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Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**EIGHTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP TO
ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM**

Rome, Italy, 10–12 October 2018

**DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT:
PROPOSAL BY THE WORKING GROUP**

Note by the Secretary

At its sixth meeting, the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group) reviewed the third draft revised Standard Material Transfer Agreement, as contained in document, IT/OWG-EFMLS-6/17/3.1, which had been prepared under the guidance of the Co-Chairs. The Working Group considered and, where necessary, revised all elements of the third draft revised Standard Material Transfer Agreement and consequently agreed to submit the *Draft Revised Standard Material Transfer Agreement: Proposal by the Working Group* to the Seventh Session of the Governing Body.

The Governing Body, at its Seventh Session, requested the Working Group to revise the Standard Material Transfer Agreement based on the Report of the Working Group contained in the document, IT/GB-7/17/7, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*. It also requested the Working Group to take into account, *inter alia*, the Co-chairs' summary arising from the Seventh Session and further information or proposals by Contracting Parties and stakeholder groups.

This document reproduces the *Draft Revised Standard Material Transfer Agreement: Proposal by the Working Group*, as contained in Appendix 2 of the document, IT/GB-7/17/7, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*.

This document also includes, in *Appendix 1*, the *List of Proposals by Working Group Members to Revise the Standard Material Transfer Agreement, Not Discussed and Decided by the Working Group at its Sixth Meeting*, which was originally provided in the Report of the sixth meeting of the Working Group.

The *Co-chairs' Proposed Consolidated Text of the Revised Standard Material Transfer Agreement* is contained in document IT/OWG-EFMLS-8/18/Inf.3 and the *Co-chairs' Summary Arising from the Seventh Session of the Governing Body* is contained in document IT/OWG-EFMLS-8/18/Inf.4. Submissions received from Contracting Parties and stakeholder groups are provided in document IT/OWG-EFMLS-8/18/Inf.6.

**[DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT:
PROPOSAL BY THE WORKING GROUP**

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”¹) was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

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

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

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

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

Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement, which in Resolution XX/2017 of XX October 2017 it decided to amend.

¹Defined terms have, for clarity, been put in bold throughout.

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 **This Agreement** is:

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

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

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

ARTICLE 2 — DEFINITIONS

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

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

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

“**Governing Body**” means the **Governing Body** of the **Treaty**.

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

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

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

* *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.

“**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 TRANSFER AGREEMENT

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

ARTICLE 4 — GENERAL PROVISIONS

4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.

4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.³

4.3 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United Nations 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, *Annex 2*, [OPTION 1 *paragraph 5*] / [OPTION 2 *paragraph 3*], and *Annex 3*, Article 3, to **this Agreement**.

4.5 The rights granted to the Food and Agriculture Organization of the United Nations 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**:

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

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

- 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 inform the **Governing Body** at least once every two calendar years, or within an interval that shall be, from time to time, decided by the **Governing Body**, about the Material Transfer Agreements entered into,⁴

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,⁵

or

Option B. In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the **Provider**;
 - b) The name and address of the **Provider**;
 - c) The date on which the **Provider** agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;

⁴ This information should be submitted by the Provider to:

The Secretary
 International Treaty on Plant Genetic Resources for Food and Agriculture
 Food and Agriculture Organization of the United Nations
 I-00153 Rome, Italy
 Email: ITPGRFA-Secretary@FAO.org

or through EasySMTA: <https://mfs.planttreaty.org/itt/>.

⁵ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, in accordance with Article 10, Option 2 of the SMTA the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent.

- d) The name and address of the **Recipient**, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
- e) The identification of each accession in *Annex 1* to the Standard Material Transfer Agreement, and of the crop to which it belongs.

This information shall be made available by the **Governing Body** to the third party beneficiary.

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.

[6.1bis If the **Recipient** uses the **Material** for any of these prohibited uses, a lower court in the country of origin of the **Material** may, on presentation of *prima facie* evidence of such illegal use, award damages against the **Recipient** to the value of USD25 million or ten times the **Recipient**'s annual turnover, whichever is higher. The **Recipient** agrees that it shall not oppose enforcement of such damage by a competent court in the jurisdiction, where its main business identity is registered.]

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**.

[6.2 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**, or that limit Farmers' Rights to save, use, exchange and sell seed and propagating material of the provided **Material**.]

