Note by the Secretary

At its eighth meeting, the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group) considered the document IT/OWG-EFMLS-8/18/3, Draft Revised Standard Material Transfer Agreement: Proposal by the Working Group, which reproduced the draft revised Standard Material Transfer Agreement prepared by the Working Group at its sixth meeting.

When reviewing the draft revised Standard Material Transfer Agreement at its eighth meeting, the Working Group also took into account the Co-chairs’ proposed consolidated text for the revised Standard Material Transfer Agreement, as requested by the Governing Body at its Seventh Session.

The Working Group, at its eighth meeting, consequently agreed on an updated version of the Draft Revised Standard Material Transfer Agreement and decided to further consider it at its ninth meeting. The draft revised Standard Material Transfer Agreement arising from the eighth meeting of the Working Group is accordingly reproduced in this document.

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

The Draft Revised Standard Material Transfer Agreement: Proposal by the Co-chairs is contained in document IT/OWG-EFMLS-9/19/4 Add.1. Submissions received from Contracting Parties and stakeholder groups, including proposals on the revision of the Standard Material Transfer Agreement, are provided in document IT/OWG-EFMLS-9/19/Inf.3.
DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT:
PROPOSAL BY THE WORKING GROUP

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the Treaty”) 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.

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.

* 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 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.

4.3 The parties to this Agreement agree that the Food and Agriculture Organization of the United Nations acting on behalf of the Governing Body of the Treaty and its Multilateral System, is the third party beneficiary under this Agreement.

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3, Annex 2, [OPTION 1 paragraph 5] / [OPTION 2 paragraph 3], and Annex 3, Article 3, to this Agreement.

4.5 The rights granted to the Food and Agriculture Organization of the United Nations above do not prevent the Provider and the Recipient from exercising their rights under this Agreement.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

2 As evidenced, for example, by pedigree or notation of gene insertion.
3 In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.
a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;

b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the Plant Genetic Resources for Food and Agriculture provided;

c) Access to Plant Genetic Resources for Food and Agriculture under Development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;

d) Access to Plant Genetic Resources for Food and Agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;

e) The Provider shall inform the Governing Body at least once every two calendar years, or within an interval that shall be, from time to time, decided by the Governing Body, about the Material Transfer Agreements entered into, either by:

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

   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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4 This information should be submitted by the Provider to:

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

   or through EasySMTA: https://mls.planttreaty.org/itt/.

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

e) The identification of each accession in Annex 1 to the Standard Material Transfer Agreement, and of the crop to which it belongs.

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

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

6.1 The Recipient undertakes that the Material shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

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

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

[6.2 The Recipient shall not claim any intellectual property or other rights that limit the facilitated access to the Material provided under this Agreement, or its genetic parts or components, in the form received from the Multilateral System, or that limit Farmers’ Rights to save, use, exchange and sell seed and propagating material of the provided Material.]

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

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

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

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

b) notify the Governing Body, in accordance with Article 5e.

On compliance with the above, the Recipient shall have no further obligations regarding the actions of the subsequent recipient.
6.5 In the case that the Recipient transfers a Plant Genetic Resource for Food and Agriculture under Development to another person or entity, the Recipient shall[, until a period of [x] years after signing of this Agreement has lapsed]:

a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new material transfer agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;

b) identify, in Annex 1 to the new material transfer agreement, the Material received from the Multilateral System, and specify that the Plant Genetic Resources for Food and Agriculture under Development being transferred are derived from the Material;

c) notify the Governing Body, in accordance with Article 5e; and

d) have no further obligations regarding the actions of any subsequent recipient.

e) [The obligations in this Article 6.5 do not apply to Plant Genetic Resources for Food and Agriculture under Development, of which the theoretical proportion of germplasm from the Material is sufficiently low, because at least five generations of crossing have been made.]

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

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

OR

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

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

6.11ter By opting for the Subscription System, the Recipient, as Subscriber, shall have no payment obligations with regard to the Material received, during the term of the Subscription, and the Product that incorporates the Material, other than the payment obligations provided for under the Subscription System.
[6.7] In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material as referred to in Article 3 of this Agreement, and where such Product is not available without restriction to others for further research and breeding, the Recipient shall pay [for a period of [x] years] a fixed percentage of the Sales of the commercialized Product into the mechanism established by the Governing Body for this purpose, in accordance with Annex 2 [OPTION 1] to this Agreement.

6.8 In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material as referred to in Article 3 of this Agreement and where that Product is available without restriction to others for further research and breeding, the Recipient shall pay [for a period of [x] years] a [lower] fixed percentage of the Sales of the commercialized Product into the mechanism established by the Governing Body for this purpose, in accordance with Annex 2 [OPTION 1] to this Agreement.]

