

## **Frequently Asked Questions on the SMTA**

### **For anyone who wants to obtain maize or wheat from CIMMYT**

This document is for you if you are considering requesting maize or wheat from CIMMYT and you are wondering about the implications of the Standard Material Transfer Agreement (SMTA). The objective is to guide you through the implications for a recipient of maize or wheat with an SMTA, by answering the questions we are most frequently asked.

- The flow diagram on page 2 illustrates the obligations that may arise during the process of exchanging, developing, and commercializing maize or wheat under the Multilateral System.
- The section *The Basics* addresses questions about what the SMTA is and how it works.
- If you are concerned whether you will be able to do what you want to do, look at the section *Your Rights as Recipient under the SMTA*.
- If you are concerned about possible liability to make payments, look at the FAQ in the section *The Bottom Line – Payments*.
- If you are concerned whether you might be required to do other things you don't want to do, such as excessive record-keeping or sharing confidential information, look at the section *Your Obligations as Recipient under the SMTA*.
- The section *Definitions* defines some terms that have specific meanings in the SMTA, which are essential to correct understanding of the SMTA.
- The section *Going Further* gives some advice on how to find out more if you wish.

**Disclaimer:** This document is the result of a combined effort with the System-wide Genetic Resources Programme (SGRP) and legal experts on the Treaty, to unravel the complexities of the SMTA to the best of our ability. However, we are unable to provide authoritative answers, and neither CIMMYT nor SGRP can accept responsibility for any errors. In cases of doubt, definitive interpretations can be given only by the Governing Body of the Treaty, through which the text of the SMTA was negotiated, drafted, and finalized.

**Flow diagram illustrating obligations that may arise during the process of exchanging, developing, and commercializing maize or wheat under the Multilateral System of the Treaty**

***Transfer arranged***

***Provider and Recipient***

- Agree on list of materials to be transferred
- Agree to accept conditions of SMTA
- Negotiate additional conditions, if any, for PGRFA under Development

***Provider***

- Verifies that transfer with SMTA is legally permitted for each sample to be transferred
- Identifies MLS ancestors of PGRFA under Development
- Prepares SMTA and, as required, phytosanitary certificate, export permit, and GMO declaration
- Prepares data, seeds, and shipment

***Recipient***

- Verifies that use will be only research, breeding, and training for food and agriculture
- Undertakes not to claim IPR that restrict access to the material provided
- If required, prepares and sends to provider an import permit to be attached to the shipment



***Transfer***

- ***Provider*** sends seed, provides all associated non-confidential data, files for report to Governing Body
- ***Recipient*** ensures compliance with national quarantine/import regulations, chooses between standard and alternative payments scheme

*Recipient uses material for research, breeding, and training:* Recipient must make non-confidential information available to (as yet non-existent) information system

*If Recipient sends sample of the material received to someone else:* Recipient now becomes Provider in a new SMTA

*If Recipient sends pre-commercial breeding lines derived from the material received to someone else:* Recipient now becomes Provider (of PGRFA under Development) in a new SMTA

*If Recipient commercializes a product and makes it available without restriction to others for further research and breeding,* the product is no longer PGRFA under Development and is available with SMTA

*If Recipient opts for alternative payments scheme:* Recipient sends signed annex 4 to the Governing Body (GB), immediately starts annual reporting and payment to the GB, with payment based on crop sales from date of SMTA

*If Recipient did not opt for alternative payments scheme and commercializes a product that was developed from material received with SMTA and that is not available without restriction to others for further research and breeding:* Recipient must make payments annually to FAO amounting to 0.77% of sales of the product

## **The Basics**

- *What is the Standard Material Transfer Agreement (SMTA)?*
- *What is the Multilateral System?*
- *Why do we have to use the SMTA?*
- *Must the SMTA always be used?*
- *Do I have to accept the SMTA every time I obtain seed from CIMMYT?*
- *Can I modify the terms and conditions of the SMTA?*
- *Am I authorized to accept the terms and conditions of the SMTA?*
- *My country is not a Party to the Treaty. Do I still have to comply with the SMTA?*
- *How do I complete the SMTA?*
- *Where do I sign the SMTA?*
- *Shrink-wrap? Click-wrap? Signed? What's that?*
- *I don't want to accept the SMTA. Can I obtain the same maize or wheat from somewhere else without an SMTA?*
- *What maize or wheat is available with the SMTA?*
- *What maize or wheat can CIMMYT provide with an SMTA?*
- *What is CIMMYT's policy on access to PGRFA under Development?*

## **Your Rights as Recipient under the SMTA**

- *What am I allowed to do with the maize or wheat I receive with an SMTA?*
- *What am I not allowed to do with the maize or wheat I receive with an SMTA?*
- *I don't want others to know what maize or wheat I have obtained from CIMMYT or what I have done with it. Is that possible?*
- *If I use germplasm from CIMMYT as a genetic background for initial insertion of traits in order to create a transgenic event, could I protect the event, i.e., the transgene insertion?*
- *I am a farmer. Can I get seed from CIMMYT to grow on my farm and then sell my produce in the market?*

## **The Bottom Line – Payments**

- *Do I have to pay CIMMYT for maize or wheat it sends me?*
- *Do I have to make payments if I release a variety containing CIMMYT germplasm received with an SMTA?*
- *Do I have to pay the Treaty?*
- *Is my product "available without restriction to others for further research and breeding"?*
- *My product is a hybrid variety. Is this considered a technological restriction on its use that would trigger mandatory payments?*
- *What are patents, and will they trigger mandatory payments?*
- *The SMTA appears to set no time limit on the liability for mandatory payments. Is that true?*
- *The SMTA appears to set no lower threshold on the percentage of DNA in my product that came from the maize or wheat received with an SMTA. Is that true?*
- *Would I ever have to pay the Treaty for commercializing products developed only from maize or wheat obtained from CIMMYT before implementation of the SMTA?*
- *Is there any way to contribute voluntarily to the international fund, even if I am not legally required to do so?*
- *What is the alternative payments scheme?*
- *Do I have to tell anyone what payment scheme I choose? If so, who?*
- *When should I start payments under the alternative payments scheme?*
- *If I need to pay, whom do I pay and what documents do I need to provide?*
- *How is the money paid going to be used?*

