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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 September 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2025) 564 annex
Subject:	ANNEX 2 ANNEX to the COUNCIL DECISION establishing the position to be taken on behalf of the Union within the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture as regards certain proposals submitted for adoption during its eleventh session

Delegations will find attached document COM(2025) 564 annex.

Encl.: COM(2025) 564 annex



Brussels, 29.9.2025
COM(2025) 564 final

ANNEX 2

ANNEX

to the

COUNCIL DECISION

**establishing the position to be taken on behalf of the Union within the Governing Body
of the International Treaty on Plant Genetic Resources for Food and Agriculture as
regards certain proposals submitted for adoption during its eleventh session**

Annex II

DRAFT REVISED STANDARD MATERIAL TRANSFER AGREEMENT

1. 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, which in Resolution [XX]/2025 of [XX] November 2025 it decided to amend.

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**.

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*⁽²⁾) (hereinafter referred to as “the **Recipient**”).

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

(2) 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

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

ARTICLE 2 - DEFINITIONS

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

“Affiliate”: one corporate body is affiliated with another corporate body if one of them is the subsidiary of the other, or both are subsidiaries of the same corporate body, or each of them is controlled by the same legal person.

“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**.

“Commercialize” means to make available **Plant Genetic Resources for Food and Agriculture** 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**, nor shall it include the sale of commodities.

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

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

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

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

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

“Product” means **Plant Genetic Resources for Food and Agriculture** that incorporate⁽³⁾ 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 received by the **Recipient** and its **affiliates** from **commercialization** and in the form of license fees for **Plant Genetic Resources for Food and Agriculture**.

“Trait of commercial value” means any inheritable and measurable trait that confers significant commercial value for food and agriculture to a **Product**, including but not limited to agronomic traits, traits conferring resistance to biotic or abiotic stresses,

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.

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

traits that enhance the nutritional or processing value of harvested commodities, and any other traits used to describe a **Product** for the purpose of promoting its **commercialization**.

ARTICLE 3 - SUBJECT MATTER OF THE AGREEMENT

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

ARTICLE 4 - GENERAL PROVISIONS

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

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

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

4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3, Annex 2, Article 3.6, and Annex 4, Paragraph 7 to **this Agreement**.

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

ARTICLE 5 - RIGHTS AND OBLIGATIONS OF THE PROVIDER

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

- 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 or other relevant institutions will be applicable.

e) The **Provider** shall inform the **Governing Body**, through its Secretary, at least once every two calendar years, or within an interval that shall be, from time to time, decided by the **Governing Body**, about the Material Transfer Agreements entered into,⁽⁵⁾

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 1 to the Standard Material Transfer Agreement, and of the crop to which it belongs.

This information shall be made available by the Secretary to the third party beneficiary. Unless the parties to **this Agreement** agree otherwise and except as may be required in the context of the settlement of disputes under Article 8 of **this Agreement**, such information shall be treated as confidential business information and shall only be used to develop aggregated reporting.

ARTICLE 6 - RIGHTS AND OBLIGATIONS OF THE RECIPIENT⁽⁷⁾

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

⁽⁵⁾ 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/>.

⁽⁶⁾ 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.

⁽⁷⁾ Editorial comment: Article numbers for “6.11”, “6.11bis”, “6.11ter”, and “6.7/6.8” have been kept, because they are commonly used to describe the payment options and concepts of the current SMTA and have become synonymous for the subscription option and the single access option, respectively. It has been agreed that these articles will be re-numbered only at a later stage.

purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.

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 Standard 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, until a period of twelve years after signing or accepting of **this Agreement** has lapsed, the **Recipient** shall:

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

The obligations in this Article 6.5 do not apply to **Plant Genetic Resources for Food and Agriculture under Development**, for which both of the following applies:

- i. it contains a genetic contribution of less than 12.5% by pedigree of the **Material** and
- ii. it does not contain a trait of commercial value that was contributed by the **Material**.

6.6 Entering into a Standard 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.

6.9 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. The **Recipient** is encouraged to place a sample of any **Product** that incorporates the **Material** into a collection that is part of the **Multilateral System**, for research, and breeding and training.

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

6.6 bis The Recipient, at the time of signing or accepting of **this Agreement**, shall select between two access options, as provided for in Article 10 of **this Agreement**: the subscription option pursuant to Article 6.11 and Annex 2, or the single access option pursuant to Articles 6.7 and 6.8 and Annex 4, unless the **Recipient** has already subscribed.

