



**New Model Law on
The Management of
Plant Genetic Resources for
Food and Agriculture**

September 2009

Part I - Scope and objectives

Article 1 - Preliminary

This Law may be cited as the Plant Genetic Resources for Food and Agriculture Law, 200_ (herein referred to as the “Law”) and shall come into force on such date as the _ may, by publication in the Official Gazette, appoint, provided that the _ may appoint different dates for different provisions of the Law.

Article 2 - Scope

(1) This Law shall apply to all plant genetic resources for food and agriculture in _ provided that, for plant genetic resources for food and agriculture acquired from other countries under mutually agreed terms, this Law shall apply consistent with such mutually agreed terms, in accordance with applicable international agreements.

(2) This Law shall not restrict traditional systems of access, use or exchange of plant genetic resources for food and agriculture, knowledge and technologies by local communities, including the rights of farmers to save, sell and exchange seeds according to customary practice in the _.

(3) This Law shall not limit the exchange of plant genetic resources for food and agriculture held *ex situ* by international institutions in trust in accordance with Article 15 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

(4) This Law shall apply to all persons, with no distinction between persons that are nationals of the _ or foreign jurisdictions.

(5) This Law shall apply and be administered in conjunction with all applicable national legislation of _.

(6) This Law shall apply and be administered in conjunction with all applicable international obligations of _, including, but not limited to the International Treaty on Plant Genetic Resources for Food and Agriculture and the Convention on Biological Diversity.

Article 3 - Objectives

The objectives of this Law are:

(a) to promote the conservation and sustainable use of plant genetic resources for food and agriculture;

(b) to promote facilitated access to plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use;

(c) to protect farmers' rights related to Plant Genetic Resources for Food and Agriculture.

Part II - Definitions

Article 4 - Definitions

In this Law, unless the context otherwise requires,

“Access” means the acquisition and transfer of plant genetic resources for food and agriculture, including associated information, from *ex situ* or *in situ* conditions and “to access” shall have the same meaning.

“Authority” means the authority designated by this Law as the autonomous entity responsible for implementing this Law.

“Benefit-Sharing” means the fair and equitable sharing of the benefits arising from the access and utilization, whether for commercial purposes or otherwise, of plant genetic resources for food and agriculture.

“Collecting Permit” shall mean a written permit issued by the Authority, granting permission to the permit holder to collect the plant genetic resources for food and agriculture specified in the permit from *in situ* conditions and setting out the terms and conditions under which the collection shall be carried out.

“Commercial Purpose” means the use or exploitation of plant genetic resources for food and agriculture, their progeny or derivatives, with the object of, or resulting in, financial gain, including but not limited to the following activities: sale; commencing product development; conducting market research; seeking pre-market approval; applying for, obtaining or transferring intellectual property rights, or other tangible or intangible rights, by sale or license or in any other manner.

“Commercial Material Transfer Agreement” means an agreement entered into between the person seeking access and the Authority setting out the terms and conditions under which access to plant genetic resources for food and agriculture is granted, including requirements for benefit-sharing, when such access is intended directly or indirectly for commercial purpose.

“*Ex situ*” means situations where plant genetic resources for food and agriculture exist outside their natural habitats or farming systems.

“Genetic Material” means any material, including reproductive and vegetative propagating material, containing functional units of heredity.

“*In situ*” mean situations where plant genetic resources for food and agriculture exist within ecosystems, natural habitats or farming systems.

“Intellectual Property Rights” means all patents, plant breeder's rights, trade secrets, copyrights, trademarks, designs, brand names and logos and all goodwill associated therewith; all applications and patents in any jurisdiction pertaining to the foregoing; and

the acts of applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights, by sale or license or in any other manner.

“International Treaty” means the International Treaty on Plant Genetic Resources for Food and Agriculture, which was open for signature on 3 November 2001 and entered into force on 29 June 2004.

“Material Transfer Agreement” means an agreement entered into between the Authority and the person requesting access to the plant genetic resources for food and agriculture specified in the agreement, in which the obligations of the parties are specified.

“Minister” means the Minister to whom responsibility for the implementation of this Law has been assigned under Article _.

“Multilateral System” means the multilateral system of access and benefit sharing for plant genetic resources for food and agriculture established by Part IV of the International Treaty.

“Non-Commercial Purpose” means the use of plant genetic resources for food and agriculture, their progeny or derivatives, for purposes other than financial gain, including but not limited to the following activities: academic, educational, research, scientific or taxonomic activities.

“Non-Commercial Material Transfer Agreement” means an agreement entered into between the Authority and the person seeking access setting out the terms and conditions under which access to plant genetic resources for food and agriculture is granted, including requirements for non-monetary benefit-sharing, when such access is intended for non-commercial purpose.

“Permit Holder” means any person who has been granted a collecting permit for the purpose of obtaining access to plant genetic resources for food and agriculture in *in situ* conditions.

“Person” means a natural person or any legal entity, institution, company, partnership, corporation, organization, government, governmental department, inter-governmental agency, international entity or association.

“Plant Genetic Resources Committee” means the national committee established under article 7 of this Law.

“Plant Genetic Resource(s) for Food and Agriculture” means any genetic material of plant origin of actual or potential value for food and agriculture.

“Recipient” means any person who has been granted access to plant genetic resources for food and agriculture under a material transfer agreement.

“Standard Material Transfer Agreement” means the Standard Material Transfer Agreement adopted by the Governing Body of the International Treaty for the transfer of plant genetic resources for food and agriculture under the Multilateral System, the text of which is reproduced in Schedule _ to this Law.

“Traditional Knowledge, Innovations and Practices” means knowledge, understanding, practices, technologies and innovations created, developed or maintained by farmers and

local communities related to conservation and use of plant genetic resources for food and agriculture.

