



Food and Agriculture  
Organization of the  
United Nations



The International Treaty  
ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE

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

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

**Rome, Italy, 14–17 March 2017**

**THIRD DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT**

**Note by the Secretary**

1. This document contains the *Third Draft Revised Standard Material Transfer Agreement*, prepared by the Co-chairs, on the basis of the guidance of the Working Group, in section 4 of the Report of its fifth meeting. The advice of the various Friends of the Co-chairs groups, the opinions of the Standing Group of Legal Experts, and the submissions received in response to the Working Group's invitation to Contracting Parties and stakeholders, have all been considered.
2. The methodology by which the *Third Draft Revised Standard Material Transfer Agreement* was prepared is described in IT/OWG-EFMLS-6/17/3.2, *Third Draft Revised Standard Material Transfer Agreement: Methodology Used In Its Preparation*.
3. As a matter of principle, text inserted in the *Second Draft* has been drawn whenever possible from the *First Draft*, as it has already been seen by the Working Group: such text is washed in blue. Text has occasionally been drawn, as well, from the current SMTA: such text is washed in pink.
4. The conventions followed to indicate changes to the text of the *Second Draft*, and to text imported from the *First Draft* and current SMTA, are as follows:
  1. Text deleted is indicated as ~~struck through~~.
  2. Text inserted is indicated by double underlining.
  3. Square brackets [ ], indicate either text that has not been agreed, or alternative versions of text.
  4. In order to avoid confusion, Articles 6.7 to 6.11 were not renumbered when they were moved or deleted. It is recommended that the renumbering of Articles be undertaken in the context of a legal reading.
  5. Reference to Articles in this document are to the current SMTA, as numbered there.



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## THIRD DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT

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### PREAMBLE

#### WHEREAS

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

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

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

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

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

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

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<sup>1</sup>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**”).

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**.

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\* *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 incorporate<sup>2</sup> 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**.<sup>3</sup>

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**:

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

<sup>3</sup> 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,<sup>4</sup>

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,<sup>5</sup>

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;

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<sup>4</sup> 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://mls.planttreaty.org/itt/>.

<sup>5</sup> 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.

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

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

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

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

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

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

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

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

[6.11 The **Recipient** may opt, within [X] months from the signing of **this Agreement** or from the date of acceptance of **this Agreement** ~~agrees to be bound by the terms and conditions of for the **Subscription System**, as set out in *Annex 3* to **this Agreement**, which constitute an integral part of **this Agreement** (**Subscription**)~~ 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 [Article 6.7/6.8REV] / [Articles 6.7 and 6.8] will apply.]

[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 For the term of the **Subscription**, the **Recipient, as Subscriber**, shall have no payment obligations, ~~[for the crop or crops covered by the **Subscription**]~~ other than those provided for under the **Subscription System**.

[6.7/6.8REV 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** make payments 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 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.

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

## 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 Food and Agriculture Organization of the United Nations 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 as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

### Duration of and Withdrawal from Agreement

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

9.3 ~~Should a Recipient withdraw from his Subscription, in accordance with Article 4 of Annex 3, he shall be deemed to have withdrawn from this Agreement, except in so far as the provisions of Articles [XX], as appropriate, apply.~~

[9.2 The Recipient may withdraw from 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 withdrawal to commercialize a Product, in respect of which payment is due in accordance with Article [6.7] / [6.7/6.8REV] and Annex 2 of this Agreement, such payment shall continue while that Product is commercialized.

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

## 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

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\* 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 **Provider** .....

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution's responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

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

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

### **Option 2 – Shrink-wrap Standard Material Transfer Agreements\***

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

### **Option 3 – Click-wrap Standard Material Transfer Agreement\***

- I hereby agree to the above conditions.

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

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*Annex 1*

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**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** listed: all available passport data and, subject to applicable 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<br>or other identifier | Associated information, <u>if available</u> ,<br>or source from which it may be obtained ( <u>URL</u> ) |
|   |   |
|   |   |
|   |   |
|   |   |

**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<br>or other identifier | Associated information, <u>if available</u> ,<br>or source from which it may be obtained ( <u>URL</u> ) |
|   |   |
|   |   |
|   |   |
|   |   |

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<br>or other identifier | Associated information, <u>if available</u> ,<br>or source from which it may be obtained ( <u>URL</u> ) |
|   |   |
|   |   |
|   |   |
|   |   |

| Crop | Accession number or other identifier | Associated information, or source from which it may be obtained |
|------|--------------------------------------|---|
|      |                                      |   |
|      |                                      |   |
|      |                                      |   |
|      |                                      |   |

If the **Material** listed above is **Plant Genetic Resources for Food and Agriculture under Development**, as provided for in *Article 6.5 of this Agreement*, the material received from the **Multilateral System**, from which it was derived, is the following:

Accession number or other identifier  
in the original Standard Material Transfer Agreement .....

The original Standard Material Transfer Agreement's  
identifying symbol or number: .....

Name and Address of original Provider: .....

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.....

.....

Name and address of original Recipient: .....

.....

.....

.....

Date of the original Standard Material Transfer Agreement: .....

