



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



**International Treaty
on Plant Genetic Resources
for Food and Agriculture**

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

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

Rome, Italy, 16–18 April 2024

The “June 2019 draft package”: Note by the Co-Chairs

Executive Summary

At its Tenth Session, the Governing Body endorsed the suggestion of the Working Group to use the “June 2019 draft package” as a starting point for its further work (Resolution 3/2023).

In this document, the Co-Chairs briefly describe the main elements of the “June 2019 draft package”.

The “June 2019 draft package” is contained in Appendix 2 to this document.

Guidance Sought

The Working Group is invited (1) to recall the main elements and concepts of the “June 2019 draft package”, (2) to provide general recommendations to the Co-Chairs on further refining the “June 2019 draft package” so that they could prepare a negotiating text for the twelfth meeting.

Appendix 1

THE “JUNE 2019 DRAFT PACKAGE”: NOTE BY THE CO-CHAIRS**I. INTRODUCTION**

1. We prepared this document as Co-Chairs to provide an overview of the “June 2019 draft package” and describe its main content.
2. At its Ninth Session, the Governing Body had decided that the resumed process for the enhancement of the Multilateral System should build upon previous progress and achievements both in terms of structure and content and address, in a balanced manner, all three blocks of the package of measures developed previously (revised SMTA; expansion of Annex I; implementation measures through a Resolution).¹
3. The Working Group, at its last meeting, agreed that the “June 2019 draft package” should serve as the starting point for further work, complemented with additional ideas and revisions, as needed.² This suggestion was endorsed by the Governing Body at its Tenth Session.³
4. We intend to present a full draft package of measures for consideration by the Working Group at its twelfth meeting, as also suggested by the Working Group at its tenth meeting.⁴
5. As we pointed out in our checkpoint report to the Tenth Session of the Governing Body, we believe that the ninth meeting of the Working Group, in June 2019, was a moment of substantive progress in the earlier phase of the enhancement process. What came out of that meeting was perhaps the most advanced draft outcome package of measures the Working Group was able to achieve at the time.⁵ The resulting “June 2019 draft package” signified a moment of genuine commitment, compromise and trust.
6. The “June 2019 draft package” is contained in *Appendix 2* to this document. It reproduces, in an unedited manner, the draft package contained in the Working Group report, [IT/OWG-EFMLS-9/19/Interim Report](#) (pages 19-42), which is available in all six UN languages at www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1106601/.
7. We encourage the Working Group to not only bear in mind the substantive progress but to also remember the crucial level of commitment, willingness to compromise and mutual trust, that ultimately led to the “June 2019 draft package.”

II. OVERVIEW

8. The “June 2019 draft package” covers all three elements referred to in Resolution 3/2022: a draft text for an amendment to Annex I of the International Treaty, a draft revised Standard Material Transfer Agreement (SMTA), and a draft resolution of the Governing Body with proposed implementation measures.

¹ [Resolution 3/2022](#)

² [IT/OWG-EFMLS-10/23/Report](#)

³ [Resolution 3/2023](#)

⁴ [IT/OWG-EFMLS-10/23/Report](#)

⁵ [IT/GB-10/23/09.2](#), Checkpoint Report of the Co-Chairs of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System

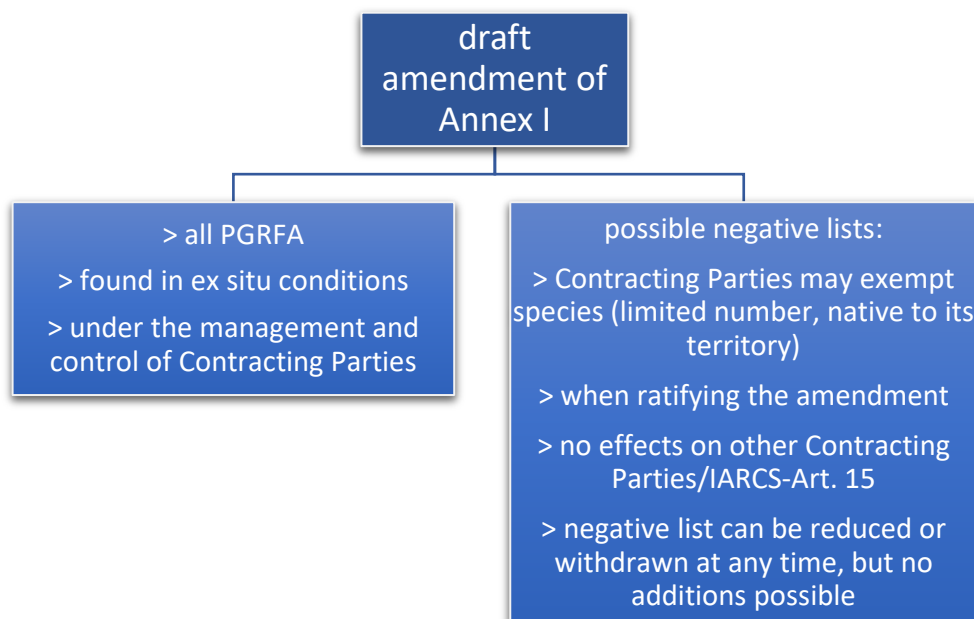
Figure 1. Overview of the “June 2019 draft package”⁶



9. The Working Group had worked – and continues to work – on the basis of the principle that nothing is agreed until everything is agreed. However, it is to be noted that preliminary consensus was reached at the time on some aspects, reflected as “(AGREED AD REF)” text in the draft Resolution and in the draft revised SMTA, and we had indicated our intention to build on that to make further progress.

III. THE AMENDMENT OF ANNEX I

Figure 2. Overview of the draft amendment of Annex I



10. The draft text for an amendment to Annex I in the “June 2019 draft package”⁷ would expand the coverage to all plant genetic resources for food and agriculture but with significant safeguards, namely (1) a limitation to ex situ material only, and (2) a possibility of a “negative list” at national level.

11. After clarifying that the Multilateral System covers only those resources that are under the management and control of the Contracting Parties and in the public domain, the text defines that the expanded coverage relates only to resources found in ex situ conditions.

12. The second element of the draft amendment text provides a possibility for Contracting Parties to establish a “negative list” of species when ratifying, accepting or approving the amendment. However, the list may only cover a limited number of species that are native to its territory. A “negative list” would not

⁶ [IT/OWG-EFMLS-9/19/Interim Report](#)

