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Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

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

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

Rome, Italy, 2 October 2015

DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT

Executive Summary

This document provides, for the consideration of the Governing Body, the revised Standard Material Transfer Agreement (SMTA) resulting from the work of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System, during the 2014–2015 biennium. It incorporates the Subscription Model/System that the Working Group has been developing into the revised SMTA and relates relevant clauses of the SMTA to the elements of the Protocol to, or amendment of, the Treaty which will be needed to complete the Subscription Model/System and which are fully described in other parts of the documentation for this meeting.

The Working Group, during the biennium, benefited from the active participation of a wide range of stakeholders, many of whose ideas it took into account in developing the subscription system and the revised SMTA.

The document, IT/OWG-EFMLS-4/15/4, *Commentary on Structural Elements for the Development of a Subscription Model/System*, describes the reasoning on which the elements of the revised SMTA have been developed, and identified areas where there is as yet no consensus, and where the guidance of the Governing Body is sought. On the basis of such guidance it would be possible to assemble a more complete SMTA.

I. INTRODUCTION

1. The Working Group at its third meeting requested the Secretary to prepare a revised Standard Material Transfer Agreement for consideration by the Governing Body at its Sixth Session.
2. In accordance with the deliberations of the Working Group, the document provides the Governing Body with a complete revised SMTA, which incorporates the Subscription Model/System that the Working Group has been developing. It includes those changes where agreement has been reached. The document, IT/OWG-EFMLS-4/15/4, *Commentary on Structural Elements for the Development of a Subscription Model/System*, describes the reasoning on which the elements of the revised SMTA have been developed, and identified areas where there is as yet no consensus, and where the guidance of the Governing Body is sought. On the basis of such guidance it would be possible to assemble a more complete SMTA.
3. The Working Group also requested that the proposed revisions to the text of the SMTA put forward by the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System,¹ and the reporting obligations decided by the Governing Body,² be integrated into the revised SMTA, in order to improve clarity and ease of use of the SMTA.
4. The legal analyses undertaken during the biennium indicate that, for full legal certainty for the use of plant genetic resources for food and agriculture, and to establish a functioning Subscription System, an international legal instrument, such as an amendment of, or Protocol to, the Treaty would be required. Illustrative elements of the required international legal instrument that relate to clauses of the revised SMTA are referenced in the Comments boxes of those clauses. The Comments boxes thus contain references only to those elements of the international legal instrument which would relate to SMTA provisions. A full overview of the elements of the required instrument is provided in coherent and complete form in the other parts of the documentation for this meeting.
5. The Working Group, during the biennium, benefited from the active participation of a wide range of stakeholders, many of whose ideas it took into account in developing the subscription system and the revised SMTA.
6. If not further specified, all Articles mentioned in this document refer to the SMTA.

¹ IT/AC-SMTA-MLS-2/10/Report.

² Resolution 5/2009, *Procedures for the Third Party Beneficiary*, paragraphs 14 and 15, and Annex 2, part 2.

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

DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT

PREAMBLE

WHEREAS

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the **Treaty**”¹) was adopted by the Thirty-first session of the FAO Conference on 3 November 2001 and entered into force on 29 June 2004;

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

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

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

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

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

Comments:

The Preamble of the current Standard Material Transfer Agreement contains general information about the Treaty; uses language of Articles 1.1 (objectives), 10.2 (Multilateral System), 12.4 (access through Standard Material Transfer Agreement); recalls certain other Articles; and recognizes the diversity of legal systems of Contracting Parties.

The Working Group may wish to add, in the Preamble of the revised Standard Material Transfer Agreement, a reference to the Protocol or the instrument amending the Treaty, and to the Subscription System it contains.

¹ ~~Note by the Secretariat: as suggested by the Legal Working Group during the Contact Group for the Drafting of the Standard Material Transfer Agreement, defined terms have, for clarity, been put in bold throughout.~~

ARTICLE 1 — PARTIES TO THE AGREEMENT

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

1.2 **This Agreement** is:

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

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

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

Comment:

The SMTA is a contract between Provider and the Recipient only. This is adequate for the individual access option in Article 6.7, but the Subscription System² provided for in Article 6.11 will require a separate legal instrument, as provided for in Annex 3 of this draft revised Standard Material Transfer Agreement. Moreover, a legally coherent Subscription System will need to be supported by an amendment of, or Protocol to, the Treaty.

