Funding Strategy is critical to the implementation of the International Treaty;

Recalling that the Funding Strategy's Benefit-sharing Fund receives mandatory and voluntary contributions pursuant to Article 13.2 of the International Treaty as well as voluntary contributions from any source to implement the Funding Strategy of the International Treaty;

Recalling that the Governing Body, at its Third Session, welcomed the *Strategic Plan for the implementation of the Benefit-sharing Fund of the Funding Strategy* and agreed that this Plan constitutes a basis for resource mobilization for the Benefit-sharing Fund by the Secretariat and the Contracting Parties, with a target of mobilizing US\$ 116 million between July 2009 and December 2014.

Commending that the implementation of the Fund through voluntary contributions is ahead of the *Strategic Plan for the Implementation of the Benefit-sharing Fund*, which was welcomed by the Governing Body at its Third Session and specifies the achievement of the agreed funding target;

1. **Welcomes** the excellent progress in the implementation of the *Strategic Plan*, which has exceeded the target of mobilizing US\$ 10 million in the first eighteen months, and that these moneys are now available for the second round of the project cycle of the Benefit-sharing Fund;

2. **Warmly thanks** the governments of Australia, Ireland, Italy, Norway and Spain for their voluntary contributions to the Benefit-sharing Fund and expresses its gratitude for their support to the International Treaty;

3. **Warmly welcomes** the establishment of partnerships with IFAD and UNDP that have facilitated, *inter alia*, the mobilization of additional financial resources in support of the second round of the project cycle of the Benefit-sharing Fund;
4. **Thanks** the members of the High-level Task Force for resource mobilization for their support to the Benefit-sharing Fund and requests them to continue their active support of the Fund through the High-level Task Force;
5. **Commends** the Secretary for having spearheaded the successful resource mobilization efforts and requests him to further intensify his efforts in accordance with the Strategic Plan;
6. **Encourages** Contracting Parties and other donor prospects to make multi-annual and direct investments to the Benefit-sharing Fund and **requests** the Secretary to foster direct and long-term relationships and seek multi-annual commitments when approaching donors;
7. **Underlines** the importance of combining resource mobilization efforts and prospect cultivation efforts with a stronger communication and mainstream media strategy of the Treaty.
8. **Recognizes** the importance of developing and sustaining the capacity within the Secretariat of the Treaty on resource mobilization in order to consolidate and build on the successes already achieved in the implementation of the *Strategic Plan*, and also to address other funding needs of the Treaty;
9. **Emphasizes** the need for the Secretary to further enhance and promote direct relationships with donors and to profile the Fund among high level political decision makers, including through the effective positioning of the Treaty among major global themes like Food Security, Biodiversity and Climate Change adaptation, the realization of donor-driven cultivation events and the engagement of “goodwill ambassadors” and high-level individuals who contribute to increasing public awareness of the Fund and the Treaty;
10. **Emphasizes** the need to further explore innovative approaches in engaging voluntary donors to the Benefit-sharing Fund, in particular various private sector prospects such as the seed and the food processing industry, and **requests** the Secretary to establish a Stakeholder Platform to bring together a wide range of stakeholders and donors to explore the development of innovative approaches to resource mobilization, including on a regular and predictable basis;
11. **Welcomes** the use of the brand name *Leading the Field* as part of the communication and media strategy to make the Benefit-sharing Fund more accessible to the public in general.

PART II: OPERATIONS OF THE BENEFIT-SHARING FUND

Recalling that the Benefit-sharing Fund is administered through the Trust Account referred to in Article 19.3 (f) of the International Treaty;

Recalling that Resolution 1/2006 established the Funding Strategy for the implementation of the Treaty and that the Governing Body has further agreed on the priorities, eligibility criteria, operational procedures¹ and information and reporting requirements² for the use of resources of the Benefit-sharing Fund;

Recalling that the Governing Body, at its Third Session, approved the first portfolio of projects funded by the Benefit-sharing Fund;

¹ IT/GB-2/07/Report Appendix D.1, D.2 and D.3

² IT/GB-3/09/Report Resolution 3/2009

Welcoming the official recognition of the Benefit-sharing Fund of the Treaty as an Adaptation Funding Mechanism under the Adaptation Funding Interface of the UN Framework Convention on Climate Change (UNFCCC);

Thanking the Convention on Biological Diversity for having disseminated the Call for Proposals 2010 of the Benefit-sharing Fund through its mechanisms to a wide range of stakeholders working on the conservation and sustainable use of biological diversity, in particular the conservation of agricultural biodiversity;

Appreciating to the International Fund for Agricultural Development (IFAD) for its recognition of the Benefit-sharing Fund as a new mechanism to prioritize the conservation and use of the biodiversity in addressing poverty reduction and, in particular, for partnering with the Benefit-sharing Fund, including through possible contributions of financial resources;

Expressing its appreciation for the commitment of the United Nations Development Programme (UNDP) to partner with the Benefit-sharing Fund, including through strategic policy advice, programme and project operation and joint resource mobilization;

Recalling that the second round of the project cycle of the Benefit-sharing Fund, based on its programmatic approach, has established the Fund as a new multilateral approach to financing food security, biodiversity conservation and use, and climate change adaptation of food crops.

Recalling that, at its Third Session, it requested the Secretary to develop disbursement, reporting and monitoring procedures for the operation of the future project cycles, including by following advice from the *Ad Hoc* Advisory Committee on the Funding Strategy;

Further recalling that, at its Third Session, it requested the Secretary to continue collaborating with international organizations in the further development and operationalization of operational procedures;

Emphasizing the importance of developing institutional arrangements to support the implementation of the second round of the project cycle;

Implementation of the first round of the project cycle

12. **Welcomes** the progress made in the implementation of the 11 small-grant projects funded under the first round of the project cycle of the Benefit-sharing Fund and **emphasizes** the importance of completion of these projects by the end of 2011, and **requests** the Secretary to prepare and make available a summary report on the implementation and impact of this first project portfolio building upon the final reports of each individual project;

13. Following the decision made at its Third Session, it **emphasizes** that plant genetic resources for food and agriculture listed in *Annex I* of the International Treaty resulting from the projects funded under the first round of the project cycle shall be made available according to the terms and conditions of the Multilateral System, and that information generated by these projects shall be made publicly available within 1 year of the completion of the project and **requests** the Secretariat to develop practical measures and systems that will facilitate that the entities implementing such projects meet such requirements;

Implementation of the second round of the project cycle (from the Opening of the Call for Proposals 2010 to the Approval of projects to be funded)³

³ Information and decisions relevant to the procedures and arrangements enabling the next steps of the second project cycle (funds disbursement, reporting and monitoring, evaluation) are contained in the

14. **Welcomes** the design the Call for Proposals 2010 of the Benefit-sharing Fund agreed by the Bureau of the Fourth Session of the Governing Body, especially its thematic focus to help ensure sustainable food security by assisting farmers to adapt to climate change through a targeted series of high impact activities on the conservation and sustainable use of plant genetic resources for food and agriculture, and the Call's structure that integrates the realization of Strategic Action Plans with the implementation of Immediate Action Projects;

15. **Thanks** the Bureau and the *Ad Hoc* Advisory Committee on the Funding Strategy for the intergovernmental work carried out to support the design and execution of the second round of the project cycle of Benefit-sharing Fund and **takes note** of the in-session document, IT-GB-4/11/Inf.12 *Report on Projects approved in the Project Cycle of the Benefit-sharing Fund in the 2010/2011 biennium* which contains the list of approved projects to be funded by the Fund;

16. **Commends** the work of the high level international experts engaged by the Secretary, following the request of the Bureau, for the high quality advice provided on the design of the second call for proposals;

17. **Welcomes** the establishment of the Helpdesk function to support the elaboration of pre-proposals and full project proposals during the second round of the project cycle and **requests** that lessons be learned for future project cycles based on the report of the Helpdesk;

18. **Thanks** the experts of the Panel of Experts for their valuable assistance in the appraisal of the project proposals;

19. **Thanks** the FAO, the Global Crop Diversity Trust, Bioversity International and UNDP for the support to the Secretary in the design of the Call for Proposals 2010 of the Benefit-sharing Fund;

20. **Requests** the Secretary to bring project proposals favourably appraised but not funded during the second project cycle to the attention of relevant international mechanisms, funds and bodies, both bilateral and multilateral, in accordance with paragraph 6.c of the Operational Procedures;

21. **Invites** relevant international mechanisms, funds and bodies to consider those project proposals favourably appraised, and to inform the Secretary of the funding and progress of those projects, as part of the Funding Strategy;

Implementation of the second round of the project cycle (from the approval of projects to be funded to independent evaluation)

22. **Adopts** interim procedures for reporting, monitoring and evaluation of the second round of the project cycle, as contained in *Annex 1* of this Resolution, and interim procedures for fund disbursement, as contained in *Annex 2* of this Resolution, to be applied in the implementation of the second round of the project cycle of the Benefit-sharing Fund;

23. **Requests** the Secretary to collaborate with international organizations and relevant FAO units

addendum: *Implementation of projects approved under the second project cycle of the Benefit-sharing Fund.*

and offices in the monitoring and evaluation of projects approved in the second round of the project cycle of the Benefit-sharing Fund, and to conclude the necessary agreements to set forth institutional arrangements with partners for the implementation of projects approved in the second round of the project cycle;

24. **Takes note** of the cost associated with supporting the implementation of projects approved in the second round of the project cycle, as contained in *Annex 3* of this Resolution and **requests** the Secretary to report back at the next Session of the Governing Body.

Implementation of future rounds of the project cycle

25. **Noting** that the thematic focus of the second round of the project cycle of the Benefit-sharing Fund is of immense strategic importance to increase the impact of the Fund in responding to global challenges, **requests** the Secretary to develop a mid-term programmatic approach for the Benefit-sharing Fund building upon this thematic focus and in full alignment with the priorities adopted by the Governing Body at its Second Session;

26. **Requests** the Secretary to take into account lessons learned on the Operational Procedures during the execution of the first and second rounds of the project cycle in the design and execution of future rounds of the project cycle;

27. **Decides** to delegate authority for the execution of the project cycle during the intersessional period of the 2012-13 biennium to the Bureau of the Fifth Session of the Governing Body;

28. **Emphasizes** that quality and technical merit shall determine the appraisal and approval of full project proposals in future rounds of the project cycle;

Further operationalization of the Benefit-sharing Fund, including procedures and institutional arrangements

29. **Acknowledges** the importance and value of building partnerships with international organizations to enhance the impact of the Benefit-sharing Fund, including with regard to resource mobilization and Fund programming, and the effectiveness of the Fund's operation, including by relying as much as possible on designated implementing entities which will fulfil high project and financial management and fiduciary standards to provide services of project formulation, supervision and implementation;

30. **Requests** the Secretary to use the *interim* procedures adopted for the second round of the project cycle as a basis for further work with a view of considering and adopting procedures for future rounds of the project cycle at the Fifth Session of the Governing Body;

31. **Notes with appreciation** the expressions of interest by FAO, the Global Crop Diversity Trust, IFAD, UNDP, UNEP, UNOPS, CATIE, Oxfam Novib and the World Bank to support the further operationalization of the Benefit-sharing Fund;

32. **Welcomes** the conclusion of Memoranda of Cooperation with IFAD and UNDP to support the

further development of the Benefit-sharing Fund and the overall implementation of the Treaty;

33. **Requests** the Secretary to continue establishing partnerships with relevant international organizations to support the Benefit-sharing Fund, especially with those multilateral institutions that act as implementing entities for other multilateral funds, have a comparative advantage in the area of plant genetic resources for food and agriculture and a recognized capacity for project and financial management, are present at field level and are capable to support co-funding of projects;

34. **Requests** the Secretary to bring the work of the Fund to the attention of the UNFCCC and other relevant climate change processes, bodies and mechanisms such as the Global Environmental Facility and the Global Adaptation Fund; the Convention on Biological Diversity and other processes concerned with access and benefit-sharing for genetic resources; and relevant high-level fora on food security and agriculture, such as the Committee on Food Security (CFS), the Secretary General's High-level Task Force on the Global Food Security Crisis, and the Global Agriculture and Food Security Programme of the World Bank;

35. **Requests** the Secretary to develop a standard procedure and cooperation framework for the establishment of partnerships with other interested international organizations taking into account lessons learned in the development of partnerships with IFAD and UNDP;

36. **Emphasizes** that the Benefit-sharing Fund is under the direct control of the Governing Body and is financed exclusively through the Strategic Plan that the Contracting Parties have established for its implementation and, given this high degree of self-financing, it **stresses** the importance of maintaining a high degree of autonomy and self-administration in the operation of the Fund.

