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Javad Mozafari Hashjin
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Director General, Academic Relations &
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Agricultural Research, Education and
Extension Organization (AREEO)
Yemen St, Chamran Freeway
Tehran
Iran

Saint-Beauzire, August 28th 2017

Re: Seed companies Declaration of Commitment

Dear Sirs,

During the informal consultation meeting last May in Switzerland we have had the pleasure of exchanging ideas and views about how to enhance the functioning of the Multilateral System of Access and Benefit-sharing of the International Treaty on PGRFA. As already expressed during such meeting, the plant breeding sector recognizes the importance of conserving PGRFA to ensure sustainable agriculture and food security. The sector is therefore supportive of the International Treaty on PGRFA and the ongoing process to enhance the Multilateral System.

Plant breeding companies believe that in order to make this process a success, it is crucial to find a solution, which not only meets the criteria determined by the Governing Body, but also makes business sense. That will make the system attractive to companies and thus increase the functioning of the Multilateral System.

The plant breeding sector is made up of many different companies, all with their own diverse needs. We believe that this diversity should be reflected in the new and approved Standard Material Transfer Agreement, to allow all the different players in the plant breeding sector, public and private, both small and big companies in the developed as well as developing countries, to access the Multilateral System. At the same time, we are aware of the concern that a predictable and sustainable flow of income should be guaranteed.

To show the commitment of the plant breeding sector to the International Treaty on PGRFA, in line and in coordination with the International Seed Federation, representatives of the four seed companies who attended the Swiss informal meeting, have developed a proposal, described in the accompanying Declaration of Commitment.

We are very pleased to send you the Declaration of Commitment, signed by 20 companies, representing the European, U.S. and Asian seed industry. By signing this Declaration of Commitment, the plant breeding companies express their intent to become a subscriber under a new SMTA containing multiple benefit-sharing options, provided that the business critical conditions as specified in the Declaration of Commitment are met. I will add that some companies were not able to reach a decision in the time available or other factors limited their ability to join the Declaration at this time.

Work on the Declaration of Commitment began directly after the Swiss informal consultation and focussed on points of attention identified during the consultation. Please be aware that the Declaration of Commitment was finalized and distributed for signature before your "Proposal from the Outcomes of the Meetings of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System" was released. The Declaration is not, therefore, responding to that proposal. Seed industry delegates representing the International Seed Federation, will attend the 7th Working Group meeting next week and share comments on your proposal.

As we can imagine that the Declaration of Commitment may raise several questions, it would be my pleasure to come to the opening meeting of the Working Group on September 5 in Rome, to present the Declaration to the Working Group and to answer any questions that the members may have. We believe that this could be beneficial to the further discussions within the Working Group.

I am looking forward to your reply.

Kind regards,



Jean-Christophe Gouache
Limagrain VP for International Affairs /
President of the International Seed Federation

Copies:

Kent N'nadozie

Secretary General - International Treaty on Plant Genetic Resources
for Food and Agriculture (ITPGRFA)
Food and Agriculture Organization of the United Nations (FAO)
Viale delle Terme di Caracalla, 00153 Rome
Italy

Michael Keller

Secretary General
International Seed Federation
Reposoir 7, 1260 Nyon
Switzerland

Declaration of Commitment

Preamble

The signatories to this Declaration are prominent plant breeding companies that recognize the significance of conserving and evaluating plant genetic diversity for food and agricultural crops to ensure sustainable agriculture and food security.

As plant breeding companies, we are committed to contributing to sustainable agriculture and food security by supporting the conservation of plant genetic diversity and using such diversity in our breeding programs in a sustainable and professional way. However, political conditions and the international legal landscape for accessing crop germplasm have become even more complex and challenging, especially due to national efforts to implement the Nagoya Protocol under the CBD, which often impede, rather than stimulate, access and use of plant genetic resources.

Being concerned about how to safeguard access to plant genetic resources for food and agriculture - which is essential for creating new plant varieties and thus ensuring food security - we wish to make a positive contribution to the current efforts to revise the IT Standard Material Transfer Agreement (SMTA).

