

ANNEX 2
GENERAL TERMS AND CONDITIONS
(January, 2017)

The following General Terms and Conditions are incorporated by reference in, and shall form an integral part of, the Subgrant Agreement. In the event of conflicts or inconsistencies between the provisions of these General Terms and Conditions and the Subgrant Agreement, the latter shall prevail.

1. DEFINITIONS

Capitalized terms in these General Terms and Conditions have the following meanings:

Background Intellectual Property	Any and all Intellectual Property developed by a Party or acquired from third parties by a Party prior to the commencement, or during the period, of the Research Project, which the Party having developed or acquired the Intellectual Property has the right to use and license out for the purpose of the Research Project.
Donor or Funder (indistinctively) Subgrantee	Any entity or entities contributing to the Subgrant Funds. The recipient of Subgrant Funds named in the Subgrant Agreement.
Subgrant Funds	The sum stated in the Subgrant Agreement for funding of the Research Project.
Subgrant Agreement	The agreement awarding the Subgrant Funds to the Subgrantee containing the specific terms and conditions of the Subgrant.
Intellectual Property	(a) patents, designs, utility models, copyrights (including the copyright in the code for any software) and related rights, database rights (where applicable), trademarks, plant variety rights, and other similar statutory rights, as well as applications for any such rights; and (b) any and all information and results of research and development activities including without limitation data, software, inventions, designs, drawings, process information, know-how, germplasm and confidential information, whether protected or not under any laws.
Project's Data and Information Products	All elements generated in the Research Project, consisting in raw data, metadata, analyzed data (including data summaries, maps, indicators, etc.), other documents, reports, papers (including working papers, workshop/seminar proceedings, books, book chapters, and journal papers), software models, pseudo-codes, codes and algorithms, statistical calculations, letters, tables, databases, web based systems (e.g. data portals, modeling on-line platforms, etc.), images, photographs, typographical arrangements of published editions, works of art, presentations, posters, training materials, protocols, factsheets, policy statements, audio files, videos, and films.
Principal Investigator	The authorized representative of the Subgrantee for technical aspects of the Subgrant Funds named in the Subgrant Agreement.
Research Project	The program of research described in Annex 1 of the Subgrant Agreement.
Main Project	The project financed by the Donor(s) or Funder(s) of which this Research Project is part of.
Resulting Intellectual Property	Any and all Intellectual Property generated in the Research Project.

2. SUBGRANT FUNDS AND INVESTMENT

- 2.1 Subgrant Funds are disbursed to the Subgrantee for the sole purpose of carrying out activities under the Research Project, and are contingent on satisfactory performance of the Research Project.
- 2.2 CIMMYT shall only be obligated to cover costs incurred by Subgrantee during the period specified for the execution of the Research Project, up to the amount committed under the Subgrant Agreement, provided all expenses correspond to the budget presented to CIMMYT. Subgrantee must promptly and no later than 30 (thirty) days return any Subgrant Funds that (i) are unspent at the conclusion of the Research Project or termination of the Subgrant agreement; (ii) are not aligned with the requirements, manuals or guidelines for record keeping communicated to Subgrantee; (iii) refer to expenses not aligned with the budget or for any other grounds disallowed or (iv) were used to fund activities that does not comply with the requirements and guidelines outlined in the Subgrant Agreement or this General Terms and Conditions.
- 2.3 Disbursements of Subgrant Funds to the Subgrantee shall, at all times, be subject to receipt of funds from the Donor(s). CIMMYT shall not incur in any liability for delay or non-payment of Subgrant Funds to the Subgrantee.
- 2.4 All yet-to-be spent Subgrant Funds, which have been disbursed to the Subgrantee, must be invested in highly liquid, minimum-risk investments (such as an interest-bearing bank account) with the primary objective of preserving principal so that Subgrant Funds remain available for funding of activities under the Research Project.
- 2.5 Any interest or other income generated by such Subgrant Funds, including currency conversion gains, shall be: (i) reported in the financial report; (ii) used only for the purposes described in the Subgrant Agreement, or (ii) if not needed for such purposes, returned to CIMMYT. The Subgrantee may freely exchange Subgrant Funds into other currencies as may facilitate their use and disbursement. Any exchange of Subgrant Funds, shall be properly reflected in the Financial Reports, together with any gain or loss resulting from the exchange. In the case there is a loss in such exchange CIMMYT shall not be bound to increase the amount of the grant.