6.11 To select the subscription option, the **Recipient**, if the **Recipient** has not already subscribed, must submit the **Registration Form** contained in Annex 3 to **this Agreement**, duly completed and signed, to the **Governing Body** of the **Treaty**, through its Secretary (**Subscription**). The **Subscription** is complete upon receipt of the Subscriber number from the Secretary.

6.11 bis The terms and conditions of the subscription option are set out in Annex 2 to **this Agreement**. Annex 2 to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and mutatis mutandis, to also include Annex 2.

6.11 ter Under the subscription option, the **Recipient**, shall have no payment obligations with regard to the **Material** received, and any **Product** that incorporates the **Material**, other than the payment obligations provided for under the subscription option, during the period of the **Subscription**.

6.7 Under the single access option, if the **Recipient** or any of its **affiliates commercializes** a **Product**, and where such **Product** is **not available without restriction**, the terms and conditions laid out in Annex 4 apply. After the restriction comes to an end, the **Recipient** or any of its **affiliates commercializing** the **Product** will continue to make payments at the rate referred to in Article 6.8 below. Annex 4 to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and mutatis mutandis, to also include Annex 4.

6.8 Under the single access option, if the **Recipient** or any of its **affiliates commercializes** a **Product** and where that **Product** is **available without restriction**, the terms and conditions laid out in Annex 4 apply. Annex 4 to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and mutatis mutandis, to also include Annex 4.

6.8 bis A **Recipient** who accesses the **Material** under Articles 6.7/6.8 shall disclose its **affiliates** at the time of signing the SMTA. In case any of those **affiliates** is given material after the signing of the SMTA, Article 6.5 of **this Agreement** shall apply.

ARTICLE 7 - APPLICABLE LAW

The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2016 and as subsequently updated, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 - DISPUTE SETTLEMENT

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

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

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

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

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

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

c) Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be 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.

d) Aggrieved parties may avail themselves of opportunities made available under the provisions of Article 12.5 of the **Treaty**.

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

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**.

Withdrawal from this Agreement

9.2 The **Recipient** may withdraw from **this Agreement** in accordance with Annex 2 and Annex 4.

Amendments to the Standard Material Transfer Agreement

9.3 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.

Transitional Phase

9.4 In the event that the Amendment of Annex I of the **Treaty**, as contained in Resolution [XX]/2025, does not enter into force by 31 July 2031 and unless the **Governing Body** extends the period or decides otherwise, at its Session in 2031:

Article 6.11 and related Annexes will cease to apply for new **Recipients** and no new **Subscription** will be allowed under **this Agreement**. A **Recipient** that became a **Subscriber** before 31 July 2031 may, within [XX] days, either:

- 1) Notify the **Governing Body** of the **Treaty**, through its Secretary, that it will maintain its **Subscription**; 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 payment mechanism under Articles 6.7, 6.8 and Annex 4 of **this Agreement**. Following such withdrawal, any amount paid by the **Subscriber** under the **Subscription** will be credited, upon request by the **Subscriber**, towards any payments that might fall due under the payment mechanism under Articles 6.7, 6.8 and Annex 4 of this Agreement.

ARTICLE 10 - SIGNATURE/ACCEPTANCE

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

Option 1 –Signature^{*(8)}

⁽⁸⁾ * Where the Provider chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly, where the Provider chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the “click-wrap” form is chosen, the Material should also be accompanied by a written copy of the Standard Material Transfer Agreement.

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

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

I hereby declare that the **Recipient's Sales** do not exceed USD [xx] in accordance with Annex 2, Article 3.4. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed USD [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.

I confirm that I am already a **Subscriber** to the **Multilateral System**.

Or

I hereby opt for the subscription option pursuant to Article 6.11 and Annex 2 of **this Agreement** and confirm I have sent the **Registration Form** in Annex 3 of **this Agreement** to the **Governing Body**, through its Secretary.

Or

I hereby opt for the single access options pursuant to Articles 6.7 and 6.8 and Annex 4 of **this Agreement**.

Signature

Date

Name of the **Recipient**

Option 2 – Shrink-wrap Standard Material Transfer Agreements*⁽⁹⁾

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**.

