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Guide for the CGIAR Centres' Use of the Standard Material Transfer Agreement

Prepared by the System-wide Genetic Resources Programme (SGRP) of the Consultative Group on International Agricultural Research (CGIAR)

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1 INTRODUCTION

The Agreements signed by the Centres with FAO on behalf of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture1 (the Treaty) on 16 October 2006 obliged the Centres to deal differently with the plant genetic resources for food and agriculture (PGRFA) they hold and have brought under the Treaty, depending on whether or not the PGRFA are listed in Annex 1 of the Treaty[2].

PGRFA of crops listed in Annex 1 to the Treaty fall under the Multilateral System of Access and Benefit-sharing established by the Treaty. **As from 1 January 2007**, all transfers of PGRFA of crops listed in Annex 1 must be under the **Standard Material Transfer Agreement (SMTA)** adopted by the Governing Body of the Treaty at its First Session in June 2006. The SMTA has replaced, for Annex 1 material, the Material Transfer Agreement previously in use by the Centres[3].

The Agreements with the Governing Body provided that PGRFA of non-Annex 1 crops held by the Centres should be transferred under the **Material Transfer Agreement currently in use by the Centres, and that t**his MTA would be amended by the Governing Body no later than its Second Session that was held in late 2007. At that session, the Governing Body decided that the SMTA should also be used by the Centres for non-Annex 1 material collected before the entry into force of the Treaty, with the inclusion of a series of interpretative footnotes to relevant provisions of the SMTA indicating that these provisions should not be interpreted as precluding the use of the SMTA for non-Annex 1 material. These footnotes should be included in all SMTAs, thus avoiding the need for the Centres to use different versions of the SMTA for Annex 1 and non-Annex material. The Governing Body will review these measures during its consideration of the SMTA at its Third Session scheduled for June 2009. Meanwhile, the new version of the SMTA has been brought into use by the Centres as from 1 February 2008.

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1 The Treaty entered into force in June 2004 and now has 119 Contracting Parties. For the text of the Treaty, see http://www.fao.org/legal/treaties/033t-e.htm

2 The CG Centres have issued a joint statement that clarifies some of the consequent actions that they will take to comply with the terms of the Agreements and how they will continue to work with non-Parties, who are not bound by the provisions of the Treaty. The Joint Statement is attached as Appendix 2 to this Guide.

3 Interim Revised Material Transfer Agreement for Plant Genetic Resources held in Trust by the International Agricultural Research Centres as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture at its Ninth Regular Session in October 2002 See ftp://ftp.fao.org/ag/cgrfa/cgrfa9//r9repe.pdf . The Commission also strongly recommended the full implementation by the Centres of the "Steps to be taken to implement the new CGIAR System-wide MTA endorsed by the CGIAR Inter-Centre Working Group on Genetic Resources in January 1999.

This document outlines procedures for the new regime of Material Transfer Agreements governing shipments of PGRFA[4] to and from the Centres. This document does not deal with other elements of normal procedures for germplasm exchange – for example, the possible need (depending on the countries and material involved) for an import permit, export permit, phytosanitary certificate, and compliance with any other applicable biosafety and intellectual property rights (IPR) conditions.

The Guide will discuss first the rules governing the acquisition of PGRFA from countries and other collections, then deal with the transfers of Annex 1 PGRFA held by the CG Centres, and finally discuss the situation of non-Annex 1 PGRFA.

The Guide has been prepared in consultation with Centres, members of the Executive Committee of the Inter-Centre Working Group on Genetic Resources and members of the Genetic Resources Policy Committee. It draws in particular on the work done by IRRI and Dr. Ruaraidh Sackville Hamilton.

2. ACCESSING PGRFA FROM COUNTRIES AND COLLECTIONS

The rules governing the acquisition of PGRFA from countries and non-country collections will depend first and foremost on whether the PGRFA are covered by the Multilateral System.

PGRFA will be covered by the Multilateral System where all of the following criteria are met:

- The PGRFA is of a crop or forage listed in Annex 1 to the Treaty (The list is reproduced at **Appendix 1** to this Guide);
- The country or collection from which the PGRFA is being sought is a Contracting Party[5] to the Treaty, or another CG Centre or other international institution that has signed an agreement with the Governing Body placing its collection within the Multilateral System[6];

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4 PGRFA are defined in the Treaty and in the SMTA as "any genetic material of plant origin of actual or potential value for food and agriculture." (Treaty Article 2; SMTA Article 2). "Genetic material" is in turn defined in the same Articles as "any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity".

5 It is to be noted that even where a country is not yet a Contracting Party to the Treaty, or where the PGRFA being sought is not under the Multilateral System, these facts do not necessarily preclude the use of the SMTA, where the parties so agree and the use of the SMTA is not inconsistent with national legislation.

6 So far agreements with the Governing Body have been signed by 11 CG Centres and by CATIE, 2 COGENT Centres (Cote d'Ivoire and South Pacific) and the Joint FAO/IAEA Division in respect of mutant PGRFA. Agreements are also being negotiated with the other two COGENT Centres and with the Secretariat of the Pacific Community (SPC) and the Cocoa Research Unit of the University of the West Indies in Trinidad and Tobago.

- The PGRFA is under the management and control of the Contracting Party and in the public domain[7], or has been placed voluntarily in the Multilateral System by the Contracting Party or by a legal or natural person within the jurisdiction of the Contracting Party, or is held by an international institution that has signed an agreement with the Governing Body placing its collection within the Multilateral System.

The **acquisition and transfer of PGRFA under the Multilateral System will be by means of the SMTA**. Where PGRFA being sought is in *in situ* conditions, and where the Centre is planning to mount a collecting mission either on its own or in collaboration with national partners, it will need to seek the permission of the country concerned, and will need to respect the conditions set in the country's own national legislation regarding the conduct of collecting missions and access to PGRFA in *in situ* conditions generally, or in the absence of such legislation, such standards as may be set by the Governing Body[8]. This is a sensitive political area, and it is strongly recommended that Centres go to extra lengths to ensure that they have permission from the proper level authorities in all countries from which they are obtaining materials that is being collected from in situ conditions, whether or not they have legislation in force.

Where the country from which PGRFA is to be acquired is not yet a Contracting Party to the Treaty, or where the PGRFA sought is not otherwise under the Multilateral System, then the Centre seeking the material and the country concerned will need to agree on the terms and conditions of access.

In this connection, the attention of Centres is drawn to the recommendation of the Genetic Resources Policy Committee at its 19th Session that the CG adopt a CG System-wide policy that, **as a general principle, Centres accept new Annex 1 material only if it can be distributed using the SMTA, and new non-Annex 1 PGRFA under the least restrictive conditions affecting subsequent distributions by the Centres. No such System-wide policy has yet been adopted. Centres may decide that this principle should not apply to PGRFA acquired for breeding programmes rather than for general conservation. Centres genebanks of course also have an overriding imperative to ensure the safe conservation of diversity that is at risk. The suggested policy should never be invoked if it compromises safe conservation**.

All transfers of PGRFA covered by the Multilateral System would normally be under the SMTA. However the SMTA should not be used for PGRFA received for black-box safety backup conservation in the genebank, where there is no transfer for the purpose of use or

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[7] Each country will need to determine for itself in accordance with international rules regarding the interpretation of treaties and in accordance with its own laws, which PGRFA fulfils these criteria. The Secretariat of the Treaty has addressed a circular state letter to Contracting Parties to the Treaty requesting information on the material that is included in the Multilateral System. So far replies have been received from 4 countries: Netherlands, Germany, Zambia and Namibia.

[8] So far the Governing Body has not adopted any such standards. The only standards currently in force are set out in the International Code of Conduct for Plant Germplasm Collecting and Transfer, adopted by the FAO Conference in November 1993.

conservation for research, breeding or training, and where no use of the material for any purpose other than backup conservation is authorized.

3 TRANSFERRING PGRFA FROM CENTRES

A flow chart indicating the decisions that will need to be taken when a request for PGRFA is made to Centres is set out in **Appendix 2** to this Guide. The flow chart has been prepared as a general guide for designing a system to handle internet orders. But the main decisions are also applicable to other systems for the distribution of PGRFA.

It is expected that Centres will already have undertaken the following preparatory work, in connection with the introduction of the SMTA as of 1 January 2007:

a. Preparatory work

Centres will have documented what PGRFA under their management have been placed within the purview of the Treaty under the Agreements signed with the Governing Body. Basically this will be all materials that have been designated as "In Trust" materials prior to the signing of the Agreements, and any PGRFA included within the purview of the Treaty subsequently to the signing of the Agreements. This information should be entered into the database so that when orders are placed for material, the system will automatically choose the right modality for transfers. [9]

Centres will have documented what PGRFA under their management fall under Annex 1 to the Treaty, as well as non-Annex material within the purview of the Treaty. This information should also be entered into the database so that when orders are placed for material, the system will automatically choose the right modality for transfers and prepare the correct reports for the Governing Body. (Annex 1 to the Treaty is reproduced as **Appendix 1** to this Guide). In practice at the present time the same SMTA will be used for both Annex 1 and non-Annex 1 material in accordance with the decision adopted by the Governing Body at its Second Session in 2007. However the Governing Body's decision will be reviewed at its next session. In any case the Secretariat has requested that separate reports be made to the Governing Body on transfers of Annex 1 and non-Annex 1 material. **Centres will have documented what PGRFA under their management have been classified as PGRFA under Development.** PGRFA under Development are basically breeding lines and other improved materials derived and distinct

[9] It should be noted that the voluntary inclusion of additional PGRFA within the purview of the Treaty has no implications for *ex situ* conservation management. Centres may continue to manage the material exactly as before, conserving or discarding as it sees fit. In the case of PGRFA under Development, Centres retain the discretion as to if or when it should be made available. Thus Centres need have no concerns about resource implications of such additional voluntary inclusions.

from original MLS materials and not yet released for c**ommercialisation. Access to PGRFA under Development is at the discretion of the Centre that is developing it, an**d can, if necessary, be subject to additional conditions, such as monetary consideration. Again it is essential that this information be entered into the database, so that the proper modalities for transfer are chosen. The **G**enetic Resources Policy Committee (GRPC) considered the issue of the practice of the CGIAR Centres with respect to PGRFA under Development at its 23rd Session in March 2008, and again at its 25th Session in March 2009. The GRPC noted the importance of the principle that the CGIAR Centres should make PGRFA as widely and openly available as possible. The committee further noted that the Centres' practices and policies in this regard may represent precedents for countries to follow. The vast majority of materials distributed by the Centres as PGRFA under Development since January 1, 2007 has not been subject to additional conditions, and therefore could have been distributed as PGRFA. The committee recommended that:

> All material in the in trust collections should be distributed as normal PGRFA.
>
> Materials from the Centres' breeding programmes can be distributed as PGRFA under Development. The committee discouraged Centres from exercising the option to include additional terms that restrict availability.
>
> Reports to the Governing Body should differentiate between PGRFA, PGRFA under Development with additional conditions, and PGRFA without additional conditions.

The Centres will be informed once the Alliance Executive has reached a decision on this recommendation.

Any special restrictions or other conditions applicable to the individual accessions in the collections should also be entered into the database, so that they can be brought up automatically if an order is placed. **Centres are encouraged to design and implement a system for on-line ordering of PGRFA that is consistent with the requirements of the Treaty**. Guidelines for such a system are set out in Appendix 2 to this Guide. Work on the development of a system for ordering genebank accessions online through SINGER is in progress, and a prototype for the system is expected to be available early in 2009.

b. Decisions at the time of transfers

Choosing the correct form of MTA. The following decisions will need to be taken at the time individual accessions are ordered or transferred:

- **Is the proposed movement of material a "transfer of PGRFA"?** The movement constitutes a "transfer of PGRFA" if the recipient is assign**ed rights over the PGRFA. Move**m**ent of material for the purpose of safety deposit under black-box conditions is not a transfer, nor is the movement of** material for the sole purpose of testing by a laboratory as a

service to the Centre, without the right to retain the material for research or breeding. Every movement of material requires some form of contract or other agreement specifying rights and obligations of provider and recipient. If the movement is a transfer of PGRFA, it must be a governed by an MTA, which (see below) may be the SMTA. If the movement is not a transfer, an individually-tailored agreement will be needed; in all cases, such agreements must prohibit conservation and use by the recipient, (typically by requiring the destruction or return of remnant materials).

- **Does the material requested fall under Annex 1 of the Treaty?** If the answer is yes, then access to the PGRFA will normally be subject to the SMTA. If the material is not listed in Annex 1, then access will be granted under the SMTA if the material was acquired before the entry into force of the Treaty, i.e 29 June 2004. This is in accordance with the decision adopted by the Governing Body at its Second Session in November 2007. Material acquired after 29 June 2004 should be made available on terms consistent with those mutually agreed between the Centre and the country of origin of those resources, or the country that has acquired them in accordance with the Convention on Biological Diversity or other applicable law. If those mutually agreed terms allow for the further distribution of the material under the SMTA, then the SMTA should be used also for that material. The availability of the material is of course subject to there being no special conditions attached to the material restricting its availability.
- **Does the purpose for which access is being requested fall within the terms of the Multilateral System?** Facilitated access under the Multilateral System is given only for the purpose of research, breeding or training for food and agriculture. These purposes do not include chemical, pharmaceutical and/or other non-food/feed industrial uses. If access is being requested for purposes that fall within the Multilateral System, then the SMTA should be used. If they do not, then the SMTA cannot be used. The interpretation given by the Centres at the time of signing the agreements provides that the Centres do not consider themselves restricted from providing material for the purpose of direct utilisation for cultivation. See below for further discussion of this topic.
- **Are there special conditions restricting access to the material?** Material previously included in the "in trust" collections will normally not be subject to any such restrictions that would preclude the use of the SMTA, since unrestricted availability was one of the conditions for the designation of material under the "in trust" agreements with FAO in the first place. There may still be unclear "transitional" situations where the status of material has not yet been fully clarified with the donor country. Under the Treaty and the Agreements with the Governing Body, non-Annex 1 material received and conserved after the entry into force of the Treaty is to be made available on terms consistent with those mutually

agreed with the country of origin of those resources or the country that acquired them in accordance with the Convention on Biological Diversity or other applicable law.

