



Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

RESOLUTION 2/2017

MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

THE GOVERNING BODY,

Recalling Resolution 2/2006, by which it adopted the Standard Material Transfer Agreement;

Recalling Resolution 2/2013, by which it established the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing (the “Working Group”), with the task of developing measures aimed at:

- (a) Increasing user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
- (b) Enhancing the functioning of the Multilateral System by additional measures;

Recalling Resolution 1/2015, by which it extended the mandate of the Working Group for the 2016-2017 biennium.

Having considered the report of the Working Group on the results from its work, suggesting a process to attain the enhanced Multilateral System, and particularly the results of the sixth meeting that included the draft revised Standard Material Transfer Agreement, proposed by the Working Group;

Thanking the Working Group for its productive work and for making available the results of its discussions more than six months before this Seventh Session of the Governing Body;

Further thanking the Co-chairs for their continuous leadership and commitment, which facilitated the significant progress by the Working Group, and for their report to the Governing Body, containing a number of recommendations;

Welcoming the important contributions from a variety of experts through the four *Ad Hoc* Friends of the Co-chairs’ groups and the Standing Group of Legal Experts, and **thanking** in particular the facilitators of these groups for their commitment and able guidance;

1. **Takes note** of the work accomplished by the Working Group in the biennium;
2. **Recognizes** that further work is needed to develop the package of measures agreed in Resolution 2/2013, and that nothing is agreed until everything is agreed;
3. **Takes note** of the proposal by the Government of Switzerland for an amendment of Annex I of the International Treaty;

4. **Extends** the mandate of the Working Group, for the 2018-2019 biennium and **requests** the Working Group, with support from the Secretary, to:
 - a. develop a proposal for a Growth Plan to attain the enhanced Multilateral System, taking into account *Annex 1* to this Resolution, as appropriate;
 - b. revise the Standard Material Transfer Agreement, based on the Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (IT/GB-7/17/7), and taking into account, *inter alia*:
 - i. the Co-Chairs' Summary arising from this Session and their proposed consolidated text for the revised Standard Material Transfer Agreement, as contained in *Annex 2* to this Resolution; and,
 - ii. further information or proposals that have been or may be submitted by Contracting Parties and stakeholder groups;
 - c. elaborate criteria and options for possible adaptation of the coverage of the Multilateral System, taking into account, *inter alia*, proposals presented at the Seventh Session of the Governing Body;
 - d. make recommendations to the Governing Body on any other issues related to the process for the enhancement of the Multilateral System;
 - e. continue to liaise closely with the Ad Hoc Committee on the Funding Strategy and Resource Mobilization in its review of the Funding Strategy, including in its work on the mobilization of funding and other resources for the Benefit-sharing Fund.
5. **Agrees** that the Working Group will hold two meetings and take any further initiatives needed within the next intersessional period to conclude the work described in paragraph 4 above;
6. **Requests** the Secretary to regularly update the Bureau of the Eighth Session of the Governing Body and Contracting Parties on the work of the Working Group;
7. **Invites** a commitment from all Contracting Parties to fulfil the mandate given to the Working Group, and **appeals** to the stakeholders who use plant genetic resources under the International Treaty to assist the Working Group in finalizing the process for the enhancement of the Multilateral System, including by continuing to develop concrete proposals regarding the finalisation of the revised Standard Material Transfer Agreement, the process for further expansion of the scope of Annex I of the International Treaty, and ways to attract additional voluntary funding for the Benefit-sharing Fund on a sustainable basis, for consideration of the Working Group;
8. **Calls** on all regions to ensure that all necessary expertise is available in the Working Group and regular feedback from the Working Group members is provided to other Contracting Parties of their regions;
9. **Urges** Contracting Parties to provide support and financial resources, as necessary, for the Working Group to be able to fulfil its tasks on schedule.