[OR]

[[6.7] In the case that the Recipient commercializes a Product that is a Plant Genetic Resource for Food and Agriculture and that incorporates Material as referred to in Article 3 of this Agreement, and where such Product is not available without restriction to others for further research and breeding, the Recipient shall pay [, for a period of 20 years,] a fixed percentage of the Sales of the commercialized Product into the mechanism established by the Governing Body for this purpose, in accordance with Annex 2 [OPTION 2] to this Agreement.]

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

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

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

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2010 and as subsequently updated, the objectives and the relevant provisions of the Treaty, and, when necessary for interpretation, the decisions of the Governing Body.
ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the Provider or the Recipient or the third party beneficiary acting on behalf of the Governing Body of the Treaty and its Multilateral System.

8.2 The parties to this Agreement agree that the Food and Agriculture Organization of the United Nations, representing the Governing Body and the Multilateral System, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the Provider and the Recipient under this Agreement.

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

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

   a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.

   b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.

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

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

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

[Duration of and Termination of this Agreement]

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

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

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

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

[Amendments to this Agreement]

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

[9.6] This Agreement shall remain in force so long as the Treaty remains in force.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The Provider and the Recipient may choose the method of acceptance unless either party requires this Agreement to be signed.

Option 1 –Signature

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

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

Name of the Provider …………………

* 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.
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.

* 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.
LIST OF MATERIALS PROVIDED

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

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

**Table A**

**Materials:**

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<th>Crop:</th>
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**Table B**

**Plant Genetic Resources for Food and Agriculture under Development:**

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<th>Crop:</th>
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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:

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Annex 2

OPTION 1

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

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

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

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

3. No payment shall be due from the Recipient when the Product or Products:
   (a) have been purchased or otherwise obtained from another person or entity who has already made payment on the Product or Products;
   (b) are sold or traded as a commodity.
   [(c) {PROPOSAL BY NORTH AMERICA} consist of at least 25% of the Material or contain a trait of commercial value that originated from the Material]

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

5. The Recipient shall submit to the Governing Body, within sixty (60) days after closure of accounts each year, an [audited] annual report setting forth:
   (a) the Sales of the Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, for the twelve (12) month period preceding the annual closure of accounts;
   (b) the amount of the payment due; and
   (c) information that allows for the identification of the applicable payment rate or rates.

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

6. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in United States dollars (US$) for the following account established by the Governing Body in accordance with Article 19.3f of the Treaty:

   FAO Trust Fund (USD) GINC/INT/031/MUL,
   IT-PGRFA (Benefit-sharing),
OR
OPTION 2

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

RATE AND MODALITIES OF PAYMENT UNDER ARTICLE 6.7 OF THIS AGREEMENT

1. If a Recipient, its affiliates, contractors, licensees, and lessees, commercializes a Product or Products, then the Recipient shall pay one point-one percent (1.1 %) of the Sales of the Product or Products less thirty percent (30%); except that no payment shall be due on any Product or Products that:

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

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

(c) are sold or traded as a commodity.

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

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

3. The Recipient shall submit to the Governing Body, within sixty (60) days after closure of accounts each year, an annual report setting forth:

(a) the Sales of the Product or Products by the Recipient, its affiliates, contractors, licensees and lessees, for the twelve (12) month period preceding the annual closure of accounts;

(b) the amount of the payment due; and

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

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

4. Payment shall be due and payable upon submission of each annual report. All payments due to the Governing Body shall be payable in United States dollars (US$) for the following account established by the Governing Body in accordance with Article 19.3f of the Treaty:

FAO Trust Fund (USD) GINC/INT/031/MUL,
IT-PGRFA (Benefit-sharing),
Citibank
399 Park Avenue, New York, NY, USA, 10022,
Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577
Annex 3

TERMS AND CONDITIONS OF THE SUBSCRIPTION SYSTEM (ARTICLE 6.11)

ARTICLE 1 — SUBSCRIPTION

1.1 The Recipient, who opts for the Subscription [System] / [Option] 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 accordingly, and cover [all Plant Genetic Resources for Food and Agriculture covered by the Multilateral System][the crop mentioned in the duly signed Registration Form]. [The Subscriber shall not be required to sign Annex 4 of any subsequent Standard Material Transfer Agreement, during the period of Subscription.]

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

1.3 The Subscriber shall be relieved of any obligation to make payments under any previously signed Standard Material Transfer Agreement, and only the payment obligations in these Subscription Terms shall apply. (AGreed Ad Ref.)

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

1.4 ALT The Governing Body may amend the Subscription Terms at any time. Such amended Subscription Terms shall not apply to any existing Subscription, unless the Subscriber notifies the Governing Body of its agreement to be subject to the amended Subscription Terms. [Should the Subscriber agree to the amended Subscription Terms, such agreement shall not affect the date on which the Subscription had taken effect.]