PART III: MONITORING THE IMPLEMENTATION OF THE FUNDING STRATEGY: RESOURCES NOT UNDER THE DIRECT CONTROL OF THE GOVERNING BODY

Recalling that the aims of the Funding Strategy are the development of ways and means by which adequate resources are available for the implementation of the International Treaty, and the transparent, efficient and effective utilization of all resources made available under the Funding Strategy;

Recalling that the Governing Body, at its First Session, requested the Secretary of the Treaty to positively pursue, with the secretariats of relevant international mechanisms, funds and bodies, means by which they might contribute to the implementation of the Funding Strategy, and the possibility of establishing memoranda of understanding with the Governing Body in this regard;

Recalling that the Governing Body, at its Third Session, adopted *Annex 4* of the Funding Strategy, *Information and Reporting Requirements under the Funding Strategy*, in order to facilitate the monitoring of the implementation of the Funding Strategy;

Recalling that *Annex 4* of the Funding Strategy sets out the requirements for information and reporting on resources not under the direct control of the Governing Body provided by Contracting Parties, non-Contracting Parties, international organisations with which the

Governing Body has entered into agreements, and relevant international mechanisms, funds and bodies.

37. **Welcomes** the information compiled by the Secretariat and provided to the *Ad Hoc* Advisory Committee on the Funding Strategy on resources not under the direct control of the Governing Body, and emphasizes the importance of regular provision of such information to raise the profile of the Funding Strategy of the Treaty and to assess gaps and synergies in its implementation;

38. **Emphasizes** the importance of the successful operation of the Global Crop Diversity Trust for the implementation of the Funding Strategy and of collaboration between the Benefit-sharing Fund and the Trust, and requests the Secretary to explore with the Executive Director of the Global Crop Diversity Trust the possibility of practical mechanisms to further enhance the synergies and programmatic complementarities between the Benefit-sharing Fund and the Global Crop Diversity Trust, including, where relevant, a possible series of joint fundraising and programming activities;

39. **Requests** the Secretary to strengthen cooperation with other international organizations to support the implementation of the Funding Strategy, and in particular the further operationalization of the Benefit-sharing Fund, through the establishment of contacts with senior management of relevant institutions and the elaboration and implementation of cooperation arrangements with relevant international mechanisms, funds and bodies;

40. **Requests** the Secretary to promote the implementation of the full remit of the Funding Strategy by communicating the importance of the Funding Strategy to a wider audience.

PART IV: INTERGOVERNMENTAL WORK ON THE FUNDING STRATEGY DURING THE NEXT INTERSESSIONAL PERIOD: DRAFT TERMS OF REFERENCE FOR THE AD HOC ADVISORY COMMITTEE ON THE FUNDING STRATEGY

41. **Decides** to reconvene the *Ad Hoc* Advisory Committee on the Funding Strategy, with the following Terms of Reference:

- i. advise the Bureau and the Secretary on resource mobilization efforts, including on innovative approaches;
- ii. advise the Bureau and the Secretary on the operation of the Benefit-sharing Fund, including on:
 - design and structure of the next call for proposals based upon lessons learned and thematic focus of the second round of the project cycle;
 - support the work of the Bureau in screening the pre-proposals;
 - procedures for fund disbursement and project monitoring, evaluation and reporting and institutional arrangements with partner institutions;
 - the programmatic approach of the Benefit-sharing Fund;
 - the functional needs of the Benefit-sharing Fund in the context of FAO's

processes on autonomy of statutory bodies;

- review of implementation of project portfolio funded by the first and second rounds of the project cycle of the Benefit-sharing Fund;

- review the Operational Procedures of the Benefit-sharing Fund, considering lessons learned from their implementation since their adoption by the Governing Body at its Second Session;

- iii. advise on the monitoring of the implementation of the overall Funding Strategy, including on strengthening collaboration with other relevant international mechanisms, funds and bodies, including the Global Crop Diversity Trust, IFAD, UNDP, and other partners;
- iv. report on the progress of its work to the Bureau and present the result of its work in the Fifth Session of the Governing Body.

ANNEX 1: INTERIM PROCEDURES FOR REPORTING, MONITORING AND EVALUATION⁴

1. Objectives

Monitoring and evaluation have the following overarching objectives:

- a. Promote accountability for the achievement of priorities established by the Governing Body through the assessment of results, effectiveness, processes, and performance.
- b. Promote learning, feedback, and knowledge sharing on results and lessons learned, as a basis for decision-making on policies, strategies, programmes, and project management.

2. Procedural steps for reporting, monitoring and evaluation of projects

The following minimum steps shall be applied to reporting, monitoring and evaluation during the project cycle.

1. *Submission of project proposals: design of a monitoring and reporting plan*

- a. A concrete monitoring and reporting plan is included in the full project proposal by the time a project proposal is submitted for appraisal by the panel of experts;
- b. the plan contains:
 - milestones for project implementation;
 - logical framework and indicators for results (outcomes, outputs);
 - baseline for the project, with a description of the problem to be addressed;
 - organizational set-up and budgets for monitoring and evaluation.
- c. the plan is developed according to the templates for project proposals that are attached to the invitation to prepare a full project proposal.
- d. Responsibility: Executing entities, following the format for project proposals prepared by the Secretary.

2. *Development of project agreement: monitoring products related to payment schedule*

- a. The project agreement provides a detailed reporting schedule based on *Implementation* and *Terminal Reports*, to which the payment schedule is linked.
- b. The schedule for delivering monitoring products is standard for projects under each window of the Call for Proposals 2010.
- c. Responsibility: the Secretary develops the project agreement following the FAO's template for Letters of Agreement.

3. *Project implementation: application of monitoring and reporting plan*

- a. The implementation of the monitoring and reporting plan comprises, as a minimum:
 - targets for implementation that are actively used, unless a reasonable explanation for their unapplicability is provided;
 - indicators for results that are actively used, unless a reasonable explanation for their unapplicability is provided;

⁴ Appendix II of the Operational Procedures for the use of resources under the direct control of the Governing Body.

- data are compiled to assess progress; and,
- the organizational set-up is operational and funds are spent as planned.

b. *Implementation Reports* are submitted periodically, at least annually, to the Secretary according to a reporting schedule with milestones included in the project document and to include:

- *Financial Reporting component*, including a periodical audited financial statement to the Secretary on the use of received funds.
 - *Result Reporting component*, including a periodical report on progress and results for all activities.
- c. A *Terminal Report* summarizes key successes and challenges for the future, and includes a financial report.
- d. Backstopping missions are carried out, where necessary, including to capture the views of stakeholders and identify solutions to obstacles in project implementation.
- e. Responsibility: Secretary prepares templates for *Implementation* and *Terminal Reports*. Executing entities develop the monitoring products and submit them to the Secretary who arranges backstopping missions in cooperation with multilateral agencies.

3. Independent Evaluation

- a. A terminal independent evaluation of the project portfolio is conducted at the end of the project cycle.
- b. The minimum requirements for such evaluation are:
- compliance with norms and standards of the United Nations Evaluation Group.
 - assessing at a minimum:
 - the achievement of outputs and outcomes, and provide ratings for targeted objectives and outcomes;
 - the sustainability of outcomes after project completion, with a scale of rating;
- c. The minimum contents of the terminal evaluation report are:
- basic data on the evaluation:
 - when the evaluation took place,
 - who was involved,
 - the key questions, and
 - the methodology;
 - basic data on the project, including expenditures from the Benefit-sharing Fund and other sources;
 - lessons for broader applicability; and,
 - the terms of reference of the evaluation (in an annex).
- d. The independent evaluation shall be based on visits to the locations of a sample of projects and other mechanisms, such as interviews, questionnaires, focus group discussions.
- e. The evaluation report shall be submitted to the Secretary within a reasonable time after termination of the projects.
- f. The evaluation report shall contain findings and recommendations and will be made public through the website.
- g. Responsibility: the evaluation team is lead by independent experts not involved with the projects and the Benefit-sharing Fund. An approach paper and Terms of

Reference for evaluation are prepared by the Secretary and the FAO Evaluation Office. The evaluation report is reviewed, if needed, by the evaluation office of the implementing entity. The evaluation team is solely responsible for the independent evaluation report.

4. Roles and responsibilities of intersessional bodies

The *Ad Hoc* Advisory Committee on the Funding Strategy provides the Secretary and the Bureau with advice on the monitoring of the project portfolio funded in the second round of the project cycle.

The Bureau of the Governing Body may request information related to the monitoring and evaluation from the project portfolio to the *Ad Hoc* Advisory Committee. The *Ad Hoc* Advisory Committee will inform the Bureau of any issues arising from the monitoring and evaluation that may require the guidance from the Governing Body, so that the Bureau can take it into account in the preparations for the next Session of the Governing Body.

At any stage of the project implementation, the *Ad Hoc* Advisory Committee may recommend that the Bureau consider the suspension or cancellation of a project due to any of the following reasons: (a) financial irregularities in the implementation of the project; (b) material breach and poor implementation performance leading to a conclusion that the project can no longer meet its objectives. Before the *Ad Hoc* Advisory Committee on the Funding Strategy makes its recommendation whether to suspend or cancel a project, the entity executing the project will be given a fair chance to present its views.

ANNEX 2: DRAFT INTERIM DISBURSEMENT PROCEDURES

1. Background

Based on Article 19.3 (h) of the Treaty, the Governing Body has established a Trust Account to receive financial contributions to the Benefit-sharing Fund. In accordance with the Financial Rules of the Governing Body, the Trust Account of the Benefit-sharing Fund is administered by FAO and its accounts and financial management are subject to the policies and procedures of FAO.

2. Implementation of the interim disbursement procedures

The implementation of these interim disbursement procedures shall be in line with the Financial Rules of the Governing Body and consistent with existing FAO financial rules and procedures, as well as other applicable FAO rules and procedures.

3. Procedural steps for disbursement of funds

a) The terms and conditions of disbursement will be set forth in the project agreements. The project agreements will include, *inter alia*:

- a schedule for the disbursement of funds in tranches based on time specific milestones;
- a requirement for an *Implementation Report* from the implementing entity prior to each tranche disbursement.
- a provision authorizing non-payment if project delivery fails.

Responsibility: the Secretary of the Governing Body will develop the project agreements following the FAO template for Letters of Agreement.

b) Payments will be made in the following phases:

- a. An initial payment to follow signature of the project agreement.

Responsibility: the Secretary of the Governing Body will authorize the initial payment.

- b. Interim payments, dependent upon receipt and acceptance of *Implementation Reports*, which includes a financial statement of expenditures signed and certified by a duly designated representative of the executing entity and relevant supporting documentation.

Responsibility: the executing entities will submit *Implementation Reports* to be accepted by the Secretary before authorizing any new payment.

- c. A final payment, dependent upon receipt and acceptance of a *Terminal Report*, which includes a final financial statement of expenditures signed and certified by a duly designated representative of the executing entity and relevant supporting documentation.

Responsibility: the executing entities will submit a *Terminal Report* to be accepted by the Secretary before authorizing the final payment.

AGENDA ITEM 10 Consideration of the Business Plan of the Governing Body

No draft Resolution has been prepared for this agenda item. A Resolution would be prepared on the basis of discussions during the session, should the Governing Body so decide (see document IT/GB-4/11/11).

AGENDA ITEM 11 Implementation of the Multilateral System of Access and Benefit-sharing

11.1 Review of the implementation of the Multilateral System

11.4 Review of the Material Transfer Agreement being used by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other relevant international institutions, for Plant Genetic Resources for Food and Agriculture not included in Annex 1 of the Treaty

The following elements of a draft Resolution have been developed by the Secretary in respect of sub-items 11.1 and 11.4 in accordance with the decisions of the Governing Body, including elements based on the advice of the Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System (see document IT/GB-4/11/12).