*Annex 1 to Resolution 2/2017**GROWTH PLAN¹*

1. The Governing Body will approve a new and revised SMTA, providing the option to subscribe to a Subscription System. Companies and other users interested in becoming subscribers of the Subscription System would be given a period of one year after a date to be set by the Governing Body to declare their willingness to sign on to the Subscription System. The new and revised SMTA containing the Subscription System as an access mechanism would automatically become effective, once companies that represent a to be agreed amount of money corresponding to [30%] approximately of global seed sales of crops contained in the Multilateral System (i.e. listed in Annex I) sign on to the Subscription System. The Bureau of the Governing Body with support from the Secretariat would have to monitor when such threshold is reached. The new and revised SMTA will thereafter apply to all users seeking access to material in the Multilateral System.
2. At the same time that the Governing Body adopts the new and revised SMTA, it should decide on amending Annex I of the Treaty, including a new list of crops. The amended Annex I would (1) delegate the power of future expansion of the Multilateral System to the Governing Body, and (2) include a list with a first set of specific crops.
3. The declaration of companies and other users of their willingness to sign on to the Subscription System, following the decision of the Governing Body to adopt a new and revised SMTA, would create confidence on the part of Contracting Parties that more user-based income will eventually accrue to the Benefit-Sharing Fund. The decision of the Governing Body to adopt a process for the amendment of Annex I would generate confidence on the part of prospective subscribers of the clear intention of Contracting Parties to increase the coverage of the Multilateral System.
4. A time limit, for example six years after adoption of the amendment by the Governing Body, should be set for achieving the number of ratifications needed for the entry into force of the Treaty amendment enlarging the scope of the Multilateral System, in accordance with Articles 23 and 24 of the Treaty. If the minimum threshold of ratifications is not reached within that period, users that have subscribed under the new and revised SMTA should be allowed to receive and use materials under their subscription for the crops in Annex I listed at that time, or opt out of their subscription and return to access under Articles 6.7 and 6.8 of the new and revised SMTA, providing access on an occasional basis.
5. Future expansion of the Multilateral System will be linked to proof of predictable flow of significant financial resources into the Benefit-Sharing Fund of the Multilateral System. It would be useful for users, in particular subscribers, to provide feedback to the Governing Body about which crops should be added in the future. Other considerations or criteria could also be important for decision-making by the Governing Body on further expansion.
6. Preferably, all new provisions would be added in Annex I, whereas no other provisions of the Treaty would need to be revised, and the amendment would follow the procedures foreseen in Articles 23 and 24 of the Treaty. The Standing Group of Legal Experts has been requested to comment on the legal feasibility of such approach.
7. Clear and up-to-date information would be needed regarding inclusion of and access to material that is *de facto* in the Multilateral System, e.g. by publishing lists of materials that are in the Multilateral System through the Treaty website; and by positive response of providers to requests for accessions. After six years, a certain amount of additional PGRFA should have been placed in the Multilateral System and be made effectively available by Contracting Parties.

¹ This text has been prepared by the Co-Chairs of the Working Group and is part of document IT/GB-7/17/31 *Co-Chairs' Proposal from the outcomes of the meetings of the Ad Hoc Open-Ended Working Group to enhance the functioning of the Multilateral System.*

8. Contracting Parties should indicate their willingness to provide a certain amount of funds for the next six years as voluntary contributions to the Benefit-Sharing Fund and/or the Fund for Agreed Purposes.
9. A progress report on the implementation of the Growth Plan should be submitted by the Secretariat to the Governing Body at each Session, whilst a review of the Growth Plan should be undertaken by the Governing Body six years after its adoption.

Annex 2 to Resolution 2/2017

CO-CHAIRS' SUMMARY ARISING FROM THE SEVENTH SESSION OF THE GOVERNING BODY, INCLUDING CO-CHAIRS' PROPOSED CONSOLIDATED TEXT FOR THE REVISED STANDARD MATERIAL TRANSFER AGREEMENT

INTRODUCTION

1. The Seventh Session of the Governing Body of the International Treaty set up a Contact Group to assist the Governing Body to make progress on the enhancement of the Multilateral System. The Contact Group held four sessions and was chaired by the Co-Chairs of the *Ad Hoc* Open-ended Working Group to enhance the functioning of the Multilateral System. The Regional Groups requested the Co-Chairs to reflect the discussions held in the Contact Group in this Co-Chairs' Summary.
2. The discussions focused on the revised Standard Material Transfer Agreement. With a view to make progress, the discussions were structured in five blocks containing a number of issues that require further work. These blocks were the following:
 - a. Mechanisms to access PGRFA from the Multilateral System;
 - b. Withdrawal and Termination;
 - c. Formulation of benefit-sharing in particular within the Subscription System;
 - d. Enforceability; and,
 - e. Digital sequence information in relation to the SMTA.
3. This Summary captures the major issues discussed in the Contact Group and provides the Co-Chairs' proposed consolidated text for the revised Standard Material Transfer Agreement. This proposed text was shared with the Contact Group as a source of information to facilitate future discussions and gather inputs from Regions on how to reflect possible areas of common understanding or compromise into concrete text for the revised SMTA.
4. Some members of the Contact Group reflected on the process developed to arrive to the draft revised SMTA and wondered if it would lead to meet their expectations regarding the level of benefit-sharing as well as the necessary transparency regarding the exchange of PGRFA. They also stated that a more general review of efforts so far undertaken would benefit further inter-sessional work.
5. The Regional Groups welcomed this initiative to prepare a Co-Chairs consolidated text of the revised SMTA, but at the same time were not ready to engage in negotiations on the basis of this proposal at this meeting. They noted that this consolidated text provides a useful source of information for further discussions on the revised SMTA. The basis for further negotiations of the draft revised SMTA remains the *draft revised Standard Material Agreement: proposal by the Working Group* provided in Annex 2 of the Report of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (IT/GB-7/17/7).