If the **Recipient's Sales** do not exceed USD [xx], it shall submit the following statement in writing and duly signed to the **Governing Body**, through its Secretary, or otherwise the exemption provided in Annex 2, Article 3.4 does not apply: "I hereby declare that the **Recipient's Sales** do not exceed USD [xx] in accordance with Annex 2, Article 3.4. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed USD [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."

⁽⁹⁾ * 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.

If the **Recipient** is a **Subscriber**, it shall submit the following information to the **Governing Body**, through its Secretary: “I hereby confirm that I am a **Subscriber**, with the Subscriber number

Or

If the **Recipient** opts for the subscription option, it shall submit the following information to the **Governing Body**, through its Secretary: “I hereby opt for the subscription option pursuant to Article 6.11 and Annex 2 of **this Agreement** and confirm I have sent the Registration Form in Annex 3 to this Agreement to the **Governing Body**, through its Secretary.”

Or

If the **Recipient** opts for the single access option, it shall submit the following information to the **Governing Body**, through its Secretary: “I hereby opt for the single access options pursuant to Articles 6.7 and 6.8 and Annex 4 of **this Agreement**.”

Option 3 – Click-wrap Standard Material Transfer Agreement⁽¹⁰⁾

- I hereby agree to the above conditions.
- I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.
- I hereby declare that the **Recipient**'s **Sales** do not exceed USD [xx] in accordance with Annex 2, Article 3.4. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed USD [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.
- I hereby confirm that I am a **Subscriber**, with the Subscriber number

Or

I hereby opt for the subscription option pursuant to Article 6.11 and Annex 2 of **this Agreement** and confirm I have sent the **Registration Form** in Annex 3 to **this Agreement** to the **Governing Body**, through its Secretary.

Or

I hereby opt for the single access options pursuant to Articles 6.7 and 6.8 and Annex 4 of **this Agreement**.

2. *Annex 1*

LIST OF MATERIALS PROVIDED

This Annex lists the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b. The following information is included, or the source indicated from which it may be obtained, for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

⁽¹⁰⁾ * 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.

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)

3. *Annex 2*

TERMS AND CONDITIONS OF THE SUBSCRIPTION OPTION (ARTICLE 6.11)

ARTICLE 1 - SUBSCRIPTION

1.1 The **Recipient**, who subscribes in accordance with Article 6.11 of **this Agreement** (hereinafter referred to as the “**Subscriber**”), agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 The **Subscription** shall take effect upon receipt by the **Subscriber** of the Subscriber number from the Secretary of the **Governing Body**, following the submission of the duly signed **Registration Form** contained in Annex 3. The **Subscriber** shall not be required to sign Annex 3 of any subsequent Standard Material Transfer Agreement, during the period of **Subscription**.

1.3 The **Subscriber** shall be relieved of any obligation to make payments under any Standard Material Transfer Agreements signed before [date], and with respect to materials accessed under those Standard Material Transfer Agreements, only the payment obligations in these **Subscription Terms** shall apply.

1.3 BIS To the extent the **Subscriber** has signed any Standard Material Transfer Agreements pursuant to Articles 6.7 or 6.8 of **this Agreement** after [date], the **Subscriber's** payment obligations under those Standard Material Transfer Agreements shall remain in place, and the **Subscriber** may subtract the sales of associated products that are **Plant Genetic Resources for Food and Agriculture** from the base of its subscription payment.

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.

ARTICLE 2 - REGISTER

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

ARTICLE 3 - MONETARY BENEFIT-SHARING

3.1 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**.

3.2 The applicable rate of payment on **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** shall be [yy] %.

3.3 At the request of the **Subscriber**, who only commercializes products that are **Plant Genetic Resources for Food and Agriculture** that are **available without restriction**, through the **Registration Form** contained in Annex 3, the rate of payment shall be [xx] %.

3.4 Notwithstanding the above, no payment shall be required for a **Subscriber** in a financial year in which its **Sales** do not exceed USD [xx].

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

3.6 The **Subscriber** shall submit to the Secretary of the **Governing Body**, within sixty (60) days after closure of accounts each financial year a statement of account, including in particular the following:

- a) Information on the **Sales** for which payment was made;
- b) In case of Article 3.3 of Annex 2, information on the **Subscriber**'s product portfolio;
- c) the verifiable source of the information provided;

or a signed declaration showing that it is exempted from payment in accordance with Article 3.4 above.

Such information shall be treated as confidential business information, to the extent specified by the **Subscriber** 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**.

