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The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 6 of the Draft Provisional Agenda

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

Rome, Italy, 6-7 November 2012

OPTIONS FOR REFLECTING UPDATES OF THE STANDARD MATERIAL TRANSFER AGREEMENT¹

I. INTRODUCTION

1. At its third meeting in June 2012, the Committee considered the issue of the updating of the Standard Material Transfer Agreement (SMTA), in particular as regards Plant Genetic Resources for Food and Agriculture Under Development *in Annex 1* of the SMTA.
2. The Committee reviewed the document, *Updating of the Standard Material Transfer Agreement in the context of reporting obligations of parties to the SMTA*,² which summarized the analysis of the issue discussed during previous meetings of the Committee, and the related considerations made by the Committee.
3. After considering the updates of the SMTA that were forwarded to the Governing Body at its Fourth Session, the Committee agreed that the Secretariat should prepare, in collaboration with the FAO Legal Office, a working document for its fourth meeting, containing options for reflecting the updates to the SMTA, an analysis of such options, and, as one of the options, draft explanatory notes that could accompany the SMTA.
4. This document responds to the request of the Committee. It outlines the available options and analyzes them from both the perspectives of practicality and legal accuracy. It includes the option with “the draft explanatory notes” that the Committee requested as well as a third option. The document has been developed jointly with the FAO Legal Office.

II. UPDATES TO THE SMTA

5. A full description of the updates so far examined by the Committee is provided in the working document prepared for the second meeting of the Committee, *Updating of the Standard Material Transfer Agreement*.³ The updates were also summarized in the document prepared for

¹ In accordance with the request of the *Ad Hoc* Technical Advisory Committee and the Terms of Reference established by the Governing Body, this document was prepared for the exclusive purpose of facilitating the Committee’s deliberations. Any opinion or position expressed in the document is not to be attributed to the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture.

² IT/AC-SMTA-MLS 3/12/4, available at <http://www.planttreaty.org/sites/default/files/AC-SMTA-MLS%203-4%20Updating%20of%20the%20SMTA.pdf>.

³ IT/AC-SMTA-MLS 2/10/4, available at http://www.planttreaty.org/sites/default/files/ac_smta_mls2_w4e.pdf.

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the last meeting of the Committee, which is, again, made available to the Committee to assist its deliberations.

6. The updates can be classified into three categories. First, some updates directly reflect the decisions of the Governing Body that specify or clarify specific provisions of the SMTA, including those related to the obligations of parties to the SMTA. Those updates consist of reflecting:

- i) the Food and Agriculture Organization of the United Nations acting as Third Party Beneficiary (Resolution 5/2009);
- ii) the content of the report to be made by providers under Article 5.e of the SMTA (Resolution 5/2009) and Annex 2, Part III: *Information to be provided to the Governing Body by parties to the SMTA* of the Third Party Beneficiary Procedures;
- iii) the frequency of the above reporting obligation (Resolution 5/2009);
- iv) the specification in Annex 4 to the SMTA of the crop or crops to which the payment modality under Article 6.11 of the SMTA applies, and the instruction to issue a separate SMTA in cases where the recipient has disclosed information to the provider, before acceptance of the SMTA, on the payment modality to be chosen (Resolution 4/2009, where the Governing Body expressly requested that the footnotes be amended accordingly);
- v) that payments due under the SMTA are to be made in US dollars, calculated at the market rate in effect on the day that the payment is made (Resolution 4/2009).

7. Other updates were deemed advisable by the Committee in light of the decisions of the Governing Body, in order to follow the logic underpinning those decisions and avoid major inconsistencies in the application of the SMTA. Those updates were necessitated by the following issues:

- i) how to ensure that information on the crops to which accessions belong is provided;
- ii) how to ensure that, should a Provider merely transmit a shrink-wrap SMTA, the other information required by the Governing Body (“the date on which the shipment was made”, and “the name of the person to whom the shipment was made”) is available;
- iii) how to clarify the meaning of “copy of the completed SMTA”, and the obligation to maintain originals, in the context of the reporting obligations under Article 5e of the SMTA;
- iv) how a provider of plant genetic resources for food and agriculture under development, in accordance with Article 6.5 of the SMTA, should identify each accession, and specify that the plant genetic resources for food and agriculture under development being transferred are derived from the material received under an SMTA;
- v) how to accommodate the fact that Article 5a of the SMTA shall not apply to the transferring of plant genetic resources for food and agriculture under development, in accordance with Article 6.5 of the SMTA;
- vi) in what instrument the additional conditions allowed for in Article 6.6 of the SMTA could be included;
- vii) if and how recipients making payments in accordance with Article 6.7 of the SMTA should report on the materials from which the products were developed;
- viii) what information recipients making voluntary payments on commercialisation, in accordance with Article 6.8 of the SMTA should be encouraged to report;
- ix) how recipients submitting Annex 4 of the SMTA should (a) include the information that, according to the footnote, must accompany the signed declaration, and (b) specify for which crop or crops the alternative payments scheme is accepted;

- x) how a provider who has accepted the alternative payments scheme under Article 6.11 should transfer plant genetic resources for food and agriculture under development to a subsequent recipient, in order to fulfil the obligations of paragraph 3 of Annex 3 to the SMTA.
8. A third category of updates consists of simple textual adjustments to enhance clarity. Those updates address:
- i) the textual imprecision in the cross-referencing from Annex 3 to Annex 2 of the SMTA, in relation to the reporting obligations of recipients who opted for the alternative payments scheme, under Article 6.11;
 - ii) the elimination of unnecessary or outdated footnotes, concerning defined terms in bold character throughout the text of the SMTA, and Resolution 2/2006 of the Governing Body on the Third Party Beneficiary.

III. OPTIONS FOR REFLECTING THE UPDATES

9. The Committee's advice, at its second meeting, was to incorporate most of the updates described above into the text of the SMTA, i.e., in both the main body of the agreement and the footnotes. Hence, this is one of the options for reflecting the updates, which was forwarded to the Fourth Session of the Governing Body. This constitutes Option 1, as is provided for in *Appendix I* to this document.

10. It is to be noted that the updates that the Committee initially recommended included a possible new *Annex* to the SMTA to resolve the issue of 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 (see sub-paragraph (x) of paragraph 7 above).

11. In this regard, the Committee had 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. The Committee recommended that the Secretary invite the Governing Body to consider how these actions might be effected, based on the text contained in Appendix 5 to this Report”.*⁴

12. If this *Annex* were to be adopted by the Governing Body, it would ostensibly become “*Annex 5*” to the SMTA. However, it must be noted that, for the proposed *Annex* to become an integral part of the SMTA, explicit reference would need to be made to it in the body of SMTA itself, rightfully under Article 6.11. It should further be noted that the proposed *Annex* should be considered along with all the three options under consideration in this document. The proposed additional *Annex* as is contained in *Appendix IV* of this document.

13. A second possible option, as identified by the Committee at its last meeting, is to have explanatory notes accompany the SMTA. Under this option, the text of the SMTA would remain fundamentally unaltered, with the possible exception being the elimination of unnecessary and outdated footnotes (see paragraph 8, sub-paragraph *ii*) above). The explanatory notes would accompany the SMTA and be made available to parties thereto. This option is provided for in *Appendix II* to this document.

⁴ Paragraph 28 of the document, IT/AC-SMTA-MLS 2/10/Report, *Report of the Second Meeting of the Ad Hoc Technical Committee on the Standard Material Agreement and the Multilateral System*.

14. A third option could be a combination of the two previous ones. Some updates, i.e. those which appear to be essential in order to ensure that the decisions of the Governing Body are followed by parties to the SMTA, would be inserted into the SMTA text itself, both in the main body, and in updated and new footnotes, while other updates of a less prescriptive nature would be reflected in the explanatory notes which would accompany each SMTA. This option is provided for in *Appendix III* to this document.

IV. ANALYSIS OF THE OPTIONS

15. It is to be noted, from the onset, that in considering which option to recommend to the Governing Body, the primary focus should be on clarity and certainty, and ensuring that users respond to or adhere to the terms of the SMTA as clarified. Updating of the SMTA may also become a recurrent process, at appropriate intervals. These updates might become necessary, for instance, in light of the continuous development and evolution of the Multilateral System, thus allowing to take into account a number of factors, including: decisions of the Governing Body; lessons learnt and experiences gained in the operation of the System; changes in trends or in the patterns usage of plant genetic resources for food and agriculture; advances in technology; and the evolving dynamics or commercial practices of the broader community of users.

