



**Food and Agriculture  
Organization of the  
United Nations**



**The International Treaty**  
**ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE**

**E**

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

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

**Geneva, Switzerland, 12–14 July 2016**

**SECOND DRAFT REVISED STANDARD MATERIAL TRANSFER  
AGREEMENT**

**CO-CHAIRS' PROPOSAL**

**Executive Summary**

At its Sixth Session, the Governing Body requested the Working Group to work on the basis of text proposals to be presented by the Co-chairs, including a full draft revised Standard Material Transfer Agreement for the fifth meeting of the Working Group. The draft revised Standard Material Transfer Agreement contained in this document will be presented by the Co-chairs at this meeting as the Co-chairs' proposal. It has been prepared on the basis of the draft revised Standard Material Transfer Agreement in document IT/OWG-EFMLS-4/15/3, *Draft Standard Material Transfer Agreement*.



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## I. INTRODUCTION

1. The Governing Body at its Sixth Session requested the Working Group to elaborate a full draft revised Standard Material Transfer Agreement, focusing especially on the development of a Subscription System, for this meeting of the Working Group. If possible, the need for any further legal instrument should be avoided, and the Subscription System should rely primarily on a revision of Article 6.11 of the Standard Material Transfer Agreement. The Working Group was also requested to work on the basis of text proposals presented by the Co-chairs, including a full draft revised Standard Material Transfer Agreement.
2. This document accordingly provides the Co-chairs' proposal for the draft revised Standard Material Transfer Agreement, building on an earlier draft contained in document IT/OWG-EFMLS-4/15/3, *Draft Revised Standard Material Transfer Agreement*, and on the background considerations contained in document IT/OWG-EFMLS-4/15/3, *Commentary on Structural Elements for the Development of a Subscription Model/System*. The draft has been prepared in accordance with the guidance provided by the Working Group at its fourth meeting, and the decisions of the Governing Body at its Sixth Session.
3. Following Resolution 1/2015, a variety of information sources were used in preparing the draft revised Standard Material Agreement, including written inputs by Contracting Parties and relevant stakeholders. In providing their guidance, the Co-chairs considered the recommendations they received from the three Friends of the Co-Chairs Groups that dealt with user and crop categories; access mechanisms and payment rates; and a possible termination clause, respectively. The full reports of the Friends of the Co-chairs Groups are contained in documents IT/OWG-EFMLS-5/16/Inf. XX, IT/OWG-EFMLS-5/16/Inf. XX and IT/OWG-EFMLS-5/16/Inf. XX). The compilation of submissions made by Contracting Parties and relevant stakeholders is available in document IT/OWG-EFMLS-5/16/Inf. XX.
4. The draft revised Standard Material Transfer Agreement contained in this document therefore incorporates a Subscription System based on a revision of Article 6.11 and Annex 3. Building on the discussions of the Working Group at its fourth meeting, the Subscription System does not foresee transfers of Plant Genetic Resources for Food and Agriculture between subscribers without a Standard Material Transfer Agreement, while seeking to minimize the need for Subscribers to track and trace the material covered by their Subscription. Moreover, the draft revised Standard Material Transfer Agreement contains a draft termination clause for the Subscription System, to enhance the attractiveness of the Subscription System. Taking into account the recommendations the Co-chairs received from one of the Friends of the Co-chairs Groups, the terms "terminate" and "termination" were replaced by the terms "withdraw" and "withdrawal" in this draft revised Standard Material Transfer Agreement and the Working Group may wish to discuss this change in terminology.
5. The Subscription System contained in the draft revised Standard Material Transfer Agreement is based on an all-crops subscription, so that it covers all plant genetic resources for food and agriculture contained in the Multilateral System.
6. As requested, the draft revised Standard Material Transfer Agreement incorporates a number of updates to implement relevant decisions of the Governing Body, as well as advice given by the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, in order to improve clarity and ease of use of the SMTA<sup>1</sup>:

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<sup>1</sup> IT/OWG-EFMLS-3/15/Report, Appendix 3.