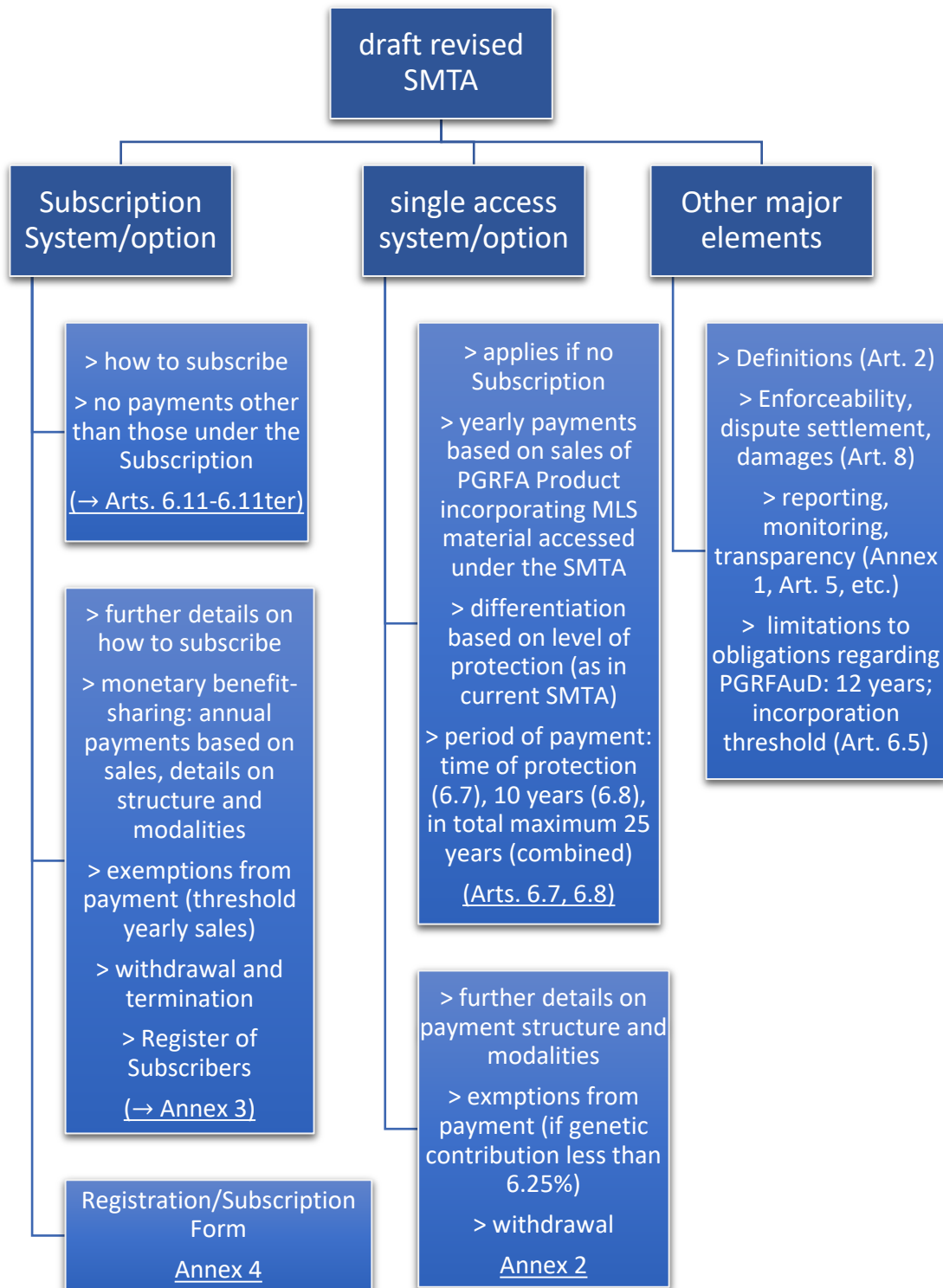
⁷ [IT/OWG-EFMLS-9/19/Interim Report](#), page 42

have any effect on facilitated access provided to the species by other Contracting Parties or Article 15 institutions. Any list can be reduced or eliminated at any time.

13. The draft Resolution contains further relevant language, as explained in Section V and Figure 4 below.⁸

IV. THE REVISED STANDARD MATERIAL TRANSFER AGREEMENT

Figure 3. Overview of the draft revised SMTA



⁸ IT/OWG-EFMLS-9/19/Interim Report, page 22

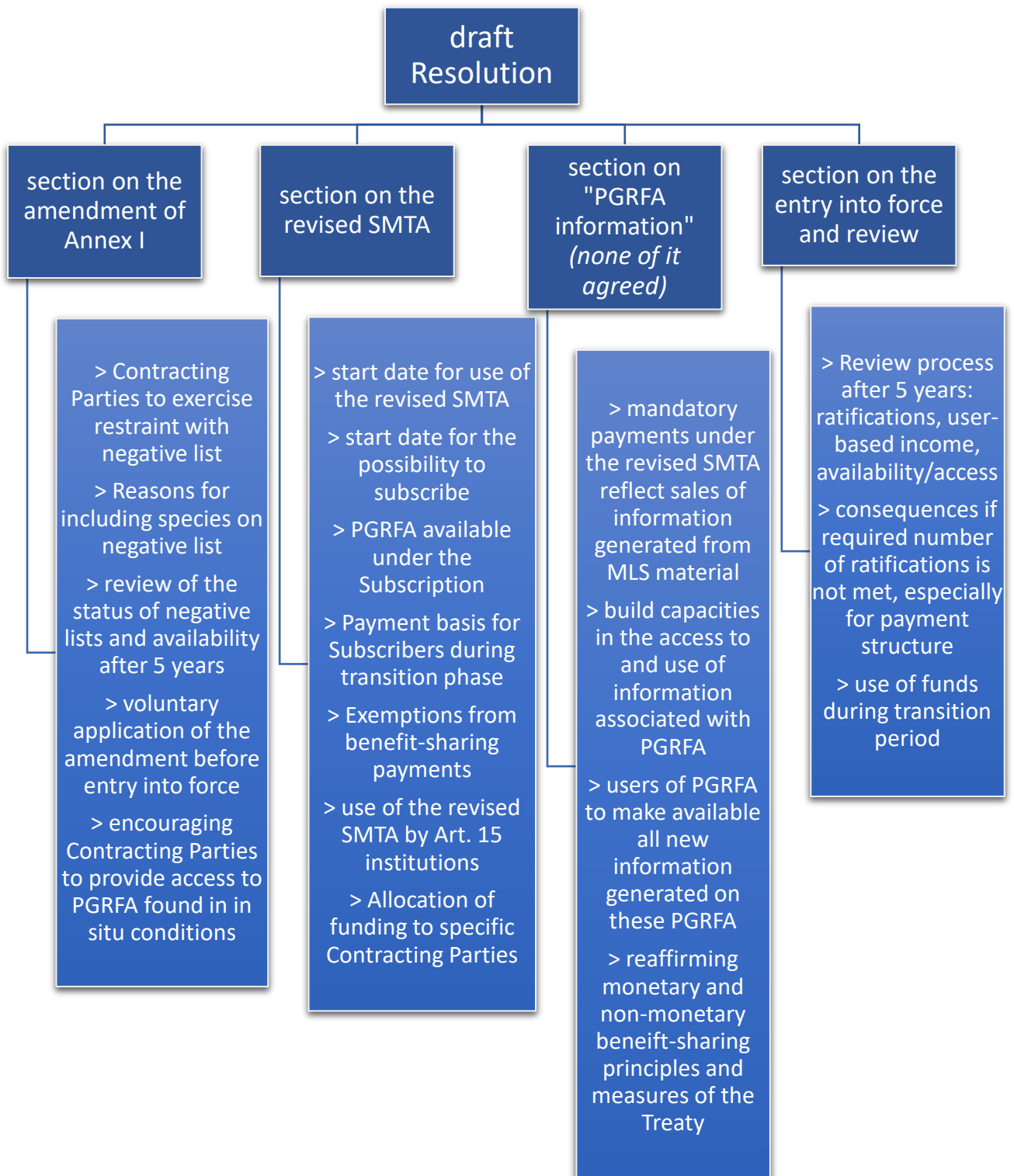
14. The “June 2019 draft package” contains a very advanced draft revised SMTA. This work was based on earlier efforts of the Working Group, considering the submissions received from Contracting Parties and stakeholders, advice by the Standing Group of Legal Experts (SGLE) and by several Friends of the Co-chairs groups (FOCCs), as well as the discussions during a series of informal consultations.
15. An overview of this information is available at <https://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/>.
16. We believe that the most significant elements of the draft revised SMTA include the following:
- a. Provision for a subscription option (Subscription System)⁹ as the primary means to enhance the predictability and sustainability of user-based payments to the Benefit-sharing Fund in a long-term manner;
 - b. Provisions to make the SMTA more attractive to users, especially those who are expected to make benefit-sharing payments, for example the withdrawal clauses and the minimum incorporation threshold clauses;
 - c. Enhanced enforceability and dispute settlement provisions, as well as provisions on damages;
 - d. Improved reporting, monitoring and transparency clauses.
17. Further work will now need to focus primarily on the payment structure and rates, which are one of the three “hotspots”.
18. Regarding digital sequence information/genetic sequence data, discussions will be needed on if, where and how to address this “hotspot” in the revised SMTA.
19. After discussing the “hotspots”, the Working Group could go through the other remaining issues in the revised SMTA and provide inputs to us as Co-Chairs for developing a negotiating text for the twelfth meeting.

V. THE DRAFT RESOLUTION

20. The draft Resolution contains complementary provisions for both the amendment of Annex I and the revised SMTA.
21. In addition, it comprises text on “PGRFA information”, a term used by the earlier Co-Chairs to refer to one of the “hotspots”, namely digital sequence information/genetic sequence data. None of the elements of this text were agreed at the time. Nevertheless, we suggest that dealing with the “hotspot” in the draft Resolution might be something worth considering for the Working Group.
22. Importantly, the draft Resolution seeks to address the transitional period until the amendment of Annex I would enter into force (which is dependent on reaching the required number of ratifications) and provides for related arrangements. A review process would take place after five years and consequences are already defined in the draft Resolution, should the required number of ratifications not be met.
23. These latter elements seek to establish a solution for the important interlinkage of an expansion of the coverage of Annex I with the realization of monetary benefit-sharing and vice versa.

