

July 2005



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
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United
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des
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l'alimentation
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l'agriculture

Organización
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Naciones
Unidas
para la
Agricultura
y la
Alimentación

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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE
ACTING AS
INTERIM COMMITTEE OF THE INTERNATIONAL TREATY
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

REPORT OF THE
CONTACT GROUP FOR THE DRAFTING OF
THE STANDARD MATERIAL TRANSFER AGREEMENT

Hammamet, Tunisia, 18-22 July 2005

The documents of the First Meeting of the
Contact Group for the Drafting of the Standard Material Transfer Agreement
are to be found on the internet at <http://www.fao.org/ag/cgrfa/cgmtal.htm>.

They may also be obtained from:

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**REPORT OF THE
FIRST MEETING OF THE
CONTACT GROUP FOR THE DRAFTING OF THE
STANDARD MATERIAL TRANSFER AGREEMENT**

INTRODUCTION

1. The First Meeting of the Contact Group for the Drafting of the Standard Material Transfer Agreement, which was established by the Second Meeting of the Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture, was held in Hammamet, Tunisia, from 18 to 22 July 2005. It was preceded by two days of regional meetings, on 15 and 16 July. A list of Representatives nominated by the Regions and Advisers is attached as *Appendix D*.
2. Mr Jose Esquinas-Alcázar, Secretary of the FAO Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture, welcomed delegates. On behalf of the Director-General of FAO, he thanked the Government of Tunisia for hosting the meeting, and the Government of the United States of America for its financial support. He recalled that the task of the meeting was to negotiate a draft Standard Material Transfer Agreement for consideration by the first meeting of the Governing Body of the International Treaty for Plant Genetic Resource for Food and Agriculture. Enormous genetic erosion had occurred since the start of the twentieth century, and the average level of interdependence between countries for plant genetic resources of the most important crops was about 70%. A multilateral approach to access and benefit-sharing, which ensured equity and fairness, was therefore essential. He underlined that the Standard Material Transfer Agreement was the instrument for the implementation of the Multilateral System of Access and Benefit-sharing, which was the heart of the Treaty.
3. Mr Eng Siang Lim, Chairman of the Contact Group, thanked the Governments of Tunisia and of the United States of America on behalf of the members of the Contact Group. He also thanked the Centre for Applied Training, which had played a key role in the organization of travel and accommodation for developing country representatives. He noted the excellent facilities for the meeting, which would help ensure a successful meeting.
4. Mr David Hegwood, Agricultural Minister Counsellor at the United States Mission to the FAO, said that his Government was pleased to be able to support the meeting. Adoption of an effective Standard Material Transfer Agreement would facilitate widespread ratification of the International Treaty. He thanked the Government of Tunisia, FAO, and the Centre for Applied Training, for their important roles in bringing the meeting about.
5. Mr Mustapha Sinaceur, FAO Representative to Tunisia and Sub-Regional Representative for North Africa, welcomed the delegates. He said that world food production would need to increase by 60% by 2030 to feed an estimated additional two billion people. Plant genetic resources for food and agriculture were vital in achieving this. The International Treaty and the Standard Material Transfer Agreement were key. He thanked the Governments of Tunisia and of the United States of America for supporting the meeting.
6. Dr Abdelaziz Mougou, General Director, President of the Agriculture Research and Education Institution at the Ministry of Agriculture and Water Resources, welcomed the delegates on behalf of the Minister for Agriculture and Water Resources, and thanked the United States of America for its financial support. The International Treaty, as part of FAO's wider policy platform, including the Special Programme for Food Security, contributed to the

