

Position

Brussels, June 2025

Enhancing the Functioning of the MLS aiming at maximizing the use of the MLS and the benefits shared

Euroseeds, which represents European seed companies, has participated since the beginning in the works that led to developing the International Treaty on Plant Genetic Resources for Food and Agriculture as the specialized instrument of the seed sector for accessing Plant Genetic Resources for Food and agriculture (PGRFA) and to share the benefits obtained from their use. Euroseeds believes the multilateral system (MLS) of the Treaty can be improved and is committed to achieving a satisfactory and workable agreement for all stakeholders.

It is our belief that achieving a successful agreement requires a variety of payment mechanisms that accommodate the needs of all potential users of the MLS, regardless of their usage frequency, market size, or the crop types they work with. An inclusive MLS, including a full subscription, a subscription per crop and a single access option, ensures that we can engage all user types and maximize benefit-sharing funds. In this position, Euroseeds aims to illustrate the necessity of such an inclusive mechanism and outline how it can be effectively organized and safeguarded. We respectfully request that our drafting proposal provided alongside this contribution is considered as an example of possible amendments to facilitate the implementation of this inclusive mechanism.

Why is there a need for multiple options to use the MLS and share benefits?

- Seed companies work with different types of crops and serve different markets, with differences in profitability and margins (i.e. the possibility of passing on additional costs).
- Depending on their portfolio (i.e., crop types) and markets, companies also have very different needs for additional genetic material and application of technology in plant breeding and thus also different levels of interest in using material from the MLS.
- In addition, the quality and value of PGRFA in the MLS may vary substantially, from poor/unknown to interesting.
- However, regardless of these differences, companies must maintain their competitiveness.
- The decision to access genetic resources (GRs) from the MLS will be made only if the conditions of access and benefit sharing ensure long term competitiveness and viability for companies. Multiple benefit sharing options allow more flexibility for accessing GRs for companies of all sizes and with different portfolios.
- Including a single access option will ensure that participation in collaborative research is also open to companies that did not subscribe.

How can the diversity of seed companies explain the need for different payment mechanisms: example of company typologies in terms of MLS interest

- ❖ **Type 1 company** specialized in a sector with a high need/interest for additional genetic material (e.g. vegetable seeds) → most likely to be interested in a **full subscription**
- ❖ **Type 2 company** specialized in crops with low interest for additional genetic material (e.g. corn, soybean) → most likely to be interested in **single access**¹
- ❖ **Type 3 company** with diversified portfolio combining species for which there is a great need/interest for additional genetic material and others for which this need is much rarer → more likely to be interested in a **subscription only for a part of their portfolio and single access for the rest of the portfolio**.

How would different models for the payment mechanism impact the use of the MLS by the seed companies and hence the benefit sharing?

1. **Subscription only:** Type 2 companies would refrain from becoming subscribers. Similarly, many Type 3 companies may also opt out due to high payments, since the payment obligation is calculated based on the whole portfolio, while the utilization of

¹ This company may however have keen interest in working on developing a market e.g., in a developing country that would have minimal impact/increase to global sales but a big impact to a local community in providing access to better quality seeds/varieties.

MLS would be limited to only some crops. Only Type 1 companies would likely become subscribers as the benefit of the subscription is in proportion to the expected payments and a commitment for many years would not be an obstacle from the company's perspective.

→ probable subscribers = only a portion of Type 1 companies.

2. **Full subscription + single access:** Type 2 companies would choose single access. Type 3 companies would choose according to the composition of their portfolio and the typology of their direct competitors. With no avoidance of benefit sharing among their competitors, Type 1 companies would choose the subscription.

→ probable subscribers = Type 1 companies + limited part of Type 3 companies; single access allows to include Type 2 companies and some of the remaining Type 3 companies.