16. Consequently, a number of criteria might be worth considering by the Committee in undertaking this task, including *inter alia*:

- the desirability that the SMTA should remain attractive to both providers and recipients of plant genetic resources for food and agriculture accessed from the Multilateral System, in order to encourage their participation in the Multilateral System;
- recognition that, in case of further updates based on decisions of the Governing body which clarify provisions, this update will set a pattern for further similar processes; and
- the need, not only for clarity and certainty, but also for consistency between already concluded SMTAs and SMTAs to be concluded subsequent to such updates.

17. In reviewing the proposed options, the Committee may also recall that the SMTA, under Article 7, provides that:

*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**.*

Practical Considerations

18. Where the decisions of the Governing Body provide interpretative or clarifying elements, such decisions would need to be communicated to the users. The main challenge in the case of the SMTA is that a significant proportion of its users do not attend the sessions of the Governing Body, and may typically not have immediate access to the outcomes, or may have limited means of knowing of any outcomes that form part of or clarify the contractual terms contained in the SMTA.

19. One of the main arguments in support of the first option is that, in terms of practicality, all the updates are incorporated in-text and it is, therefore, much easier for parties to the SMTA to be aware of them. This is further buttressed by the fact that if the updates are inserted in or next to the specific provisions being updated, there are no additional cross-references to deal with.

20. A possible practical counter-argument might be that, given the length of the SMTA, it may place additional reading burden on the parties to the SMTA, to deal with additional text. It may also be the case that some users would see the updates as apparent changes to the terms of the SMTA and have concerns about long-term certainty and consistency. However, where such

additional text reflects the decisions of the Governing Body and provides better clarity to the provisions, it would seem well worth such minor inconvenience.

21. A further argument in support of in-text incorporation of the updates is that they are more easily seen as forming an integral part of the SMTA, in practical terms and its legal effects. This may not be the case under options 2 and 3.

22. In regard to the second option, the main benefit is that the text of the SMTA remains as it is, so that users who have become used to it or have incorporated it into their electronic systems would not have to make any changes in order to take the updates into account. The updates could then be dealt with through the explanatory notes or, in the case of electronic version of the SMTA, by links to the explanatory notes. However, there is always the possibility that some users may not take notice or otherwise not bother to check the explanatory notes that are outside the main body. This may particularly be the case with long-time users of the SMTA. Draft Explanatory Notes which have been prepared for the consideration of the Committee, are contained in *Appendix II* to this document.

23. The third option consisting of a mix of in-text incorporation and explanatory notes, may seem a pragmatic approach, which while focusing on clarity, would at the same, seek to minimize the introduction of new text that might seem too cumbersome for users. In this regard, the Committee would need to assess those updates that are most essential for in-text incorporation and which ones are better suited for inclusion in the explanatory notes that could accompany the SMTA, and make its recommendations accordingly. Consequently, the Committee may wish to first establish a basis for identifying those updates that are best suited for incorporation and those that may be accommodated in the explanatory notes. This option may achieve clarity and consistency in the use of the SMTA. *Appendix III* to this document contains option 3 for the Committee's consideration.

Legal Considerations

24. From a legal standpoint, there seems to be three main relevant issues, namely: whether footnotes to the SMTA have binding value to the parties thereto; whether explanatory notes accompanying the SMTA also have such binding value; and, if and how parties to SMTAs already concluded should be informed of updates to the text thereof, or of the explanatory notes.

25. Before considering the relevant issues from a legal viewpoint, it may be important to recall a few key elements of the SMTA. The Governing Body, at its first Session, adopted the SMTA (IT/GB-1/06/Report, Appendix G), which is a standard contractual instrument containing a number of terms and conditions applicable to providers and recipients of plant genetic resources for food and agriculture within the territories of Contracting Parties, from relevant international agricultural research centres under Article 15 of the Treaty, as well as other natural and legal persons who have brought their material under the Multilateral System.