RESOLUTION **/2011

Implementation of the Multilateral System

Recalling, that Part IV of the Treaty establishes a Multilateral System of Access and Benefit-sharing, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Recalling Resolution 4/2009 on the Multilateral System of Access and Benefit-sharing, adopted by the Governing Body at its Third Session;

Convinced of the crucial importance for the Treaty of bringing the Multilateral System of Access and Benefit-sharing into full and effective operation;

Convinced of the need to address the various elements of the Multilateral System as an integrated whole;

Recognizing that significant progress has been made in the implementation of the Multilateral System and the importance of maintaining current efforts and momentum in its implementation;

Recalling that under Article 12.4 of the Treaty, facilitated access to the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement adopted by the Governing Body;

Recognizing that, under the Multilateral System, in addition to the sharing of the benefits arising from commercialization of plant genetic resources for food and agriculture, Contracting Parties shall share the benefits arising from the use of plant genetic resources through the mechanisms of information exchange, access to and transfer of technology, and capacity-building;

Recalling that, in Article 11.3 of the International Treaty, Contracting Parties agreed to take appropriate measures to encourage natural and legal persons within their jurisdictions who hold plant genetic resources for food and agriculture listed in *Annex 1* to include such plant genetic resources for food and agriculture in the Multilateral System;

Recognizing that access to the information referred to in Article 13.2a is essential for the effective functioning of the Multilateral System and for the development of national capacity for the implementation of the Multilateral System;

Recognizing the importance of communication, education and public awareness for the successful implementation of the Multilateral System;

Further recognizing that, for the Multilateral System to be effective, it is also essential that information on the plant genetic resources for food and agriculture that are in the Multilateral System is made available in a manner that is accessible and usable by potential users;

Recognizing that enhanced cooperation and improved coordination with other international organizations is of particular importance for the sustainable functioning of the Multilateral System;

Recognizing that the objectives of the Treaty will be attained by closely linking the Treaty to the Food and Agriculture Organisation of the United Nations and to the Convention on Biological Diversity;

Welcoming the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), and *noting* that it is of major relevance for the attainment of the objectives of the Treaty and, in particular, the operation of the Multilateral System of the Treaty;

Acknowledging the ongoing fruitful collaboration with other international organizations, in particular, the Convention on Biological Diversity and the Consultative Group on International Agricultural Research and other relevant international institutions in the implementation of the Multilateral System;

THE GOVERNING BODY,

Plant genetic resources held by Contracting Parties and forming part of the Multilateral System

1. *Thanks* those Contracting Parties that have notified the Secretary of the plant genetic resources for food and agriculture that are in the Multilateral System and *urges* them to continue to update their information as it becomes available;
2. *Requests* all Contracting Parties to report on their plant genetic resources for food and agriculture that are in the Multilateral System, in accordance with Article 11.2 of the Treaty, and, according to national capacities, to take measures to make information on these resources available to potential users of the Multilateral System;

Plant genetic included by natural and legal persons within the jurisdictions of Contracting Parties

3. *Reiterates* its concern that more information is required on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties;
4. *Thanks* those Contracting Parties that have made information available on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within their jurisdiction;
5. *Urges* natural and legal persons to take steps to include plant genetic resource for food and agriculture in the Multilateral System, and to inform the Secretary accordingly;
6. *Urges* Contracting Parties to take, as appropriate, legal, administrative, fiscal and other measure to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, according to national capacities;

Plant genetic resources held by International Institutions, under Article 15

7. *Recognizes* the importance of the International Agricultural Research Centers of the

Consultative Group on International Agricultural Research and other relevant International Institutions for the fulfilment of the objectives of the Treaty, and their valuable contributions to the development of its Multilateral System;

8. **Notes** the comprehensive report provided by the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other relevant International Institutions, the Tropical Agricultural Research and Higher Education Centre (CATIE), Secretariat of the Pacific Community Centre for Pacific Crops and Trees (CePaCT), and the Mutant Germplasm Repository of the FAO/IAEA Joint Division, and **thanks** them for providing such detailed and useful report, and further **encourages** them to continue providing the Governing Body with similar reports in future Sessions of the Governing Body;
9. **Invites** other relevant international institutions to enter into agreements with the Governing Body to put their collections of plant genetic resources for food and agriculture in the Multilateral System;
10. **Requests** the Secretary to continue enhancing the collaboration with the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other relevant International Institutions and, as far as feasible, providing them with advisory and technical support in the implementation of their obligations under the Multilateral System and, in particular, in their use of the Standard Material Transfer Agreement;
11. **Requests** the Secretary to take necessary steps to encourage further inclusion of plant genetic resources for food and agriculture in the Multilateral System by relevant international institutions.

Documenting the plant genetic resources for food and agriculture within the Multilateral System

12. **Stresses** the importance of the continued identification and documentation of the plant genetic resources for food and agriculture within the Multilateral System, so that they may be accessed for the purpose of utilization and conservation for research, breeding and training for food and agriculture using the FAO/IPGRI Multicrop Passport Descriptor List;
13. **Requests** the Secretary to continue gathering information on and documentation of plant genetic resources in the Multilateral System, including through the use of appropriate information technology tools, so that the plant genetic resources for food and agriculture may be used for plant breeding, research and training;
14. **Welcomes** the efforts underway to coordinate and improve information systems documenting plant genetic resources for food and agriculture, based on existing information systems, in order to develop and strengthen the Global Information System, foreseen in Article 17, consistent with Article 12.3b, of the International Treaty;
15. **Recognizes** that improving access to and availability of information in the Multilateral System continues to be an immediate priority and that there is a need to support the relevant authorities and entities, particularly in developing countries, in improving their capacity to provide, manage or access information in respect of the Multilateral System;
16. **Further requests** the Secretary, where feasible, to provide assistance to those Contracting Parties that may require support in identifying and reporting their plant genetic resources for food and agriculture that are in the Multilateral System;

Legal and other appropriate measures to provide access through the Multilateral System (Article 12.2)

17. **Urges** Contracting Parties, in accordance with Article 12.2, to take necessary legal and other appropriate measures to provide access to plant genetic resources for food and agriculture

through the Multilateral System and requests them to report on such information, using the standard format to be prepared by the Secretary with the Support of the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System;

Implementation of the Standard Material Transfer Agreement

18. **Stresses** the to document exchanges under the Multilateral System through Standard Material Transfer Agreement operations, including through adequate reporting on concluded Standard Material Transfer Agreements in accordance with Resolution 5/2009;
19. **Requests** the Secretary to continue giving priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems, including by reconvening the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System to continue and complete its work on the issues it identified during the last biennium and address other issues raised by users to the Secretary;
20. **Notes** the lack of implementation of non-monetary benefit-sharing and **requests** the Secretary to continue collecting information on the status of non-monetary and monetary benefit-sharing, as provided for in Articles 13.2a, b, c and d of the Treaty, and for this purpose to engage Contracting Parties and other stakeholders in providing information;
21. **Urges** Contracting Parties, international institutions having signed agreements under Article 15, and private sector entities to provide such information, using the standard format to the prepared by the Secretary with advice from the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System;
22. **Further requests** the Secretary to support Contracting Parties to take the necessary policy, legal and administrative measures for their national plant genetic resource systems, and natural and legal persons within their jurisdictions, to be able to use the Standard Material Transfer Agreement to provide facilitated access to plant genetic resources for food and agriculture;
23. **Invites** Contracting Parties and other relevant stakeholder to explore innovative benefit-sharing measures within the purview of Articles 13.2a, b, and c of the Treaty;

The Work of the *Ad Hoc* Technical Advisory Committee on the Multilateral System and Standard Material Transfer Agreement

24. **Thanks** the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System for their advice to the Secretary as well as the useful recommendations made for the effective implementation of the Multilateral System and the operation of the SMTA;
25. **Thanks** the government of Brazil for generously hosting and supporting the second meeting of the *Ad Hoc* Technical Advisory Committee;
26. **Approves** the updates to the SMTA, as contained in *Appendix ...* to this Resolution and requests the Secretary to publish the same and take all necessary measures to bring the updated version into operation, including by bringing it to the attention of all relevant stakeholder;
27. **Emphasizes** the need to further explore innovative approaches in engaging users of the Standard Material Transfer Agreement to make voluntary contributions to the Benefit-sharing Fund, in particular natural and legal persons from the seed and the food processing industry, and requests Contracting Parties to provide financial support for the Secretary to establish a Stakeholder Platform to bring together a wide range of such users to explore the development of innovative approaches to resource mobilization, including on a regular and predictable basis;
28. **Notes** the discussions of the Committee on the development of standards under Article 12.3h and **requests** it to examine further how this provision might best be implemented;

29. *Notes* the opinions and advice provided by the Committee at its first two meetings and *endorses* the opinions regarding non-food/feed uses and restoration of plant genetic resources for food and agriculture, as contained in the report of its second meeting;
30. *Further requests* the Committee to continue its work on the issues it had identified for further development and conclude its examination of those issues for consideration by the Governing Body at its Fifth Session.
31. *Agrees with* the opinion developed by the Committee on the Restoration of Germplasm and contained in Appendix ... to this Resolution.
32. *Decides* to reconvene the Committee in accordance with the terms of reference contained in Appendix..._ to this Resolution;⁵
33. *Decides* to again review the implementation of the Multilateral System at its Fifth Session;
34. *Requests* the Secretary to follow-up actively, with all measures required to obtain the information necessary;

Support to Contracting Parties and users of the Multilateral System

35. *Notes* the expression of the needs for support by developing countries in the implementation of the Multilateral System, taking into account their current capacities, as well as the additional need for support that will arise as the Nagoya Protocol enters into force;
36. *Welcomes* the progress made with the joint capacity building programme established by the Treaty, FAO and Bioversity International;
37. *Stresses* the crucial importance of assisting developing countries, including through existing coordinated multilateral frameworks, such as the Joint Capacity-building Programme and requests the Secretary to continue supervising the Joint Programme, based on the successful experience gained over the past two biennia;
38. *Expresses* the need to further extend the duration of the joint capacity building programme as well as its geographical coverage and *Invites* Contracting Parties to consider providing additional resources for the continuation of the Programme.
39. *Thanks* the Governments of Indonesia and Norway for convening a Global Consultation on Benefit-sharing under the Multilateral System and *requests* the Secretary to facilitate the necessary measures to implement the non-monetary benefit-sharing mechanisms of Articles 13.2a, b and c.
40. *Stresses* the need for coordination with other relevant international regimes related to access and benefit-sharing, in particular with capacity-building programmes under the Convention on Biological Diversity to ensure synergies and complementarities;

Major developments in the international environment of importance to the implementation of the Multilateral System

41. *Welcomes* the adoption of the Nagoya Protocol Nagoya Protocol of the Convention on Biological Diversity;
42. *Acknowledges* the recognition of the International Treaty by the Conference of Parties of the Convention on Biological Diversity and in the Nagoya Protocol, as one of the four complementary instruments that constitute the International Regime on Access and Benefit-sharing;

⁵ Pending the decision of the Governing Body on whether to reconvene the Committee, the terms of reference of the Committee from the 2010-11 biennium are reproduced in *Appendix ***.

43. Further *notes* that the Treaty and the Convention on Biological Diversity are in harmony one with another and that the Treaty, under Article 20, requires its Secretary to cooperate in particular with the Secretariat of the Convention on Biological Diversity;
44. *Commends* the Secretary for concluding the Memorandum of Cooperation with the Secretariat for cooperation and for enhancing cooperation with the CBD generally, especially in capacity-building dealing with access and benefit-sharing on plant genetic resources for food and agriculture and *emphasizes* the need to continue cooperation with the Convention on Biological Diversity in order to continue the harmonious relationship between the two agreements;
45. *Requests* the Secretary to continue enhancing the collaboration with the Convention on Biological Diversity in regard to access to plant genetic resources and benefit-sharing through, *inter alia*, participation in the relevant processes of the Convention and its Nagoya Protocol and specific joint activities with the Secretariat of the Convention;
46. *Urges* Contracting Parties to ensure, in adopting legal, administrative and policy measures to implement both the Treaty and the Convention on Biological Diversity (or its Nagoya Protocol), that both agreements are implemented in harmony with each other and in a mutually supportive manner;
47. *Requests* the Secretary to continue participating in relevant meetings of the World Intellectual Property Organization, and other relevant international organizations including the International Union for the Protection of New Varieties of Plants and the World Health Organization, and to further collaborate with the above relevant organisations to ensure mutual supportiveness on issues related to access to genetic resources and benefit-sharing;

Review of SMTA used by the IARCs of the CGIAR for non-Annex I PGRFA

48. *Notes* that at its Second Session it endorsed that an interpretative footnote or series of footnotes would be included to relevant provisions of the Standard Material Transfer Agreement (SMTA) for transfers of non-Annex I material collected before the entry into force of the International Treaty to be used by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research;
49. *Further* notes the continued successful use of the Standard Material Transfer Agreement by the International Treaty to be used by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research, and decides to further review the measures at its Fifth Session.

Follow-up by the Secretariat

50. *Stresses* the importance of adequate information being provided to the Secretary on all the relevant issues by ..., so that a full report may be prepared for its Fifth Session.

APPENDIX ***

**DRAFT TERMS OF REFERENCE FOR
THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE STANDARD
MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM**

1. The *Ad Hoc* Advisory Technical Committee will advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement. The *Ad Hoc* Advisory Technical Committee shall take into account implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement.
2. The *Ad Hoc* Advisory Technical Committee will comprise up to two members designated by each Region and up to five technical experts, including representatives of the CGIAR. In inviting these technical experts to a meeting of the *Ad Hoc* Advisory Technical Committee, the Secretary will have regard of the specific nature of the questions brought to his notice and the expertise needed to address these. Experts will be identified with due attention to the knowledge and skills required, understanding of the International Treaty and its Multilateral System, impartiality, and geographical balance. There will be two Co-Chairs, one from a developing country and one from a developed country Contracting Party, who will be elected from the members of the *Ad Hoc* Advisory Technical Committee.
3. The *Ad Hoc* Advisory Technical Committee will hold up to two meetings subject to the availability of funds.
4. The *Ad Hoc* Advisory Technical Committee will prepare a report at the end of a meeting, with responses to matters brought to its attention, and, where necessary, opinions on specific questions. These reports will be made available as information documents to the Fourth Session of the Governing Body. Where necessary, the *Ad Hoc* Advisory Technical Committee should discuss and consider questions regarding the Standard Material Transfer Agreement and the Multilateral System that may need to be brought to the attention of the Governing Body through the Secretary.
5. The *Ad Hoc* Advisory Technical Committee will report on the progress to the Secretary who will in turn report on this progress to the Fifth Session of the Governing Body.