See IT/OWG-EFMLS-4/15/4, Appendix 1, *Implementing the system design: changes needed to the SMTA*.

ARTICLE 2 — DEFINITIONS

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

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

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

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

* *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.

² For the sake of clarity, only the word “System” is used in this draft revised Annex 3 and not the term “Model/System”.

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

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

“**Plant Genetic Resources for Food and Agriculture under Development**” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

“**Product**” means **Plant Genetic Resources for Food and Agriculture** that incorporate³ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“**Sales**” means the gross income resulting from the **commercialization** of a **Product** or **Products**, by the **Recipient**, its affiliates, contractors, licensees and lessees.

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

Comment:

For consideration of the question of definitions, see IT/OWG-EFMLS-4/15/4, Appendix 1, *Implementing the system design: changes needed to the SMTA*.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

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

ARTICLE 4 — GENERAL PROVISIONS

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

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

³ As evidenced, for example, by pedigree or notation of gene insertion.

4.3 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United Nations ~~(the entity designated by the **Governing Body**)~~,⁵ acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.

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

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

Comment:

While the draft Revised Standard Material Transfer Agreement presented here would apply directly to crops in *Annex I* to the Treaty, the implications of the expansion of the Treaty's crop coverage, and the amendment of, or Protocol to, the Treaty, need to be borne in mind: see IT/OWG-EFMLS-4/15/4, Appendix 1, *Implementing the system design: changes needed to the SMTA, during steps 1 and 2*, discussion of Article 1.1, 4.1 and 3.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

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

⁴ In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the Governing Body and the CGIAR Centres and other relevant institutions will be applicable.

⁵ ~~Note by the Secretariat: by Resolution 2/2006, the Governing Body "invite[d] the Food and Agriculture Organization of the United Nations, as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with the procedures to be established by the Governing Body at its next session". Upon acceptance by the FAO of this invitation, the term, "the entity designated by the Governing Body", will be replaced throughout the document by the term, "the Food and Agriculture Organization of the United Nations".~~ [Footnotes to be re-numbered accordingly.]

- e) The **Provider** shall periodically inform the **Governing Body** at least once every two calendar years about the Material Transfer Agreements entered into,

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,⁶

or

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

i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;

ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and

iii. providing the following information:

a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider;

b) The name and address of the Provider;

c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;

d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;

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

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

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

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

⁶ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, 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, in accordance with Article 10, Option 2 of the SMTA. [Footnotes to be re-numbered accordingly.]

⁷ ~~Note by the Secretariat: The Standard Material Transfer Agreement makes provision for information to be provided to the **Governing Body**, in the following Articles: 5e, 6.4b, 6.5e and 6.11h, as well as in Annex 2, paragraph 3, Annex 3, paragraph 4, and in Annex 4. Such 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
1-00100 00153 Rome, Italy
www.planttreaty.org

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

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

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

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

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

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

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

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

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

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

Comment:

The Working Group, in requesting the preparation of this draft revised Standard Material Transfer Agreement, decided to maintain a number of options regarding whether payment for certain Product Categories should be voluntary or mandatory, and whether the voluntary option should remain.

In order to capture these diverse options within a single text, a methodology has been used that foresees making all payments mandatory. For those Product categories to which the Governing Body does not wish to make payment mandatory, a 0% rate could be established, in effect maintaining payment as voluntary, in such cases. This logic implies deleting Article 6.8.

A methodology has also been proposed and implemented, whereby payment rates may be established across the various options: see IT/OWG-EFMLS-4/15/4, textbox 2, *Article 6.7 and Annex 2: A methodology for setting different rates for different Products*.

It should be noted that Recipients to opt for payment under Article 6.7 may not benefit from full legal certainty with regard to the interface with the CBD and its Nagoya Protocol, which could only be provided by a public international legal instrument, such as an amendment of, or Protocol to, the Treaty. See IT/OWG-EFMLS-4/15/4, Appendix 3, *Harmonising with commercial practice, and overcoming stumbling blocks to the use of the SMTA; The importance of legal certainty (a) the interface between the Treaty and the Nagoya Protocol*.