We are supportive of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the ongoing process to enhance the functioning of the Multilateral System (MLS) of Access and Benefit Sharing (ABS) of the ITPGRFA. Our combined revenue constitutes a major portion of the worldwide seed turnover and our potential subscription payments to the ITPGRFA would represent an important and predictable monetary flow from the seed industry to the Treaty's Benefit-sharing Fund.

Context

- The Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-Sharing (WG) is considering different options to revise the SMTA. The proposals from the WG will be submitted for consideration and decision by the Governing Body (GB) at its 7th session in November 2017.
- Among the critical options to be decided upon are:
 - Should plant genetic resource access be possible under a single benefit sharing mechanism (subscription only) or should a multi-optional benefit sharing mechanism (subscription system or current payment based on use) be maintained?
 - Whichever mechanism is chosen, what should be the payment rates?
 - How to safeguard legal certainty under the proposed mechanisms?
- The International Seed Federation (ISF), the voice of the global seed industry, has issued on July 31st 2017, a "Statement on the Revision of the SMTA" (Attachment 1), proposing its vision and proposals to solve the main issues being currently discussed by the WG.
- The signatories to this Declaration fully support the ISF view that the SMTA should maintain multiple benefit-sharing options, one being the subscription system and the other being the single access system (payment based on use of accessed genetic resources). The signatories to this Declaration are also of the opinion that the breeders' exemption should continue to be recognized as an important form of benefit-sharing.

Issue

- The main goal of enhancing the functioning of the MLS is to ensure a predictable and sustainable flow of income which will be generated by the new SMTA.
- The global seed industry, represented by ISF, is in favor of a multi-optional system to address the multiple and diverse needs of all stakeholders and to maximize the circulation and use of PGRFA. The signatories believe it to be critical that the WG and the Governing Body have relevant context and perspective to assess the viability of the proposed mechanism now and for the years to come.
- The signatories to this Declaration hereby convey their intentions and considerations to become a subscriber to the MLS if a multi-option system consistent with the ISF Statement would be decided upon during the next meeting of the Governing Body.
- The signatories believe that this Declaration will provide the WG and the GB with valuable perspective to give more visibility and predictability and to inform and facilitate the decision-making process of the GB.

Declaration

The Signatories hereby declare that they will choose the subscription option under a new SMTA containing multiple benefit-sharing options, provided that business critical conditions, as specified below, are met, in addition to the essential conditions specified in the attached ISF statement:

- **Legal certainty**
 - The new SMTA should i) have no perpetual obligations, ii) allow for termination without ongoing payment obligations, iii) ensure that the recipient retains all rights with regard to the accessed materials, its PGRFA under Development and its Products and iv) not be unilaterally changeable.

- **Subscription financial conditions**
 - The proposed subscription rate should be 0.01 % of a subscriber's seed revenues generated from crops included in Annex 1 minus 30% as specified in the current revised draft.
 - Subscribers will commit to subscribe automatically to all new crops added to Annex 1 and the annual subscription payment would be adjusted the year following any enlargement of the crop list, without any retroactive effect.

- **Commitment by the Governing Body and the Contracting Parties**
 - The Contracting Parties commit to recognize all PGRFA accessed through the SMTA as excluded from conditions and obligations under their respective national access and benefit-sharing legislation.
 - The Governing Body should prepare and approve a Growth Plan to amend the crop scope of Annex 1, with the goal of including in the MLS PGRFA for all crops.
 - All Contracting Parties would clearly state their commitment to undertake the Growth Plan and to work toward this goal.
 - A 5-year period is proposed to achieve the expansion of Annex 1 to all PGRFA.
 - Should the Governing Body fail to enlarge the scope of Annex 1 and the MLS as prescribed by the Growth Plan within the aforementioned period or should PGRFA in the scope of Annex 1 not be effectively made available by providers, each subscriber would have the right to terminate their subscription immediately without any further payment obligations and with full surviving rights for all PGRFA accessed under the subscription.

Beyond these main principles, more details and conditions are provided by the ISF Statement (Attachment 1). The Signatories recognize the important work needed to translate these principles into a workable SMTA but consider the principles above as indispensable elements conditioning their possible subscription.

