

THE PROTECTION OF PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE ACT

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THE PROTECTION OF PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE ACT

Act
1 of 2013.

[8th February, 2013.]

1. This Act may be cited as the Protection of Plant Genetic Resources for Food and Agriculture Act. Short title.

2.—(1) In this Act—

Inter-
pre-
tion.

“Contracting Party” means a State or inter-governmental organization that is a party to the Treaty;

“Convention” means the Convention on Biological Diversity done at Rio de Janeiro, Brazil, and entered into force on the 29th day of December, 1993, and any amendment thereto as adopted from time to time by the Government of Jamaica;

“*in situ*”, in relation to plant genetic resources means plant genetic resources in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties;

“listed plant genetic resource” means any plant genetic resource listed in Annex 1 of the Treaty as amended from time to time;

“Management Authority” means the Management Authority established under section 4;

“plant genetic resources” means plant genetic resources for food and agriculture—

- (a) being any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity; and

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(b) having actual or potential value for food and agriculture;

“standard material transfer agreement” means an agreement in accordance with section 8;

“Treaty” means the International Treaty on Plant Genetic Resources for Food and Agriculture done at Rome, Italy, and entered into force on the 29th day of June, 2004, and any amendment as adopted from time to time by the Government of Jamaica.

(2) Any document originating from a Contracting Party and required to be submitted under this Act shall, if not in the english language, be accompanied by a translation thereof in the english language and a declaration by the translator that the translation is, to the best of his knowledge and belief, complete and faithful.

Objects of Act.

3. The objects of this Act are to facilitate Jamaica’s compliance with its obligations under the Treaty and otherwise to—

(a) further the conservation and sustainable use of plant genetic resources; and

(b) facilitate access to, and use of, plant genetic resources, and to promote the equitable sharing of benefits arising out of their use,

in harmony with the provisions of the Convention.

Establishment and fund of Management Authority.

First Schedule.

4.—(1) For the purposes of this Act, there shall be established a body to be known as the Management Authority, to which the provisions of section 28 of the *Interpretation Act* shall apply, and the provisions of the First Schedule shall have effect as respects the constitution of the Management Authority and otherwise in relation thereto.

(2) The funds and resources of the Management Authority shall consist of—

(a) such sums as may be provided to it by Parliament annually in the Estimates of Revenue and Expenditure;

- (b) such sums as may be allocated from time to time to the Management Authority from loan funds;
- (c) all other sums or property which may in any manner become payable to, or vested in, the Management Authority in respect of any matter incidental to its functions.

5. The Minister may, after consultation with the chairman of the Management Authority, give to the Management Authority such directions of a general character as to the policy to be followed by the Management Authority in the performance of its functions, as appear to the Minister to be necessary in the public interest, and the Management Authority shall give effect thereto.

Policy
directions.

6. The Management Authority shall—

- (a) advise the Minister on matters of policy and legal measures that provide for the conservation and sustainable use of plant generic resources and the equitable sharing of the benefits arising out of their use, being policies and legal measures which promote—

Functions of
the Manage-
ment
Authority.

- (i) the pursuit of fair agricultural policies and, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
- (ii) research that enhances and conserves biological diversity by maximizing intra-specific as well as inter-specific variation for the benefit of farmers who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests;

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- (iii) as appropriate, plant breeding efforts that, with the participation of farmers, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;
 - (iv) the broadening of the genetic base of crops and the expansion of the range of genetic diversity available to farmers;
 - (v) as appropriate, the expanded use of local, and locally adapted crops, varieties and under-utilized species;
 - (vi) support for, as appropriate, the wider use of diversity of varieties and species in—
 - (A) on-farm management, conservation and sustainable use of crops;
 - (B) creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion and promote increased world food production compatible with sustainable development; and
 - (vii) the periodic review and, as appropriate, adjustment of breeding strategies concerning plant variety release and seed distribution;
- (b) develop and implement a funding strategy to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under the Treaty;
 - (c) ensure the integration of activities under the Treaty into the Government's relevant agricultural and rural development policies and programmes;
 - (d) co-operate with relevant international organizations in—

- (i) establishing or, as appropriate, strengthening the capabilities of developing countries and countries with economies in transition, with respect to conservation and sustainable use of plant genetic resources;
- (ii) enhancing international activities to promote—
 - (A) conservation, evaluation, documentation, genetic enhancement, plant breeding and seed multiplication; and
 - (B) sharing, providing access to, and exchanging, plant genetic resources and appropriate information and technology relating thereto; and
- (iii) maintaining and strengthening the institutional arrangements provided for in Part V of the Treaty; and

(e) perform such other functions as may be assigned to it under this Act or, from time to time, by the Minister.