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

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

6.11 The **Recipient** may opt t, within [X] months from the date of signing **this Agreement** or from the date of acceptance of **this Agreement**, ~~as per Annex 4, as an alternative to payments under Article 6.7, for the following system of payments~~ for the **Subscription System of the Treaty**, as set out in Annex 3 to **this Agreement**, by returning the **Registration Form** contained in Annex 3 to **this Agreement**, duly completed and signed, to the Governing Body of the Treaty, through its Secretary. If the **Registration Form** is not returned to the Secretary within this period, the alternative modality of payment specified in Article 6.7 will apply.

6.11bis For the term of the **Subscription**, the **Subscriber** shall have no payment obligations[, for the crop or crops covered by the **Subscription**], other than those provided for under the **Subscription System**.

- a) ~~The **Recipient** shall make payments at a discounted the applicable rate as set out in Annex 3 to **this Agreement** during the period of validity of the option;~~
- b) ~~The period of validity of the option shall be ten years renewable in accordance with Annex 3 to **this Agreement**;~~
- e) ~~The payments shall be based on the **Sales** of any **Products** and of the sales of any other products that are **Plant Genetic Resources for Food and Agriculture** belonging to the same crop, as set out in Annex 1 to the **Treaty**, to which the **Material** referred to in Annex 1 to **this Agreement** belongs;~~
- d) ~~The payments to be made are independent of whether or not the **Product** is **available without restriction**;~~
- ed) ~~The rates of payment and other terms and conditions applicable to this option, including the discounted applicable rates are set out in Annex 3 to **this Agreement**;~~
- fe) ~~The **Recipient** shall be relieved of any obligation to make payments under Article 6.7 of **this Agreement** or any previous or subsequent Standard Material Transfer Agreements entered into in respect of the same crop;~~
- gf) ~~After the end of the period of validity of this option the **Recipient** shall make payments on any **Products** that incorporate **Material** received during the period in which this Article was in force, and where such **Products** are not **available without restriction**. These payments will be calculated at the same rate as in paragraph (a) above;~~
- hg) ~~The **Recipient** shall notify the **Governing Body** within [6] months that he has opted for this modality of payment. If no notification is provided the alternative modality of payment specified in Article 6.7 will apply.~~

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2004 2010 and as subsequently updated, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or the Food and Agriculture Organization of the United ~~(*the entity designated by the **Governing Body***)~~, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.

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

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

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

Comment:

For the Subscription System, the above text is not adequate, as it refers to the original Provider and Recipient, not to Subscribers. For this reason, full dispute settlement procedures have been incorporated in Annex 3.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

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

Duration and Termination of Agreement

9.2 **This Agreement** shall remain in force ~~so long as the Treaty remains in force~~ for a period of ten (10) years from the date of signature or of acceptance by the Recipient or acceptance, and in the case of shrink-wrap, the date of acceptance shall be the date on which the shipment was sent.

9.3 Within [X] months of the end of this period, and not less than [X] weeks from the end of this period, the **Recipient** may give written notice of his intent to terminate this **Agreement**, failing which, the **Agreement** shall be automatically renewed for a further period of ten (10) years.

9.4 If the **Recipient** wishes to terminate this **Agreement** before this period has elapsed, he may do so upon [X] months' written notice, effective as at the end of each calendar year, provided that the **Recipient**, at the same time, pay a cancellation fee. This cancellation fee will be

[xx]. Such termination shall take effect 31 December of the calendar year in which such notice of termination is given.

9.5 Upon termination, the **Recipient** shall, for a period of [X] years:

- (a) Make annual payments for **Products** that incorporate **Material** received under this **Agreement**, in accordance with **Article 6.7 and Annex 2** to this **Agreement**, and report in accordance with Article 5; and
- (b) Use the **Standard Material Transfer Agreement** in transferring any **Materials** received under this **Agreement** to another natural or legal person.

Comments:

These Termination provisions are repeated *mutatis mutandis* in the Subscription Terms, in Article 8 of Annex 3 of this revised SMTA, for consistency.

ARTICLE 10 — SIGNATURE/ACCEPTANCE [OF THIS AGREEMENT]

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

Option 1 –Signature*

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

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

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

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

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

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

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

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.

Annex 1

LIST OF MATERIALS PROVIDED

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

This information is either provided below or can be obtained at the following website: (*URL*).