⁹ The “June 2019 draft package” uses the terms “Subscription System” and “single access system”. In the report of its tenth meeting, the Working Group uses the terms “subscription option” and “single access option”, which the Co-Chairs accordingly used in their checkpoint report to the Tenth Session of the Governing Body and – whenever possible – in this document.

Figure 4. Overview of the draft Resolution



VI. NEXT STEPS AND GUIDANCE SOUGHT

24. We plan to refine the “June 2019 draft package” and provide the updated version to the twelfth meeting of the Working Group, incorporating the suggestions received during this eleventh meeting.

25. The “June 2019 draft package” will therefore be used as a starting point for enabling negotiations by the Working Group. The primary focus will first be on the three “hotspots”, digital sequence information/genetic sequence data, expansion of Annex I, and payment structure and rates. We have identified some options for the “hotspots” in the document, IT/OWG-EFMLS-11/24/5.

26. Other areas will then require further work, especially some provisions in the revised SMTA and the transitional phase until the entry into force of the amendment of Annex I.

27. The Working Group is invited to provide recommendations to us Co-Chairs on the preparation of a Co-Chairs’ proposal based on the “June 2019 draft package”. Such recommendations may include to

- a. revise the introductory paragraphs to reflect developments since 2019;
- b. as much as possible avoid rewriting text marked as *AGREED AD REF* in the “June 2019 draft package”;
- c. as much as possible avoid providing alternative texts for a given paragraph that still existed in the draft Resolution of the “June 2019 draft package” (see for example paragraph 14 in the draft Resolution);
- d. update relevant dates contained in the “June 2019 draft package”;
- e. include provision for a section on DSI/GSD in the draft Resolution;
- f. take into consideration inputs by the Working Group on the three “hotspots” and in particular on the options identified by the Co-chairs in the document, IT/OWG-EFMLS-11/24/5;
- g. take into consideration any other inputs by the Working Group on other areas that will require further work, especially some provisions in the revised SMTA and the transitional phase until the entry into force of the amendment of Annex I.

Appendix 2

**DRAFT RESOLUTION **/2019: ENHANCEMENT OF THE
MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING OF THE
INTERNATIONAL TREATY**

[THE GOVERNING BODY,

Recalling Resolution 2/2006, by which it adopted the Standard Material Transfer Agreement; (AGREED AD REF)

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: (AGREED AD REF)

(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 Resolutions 1/2015 and 2/2017, by which it extended the mandate of the Working Group for the 2016-2017 and 2018-2019 biennia; (AGREED AD REF)

Having considered the report of the Working Group on the results of its work, and particularly the results of the ninth meeting that included the draft revised Standard Material Transfer Agreement, proposed by the Working Group, and a draft text for amending Annex I of the International Treaty; (AGREED AD REF)

Thanking the Working Group for its productive work and constructive spirit; (AGREED AD REF)

Further thanking the Co-chairs for their commitment and able guidance, which facilitated the successful conclusion of the tasks it requested from the Working Group; (AGREED AD REF)

Recalling Article 1 of the International Treaty, which states that the objectives of the International 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, and also states that these objectives will be attained by closely linking the Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity; (AGREED AD REF)

Noting that the Standard Material Transfer Agreement should be in conformity with the International Treaty, be effective, and should ensure the efficient implementation of the Multilateral System; (AGREED AD REF)

Potential elements for the revised SMTA

1. *Adopts* the Standard Material Transfer Agreement as revised and contained in Appendix 1 to this Resolution; (AGREED AD REF)
2. *Decides* that the revised Standard Material Transfer Agreement as contained in Appendix 1 to this Resolution replaces the current Standard Material Transfer Agreement as of 1 July 2020; (AGREED AD REF)
3. *Decides* that the registration to the Subscription System under the revised Standard Material Transfer Agreement will be open as of 1 July 2020 and that facilitated access under the Subscription System is provided to the plant genetic resources for food and agriculture listed in the current Annex I and to all other plant genetic resources for food and agriculture made available under the terms and conditions of the Multilateral System. Payments under the Subscription System will be calculated based on the list of plant genetic resources for food and agriculture listed in the current Annex I; (AGREED AD REF)

4. *Decides* that, notwithstanding the obligations and conditions laid down in the revised Standard Material Transfer Agreement, rights of farmers and indigenous communities to conserve, exchange and use the Material that is available in the Multilateral System are preserved; and the public institutions involved in research and breeding in the developing countries are exempted from any payment obligations arising out of access and use of Material from Multilateral System;
5. *Recognises* the need to ensure the access without restriction to any PGRFA in the form received from the MLS;
5. BIS *Recognises* that a certain amount of PGRFA put into the MLS are still being used *in-situ*;
5. TER *Recognises* that these uses, often on-farm, include, inter alia, food and agriculture production, reproduction, exchange and sell of reproductive material of these PGRFA;
5. QUATER *Recalls* that these uses on PGRFA in the form received from the MLS should be applied as appropriate, in accordance to relevant national laws;
5. QUINTES *Calls upon* every Contracting Party to take measures preventing Recipients of PGRFA from the MLS from claiming any new IP or other rights that limit these uses on PGRFA in the form received and provided to the MLS under the revised SMTA, notwithstanding the provisions of the article 6.2 of the revised SMTA;
6. *Recalls* that pursuant to Article 15 of the International Treaty, CGIAR Centers and other international institutions have signed a number of Agreements with the Governing Body, agreeing to provide Annex I materials in accordance with Part IV of the International Treaty and provide non-Annex I materials subject to guidance from the Governing Body; (AGREED AD REF)
7. *Recalling* that at its Second Session it endorsed that interpretative footnotes or series of footnotes would be included to relevant provisions of the Standard Material Transfer Agreement for transfers of non-Annex I material collected before the entry into force of the International Treaty to be used by CGIAR Centers, *confirms* that CGIAR Centers and other Article 15 institutions should start using the revised Standard Material Transfer Agreement as of July 2020, for distributions of both Annex I and non-Annex I materials and *appeals* to Contracting Parties and other governments, especially host countries, to facilitate the implementation of Article 15 Agreements, in particular their ability to exchange and transfer plant genetic resources for food and agriculture under the Treaty; (AGREED AD REF)
7. BIS *Decides* that, as of July 2020, CGIAR Centers and other Article 15 institutions should require the Recipients of in trust materials to make any genetic sequence data on these materials publicly available;
8. *Appreciates* there are limits to the ability of genebanks and, as highlighted in the statement issued by CGIAR Centers upon signature of their Article 15 agreements in 2006, CGIAR Centers to respond to large requests covering a broad range of materials; (AGREED AD REF)
9. Further *decides* that a Provider and a Recipient who signed or accepted a Standard Material Transfer Agreement before 1 July 2020 have the right to jointly agree on replacing such Standard Material Transfer Agreement with the revised Standard Material Transfer Agreement as contained in Appendix 1 to this Resolution; (AGREED AD REF)
10. *Urges* Contracting Parties to the International Treaty, as well as institutions that have concluded agreements with the Governing Body under Article 15 of the International Treaty, to take measures necessary for the implementation of the revised Standard Material Transfer Agreement as contained in Appendix 1 to this Resolution; (AGREED AD REF)
11. *Notes* that the revisions to the Standard Material Transfer Agreement do not alter the rights, roles and responsibilities of the third party beneficiary and *invites* the Food and Agriculture Organization of the United Nations, as the third party beneficiary, to continue to carry out the roles and responsibilities, as identified and prescribed in the revised Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures adopted by the Governing Body through Resolution 5/2009; (AGREED AD REF)