7.—(1) Access to any listed plant genetic resource for utilization, or conservation, for the purpose of—

Access to listed plant genetic resources.

- (a) research;
- (b) breeding; or
- (c) training, for food and agriculture,

may be obtained only by any entity specified in subsection (2), in accordance with the terms and conditions of a standard material transfer agreement, between that entity and the owner of the plant genetic resource.

(2) An entity referred to in subsection (1) is a reference to any of the following—

- (a) a Contracting Party;
- (b) an individual who is a citizen of Jamaica, or of a Contracting Party, and who is ordinarily resident in Jamaica or in the jurisdiction of a Contracting Party; and

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(c) a body corporate, association or organization incorporated or registered in Jamaica or in the jurisdiction of a Contracting Party and wholly owned, managed and controlled by persons falling within paragraph (b).

(3) No person shall, for monetary consideration or otherwise, transfer for any purpose mentioned in subsection (1) the results of any research relating to any listed plant genetic resource, without the prior approval of the Management Authority.

(4) A person who contravenes subsection (3) commits an offence and shall be liable upon conviction before a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Standard
material
transfer
agreements.
Second
Schedule.

8.—(1) A standard material transfer agreement shall be in the form set out in the Second Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Second Schedule from time to time to reflect any changes in the standard material transfer agreement adopted pursuant to article 12.4 of the Treaty.

(3) The Minister shall act promptly in the exercise of the power given under subsection (2), as is necessary to ensure Jamaica's compliance with its obligations under the Treaty.

Plant
Resources
Fund.

9.—(1) A fund to be known as the Plant Resources Fund is hereby established into which all monies arising from standard material transfer agreements, and payable to stakeholders, shall be paid, and from which all payments to, or for the benefit of, stakeholders shall be made.

(2) The Management Authority shall manage the Plant Resources Fund in the prescribed manner.

Register of
plant genetic
resources.

10.—(1) The Management Authority shall establish and maintain, in such form as may be prescribed, a register of plant genetic resources, into which shall be entered the details of any plant genetic resources donated to the gene banks kept by any

agency or department of Government or any statutory body or Government company.

(2) In subsection (1), "Government company" means a company registered under the *Companies Act*, being a company in which the Government or an agency or department of the Government, by the holding of shares or otherwise, is in a position to direct the policy of that company.

11.—(1) The Minister may, by order published in the *Gazette* and subject to affirmative resolution, increase any monetary penalty imposed by this Act. Power of Minister to amend by order.

(2) The plant genetic resources listed in Annex 1 of the Treaty are set out in the Third Schedule, for ease of reference and the Minister may, by order published in the *Gazette*, amend the Third Schedule to reflect any amendments made to Annex 1 of the Treaty. Third Schedule.

12.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations— Regulations.

(a) prescribing prohibited activity in relation to any listed plant genetic resources found in *in situ* conditions, and incorporating any standards, set from time to time by the Governing Body established under article 19 of the Treaty, in relation to access to plant genetic resources found in *in situ* conditions;

(b) regulating the management of the Plant Resources Fund;

(c) as to the form and contents of the register of plant genetic resources.

(2) Regulations made under subsection (1) may, subject to affirmative resolution, provide for the imposition of penalties, on summary conviction before a Resident Magistrate, of a fine not exceeding two million dollars or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

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FIRST SCHEDULE

(Section 4)

Constitution and Procedure of Management Authority

Constitution
of
Management
Authority.

1. The Management Authority shall consist of not less than eleven nor more than thirteen members appointed by the Minister as follows—

- (a) one member shall be a representative of the Ministry responsible for agriculture;
- (b) one member shall be a representative of the Ministry responsible for environment;
- (c) one member shall be a representative of the National Environment and Planning Agency;
- (d) one member shall be a representative of the Scientific Research Council;
- (e) two members, each representing a tertiary institution;
- (f) one member shall be a representative of the Institute of Jamaica;
- (g) one member shall be an attorney-at-law;
- (h) one member shall be qualified in the area of accounting and finance; and
- (i) at least two persons appointed from among such other persons as appear to the Minister to be suitably qualified in the area of botany, or to represent the interests of farmers and plant breeders.