- **Does the recipient require that the SMTA be signed?** As indicated in the flow chart, the default modality should eventually be the click-wrap form of agreement: pending development and adoption of an online ordering system, it may well need to be the shrink-wrap form. If the recipient requires signature of the SMTA, then the order should not be dispatched until such time as the signed copy of the SMTA is received.
- **Is the material being requested PGRFA under Development?** If the answer is yes, then access to the PGRFA being requested will be at the discretion of the developer (typically the Centre and/or its collaborators), and may be subject to special conditions.

The above decision points are reflected in the flow chart set out in Appendix 2 to this Guide, and in the Guidelines for the setting up of internet systems also set out in Appendix 2.

4 TRANSFERS OF ANNEX 1 PGRFA UNDER THE MULTILATERAL SYSTEM

The Centres agreed to use the SMTA for all transfers of PGRFA under the Multilateral System as from 1 January 2007[10].

Guidelines for the use of the SMTA

The SMTA as adopted by the Governing Body in June 2006 is quite long. A summary of the SMTA has been prepared to help Centres understand the SMTA and to comprehend their obligations under the SMTA, both as potential Providers and potential Recipients. The actual SMTA is attached as **Appendix 3** to this Guide, and the summary is attached as **Appendix 4**.

Please note that the summary is provided merely for the convenience of Centres as Providers or Recipients of plant genetic resources for food and agriculture (PGRFA) and does not constitute a legal document or have any legal status of its own. For an authoritative statement of their rights and obligations, Centres must turn to the SMTA itself.

Commentary on certain elements of the SMTA

Before dealing with the administrative elements of filling out the SMTA, it is perhaps useful to clarify certain preliminary questions.

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[10] The actual legal deadline for the full implementation of the Agreements with the Governing Body was 14 January 2007, i.e. 90 days after signature of the Agreements. However, the Centres issued a Statement at the time of signature of the Agreements, indicating that they would use the SMTA as from 1 January 2007.

The nature of the SMTA

The SMTA adopted by the Governing Body in June 2006 is a template. The terms and conditions of the template cannot be varied, but of course each time the template is filled in the agreement will be individualised, by including, for example, the names of the individual Provider and Recipient and their addresses, and listing in Annex 1 the PGRFA and related information being transferred[11]. It is for this reason that the SMTA speaks sometimes of the SMTA and sometimes of the Material Transfer Agreement (MTA). An example can be found in Article 6.5a of the SMTA, where a Recipient transferring PGRFA under Development is required to "do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, … etc" In this case, the SMTA, or rather the "terms and conditions of the SMTA" is the template, and the "new MTA" is the individualisation of the template in a new context between new parties with, in some cases, different material being transferred.

When should the SMTA be used?

The Treaty, in Article 12.4, provides that "facilitated access" shall be provided pursuant to the SMTA. In essence this means that that all transfers of PGRFA for the purpose of granting access to those PGRFA under the Multilateral System for the purpose of breeding, research or training must be by means of an SMTA.

This is not to say that **all** "transfers" of Annex 1 PGRFA, in the sense of all batches of PGRFA sent from one entity to another, are for the purpose of "facilitated access" and must therefore be by means of an SMTA. For example, "transfers" of PGRFA for black-box safety duplication are not transfers for the purpose of "facilitated access" and would not need to be under the SMTA. Indeed they are not really "transfers" in the sense used in the Treaty, in that depositing duplicate PGRFA samples in black-box safety deposit does not imply any transfer of title over the samples, or any rights to use those samples for research, breeding or training. Similarly, "transfers" of samples to research laboratories purely for the purpose of testing, as a service contracted by a Centre, would not require an SMTA, provided that the research laboratory is not given any rights to use the samples for its own research or breeding programmes. To make such situations clear, it is suggested that any transmission of samples for purposes other than facilitated access should carry the following wording:

"*The transmission of the enclosed samples does not confer any right on the Recipient to use the samples in its own research or breeding programme or to transfer the samples to another entity for those purposes. Once the samples have been used for the purpose for which they have been transmitted, they should be returned to [the Centre] or destroyed*."

If Centres have any doubts as to whether or not the SMTA should be used, we suggest you use it!

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[11] We will deal with these aspects more under the section on "Filling out the SMTA" below.

Use of PGRFA under the Multilateral System by Centre breeders
It is already a CGIAR system-wide policy that all products of Centre research that are PGRFA of crops listed in Annex 1 of the Treaty (PGRFA under the Multilateral System) should by released subject to the benefit-sharing provisions of the Multilateral System.

In principle all accessing of Annex 1 material by Centre breeders **after 1 January 2007** should if possible[12] be subject to the terms and conditions set out in the SMTA, in accordance with the following:

- Where the material is accessed from collections other than the Centre's own genebank, this will of course entail agreement to the SMTA by that Provider.

- Where the material is accessed from the Centre's own genebank, it is not necessary for the Centre breeder to physically sign the SMTA with the Centre genebank manager. That would seem to be administratively cumbersome. And ultimately it is the Centre itself that will be responsible both as Provider and Recipient of the PGRFA. It is sufficient that that each Centre issue an internal administrative notice to Centre breeders indicating that as from 1 January 2007, all accessing of Annex 1 material from the Centre genebank by Centre breeders will be deemed to be subject to the terms and conditions of the SMTA. The accession will need to be recorded and the records kept for use by the Third Party Beneficiary if it so requests. Aggregate data on accessions by Centre breeders will also be reported to the Governing Body in the periodical reports by the CGIAR System on the implementation of the Multilateral System and transfers of non-Annex 1 material under the terms and conditions of the SMTA.

All Annex 1 material accessed by Centre breeders from the Centre genebank **prior to 1 January 2007** need not be reported to the Governing Body, although it will presumably have already been recorded by the Centre concerned. However, Centre Directors have agreed that products of Centre's research derived from such material should be treated as covered by the terms and conditions of the Multilateral System. For further details see the section on **PGRFA under Development** below.

Keeping records of accessions from Centre genebanks that the Centre breeders use in their improvement work will be necessary to allow for Centres to claim the status of PGRFA under Development for products of Centre research that are derived from material accessed from the Multilateral System. This matter will be taken up in more detail under the section on **PGRFA under Development** later in this Guide.

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[12] This cannot be enforced for acquisitions from countries that are not Contracting Parties to the Treaty, or from a natural or legal person under the jurisdiction of a Contracting Party holding germplasm that is not under the management and control of the Contracting Party. For administrative simplicity, centres are likely to want to encourage use of the SMTA even in these situations; if the potential Provider is not willing to use the SMTA, the Centre will need to consider the advantages of the acquisition against the consequences of acquisition through a different instrument.

What should be covered by the term "PGRFA"?

As noted earlier in this Guide, PGRFA are defined in the Treaty and in the SMTA as "any genetic material of plant origin of actual or potential value for food and agriculture." (Treaty Article 2; SMTA Article 2). "Genetic material" is in turn defined in the same Articles as "any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity". The question is often raised as to whether this definition includes a range of products that are research tools containing DNA or RNA.

The matter was considered by the workshop "Managing the Generation Challenge Program in a post-International Treaty world," (the GCP Treaty Workshop) Johannesburg, September 2007. The GCP Treaty Workshop noted that there was a lack of clarity concerning the status of a number of tools, such as DNA libraries and DNA markers, developed under the Generation Challenge Programme, given that the application of the definitions of 'PGRFA' and 'genetic material' is not clear. The Workshop recommended that when these borderline materials are used as research tools and not to be incorporated in downstream improved PGRFA, then they should be transferred using some legal instrument other than an SMTA. However, where it is not absolutely clear that recipients will use those materials in the ways, such as the examples set out Table 1 (i.e, not as genetic resources) then consortium members should distribute them using the SMTA.

In a subsequent Workshop for Breeders, however, doubts were raised regarding this recommendation, on the grounds that such research tools, if not transferred under the SMTA, might be subject to more stringent controls under national legislation.

The matter was considered by the Genetic Resources Policy Committee at its 23rd Session in March 2008. The Committee decided to refer the issue to the meeting of experts on the SMTA and the Multilateral System to be convened by the Secretariat of the Governing Body of the International Treaty.

The Meeting of Experts has held one meeting to date, but has not had time to consider this issue. The Secretariat of the Treaty has in the meantime taken a general position that in cases of doubt, the SMTA should be used.

Pending consideration of the issue by the next Meeting of Experts, it is recommended that Centres continue to use the SMTA even for the transfer of research tools, except in the special cases of service provision described above.

Non-Contracting Parties

The Treaty provides that facilitated access to PGRFA under the Multilateral System should be provided to other Contracting Parties using the SMTA. The Treaty is silent on how Contracting Parties should deal with non-Contracting Parties. This matter is then left to the discretion of the Contracting Parties.

The Agreements between the Centres and the Governing Body of the Treaty are also

silent on how the Centres should deal with non-Contracting Parties. In the Statement issued by the CG Centres on the signature of the Agreements between the Centres and the Governing Body, the Centres have clarified their understanding of the effect of the agreement on the relations of Centres with non-Contracting Parties in the following terms:

"*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."*

Purposes for which PGRFA may be made available

The interim MTA previously in use by the CG Centres, as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture to bring it into line with the Treaty provides in a footnote to the reference to use for research, breeding and training, that "*This does not prevent the recipients from releasing the material for purposes of making it directly available to farmers or consumers for cultivation, provided that the other conditions set out in this MTA are complied with."*

In the Statement issued by the CG Centres on the signature of the Agreements between the Centres and the Governing Body, the Centres have clarified their understanding of the effect of the agreement on this matter in the following terms:

"*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."*

This matter may be further considered by the next Meeting of Experts on the SMTA and the Multilateral System. Pending any further guidance, Centres should continue to follow the practice noted above.

Centres may also be requested to provide materials from their collections for other purposes that are not covered by the Multilateral System, including for chemical, pharmaceutical and/or other non-food/feed industrial uses. Such uses lie outside the scope of the Treaty and its Multilateral System, and **Centres should not transfer materials for these purposes using the SMTA.**

The SGRP Secretariat is preparing a draft model MTA for the Centres to use for the transfer of PGRFA for purposes not covered by the Multilateral System. The model MTA will be made available once it has been considered by the GRPC and approved by the Alliance Executive.

Meanwhile, whether or not Centres should respond to such requests in general is a matter on which no authoritative guidance can be given at this moment. The matter is outside the

scope of the Treaty. The only advice we can give is to exercise extreme caution! If Centres do respond to such requests, however, they should make it clear that the material is not being provided for research, breeding or training for food and agriculture, and that the provision of materials for this purpose would be covered by the terms and conditions of the SMTA.

Whether or not PGRFA under the Multilateral System are being transferred for pharmaceutical, medical or other non-food/feed industrial purposes rather than for food and agriculture will sometimes be a matter on which a certain amount of judgement may need to be exercised. For example, there is rapidly increasing interest in claimed nutritional or medical properties of certain special varieties of rice and other crops. In such cases, we will need to distinguish between improving diet with nutritionally superior varieties consumed as food in the normal way, and varieties that are processed into a product sold as a nutraceutical or medicine[13]. For example, rice that is digested slowly is grown / marketed for diabetics and for labourers who need energy to be released from their food slowly throughout their whole working day would presumably by categorized normally as a food, and transfer should therefore be subject to the SMTA. Similarly, one of the black rice varieties of Laos is grown in small plots when a woman is pregnant, in the belief that post-natal recovery is faster if it is consumed then. This also would seem to be a food, albeit with enhanced nutritional qualities.

In general, however, it is likely to be reasonably clear as to whether the use is for food and agriculture or for other uses. **In any case, the responsibility for complying with the restrictions as to use will lie with the Recipient. Where the Centre is asked directly by a Recipient or potential Recipient whether or not the use to which the material is to be put is one that is allowed under the SMTA, the Centre should point out that it is not in a position to give an authoritative interpretation of the SMTA and the Treaty, and that this is a matter for the Governing Body and the Contracting Parties generally. It can then give general guidance as above, namely that the use of Material to produce Products that are food, albeit with enhanced nutritional qualities would normally count as a food and agriculture use, but the use of Material to produce Products that will be produced and marketed as nutraceutical or pharmaceutical products will not be allowed under the SMTA.**

PGRFA under Development

PGRFA under Development is defined in Article 2 of the SMTA. Basically they are PGRFA that are in the process of being developed into a Product, that are thus derived and distinct from original material from the Multilateral System, but that are not yet ready for commercialization on the open market. If a Recipient decides, in the exercise of his discretion, to transfer PGRFA under Development, the transfer must be subject to the normal **SMTA**, provided that the obligation to make it available expeditiously and without the need to track individual accessions and free of charge (Article 5a) will not

[13] The definition of "nutraceutical" is taken here as "a product produced from foods but sold in pills, powders, (potions) and other medicinal forms not generally associated with food" rather than as including foods such as "bio" yoghurts and fortified breakfast cereals.

apply. The parties to the SMTA may agree on additional conditions relating to further product development, including as appropriate the payment of monetary consideration, provided such additional conditions do not conflict with the SMTA[14]. However, transfers of PGRFA under Development will not count as commercialization for the purpose of monetary benefit-sharing, even if payments are made for the transfer. The Material received from the Multilateral System must be identified in Annex 1 to the SMTA, and the fact that the PGRFA under Development being transferred are derived from that Material must also be specified in that Annex. The Governing Body must be notified of the transfer according to the same schedule as for other PGRFA.

Since Centres are, for the most part, all in the business of developing new and improved lines, the provisions regarding PGRFA under Development are obviously of great significance for their operations, and in particular for the Centres' breeding programmes. Of particular significance is the fact that PGRFA under Development are to be made available only at the discretion of the developer during the period of its development. Where PGRFA under Development are transferred, the developer is also allowed, though not of course required, to enter into separate agreements with transferees who will continue the development of the PGRFA, attaching additional conditions relating to further product development. Such additional conditions may include, for example, provisions regarding the taking out of intellectual property protection by cooperating national partners prior to commercialisation of a product.