achievement of world food security. The Treaty's aim was the rational and sustainable management of plant genetic resources for food and agriculture, in order to enable the development of new varieties, as a response to environmental changes and pests and diseases. Genetic resources were being constantly eroded. Since 1992, this had led to a number of international instruments, including the International Treaty, which promoted international cooperation in this area. It was important that developed countries provided developing countries with assistance to enable them to play their full part in international efforts to manage plant genetic resources for food and agriculture sustainably. Tunisia's biodiversity action plan aimed to strengthen infrastructure and human resources, and promote research and the management and rational use of natural resources, using a participatory approach. Tunisia now had twenty-six protected areas, of which three were of importance for the Mediterranean region. Tunisia was in the process of establishing a genebank, which had the full support of the President of the Republic. This would support technical and scientific research that would lead to increased food production. Dr Mougou said that it was an honour for Tunisia to host the meeting, and hoped that the delegates would have fruitful discussions resulting in a draft Standard Material Transfer Agreement that could be submitted to the first meeting of the Governing Body. On behalf of the Minister for Agriculture and Water Resources, he declared the meeting open.

ELECTION OF VICE-CHAIRS REPRESENTING THE REGIONS

7. Mr Tewolde Berhan Gebre Egziabher (Africa), Mr Rashid Anwar (Asia), Mr Bert Visser (Europe), Mr Hadil da Rocha Vianna (Latin America and the Caribbean), Mr Bryan L. Harvey (North America), Mr Javad Mozafari (Near East), and Mr John Madden (Southwest Pacific) were elected as Vice-Chairs representing the Regions.

ADOPTION OF THE AGENDA AND TIMETABLE

8. The Chair proposed that the meeting first consider the incorporation of proposals from regions for additions or amendments to the Document, *First Draft Standard Material Transfer Agreement prepared by the Secretariat*.¹ Negotiations on the individual articles would then follow. The agenda and timetable were adopted on this basis.

9. On a proposal by the Chair, a Legal Expert Group was established to provide legal opinions on any questions addressed to it by the Contact Group.

GENERAL VIEWS ON THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT

10. All regions stressed the importance of achieving a practical, effective and efficient Standard Material Transfer Agreement, consistent with the requirements of the Treaty, for the implementation of the Multilateral System. They underlined the great value of the two days of regional consultations, which had preceded the meeting, and expressed their wish that similar opportunities be provided at future meetings. They thanked the FAO Secretariat for the *First Draft Standard Material Transfer Agreement prepared by the Secretariat*, which was recognized as an excellent basis for the negotiations. They also expressed their gratitude to the Government of Tunisia for hosting the meeting and to the Governments of the United States of America and of other countries for providing financial support.

¹ CGRFA/IC/CG-SMTA-1/05/2.

CONSIDERATION OF THE TEXT OF THE FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT

11. The Contract Group reviewed the draft Standard Material Transfer Agreement, which had been prepared under the guidance and supervision of its Chair, in consultation with the Chairs of the FAO Regional Groups and the Chair of the Second Meeting of the Interim Committee.

12. The Contact Group accordingly considered and, where necessary, revised all elements of the Standard Material Transfer Agreement. It adopted the definitive *First Draft of the Standard Material Transfer Agreement*, as attached in *Appendix A*.

FURTHER WORK

13. The Contact Group considered how to complete the preparation of the Standard Material Transfer Agreement, so that it might be considered for adoption by the first meeting of the Treaty's Governing Body. It agreed that it should hold a further meeting for this purpose, which should include two days of preparatory regional consultations, in late 2005 or early 2006. This would be subject to the availability of the necessary extra-budgetary financial resources. It accordingly appealed to donor countries to make these resources available in a timely fashion, including to support the participation of developing countries. In preparation for this meeting:

- The Secretariat should forward the *First Draft of the Standard Material Transfer Agreement* to all the Representatives who had been nominated by the Regions, as well as to the Chairs of the FAO Regional Groups in Rome.
- The Contact Group requested that any comments from countries in a Region should be made to the Vice-Chairs of the Contact Group who represented that region, copied to the Chairs of the FAO Regional Groups in Rome. The Secretariat would forward any comments that it might receive to the Vice-Chairs of the Contact Group representing the Regions, to be taken into account in preparing for the next meeting.

