



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

**CO-CHAIRS' PROPOSED CONSOLIDATED TEXT OF THE REVISED
STANDARD MATERIAL TRANSFER AGREEMENT**

Note by the Secretary

At its Seventh Session, the Governing Body set up a Contact Group to assist it in making progress on discussions regarding the enhancement of the Multilateral System. The Contact Group was chaired by the Co-chairs of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group) and focused on revising the Standard Material Transfer Agreement.

The Co-chairs developed the *Co-chairs Proposed Consolidated Text of the Revised Standard Material Transfer Agreement* contained in this document based on the discussions held at the Contact Group. The Contact Group was not able to engage in negotiations on the basis of this proposal during the Seventh Session of the Governing Body, but noted that this consolidated text provides a useful source of information for further discussions on the revised Standard Material Transfer Agreement.

In its Resolution 2/2017, the Governing Body consequently requested the Working Group, when revising the Standard Material Transfer Agreement, to take into account, *inter alia*, the *Co-chairs Proposed Consolidated Text of the Revised Standard Material Transfer Agreement*, which is therefore reproduced in this document for the information of the Working Group.

**CO-CHAIRS' PROPOSED CONSOLIDATED TEXT OF THE REVISED
STANDARD MATERIAL TRANSFER AGREEMENT¹**

PREAMBLE

WHEREAS

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

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

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

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

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

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

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

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 **This Agreement** is:

BETWEEN: (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** or **Subscriber**”, as appropriate).

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:

A “**Recipient**” is a party to this Agreement that has opted for *Annex 2* and a “**Subscriber**” is a party that has opted for *Annex 3*.

“**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** or **Subscriber**’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** or **Subscriber** 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.

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

“**Sales**” means the gross income, including any income from the sale of seeds and plant materials and income in the form of any license fees, received by the **Recipient** and its respective affiliates, resulting from the **commercialization** of any **Product** under Article 6.8, or by a **Subscriber** and its respective affiliates, of any **Product**, or product that is a **Plant Genetic Resources for Food and Agriculture**.

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration, 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** or **Subscriber** 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, 8.3, *Annex 2* paragraph 5, 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** or **Subscriber** from exercising their rights under **this Agreement**.

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

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

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

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://mils.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 12, 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.

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;
- d) The name and address of the **Recipient** or **Subscriber**, 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 AND SUBSCRIBER

6.1 The **Recipient** may opt for the **Subscription System** at the time of signing **this Agreement** or at the time of acceptance of **this Agreement**, as set out in *Annex 3* to **this Agreement**, or to be subject to *Annex 2*.

6.2 The **Recipient** may opt for the **Subscription System** 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 sent to the Secretary, or acceptance not signified through EasySMTA, the modality of payment specified in Articles 6.11 and 6.12 shall apply. The modality of payment specified in *Annex 3* shall apply from the date that the **Recipient** opts for the **Subscription System**.

6.3 The **Recipient** or **Subscriber** 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.

6.4 The **Recipient** or **Subscriber** 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 any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

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

6.6 In the case that the **Recipient** or **Subscriber** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the subsequent recipient”), the **Recipient** or **Subscriber** 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** or **Subscriber** shall have no further obligations regarding the actions of the subsequent recipient.

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

- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
- b) identify, in *Annex 1* to the new material transfer agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any subsequent recipient provided that an SMTA has been signed, as stipulated in paragraph (a).

6.8 Entering into a material transfer agreement under paragraph 6.6 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.

6.9 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*.

6.10 By opting for the **Subscription System**, the **Subscriber** shall have no payment obligations under Articles 6.11 and 6.12, during the term of the **Subscription**.

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

6.12 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 a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

6.13 The **Recipient** or **Subscriber** 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** or **Subscriber** is encouraged to place a sample of this **Product** into a collection that is part of the **Multilateral System**, for research and breeding.

6.14 A **Recipient** or **Subscriber** who obtains intellectual property rights on any **Products** developed from the **Material** or its genetic parts or 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 **Subscriber** 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** or **Subscriber** 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** or **Subscriber**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient** or **Subscriber**, 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 — WARRANTY

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** or **Subscriber** 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**.

ARTICLE 10 — TERMINATION

10.1 In the case of a material breach of any of the obligations of the **Recipient** or the **Subscriber** under **this Agreement**, the Third Party Beneficiary shall inform the **Recipient** or **Subscriber** in writing of the alleged breach. If such breach is not remedied within thirty (30) days of notice being given, the Third Party Beneficiary shall initiate dispute settlement in accordance with Article 8 of **this Agreement**. In case the dispute is not satisfactorily resolved within six months, the Third Party Beneficiary may terminate **this Agreement** and any other Standard Material Transfer Agreements signed by the **Subscriber** and claim damages, as appropriate. The Third Party Beneficiary shall bring the matter to the attention of the following session of the Governing Body.