In filling out the SMTA for PGRFA under Development, Centres will need, in Annex 1 to the SMTA under which it is being sent out, to -

- identify the material as being PGRFA under Development;
- specify that the PGRFA under Development being transferred are derived from Material accessed from the Multilateral System (and hence are distinct from that Material);
- identify the Material originally received from the Multilateral System from which the PGRFA is derived.

The SMTA envisages the situation where material is accessed from the Multilateral System by means of an SMTA, then improved. In such cases breeders will be expected to be able to identify the Material they accessed from the Multilateral System, and list the ancestral MLS germplasm in the appropriate table in Annex 1 to the new SMTA when PGRFA under Development is being transferred.

For the immediate future, however, most of the ancestral germplasm from which PGRFA under Development is being derived will be material that has not been accessed from the Multilateral System by means of an SMTA, but rather originally accessed from the former "in trust" collections or other collections now treated as being part of the

14 The whole question of what additional conditions the Centres may impose on the transfer of PGRFA under Development is currently under consideration by the Genetic Resources Policy Committee (GRPC). It is envisaged that guidance on acceptable additional conditions will be circulated to Centres at a later date.

Multilateral System. In such cases, such ancestral germplasm should also be treated as coming from the Multilateral System and identified as ancestral MLS germplasm in the appropriate table in Annex 1 to the SMTA.

In some cases, where the ancestral germplasm was originally accessed prior to 1 January 1, 2007, it may prove impossible for breeders to identify the precise ancestral germplasm, because such tracing obligations were not in place before that date. In such cases, the Centre should not identify it as PGRFA under Development under Article 6.5 of the SMTA, and distribute it as it does normal Annex 1 material, without the option of setting special conditions for its transfer.

See below under the section entitled "Filling out the SMTA" for the precise wording to be used.

It has been pointed out by some Centres having large breeding programmes that to physically attach a new SMTA to each batch of breeder's lines exchanged during the course of a particular breeding programme may be excessively cumbersome, time consuming, costly and inefficient. Breeder's lines are constantly being exchanged to and fro with other breeders in joint research and breeding efforts, including Centre's, NAR's and other related breeders, for selection, testing and further improvement.

It should be noted, first of all, that there is a very serious rationale underlying the requirement of Article 6.5 of the SMTA. The whole Multilateral System of facilitated access and benefit-sharing is built on the idea of an unbroken chain of contractual obligations passed on from recipient to recipient. To break that chain at any point risks leaking material out of the Multilateral System, free of the obligations of the Multilateral System. However, in implementing the system, we must choose an approach that is workable and efficient, while meeting the substantive legal requirements. In this particular case, the main substantive legal requirement is that transfers of breeder's line should be covered by the terms and conditions of the SMTA.

As a practical solution, Centres with large breeding programmes may wish to include in their framework agreements with breeders and institutions cooperating in breeding programmes wording along the following lines:

> *"All exchanges of breeder's lines and other plant genetic resources under development under the breeding programme are subject to the terms and conditions set out in the Standard Material Transfer Agreement adopted by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture at its First Session in June 2006, provided that Article 5a of the SMTA shall not apply. Inventories accompanying each shipment shall be deemed to constitute Annex 1 of the SMTA. A copy of the SMTA is attached to this framework agreement."*

Centres would then not need to use a separate SMTA for each individual transfer of breeder's lines or other PGRFA under Development with the context of the ongoing

breeding programme covered by the framework agreement.

The practice of using framework agreements where necessary to promote efficiency was endorsed by the First Meeting of Experts on the SMTA and the Multilateral System convened by the Secretariat of the Treaty in July 2008. In particular, the Meeting endorsed the use of a single SMTA to cover ongoing shipments over a period of time: individual shipments would then be listed as amendments to Annex 1 of the SMTA, or as a sort of "rolling Annex 1". Agreements establishing joint research programmes such as the Generation Challenge Programme could also include clauses establishing that parties agree that all transfers within the joint project will be subject to the terms and conditions of the SMTA as annexed to the agreement: the full text of the SMTA would not then need to accompany each transfer. In both cases, the Meeting stressed the importance of ensuring that the inventories accompanying each shipment should include all of the information currently anticipated in Annex 1 of the SMTA, including details of MLS ancestors of PGRFA under Development and the identity of the individual providers and recipients, as well as the dates of individual shipments. Recipients should maintain independent records of when they received each shipment. The inventory document should refer to the specific SMTA or multiparty framework agreement pursuant to which the transfers are being made.

Some Centres are also concerned that they do not wish to be under a legal obligation to conserve large numbers of what will for the most part be purely ephemeral material. It must be emphasized that this is a false concern: there is no obligation whatsoever under the Treaty or under the SMTA for the Centres to conserve such material. Whether the centre wishes to conserve or discard materials is a matter for each Centre to decide for itself in accordance with its own genebank or breeding programme management policies.

Obligations of Centres to make PGRFA available

Under the terms of Article 2 (a) and (b) of the Agreements with the Governing Body, 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*". PGRFA is to be made available "*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."*

On the face of it, the language used by the Agreement, which tracks the language used in the Treaty, is absolute. However, this obligation must be interpreted in the light of what is reasonable in the particular circumstances. The Centres' understanding of the effect of this provision is set out in the Statement issued by the Centres at the time of signing the agreements (See **Appendix 5** to this Guide). Basically the Statement makes it clear that it is implicit in the undertaking entered into by the Centres that users will be making reasonable requests for materials, and that the undertaking of the Centres will not extend to the fulfilment of unreasonable request. In particular,

- the Centres will need to exercise some discretion in determining the number of samples to be provided at any given time to any given recipient, and may not, for

example, be in a position to distribute materials immediately where this would reduce stocks below accepted levels for conservation purposes;

- In cases of limited supplies, immediate availability of materials cannot always be guaranteed: Centres will need to agree on schedules for delivery;
- In some cases, Centres may need to ask recipients to cover all or part of the costs of multiplying relevant accessions;
- Centres cannot distribute samples that do not meet applicable health or quarantine standards.

Enforcement of the SMTA

Article 2 (b) (iv) of the Agreement with the Governing Body of the Treaty provides that Centres are to take appropriate measures, in accordance with their capacities, to maintain effective compliance with the conditions of the MTAs[15] for non-Annex 1 material, and shall promptly inform the Governing Body of cases of non-compliance. It should be noted that the provision in question covers only the transfer of non-Annex 1 material, although the Centres have volunteered to take similar measures for Annex 1 material.

In the Statement setting out their understanding of the meaning of the agreements signed with the Governing Body, the Centres undertake to take the following steps when faced with instances of non-compliance:

i. The Centre will request a written explanation. If no satisfactory explanation is received, 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.

ii. If the matter is not resolved at this stage, **the Centre will inform the Governing Body of the Treaty through its Secretariat of the perceived violation**.

iii. 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.

iv. In regard to the above, the **Centres will work in close cooperation with the Secretariat of the Governing Body of the Treaty**.

v. 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.

Acceptance of the SMTA

The SMTA provides for three possible ways of expressing acceptance of the SMTA:

[15] Now the SMTA

- **Signature** by both Parties;
- **Shrink-wrap** acceptance i.e. where a copy of the SMTA is included in the packaging of the Material, and the Recipient's acceptance of the Material constitutes acceptance of the SMTA; and
- **Click-wrap** acceptance i.e. where the agreement is concluded on the internet and the Recipient accepts the terms and conditions of the SMTA by clicking on the appropriate icon on the website or in the electronic version of the SMTA, as appropriate.

It will be up to the individual Parties to the SMTA to agree on the form of acceptance to be used in each individual case.

It is obviously in the interest of the Centres to ensure that ordering and delivery of PGRFA can be effected in the easiest possible way, with the minimum of administrative effort and transaction costs. Eventually this may lead to a wider use of the "click-wrap form of acceptance. At least initially, many Centres may wish to continue using the **shrink-wrap** form of acceptance, as was practised with the interim MTA.

However, Providers or Recipients in some jurisdictions may find it unacceptable to consent to be bound by the SMTA without the **signature** of an authorized official. In such cases, the SMTA should be sent to them for signature, deleting **the other choices from the SMTA, and leaving only the following signature blocks from the SMTA adopted by the Governing Body**:

"ARTICLE 10 — SIGNATURE/ACCEPTANCE

*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**……"*

Similarly for shrink-wrap and click-wrap options agreement, only the text for the agreed

option should be left in Article 10.

Requests for samples of PGRFA will be made on the internet through the websites of the individual Centres, or through the centralised ordering system for genebank accessions being developed by the CG System. In this context, the web-site should offer the click-wrap form by default, while providing a facility for signed SMTAs for recipients that require it. **Guidelines for the setting up of internet systems for the SMTA are attached as Appendix 2 to this Guide.**

In all cases, except where the Requestor is placing the request within the context of a framework agreement, a copy of the MTA actually entered into should be printed and enclosed in the package of samples delivered to the recipient.

Centres were advised in earlier editions of this Guide to take the following steps to maximize the legal acceptability of all forms of acceptance of the SMTA, including in particular the click-wrap and shrink-wrap forms:

- You should send around a prior notification to all your regular customers, including of course those that that have pre-ordered shipments for 2007,

  advising them that as from 1 January 2007, all shipments of PGRFA of crops listed in Annex 1 to the International Treaty (shipments of PGRFA under the Multilateral System) will be subject to the terms and conditions of the SMTA adopted by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture in June 2006;
  attaching a copy of the SMTA in the relevant language;
  informing them that future shipments of PGRFA under the Multilateral System will be accompanied by the SMTA and that their acceptance and use of the Material will constitute acceptance of the terms and conditions of the SMTA.

A draft model for the notification to be sent to all regular customers is attached as Appendix 6 to this Guide for the convenience of Centres.

- In future, when a Centre receives a request for germplasm to be transferred under a shrink-wrap agreement, it should send a copy of the SMTA, drawing attention to its terms, in a letter or email acknowledging receipt of the request for germplasm. This letter should ask that the Centre be notified immediately if the terms are unacceptable, in order to avoid unnecessary and inappropriate shipment of materials;
- As appropriate, Centres should reference and append the SMTA to letters of agreement or contracts which deal in any way with transfers of germplasm;
- The SMTA should be posted prominently on all Centre web sites, and on the CGIAR web site;
- When sending out shipments under the SMTA, the SMTA should be filled out, including the name and addresses of the Provider and Recipient and Annex 1 of the SMTA, and the completed SMTA enclosed in every package that includes samples of Annex 1 material;

- Where a package includes Annex 1 material, whether or not this is mixed with non-Annex 1 material, the following text should be attached to the package in such a way that the recipient will have to tear it off to get inside the package and gain access to the materials:

  "**IMPORTANT NOTICE:**

  This package contains Plant Genetic Resources for Food and Agriculture (PGRFA) subject to the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty). The transfer of these PGRFA is subject to the terms and conditions of the Standard Material Transfer Agreement (SMTA), adopted by the Governing Body of the Treaty in June 2006. The completed SMTA governing the enclosed PGRFA is included in this package. Your acceptance of the PGRFA will constitute acceptance of the terms and conditions of the SMTA, including its conditions related to payments due on commercialisation of a Product incorporating the PGRFA. If you do not wish to accept the SMTA, then you must return the PGRFA to [Centre] immediately without using the PGRFA."

Filling out the SMTA

Following the decision of the Governing Body endorsing the insertion of a series of interpretative footnotes in the SMTA to allow for its use for non-Annex 1 PGRFA, Centres are reminded that the same SMTA with the interpretative footnotes should also be used for the transfer of Annex 1 material.

The attention of Centres is also drawn to the practice of using framework agreements covering shipments of PGRFA to regular customers over a period of time, normally for a period of one year. This practice has been endorsed by the First Meeting of the Group of Legal Experts convened by the Secretariat of the Treaty in July 2008 and is already being followed by a number of Centres. Under this practice, a single SMTA would be used to cover ongoing shipments to the same customer over a period of time: individual shipments would then be listed as amendments to Annex 1 of the SMTA, or as a sort of "rolling Annex 1". Where such framework agreements are used, Centres should ensure that the inventories accompanying each shipment include all of the information currently anticipated in Annex 1 of the SMTA, including details of MLS ancestors of PGRFA under Development and the identity of the individual providers and recipients, as well as the dates of individual shipments. Recipients should maintain independent records of when they received each shipment. The inventory document should refer to the specific SMTA pursuant to which the transfers are being made.

As noted earlier, the terms and provisions of the SMTA must not be changed. But the SMTA also contains elements that must be tailored to suit the individual shipment. One of these elements, the form of acceptance, has already been covered above. This section

describes the other individualised elements.

1 **Name and address of the Provider and Recipient** (article 1.2, page 1)
No explanations are required. The names and addresses required are those of the **Provider or Providing Institution**, and of the **Recipient or Recipient Institution**. For material being sent out by a Centre, the Provider should be listed as the Centre and not the individual officer concerned. Similarly where material is being sent to a Research Institute, the Recipient should normally be the Research Institute itself and not a particular individual. The footnote to Article 1.2 indicates that it is not necessary to include the names and addresses of the Provider and Recipient where the "shrink-wrap" and "click-wrap form of agreement are to be used. Despite this, it is suggested that where an SMTA is generated on the internet, a copy of the final SMTA including the names and addresses should be included with the samples on delivery.

2. **Acceptance clause**
Please note that only the clause representing the mode of acceptance chosen by the Parties to the SMTA should appear in the final SMTA filled out by the Centre. The other clauses should be deleted in accordance with the instructions set out in the footnote to Article 10 of the SMTA.

Where the SMTA is to be signed by both Parties, then one copy of the SMTA signed by the Recipient should be returned to the Provider, and the Recipient should be instructed accordingly. No copy should be sent to the Governing Body. The only time the Recipient is required to communicate with the Governing Body as Recipient is if he decides to opt for the alternative payments scheme in Article 6.11 of the SMTA.