3. RESPONSIBILITIES OF THE SUBGRANTEE

- 3.1 The Subgrantee shall commence performance of the Research Project promptly after the commencement date of the Research Project and shall use reasonable endeavors to perform the same in accordance with the terms and conditions of the Subgrant Agreement, including compliance with the Work Plan and activity chronogram set forth in Annex 1.
- 3.2 The Research Project will be under the supervision of the Principal Investigator. If the Principal Investigator becomes unable or unwilling to continue the Research Project, the Subgrantee shall inform CIMMYT immediately and Parties shall agree on a replacement within thirty (30) days. If such a replacement cannot be agreed upon, either Parties shall be entitled to terminate the Subgrant Agreement by giving thirty (30) days' notice in writing to the other. Under any circumstance, Subgrantee shall take all of the necessary measures to avoid any damages derived from the Principal Investigator's departure, whether they could be caused to CIMMYT or any third parties.
- 3.3 The Subgrantee warrants that it has, and shall maintain for the term of the Subgrant Agreement, the facilities and skilled personnel that are necessary to maintain and fulfill the requirements of the Subgrant Agreement.
- 3.4 CIMMYT and/or its Donor(s) reserve the right to conduct due diligence and review of the Research Project for technical or financial aspects, as well as the Subgrantee general performance, to the extent deemed necessary or appropriate.

- 3.5 Whenever relevant and possible, the Subgrantee shall carry acceptable liability insurance in connection with the Research Project, in light of the insurance available, the activities being undertaken by the Subgrantee, and the amount of Subgrant Funds involved.
- 3.6 The Subgrantee shall obtain prior written approval from CIMMYT to make material revisions to the Research Project, including but not limited to the following reasons: (i) to change the scope, deliverables or the objectives of the Research Project or to add any new material activity; (ii) unless otherwise specified, to change any budget line item by more than 10% or US\$50,000 (without altering the granted amount), whichever is lower; and (iii) to request an increase in the Subgrant Funds (if available). Approvals for (i) and (iii) above shall be formalized through written amendment to the Subgrant Agreement; approvals for (ii) above shall be given by both, CIMMYT's Administrative and Technical Authorized Representatives. All proposals for material revisions proposed by Subgrantee shall include a justification for such modification and shall be submitted using CIMMYT's templates in case they are provided to Subgrantee.
- 3.7 The Subgrantee shall be entitled to subcontract part of the activities in the Research Project, provided due written notification is given to CIMMYT to that effect and the following conditions are met:
- (a) there are no restrictions from the Donor(s) to Subcontract;
 - (b) CIMMYT is notified beforehand of the intention to Subcontract part of the activities, specifying the envisioned collaborators and the activities to be subcontracted; such notification shall be considered as given when the Subgrantee includes the information regarding such envisioned collaborators and activities to be performed by each of them as part of the Work plan (Annex 1) approved by CIMMYT.
 - (c) the Subgrantee ensures that the third parties that are subcontracted are bound by the relevant obligations of the Subgrantee under the Subgrant Agreement.
- Notwithstanding any subcontract, the Subgrantee remains solely and wholly responsible for its obligations under the Subgrant Agreement.
- 3.8 The Subgrantee, as well as any Subgrantee's employee, personnel, consultant or subcontracted party, shall conduct appropriately, ethically and legally while executing the activities of the Research Project. This obligation includes conducting activities in accordance with the following Policies, available at <http://www.cimmyt.org/institutional-research-policies/>:
- (a) CIMMYT's Code of Conduct;
 - (b) CIMMYT's Ethics in Research Policy.
- In case Subgrantee's internal Policies do not allow use of the CIMMYT's Policies referred above, Subgrantee shall be entitled to apply its own Policies for the matters therein regulated, provided such Policies are not contrary to CIMMYT Policies. In the event that CIMMYT and Subgrantee Policies are contradictory, Subgrantee shall immediately inform CIMMYT of such circumstance. Parties will work together to find an acceptable solution that satisfies requirements underlined in the documents referred above; however, if there is no agreement within the following 30 (thirty) days of the conflict being notified, this Subgrant will immediately and automatically terminate in accordance with clause 13.