[6.2bis If the **Recipient** claims any such IP or other rights in contravention of this clause, a lower court in the country of origin of the **Material** may on presentation of *prima facie* evidence of such claims award damages against the **Recipient** to the value of USD25 million or ten times the **Recipient**'s annual turnover, whichever is higher, and declare the IP or other right forfeited to the country of origin.]

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[, until a period of [x] years after signing of **this Agreement** has lapsed]:

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
 - b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
 - c) notify the **Governing Body**, in accordance with Article 5e; and
 - d) have no further obligations regarding the actions of any **subsequent recipient**.
- e) [The obligations in this Article 6.5 do not apply to **Plant Genetic Resources for Food and Agriculture under Development**, of which the theoretical proportion of germplasm from the **Material** is sufficiently low, because at least five generations of crossing have been made.]

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.

[6.11 The **Recipient**, by signing **this Agreement**, agrees to be bound by the terms and conditions of the **Subscription System**, as set out in *Annex 3* of **this Agreement**, which constitute and integral part of **this Agreement**. Any reference to **this Agreement** shall be understood, where the context permits and *mutatis mutandis*, to also include *Annex 3*.]

OR

[6.11 The **Recipient** may opt at the time of signing of **this Agreement** or at the time of acceptance of **this Agreement** for the **Subscription System**, as set out in *Annex 3* to **this Agreement**, by returning the **Registration Form** contained in *Annex 4* to **this Agreement**, duly completed and signed, to the **Governing Body** of the **Treaty**, through its Secretary[, or by signifying acceptance through EasySMTA] (“**Subscription**”). [If the **Registration Form** is not returned to the Secretary, [or acceptance not signified through EasySMTA], within this period, the modality of payment specified in Articles 6.7 and 6.8 will apply], unless the **Recipient** has already opted for the **Subscription System** earlier.]

[6.11bis Should the **Recipient** opt for the **Subscription System**, the terms and conditions of the **Subscription System**, as set out in *Annex 3* to **this Agreement**, apply. In this case, *Annex 3* to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and *mutatis mutandis*, to also include *Annex 3*.]

6.11ter By opting for the **Subscription System**, the **Recipient**, as **Subscriber**, shall have no payment obligations with regard to the **Material** received, during the term of the **Subscription**, and the **Product** that incorporates the **Material**, other than the payment obligations provided for under the **Subscription System**.

[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 [for a period of [x] years] 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* [OPTION 1] 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** shall pay [for a period of [x] years] a [lower] 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* [OPTION 1] to **this Agreement**.]

OR

[[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 [, for a period of 20 years,] 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* [OPTION 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* [OPTION 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.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2010 and as subsequently updated, 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 third party beneficiary acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

8.2 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United Nations, 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 in **this Agreement** 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, invasive alien species and biosafety regulations and rules as to import or release of **genetic material**.

[Duration of and Termination of this Agreement]

[9.2 The **Recipient** may terminate **this Agreement** upon six months written notice to the **Governing Body** through its Secretary, not less than [XX] years from the date of signing of **this Agreement** by the **Provider** or the **Recipient**, whichever date is later, or from the date of acceptance of **this Agreement** by the **Recipient**.

[9.3 In the case that the **Recipient** has begun before termination to **commercialize a Product**, in respect of which payment is due in accordance with Articles 6.7 and 6.8 and *Annex 2* of **this Agreement**, such payment shall continue while that **Product** is **commercialized**.]

[9.4 In case of termination of **this Agreement**, the **Recipient** shall no longer be allowed to use or transfer the **Material**. In case the **Recipient** still has any **Material** in its possession, the **Recipient** shall contact the **Provider** or any other designated MLS provider to effect the return or transfer of the possession of the **Material**. Termination of **this Agreement** shall not affect the rights and obligations of the **Recipient** with regard to both the **Plant Genetic Resources for Food and Agriculture under Development** as well as the **Products**. Articles [6.1, 6.2, 6.5, 6.6, 6.7, 6.8, 6.9 and 6.10] shall therefore, even after **this Agreement** has been terminated, remain applicable for an indefinite period of time, unless the specific Article itself mentions a limited period of applicability.]

[9.4 Notwithstanding the above, Articles [6.1.][6.2][...] of **this Agreement** shall continue to apply.]