AGENDA ITEM 11 Implementation of the Multilateral System of Access and Benefit-sharing

11.2 *Assessment of progress in the inclusion in the Multilateral System of plant genetic resources for food and agriculture held by natural and legal persons*

11.3 *Review of the implementation and operation of the Standard Material Transfer Agreement and the Multilateral System*

The following elements of a draft Resolution have been developed by the Secretary in respect of sub-items 11.2 and 11.3 (see document IT/GB-4/11/13) in accordance with the decisions of the Governing Body, including elements based on the advice of the Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System.

RESOLUTION **/2011

THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

Draft elements regarding the reviews and assessments due under Articles 11.4 and 13.2d(ii) of the Treaty

The Governing Body,

Recalling that

- a) In Article 11.3 of the Treaty, Contracting Parties agreed to take appropriate measures to encourage natural and legal persons within their jurisdictions who hold plant genetic resources for food and agriculture listed in *Annex I* to include such plant genetic resources for food and agriculture in the Multilateral System;
- b) Article 11.4 of the Treaty provided that, within two years of the entry into force of the Treaty, the Governing Body should assess the progress in including these plant genetic resources for food and agriculture in the Multilateral System, and that, following this assessment, the Governing Body should decide whether access shall continue to be facilitated to those natural and legal persons that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate;
- c) At its Second Session, the Governing Body had decided to postpone this assessment of progress until its Third Session, and that at its Third Session it further postponed the assessment until this Fourth Session;
- d) At its Third Session, it requested all Contracting Parties to report on the appropriate measures that they are taking, in accordance with Article 11.3 of the Treaty, to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, according to national capacities, and to provide information on the collections of legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems and who are willing to make such information available;

Noting that there is as yet, in particular, very little information regarding plant genetic resources that private sector entities may be incorporating in the Multilateral System;

Recalling that

- a) Article 13.2d(ii) of the Treaty provides that the Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits;
- b) At its Third Session, the Governing Body had decided to review the level of payments, with a view to achieving fair and equitable sharing of benefits, at this Fourth Session;
- c) Article 13.2d(ii) further provides that the Governing Body may assess, within a period of five years from the entry into force of the Treaty, whether the mandatory payment requirement in the Material Transfer Agreement shall apply also in cases where commercialized products are available without restriction to others for further research and breeding;
- d) At its Third Session, the Governing Body had decided to postpone the review of whether the mandatory payment requirement shall also apply in cases where commercialized products are available without restriction to others for further research and breeding to this Fourth Session;

Noting that very little information has yet become available regarding actual and expected mandatory payments in accordance with Articles 6.7 and 6.11, and voluntary payments in accordance with Article 6.8, of the Standard Material Transfer Agreement;

Reiterating the importance of obtaining the relevant information it needs in order to undertake the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the Treaty;

- i) **Thanks** those Contracting Parties who have provided information on the collections of natural and legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems, and **encourages** them to continue to provide such information as and when it becomes available;
- ii) **Reiterates** its request to all Contracting Parties to provide such information as soon as possible;
- iii) **Further requests** all Contracting Parties to inform it of the appropriate measures they are taking, in accordance with Article 11.3, to encourage natural and legal persons within their jurisdictions to include plant genetic resources for food and agriculture in the Multilateral System, including those whom they regard as forming part of their national plant genetic resources systems, those in the private commercial sector and other natural and legal persons;
- iv) **Expresses its concern** that information on the inclusion of plant genetic resource for food and agriculture in the Multilateral System by natural and legal persons within the jurisdiction of Contracting Parties on which to base its assessment of the progress in including these plant genetic resources for food and agriculture in the Multilateral System, is not yet available, and that such information should comprise:
 - The holders of the collections;
 - The crops included; and
 - The total number of accessions;
- v) **Recognizes** that there are various effective means by which natural and legal persons could include material in the Multilateral System, and that documenting such inclusions will require analysis and research, in consultation with stakeholders;
- vi) **Requests** private natural and legal persons, in particular commercial companies and breeders, to report on plant genetic resources for food and agriculture that they have included in the Multilateral System, and, in this context, invites the assistance of

industry representative bodies in conveying this request to their members;

- vii) **Decides** to again postpone the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the Treaty to its Fifth Session;
- viii) **Requests** the Secretary to undertake the necessary research, and for this purpose to request information from Contracting Parties, international institutions that have concluded agreements under Article 15 of the Treaty, private sector entities and other natural and legal persons, in order to provide to its Fifth Session a comprehensive document for these reviews and assessments;
- ix) **Requests** the Secretary to develop, with advice from the *Ad Hoc* Technical Advisory Committee on the Multilateral System and Standard Material Transfer Agreement, standard formats to enable Contracting Parties, international institutions having signed agreements under Article 15, and natural and legal persons, to provide, as appropriate, information and report effectively on the various items mentioned in this Resolution, and the implementation of the Multilateral System and the operation of the Standard Material Transfer Agreement in general.
- x) **Decides** to reconvene the *Ad Hoc* Committee on the Multilateral System and the Standard Material Transfer Agreement, *inter alia*, to:
- Review the draft of the document prepared by the Secretary, provide advice or inputs, identify any additional information necessary, and make recommendations to the Governing Body on the organization of the reviews and assessments at its Fifth Session;
 - Review and finalize the standard formats mentioned above.

*APPENDIX ****

**The Standard Material Transfer Agreement,
annotated with elements that may be integrated into the text**

Text proposed for deletion is ~~struck through~~; and text proposed for insertion is double-underlined.

STANDARD MATERIAL TRANSFER AGREEMENT

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)⁶ was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement.

⁶ *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout. [Footnotes to be re-numbered accordingly]

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

BETWEEN: (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Provider**”),

AND: (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official**) (hereinafter referred to as “the **Recipient**”).

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“**Plant Genetic Resources for Food and Agriculture**” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate. [*Footnotes to be re-numbered accordingly*]

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate⁷ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“**Sales**” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration on the open market, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex I* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex I* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.⁸

4.3 The parties to **this Agreement** agree that (~~the entity designated by the **Governing Body**~~)the Food and Agriculture Organization of the United Nations,⁹ acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex 2, paragraph 3*, to **this Agreement**.

4.5 The rights granted to the (~~the entity designated by the **Governing Body**~~)Food and Agriculture Organization of the United Nations above do not prevent the **Provider** and the

⁷ As evidenced, for example, by pedigree or notation of gene insertion.

⁸ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

⁹ *Note by the Secretariat:* by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”. [Footnotes to be re-numbered accordingly].

Recipient from exercising their rights under **this Agreement**.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved.
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall inform the **Governing Body** at least once every two calendar years about the Material Transfer Agreements entered into, either by:

Option A. Transmitting a copy of the completed Standard Material Transfer Agreement,¹⁰

or

Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material

¹⁰ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent, in accordance with Article 10, Option 2 of the SMTA.

Transfer Agreement by the Provider:

- b) The name and address of the Provider;
- c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
- d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
- e) The identification of each accession in Annex I to the Standard Material Transfer Agreement, and of the crop to which it belongs.

according to a schedule to be established by the **Governing Body**. This information shall be made available by the **Governing Body** to the third party beneficiary.¹¹

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

- 6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.
- 6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.
- 6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.
- 6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall
- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
 - b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the

¹¹ ~~Note by the Secretariat:~~ The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy

actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers a **Plant Genetic Resources for Food and Agriculture under Development** to another person or entity, the **Recipient** shall:

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex I* to the new material transfer agreement, the ~~M~~material received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from ~~the~~ that Mmaterial;¹²
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.¹³

6.7 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.10 A **Recipient** who obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such intellectual

¹² The material referred to here is the material originally received from the **Multilateral System**.

¹³ Additional conditions attached to the transfer of **Plant Genetic Resources for Food and Agriculture under Development** should be contained in a separate agreement between the parties to the transfer, instead of in the new material transfer agreement provided for under *Article 6.5a*. The **Provider** is not obliged to transmit such a separate agreement, or information about it, to the **Governing Body**, when reporting in accordance with *Article 6.5*.

property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;
- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;
- c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in *Annex I* to the **Treaty**, to which the **Material** referred to in *Annex I* to **this Agreement** belongs;
- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
- e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3* to **this Agreement**;
- f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
- g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
- h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or ~~(the entity designated by the **Governing Body**)~~ the Food and Agriculture Organization of the United Nations, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

8.2 The parties to **this Agreement** agree that the ~~(the entity designated by the **Governing Body**)~~ Food and Agriculture Organization of the United Nations, representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

9.1 The **Provider** makes no warranties as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

Duration of Agreement

9.2 **This Agreement** shall remain in force so long as the **Treaty** remains in force.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

Option 1 –Signature*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Provider**

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....
Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the "click-wrap" form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Annex 2

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products**, then the **Recipient** shall pay one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%); except that no payment shall be due on any **Product** or **Products** that:

(a) are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**;

(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the **Product** or **Products** or is exempt from the obligation to make payment pursuant to subparagraph (a) above;

(c) are sold or traded as a commodity.

2. Where a **Product** contains a **Plant Genetic Resources for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due;

(c) the material received from the **Multilateral System**, from which the **Product** or **Products** were derived; and

(ed) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*¹⁴ for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,
Account No. 000156426¹⁵

¹⁴ *Note by the Secretariat:* The **Governing Body** has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

¹⁵ *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the **Governing Body** at its First Session (*Appendix E* to IT/GB-1/06/Report).

Annex 3

**TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME UNDER
ARTICLE 6.11 OF THIS AGREEMENT**

1. The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in *Annex 1* to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with ~~the banking instructions set out in paragraphs 3a, 3b and 4 of *Annex 2* to **this Agreement**, provided that paragraphs 3a, 3b and 4 of *Annex 2* shall apply to the **Sales** of any **Products** and to the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** of the crop or crops for which the **Recipient** has opted for the alternative payments scheme.~~
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

Annex 4

**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (full name of **Recipient** or **Recipient's authorised official**) declare to opt for payment in accordance with Article 6.11 of **this Agreement**, for the following crop or crops:

.....

Signature.....

Date.....¹⁶

Address of Recipient:

.....
.....
.....
.....

Name and Address of Provider:

.....
.....
.....
.....

Provider's Standard Material Transfer

Agreement identifying symbol or number:

.....

Date of the Standard Material Transfer Agreement.

.....

¹⁶ In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy.

The signed declaration must be accompanied by the following:

- The date on which **this Agreement** was entered into;
- The name and address of the **Recipient** and of the **Provider**;
- A copy of *Annex 1* to **this Agreement**.

Once notification has been provided by the **Recipient** to the **Governing Body** for one or more crops, the payment rate of alternative payments scheme is operative for any subsequent Standard Material Transfer Agreement entered into in respect of the same crop or crops, for the period of specified in *Article 6.11b*. During this period, no further notification in respect of this crop or these crops is required.

APPENDIX ***

ANNEX ...

**TRANSFER OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
UNDER DEVELOPMENT, TO WHICH THE ALTERNATIVE PAYMENTS SCHEME
UNDER ARTICLE 6.11 APPLIES**

Whereas, I (*name and address of the provider or providing institution, name of authorized official, contact information for authorized official*),

Am transferring to you (*name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*),

Plant Genetic Resources for Food and Agriculture under Development identified in *Annex I* of the Standard Material Transfer Agreement between us, (*insert the identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider*), dated (*insert date*);

Whereas, I have opted for the alternative payments scheme provided for in Article 6.11 of the Standard Material Transfer Agreement;

Paragraph 3 of *Annex 3* to the Standard Material Transfer Agreement requires that you shall pay zero point five percent (0.5 %) of the Sales of any **Product** derived from these **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is available or not without restriction, in accordance with the banking instructions set out in paragraph 4 of *Annex 2* to the Standard Material Transfer Agreement.

In the event that you transfer these **Plant Genetic Resources for Food and Agriculture under Development**, or **Plant Genetic Resources for Food and Agriculture under Development** derived from them, to a **subsequent recipient**, you are required to do so under the exact same terms as in this Agreement, and under a Standard Material Transfer Agreement.

This transfer of **Plant Genetic Resources for Food and Agriculture under Development** is conditional on your accepting these conditions by signing and returning this Agreement to:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy

Signed:

Date:

AGENDA ITEM 12 Operation of the Third Party Beneficiary**12.1 Report of the Chair of the Ad Hoc Third Party Beneficiary Committee**

The following draft Resolution was developed by the Ad Hoc Third Party Beneficiary Committee in accordance with the request of the Governing Body (see document IT/GB-4/11/14).