11. BIS *Requests* the Secretary to publicize the adoption and to promote the implementation of the revised Standard Material Transfer Agreement including through provision of technical support and background information as well as through communication efforts for various users, including regional or national capacity-building workshops, subject to the availability of financial resources; (AGREED AD REF)
11. TER *Recalling* Article 18.4 of the International Treaty and further *recalling* with appreciation the voluntary contributions made by Contracting Parties to the Benefit-sharing Fund in the past, *invites* Contracting Parties in a position to do so, especially Contracting Parties that are developed countries, the private sector, NGOs and other sources, at their earliest opportunity, to make pledges to the Benefit-sharing Fund for the period from 2020 to 2025 as an important trust building measure in light of the enhancement of the Multilateral System; (AGREED AD REF)
11. QUATER *Requests* the Secretary of the International Treaty to inform the Governing Body on the state of the pledges done; (AGREED AD REF)
12. *Requests* the Secretary of the International Treaty to monitor the implementation and operation of the revised Standard Material Transfer Agreement as contained in Appendix 1 to this Resolution, in particular the new Subscription System, with a view to provide a comprehensive report on progress to the Governing Body at each subsequent Session; (AGREED AD REF)
13. *Invites* Recipients under the revised Standard Material Transfer Agreement as contained in Appendix 1 to this Resolution, especially commercial users, to opt for the Subscription System; (AGREED AD REF)
14. *Emphasizes* the importance of the Multilateral System to enable access to plant genetic resources for food and agriculture to a wide range of users, in particular family farmers, indigenous peoples, small plant breeding companies and public institutions, and in doing so, *agrees* to exempt from the requirements of benefit-sharing in the revised Standard Material Transfer Agreement users that have less than [XX] seed sales a year and *requests* each Contracting Party to inform the Governing Body how these terms are defined in its respective national jurisdiction;

OR

14. ALT *Recognizing* the key importance and rights that family farmers, indigenous communities, and small plant breeding companies have in developing countries to conserve, make sustainable use exchange plant genetic resources for food and agriculture, and taking into account local economic, social and legal considerations in those countries, among others, *decides* that they will be exempted from any payment provision and legal provisions related of the Standard Material Transfer Agreement and that National Focal Points in developing countries will provide to the Governing Body with a limited list of small plant breeding companies and will certify that a Subscriber is a family farmer that shall be exempted from any payment and legal provisions associated;
14. ALT BIS *Recognizing* the key importance in developing countries of public institutions, from a social, economic and legal points of views among others, *decides* that they will be exempted from any payment provision and legal provisions related of the Standard Material Transfer Agreement and that National Focal Points in developing countries will provide to the Governing Body with a list of public institutions that should be exempted;
15. *Requests* the Committee of the Funding Strategy to prepare possible criteria for allocation of funds by the Benefit-sharing Fund, that could take into account, *inter alia*, payments made by entities in a given country; whether a country has ratified the amended Annex I and is actively sharing the material through the Multilateral System and has made its material fully available;

OR

15. ALT *Taking into account* the urgent needs of developing countries in relation to conservation and sustainable use of plant genetic resources for food and agriculture, *decides* that when a payment is made by a Recipient located in the territory of a Contracting Party that is in a developing country or in a territory of a Contracting Party with an economy in transition, or when the payment made by a Recipient has been calculated according to the Article 6.8 of the Standard Material Transfer Agreement based on the accounting records of the Recipient in the territory of a Contracting Party that is a developing country or a territory of a Contracting Party with an economy in transition, then 60%-80% of the amount effectively transferred into the mechanism established by the Governing Body will immediately be allocated to finance projects for the

implementation of the International Treaty in that Contracting Party that is a developing country and from which the deposited funds came from / in the region of the Contracting Party from which the deposited funds came from. These funds will be administered by the Application Authority designated by each Contracting Party for this purpose, together with FAO. The progress in implementation of the projects will be informed to the Committee on the Funding Strategy and Resource Mobilization, which will regularly report to the Governing Body;

Potential elements for the amendment of Annex I

16. *Decides* to adopt the amendment to Annex I of the International Treaty as contained in *Appendix 2* to this Resolution, in accordance with Articles 23 and 24 of the International Treaty; (AGREED AD REF)
17. *Encourages* all Contracting Parties to consider ratifying, accepting or approving the amendment contained in Appendix 2 as soon as possible to allow for its timely entry into force; (AGREED AD REF)
18. *Decides* that when ratifying, accepting or approving the amendment of Annex I of the International Treaty, a Contracting Party may, exceptionally, declare certain and a limited number of species native to its territory that it will not make available under the terms and conditions of the Multilateral System; *requests* the Secretary to make such lists publicly available; *invites* Contracting Parties who avail themselves of the right stipulated in this paragraph to consider eliminating plant genetic resources for food and agriculture from their list whenever possible and communicate such decision to the Secretary; *emphasizes* that such declared lists do not affect the rights and obligations of any other Contracting Party under the International Treaty or of the International Agricultural Research Centres or other International Institutions that concluded an agreement with the Governing Body under Article 15 of this Treaty;
19. *Calls upon* Contracting Parties to exercise restraint in making a declaration of exclusion under the amendment; (AGREED AD REF)
20. *Requests* Contracting Parties which are making a declaration to state clear reasons for any exclusion, which may include, *inter alia*, pre-existing legal restrictions, socio-economic or cultural reasons, bearing in mind food security and interdependence; (AGREED AD REF)
21. *Recalling* that the availability of and facilitated access to material in the Multilateral System is an incentive for subscription to the Multilateral System, *decides* to review the status of declarations of exclusions to the amendment as part of its review in 2025 relating to the availability of and facilitated access provided to material within the Multilateral System; (AGREED AD REF)
22. *Decides* that the Benefit-sharing Fund should not support projects related to excluded species in Contracting Parties that have excluded those species; (AGREED AD REF)
23. *Encourages* Contracting Parties to provide access according to the terms and conditions of the Multilateral System to all plant genetic resources for food and agriculture found in *in situ* conditions, in accordance with Article 12.3h of the Treaty, as appropriate;
24. *Requests* the Secretary to promote the ratification, acceptance or approval of the amendment of Annex I including through communication efforts and the provision of background information to Contracting Parties and others, to support or facilitate timely ratification, acceptance or approval by as many countries as possible; (AGREED AD REF)
25. *Invites* the Director General of FAO to inform the FAO Conference about the amendment of Annex I and to promote its ratification, acceptance or approval by Member Countries that are Contracting Parties of the International Treaty; (AGREED AD REF)
26. *Decides* that the Governing Body acts as the Governing Body for the amendment, comprising the Contracting Parties that have ratified, accepted or approved the amendment; (AGREED AD REF)
27. *Decides* that after the entry into force of this amendment, any ratification, acceptance or approval of or accession to the International Treaty includes this amendment; (AGREED AD REF)
28. *Invites* Contracting Parties, pending entry into force of the amendment, to already make available under the terms and conditions of the Multilateral System the full extent of their plant genetic resources for food and agriculture; (AGREED AD REF)

Potential elements for the draft Resolution related to PGRFA information.

29. *Reaffirms* that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the exchange of information, access to and transfer of technology, capacity-building, and the sharing of monetary and other benefits arising from commercialization, as provided for in Article 13.2 of the Treaty;
30. *Reaffirms* that facilitated access to plant genetic resources for food and agriculture which are included in the Multilateral System constitutes itself a major benefit of the Multilateral System, as provided for in Article 13.1 of the Treaty;
31. *Reaffirms* that, in accordance with Treaty Article 12.3.c, all available passport data and, subject to applicable law, any other associated non-confidential descriptive information, shall be made available with the plant genetic resources for food and agriculture provided under the Multilateral System;
32. *Urges* Contracting Parties, and *invites* natural and legal persons, who hold information associated with plant genetic resources for food and agriculture to make such information publicly accessible, for example by linking it to the Global Information System;
33. *Encourages* users of plant genetic resources for food and agriculture from the Multilateral System to make available all new information generated on these plant genetic resources for food and agriculture, and to support capacity building efforts so that such information can be used and shared, in order to achieve the objectives of the Treaty to support sustainable agriculture and global food security;
34. *Invites* Contracting Parties, especially developed country Contracting Parties, to provide resources and support to developing country Contracting Parties and Contracting Parties with economies in transition to build capacities in the access to and use of information associated with plant genetic resources for food and agriculture;
35. *Agrees* that mandatory payments under the revised Standard Material Transfer Agreement contained in Appendix 1 to this Resolution also reflect the sales of information generated from the material from the Multilateral System that is commercialized;

Potential elements for the implementation and review of the enhanced Multilateral System

