

April 2005



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
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**

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

**Hammamet, 18-22 July 2005**

**FIRST DRAFT OF THE STANDARD MATERIAL TRANSFER AGREEMENT  
PREPARED BY THE SECRETARIAT**

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The documents for this meeting are available on Internet at [www.fao.org/ag/cgrfa/cgmta1](http://www.fao.org/ag/cgrfa/cgmta1).

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## INTRODUCTION

1. This draft Standard Material Transfer Agreement was by the Secretariat for the first meeting of the Contact Group on the Drafting of the Standard Material Transfer Agreement, in accordance with the terms of reference for the Contact Group.<sup>1</sup> It should be read in conjunction with the explanatory notes prepared by the Secretariat,<sup>2</sup> which set out the basis on which this text was prepared.

2. The draft Standard Material Transfer Agreement is based on the outputs of the Expert Group on the Terms of the Standard Material Transfer Agreement.<sup>3</sup> It should be noted that no attempt was made by the Expert Group to reach agreement on any particular option or options and that the report of the Expert Group simply listed the options identified.

3. Every attempt was made to include all options identified by the Expert Group in the draft Standard Material Transfer Agreement. It is to be noted that not all options are mutually exclusive and that some could be combined. The Expert Group identified a number of Articles in the Treaty that might need to be reflected within the Standard Material Transfer Agreement. All those identified have been included in the text, with the exception of Articles 6.1, 8, 12.6, 17.1 and 18.4f. The Contact Group may wish to consider how and where these Articles might be reflected in the Standard Material Transfer Agreement.

4. It should be noted that while this draft seeks to take full account of the Report of the Expert Group, it does not replace it.

5. On 23 February 2005, the Chairman of the Contact Group sent copies of the first draft Standard Material Transfer Agreement to the Chairs of the FAO Regional Groups, with a request for comments. Replies were received from two Regional Groups and eight individual countries. An analysis of these replies revealed that they contained a mixture of (1) comments on the first draft text, (2) proposals for new draft text, and (3) statements of the respondents' opinions and preferences. In view of the nature of the replies, it was very difficult for the Secretariat to make modifications to the text in a fair and equitable way. Moreover, it was not clear whether individual respondents wished their comments to be made public, and a number of respondents specifically stated that they did not want their comments to be made public. For this reason, no changes were made to the draft text.

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<sup>1</sup> 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.

<sup>2</sup> Document CGRFA/IC/CG-SMTA-1/05/2 Add.1, *Explanatory notes on the first draft Standard Material Transfer Agreement prepared by the Secretariat.*

<sup>3</sup> Document CGRFA/IC/MTA-1/04/Rep, *Report on the outcome of the Expert Group on the Terms of the Standard Material Transfer Agreement.*

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## FIRST DRAFT STANDARD MATERIAL TRANSFER AGREEMENT

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### 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 Treaty relates to plant genetic resources for food and agriculture and its objectives 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. Under the Treaty the Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers in all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world;
- 1d. Under the Treaty, the Contracting Parties recognize the sovereign rights of States over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation;
- 1e. Under the Treaty, the Contracting Parties, in the exercise of their sovereign rights, have agreed to establish a Multilateral System, which is efficient, effective and transparent, 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;
- 1f. The Multilateral System established by the Treaty covers the plant genetic resources for food and agriculture listed in *Annex I* to the Treaty that are under the management and control of the Contracting Parties and in the public domain, and any plant genetic resources for food and agriculture listed in *Annex I* that are included in the Multilateral System by other holders at the invitation of the Contracting Parties;
- 1g. The Multilateral System established by the Treaty also covers the plant genetic resources for food and agriculture listed in *Annex I* to the Treaty that are held in the *ex situ* collections of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research, as provided in Article 15.1a of the Treaty, and in other international institutions, in accordance with Article 15.5 of the Treaty.
- 1h. Under the Treaty, the Contracting Parties recognize that facilitated access to plant genetic resources for food and agriculture constitutes a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably. The Contracting Parties have also agreed that benefits shall be shared through the exchange of information, access to and transfer of technology, capacity building, and the sharing of the benefits arising from commercialization. The Contracting Parties have further agreed that the Standard Material

Transfer Agreement shall contain the provisions of Article 13.2d(ii) providing for the sharing of monetary benefits arising from commercialization.

1i. The Standard Material Transfer Agreement has been adopted by the Governing Body of the Treaty for use by Contracting Parties or natural or legal persons within the jurisdiction of a Contracting Party, and by International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other international institutions that have signed agreements with the Governing Body of the Treaty under Article 15 of the Treaty, when plant genetic resources covered by the Multilateral System of the Treaty are transferred.

## 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.

2.2 This Agreement is

BETWEEN: [**name and address of provider or providing institution**] (hereinafter referred to as “the Provider”),

AND: [**name and address of recipient or recipient institution**] (hereinafter referred to as “the Recipient”).

2.3 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;

“*Commercializes*” means the act of

Option 1

[selling, leasing or licensing a product for monetary consideration] **or**

Option 2

[offering a product for sale, as well as selling the product] **or**

Option 3

[offering for sale the product of a product, and all subsequent products, not just the seed alone] **or**

Option 4

[making a request for a plant genetic resource for food and agriculture in the Multilateral System, with a view to commercializing a product][, and shall not include the act of applying for an intellectual property right].

“*Product*” means

Option 1

[a plant variety, breeding line, breeding materials, genes, tissue or *in vitro* material, excluding grain] **or**

Option 2

[all harvested material] **or**

Option 3

[genes that could potentially be used as plant genetic resources for food and agriculture].