3.7 All payments due to the **Governing Body** shall be payable in United States dollars (USD) 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**:

FAO Trust Fund (USD)

GINC/INT/031/MUL,

IT-PGRFA (Benefit-sharing),

Citibank

399 Park Avenue, New York, NY, USA, 10022,

Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577

ARTICLE 4 - WITHDRAWAL FROM THE SUBSCRIPTION

4.1 The **Subscription** shall be in force until the **Subscriber** withdraws from it, subject to the outcomes of any dispute settlement under Article 8 of **this Agreement**.

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

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

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

4. *Annex 3*⁽¹¹⁾

REGISTRATION FORM

The **Recipient** hereby agrees to be bound by the **Subscription Terms**. It is understood and expressly agreed that the **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 authorized official.

(Only if the monetary benefit-sharing payment rates under Annex 2, Article 3.3 are chosen): I hereby opt for the payment rates provided in Annex 2, Article 3.3. I understand and expressly agree that my yearly statement of account will have to include the additional information stipulated in Annex 2, Article 3.6.

⁽¹¹⁾ This Annex only applies if the Recipient has opted for the subscription option. If the Recipient is already a Subscriber and has indicated the Subscription number in Article 10 above, they shall not be required to sign the Registration Form.

Signature

Date

Full name of Recipient:

Address:

Telephone:

Email:

Recipient's authorized official:

Address:

Telephone:

Email:

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

Email: ITPGRFA-Secretary@FAO.org.

5. **Annex 4**⁽¹²⁾

**TERMS AND CONDITIONS OF THE SINGLE ACCESS OPTION
(ARTICLES 6.7 AND 6.8)**

1. On **commercialization** of the **Product**, the **Recipient** shall pay each year [bb %] of the annual **Sales** of the **Product**, if the **Product** is **not available without restriction** to others for further research and breeding, for the period for which the restriction is applicable. After the restriction comes to an end, the **Recipient** or any of its **affiliates** commercializing the **Product** will continue to make payments at the rate referred to in Paragraph 2 below.

2. On **commercialization** of the **Product**, the **Recipient** shall pay each year, for a period of twenty-five years, [aa] % of the annual **Sales** of the **Product**, if the **Product** is **available without restriction** to others for research and breeding.

3. For a particular **Product**, the **Recipient** shall be required to make payments for not more than twenty-five years in total.

4. The **Recipient** shall notify the **Governing Body** through its Secretary that it has **commercialized** the **Product**, within 6 months of the date the **commercialization** had started.

4bis. The **Recipient** may opt make a one-time payment equivalent to [zz%] of the total research and development expenditure related to the development of the

⁽¹²⁾ This Annex applies only if the Recipient has not opted for the subscription option

Product upon completion of the initial research phase. That payment will be deducted from any payment due under Articles 1 or 2 above. Completion of initial research means that laboratory analyses, field studies, or any other research activities necessary to determine the utility of the **Material** or its components obtained from the **Multilateral System** has been conducted and finalized.

5. No payment shall be due from the **Recipient** when the **Product**:

(a) has been purchased or otherwise obtained from another person or entity who has already made payment on the **Product**;

(b) is sold or traded as a commodity; or

(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**.

6. 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.

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

(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;

(b) the amount of the payment due;

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

(d) the verifiable source of the information provided.

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.

8. 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 (USD) 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:

FAO Trust Fund (USD)

GINC/INT/031/MUL,

IT-PGRFA (Benefit-sharing),

Citibank

399 Park Avenue, New York, NY, USA, 10022,

Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577

9. A **Recipient** may withdraw from **this Agreement** upon six months written notice to the **Governing Body**, through its Secretary, not less than ten years from the date of signing of **this Agreement** by the **Provider** or the **Recipient**, whichever date is later, or from the date of acceptance of **this Agreement** by the **Recipient**.

10. In the case that the **Recipient commercializes a Product**, in respect of which payment is due in accordance with Articles 6.7, 6.8 and Annex 4 of **this Agreement**, such payment shall continue after withdrawal while that **Product** is **commercialized** and in accordance with the terms of Articles 6.7, 6.8 and Annex 4 of **this Agreement**.

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

12. Notwithstanding the above, only Articles 4, 6.1, 6.2, 6.3, 6.4, 6.9, 6.10 and 8 of **this Agreement** shall continue to apply after the withdrawal has taken effect.