The following information is included for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

<i>(List)</i> Crop	Accession number or other identifier	Associated information, or source from which it may be obtained

If the **Material** listed above is **Plant Genetic Resources for Food and Agriculture under Development**, as provided for in *Article 6.5* of **this Agreement**, the material received from the **Multilateral System**, from which it was derived, is the following:

Accession number or other identifier
in the original Standard Material Transfer Agreement

The original Standard Material Transfer Agreement’s
identifying symbol or number:

Name and Address of **Provider**:
.....
.....
.....

Name and address of **Recipient**:
.....
.....
.....

Date of the original Standard Material Transfer Agreement:

Annex 2

RATE AND MODALITIES OF PAYMENT
UNDER ARTICLE 6.7 OF THIS AGREEMENT

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

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

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

~~(c) (b) are sold or traded as a commodity.~~

Comment:

The possibility of exempting certain Subscribers from payment has been considered by the Working Group in the context of the Subscription System only. See IT/OWG-EFMLS-4/15/4, Appendix 2, *New elements, to be included in the SMTA, Differentiation by user category*.

Crop Groups		
Group 1	Group 2	Group 3
[...]	[...]	[...]

Rates (%) for Products commercialized under			
Crop group	[...] ⁸	[...] ⁹	[...] ¹⁰

⁸ The heading of this column could read, for example, "patents".

⁹ The heading of this column could read, for example, "PVP" (plant variety protection).

¹⁰ This column or these columns would apply to any other Product for which the Governing Body would decide to make payments mandatory.

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

3. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after each calendar year ending December 31st, an annual report setting forth:

(a) the **Sales** of the **Product** or **Products** by the **Recipient**, its affiliates, contractors, licensees and lessees, for the twelve (12) month period ending on December 31st;

(b) the amount of the payment due; ~~and~~

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

(d) the material received from the **Multilateral System**, from which the **Product** or **Products** were derived.

4. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)*¹¹ for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**¹²:

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

¹¹ *Note by the Secretariat:* The **Governing Body** has not yet considered the question of currency of payment. Until it does so, Standard Material Transfer Agreements should specify United States dollars (US\$).

¹² *Note by the Secretariat:* This is the Trust Account provided for in Article 6.3 of the Financial Rules, as approved by the **Governing Body** at its First Session (*Appendix E* to IT/GB 1/06/Report).

Annex 3

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

**AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS
OF THE SUBSCRIPTION SYSTEM**

ARTICLE 1 — SUBSCRIPTION

1.1 The **Recipient** who opts for the **Subscription System**, in accordance with Article 6.11 of the Standard Material Transfer Agreement (hereinafter referred to as the “**Subscriber**”), agrees to be bound by the Terms and Conditions of the Subscription System (the “**Subscription Terms**”), for [the crop or crops for which he subscribes]/[all Plant Genetic Resources for Food and Agriculture covered by the Multilateral System].

1.2 **Subscription** shall take effect upon receipt of the duly signed **Registration Form** by the Secretary, who will notify the **Subscriber** of such receipt.

1.3 The **Subscriber** agrees to report and to make payment in accordance with Article 5 below.

1.4 The Governing Body may amend these **Subscription Terms** at any time, with the amended Subscription Terms becoming immediately effective, or at a time that the Governing Body shall specify. The Governing Body shall inform all **Subscribers** of such amendments and, if the **Subscriber** does not accept such amendments, he may cancel his **Subscription**, within [XX weeks] from the date such changes become effective, and in accordance with Article 8 below.

Comment:

A major question in the Subscription System is legal certainty for the use of PGRFA in plant breeding in relation to the Nagoya Protocol to the CBD. Contracts entered into in accordance with the provisions of the CBD must be respected. However, most plant genetic resources for food and agriculture are not acquired under such contracts, but breeders are still required to fulfil the onerous burden of proof obligations of the Nagoya Protocol, and open to legal uncertainty in this regard.

A formal international agreement, such as and amendment of, or Protocol to, the Treaty would be needed to reverse the burden of proof for materials not acquired under the provisions of the Convention on Biological Diversity (see IT/OWG-EFMLS-4/15/4, textbox 3, and Appendix 3).

Such a Protocol would also need to include a legal definition of subscription, and its scope. The Protocol would also provide a full legal framework for the exchange of plant genetic resources for food and agriculture under the Subscription System, in particular for the Treaty’s expanded crop coverage to promote the harmonious implementation of all legal instruments applicable to plant breeding. The Protocol should include concrete provisions to ensure the sharing of benefits derived from the use of PGRFA accessed.