36. *Agrees* to review, at its Eleventh Session in 2025, the status of (1) ratifications to the amended Annex I; (2) the level of user-based income accruing to the Benefit-sharing Fund (3) availability of and access provided to material within the Multilateral System; (AGREED AD REF)
37. *Decides* that, should the review show that the number of ratifications required for the entry into force of the amendment has not been reached:
- i. Article 6.8 of the Standard Material Transfer Agreement would then become voluntary again, until the entry into force of the amendment; (AGREED AD REF)
 - ii. The registration to the Subscription System will be suspended until the entry into force of the amendment; (AGREED AD REF)
 - iii. Subscribers will be given the option to (1) terminate their subscription with immediate effect and revert to Articles 6.7 and 6.8 of the Standard Material Transfer Agreement (Single access system). In order to avoid double payment, any amounts paid shall be credited towards any payments that might fall due under the single access system within the following ten years from the starting date of the initial subscription; or to (2) voluntarily continue their subscriptions for a total of ten years from the starting date of their subscription; (AGREED AD REF)
38. *Decides* that income generated through the Subscription System is to be paid into the Benefit-sharing Fund. As a transitional measure and without prejudice to future allocation of funds available under the Benefit Sharing Fund, 50% of this income is to be utilized to support projects in Contracting Parties that are developing countries or with economies in transition that would have ratified the amendment, or that included material into the Multilateral System. The remaining amount is to be held in the Benefit-sharing Fund to be utilized when the amendment enters into force; (AGREED AD REF)

39. *Decides* that it may extend the period for giving effect to this package of measures should the review mentioned above show that the entry into force of the amendment is within reach in order to allow for more Contracting Parties to complete national ratification processes; (AGREED AD REF)
40. *Requests* the Secretary to submit a progress report on the number of ratifications and respective declarations and on income generated to the Benefit-sharing Fund through the revised Standard Material Transfer Agreement as contained in Annex I at each Session of the Governing Body; (AGREED AD REF)
41. *Decides* to reconvene the *Ad Hoc* Technical Advisory Committee on the Multilateral System and the Standard Material Transfer Agreement during the biennium 2020/2021 to provide advice on the implementation of the enhanced Multilateral System (AGREED AD REF)]

Annex 1 to Appendix 2

**[DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT: PROPOSAL
BY THE WORKING GROUP
TO THE EIGHTH SESSION OF THE GOVERNING BODY**

1 **PREAMBLE**

2
3 **WHEREAS**

4
5 The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the
6 **Treaty**”¹⁰) was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered
7 into force on 29 June 2004; (AGREED AD REF)

8
9 The objectives of the **Treaty** are the conservation and sustainable use of **Plant Genetic Resources for Food
10 and Agriculture** and the fair and equitable sharing of the benefits arising out of their use, in harmony with
11 the Convention on Biological Diversity, for sustainable agriculture and food security; (AGREED AD REF)

12
13 The Contracting Parties to the **Treaty**, in the exercise of their sovereign rights over their **Plant Genetic
14 Resources for Food and Agriculture**, have established a **Multilateral System** both to facilitate access to
15 **Plant Genetic Resources for Food and Agriculture** and to share, in a fair and equitable way, the benefits
16 arising from the utilization of these resources, on a complementary and mutually reinforcing basis;
17 (AGREED AD REF)

18
19 Articles 4, 11, 12.4 and 12.5 of the **Treaty** are borne in mind; (AGREED AD REF)

20
21 The diversity of the legal systems of the Contracting Parties with respect to their national procedural rules
22 governing access to courts and to arbitration, and the obligations arising from international and regional
23 conventions applicable to these procedural rules, are recognized;

24
25 Article 12.4 of the **Treaty** provides that facilitated access under the **Multilateral System** shall be provided
26 pursuant to a Standard Material Transfer Agreement, and the **Governing Body** of the **Treaty**, in its
27 Resolution 1/2006 of 16 June 2006, adopted the Standard Material Transfer Agreement, which in Resolution
28 [XX]/2019 of [XX] November 2019 it decided to amend. (AGREED AD REF)

29

¹⁰Defined terms have, for clarity, been put in bold throughout.

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

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**”), (AGREED AD REF)

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**”). (AGREED AD REF)

1.3 The parties to **this Agreement** hereby agree as follows: (AGREED AD REF)

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**. (AGREED AD REF)

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

“**Governing Body**” means the **Governing Body** of the **Treaty**. (AGREED AD REF)

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**. (AGREED AD REF)

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

“**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**. (AGREED AD REF)

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate¹¹ 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. (AGREED AD REF)

* *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.

¹¹ As evidenced, for example, by pedigree or notation of gene insertion.

1 **["Sales"** means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the
2 **Recipient**, its affiliates, contractors, licensees and lessees.]

3 [ALT **"Sales"** means the gross income received by the **Recipient** and its affiliates in the form of license fees
4 [for **Plant Genetic Resources for Food and Agriculture**] and from **commercialization**. [and from
5 commercial use of genetic sequence data.]]

6
7 **["To commercialize"** means to sell a **Product** or **Products** [or any associated information including genetic
8 sequence data] for monetary consideration on the open market, and **"commercialization"** has a
9 corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic
10 Resources for Food and Agriculture under Development**.]

11 [ALT **"To commercialize"** means to exchange **Plant Genetic Resources for Food and Agriculture** [or any
12 associated information including genetic sequence data] for monetary consideration on the open market, and
13 **"commercialization"** has a corresponding meaning. **Commercialization** shall not include any form of
14 transfer of **Plant Genetic Resources for Food and Agriculture under Development**, nor shall it include
15 the sale of commodities and other products used for food, feed and processing.]

16 17 18 **ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT**

19
20 The **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement**
21 (hereinafter referred to as the **"Material"**) and the available related information referred to in Article 5b and
22 in *Annex 1* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set
23 out in **this Agreement**. (AGREED AD REF)

24 25 26 **ARTICLE 4 — GENERAL PROVISIONS**

27
28 4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be
29 implemented and interpreted in accordance with the objectives and provisions of the **Treaty**. (AGREED AD
30 REF)

31
32 4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have
33 been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those
34 taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.¹² (AGREED AD REF)

35
36 4.3 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United
37 Nations acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third
38 party beneficiary under **this Agreement**. (AGREED AD REF)

39
40 4.4 The third party beneficiary has the right to request the appropriate information as required in Articles
41 5e, 6.5c, 8.3, *Annex 2*, paragraph 5, and *Annex 3*, Article 3.5, to **this Agreement**. (AGREED AD REF)

42
43 4.5 The rights granted to the Food and Agriculture Organization of the United Nations above do not
44 prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**. (AGREED AD
45 REF)

46 47 48 **ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER**

49
50 The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the
51 **Treaty**: (AGREED AD REF)

52

12 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 or other relevant institutions will be applicable.

- 1 a) Access shall be accorded expeditiously, without the need to track individual accessions and free
2 of charge, or, when a fee is charged, it shall not exceed the minimal cost involved; (AGREED
3 AD REF)
4
- 5 b) All available passport data and, subject to applicable law, any other associated available non-
6 confidential descriptive information, shall be made available with the **Plant Genetic Resources**
7 **for Food and Agriculture** provided; (AGREED AD REF)
8
- 9 c) Access to **Plant Genetic Resources for Food and Agriculture under Development**, including
10 material being developed by farmers, shall be at the discretion of its developer, during the period
11 of its development; (AGREED AD REF)
12
- 13 d) Access to **Plant Genetic Resources for Food and Agriculture** protected by intellectual and
14 other property rights shall be consistent with relevant international agreements, and with relevant
15 national laws; (AGREED AD REF)
16
- 17 e) The **Provider** shall inform the **Governing Body** at least once every two calendar years, or
18 within an interval that shall be, from time to time, decided by the **Governing Body**, about the
19 Material Transfer Agreements entered into,¹³ (AGREED AD REF)
20

21 either by:

22
23 Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,¹⁴
24 (AGREED AD REF)

25 or

26
27 Option B: In the event that a copy of the Standard Material Transfer Agreement is not
28 transmitted, (AGREED AD REF)

- 29 i. ensuring that the completed Standard Material Transfer Agreement is at the disposal
30 of the third party beneficiary as and when needed;
- 31 ii. stating where the Standard Material Transfer Agreement in question is stored, and
32 how it may be obtained; and
- 33 iii. providing the following information:
- 34 a) The identifying symbol or number attributed to the Standard Material Transfer
35 Agreement by the **Provider**;
- 36 b) The name and address of the **Provider**;
- 37 c) The date on which the **Provider** agreed to or accepted the Standard Material
38 Transfer Agreement, and in the case of shrink-wrap, the date on which the
39 shipment was sent;
- 40 d) The name and address of the **Recipient**, and in the case of a shrink-wrap
41 agreement, the name of the person to whom the shipment was made;

¹³ 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/>.