A. MECHANISMS TO ACCESS PGRFA FROM THE MLS

6. Based on the discussions, the Co-Chairs were of the view that common understanding has been reached to:
 - a. Develop an effective and balanced dual access mechanism (Subscription System + single access mechanism).
 - b. Provide access to PGRFA under conditions of mandatory payments only.

- c. Finalize a Subscription System where the subscription would cover all PGRFA within Annex 1.

B. WITHDRAWAL AND TERMINATION

7. The Co-Chairs explained that throughout the consolidated text of the revised SMTA, the term “withdrawal” was understood to mean an act by the Subscriber, whereas the term “termination” was understood to mean an act by the third party beneficiary.
8. Some members noted that the Subscription System should be designed in such a way that subscribers would not have any incentive to withdraw.
9. Based on the discussions, the Co-Chairs were of the view that common understanding has been reached to:
 - a. Incorporate a minimum period of subscription of 10 years;
 - b. Introduce a Withdrawal provision in Annex 3 (Subscription System);
 - c. Incorporate Termination provisions in the SMTA (both access mechanisms).
10. No consensus was reached on:
 - a. The length of any continuing subscription obligations after withdrawal;
 - b. The inclusion of a withdrawal option in relation to the single access mechanism.

C. FORMULATION OF BENEFIT-SHARING IN PARTICULAR WITHIN THE SUBSCRIPTION SYSTEM

11. Based on the discussions, the Co-Chairs were of the view that the text of Article 3 in Annex 3 of the draft revised SMTA contained in the report of the sixth meeting of the Working Group (IT/GB-7/17/7) forms a good basis to agree on the benefit-sharing provisions under the Subscription System. Although the Contact Group did not address the payment rates, it stressed their importance in relation to realizing effective benefit-sharing.

D. ENFORCEABILITY

12. The Regions agree that the SMTA should be an enforceable contract. No consensus was reached on whether the current SMTA provides for effective enforcement measures. Some members felt that revisiting Article 8 defining the rights of the Third Party Beneficiary would be sufficient to guarantee enforceability. Others felt that new provisions strengthening the enforceability of the SMTA would be needed. In relation to strengthening the enforceability provisions of the SMTA, the Co-Chairs noted that there was agreement that the Standing Group of Legal Experts would be the primary body to provide advice and to bring in additional skills on contract law, when and if required.

E. DIGITAL SEQUENCE INFORMATION IN RELATION TO THE SMTA

13. The Co-Chairs explained how their proposed consolidated text for the revised SMTA made provision for the concept of digital sequence information (DSI) to be reflected in the revised SMTA through a new definition of “genetic parts and components”.
14. There was no consensus at this meeting on if and how to reflect issues related to DSI in the text of the revised SMTA.

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

PREAMBLE

WHEREAS

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

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

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

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

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

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

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

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 **This Agreement** is:

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

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

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

ARTICLE 2 — DEFINITIONS

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

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

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

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

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

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

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

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient** or **Subscriber’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** or **Subscriber** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate

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**.

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate² the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

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

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

“**To commercialize**” means to sell a **Product** or **Products** for monetary consideration, and “**commercialization**” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

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

ARTICLE 4 — GENERAL PROVISIONS

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

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

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

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 8.3, *Annex 2* paragraph 5, and *Annex 3*, Article 3, to **this Agreement**.

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

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

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

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

- a) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- b) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the **Plant Genetic Resources for Food and Agriculture** provided;
- c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- e) The **Provider** shall inform the **Governing Body** at least once every two calendar years, or within an interval that shall be, from time to time, decided by the **Governing Body**, about the Material Transfer Agreements entered into,⁴

either by:

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

or

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

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material

⁴ This information should be submitted by the Provider to:

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

or through EasySMTA: <https://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 13, Option 2 of the SMTA, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent.

