

Annex. 8. Sample of a Standard Material Transfer Agreement

Standard Material Transfer Agreement

PREAMBLE

WHEREAS

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;

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.

I 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.

** In the event that the SMTA is used for the transfer of Plant Genetic Resources for Food and Agriculture other than those listed in Annex I of the Treaty:*

The references in the SMTA to the “Multilateral System” shall not be interpreted as limiting the application of the SMTA to

Annex I Plant Genetic Resources for Food and Agriculture, and in the case of Article 6.2 of the SMTA shall mean “under this Agreement”;

The reference in Article 6.11 and Annex 3 of the SMTA to “Plant Genetic Resources for Food and Agriculture belonging to the same crop, as set out in Annex I to the Treaty” shall be taken to mean “Plant Genetic Resources for Food and Agriculture belonging to the same crop”.

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.

“Product” means Plant Genetic Resources for Food and Agriculture that incorporate 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.
- 4.3. The parties to this Agreement agree that (the entity designated by the Governing Body), 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) above do not prevent the Provider and the 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 periodically inform the Governing Body about the Material Transfer Agreements entered into, 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.

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 Resource for Food and Agriculture under Development to another person or entity, the Recipient shall:

5 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-00100 Rome, Italy

- 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 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 Material;
- 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.

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;
- 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 (the entity designated by the Governing Body), 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), representing the Governing Body and the Multilateral System, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the Provider and the Recipient under this Agreement.
- 8.3. The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the Provider and the Recipient, regarding their obligations in the context of this Agreement. Any information or samples so requested shall be provided by the Provider and the Recipient, as the case may be.
- 8.4. Any dispute arising from this Agreement shall be resolved in the following manner:
- a. Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
 - b. Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
 - c. Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

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

Duration of Agreement

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

ARTICLE 10 — SIGNATURE/ACCEPTANCE

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

Option 1 –Signature*

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

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

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

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

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

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

Option 3 – Click-wrap Standard Material Transfer Agreement*

I hereby agree to the above conditions.

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

Annex 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.