DRAFT RESOLUTION **/2011 (PART I)¹⁷**OPERATION OF THE THIRD PARTY BENEFICIARY**

THE GOVERNING BODY:

- (i) **Recalling** Resolution 5/2009, *Procedures for the Third Party Beneficiary*, by which it adopted *Third Party Beneficiary Procedures* and requested the Director General to bring these procedures to the attention of the relevant bodies of FAO, for formal approval;
- (ii) **Recognizing** the important role of the Third Party Beneficiary in initiating and carrying out dispute settlement as provided for in the Standard Material Transfer Agreement;
- (iii) **Noting** that the Committee on Constitutional and Legal Matters and the Council of FAO had examined the *Third Party Beneficiary Procedures*, together with related amendments to the Financial Rules;
- (iv) **Noting further** that the Council, in considering the *Third Party Beneficiary Procedures*, had regarded these as an example of useful synergies between FAO and bodies established under Article XIV of the FAO Constitution, and approved the Third Party Beneficiary Procedures, which are now fully operational;
- (v) **Noting** that, as requested in Resolution 5/2009, the *Ad Hoc* Third Party Beneficiary Committee has prepared draft *Mediation Rules* for use in the context of Article 6 of the *Third Party Beneficiary Procedures*;
 - 1. **Thanks** the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) and the United Nations Commission on International Trade Law (UNCITRAL), for having provided technical support in the preparation of these *Mediation Rules*;
 - 2. **Recognizes** that these *Mediation Rules* will promote the effective functioning of the Third Party Beneficiary and provide an opportunity for cost containment;

¹⁷ Note by the Secretary. This draft Resolution will be merged with the draft Resolution contained in Document IT/GB-4/10/15, *Report on the operations of the Third Party Beneficiary*, after its consideration and adoption by the Governing Body.

3. **Adopts** these *Mediation Rules*, and amends Article 6 of the *Third Party Beneficiary Procedures* by adding a paragraph to read as follows:
4. *The Third Party Beneficiary shall propose to the parties to the Standard Material Transfer Agreement that mediation be carried out in accordance with the Mediation Rules contained in Annex 2 to these Third Party Beneficiary Procedures.*
5. **Requests** the Director-General to bring the *Third Party Beneficiary Procedures*, as amended, to the attention of the relevant bodies of FAO, for approval;
6. For the settlement of a dispute under Article 8 of the SMTA, **requests** the Third Party Beneficiary to propose these *Mediation Rules*, to parties to the Standard Material Transfer Agreement proceeding to mediation under Article 8.4b of the Standard Material Transfer Agreement, and failing an agreement on the application of the *Mediation Rules*, to propose such other mediation rules as may be acceptable to the parties;
7. **Requests** the Arbitration and Mediation Center of WIPO to act as Administrator of these *Mediation Rules*;
8. **Notes** that a party to a Standard Material Transfer Agreement initiating dispute settlement in accordance with Article 8 of the Standard Material Transfer Agreement should immediately inform the Third Party Beneficiary, and should also inform the Third Party Beneficiary of any settlement of the dispute that may have been reached;
9. **Recognizes** the importance for the functioning of the Multilateral System in general, and of the Third Party Beneficiary in particular, of effective information technology tools, and requests the Secretary to give priority to completing them, and putting them at the disposal of users of the Standard Material Transfer Agreement;
10. **Reiterates** the importance of maintaining sufficient resources to initiate dispute settlement, by fully funding the Third Party Beneficiary Operational Reserve, as a priority, in the context of Contracting Parties' contributions to the Treaty and its Core Administrative Budget, in accordance with Article 6.5 of the Financial Rules;
11. **Calls** on Contracting Parties, States that are not Contracting Parties, intergovernmental organizations, non-governmental organizations and other entities to contribute periodically, as necessary, to the Third Party Beneficiary Operational Reserve, in order to maintain it at a level commensurate with the needs.

Appendix 1

*Annex 2 to the Third Party Beneficiary Procedures***RULES FOR MEDIATION OF A DISPUTE IN RELATION TO A STANDARD
MATERIAL TRANSFER AGREEMENT
("MEDIATION RULES")****Article 1****Scope of the Mediation Rules**

(a) These Mediation Rules give effect to Article 6, *Mediation*, of the *Third Party Beneficiary Procedures* approved by the Governing Body of the International Treaty.

(b) If a dispute has not been settled by amicable dispute settlement after the issuance of the summary of information and the notice referred to in Article 5, paragraph 2, of the *Third Party Beneficiary Procedures*, then the parties to the Standard Material Transfer Agreement and the Third Party Beneficiary may choose mediation through a neutral mediator pursuant to Article 6, paragraph 1, of the *Third Party Beneficiary Procedures* and to Article 8.4b of the Standard Material Transfer Agreement. If they choose mediation, they may agree that the mediation shall be carried out in accordance with these Mediation Rules, which are administered by [*the entity designated by the Governing Body*] ("the Administrator").

Article 2**Request for Mediation**

(a) Either party to the Standard Material Transfer Agreement or the Third Party Beneficiary may file a Request for Mediation with the Administrator.

(b) The Request for Mediation shall contain or be accompanied by:

- (i) the names, addresses and telephone, telefax, e-mail or other communication references of the parties to the Standard Material Transfer Agreement and of the representative of the party filing the Request for Mediation; and
- (ii) a summary of the relevant provisions of the Standard Material Transfer Agreement that have not been complied with, and other relevant information ("Summary of Information"); and
- (iii) the signed "Acceptance of Mediation" (*Annex 1* to these Mediation Rules).

(c) The Administrator shall transmit a copy of these Mediation Rules, the Summary of Information and the Schedule of Fees applicable on the date of the request for Mediation to the

parties to the Standard Material Transfer Agreement, and to the Third Party Beneficiary, within fifteen (15) days of receipt of a Request for Mediation.

Article 3

Acceptance of these Mediation Rules

(a) A party to the Standard Material Transfer Agreement or the Third Party Beneficiary accepting mediation under these Mediation Rules shall sign the Acceptance of Mediation and return it to the Administrator.

(b) The parties to the mediation (“the Party” or the “Parties”)¹ are the parties to the Standard Material Transfer Agreement, and the Third Party Beneficiary that accept mediation in accordance with paragraph (a) of this Article.

(c) A party to the Standard Material Transfer Agreement that is not a Party to the mediation, in accordance with paragraph (b) of this Article, shall not be privy to any information, notifications or documents in the context of the mediation, if such mediation is held.

Article 4

Commencement of Mediation

(a) Mediation shall commence on receipt of signed copies of the Acceptance of Mediation from the Parties, provided that such signed copies of the Acceptance of Mediation are received by the Administrator within thirty (30) days of the transmission by the Administrator of the documents in accordance with Article 2c of these Mediation Rules.

(b) On commencement of mediation, the Administrator shall consult with the Parties, in order to agree on the place of mediation, and the language to be used in mediation.

Article 5

Notices and Periods of Time

(a) Any notice or other communication that may or is required to be given under these Mediation Rules shall be in writing and shall be delivered by expedited postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication that provide a record thereof.

(b) The address of the Administrator is provided in *Annex 2* to these Mediation Rules and may be changed at the discretion of the Administrator.

¹ For the purposes of these Mediation Rules, the terms “Party” or “Parties” are used to refer only to parties to the mediation and not a party or the parties to the Standard Material Transfer Agreement or a Contracting Party to the Treaty.

(c) A Party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that Party. Communications may in any event be addressed to a Party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the Parties.

(d) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance with paragraphs (a), (b) and (c) of this Article.

(e) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a), (b) and (c) of this Article, prior to or on the day of the expiration of the time limit.

(f) For the purpose of calculating a period of time under these Mediation Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(g) The Parties may agree to reduce or extend the periods of time referred to in these Mediation Rules.

(h) The Administrator may, at the request of a Party or on its own motion, extend or reduce the periods of time referred to in these Mediation Rules.

Article 6

Appointment of the Mediator

(a) If the Parties agree within seven (7) days of the commencement of the mediation on the person of the mediator, or have agreed on another appointment procedure, the Administrator shall appoint any mediator so selected, after confirming the requirements of Articles 8 and 9.

(b) If the Parties cannot agree within seven (7) days of the commencement of the mediation on the person of the mediator, or have not agreed on another appointment procedure, the mediator shall be appointed in accordance with the following procedure:

- (i) The Administrator shall as soon as possible send to each Party an identical list of candidates. Where possible, the list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a statement of each candidate's qualifications. If the Parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.

- (ii) Each Party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.
 - (iii) Each Party shall return the marked list to the Administrator (without obligation to send a copy to the other Party or Parties) within seven (7) days after the date on which the list is received by it. Any Party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.
 - (iv) Upon receipt by it of the lists from the Parties, the Administrator shall, taking into account the preferences and objections expressed by the Parties, invite a person from the list to be the mediator.
 - (v) If the lists that have been returned do not show a person who is acceptable as mediator to all Parties, the Administrator shall be authorized to appoint the mediator. The Administrator shall similarly be authorized to do so if a person is not able or does not wish to accept the Administrator's invitation to be the mediator, or if there appear to be other reasons precluding that person from being the mediator, and there does not remain on the lists a person who is acceptable as mediator to each Party.
- (c) Notwithstanding the provisions of paragraph (b), the Administrator shall be authorized to appoint the mediator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Article 7

Nationality of the Mediator

- (a) An agreement of the Parties concerning the nationality of the mediator shall be respected.
- (b) If the Parties have not agreed on the nationality of the mediator, such mediator shall, in the absence of special circumstances such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the Parties, if different.

Article 8

Impartiality and Independence

- (a) The mediator shall be impartial and independent.
- (b) The prospective mediator shall, before accepting appointment, disclose to the Parties and the Administrator any circumstances that might give rise to justifiable doubt as to the mediator's impartiality or independence, or confirm in writing that no such circumstances exist.

(c) If, at any stage during the mediation, new circumstances arise that might give rise to justifiable doubt as to the mediator's impartiality or independence, the mediator shall promptly disclose such circumstances to the Parties and the Administrator.

Article 9

Availability, Acceptance and Notification

(a) The mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted and completed expeditiously.

(b) The prospective mediator shall accept appointment in writing and shall communicate such acceptance to the Administrator.

(c) The Administrator shall notify the Parties of the appointment of the mediator.

Article 10

Representation of Parties and Participation in Meetings

(a) The Parties may be represented or assisted by persons of their choice, including in their meetings with the mediator.

(b) Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a Party, and the names and positions of the persons who will be attending the meetings of the Parties with the mediator on behalf of that Party, shall be communicated by that Party to the other Party or Parties, the mediator and the Administrator.

Article 11

Conduct of the Mediation

(a) The mediation shall be conducted in the manner agreed by the Parties. If, and to the extent that, the Parties have not made such agreement, the mediator shall, in accordance with these Mediation Rules, determine the manner in which the mediation shall be conducted.

(b) If at any stage of the mediation, the Parties so agree, the mediator shall provide an evaluation of the dispute. Such evaluation may take the form of a written document, which the Parties are free to accept or reject as the settlement of the dispute.

(c) Each Party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

(d) The mediator shall be free to meet and to communicate separately with a Party on the clear understanding that information given at such meetings and in such communications shall not be

disclosed to the other Party or Parties without the express authorization of the Party giving the information.

(e) As soon as possible after being appointed, the mediator shall, in consultation with the Parties, establish a timetable for the submission by each Party to the mediator and to the other Party or Parties of a statement summarizing the background of the dispute, the Party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the Party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.

(f) The mediator may at any time during the mediation suggest that a Party provide such additional information or materials as the mediator deems useful.

(g) Any Party may at any time submit to the mediator, for consideration by the mediator only, written information or materials that it considers to be confidential. The mediator shall not, without the written authorization of that Party, disclose such information or materials to the other Party or Parties.

Article 12

Role of the Mediator

(a) The mediator shall promote the settlement of the issues in dispute between the Parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the Parties.

(b) The mediator or a Party to the dispute may propose that one or more independent experts be consulted to report on specific issues. Terms of reference should be established for such expert in consultation between the mediator and the Parties. Any such experts shall be required to sign an appropriate confidentiality undertaking in accordance with Article 16 of these Mediation Rules.

Article 13

Termination of the Mediation

The mediation shall be terminated within six months of the commencement of mediation, or any shorter period of time agreed on by the Parties. The mediation shall be terminated by the following means:

- (i) by the signing of a Settlement Agreement by the Parties covering any or all of the issues in dispute between the Parties;
- (ii) by the decision of the mediator if, in the mediator's judgment, further efforts at mediation are unlikely to lead to a resolution of the dispute; or

- (iii) by a written declaration of a Party at any time sent to the other Party or Parties, the Administrator and the mediator.

Article 14

Mediation Termination Notices

Upon the termination of the mediation, the mediator shall promptly send to the Administrator a Mediation Termination Notice in writing, indicating that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the Parties a copy of the notice so addressed to the Administrator.

Article 15

Dispute Resolution Termination Notice

If the Mediation Termination Notice indicates that the Parties reached a settlement, the Administrator shall send a Dispute Resolution Termination Notice to the other Party or Parties, terminating the dispute resolution process.

