



Booklet of CGIAR Centre Policy Instruments, Guidelines and Statements on Genetic Resources, Biotechnology and Intellectual Property Rights

Version III

Updated to include policy instruments and guidelines related to the management of PGRFA under the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture

Rome, August 2010



Produced by the System-wide Genetic Resources Programme (SGRP)
with the CGIAR Genetic Resources Policy Committee

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INTRODUCTION

A number of international conventions, agreements and guidelines affect the way that genetic resources and related information can be accessed, pooled, managed and used. The Consortium of International Agricultural Research Centres, supported by the Consultative Group on International Agricultural Research (CGIAR), is committed to operating in conformity with all such international instruments.

This booklet – and its earlier editions – contains agreements that the Centres have made with international bodies, and CGIAR system-wide policies, guidelines, and related legal instruments that the Centres have adopted concerning genetic resources and intellectual property. It is developed primarily for use by the Centres to facilitate awareness of, and compliance with, the policies and instruments included.

The last edition of this booklet was produced in 2003¹. The core of that edition consisted of the 1994 FAO CGIAR In-Trust Agreements, and policies, guidelines, and material transfer agreements that the Centres adopted pursuant to those agreements.

Since that time, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) came into force (in 2004), and the eleven CGIAR Centres hosting international crop and forage collections have signed agreements with the Governing Body of the ITPGRFA (in 2006), placing those collections under the overarching international framework of the ITPGRFA. Most of the new entries in this edition are related to the ITPGRFA, and the ways in which the Centres execute their responsibilities pursuant to their agreements with the Governing Body.

That said, there is one other new significant entry in this edition, which is not directly related to the ITPGRFA - the 'Guiding Principles for the Development of the CGIAR Centres' Policies to Address the Possibility of Unintentional Presence of Transgenes in *Ex Situ* Collections'. These Guiding Principles were adopted by the Alliance Executive in 2005. Since that time, based on the Guiding Principles, the International Maize and Wheat Improvement Center (CIMMYT), the International Potato Center (CIP) and the International Rice Research Institute (IRRI) have developed crop-specific policies, guidelines and procedures for Maize, Potato and Rice respectively.²

The policies and instruments included in this booklet have been endorsed at different times, by different bodies within the CGIAR system. Most of them have been developed, reviewed and contributed to by the System-wide Genetic Resources Programme (SGRP) and the Genetic Resources Policy Committee (GRPC), before being forwarded for review and approval by the Inter-Centre Working Group on Genetic Resources (ICWG-GR), or the Alliance Executive, or the CGIAR itself.

The first section of this booklet includes agreements, policies and guidelines related to the management of the Centre-hosted in-trust collections of plant genetic resources. The second section concerns the policies for acquiring, managing and transferring animal, aquatic and microbial genetic resources. The third section is a bit of a 'mixed bag' of guidelines and statements concerning biotechnology, biosafety, intellectual property rights and interaction with the Private Sector. The final section consists of the CGIAR's Ethical Principles relating to Genetic Resources.

¹ The earlier edition is available at URL: <http://www.sgrp.cgiar.org/?q=node/1053>, and at http://www.sgrp.cgiar.org/sites/default/files/Policy_Booklet_Version2.pdf

² These three crop specific guidelines are available on the Crop Genebank Knowledge Base website of the SGRP at: http://croptgenebank.sgrp.cgiar.org/index.php?option=com_content&view=article&id=550&Itemid=745&lang=english

INTRODUCTION TO SECTION 1

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was adopted by the Conference of the Food and Agriculture Organization of the United Nations (FAO) in 2001 and entered into force in 2004. As of July 2010, the ITPGRFA had 125 members, plus the European Union. The ITPGRFA creates the Multilateral System of Access and Benefit-sharing, which provides for facilitated access to plant genetic resources for food and agriculture 'for the purpose of utilization and conservation for research, breeding and training for food and agriculture' (ITPGRFA Article 12.3.a) and regulates the sharing of the benefits arising from the use of those resources. The Multilateral System includes 35 crops and 29 forage genera listed in Annex 1 of the ITPGRFA.

At its First Session, in June 2006, the Governing Body of the ITPGRFA adopted a Standard Material Transfer Agreement (SMTA), which sets out the legal conditions that apply to both providers and recipients of plant genetic resources for food and agriculture (PGRFA) in the Multilateral System.

Through Article 15 of the ITPGRFA the 'Contracting Parties called upon the IARCs' to sign agreements with the Governing Body to place the in-trust collections they host under the framework of the ITPGRFA. On October 16, 2006, the eleven CGIAR Centres holding *ex situ* collections of plant genetic resources signed such agreements. The model agreement is the first document included in this section. (Copies of the actual signed agreements for each Centre and other international organizations that have signed agreements with the Governing Body are posted on the ITPGRFA website.¹) At the time of signing, the Centres issued a statement regarding their implementation of the agreements. The Centres' statement is also included in this section.

Pursuant to their agreements with the Governing Body, the Centres agree to use the SMTA when distributing Annex 1 materials. During its Second Session, in November 2007, the Governing Body of the ITPGRFA decided that the CGIAR Centres should use the same SMTA when transferring non-Annex 1 materials as well. The Governing Body decided that the SMTA used by the Centres should have a footnote explaining that references to Annex 1 in the SMTA should not be construed as prohibiting its use for non-Annex 1 materials. The English version of the SMTA, including the explanatory footnote, is included below. Arabic, Chinese, French, Russian and Spanish versions of the SMTA, including the explanatory footnote, are available on the SGRP website at: <http://sgrp.cgiar.org/?q=node/125>. All official language versions of the SMTA without the explanatory footnote are available on the website of the ITPGRFA at: http://www.planttreaty.org/smta_en.htm.

With the aim of assisting the Centres in the use of the SMTA, the SGRP coordinated the preparation of a 'Guide for the CGIAR Centres' Use of the Standard Material Transfer Agreement'. The Guide is frequently updated as the Centres' encounter new issues associated with exercising their responsibilities pursuant to their agreements with the Governing Body, and with using the SMTA generally. The revisions of the Guide are reviewed by the GRPC and the ICWG-GR. The Guide is available online, at <http://www.sgrp.cgiar.org/?q=node/171> and http://www.sgrp.cgiar.org/sites/default/files/Guide_SMTA.pdf. CGIAR staff are encouraged to print off, or save, a copy of the Guide for quick reference.

¹ http://www.planttreaty.org/inclus_en.htm

The generally accepted view is that the 2006 agreements between the CGIAR Centres and the Governing Body of the ITPGRFA supersede the 1994 FAO-CGIAR In-Trust Agreements. As far as the day-to-day operations of the Centres' are concerned, the ITPGRFA has, effectively, eclipsed the earlier agreements: for examples, the Centres now use the SMTA, not the earlier MTA created for use under the In-Trust Agreements; and the Centres report to the Governing Body of the ITPGRFA concerning transfers of materials from the international collections, not to the Commission on Food and Agriculture as they used to do under the 1994 In-Trust Agreements. All that said, strictly legally speaking, the In-Trust Agreements remain in force; they are automatically renewed every 4 years, unless either FAO or the Centre concerned gives notice of non-renewal. To date, no such notice of non-renewal has been made. For this reason, we have not deleted the 1994 In-Trust Agreements and the joint interpretative statements that FAO and the Centres issued in 1994 and 1998 respectively. They are included in Annex 1 of this booklet.

2006

**AGREEMENT BETWEEN [NAME OF CENTRE] AND THE FOOD AND AGRICULTURE
ORGANIZATION OF THE UNITED NATIONS (FAO), ACTING ON BEHALF OF THE
GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC
RESOURCES FOR FOOD AND AGRICULTURE**

Preamble

The [*name of Centre*] (hereinafter referred to as the “Centre”), supported by the Consultative Group on International Agricultural Research (hereinafter referred to as “CGIAR”), and the Food and Agriculture Organization of the United Nations (hereinafter referred to as “FAO”) acting on behalf of the Governing Body for the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the “Governing Body”);

Considering the importance to humanity of protecting and conserving plant genetic resources for food and agriculture for future generations;

Recalling the Agreement between [*name of Centre*] and the Food and Agriculture Organization of the United Nations (FAO) placing collections of plant germplasm under the auspices of the FAO signed on 26 October 1994;

Considering the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the FAO Conference at its Thirty-first Session in 2001, which entered into force on 29 June 2004 (hereinafter referred to as the “Treaty”);

Noting that in Article 15 of the Treaty, the Contracting Parties to the Treaty recognize the importance to the Treaty of the *ex situ* collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and call upon the Centres to sign agreements with the Governing Body with regard to such *ex situ* collections;

Reaffirming the commitment of the Parties to this Agreement to the conservation, sustainable use and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture;

Noting that both the Centre, in its decision no... of, and the Governing Body, on 16 June 2006, have approved the terms of the present Agreement;

Have agreed as follows:

**Article 1
Application and Interpretation of this Agreement**

1. This Agreement shall be construed and applied in a manner consistent with the provisions of the Treaty.
2. The terms used in this Agreement that are also used in the Treaty shall have the same meanings assigned to them as in the Treaty.
3. Any reference in this Agreement to the Centre shall include its successors in title.

Article 2

Rights and Obligations of the Parties to this Agreement

The Centre hereby agrees to place the *ex situ* collection held by it in trust within the purview of the Treaty in accordance with the following terms and conditions:

- (a) Plant genetic resources for food and agriculture listed in *Annex I* of the Treaty and held by the Centre shall be made available in accordance with the provisions set out in Part IV of the Treaty.
- (b) Plant genetic resources for food and agriculture other than those listed in *Annex I* of the Treaty and collected before its entry into force that are held by the Centre shall be made available in accordance with the provisions of the Material Transfer Agreement (hereinafter referred to as the MTA) currently in use pursuant to agreements between the Centre and the FAO. This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the Centre, in accordance with the relevant provisions of the Treaty, especially Articles 12 and 13, and under the following conditions:
 - (i) The Centre shall periodically inform the Governing Body about the MTAs entered into, according to a schedule to be established by the Governing Body;
 - (ii) The Contracting Parties in whose territory the plant genetic resources for food and agriculture were collected from in situ conditions shall be provided with samples of such plant genetic resources for food and agriculture on demand, without any MTA;
 - (iii) Benefits arising under the above MTA that accrue to the mechanism mentioned in Article 19.3f of the Treaty shall be applied, in particular, to the conservation and sustainable use of the plant genetic resources for food and agriculture in question, particularly in national and regional programmes in developing countries and countries with economies in transition, especially in centres of diversity and the least developed countries; and
 - (iv) The Centre shall take appropriate measures, in accordance with its capacity, to maintain effective compliance with the conditions of the MTAs, and shall promptly inform the Governing Body of cases of non-compliance.
- (c) The Centre recognizes the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by it and subject to the provisions of the Treaty.
- (d) The scientific and technical facilities in which such *ex situ* collections are conserved shall remain under the authority of the Centre, which undertakes to manage and administer these *ex situ* collections in accordance with internationally accepted standards, in particular the Genesbank Standards as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture.
- (e) Upon request by the Centre, the Secretary of the Governing Body of the Treaty (hereinafter referred to as the "Secretary") shall endeavour to provide appropriate technical support.
- (f) The Secretary shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material covered by this Article.

- (g) If the orderly maintenance of these *ex situ* collections held by the Centre is impeded or threatened by whatever event, including force majeure, the Secretary, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.
- (h) The Centre shall be included in the list of International Agricultural Research Centres of the CGIAR to be held by the Secretary, and will have facilitated access to plant genetic resources for food and agriculture listed in *Annex I* under the Multilateral System, in accordance with Article 15.2 of the Treaty.
- (i) The Governing Body will encourage Contracting Parties to provide the Centre with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in *Annex I* that are important to the programmes and activities of the Centre.
- (j) The Centre shall be invited to attend sessions of the Governing Body as an observer.

Article 3
Plant Genetic Resources for Food and Agriculture Received
after the coming into force of the Treaty

Plant genetic resources for food and agriculture other than that listed in *Annex I* of the Treaty, which are received and conserved by the Centre after the coming into force of the Treaty, shall be available for access on terms consistent with those mutually agreed between the Centre that receives the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

Article 4
Consultations Regarding Implementation

The Centre shall consult periodically with the Secretary or such other person or entity as the Governing Body may designate regarding the effective implementation of this Agreement. The results of such consultations shall be reported to the Governing Body.

Article 5
Amendment

1. The Governing Body or the Centre may propose that this Agreement be amended by giving notice thereof.
2. Should the Treaty be amended in such a way as to significantly change the rights or obligations of the Parties to this Agreement, the Parties to this Agreement hereto shall consult regarding any amendments to the provisions of this Agreement that may be required or such other measures as may be required.
3. If there is a mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

Article 6
Duration of the Agreement

1. It is the intention of the Parties that this Agreement should remain in force in perpetuity. However, should circumstances beyond its control make it impossible for either

Party to fulfil its obligations under this Agreement or fulfil them in a manner compatible with its mandate, either Party may, after a period of two years from the entry into force of this Agreement, give notice to the other Party of its withdrawal from this Agreement. Such withdrawal shall take effect one year from the date of receipt of such notice. In the event of such a withdrawal, the Parties to this Agreement hereto shall consult with a view to ensuring that the in-trust collections are maintained consistently with the Treaty through other arrangements, where possible by other Centres of the CGIAR.

2. This Agreement may be terminated by mutual agreement between the Parties to this Agreement hereto.

Article 7 Settlement of Disputes

Any dispute concerning the implementation of this Agreement, which cannot be settled by negotiations between the Parties to this Agreement, shall be settled by arbitration in accordance with the procedures set out in Part I of Annex II to the Treaty, except that the references to the Director-General of FAO shall be replaced by references to the Secretary-General of the Permanent Court of Arbitration.

Article 8 Depositary

The Director-General of the FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Contracting Parties to the Treaty, to all the Members of the FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform the Contracting Parties to the Treaty, and FAO Members of
 - (i) the signature of this Agreement in accordance with Article 9; and
 - (ii) the adoption of amendments to this Agreement in accordance with Article 5.

Article 9 Coming into Force

This Agreement shall come into force on the ninetieth day after its signature by the authorized representative of the FAO acting on behalf of the Governing Body and by the authorized representative of the Centre.

**Food and Agriculture Organization of
the United Nations, acting on behalf of
the Governing Body of the International
Treaty on Plant Genetic Resources for
Food and Agriculture**

[Name of Centre]

by: _____
(signature)

by: _____
(signature)

Date: _____

Date: _____

**STATEMENT OF THE CGIAR CENTRES REGARDING IMPLEMENTATION OF THE
AGREEMENTS BETWEEN THE CENTRES AND THE GOVERNING BODY OF THE
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

The Centres of the Consultative Group on International Agricultural Research warmly welcome the signing of Agreements with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture in regard to the *ex situ* collections described in Article 15 of the Treaty. With the signing of these Agreements, the Centres commit themselves to supporting and implementing the Treaty, and in particular, to working with the international community to build a strong and effective Multilateral System.

The Centres note that, with the adoption of the Standard Material Transfer Agreement (SMTA) by the Governing Body at its first Meeting, the stage is now set for the full implementation of the Multilateral System. The Centres will apply the SMTA, as approved by the Governing Body, for all transfers of Annex 1 plant genetic resources for food and agriculture (PGRFA) as from 1 January 2007. As stipulated by the Treaty, for non-Annex 1 materials, the Centres will continue to apply the Material Transfer Agreement (MTA) currently in use until it is amended by the Governing Body at its second Session.

This statement clarifies the Centres' common understanding of certain provisions of the Agreements and indicates some actions that the Centres will be taking to implement them.

With respect to Article 2 of the Agreements dealing with the rights and obligations of the Parties:

Non-Contracting Parties

It is understood that nothing in Article 2 of the Agreement will prevent the Centres from making available PGRFA held by it to non-Contracting Parties. The Centres will use the SMTA for distributions of Annex 1 PGRFA to non-Contracting Parties, and the Material Transfer Agreement (MTA) currently in use until it is amended by the Governing Body at its second Session for transfers of non-Annex 1 PGRFA. Centres will also apply the conditions of Article 2(b)(ii) to the return of samples of plant genetic resources to non-Contracting Parties.

Availability of PGRFA for cultivation

It is also understood that nothing in Article 2 will prevent the Centres from making PGRFA from the Multilateral System directly available to farmers or others for cultivation, as is the current practice, whether this is unimproved or improved PGRFA.

Compliance (Article 2 (b) (iv))

When Centres have reasonable grounds to believe that a recipient has violated the terms of a MTA, it will undertake the following actions in response to the perceived violation, in addition to any dispute resolution mechanisms set up under the approved MTA:

1. The Centre will request a written explanation. Upon failure to receive a satisfactory and timely explanation from the recipient, the Centre will notify the recipient that a violation is thought to have occurred and request the recipient to conform to the requirements set out in the MTA.

2. When the Centre continues to have reasonable grounds to believe that a violation of the provisions of the MTA has occurred, it will promptly inform the Governing Body of the Treaty through its Secretariat and IPGRI of the perceived violation and any follow-up action. Where the violation is with respect to the provisions on intellectual property rights, the Centre will notify the intellectual property rights-granting authority in the relevant country of the possibility that the MTA has been violated, and bring to their attention the fact that the grant of intellectual property rights may, therefore, have been inappropriate in the case of the material obtained from the Centre.
3. In regard to the above, the Centres will work in close cooperation with the Secretariat of the Governing Body of the Treaty.
4. Reports from the Centres concerning perceived violations of the MTA will be presented to the Governing Body at its regular sessions, through IPGRI, on the actions taken in accordance with 1 and 2 above.

The procedures described above will also be applied in respect of violations or perceived violations of SMTAs relating to PGRFA listed in Annex 1 of the Treaty.

Obligations of Centres to make plant genetic resources for food and agriculture available (Article 2 (a) and (b))

Under the terms of this provision, the Centres “undertake to make plant genetic resources for food and agriculture available for the purpose of utilization and conservation for research, breeding and training for food and agriculture”. It is implicit in this undertaking that users will make reasonable requests for these purposes, and that the undertaking of the Centres in this regard would not, as under their previous agreements with FAO, extend to the fulfilment of unreasonable requests.

For example, sound management practices as well as practical or even biological constraints (such as seed availability or the health status of a sample) may at times limit the ability of Centres to provide plant genetic resources for food and agriculture for the purposes spelled out above. It is understood that Centres will have to use some discretion in determining the size and number of samples to be provided at any given time to a particular recipient. Centres may not be able to distribute seed or other materials immediately when such distributions would reduce stocks below accepted levels for conservation purposes, or when the request is for such a number of samples or quantity of a particular accession as to make it financially or technically impossible for the Centre to meet the request in full, or make it impossible for the Centre to meet requests from others. In such cases, the Centre may ask that the recipient cover all or part of the costs of multiplying the relevant accessions. In cases of limited supplies, immediate availability of materials cannot be guaranteed. Such availability will follow a process of multiplication. Recipients might be advised that they may need to undertake their own seed multiplication when existing sample sizes are small (such as in the case with many accessions of wild relatives) or when demand for a particular sample exceeds supply.

In particular, multiplying woody species accessions and supplying materials of vegetatively propagated species can involve very time-consuming and expensive procedures. While Centres endeavour to supply materials free of cost, in such circumstances it would be unreasonable to expect that Centres could guarantee unlimited quantities or immediate availability of all germplasm. At their discretion, Centres may request that users cover all or part of the costs involved in multiplication.

In filling requests for material for conservation purposes alone, users are invited to note the Global Plan of Action’s objectives of “safeguarding as much existing unique and valuable

diversity as possible in *ex situ* collections,” while reducing “unnecessary and unplanned redundancy in current programmes.”

In cases when a Centre cannot fully or immediately meet a request, the Centre will enter into a discussion with the requesting entity to develop and agree upon a plan and schedule for the supply of materials. This process might establish an agreed list of accessions to which priority would be given.

Centres cannot distribute samples that do not meet health or quarantine standards, or whose transfer could pose the danger of a spread of pests or disease. In distributing samples, the Centres will comply with all relevant international and national legislation and regulations regarding phytosanitary, biosafety and other relevant standards and procedures.

With respect to acceptance of the SMTA:

The Centres welcome the clarification in the SMTA that the parties to the SMTA may choose to signify their acceptance of the SMTA in the “click-wrap” and/or “shrink-wrap” form. While the footnote to Article 1.2 of the SMTA provides that the insertion of the name and address of the Provider and Recipient is not required (“applicable”) for shrink-wrap and click-wrap SMTAs, the Centres wish it to be known that, in the interests of transparency and greater enforceability of the SMTAs, they will in practice, on a voluntary basis, be including this information in click-wrap agreements, (the insertions will be generated electronically) and in shrink-wrap agreements that accompany transfers of ordered material.

Centro Internacional de Agricultura Tropical (CIAT)
Centro Internacional de Mejoramiento de Maíz y Trigo (CIMMYT)
Centro Internacional de la Papa (CIP)
International Center for Agricultural Research in the Dry Areas (ICARDA)
International Crops Research Institute for the Semi-Arid Tropics (ICRISAT)
International Institute of Tropical Agriculture (IITA)
International Livestock Research Institute (ILRI)
International Plant Genetic Resources Institute (IPGRI)
International Rice Research Institute (IRRI)
The Africa Rice Center (WARDA)
World Agroforestry Centre (ICRAF)

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.

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

The references in the SMTA to the "Multilateral System" shall not be interpreted as limiting the application of the SMTA to *Annex I* Plant Genetic Resources for Food and Agriculture, and in the case of Article 6.2 of the SMTA shall mean "under this Agreement";

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

ARTICLE 1 — PARTIES TO THE AGREEMENT

1.1 The present Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.

1.2 **This Agreement** is:

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

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

1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

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

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

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

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

“**Plant Genetic Resources for Food and Agriculture**” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate² the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

* *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.

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

“**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

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;

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 *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”.

- 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

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

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

6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.

6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
- b) notify the **Governing Body**, in accordance with Article 5e.

On compliance with the above, the **Recipient** shall have no further obligations regarding the actions of the **subsequent recipient**.

6.5 In the case that the **Recipient** transfers a **Plant Genetic Resource for Food and Agriculture under Development** to another person or entity, the **Recipient** shall:

⁵ *Note by the Secretariat:* The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:

The Secretary
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00100 Rome, Italy

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

6.6 Entering into a material transfer agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.

6.7 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is not **available without restriction** to others for further research and breeding, the **Recipient** shall pay a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.8 In the case that the **Recipient commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** is encouraged to make voluntary payments into the mechanism established by the **Governing Body** for this purpose in accordance with *Annex 2* to **this Agreement**.

6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. After the expiry or abandonment of the protection period of an intellectual property right on a **Product** that incorporates the **Material**, the **Recipient** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

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

6.11 The **Recipient** may opt as per *Annex 4*, as an alternative to payments under Article 6.7, for the following system of payments:

- a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;
- b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;
- c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same

- crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belongs;
- d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;
 - e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in *Annex 3* to **this Agreement**;
 - f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;
 - g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;
 - h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

- 8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or the (*the entity designated by the **Governing Body***), acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.
- 8.2 The parties to **this Agreement** agree that the (*the entity designated by the **Governing Body***), representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.
- 8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.
- 8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:
- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
 - b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.

- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

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

Duration of Agreement

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

ARTICLE 10 — SIGNATURE/ACCEPTANCE

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

Option 1 –Signature*

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

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

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

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

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

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

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

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

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* contains a list of the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

(*List*)

Annex 2

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\$)*⁶ for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**⁷:

**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. 000156426**

⁶ *Note by the Secretariat:* The Governing Body has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

⁷ *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 4

**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.....

Date.....⁸

⁸ In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient** to the **Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient** to the **Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00100 Rome, Italy

The signed declaration must be accompanied by the following:

- The date on which **this Agreement** was entered into;
- The name and address of the **Recipient** and of the **Provider**;
- A copy of Annex 1 to **this Agreement**.

**MATERIAL TRANSFER AGREEMENT (MTA)
FOR NON-PLANT GENETIC MATERIALS
(INCLUDING MICRO-ORGANISMS, ANIMALS, AND AQUATIC AND MARINE
MATERIALS)**

The material contained herein is being furnished by [Centre] under the following conditions:

[Centre] is making the material described in the attached list available as part of its policy of maximizing the utilization of genetic material for research. The material was either developed by [Centre]; or was acquired prior to the entry into force of the Convention on Biological Diversity; or if it was acquired after the entering into force of the Convention on Biological Diversity, it was obtained with the understanding that it could be made freely available for any research or breeding purposes.

The recipient may reproduce and use the material for research and breeding purposes and may distribute it to other parties provided the recipient is also willing to accept the conditions of this agreement.¹

The recipient, therefore, hereby agrees not to claim ownership over the germplasm to be received, nor to seek intellectual property rights over that germplasm or related information. The recipient further agrees to ensure that any subsequent person or institution to whom he/she/it may make samples of the germplasm available, is bound by the same provision and undertakes to pass on the same obligations to future recipients of the germplasm.

[Centre] 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. It is not possible for [Centre] to guarantee that this material is completely free from pathogens and parasites. The recipient assumes full responsibility for complying with the recipient nation's quarantine/biosafety regulations and rules as to import or release of genetic material.

Upon request, [Centre] will furnish information that may be available in addition to whatever is furnished with the germplasm. Recipients are requested to furnish [Centre] with data and information collected during evaluations of the material.

The material is supplied expressly conditional on acceptance of the terms of this agreement. The recipient's acceptance of the material constitutes acceptance of the terms of this Agreement.

¹ This does not prevent the recipient from making the germplasm directly available to farmers or consumers for cultivation, use or consumption, provided that the other conditions set out in the MTA are complied with.

GUIDELINES FOR THE ACQUISITION AND TRANSFER OF GERMLASM: MICRO-ORGANISM, ANIMAL, AND AQUATIC AND MARINE

Background

As of 29 December 1993, the date on which the Convention on Biological Diversity entered into force, access to genetic resources, where granted, shall be on "mutually agreed terms" and shall be subject to the "prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party." (Article 15 of the Convention on Biological Diversity). Contracting Parties are countries which have signed and formally ratified the Convention. Article 15 further states that the genetic resources being provided are "only those provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention."¹

It is absolutely necessary that Centres obtain proper, formal permission from the relevant authorized government body, prior to collecting or acquiring any germplasm. This permission may be included in a letter of agreement (which may address other matters as well), in a specific Germplasm Acquisition Agreement (GAA)², or in other legal documents, contracts, or agreements.

Once genetic resources are properly obtained by a Centre through prior informed consent and on the basis of mutually agreed terms, they are managed and exchanged according to the terms agreed with the country that provided them. (The Convention does not dictate or spell out what those terms shall be. Terms and conditions are determined by the country and the recipient and are spelled out in the agreement they make together.)

Terms and Modalities of Access

The CGIAR has historically adhered to a policy on plant genetic resources which is based on the unrestricted availability of germplasm. Thus, consistent with this position and as a first priority, Centres should attempt to acquire animal, microbe, and aquatic and marine germplasm without conditions which would restrict future availability.

Countries providing material may wish to impose certain restrictions on its further availability, however. Centres will need to evaluate, on a case-by-case basis, whether those terms are acceptable, and act accordingly. In such circumstances, Centres may wish to consider the potential usefulness and need of the germplasm and weigh that against the political, scientific, and management difficulties which restrictions on use and availability may cause.

¹ It is neither necessary nor advisable that centers assume the responsibility of ascertaining whether countries providing genetic resources are, as a matter of law, the countries of origin as defined by the Convention. (Equally, it is not necessary for Centers to confirm or endorse a country's claim to such a status, when the Center describes in its databases the germplasm thus obtained.) The Convention contains dispute settlement procedures to address such conflicts as may arise, including those concerning claims of the status of country of origin.

² A model GAA (intended for use specifically with plant genetic resources for food and agriculture) was previously developed, and endorsed by the Inter-Centre Working Group on Genetic Resources. This document should be helpful in constructing GAAs for non-plant materials.

Suggested Elements of GAAs and Other Agreements Authorizing Access

The agreement should specify that the supplier is legally free to provide the germplasm and that necessary permissions have been obtained.

The agreement should clearly spell out the terms on which access is being granted, and any obligations assumed by the recipient (the Centre), including restrictions on the use or exchange of the material by the Centre or those who may subsequently acquire the material from the Centre.

Putting Germplasm Acquisition Policies and Agreements into Practice

All relevant Centre employees should be informed of the necessity of acquiring materials properly, in conformance with international agreements and CGIAR policy.

Centres should maintain a central file containing copies of all agreements relating to access to genetic resources. If there are restrictions on further access and use, then these restrictions should be duly noted in genebank records, and in SINGER.

Terms and Modalities of Transfer

Consistent with CGIAR policies, Centres will typically transfer germplasm under terms and instruments which guarantee its future unrestricted availability³. (In cases where Centres *acquired* materials with restrictions, Centres will, of course, honour those terms if/when they distribute the germplasm and related information.) Products of Centre breeding and research may, however, be transferred under agreements which restrict access or set certain conditions on use.

In all cases, germplasm should be transferred under a Material Transfer Agreement, and relevant sanitary regulations must be followed.

³ A Model MTA intended to ensure future unrestricted availability of the material has been developed, and endorsed by the Inter-Center Working Group on Genetic Resources. In using this MTA, Centres should follow procedures agreed previously for use of the MTA for designated accessions of PGRFA.

**GUIDING PRINCIPLES FOR THE DEVELOPMENT OF THE CGIAR CENTRES'
POLICIES TO ADDRESS THE POSSIBILITY OF UNINTENTIONAL
PRESENCE OF TRANSGENES IN *EX SITU* COLLECTIONS**

Background

1. In the management of germplasm, the CGIAR Centres embrace the following overarching principles: ethics, transparency, accountability, risk analysis and quality control.
2. The purpose of genebanks is to collect, conserve and make genetic resources available. The maintenance of the genetic identity of the accessions is an overriding objective of genebanks. The Centres take proactive steps that aim to prevent the unintentional introgression of exotic genes, including transgenes, not already present into samples conserved in their genebanks. Proper germplasm management procedures and genebank practices and protocols to ensure quality and integrity of accessions must be followed.
3. Transgenes and conventional genes are subject to the same underlying biological processes of mutation, geneflow, introgression, recombination and natural selection. Therefore, best practices for preventing introgression of conventional genes provide an appropriate basis for preventing introgression of transgenes.
4. Germplasm management procedures and practices should conform to best practices. Best practices and appropriate technologies vary with the crop, influenced, for example, by its breeding system, pollination system, and whether it is an annual/perennial. These best practices include procedures and practices that aim to prevent the transfer of genes from sources other than the accession in question. Routes for transfer by other sources include admixture of seeds and pollination.
5. It is recognized that available technical means do not permit the complete exclusion of unintentional presence of exotic genes, including transgenes, in genebank accessions. It is also recognized that available testing techniques do not provide an absolute guarantee, without testing every single seed or plant that any given accession is free of transgenes. However, best practices in genebanks will achieve a high degree of statistical probability that an accession does not include unintentionally present transgenes.

Guiding principles

6. The Centres should take proactive steps to determine the risk of the unintentional presence of exotic genes, including transgenes, in their *ex situ* collections.
7. The Centres should develop, document and communicate crop-specific guidelines for best gene bank management practices. These guidelines should include crop-specific risk analysis procedures (i.e., risk assessment, management, and communication) addressing critical control points.
8. The major genebank operations that need to be evaluated are collecting, acquisition, regeneration, characterization, delivery, conservation, testing health and viability, evaluation and documentation (genebanks are most open to unintentional introduction of transgenes at the collecting and acquisition stage, because germplasm may have

been exposed to geneflow outside the control of the genebank).

The guidelines must aim to minimize geneflow at these stages, for transgenes and for conventional genes.

9. As part of their risk analysis, when collecting or acquiring new accessions by other means, Centres should consider the following regarding testing:
 - a. whether transgenic events (commercial and research) in the relevant taxa are likely to be present in the area of collecting or acquisition;
 - b. the distance between the collecting site and areas where transgenic events (commercial and research) are situated; or
 - c. whether germplasm providers can provide adequate documentation of their germplasm management practices with respect to the material in question.
10. With respect to existing accessions, Centres' testing procedures should be guided by the following criteria:
 - a. No testing would be required when:
 - i. there are no transgenic events (commercial or research) in the relevant taxa at the present time;
 - ii. there were no transgenic events (commercial or research) in the relevant taxa at the time of acquisition (e.g., maize prior to 1996);
 - iii. it is determined that, unless there are other factors, there is no presence of transgenic events within a distance that would allow for introgression; or
 - iv. there are transgenic events (commercial or research) present, however, proper management practices have been followed and documented in the management of the accession.
 - b. Tests should be undertaken when there are transgenic events (commercial or research) present and good management practices cannot be demonstrated.
 - c. Once an accession has been determined to either not require testing or has tested negative, the Centre will follow best practice regeneration and maintenance procedures to maintain the genetic integrity, as for all accessions.
11. If and when transgenes are detected in an accession, in following best practice management procedures, the Centres will take appropriate steps to prevent introgression of those transgenes to other accessions.
12. The Centres should establish and maintain a database on the global status of GM research and development for the crops within their collections in order to facilitate risk analysis. The database should be posted on a publicly accessible website.
13. The Centre should bear the costs of the procedures, including tests when necessary, set out above. Requests for additional assurances above those established by the Centre should be met through additional funds on a case-by-case basis from outside sources.
14. Upon request by the recipients of materials, the Centre will provide information describing procedures and tests that the Centre has followed for the accession concerned.
15. All data resulting from any testing should be properly documented and made publicly available as soon as it is considered scientifically reliable (e.g., by posting on the Centre's web site). All procedures and supporting information should be presented at the same time. The Centre will also inform the relevant authority of the country of collecting or acquisition of the material in question when transgenes are found; the Centre will also inform the relevant authority of the country in which the Centre is located.

CDC STATEMENT ON THE GUIDING PRINCIPLES ON INTELLECTUAL PROPERTY RIGHTS RELATING TO GENETIC RESOURCES

The Directors General of the Future Harvest Centres, supported by the Consultative Group on International Agricultural Research, in their meeting of 19 October 2000, considered proposed new text for the Guiding Principles on Intellectual Property Relating to Genetic Resources. In doing so they reaffirmed their full commitment to upholding the Agreements signed with FAO in 1994 that recognized the trusteeship status of the Centres with regard to the plant genetic resources collections, and placed the collections within the FAO International Network of *Ex situ* Collections.

Furthermore the Centre Directors reaffirmed that, in accordance with the Agreements, they:

- 1) will continue to safely conserve, maintain, study and distribute this germplasm world-wide for use in agricultural research and development,
- 2) recognize the intergovernmental authority of FAO and its Commission on Genetic Resources for Food and Agriculture in setting policies for the International Network of *Ex situ* Collections, of which the designated germplasm is part,
- 3) confirm that they will not seek legal ownership nor seek intellectual property protection over the designated germplasm or related information and ensure, through the use of material transfer agreements, that any recipient of the material is bound by the same conditions.

The Centre Directors recognized, however, that there have been different and conflicting interpretations concerning certain aspects of the Agreements, particularly with respect to intellectual property protection, and that these need to be resolved as soon as possible. The lack of such resolution risks seriously hampering crop improvement work for the benefit of developing countries.

Under the terms of the 1994 Agreements with FAO, it is not within the power or authority of the Centres to set policies unilaterally on matters concerning the designated germplasm. Such resolution is to be provided by FAO and its Commission on Genetic Resources for Food and Agriculture. However, the Centre Directors also recognized the difficulties faced by the FAO Commission in attempting to provide such resolution in the short term, especially prior to concluding the renegotiation of the International Undertaking. They thus call upon FAO, and the international community in general, to use whatever offices are appropriate to bring this issue to an expeditious conclusion.

The Centre Directors have decided that, pending resolution of these issues, no new guiding principles on intellectual property relating to plant genetic resources will be adopted.

CGIAR International Centres Week 2000
Washington, DC, USA
October 2000

PRINCIPLES INVOLVING CENTRE INTERACTION WITH THE PRIVATE SECTOR AND OTHERS

- The CGIAR Centres recognize the increasing importance of the private sector and other institutions in the invention and development of materials and advanced technologies that could be applied to the CGIAR goals of alleviation of poverty, enhancement of food security and protection of natural resources.
- The CGIAR Centres engage the private sector, universities, advanced research institutes, NARS, and other institutions to access these materials and technologies and bring them to bear on the problems and opportunities of poor farmers. This may include licensing of products and technologies and engaging in partnerships to develop and deliver new technology to poor farmers and others in developing countries.
- CGIAR Centres derive benefits from relationships with other institutions and the private sector through access to and use of:
 - proprietary technology and expertise (know-how)
 - proprietary materials, reagents, and products
 - manufacturing and production capabilities
 - delivery systems for research and information products
- Centres' collaboration with other institutions will be conducted in accordance with the CGIAR Ethical Principles Relating to Genetic Resources which have been adopted formally at MTM1998. In the event Centres secure financial returns as a result of commercialization by others of protected property, they will be applied to furthering the mandate of Centres involved and the objectives of the CGIAR.
- The Guiding Principles for the CGIAR International Agricultural Research Centres on Intellectual Property and Genetic Resources (agreed to informally as operating guidelines during MTM1996) will apply to all agreements with the private sector and other institutions. These principles define or describe responsibilities related to germplasm held in trust by the Centres, as well as ensuring broad access to designated germplasm and centre's research outputs, including biotechnological research processes and products. These principles specify the responsibilities and procedures for Centres in dealing with:
 - National sovereignty (rights of states over their genetic resources)
 - Farmers' rights
 - Intellectual property protection for designated germplasm and centre research products
 - Plant breeders' rights
 - Defensive protection by Centres
 - Patenting
 - Centre access to materials protected by others
 - Biosafety and Bioethics

- In collaboration with industry or other institutions, Centres will adhere to policies and procedures for the conservation and use of genetic resources and biodiversity as defined under the terms of the:
 - Convention on Biological Diversity
 - FAO-CGIAR Agreement on Genetic Resources
 - FAO International Undertaking on Plant Genetic Resources for Food and Agriculture
- In compliance with contemporary legal and ethical obligations, Centres will undertake good faith negotiations with owners of proprietary technologies they use or plan to use, including patented materials and legally protected trade secrets
- The Chair of the CGIAR or his designee is entrusted to represent and protect the interests of the CGIAR and its Centres in international decision-making fora including but not limited to WTO (specifically with respect to TRIPS), WIPO, CBD, UPOV and FAO.

CGIAR POLICY STATEMENT ON GENETIC USE RESTRICTION TECHNOLOGIES

“The Genetic Resources Policy Committee endorsed a CGIAR policy statement on the implications of the gene technology preventing seed germination for consideration by the Group (ICW):

‘The CGIAR will not incorporate into its breeding materials any genetic systems designed to prevent seed germination. This is in recognition of concerns over potential risks of its inadvertent or unintended spread through pollen; the possibilities of the sale or exchange of inviable seed for planting; the importance of farm-saved seed, particularly to resource-poor farmers; potential negative impacts on genetic diversity; and the importance of farmer selection and breeding for sustainable agriculture.’

....The Group accepted the GRPC's recommendation that the CGIAR adopt a statement concerning "terminator genes technology." Noting that the CGIAR's science exists to serve the poor, the Group decided that:

‘The International Agricultural Research Centres supported by the Consultative Group on International Agricultural Research system, which are engaged in breeding new crop varieties for resource poor farmers, will not incorporate into their breeding material any genetic systems designed to prevent seed germination.’”

CGIAR International Centres Week
Washington, DC, USA
October 1998

CENTRES' POSITION STATEMENT ON BIOTECHNOLOGY

Given the immensity of the long-term food security and environmental conservation challenges confronting countries of the South, the Centres firmly believe in the following propositions:

- Biotechnology must be viewed as one of the critical tools for providing food security for the poor.
- The Centres advocate the prudent application of the full range of biotechnology tools to achieve substantial and sustainable growth in agricultural productivity in poor countries. These tools include, but are not limited to, molecular markers, genetic engineering, and recombinant vaccines.
- The Centres view biotechnology as an important means for ensuring environmental protection over the long term.
- The Centres have a clear comparative advantage in ensuring access by the countries of the South to the advanced tools of biotechnology. This advantage accrues by virtue of its present credible mass in biotechnology, its global network of partnerships within and among countries of the South, and its increasingly close linkages to advance research institutions of the north, both public and private.
- Given the extremely rapid pace of new developments in biotechnology, the Centres are committed to increasing their partnerships with ARIs, both public and private, north and south, to ensure ready access of Centre scientists and our partners in the south to advanced technologies.
- The Centres make adequate investments in the arena of biotechnology in order to: 1) maintain their own credible scientific mass, 2) be proactive in assisting countries of the South to establish effective biosafety regulations, and 3) contribute substantially to developing the human capital needed to ensure the judicious application of appropriate biotechnology tools to important food security and environmental problems.
- The Centres are firmly committed to the application of genomics (molecular genetics, molecular markers) for immediate use in better understanding and manipulating the genomes of plants, animals, and their pathogens and pests.
- The development and deployment of transgenics (via genetic engineering), is seen by the Centres to provide important options for meeting the food security and environmental challenges of the future.
- The Centres will carry out all of their activities in the arena of biotechnology under high standards of appropriate and approved biosafety regulatory frameworks, both within individual countries and institutions. The Centres will seek partnerships with institutes that have such frameworks in place (thus our commitment to policy and capacity building in this area).

GUIDING PRINCIPLES FOR THE CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH CENTRES ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES¹

Background

The CGIAR is committed to the conservation and use of genetic resources in an expeditious, cost-effective and equitable manner. In recent years the CGIAR's activities have been increasingly conditioned by a rapidly changing intellectual property rights environment, the issue of Farmers' Rights and the growing importance of the private sector. In this context the CGIAR, at its Mid-Term Meeting, Istanbul in May 1992, agreed on a set of working principles on genetic resources and intellectual property. These were published in the proceedings of the meeting and were largely based on a set of guiding principles on plant genetic resources and related intellectual property rights issues adopted by the International Agricultural Research Centres in 1991.

Significant changes have occurred since the CGIAR decisions in 1992 that affect the exchange and use of genetic resources:

- The Convention on Biological Diversity came into force 29 December 1993;
- Centres signed agreements with FAO on 26 October 1994, bringing their germplasm collections under the auspices of FAO, as part of the International Network of *Ex Situ* Collections. Materials covered in these agreements referred to as "designated germplasm"², are listed in the appendices to the agreements.
- The Multilateral Trade Agreement which came into force 1 January 1995 embodies provisions on Trade Related Intellectual Property (TRIPS). As a result, many countries are now developing and enacting intellectual property rights legislation, including plant variety protection.

Against this background, the CGIAR convened a panel on intellectual property rights in September 1994 under the Chairmanship of Dr. M.S. Swaminathan. The report of the panel was endorsed at International Centres Week in October 1994.

Based on the agreed recommendations made in this report and, pending the emergence of international consensus on a range of issues arising, the CGIAR Centres have revised their guiding principles on intellectual property. While it is envisaged that there may well be further revisions as changing circumstances warrant, the Centres consider it essential to clearly state these guiding principles for the benefit of the NARSs, donors, NGOs, the private sector and our other partners in research and development.

¹ This paper was adopted as an interim working paper by the CGIAR at its ICW1996 meeting, Washington, D.C. 1996.

² The majority of materials currently held in Centre genebanks has already been designated as coming under the agreement with FAO. Further material is being designated (as stocks are cleaned and multiplied) with the result that only those materials carrying special conditions imposed by the supplier would remain undesignated. (In 1996, such material accounts for less than 5 percent of the total holdings.)

Guiding Principles

- The germplasm designated by the Centres is held in trust for the world community in accordance with the agreements signed with FAO. Through the agreements, official inter-governmental recognition is given to this role of the Centres, and FAO is to provide policy advice to the Centres in the execution of their responsibilities. The Centres agree to conserve, maintain, study, improve, and distribute germplasm worldwide for use in agricultural research and development. As trustees of the designated germplasm, the Centres also affirm their responsibility for safe and secure conservation of these genetic materials for present and future generations, including their duplication in at least one other location for safety.
- Through their guiding principles on intellectual property protection, the Centres aim to promote ready access to both the designated germplasm and the Centres' research products, including biotechnological processes arising from their research.

National Sovereignty

- The Centres recognize that the acquisition of germplasm after the coming into force of the Convention on the Biological Diversity is subject to the provisions of the said Convention, and in particular to the sovereign rights of states over their genetic resources. The Centres will strive to reach an understanding on mutually agreed terms with national governments, either individually or collectively, facilitating the fair and equitable sharing of benefits arising from the collection, conservation and utilization of such germplasm, besides providing ready access to these genetic resources.

Farmers' Rights

- The Centres recognize the contributions of farming and indigenous communities to genetic resources conservation and enhancement. In order to convert this concept into reality the Centres are prepared to contribute to national and international efforts to develop appropriate policies and procedures for the recognition of Farmers' Rights. The Centres also recognize the expertise of many national and international NGOs on equity, gender, conservation and sustainability issues and where appropriate partnerships with them and others in order to integrate these concerns in research on genetic resources conservation and use.

Intellectual Property protection: designated germplasm and centre research products

- The Centres will not claim legal ownership nor apply intellectual property protection to the germplasm they hold in trust, and will require recipients of the germplasm to observe the same conditions, in accordance with the agreements signed with FAO.
- *Plant Breeders' Rights.* Materials supplied by the Centres, whether designated germplasm or the products of the Centres' breeding activities, may be used by recipients for breeding purposes without restriction. Recipients, including the private sector, may protect the products of such breeding through plant variety protection that is consistent with the provisions of UPOV or any other *sui generis* system, and that does not preclude others from using the original materials in their own breeding programs.
- *Defensive Protection by Centres.* Based on the conviction that their research will continue to be supported by public funds, the Centres regard the results of their work as international public goods. Hence full disclosure of research results and products in the public domain is the preferred strategy for preventing misappropriation by others.

Consequently, the Centres will not assert intellectual property control over derivatives except in those rare cases when this is needed to facilitate technology transfer or otherwise protect the interests of developing nations. In all such cases, the Centres will disclose the reasons for seeking protection.

- The Centres do not see the protection of intellectual property as a mechanism for securing financial returns for their germplasm research activities, and will not view potential returns as a source of operating funds. In the event that a Centre secures financial returns as a result of the commercialization by others of its protected property, appropriate means will be used to ensure that such funds are used for furthering the mandate of the Centre and the objectives of the CGIAR.
- Any intellectual property protection of Centres' output will be done on behalf of the Centres and not individual scientists. All staff in the Centres will be required to disclose innovations and assign all rights on these to the Centres.
- *Patenting.* We recognize that there is an increasing use of patenting in both the private and public sectors. Cells, organelles, genes or molecular constructs isolated from materials distributed by Centres may be protected by recipients only with the agreement of the supplying Centre. Centres will only give such approval after consultation with the country, or countries, of origin of the germplasm where this is known or can be readily identified. This consultation would include consideration of an appropriate sharing of any benefits, whether bilateral or multilateral, flowing from subsequent commercial development of the protected material.³, and would require that the original material remains available for the public good.
- *Centre Access to Material Protected by Others.* To promote the availability to developing nations of germplasm and scientific innovations that have been protected by others, the Centres may enter into agreements with the holders of such rights. Acceptance of any limitations on the distribution and use of derived and associated materials would have to be consistent with the goals and objectives of the CGIAR, and the benefits of such agreements should outweigh the potential disadvantages.

Biosafety

- The Centres will continue to give overriding importance to biosafety concerns and will follow collaborating country guidelines concerning biosafety.

General Procedures

- These Guiding Principles will be reviewed at regular intervals and revised as need be in the light of international developments. This revision will be carried out by the Centre Directors Committee.
- The Centres will adopt specific policies for the distribution and use of improved germplasm and biotechnological products following the above Guiding Principles.

³ It is recognized that this requirement for the granting of permission by a Centre before a recipient can take out patent protection represents a significant departure from the current position in which the Centres do not require any such permission. While this is not specifically required under the terms of the agreements signed with FAO, nevertheless the CGIAR feels that such a requirement is needed both to protect the interests of countries of origin and to bring CGIAR policy in line with the spirit of the Convention on Biological Diversity (CBD). While the CGIAR Centres can not themselves be party to the Convention, it is nevertheless recognized that the majority of CGIAR members and partner countries have signed and ratified the CBD.

THE CGIAR'S ETHICAL PRINCIPLES RELATING TO GENETIC RESOURCES

Introduction

The CGIAR was founded on the ethical imperative of eliminating hunger and starvation and has, since its inception, followed certain ethical principles. Increasing food security¹ and alleviating poverty have long been central to the system's science-based humanitarian mission. With the growing complexity of the problems being addressed by the research of the Centres, the expanding number of partners with whom they work and the rapidly evolving scientific, social and economic environment within which they operate, an increasing need has been felt for a clearer enunciation of the System's underlying ethical principles. Greater transparency about what the CGIAR really stands for is important in enabling strong and unambiguous relationships to be forged with a wide range of partners.

The main ethical principles are presented under four headings: Equity; Trusteeship of Genetic Resources; Respect, Responsibility and Integrity in Science; and Social Benefits. These are intended to encapsulate the essential principles followed by the CGIAR in relation to its work on genetic resources and in the pursuance of its goal: to contribute through agricultural and natural resources research and partnerships to sustainable food security and the alleviation of poverty.

Equity

- The CGIAR works for the attainment of equity in the conservation, sustainable use and the sharing of benefits derived from genetic resources. This commitment to fairness requires that emphasis be given to the needs of resource poor communities and to disadvantaged members of society.
- The CGIAR recognizes the contribution of many different communities and individuals, especially of women, to the conservation and enhancement of genetic diversity of potential use for food and agriculture, and will strive to ensure they benefit from such contributions. The CGIAR will avoid situations where a foreseeable reduction of local communities' access to, and benefits from, genetic resources might occur.
- The CGIAR recognizes that its major strength lies in its partnerships with national agricultural research systems and other organizations, and is committed to sharing credit in an equitable manner.

Trusteeship of Genetic Resources

The CGIAR Centres hold genetic resources in trust for the international community. In the case of plant genetic resources for food and agriculture this is, to a great extent, recognized through agreements with FAO. As trustees of genetic resources the CGIAR Centres recognize their responsibility to be impartial, transparent and fair in their administration of the trust; to respect and observe national regulations and international conventions, in particular the Convention on Biological Diversity; to be accountable for their actions; and to exercise

¹ According to the definition in the World Food Summit Plan of Action, food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

due care and diligence in conserving the material for the use of present and future generations and in making it readily available for use for the public good.

Respect, Responsibility and Integrity in Science

- The CGIAR's work on genetic resources respects the general scientific principles of good faith and the search for truth. However, the CGIAR is guided by its particular humanitarian and equity-based concerns, and not the pursuit of knowledge for its own sake.
- The CGIAR's scientific work, including that on biotechnology, is based on the principles of accountability, responsibility and precautionary action. For any undertaking, potential benefits shall clearly outweigh foreseeable risks, emphasizing broad societal interests such as food security, poverty alleviation and environmental sustainability.
- The CGIAR recognizes and respects the integrity of culture, tradition and the relationship of local people with their natural environments. Likewise the CGIAR respects the aspirations and culture of partner institutions and the societal context within which they operate.
- The CGIAR adheres to national regulations and to relevant internationally accepted codes of behaviour and conduct in areas of plant and animal biology; the collection and transfer of genetic resources; biosafety; animal welfare; and intellectual property.

Social Benefits

The CGIAR aims to promote lasting social benefit through its research and partnerships for the international public good. In its activities on genetic resources the CGIAR strives to increase individual, local and national food and livelihood security in developing countries through sustainable advances in productivity, nutritional quality, stability and through promoting biological and food diversity. For this purpose it is accountable for the dimensions of social and gender equity and environmental sustainability in its research, human resource development and capacity building programmes. The CGIAR aims to support the building of national capacity and institutions to manage, develop and conserve genetic resources.

Conclusion

The above principles, while not exhaustive, are intended to provide an overall statement of ethical principles relating to the CGIAR's work in genetic resources. They are also intended to provide a basis on which individual Centres can further elaborate their own guiding ethical principles or codes of conduct, and set up monitoring mechanisms, as appropriate. In implementing the above principles, the CGIAR Centres will work in partnership with national systems and other relevant organizations.

**Annex 1: The FAO-CGIAR In-Trust Agreements, 1994, related statements,
and material transfer agreement**

1994

**THE AGREEMENT BETWEEN [NAME OF CENTRE] AND THE FOOD AND
AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) PLACING
COLLECTIONS OF PLANT GERMPLASM UNDER THE AUSPICES OF FAO**

Preamble

The [Name of Centre] (hereinafter referred to as the "Centre"), supported by the Consultative Group on International Agricultural Research (hereinafter referred to as "CGIAR"), and the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO");

Considering the importance to humanity of protecting and conserving plant germplasm for future generations;

Considering the International Undertaking on Plant Genetic Resources adopted by the FAO Conference at its Twenty-second Session in 1983 (Resolution 8/83) and in particular Article 7 thereof: and the Annexes of the Undertaking adopted by the FAO Conference in 1989 and 1991;

Considering that the FAO Commission on Plant Genetic Resources (hereinafter referred to as the "Commission"), as the relevant intergovernmental body in this field, has the responsibility for monitoring of the implementation of Article 7 of the International Undertaking on Plant Genetic Resources;

Considering the Memorandum of Understanding Between the Food and Agriculture Organization of the United Nations and the International Board for Plant Genetic Resources (IBPGR) dated September 21, 1990, on the respective roles of the two organizations in establishing, maintaining and managing germplasm collections and setting standards for these collections;

Considering the strong support FAO, as one of the co-sponsors, has provided and continues to provide to the CGIAR;

Considering the importance of the plant germplasm collections held by the International Agriculture Research Centres (IARCs), supported by the CGIAR, as part of the global strategy for germplasm conservation;

Considering that the CGIAR adheres to a policy on plant genetic resources which is based on the unrestricted availability of germplasm held in their genebanks;

Considering that the germplasm accession have been donated or collected on the understanding that these accessions will remain freely available and that they will be conserved and used in research on behalf of the international community, in particular the developing countries;

Considering that the Centre has expressed the wish that its designated germplasm be recognized as part of the international network of *ex situ* collection (as per the International Undertaking on Plant Genetic Resources) under the auspices of FAO;

Have agreed as follows:

Article 1
Application of this Agreement

This Agreement shall be construed and applied in a manner consistent with the provisions of the Convention on Biological Diversity and the International Undertaking on Plant Genetic Resources.

Article 2
Basic Undertaking

The Centre hereby places under the auspices of FAO, as part of the international network of *ex situ* collections provided for in Article 7 of the International Undertaking on Plant Genetic Resources, the collections of plant genetic resources listed in the Appendix hereto (hereinafter referred to as the "designated germplasm"), as catalogued and published by the Centre in print or machine-readable form, in accordance with the terms and conditions set forth in this Agreement. The list of designated germplasm will be updated every two years as new accessions are added to the collection.

Article 3
Status of Designated Germplasm

- (a) The Centre shall hold the designated germplasm in trust for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking on Plant Genetic Resources and the terms and conditions set out in this Agreement.
- (b) The Centre shall not claim legal ownership over the designated germplasm, nor shall it seek any intellectual property rights over that germplasm or related information.

Article 4
Premises

- (a) The premises in which the designated germplasm is conserved shall remain in the charge of the Centre.
- (b) FAO shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the designated germplasm.

Article 5
Management and Administration

- (a) The Centre undertakes to manage and administer the designated germplasm in accordance with internationally accepted standards, including, with respect to the storage, exchange and distribution of seeds, the international Genebank Standards endorsed by the Commission, as soon as possible applying the "preferred standards" where these are specified, and ensuring that all the designated germplasm is duplicated in order to ensure its safety.
- (b) FAO may recommend action, if it considers such action to be desirable, in order to ensure the proper conservation of the designated germplasm.
- (c) If the orderly maintenance of the germplasm collection of the Centre is impeded or threatened by whatever event, including *force majeure*, FAO shall assist in the evacuation and/or transfer of the collections, to the extent possible. The cost of such an operation will be covered by the Centre concerned.

Article 6
Policies

The Centre recognizes the intergovernmental authority of FAO and its Commission in setting policies for the International Network referred to in Article 7 of the International Undertaking and undertakes to consult with FAO and its Commission on proposed policy changes related to the conservation of, or accessibility to, the designated germplasm, subject, always, to the provisions of Article 9 hereinafter. The Centre shall give full consideration to any policy changes proposed by the Commission.

Article 7
Staff

- (a) Staff responsible to managed and administer the designated germplasm shall be employed and remunerated by the Centre.
- (b) As and when deemed appropriate, FAO shall furnish technical backstopping on request by the Centre.

Article 8
Finances

The Centre shall remain entirely responsible for financing the maintenance of the designated germplasm.

Article 9
Availability of Designated Germplasm and Related Information

The Centre undertakes to make samples of the designated germplasm and related information available directly to users or through FAO, for the purpose of scientific research, plant breeding or genetic resources conservation, without restriction.

Article 10
Transfer of Designated Germplasm and Related Information

Where samples of the designated germplasm and/or related information are transferred to any other person or institution, the Centre shall ensure that such other person or institution, and any further entity receiving samples of the designated germplasm from such person or institution, are bound by the conditions set out in Article 3 (b) and, in the case of samples duplicated for safety purposes, to the provisions of Article 5 (a).

This provision shall not apply to the repatriation of germplasm to the country that provided such germplasm.

Article 11
Duration

This agreement is conducted for a period of four years and shall be automatically renewed for further periods of four years unless notice of non-renewal is given in writing by either party not less than one hundred and eighty (180) days before the end of any four-year period.

Article 12
Termination

- (a) Either FAO or the Centre may terminate this Agreement at any time by giving notice to the other, one year in advance of the termination date.
- (b) FAO and the Centre shall, in such case, take all necessary measures to wind-up joint activities in an appropriate manner and, within the limits of their respective competence, to ensure the continued conservation of and access to the designated germplasm.

Article 13
Settlement of Disputes

- (a) Any dispute concerning the implementation of this Agreement shall be settled by mutual consent.
- (b) Failing mutual consent, such dispute may be submitted, at the request of either FAO or the Centre, to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall designate by mutual consent the third arbitrator, who will act as the presiding arbitrator of the tribunal.
- (c) If within two months after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the Secretary-General of the United Nations to appoint the second arbitrator.
- (d) If within two months after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, such presiding arbitrator shall be designated by the Secretary-General of the United Nations at the request of either party.

- (e) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure.
- (f) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding for the parties to the dispute.

Article 14
Amendment

- (a) FAO or the Centre may propose that the Agreement be amended by giving notice thereof.
- (b) If there is a mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set, and be reported to the next session of the Commission.

Article 15
Depositary

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Members Nations of:
 - (i) the signature of this Agreement in accordance with Article 16; and
 - (ii) the adoption of amendments to this Agreement in accordance with Article 14.

Article 16
Coming into Force

This Agreement shall come into force upon signature by the authorized representative of FAO and the Centre.

United National Food and Agriculture
Organization

[Name of Centre]

by:
(signature)

by:
(signature)

Date:

Date:

Appendix
Designated Germplasm

- (a) List of germplasm accession covered by this agreement
- (b) List of location where material is held

JOINT STATEMENT OF FAO AND THE CGIAR CENTRES ON THE AGREEMENT PLACING CGIAR GERMPLASM COLLECTIONS UNDER THE AUSPICES OF FAO

The International Agricultural Research Centres of the Consultative Group on International Agricultural Research (the Centres), which hold plant genetic resources in trust in their genebanks, listed at the end of this joint statement, have placed these collections under the auspices of FAO as part of the International Network of *Ex Situ* Collections, under agreements signed with FAO (the Agreement).

The text of the Agreement is essentially that approved by the Commission on Plant Genetic Resources (CPGR) in April 1993 and the FAO Conference in November 1993 with the modifications introduced into the text to reflect the concerns expressed by the CPGR on certain points. The modifications deal with (i) clarification of the concept of trusteeship and beneficiary, in particular as it relates to the concept of ownership; (ii) obligations with respect to the conservation of germplasm and its availability that would flow from the concept; (iii) the policy role of the CPGR; and (iv) the duration of the agreement and opportunities for its review by the CPGR.

The modified draft agreement was further commented on by the Working Group of the CPGR at its ninth session (Rome, 11-12 May 1994), which expressed its concern that the draft agreement, substantially in its present form should be concluded as soon as possible. In so doing the Working Group drew attention to the need to clarify the implication of the words "without restriction" at the end of Article 9, in the light of the Convention on Biological Diversity and the ongoing process of renegotiation of the International Undertaking on Plant Genetic Resources. It was suggested that the words either be deleted or be clarified in a joint statement, by the parties to the agreement, to be presented to the CPGR. The text of the Agreement to be signed on 26 October 1994 is identical to that presented to the Working Group in May 1994, with the addition, at the beginning of Article 9, of the expression "Subject to the provisions of Article 10 below"

In considering the final text of the Agreement, the common understanding of the parties concerning certain of its provisions is hereby communicated to the Commission on Plant Genetic Resources as follows:

1. Article 3(b): This article does not prevent the Centres from using instruments such as material transfer agreements when they are designed to ensure the materials distributed remain in the public domain as is required under Article 10.
2. Article 3(b): The words "related information" at the end of Article 3(b) refer to information which has been compiled with respect to individual accessions. Such information includes passport and characterization data and, when available in the databases of the respective genebanks, evaluation data and information on indigenous knowledge.
3. Article 9: The words "without restriction" at the end of Article 9 should be interpreted consistently with the Convention on Biological Diversity and as not in any way affecting the rights of countries of origin under this Convention.
4. Article 9: The words "Subject to the provisions of Article 10 below" were added at the beginning of the Article to clarify that the words "without restriction" in Article 9 are not interpreted as a limitation on the ability of the Centres to obtain commitments from persons and entities receiving samples of designated germplasm as stated in Article 10

5. Article 10: With respect to the transfer of samples of designated germplasm, the requirements of Article 10 will be satisfied by arrangements, such as material transfer agreements, that require the recipient not to seek intellectual property protection on the material and to pass on the same obligation to subsequent recipients. Similarly, with respect to the transfer of duplicates of collections, or parts thereof, for safety purposes, the requirements of Article 10 will be satisfied by an agreement under which the recipient institution undertakes to observe the maintenance obligations set out in Article 5(a). However, in neither case will the source Centre be under an obligation to monitor the compliance of the recipient with these undertakings; the obligation of the source Centre will be limited to obtaining such undertakings on the part of the recipient.
6. The parties to the Agreement recognize that the conclusion of the Agreement represents but one stage of a continuing, dynamic process and agree to continue the dialogue in the context of the implementation of the Convention on Biological Diversity and the FAO Global System on Plant Genetic Resources. They will consult from time to time to review these matters and to consider such modifications as may be appropriate in the circumstances.

Centro Internacional de Agricultura Tropical (CIAT)
Centro Internacional de Mejoramiento de Maiz y Trigo (CIMMYT)
Centro Internacional de la Papa (CIP)
International Center for Agricultural Research in the Dry Areas (ICARDA)
International Center for Research in Agroforestry (ICRAF)
International Crops Research Institute for the Semi-Arid Tropics (ICRISAT)
International Institute for Tropical Agriculture (IITA)
International Livestock Centre for Africa (ILCA)
International Plant Genetic Resources Institute (IPGRI)/International Network for the Improvement of Banana and Plantain (INIBAP)
International Rice Research Institute (IRRI)
West Africa Rice Development Association (WARDA)
Centre for International Forestry Research (CIFOR)

**SECOND JOINT STATEMENT OF FAO AND THE CGIAR CENTRES ON THE
AGREEMENT PLACING CGIAR GERMPLASM COLLECTIONS
UNDER THE AUSPICES OF FAO**

A Joint Statement issued by FAO and the CGIAR in conjunction with the signing of the FAO-CGIAR Agreements placing CGIAR Germplasm Collections under the auspices of FAO observed that:

The parties to the Agreement recognize that the conclusion of the Agreements represents but one stage of a continuing, dynamic process and agree to continue the dialogue in the context of the implementation of the Convention on Biological Diversity and the FAO Global System on Plant Genetic Resources. They will consult from time to time to review these matters and to consider such modification as may be appropriate in the circumstances.

FAO and the CGIAR have consulted frequently since the Agreements were concluded in 1994 in order to review the implementation of the Agreements.

The Parties understand and agree that:

While Centres distribute germplasm designated under the FAO/CGIAR Agreements through Material Transfer Agreements which prohibit the recipient, or any subsequent recipient, from taking out intellectual property rights, the CGIAR cannot guarantee that recipients will abide by the terms of the MTA. Violations may take place. However, in such cases the Parties commit themselves to taking appropriate remedial action, in accordance with the following agreed procedures:

When Centres become aware of a possible violation of their MTAs by a recipient of germplasm, the Centres will henceforth voluntarily undertake the following actions in response to the perceived violation.

1. The Centres will request an explanation. Upon failure to receive a satisfactory and timely explanation for the situation from the germplasm recipient, the Centres will notify the recipient that a violation is thought to have occurred and request that the recipient cease and desist in its efforts to obtain intellectual property rights over the material, or renounce such rights or ownership if they have already been granted or claimed.
2. The Centres will notify the proper regulatory body in the relevant country of the possibility that the MTA has been violated, and bring to their attention the fact that the grant of intellectual property rights may, therefore, have been inappropriate in the case of the material obtained from the CGIAR.
3. The Centres will notify IPGRI and the FAO Commission on Genetic Resources for Food and Agriculture, through its Secretariat, of the possible violation of the MTA under the Agreements with FAO.

The Centres reserve the right to take other action, including legal action, as they might deem feasible and appropriate to enforce the MTAs and preserve the integrity of the Agreements with FAO. In this regard, it would be the intent of the Centres to work in cooperation with FAO, under whose auspices the materials are held in trust by the CGIAR for the benefit of the international community.

The Centres recognize that many accessions designated under the Agreements with FAO, were distributed to plant breeders and researchers prior to designation in keeping with the CGIAR policy for providing "unrestricted availability" to germplasm - as noted in the Preamble of Agreements. In dealing with this situation, Centres will request and urge that no intellectual property rights be sought for designated germplasm that was distributed prior to its designation under the FAO-CGIAR Agreement.

Periodic reports will be presented to the Commission on Genetic Resources for Food and Agriculture on the actions taken in support of the objectives of the Agreements between the CGIAR Centres and FAO.

In considering the text of the Agreement, the common understanding of the parties concerning certain of its provisions is, as follows:

Under the terms of the Agreements (Article 9), the Centres undertake "to make samples of the designated germplasm available directly to users or through FAO for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction." It is implicit in this undertaking that users will make only reasonable requests for these specific purposes, and that the liability of the Centres would not extend to the fulfillment of unreasonable requests.

Sound management practices as well as practical or even biological constraints (such as seed availability or the health status of a sample) may at times make it difficult or inappropriate for Centres to provide germplasm designated under the Agreements for the purposes spelled out in Article 9. It is understood that Centres must use some discretion in determining the size and number of samples to be provided at any given time to a particular recipient. Centres are not obligated to distribute seed or other designated materials when such distributions would reduce stocks below accepted levels for conservation purposes, or when the request is for such a number of samples or quantity of a particular accession as to pose an undue burden on the financial or technical resources of the centre or on its ability to meet requests from others. In such cases, the centre may ask that the recipient cover the actual costs of multiplying the relevant accessions. In cases of limited supplies, immediate availability of materials cannot be guaranteed. Such availability will follow a process of multiplication. Centres are not obligated to supply quantities of a sample which exceed basic requirements for the purposes stated in Article 9. Recipients are advised that they may need to undertake their own seed multiplication when existing sample sizes are small (such as in the case with many accessions of wild relatives) or when demand for a particular sample exceeds supply. In filing requests for material for conservation purposes alone, users are invited to note the Global Plan of Action's objectives of "safeguarding as much existing unique and valuable diversity as possible in *ex situ* collections," while reducing "unnecessary and unplanned redundancy in current programmes."

In cases when a centre cannot fully or immediately meet a request, the centre will enter into a discussion with the requesting entity to develop and agree upon a plan and schedule for the supply of materials. This process might establish an agreed list of accessions to which priority would be given.

Some designated accessions cannot be multiplied without considerable cost. For example, certain accessions of woody species may take upwards of 10 hectares of land and 30 years to multiply. Similarly, supplying materials of vegetatively propagated species can involve very time-consuming and expensive procedures. While Centres endeavour to supply materials free of cost, in such circumstances it would be unreasonable to expect that Centres could guarantee unlimited quantities or immediate availability of all designated germplasm. Users are encouraged to exercise good judgement and appropriate constraint in requests for such

materials. At their discretion, Centres may request that users cover all or part of the costs involved in multiplication.

Centres are neither obligated nor advised to distribute samples that do not meet health or quarantine standards, or whose transfer could pose the danger of a spread of pests or disease. Centres will inform those requesting materials of the danger which might be posed by invasiveness in those cases where they perceive such dangers to be significant, and of the need for the prior informed consent of the recipient Government for the import of such materials. Materials will then be supplied upon receipt of such prior informed consent.

Article 2 provides that “The list of designated germplasm will be updated every two years as new accessions are added to the collection.” This does not preclude Centres from adding new germplasm to the list of designated germplasm without having to wait for the biennial updating of the lists. In such cases, the status of particular germplasm as “designated germplasm” becomes effective immediately upon a centre’s determining that it is designating the germplasm under the Agreement and managing the germplasm under the terms of the Agreement. The additional designations will be consolidated into updated lists, which will be notified to FAO every two years or more frequently as may be appropriate.

As management and information systems improve and as genomic information about accessions becomes available, Centres will update the list of materials covered under the Agreements. In addition to adding new materials, Centres may find, for example, that particular accessions have been designated more than once; that an accession’s registration number conveyed to FAO on the list of designated germplasm referred to in Article 2, may be incorrect or no longer correspond to an actual accession in the centre’s genebank; or that an accession may, through natural or accidental causes, have lost viability. Logically, such “accessions” will no longer be considered as designated under the terms of the Agreement. The Centre or Centres concerned will notify FAO of any proposals for the deletion of accessions from the list of designated germplasm for such reasons and will provide FAO with a statement of the reasons therefore.