ARTICLE 2 — RELATIONSHIP BETWEEN THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE SUBSCRIPTION SYSTEM

2.1 The **Subscription Terms** shall be interpreted in accordance with the objectives and provisions of the Treaty.

2.2 Annex 3 to the Standard Material Transfer Agreement is a whole contract governing the **Subscription System** provided for under Article 6.11 of the Standard Material Transfer Agreement.

2.3 The Standard Material Transfer Agreement contracted between the **Provider** and the **Subscriber**, as **Recipient**, forms an integral part of these **Subscription Terms**, except the provisions of the following Articles of the Standard Material Transfer Agreement shall not apply: [3], [4.3 and 4.4], [5], [6.4], [6.5 and 6.6], [6.7, 6.8, 6.9 and 6.10], [8], [9] and [Annex 1], [Annex 4].

Comments:

For questions regarding Definitions, see IT/OWG-EFMLS-4/15/4.

This Article defines the relationship between the Standard Material Transfer Agreement and Annex 3 to the Standard Material Transfer Agreement, which acts as a separate and whole contract. It ensures that there is no conflict of interpretation between the two.

A number of provisions of the Standard Material Transfer Agreement need, for logical reasons to not apply to the Subscription System. For clarity, these are listed. Where relevant, similar provisions are stated in the Subscription Terms.

- Article 3 governs the specific Material transferred under the original Standard Material Transfer Agreement, whereas the Subscription System will apply to a different and larger set of material.
- Articles 4.3 and 4.4: Recognition of the rights of the Third Party Beneficiary in relation to the Subscription System will be slightly different, and therefore stipulated in Annex 3.
- Article 5 governs the specific Material transferred under the original Standard Material Transfer Agreement, whereas the Subscription System will apply to a different and larger set of material. In the case of the Subscription Model/System, the concept of Provider no longer applies.
- Article 6.4: Transfer of materials between Subscribers and from Subscribers and Non-Subscribers will be governed by separate provisions of Annex 3.
- Articles 6.5 and 6.6 govern the specific Material transferred under the original Standard Material Transfer Agreement, and the concepts will need to be tailored to the structure of the Subscription Model/System.
- Articles 6.7–6.10 govern the specific Material transferred under the original Standard Material Transfer Agreement, and the concepts will need to be tailored to the structure of the

Subscription Model/System. Moreover, Article 6.7 and 6.8 relate specifically to other options, and not to the Subscription Model/System established under Article 6.11.

- Article 8: The provisions for Dispute Settlement need to be tailored to be used in a situation where the concept of Provider does not apply.
- Article 9.1 governs the specific Material transferred under the original Standard Material Transfer Agreement, and so does not apply. Article 9.2 will be replaced by separate provisions within Annex 3.

NB: It would also be possible to formulate Article 6.11 of the Standard Material Transfer Agreement, so that a Recipient wishing to subscribe to the Subscription Model/System would sign a wholly separate contract, in which case it would not be necessary to specify which clauses of the Standard Material Transfer Agreement would not apply. Such a solution might be seen to be both simpler and provide greater legal certainty.

NB: A further possibility would be to develop a New SMTA on the basis of a statutory instrument, such as an amendment of, or a Protocol to, the Treaty, that envisages the expansion of the Treaty's crop coverage.

ARTICLE 3 — REGISTER OF SUBSCRIBERS

3.1 The **Subscriber** agrees that his full name, contact details, the crop or crops for which he subscribes, and the date at which subscription took effect, shall be placed on a public register of subscribers (the "**Register**"), and undertakes to immediately communicate any changes to this information to the Secretary of the Treaty.

3.2 A **Subscriber** shall ascertain that a natural or legal person is also a **Subscriber**, [and the crop or crops for which he has subscribed] by consulting the **Register**, before transferring any materials, as provided for in Article 4 below.

Comments:

For an analysis of the need for, and functions of, a public Register of Subscribers, see document IT/OWG-EFMLS-4/15/4, textbox 4, *Implementing key aspects of the Subscription Model/System*.

The Subscription Register provides public access only to the names of Subscribers, their addresses and authorised representatives, and the date that their subscription took effect[, and the crop of crops to which they have subscribed]. No other information will be placed on the Register.