**Updates in accordance with decisions of the Governing Body and advice given by the *Ad Hoc* Advisory Technical Committee on the SMTA and the MLS**

- Incorporation of the reporting obligations established by the Governing Body in paragraph 5e<sup>2</sup>
- Reference to FAO acting as the Third Party Beneficiary
- Resolution of inconsistency in the use of “Material” and “material”, in Article 6.5b<sup>3</sup>
- Insertion of the List of Material provided, in Annex 1 to the SMTA<sup>4</sup>
- Provision for information regarding the Material received from the Multilateral System, to be provided by a Recipient who commercializes a Product or Products, in the annual report, in a new paragraph 3d of Annex 2 to the SMTA.<sup>5</sup>

7. In order to avoid confusion and for practical reasons, Articles 6.7 to 6.11 were not renumbered in case of deletions.

8. The Working Group will also need to make practical and timely arrangements for the draft of the revised Standard Material Transfer Agreement resulting from its work to be subjected to a thorough overall legal reading and drafting, before it is transmitted to the Governing Body for adoption at its Seventh Session.

9. If not further specified, all Articles mentioned in this document refer to the Standard Material Transfer Agreement.

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<sup>2</sup> GB Resolution 5/2009, para. 14-15 and Annex 2, Parts III and IV; and GB Resolution 4/2011, para. 22.

<sup>3</sup> IT/AC-SMTA-MLS-2/10/Report, p. 21.

<sup>4</sup> IT/AC-SMTA-MLS-2/10/Report, p. 25.

<sup>5</sup> IT/AC-SMTA-MLS-2/10/Report, p. 26.

*Appendix I:**Second Draft Revised Standard Material Transfer Agreement  
– with highlighted deletions and changes*

*NB: In the text below, deletions are ~~struck through~~ and changed text is **washed in grey**.*

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

## 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 ~~(the entity designated by the **Governing Body**)~~,<sup>4</sup> acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3 and *Annex 23, paragraph 3 Article 3*, to **this Agreement**.

4.5 The rights granted to the Food and Agriculture Organization of the United Nations ~~(the entity designated by the **Governing Body**)~~ above do not prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**.

<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.

<sup>4</sup> ~~Note by the Secretariat: by Resolution 2/2006, the Governing Body “invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session”. Upon acceptance by the FAO of this invitation, the term, “the entity designated by the Governing Body”, will be replaced throughout the document by the term, “the Food and Agriculture Organization of the United Nations”.~~ [Footnotes to be re-numbered accordingly.]

## ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall periodically inform the **Governing Body** 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>5</sup>

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,<sup>6</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:

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<sup>5</sup> *Note by the Secretariat:* The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5c, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such 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-00100 00153 Rome, Italy  
 [email]  
 [URL EasySMTA]

<sup>6</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. [Footnotes to be re-numbered accordingly.]

- 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;
- 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.

~~according to a schedule to be established by the **Governing Body**.~~ This information shall be made available by the **Governing Body** to the third party beneficiary.<sup>7</sup>

## 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:

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<sup>7</sup> ~~Note by the Secretariat: The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5e and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4*. Such information should be submitted to:~~

- 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** 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** that material;
- c) notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.

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

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

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

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

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

~~6.11 The **Recipient** agrees to be bound by ~~may opt as per Annex 4, as an alternative to payments under Article 6.7, for the following system of payments~~ 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*.~~

- ~~a) The **Recipient** shall make payments at a discounted rate during the period of validity of the option;~~

- b) ~~The period of validity of the option shall be ten years renewable in accordance with Annex 3 to **this Agreement**;~~
- e) ~~The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in Annex 1 to **this Agreement** belongs;~~
- d) ~~The payments to be made are independent of whether or not the **Product** is **available without restriction**;~~
- e) ~~The rates of payment and other terms and conditions applicable to this option, including the discounted rates are set out in Annex 3 to **this Agreement**;~~
- f) ~~The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;~~
- g) ~~After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;~~
- h) ~~The **Recipient** shall notify the **Governing Body** that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.~~

#### ARTICLE 7 — APPLICABLE LAW

The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004 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 (~~the entity designated by the **Governing Body**~~), 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 (~~the entity designated by the **Governing Body**~~), representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.

8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.

8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

- a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

## ARTICLE 9 — ADDITIONAL ITEMS

### Warranty

9.1 The **Provider** makes no warranties as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine and biosafety regulations and rules as to import or release of **genetic material**.

### 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.

## 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

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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.

responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

Signature..... Date.....  
Name of the **Provider** .....

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

Signature..... Date.....  
Name of the **Recipient** .....

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

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

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

- I hereby agree to the above conditions.



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*Annex 2*

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**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.~~

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\$)<sup>8</sup> to the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**<sup>9</sup>:~~

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

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<sup>8</sup> *Note by the Secretariat:* The Governing Body has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

<sup>9</sup> *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the Governing Body at its First Session (*Appendix E* to IT/GB 1/06/Report).