26. The Treaty sets forth some of these terms and conditions. One of these is that the provisions of the SMTA shall apply to the transfer of plant genetic resources for food and agriculture between a provider and a recipient, as well as to any successive transfers of those plant genetic resources for food and agriculture to subsequent recipients.

27. Under the SMTA, following the request of the Governing Body and acceptance by FAO, FAO performs functions as Third-Party Beneficiary on behalf of the Governing Body of the Treaty and of the Multilateral System.

28. The SMTA is the cornerstone of the Multilateral System, the purpose of which is to establish uniform rules facilitating access to certain plant genetic resources for food and agriculture and fair conditions for the sharing of the benefits that are generated through that access. The SMTA is a legal instrument allowing obligations stemming from the Treaty to be passed from the first provider to a recipient and from this recipient to subsequent recipients by means of a contractual sequence. In substance, the individual agreements that are concluded in

accordance with the standard terms and conditions of the SMTA are tools for the implementation of the Multilateral System of Access and Benefit Sharing.

29. Whichever option is preferred, it is important to ensure consistency with the adopted SMTA and continuity in the implementation of the SMTA.

30. As stated earlier in this document, the proposed updates either (i) directly reflect the decisions of the Governing Body that specify or clarify the obligations of parties to a SMTA, or (ii) are considered advisable by the Committee in light of the decisions of the Governing Body or (iii) are also simple textual adjustments.

31. Hence, from a legal point of view, the proposed updates have an explanatory nature, for the purpose of clarifying the terms and conditions set out in the SMTA. In other words, they can hardly be considered as amending the standard terms and conditions of the SMTA. This is even more so in the light of Article 7 – “*Applicable Law*” of the SMTA which reads as follows :

“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.”(emphasis added)

32. Resolutions 4/2009 and 5/2009 adopted by the Governing Body have defined and clarified the obligations of parties to an SMTA which are already specified in the SMTA.

33. In view of the foregoing, the clarifying decisions of the Governing Body are binding *per se* in the context of the existing as well as future bilateral contractual relationships created by the SMTA. For this reason also, it is considered that the possibility to avail of in-text incorporation and footnotes (option 1), of explanatory notes (option 2), or of a combination of the two (option 3) does not affect the binding nature of such updates. The choice among the three options is rather a matter of clarity, consistency and continuity as well as practicality.

34. Turning to the issue of using footnotes, the Committee may observe that this approach may ease the comprehension of the terms of the SMTA by the parties, however, to a limited extent namely for brief/short updates as for instance the designation of FAO as the third party beneficiary. In contrast, the provision of more complex/lengthy updates, such as, for instance, the details of reporting obligations under Article 5(e) of the SMTA or payment modalities of alternative payments under Article 6.11 of the SMTA, may require a clearer and comprehensive statement, for which explanatory notes would probably be more appropriate.

35. In the context of Options 2 and 3, to remove any doubts about the binding nature of the explanatory notes which may accompany a SMTA, reference should be made to Article 7 – *Applicable Law* – of the SMTA at the outset of the Explanatory Notes. It should be recalled that, as a matter of principle, the terms of an agreement may be incorporated either by being set out in the main document, or by reference to another collateral document. To this extent, an express reference in the SMTA to the explanatory notes would be preferable, for the update to be fully effective.

36. Finally, with respect to the SMTA which have been concluded so far, the clarifying decisions of the Governing Body apply to all of them pursuant to Article 7 of the SMTA. The use of Explanatory Notes which group all the updates in one document may contribute to consistency and continuity in the implementation of the SMTA. From a practical viewpoint this approach might be attractive for existing users of the SMTA as well as some future users.

V. GUIDANCE SOUGHT

37. The Committee is invited to examine the options presented in this document and, as necessary:

- a) recommend an updated text of the SMTA, including footnotes thereto, for the consideration and approval by the Governing Body at its Fifth Session; and/or

- b) review the draft explanatory notes accompanying the SMTA that are contained in *Appendix I* of this document, and recommend them for the consideration and approval by the Governing Body at its Fifth Session; and
- c) provide any further advice that is relevant to the updating of the SMTA.

38. In the context of the above considerations, the Committee is invited to advise on the issue of 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, as reflected in the *Appendix IV* to this document, which might constitute an additional *Annex* to the SMTA or be reflected in the explanatory notes accompanying the SMTA.