OTHER BUSINESS

14. The Contact Group recorded a vote of thanks to the Government of Tunisia for having hosted the meeting, as well as to the Governments of the United States of America and others, for having provided financial support. It recognized the important contribution of the FAO Representative to Tunisia, in preparing the meeting, in coordination with the Centre for Applied Training. It thanked its Chair for the excellent and very expeditious manner in which he had managed the meeting, which had resulted in a constructive and productive atmosphere. It thanked, in particular, the Legal Expert Group, which it had established, and its Chair, Mr. Brett Walker (Southwest Pacific) for the excellent support it had given to the Contact Group's work.

15. It also thanked the Secretariat for its efficient preparation and support of the meeting itself.

ADOPTION OF THE REPORT

16. The Contact Group adopted its Report at 19:45 hours on Friday, 22 July 2005.

APPENDIX A

**FIRST DRAFT OF THE
STANDARD MATERIAL TRANSFER AGREEMENT
ESTABLISHED BY THE
CONTACT GROUP FOR THE DRAFTING OF THE
STANDARD MATERIAL TRANSFER AGREEMENT**

1. PREAMBLE

WHEREAS

1a. The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the Treaty”) was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

1b. 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.

1c. The Contracting Parties to the Treaty, in the exercise of their sovereign rights, 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.

1d. This Agreement is the Standard Material Transfer Agreement as adopted[pursuant to Article 12.4 of the Treaty] in Decision *** adopted by the Governing Body on *(date)*. [This agreement shall be applied in a manner consistent with the objectives and relevant provisions of the Treaty.][This Agreement is made[and shall be applied[and interpreted]] within the framework of the Treaty.]

[1e. Nothing in this Agreement shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under the Treaty and other international agreements.]

2. PARTIES TO THE AGREEMENT

2.1 The present Material Transfer Agreement (hereinafter referred to as “this Agreement”) is [in conformity with the Standard Material Transfer Agreement][the Standard Material Transfer Agreement referred to in Article 12.4 of the Treaty].

2.2 This Agreement is

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

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

¹ - The Contact Group Membership was established in accordance with its Terms of Reference, see Appendix C, which provide for Representatives nominated by the Chairs of the FAO Regional Groups, their Advisers and Representatives from specified International Organizations

[2.3 Contracting Parties to the Treaty shall take measures to ensure that parties to this Agreement that are under their jurisdiction meet the obligations in this Agreement.]

2.4 The parties to this Agreement hereby agree as follows:

3. DEFINITIONS

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

“*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;

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

“*To commercialize*” means to sell, lease, or license a Product or Products for monetary consideration.

“*Product*” means

Option 1

[a plant variety, breeding line, breeding materials, [genes or any other functional unit of heredity,] [tissues or *in vitro* material, and seed and other propagating material derived from the Material received] / or any result from technological [innovations] [developments] / excluding grain [and other commodities for commercialization.] /]

Option 2

[a plant genetic resource for food and agriculture [developed by the recipient] [and derived from the Material, as defined in Article 4.1, through research and breeding] that incorporates [by pedigree, at least twenty-five percent (25%) of the Material or that contains an identifiable trait of value or essential characteristic of the Material] [Material accessed from the Multilateral System and that has undergone [innovation] [development] and is to be commercialized.] /]

“*To incorporate*” means

Option 1

[[physical] incorporation of any [part of [genetic material] [a genotype from materials] [genes or functional units of heredity of plant genetic resources for food and agriculture] accessed from the Multilateral System [into] [in] a Product[, without taking into account the expression of a trait] [that results in a functional trait of interest to be maintained]. /]

Option 2

[incorporation, by pedigree, of at least [twenty-five percent (25%)] of the Material (as defined in Article 4.1 below) or incorporation of an identifiable trait of value or essential characteristic of the Material.]

[“Available without restriction”:² A product is considered to be available without restriction to others for further research and breeding when it can be used for research and breeding without any legal or contractual obligations, or biotechnological or technological restrictions[, or any other restriction], that would preclude using [[it][or any further Product]][its functional units of heredity] in the manner specified in the Treaty.[Availability is not dependent upon any specific type of intellectual property right claimed for the Product but on how the owner of the intellectual property chooses to make the Product available.]]