¹⁴ 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 Standard Material Transfer Agreement, 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.

- 1 e) The identification of each accession in Annex 1 to the Standard Material Transfer
2 Agreement, and of the crop to which it belongs.
3 (AGREED AD REF)
4

5 This information shall be made available by the **Governing Body** to the third party beneficiary.
6 Such information shall be treated as confidential business information and shall be used to
7 develop aggregated reporting only, subject to national legislation, as appropriate.
8

9
10 **ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT**

11
12 6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of
13 research, breeding and training for food and agriculture. Such purposes shall not include chemical,
14 pharmaceutical and/or other non-food/feed industrial uses. (AGREED AD REF)
15

16 6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access
17 to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received
18 from the **Multilateral System**.
19

20 6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the
21 **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using
22 the Standard Material Transfer Agreement. (AGREED AD REF)
23

24 6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another
25 person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall (AGREED AD
26 REF)
27

- 28 a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a
29 new Standard Material Transfer Agreement; and (AGREED AD REF)
30

- 31 b) notify the **Governing Body**, in accordance with Article 5e. (AGREED AD REF)
32

33 On compliance with the above, the **Recipient** shall have no further obligations regarding the actions of the
34 **subsequent recipient**. (AGREED AD REF)
35

36 6.5 In the case that the **Recipient** transfers a **Plant Genetic Resource for Food and Agriculture under**
37 **Development** to another person or entity, until a period of twelve years after signing or accepting of **this**
38 **Agreement** has lapsed, the **Recipient** shall: (AGREED AD REF)
39

- 40 a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a
41 new Standard Material Transfer Agreement, provided that Article 5a of the Standard Material
42 Transfer Agreement shall not apply; (AGREED AD REF)
43

- 44 b) identify, in Annex 1 to the new Standard Material Transfer Agreement, the **Material** received
45 from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and**
46 **Agriculture under Development** being transferred are derived from the **Material**; (AGREED
47 AD REF)
48

- 49 c) notify the **Governing Body**, in accordance with Article 5e; and (AGREED AD REF)
50

- 51 d) have no further obligations regarding the actions of any **subsequent recipient**. (AGREED AD
52 REF)
53

- 1 e) The obligations in this Article 6.5 do not apply to **Plant Genetic Resources for Food and**
2 **Agriculture under Development**, for which both of the following applies: does contain a
3 genetic contribution of less than 12.5% by pedigree of the **Material** and does not contain a trait
4 of commercial value that was contributed by the **Material**. (AGREED AD REF)
5
6

7 6.6 Entering into a Standard Material Transfer Agreement under paragraph 6.5 shall be without
8 prejudice to the right of the parties to attach additional conditions, relating to further product development,
9 including, as appropriate, the payment of monetary consideration. (AGREED AD REF)
10

11 6.11 The **Recipient** may, at the time of signing of **this Agreement** or at the time of acceptance of **this**
12 **Agreement** or at any time after that, opt for the **Subscription System**, as set out in *Annex 3* to **this Agreement**,
13 by returning the **Registration Form** contained in *Annex 4* to **this Agreement**, duly completed and signed, to
14 the **Governing Body** of the **Treaty**, through its Secretary ("**Subscription**"). If the **Registration Form** is not
15 received by the Secretary, the modality of payment specified in Articles 6.7 and 6.8 will apply unless the
16 **Recipient** has already opted for the **Subscription System** earlier (AGREED AD REF)
17

18 6.11bis Should the **Recipient** opt for the **Subscription System**, the terms and conditions of the **Subscription**
19 **System**, as set out in *Annex 3* to **this Agreement**, apply. In this case, *Annex 3* to **this Agreement** constitutes
20 an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context
21 permits and *mutatis mutandis*, to also include *Annex 3*.-(AGREED AD REF)
22

23 6.11ter By opting for the **Subscription System**, the **Recipient**, as **Subscriber**, shall have no payment
24 obligations with regard to the **Material** received, during the term of the **Subscription**, and the **Product** that
25 incorporates the **Material**, other than the payment obligations provided for under the **Subscription System**.
26 (AGREED AD REF)
27

28 [6.7 In the case that the **Recipient** does not opt for the **Subscription System** and the **Recipient** or any of its
29 affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that
30 incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is **not**
31 **available without restriction** to others for further research and breeding, the **Recipient** shall pay, for the
32 period for which the restriction is applicable, a fixed percentage of the **Sales** of the **commercialized Product**
33 into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this**
34 **Agreement**. After the restriction comes to an end, the **Recipient** or any of its affiliates commercializing the
35 **Product** will continue to make payments at the rate referred to in Article 6.8 below.

36 6.8 In the case that the **Recipient** does not opt for the **Subscription System** and the **Recipient** or any of its
37 affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that
38 incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available**
39 **without restriction** to others for further research and breeding, the **Recipient** shall pay for a period of ten
40 years a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the
41 **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

42 6.8 BIS For a particular **Product** the **Recipient** shall be required to make payments for not more than 25
43 years combined under the terms of 6.7 and 6.8.]
44

45 6.9 The **Recipient** shall make available to the **Multilateral System**, through the information system
46 provided for in Article 17 of the **Treaty**, all non-confidential information [and all genetic sequence data] that
47 results from research and development carried out on the **Material** and is encouraged to share through the
48 **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result
49 from such research and development. The **Recipient** is encouraged to place a sample of any **Product** that
50 incorporates the **Material** into a collection that is part of the **Multilateral System**, for research and breeding.
51

52 6.10 A **Recipient** who applied for or obtains intellectual property rights on any **Products** developed from
53 the **Material** or its components, obtained from the **Multilateral System**, and assigns such application or
54 intellectual property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement**

1 to that third party. Such transfer shall only take place once the third party has accepted these benefit-sharing
2 obligations.
3

4 5 **ARTICLE 7 — APPLICABLE LAW** 6

7 The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of
8 International Commercial Contracts 2016 and as subsequently updated, the objectives and the relevant
9 provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.
10 (AGREED AD REF)
11

12 13 **ARTICLE 8 — DISPUTE SETTLEMENT** 14

15 8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or the third party beneficiary
16 acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**. (AGREED AD REF)
17

18 8.2 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United
19 Nations, representing the **Governing Body** and the **Multilateral System**, has the right, as a third party
20 beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the
21 **Recipient** under **this Agreement**. (AGREED AD REF)
22

23 8.3 The third party beneficiary has the right to request that the appropriate information, including
24 samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in
25 the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider**
26 and the **Recipient**, as the case may be. (AGREED AD REF)
27

28 8.4 Any dispute arising from **this Agreement** [exemption Art. 4.5 of Annex 3] shall be resolved in the
29 following manner:
30

- 31 a) Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by
32 negotiation. (AGREED AD REF)
- 33 b) Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a
34 neutral third party mediator, to be mutually agreed. (AGREED AD REF)
- 35 c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the
36 dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to
37 the dispute. Failing such agreement, the dispute shall be settled under the Rules of Arbitration of the
38 International Chamber of Commerce, by one or more arbitrators appointed in accordance with the
39 said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of
40 experts as the Governing Body may establish for this purpose; both parties, or the arbitrators
41 appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be,
42 from such list of experts. The result of such arbitration shall be binding. (AGREED AD REF)
- 43 d) Aggrieved parties may avail themselves of opportunities made available under the provisions of
44 Article 12.5 of the Treaty. (AGREED AD REF)
45

46 8.5 In case of a proven breach of Articles 6.1 or 6.2, the **Recipient** may be liable for damages. With
47 respect to Article 6.1, damages should be in proportion to the income received by the **Recipient** as a result of
48 the proven breach. With respect to Article 6.2, damages should be in proportion to the income received by
49 the **Recipient** as a result of the intellectual property or other rights that limit the facilitated access to the
50 **Material**, or its genetic parts or components, in the form received from the **Multilateral System**, and may
51 additionally result in assignment of the intellectual property or other rights involved, in accordance with
52 relevant international law and national legislation. (AGREED AD REF)
53
54