To govern relations between Subscribers, and to provide full legal certainty in this regard, the establishment of a public Register through a provision in an amendment of, or a Protocol to, the Treaty, which has the force of a public international law instrument, is necessary, as the Standard Material Transfer Agreement itself, and individual signatures of Annex 3 to the Standard Material Transfer Agreement signature by Subscribers, are not legally adequate for this purpose.

A public international law instrument that provides for such a Register is also necessary to provide legal certainty to plant breeders and other users in relation to the Convention on Biological Diversity and its Nagoya Protocol, so as to create full harmony and legal certainty for users. In particular, only through a public international law instrument, such as a Protocol, can the

burden of proof of compliance with the provisions of the Nagoya Protocol, which applies to breeders even when they are using no materials accessed under the provisions of the Convention on Biological Diversity (IT/OWG-EFMLS-4/15/4, paragraph 10, textbox 3, and Appendix 3), be effected.

A major function of the Register, established under a Protocol, would be to reverse the burden of proof for compliance with the Nagoya Protocol, thus providing legal certainty.

ARTICLE 4 — ACCESS TO, AND TRANSFER OF, MATERIALS COVERED BY THE SUBSCRIPTION

4.1 **Subscribers**, whose names are publically available on the **Register** shall be provided with samples of all Plant Genetic Resources for Food and Agriculture to which Articles 11.2, 11.5, 12.2, 12.3 and 15.1 of the Treaty apply, on request.

4.2 Where the **Subscriber** has already entered, or enters in the future, into a Standard Material Transfer Agreement[in relation to the crop of crops for which he has subscribed], the **Subscription Terms** also apply to such transfers.

4.3 A **Subscriber** may transfer any Plant Genetic Resources for Food and Agriculture[of the crop of crops for which he has subscribed] to another **Subscriber** who is listed on the **Register** at the time of the transfer, without a Standard Material Transfer Agreement.

4.4 A **Subscriber** shall transfer any Plant Genetic Resources for Food and Agriculture[of the crop of crops for which he has subscribed] to a natural or legal person who is not a **Subscriber** under a Standard Material Transfer Agreement.

4.5 In the case that the **Subscriber** transfers a **Plant Genetic Resources for Food and Agriculture under Development** to a natural or legal person who is not a **Subscriber**, the **Subscriber** shall do so in accordance with Article 6.5 of the Standard Material Transfer Agreement.

4.6 In the case that the **Subscriber** transfers a **Plant Genetic Resources for Food and Agriculture under Development** to a natural or legal person, the **Subscriber** may attach conditions, relating to further development, including, as appropriate, the payment of monetary conditions.

Comments:

These elements provide for:

- The ability of the Subscriber to receive materials under an SMTA from those obliged to provide materials in accordance with Articles 11.2, 12.3 and 15.1 of the Treaty;
- Transfer of materials between Subscribers, without an Standard Material Transfer Agreement; and
- Transfers from a Subscriber to natural or legal person who is not a subscriber, with an Standard Material Transfer Agreement.

Since the Treaty provides for any transfer of plant genetic resources for food and agriculture included in the Multilateral System to be done with an SMTA (Article 12.4), transfer of materials under the Subscription System without an SMTA requires additional provisions of a public international law nature, in order to provide full legal certainty for the System and the users.

An amendment or Protocol to the Treaty would also be needed to provide legal certainty for plant breeders and other users of PGRFA in the context of the CBD and its Nagoya Protocol.

See IT/OWG-EFMLS-4/15/3, textbox 3, *Implementing key aspects of the Subscription Model/System*.

ARTICLE 5 — MONETARY BENEFIT-SHARING PAYMENT

Comments:

The Governing Body has not yet decided whether a subscription should be for: (1) a crop or crops, (2) all crops in the Multilateral System, or whether (3) the Subscription should offer a potential subscriber the choice of two such options. Even if the Governing Body decided on (3) above, only the options for (1) and (2) need be in this part of the text, as the choice of the Subscriber would be made in the Registration Form.

Option 1 for 5.1: Subscription for a crop or crops

5.1 [In order to share the monetary benefits from the use of Plant Genetic Resources for Food and Agriculture provided for by the Treaty,] the **Subscriber** shall make annual payments for **Sales** of all his **Products** of the crop or crop for which he has subscribed, which were commercialized in the calendar year ending 31 December. Such payment shall be a percentage of the **Sales** of such **Products** as set forth in the following tables[, for the crop or crops involved].