Article 16

Confidentiality

- (a) No recording of any kind shall be made of any meetings of the Parties.
- (b) Each person involved in the mediation, including, in particular, the mediator, the Parties and their representatives and advisors, any independent experts, and any other persons present during the meetings of the Parties with the mediator, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the Parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Each such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.
- (c) Unless otherwise agreed by the Parties, each person involved in the mediation shall, on the termination of the mediation, return, to the Party providing it, any brief, document or other materials supplied by a Party, without retaining any copy thereof. Any notes taken by a person concerning the meetings of the Parties with the mediator shall be destroyed on the termination of the mediation.
- (d) Unless otherwise agreed by the Parties, the mediator and the Parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding:
 - (i) any views expressed or suggestions made by the other Party or Parties with respect to a possible settlement of the dispute;

- (ii) any admissions and statements made by a Party in the course of the mediation;
- (iii) any proposals made or views expressed by the mediator;
- (iv) any evaluation of the dispute made by the mediator, pursuant to Article 11b of these Mediation Rules, or any parts or contents thereof;
- (v) the fact that a Party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other Party or Parties.

(e) The Administrator, the mediator and the Third Party Beneficiary shall keep any Mediation Termination Notice, Dispute Resolution Notice, and Settlement Agreement confidential and shall not, without the written authorization of the Parties, disclose either the existence or the result of the mediation to any person, except where its disclosure is necessary for purposes of implementation and enforcement.

(f) Notwithstanding the provisions of paragraph (e) of this Article, the Administrator may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the Parties or enable the particular circumstances of the dispute to be identified.

(g) Notwithstanding the provisions of paragraph (e) of this Article, the Third Party Beneficiary may, however, include information concerning the mediation in its report to a session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, pursuant to Article 9, *Reporting*, of the *Third Party Beneficiary Procedures*, provided that such information does not reveal the identity of the Parties or enable the particular circumstances of the dispute to be identified.

Article 17

Role of the Mediator in Pending or Future Proceedings

Unless required by a court of law or authorized in writing by the Parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter dealt with in the mediation proceedings.

Article 18

Administration Fee

(a) The Request for Mediation shall be subject to the payment to the Administrator of an administration fee, the amount of which shall be fixed in accordance with the Schedule of Fees applicable on the date of the Request for Mediation, when they are sent to the Parties, pursuant to Article 2(c) of these Mediation Rules.

(b) The administration fee shall not be refundable.

(c) No action shall be taken by the Administrator on a Request for Mediation until the administration fee has been paid.

(d) If a Party who has filed a Request for Mediation fails, within seven (7) days after a reminder (normally to be sent within 3 weeks of the receipt of the request for mediation) in writing from the Administrator, to pay the administration fee, it shall be deemed to have withdrawn its Request for Mediation.

Article 19

Fees of the Mediator

(a) The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by the Administrator, after consultation with the mediator and the Parties.

(b) The amount of the fees shall be reasonable and, unless the Parties and the mediator agree otherwise, be calculated on the basis of the hourly indicative rate set out in the Schedule of Fees applicable on the date of the Request for Mediation, and taking into account the amount in dispute, the complexity of the subject matter of the dispute and any other relevant circumstances of the case.

Article 20

Deposits

(a) The Administrator may, at the time of the appointment of the mediator, require each party to deposit an equal amount as an advance for the costs of the mediation, including, in particular, the estimated fees of the mediator and the other expenses of the mediation. The amount of the deposit shall be determined by the Administrator.

(b) The Administrator may require the Parties to make supplementary deposits in equal shares.

(c) If a Party fails, within seven (7) days after a reminder in writing from the Administrator, to pay the required deposit, the mediation shall be deemed to be terminated. The Administrator shall, by notice in writing, inform the Parties and the mediator accordingly and indicate the date of termination.

(d) After the termination of the mediation, the Administrator shall render an accounting to the Parties of any deposits made and return any unexpended balance to the Parties or require the payment of any amount owing from the Parties.

Article 21**Costs**

(a) Upon termination of the mediation proceedings, the Administrator fixes the costs of the mediation and gives written notice thereof to the Parties. The term “costs” includes:

- (i) The fees of the mediator;
- (ii) The travel and other expenses of the mediator;
- (iii) The costs (including fees, travel and other expenses) of any independent expert appointed in accordance with Article 12 of these Mediation Rules;
- (iv) Such other expenses as are necessary for the conduct of mediation proceedings, such as the cost of meeting facilities.

(b) The costs, as defined above, are borne equally by the Parties unless the Parties have agreed otherwise or the settlement agreement provides for a different apportionment. All other expenses incurred by a Party are borne by that Party.

Article 22**Exclusion of Liability**

Except in respect of deliberate wrongdoing, the mediator and the Administrator shall not be liable for any act or omission in connection with any mediation conducted under these Mediation Rules.

Article 23**Waiver of Defamation**

The Parties, and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Annex 1

Acceptance of Mediation

Article 8.4b of the Standard Material Transfer Agreement provides that “[i]f the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.”

Having received from the Administrator [*the entity designated by the Governing Body*]:

- (a) a Summary of Information relative to a dispute under a Standard Material Transfer Agreement, in accordance with Article 2b(ii) of the *Rules for Mediation of a Dispute in Relation to a Standard Material Transfer Agreement* and Article 5, paragraph 2, *Amicable Dispute Settlement*, of the *Third Party Beneficiary Procedures*, and
- (b) a copy of the *Rules for Mediation of a Dispute in Relation to a Standard Material Transfer Agreement*,

The undersigned party hereby accepts mediation in relation to this dispute in accordance with the above-mentioned *Mediation Rules*.

The undersigned party accepts that, unless the Parties to the mediation agree otherwise, the costs of the mediation shall be borne in equal shares by the Parties to the mediation, in accordance with Article 21 of the above-mentioned *Mediation Rules*.

Signature: Date:

Name of Signatory:

Name of party to the Standard Material Transfer Agreement in dispute, or the Third Party Beneficiary:

1. The signed Acceptance of Mediation is to be returned to:

[Name and address of the Administrator [*entity designated by the Governing Body*]]

2. If the Administrator has received no acceptance of mediation from a Party within thirty (30) days of its transmission of the Summary of Information and the copy of the above mentioned *Mediation Rules*, such party is deemed to have opted not to accept mediation.

3. Please note that the consequences of not accepting mediation include the following:

- Even if you do not accept mediation, mediation may nevertheless proceed between the other party to the Standard Material Transfer Agreement and the Third Party Beneficiary, provided that they accept mediation. You would not be a Party in such mediation and would not be privy to any information, notifications or documents in the context of such

mediation, if such mediation is held, in accordance with Article 3c of the above mentioned *Mediation Rules*.

- In accordance with Article 8.4c of the Standard Material Transfer Agreement, if the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement on the applicable Arbitration Rules, the dispute, if submitted to arbitration, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with said Rules.

4. If you have any questions, please contact the [*entity designated by the Governing Body*] by email at: [email address].

Annex 2

Address of the Administrator

Address of the Administrator:

[INSERT]

AGENDA ITEM 12 **Operation of the Third Party Beneficiary**

12.2 **Report on the operations of the Third Party Beneficiary**

The following elements of draft Resolution have been developed by the Secretary in accordance with the Third Party Beneficiary Procedures and the decisions of the Governing Body (see document IT/GB-4/11/15).

DRAFT RESOLUTION **/2011 (PART II)¹⁸

OPERATION OF THE THIRD PARTY BENEFICIARY

THE GOVERNING BODY:

Recalling that under Article 12.4 of the Treaty, facilitated access to the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement adopted by the Governing Body at its First Session;

Recalling that under Article 13.2 of the Treaty, benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the mechanisms specified under that Article;

Recalling further that the Governing Body, at its Third Session, adopted the Third Party Beneficiary Procedures and requested the Director-General of FAO to bring these procedures to the attention of the relevant bodies of FAO, for formal approval;

Recognizing that the Third Party Beneficiary will require adequate financial and other resources and that FAO acting as Third Party Beneficiary shall not incur any liabilities in excess of the funds available in the Third Party Beneficiary Operational Reserve;

- i) **Thanks** the FAO Council and other relevant bodies of FAO for formally approving the Third Party Beneficiary Procedures, thereby making the Third Party Beneficiary fully operational;
- ii) **Notes** the Report on the Operation of the Third Party Beneficiary and **thanks** FAO and the Secretary for providing the report in accordance with the Third Party Beneficiary Procedures, and further **requests** the Secretary to continue to provide, at each session of the Governing Body, a report in accordance with Article 9 of the Third Party Beneficiary Procedures;
- iii) **Notes** that, in accordance with Resolution 5/2009, the Secretary has invited Contracting Parties to nominate experts and has also established the mechanism for the nomination of experts to the list from which the parties to a Standard Material Transfer Agreement may appoint mediators and arbitrators in accordance with the Third Party Beneficiary Procedures;

¹⁸ Note by the Secretary. This draft Resolution will be merged with the draft Resolution contained in Document IT/GB-4/10/14, *Report of the Chair of the Ad Hoc Third Party Beneficiary Committee*, after its consideration and adoption by the Governing Body.

- iv) *Further **invites** Contracting Parties to provide names of experts to be placed on the list in accordance with the criteria of expertise contained in Annex 2 to the Third Party Beneficiary Procedures;*
- v) ***Decides** to maintain the Third Party Beneficiary Operational Reserve for the 2012/2013 biennium at the current level of USD283,280, and to review same at its Fifth Session;*
- vi) *Further **calls** upon Contracting Parties, States that are not Contracting Parties, intergovernmental organizations, non-governmental organizations and other entities to contribute periodically, as necessary, to the Third Party Beneficiary Operational Reserve, in order to maintain it at a level commensurate with the needs;*
- vii) ***Notes** that the Secretary has developed, in consultation with relevant organizations, appropriate and cost-effective processes to facilitate the submission, collection and storage of information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures, and further **requests** the Secretary to continue applying adequate measures to ensure the integrity of information and, where required, confidentiality of the information so provided.*

AGENDA ITEM 13 Implementation of Article 9, *Farmers' Rights*

No draft Resolution has been prepared for this agenda item. A Resolution will be prepared on the basis of discussions during the session, should the Governing Body so decide (see document IT/GB-4/11/16).

AGENDA ITEM 14 Implementation of Article 6, Sustainable Use of Plant Genetic Resources

The following elements of a draft Resolution have been developed by the Secretary in accordance with the request and decisions of the Governing Body (see document IT/GB-4/11/17).

RESOLUTION **/2011

**IMPLEMENTATION OF ARTICLE 6
SUSTAINABLE USE OF PLANT GENETIC RESOURCES**

- (i) **Recognizing** the pivotal role of sustainable use of plant genetic resources for food and agriculture (PGRFA) in addressing global challenges, including food security, biodiversity loss, climate change adaptation and poverty alleviation for small-holder farmers;
- (ii) **Recalling** that, in accordance with Article 6 of the International Treaty, the Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of PGRFA;
- (iii) **Recalling** that the Governing Body, at its Third Session, noted that in many regions the implementation of Article 6 is lagging behind in comparison to other elements of the International Treaty, and that further financial resources, capacity building and technology transfer are required;
- (iv) **Acknowledging** that there is uncertainty in many countries as to how sustainable use of PGRFA can effectively be achieved, and that an integrated approach to sustainable use needs to be facilitated;
- (v) **Recalling** that the Governing Body, at its Third Session, requested the Secretary to clarify the notion of a toolbox to assist countries in the design of measures to promote sustainable use in order to come to a common understanding with regard to such an instrument and submit it to the Contracting Parties at this Fourth Session;
- (vi) **Considering** that the development of the toolbox may be instrumental to the development of a work programme on sustainable use of PGRFA and that such a work programme should be developed in a participatory manner and in coordination with other relevant international processes and fora, such as the Convention on Biological Diversity, FAO Commission on Genetic Resources for Food and Agriculture, and the Global Forum on Agricultural Research (GFAR);
- (vii) **Recalling** that the Conference of the Parties of the Convention on Biological Diversity deals with sustainable use of biodiversity as a cross-cutting issue and that at its Tenth meeting, the Conference, in decisions X/32 (sustainable use of biodiversity), has requested collaboration with the Secretariat of the International Treaty to compile information on how to improve sustainable use of biodiversity;

1. **Requests** the Secretary, in collaboration with FAO technical units and other stakeholders and subject to the availability of financial resources and the priorities of the Work Programme and Budget agreed by the Governing Body, to develop a toolbox on sustainable use of PGRFA in order to assist Contracting Parties in the implementation of Article 6 of the Treaty;
2. **Requests** the Secretary to elaborate a draft work programme on sustainable use of PGRFA for the consideration of the Governing Body at its Fifth Session and, mindful of the need to devise such a work programme in a participatory manner,
3. **Requests** the Secretary, subject to the availability of financial resources and the priorities of the Work Programme and Budget agreed by the Governing Body, to convene a stakeholders' consultation to devise and elaborate elements of a work programme, in collaboration with relevant international organizations and key actors engaged in sustainable use of PGRFA;
4. **Requests** the Secretary to invite submissions from Contracting Parties, other governments and relevant institutions and organizations on how to improve sustainable use of biodiversity in a landscape perspective, including on sectoral policies, international guidelines, and best practices for sustainable agriculture, including a review of relevant criteria and indicators;
5. **Requests** the Secretary to work with the networks and partners brought together in the Global Forum on Agricultural Research to promote the expanded use of local and locally adapted crops and underutilized crops in order to better meet sustainable development objectives;
6. **Establishes** an *Ad Hoc* Technical Committee on Sustainable Use of PGRFA, according to the terms of reference as contained in the *Annex* to this Resolution.