[“Net Sales” means the gross sales of a Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, to an independent third party less the sum of the following: (a) discounts, in amounts customary in the trade, for quantity purchases, cash payments, or given to wholesalers and distributors; (b) amounts repaid or credited by reason of rejection or returns; and (c) any freight or other transportation costs, insurance, duties, tariffs and sales and excise taxes based directly on sales or turnover or delivery of a Product or Products.]

[“Gross income” means income resulting from sales, licensing and contractual agreements, leasing and any other income arising from commercialization, before the deduction of any costs or taxes.]

4. SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

4.1 The plant genetic resources for food and agriculture specified in *Appendix 1* to this Agreement (hereinafter referred to as the “Material”)[and the related information referred to in Article 6.1b[and in *Appendix 1*]] are hereby transferred from the Provider to the Recipient subject to the terms and conditions set out in this Agreement.

[5. GENERAL PROVISIONS

5.1 [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.]

[5.2 The parties to this Agreement agree that the (*legal person representing the Governing Body*), as a third party beneficiary, has the right to monitor the execution of this Agreement and to initiate dispute resolution procedures in accordance with Article 9.2, in the case of a breach of this Agreement.

5.3 The monitoring and *locus standi* rights, referred to in Article 5.2, include but are not limited to, the rights to:

- (a) request samples of any Product from the Provider and the Recipient, and information relating to the execution of their obligations under Articles 6.1 and 7.1, 7.2, 7.4, 7.5, 7.6, 7.7, 7.10, 7.11 and 7.13, including statements of account;

² This text could also be placed in Article 7.

(b) initiate dispute resolution procedures in conformity with Article 9 of this Agreement, in the case of a breach of the obligations referred to in paragraph (a) above.

5.4 The rights granted to the (*legal person representing the Governing Body*) above do not prevent the Provider and the Recipient from exercising their rights under this Agreement.]]

6. RIGHTS AND OBLIGATIONS OF THE PROVIDER

6.1 The Provider undertakes that the Material[, and the related information referred in Article 6.1b,] 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 notify the Third Party Beneficiary of the name and address of the parties, the Material transferred and the date of the Agreement.]

7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT

7.1 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.

7.2³⁻⁴ The Recipient shall not claim any intellectual property or other rights that limit the facilitated access to the Material provided under this Agreement, or their genetic parts or components, in the form received from the Multilateral System.

[7.3 The Recipient may obtain intellectual property or other rights on the Product, if the criteria relating to such rights are met according to domestic laws.]

³ [It shall not come within “the material, or their genetic parts and components, in the form received”, if, for instance, a gene is separated or refined from the Material, or their genetic parts or components received under this Agreement with a view to clarifying its functions.]

⁴ [“The material, or their genetic parts and components, in the form received from the Multilateral System” include seeds, organs, tissues, cells, genes and DNA that come from the Material provided under this Agreement.]

[7.4 In the case that the Recipient obtains an intellectual property right on a Product that contains any genetic material or components received from the Multilateral System under this Agreement, the recipient will disclose this fact to the Third Party Beneficiary.]

[7.5 Genetic material that is supplied under this Agreement and which is protected by intellectual and other property rights shall be used only in a manner that is consistent with relevant international agreements, and with relevant national laws.]

7.6 In the case that the Recipient conserves the Material supplied, the Recipient shall make the Material, and the related information referred to in Article 6.1b, available to the Multilateral System using the Standard Material Transfer Agreement.

7.7 In the case that the Recipient transfers the Material and the related information referred to in Article 6.1b supplied under this Agreement[,or a Product under development obtained from such Material,] to another person or entity[for research and breeding], the Recipient shall do so under[the terms of][the][a new]Standard Material Transfer Agreement[and shall notify the fact to the Governing Body of the Treaty or to the person designated to this effect]. [The Recipient shall have no further obligations regarding the actions of any third party transferee.]

[7.8 Any subsequent transfer of Material supplied is subjected to the rights of the country of origin of the plant genetic resources for food and agriculture.]

[7.9 Subject to the requirements of Articles 7.10 and 7.11 below, the Recipient may commercialize a Product or Products.]

