

February 2006



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
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Organisation  
des  
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Unies  
pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

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### Items 3 and 4 of the Draft Provisional Agenda

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

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

**Alnarp, Sweden, 24-28 April 2006**

**FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT**

1. At its first meeting, the Contact Group for the Drafting of the Standard Material Transfer Agreement reviewed and amended a draft Standard Material Transfer Agreement prepared by the Secretariat. The outcome of that meeting was the *First Draft Standard Material Transfer Agreement*,<sup>1</sup> which is given in this document.
2. The Contact Group is invited to review and amend the *First Standard Material Transfer Agreement*, so that it may be forwarded to the first session of the Governing Body for its consideration and possible adoption.

<sup>1</sup> CGRFA/IC/CG-SMTA-1/05/REP, Appendix A.



## FIRST DRAFT 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”).*
- [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”:<sup>1</sup> 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;

(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.]]

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<sup>1</sup> This text could also be placed in Article 7.

## 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.

7.2<sup>2-3</sup> 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.]

[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.

<sup>2</sup> [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.]

<sup>3</sup> [“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.]

7.7 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/SETTLEMENT<sup>4</sup>

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:

[(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.

<sup>4</sup> There may be a need to consider *locus standi* for the Third Party Beneficiary in this Article.



(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.....

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\* 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.<sup>5</sup> 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*).]

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<sup>5</sup> [These options do not preclude the possibility of further options being proposed in *Appendix 2*.]

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

[1.<sup>6</sup> 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*).]

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