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**. (AGREED AD REF)

Withdrawal from this Agreement

9.2 The **Recipient** may withdraw from **this Agreement** in accordance with Annex 3 (Subscription System) or Annex 2 (single access system), respectively. (AGREED AD REF)

Amendments to the Standard Material Transfer Agreement

9.5 If the **Governing Body** amends the terms and conditions of the Standard Material Transfer Agreement, the **Recipient** shall, as of the date decided by the **Governing Body**, utilize the amended SMTA for subsequent transfers of the **Material** to third parties. The other rights and obligations of the **Recipient** shall remain unchanged, unless the **Recipient** explicitly agrees in writing to the amended Standard Material Transfer Agreement. (AGREED AD REF)

[Transitional Phase

9.6 In the event that the Amendment of Annex I of Treaty, as contained in Resolution [XX]/2019, does not enter into force by 31 July 2025 and unless the Governing Body extends the period or decides otherwise: Article 6.8 will read as follows:

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

Article 6.11 and related Annexes will cease to apply for new Subscribers and no new Subscription will be allowed under **this Agreement**. A **Recipient** that became a **Subscriber** before 31 July 2025 may, within [XX] days, either:

- 1) Notify the Secretary that it will maintain its Subscription for a total of ten years; or
- 2) Withdraw from its Subscription with immediate effect. Should the Subscriber choose this option, the Subscription Terms shall cease to apply and shall be replaced by the terms and conditions of the "single access system", and Articles 6.7, 6.8 and Annex 2 of **this Agreement** shall apply. Following such withdrawal, any amount paid by the Subscriber under the Subscription will be credited towards any payments that might fall due under the single access system within the following ten years from the starting date of the initial Subscription].

ARTICLE 10 — SIGNATURE/ACCEPTANCE (AGREED AD REF)

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**.

I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

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

Name of the **Provider**

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

I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

(Only for Subscribers) I hereby declare that the **Recipient’s Sales** do not exceed US\$ [xx] in accordance with *Annex 3*, Article 3.3. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed US\$ [xx]. The right of the third party beneficiary to request the appropriate information in accordance with Article 4.4 of **this Agreement** is understood and expressly acknowledged.

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**.

The **Recipient** understands and expressly agrees that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

(Only for Subscribers) If the **Recipient** is a Subscriber and its **Sales** do not exceed US\$ [xx], it shall submit the following statement in writing and duly signed to the **Governing Body** through its

* 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.

* 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.

1 Secretary, or otherwise the exemption provided in *Annex 3*, Article 3.3 does not apply: “I hereby
2 declare that the **Recipient’s Sales** do not exceed US\$ [xx] in accordance with *Annex 3*, Article 3.3.
3 The **Recipient** commits to making annual payments and submit annual reports as of the time that its
4 **Sales** exceed US\$ [xx]. The right of the third party beneficiary to request the appropriate information
5 in accordance with Article 4.4 of **this Agreement** is understood and expressly acknowledged.”
6
7

8 **Option 3 – Click-wrap Standard Material Transfer Agreement**
9

- 10 I hereby agree to the above conditions.
11
12 I understand and expressly agree that the third party beneficiary shall have the rights
13 provided in Articles 4 and 8 of **this Agreement**.
14
15 (Only for Subscribers) I hereby declare that the **Recipient’s Sales** do not exceed US\$ [xx] in
16 accordance with *Annex 3*, Article 3.3. The **Recipient** commits to making annual payments
17 and submit annual reports as of the time that its **Sales** exceed US\$ [xx]. The right of the third
18 party beneficiary to request the appropriate information in accordance with Article 4.4 of
19 **this Agreement** is understood and expressly acknowledged.

Annex 1 (AGREED AD REF)

LIST OF MATERIALS PROVIDED

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

The following information is included, or the source indicated from which it may be obtained, for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

Table A

Materials:

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

Table B

Materials that are 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)

In accordance with Article 6.5b, the following information is provided regarding the materials received under an SMTA or which were brought into the **Multilateral System** by an agreement pursuant to Article 15 of the **Treaty**, from which the **Plant Genetic Resources for Food and Agriculture under Development** listed in Table B are derived:

Crop:	
Accession number 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 6.7 AND 6.8 OF THIS AGREEMENT]

[Terms and conditions of the “single access system” (Articles 6.7 and 6.8)]

1. If a **Recipient** or any of 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**, the **Recipient** shall pay each year [one point-one percent (1.1 %) of the annual **Sales** of the **Product** or **Products** less thirty percent (30%)] [$\{yy\}$ percent (yy %) of the annual **Sales** of the **Product** or **Products**].

2. If a **Recipient** or any of 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**, the **Recipient** shall pay each year [$\{xx\}$ percent ($\{xx\}$ %) of the annual **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**; (AGREED AD REF)

(b) are sold or traded as a commodity; or (AGREED AD REF)

(c) contains a genetic contribution of less than 6.25% by pedigree of the **Material** and does not contain a trait of commercial value that was contributed by the **Material**. (AGREED AD REF)

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. (AGREED AD REF)

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

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, and any of its affiliates, for the twelve (12) month period preceding the annual closure of accounts; (AGREED AD REF)

(b) the amount of the payment due; (AGREED AD REF)

(c) information that allows for the identification of the applicable payment rate or rates; and (AGREED AD REF)

(d) the verifiable source of the information provided. (AGREED AD REF)

Such information shall be treated as confidential business information, to the extent specified by the **Recipient** within the limits set by **this Agreement**, 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**, and to the **Governing Body** for aggregated reporting purposes on income to the fund established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**. (AGREED AD REF)

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\$)* at the exchange rate that prevailed at the date of closure of accounts 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),**

1 **Citibank**
2 **399 Park Avenue, New York, NY, USA, 10022,**
3 **Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577**

4 7. A **Recipient** who has not opted for the **Subscription System** may withdraw from **this Agreement**
5 upon six months written notice to the **Governing Body** through its Secretary, not less than ten years from the
6 date of signing of **this Agreement** by the **Provider** or the **Recipient**, whichever date is later, or from the
7 date of acceptance of **this Agreement** by the **Recipient**. (AGREED AD REF)

8 8. In the case that the **Recipient** has begun before withdrawal to **commercialize** a **Product**, in respect
9 of which payment is due in accordance with Articles 6.7, 6.8 and 6.8 BIS and *Annex 2* of **this Agreement**,
10 such payment shall continue while that **Product** is **commercialized** and in accordance with the terms of
11 Articles 6.7, 6.8 and 6.8 BIS and *Annex 2* of **this Agreement**. (AGREED AD REF)

12 9. Upon withdrawal from **this Agreement**, the **Recipient** shall no longer use the **Material**. The
13 Recipient may conserve the Material and make it available to the Multilateral System in accordance with
14 Article 6.3. The Recipient may also offer to return any remaining Material in its possession to the **Provider**.
15 If this is not possible or the **Provider** declines the offer, the **Recipient** shall offer to transfer the **Material** to
16 an international institution that has signed an agreement with the **Governing Body** under Article 15 of the
17 **Treaty** or any other genebank that operates under the terms and conditions of the Multilateral System. If the
18 offer is declined or such transfer is not possible, as a last resort, the Material may be destroyed, and evidence
19 of its destruction is provided to the third party beneficiary. (AGREED AD REF)

20 10. Notwithstanding the above, only Articles 4, 6.2, 6.3, 6.9, 6.10 and 8 of **this Agreement** shall
21 continue to apply after the withdrawal has taken effect. (AGREED AD REF)

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** 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**”). (AGREED AD REF.)

1.2 The **Subscription** shall take effect upon receipt by the Secretary of the **Governing Body** of the duly signed **Registration Form** contained in *Annex 4*. 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**. (AGREED AD REF)

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 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. (AGREED AD REF)

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 [Sales] of [products that are] [**Plant Genetic Resources for Food and Agriculture** covered by the **Multilateral System**][**Plant Genetic Resources for Food and Agriculture** listed in Annex I of the **Treaty**][or associated information or genetic sequence data].]