Attachment 1

ISF "Statement on the Revision of the SMTA"

Statement on the Revision of the SMTA

31 JULY 2017

A STATEMENT PREPARED BY THE INTERNATIONAL SEED FEDERATION

The International Seed Federation (ISF) wishes to provide you with its input for further discussions on the revision of a SMTA to become workable. The new SMTA and the related MLS need to be attractive to users and provide legal certainty.

The SMTA needs to be drafted in such a way that any user, from public sector, private sector, any country, or an organization of any size, can access and make use of MLS genetic resources and comply with reasonable monetary and non-monetary benefit-sharing obligations. Moreover, it should be practical for both frequent and infrequent MLS users.

Therefore, ISF is of the opinion that the SMTA should include the following elements:

1. Multi-optional benefit-sharing mechanism

Based on the type of organization, economics, risk tolerance and legal certainty, and on the quality and accessibility of MLS genetic resources, different benefit-sharing mechanisms can be chosen. Based on discussions that have taken place until now we see the need for two options for benefit-sharing in the SMTA among which the user can choose:

- Option 1: Subscription system; annual subscription fee
- Option 2: Single access mechanism; payment base on use of accessed genetic resources

Regarding the scope of the SMTA, any genetic resource of Annex 1 crops under the management and control of Contracting Parties and available in the public domain should be included in the MLS and become accessible through the SMTA.

- **Option 1: Subscription system; annual subscription fee**

In order to facilitate access for frequent users, to have a continuous input into the benefit-sharing fund and to minimize administrative burden for users, a subscription mechanism could be useful. ISF considers the following conditions important for an efficient and effective Subscription System.

Subscription scope: The subscription system should encourage total portfolio subscription of Annex 1 crops, but it should also be available on a crop by crop basis. Subscribers may not be ready to pay on total Annex 1 crop sales when their MLS needs are limited to a few crops of lesser value or will only serve minor regions. However, in case the subscription is based on a Subscriber's total portfolio of Annex 1 crops, the payment rate should be sufficiently low.

Subscription rate of payment: The rate of payment for the Subscription must make economic sense. In case the system would be implemented for all crops, one should think of a maximum rate of 0.01% on sales of Annex 1 crops by the company.

Subscription term: ISF supports an initial 10-year Subscription term with annual payments after which the Subscriber has the right to terminate the Subscription. A longer initial subscription term will likely require a lower rate needed to make the Subscription attractive.

Access rights during subscription: ISF is of the opinion that a Subscriber should have access to genetic resources in the MLS during the full term of the Subscription. In case, negotiators are of the opinion that the Subscription should have a phase-out period during which the annual payment continues but genetic resource access is no longer possible, ISF may accept a phase-out period as long as it is no longer than 2 years.

Subscription and prior SMTAs: ISF supports retention of paragraph 1.3 of Annex 3 in the 3rd revised draft, so that a Subscriber is relieved from any payment obligations under SMTAs signed prior to the Subscription. Next to that, a Subscriber should have the possibility to bring existing SMTAs under the conditions of the new SMTA, to make the Subscription system more attractive to potential subscribers. However, *mandatory* conversion of prior SMTAs is not desired.

Subscriber's surviving rights and obligations after termination of Subscription: The SMTAs signed during the Subscription term should remain in effect after termination of the Subscription, without application of the payment obligations under 6.7/6.8. ISF is of the opinion that the total payment made during the Subscription term should be sufficient. Upon termination of the Subscription, any time after the specified minimum term, the Subscriber should retain paid-up rights to continue using **Material** accessed during the **Subscription** term in the form received and for the development of **PGRFAuD** (unless Subscription is terminated due to breach of agreement or bankruptcy), to sell and license Products, to breed with PGRFA under Development without payment obligations, and to license and transfer PGRFA under Development.

SMTA surviving rights and obligations: Next to the Subscription, a Subscriber should also be able to terminate the SMTAs signed during the Subscription and it should be clear what surviving rights remain. Breeders must have the right to continue breeding with PGRFA under Development and the right to transfer, license and sell both Products and PGRFA under Development after SMTA termination. Possible transfer obligations should continue until either i) a period of 20 years after signature has passed or ii) 5 outcrosses have been made and no Trait of Value (see Appendix) is maintained, whichever occurs first.