3. Annex 1.
Annex 1 must specify the Material included in the shipment. The precise format of annex 1 is not defined, but the following criteria must be met:

a. Annex 1 must include a list of the Material in the shipment. Each sample should be identified by a unique identifier that distinguishes the particular sample from all other such samples – typically an accession ID for genebank accessions ("accession number" in the Multi-Crop Passport Descriptors), or other appropriate unique ID for breeding lines. A variety name would not be adequate. Most users also expect to see a variety name or other descriptive designation ("accession name" in the Multi-Crop Passport Descriptors)
b. Under article 5a of the SMTA, it is necessary also to provide "all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information" for each packet of seed in the shipment. You have two options for providing these data: (a) include them in annex 1; or (b) publish them online in a web page, and in annex 1 type the URL of the web page. Since the quantity of data is likely to be large, the second option will usually be preferable. In either case,
    i. Passport data should follow international standards set out in the FAO-IPGRI Multi-Crop Passport Descriptors.

ii. In providing descriptive information, Centres may wish to take into account the standards set out in the relevant "Descriptors" for the crop concerned, although these should not be viewed as prescriptive. In general the requirement is for "all available data" to be provided.

c. For transfers of PGRFA under development, under article 6.5b of the SMTA, you must identify, in Annex 1 … the Material received from the [MLS], and specify that the [PGRFA under Development] being transferred are derived from the Material. That is, you must

i. List PGRFA under Development separately from PGRFA other than PGRFA under development

ii. List all known ancestors of the PGRFA under Development that are in the multilateral system and not PGRFA under Development

iii. Specify that the PGRFA under Development are derived from PGRFA in the last list.

The following is a suggested layout for Annex 1, illustrated using an example of an actual entry prepared by IRRI in the format currently used by IRRI. In this example, only skeletal information is given in Annex 1 itself, and the Recipient is referred to the IRRI website for more detailed information. IRRI has found this format to be the most acceptable to both IRRI as a Provider as well as to Recipients. Otherwise Annex 1 tends to get too long. The highlighted text is specific to this example and will be different for different SMTAs.

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: http://www.iris.irri.org/smta/listEntriesData.do?studyId=-320&method=listEntriesData&smtaId=SMTA0306

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.

Each **Material** listed in this annex is identified by an ID that uniquely identifies the sample, followed in parentheses by a variety name or other designation associated with the **Material**.

The **Materials** listed below are PGRFA other than **PGRFA under Development**.

IRGC 6303 (ASD7)
IRGC 6663 (MUDGO)
IRGC 8978 (BABAWEE)
IRGC 11730 (RATHU HEENATI)
IRGC 12507 (ARC 10550)
IRGC 15609 (RATHU HEENATI)
IRGC 16130 (BASMATI)

The **Materials** listed below are **PGFRA under Development**, provided at the discretion of the developer in accordance with article 5c. Each is derived from one or more of the "Ancestral MLS germplasm" listed underneath.

IRIS 71-1234440 (IR 79913-B-115-B)
IRIS 71-116195 (IR 79913-B-11-B)
IRIS 71-117605 (IR 79913-B-124-B)
IRIS 71-1234459 (IR 79913-B-133-B)
IRIS 71-117649 (IR 79913-B-139-B)
IRIS 71-1234471 (IR 79913-B-143-B)
IRIS 71-116077 (IR 79913-B-154-B)
IRIS 71-1234486 (IR 79913-B-156-B)
IRIS 71-1234488 (IR 79913-B-158-B)
IRIS 71-1234493 (IR 79913-B-161-B)

The "Ancestral MLS germplasm" listed below comprise germplasm accessed from the Multilateral System by means of an SMTA, or germplasm from former “in trust” collections, or other germplasm now treated as subject to the Multilateral System; each is an ancestor of one of more of the **PGFRA under Development** listed above.

IRTP 18210 (IR 55419-04)
IRTP 23013 (WAY RAREM)
IRTP 12936 (IR 12979-24-1 (BROWN))
IRTP 7034 (UPL RI 5)
IRTP 10584 (IR 12979-24-1)
IRTP 195 (IR 8)
IRTP 15161 (ARIAS)
IRGC 123 (DEE-GEO-WOO-GEN)
IRTP 5551 (SIGADIS)
IRTP 1050 (C 4-63)
IRTP 837 (IR 879-314-2)
IRTP 13053 (BPI 76)
IRTP 387 (CARREON)
IRTP 199 (IR 26)
IRGC 35 (PETA)

As an alternative, more information can be given in Annex 1 itself. This was the format recommended in previous versions of the Guide. It is repeated here for the convenience of Centres:

Material provided					For PGRFA under Development only: Ancestral MLS germplasm [1]	
ID	Origin	PGRFA under development[2]?	Variety or other designation	Pedigree	ID	Origin
		Yes/No				

1 Ancestral MLS germplasm may include germplasm accessed from the Multilateral System by means of an SMTA, or germplasm from former "in trust" collections or other collections now treated as subject to the Multilateral System.

2 **Materials** marked with a "Yes" are provided as PGFRA under Development. PGRFA under Development are provided at the discretion of the developer in accordance with Article 5c), and subject to the terms of Article 6.5 and 6.6. of the Standard Material Transfer Agreement. In accordance with Article 6.5(b), the MLS germplasm from which they are derived is identified under "Ancestral MLS germplasm".

In this table,

ID of Material provided is an identifier uniquely identifying the sample being provided, distinguishing it from other samples of the same line or variety held elsewhere. For example, it may be the holding genebank's accession ID or an ID assigned by the breeder. It should not be a variety name or an identifier from another genebank or breeding collection.

Origin of Material provided: the country or institute where the material was bred (for bred samples) or collected (for samples collected from in situ conditions). If the material was bred in your institute, this will be your institute. Note that, if you obtained the sample from elsewhere, this is not necessarily the same as the country or institute from which you obtained it.

PGRFA under development? A sample may be transferred as PGRFA under Development if it was bred, is still under development (i.e. is not a commercially released variety), and contains in its pedigree at least one line that is now part of the multilateral system.

Materials being transferred as PGRFA under development should be marked as such with a "Yes" and a list of all known ancestral MLS germplasm given in the two right-most columns.

Materials not under development should be indicated with a "No"; and the two right-most columns should be left blank, even if they are known to have MLS ancestors.

Variety or other designation: the name of the variety, or breeding line, or previous genebank accession ID, or collectors ID.
Pedigree: the pedigree of the material, in as much detail as you know. Leave blank for materials collected from *in situ* conditions and not subsequently modified through breeding or selection.
ID of ancestral MLS germplasm: Where PGRFA under Development have been derived from Material originally accessed from the Multilateral System, the ancestral MLS germplasm used in their development to date should be identified. Similarly, where PGRFA under Development have been derived from material originally accessed from the "in trust" collection of the Centre before 1 January 2007, or from another collection now treated as part of the Multilateral System, the ancestral germplasm used in their development to date should be identified.

4. Annex 2.

In accordance with the instructions given in the Note by the Secretariat set out in footnote 6 in Annex 2, SMTAs should specify the currency as United States dollars (US$) until such time as the Governing Body decides otherwise.

We have now been informed by the Secretariat of the following details of the Trust Account to which benefit-sharing payments are to be made, as referred to in paragraph 4 of Annex 2 and footnote 7:

Account Name: FAO Trust Fund (USD) (GINC/INT/031/MUL, IT-PGRFA (Benefit-sharing)
Bank Name: HSBC New York
452 Fifth Ave.
New York, NY, USA, 10018
Swift/BIC: MRMDUS33
ABA/Bank Code: 021001088
Account No. 000156426[1]

Monitoring and reporting
The SMTA requires you to report certain information to the Governing Body, as provider or as recipient. This section summarizes your reporting commitments, so that you may keep appropriate records.

- **As a donor**, under Article 5e you are required to report periodically on what germplasm you have sent with the SMTA, according to a schedule that the Governing Body will establish. (As yet no such schedule has been established.)
- This commitment also applies (Article 6.4b) to germplasm that you originally obtained with an SMTA.

[1] *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).

- It also applies (Article 6.5c) to material that you distribute under Article 6.5 as PGRFA under Development derived from MLS germplasm.
- **As a recipient**, if a Centre becomes liable to make payments resulting from the commercialization of Products derived from MLS germplasm, it would be required under Annex 2 paragraph 3 of the SMTA to submit annual reports on sales of such Products.
- Alternatively, under Article 6.11 of the MTA, you may choose a different form of payment, in which case, under 6.11h you are required to notify the Governing Body that you choose this option.

Centres are reminded that data on first level distribution of materials from their genebanks is already publicly available and regularly updated on SINGER.

Answering questions on the meaning of provisions of the SMTA

It is almost inevitable that Centres will be asked questions by recipients on the legal significance of certain provisions of the SMTA. One question that is likely to be asked is the legal significance of the provisions dealing with claiming intellectual property rights over the Material (Article 6.2 of the SMTA). That particular question cannot be answered. There is an ambiguity inherent in this provision, and that ambiguity can only be resolved by the Contracting Parties either in the Governing Body or individually, or by dispute settlement procedures.

The same general principle of deference to the Governing Body on matters of interpretation of the SMTA holds good for all questions. If you need any advice on any matters brought up by Recipients, please do not hesitate to contact us!

Frequently Asked Questions on the SMTA

The need for recipients to direct questions to individual Centres can be forestalled by including a Frequently Asked Questions page dealing with the SMTA on your web-site. A set of Frequently Asked Questions (FAQs) prepared by the SGRP, currently posted on the CIMMYT website at < http://www.cimmyt.org/english/wps/obtain_seed/smtafaq-en.htm >, is attached as **Appendix 7** to this Guide. The FAQs link in with the FAO Treaty website page dealing with Frequently Asked Questions on the Treaty.

5. THE TRANSFER OF NON-ANNEX 1 PGRFA FROM CENTRES

Following the decision of the Governing Body of the Treaty at its Second Session in November 2007, Centres who wish to transfer non-Annex 1 PGRFA collected before the entry into force of the Treaty to Contracting Parties of the Treaty or to non-Contracting Parties are now required to use the SMTA with a series of interpretative footnotes. This decision will be reviewed by the Governing Body at its Third Session during the consideration of the SMTA and its benefit sharing provisions and modalities of payment.

Centres wishing to transfer non-Annex 1 PGRFA received after the entry into force of the Treaty are required to make the material available for access on terms consistent with those mutually agreed between the Centres concerned and the country of origin of the PGRFA or the country that has acquired them in accordance with the Convention on Biological Diversity or other applicable law.

APPENDIX 1

ANNEX I OF THE INTERNATIONAL TREATY

LIST OF CROPS COVERED UNDER THE MULTILATERAL SYSTEM

Food crops

Crop	Genus	Observations
Breadfruit	*Artocarpus*	Breadfruit only.
Asparagus	*Asparagus*	
Oat	*Avena*	
Beet	*Beta*	
Brassica complex	*Brassica* et al.	Genera included are: *Brassica, Armoracia, Barbarea, Camelina, Crambe, Diplotaxis, Eruca, Isatis, Lepidium, Raphanobrassica, Raphanus, Rorippa*, and *Sinapis*. This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species *Lepidium meyenii* (maca) is excluded.
Pigeon Pea	*Cajanus*	
Chickpea	*Cicer*	
Citrus	*Citrus*	Genera *Poncirus* and *Fortunella* are included as root stock.
Coconut	*Cocos*	
Major aroids	*Colocasia, Xanthosoma*	Major aroids include taro, cocoyam, dasheen and tannia.
Carrot	*Daucus*	
Yams	*Dioscorea*	
Finger Millet	*Eleusine*	
Strawberry	*Fragaria*	
Sunflower	*Helianthus*	
Barley	*Hordeum*	
Sweet Potato	*Ipomoea*	
Grass pea	*Lathyrus*	
Lentil	*Lens*	
Apple	*Malus*	
Cassava	*Manihot*	*Manihot esculenta* only.
Banana / Plantain	*Musa*	Except *Musa textilis*.
Rice	*Oryza*	
Pearl Millet	*Pennisetum*	

Beans	*Phaseolus*	Except *Phaseolus polyanthus*.
Pea	*Pisum*	
Rye	*Secale*	
Potato	*Solanum*	Section tuberosa included, except *Solanum phureja*.
Eggplant	*Solanum*	Section melongena included.
Sorghum	*Sorghum*	
Triticale	*Triticosecale*	
Wheat	*Triticum* et al.	Including *Agropyron*, *Elymus*, and *Secale*.
Faba Bean / Vetch	*Vicia*	
Cowpea et al.	*Vigna*	
Maize	*Zea*	Excluding *Zea perennis*, *Zea diploperennis*, and *Zea luxurians*.

