

## STANDARD MATERIAL TRANSFER AGREEMENT

### PREAMBLE

#### WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as "the **Treaty**")<sup>1</sup> 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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<sup>1</sup> *Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.

## ARTICLE 1 – PARTIES TO THE AGREEMENT

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

**1.2 This Agreement is:**

**BETWEEN:**

Genebank of the  
Leibniz Institute of Plant Genetics and Crop Plant Research (IPK)  
represented by  
Prof. Dr. N. Stein  
Corrensstr. 3  
06466 Seeland, OT Gatersleben  
Germany

*(hereinafter referred to as "the **Provider**"),*

**AND\*:**

\_\_\_\_\_  
*Name of the Recipient*

\_\_\_\_\_  
**Represented by**

\_\_\_\_\_  
*Street / PO box*

\_\_\_\_\_  
*Postal Code /City*

\_\_\_\_\_  
*Country*

*(hereinafter referred to as "the **Recipient**").*

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

\_\_\_\_\_  
*\* Insert as necessary. Not applicable for click-wrap Standard Material Transfer Agreements.*

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.

## 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 the Material or any of its genetic parts or components<sup>2</sup> that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

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

**"To commercialize"** means to sell a **Product** or **Products** for monetary consideration on the open market, and **"commercialization"** has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

## ARTICLE 3 – SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in Annex 1 to **this Agreement** (hereinafter referred to as the "**Material**") and the available related information referred to in Article 5b and in Annex 1 are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

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<sup>2</sup> As evidenced, for example, by pedigree or notation of gene insertion.

## 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**.

**4.3** The parties to **this Agreement** agree that (*the entity designated by the **Governing Body***)<sup>3</sup>, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

**4.4** The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and Annex, 2 paragraph 3, to **this Agreement**.

**4.5** The rights granted to the (*the entity designated by the **Governing Body***) above do not prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**.

## ARTICLE 5 – RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;

b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;

c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;

d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;

e) The **Provider** shall periodically inform the **Governing Body** about the Material Transfer

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<sup>3</sup> *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”.

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.<sup>4</sup>

## ARTICLE 6 – RIGHTS AND OBLIGATIONS OF THE RECIPIENT

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

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

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

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

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

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

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

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
- c) notify the **Governing Body**, in accordance with Article 5e; and

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<sup>4</sup> *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

d) have no further obligations regarding the actions of any **subsequent recipient**.

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

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

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

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

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

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

a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;

b) The period of validity of the option shall be ten years renewable in accordance with *Annex 3* to **this Agreement**;

c) The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in *Annex 1* to the **Treaty**, to which the **Material** referred to in *Annex 1* to **this Agreement** belongs;

d) The payments to be made are independent of whether or not the **Product** is **available without restriction**;

e) The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in Annex 3 to **this Agreement**;

f) The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;

g) After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;

h) The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.

## ARTICLE 7 – APPLICABLE LAW

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

## ARTICLE 8 – DISPUTE SETTLEMENT

**8.1** Dispute settlement may be initiated by the **Provider** or the **Recipient** or the (the entity designated by the **Governing Body**), acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

**8.2** The parties to **this Agreement** agree that the (the entity designated by the **Governing Body**), representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

**8.3** The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the Provider and the Recipient, as the case may be.

**8.4** Any dispute arising from **this Agreement** shall be resolved in the following manner:

a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.

b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.

c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the

Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

## ARTICLE 9 – ADDITIONAL ITEMS

### Warranty

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

### Duration of Agreement

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

## ARTICLE 10 – SIGNATURE/ACCEPTANCE

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

### Option I – Signature

I, Prof. Dr. N. Stein, 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 .....  
Position: Head of Genebank Gatersleben

Date .....



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 II – Click-wrap Standard Material Transfer Agreement (available only if the Recipient is using the online services of the Genebank Gatersleben Information System)***

I hereby agree to the above conditions.

## **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.

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.

## 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 31<sup>st</sup>, 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 31<sup>st</sup>;
  - (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 US\$ for the following account:

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

## 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<sup>5</sup> .....

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<sup>5</sup> 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**.