[3.2 The following rates of payment shall apply to [Sales] of [products that are] [**Plant Genetic Resources for Food and Agriculture** covered by the **Multilateral System**][**Plant Genetic Resources for Food and Agriculture** listed in Annex I of the **Treaty**] [or associated information or genetic sequence data]:

[xx]% when [such products] [the [**Products** or] products] are available without restriction, and

[yy]% when [such products] [the [**Products** or] products] are not available without restriction.

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

[3.2 ALT The applicable rate of payment in relation to Sales of [products that are] [**Plant Genetic Resources for Food and Agriculture** covered by the **Multilateral System**][**Plant Genetic Resources**

1 **for Food and Agriculture** listed in Annex I of the **Treaty**] [or associated information or genetic
2 sequence data] shall be [zz]%.]

3 OR

4 3.2 The applicable rate of payment on Sales in relation to Plant Genetic Resources for Food and
5 Agriculture listed in Annex I of the Treaty [including Sales of associated information or genetic sequence
6 data] shall be [zz]%.]

7 3.2 BIS At the request of the Subscriber, the following rates of payment shall apply to Sales of Plant
8 Genetic Resources for Food and Agriculture listed in Annex I of the Treaty [or Sales of associated
9 information or genetic sequence data]:

10 [xx]% when such products are available without restriction, and

11 [zz]% when such products are not available without restriction.

12 3.3 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year in which its
13 **Sales** do not exceed US\$ [xxx].

14 3.4 Payment shall be made within sixty (60) days after closure of accounts each financial year, for the
15 previous year. Whenever the **Subscription** took effect during the year, the **Recipient** shall make a
16 proportionate payment for the first year of its **Subscription**. (AGREED AD REF)

17 3.5 The **Subscriber** shall submit to the **Governing Body** of the **Treaty**, through its Secretary,
18 within sixty (60) days after closure of accounts each financial year a statement of account, including in
19 particular the following: (AGREED AD REF)

20 a) Information on the **Sales** for which payment was made; (AGREED AD REF)

21 b) Information that allows for the identification of the applicable payment rate or rates; and
22 (AGREED AD REF)

23 c) the verifiable source of the information provided; (AGREED AD REF)

24 or a signed declaration showing that it is exempted from payment in accordance with Article 3.3 above.
25 (AGREED AD REF)

26 Such information shall be treated as confidential business information, to the extent specified by the
27 **Subscriber** within the limits set by **this Agreement**, and shall be made available to the third party
28 beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**, and to the
29 **Governing Body** for aggregated reporting purposes on income to the fund established by the **Governing**
30 **Body** in accordance with Article 19.3f of the **Treaty**.
31 (AGREED AD REF)

32 3.6 All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)* at the
33 exchange rate that prevailed at the date of closure of accounts for the following account established by the
34 **Governing Body** in accordance with Article 19.3f of the **Treaty**: (AGREED AD REF)

35 **FAO Trust Fund (USD) GINC/INT/031/MUL,**
36 **IT-PGRFA (Benefit-sharing),**
37 **Citibank**
38 **399 Park Avenue, New York, NY, USA, 10022,**
39 **Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577**

40 **ARTICLE 4 —WITHDRAWAL FROM AND TERMINATION OF THE SUBSCRIPTION**

41 4.1 The **Subscription** shall be in force until the **Subscriber** withdraws from it, or the **Governing Body**
42 terminates it as provided for in Article 4.5 below. (AGREED AD REF.)

43 4.2 The **Subscriber** may withdraw from its **Subscription** upon six months written notice to the
44 **Governing Body** through its Secretary, not less than 10 years from the date that the **Subscription** took
45 effect. (AGREED AD REF.)

1 4.3 Upon withdrawal from its **Subscription**, the Subscriber shall no longer use the **Material**. The
2 Subscriber may conserve the Material and make it available to the Multilateral System in accordance with
3 Article 6.3. The Subscriber may also offer to return any remaining Material in its possession to the **Provider**.
4 If this is not possible or the **Provider** declines the offer, the **Subscriber** shall offer to transfer the **Material**
5 to an international institution that has signed an agreement with the **Governing Body** under Article 15 of the
6 **Treaty** or any other genebank that operates under the terms and conditions of the Multilateral System. If the
7 offer is declined or such transfer is not possible, as a last resort, the Material may be destroyed, and evidence
8 of its destruction is provided to the third party beneficiary. (AGREED AD REF)

9 [4.4 The monetary benefit-sharing provisions of Article 3 of these **Subscription Terms** shall continue for
10 [two] years from the end of the **Subscription**. Notwithstanding the foregoing, only Articles 4, 6.1, 6.2, 6.3,
11 6.4, 6.9, [6.10] and 8 [9.4] of **this Agreement** shall continue to apply after the end of the **Subscription**.]

12 [4.5 In the case of a [presumed, alleged or suspected] material breach of any of the obligations by
13 the **Subscriber**, the third party beneficiary shall inform the **Subscriber** in writing of the alleged breach.
14 If such breach is not remedied within thirty (30) days of notice being given, the third party beneficiary
15 has the right to initiate dispute settlement in accordance with Article 8 of **this Agreement**. [In case the
16 dispute is not satisfactorily resolved within six months, the third party beneficiary may terminate the
17 **Subscription** and claim damages, as appropriate.][In case the Subscriber is found at fault for material
18 breach, the third party beneficiary may terminate the Subscription.] [The third party beneficiary may
19 decide that the **Subscriber** shall not have the right to opt for the **Subscription System** in any Standard
20 Material Transfer Agreement signed by it in the future, until the **Governing Body** decides otherwise.]
21 The third party beneficiary [shall][may] bring the matter to the attention of the following session of the
22 **Governing Body**.]
23

24 [4.5 BIS Notwithstanding Article 4.2, the Subscriber may withdraw from its Subscription upon three
25 months' written notice to the Governing Body through its Secretary that a material breach of the terms of its
26 Subscription have occurred, such that it is not duly receiving PGRFA under the MLS as per the Subscription
27 terms. It shall include in such written notice a statement setting forth the circumstances of the material
28 breach and documentation to support the statement. Notwithstanding Article 4.4, under such circumstances,
29 the monetary benefit sharing provisions of Article 3 of these Subscription terms shall cease immediately,
30 while [Articles 4, 6.1, 6.3, 6.4, 6.9, and 8 of this Agreement] shall continue to apply after the end of the
31 Subscription. If the Governing Body disputes that a material breach has occurred, it shall direct the third
32 party beneficiary to initiate dispute settlement in accordance with Article 8 of this Agreement.]

Annex 4 (AGREED AD REF)

REGISTRATION FORM

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

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

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

Full name of Recipient:

Address:

Telephone: Email:

Recipient's authorised official:

Address:

Telephone: Email:

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

The **Subscriber** shall signify acceptance by returning a signed **Registration Form** to the Governing Body, through its Secretary, at the address below. 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]

Annex 2 to Appendix 2

**DRAFT TEXT FOR AN AMENDMENT TO ANNEX I OF THE
INTERNATIONAL TREATY, IN ACCORDANCE WITH ITS ARTICLES 23
AND 24:**

Article 1: Amendment

In Annex I, the following two paragraphs shall be inserted after the list of plant genetic resources for food and agriculture:

“1. In furtherance of the objectives and scope of this Treaty, in accordance with Article 3 of this Treaty, and without prejudice to Article 12.3 h of this Treaty, the Multilateral System shall, in addition to the Food Crops and Forages listed above, cover all other plant genetic resources for food and agriculture, including those plant genetic resources for food and agriculture previously excepted or excluded in the list above, that are under the management and control of the Contracting Parties and in the public domain and that are found in *ex situ* conditions.”

“2. At the time of its ratification, acceptance or approval of this Amendment, a Contracting Party may, exceptionally, declare certain and a limited number of species native to its territory that it will not make available under the terms and conditions of the Multilateral System. Such a declaration shall not affect the rights and obligations of any other Contracting Party related to the species, nor those of the International Agricultural Research Centres or other International Institutions that concluded an agreement with the Governing Body under Article 15 of this Treaty. A Contracting Party may withdraw its declaration at any time, or eliminate plant genetic resources for food and agriculture from its list at any time, but shall not make any additional declaration.”

Article 2: Relationship with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001)

After the entry into force of this Amendment, any accession, acceptance or approval of or accession to the International Treaty on Plant Genetic Resources for Food and Agriculture shall include this Amendment.