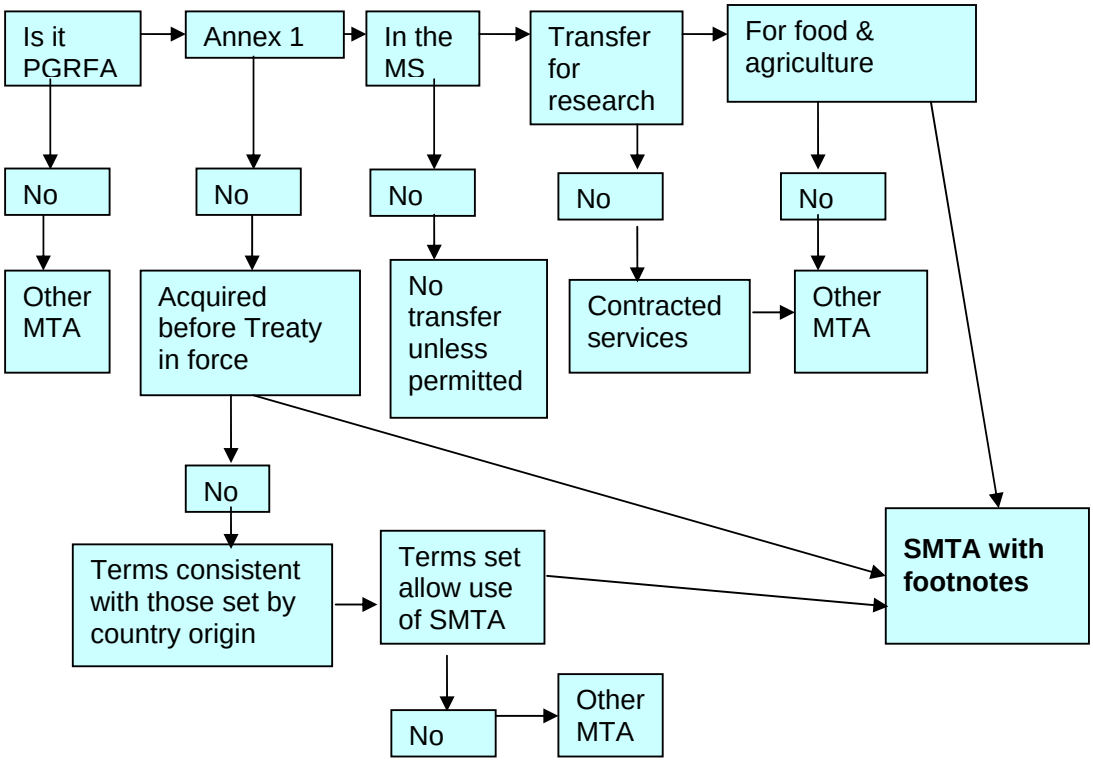
Forages

Genera	**Species**
LEGUME FORAGES	
Astragalus	*chinensis, cicer, arenarius*
Canavalia	*Ensiformis*
Coronilla	*Varia*
Hedysarum	*Coronarium*
Lathyrus	*cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus*
Lespedeza	*cuneata, striata, stipulacea*
Lotus	*corniculatus, subbiflorus, uliginosus*
Lupinus	*albus, angustifolius, luteus*
Medicago	*arborea, falcata, sativa, scutellata, rigidula, truncatula*
Melilotus	*albus, officinalis*
Onobrychis	*Viciifolia*
Ornithopus	*Sativus*
Prosopis	*affinis, alba, chilensis, nigra, pallida*
Pueraria	*Phaseoloides*

Trifolium	*alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum*
GRASS FORAGES	
Andropogon	*Gayanus*
Agropyron	*cristatum, desertorum*
Agrostis	*stolonifera, tenuis*
Alopecurus	*Pratensis*
Arrhenatherum	*Elatius*
Dactylis	*Glomerata*
Festuca	*arundinacea, gigantea, heterophylla, ovina, pratensis, rubra*
Lolium	*hybridum, multiflorum, perenne, rigidum, temulentum*
Phalaris	*aquatica, arundinacea*
Phleum	*Pratense*
Poa	*alpina, annua, pratensis*
Tripsacum	*Laxum*
OTHER FORAGES	
Atriplex	*halimus, nummularia*
Salsola	*Vermiculata*

APPENDIX 2

FLOW CHART FOR TRANSFER PGRFA (IARCS)



Guidelines for the setting up of internet systems for the SMTA

INTRODUCTION

The implementation of Standard Material Transfer Agreement (SMTA) in existing online germplasm ordering systems will require additional functionalities and modifications to the databases supporting the systems. Once these functionalities are in place, centres will also need an order-tracking system for ensuring that the conditions of the SMTA are met.

These guidelines outline one possible approach to developing a system for requesting germplasm online. They include a few basic essential attributes of the system that centres must consider when implementing their online germplasm ordering systems to remain in compliance with the terms and conditions of the SMTA, plus a number of optional aspects that centres may wish to consider. In this document, the term 'system' refers to a system for ordering germplasm online.

INFORMATION-ACCESS AGREEMENT

An information access agreement is an agreement between a centre and germplasm users. It states that the centre has exclusive rights to the database and to the information contained therein in the form presented, and that these rights will be for the same duration as for any other copyrighted work in the country where the database is accessed, according to each country's copyright laws[1].

Figure-1: Information Access Agreement

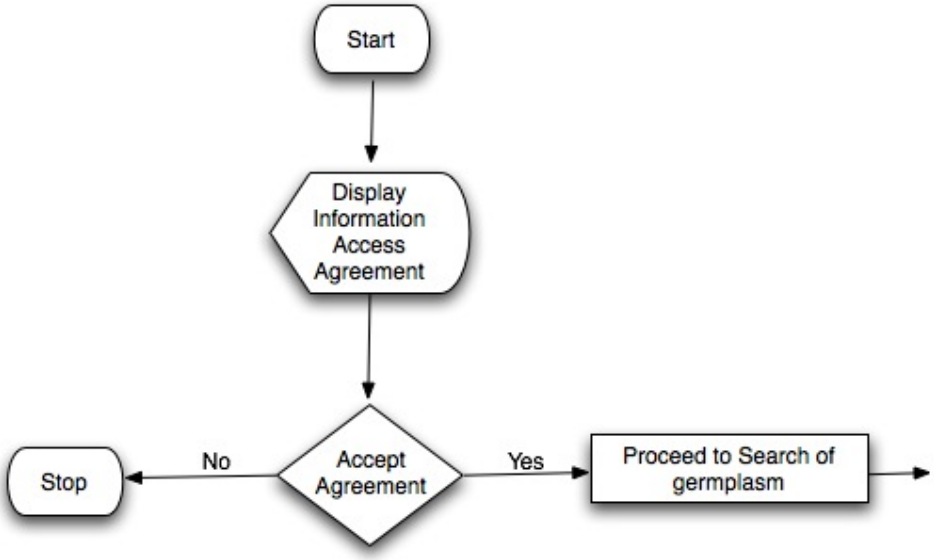


Figure-1 suggests a possible navigational flow for implementing an online germplasm ordering system in which users can accept the information-access agreement online before proceeding to search for germplasm.

The system should:

1. Display the information-access agreement;
2. Allow users to either accept or reject the agreement;
3. Exit if a user disagrees with the terms and conditions of the agreement; or
4. Proceed to a germplasm search page if a user accepts the terms and conditions of the agreement.

[1] An analysis of information access agreements and a possible model agreement will be submitted to a future session of the Genetic Resources Policy Committee (GRPC).

GERMPLASM SELECTION

Figure-2: Germplasm Selection

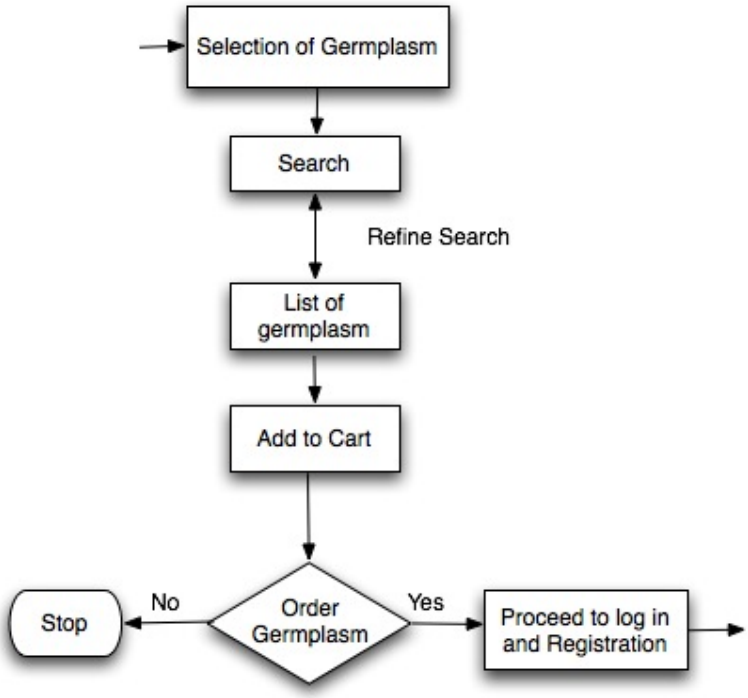


Figure-2 suggests a possible information flow for searching and selecting germplasm to order.

The system should:

1. Allow users to search the online database;
2. Display the search results;
3. Allow users to select and add the germplasm to the cart;
4. Exit if a user does not want to order the selected germplasm; or
5. Display a log-in and registration page if a user wants to order the selected germplasm.

REGISTRATION PROCESS

Figure-3: Registration Process

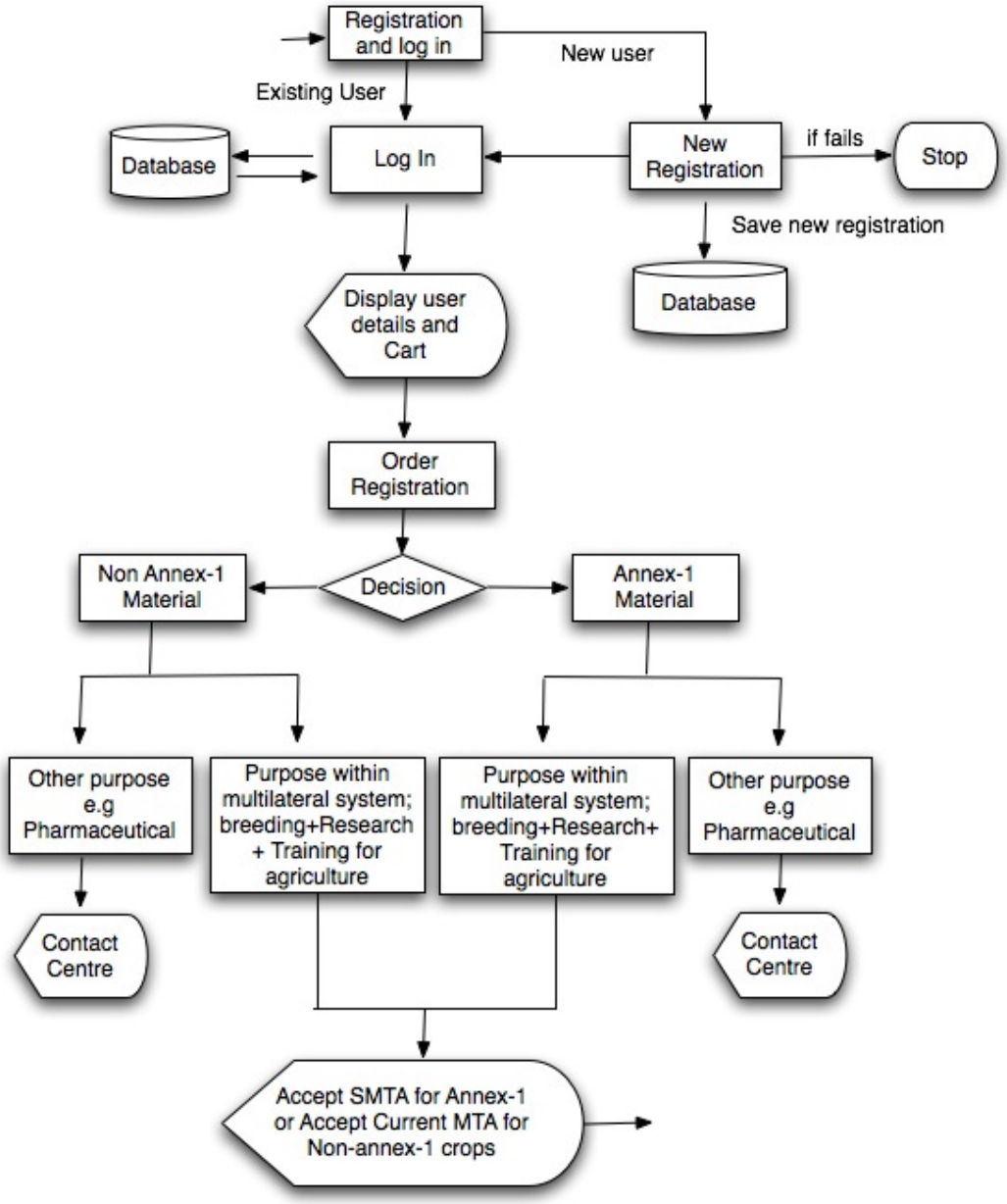


Figure-3 suggests a possible workflow for allowing users to log in or register to order germplasm.

In this figure, the "Order Registration" process, automatically takes a "Decision" about the classification of the material (Annex-1 or Non-Annex-1 crop) and takes the users to an appropriate path to follow.

LOG IN/NEW REGISTRATION

The system should:

1. Allow existing users to log in with a user identification and password; or
2. Allow new users to register. The suggested fields for the new user registration are:
    a. User identification
    b. Password
    c. First and last name
    d. Institute name
    e. Street address
    f. City
    g. Postal code
    h. Telephone number
    i. Fax number
    j. Email address
3. The system should exit if registration is not completed; or
4. Display user details and the selected germplasm in the cart if log in and new registration is a success.

ORDER REGISTRATION

Before the order is registered in the system database, the following steps are performed:

1. The system checks and classifies the selected material as Annex-1 or non-Annex-1 material.
2. Based on the classification, the system prompts users to describe the purpose of the request for material.
3. If the use of material is for the purposes described within the multilateral system such as breeding, research and training for agriculture, the system prompts users to accept the terms of SMTA for Annex-1 material or the terms of the current MTA for non-Annex-1 material.
4. If the material is to be used for other purposes, such as pharmaceutical use, the system informs the user to contact the centre.