## **Your Obligations as Recipient under the SMTA**

- *What am I obliged to do with the maize or wheat I receive with the SMTA?*
- *Do I have to tell anyone what maize or wheat I have received with the SMTA?*
- *Do I have to submit reports to the Governing Body of the Treaty?*
- *I want to share germplasm received from CIMMYT with my colleagues at work. Should I use the SMTA for internal transfers within my organization?*
- *I want to share germplasm received from CIMMYT with colleagues in a subsidiary station of my organization in another country. Should I use the SMTA for this transfer?*
- *I am worried that if I commit to providing maize or wheat with an SMTA, I will have to commit additional resources to conserve the material. What should I do?*
- *Do I have to document how I use CIMMYT germplasm in my breeding program?*
- *Do I have to document how I share CIMMYT germplasm with others?*
- *Do I have to document how I share with others the maize or wheat that I breed from samples I originally obtained from CIMMYT?*
- *Am I obliged to disclose the pedigrees of my varieties and breeding lines?*
- *The SMTA seems to imply that I must maintain pedigree records in perpetuity. Is that true?*
- *If I obtain maize or wheat from CIMMYT under an SMTA and use it in my breeding program, do I have to make my bred materials available to others before they are ready to be commercialized?*
- *Do my obligations as a recipient differ if the maize or wheat I receive from CIMMYT is classified as “PGRFA under Development”?*

## **Definitions**

- *What does “PGRFA under Development” mean?*
- *What does “Product” mean? What kinds of products are considered as Products for the SMTA?*

## **Going Further**

- *I want to understand the SMTA better. How do I set about doing so?*

## The Basics

- **What is the Standard Material Transfer Agreement (SMTA)?**

The SMTA is a standard agreement that sets out the terms and conditions under which plant genetic resources for food and agriculture are transferred from one person or organization (“the Provider”) to another (“the Recipient”) under the Multilateral System (see FAQ *What is the Multilateral System?*) of the International Treaty on Plant Genetic Resources for Food and Agriculture (“the Treaty”). Each use of the SMTA constitutes a contract between the Provider and the Recipient, and is legally binding under normal contract law regardless of their status or what countries they are based in. If you obtain maize or wheat from CIMMYT with an SMTA, the rights and obligations of the Recipient apply to you, while the rights and obligations of the Provider apply to CIMMYT.

- **What is the Multilateral System?**

The Multilateral System, short for the Multilateral System of Access and Benefit-Sharing, is one element of the Treaty. All countries that are members of the Treaty agree to establish and follow the same set of rules for sharing plant genetic resources for food and agriculture of more than 60 major crops and forages, for sharing associated non-confidential data, and for sharing the benefits that arise from their use. By providing a single agreed system, this avoids the multiple repeated bilateral negotiations that would otherwise be needed, and thereby seeks to be more efficient, effective, transparent, fair, and equitable.

- **Why do we have to use the SMTA?**

CIMMYT has to use the SMTA by agreement between CIMMYT and the Governing Body signed on 16 October 2006.

The basic purpose of the SMTA is very simple: with a minimum of legal hassle and transaction costs, it provides a standard, mutually agreed way to facilitate access to, and the fair use of, genetic resources for conservation and the sustainable development of agriculture. The underlying rationale, detailed in the Treaty, is founded on two simple but essential ideas:

- A system for simple, low-cost, efficient, effective, and transparent transfers of genetic resources between organizations and individuals is vital for sustainable progress in agriculture. Farmers, breeders, and other scientists, in both the public and private sector, must be allowed to use existing germplasm to create improved varieties. Allowing and encouraging them to profit from their work is necessary to promote sustainable progress.
- All such exchange of germplasm has to be fair. The sovereign rights of the countries from which the germplasm originally came must be recognized, and a system of exchange must ensure that the Recipient contributes a fair and equitable share of the benefits arising from the use of the germplasm.

The Multilateral System of the Treaty was established in response to concerns over the potential misuse of genetic resources. It is designed to facilitate the exchange of plant genetic resources for food and agriculture, while ensuring appropriate sharing of benefits that arise from their use. It encourages fair use while preventing misuse. The SMTA is intended to implement these simple ideas, ensuring that everyone can continue to have free access to use the germplasm for the

sustainable development of agriculture, while at the same time ensuring that the benefits that arise from its use are shared fairly and equitably.

For example, if we did not protect the germplasm and related information with an SMTA, anyone could claim ownership over the material and information they receive, and take out patents or claim other forms of Intellectual Property Rights over it. They could then prevent you or us from using it without their approval. The SMTA aims to make sure that that could never happen.

Importantly, the SMTA does not prevent farmers from farming with the germplasm. They can grow and sell the produce commercially in exactly the same way as they would with any other traditional variety or landrace. They just can't do things like patenting it—but, as that is not a normal part of farming, farmers can accept the SMTA without any worry that it might limit how they farm with the germplasm. (Of course, they still have to comply with national legislation applicable in their country—and some countries do not allow the sale of the produce of landraces or traditional varieties that have not been registered. But, that is a separate issue, having nothing to do with the SMTA.)

Equally important, the SMTA allows you to use the material freely for your own research, training, and breeding for food and agriculture. You can create, protect, and commercialize your own improved varieties using the material we send you. Such use is essential for sustainable progress in agriculture.

So, the idea is simple. Unfortunately, trying to enforce simple ideas in law is never simple. Complicated language is needed to define the intention unambiguously and therefore to ensure that the right legal decisions are made in the event of a dispute being taken to a court of law.

- **Must the SMTA always be used?**

The SMTA must always be used for transferring material under the Multilateral System.

If you ask CIMMYT to send you maize or wheat, in most cases the transfer would be under the Multilateral System, and therefore we would have to use the SMTA. Exceptions are:

- You want seed of maize or wheat that is governed by contractual or other legal restrictions that prevent us from sending it with an SMTA—for example, material received with an MTA that is not the SMTA, or under some other form of contract containing terms inconsistent with the SMTA. In such cases, we need to determine for each case individually whether we would be legally permitted to send you seed at all, and, if so, under what conditions.
- You want to use the seed for purposes other than research, breeding, or training for food and agriculture. Such other purposes, including pharmaceuticals and biofuels, fall outside the scope of the Multilateral System.

The SMTA is also not used if we send you maize or wheat because we need you to do a particular analysis for us or for a project, without you independently using the material for your own breeding, research, and training. In such cases, you would not be accessing material for your own purposes of research, breeding, or training: you would be performing a service for us. For such cases, the appropriate agreement is a “service provision contract”—a contract by which we request you to provide a service to us.

- **Do I have to accept the SMTA every time I obtain seed from CIMMYT?**

Yes. If you receive seed regularly under the “shrink-wrap” form of acceptance, you may tell us in advance that you will always accept the SMTA for every shipment; in this case, we won’t ask you to verify your acceptance in advance. Nevertheless, every shipment has to be accompanied by its own separate SMTA, each one an independent legal contract agreed between you and CIMMYT.

- **Can I modify the terms and conditions of the SMTA?**

No. The text of the SMTA was decided by negotiation between all countries that are members of the Treaty. As such, the terms and conditions of the SMTA must not be modified at all. In the future, the Governing Body of the Treaty may decide to re-negotiate the text. Until that time, the text is fixed.