- **Option 2: Single access mechanism; payment based on use of accessed genetic resources**

The single access mechanism will be preferred by MLS users who rarely access genetic resources, who cannot subscribe for a long period, or who prefer to pay on sales of products derived from accessed genetic resources. ISF considers the following conditions important for an effective single access mechanism system.

Single access rate: ISF is of the opinion that the breeders' exemption, as a cornerstone of the plant breeder's rights system, is an important tool for benefit-sharing and open innovation. It implies that any variety protected by plant breeders' rights can be used for further research and breeding and the newly bred variety can be commercialized without any obligations towards the right holder. In case mandatory payments are required for products available without restriction, ISF is of the opinion that the payment

should be significantly lower than the 1.1% rate for products that are available with restriction. ISF recommends a rate of 0.11 to 0.22% of the sales of the product available without restriction less 30%. This difference is consistent with what is used in commercial practice as a ratio between an exclusive license and a non-exclusive license.

Expiration of payment obligations: Payment obligations based on use of a genetic resource should not be in perpetuity; it should be limited in time. Payment obligations should expire either i) when a period of 20 years after signature has passed or ii) once 5 outcrosses have been made and no Trait of Value (see appendix) is maintained, whichever occurs first.

Expiration of transfer obligations of PGRFA under Development: For PGRFA under development it is accepted that this should be transferred with a SMTA. However, ISF urges to limit this obligation to either i) 20 years after signature has passed or ii) 5 outcrosses have been made and no Trait of Value (see appendix) is maintained, whichever occurs first.

SMTA surviving rights and obligations: A user should be able to terminate the SMTA and it should be clear what surviving rights remain. Breeders must have the right to continue breeding with PGRFA under Development and the right to transfer, license and sell both Products and PGRFA under Development after SMTA termination. Possible payment obligations and transfer obligations should continue until either i) a period of 20 years after signature has passed or ii) 5 outcrosses have been made and no Trait of Value (see Appendix) is maintained, whichever occurs first.

2. Contractual and legal clarifications in the SMTA

a. Scope of “sales”: For the purpose of calculating benefit sharing payments, “sales” must be limited to only those seed sales and licensing fees received by the user’s (the Recipient) company and affiliates. Sales should not include value generated beyond the direct business engagement of the Recipient, who is the signatory of the SMTA. A Recipient can’t assume obligations to track, audit, report and pay on downstream value beyond the scope of the company’s own revenue generation.

b. Remedies: The language currently proposed in Articles 6.x is unacceptable and unnecessary. If negotiators insist on introducing remedy language, ISF recommends the following language based on art. 7.4.1 of the UNIDROIT Principles 2010:

“7.2 Any non-performance under this Agreement gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies, except where the non-performance is excused, all in accordance with the UNIDROIT Principles of International Commercial Contracts 2010.”

c. Digital sequence information: The SMTA should be based on PGRFA in material form obtained from the MLS and not on DNA information. The current discussions regarding use of Digital Sequence Information should not delay efforts to finalize the revised SMTA.

d. Unilateral changes: Unilateral changes are not acceptable in usual contractual relations so such changes in the terms of the SMTA or Subscription should not be allowed.

Appendix

Industry proposal for Article 6.5(e) and definition of “Trait of Value”

6.5 In the case 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]: (subparagraphs a through d are unchanged)

- a) (as in draft revised version)
- b) (as in draft revised version)
- c) (as in draft revised version)
- d) (as in draft revised version)

[e) The obligations in this paragraph 6.5 do not apply to Plant Genetic Resources for Food and Agriculture under Development after 5 generations of outcrossing, except where one or more Traits of Value are retained and identified at the time of transfer.]

Proposed definition:

“Trait of Value” means a trait that is bred from the Material, which is selected specifically to increase the commercial value of a product, and is used to describe a Product for the purpose of promoting its Commercialization.

Explanation:

ISF proposes that a commercialized Product is only subject to benefit sharing if it contains >3.125% (theoretical) of the original material (5 or fewer outcrosses) or contains a Trait of Value present in and traceable to the original Material using markers or other scientifically recognized methods. If neither of these conditions are met, product(s) from a user’s breeding program are not subject to mandatory benefit sharing under 6.7 or 6.8.