Part III - Administration

Article 5 - Minister responsible for the implementation of the Law

- (1) The [Minister of Agriculture] shall be responsible for the implementation of this Law.
- (2) The Minister may make, amend, or revoke regulations, orders, schedules or notices which he/she considers appropriate to give effect to any of the purposes of this Law.
- (3) In particular and without precedence to the generality of Article 5 (2), the Minister may by ministerial decree, in accordance with this Law:
 - (a) amend any schedules to this Law;
 - (b) make any other regulations, orders, schedules, or notices prescribing all or any of the following matters:
 - (i) procedures to be followed by the Authority in the exercise of its powers under this Law;
 - (ii) the composition and size of the Authority and the scope of the powers of the Authority to enforce the purposes of the Law;
 - (iii) any matter relating to the funds, finance, administration and management of the Authority;
 - (iv) any matter necessary for better carrying out the functions of such Authority;
 - (v) the process by which a person may apply for access to plant genetic resources for food and agriculture;
 - (vi) the procedures by which collecting permits and material transfer agreements shall be issued under this Law;
 - (vii) the procedures to be followed for lodging an appeal against actions taken by the Authority under this Law; and
 - (viii) additional measures to be taken for the purpose of protecting plant genetic resources for food and agriculture.

Article 6 - The Authority

- (1) The _ shall be responsible for carrying out the functions assigned to the Authority under this Law, as may be further specified by ministerial decree.
- (2) The functions of the Authority are to:

(a) design and implement policies and programmes, including training and other capacity building programmes, in pursuance of the national objectives regarding the conservation and sustainable use of plant genetic resources for food and agriculture, on the advice of the Plant Genetic Resources Committee;

(b) develop periodic reports on the status of plant genetic resources for food and agriculture in _;

(c) co-ordinate the activities of the Authority with those of other agencies concerned with the conservation and sustainable use of plant genetic resources for food and agriculture under this Law or under any other law for the time being in force, which is related to the objectives of this Law;

(d) implement the provisions of this Law regarding collection of and access to plant genetic resources for food and agriculture, including:

(i) receiving applications for collecting permits and access;

(ii) considering and deciding upon applications for access to plant genetic resources for food and agriculture in the Multilateral System;

(iii) forwarding applications for collecting permits, and access to plant genetic resources for food and agriculture outside of the Multilateral System to the Plant Genetic Resources Committee;

(iv) issuing collecting permits upon decision of the Plant Genetic Resources Committee;

(v) entering into Standard Material Transfer Agreements with recipients;

(vi) entering into material transfer agreements, other than the Standard Material Transfer Agreement, with recipients upon decision of the Plant Genetic Resources Committee;

(vii) implementing, monitoring and enforcing the terms and conditions of material transfer agreements;

(viii) maintaining up to date and publicly available records of all collecting permits issued and material transfer agreements concluded under this Law;

(ix) ensuring consultation with stakeholders in the implementation of this Law, and promoting their participation in programmes and activities for the conservation and sustainable use of plant genetic resources for food and agriculture; and

(x) facilitating the participation of _ in the sharing of information under the International Treaty.

(e) enforce the provisions of this Law.

(3) The Minister may, by ministerial decree, designate a different body to serve as the Authority.

Article 7 – Plant Genetic Resources Committee

- (1) A Plant Genetic Resources Committee is hereby established, to consist of –
 - (a) five staff members of the [Ministry of Agriculture], including the Head of the Authority; and
 - (b) a representative of each of the following:
 - [(i) the Ministry responsible for the environment;]
 - (ii) the National Plant Protection Organization;
 - (iii) an institution of public or private higher education;
 - (iv) an institution of public agricultural research;
 - (v) an association of plant breeders;
 - (vi) an association of farmers;
 - (vii) local farming communities.
- (2) When considering applications for collecting permits and access to plant genetic resources for food and agriculture under the management of farmers or local communities, the Plant Genetic Resources Committee shall invite representatives of such farmers and/or local communities to attend its meetings, to present their views and to express their consent or dissent, as appropriate. Such representatives shall not be considered as members of the Plant Genetic Resources Committee for the purposes of this Law.
- (3) Members of the Plant Genetic Resources Committee shall be nominated by their respective Minister or president/chair, and appointed by the Minister.
- (4) Members shall serve for a period of three years and shall be eligible for reappointment.
- (5) No member of the Plant Genetic Resources Committee shall take part in decisions of the Committee on any matter in which he/she has a financial interest.
- (6) The quorum at a meeting of the Plant Genetic Resources Committee shall be at least one half of the membership.
- (7) The Plant Genetic Resources Committee shall meet at least three times per year.
- (8) The Plant Genetic Resources Committee shall elect a Chair at its first meeting, which shall take place within three months of this Law coming into force.
- (9) The Plant Genetic Resources Committee shall:
 - (i) advise the Minister on all policy matters related to plant genetic resources for food and agriculture in _ and on coordination with national policies relating to other genetic resources;
 - (ii) advise the Minister on matters relating to international cooperation for the conservation and sustainable use of plant genetic resources for food and agriculture;
 - (iii) consider the reports under Article 6 (2) (b) of this Law and advise the Minister on actions to be taken;

(iv) advise the Minister on regulations, orders, decrees, schedules or notices accompanying this Law and in particular on matters related to the powers and functioning of the Authority and the procedures for the issuing of collecting permits and the conclusion of material transfer agreements;

(v) provide the Authority with guidance on the implementation of Articles 8 and 9 of this Law; and

(vi) designate a National Focal Point for the implementation of the International Treaty.

(10) The Plant Genetic Resources Committee shall consider and decide upon applications for collecting permits, and access to plant genetic resources for food and agriculture outside of the Multilateral System.