39. In its deliberations, the Committee would recall that, according to the Terms of Reference established by the Governing Body at its Fourth Session, it may provide recommendations on matters related to possible changes to the SMTA, to the Governing Body for its consideration and approval.⁵

⁵ IT/GB-4/11/Report, Resolution 4/2011, Appendix, paragraph 6. The report is available at <http://www.planttreaty.org/content/report-fourth-session-governing-body>.

APPENDIX I

[Option 1]

Updates to the SMTA

**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 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**.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 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;

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.

- 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 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**

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

Agriculture under Development being transferred are derived from ~~the~~ that Material;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 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**;

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*.

- 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**

* 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.

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.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* contains a list of the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

<u>(List)</u> <u>Crop</u>	<u>Accession number or other identifier</u>	<u>Associated information, or source from which it may be obtained</u>

If the **Material** listed above is **Plant Genetic Resources for Food and Agriculture under Development**, as provided for in *Article 6.5* of **this Agreement**, the material received from the **Multilateral System**, from which it was derived, is the following:

Accession number or other identifier
in the original Standard Material Transfer Agreement

The original Standard Material Transfer
Agreement's identifying symbol or number:

Name and Address of **Provider**:
.....
.....
.....

Name and address of **Recipient**:
.....
.....
.....

Date of the original 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 II**[OPTION 2]****STANDARD MATERIAL TRANSFER AGREEMENT****EXPLANATORY NOTES**

The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture approved the explanatory notes (Resolution [X]). The purpose of the explanatory notes is:

- *to inform individual parties to the Standard Material Transfer Agreement of the relevant decisions made by the Governing Body;*
- *offer practical guidance as to the application of the provisions of the Standard Material Transfer Agreement;*
- *consolidate the information in a single document to accompany the text of the Standard Material Transfer Agreement.*

These Explanatory Notes are an integral part of the Standard Material Transfer Agreement and, having been adopted by the Governing Body, are binding for the Parties, in virtue of article 7 of SMTA on applicable law.

The following notes are to be read into or in conjunction with the Articles to which they refer, and form part of this agreement.

Relevant Article(s)	Related Explanations
Article 4.3 Article 4.5 Article 8.1 Article 8.2	The term, “the entity designated by the Governing Body”, shall read throughout the text of the Standard Material Transfer Agreement as, “the Food and Agriculture Organization of the United Nations”.
Article 5e)	Providers have two options for fulfilling their obligation under Article 5e, A. Either the Provider transmits a copy of the completed Standard Material Transfer Agreement, <i>or</i> B. In the event that the Provider does not transmit a copy of the Standard Material Transfer Agreement, s/he i. ensures that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed; ii. states where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and iii. provides the following information: a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider; b) The name and address of the Provider;

	<p>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;</p> <p>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;</p> <p>e) The identification of each accession in <i>Annex I</i> to the Standard Material Transfer Agreement, and of the crop to which it belongs.</p> <p>In the case that the Provider transmits a copy of the completed Standard Material Transfer Agreement under option A above, the Provider should identify the Material by accession number or other identifier, and the crop to which it belongs.</p> <p>In the case that the copy of the completed Standard Material Transfer Agreement that is transmitted under option A above is shrink-wrap (see Article 10, option 2), the Provider should 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.</p> <p>In the case that the copy of the completed Standard Material Transfer Agreement that is transmitted under option A above is click-wrap (see Article 10, option 3), the Provider may transmit either (a) a copy of the full electronic document, in printable format (for example, in a PDF file); or (b) a printed copy of that document.</p> <p>Providers reporting under Article 5e should maintain the original Standard Material Transfer Agreement, as is normal business practice. In the case of a click-wrap Standard Material Transfer Agreement, the Provider should employ technological measures to ensure – and be able to demonstrate that the information it contains has not been altered, including by himself, from the time it was first generated in its final form.</p> <p>The information required in accordance with Article 5e should be provided at least once every two calendar years.</p> <p>The information to be provided in accordance with Article 5(e) has to be submitted to:</p> <p style="padding-left: 40px;">The Secretary International Treaty on Plant Genetic Resources for Food and Agriculture FAO Headquarters Viale delle Terme di Caracalla, 1 00153 Rome, Italy</p> <p style="padding-left: 40px;">Email: PGRFA-Treaty@fao.org</p>
Article 6.5b)	The “Material” referred to is the material originally received from the Multilateral System.
Article 6.6	Additional conditions attached to the transfer of Plant Genetic Resources for Food and Agriculture under Development should be contained in a