3. **Full subscription + subscription per crop + single access:** Type 1 companies would likely mainly choose full subscription, and some would choose the combination of subscription per crop and single access. Type 2 companies would choose mainly single access, and some would choose both subscription per crop on a part of their portfolio and single access on the rest. Type 3 companies would choose a combination of subscription per crop and single access.

→ probable subscribers = Type 1 companies, mostly with full subscription; Type 3 companies, mostly with subscription per crop; and a limited part of Type 2 companies, only with subscription per crop. Single access allows the inclusion of all other companies and all crops in the use of MLS and sharing of benefits.

Impact of a possible inclusion of DSI in the case of full subscription

While single access and subscription per crop can deal with the use of DSI sequenced from the accessed PGRFA, these mechanisms are not fit to cover more widely the use of DSI, especially DSI from publicly accessible databases. In practice, as most gene sequences occur in different plant species and are not unique to a single species, for the vast majority of DSI it is impossible to be assigned to a specific species. Consequently, it becomes essential to also ensure that an all-encompassing mechanism, such as a full subscription covering all PGRFA, covers all PGRFA DSI.

Subscription could therefore be fostered by a global agreement with the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) in which seed companies subscribing will be released from any obligation for a contribution to the Cali Fund of the CBD multilateral mechanism (MLM) for DSI benefit sharing, for their turnover in seeds. Any such agreement should, at the same time, leave room for other ways to fulfil potential obligations or expectations under the CBD MLM, such as voluntary payments.

Impact of a possible differentiated payment rate in the case of subscription

The current benefit sharing mechanism of the MLS (Articles 6.7 and 6.8) distinguishes between benefit sharing based on the commercialization of a product that is available without restriction to others for further research and breeding, and based on the commercialization of a product that is not available without restriction to others for further research and breeding. Only the latter case entails an obligation to pay monetary benefit sharing. This differentiation is rightly justified by the recognition that the free accessibility of a product for further research and breeding is non-monetary benefit sharing by itself.

The June 2019 package proposed compulsory monetary benefit sharing for both kinds of products in all proposed benefit sharing options, while proposing a lower rate for those products that are available without restriction to others for further research and breeding, thus rewarding the non-monetary benefits they provide. Products that are not available without restriction require higher payment rates.

In the current proposal of the Co-Chairs, in the case of single access, differentiation is applied on a product-by-product basis (as described above), depending on whether or not they can be used freely for further research and breeding, regardless of the companies' overall IP portfolios. Euroseeds is open to consider applying such a differentiation to the subscription

options. However, such differentiation should be implemented for subscriptions - whether full or per crop - under the same conditions as those applied to single access².

² A completely different choice has been made by the co-chairs for the subscription. The current proposal for the subscription option considers such a differentiation not based on product types but rather by imposing the higher rate for the entire portfolio, as soon as one Product is not available without restriction. This modification in the rule for differentiated rates would significantly disadvantage companies that have at least one product not available without restriction. Euroseeds considers this penalty to be inappropriate, as the selection of intellectual property tools is heavily influenced by practices employed in various markets. It is common for a product not available without restriction in one market to be available without restriction in another.

Such a difference in the conditions for applying differentiation could potentially deter many companies from subscribing and encourage them to opt for single access instead.

Euroseeds regrets the inconsistency in differentiation application, all the more because the basis used for single access, i.e. the identification of products that are or are not available without restriction, could be applied in the exact same way in the case of subscription. We therefore consider it appropriate to apply the same differentiation rules for single access as for subscription, on the basis of sales from either freely accessible products or products to which access is restricted.

What could be the rates and thresholds applying to that comprehensive scheme?

Before coming to the possible level of different rates, it is necessary to recall **the basic principles** to be applied in determining these rates:

- Rates have to be realistic, preserving the economic viability of users and reflecting the potential commercial value of MLS resources, otherwise they would lead companies to avoid using MLS as much as possible.
- To meet the Parties' expectations regarding the global level of funding, broadening the base of benefit sharing payment would be more effective than disproportionately raising rates.
- Rates must be staggered so as not to penalize companies opting for subscription.