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of AgReliant Genetics, LLC, hereby sign(s) on behalf of the company the Declaration of Commitment.

AGRELIANT GENETICS, LLC

A handwritten signature in black ink that reads "Mark Herrmann". The signature is written in a cursive style with a large, stylized initial "M".

Name: Mark Herrmann

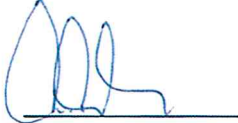
Title: President and CEO

Date: August 23, 2017

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of Bayer AG, hereby sign(s) on behalf of the company the Declaration of Commitment.

Bayer AG



Name: Frank Terhorst

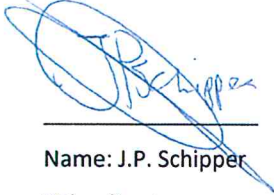
Title: Global Head of Seeds

Date: 2017-08-10

Signature

The undersigned, in his capacity as authorized representative of Bejo Finance B.V., hereby signs on behalf of the company the Declaration of Commitment.

Bejo Finance B.V.



Name: J.P. Schipper

Title: director

Date: 10 August 2017

Signature

The undersigned, in his capacity as authorized representative of East-West International B.V., hereby sign on behalf of the company the Declaration of Commitment.

East-West International B.V.



Name: Ard Groot

Title: Vice Chairman Supervisory Board

Date: 17 August 2017

Signature

The undersigned, in his their capacity as authorized representative(s) of Elsoms Seeds, hereby sign(s) on behalf of the company the Declaration of Commitment.

Elsoms Seeds Ltd

A handwritten signature in black ink, appearing to read "Robin Wood", written over a horizontal line.

Name: Robin Wood

Title: Deputy Chairman

Date: 11.08.17

Signature

The undersigned, in his capacity as authorized representative of Enza Zaden Beheer B.V., hereby sign on behalf of the company the Declaration of Commitment.

Enza Zaden Beheer B.V.



Name: Ir. Jaap P. Mazereeuw

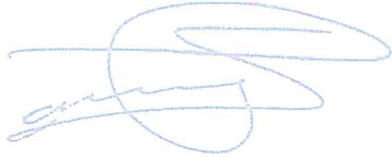
Title: Managing Director

Date: 14th August 2017

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of EURALIS SEMENCES
AVENUE GASTON PHOEBUS 64230 LESCAR, hereby sign(s) on behalf of the company the Declaration of
Commitment.

EURALIS SEMENCES

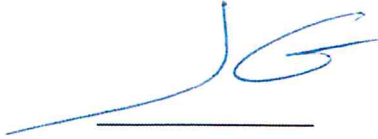
A handwritten signature in blue ink, appearing to be 'Philippe SAUX', written over a horizontal line.

Name: Philippe SAUX
Title: General Manager
Date: August 17, 2017

Signature

The undersigned, in his capacity as authorized representative of GAUTIER SEMENCES SAS, hereby sign on behalf of the company the Declaration of Commitment.

GAUTIER SEMENCES SAS



Name: Jacques GAUTIER

Title: President

Date: 24 August 2017

GAUTIER SEMENCES SAS
OBTENITEUR et PRODUCTEUR
de SEMENCES MARAICHÈRES
13630 EYRAGUES (FRANCE)
SIRET : 351 574 017 00015
Tél. : +33 (0)4 90 240 270

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of KWS SAAT SE hereby sign(s) on behalf of the company the Declaration of Commitment.

KWS SAAT SE



Name: L. H. M. Broers

Title: Memembr Executive Board

Date: 22 August, 2017



E. Kienle

Member Executive Board

22 August, 2017

Signature

The undersigned, in his capacity as authorized representative of Limagrain / Vilmorin & Cie, hereby signs on behalf of the company the Declaration of Commitment.