7.10 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 4.1 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 gross income resulting from commercialized Products obtained from the plant genetic resources in question][on the basis of the gross income resulting from the commercialized Product or Products obtained from the plant genetic resource in question]into the mechanism established by the Governing Body for this purpose in accordance with the [formula and] banking instructions set out in *Appendix 2* to this Agreement. [This percentage shall be periodically reviewed by the Governing Body, as in Article 13.2d(ii) of the Treaty.]

[7.11

Option 1

[The Recipient is encouraged to deposit plant genetic resources for food and agriculture, and associated information, developed by the Recipient and that incorporates the Material through research and breeding into the Multilateral System so that they are available for further research and breeding.]

Option 2

[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 and share non-monetary benefits resulting from research and development carried out on the genetic Material and its components received from the Multilateral System.]

[7.12 The Recipient is encouraged to share non-monetary benefits associated with any plant genetic resources for food and agriculture it has developed which incorporates the Material[as referred to in Article 4.1] with the Multilateral System. Such non-monetary benefits may include:

- (a) the exchange of information, for example as set out in Article 13.2a of the Treaty;
- (b) access to and transfer of technology, for example as set out in Article 13.2b of the Treaty;
- (c) capacity building, for example as set out in Article 13.2c of the Treaty; and
- (d) sharing of other benefits of commercialization, for example as set out in Article 13.2d of the Treaty.]

[7.13 A Recipient who obtains restrictive intellectual property rights on any Products developed from genetic Material or its components, obtained from the Multilateral System, and transfers such restrictive intellectual property rights to a third party, shall transfer the benefit-sharing obligations of this Agreement to that third party.]

[7.14 In the case that the Recipient commercializes a Product that is a plant genetic resource for food and agriculture belonging to (*a crop listed in Annex I of the Treaty*), the Recipient shall pay into the mechanism established by the Governing Body under Article 19.3f, ** % of the gross income resulting from such commercialization, in accordance with the banking instructions set out in *Appendix 2* to this Agreement.]

[8. [APPLICABLE LAW][INTERPRETATION]

8.1

Option 1

[The applicable law shall be General Principles of Law, the Treaty and decisions of the Governing Body.]

Option 2

[The applicable law shall be General Principles of Law and the UNIDROIT Principles of International Commercial Contract 2004, taking into account the objectives and relevant provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture.]]

9. DISPUTE RESOLUTION/SETTLEMENT⁵

9.1 Dispute settlement may[only] be initiated by the Provider or the Recipient[or a person duly appointed to represent the interests of third party beneficiaries under this Agreement][but acknowledging that this does not preclude the Governing Body from taking any action it deems appropriate if it considers that this Agreement has been breached].

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

⁵ There may be a need to consider *locus standi* for the Third Party Beneficiary in this Article.

[(new a) Interpretation: This Material Transfer Agreement may be interpreted based on the provisions of the Treaty, General Principles of Law and the decisions of the Governing Body.]

(a) Amicable dispute settlement: The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. If the dispute is not resolved within *** [days][months], either party may initiate mediation as provided in subparagraph (b) below.

(b) Mediation: If the dispute is not resolved by negotiation, the parties shall endeavour to settle the dispute by mediation through a neutral third party mediator, to be mutually agreed. If the dispute is not resolved within *** [days][months] from the referral to mediation, either party may[initiate][propose] arbitration as provided in subparagraph (c) below.

(c) Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted [by the agreement of both parties]for arbitration to [an arbitration body subject to the agreement of both parties]/[an arbitration mechanism of an international body[, such as the International Chamber of Commerce]]/[a Panel of Experts established by the Governing Body for this purpose][a Panel of Experts established jointly by an existing international arbitration mechanism and the Governing Body].[The result of such arbitration shall be binding on both parties.]