On the **rates level**, it is impossible to give a quick and definitive answer, as each company will have its limits, according to its subjective economic situation.

Regarding **thresholds** for small entities, the reason for these thresholds lies more in the administrative complexity of the system than in its cost. As payment is proportional to sales, entities with low sales will also have low payment levels. It therefore seems logical to focus on the level of staff below which the administrative follow-up of the subscription and the supporting documents to be produced can constitute a barrier. To that extent, the ceiling used by European regulations to define small enterprises, i.e. **companies with 10 to 50 employees in their group structure**, seems a relevant parameter.

Other success factors

- Traceability
 - The seed sector anticipates that an enhanced MLS, especially with the subscription options (either per crop or full subscription), will address the administrative burden of endless traceability of the current sMTA. For this reason, a dilution rate from the accessed GR in the pedigree of the product has been introduced beyond which tracking and payment obligations cease, except in the case the product contains a trait of commercial value that was contributed by the Material accessed through the sMTA. We are awaiting the conclusions from the experts' non-paper on this matter. However, we reaffirm our commitment to maintaining a limit on traceability obligations. It remains our position that expressing this limit based on dilution rate is the most rational approach.
 - For the same reasons, we recommend against introducing any obligation to identify the PGRFA that may be part of the pedigree of a new variety at the time of filing for varietal protection. The new WIPO treaty has already made it mandatory where the claimed invention in a patent is based on an accessed genetic resource. The request should remain within this scope; otherwise, there

is a significant risk that companies, still burdened by high traceability requirements, may perceive limited value in subscription models.

➤ No unnecessary limitations

- As previously stated, an efficient mechanism to maximize the amount of benefit sharing collected by the MLS involves expanding the payment base as extensively as possible. Accordingly, subscribers should be encouraged to include their affiliates within the scope of the signed SMTA, thereby ensuring that the payment base encompasses both the parent company's sales and those of its affiliates. In return, it must be made clear that in this case an exchange of genetic material from the treaty may take place between the affiliates for the purpose of research and development. The SMTA should be adjusted to enable the user to specify the scope, indicating whether the subscriber is signing on behalf of a specific company or an entire group, including the parent company and its affiliates, with a commitment to include the sales of these affiliates in the benefit-sharing base. For the sake of clarity, it should be recalled that "Affiliate is a corporate body that is controlled by another company through ownership of more than 50 % of shares/voting power". Such a precision will form the basis for a harmonized and consistent approach.