Limagrain / Vilmorin & Cie



Name: GOUACHE Jean-Christophe

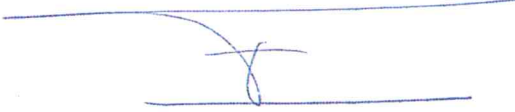
Title: Corporate VP – International Affairs

Date: August 24th 2017

Signature

The undersigned, in his capacity as authorized representative(s) of Régis FOURNIER, hereby signs on behalf of the company the Declaration of Commitment.

MAÏSADOUR SEMENCES



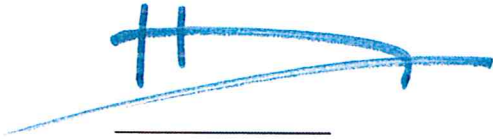
Name: Régis FOURNIER

Title: general manager Maïsadour Semences

Date: 28 August 2017

Signature

The undersigned, in his capacity as authorized representative of Maison Florimond Desprez, hereby signs on behalf of the company the Declaration of Commitment.



Name: François DESPREZ

Title: Président

Date: August 11th, 2017

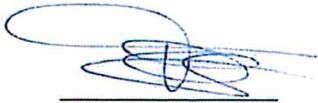
S.A.S. MAISON FLORIMOND DESPREZ
3 Rue Florimond Desprez
F. 59242 CAPPELLE EN PEVELE
Siret 458 590 170 00014 - Code APE 0119 Z

①

Signature

The undersigned, in his capacity as authorized representative of RAGT, hereby sign on behalf of the company the Declaration of Commitment.

RAGT



Name: Claude TABEL

Title: Chairman of the Executive Board

Date: 24th of August 2017

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of RiceTec, Inc., hereby sign(s) on behalf of the company the Declaration of Commitment.

RiceTec, Inc.
1925 FM 2917 Rd.
Alvin, TX 77512
(281) 756-3300

A handwritten signature in black ink, appearing to be 'Dr. Jose Re', written over a horizontal line.

Dr. Jose Re
Vice President
Research & Technology
August 21, 2017

Signature

The undersigned, in his capacity as authorized representative of Rijk Zwaan Zaaeteelt en Zaaehandel B.V., hereby signs on behalf of the company the Declaration of Commitment.

Rijk Zwaan Zaaeteelt en Zaaehandel B.V.

A handwritten signature in blue ink, appearing to read 'B.M. Tax', written over a horizontal line.

Name: B.M. Tax

Title: Managing Director

Date: 21 August 2017

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of [Sakata Seed Corporation], hereby sign(s) on behalf of the company the Declaration of Commitment.

[Sakata Seed Corporation]

A handwritten signature in blue ink, appearing to read "Hiroshi Sakata", written over a horizontal line.

Name: Hiroshi Sakata

Title: President

Date: 2017/8/21

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of Sejet Plant Breeding, hereby sign(s) on behalf of the company the Declaration of Commitment.

Sejet Planteforædling I/S,
Sejet Plant Breeding,
Nørremarksvej 67, 8700 Horsens,
Denmark

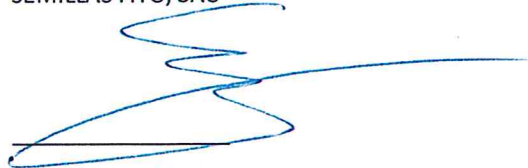


Name: Birger Eriksen
Title: Managing Director
Date: 21-08-2017

Signature

The undersigned, in his capacity as authorized representative of SEMILLAS FITO, SAU hereby signs on behalf of the company the Declaration of Commitment.

SEMILLAS FITO, SAU

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Name: Eduard Fitó

Title: Director

Date: 16/August/2017

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of *Snow Brand Seed co., Ltd*, hereby sign(s) on behalf of the company the Declaration of Commitment.

Snow Brand Seed Co., Ltd

Masahito Akaishi

Name: Masahito Akaishi

Title: President

Date: *21st . August . 2017*

Signature

The undersigned, in his/her/their capacity as authorized representative(s) of Takii & Co. Ltd, hereby sign(s) on behalf of the company the Declaration of Commitment.

Takii & Co. Ltd

A handwritten signature in black ink, appearing to read 'Denichi Takii', written over a horizontal line.

Name: Denichi Takii

Title: CEO, President

Date: 10th August 2017