PROCESS ORDER

Figure-4: Process Order

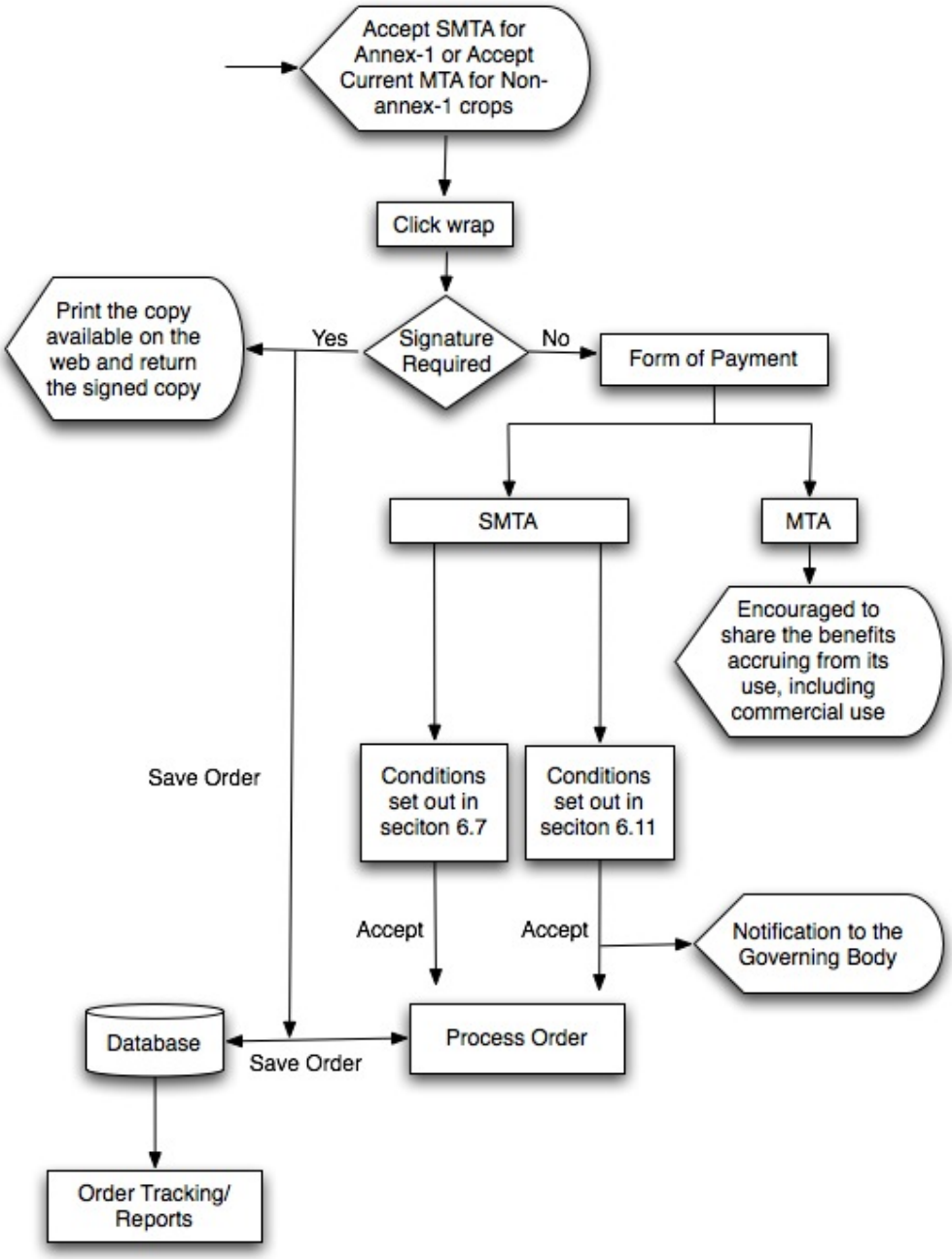


Figure-4 suggests a possible flow for accepting the SMTA and completing an order.

Final processing of the order involves a series of steps, during which the information is processed by the system.

CLICK WRAP

The click-wrap option allows user to accept the SMTA online.

1. If a 'signature' is required by both parties; the system automatically inserts the necessary information into the SMTA. The user is then allowed to download the completed version of the SMTA for printing and signature.
2. The system saves details of the order in the database for processing after the signed copy of the SMTA has been received.
3. If a signature is not required, the user is prompted to accept the form of payment; the modes of accepting the form of payment are different for the SMTA and the MTA for non-Annex-1 material.
    a. Form of payment applicable to SMTA
        i. A user can accept the conditions described in section 6.7 of the SMTA; or
        ii. A user can accept the conditions set out in section 6.11 of the SMTA. If this form of payment is selected, the system prompts each user to send a notification to the governing body.
    b. Form of payment applicable to MTA
        i. For non-Annex-1 material, the system displays message encouraging each user to share the benefits accruing from its use, including commercial use.
4. Once the form of payment has been accepted, the system saves the order in the database.
5. The system automatically generates the SMTA or MTA with necessary information such as user name, address and passport data.
6. At this stage, centres can package the material with the SMTA for dispatch.

APPENDIX 3

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.

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[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 1 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 1 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 1 to the Treaty" shall be taken to mean "Plant Genetic Resources for Food and Agriculture belonging to the same crop".

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 **This Agreement** is:

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

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

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

ARTICLE 2 — DEFINITIONS

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

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

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

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

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

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

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

"*Product*" means **Plant Genetic Resources for Food and Agriculture** that incorporate[2] the **Material** or any of its genetic parts or components thereof that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

**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.

"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;

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

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

[4] *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:

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[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 Bo**dy 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 account of the Trust Account or other mechanism established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**. The details of the Trust Account are as follows:

FAO Trust Fund (USD) (GINC/INT/031/MUL, IT-PGRFA (Benefit-sharing),
HSBC New York, 452 Fifth Ave., New York, NY, USA, 10018,
Swift/BIC: MRMDUS33, ABA/Bank Code: 021001088,
Account No. 000156426 [7]

[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**.

APPENDIX 4

Summary of the Standard Material Transfer Agreement

The following is a summary of the provisions of the Standard Material Transfer Agreement (SMTA) adopted by the Governing Body at its first session in June 2006. The summary does not constitute a legal document or have any legal status of its own. For an authoritative statement of their rights and obligations, Providers and Recipients must turn to the SMTA itself.

PARTIES TO THE SMTA

- The SMTA is entered into between the **Provider** and the **Recipient** of the PGRFA.
- The Food and Agriculture Organization of the United Nations (**FAO**) has certain rights to initiate dispute settlement procedures and to request information from the Provider and Recipient, to protect the interests of the Multilateral System as **third party beneficiary** under the SMTA.

SUBJECT MATTER OF THE SMTA

The subject matter of the SMTA is the **Material being transferred under the SMTA** as specified in Annex 1 of the SMTA, and the available related information.

GENERAL PROVISIONS

- The SMTA is to be **implemented and interpreted** in accordance with the objectives and provisions of the **Treaty**.
- Parties to the SMTA are subject to **applicable legal measures adopted by the Parties to the Treaty** in conformity with the Treaty: in the cases of CG Centres, the agreements between those Centres and the Governing Body of the Treaty will be applicable.

RIGHTS AND OBLIGATIONS OF THE PROVIDER

- Access to the PGRFA must be accorded **expeditiously and free of charge**, or at minimum cost;
- All available **passport data** and, subject to applicable law, any other associated available non-confidential descriptive information must also be made available;
- Access to **PGRFA under Development**[1] is at the **discretion** of the developer during the period of development;
- Access to PGRFA protected by **intellectual and other property rights** must be consistent with relevant international agreements and with relevant national laws;
- The Provider must **inform the Governing Body** periodically about the Material Transfer Agreements entered into on the basis of the SMTA.

RIGHTS AND OBLIGATIONS OF THE RECIPIENT

General

1 PGRFA under Development is defined in Article 2 – basically it is PGRFA that is derived from material received from the multilateral system, is in the process of being developed into a Product and which is not yet ready for commercialization on the open market

The Material transferred is to be used or conserved only for **research, breeding and training** for food and agriculture, not including chemical pharmaceutical and other non-food/feed industrial uses;

- **Intellectual property or other rights** that limit facilitated access to the Material, or its genetic parts and components, in the form received from the Multilateral System, must not be claimed;
- If the Recipient conserves the Material supplied, he must **make the Material and related information available to the Multilateral System,** using the SMTA;
- If the Recipient transfers the Material to another person or entity, that transfer must also be subject to a **SMTA**, and the fact of transfer must be notified to the Governing Body. Once he has done that, he has no further obligations regarding the action of subsequent recipients.

PGRFA under Development

- If a Recipient decides, in the exercise of his discretion, to transfer PGRFA under Development, the transfer must be subject to the normal **SMTA**, provided that the obligation to make it available expeditiously and without payment (Article 5e) will not apply;
- The Material received from the Multilateral System must be identified in Annex 1 to the SMTA, and the fact that the PGRFA under Development being transferred are derived from that Material must also be specified in that Annex;
- The Governing Body must be notified of the transfer;
- Once this is done, the Recipient has no further obligations regarding the action of subsequent recipients;
- The parties to the SMTA may agree on additional conditions relating to further product development, including as appropriate the payment of monetary consideration;
- Transfers of PGRFA under Development will not count as commercialization for the purpose of monetary benefit-sharing.

Monetary Benefit-sharing

- If a Product[2] that is a PGRFA is commercialized and that product incorporates Material accessed from the Multilateral System, then the Recipient –

  Where the Product is **not available without restriction**, is **required** to make a payment of a fixed percentage of the sales of the commercialized Product to the Multilateral System (the mechanism established by the Governing Body) in accordance with the banking instructions given in Annex 2 to the SMTA; or

  Where the Product is **available without restriction**, is **encouraged** to make voluntary payments to the Multilateral System.
- The normal rate for monetary benefit-sharing is set at 1.1 % of the Sales of the Product less 30%.
- The Recipient may opt for an **alternative payment scheme** that provides for -

  Payments at a **discounted rate of 0.5%** over the period of validity of the option (10 years renewable);

  Payments on **both** the **Sales of Products** incorporating Material accessed from the Multilateral System and **the sales of other products belonging to the same crop** as that Material;

2 A product is defined as PGRFA that incorporate the Material accessed from the Multilateral System or any of its genetic parts or components that are ready for commercialization, excluding commodities and other products used for food, feed and processing

Payments are to be made **whether or not the Product is available without restriction**;

Payments made under this option replace the normal payments due under the SMTA and any subsequent SMTA entered into during the period of validity of the option;

Once the period of validity of the option has ended, the Recipient is required to make payments on Products in accordance with the normal payments scheme, except that Products derived from Material accessed from the Multilateral System during the period of validity of the option **will continue to be charged at the discounted rate of 0.5%;**

Recipients who opt for the alternative payment scheme must notify the Governing Body for the option to be valid.

- A Recipient who **assigns to a third party intellectual property rights** over Products developed from Material accessed from the Multilateral System or its components, must transfer the **benefit-sharing obligations** to the third party along with those intellectual property rights.

Non-monetary benefit-sharing

- The Recipient is **required** to make all non-confidential **information** resulting from research and development carried out on the Material accessed from the Multilateral System available to the Multilateral System through the information system provided for in Article 17 of the Treaty;
- The Recipient is **encouraged** to share non-monetary benefits resulting from **research and development** on the Material identified in Article 13.2 of the Treaty (Exchange of information; access to and transfer of technology; capacity-building and sharing of monetary and other benefits of commercialization) through the Multilateral System;
- After the expiry of the protection period of an **intellectual property right** on a Product incorporating Material accessed from the Multilateral System, the Recipient is encouraged to place a sample of the Product into the Multilateral System.

Applicable Law

The SMTA is to be governed by **General Principles of Law**, including the UNIDROIT Principles of International Commercial Contracts 2004[3], the objectives and the relevant provisions of the Treaty and, when necessary for interpretation, the decisions of the Governing Body.

Dispute Settlement

Dispute settlement procedures may be initiated by the **Provider**, by the **Recipient**, or by **FAO** representing the Governing Body and the Multilateral System as third party beneficiary under the SMTA. Disputes are to be resolved through **negotiation** or **mediation**. Failing any of the above, the dispute may be referred by any party to **binding arbitration**, using agreed arbitration rules, or failing agreement, under the Rules of Arbitration of the International Chamber of Commerce. Parties may choose arbitrators from the list of experts established by the Governing Body if they so wish.

Warranties

The Provider makes no warranties as to the safety of or title to the Material being transferred.

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[3] See http://www.unidroit.org/english/principles/contracts/main.htm

Duration of the SMTA
The SMTA remains in force so long as the Treaty remains in force.

Signature and acceptance
The SMTA provides for **three possible ways** of expressing acceptance of the SMTA:

- **Signature by both Parties**;
- **Shrink-wrap acceptance** i.e. where a copy of the SMTA is included in the packaging of the Material, and the Recipient's acceptance of the Material constitutes acceptance of the SMTA; and
- **Click-wrap acceptance** i.e. where the agreement is concluded on the internet and the Recipient accepts the terms and conditions of the SMTA by clicking on the appropriate icon on the website.

APPENDIX 5

Statement issued by the Centres at the time of signing agreements with the Governing Body, 16 October 2006

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)

APPENDIX 6

Suggested draft of the notification to be sent to all regular customers

Dear Customer,

On 16 October 2006, all Centres of the CGIAR System holding collections of Plant Genetic Resources for Food and Agriculture (PGRFA) signed Agreements with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty) placing their in trust collections of PGRFA within the purview of the Treaty.

In accordance with this Agreements, you are hereby advised that, as from 1 January 2007, all shipments of PGRFA of crops listed in Annex 1 to the Treaty (shipments of PGRFA under the Multilateral System) will be subject to the terms and conditions of the **Standard Material Transfer Agreement (SMTA)** adopted by the Governing Body of the Treaty at it's First Session in June 2006.

You should note that future shipments of PGRFA under the Multilateral System will be accompanied by the SMTA and that your acceptance and use of the Material will constitute acceptance of the terms and conditions of the SMTA. Having both parties sign the SMTA prior to the shipment of materials is also an option that you can exercise, if you wish. You will have to notify our Centre if indeed that is your preference

I attach the following documents for your information:

- the list of crops included in Annex 1 to the Treaty;
- the SMTA

Please notify me at your earliest possible convenience if you are not content to receive Annex 1 materials pursuant to the terms and conditions of this SMTA.

Yours sincerely,

APPENDIX 7

Frequently Asked Questions on the SMTA

(Extract from the CIMMYT Website with updating)

International Treaty for Plant Genetic Resources for Food and Agriculture

The Food and Agriculture of the United Nations (FAO) has a website answering some Frequently Asked Questions (FAQs) on the International Treaty. The address of the FAO website is http://www.planttreaty.org/faq_en.htm.

With the kind permission of FAO, we reproduce the text of the FAO FAQs, and have added our own set of FAQs relating more specifically to issues of particular interest to CIMMYT and breeders who obtain plant genetic resources for food and agriculture from CIMMYT.

FAO's Frequently Asked Questions

- What are "plant genetic resources for food and agriculture" (PGRFA)?
- What are the Treaty's objectives?
- What is the Multilateral System for Access and Benefit-Sharing?
- What is the Multilateral System for Access and Benefit-Sharing?
- What are the conditions for access in the Multilateral System?
- How does the Treaty protect Farmers' Rights?
- Who benefits from the Treaty and how?
- When did the Treaty come into force?