10.2 Upon termination of **this Agreement**, the **Recipient** or **Subscriber** shall no longer use the **Material** and shall return it to the **Provider**, and if this is not possible shall make it available to an International Institution that has signed an agreement with the Governing Body under Article 15 of the Treaty. The **Recipient** or **Subscriber** shall continue to be bound by the provisions of Article 6 of **this Agreement**, as appropriate.

ARTICLE 11 — BANKRUPTCY

The terms and conditions of **this Agreement** shall continue to apply in situations where the **Recipient** or **Subscriber** is declared or declares bankruptcy.

ARTICLE 12 — AMENDMENTS TO THIS AGREEMENT

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 13 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** or **Subscriber** 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 or Subscriber** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature.....

Date.....

Name of the **Recipient or Subscriber**.....

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.

Option 2 – Shrink-wrap Standard Material Transfer Agreement

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

Annex I

LIST OF MATERIALS PROVIDED

This *Annex* lists the **Material** 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

The **Materials** listed below are **Plant Genetic Resources for Food and Agriculture** that are not **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) |
|---|--|
| | |
| | |
| | |
| | |

Table B

The **Materials** listed below are **Plant Genetic Resources for Food and Agriculture under Development**, transferred as provided for in Articles 5c and 6.5 of **this Agreement**:

Crop:

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

In accordance with Article 6.7b, 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

**RATE AND MODALITIES OF PAYMENT UNDER ARTICLES 6.11 AND 6.12
OF THIS AGREEMENT**

1. If a **Recipient** or its affiliates **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 [xx] percent ([xx] %) of the **Sales** of the **Product** or **Products**.

2. If a **Recipient** or its affiliates **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** .

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.

4. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more Standard Material Transfer Agreements 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** or its affiliates 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.**

Annex 3

TERMS AND CONDITIONS OF THE SUBSCRIPTION SYSTEM**ARTICLE 1 — SUBSCRIPTION**

1.1 The **Recipient**, who opts for the **Subscription System** in accordance with Articles 6.1 and 6.2 (referred to in **this** Agreement as the “**Subscriber**”), agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 The **Subscription** shall take effect upon receipt by the Secretary of the **Governing Body** of the **Treaty** of the duly signed **Registration Form** contained in *Annex 4*, or upon acceptance by the **Subscriber** through EasySMTA. The Secretary shall notify the **Subscriber** of the date of receipt. The **Subscriber** shall not be required to sign *Annex 4* of any subsequent Standard Material Transfer Agreement, during the period of **Subscription**.

1.3 The **Subscriber** shall be relieved of any obligation to make payments under any previous Standard Material Transfer Agreement, 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 **Subscription Terms** shall not apply to any existing **Subscription**, unless the **Subscriber** notifies the **Governing Body** of its agreement to be subject to the amended **Subscription Terms**.

ARTICLE 2 — REGISTER

The **Subscriber** agrees that its full name, contact details, 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 The **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** by the **Subscriber** and its affiliates.

3.2 The following rates of payment shall apply to **Sales**:

[xx]% when the products are **available without restriction**, and
[yy]% when the products are not **available without restriction**.

3.3 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year in which 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 **Subscriber** shall make a proportionate payment for the first year of its **Subscription**.

3.5 The **Subscriber** shall submit to the **Governing Body** of the **Treaty**, through its Secretary, within sixty (60) days after closure of accounts each year an audited statement of account, including in particular the following:

- a) Information on the **Sales** of the products for which payment was made;
- b) 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**.

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 — WITHDRAWAL FROM 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 10 of **this Agreement**.

4.2 The **Subscriber** may withdraw from its **Subscription** upon six months written notice to the **Governing Body** through its Secretary, not less than 10 years from the date that the **Subscription** took effect. After withdrawal, Articles 6.11 and 6.12 and other provisions of **this Agreement**, including *Annex 2* and the provisions of any other Standard Material Transfer Agreement signed by the **Subscriber**, shall continue to apply. The withdrawal shall take effect for all purposes upon the first day of the following calendar year.

4.3 With respect to **Plant Genetic Resources for Food and Agriculture under Development**, notwithstanding Article 4.2, only Articles 6.3, 6.4, 6.5, and 6.13 of **this Agreement** shall continue to apply after [2–5] years from the date of withdrawal from the **Subscription System**.

Annex 4

REGISTRATION FORM

The **Recipient** hereby declares to opt for the **Subscription System**, in accordance with Articles 6.1 and 6.2 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 **Recipient** opting to become a **Subscriber** must also sign or accept **this Agreement**, as provided for in Article 13, without which **Registration** is not valid.

The **Recipient** opting to become a **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.