[Amendments to this Agreement]

[9.5 If the **Governing Body** decides to amend the terms and conditions of the Standard Material Transfer Agreement, such amendments shall only affect subsequently signed Standard Material Transfer Agreements. **This Agreement** shall remain unchanged, unless the **Recipient** explicitly agrees in writing with the proposed amendments.]

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

* 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.

and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

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

Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient's** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the “click-wrap” form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* lists the **Material** and/or **Plant Genetic Resources for Food and Agriculture under Development** provided under **this Agreement**, including the associated information referred to in Article 5b.

The following information is included, or the source indicated from which it may be obtained, for each **Material** and/or **Plant Genetic Resources for Food and Agriculture under Development** listed: all available passport data and, subject to domestic, or other, relevant law, any other associated, available, non-confidential descriptive information.

Table A

Materials:

Crop:	
Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

Table B

Plant Genetic Resources for Food and Agriculture under Development:

Crop:	
Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

In accordance with Article 6.5b, the following information is provided regarding the materials received under an SMTA or which were brought into the **Multilateral System** by an agreement pursuant to Article 15 of the **Treaty**, from which the **Plant Genetic Resources for Food and Agriculture under Development** listed in Table B are derived:

Crop:	
Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

Annex 2

OPTION 1

NB: THIS OPTION RELATES TO THE FIRST ALTERNATIVE OF ARTICLES 6.7 AND 6.8 IN THE BODY OF THE SMTA

[RATE AND MODALITIES OF PAYMENT UNDER ARTICLES 6.7 AND 6.8 OF THIS AGREEMENT

1. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products** that are not **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, then the **Recipient** shall pay [one point-one percent (1.1 %) of the **Sales** of the **Product** or **Products** less thirty percent (30%)]

2. If a **Recipient**, its affiliates, contractors, licensees, and lessees, **commercializes** a **Product** or **Products** that are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, then the **Recipient** shall pay [xx] percent ([xx] %) of the **Sales** of the **Product** or **Products** less thirty percent (30%).

3. No payment shall be due from the **Recipient** when the **Product** or **Products**:
 - (a) have been purchased or otherwise obtained from another person or entity who has already made payment on the **Product** or **Products**;
 - (b) are sold or traded as a commodity.
 - (c) have a theoretical proportion of germplasm from the **Material** which is sufficiently low, because at least [x] generations of crossing have been made.]

4. 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 paragraphs 1 and 2 above.

5. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after closure of accounts each year, an [audited] 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 preceding the annual closure of accounts;
 - (b) the amount of the payment due; and
 - (c) information that allows for the identification of the applicable payment rate or rates.Such information shall be treated as confidential [business information], and shall be made available to the third party beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**.

6. 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\$)* for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

**FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),**

Citibank
399 Park Avenue, New York, NY, USA, 10022,
Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577]

OR

OPTION 2

NB: THIS OPTION RELATES TO THE SECOND ALTERNATIVE OF ARTICLES 6.7 AND 6.8 IN THE BODY OF THE SMTA

[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.

(d) have a theoretical proportion of germplasm from the Material which is sufficiently low, because at least [x] generations of crossing have been made.]

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 closure of accounts each year, 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 preceding the annual closure of accounts;

(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.

Such information shall be treated as confidential [business information], and shall be made available to the third party beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**.

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\$)* for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
Citibank
399 Park Avenue, New York, NY, USA, 10022,
Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577

Annex 3

TERMS AND CONDITIONS OF THE SUBSCRIPTION SYSTEM (ARTICLE 6.11)**ARTICLE 1 — SUBSCRIPTION**

1.1 The **Recipient**[, who opts for the **Subscription System** in accordance with Article 6.11 (hereinafter referred to as the “**Subscriber**”),] agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 **Subscription** shall take effect upon receipt by the Secretary of the [first] duly signed **Registration Form**, contained in *Annex 4*, [or of the [first] acceptance by the **Subscriber** through EasySMTA,] who will notify the **Subscriber** accordingly, and cover [all **Plant Genetic Resources for Food and Agriculture** covered by the **Multilateral System**][the crop mentioned in the duly signed **Registration Form**].

1.3 The **Subscriber** shall be relieved of any obligation to make payments under any previous SMTA for the crop or crops covered by the **Subscription** as well as any SMTA signed for the crop or crops covered by the **Subscription** during the term of the **Subscription**, and only the payment obligations in these **Subscription Terms** shall apply.