4. REPORTING, RECORD KEEPING AND AUDIT

- 4.1 The Subgrantee shall provide to CIMMYT written technical and financial reports, and any other information/report for monitoring and evaluation purposes as specified herein and in accordance with the schedule agreed in the Subgrant Agreement.
- 4.2 The Subgrantee shall report (technically and financially) in accordance with the templates provided by CIMMYT to that effect and incorporated as annexes to the Subgrant Agreement. Such reports shall always include the following information:
- (a) Status of expenditure as compared to the budget line items presented in the Project Proposal and/or approved by CIMMYT in relation to the Research Project. Such report shall be

- submitted in US dollars (unless otherwise agreed in writing), shall include exchange rate differences and shall make reference to any authorized change in budget (if applicable);
- (b) Brief description on progress towards achieving each agreed milestone and deliverable, and results obtained as defined in the Subgrant Agreement, as well as any possible factors that may impact (positively or negatively) the agreed timelines;
 - (c) Intellectual Assets created in the Research Project, including any of the deliverables that need to be provided to CIMMYT as per Subgrant Agreement;
 - (d) Any additional information, as indicated in the reporting templates or requested by CIMMYT.
- 4.3 CIMMYT reserves the right to request from the Subgrantee further reports (such as audited financial statements) as may be reasonably necessary for its own purposes and/or to comply with its reporting obligations to the Donor(s).
- 4.4 The Subgrantee shall maintain sufficient books, records, documents, and other evidence in accordance with its usual accounting procedures to sufficiently substantiate, in a manner reasonably satisfactory to CIMMYT and its Donor(s), financial data relating to the Subgrant Funds. When Donor(s) have specific requirements, manuals or guidelines related to record keeping for expenses incurred, financial and/or technical reporting, such documents shall be used and followed by Subgrantee, once notified by CIMMYT.
- 4.5 The Subgrantee shall: (i) retain all records evidencing expenditures of Subgrant Funds disbursed pursuant to the Subgrant Agreement for at least five (5) years after the termination of the Subgrant Agreement; (ii) permit designated representatives of CIMMYT or the Donor(s) to examine such records; and (iii) provide to CIMMYT or the Donor(s) all such information concerning such records as they may from time to time reasonably request.
- 4.6 The Donor(s) or CIMMYT may commission an independent audit of the Subgrant Funds provided to the Subgrantee, and the Subgrantee shall fully cooperate with, and facilitate such independent audit.

5. MONITORING AND EVALUATION

- 5.1 The Subgrantee agrees that CIMMYT and the Donor(s) have the right to commission evaluations of the Subgrantee in connection with activities undertaken by the Subgrantee under the Subgrant Agreement. CIMMYT and/or the Donor(s) shall inform the Subgrantee of such evaluations in a timely manner.
- 5.2 The Subgrantee hereby agrees to adhere to procedures communicated by CIMMYT and/or the Donor(s) for monitoring progress, and for evaluation, of the Research Project.

6. AUTHORIZED REPRESENTATIVES

CIMMYT and Subgrantee shall designate authorized representatives for administrative and technical matters related to the Subgrant Agreement. Such representatives shall have the roles and authorities described below:

- (a) Technical representatives will serve as liaison regarding implementation and progress of the Research Project. They shall be responsible for strategic and technical oversight of the Research Project to the extent applicable to each Party, including its implementation and assessing of progress against the objectives and milestones agreed. Technical Representatives may request (Subgrantee) or recommend (CIMMYT) modifications to the Research Project to ensure the achievement of results.
- (b) Administrative representatives will serve as liaison regarding financial and other administrative matters related to the Research Project, including financial reporting and budget realignment.

7. MANAGEMENT OF INTELLECTUAL PROPERTY

7.1 Subgrantee hereby agrees that all Intellectual Property in the Research Project shall be managed as International Public Goods and in a way that is consistent with the policies listed below (available at <http://www.cimmyt.org/en/who-we-are/policies>), as may be amended from time to time:

- (a) CGIAR Principles on the Management of Intellectual Assets (“CGIAR Principles”);
- (b) CGIAR Open Access and Data Management Policy (“CGIAR Open Access Policy”);
- (c) CIMMYT Intellectual Property Policy;
- (d) CIMMYT Research Data and Information Products Policy;
- (e) CIMMYT Copyright and Authorship Policy;
- (f) CIMMYT Germplasm Policy.

Provisions related to Limited Exclusivity Agreements and Restrictive Use Agreements contained in the CGIAR Principles, as well as timelines to make available Data and Information Products contained in the CGIAR Open Access Policy shall prevail over any other disposition contained in the documents mentioned above.

7.2 Parties agree that any and all rights to Resulting Intellectual Property produced or developed as part of the Research Project shall be owned jointly between the Parties, in the same percentage by each of them (50% each one). Parties hereby assign to each other any rights that are deemed to be necessary for this shared ownership to be valid under any legal system. Such assignment includes the rights for the Parties to world-wide, royalty free and perpetually use and license the Resulting Intellectual Property Notwithstanding the foregoing, in case any Resulting Intellectual Property is produced by the Subgrantee or any of its subcontractors as commissioned work under the instruction of CIMMYT, such commissioned work shall be owned/assigned exclusively by/to CIMMYT, in the terms of the applicable legislation.