	<p>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.</p>
Article 6.7; Annex 4	<p>Recipients opting for the crop-based payment modality under Article 6.11, by submitting Annex 4 to the Standard Material Transfer Agreement, duly signed, should at the same time specify to which crop it applies.</p> <p>Where the recipient has disclosed information to the provider before acceptance of the Standard Material Transfer Agreement on the payment modality to be chosen, the provider should issue a separate Standard Material Transfer Agreement for material to which the payment modality under Article 6.11 will apply.</p>
Article 6.8	<p>A Recipient who makes voluntary payments in accordance with Article 6.8 is invited to submit a report to the Governing Body in accordance with paragraph 3 of <i>Annex 2</i>.</p>
Annex 1	<p>If the Material is Plant Genetic Resources for Food and Agriculture under Development, as provided for in Article 6.5, the Provider should notify the Governing Body in accordance with Article 5.e:</p> <ul style="list-style-type: none"> - the accession number or other identifier of the material in the original Standard Material Transfer Agreement; - the original Standard Material Transfer Agreement's identifying symbol or number; - the name and address of the Provider; - the name and address of the Recipient; - the date of the original Standard Material Transfer Agreement.
Annex 2	<p>In submitting the report to the Governing Body in accordance with paragraph 3 of <i>Annex 2</i>, the Recipient is invited to report on the Material derived from the Multilateral System, from which the Product or Products were derived.</p> <p>Payments due under the Standard Material Transfer Agreement should be made in US dollars, calculated at the market rate in effect on the day that the payment is made.</p> <p>Payments can be made to the following bank account:</p> <p style="text-align: center;">FAO Trust Fund (USD) GINC/INT/031/MUL, ITPGRFA (Benefit-sharing), HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018, Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088, Account No. 000156426</p>
Annex 3	<p>A Recipient who makes payments under the alternative payment scheme under Article 6.11 should submit to the Governing Body an annual report to the Governing Body on:</p> <ul style="list-style-type: none"> - the Sales of any Products and of the sales of any other products that are Plant Genetic Resources for Food and Agriculture of the crop or

	<p>crops for which the Recipient has opted for the alternative payment scheme; - the amount of the payment due.</p> <p>Payments should be due and payable upon submission of each annual report.</p> <p>Payments should be made in US dollars, calculated at the market rate in effect on the day that the payment is made.</p> <p>Payments can be made to the following bank account:</p> <p>FAO Trust Fund (USD) GINC/INT/031/MUL, ITPGRFA (Benefit-sharing), HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018, Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088, Account No. 000156426</p>
Annex 4	<p>The notification to the Governing Body by a Recipient in accordance with Annex 4 should specify:</p> <ul style="list-style-type: none"> - <i>to which crop or crops it applies;</i> - the address of the Recipient; - the name and address of the Provider; - the Provider's Standard Material Transfer Agreement identifying symbol or number; - the date of the Standard Material Transfer Agreement; - a copy of Annex 1 to the Standard Material Transfer Agreement. <p>Once the 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.</p>

APPENDIX III

[OPTION 3]

**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**”)¹⁷ 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.

¹⁷ ~~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 incorporate¹⁸ 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**.¹⁹

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,²⁰ 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

¹⁸ As evidenced, for example, by pedigree or notation of gene insertion.

¹⁹ 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.

²⁰ *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, in accordance with reporting criteria set out in Section 1 of the Explanatory Notes of the Standard Material Transfer Agreement. This information shall be made available by the **Governing Body** to the third party beneficiary.²¹

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**

²¹ ~~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

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 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;²²
- 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.²³

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

²² The material referred to here is the material originally received from the **Multilateral System**.

²³ 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*.

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 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.