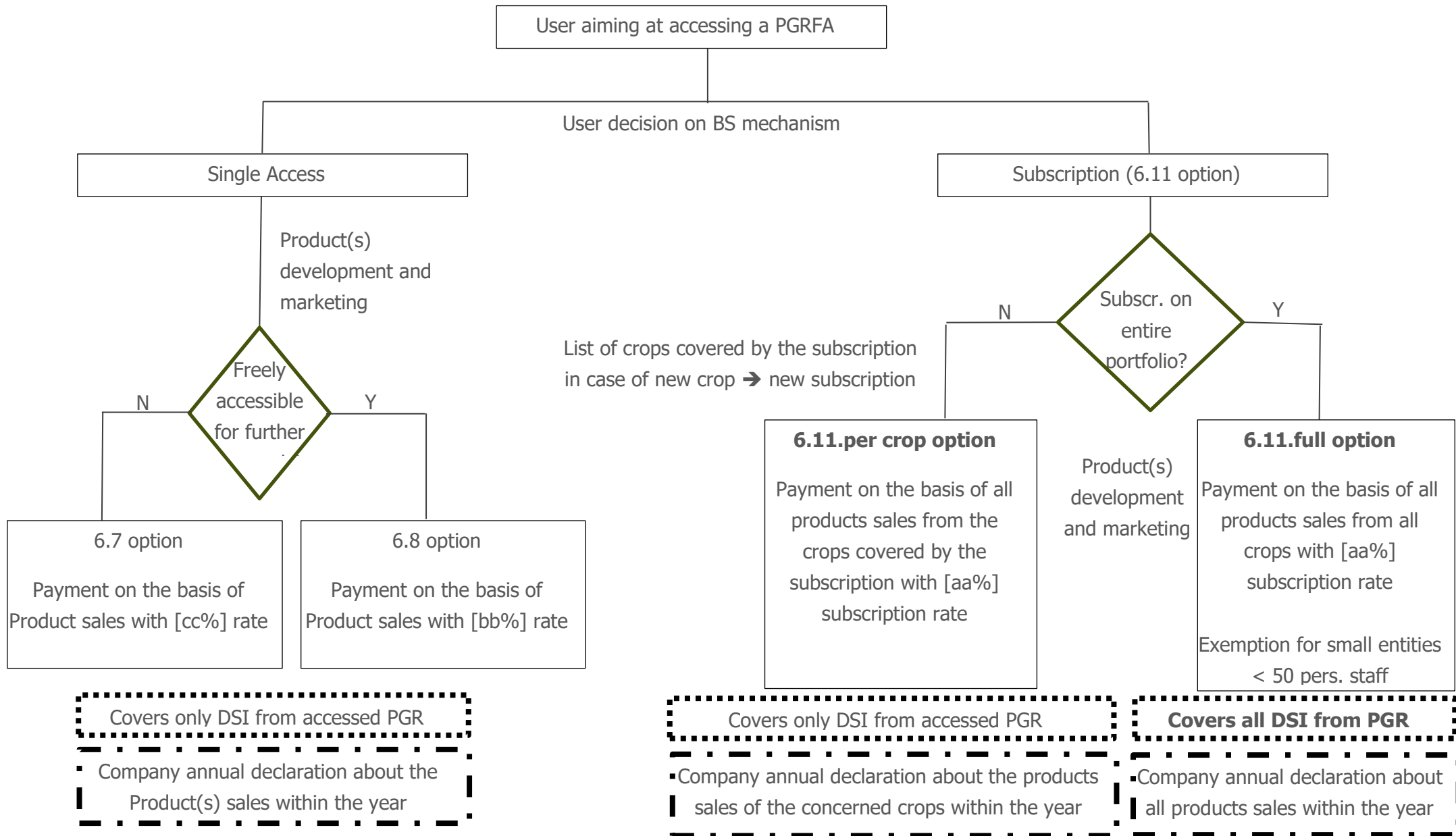
Avenue des Arts 52
1000 Brussels

www.euroseeds.eu

#EmbracingNature



Overview of the inclusive mechanism proposed by Euroseeds



Rates order: aa% << bb% << cc%

One possible redaction of the subscription per crop option

6.11 The **Recipient** may, at the time of signing of **this Agreement** or at the time of acceptance of **this Agreement** or at any time after that, opt for the **Subscription Mechanism**, as set out in *Annex 2* to **this Agreement**, by submitting 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 **Recipient** indicates their choice for full subscription or subscription limited to a list of crops that shall be detailed on the **Registration Form**. In that case, this list of crops is considered as the list of crops covered by the **Subscription**. If the **Registration Form** is not received by the Secretary, the modality of payment specified in Articles 6.7 and 6.8 will apply unless the **Recipient** is already a **Subscriber**.

6.11 bis Should the **Recipient** opt for the **Subscription Mechanism**, the terms and conditions of the **Subscription Mechanism**, as set out in *Annex 2* to **this Agreement**, apply. In this case, *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 By opting for the **Subscription System**, the **Recipient**, as **Subscriber**, shall have no payment obligations with regard to the **Material** received, and the **Product** that incorporates the **Material**, other than the payment obligations provided for under the **Subscription Mechanism**, during the period of the **Subscription**, at the condition that the **Material** received belongs to one of the crops covered by the **Subscription**.