Part IV

Conservation and sustainable use of plant genetic resources for food and agriculture

Article 8 - Conservation of plant genetic resources for food and agriculture

The Authority, taking into account the guidance of the Plant Genetic Resources Committee and in collaboration with other bodies as appropriate, shall develop programmes and activities with the aim of:

(a) surveying and carrying out inventories of plant genetic resources for food and agriculture in __, including those that are of potential use and, as feasible, assessing any threats to them, and promoting the collection of plant genetic resources for food and agriculture that are under threat or are of potential use;

(b) minimizing, or if possible, eliminating threats to plant genetic resources for food and agriculture;

(c) promoting *in situ* conservation of plant genetic resources for food and agriculture, by supporting, *inter alia*, the efforts of local communities;

(d) contributing to the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation; and

(e) promoting and supporting, as appropriate, farmers' and local communities' efforts to manage and conserve plant genetic resources for food and agriculture.

Article 9 – Sustainable use of plant genetic resources for food and agriculture

The Authority, taking into account the guidance of the Plant Genetic Resources Committee and in collaboration with other bodies as appropriate, shall develop programmes and activities with the aim of:

- (a) promoting, as appropriate, plant breeding efforts that, with the participation of farmers, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;
- (b) promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and under utilized species; and
- (c) reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

Part V - Farmers' rights

Article 10 – Protection and promotion of farmers' rights

- (1) The State recognizes and protects the rights of farmers and local communities to their traditional knowledge, innovations and practices.
- (2) Farmers and local communities shall have the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture, including through mechanisms to be established by the Authority.
- (3) Farmers and local communities shall have the right to equitably participate in the sharing of benefits arising from the utilization of plant genetic resources for food and agriculture, including through mechanisms to be established by the Authority.

Article 11 - Protection of farmers' plant varieties

- (1) The Authority shall develop a scheme for the protection of farmers' plant varieties, including measures to compensate concerned farmers for the use without their consent of farmers' plant varieties in the development of plant varieties that are protected by intellectual property rights under national law.
- (2) Regulations accompanying this Law shall specify the procedures for implementation of the scheme under paragraph (1) above.

Part VI – Access to and collection of plant genetic resources for food and agriculture

Article 12 – Implementation of the Multilateral System

(1) The Plant Genetic Resources Committee, on the recommendation of the Authority, shall determine which plant genetic resources for food and agriculture in ___ of crops listed in Annex 1 to the International Treaty, as reproduced in Schedule 1 to this Law, are under the management and control of the government of _ and in the public domain and, as such, fall within the scope of the Multilateral System. The Plant Genetic Resources Committee shall compile and disseminate information on those plant genetic resources for food and agriculture in the Multilateral System.

(2) The Authority shall implement such measures as the Plant Genetic Resources Committee may decide to encourage persons within the jurisdiction of ___ who hold plant genetic resources for food and agriculture listed in Annex 1 to the International Treaty to include such plant genetic resources for food and agriculture in the Multilateral System.

(3) The Authority shall in particular encourage persons who are holder of plant genetic resources for food and agriculture to deposit samples of such plant genetic resources for food and agriculture in the national gene bank in accordance with a model deposit agreement in the prescribed form.

Article 13 – General principles

(1) Access to plant genetic resources for food and agriculture shall be subject to the conclusion of a material transfer agreement

(2) In the case of access to plant genetic resources for food and agriculture under the Multilateral System, access shall be granted by the Authority subject to the conclusion of the Standard Material Transfer Agreement.

(3) In the case of access to plant genetic resources for food and agriculture outside of the Multilateral System, access shall be subject to the conclusion of a commercial or non-commercial material transfer agreement, depending on the purpose for which access is being sought, between the Authority and the person requesting such access, setting out the terms and conditions, including benefit sharing, of such access.

(4) The collecting of all plant genetic resources for food and agriculture from *in situ* conditions shall be subject to the issuing of a collecting permit by the Authority.

Article 14 - Applications for access plant genetic resources for food and agriculture

(1) All applications for access to plant genetic resources for food and agriculture shall be made to the Authority in the prescribed form and shall indicate whether the application is made under the Multilateral System or outside the Multilateral System. In cases of applications for access to plant genetic resources for food and agriculture outside of the

Multilateral System, the application shall specify whether access is requested for commercial or for non-commercial purposes.

(2) The Authority may request an applicant to furnish such additional particulars as it may consider necessary.

(3) The Authority shall respond to requests for access within a reasonable time. If the decision of the Plant Genetic Resources Committee is to deny access, whenever possible the reasons shall be given in writing to the person requesting access, and, where appropriate, an opportunity shall be given to modify the application.

(4) The Authority may require payment by the applicant of a fee with respect to the processing of the application, the amount of which shall be determined by the Minister.

(5) Any information submitted by the person requesting access during the application process shall be public and may be consulted by any interested person, unless the Authority has granted confidential treatment, upon acceptable justification, to information submitted by the applicant, which could otherwise be used otherwise be divulged to and used by third parties for unfair commercial advantage.

Article 15 - Access to plant genetic resources for food and agriculture under the Multilateral System

(1) Applications for access to plant genetic resources for food and agriculture under the Multilateral System shall be considered by the Authority. In cases where the Authority determines that the application is for plant genetic resources for food and agriculture within the Multilateral System under Article 12, paragraphs (1) or (2) as the case may be, of this Law and is for the purposes specified in paragraph (3) below, the Authority shall grant access by concluding the Standard Material Transfer Agreement with the person requesting access.

(2) For access to plant genetic resources for food and agriculture under the Multilateral System and maintained in *ex situ* collections held by persons other than the Authority who have voluntarily included them into the Multilateral System, the Authority may delegate authority to conclude the Standard Material Transfer Agreement to the holder of that collection, subject to the conditions and limitations set forth in this Law.