Annex

TERMS OF REFERENCE FOR THE *AD HOC* TECHNICAL COMMITTEE ON SUSTAINABLE USE OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

1. The *Ad Hoc* Technical Committee will advise the Secretary on:
 - The development of a toolbox on sustainable use of PGRFA in order to assist Contracting Parties in the implementation of Article 6 of the Treaty;
 - The elaboration a draft work programme on sustainable use of PGRFA, based on elements generated by stakeholder consultations;
 - Cooperation with the CBD and other international processes and institutions in the field of sustainable use of PGRFA.
2. The *Ad Hoc* Technical Committee will comprise up to two members designated by each Region and up to ten technical experts. In inviting these technical experts to the meetings of the *Ad Hoc* Technical Committee, the Secretary will have regard of the balance of knowledge and skills. There will be two Co-Chairs, one from a developing country and one from a developed country Contracting Party, who will be elected from the members of the *Ad Hoc* Technical Committee that are designated by the Regions.
3. The *Ad Hoc* Technical Committee will hold up to two meetings subject to the availability of financial resources.
4. The *Ad Hoc* Technical Committee will prepare reports at the end of its meetings, which will be made available as information documents to the Fifth Session of the Governing Body.
5. The Secretary will report on the results of the work of the *Ad Hoc* Technical Committee to the Governing Body at its Fifth Session.

AGENDA ITEM 15 Relationship between the Governing Body and the Commission on Genetic Resources for Food and Agriculture

No draft Resolution has been prepared for this agenda item. A Resolution will be prepared on the basis of discussions during the session, should the Governing Body so decide, (see document IT/GB-4/11/18).

AGENDA ITEM 16 Relationship between the Governing Body and the Global Crop Diversity Trust

The following draft Resolution has been developed in accordance with the request of the Governing Body (see document IT/GB-4/11/21).

DRAFT RESOLUTION **/2011

PROCEDURES FOR THE SELECTION AND APPOINTMENT OF MEMBERS OF THE EXECUTIVE BOARD OF THE GLOBAL CROP DIVERSITY TRUST

THE GOVERNING BODY,

Recalling that the Global Crop Diversity Trust is an essential element of the Funding Strategy of the Treaty, and the importance of the Trust's work in safeguarding globally important crop diversity;

Reaffirming the need to maintain and further develop the relationship between the International Treaty and the Global Crop Diversity Trust in a complementary manner in order to achieve coherence of goals and activities;

Recalling that, under the terms of the Relationship Agreement between the Global Crop Diversity Trust and the Governing Body, the Governing Body shall appoint four members to serve on the Executive Board of the Global Crop Diversity Trust, of whom at least two shall be from developing countries;

Recognizing that, in accordance with Article 5 (6) of the Constitution of the Global Crop Diversity Trust, the members of the Executive Board of the Global Crop Diversity Trust shall serve in their personal capacities;

Recalling that the Governing Body, at its First Session, delegated to the Bureau the power of appointment of the first four members of the Executive Board of the Global Crop Diversity Trust to be appointed by the Governing Body;

Further recalling that the Governing Body, at its Third Session, also delegated to the Bureau the power to select and appoint members of the Executive Board of the Global Crop Diversity Trust to replace those members whose term would expire during the intersessional period between the Third and Fourth Sessions of the Governing Body, as well as the power to oversee the selection process for in the appointments to be made in 2012;

Further recalling that, in accordance with the Constitution of the Global Crop Diversity Trust, the parties appointing members of the Executive Board, before making such appointments, shall consult with each other and with the Executive Board with a view to ensuring that the Executive Board has the balance and range of skills necessary for it to perform its functions effectively;

Conscious of the need for the Procedures for the Selection and Appointment Members of the Executive Board of the Global Crop Diversity Trust to be simple and facilitate effective consultations between the parties appointing members of the Executive Board of the Global Crop Diversity Trust, in accordance with the Constitution of the Global Crop Diversity Trust;

1. **Adopts** these *Procedures for Selection and Appointment of Members of the Executive Board of the Global Crop Diversity Trust by the Governing Body*, as contained in the *Annex* to this Resolution, which hereby supersede the normal selection and appointment procedures

adopted at its First Session;

2. **Delegates** to its Bureau, the power to select and appoint, on its behalf and in accordance with these Procedures, members of the Executive Board to the Global Crop Diversity Trust to fill any vacancies which may fall due or arise in the Executive Board of the Global Crop Diversity Trust, subject to any other decisions or additional directions the Governing Body may wish to give in the future; and
3. **Welcomes** the agreement of the Donors' Council of the Global Crop Diversity Trust to subscribe to these Procedures.

*Appendix ****

**DRAFT PROCEDURES FOR THE SELECTION AND APPOINTMENT OF MEMBERS
OF THE EXECUTIVE BOARD OF THE GLOBAL CROP DIVERSITY TRUST**

The following procedures apply to the selection and appointment of Members of the Executive Board of the Global Crop Diversity Trust (Executive Board).

**A. IDENTIFICATION AND NOTIFICATION OF VACANCIES ON THE
EXECUTIVE BOARD**

1. The Executive Board of the Trust will identify vacancies occurring in the Board well in advance of the vacancies occurring, and wherever possible at least 9 months in advance of the vacancy. The Board, after assessing the implications of the vacancies on the balance and range of skills of the Executive Board, will draw up the suggested profiles of the new members required to maintain that balance and range of skills. The Executive Board will communicate this information to the Chair of the Governing Body and the Chair of the Donors Council.
2. To the extent possible, the selection and appointment of new members to fill vacancies on the Executive Board will normally take place once every two years, and cover two consecutive yearly appointments, at times to be agreed upon between Bureau and the Donors' Council.

B. SELECTION AND APPOINTMENTS BY THE GOVERNING BODY

3. The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Governing Body), unless it otherwise decides in future, authorizes its Bureau to carry out the selection of candidates for appointment as members to the Executive Board under Article 5 of the Constitution of the Global Crop Diversity Trust.
4. The Bureau will decide on its own procedures for the selection and appointment of members of the Executive Board to be appointed by the Governing Body.
5. The Bureau will decide on the procedures by which potential candidatures may be brought to its attention by Contracting Parties.
6. Where a vacancy to be filled by the Governing Body on the Board falls due or arises, and the Bureau calls for nominations and suggestions, and receives more candidates than the vacancy or vacancies to be filled at any given time, the Bureau shall select the candidate or candidates to fill the vacancy or vacancies through voting. In so doing, it shall adhere to the general Rules for Elections established by the FAO Conference, taking into account the requirements under Article 5 (1) (a) of the Constitution of the Trust.

C. SELECTION AND APPOINTMENTS BY THE DONORS' COUNCIL

7. The Donors' Council will decide on its own procedures for the selection and appointment of members of the Executive Board to be appointed by the Donors' Council.
8. The Donors' Council will decide on the method for filling unforeseen vacancies, which are to be filled by it, that may arise during the intersessional period, for reasons such as retirement, death, incapacity or other such reasons.

9. Where a vacancy to be filled by the Donors' Council falls due or arises, and the Donors' Council calls for nominations and suggestions, and receives more candidates than the vacancy or vacancies to be filled at any given time, the Donors' Council will select the candidate or candidates to fill the vacancy or vacancies through voting.

D. CONSULTATIONS AMONG THE APPOINTING ENTITIES

10. Where a vacancy to be filled by the Governing Body or the Donors' Council on the Executive Board falls due or arises, the Bureau and the Donors' Council, with other appointing entities, will hold consultations among themselves under Article 5 (2) of the Constitution of the Global Crop Diversity Trust, on the issue of balance and range of skills required by the Executive Board of the Global Crop Diversity Trust.

11. Consultations among the appointing entities for the purpose of achieving the balance and the range of skills required by the Executive Board of the Global Crop Diversity Trust may take the form of written advice, phone calls, other forms of electronic communication or personal representation and report at meetings.

12. Where personal representation is considered necessary or feasible by the Bureau, it may invite the Chairperson or other representative of the Donors' Council to attend its meeting, where the selection/appointment of members of Executive Board of the Global Crop Diversity Trust is on the agenda, to consult on options for the balance and range of skills required by the Executive Board of the Global Crop Diversity Trust. The date of a meeting of the Bureau where selection and appointment of members of the Board is on the agenda will be communicated to the Executive Secretary of the Trust within a reasonable time prior to the date of the meeting.

13. The Bureau, if invited by the Donors' Council, may request the Chairperson or any Vice-Chair of the Governing Body to attend the meeting, or meetings, of the Donors' Council where the selection/appointment of Board members is on the agenda to consult, on its behalf, on options for the balance and range of skills within the Executive Board of the Global Crop Diversity Trust.

E. FACTORS COMMON TO SELECTION AND APPOINTMENTS BY THE GOVERNING BODY AND THE DONORS' COUNCIL

14. In the consideration of candidates for appointment under these procedures, the Bureau and the Donors' Council should ensure that their functions are carried out in such a manner as to avoid unnecessary public embarrassment to unsuccessful candidates for membership of the Executive Board.

15. Upon the selection of a candidate or candidates by the Bureau or the Donors' Council, the Secretary of the Governing Body or the Chair of the Donors' Council, as the case may be, shall contact the candidate or candidates in order to confirm their willingness to serve on the Executive Board of the Global Crop Diversity Trust.

16. The appointment of any candidate or candidates selected by the Bureau will be made by the Chairperson of the Governing Body, on behalf of the Governing Body. The appointment of any candidate or candidates selected by the Donors' Council will be made by the Chair of the Donors' Council, on behalf of the Donors' Council.

17. Upon receiving the confirmation from the candidate or candidates of their willingness to serve, the Chairperson of the Governing Body and the Chair of the Donors' Council will communicate, in writing, to the Executive Board of the Global Crop Diversity Trust informing it of the appointment or appointments, and report to the Governing Body and the Donors' Council, as the case maybe, at their next sessions following such an appointment or appointments.

AGENDA ITEM 17 Report on the status of cooperation with other international organizations

Part I Relationship with the Convention on Biological Diversity

The following elements of a draft Resolution have been developed by the Secretary based on the recommendation of the Bureau, and in accordance with the decisions of the Governing Body (see document IT/GB-4/11/22).

DRAFT RESOLUTION **/2011 (PART I)

RELATIONSHIP WITH THE CONVENTION ON BIOLOGICAL DIVERSITY

The Governing Body,

Recalling that the objectives of the Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

Recalling that Article 1.2 of the Treaty provides that the objectives of the Treaty will be attained by closely linking this Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity, and that Article 19.3(g) and (l) of the Treaty provides for the Governing Body to establish and maintain cooperation with, as well as take note of the relevant decisions of, the Conference of Parties to the Convention on Biological Diversity;

Further recalling that in developing the Global Information System on Plant Genetic Resources for Food and Agriculture, cooperation will be sought with the Clearing House Mechanism of the Convention on Biological Diversity, in accordance with Article 17.1 of the Treaty;

Taking into account the provisions of Article 20.5 of the Treaty that requires the Secretary to cooperate with the Secretariat of the Convention on Biological Diversity;

Cognizant of the interdependence of all countries with regard to plant genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide, and for sustainable development of agriculture in the context of poverty alleviation and climate change, and **reaffirming**, in those respects, the fundamental role of the Treaty;

Noting the outcomes of the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity, in particular the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (the Nagoya Protocol), and the Strategic Plan for Biodiversity 2011-2020 (the Strategic Plan);

Further noting the various decisions of the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity that are of relevance to the Treaty, including on the implementation of the Convention's work programme on Agricultural Biodiversity, Sustainable Use of Biodiversity, and Biodiversity and Climate Change, as well as the International Decade on Biodiversity;

Cognizant of the importance of further enhancing the cooperation and synergies between the Treaty and the Convention on Biological Diversity, as well as between their respective intergovernmental bodies and Secretariats;

Convinced of the potentials of the Nagoya Protocol and the Strategic Plan for enhancing the synergies and improving the coherent implementation of the Convention and the Treaty;

Noting that the Secretary of the Governing Body has recently concluded a Memorandum of Cooperation with the Executive Secretary of the Convention for institutional cooperation between the two Secretariats in areas of mutual interest and within their respective mandates;

1. **Congratulates** the Conference of the Parties to the Convention on Biological Diversity, on the adoption of the Nagoya Protocol that successfully concluded an important process of negotiations;
2. **Recognizes** the important role that the Nagoya Protocol will have, in harmony with the Treaty, for the conservation and sustainable utilization of genetic resources under the Convention, for the fair and equitable sharing of the benefits arising from their utilization;
3. **Appeals** to Contracting Parties and other States to give priority consideration to the signature and ratification of the Nagoya Protocol, so that it may enter expeditiously into force;
4. **Decides** to establish and maintain cooperation with the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol established by the Conference of Parties to the Convention, and, upon the entry into force of the Protocol, with the Conference of the Parties serving as the meeting of the Parties to the Protocol;
5. **Requests** the Secretary to convey the present Resolution to both the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol and, upon the entry into force of the Protocol, the Conference of the Parties serving as the meeting of the Parties to the Protocol;
6. **Takes note** of the Memorandum of Cooperation signed between the Secretary and the Executive Secretary of the Convention on Biological Diversity and commends the Secretary for the initiative, and **requests** the Secretary to explore with the Secretariat of the Convention on Biological Diversity, practical means and activities to give effect to this cooperation, in particular through capacity building for access and benefit-sharing, as related to plant genetic resources for food and agriculture, including through the organization of workshops, seminars and other events, coordination of technical assistance as well as the exchange of information;
7. **Requests** the Secretary to continue to participate in relevant meetings of the Convention on Biological Diversity, the Open-ended *Ad Hoc* Intergovernmental Committee for the Nagoya Protocol, as well as the Liaison Group of Biodiversity-related Conventions;
8. **Requests** the Secretary to strengthen collaboration with the Secretariat of the Convention on Biological Diversity in the implementation of the Convention's programme of work on agricultural biodiversity, sustainable use of biodiversity, biodiversity and climate change, as well as on the United Nations Decade on Biodiversity and the integration of biodiversity into poverty eradication and development, in harmony with the work of the Treaty;
9. **Calls on** Contracting Parties to ensure that any legislative, administrative or policy measures taken for the implementation of both the Treaty and the Convention on Biological Diversity (or its Nagoya Protocol), are consistent and mutually supportive;
10. **Requests** the national focal points of the Treaty to enhance their collaboration and coordination with their counterpart national focal points for the Convention on Biological Diversity on all relevant processes, in particular on the Nagoya Protocol and the Strategic Plan;
11. **Requests** the Secretary to report on cooperation with the Secretariat of the Convention at each session of the Governing Body.