Crop Groups		
Group 1	Group 2	Group 3
[...]	[...]	[...]

Crop or crops subscription			
Rates (%) for Products commercialized under			
Crop group	[...] ¹³	[...] ¹⁴	[...]

¹³ The heading of this column could read, for example, “patents”.

¹⁴ The heading of this column could read, for example, “PVP” (plant variety protection) or “PBR” (plant breeders’ right).

1			
2			
3			

Option 2 for 5.1: All crops Subscription System

5.1 [In order to share the monetary benefits from the use of Plant Genetic Resources for Food and Agriculture provided for by the Treaty,] the **Subscriber** shall make annual payments for **Sales** of all his **Products** of the crops included in *Annex 1* to the Treaty, which were commercialized in the calendar year ending 31 December. Such payment shall be a percentage of the **Sales** of such **Products** as set forth in the following tables, for the crop or crops involved.

Crop Groups		
Group 1	Group 2	Group 3
[...]	[...]	[...]

Crop group	All crops Subscription Rates (%) for Products commercialized under		
	[...]¹⁵	[...]¹⁶	[...]
1			
2			
3			

Option 3: Subscriber may choose a crop-by-crop or all-crops Subscription System

Comments:

If the Governing Body has decided to offer a potential subscriber the choice of the two options, the following Article should proceed the two above texts, renumber 5.2 and 5.3:

¹⁵ The heading of this column could read, for example, “patents”.

¹⁶ The heading of this column could read, for example, “PVP” (plant variety protection) or “PBR” (plant breeders’ right).

5.1 The **Subscriber** shall make payment according to whether he has opted for the crop or crops **Subscription System**, or the all-crop **Subscription System**, in his **Registration Form**, according to either Article 5.2 or 5.3 below.

5.2 Payment shall be made by 31 March each year, for the previous calendar year. Whenever the **Subscription** took effect during the year, the **Subscriber** shall make a proportionate payment for the first year of his Subscription.

5.3 The Subscriber shall submit to the Secretary of the Treaty by 31 March following a statement of account, specifying on which basis the payment due was calculated, including in particular the following information:

- The **Sales** of the **Products** for which payment was made;
- The crop group or crop groups of the **Products**;
- The applicable rate or rates for the **Products**;
- The calculation of the total payment.

Comments:

In all three options, the basis for payment would be a percentage of the Sales of Products, with different rates established according to a number of factors. A methodology by which the Governing Body could establish the rates is suggested in document IT/OWG-EFMLS-4/15/4, textbox 2, *A methodology for setting different rates for different Products*. That methodology has been assumed in preparing the options above.

A further question which the Governing Body will need to address is whether to make all payments mandatory, as discussed in IT/OWG-EFMLS-4/15/4, textbox 1, *Article 6.7 and 6.8. Mandatory and voluntary payments*.

ARTICLE 6 — EXEMPTION FROM PAYMENT

Comments:

The question as to whether or not a Subscriber, or a Recipient opting for the individual sample access option, under Article 6.7 of the Standard Material Transfer Agreement, should be exempted from payment (either because of the nature of the legal person — e.g., a non-profit organization, or a NARS — or because of the low volume of business) has still not been addressed in any detail.

This question is discussed on p. 16 of IT/OWG-EFMLS-4/15/4.

No agreement having been reached, it is too early to draft text.

ARTICLE 7 — DISPUTE SETTLEMENT

7.1 The **Subscriber** agrees that the **Third Party Beneficiary**, acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, may initiate dispute settlement regarding the rights and obligations of the **Subscriber**.

7.2 The **Subscriber** agrees that the **Procedures for the Operation of the Third Party Beneficiary** (“**Third Party Beneficiary Procedures**”), as from to time may be amended by the Governing Body, shall also apply to disputes under the **Subscription System**.

ARTICLE 8 — TERMINATION

8.1 The period of Subscription shall be ten (10) years from the date of receipt of the duly signed **Registration Form**.

8.2 Within [X] months of the end of the period of **Subscription**, and not less than [X] weeks from the end of the period of subscription, the **Subscriber** may give written notice of his intent to terminate his **Subscription**, failing which, the **subscription** shall be automatically renewed for a further period of ten (10) years.