7.3 Parties hereby agree that either Party will be entitled to independently use, disseminate, further develop and license in a world-wide, royalty free, perpetual and nonexclusive manner any Resulting Intellectual Property jointly owned. For that purpose, both Parties grant to the other a non-exclusive, worldwide, royalty-free, irrevocable license to use and sublicense their respective share of Resulting Intellectual Property. Parties acknowledge that any request by third Parties to non-exclusively access jointly owned Resulting Intellectual Property may be made to either of them.

7.4 Subject to compliance with any confidentiality obligation, any Party introducing Background Intellectual Property to be used or incorporated into the Research Project hereby grants to the other Party a world-wide, royalty free, perpetual license to use, further develop and sublicense the Background Intellectual Property for the purposes of the Research Project. Parties hereby agree that in the event that the Background Intellectual Property is incorporated to the Resulting Intellectual Property as part of the Research Project planned activities, subject to any Confidentiality obligations, the granted license includes the ability to continue using, disseminating, further developing and sublicensing to third parties such Background Intellectual Property, in terms of sections 6.2. and 6.3 above. Where Background Intellectual Property used contains restrictions that may prevent its incorporation into, or use for the Research Project, the Party introducing same shall inform the other Party prior to the start of the activities or immediately after this is known by the said Party.

7.5 The possibility of filing for a patent, plant breeder’s right, as well as any other kind of Intellectual Property protection or registration in relation to the Resulting Intellectual Property shall be jointly assessed in the light of the Policies listed in section 6.1.

7.6 CIMMYT, as an international agricultural organization holding in trust *ex-situ* collections of maize and wheat germplasm, has signed an agreement with the Food and Agriculture Organization of the United Nations, acting on behalf of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, on 16 October 2006, to re-affirm its commitments to the conservation, sustainable use and equitable sharing of benefits arising from the utilization of maize and wheat genetic resources for food and agriculture. The Subgrantee is hereby encouraged to use the Standard

Material Transfer Agreement of the International Treaty on Plant Genetic Resources for Food and Agriculture (available at <http://www.planttreaty.org>), or such other material transfer agreement as may be consistent with it, for exchange of germplasm with CIMMYT and/or under the Research Project.

- 7.7 Management of Intellectual Property created in the Research Project shall be done according to the relevant plan(s) for the Main Project. In absence of any plan or guidelines for that purpose, management, as well as attribution, authorship and data sharing of the results shall be agreed by the Parties, in accordance with the Policies referred in section 6.1.
- 7.8 This clause 7 will survive termination and/or expiration of this Subgrant Agreement.

8. STORAGE AND DISSEMINATION OF PROJECT'S DATA AND INFORMATION PRODUCTS

- 8.1 Parties shall make Project's Data and Information Products available in Open Access repositories, as International Public Goods, with exception of those that fall into the permitted limitations and/or restrictions to Open Access and/or Confidential Subject Matter, as described herein, in light of applicable Policies listed in section 6.1. above.
- 8.2 CIMMYT shall be entitled to disseminate any and all Data and Information Products provided to CIMMYT in terms of clause 7.5. Such dissemination shall be made in accordance with timeframes defined in the applicable Policies referred in section 6.1., CIMMYT implementation plans derived thereof, as well as any Data and Information Products Management Plan communicated to Subgrantee, in terms of clause 7.6. CIMMYT reserves the right to decide if Project's Data and Information Products or any part thereof will be made available through CIMMYT repositories or not. Such decision may include considerations on permitted restrictions and/or limitations listed in section 7.3, lack of available funding or other logistical limitations, as well as Project's Data and Information Products potential future utility, relevant supporting documentation, among others. Such decision shall not prevent Subgrantee in any manner from disseminating the Project's Data and Information Products.
- 8.3 For the purpose of disseminating Data and Information Products, CIMMYT repositories and webpages of the Main Project, as well as links to the approved or chosen repository for the Main Project shall be preferred. Notwithstanding the foregoing, Subgrantee will not be in any manner prevented from disseminating the Project's Data and Information Products.
- 8.4 Parties acknowledge and agree that dissemination of Project's Data and Information Products as provided in sections 7.1., 7.2. and 7.3 above may be subject to permitted limitations or restrictions, in accordance to the relevant policies referred in section 6.1. Parties agree to discuss and document any restriction or limitation and the scope in relation to the Project's Data and Information Products before the start of the Research Project. Permitted limitations and restrictions may consist but are not limited to Intellectual Assets Management and/or legal rights and legitimate interests of stakeholders and third parties (including the pursuit of Intellectual Property Rights ("IPRs")), confidentiality obligations, sensitivity of Data or Information (including price and politically sensitive information), as well as farmers' and privacy rights.
- 8.5 For storage purposes, Subgrantee shall deposit in CIMMYT-approved repositories all Project's Data and Information Products, as soon as possible and at the latest, according to the following timeframes:
- 8.5.1 Upon completion: source code of any developed software;
 - 8.5.2 Within three (3) months of publication or completion: (1) scholarly articles reporting research; (2) Information Products that are not intended for peer-reviewed journals, such as reports, conference papers, policy briefs and working papers; (3) digital version of books and book chapters; (4) complete final digital versions of published video and audio outputs and image collections; and (5) specified classes of unpublished Research Data (e.g. phenotypic results from field trials) and other Information Products (e.g. maps highlighting survey results).