(3) Access under the Multilateral System shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purposes not include chemical, pharmaceutical or other non-food / feed industrial uses, in accordance with the International Treaty.

(4) In deciding on applications for access under the Multilateral System to multiple-use crops (food and non-food), their importance for food security should be the determinant for granting access under the Multilateral System.

Article 16 - Access to plant genetic resources for food and agriculture outside of the Multilateral System

(1) Applications for access to plant genetic resources for food and agriculture outside of the Multilateral System shall be referred by the Authority to the Plant Genetic Resources Committee for consideration and decision.

(2) Where the Plant Genetic Resources Committee approves an application for access to plant genetic resources for food and agriculture for non-commercial purposes, the Committee shall authorize the Authority to conclude a non-commercial material transfer agreement with the person requesting access setting out the terms and conditions for access, including non-monetary benefit sharing.

(3) The non-commercial material transfer agreement shall provide that the plant genetic resources for food and agriculture shall not be used for commercial purposes, nor transferred by the recipient to any person without prior written consent of the Authority.

(4) The non-commercial material transfer agreement shall be in the form set out in Schedule _ to this Law and may contain such other particulars, including terms and conditions for non-monetary benefit-sharing, as the Plant Genetic Resources Committee may specify on a case-by-case basis after negotiations with the person requesting access.

(5) Notwithstanding the provisions of paragraphs (3) and (4) above, the Plant Genetic Resources Committee may authorize the Authority to make plant genetic resources for food and agriculture outside of the Multilateral System available to institutions with which agreements have been concluded under Article 18 of this Law on terms and conditions that would allow the receiving institution to make the plant genetic resources for food and agriculture further available to others under the Standard Material Transfer Agreement. Whether or not the Plant Genetic Resources Committee chooses to exercise its powers under this paragraph shall be a matter within the discretion of the Committee, to be decided on a case by case basis in light of the type of crop concerned and the content of the agreements between the Authority and the institutions concerned.

(6) If at any time subsequent to access to the plant genetic resource for food and agriculture under paragraph (2) above there exists or arises the potential for commercialization of the plant genetic resources for food and agriculture or any derivative, the person who accessed such material pursuant to non-commercial material transfer agreement shall notify the Authority of such potential, and, if the person desires to pursue such possible commercialization, the person shall request access under a commercial material transfer agreement as set out in paragraph (8) below.

(7) Where the Plant Genetic Resources Committee approves an application for access to plant genetic resources for food and agriculture for commercial purposes, the Committee shall authorize the Authority to conclude a commercial material transfer agreement with the person requesting access setting forth the terms and conditions for access, including monetary benefit sharing.

(8) The commercial material transfer agreement shall be in the form set out in Schedule _ to this Law and may contain such other particulars, including terms and conditions for benefit-sharing, as the Plant Genetic Resources Committee may specify on a case-by-case basis after negotiations with the person requesting access.

(9) A material transfer agreement concluded under this Article may be terminated by the Authority, upon recommendation of the Plant Genetic Resources Committee, in case of provision of false information in the application or substantial non-performance by the recipient of his/her obligations under the material transfer agreement.

Article 17 – Collecting permits

(1) All applications for the collecting of plant genetic resources for food and agriculture in *in situ* conditions shall be made to the Authority in the prescribed form. The provisions of paragraphs from (2) to (5) of Article 14 of this Law shall apply to applications for the collecting of plant genetic resources for food and agriculture in *in situ* conditions.

(2) Applications for the collecting of plant genetic resources for food and agriculture in *in situ* conditions shall be referred by the Authority to the Plant Genetic Resources Committee for consideration and decision.

(3) The Authority shall publish all applications for collecting permits in such form as the Authority deems appropriate and shall provide an opportunity for any interested person or local community to comment on such applications prior to the decision of the Plant Genetic Resources Committee.

(4) In deciding on applications for the collecting of plant genetic resources for food and agriculture in *in situ* conditions, the Plant Genetic Resources Committee shall:

- (a) respect the rights and customary practices of farmers and local communities;
- (b) respond to requests by local communities for additional information to the extent feasible; and
- (c) where applicable, obtain the consent of the concerned farmers and local communities.

(5) In cases where the Plant Genetic Resources Committee approves an application for the collecting of plant genetic resources for food and agriculture in *in situ* conditions, the Committee shall authorize the Authority to issue a collecting permit with the person requesting the collection.

(6) The collecting permit shall be in the form set out in Schedule _ to this Law and shall provide that:

- (a) the collecting activity shall not endanger the plant genetic resource for food and agriculture collected, or the environment;
- (b) the collecting activities be undertaken in a manner respecting the customary rights and practices of farmers and local communities;
- (c) a sample of each plant genetic resource for food and agriculture collected *in situ* by the permit holder be deposited with the Authority, together with full field information;
- (d) a person or persons designated by the Authority be allowed to accompany the collecting mission at all times;

- (e) the Authority be allowed to inspect the plant genetic resources for food and agriculture collected at any reasonable time; and
- (f) such other particulars as the Plant Genetic Resources Committee may specify on a case-by-case basis, including as appropriate:
 - (i) the purpose for collection;
 - (ii) the type and quantity of plant genetic resources for food and agriculture collected; and
 - (iii) the duration of the collecting mission.

(7) The collecting permit shall allow such collecting activities to be carried out with respect to such plant genetic resources for food and agriculture as specified in the permit.

(8) A collecting permit shall not provide rights of access to the plant genetic resources for food and agriculture specified in the permit or obviate the requirements for a material transfer agreement where such access is being sought.

(9) The Authority, upon recommendation of the Plant Genetic Resources Committee, may cancel a collecting permit in the following cases:

- (a) where the permit holder has failed to comply with the terms of the collecting permit;
- (b) where there is evidence that the collecting is being carried out in such a way as to cause significant damage to the rights of the farmers and local communities or the environment.

(10) Any cancellation of a collecting permit shall be notified forthwith to the permit holder, who may appeal the decision to the Minister, whose decision shall be final.

Article 18 – Agreements with institutions

(1) The Authority, upon recommendation of the Plant Genetic Resources Committee, may conclude agreements with:

- (a) universities and research institutions domiciled in _; and
- (b) international and regional institutions competent in plant genetic resources for food and agriculture.

(2) Such agreements may provide for:

- (a) the participation of such institutions in programs for the conservation and sustainable use of plant genetic resources for food and agriculture in _ and in capacity building;
- (b) arrangements to facilitate the collecting of and access for non-commercial purposes to plant genetic resources for food and agriculture;

provided that such arrangements are consistent with the objectives of this Law.

Article 19- Responsibilities of applicants, recipients and permit holders

(1) All applicants, recipients and permit holders shall abide by the relevant laws of _ , particularly those regarding export, phytosanitary control, biosafety and the protection of the environment.

(2) Subject to this Law, no person shall:

(a) collect plant genetic resources for food and agriculture in *in situ* conditions without a valid collecting permit issued by the Authority;

(b) access plant genetic resources for food and agriculture, including associated information, from *in situ* or *ex situ* conditions without a material transfer agreement concluded with the Authority;

(c) provide false information in the application for the collecting or access to plant genetic resources for food and agriculture, or during the course of the subsequent monitoring of collection or access;

(d) transfer or sell the collecting permit or the material transfer agreement to any other person; or

(e) violate or contravene the terms of any applicable collecting permit or material transfer agreement.

Part VII - Enforcement

Article 20 – Offences and Penalties

Any Person who contravenes any provisions of this Law shall be guilty of an offence and shall be subject to penalties that may include:

(a) written warning;

(b) fines;

(c) cancellation of the collecting permit;

(d) suspension of commercialization of any product or process;

(e) confiscation and forfeiture of collected plant genetic resources for food and agriculture, equipment; or any thing used in the perpetration of the offence;

(f) permanent ban from the collecting or access to plant genetic resources for food and agriculture in _.

Schedule No 1

Crops Included in Annex 1 to the International Treaty

<u>Schedule No 2</u>	Standard Material Transfer Agreement
<u>Schedule No 3</u>	Non-Commercial Material Transfer Agreement
<u>Schedule No 4</u>	Commercial Material Transfer Agreement
<u>Schedule No 5</u>	Collecting Permit

SCHEDULE NO 1

CROPS INCLUDED IN ANNEX 1 TO THE INTERNATIONAL TREATY

FOOD CROPS

Crop	Genus	Observations
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica</i> et al.	Genera included are: <i>Brassica</i> , <i>Armoracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Diplotaxis</i> , <i>Eruca</i> , <i>Isatis</i> , <i>Lepidium</i> , <i>Raphanobrassica</i> , <i>Raphanus</i> , <i>Rorippa</i> , and <i>Sinapis</i> . This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species <i>Lepidium meyenii</i> (maca) is excluded.
Pigeon Pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Genera <i>Poncirus</i> and <i>Fortunella</i> are included as root stock.
Coconut	<i>Cocos</i>	
Major aroids	<i>Colocasia</i> , <i>Xanthosoma</i>	Major aroids include taro, cocoyam, dasheen and tannia.

Carrot	<i>Daucus</i>	
Yams	<i>Dioscorea</i>	
Finger Millet	<i>Eleusine</i>	
Strawberry	<i>Fragaria</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</i>	
Grass pea	<i>Lathyrus</i>	
Lentil	<i>Lens</i>	
Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only
Banana / Plantain	<i>Musa</i>	Except <i>Musa textilis</i>
Rice	<i>Oryza</i>	
Pearl Millet	<i>Pennisetum</i>	
Beans	<i>Phaseolus</i>	Except <i>Phaseolus polyanthus</i>
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	Section <i>tuberosa</i> included, except <i>Solanum phureja</i>
Eggplant	<i>Solanum</i>	Section <i>melongena</i> included
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum</i> et al.	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i>
Faba Bean / Vetch	<i>Vicia</i>	

Cowpea et al.	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> , and <i>Zea luxurians</i>

FORAGES

Genera	Species
LEGUME FORAGES	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>
<i>Canavalia</i>	<i>Ensiformis</i>
<i>Coronilla</i>	<i>Varia</i>
<i>Hedysarum</i>	<i>Coronararium</i>
<i>Lathyrus</i>	<i>cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>Viciifolia</i>
<i>Ornithopus</i>	<i>Sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>Phaseoloides</i>
<i>Trifolium</i>	<i>alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum,</i>

	<i>vesiculosum</i>
GRASS FORAGES	
<i>Andropogon</i>	<i>Gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinaeea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pretense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
OTHER FORAGES	
<i>Atriplex</i>	<i>halimus, nummularia</i>
<i>Salsola</i>	<i>vermieulata</i>

SCHEDULE NO 2

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**”)¹ 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.

¹ *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.

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.

***Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate.

“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 incorporate² the **Material** or any of its genetic parts or components thereof 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**.³

² As evidenced, for example, by pedigree or notation of gene insertion.

³ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

4.3 The parties to **this Agreement** agree that (*the entity designated by the **Governing Body***),⁴ 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.⁵

⁴ *Note by the Secretariat*: by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”.

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

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:

- 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.

(*List*)

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products**, then the **Recipient** shall pay one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%); except that no payment shall be due on any **Product** or **Products** that:

- (a) are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**;
- (b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the **Product** or **Products** or is exempt from the obligation to make payment pursuant to subparagraph (a) above;
- (c) are sold or traded as a commodity.

2. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

- (a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;
- (b) the amount of the payment due; and
- (c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in United States Dollars (US \$) for the account of the Trust Account or other mechanism established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**. The details of the Trust Account are as follows:

FAO Trust Fund (USD) (GINC/INT/031/MUL, IT-PGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,
Account No. 000156426⁶

⁶ *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the Governing Body at its First Session (*Appendix E* to IT/GB-1/06/ Report).

Annex 3

**TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS SCHEME
UNDER ARTICLE 6.11 OF THIS AGREEMENT**

1. The discounted rate for payments made under Article 6.11 shall be zero point five percent (0.5 %) of the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belong.
2. Payment shall be made in accordance with the banking instructions set out in paragraph 4 of *Annex 2* to **this Agreement**.
3. When the **Recipient** transfers **Plant Genetic Resources for Food and Agriculture under Development**, the transfer shall be made on the condition that the **subsequent recipient** shall pay into the mechanism established by the **Governing Body** under Article 19.3f of the **Treaty** zero point five percent (0.5 %) of the **Sales** of any **Product** derived from such **Plant Genetic Resources for Food and Agriculture under Development**, whether the **Product** is **available or not without restriction**.
4. At least six months before the expiry of a period of ten years counted from the date of signature of **this Agreement** and, thereafter, six months before the expiry of subsequent periods of five years, the **Recipient** may notify the **Governing Body** of his decision to opt out from the application of this Article as of the end of any of those periods. In the case the **Recipient** has entered into other Standard Material Transfer Agreements, the ten years period will commence on the date of signature of the first Standard Material Transfer Agreement where an option for this Article has been made.
5. Where the **Recipient** has entered or enters in the future into other Standard Material Transfer Agreements in relation to material belonging to the same crop[s], the **Recipient** shall only pay into the referred mechanism the percentage of sales as determined in accordance with this Article or the same Article of any other Standard Material Transfer Agreement. No cumulative payments will be required.

Annex 3

**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE
PAYMENTS SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (*full name of **Recipient** or **Recipient's authorised official***) declare to opt for payment in accordance with Article 6.11 of **this Agreement**.

Signature.....

[
SCHEDULE NO 3

NON-COMMERCIAL MATERIAL TRANSFER AGREEMENT

NON-COMMERCIAL MATERIAL TRANSFER AGREEMENT

Pursuant to the _Law, _ and the terms of this Material Transfer Agreement (“Agreement”), the Authority, [on behalf of _], provides to _____ (hereinafter “Recipient”) the plant genetic resources for food and agriculture described below (hereinafter “Material”) in connection with Recipient’s request for access.

[This Agreement shall be read in conjunction with the Collecting Permit for the collecting of plant genetic resources for food and agriculture in *in situ* conditions that is attached here to for ease of reference].

All terms not otherwise defined herein shall have the meaning set forth in the _Law, _.

The Material accessed shall be (include Latin name and local name, if known): _____

The Material will be used solely for scientific research and/or educational purposes, namely: _____

[A copy of any relevant project proposal, as initialed by the Authority and the Recipient, is attached to this Agreement and considered part thereof.]

Access to the Material is subject to the continued guarantee of the Recipient’s parent or sponsoring institution; such guarantee being attached hereto and incorporated herein by reference. The following lists all financial or other sponsors, partners or collaborators in the proposed project: _____

The Recipient agrees to maintain during the period of duration of this Agreement an Agent in _, authorized to receive notices related to the implementation of the Agreement on behalf of the Recipient.

As consideration for the receipt of the Material accessed and other good and valuable consideration, the receipt of which is hereby acknowledged, Recipient hereby agrees as follows:

Unless otherwise provided for by law, all rights, including proprietary rights in and to the Material, and any part and samples thereof, and related traditional knowledge, innovations and practices are retained by and shall remain with _.

The Recipient will not directly or indirectly use the Material for commercial purposes, nor permit any third party to use the Material for commercial purposes. If at any time during the period of execution of this Agreement there exists or arises the potential for commercialization of the Material or any derivative thereof, the Recipient shall notify the Authority of such potential, and, if the Recipient desires to pursue such possible commercialization, Recipient shall make a separate application for access for commercial purpose.

The Recipient will not seek or claim any right, title or interest, including any intellectual property rights, in or to the Material, any part, sample or derivatives thereof, or related traditional knowledge, technologies, or processes derived, developed or created therefrom.

The Recipient shall not provide, make available, transfer or sell any of the Material, part, sample or derivative thereof, to any person, entity, institution, organization, corporation, government or any other third party without the prior written consent of the Authority.

The Recipient shall provide the following benefits to _ in connection with access under this Agreement, including:

a) At the termination of the research project, or any other research conducted by Recipient on any of the Material, copies of all results and associated information, as well as any remaining samples of the Material, will be provided to _. Recipient agrees to provide recognition of origin in any publication(s) resulting from access of the Material.

b) The Recipient agrees to communicate promptly and disclose all information, details and data generated by the research project or any other research conducted by Recipient on any of the Material, which shall be made available unsolicited and free of charge to the Authority.

[The following representatives of the Authority, national scientific personnel and/or organizations shall participate in the research on the Material accessed: _____]

c) The Recipient shall provide training, at institutional and/or farmer levels, to enhance local skills in Plant Genetic Resource conservation, evaluation, development, propagation and use, namely: _____

The Recipient shall provide the following additional benefits: _____

The Authority makes no representations or warranties as to: (i) the safety of the Material; (ii) the accuracy or correctness of any data or information provided with the Material; or (iii) the quality, availability, or purity (genetic or mechanical) of the Material being accessed by Recipient. The phytosanitary condition of the Material is warranted only as described in any applicable phytosanitary certificate. Responsibility for complying with applicable export, quarantine and biosafety laws shall rest solely with the Recipient.

The Recipient recognizes that any violation of this Agreement constitutes an offence under the laws of _ and in accordance with the _Law, _. The Authority _ has the right to terminate the Agreement and take any other action ion as provided for in the _Law, _, in the event of the Recipient's violation of any of the terms of this Agreement, including the provision of any information that is knowingly false or misleading. Upon such termination, all remaining samples and specimens of the Material, any derivatives thereof and related information shall be returned to the Authority.

All disputes or controversies arising out of this Agreement shall be settled by mutual agreement between the parties. If the parties are unable to reach an agreement or any question in dispute or on a mode of settlement other than arbitration, the parties agree to submit the dispute or controversy to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law. The parties agree to be bound by any arbitration award rendered in accordance with the above-mentioned rules as the final adjudication of any such dispute. The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction, which shall include all courts in the _ and the jurisdiction in which the Recipient resides, has its primary business address, and/or conducts business activity.

This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with the laws of _.

The determination that any provision in this Agreement is invalid, illegal or unenforceable shall not invalidate the validity, legality and enforceability of the Agreement or any of the remaining provisions hereof, which shall be valid, legal and enforceable to the fullest extent permitted by law.

If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labour disputes, Law of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

By executing this Agreement, Recipient hereby accepts and agrees to be bound by the terms and conditions herein and warrants that to the best of Recipient's knowledge and belief the foregoing is true and correct.

This Agreement shall enter into force on the signature by both parties.

Signed this __ day of _____, 200_.

On behalf of the Authority

On behalf of the Recipient

Name and contact details of the Recipient's Agent in _:

]

[
SCHEDULE NO 4

COMMERCIAL MATERIAL TRANSFER AGREEMENT

COMMERCIAL MATERIAL TRANSFER AGREEMENT

Pursuant to the _Law, _ and the terms of this Material Transfer Agreement (“Agreement”), the Authority, [on behalf of _], provides to _____ (hereinafter “Recipient”) the plant genetic resources for food and agriculture described below (hereinafter “Material”) in connection with Recipient’s request for access.

[This Agreement shall be read in conjunction with the Collecting Permit for the collecting of plant genetic resources for food and agriculture in *in situ* conditions that is attached here to for ease of reference].

All terms not otherwise defined herein shall have the meaning set forth in the _Law, _.

The Material accessed shall be (include Latin name and local name, if known): _____

The Material will be used solely for the commercial purposes provided for herein, namely: _____

[A copy of any relevant project proposal, as initialed by the Authority and the Recipient, is attached to this Agreement and considered part thereof.]

The Recipient agrees to maintain during the period of duration of this Agreement an Agent in _, authorized to receive notices related to the implementation of the Agreement on behalf of the Recipient.

As consideration for the receipt of the Material accessed and other good and valuable consideration, the receipt of which is hereby acknowledged, Recipient hereby agrees as follows:

Unless otherwise provided for by law, all rights, including proprietary rights in and to the Material, and any part and samples thereof, and related traditional knowledge, innovations and practices are retained by and shall remain with _.

The Recipient shall provide the following benefits to _ in connection with access under this Agreement:

- a) At the termination of any research conducted by Recipient on any of the Material, copies of all results and associated information, as well as any remaining samples of the

Material, will be provided to __. Recipient agrees to provide recognition of origin in any publication(s) resulting from access of the Material.

b) The Recipient agrees to communicate promptly and disclose all information, details and data generated by any research conducted by Recipient on any of the Material, which shall be made available unsolicited and free of charge to the Authority.

[The following representatives of the Authority, national scientific personnel and/or organizations shall participate in the research on the Material accessed: _____]
_____]

c) The Recipient shall provide training, at institutional and/or farmer levels, to enhance local skills in Plant Genetic Resource conservation, evaluation, development, propagation and use, namely: _____

In consideration for the right to access and commercially exploit the Material, the Recipient hereby agrees to provide to __ the benefits identified below that have been negotiated between Recipient and the Authority upon mutually agreed terms.

Additional Benefits (As applicable, such benefits may be more fully described in an exhibit to be attached hereto and incorporated herein by reference):

[

1. priority access to any new processes, methods, inventions, products, information and/or knowledge, including but not limited to, the grant of a non-exclusive, royalty free, no-fee license to make, use, sell, distribute, sublicense or otherwise practice under any patent, invention, discovery, technology or other rights, resulting or deriving from the Material or any derivative thereof or from access to the Material, upon such terms to be determined between the parties in separate license agreement.
2. joint ownership rights between the Recipient and __, including any intellectual property rights, in any processes, inventions, innovations or products derived from the Material (but not the Material or any parts, samples or proximate derivatives thereof, or related traditional knowledge).
3. the right to be the first source to supply raw material for research, development and manufacture of any products or process derived from the Material, upon such terms to be determined between the parties in a separate supply agreement.
4. training related to plant genetic resources for food and agriculture with the full participation of the Recipient, including collaboration in scientific research and development programs, where possible, in __.

5. technology transfer under fair and most favourable terms, including but not limited to the provision of knowledge equipment, infrastructure, technology, biotechnology support, namely:

6. employment opportunities:

7. an upfront payment in the amount of:

8. research funding as follows:

9. additional benefits:

]

The Recipient hereby agrees that it will execute any additional documentation, agreements, licenses or instruments that may be desirable or necessary to implement the terms and conditions of this Agreement, including but not limited to, the sharing of the above enunciated benefits with _.

The Recipient agrees to provide the Authority with prior written notice of the Recipient's intent to seek intellectual property rights resulting from the commercial exploitation of any products, methods, inventions, innovations or processes developed from the Material or any derivative thereof, as contemplated by this Agreement. The Recipient agrees that it will not seek any intellectual property rights in the traditional knowledge, innovations and practices related to the Material which such rights shall rest with _, unless expressly waived in writing by _.