8.3 If the **Subscriber** wishes to terminate his **Subscription** before a period of **Subscription** has elapsed, it may do so upon [X] months’ written notice, effective as at the end of each calendar year, provided that the **Subscriber**, at the same time, pay the cancellation fee. The cancellation fee will be [xx]. Such termination shall take effect 31 December of the calendar year in which such notice of termination is given.

8.4 Upon termination, the **Subscriber** shall, for a period of [X] years:

- (a) Make annual payments and report in accordance with Article 5; and
- (b) Use the **Standard Material Transfer Agreement** in transferring any materials[, of the crop or crops for which he has subscribed] to another natural or legal person.

8.5 If, after repeated requests, the **Subscriber** does not receive samples of **Plant Genetic Resources for Food and Agriculture** that he has requested, as provided for in Article 4.1, he may bring this in writing to the attention of the following session of the **Governing Body**, through the Secretary, setting forth the alleged facts, and requesting that the **Governing Body** use its good offices with the **Provider** so that the material be supplied, or good reason be given for why it is not available. Should the Subscriber bring [x] cases where samples were not provided, over a period of [x] years, without a good reason being given, the **Subscriber** may cancel his subscription, by written notice to the Secretary. Such cancellation shall take effect on 31 December of the calendar year in which such notice of termination is given. No cancellation fee shall be due, and the **Subscriber** shall not be required to make further annual payments, or to use the **Standard Material Transfer Agreement** in transferring any materials[, of the crop or crops for which he has subscribed] to another natural or legal person.

Comments:

These termination provisions relate only to the Subscription, and any SMTA that the Subscriber has entered into would remain in force, unless cancelled separately.

Since the nexus of the Subscription System is payment for all a Subscriber’s Products, in exchange for access to all the materials in the Multilateral System, remedy needs to be provided in the event that the Subscriber is unable to exercise this right. See IT/OWG-EFMLS-4/15/4, textbox 4, *Implementing key aspects of the Subscription Model/System*.

Registration form

I (*full name of **Recipient** or **Recipient's** authorised official*) declare to opt for the **Subscription System** of monetary benefit-sharing, in accordance with Article 6.11 of **this Agreement**.

My **subscription will be** [, for the crop or crops listed below (*structural option 1*)] / [for all crops in the Multilateral System (*structural option 2*)]

Crop/Crops:

.....

OR

[I opt to subscribe (*please indicate choice of subscription modality, by ticking one box*):

- for the crop or crops listed below
- for all crops in the Multilateral System

Crop/Crops:

.....

(*structural option 3*)]

I understand and expressly agree that my full name, contact details[, the crop or crops for which I have subscribed], and the date at which subscription took effect, shall be placed on a public register of subscribers (the "**Register**"), and I undertake to immediately communicate any changes to this information to the Secretary of the Treaty.

Signature..... Date.....¹⁷

Address of Subscriber:

.....

.....

.....

Telephone: Email:

NB: A **Subscriber** must also sign Article 10 of the **Standard Material Transfer Agreement**, without which **Registration** is not valid.

Comments:

The three possible structural options Subscription are listed above. Only the one retained by the Governing Body will be in the Standard Material Transfer Agreement, as revised.

¹⁷ The signed **Registration Form** opting for the **Subscription System** of monetary benefit-sharing must be sent by registered letter 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
www.planttreaty.org

The signed **Registration Form** must be accompanied by a copy of **this Agreement**.

For the reason why Subscribers must also sign Article 10 of the Standard Material Transfer Agreement, see IT/OWG-EFMLS-4/15/4, Appendix 1, *Implementing the system design; changes needed to the SMTA*.

Annex 4

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

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

Signature..... Date.....¹⁸

¹⁸ In accordance with Article 6.11h of the Standard Material Transfer Agreement, the option for this modality of payment will become operative only once notification has been provided by the **Recipient to the Governing Body**. The signed declaration opting for this modality of payment must be sent by the **Recipient to the Governing Body** at the following address, whichever method of acceptance of **this Agreement** (signature, shrink-wrap or click-wrap) has been chosen by the parties to **this Agreement**, and whether or not the **Recipient** has already indicated his acceptance of this option in accepting **this Agreement** itself:

The Secretary,
International Treaty on Plant Genetic Resources for Food and Agriculture
Food and Agriculture Organization of the United Nations
1-00100 Rome, Italy

The signed declaration must be accompanied by the following:

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