The following are the additional FAQs covering the implications of the International Treaty for accessing germplasm from CIMMYT that have been prepared by CIMMYT:

- What is the Standard Material Transfer Agreement?
- Do I now have to sign the SMTA every time I ask for germplasm from CIMMYT?
- Do I have to sign the SMTA every time I send back to CIMMYT seeds that CIMMYT has sent me to work on?
- Am I authorized to accept the terms and conditions of the SMTA?
- Do I now have to pay for germplasm I ask for from CIMMYT?
- I am a farmer. Can I receive seed from you to grow on my farm and sell in the market?
- I want to share germplasm received from you with my colleagues at work. Should I to use the SMTA for internal transfers within my organization?
- I want to share germplasm received from you with colleagues in a subsidiary station of my organization in another country. Should I to use the SMTA for transfers to them?
- Can we modify the terms and conditions of the SMTA?
- If I use the seeds just as a vehicle for creating a transgenic event, and backcross the resulting plants to remove all genes, coding sequences, promoters or other operational elements of the original germplasm, leaving only small pieces of non-functional DNA from the original germplasm at the edges of the transgene, is the product still bound by the conditions of the SMTA for products?
- I do not understand what the following terms mean: "where the Product available without restriction to others for further breeding" or under which conditions "the Product would not be available without restrictions to others for further breeding".

- If the Material is used as a genetic background for initial insertion of traits in order to create a transgenic event, could we protect the event, i.e. the transgene insertion?
- Is there any way to contribute voluntarily to the international fund, even if I am not legally required to do so?
- Do I have to track how I use CIMMYT germplasm in my Breeding program?
- Do I have to make payments if I release a variety containing CIMMYT germplasm?
- Do I have to make payments if I apply for plant breeder's rights for a variety containing CIMMYT germplasm?
- When would I be legally required to make payments?
- Do I have to make payments if I patent a variety containing CIMMYT germplasm?
- What are patents, and which ones would trigger mandatory payments?
- What other restrictions would trigger mandatory payments?
- If I access material from CIMMYT under a SMTA and then access other material from the Multilateral System under another SMTA and use both materials in developing a new Product, which I then patent, would I be required to make two mandatory payments to the Multilateral System, or only one?
- If I need to make payments, who do I pay and what records do I need to provide?
- What does the alternative payments scheme provided for under Article 6.11 entail?
- When should payments under the alternative payments scheme provided for under Article 6.11 of the SMTA start?
- How will monetary benefits received under the various payment schemes be shared with farmers?
- Do I have an obligation to track how I share CIMMYT germplasm with others?
- Do I have an obligation to track how I share with others the progeny descendants that I develop from the germplasm I originally obtained from CIMMYT?
- Do my obligations differ if I access CIMMYT germplasm in the form of PGRFA under Development rather than as unimproved germplasm?
- What exactly does PCGRFA under Development mean?
- Do I have to sign an SMTA for the transfer of germplasm under development?
- If I am working on developing a new variety using germplasm obtained from CIMMYT under an SMTA, do I have to make my breeder's lines available to others?
- Do I have to make any reports to the Governing Body of the Treaty?

What are "plant genetic resources for food and agriculture" (PGRFA)?
The Treaty defines PGRFA as "any genetic material of plant origin of actual or potential value for food and agriculture".

What are the Treaty's objectives?
Its objectives are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits derived from their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

What is the Multilateral System for Access and Benefit-Sharing?
Through the Treaty, countries agree to establish an efficient, effective and transparent Multilateral System to facilitate access to plant genetic resources for food and agriculture, and to share the benefits in a fair and equitable way. The Multilateral System applies to over 64 major crops and forages. The Governing Body of the Treaty, which is composed of the countries that have ratified it, has set out the conditions for access and benefit-sharing in a "Standard Material Transfer Agreement".

What is the Multilateral System for Access and Benefit-Sharing?
Through the Treaty, countries agree to establish an efficient, effective and transparent Multilateral System to facilitate access to plant genetic resources for food and agriculture, and to share the benefits in a fair and equitable way. The Multilateral System applies to over 64 major crops and forages. The Governing Body of the Treaty, which is composed of the countries that have ratified it, has set out the conditions for access and benefit-sharing in a "Standard Material Transfer Agreement".

What are the conditions for access in the Multilateral System?
Resources may be obtained from the Multilateral System for utilization and conservation in research, breeding and training. When a commercial product is developed using these resources, the Treaty provides for payment of an equitable share of the resulting monetary benefits, if this product may not be used without restriction by others for further research and breeding. If others may use it, payment is voluntary.

How does the Treaty protect Farmers' Rights?
The Treaty recognizes the enormous contribution that farmers and their communities have made and continue to make to the conservation and development of plant genetic resources. This is the basis for Farmers' Rights, which include the protection of traditional knowledge, and the right to participate equitably in benefit-sharing and in national decision-making about plant genetic resources. It gives governments the responsibility for implementing these rights.

Who benefits from the Treaty and how?
All benefit, in many ways:
-Present and future generations, because of increased food security;
-Farmers and their communities, through Farmers' Rights;
-Consumers, because of a greater variety of foods, and of agriculture products, as well as increased food security;
-The scientific community, through access to the plant genetic resources crucial for research and plant breeding;
-International Agricultural Research Centres, whose collections the Treaty puts on a safe and long-term legal footing;
-Both the public and private sectors, which are assured access to a wide range of genetic diversity for agricultural development; and
-The environment, and future generations, because the Treaty will help conserve the genetic diversity necessary to face unpredictable environmental changes, and future human needs.

When did the Treaty come into force?
The Treaty came into force on 29 June 2004, ninety days after forty governments had ratified it. Governments that have ratified it will make up its Governing Body. At its first meeting, this Governing Body will address important questions, such as the level, form and manner of monetary payments on commercialization, a Standard Material Transfer Agreement for plant genetic resources, mechanisms to promote compliance with the Treaty, and the funding strategy.

Implications of the International Treaty for Accessing Germplasm from CIMMYT
The following are the additional FAQs covering the implications of the International Treaty for accessing germplasm from CIMMYT that have been prepared by CIMMYT**:**

What is the Standard Material Transfer Agreement?
The SMTA is the standard agreement that sets out the terms and conditions under which PGRFA can be accessed under the Multilateral System. All transfers of germplasm under the Multilateral System must be under the SMTA. This means that all transfers from CIMMYT and any other CG Centre of germplasm covered by the Multilateral System will by under the SMTA. So also will any transfers of germplasm under the Multilateral System from national collections in Contracting Parties to the Treaty, including transfers to CIMMYT. The text of the SMTA was adopted by the Governing Body of the Treaty at its First Session in June 2006. The SMTA cannot be varied. When PGRFA is transferred under the SMTA, the material being transferred will need to be listed in an Annex to the SMTA (Annex 1).

Do I now have to sign the SMTA every time I ask for germplasm from CIMMYT?
Normally you will have to accept the SMTA every time you ask for germplasm. But that doesn't mean that you will have to sign it each time. The SMTA provides for three ways in which you can accept the SMTA.

1. You can accept it by signing it. If you are a regular customer of CIMMYT and you have already signed an SMTA with CIMMYT and that SMTA is still inforce, you may not need to sign a new one. New orders of germplasm will automatically be added to Annex 1 of the existing SMTA. Please contact CIMMYT for more details;
2. If you are ordering over the internet, you can accept the SMTA on line by clicking on the box marked "I agree to the above conditions" (this is called a "click-wrap" form of acceptance, and is basically the same as when you order goods or services from any internet website);
3. If you receive material that you have ordered without having signed the SMTA, it will be accompanied by a printed copy of the SMTA and a note to the effect that if you accept the material and use it, you will be bound by the terms and conditions of the SMTA (this is called a "shrink-wrap" form of acceptance, and is basically the same as buying copies of computer software). This is the procedure that has been used up to now by CIMMYT for Material Transfer Agreements under the "in trust agreements" with FAO.

Do I have to sign the SMTA every time I send back to CIMMYT seeds that CIMMYT has sent me to work on?
If the material was sent to you under the SMTA to work on and you are sending it back to CIMMYT, you should send it back under the SMTA. Please note that if you are a regular customer of CIMMYT and you have already signed an SMTA with CIMMYT, you may not need to physically sign a new one, although you will need to fill out Annex 1 of the SMTA each time you send material under the same SMTA. Please consult with CIMMYT for how to do this.

Am I authorized to accept the terms and conditions of the SMTA?
Under the Treaty and the Agreement the Centres have signed with the Governing Body of the Treaty, the Centres are required to facilitate access to any "legal and natural persons under the jurisdiction of any Contracting Party" – that means any individual or organization in a country that is a member of the Treaty. The Centres choose also to grant the same privilege to individuals and organizations from non-member countries. So, if you are requesting germplasm, as far as the Treaty is concerned and as far as the Centres are concerned, yes you are definitely authorized.

However, you need to be careful about who is accepting liability. If you accept the SMTA in your own name, you are personally liable to fulfil your obligations under the SMTA. If you are working for an organization and expect your organization to be liable, you must make sure that agreement is given by the person authorized to do so by your organization.

Note that this authorization is only at the institutional level – you do not need to seek authorization from the Governing Body, nor, if you are requesting germplasm, do you need to seek authorization from your Government.

If you are making germplasm available, you may need to check whether there are any restrictions that your Government has in place that would limit your freedom to make the germplasm available. Where your country is a Contracting Party to the Treaty and the germplasm is of a crop listed in Annex 1 to the Treaty, there would not normally be any such restrictions, although your Government may have certain procedures that you may need to follow.

Do I now have to pay for germplasm I ask for from CIMMYT?
No. The International Treaty requires us to give access to germplasm expeditiously and free of charge. The Treaty does allow us to charge for the administrative costs involved in making germplasm available. We do not currently make such a charge, although we do request breeders and genebanks in developed countries to make a voluntary donation to cover the costs of shipment and phytosanitary certification. The Treaty also allows us to charge for improved breeding materials which we classify as "plant genetic resources for food and agriculture under development". But again, we have no plans to make any such charge at the moment.

If you use germplasm of crops listed in Annex 1 of the Treaty provided to you by CIMMYT, AND you breed a new PGRFA product AND you commercialize that product, AND you take out a patent on that product that restricts the further use of that product by others for research or breeding, or otherwise take legal or technological measures that restrict the further use of that product by others for research or breeding, then you will be required to make a payment to the international fund established by the Treaty. If you merely take out UPOV type plant varietal protection over the new product, you will NOT be required to make a payment to the international fund, since UPOV type plant varietal protection does not restrict the further use of that product by others for research or breeding. Other types of plant varietal protection that are not UPOV compliant may have the effect of restricting further availability for research and breeding.

I am a farmer. Can I receive seed from you to grow on my farm and sell in the market?
Yes. Like any other recipient of germplasm from CIMMYT, you will have to abide by the terms and conditions of the SMTA. It is recognized that farmers are also experimental breeders, researching and breeding lines for use on their farm. Therefore use on farm is within the scope of acceptable use, and the SMTA does not prohibit sale of the produce.

I want to share germplasm received from you with my colleagues at work. Should I to use the SMTA for internal transfers within my organization?
The SMTA is a legally binding contract between the provider and the recipient. When you accept germplasm with an SMTA, the acceptance should be by your organization, not by you as an individual. In this case, the SMTA automatically applies to all employees in your organization, and technically you do not need to use the SMTA for internal transfers.

However, when transferring internally without SMTA, you should ensure that your colleagues are aware that their use of the material is also governed by the SMTA.

I want to share germplasm received from you with colleagues in a subsidiary station of my organization in another country. Should I to use the SMTA for transfers to them?
The SMTA is a legally binding contract between the provider and the recipient. When you accept germplasm with SMTA, the acceptance should be by your organization, not by you as an individual. In this case, the SMTA automatically applies to all employees in your organization.

For transfers to a subsidiary body in another country, the key question is, does that subsidiary body have its own separate status as a legal entity? If it does, then your acceptance of the SMTA would not automatically apply to it and you would need to use the SMTA for transfers to it. If it does not, then your acceptance of the SMTA should apply to it, and you only need to ensure that your colleagues are aware that their use of the material is also governed by the SMTA.

Can we modify the terms and conditions of the SMTA?
The text of the SMTA was decided by negotiation between all governments in the Governing Body of the Treaty (which means all Contracting Parties to the Treaty). CIMMYT is bound by legal contract with the Governing Body to use the SMTA for the exchange of germplasm of crops listed in Annex 1 of the Treaty. As such, the terms and conditions of the SMTA must not be modified at all.

In future, the Governing Body may decide to re-negotiate the text. Until that time, the text is fixed.

PGRFA under Development represent a special case, in that additional terms and conditions can be appended to the SMTA, provided that they are not inconsistent with the terms and conditions of the SMTA and provided that the main body of the SMTA remains unchanged.

If I use the seeds just as a vehicle for creating a transgenic event, and backcross the resulting plants to remove all genes, coding sequences, promoters or other operational elements of the original germplasm, leaving only small pieces of non-functional DNA from the original germplasm at the edges of the transgene, is the product still bound by the conditions of the SMTA for products?
Yes. The SMTA does not specify a lower threshold either in terms of amount or functionality of DNA in the product. If you have used the germplasm to create your product, and the product contains any DNA at all from the germplasm, it is covered by the terms and conditions of the SMTA.

I do not understand what the following terms mean: "where the Product available without restriction to others for further breeding" or under which conditions "the Product would not be available without restrictions to others for further breeding".
Under the "breeders' exemption" of UPOV-compliant Plant Variety Protection, even protected varieties must be freely available to others for further breeding and research. Where a variety or gene is protected by certain forms of patent, the material may not available without specific authorization from the breeder.

If the Material is used as a genetic background for initial insertion of traits in order to create a transgenic event, could we protect the event, i.e. the transgene insertion?
Yes. The SMTA allows you to protect you own intellectual property, as long as you conform with article 6.2, i.e. that you 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"

Is there any way to contribute voluntarily to the international fund, even if I am not legally required to do so?
If you do not restrict the availability to others of products incorporating Annex 1 CIMMYT germplasm for further research and breeding, you are not legally required to make any payment to the international fund set up by the Treaty. You are, however, encouraged to make a voluntary payment. Please note that you are merely encouraged to make the payment. You are not legally required to make the payment.