AGENDA ITEM 17 Report on the status of cooperation with other international organizations

Part II Progress report on partnerships, synergies and cooperation with other organizations

2. The following elements of a draft Resolution have been developed by the Secretary, in accordance with the request of the Governing Body (see document IT/GB-4/11/23).

DRAFT RESOLUTION **/2011 (PART II)

COOPERATION WITH OTHER TREATY BODIES AND INTERNATIONAL ORGANIZATIONS, INCLUDING WITH THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH AND OTHER INTERNATIONAL INSTITUTIONS THAT SIGNED AGREEMENTS UNDER ARTICLE 15 OF THE TREATY

THE GOVERNING BODY,

Cognizant of the need to establish and maintain cooperation with other relevant international organizations and treaty bodies, on matters covered by the Treaty, including their participation in the Funding Strategy;

Acknowledging the ongoing fruitful collaboration between the Treaty and other related international organizations and treaty bodies, in particular the Convention on Biological Diversity, the International Union for the Protection of New Varieties of Plants, the United Nations Framework Convention on Climate Change, the World Health Organization, the World Intellectual Property Organization, and the World Trade Organization;

Recognizing that the adoption and possible entry into force and implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization offers an immediate opportunity to strengthen cooperation with the Convention on Biological Diversity;

Acknowledging the positive outcomes of the strategy of cooperation with relevant international organizations to facilitate the implementation of the Funding Strategy, especially its Benefit-sharing Fund;

Welcoming the expressions of interest in partnerships to implement the Funding Strategy and its Benefit-sharing Fund, especially from the United Nations Development Programme and the International Fund for Agricultural Development;

Further recognizing the function of the Joint Capacity Building Programme set up by the Treaty, FAO and Bioversity International to facilitate implementation of the Treaty, and in particular of the Multilateral System of Access and Benefit-sharing, by developing country Contracting Parties;

Noting the need to continue providing assistance under the Joint Capacity Building Programme to developing country Contracting Parties in the process of implementation of the Multilateral System;

Recalling the significant support to the objectives of the International Treaty by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research,

and other international institutions that signed agreements with the Governing Body under Article 15 of the Treaty;

- i) **Requests** the Secretary to continue to foster collaboration with other treaty bodies, especially with the Convention on Biological Diversity in regard to the conservation and sustainable use of agricultural biological diversity, access to plant genetic resources for food and agriculture and benefit-sharing in the framework of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, according to the respective mandates, governance structures and agreed programs;
- ii) **Requests** the Secretary to continue participating in relevant meetings of the International Union for the Protection of New Varieties of Plants, the World Health Organization, the World Intellectual Property Organization and the World Trade Organization;
- iii) **Requests** the Secretary to foster cooperation with other international organizations and strengthen existing cooperative arrangements with a view to developing synergies and reducing inefficiencies consistently with the respective mandates, governance structures and agreed programs, and based on available resources;
- iv) **Requests** the Secretary to explore possible areas of cooperation with the United Nations Framework Convention on Climate Change, given the connection between climate change adaptation in agriculture and genetic resources, such as the participation of the Treaty as a partner in the REDD initiative;
- v) **Acknowledges** the importance and value of building partnerships with international organizations to enhance the impact of the Benefit-sharing Fund, including with regard to resource mobilization, programming and effectiveness of the Fund's operation, including by relying as much as possible on designated implementing entities, which are to fulfil project, financial, management and fiduciary high standards in order to provide services of project formulation, supervision and implementation;
- vi) **Requests** the Secretary to explore areas of cooperation with other international organizations to further develop and implement the Funding Strategy of the International Treaty and its Benefit-sharing Fund;
- vii) **Welcomes** the conclusion of Memoranda of Cooperation with the International Fund for Agricultural Development and the United Nations Development Programme to support the further development of the Benefit-sharing Fund and the overall implementation of the Treaty;
- viii) **Requests** the Secretary to continue establishing partnerships with other interested relevant international organizations to support the Benefit-sharing Fund, especially with those multilateral institutions that act as implementing entities for other multilateral funds, have a comparative advantage in the area of plant genetic resources for food and agriculture and a recognized capacity for project and financial management, are present at field level and capable to support co-funding of projects;
- ix) **Requests** the Secretary to develop a standard procedure and cooperation framework for the establishment of partnerships with other interested international organizations taking into account lessons learned in the development of partnerships with the International Fund for Agricultural Development and the United Nations Development Programme;

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- x) **Reaffirms** the need to expand the duration of the Joint Capacity Building Programme to the remaining part of the current biennium as well as to the full biennium 2012-2013 and **invites** on a voluntary basis additional funding and partners for expanding the Joint Capacity Building Programme;
 - xi) **Requests** the Secretary to report to the Governing Body at its Fifth Session on relevant activities undertaken to maintain, strengthen and extend the partnerships, synergies and cooperation under the present Resolution.

AGENDA ITEM 18 Matters relevant to the Treaty arising from the FAO reform process

No draft Resolution has been prepared for this agenda item. Should the Governing Body so decide, the Resolution will be prepared on the basis of discussions during the session (see documents IT/GB-4/11/24).

AGENDA ITEM 19 Adoption of the Work Programme and Budget for 2012/13 biennium

The following elements of draft Resolution have been developed by the Secretary, in accordance with the request of the Governing Body, and the provisions of the Treaty and the Financial Rules of the Governing Body (see documents IT/GB-4/11/25; IT/GB-4/11/26; IT/GB-4/11/27 and IT/GB-4/11/27 Add. 1).

Resolution .../2011 - Work Programme and Budget 2012/13

The Governing Body,

Recalling that:

- a) The FAO Governing Bodies have determined that the International Treaty on Plant Genetic Resources for Food and Agriculture is a priority FAO activity;
- b) That the FAO Conference has recommended that “*statutory bodies and conventions will be strengthened, enjoying more financial and administrative authority within the framework of FAO and a greater degree of self-funding by their Members*”;

Recognizing that:

- a) The Treaty is at a crucial stage in its implementation, with a number of the major fields of activity that derive directly from the provisions of the Treaty now taking substantive shape;
- b) That the execution of the Work Programme is subject to adequate resources being available within the Core Administrative Budget, and that this will be essential to the future functioning, credibility and effectiveness of the Treaty;

Reiterating the importance of the Treaty, as a concrete and effective pillar of the international architecture governing the conservation and use of genetic resources, and of cooperation with the Nagoya Protocol to the Convention on Biological Diversity, on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, as countries begin to take legal and administrative measures to implement the Nagoya protocol;

- i) **Adopts** the Work Programme and the Treaty’s Core Administrative Budget for the biennium 2012/13, as contained in *Appendix 1* to this resolution;
- ii) **Urges** all Contracting Parties to provide the resources required in the Core Administrative Budget, as adopted;
- iii) **Invites** Governments that are not Contracting Parties, inter-governmental organizations, non-governmental organizations and other entities, to also contribute to the Core Administrative Budget;
- iv) **Takes note** of the provisional proposed contribution from FAO of USD 1,987,200;
- v) [**Warmly thanks** the Governments of ***, for having exceptionally agreed to allow part of their donor contributions to the Special Funds for Agreed Purposes to be used to directly support the Core Implementing Functions in the 2012/13 biennium;]
- vi) [**Recognizes** that such exceptional contributions are no long-term solution to the budgetary needs of the Treaty;]
- vii) **Approves** the level of the Working Capital Reserve at USD 400,000, with the balance above the actual level of the Working Capital Reserve at 31 December 2011 to be funded in the biennium 2012/13, by separate voluntary contributions from Contracting Parties, in addition to their voluntary contributions to the Core Administrative Budget;

- viii) **Takes note** of the Secretariat staffing structure for the biennium 2012-13 set out in *Annex 2* to this Resolution, recognizing that the precise staffing arrangements are a matter of the normal executive authority of the Secretary;
- ix) **Warmly thanks** the Governments of Italy, Ireland and Spain, who have generously donated substantial funds for additional project activities, outside the Core Administrative Budget, which have assisted the Treaty to establish its operational systems on its entry into force, and to provide support to Contracting Parties that are developing countries in implementing the Treaty's systems;
- x) **Commends** the project proposals contained in *Annex 3* to this Resolution to donor Governments and institutions, and **invites** them to provide the funding necessary for the implementation of these projects;
- xi) **Confirms** that Contracting Parties that are developing countries and countries with economies in transition should be informed by the Secretary, in a timely manner before a meeting, of the availability of resources to support their participation in that meeting from the Fund referred to in the Treaty's Financial Rule VI.2c, and that, where such funding is limited, priority should be given to the least developed countries;
- xii) **Encourages** the Secretary to continue the implementation of the transparent approach in preparing and submitting the draft Work programme and Budget for the biennium 2014-15, including a Secretariat staffing table and a Draft Resolution, for the consideration of the Governing Body at its Fifth Session, and to report on progress on income and expenditures, as well as any adjustments made to the budget in the biennium 2012/13.

(Adopted on ... March 2011)

ANNEX 1
PROPOSED CORE WORK PROGRAMME: 2012 - 2013 BIENNIUM

<i>Category</i>	<i>Maintenance Functions</i>	<i>Core Implementation Functions</i>	<i>Core Work Programme</i>
<i>All amounts in US\$</i>			
A. Human resources			
<i>A.1 Established staff positions</i>	3,535,400	-	3,535,400
<i>A.2 Additional posts approved for 2010-11 biennium (extension requested for the 2012-13 biennium)</i>	824,260	-	824,260
<i>A.3 New posts & upgrades proposed for approval</i>	173,700	82,570	256,270
<i>A.4 Consultancy costs</i>	135,525	236,960	372,485
Total A. Human Resources	4,668,885	319,530	4,988,415
B. Meetings			
<i>Statutory Bodies</i>			
<i>B.1 Governing body</i>	521,250	-	521,250
<i>B.2 Bureau</i>	31,275	-	31,275
<i>B.3 Compliance Committee</i>	30,000	-	30,000
<i>B.4 Panel of Scientific Experts</i>	80,000	-	80,000
<i>Other Meetings</i>			
<i>B.5 Activity related</i>		317,630	317,630
Total B. Meetings	662,525	317,630	980,155
C. Other costs			
<i>C.1 Core staff duty travel</i>	146,730	38,000	184,730
<i>C.2 Publications and communication</i>	69,590	34,940	104,530
<i>C.3 Supplies and equipment</i>	50,040	-	50,040
<i>C.4 Miscellaneous</i>	23,460	-	23,460
<i>C.5 Contracts</i>	-	219,920	219,920
Total C. Other Costs	289,820	292,860	582,680
Total A + B + C	5621,230	930,020	6,551,250
D. General Operating Services	224,850	37,210	262,060
Operating Budget	5,846,080	967,230	6,813,310
E. Project Servicing Cost	231,530	58,040	289,570
Total	6,077,610	1,025,270	7,102,880
Funding of the Proposed Core Work Programme			
Total Core Work Programme			7,102,880
Less:			
<i>F. FAO contribution</i>			<i>[1,987,200]</i>
<i>G. Exceptional Donor Contribution</i>			<i>[800,000]</i>
Net amount to be funded by Contracting Parties			4,315,680