10. ADDITIONAL ITEMS

/Warranty

10.1 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 [all relevant][the Recipient nation's] quarantine and biosafety regulations and rules as to import or release of genetic material./

/Duration of Agreement

10.2 This Agreement shall remain in force[so long as the Treaty remains in force][unless terminated in accordance with Article 10.5[, Termination], recognising that the obligations and rights contained in Articles [...] shall survive the termination of this Agreement]./

Entire Agreement

10.3 [The provisions of this Agreement constitute the entire Agreement between the parties relating to the subject matter and the parties do not make representations or warranties except those contained in the Agreement][recognizing that obligations arising under this Agreement rest exclusively with the parties to this Agreement].

/Voluntary Payments

10.4 In the case that the Recipient commercializes a Product that is a plant genetic resource for food and agriculture that incorporates Material as referred to in Article 4.1 of this Agreement and where that Product is available without restriction to others for further research and breeding, the Recipient is encouraged to make [the payment specified in Article

7.10][voluntary payments] into the mechanism established by the Governing Body for this purpose[in accordance with the banking instructions set out in *Appendix 2* to this Agreement].]

[Termination

10.5 Notwithstanding Article 10.2, either party to this MTA may terminate this MTA with immediate effect by giving notice to the other party if that other party breaches any provision of this Agreement.]

11. [SIGNATURE/ACCEPTANCE][SIGNATURE]

Option 1

[Signed (*Provider*).....
On behalf of (*Providing Institution*)*
Date

Signed (*Recipient*).....
On behalf of (*Recipient Institution*)*
Date]

Option 2

[Acceptance and use of the Material constitutes acceptance of the terms and conditions of this Agreement]

Option 3

[The Material is provided expressly conditional on acceptance of the terms of this Agreement. Recipient’s acceptance of the Material constitutes acceptance of the terms of this Agreement.

Signatures: (*Optional, as may be required in some jurisdictions*).

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.....

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.....

* As appropriate.

*APPENDIX 1***[LIST OF PROVIDED MATERIALS]**

This Appendix contains a list of the Material provided under this Agreement, including the associated information referred to in Article 6.1b.

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, including the scientific name and any other appropriate designation (such as accession number)[and country of collection or primary provider of the Material], and
- other associated information, such as comprehensive written description, any identifiable agronomic trait and/or essential characteristic, and the form of Material provided (*e.g.* seed, fruit, leaves, budwood, tuber, *etc.*.)]

[All available passport data, and, subject to national law, any other associated, non-confidential descriptive information regarding the Material, provided under this Agreement, is hereby made available.]

APPENDIX 2**[PAYMENT OF BENEFIT-SHARING]**

[1.⁶ If a Recipient[, its affiliates, contractors, licensees, and lessees,] commercializes a Product or Products, then the Recipient shall pay][*** percent (***) of] the[Net Sales of the Product or Products][gross income resulting from the commercialized Product or Products obtained from the plant genetic resources in question]; 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 3 of this Agreement, or]

[(b) have been purchased or otherwise obtained from another person or entity who either has already paid royalties on the Product or Products or is exempt from the obligation to pay royalties pursuant to subparagraph (a) above, or]

[(c) are sold or traded as a commodity.]]

[2. The Recipient shall submit to the Governing Body, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth the[Gross income from] [Net 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, and the amount of the payment due[, in conformity with Articles 7.10 and 10.4].

3. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in (*specified currency*) for the account of (*the Trust Account or other mechanism established by the Governing Body in accordance with Article 19.3f of the Treaty*).]

⁶ [These options do not preclude the possibility of further options being proposed in *Appendix 2*.]

APPENDIX B

AGENDA, AS ADOPTED

1. Election of Vice-Chairs representing the Regions
2. Adoption of the agenda and timetable
3. General views on the first draft Standard Material Transfer Agreement
4. Consideration of the text of the first draft Standard Material Transfer Agreement
5. Further work
6. Other business
7. Adoption of the Report

¹ - The Contact Group Membership was established in accordance with its Terms of Reference, see Appendix C, which provide for Representatives nominated by the Chairs of the FAO Regional Groups, their Advisers and Representatives from specified International Organizations