Transfer Agreement by the **Provider**;

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

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

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT AND SUBSCRIBER

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

6.2 The **Recipient** may opt for the **Subscription System** by returning the **Registration Form** contained in *Annex 4* to **this Agreement**, duly completed and signed, to the **Governing Body** of the **Treaty**, through its Secretary, or by signifying acceptance through EasySMTA (“**Subscription**”). If the **Registration Form** is not sent to the Secretary, or acceptance not signified through EasySMTA, the modality of payment specified in Articles 6.11 and 6.12 shall apply. The modality of payment specified in *Annex 3* shall apply from the date that the **Recipient** opts for the **Subscription System**.

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

6.4 The **Recipient** or **Subscriber** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**, or that limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7 — APPLICABLE LAW

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

ARTICLE 8 — DISPUTE SETTLEMENT

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

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

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

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

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

ARTICLE 9 — WARRANTY

The **Provider** makes no warranties in **this Agreement** as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** or **Subscriber** assumes full responsibility for complying with the

recipient nation's quarantine, invasive alien species and biosafety regulations and rules as to import or release of **genetic material**.

ARTICLE 10 — TERMINATION

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

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

ARTICLE 11 — BANKRUPTCY

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

ARTICLE 12 — AMENDMENTS TO THIS AGREEMENT

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

ARTICLE 13 — SIGNATURE/ACCEPTANCE

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

Option 1—Signature

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

Signature.....

Date.....

Name of the **Provider**

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

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

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

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

Option 2 –Shrink-wrap Standard Material Transfer Agreement

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

Option 3 –Click-wrap Standard Material Transfer Agreement

- I hereby agree to the above conditions.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* lists the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

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

Table A

The **Materials** listed below are **Plant Genetic Resources for Food and Agriculture** that are not **Plant Genetic Resources for Food and Agriculture under Development**:

Crop:

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

Table B

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

Crop:

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

In accordance with Article 6.7b, the following information is provided regarding the materials received under an SMTA or which were brought into the **Multilateral System** by an agreement pursuant to Article 15 of the **Treaty**, from which the **Plant Genetic Resources for Food and Agriculture under Development** listed in Table B are derived:

Crop:

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

Annex 2

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

1. If a **Recipient** or its affiliates **commercializes** a **Product** or **Products** that are not **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, then the **Recipient** shall pay [xx] percent ([xx] %) of the **Sales** of the **Product** or **Products**.
2. If a **Recipient** or its affiliates **commercializes** a **Product** or **Products** that are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, then the **Recipient** shall pay [xx] percent ([xx] %) of the **Sales** of the **Product** or **Products** .
3. No payment shall be due from the **Recipient** when the **Product** or **Products**:
 - (a) have been purchased or otherwise obtained from another person or entity who has already made payment on the **Product** or **Products**;
 - (b) are sold or traded as a commodity.
4. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more Standard Material Transfer Agreements only one payment shall be required under paragraphs 1 and 2 above.
5. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after closure of accounts each year, an audited annual report setting forth:
 - (a) the **Sales** of the **Product** or **Products** by the **Recipient** or its affiliates for the twelve (12) month period preceding the annual closure of accounts;
 - (b) the amount of the payment due; and
 - (c) information that allows for the identification of the applicable payment rate or rates.

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

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

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

Annex 3

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

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

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

1.3 The **Subscriber** shall be relieved of any obligation to make payments under any previous Standard Material Transfer Agreement, and only the payment obligations in these **Subscription Terms** shall apply.

1.4 The **Governing Body** may amend the **Subscription Terms** at any time. Such amended **Subscription Terms** shall not apply to any existing **Subscription**, unless the **Subscriber** notifies the **Governing Body** of its agreement to be subject to the amended **Subscription Terms**.

ARTICLE 2 — REGISTER

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

ARTICLE 3 — MONETARY BENEFIT-SHARING

3.1 The **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** by the **Subscriber** and its affiliates.

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

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

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

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

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

- a) Information on the **Sales** of the products for which payment was made;
- b) Information that allows for the identification of the applicable payment rate or rates.

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

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

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

ARTICLE 4 — WITHDRAWAL FROM THE SUBSCRIPTION

4.1 The **Subscription** shall be in force until the **Subscriber** withdraws from it, or the **Governing Body** terminates it, as provided for in Article 10 of **this Agreement**.

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

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

Annex 4

REGISTRATION FORM

The **Recipient** hereby declares to opt for the **Subscription System**, in accordance with Articles 6.1 and 6.2 of **this Agreement**.

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

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

Full name of Recipient:

Address:

Telephone: Email:

Recipient's authorised official:

Address:

Telephone: Email:

NB: The **Recipient** opting to become a **Subscriber** must also sign or accept **this Agreement**, as provided for in Article 13, without which **Registration** is not valid.

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

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