ARTICLE 10 — SIGNATURE/ACCEPTANCE (AGREED AD REF)

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

Option 1 –Signature*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **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 3.3. The **Recipient** commits to making annual payments and submitting 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 for the crops to which the **Material** received belongs.

Subscriber number:

Or

- ☐ I hereby opt for the Subscription Mechanism pursuant to Article 6.11 and Annex 2 of this Agreement and confirm I have sent the Registration Form in Annex 3 to the Governing Body, through its Secretary. I confirm that this subscription covers the crops to which the **Material** received belongs.

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*

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 3.3 does not apply: "I hereby declare that the **Recipient's Sales** do not exceed USD [xx] in accordance with *Annex 2*, Article 3.3. The **Recipient** commits to making annual payments and submitting 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."

If the **Recipient** is a **Subscriber**, it shall submit the following information to the **Governing Body**, through its Secretary: "I hereby confirm that the **Recipient** is a **Subscriber** for the crops to which the **Material** received belongs, with the **Subscriber** number"

Or

If the Recipient opts for the Subscription Mechanism, it shall submit the following information to the Governing Body, through its Secretary: "I hereby opt for the Subscription Mechanism pursuant to Article 6.11 and Annex 2 of this Agreement and confirm I have sent the Registration Form in Annex 3 to the Governing Body, through its Secretary. I confirm that this subscription covers the crops to which the **Material** received belongs."

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

- ☐ 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 3.3. The **Recipient** commits to making annual payments and submitting 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 the **Recipient** is a **Subscriber** for the crops to which the **Material** received belongs, with the **Subscriber** number

Or

- ☐ I hereby opt for the Subscription Mechanism pursuant to Article 6.11 and Annex 2 of this Agreement and confirm I have sent the Registration Form in Annex 3 to the Governing Body, through its Secretary. I confirm that this subscription covers the crops to which the **Material** received belongs.

Or

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

Annex 2

SUBSCRIPTION TERMS AND CONDITIONS OF THE SUBSCRIPTION MECHANISM

(ARTICLE 6.11)*

ARTICLE 1 — SUBSCRIPTION

1.2 The **Subscription** shall take effect upon receipt by the Secretary of the **Governing Body** of the duly signed **Registration Form** contained in *Annex 3*. The Secretary shall notify the **Subscriber** of the date of receipt. The **Subscriber** shall not be required to sign *Annex 3* of any subsequent Standard Material Transfer Agreement for **Material** belonging to the crops covered by the **Subscription**, during the period of **Subscription**.

1.3 The **Subscriber** shall be relieved of any obligation to make payments for **Material** belonging to the crops covered by the **Subscription** under any previously signed Standard Material Transfer Agreement, and only the payment obligations in these **Subscription Terms** shall apply.

ARTICLE 2 — REGISTER

The **Subscriber** agrees that its full name, contact details, ~~and~~ the date at which **Subscription** took effect and, if applicable, the list of crops covered by the **Subscription**, 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.

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**. In case of the limitation of the **Subscription** to a list of crops, the **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources** from that list of crops.

Annex 3

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.

In case the **Recipient** chooses to limit the **Subscription** to a list of crops, it is understood and expressly agreed that this list of crops covered by the **Subscription** shall also be placed on a public register of **Subscribers** (the "**Register**").

☐ (Only if the monetary benefit-sharing payment rates under *Annex 2*, Article 3.3 are is 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.

☐ (Only if a **Subscription** limited to a list of crops is chosen): I hereby opt for a limitation of the subscription to a list of crops ("list of crops covered by the **Subscription**"), which is indicated on the following page.

Full name of Recipient:

.....

Address:

.....

.....

Telephone: **Email:**

Recipient's authorized official:

.....

Address:

.....

Telephone: **Email:**

☐ List of crops covered by the **Subscription** (number of pages =)

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