

June 2012



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



## THIRD MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM

New Delhi, India, 26-28 June 2012

### UPDATING OF THE STANDARD MATERIAL TRANSFER AGREEMENT

#### I. Introduction

1. At its Fourth Session, in establishing the Terms of Reference for the Committee, the Governing Body outlined a number of issues for consideration by the Committee, including some that were outstanding from previous meetings of the Committee as well as any issues it had identified for further development.<sup>1</sup> One of the issues identified in the Terms of Reference is updates to “*Annex 1* of the Standard Material Transfer Agreement relating to PGRFA Under Development, taking into consideration the situation of providers of material under development who have accessed Multilateral System materials from a collection hosted by the same legal entity”.

2. This document contains excerpts of the analysis that was presented in the background documents for the second meeting of the Committee, as well as the outcomes of the initial considerations made by the Committee on the issue.<sup>2</sup>

#### II. Preliminary Analysis and Issues for Consideration

3. At its second meeting, the Committee had requested the preparation of an analysis of reporting obligations in the SMTA, and had before it a document that reviewed, in detail, the full range of such obligation, taking into account, in particular, the relevant decisions of the Third Session of the Governing Body (document IT/AC-SMTA-MLS/2/10/3). The Committee was of the opinion that these decisions needed integration into the SMTA in a coherent manner, in order to facilitate its use by Providers and Recipients. The Committee was of the opinion that these updates were only clarifications.

In reviewing that document, the Committee also identified a number of minor, non-substantive, updates to the text of the SMTA that could resolve various uncertainties of formulation and cross-reference. Those updates consisted of:

- Replacing “Third Party Beneficiary” with FAO and deleting related explanatory footnotes that are now outdated;

<sup>1</sup> IT/GB-4/11/Report, Resolution 4/2011, Annex, *List of issues to be considered by the Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System*.

<sup>2</sup> IT/AC-SMTA-MLS/2/10/3, *The reporting obligations of parties under the SMTA*. See also, IT/AC-SMTA-MLS/2/10/4, *Updating of the SMTA*.

- Clarifying that 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 and are not to be reported on to the Governing Body;
  - Identifying the Recipient's obligation to report on the material received from the Multilateral System in the context of the reporting obligations that are connected to product-based payments, as contained in Annex 2 to the SMTA;
  - In the context of alternative payment-related reporting obligations of the Recipient, rectifying textual imprecisions in the cross-referencing from Annex 3 to Annex 2 to the SMTA.
4. Accordingly, the Committee recommended that the Secretary bring to the attention of the Governing Body, for consideration and adoption, an integrated and updated text of the SMTA, as attached in the *Appendix* to this document.
5. Furthermore, the Committee identified a number of passages in the SMTA, where clarification of the meaning would help actual and potential users and it was in that context that the issue of updating *Annex I* to the SMTA in relation to PGRFA under Development came to the attention of the Committee.
6. The Committee noted that, under *Article 6.4*, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture, as received from the Multilateral System, the new material transfer agreement required by this article must contain the full text, and only the full text, of the SMTA, without modification.
7. It also noted that, under *Article 6.5*, which relates to the transfer to a subsequent recipient of Plant Genetic Resources for Food and Agriculture under Development, the transfer is to be effected through "a new material transfer agreement". *Article 6.5a* provides that *Article 5a* of the SMTA will not apply. This is in itself legally adequate, and *Article 5a* does not need to be deleted. The new material transfer agreement should accordingly consist of the full text, and only the full text, of the SMTA, without modification.
8. The Committee also considered the transfer, by a Recipient who has opted for the alternative payments scheme under *Article 6.11*, of Plant Genetic Resources for Food and Agriculture under Development of that crop.
9. The provisions of paragraph 3 of *Annex 3* to the SMTA are as follows:
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**.
10. The Committee noted that the current text of the SMTA does not provide guidance as to how the subsequent recipient is to be bound by the terms and conditions of the alternative payments scheme. For this to be possible, the following actions would need to be undertaken:
- (a) the Recipient now acting as Provider should indicate to the subsequent recipient that he is required to accept the alternative payment scheme for the Plant Genetic Resources for Food and Agriculture under Development in question; and
  - (b) the subsequent recipient must accept these conditions.
11. Based on these considerations on how to bind the subsequent recipient of Plant Genetic Resources for Food and Agriculture under Development to the alternative payment scheme of Article 6.11, the Committee recommended that the Governing Body consider the text contained in *Appendix 2* to this document, which might constitute an additional *Annex* to the SMTA.

12. In relation to updates regarding the Third Party Beneficiary, the Committee may wish to note that the Secretariat has provisionally updated the SMTA by adding a footnote drawing attention to the text adopted by the Governing Body at its Third Session stipulating the information to be provided by the parties to the Standard Material Transfer Agreement, and contained in *Annex 2* of the Resolution 5/2009.

### III. Conclusions

13. At its second meeting, the Committee had noted that its recommendations for updating the SMTA were only clarifications that do not alter any of the obligations of Providers and Recipient, but simply set them forth in a single document. The Committee had then advised the Secretary to bring these issues to the attention of the Governing Body.

14. By Resolution 5/2011, the Governing Body thanked the Committee 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.

15. The Governing Body further noted “the opinions and advice provided by the *Ad Hoc* Technical Advisory Committee on the Multilateral System and the SMTA at its first two meetings as helpful guidance for Contracting Parties in implementing their obligations under the Treaty”.

16. In the Terms of Reference established by the Governing Body for the Committee, the Governing Body had also stated that:

*For matters relating to possible changes to the SMTA, or on the implementation of the Multilateral System, the Committee, in its report, may provide recommendations to the Governing Body at the next session of the Governing Body for consideration and approval by the Governing Body. The Committee’s recommendations should not be relied on until approved by the Governing Body.*

17. In this context, the Committee is invited to review the issues stated above, taking into account its opinion at its second meeting, and provide any advice or make any necessary recommendation for the consideration of the Governing Body at its Fifth Session.

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*Appendix 1*

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**Updates to the SMTA**

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**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.**

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**STANDARD MATERIAL TRANSFER AGREEMENT****PREAMBLE****WHEREAS**

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”)<sup>3</sup> 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.

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<sup>3</sup> *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**.

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\* *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 incorporate<sup>4</sup> 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 1* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex 1* 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**.<sup>5</sup>

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,<sup>6</sup> 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

<sup>4</sup> As evidenced, for example, by pedigree or notation of gene insertion.

<sup>5</sup> 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.

<sup>6</sup> *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,<sup>7</sup>

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

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<sup>7</sup> 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.<sup>8</sup>

**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

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<sup>8</sup> *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 1* 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;<sup>9</sup>
- 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.<sup>10</sup>

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

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<sup>9</sup> The material referred to here is the material originally received from the **Multilateral System**.

<sup>10</sup> 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 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* 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.

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\* 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.



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*Annex 2*

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**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 31<sup>st</sup>;

(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\$)*<sup>11</sup> 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. 000156426<sup>12</sup>

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<sup>11</sup> *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\$).

<sup>12</sup> *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).

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*Annex 3*

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**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.

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*Annex 4*

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**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.....<sup>13</sup>

**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.**

.....

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<sup>13</sup> 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.

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**Appendix 2**

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

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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 1* 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: .....