Appointment
of chairman
and vice-
chairman.

2.—(1) The Minister shall appoint one of the members to be the chairman.

(2) The members shall appoint one of their numbers to be the vice-chairman.

(3) In the case of the absence or inability to act of the chairman, the vice-chairman shall perform the functions of the chairman, and in the case of the absence or inability to act of both the chairman and vice-chairman—

- (a) the Minister may appoint any member to perform the functions of chairman; and
- (b) the other members shall appoint one of their number to perform the functions of vice-chairman.

Temporary
appointment.

3. In the case of the absence or inability to act of any other member, the Minister may appoint another person to act temporarily for that member, so, however, that the person temporarily appointed shall have a similar qualification to the member for whom he is acting.

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FIRST SCHEDULE, *contd.*

- 4.—(1) The appointment of every member of the Management Authority shall be evidenced by instrument in writing, and such instrument shall state the period of office of that member, which shall not exceed three years. Tenure of office.
- (2) Every member shall be eligible for reappointment.
5. The Minister may, if he thinks it expedient so to do, revoke the appointment of the chairman or any other member of the Management Authority by instrument in writing addressed to the chairman or such other member (as the case may be). Revocation of appointment.
- 6.—(1) Any member of the Management Authority other than the chairman may resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Management Authority. Resignation.
- (2) The chairman may at any time resign his office by instrument in writing addressed and transmitted to the Minister, and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.
7. The names of all members of the Management Authority as first constituted and every change in the membership thereof shall be published in the *Gazette*. Publication of membership.
8. All documents made by, and all decisions of, the Management Authority may be signified under the hand of the chairman or any other member authorized to act in that behalf by the Management Authority. Execution of documents.
- 9.—(1) The Management Authority shall meet at such times as may be necessary for the transaction of its business and such meetings shall be held at such places and times and on such days as the Management Authority may determine. Procedures and meetings.
- (2) The chairman may at any time call a special meeting of the Management Authority and shall call a special meeting within seven days of the receipt of a written request for that purpose addressed to him by two members of the Management Authority.
- (3) The chairman shall preside at meetings of the Management Authority and if the chairman is absent from a meeting the vice-chairman shall preside at that meeting and if both the chairman and vice-chairman are absent, the members present shall elect one of their number to preside at that meeting.

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FIRST SCHEDULE, *contd.*

(4) The quorum of the Management Authority shall be five.

(5) The decisions of the Management Authority shall be by a majority of votes and in addition to an original vote the chairman, vice-chairman or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes of each meeting of the Management Authority shall be kept in proper form and shall be confirmed as soon as practicable at a subsequent meeting.

(7) The validity of the proceedings of the Management Authority shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(8) Subject to the provisions of this Schedule, the Management Authority shall regulate its own proceedings.

Disclosure of interest.

10. A member of the Management Authority who is directly or indirectly interested in any matter which is being dealt with by the Management Authority—

(a) shall disclose the nature of his interest at a meeting of the Management Authority; and

(b) shall not take part in any deliberation or decisions of the Management Authority with respect to that matter.

Remuneration of members.

11. There shall be paid to the chairman, vice-chairman and other members of the Management Authority such remuneration (whether by way of honorarium, salary or fees) and such other allowances as the Minister may determine.

Office of chairman, vice-chairman or member not public office.

12. The office of chairman, vice-chairman or member of the Management Authority shall not be a public office for the purposes of Chapter IX of the Constitution of Jamaica.

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SECOND SCHEDULE

(Section 8)

Standard Material Transfer Agreement

PREAMBLE

WHEREAS:

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as "the Treaty") was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June, 2004;

The objectives of the Treaty are the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

The Contracting Parties to the Treaty, in the exercise of their sovereign rights over their Plant Genetic Resources for Food and Agriculture, have established a Multilateral System both to facilitate access to Plant Genetic Resources for Food and Agriculture and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;

Articles, 4, 11, 12.4 and 12.5 of the Treaty are borne in mind;

The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules governing access to courts and to arbitration, and the obligations arising from international and regional conventions applicable to these procedural rules, are recognized;

Article 12.4 of the Treaty provides that facilitated access under the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement, and the Governing Body of the Treaty, in its Resolution 1/2006 of 16 June, 2006, adopted the Standard Material Transfer Agreement.

¹*Note by the Secretariat:* as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.

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SECOND SCHEDULE, *contd.*

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 — *Definition*

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.

*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.

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

SECOND SCHEDULE, *contd.*

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

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

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

“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 Transfers 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

³In 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 CGIAR Centres and other relevant institutions will be applicable.

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SECOND SCHEDULE, *contd.*

4.3 The parties to this Agreement agree that (the entity designated by the Governing Body),⁴ acting on behalf of the Governing Body of the Treaty and its Multilateral System, is the third party beneficiary under this Agreement.

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

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

ARTICLE 5 — *Rights and Obligations of the Provider*

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

- (a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- (b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the Plant Genetic Resources for Food and Agriculture provided;
- (c) Access to Plant Genetic Resources for Food and Agriculture under Development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- (d) Access to Plant Genetic Resources for Food and Agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- (e) The Provider shall periodically inform the Governing Body about the Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body. This

⁴Note 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".

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SECOND SCHEDULE, *contd.*

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:

- (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;

⁵Note 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
1-00100 Rome, Italy

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SECOND SCHEDULE, *contd.*

- (b) identify, in Annex 1 to the new material transfer agreement, the Material received from the Multilateral System, and specify that the Plant Genetic Resources for Food and Agriculture under Development being transferred are derived from the Material;
- (c) notify the Governing Body, in accordance with Article 5e; and
- (d) have no further obligations regarding the actions of any subsequent recipient.

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

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

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

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

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

SECOND SCHEDULE, *contd.*

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.

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SECOND SCHEDULE, *contd.*

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.

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SECOND SCHEDULE, *contd.*

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.

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SECOND SCHEDULE, *contd.*

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;

SECOND SCHEDULE, *contd.*

- (b) the amount of the payment due; and
- (c) information that allows for the identification of any restrictions that have given rise to the benefit-sharing payment.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in United States dollars (US\$)⁶ for the following account established by the Governing Body in accordance with Article 19.3f of the Treaty⁷:

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

Annex 3

TERMS AND CONDITIONS OF THE ALTERNATIVE PAYMENTS
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT 1.2.3.4.5.

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 of 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.

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).

**PROTECTION OF PLANT GENETIC RESOURCES
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SECOND SCHEDULE, *contd.*

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

⁸In 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.

THIRD SCHEDULE

(Section 11)

List of Crops Specified in Annex 1 of the Treaty

Food Crops

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

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THIRD SCHEDULE, *contd.*

List of Crops Specified in Annex 1 of the Treaty

Food Crops		
<u>Crop</u>	<u>Genus</u>	<u>Observations</u>
Sunflower	Helianthus	
Barley	Hordeum	
Sweet Potato	Ipomoea	
Grass pea	Lathyrus	
Lentil	Lens	
Apple	Malus	
Cassava	Manihot	<i>Manihot esculenta</i> only.
Banana/ Plantain	Musa	Except <i>Musa textilis</i> .
Rice	Oryza	
Pearl Millet	Pennisetum	
Beans	Phaseolus	Except <i>Phaseolus polyanthus</i> .
Pea	Pisum	
Rye	Secale	
Potato	Solanum	Section <i>tuberosa</i> included, except <i>Solanum phureja</i> .
Eggplant	Solanum	
Sorghum	Sorghum	Section <i>melongena</i> included.
Triticale	Triticosecale	
Wheat	Triticum <i>et al.</i>	Including <i>Agropyron</i> , <i>Elymus</i> and <i>Secale</i> .
Faba Bean / Vetch	Vicia	
Cowpea <i>et al.</i>	Vigna	
Maize	Zea	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> and <i>Zea luxurians</i> .

THIRD SCHEDULE, *contd.*

Forages

<u>Genera</u>	<u>Species</u>
LEGUME FORAGES	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>
<i>Canavalia</i>	<i>ensiformis</i>
<i>Coronilla</i>	<i>varia</i>
<i>Hedysarum</i>	<i>coronarium</i>
<i>Lathyrus</i>	<i>cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>
<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pretense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum</i>
GRASS FORAGES	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>

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THIRD SCHEDULE, *contd.*

Forages

<u>Genera</u>	<u>Species</u>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatus</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
OTHER FORAGES	
<i>Atriplex</i>	<i>halimus, nummularia</i>
<i>Salsola</i>	<i>vermiculata</i>