Do I have to track how I use CIMMYT germplasm in my Breeding program?
There is no formal legal obligation in the SMTA to track how you use CIMMYT germplasm in your breeding program. However normally it is always advisable to keep records documenting the receipt and use of CIMMYT breeding materials. This is normal plant breeding practice.

You will need to keep records of the germplasm you receive with an SMTA, because if CIMMYT provides you with germplasm of crops listed in Annex 1 of the Treaty and you choose to keep that germplasm, you will need to make it available to other users if they ask you for it. If you make it available to others, then you will have to do so under a new SMTA.

You will also need to keep records of which breeding lines you derive from germplasm received with SMTA, because if you send samples of those breeding lines to others, then you will also need to do so under a new SMTA.

If you choose to send those breeding lines as PGRFA under Development, then in the new SMTA you must declare the germplasm that you received with the SMTA and used to develop your breeding lines. Therefore you must keep records of which germplasm you used to develop each breeding line.

If you choose to send those breeding lines as PGRFA under Development, then in the new SMTA you must declare the germplasm that you received with the SMTA and used to develop your breeding lines. Therefore you must keep records of which germplasm you used to develop each breeding line.

If you breed a new PGRFA product using the germplasm acquired from CIMMYT, commercialize it and restrict further access to the product by others for research and breeding e.g. through some forms of patenting, then you will be required to make a payment to the international fund established by the Treaty. (See above)

Do I have to make payments if I release a variety containing CIMMYT germplasm?
No. The Treaty is designed to facilitate the exchange of plant genetic resources for food and agriculture and the use of those resources for further breeding and research. Releasing a new variety developed from CIMMYT germplasm will not trigger mandatory payments, unless

you commercialize a new variety developed from Annex 1 germplasm and you restrict its availability for further research and breeding e.g. through some forms of patenting.

Plant Varietal Protection (PVP) under UPOV does not restrict the further use of the variety for research and breeding. Sui generis PVP may restrict further use, but such PVP laws are not UPOV-compliant. If your country has a PVP system but is not a UPOV member, you should find out whether your PVP laws restrict further use. Patent protection may in some jurisdictions restrict availability for further research and breeding. So may some technological or contractual restrictions.

Do I have to make payments if I apply for plant breeder's rights for a variety containing CIMMYT germplasm?
Not normally. Plant Breeder's Rights under **UPOV type** Plant Varietal Protection (PVP) laws do not restrict the further use of the variety for research and breeding. Commercialization of a new variety that is protected by this type of Plant Breeder's Rights developed from CIMMYT germplasm would not trigger mandatory payments under the Treaty.

Plant Breeder's Rights under *sui generis* PVP laws may restrict further use for research and breeding. Such PVP laws are not UPOV-compliant. If your country has a PVP system but is not a UPOV member, you should find out whether your PVP laws restrict further use. Patent protection may in some jurisdictions restrict availability for further research and breeding. So may some technological or contractual restrictions.

When would I be legally required to make payments?
The Treaty and the SMTA provide that payments must be made when the following conditions are met:

1. a new PGRFA product incorporating Annex 1 germplasm received from CIMMYT is commercialized; AND
2. the further availability of the new PGRFA product to others for research and breeding is restricted e.g. through some forms of patenting.

Do I have to make payments if I patent a variety containing CIMMYT germplasm?
You may have to make payments if you commercialize a variety that has been patented. This will depend on whether the patent protection restricts availability of the product for further research and breeding. As a general rule, US utility patents will restrict availability for further research and breeding. Some European patents will not. Please note that just patenting a variety will not trigger mandatory payments. The trigger is when the variety is commercialized. For more information on patents see below.

What are patents, and which ones would trigger mandatory payments?
Patents are grants made by a government that confer upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.

The Treaty provides that payments must be made if a product incorporating germplasm accessed from the Multilateral System is commercialized and the availability of the product for research and breeding by others is restricted.

Patent protection differs from country to country. You will need to seek legal advice on the situation in your own country. The following general review is of course subject to that

proviso.

As a general rule, US utility patents will restrict availability for further research and breeding, unless of course the patent holder were to undertake to issue free licences to whomsoever wished to use the patented product for research or breeding. On the other hand, patents under the US Plant Patent Act cover only asexually reproduced plants, and thus would not restrict availability for breeding.

As a general rule in Europe, patents do not restrict availability for research. France and Germany have new legislation that extends this exemption to breeding. Switzerland is considering adopting similar legislation. Netherlands and UK patents still don't provide for a breeding exemption.

Patent protection in Japan does not cover acts carried out for the purpose of experiment or research. However it would restrict availability for commercial breeding.

There is an "experimental use" exemption also under the patent law in Australia, but again this would not extend to commercial breeding.

The situation is similar in New Zealand, though there the "experimental use" exemption is based on judicial practice rather than legislation.

Please note that just patenting a variety will not trigger mandatory payments. The trigger is when the variety is commercialized.

What other restrictions would trigger mandatory payments?
The Treaty and the SMTA provide that payments must be made when the following conditions are met:

1. a new PGRFA product incorporating germplasm received from CIMMYT is commercialized; AND
2. the further availability of the new PGRFA product to others for research and breeding is restricted. Patent protection may in some jurisdictions, like the USA, restrict availability for further research and breeding. So may some technological or contractual restrictions. An example of a technological restriction could be certain types of Genetic Use Restriction Technologies (GURTS) such as the so-called "terminator seed". An example of a contractual restriction could be where property in a variety is passed under a contract that restricts the use of the variety for further research and breeding. In some cases these kinds of contractual restrictions may be reinforced by restrictions on replanting and inspection procedures. Very often the contractual restrictions may be cumulative with patent protection.

If I access material from CIMMYT under a SMTA and then access other material from the Multilateral System under another SMTA and use both materials in developing a new Product, which I then patent, would I be required to make two mandatory payments to the Multilateral System, or only one?

You would only need to make one payment. Paragraph 2 of Annex 2 of the SMTA provides that "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." This provision is even clearer in the Spanish language version of the SMTA which

reads as follows: "Cuando un Producto contenga recursos fitogeneticos para la alimentacion y la agricultura a los que se haya tenido acceso al amparo del sistema multilateral en virtud de dos o mas accuerdos de transferencia de material basados en el Acuerdo normalizado de transferiencia de material, solamente se requerira un pago con arreglo al parrafo 1 supra."

If I need to make payments, who do I pay and what records do I need to provide?
Payments are to be made to the international fund set up by the Governing Body of the Treaty. Please note that they are not to be made to CIMMYT. The funds generated will be used for the purposes of implementing the Treaty and the benefits will flow primarily directly and indirectly to farmers in all countries, especially in developing countries and countries with economies in transition who conserve and sustainably utilize plant genetic resources for food and agriculture. Payments should be made in US dollars to the following account:

Account Name:	FAO Trust Fund (USD) (GINC/INT/031/MUL, IT-PGRFA (Benefit-sharing)
Bank Name:	HSBC New York 452 Fifth Ave. New York, NY, USA, 10018
Swift/BIC:	MRMDUS33
ABA/Bank Code:	021001088
Account No.	000156426

You should check with the Secretariat of the Treaty to confirm these bank account details before making the payment".

If you become liable to make payments to the Governing Body on commercializing a product, you must submit annual reports together with your annual payments.

Each annual report must be submitted to the Governing Body within sixty (60) days after each calendar year ending December 31st and should contain the following:

> (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.
>
> Reports should be addressed 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**

What does the alternative payments scheme provided for under Article 6.11 entail?
When you receive germplasm from CIMMYT, you have a choice between the normal payments scheme provided for in Article 6.7 of the SMTA, and the alternative payments scheme provided for under Article 6.11.

The normal payments scheme requires you to pay 1.1% of the Sales of the Product less 30%; i.e. 0.77%.

The alternative payment scheme provides for -

- Payments at a discounted rate of 0.5% over the period of validity of the option (10 years renewable);
- Payments on both the Sales of Products incorporating Material accessed from the Multilateral System and the sales of other products belonging to the same crop as that Material;
- Payments are to be made whether or not the Product is available without restriction;
- Payments made under this option replace the normal payments due under the SMTA and any subsequent SMTA entered into during the period of validity of the option;
- Once the period of validity of the option has ended, you are required to make payments on Products in accordance with the normal payments scheme, except that Products derived from Material accessed from the Multilateral System during the period of validity of the option will continue to be charged at the discounted rate of 0.5%;
- If you opt for the alternative payment scheme, you must notify the Governing Body for the option to be valid.
- If you assign to a third party intellectual property rights over Products developed from Material accessed from the Multilateral System or its components, you must transfer the benefit-sharing obligations to the third party along with those intellectual property rights.

When should payments under the alternative payments scheme provided for under Article 6.11 of the SMTA start?

Payments should start on the date on which SMTA has been concluded, whether this be through signature by both parties, or acceptance of the SMTA through electronic means ("click-wrap" acceptance) or by acceptance and use of the germplasm ("Shrink-wrap acceptance), provided that you have sent notification of your option for the alternative payments scheme to the Governing Body (see Annex 4 of the SMTA). If you do not send in your notification, then your option is not valid and you will still be liable for the normal payments under the terms of Article 6.7. Payments under the alternative payments scheme are to be made "during the period of validity of the option", which runs for 10 years from the date of signature or other acceptance of the SMTA.

How will monetary benefits received under the various payment schemes be shared with farmers?

The moneys received under the various payments schemes will form part of the financial resources of the Treaty under the Funding Strategy to be used as directed by the Governing Body of the Treaty. The Treaty provides that the benefits arising form from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly or indirectly, to famers in all countries, especially in developing countries and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

Do I have an obligation to track how I share CIMMYT germplasm with others?

If you pass on CIMMYT germplasm listed in Annex 1 of the Treaty to others, you must do so under a new SMTA, i.e. you will need to fill out a new SMTA and send the germplasm under that SMTA.

You then become a "Provider" of PGRFA under the Treaty and are required to inform the Governing Body periodically about the SMTAs you have issued. The Governing Body will establish the schedule for such reports. The Secretariat of the Treaty will provide guidelines as to the recommended format for reports in due course. These guidelines will be reported on this webpage when they are available.

Do I have an obligation to track how I share with others the progeny descendants that I develop from the germplasm I originally obtained from CIMMYT?
You should treat germplasm you develop from CIMMYT germplasm in the same way as the original germplasm i.e. it must be transferred under a new SMTA and reports made to the Governing Body as described in the reply to the previous question. Of course, this does not stop you in any way from developing new varieties from the original germplasm or from taking out intellectual property rights over those new varieties.

Do my obligations differ if I access CIMMYT germplasm in the form of PGRFA under Development rather than as unimproved germplasm?
If you access CIMMYT in the form of PGRFA under Development, you do not have to make that germplasm available to others while you are continuing to develop it. You in effect become the new "developer" of the PGRFA under Development and have the same developer's rights as CIMMYT has over the material. Article 6.5 of the SMTA specifically provides that where PGRFA under Development is transferred under the SMTA, the Recipient will not be bound by the provisions of Article 5a of the SMTA, i.e. the obligation to make the material available expeditiously etc. Whether or not to make the material available is a matter within your discretion as its new developer during the period of its development.

There is also another difference in the status of PGRFA under Development. CIMMYT is authorized under the Treaty and the terms of the SMTA to make the transfer of PGRFA under Development subject to additional conditions. At the moment, CIMMYT does not make the transfer of PGRFA under Development subject to additional conditions, but reserves the right to do so in the future. If additional conditions are set, these will be set out in an additional contract that will go along with the SMTA.

What exactly does PCGRFA under Development mean?
PGRFA under Development are basically breeders' lines derived from Material from the Multilateral System, that you are currently working on and which you may not wish to release in their present form, because they are still under development.

Under the Treaty and the SMTA, you as developer (i.e. breeder) do not have to make PGRFA under Development available to others during the period of their development. You, as developer, have the discretion as to whether or not to make them available.

If, in the exercise of your discretion, you decide to transfer PGRFA under Development derived from material from the Multilateral System (normally you would have got the original material under an SMTA), you must do so under the normal SMTA. However, since it is still PGRFA under Development, it is understood that the obligation to make the material available expeditiously and without payment (Article 5a) will not be passed on. You will in effect become the "new developer" and will have the developer's discretion about if and when to make the material available during the period of its development.

If you do make the PGRFA under Development available to others, remember that:

- The Material originally received from the Multilateral System must be identified in an Annex to the SMTA (Annex 1), and the fact that the PGRFA under Development being transferred are derived from that Material must also be specified in that Annex.
- The Governing Body must be notified of the transfer.
- Once this is done, the Recipient has no further obligations regarding the action of subsequent recipients.
- The parties to the SMTA may agree on additional conditions relating to further product development, including as appropriate the payment of monetary consideration.
- Transfers of PGRFA under Development will not count as commercialization for the purpose of monetary benefit-sharing.

Do I have to sign an SMTA for the transfer of germplasm under development?
Yes. The Treaty gives you as breeder the discretion as to whether and when you should make the germplasm you are developing available. You can of course commercialise the new material you have developed if you so wish. If you decide to transfer it to another breeder for further development, you should do so under a new SMTA so that you pass on the benefit sharing obligations under the Multilateral System. You can also add additional conditions to the transfer, including the payment of monetary consideration.

If I am working on developing a new variety using germplasm obtained from CIMMYT under an SMTA, do I have to make my breeder's lines available to others?
No. That is the whole point of the idea of PGRFA under Development. PGRFA under Development does not have to be made available during the period of its development. It is up to you, in your own discretion, to decide whether or not you should make it available, or when the period of development is finished. But if you do make it available, you must do so under the SMTA, although you may make the transfer subject to additional conditions, including the payment of monetary consideration.

Do I have to make any reports to the Governing Body of the Treaty?
There are a number of references in the SMTA to notifications that must be sent to the Governing Body. The following is a complete list:

- You must periodically inform the Governing Body about all SMTAs in which you are the Provider of germplasm, including transfers to a third party of material you previously received under an SMTA, and also including transfers of PGRFA Under Development.
- If you become liable to make payments to the Governing Body on commercializing a product, you must submit annual reports together with your annual payments.
- If you opt for the alternative form of financial liability, you must do so by signing Annex 4 and returning it to the Governing Body.

In principle, all notifications to the Governing Body should be sent to the following address:

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