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*Annex 2*

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**OPTION 1**

**NB: THIS OPTION RELATES TO ARTICLE 6.7/6.8REV IN THE BODY OF THE SMTA**

**[RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7/6.8REV 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%)] ~~except that no payment shall be due on any Product or Products that:~~

~~(a) are available without restriction to others for further research and breeding in accordance with Article 2 of this Agreement;~~

~~(b) have been purchased or otherwise obtained from another person or entity who either has already made payment on the Product or Products or is exempt from the obligation to make payment pursuant to subparagraph (a) above;~~

~~(c) are sold or traded as a commodity.~~

2. 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.

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 each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product or Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31<sup>st</sup>;

(b) the amount of the payment due; and

(c) information that allows for the identification of the applicable payment rate or rates ~~any restrictions that have given rise to the benefit sharing payment.~~

Such information shall be treated as confidential, 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 ARTICLE 6.7 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.

2. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraph 1 above.

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31<sup>st</sup>;

(b) the amount of the payment due; and

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

Such information shall be treated as confidential, 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**

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*Annex 3*

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**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 duly signed **Registration Form**, contained in *Annex 4*, or of the acceptance by the **Subscriber** through EasySMTA, who will notify the **Subscriber** of such receipt accordingly. signature of this Agreement by the **Recipient** or the **Provider**, whichever date is later, or upon acceptance of this Agreement by the **Recipient**, respectively, and cover [all **Plant Genetic Resources for Food and Agriculture** covered by the **Multilateral System**].

1.3 The **Subscriber** shall be relieved of any obligation to make payments under Article [6.7] / [6.7/6.8REV] of any previous SMTA, and only the **Subscription Terms** shall apply, while this **Subscription** is in effect.

[1.4 The **Governing Body** may amend these **Subscription Terms** at any time, with the amended **Subscription Terms** becoming immediately effective, or at a time that the **Governing Body** shall specify. The **Governing Body** shall inform the **Recipient** of such amendments and, if the **Recipient** does not accept such amendments, he may withdraw from his **Subscription**, in accordance with Article 4 below.]

OR

[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 his **Subscription**, or the **Governing Body** terminates his **Subscription**, in accordance with Article 4 below.]

**ARTICLE 2 — REGISTER**

The **Subscriber** agrees that his 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 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 (1) the **Sales** of any **Products** and sales of any other products [of all crops included in Annex I to the **Treaty**], and (2) income from [technology fees] and license agreements[, covering crops included in Annex I to the **Treaty**], if not already included in the **Sales** or sales under (1), in the previous calendar year (starting 1 January and ending 31 December).

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

[a) For **Products** and any other products **available without restriction** to others for further research and breeding: [crop group 1: [uu percent]; crop group 2: [vv percent]; and crop group 3, [ww percent]] ];

b) For **Products** and any other products not **available without restriction** to others for further research and breeding: [crop group 1: [xx percent]; crop group 2: [yy percent]; and crop group 3, [zz percent].] ]

~~[3.3 — A rate of [XX] percent ([XX] %) shall apply if the **Recipient** commits not to access more than ten accessions in a calendar year (starting 1 January, ending 31 December) and to make the Product or Products **available without restriction** to others for further research and breeding.]~~

[3.3 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year where its total payment due under Articles 3.1 and 3.2, does not exceed US\$ [xxx].]

3.4 Payment shall be made by 31 March of each year, for the previous calendar year. Whenever the **Subscription** took effect during the year, the **Recipient** shall make a proportionate payment for the first year of his **Subscription**.

3.5 The **Recipient** shall submit to the Secretary of the **Treaty** by 31 March 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 for which payment was made;
- c) [Whether or not each **Product** and product was **available without restriction** to others for further research and breeding, and the crop group to which it belongs].
- 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, 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 — DURATION OF AND WITHDRAWAL FROM THE SUBSCRIPTION

4.1 The **Subscription** shall be in force ~~so long as until~~ the **Recipient Subscriber** ~~has not~~ withdraws from it, or the Governing Body terminates it as provided for in Article 4.5 below.

4.2 The **Recipient Subscriber** may withdraw from his its **Subscription** upon six months written notice ~~by it~~ to the **Governing Body** through its Secretary, ~~but in any event~~ not less than [XX] years from the date that the **Subscription** took effect 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**, respectively.

4.3 The ~~mandatory monetary~~ benefit-sharing provisions of Article 3 of these **Subscription Terms** ~~will shall~~ continue for [YY] years from the end of the **Subscription**, or for [XX] years after the **Recipient** last received materials from the **Multilateral System**, whichever period is longer. 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] / [6.7/6.8REV] of this Agreement shall not apply.

[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.]

4.4 — In case of Article 1.3, the **Recipient** may withdraw from his **Subscription** within [XX weeks] from the date such changes become effective, by written notice to the **Governing Body** of the ~~Treaty~~, through its Secretary. Such withdrawal shall take effect upon receipt of the written notice by the Secretary. Article 4.3 of these **Subscription Terms** applies.

[4.5 The **Governing Body** may, at any time, revoke the **Subscription** for 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 REVOCATION WILL NEED TO BE SPECIFIED.]

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*Annex 4*

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**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 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