The SMTA template has to be modified slightly for each transfer (see FAQ *How do I complete the SMTA?*), but these changes involve only adding details of the material being transferred and of the Provider and Recipient; they do not change the terms and conditions.

However, when transferring “PGRFA under development” (see FAQ *What does “PGRFA under Development” mean?*), additional terms and conditions can be appended to the SMTA by mutual agreement between you and us, 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.

- **Am I authorized to accept the terms and conditions of the SMTA?**

Under the agreement that CIMMYT has signed with the Governing Body of the Treaty, we are required to supply maize or wheat, on reasonable demand, to any individual or organization in a country that is a member of the Treaty, regardless of their status, for the purpose of breeding, research, and training for food and agriculture. We choose also to grant the same privilege to all individuals and organizations from non-member countries. So, if you want maize or wheat from CIMMYT for the purpose specified, as far as the Treaty is concerned and as far as we 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 fulfill 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 need for authorization is only at the level of your organization: you do not need to seek authorization from the Governing Body, or your government, before you accept the SMTA in your own name or on behalf of your organization.

- **My country is not a Party to the Treaty. Do I still have to comply with the SMTA?**

Yes. The SMTA is like any regular contract between two parties—in this case, between you the Recipient and CIMMYT the Provider. Whether your country is a Party to the Treaty makes no difference—contract law is the same and your rights and obligations under the SMTA are legally enforceable.

- **How do I complete the SMTA?**

You don't, at least not when you are requesting maize or wheat from us. As the Provider of the maize or wheat, we complete it. Even if you do create an SMTA as part of a request to us, we'll have to create another one in order to register it properly in our system. Just for the record, this is how we do it:

- We do not, and indeed we must not, change even one word of the SMTA except as specified below.
- We add an ID to identify the particular SMTA.
- In article 1.2 of the SMTA, we insert our name and address as Provider, and your name and address as Recipient (or your organization name and address if you are requesting material on behalf of the organization).
- In article 10, we insert the required text for the chosen method of indicating agreement to the SMTA—normally the "shrink-wrap SMTA," but, upon your request, we can change that to the text for a signed SMTA (see FAQ *Shrink-wrap? Click-wrap? Signed? What's that?*).
- In annex 1, we give a URL that gives you access on the Internet to all available passport and descriptive data for every sample in the shipment.
- In annex 1, we give up to three lists of germplasm:
  - Samples in the shipment (if any) other than PGRFA under Development.
  - Samples in the shipment (if any) that are PGRFA under Development (see FAQ *What does "PGRFA under Development" mean?*).
  - Accessions in the MLS from which at least one of the PGRFA under Development shipped to you has been derived.

- **Where do I sign the SMTA?**

You don't! At least, not normally. In specific circumstances, you (or the authorized official of your organization, if you are requesting maize or wheat on behalf of an organization) can sign in one or two places:

- You can sign article 10 of the SMTA to demonstrate your acceptance of the SMTA. In this case, you have to sign and return the SMTA to us before we can send you seed. Signing is only one of three different ways the SMTA allows you to accept the SMTA. In most cases, we do not use the signed version, so you won't normally sign here unless you tell us that you or your organization requires a signature (see FAQ *Shrink-wrap? Click-wrap? Signed? What's that?*).
- You can sign annex 4 of the SMTA to indicate your decision to choose the alternative method of payment (see FAQ *Do I have to tell anyone what payment scheme I choose? If so, who?*). In this case, you sign after you receive the seeds from us, and you send the signed annex 4 to the Governing Body of the Treaty.



- **Shrink-wrap? Click-wrap? Signed? What's that?**

These are the three different ways in which a Provider and a Recipient can indicate acceptance of the SMTA. For any shipment of maize or wheat with an SMTA, just one of the three ways must be chosen by mutual agreement.

1. You can accept it by signing. If you are requesting material on behalf of an organization, make sure it is signed by a person authorized to sign on behalf of the organization. We prefer not to use this method because it involves extra bureaucracy and delays, as we have to print a copy of the SMTA and wait for it to be signed and returned by both you and CIMMYT before we can send you the seed. However, if you need the signed version, just tell us, and we will use it.
2. If you are ordering over the Internet, you can accept the SMTA online by clicking on the box marked "I agree to the above conditions." This is called a "click-wrap" form of acceptance and it basically works the same way as when you order goods or services from other Internet Web sites. CIMMYT cannot yet offer this option, as we have not developed an online ordering system.
3. Under the so-called "shrink-wrap" form of acceptance, the very act of your accepting and using the maize or wheat we send constitutes your acceptance of the SMTA. That is, by accepting and using the material, you become legally bound by the terms and conditions of the SMTA just as if you had signed the SMTA. (This works the same as when you buy copies of computer software—you don't sign a contract with the software developer, but, by the act of opening the box and removing its shrink-wrapping, you are bound by the conditions of the contract.) In this case, we will ask you to verify (usually by email) that you accept the SMTA before we send the seed, and the package you receive 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 has been and continues to be the normal and preferred form of agreement for seed you obtain from CIMMYT. It is the easiest, least bureaucratic, and fastest method—you just tell us you accept the SMTA and we ship the seed to you with minimal delay.

- **I don't want to accept the SMTA. Can I obtain the same maize or wheat from somewhere else without an SMTA?**

Certainly, you could try. Materials are included in the Multilateral System by sample, not variety, so it is possible that CIMMYT holds a sample of a variety under the Multilateral System while others hold the same variety outside the Multilateral System. So, while CIMMYT would have to use the SMTA for sending you the maize or wheat you want, you might be able to find a supplier who is not under the same obligation. However, be careful—in most cases, maize or wheat that is not under the Multilateral System of the Treaty is under the Convention on Biological Diversity. This means that the terms and conditions for gaining access to the maize or wheat would have to be negotiated case-by-case between your government and the government of the Provider, which may be far more difficult.

- **What maize or wheat is available with the SMTA?**

Many individuals and organizations around the world have maize or wheat available with the SMTA. Holders of the following categories of maize or wheat must facilitate access to them with an SMTA under the Multilateral System as long as they conserve samples (note that they are not obliged to conserve any specific samples; they are obliged only to facilitate access to the samples that they choose to conserve):

- Maize or wheat managed by governmental organizations in countries that are members of the Treaty (in the legal jargon of the Treaty, maize or wheat that is “under the management and control of the Contracting Parties and in the public domain”), both *ex situ* and *in situ*.
- Maize or wheat conserved under the Multilateral System in genebanks of the CGIAR, including CIMMYT and the International Center for Agricultural Research in Dry Areas (ICARDA), and the International Institute for Tropical Agriculture (IITA).
- Maize or wheat bred in institutes of the CGIAR, including CIMMYT, ICARDA and IITA, unless the maize or wheat was bred subject to agreements that prohibit distribution.
- Maize or wheat held by anyone anywhere if it was acquired with an SMTA.

Everyone else who holds maize or wheat—whether farmer, public organization, private company, NGO, private individual—is also invited by the Governing Body to include the maize or wheat they hold in the Multilateral System. In the case of individuals and organizations in countries that are not members of the Treaty, the invitation is neutral, as such holders are of course subject to legislation in their own country. For individuals and organizations in member countries, the invitation is stronger: governments of member countries are obliged to “take appropriate measures to encourage” them to include their maize or wheat in the Multilateral System, and, if they refuse to do so, the Governing Body may in the future decide to deny them access to other genetic resources or take any other measures it deems appropriate.

Breeding and research materials held by anyone anywhere derived from maize or wheat received with an SMTA (“PGRFA under development”: see FAQ *What does “PGRFA under Development” mean?*) are also under the Multilateral System, but under slightly different rules. Breeders do not have to share their PGRFA under development with others, but, if they choose to do so, they must do so with an SMTA. They have three options for responding to a request for their PGRFA under development:

- They can refuse your request.
- They can give you samples with an SMTA in the same way as for maize or wheat that is not PGRFA under Development.
- They can give you samples with an SMTA to which they append additional conditions. These additional conditions must be negotiated bilaterally between you (the Recipient) and them (the Provider), and can include any conditions that are compatible with the SMTA.

Commercially available products developed by anyone anywhere from maize or wheat received with an SMTA may or may not be available with an SMTA, depending on how the developer chooses to commercialize them and the laws of the country where the products are commercialized. Note that if such products are not available with an SMTA, the developer is normally required to pay a percentage of sales to the Governing Body of the Treaty (see FAQ *Do I have to pay the Treaty?*).

### • **What maize or wheat can CIMMYT provide with an SMTA?**

Most maize or wheat in CIMMYT is accessible with an SMTA. Categories are

- Maize or wheat accessions conserved in the genebank and registered under the Multilateral System—predominantly traditional varieties and wild relatives, but also including some improved materials. These include older accessions previously held in trust under a 1994 agreement with the FAO, and newer accessions sent to the genebank

with an SMTA or under conditions that permit re-distribution with an SMTA. CIMMYT is committed to conserving these accessions long-term to the best possible standards, and thus to maintaining them available with an SMTA.

- Improved, elite, advanced, and promising lines that are considered suitable for commercial use or for use as parents in further breeding, many of which have been selected for testing in special-purpose multi-location trials through the International Nurseries Networks. These include lines developed in CIMMYT, and lines developed outside CIMMYT and sent to CIMMYT with an SMTA or under conditions that permit redistribution with an SMTA. CIMMYT is committed to conserving these materials and distributing them on demand with an SMTA for as long as they retain their status as elite materials and/or remain nominated entries in one or more international nurseries.
- Maize or wheat previously acquired by other CIMMYT scientists with an SMTA or under conditions that permit redistribution with an SMTA. There is no commitment to conserve these materials, which may or may not remain available through CIMMYT.
- Improved materials bred at CIMMYT from maize or wheat conserved in the genebank, or from maize or wheat sent to CIMMYT by others with an SMTA or under conditions that permit the distribution of derived materials with an SMTA—which includes almost all CIMMYT-bred maize and wheat. There is no commitment to conserve these materials or keep them available. Given the large number of new breeding lines created each year and the highly dynamic nature of plant breeding, many of these breeding lines are maintained for only a short period of time.

Certain samples or strains of maize and wheat may be explicitly excluded from the Multilateral System if they are subject to specific restrictions that would prevent sharing with an SMTA. These could include varieties protected by intellectual or other property rights, material sent to the genebank under an agreement requiring safe conservation without redistribution, and material acquired by breeders or other researchers with an MTA or other contract with terms inconsistent with the SMTA.

- **What is CIMMYT’s policy on access to PGRFA under Development?**

Under the SMTA, access to PGRFA under Development (see FAQ *What does “PGRFA under Development” mean?*) is at the discretion of the developer (the breeder). The developer can choose, on a case-by-case basis, whether or not to grant or deny access to those PGRFA under Development, but, if access is granted, it must be granted with an SMTA.

In most cases, CIMMYT chooses to make these PGRFA under Development freely available to any interested partners under the normal SMTA.

## **Your Rights as Recipient under the SMTA**

- **What am I allowed to do with the maize and wheat I receive with an SMTA?**

The SMTA essentially allows you to do anything that is a reasonable and fair part of the process of conserving and using plant genetic resources for sustainable development in food and agriculture:

- You may use the material for your own breeding, research, and training for food and agriculture.
  - You may conserve the material.
  - You may distribute the material to others, provided you do so in accordance with the conditions below.
  - You may develop breeding and research materials derived from the material, provided you do so in accordance with the conditions below.
  - You may freely decide, on a case-by-case basis, what derived breeding and research materials you will share with whom you choose, provided that, when you do grant access, you do so in accordance with the conditions below.
  - In cases (if any) when you do grant access to derived breeding and research materials, you may attach further conditions or restrictions on the transfer, negotiated on a case-by-case basis as appropriate for the particular transfer, provided the further conditions are not inconsistent with the SMTA.
  - You may develop and commercialize products derived from the material, provided you do so in accordance with the conditions below.
  - You may claim the rights to your own intellectual property on products you derive from the material, provided you do so in accordance with the conditions below.
- **What am I not allowed to do with the maize and wheat I receive with an SMTA?**
    - You must not use it for any purpose other than research, breeding, and training for food and agriculture. Using it for chemical, pharmaceutical, or other non-food/feed industrial uses is explicitly prohibited. Such use falls outside the scope of the Treaty, so would need to be negotiated under other relevant frameworks. However, currently, it is not certain what this would entail.
    - You must not claim any intellectual property or other rights that limit the freedom of others to obtain, with an SMTA, samples of the same materials that you received with an SMTA, or their genetic parts or components, in the form you received them. Note that, as indicated above, this does **not** prevent you from making valid claims on your own intellectual property that you invested to create your product; it merely prevents you from trying to extend your claim to seek control over what is not yours. Note also the careful form of words used in this part of the SMTA: the restriction is not simply that you cannot seek IPRs on the materials you received with the SMTA or their genetic parts or components; it is, more generally, that you can't seek IPRs that restrict access by others to the original materials or their genetic parts or components. For example, some existing gene patents have sought to claim rights over all germplasm containing the patented gene sequence; such claims would be unacceptable for gene discoveries made with material received under the SMTA.

- **I don't want others to know what maize or wheat I have obtained from CIMMYT or what I have done with it. Is that possible?**

Yes. The SMTA allows confidentiality to be respected, requiring only non-confidential information to be shared.

There is only one case in which you and we will be obliged to provide complete details, including confidential information: in the event of a dispute over a suspected case of non-compliance with the SMTA (<ftp://ftp.fao.org/ag/agp/planttreaty/gb3/gb3w11r1e.pdf>), the FAO has the right to request all relevant information, including confidential data, that may be required to resolve the dispute.

As a Provider of maize or wheat with an SMTA, one of our obligations is to “inform the Governing Body about the Material Transfer Agreements entered into.” These regular reports may include some of the information required by the FAO in cases of dispute resolution, but this information will be kept under conditions of strict confidentiality, accessible only to the FAO and to be used by the FAO only in the context of a possible initiation of a dispute settlement.

- **If I use germplasm from CIMMYT as a genetic background for initial insertion of traits in order to create a transgenic event, could I protect the event, i.e., the transgene insertion?**

Yes. The SMTA allows you to protect your own intellectual property, whatever it is. The only restriction on the nature of protection you seek is that you must not claim any intellectual property or other rights that limit the freedom of others to obtain, with an SMTA, samples of the material you received, or its genetic parts or components, in the form received.

- **I am a farmer. Can I get seed from CIMMYT to grow on my farm and then sell my produce in the market?**

Yes, you can. But, like any other recipient of germplasm from CIMMYT, you will have to abide by the terms and conditions of the SMTA. The SMTA does not prohibit sale of the produce.

## The Bottom Line – Payments

- **Do I have to pay CIMMYT for maize or wheat it sends me?**

No, at least not normally. In most cases, we will send it to you free of charge.

The SMTA does allow us to charge you a fee that does “not exceed the minimal cost involved” in providing the maize or wheat to you. However, we do so only in exceptional cases, in which fulfilling your request incurs an unreasonable burden on our resources—for example, if you want more than the normal quantity per accession so that we have to grow more maize or wheat especially for you, or if you want some thousands of accessions.

The SMTA also allows us to enter into special agreements, including charging additional fees, for supplying seed of improved breeding materials classified as “Plant Genetic Resources for Food and Agriculture under Development” (see FAQ *What does “PGRFA under Development” mean?*). However, at present, we do so only in special cases, such as hybrid maize germplasm, for which charges are differentiated by public- and private-sector organizations that are engaged in hybrid maize breeding. Note that this does not apply to improved varieties that are commercially available, for which we are not allowed to charge more than the minimal costs involved in providing the maize or wheat.

- **Do I have to make payments if I release a variety containing CIMMYT germplasm received with an SMTA?**

No, the release of a variety does not in itself trigger mandatory payments. The trigger to mandatory payments under the standard payment scheme is commercialization with restricted availability of the released variety for further research and breeding, not the release per se. See the FAQ below.

- **Do I have to pay the Treaty?**

Most recipients will pay nothing. Normally, you have to pay only if you develop a product (e.g., an improved variety: see FAQ *What does “Product” mean? What kinds of products are considered as Products for the SMTA?*) from material acquired with an SMTA, **and** you sell the product commercially on the open market, **and** the product is “is not **available without restriction** to others for further research and breeding.” To decide whether this third condition will apply to your product, see the FAQ *Is my product “available without restriction to others for further research and breeding”?*

Alternatively, if you wish, you can opt for an alternative form of payment that is not linked to the availability of your product to others for further research and breeding: see the FAQ *What is the alternative payments scheme?*

If all three conditions above apply to you and you do not opt for the alternative form of payment, you will have to pay to the FAO 0.77% (which is the meaning of the SMTA’s more complex expression “1.1% less 30%”) of your gross income from sales of the product, annually, starting when the restrictions on access start and stopping when the restrictions finish—typically 20 years for maize or wheat if the restricted availability results from your claim to your intellectual property rights on the product.

The liability applies to each product derived from anything received with an SMTA. The rate of payment is the same whether your product is derived from a traditional variety or an early generation

breeding line or an elite line nearly ready for commercialization. It's also the same whether your product incorporates only a tiny fraction or almost all of the genome of the maize or wheat received with an SMTA. It's also the same whether your product has just one or a hundred ancestors that you obtained with an SMTA. In all cases, you are liable only to pay 0.77% of the sales of each product that is not available without restriction to others for further research and breeding.

The "worst-case" scenario would apply if 100% of your commercial products are derived from material received with an SMTA, if you restrict use of all of them by others for further breeding and research, and if 100% of your income is from sales of such protected varieties. In this case, you would simply pay to the Governing Body 0.77% of your gross income.

- **Is my product "available without restriction to others for further research and breeding"?**

Answering this question requires careful consideration of the precise meaning of "available without restriction." We therefore quote here the somewhat complicated definition given in the SMTA: "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**."

If you use a so-called GURT (Genetic Use Restriction Technology), your product is not available without restriction because of a technological restriction, and this would trigger mandatory payments to the FAO indefinitely.

If you file for legal protection of your plant breeder's rights or other intellectual property rights, your product may or may not be available without restriction. This depends on the nature of the protection and the law of the country where you seek protection, and you should seek legal advice in that country. For example,

- If you obtain plant variety protection (PVP) in a country that is a member of UPOV, that country's law explicitly denies you any right to restrict access to others for further breeding and research. If that's how you protect your varieties and there are no other restrictions on use, you will never be liable for payment.
- If you seek protection in a country that provides for PVP that is not UPOV-compliant, you will need to determine whether that PVP law gives or denies you the right to control access to others for breeding and research.
- If you seek protection by patents, again patent law varies between countries and you must seek local advice. See the FAQ *What are patents, and will they trigger mandatory payments?*

If the country where the variety was bred prohibits the export of commercial varieties as seed, then all varieties bred in that country are clearly not available without restriction to others for further breeding and research, regardless of whether or not they have protected plant breeders' rights. Presumably, commercial sales of such varieties trigger mandatory payments regardless of any intellectual property protection you may seek.

Restrictions on access resulting from plant health issues presumably do not trigger mandatory payments, since the restrictions apply essentially to the disease or pest organisms, not to the variety per se.

- **My product is a hybrid variety. Is this considered a technological restriction on its use that would trigger mandatory payments?**

We believe not. Although it is not common to use a hybrid itself, or its progeny, as a parent in a breeding program, this is only because it is not generally beneficial to do so; there is no technological factor precluding its use in the manner specified in the Treaty.

- **What are patents, and will they 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. In some cases, patent protection restricts availability for further research and breeding and will therefore trigger mandatory payments on sales. In other cases, it does not. For example,

- USA utility patents generally restrict availability for further research and breeding, unless of course the patent-holder issues free licenses to whoever wishes to use the patented product for research or breeding.
  - Patents under the USA Plant Patent Act cover only asexually reproduced plants and thus would not restrict availability for breeding sexually reproduced plants.
  - In Europe, patents generally do not restrict availability for research. France and Germany have new legislation that extends this exemption to breeding. Switzerland is considering adopting similar legislation. Dutch and UK patents do not have provisions yet for a breeding exemption.
  - Patent protection in Japan does not cover acts carried out for the purpose of experiment or research. However, it restricts availability for commercial breeding.
  - There is an “experimental use” exemption, also under patent law, in Australia, but again this would not extend to commercial breeding.
  - This is similar in New Zealand, though the “experimental use” exemption there is based on judicial practice rather than legislation.
- **The SMTA appears to set no time limit on the liability for mandatory payments. Is that true?**

No. It is true that the SMTA does not explicitly specify a time limit. However, it does so indirectly, by linking liability under the default scheme of payment to availability of your product to others for further research and breeding. Liability to mandatory payments starts when the restrictions on availability start, and stops when those restrictions finish. If the restriction on availability results from your protection of your intellectual property on a variety, liability for payment will typically end after 20 years.

- **The SMTA appears to set no lower threshold on the percentage of DNA in my product that came from the maize or wheat received with an SMTA. Is that true?**

A specific case of the same question came from one of our collaborators: “If I use the seeds merely as a vehicle for creating a transgenic event and then 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 on 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, in terms of either 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.

The issue of whether or not to set a threshold attracted much debate during negotiation of the SMTA. The decision not to set a threshold, unlike many agreements between private breeding companies, is based primarily on the fact that the value of genebank accessions (the primary target of the Treaty) often lies in a small number of important genes present in an otherwise inferior background. To capture this value would require either a vanishingly small threshold by pedigree or a threshold based on gene value rather than pedigree, which would be very expensive to administer.

- **Would I ever have to pay the Treaty for commercializing products developed only from maize or wheat obtained from CIMMYT before implementation of the SMTA?**

No. The conditions you agreed to at the time of the transfer remain in force now. If you obtained maize or wheat from CIMMYT before 1 January 2007, the material is subject to the terms and conditions agreed at the time, which could not have been the SMTA. This means that the conditions in the SMTA that trigger mandatory payments cannot apply.

Of course, if your product incorporates genetic material from maize or wheat received with the SMTA as well as maize or wheat received before implementation of the SMTA, the conditions of the SMTA do apply to your product, including the trigger to mandatory payments.

- **Is there any way to contribute voluntarily to the international fund, even if I am not legally required to do so?**

Yes. Even if you are not legally required to pay, you may, and indeed are encouraged to, make voluntary payments using the same mechanism as the mandatory payments.

- **What is the alternative payments scheme?**

If you prefer not to pay 0.77% of your gross sales of varieties that are not available without restriction to others for further research and breeding, you can opt for an alternative scheme that entails the following:

- You pay annually at a lower rate, 0.5%, but this lower rate applies to all sales of the crop concerned, not only to products that were developed from material received with an SMTA and that are not available without restriction. That is, unlike the default payment scheme,
  - payment is also due on sales of products that are available without restriction; payment is also due on sales of products that were developed completely independently of material received with an SMTA; and
  - liability to pay begins immediately, not only after you have completed the process of developing and commercializing a product using the material received.
- Payments made under this option are not cumulative. They replace normal payments you may already be making resulting from previous transactions, and they replace payments that you might otherwise have to make in the future while you are following this alternative payments scheme.

- If you subsequently transfer to someone else “PGRFA under Development” (see the FAQ *What does “PGRFA under Development” mean?*), you have to make the transfer subject to the condition that the person you transfer it to pays 0.5% of the sales of any resulting product, regardless of whether it is available without restriction.
- After 10 years, you have another choice:
  - Continue paying under this scheme.
  - Opt out of this scheme and start using a third, hybrid scheme. In this case, you must notify the Governing Body of your choice, and you will be liable to pay
    - Nothing on products developed independently of material received with an SMTA (same as the default scheme).
    - 0.5% on sales of products that were developed from material received with an SMTA while you were using the alternative payments scheme, and that are not available without restriction (continuation of the discounted rate but only applicable to products that have restricted availability).
    - For products derived from materials received with an SMTA when you were not covered by the alternative payments scheme (i.e., after you opted out of the scheme or before you opted for it) and which are not available without restriction to others for further research and breeding, you will need to pay the full default scheme rate (i.e., 0.77% on sales).
- If you choose to continue the alternative payments scheme after 10 years, every five years thereafter you may again choose to opt out.

• **Do I have to tell anyone what payment scheme I choose? If so, who?**

You do not have to tell CIMMYT.

If you choose the standard scheme, you don’t have to tell anyone about your choice. It is the default scheme.

If you choose the alternative scheme, you must inform the Governing Body of the Treaty, by signing annex 4 of the SMTA, and sending it to the address specified in annex 4. So, if you don’t sign and send annex 4, you have to follow the standard scheme.

• **When should I start payments under the alternative payments scheme?**

As with the standard scheme, payments must be submitted annually at the start of the year (within the first 60 days) together with a report on your liability for payment. The first payment is made at the start of the first year after you have sent your signed annex 4 to the Governing Body. Calculations for the first year are based on crop sales from the date you become liable to pay, which is the date the SMTA becomes a legal contract, whether this be through signing by both parties, or through “click-wrap” or “shrink-wrap” acceptance (see FAQ *Shrink-wrap? Click-wrap? Signed? What’s that?*).

• **If I need to pay, whom do I pay and what documents do I need to provide?**

Payments are to be made to the international fund set up by the Governing Body of the Treaty, in U.S. 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 Avenue  
New York, NY 10018, USA  
Swift/BIC: MRMDUS33  
ABA/Bank Code: 021001088  
Account no.: 000156426

If you become liable to make payments to the Governing Body by commercializing a product, you must submit annual reports together with your annual payments. Each annual report must be submitted to the Governing Body within the first 60 days of the year, and should contain the following:

- (a) Sales made of the product or products by the recipient, its affiliates, contractors, licensees, and lessees, for the 12-month period ending 31 December;
- (b) Amount of payment due; and
- (c) Information that will identify any restrictions that give 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**

- **How is the money paid going to be used?**

The money paid into the fund will form part of the financial resources of the Treaty, to be used as directed by the Governing Body of the Treaty. The Treaty requires that it should be used primarily, directly or indirectly, for the benefit of farmers, especially those in developing countries and countries with economies in transition, who conserve and sustainably use traditional varieties.

## Your Obligations as Recipient under the SMTA

- **What am I obliged to do with the maize or wheat I receive with the SMTA?**

Most of the things you are obliged to do are contingent on choosing to do something else:

- If you conserve the material you receive, you must make it and related information available to others.
- If you transfer the material you receive to another person, you must do so under a new SMTA in which you are the Provider (and therefore subject to all terms and conditions of the SMTA that apply to the Provider, i.e., SMTA article 5) and the other person is the Recipient. In the new SMTA, you must
  - List in annex 1 of the new SMTA the material you are providing.
  - Make available all available passport data and all possible associated descriptive data, either in annex 1 of the new SMTA itself or on a Web site whose URL is specified in annex 1 of the SMTA.
- If you use the material for developing genetic stocks, breeding lines, or improved varieties, and you transfer to another person derived breeding lines that are not ready to be commercialized ("PGRFA under Development"), you also have to do this under a new SMTA in which you are the Provider and the other person is the Recipient. As such, you will also be subject to the terms and conditions of the SMTA that apply to the Provider, as specified in SMTA article 5, but, in this case,
  - You are **not** bound by SMTA article 5a.<sup>1</sup>
  - Annex 1 of your new SMTA must list not only the breeding lines that you transfer but also the materials that you received with an SMTA and used to develop them.
- If you commercialize a product that incorporates material provided under an SMTA and that is not available without restriction to others for further research and breeding, then normally you have to pay a fixed percentage of your sales of the commercialized product to the Governing Body.
- Alternatively, instead of making yourself liable to the above payments, you can opt (by signing annex 4 of the SMTA and informing the Governing Body) to pay a lower fixed percentage of your sales of all products belonging to the same crop.
- You have to make available all non-confidential information that results from research and development carried out on the material you receive.
- You have to inform the Governing Body on various aspects of your use of the germplasm, including:
  - 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.

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<sup>1</sup> Under SMTA article 5a, which applies only to germplasm that is not under development, the Provider undertakes that "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."

- 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.

• **Do I have to tell anyone what maize or wheat I have received with the SMTA?**

No. However, depending on what you do with the maize or wheat you receive with the SMTA, you may subsequently have to tell others about it:

- If you redistribute it to others, you will have to inform the Governing Body (see FAQ *Do I have to submit reports to the Governing Body of the Treaty?*).
- If you send someone a line that you derive from it as PGRFA under Development, you will have to tell the recipient, in Annex 1 to the SMTA, that the maize or wheat you received with the SMTA is an ancestor of the PGRFA under Development that you are sending.
- Through an information system that has not yet been developed, you will have to make available all non-confidential information that results from your research and development carried out with the maize or wheat that you received.

• **Do I have to submit reports to the Governing Body of the Treaty?**

It depends. These are your reporting obligations specified in the SMTA:

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

All such 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**

• **I want to share germplasm received from CIMMYT with my colleagues at work. Should I use the SMTA for internal transfers within my organization?**

Strictly, you do not need to. The SMTA is a legally binding contract between the Provider and the Recipient. When you accept germplasm with an SMTA, acceptance should be made by your organization, not by you as an individual. In this case, the SMTA automatically applies to all employees in your organization. Therefore, technically, you are free to share material with your colleagues and you do not need to use the SMTA for transfers internal to your organization.

However, when transferring material internally without an SMTA, you should ensure that your colleagues are aware of the fact that their use of the material and its derivatives is also governed by the SMTA. Some organizations find that a convenient and reliable way to ensure awareness is to use

the SMTA for internal transfers as well. This is entirely acceptable. However, unlike external transfers, you should not report internal transfers to the Governing Body (see the FAQ *Do I have to submit reports to the Governing Body of the Treaty?*).

- **I want to share germplasm received from CIMMYT with colleagues in a subsidiary station of my organization in another country. Should I use the SMTA for this transfer?**

To answer this question you must know the legal status of your organization and the subsidiary station, and what legal entity accepted the original SMTA.

If the acceptance of the original SMTA was made by your organization, and its status as a legal entity includes the subsidiary station, then the original SMTA also binds the subsidiary station. The transfer is then like any other internal transfer; it is not essential to use an SMTA for the transfer, but you should ensure that your colleagues know that their use of the material is also covered by the SMTA, and, if you wish, you could use an SMTA internally to ensure that they know.

In contrast, if the subsidiary body has its own separate status as a legal entity and is therefore not bound by contracts entered into by your organization, you would need to use an SMTA for the transfer.

- **I am worried that if I commit to providing maize or wheat with an SMTA, I will have to commit additional resources to conserve the material. What should I do?**

You are not under any obligation, from the Treaty or the SMTA, to conserve the germplasm you send or receive. The SMTA requires only that **if** you choose to conserve material received with an SMTA, you must make it available to others. Distributing PGRFA under Development with an SMTA has no effect whatsoever on how you choose to maintain or develop your germplasm.

- **Do I have to document how I use CIMMYT germplasm in my breeding program?**

There is no formal legal obligation in the SMTA itself to track how you use CIMMYT germplasm in your breeding program. However, you will need to keep certain basic records to enable you to fulfill your obligations:

- 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 for it. If you make it available to others, you will have to do so under a new SMTA.
- You will also need to keep records of the breeding lines you derive from germplasm received with an SMTA because, if you send samples of those breeding lines to others, 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 identify the germplasm that you received with the SMTA and used to develop your breeding lines. You must therefore keep records of the germplasm that you used to develop each breeding line.
- If you breed a new PGRFA product using germplasm acquired from CIMMYT, commercialize it, and restrict further access to the product by others for research and breeding (e.g., through some form of patenting), you will be required to make a payment

to the international fund established by the Treaty. You must therefore keep records of how you produce and commercialize improved varieties.

If you follow normal good practice for a plant breeding program, you will keep all these records anyway, so no additional documentation will be required.

- **Do I have to document 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, that is, you will need to fill out a new SMTA in which you are the Provider, and send the germplasm under that SMTA. As a Provider, you are required to inform the Governing Body periodically about the SMTAs you have issued; you will therefore have to keep sufficient records to prepare the required reports to the Governing Body.

- **Do I have to document how I share with others the maize or wheat that I breed from samples I originally obtained from CIMMYT?**

If you share breeding lines that have been derived from maize or wheat received with an SMTA, you must do so under an SMTA in which you are the Provider. You will therefore have to keep sufficient records to prepare reports that have to be submitted by all providers to the Governing Body.

- **Am I obliged to disclose the pedigrees of my varieties and breeding lines?**

No, the SMTA does not require you to disclose the pedigrees. The SMTA requires you to make available all non-confidential information that results from research and development carried out on the material you receive. The term “non-confidential” is not defined in the SMTA, and therefore carries its conventional meaning. If you consider the pedigrees of your breeding lines to be confidential, you do not need to make that information available.

There is a requirement for limited disclosure of part of the pedigrees if you choose to share your breeding lines as PGRFA under Development. In this case, you are required to inform the Recipient by stating, in Annex 1 to the SMTA, which materials in the pedigree of your breeding lines were acquired with the SMTA. However, since they are PGRFA under Development, you are permitted to add extra conditions (see FAQ *Can I modify the terms and conditions of the SMTA?*), which could include a confidentiality clause preventing further disclosure of even this partial information.

- **The SMTA seems to imply that I must maintain pedigree records in perpetuity. Is that true?**

Possibly in theory, but unlikely in practice. The apparent requirement comes from article 6.5, which states that if you transfer to someone else maize or wheat that you have bred from maize or wheat received from us and that you classify as PGRFA under development (see FAQ *What does “PGRFA under Development” mean?*), you must do so using an SMTA and you have to identify, in Annex 1 of that SMTA, the ancestral material you received from us. We may deduce that in theory (quoting one of our collaborators) “one hundred years from now, all pedigrees back to 1 January 2007 will need to be searched to make the determination of ancestral materials received with an SMTA.”

However, this provision applies only to the transfer of PGRFA under Development. Once a line becomes a commercial variety, it is no longer PGRFA under Development. If a commercial variety is not protected, or when it is no longer protected, it should be available under the Multilateral System,

as specified in SMTA article 6.9. Since logically we shouldn't trace back to the MLS ancestors of MLS germplasm, once those new commercial varieties are returned to the Multilateral System, we stop the search with them. In this case, in practice we would have to search pedigrees all the way back to 1 January 2007 only for lines with no released varieties in their ancestry.

- **If I obtain maize or wheat from CIMMYT under an SMTA and use it in my breeding program, do I have to make my bred materials available to others before they are ready to be commercialized?**

No. PGRFA under Development (see FAQ *What does "PGRFA under Development" mean?*) do not have to be made available during the period of their development. It is up to you, the developer, at your own discretion, to decide whether or not you should make them available.

If you do choose to send breeding materials to another individual or organization as PGRFA under Development, you must do so under an SMTA in which you are the Provider subject to the rights and obligations of the Provider as set out in article 5 of the SMTA, but with the exception that you are not bound by article 5a. This means that you can require the Recipient to track individual samples, send you reports on its use of the materials, and you can charge fees greater than just the cost of providing the material. You may also make the transfer subject to other additional conditions, provided these do not conflict with the terms of the SMTA. These additional conditions can be negotiated case-by-case between the Provider and Recipient.

- **Do my obligations as a recipient differ if the maize or wheat I receive from CIMMYT is classified as "PGRFA under Development"?**

Yes. Developers of PGRFA under Development are under no obligation to make them available to others. The same applies if you obtain maize or wheat from CIMMYT in the form of PGRFA under Development, since you, in effect, become the new developer of the PGRFA under Development and will have the same developers' rights as CIMMYT over the material.

There may also be other differences, since the Provider (CIMMYT) is authorized under the Treaty and the terms of the SMTA to make the transfer of PGRFA under Development subject to additional conditions. If we do this, then yes you will have additional obligations that will be defined in an additional contract that will be appended to the SMTA.



## Definitions

- **What does “PGRFA under Development” mean?**

PGRFA under Development are basically breeders’ lines derived from material obtained with an SMTA, which the breeder intends to develop further or is willing to transfer to others to develop further.

The period of development is considered to end on the day the material is first sold commercially as a product. This is an important definition—it means that the status of the material as PGRFA under development spans not only genetic development (breeding) but also the process of final testing and approval for commercial release, which may take some years after the completion of genetic development.

- **What does “Product” mean? What kinds of products are considered as Products for the SMTA?**

The definition of **Product** in the SMTA is very specific, and itself includes terms that are defined in the SMTA. Relevant definitions (noting that bold text marks terms defined in the SMTA) are reproduced here:

- **“Product”** means **Plant Genetic Resources for Food and Agriculture** that incorporate 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.
- **“Plant Genetic Resources for Food and Agriculture”** means any **genetic material** of plant origin of actual or potential value for food and agriculture.
- **“Material”** means the **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement**.
- **“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**.
- **“Genetic material”** means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

In other words, a Product for the SMTA is material of plant origin that contains functional units of heredity, ready to be sold on the open market, excluding commodities and products used for food, feed, and processing. So, this includes varieties sold as seed for agricultural production, but not the grain harvested by farmers for consumption. Unfortunately a functional unit of heredity is not defined, leaving uncertainty about the boundary between what is and what is not “genetic material.”

## Going Further

- **I want to understand the SMTA better. How do I set about doing so?**

If you have specific questions, please feel free to ask us. If you would like to receive formal training on the Treaty and the SMTA, please contact [CIMMYT](#), [Bioversity International](#), or the [Treaty Secretariat](#). Occasional courses are organized.

If you are willing to study yourself, be prepared to spend a long time reading, and read carefully! Legal documents typically use complicated language with very carefully chosen words to convey the meaning intended, and you have to analyze each sentence carefully to understand exactly what it means. To guide your reading,

- For full authoritative background, read the full [text of the Treaty](#)
- The Multilateral System is defined in [Part IV of the Treaty](#)
- A comprehensive guide to the Treaty by Moore and Tymowski is available at <http://data.iucn.org/dbtw-wpd/edocs/EPLP-057.pdf>
- The agreement between CIMMYT and the Governing Body of the Treaty is available at <ftp://ftp.fao.org/ag/agp/planttreaty/agreements/pdf/CIMMYT.pdf>
- The template of the SMTA is available at <ftp://ftp.fao.org/ag/agp/planttreaty/agreements/smta/SMTAe.pdf>. In this document, note:
  - Most definitions of terms are given in article 2.
  - Terms written in bold are defined in the SMTA, in article 2 or elsewhere. For example, “**Material**” in bold refers to the **Material** being transferred under the SMTA, as defined in Article 3, whereas “material” not in bold refers to other material—an important distinction for the definition of “**Plant Genetic Resources for Food and Agriculture under Development**” in article 2, which refers to both **Material** and material.
  - Our specific rights and obligations as Provider are defined in article 5.
  - Your specific rights and obligations as Recipient are defined in article 6.
  - If you subsequently transfer the maize or wheat received or its derivatives, article 5 defines your rights and obligations as Provider.
  - Three alternative versions of article 10 are presented in the SMTA template, depending on the chosen method of agreement. When we send you maize or wheat with an SMTA, you will find that article 10 contains only text corresponding to the selected method of agreement.
  - Annex 1 of the SMTA is where we (as Provider) include all applicable available information about the maize or wheat we send to you.
  - If you become liable for payments for the Governing Body and you don’t choose the alternative payments scheme, annex 2 defines how much you have to pay and how you have to pay it.
  - Annexes 3 and 4 of the SMTA are used only if you opt for the alternative payments scheme; annex 3 defines how to pay and annex 4 is used to indicate your choice.

- A guide to the use of the SMTA by the CGIAR centers is available at [www.sgrp.cgiar.org/?q=node/668](http://www.sgrp.cgiar.org/?q=node/668).
- Further online training resources are available on the Treaty Web site at [www.planttreaty.org/training\\_en.htm](http://www.planttreaty.org/training_en.htm).