[1.4 The **Governing Body** may amend the **Subscription Terms** at any time. Such amended terms will not apply to the **Subscriber** who has agreed to the **Subscription Terms**, which will continue until the **Subscriber** withdraws from its **Subscription**, or the **Governing Body** terminates its **Subscription**, in accordance with Article 4 below.]

ARTICLE 2 — REGISTER

The **Subscriber** agrees that its full name, contact details[, the crop to which the **Subscription** applies] and the date at which **Subscription** took effect, shall be placed on a public register (the “**Register**”), and undertakes to immediately communicate any changes to this information to the **Governing Body** of the **Treaty**, through its Secretary.

ARTICLE 3 — MONETARY BENEFIT-SHARING

[3.1 In order to share the monetary benefits from the use of **Plant Genetic Resources for Food and Agriculture** under the **Treaty**, the **Subscriber** shall make annual payments based on the Subscriber’s sales, [technology fees] and licensing fees of/for products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crops that are subject to the **Subscription**, and on income that the **Subscriber** receives from its affiliates, contractors, licensees and lessees, in the preceding year.]

[3.1bis The Subscriber will transfer **Plant Genetic Resources for Food and Agriculture under Development** under an SMTA. The **Subscriber** will not have further obligations regarding the actions of any subsequent recipient.]

3.2 The rates of payment shall be as follows, less thirty percent (30%):

[a] For [**Products** and any other products] **available without restriction** to others for further research and breeding: [xx] percent];

[b) For [**Products** and any other products] not **available without restriction** to others for further research and breeding: [yy] percent]

[3.3 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year where its total sales and license fees referred to under Articles 3.1, do not exceed US\$ [xxx].]

3.4 Payment shall be made within sixty (60) days after closure of accounts each year, for the previous year. Whenever the **Subscription** took effect during the year, the **Recipient** shall make a proportionate payment for the first year of its **Subscription**.

3.5 Notwithstanding Article 3.3 above, the Subscriber shall submit to the Secretary of the **Treaty** within sixty (60) days after closure of accounts each year a statement of account, specifying on which basis the payment due was calculated, including in particular the following information:

- a) The **Sales** of the **Products** for which payment was made;
- b) The sales of any other products [that are **Plant Genetic Resources for Food and Agriculture**] for which payment was made;
- [b)bis The sales of any other products that are not **Plant Genetic Resources for Food and Agriculture**, for which payment was made;]
- c) [Whether or not each **Product** and product was **available without restriction** to others for further research and breeding,].
- d) [The income from [technology fees and] license agreements for which payment was made;]
- e) The calculation of the total payment.

Such information shall be treated as confidential [business information], and shall be made available to the third party beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**.

[The Secretary of the **Governing Body** shall be entitled to audit any such annual report.]

3.6 All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)* for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

**FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
Citibank
399 Park Avenue, New York, NY, USA, 10022,
Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577**

ARTICLE 4 — [DURATION OF AND] WITHDRAWAL FROM [AND TERMINATION OF] THE SUBSCRIPTION

4.1 The **Subscription** shall be in force until the **Subscriber** withdraws from it, or the **Governing Body** terminates it as provided for in Article 4.5 below.

4.2 The **Subscriber** may withdraw from its **Subscription** upon six months written notice to the **Governing Body** through its Secretary, not less than [XX] years from the date that the **Subscription** took effect.

[4.3 The monetary benefit-sharing provisions of Article 3 of these **Subscription Terms** shall continue for [YY] years from the end of the **Subscription**. All other conditions of **this Agreement** shall continue to apply, except in so far that the monetary benefit-sharing obligations arising from [Article 6.7] / [Articles 6.7 and 6.8] of **this Agreement** shall not apply.]

[4.3 The monetary benefit-sharing provisions of Article 3 of these **Subscription Terms** shall continue for [YY] years from the date that the **Subscription** took effect, regardless of whether the **Subscription** is withdrawn from or terminated before the end of this period, or for [XX] years after the **Recipient** last received **Material** from the **Multilateral System**, whichever date is later.]

[4.4 Notwithstanding Article 4.3 of these **Subscription Terms**, with respect to **Plant Genetic Resources for Food and Agriculture under Development**, [ZZ] years from the end of the **Subscription**, only Articles [6.1.][6.2][...] of **this Agreement** shall continue to apply.]

[4.x Withdrawal from or termination of the **Subscription** does not affect the validity of the Standard Material Transfer Agreements signed during the **Subscription** term. These Standard Material Transfer Agreements shall remain in full force and effect in accordance with the terms of the Standard Material Transfer Agreement (excluding Article 6.7).]

[4.xbis In exception to Article 4.2, the **Subscriber** may withdraw immediately, regardless of when the **Subscription** took effect, in the event of specific circumstances of the discontinuation of its operations in the crop to which the **Subscription** relates, a suspension of payment, or declared bankruptcy. Under these circumstances, the provisions of Articles 4.3 and 4.4 also do not apply. The Standard Material Transfer Agreements signed during the **Subscription** term shall be considered terminated on the same day as the **Subscription**. Article 9.3 of the Standard Material Transfer Agreements will in such case apply, but without the applicability of Article 6.7 of the Standard Material Transfer Agreement.]

[4.5 The **Governing Body** may, at any time, terminate the **Subscription** for material breach of the terms and conditions of the **Subscription System**. The Secretary shall inform the **Subscriber** in writing of the impugned breach, and if such breach is not cured within thirty (30) days of notice being given, shall refer the matter to the next meeting of the **Governing Body**.]
[NB: THE CONSEQUENCES OF SUCH TERMINATION WILL NEED TO BE SPECIFIED.]

[4.6 If the **Governing Body** decides to amend the **Subscription Terms**, it shall inform the **Subscriber** of such amendments. If the **Subscriber** does not accept such amendments, the **Governing Body** may terminate the **Subscription**, no earlier than [10][20] years after such amendments came into force.]

[4.7 The **Governing Body** may terminate the **Subscription** in case the **Treaty** terminates.]

Annex 4

REGISTRATION FORM

The **Recipient** hereby declares to opt for the **Subscription System**, in accordance with Article 6.11 of **this Agreement**.

It is understood and expressly agreed that **Recipient's** full name, contact details [, the crops to which the **Subscription** applies] and the date at which **Subscription** took effect, shall be placed on a public register of subscribers (the "**Register**"), and that any changes to this information is communicated immediately to the **Governing Body** of the **Treaty**, through its Secretary, by the **Recipient** or its authorised official.

Signature.....

Date.....

Full name of Recipient:

.....

Address:

.....

.....

.....

Telephone:

Email:

Recipient's authorised official:

.....

Address:

.....

.....

Telephone:

Email:

NB: The **Subscriber** must also sign or accept **this Agreement**, as provided for in Article 10, without which **Registration** is not valid.

The **Subscriber** may signify acceptance, either by returning a signed **Registration Form** to the Governing Body, through its Secretary, at the address below, or through EasySMTA, in the case that **this Agreement** was formed in EasySMTA. A signed **Registration Form** must be accompanied by a copy of **this Agreement**.

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy]

*Appendix 1***LIST OF PROPOSALS BY WORKING GROUP MEMBERS TO REVISE THE STANDARD MATERIAL TRANSFER AGREEMENT, NOT DISCUSSED AND DECIDED BY THE WORKING GROUP AT ITS SIXTH MEETING**

Note by the Co-Chairs: The following list assembles the remaining textual proposals for revising the Standard Material Transfer Agreement that could not be fully discussed and decided by the Working Group at its sixth meeting, because they were received late by the Working Group. The proposals are presented in the sequence of the provisions in the Standard Material Transfer Agreement to which they relate and compiled in the language they were received.

Proposal by the Africa Region on Article 2 of the revised SMTA:

The Africa Region, drawing on a proposal by farmers' organizations, has submitted the following proposal for additional text in Article 2 of the revised SMTA:

- [“*Genetic parts or components*” means the elements of which they are composed or the genetic information that they contain.]

Proposal by the Africa Region on Article 6.1 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to Article 6.1 of the revised SMTA:

- [If the Recipient uses the Material for any of these prohibited uses, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such illegal use, order the Recipient to stop such illegal use forthwith and award punitive damages against the Recipient to the value of USD25 million or ten times the Recipient's annual turnover, whichever is higher. The Recipient agrees that it shall not oppose any application for enforcement of such punitive damage made to a competent court in the jurisdiction where its main business identity is registered.]

Proposal by the Africa Region on Article 6.2 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to Article 6.2 of the revised SMTA:

- [If the Recipient claims any such IP or other rights in contravention of this clause, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such claim, order the Recipient to stop pursuing such claim forthwith, award punitive damages against the Recipient to the value of USD25 million or ten times the Recipient's annual turnover, whichever is higher, and declare any granted IP or other rights forfeited to the provider, the country of origin of the PGRFA in question or the Third Party Beneficiary. The Recipient agrees that it shall not oppose any application for enforcement of such punitive damage or forfeiture made to a competent court in the jurisdiction where its main business identity is registered.]

Proposal by the Africa Region on the alternative Article 6.2 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to the alternative version of Article 6.2 of the revised SMTA that contains the sentence “or that limit Farmers’ Rights to save, use, exchange and sell seed and propagating material of the provided Material”:

- [If the Recipient claims any such IP or other rights in contravention of this clause, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such claim, order the Recipient to stop pursuing such claim forthwith, award punitive damages against the Recipient to the value of USD25 million or ten times the Recipient’s annual turnover, whichever is higher, and declare any granted IP or other rights forfeited to the provider, the country of origin of the PGRFA in question, an appropriate Farmers’ Organisation or the Third Party Beneficiary. The Recipient agrees that it shall not oppose any application for enforcement of such punitive damage or forfeiture made to a competent court in the jurisdiction where its main business identity is registered.]

Proposal by the Africa Region on Article 6.3 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to Article 6.3 of the revised SMTA:

- [If the Recipient fails to make the Material available as agreed, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such failure, order the Recipient to make to Material available or pay punitive damages. The Recipient agrees that it shall not oppose any application for enforcement of such punitive damage or forfeiture made to a competent court in the jurisdiction where its main business identity is registered.]

Proposal by the Africa Region on Article 6.4 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to Article 6.4 of the revised SMTA:

- [If the Recipient transfers the Material without securing a new SMTA from the subsequent recipient, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such transfer, order the Recipient to secure such new SMTA forthwith and hold the original Recipient liable for any obligations that arise out of the subsequent recipient’s use of the Material until the new SMTA has been signed by the subsequent recipient. The original Recipient agrees that it shall be so liable as if it had used the Material itself under the terms of the SMTA.]

Proposal by the Africa Region on Article 6.5 of the revised SMTA:

The Africa Region has submitted the following proposal for an addition to Article 6.5 of the revised SMTA:

- [If the Recipient transfers a Plant Genetic Resource for Food and Agriculture under Development without securing a new SMTA from the subsequent recipient, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such transfer, order the Recipient to secure such new SMTA forthwith and hold the original Recipient liable for any obligations that arise out of the subsequent recipient’s use of the Plant Genetic Resource for Food and Agriculture under Development until the new SMTA has been signed by the subsequent recipient. The original Recipient agrees that it shall be so liable as if it had used the Plant Genetic Resource for Food and Agriculture under Development itself under the terms of the SMTA.]

Proposal by the North America Region on Articles 2 and 6.5e of the revised SMTA:

The North America Region, drawing on a proposal originally made by the Seed Industry, submitted the following proposal for text to be added to the proposed new Article 6.5e of the revised SMTA (added text in italics), as well as a related new definition to be included in Article 2 of the revised SMTA:

- [The obligations in this paragraph 6.5 do not apply to Plant Genetic Resource for Food and Agriculture under Development of which the theoretical proportion of germplasm from the Material is sufficiently low because at least 5 generations of outcrossing have been made [*, except where one or more traits of commercial value are retained therein*].]
- [*“Trait of Value”* means any trait that confers commercial value to a Product, including but not limited to agronomic traits, traits conferring resistance to biotic or abiotic stresses, traits that enhance the nutritional or processing value of harvested commodities, and any other traits used to describe a Product for the purpose of promoting its commercialization.]

Proposal by the Africa Region on Annex 2, Article 3, of the revised SMTA:

The African Region, drawing on a proposal by farmers’ organizations, has submitted the following proposal for additional text in Article 3 of Annex 2 of the revised SMTA:

- [c) available without restriction to others for further research and breeding or to the realization of farmers’ rights to conserve, use, exchange or sell farm-saved seed or propagating material.]

Proposal by the South West Pacific Region on Annex 3, Article 3.1, of the revised SMTA and Annex 2 of the revised SMTA:

The South West Pacific Region has submitted the following proposal for an addition, to be inserted after Article 3.1 of Annex 3 of the revised SMTA and after the equivalent text in Annex 2 of the revised SMTA

- [Where an inconsistency between this Article and Article 6.5 of the SMTA arises, Article 6.5 prevails.]