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*Annex 3*

**NB: THIS ANNEX IS TOTALLY NEW TEXT, AND REPLACES THE CURRENT ANNEX 3**

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

**ARTICLE 1 — SUBSCRIPTION**

1.1 The **Recipient**, in accordance with Article 6.11, agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 **Subscription** shall take effect upon 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 **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.

**ARTICLE 2 — REGISTER**

The **Recipient** 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 **Recipient** shall make annual payments based on (1) the **Sales** of any **Products** and on sales of any other products of all crops included in Annex I to the **Treaty**, and (2) income from 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, ending 31 December).

3.2 The rate of payment shall be [XX] percent ([XX] %).

[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.]

3.4 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 a statement of account, specifying on which basis the payment due was calculated, including in particular the following information:

- The **Sales** of the **Products** for which payment was made;
- The sales of any other products for which payment was made;
- The income from license agreements for which payment was made;
- The calculation of the total payment.

3.6 All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*<sup>6</sup> for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**<sup>7</sup>:

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

#### **ARTICLE 4 — DURATION OF AND WITHDRAWAL FROM THE SUBSCRIPTION**

4.1 The **Subscription** shall be in force so long as the **Recipient** has not withdrawn from it.

4.2 The **Recipient** may withdraw from his **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 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 benefit sharing provisions of Article 3 of these **Subscription Terms** will continue for [XX] 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.

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.

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*Annex 4*

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**OPTION FOR CROP-BASED PAYMENTS UNDER THE ALTERNATIVE PAYMENTS  
SCHEME UNDER ARTICLE 6.11 OF THIS AGREEMENT**

I (*full name of **Recipient** or **Recipient's authorised official***) declare to opt for payment in accordance with Article 6.11 of **this Agreement**.

Signature..... Date.....<sup>10</sup>

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<sup>10</sup> In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient to the Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient to the Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,  
International Treaty on Plant Genetic Resources for Food and Agriculture  
Food and Agriculture Organization of the United Nations  
I-00100 Rome, Italy

The signed declaration must be accompanied by the following:

- The date on which **this Agreement** was entered into;
- The name and address of the **Recipient** and of the **Provider**;
- A copy of Annex 1 to **this Agreement**.

*Appendix 2:**Second Draft Revised Standard Material Transfer Agreement  
– with all elements highlighted in Appendix 1 integrated into the text*

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**SECOND 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>11</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>11</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>12</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>13</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 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>12</sup> As evidenced, for example, by pedigree or notation of gene insertion.

<sup>13</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.

- f) 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;
- g) 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;
- h) 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;
- i) 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;
- j) 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>14</sup>

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,<sup>15</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>14</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]  
 [URL EasySMTA]

<sup>15</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

- c) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement; and
- d) 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:

- e) 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;
- f) 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 material;
- g) notify the **Governing Body**, in accordance with Article 5e; and
- h) have no further obligations regarding the actions of any **subsequent recipient**.

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

6.7 *[Deleted by Governing Body Resolution XX/2017]*

6.8 *[Deleted by Governing Body Resolution XX/2017]*

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:

- d) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.
- e) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.
- f) 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.

## 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

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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.

responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

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

Name of the **Provider** .....

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

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

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

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

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

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

- I hereby agree to the above conditions.



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*Annex 2*

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*[Deleted by Governing Body Resolution XX/2017]*

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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**, in accordance with Article 6.11, agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 **Subscription** shall take effect upon 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 **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.

**ARTICLE 2 — REGISTER**

The **Recipient** 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 **Recipient** shall make annual payments based on (1) the **Sales** of any **Products** and on sales of any other products of all crops included in Annex I to the **Treaty**, and (2) income from 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, ending 31 December).

3.2 The rate of payment shall be [XX] percent ([XX] %).

[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.]

3.4 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 a statement of account, specifying on which basis the payment due was calculated, including in particular the following information:

- The **Sales** of the **Products** for which payment was made;

- The sales of any other products for which payment was made;
- The income from license agreements for which payment was made;
- The calculation of the total payment.

3.6 All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*<sup>6</sup> for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**<sup>7</sup>:

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

#### **ARTICLE 4 — DURATION OF AND WITHDRAWAL FROM THE SUBSCRIPTION**

4.1 The **Subscription** shall be in force so long as the **Recipient** has not withdrawn from it.

4.2 The **Recipient** may withdraw from his **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 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 benefit sharing provisions of Article 3 of these **Subscription Terms** will continue for [XX] 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.

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.

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*Annex 4*

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*[Deleted by Governing Body Resolution XX/2017]*