* 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, comprehensive of its Annexes and Explanatory Notes.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* contains a list of the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

(List)

<u>Crop</u>	<u>Accession number or other identifier</u>	<u>Associated information, or source from which it may be obtained</u>

If the **Material** listed above is **Plant Genetic Resources for Food and Agriculture under Development**, as provided for in *Article 6.5* of **this Agreement**, the material received from the **Multilateral System**, from which it was derived, is the following:

Accession number or other identifier in the original Standard Material Transfer Agreement

The original Standard Material Transfer Agreement's identifying symbol or number:

Name and Address of **Provider**:

.....

.....

.....

Name and address of **Recipient**:

.....

.....

.....

Date of the original 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\$)*²⁴ 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. 000156426²⁵

²⁴ *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\$).

²⁵ *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. Payments and reporting to the Governing Body shall be made in accordance with Section 2 of the Standard Material Transfer Agreement Explanatory Notes.
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.....²⁶

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.

.....

²⁶ 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.

[EXPLANATORY NOTES TO APPENDIX III]

STANDARD MATERIAL TRANSFER AGREEMENT**EXPLANATORY NOTES**

The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture approved the explanatory notes (Resolution [X]). The purpose of the explanatory notes is:

- *to inform individual parties to the Standard Material Transfer Agreement of the relevant decisions made by the Governing Body;*
- *offer practical guidance as to the application of the provisions of the Standard Material Transfer Agreement;*
- *consolidate the information in a single document to accompany the text of the Standard Material Transfer Agreement.*

These Explanatory Notes are an integral part of the Standard Material Transfer Agreement and, having been adopted by the Governing Body, are binding for the Parties, in virtue of article 7 of SMTA on applicable law.

The following notes are to be read into or in conjunction with the Articles to which they refer, and form part of this agreement.

1. Reporting criteria for information to the Governing Body, in pursuance of Article 5(e) (Governing Body Resolution 5/2009)

- 1.1 According to **Article 5(e)** of the SMTA, the Provider shall at least once every two calendar years inform the Governing Body about the Standard Material Agreements entered into.
- 1.2 Providers have two options to fulfil the above obligation :
- A. The Provider transmits a copy of the completed Standard Material Transfer Agreement,
- or*
- B. In the event that the Provider does not transmit a copy of the Standard Material Transfer Agreement, s/he:
- i. ensures that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
 - ii. states where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
 - iii. provides the following information:
 - a) The identifying symbol or number attributed to the Standard Material 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.
- 1.3 In the case that the Provider transmits a copy of the completed Standard Material Transfer Agreement under option A above, the Provider should identify the Material by accession number or other identifier, and the crop to which it belongs.
- 1.4 In the case that the copy of the completed Standard Material Transfer Agreement that is transmitted under option A above is shrink-wrap (see Article 10, option 2), 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.
- 1.5 In the case that the copy of the completed Standard Material Transfer Agreement that is transmitted under option A above is click-wrap (see Article 10, option 3), the Provider may transmit either (a) a copy of the full electronic document, in printable format (for example, in a PDF file); or (b) a printed copy of that document.
- 1.6 Providers reporting under Article 5e shall maintain the original Standard Material Transfer Agreement, as is normal business practice. In the case of a click-wrap Standard Material Transfer Agreement, the Provider should employ technological measures to ensure – and be able to demonstrate- that the information it contains has not been altered, including by himself, from the time it was first generated in its final form.
- 1.7 The information to be provided in accordance with Article 5(e) has to be submitted to:

The Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
FAO Headquarters
Viale delle Terme di Caracalla, 1
00153 Rome, Italy

Email: PGRFA-Treaty@fao.org

2. Reporting duties and payment modalities for alternative payments under article 6.11 of the Standard Material Transfer Agreement (Governing Body Resolution 4/2009)

- 2.1 A Recipient who makes payments under the alternative payment scheme under Article 6.11 shall submit to the Governing Body an annual report to the Governing Body on:
- the Sales of any Products and on 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 payment scheme;
 - the amount of the payment due.
- 2.2 Payments shall be due and payable upon submission of each annual report.

- 2.3 Payments shall be made in US dollars, calculated at the market rate in effect on the day that the payment is made, for the following account established by the **Governing Body** in accordance with Article 19.3(f) of the **Treaty**:

**FAO Trust Fund (USD) GINC/INT/031/MUL,
ITPGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,
Account No. 000156426**

APPENDIX IV

**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 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: