

**Guidelines for the Implementation of
International Treaty on Plant Genetic
Resources for Food and Agriculture for
Facilitated Access under Multilateral
System**

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Guidelines for the Implementation of International Treaty for Plant Genetic Resources for Food and Agriculture for Facilitated Access under Multilateral System

Section-I

Introduction

Acknowledging the fact that Plant Genetic Resources for Food and Agriculture (PGRFA) are the basic requirement indispensable for crop genetic improvement, their distinctive features and special nature is well recognized. Reiterating the fact that PGRFA are very important for food security and no country is self-sufficient in terms of PGRFA, access to a wide range of PGRFA and related information is crucial for sustainable agriculture and food security. India being signatory to the legally binding International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) has obligation as a Contracting Party (Countries which have ratified the Treaty, www.planttreaty.org) to provide facilitated access to PGRFA.

The guidelines are for the purpose of providing facilitated access to PGRFA as per the international obligation for implementing the ITPGRFA, and as per the national policies, commitment and laws and also in the interest of promoting their sustainable utilization along with equitable benefit sharing in harmony with relevant national legislations.

Since, India has ratified Nagoya Protocol(NP), as per article 4.2 and 4.4 of the Protocol nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol. These guidelines are in harmony with the Convention and NP and do not run counter to the objectives of relevant international agreements and extant relevant national legislations.

India signed and ratified ITPGRFA hereinafter referred to as the Treaty after approval from Cabinet, on 10th June, 2002. 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. As per Article 12 of the Treaty¹, all Contracting Parties (countries) are obliged to provide facilitated access to PGRFA that are under the management and control of Contracting Parties and in the public domain. Contracting Parties are also obliged to encourage natural and legal persons within their jurisdiction, who hold such PGRFA, to include these in the multilateral system (MLS) of the Treaty to facilitate their access. The list of 35 food crops and 29 forage crops as agreed by the Contracting Parties referred to as Annex 1 crops, is at Annexure II.

¹*Article 12 - Facilitated access to plant genetic resources for food and agriculture within the Multilateral System*
(<http://www.planttreaty.org/content/texts-treaty-official-versions>)

Facilitated access to PGRFA, as per the provisions of the Treaty shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed/ industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security shall be determinant for their inclusion in the Multilateral System and availability for facilitated access. Recipients cannot claim any Intellectual Property (IP) or other rights that limit the facilitated access to the PGRFA, or their genetic parts or components, in the form received under MLS. Access to PGRFA protected by IP and other property rights shall be consistent with relevant international agreements, and with relevant national laws (Article 12.3 a)².

Facilitated Access to PGRFA is to be provided under the conditions of a Standard Material Transfer Agreement (SMTA) (Annexure-I) approved by the Governing Body (GB) of the Treaty. SMTA is the instrument that binds the recipient to use the material only for the purpose it is accessed and not to claim any Intellectual Property Rights (IPRs) over the accessed PGRFA, in the form received. The recipients can improve, utilize and commercialize the products of research with specified benefit sharing arrangements under MLS enshrined in SMTA. This SMTA is also to be used for third party transfers of the material by subsequent users (Article 12.4)³.

For Implementation of the Treaty in India, facilitated access to PGRFA from India shall be in agreement with the relevant extant national legislations, for regulating access to PGRFA from India.

National Bureau of Plant Genetic Resources (NBPGR) being the nodal agency for the management and exchange of PGR for research purposes in India, will coordinate the supply of PGRFA of Annex 1 Crops for the purpose of the Treaty, in consultation with other relevant national research institutions/organizations, and with the concurrence of the National Focal Point (NFP) designated under the Treaty.

²Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access (Article 12.3 a).

³To this effect, facilitated access, in accordance with Articles 12.2 and 12.3 above, shall be provided pursuant to a standard material transfer agreement (MTA), which shall be adopted by the Governing Body and contain the provisions of Articles 12.3a, d and g, as well as the benefit-sharing provisions set forth in Article 13.2d(ii) and other relevant provisions of this Treaty, and the provision that the recipient of the plant genetic resources for food and agriculture shall require that the conditions of the MTA shall apply to the transfer of plant genetic resources for food and agriculture to another person or entity, as well as to any subsequent transfers of those plant genetic resources for food and agriculture (Article 12.4)

MLS shall also include crops other than Annex 1 already held in the *ex situ* collections of the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR)⁴.

PGRFA collected before 1993 and held in trust by IARCs shall also be made available in accordance with the provisions of SMTA pursuant to agreements between IARC and FAO, in accordance with the relevant provisions of this Treaty⁵.

India has presently notified 26,563 accessions belonging to 9 crops⁶ from the list of Annex I crops. Inclusion/expansion in this list will be notified as and when warranted.

The guidelines ensure the conformity of laws, regulations and procedures with its obligations as Contracting Party to the Treaty to facilitate access to PGRFA and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis⁸.

⁴*The Multilateral System shall also include the plant genetic resources for food and agriculture listed in Annex I and held in the ex situ collections of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR), as provided in Article 15.1a, and in other international institutions, in accordance with Article 15.5(Article 11.5).*

⁵*The Contracting Parties recognize the importance to this Treaty of the ex situ collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR). The Contracting Parties call upon the IARCs to sign agreements with the Governing Body with regard to such ex situ collections, ----- (Article 15.1)*

⁶*Barley, chickpea, finger millet, lentil, paddy, pearl millet, pigeon pea, sorghum and wheat (crops notified and available at www.nbpgr.ernet.in)*

⁷*In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 1, the Multilateral System shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence (Article 11.1)⁷*

⁸*In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis (Article 10.2)*

Section II

(A) General Guidelines for Facilitated Access to Plant Genetic Resources for Food and Agriculture for National Focal Point(NFP)

1. The Department of Agriculture & Cooperation (DAC), Government of India (GOI) currently being the NFP shall be the Competent Authority to decide on the requests received from Contracting Parties of the Treaty for access to PGRFA of designated accessions in accordance with the provisions of relevant international agreements to which India is a party, and extant relevant national legislations.
2. All requests for exchange of PGRFA listed in Annex I to the Treaty (as per Article 12.3 c of the Treaty) should be addressed to NFP⁹,
3. These guidelines shall apply to providing facilitated access to the designated accessions of PGRFA under MLS of the Treaty by GOI that belong to Annex 1 crops only. The access shall be provided to the Contracting Parties only.
4. In addition, germplasm of Indian Origin already available with IARCs collected before 1993 shall also be facilitated for access (Article 15).
5. Facilitated access to PGRFA as notified by GoI under MLS of Annex I crops would be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed/ industrial uses.
6. All requests for other purposes including non-food/feed use of PGRFA shall be in accordance with the provisions of relevant international agreements to which India is a party, and extant relevant national legislations. Access by other countries, which are not Contracting Parties, will be in accordance with the extant relevant national legislations, on a bilateral basis.
7. Voucher samples along with passport data of all PGRFA so accessed/ supplied, shall be conserved and documented by NBPGR.
8. All germplasm shall be supplied only under the SMTA adopted by GB of the Treaty. Specific conditions may be added in SMTA in case of any material under development^ø as per the provisions of the Treaty.
9. Time bound schedule will be followed for exchange of PGR. Exchange of the requisitioned PGR will be undertaken subject to the ready availability of the same, or by the next cropping season required to multiply/ produce the material.

⁹*Request for import of PGRFA should be addressed to Joint Secretary (Seeds), Department of Agriculture and Cooperation, Ministry of Agriculture, Krishi Bhawan, New Delhi 110001.*

(B) Specific Guidelines for Facilitated Access to Plant Genetic Resources for Food and Agriculture for Nodal Agency

NBPGR (ICAR), India shall act as the Nodal Agency for import, export and quarantine of plant germplasm. Only specified quantity of PGRFA as detailed in Annexure-I, shall be supplied on request from the Contracting Party.

The following procedure will be followed for processing applications for the export of PGRFA under the Treaty.

1. The access shall be provided only for PGRFA (Annex 1 crops) notified by India under MLS of the Treaty, and those mentioned in Section II A, para 4, 5.
2. All requests for access to PGRFA shall be addressed to NFP.
3. Access to PGRFA requested shall be granted with the approval of NFP.
4. On receipt of request, the Germplasm Export Facilitation Committee (GEFC), constituted for the purpose of examining the request, shall examine the request on case to case basis, and submit its recommendations to NFP.
5. After the approval of NFP, NBPGR will coordinate the supply of PGRFA as per established norms.
6. For export of PGRFA, the Import Permit (IP) from the importing country will be required. NBPGR will issue the necessary phytosanitary certificate (PSC).
7. The seed/planting material¹⁰ shall be exported to the requesting country under the provisions of SMTA. SMTA shall be signed prior to transfer of PGRFA only as hard copies and the Director, NBPGR will be the authorized signatory.
8. No requests for access to PGRFA will be entertained unless addressed to NFP.
9. For importing PGRFA under MLS of the Treaty, any natural or legal person can make a request to any Contracting Party. The request for import shall be processed as per the extant national legislations. The IP for importing PGRFA shall be issued by Director, NBPGR as per Plant Quarantine (Regulation of Import into India) Order, 2003. PSC from the exporting country is also required while importing the PGRFA into India.
10. Proforma for intimation to NFP for export of PGFRA under MLS is at Annexure-III.
11. The composition of Germplasm Export Facilitation Committee (GEFC) for the purpose of facilitating access to PGFRA under MLS is at Annexure-IV.

¹⁰Seed/planting material of PGRFA includes the relevant propagating material such as seeds, cuttings, scions, stones, rooted plants, in-vitro plantlets or any other propagating material.

Section III

Benefit Sharing

The benefit sharing provisions from commercialization of PGRFA exported from India are fully contained in the Standard Material Transfer Agreement (SMTA), under which the access is to be facilitated by all countries signatory to the Treaty.

PGRFA received under the Multilateral System in itself is a major benefit of the System. The benefits accruing there-from, shall be shared fairly and equitably in accordance with the provisions of Article 13 of ITPGRFA. These benefits shall also be through the exchange of information, access to and transfer of technology, capacity-building and the sharing of the benefits arising from commercialization. [(refer Articles 12.3 a, d and g, as well as the benefit sharing provisions of article 13.2d(ii)]

Article 13.d (ii) of the Treaty ensures that a recipient, who commercializes a product incorporating materials accessed from MLS, shall pay a fixed percentage of profits to the Trust Fund established as per Article 19.3 f of the Treaty.

Section IV

Maximum permissible Quantity of seed/planting material for export *

(i) Seeds:

(a) Large seeded crop species viz; *Zea mays*, *Helianthus* spp., *Phaseolus* spp., *Pisum sativum*, *Cajanus cajan*, *Cicer* spp., *Vicia* spp., etc., 1000 gm

(b) Small seeded crop species viz; *Brassica* spp., *Solanum melongena* and *Solanum* spp., *Daucus carota*, *Secale* spp., *Pennisetum* spp., *Sorghum* spp., small millets 200 gm

(c) All other species of plants such as *Oryza* spp., *Triticum* spp., *Hordeum* spp., *Lens* spp. 500 g

(ii) Vegetable propagules:

(a) Number of rooted cuttings/plants per sample 25 numbers

(b) Number of other vegetative propagules per samples 50 numbers

*Quantity specified is subject to revision

Section V

Glossary

Accession	A sample of crop species maintained at genetic resources center for conservation and use.
Accession number	A unique identifier assigned to an accession, when it is registered with a gene bank. This number is never assigned again to another accession even after the loss of an accession.
Benefit Sharing	Means sharing of benefits arising from use of PGRFA.
Convention on Biological Diversity	The Convention on Biological Diversity (CBD) is an international treaty that was adopted at the Earth Summit in Rio de Janeiro in 1992 and entered into force on 29 December 1993. The Convention has three main goals, (i) conservation of biological diversity,(ii) sustainable use of its components and (iii) Fair and equitable sharing of benefits arising from use of genetic resources.
Documentation	A term used at a genetic resources center for the correct and orderly recording of data about accession.
Facilitated Access	Means obtaining (acquisition/ right to use) any PGRFA/ or knowledge associated thereof, and of their derivatives or, as applicable, intangible components, for purposes of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses

Genetic Resources for Food and Agriculture	Any genetic material of actual or potential value for food and agriculture.
Germplasm	The sum total of the genetic material in plant.
Import Permit	An official document that allows the import of any resource into the country from outside.
Intellectual Property	Refers to inventions, new products, processes derived from use of PGRFA accessed from the Multilateral System.
Multilateral System	Established under the Treaty for efficient, effective and transparent access to PGRFA and to share in a fair and equitable way the benefits arising from utilization of these resources on a complementary and mutually reinforcing basis. .
Phytosanitary Certificate	An official document confirming that the biological material received in the country from foreign sources is free from exotic pests and diseases.
Quarantine	Legislative measures which protect the indigenous plant species against pests and diseases which may be transmitted through introduced plant material.
Standard Material Transfer Agreement	Standard Material Transfer Agreement (SMTA) specifies the conditions for exchange of germplasm between signatories (parties) with Members of the ITPGRFA.

Acronyms:

CBD	Convention on Biological Diversity
CGIAR	Consultative Group on International Agricultural Research
DARE	Department of Agricultural Research and Education
DAC	Department of Agriculture and Cooperation
FAO	Food and Agriculture Organisation
GB	Governing Body
GEFC	Germplasm Export Facilitation Committee
GRFA	Germplasm Resources for Food and Agriculture
GR	Genetic Resources
GoI	Government of India
IARC	International Agricultural Research Centre
ICAR	Indian Council of Agricultural Research
IP	Import Permit
IPR	Intellectual Property Rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUPGR	International Undertaking on Plant Genetic Resources
MoA	Ministry of Agriculture
MLS	Multilateral System
NBPGR	National Bureau of Plant Genetic Resources
NFP	National Focal Point
NP	Nagoya Protocol
PSC	Phytosanitary Certificate
PGR	Plant Genetic Resources
PGRFA	Plant Genetic Resources for Food and Agriculture
SMTA	Standard Material Transfer Agreement

STANDARD MATERIAL TRANSFER AGREEMENT

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as "the Treaty") 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.

Note by the Secretariat: as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 This Agreement is:

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

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

1.3 The parties to this Agreement hereby agree as follows:

ARTICLE 2 — DEFINITIONS

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

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

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

"Governing Body" means the Governing Body of the Treaty.

"Multilateral System" means the Multilateral System established under Article 10.2 of the Treaty.

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

"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.

Salesö means the gross income resulting from the commercialization of a Product or Products, by the Recipient, its affiliates, contractors, licensees and lessees.

öTo commercializeö means to sell a Product or Products for monetary consideration on the open market, and öcommercializationö 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 öMaterialö) 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 öinvite[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 sessionö. Upon acceptance by the FAO of this invitation, the term, öthe entity designated by the Governing Bodyö, will be replaced throughout the document by the term, öthe Food and Agriculture Organization of the United Nationsö.

- 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 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 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 ð 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 í í í í í í í

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 Recipientí í í í í í í

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.

LIST OF MATERIALS PROVIDED

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

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

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

(List)

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes a Product or Products, then the Recipient shall pay one point-one percent (1.1 %) of the Sales of the Product or Products less thirty percent (30%); except that no payment shall be due on any Product or Products that:
 - (a) are available without restriction to others for further research and breeding in accordance with Article 2 of this Agreement;
 - (b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;
 - (c) are sold or traded as a commodity.
2. Where a Product contains a Plant Genetic Resource for Food and Agriculture accessed from the Multilateral System under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.
3. The Recipient shall submit to the Governing Body, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:
 - (a) the Sales of the Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;
 - (b) the amount of the payment due; and
 - (c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.
4. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in United States dollars (US\$)6 for the following account established by the Governing Body in accordance with Article 19.3f of the Treaty7:

**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**

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\$).

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).

**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.

**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 authorized official) declare to opt for payment in accordance with Article 6.11 of this Agreement.

Signature..... Date.....

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:

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

List of crops covered under the Multilateral System (Annex 1 of ITPGRFA)**A. Food crops (35)**

Crop	Genus	Observations
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica</i> et al.	Genera included are: <i>Brassica</i> , <i>Armoracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Diplotaxis</i> , <i>Eruca</i> , <i>Isatis</i> , <i>Lepidium</i> , <i>Raphanobrassica</i> , <i>Raphanus</i> , <i>Rorippa</i> , and <i>Sinapis</i> . This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species <i>Lepidiummeyenii</i> (maca) is excluded.
Pigeon Pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Genera <i>Poncirus</i> and <i>Fortunella</i> are included as root stock.
Coconut	<i>Cocos</i>	
Major aroids	<i>Colocasia</i> , <i>Xanthosoma</i>	Major aroids include taro, cocoyam, dasheen and tannia.
Carrot	<i>Daucus</i>	
Yams	<i>Dioscorea</i>	
Finger Millet	<i>Eleusine</i>	
Strawberry	<i>Fragaria</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</i>	
Grass pea	<i>Lathyrus</i>	
Lentil	<i>Lens</i>	
Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only.
Banana / Plantain	<i>Musa</i>	Except <i>Musa textilis</i> .
Rice	<i>Oryza</i>	
Pearl Millet	<i>Pennisetum</i>	
Beans	<i>Phaseolus</i>	Except <i>Phaseolus polyanthus</i> .
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	Section <i>tuberosa</i> included, except <i>Solanum phureja</i> .
Eggplant	<i>Solanum</i>	Section <i>melongena</i> included.
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum</i> et al.	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i> .
Faba Bean / Vetch	<i>Vicia</i>	
Cowpea et al.	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> , and <i>Zea luxurians</i> .

B. Forages (29)

Genera	Species
Legume Forages	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>
<i>Canavalia</i>	<i>ensiformis</i>
<i>Coronilla</i>	<i>varia</i>
<i>Hedysarum</i>	<i>coronarium</i>
<i>Lathyrus</i>	<i>cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>
<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum</i>
Grass Forages	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
Other Forages	
<i>Atriplex</i>	<i>halimus, nummularia</i>
<i>Salsola</i>	<i>vermiculata</i>

Performa for intimation to NFP for export of PGRFA under MLS of the Treaty

1.	Nodal Ministry	Ministry of Agriculture, GOI, India
2.	Name of the country (Contracting Party to the Treaty) to which PGRFA is exported	
3.	Type of PGRFA with details	
4.	Quantity of PGRFA supplied/exported	
5.	Remarks and Comments of GEFC	
6.	Purpose of the PGRFA request	
7.	Name and designation of the person authorized by the Ministry for sending the PGRFA	
8.	Name and designation of authorized person for receiving the PGRFA	
9.	Any other relevant information	

Chairman
Germplasm Export Facilitation Committee (GEFC)

Composition of Germplasm Export Facilitation Committee (GEFC) for the purpose of facilitating access to PGRFA under MLS of the Treaty

Chairman

1. Director, NBPGR, New Delhi

Members

2. Director/Dy. Director (IC), DARE, Krishi Bhawan, New Delhi
3. ADG (IP &TM), ICAR, Krishi Bhawan, New Delhi
4. ADG of concerned crop, ICAR, New Delhi
5. Two representatives from Department of Agriculture and Cooperation, Ministry of Agriculture, New Delhi
6. Director/PD/PC of concerned crop, ICAR, New Delhi
7. Head, Plant Quarantine Division, NBPGR, New Delhi
8. Officer In Charge, Germplasm Exchange and PGR Policy Unit, NBPGR, New Delhi