“*Incorporates*” means

Option 1

[physical incorporation of any part of a genotype from materials accessed from the Multilateral System into a product] **or**

Option 2

[incorporation of any part of genetic material accessed from the Multilateral System in a product, without taking into account the expression of a trait] **or**

Option 3

[incorporation of any part of genetic material accessed from the Multilateral System in a product that results in an expressed trait] **or**

Option 4

[incorporation of any part of genetic material accessed from the Multilateral System in a product that results in an expressed trait that is of value].

#### **4. SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT/ MATERIAL TO BE TRANSFERRED**

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 *Appendix 1* are hereby transferred from the Provider to the Recipient subject to the terms and conditions set out in this Agreement.

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**[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 provisions of the Treaty and in the light of its objectives.]

**6. RIGHTS AND OBLIGATIONS OF THE PROVIDER**

6.1 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.

[6.2 **Article 12.3h** *See Explanatory Notes*]

[6.3 **Article 13.2a** *See Explanatory Notes*]

[6.4 **Article 13.2b(i)** *See Explanatory Notes*]

[6.5 **Article 13.2b(iii)** *See Explanatory Notes*]

[6.6 **Article 12.4** *See Explanatory Notes*]

**7. RIGHTS AND OBLIGATIONS OF THE RECIPIENT**

[7.1 **Article 10.1** *See Explanatory Notes*]

7.2 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.

[7.3 **Article 12.3b** *See Explanatory Notes*]

[7.4 **Article 12.3c** *See Explanatory Notes*]

7.5 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.

[7.6 **Article 12.3f** *See Explanatory Notes*]

7.7 In the case that the Recipient conserves the Material supplied, the Recipient shall make the Material available under the Multilateral System using the Standard Material Transfer Agreement.

7.8 In the case that the Recipient transfers the Material supplied under this Agreement to another person or entity, the Recipient shall do so under the Standard Material Transfer Agreement.

[7.9 **Article 13.2** *See Explanatory Notes*]

[7.10 **Article 13.2b** *See Explanatory Notes*]

[7.11 **Article 13.2c** *See Explanatory Notes*]

[7.12 **Article 13.2d(i)** *See Explanatory Notes*]

[7.13 **Article 13.2d(ii)** *See Explanatory Notes*]

7.14 In the case that the Recipient commercializes a product that is a plant genetic resource for food and agriculture that incorporates genetic material supplied under this Agreement and where that product is not available without restriction to others for further research and breeding, the Recipient shall pay [*See Explanatory Notes*] 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.

7.15 In the case that the Recipient commercializes a product that is a plant genetic resource for food and agriculture that incorporates genetic material supplied by the Provider under 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 the preceding paragraph 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.

7.16 A product is considered to be available without restriction to others for further research and breeding when

Option 1

[it is in the public domain, protected by Plant Variety Protection, or protected by a patent system and made available through royalty-free licences] **or**

Option 2

[it is not protected by any intellectual property rights] **or**

Option 3

[national legislation does not prohibit a commercialized new material being made available to others for further research and breeding] **or**

Option 4

[a product can be used for research and breeding without any legal or contractual obligations that would preclude using it or any future product in the manner specified by 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] **or**

Option 5

[a product can be used for research and breeding without any legal or contractual obligations, or biotechnological or technological restrictions, that would preclude using it or any future product in the manner specified by 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. Legal restrictions would include patents granted in legal systems without a research or breeder's exemption and other intellectual property rights restricting the availability of the product that is a plant genetic resource for food and agriculture to others for further research and breeding.] **or**

Option 6

[it is accessed free of charge or, if a fee is charged, the payment does not exceed the minimum cost necessary to effect that access].

[7.17 **Article 12.6** *See Explanatory Notes*]

## **8. INTERPRETATION (APPLICABLE LAW/JURISDICTION)**

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

## **9. DISPUTE RESOLUTION/SETTLEMENT**

9.1 Dispute settlement may

Option 1

[only be initiated by the Provider or the Recipient] **or**

Option 2

[be initiated by the Provider, the Recipient or any interested natural or legal person] **or**

Option 3

[be initiated by the Provider, the Recipient or a person duly appointed to represent the interests of third party beneficiaries under this Agreement].

9.2 Any dispute arising from this Agreement shall

Option 1

[be resolved in the following manner:

(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 arbitration as provided in subparagraph (c) below.

(c) Arbitration: If the dispute has not been resolved by mediation, the dispute will be submitted for arbitration to

Option 1

[the arbitration mechanism of the International Chamber of Commerce] **or**

Option 2

[the arbitration mechanism of [*other international body*]] **or**

Option 3

[a Panel of Experts established by the Governing Body for this purpose] **or**

Option 4

[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.] **or**

Option 2

[be resolved through recourse to the national courts in the country of the [Recipient] **or** [Provider].]

[9.3 **Article 21** *See Explanatory Notes*]

[9.4 **Article 22** *See Explanatory Notes*]

## **10. ADDITIONAL ITEMS**

### **Warranty**

10.1 The Provider makes no warranties as to the safety or title of 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 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.

**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.

**[Guarantor**

10.4 *See Explanatory Notes]*

**[Following the Material**

10.5 *See Explanatory Notes]*

**[Return of Sample to Provider**

10.6 *See Explanatory Notes]*

**11. SIGNATURE/ACCEPTANCE**

Option 1

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

Date ..... Date .....]

**or**

Option 2

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

Option 3

[*See Explanatory Notes]*

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\* As appropriate.

*APPENDIX 1*

[**COMMENT:** The Expert Group on the Terms of the Standard Material Transfer Agreement recognised that this would need to cover the list of accessions to which the Agreement applied and any relevant associated information.]

***APPENDIX 2***

[COMMENT: *Appendix 2* to the Standard Material Transfer Agreement would state the terms and means of payment (banking details, *etc.*), and provide for further information required at the time of payment, including the name of the payer and the motive for payment.]