APPENDIX C

TERMS OF REFERENCE FOR THE CONTACT GROUP FOR THE DRAFTING OF THE STANDARD MATERIAL TRANSFER AGREEMENT

Scope of the work

- To develop a draft of the Standard Material Transfer Agreement (MTA) referred to in Article 12.4 of the International Treaty, on the basis of the first draft prepared as described below, for submission to the first session of the Governing Body, for its consideration with a view to adoption, taking into account the report of the Expert Group on the Terms of the Standard MTA, with the guidance given in the report of the Second Meeting of the Interim Committee, as well as inputs from regional groups
- The whole process and the draft will be consistent with the International Treaty

Composition of the Contact Group

- Twelve countries per region or twelve representatives per region, depending on regional decisions, except for the North America and the South West Pacific regions, which will have six representatives each. A maximum of three advisers per country may be present in the meeting room, at any one time. Advisers will have no speaking rights. There should be a video link to make it possible for those advisers outside the room to follow the meeting of the Contact Group.

Chair of Contact Group

- The chair of the Expert Group shall be the chair of the Contact Group. There will be Vice-Chairs representing the regions. The Chair and the Vice-Chairs will constitute the Bureau.

Relevant Organizations to be invited

- The CGIAR is invited to nominate one representative to participate in his or her technical capacity in the work of the Contact Group.
- The CBD, WIPO and UPOV will be invited to send one representative each, to provide technical assistance at the request of the Contact Group.

Preparing the first draft of the standard MTA for consideration by the first meeting of the Contact Group

- The Secretariat of the Commission, with the support of the Legal Office, under the guidance and supervision of the chair of the Contact Group in consultation with the chairs of the regional groups and the chair of the Second Meeting of the Interim Committee, shall prepare the first draft of the Standard MTA, for consideration by the first meeting of the Contact Group.
- The draft text for the Standard MTA will be made available to members of the Contact Group, at least eight weeks before it meets.

Schedule for completion by the Contact Group of its functions

- The regional groups are requested to nominate their representatives on the Contact Group before the end of February 2005, so that the meeting(s) of the Contact Group may be held if possible, within the first half of 2005, subject to availability of

¹ - The Contact Group Membership was established in accordance with its Terms of Reference, see Appendix C, which provide for Representatives nominated by the Chairs of the FAO Regional Groups, their Advisers and Representatives from specified International Organizations

adequate extra-budgetary resources, especially to finance the participation of representatives of the Contact Group from developing countries.

- The Contact Group will report to the Governing Body at its first session.

APPENDIX D

LIST OF DOCUMENTS

Working Documents

CGRFA/IC/CG-SMTA-1/05/1	Draft Provisional Agenda and Time-table
CGRFA/IC/CG-SMTA-1/05/2	First draft Standard Material Transfer Agreement prepared by the Secretariat
CGRFA/IC/CG-SMTA-1/05/2 Add 1	Explanatory Notes on the first draft Standard Material Transfer Agreement prepared by the Secretariat
CGRFA/IC/CG-SMTA/1/05/3	Compilation of Comments Received on the First Draft Standard Material Transfer Agreement Prepared by the Secretariat

Information Documents

CGRFA/IC/CG-SMTA-1/05/Inf.1	Terms of Reference of the Contact Group
CGRFA/IC/CG-SMTA-1/05/Inf.2	List of documents
CGRFA/IC/CG-SMTA-1/05/Inf.3	Information note for Participants
CGRFA/IC/CG-SMTA-1/05/Inf.4	Statement of competences and voting rights submitted by the European Community and its Member States

Background Study Papers

Background Study Paper no. 25	International Arbitration
Background Study Paper no. 26	Methods of Expressing Acceptance of the Terms and Conditions of MTAs: Shrink-wrap and click-wrap agreements
Background Study Paper no. 27	Commercial Practice in the Use of Plant Genetic Resources for Food and Agriculture

Other documents

CGRFA/IC/MTA-1/04/Rep	Report on the outcome of the Expert group on the Terms of the Standard Material Transfer Agreement
CGRFA/MIC-2/04/Rep	Report of the second meeting of the Commission on Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture
CGRFA/IC/Inf.1	Vienna Convention on the Law of Treaties, Section 3: Interpretation of Treaties

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