ARTICLE 2 — REGISTER

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

ARTICLE 3 — MONETARY BENEFIT-SHARING

3.1 In order to share the monetary benefits from the use of Plant Genetic Resources for Food and Agriculture under the Treaty, the Subscriber shall make annual payments based on the Subscriber’s sales, [technology fees] and licensing fees of/for products that are Plant Genetic Resources for Food and Agriculture belonging to the same crops that are subject to the Subscription, and on income that the Subscriber receives from its affiliates, contractors, licensees and lessees, in the preceding year.]
[3.1bis] The Subscriber will transfer Plant Genetic Resources for Food and Agriculture under Development under an SMTA. The Subscriber will not have further obligations regarding the actions of any subsequent recipient.

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

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

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

[3.1 ALT] The Subscriber shall make annual payments based on the Sales.

[3.2 ALT] The following rates of payment shall apply to Sales:

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

[3.2 ALT] The applicable rate of payment in relation to Sales shall be [zz]%.

[3.2 BIS] At the request of the Subscriber, the higher rate of payment shall apply to Sales without distinction.

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

[3.3 ALT] Notwithstanding the above, in a year in which its payments due on declared Sales referred to in Article 3.1 do not exceed [US$ 1,000], the Subscriber may defer payment, in consecutive years, until it has accumulated up to the sum of [US$ 1,000] due and payable.

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

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

a) Information on the Sales of the products for which payment was made;

b) Information that allows for the identification of the applicable payment rate or rates.

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

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

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

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

4.2 The Subscriber may withdraw from its Subscription upon six months written notice to the Governing Body through its Secretary, not less than 10 years from the date that the Subscription took effect. (AGREED AD REF.)

[4.3 The monetary benefit-sharing provisions of Article 3 of these Subscription Terms shall continue for [YY]/[two]/[five] years from the end of the Subscription. [All other conditions of this Agreement shall continue to apply, except in so far that the monetary benefit-sharing obligations arising from [Articles 6.7 and 6.8] of this Agreement shall not apply.] [Only Articles 6.1, 6.2, 6.3, and 6.9 of this Agreement shall continue to 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 ALT With respect to Plant Genetic Resources for Food and Agriculture under Development, notwithstanding Article 4.2, only Articles 6.1, 6.2, 6.3, and 6.9 of this Agreement shall continue to apply after [2–5] years from the date of withdrawal from the Subscription System.]

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

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

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

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

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

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

Full name of Recipient: ................................................

Address: ................................................................

Telephone: .................................................. Email: ..............................................

Recipient’s authorised official: ..................................

Address: ................................................................

Telephone: .................................................. Email: ..............................................

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

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

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
I-00153 Rome, Italy]
Appendix 1:

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

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

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

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

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

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

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

- [If the Recipient claims any such IP or other rights in contravention of this clause, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such claim, order the Recipient to stop pursuing such claim forthwith, award punitive damages against the Recipient to the value of USD25 million or ten times the Recipient’s annual turnover, whichever is higher, and declare any granted IP or other rights forfeited to the provider, the country of origin of the PGRFA in question or the Third Party Beneficiary. The Recipient agrees that it shall not oppose any application for enforcement of such punitive damage or forfeiture made to a competent court in the jurisdiction where its main business identity is registered.]
Proposal by the Africa Region on the alternative Article 6.2 of the revised SMTA:
The Africa Region has submitted the following proposal for an addition to the alternative version of Article 6.2 of the revised SMTA that contains the sentence “or that limit Farmers’ Rights to save, use, exchange and sell seed and propagating material of the provided Material”:

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

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

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

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

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

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

- If the Recipient transfers a Plant Genetic Resource for Food and Agriculture under Development without securing a new SMTA from the subsequent recipient, a mediator or arbitrator appointed in terms of Article 8 may, on presentation of prima facie evidence of such transfer, order the Recipient to secure such new SMTA forthwith and hold the original Recipient liable for any obligations that arise out of the subsequent recipient’s use of the Plant Genetic Resource for Food and Agriculture under Development until the new SMTA has been signed by the subsequent recipient. The original Recipient agrees that it shall be so liable as if it had used the Plant Genetic Resource for Food and Agriculture under Development itself under the terms of the SMTA.]
Proposal by the North America Region on Articles 2 and 6.5e of the revised SMTA:
The North America Region, drawing on a proposal originally made by the Seed Industry, submitted the following proposal for text to be added to the proposed new Article 6.5e of the revised SMTA (added text in italics), as well as a related new definition to be included in Article 2 of the revised SMTA:

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

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

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

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

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