The Recipient shall not directly or indirectly transfer, sell, assign, provide or make available any of the Material to any person, institution, corporation, association, agency or other third party ("Person") except as provided for herein, without the express prior written consent of _. The Recipient agrees that as a condition precedent to the transfer of the Material to any Person, such Person shall enter into an agreement or undertaking designating the Authority as a third party beneficiary, whereby such Person agrees to be

bound by the terms and conditions of this Agreement. Any such Person shall not have the right to assign, transfer or make available any of the Material to any other third parties. This Agreement and the rights and obligations herein may not be assigned, sold or otherwise transferred by the Recipient without the prior written consent of the Authority. Any such assignees or successors to this Agreement shall be bound by all the terms and conditions of this Agreement.

The Authority makes no representations or warranties as to: (i) the safety of the Material; (ii) the accuracy or correctness of any data or information provided with the Material; or (iii) the quality, availability, or purity (genetic or mechanical) of the Material being accessed by Recipient. The phytosanitary condition of the Material is warranted only as described in any applicable phytosanitary certificate. Responsibility for complying with applicable export, quarantine and biosafety laws shall rest solely with Recipient.

The terms of this Agreement shall continue until the last to expire of the following conditions: (i) as long as the Recipient is commercially exploiting any products, methods, inventions, innovations or processes developed from the Material or any derivative thereof; or (ii) any of the benefits set forth in the Agreement are still being provided to, received, used or exploited by _ or remain outstanding, unless the Agreement is otherwise terminated in writing by the Authority or superseded by a subsequent agreement entered into by the Recipient and the Authority explicitly terminating this Agreement. This Agreement may only be terminated by the Authority upon thirty (30) days prior written notice to the Recipient.

At the request of either party, the terms of this Agreement that the disclosure of would cause harm to a party's competitive interests may be considered confidential and shall not be disclosed by either party without the express written consent of the other party.

The Recipient recognizes that any violation of this Agreement constitutes an offence under the laws of _ and in accordance with the _Law, _. The Authority _ has the right to terminate the Agreement and take any other action as provided for in the _Law, _, in the event of the Recipient's violation of any of the terms of this Agreement, including the provision of any information that is knowingly false or misleading. Upon such termination, all remaining samples and specimens of the Material, any derivatives thereof and related information shall be returned to the Authority.

All disputes or controversies arising out of this Agreement shall be settled by mutual agreement between the parties. If the parties are unable to reach an agreement or any question in dispute or on a mode of settlement other than arbitration, the parties agree to submit the dispute or controversy to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law. The parties agree to be bound by any arbitration award rendered in accordance with the above-mentioned rules as the final adjudication of any such dispute. The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction, which shall include all courts in the _ and the jurisdiction in which the Recipient resides, has its primary business address, and/or conducts business activity.

This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with the laws of _.

The determination that any provision in this Agreement is invalid, illegal or unenforceable shall not invalidate the validity, legality and enforceability of the Agreement or any of the remaining provisions hereof, which shall be valid, legal and enforceable to the fullest extent permitted by law.

If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labour disputes, Law of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

By executing this Agreement, Recipient hereby accepts and agrees to be bound by the terms and conditions herein and warrants that to the best of Recipient's knowledge and belief the foregoing is true and correct.

This Agreement shall enter into force on the signature by both parties.

Signed this __ day of _____, 200_.

On behalf of the Authority

On behalf of the Recipient

Name and contact details of the Recipient's Agent in _:

[

SCHEDULE No 5

COLLECTING PERMIT

COLLECTING PERMIT

This Collecting Permit has been issued in accordance with the terms and conditions of the _ Law, _ (the "Law"). The Law and the regulations issued under the Law shall govern this Collecting Permit and all collecting activities conducted pursuant to this Collecting Permit.

Name of Collector or Collecting Institution: _____

Address: _____

Local address of Collector during collecting mission: _____

Telephone: _____ email Address: _____

Name of National Counterpart: _____

Address: _____

Plant genetic resources for food and agriculture to be collected: _____

The plant genetic resources for food and agriculture to be collected are:

seeds vegetative propagules

Type/Species: _____

Quantity: _____

Plant genetic resources for food and agriculture to be collected are rare or endangered:

Yes No

Provisional route(s), site(s) and location(s) from which the plant genetic resources for food and agriculture is to be collected:

Method of collecting and equipment to be used: _____

Timing and duration of collecting mission: _____

Method of evaluation and storage of the plant genetic resources for food and agriculture: _____

Persons and affiliated institutions or organizations authorized to participate in the collecting mission:

Additional Information: _____

By accepting this Collecting Permit, the Permit Holder agrees that the responsibility to be familiar with the terms of the Law and the regulations issued under the Law rests with the Permit Holder, who further acknowledges that all collecting activities will occur in accordance with the terms and conditions of the Law and the regulations issued under the Law. Specifically, the Permit Holder acknowledges that as a condition to issuance of this Collecting Permit, the Permit Holder has agreed to the following:

- (a) that the collecting activity shall not endanger the plant genetic resource for food and agriculture collected, or the environment;
- (b) that the collecting activities be undertaken in a manner respecting the customary rights and practices of farmers and local communities;
- (c) that a sample of each plant genetic resource for food and agriculture collected *in situ* by the permit holder be deposited with the Authority, together with full field information;
- (d) that a person or persons designated by the Authority be allowed to accompany the collecting mission at all times; and
- (e) that the Authority be allowed to inspect the plant genetic resources for food and agriculture collected at any reasonable time.

Additional Conditions: _____

Issued by the Authority
Date and place of issue

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