8.6 In the event that CIMMYT communicates to Subgrantee any Data and Information Products Management Plan derived from the Main Project, the same shall be followed by Subgrantee.

8.7 This clause will survive termination and/or expiration of this Subgrant Agreement.

9. BRANDING AND COMMUNICATION

9.1 Subgrantee shall abide to branding guidelines communicated by CIMMYT from time to time. All public communications to be made in connection with the Research Project, as well as branding in Resulting Intellectual Property and Project's Data and Information Products shall be made accordingly.

9.2 In all Resulting Intellectual Property and Project's Data and Information Products, due acknowledgement shall be given to:

- (a) Financial contributions, including those from the Donor(s) and CIMMYT; reference to the Main Project shall also be included when applicable;
- (b) Technical contributions, including the institutions leading and/or collaborating in the development of the Resulting Intellectual Property or Project's Data or Information Product, as well as author(s) of the same, in accordance with the CIMMYT Copyright and Authorship Policy referred in section 6.1. above.

In case of doubt in relation to how acknowledgement needs to be made, Subgrantee shall consult with CIMMYT. CIMMYT reserves the right to request to Subgrantee the correction of any acknowledgement or any lack of it in any Resulting Intellectual Property or Project's Data and Information Product. Subgrantee agrees to make the necessary corrections as soon as practicable possible and at its own costs.

9.3 Inclusion of any logo from Donor(s) and/or CIMMYT in Resulting Intellectual Property and Project's Data and Information Products shall be subject to written explicit authorization given for such purpose. Such authorization shall be understood as given when:

- (a) the use of any of the logos is regulated in any branding guidelines communicated by CIMMYT, in terms of section 8.1.;
- (b) the use of any of the logos is regulated in any Data and Information Products Management Plan;
- (c) the use of any of the logos is requested by any authorized representative from the relevant Donor(s) or CIMMYT, as part of any revision made to the Resulting Intellectual Property or Project's Data and Information Products; or
- (d) a formal authorization is issued for such purpose.

10. CONFIDENTIAL INFORMATION

10.1 Parties will take appropriate and reasonable care to keep confidential any information marked as such ('Confidential Subject Matter') received from another Party in relation to the Research Project and will not disclose or transfer it to any third party without the previous written consent from the owner. It shall only grant access to those of its employees or consultants to whom it will be necessary to grant access thereto and who have executed undertakings securing their compliance with the Research Project. In case of oral disclosure of Confidential Subject Matter, the disclosing Party shall identify the same in the Subgrant General Information document and/or reduce the Confidential Subject Matter (including marking it confidential) to writing within thirty (30) days after disclosure.

10.2 The Parties shall:

- 10.2.1 assume responsibility for the observance of their obligations by all persons having had access to the Confidential Subject Matter through the said Party;
- 10.2.2 exercise at least the same degree of care that it uses for its own proprietary information; and

- 10.2.3 maintain adequate security to prevent unauthorized disclosure, theft, loss or destruction of the Confidential Subject Matter.
- 10.3 However, the foregoing confidentiality obligations shall not apply to Confidential Subject Matter which:
- 10.3.1 was in a Party's possession and at its free disposal prior to disclosure by the other Party, as evidenced by written records; or
 - 10.3.2 was in the public domain at the time of disclosure by a Party; or
 - 10.3.3 subsequently comes into the public domain through no fault, action or omission of the Party; or
 - 10.3.4 becomes available to the Party without any obligation of confidence from a third party having the right to transmit the same.
- 10.4 The foregoing shall not prevent a Party to disclose information in order to comply with any applicable law or if required to do so by order of any court or other judicial or administrative body, provided that prior to making such disclosure the receiving Party gives the disclosing Party notice of the requirement of disclosure and the information to be disclosed and the opportunity if available to seek any legal redress.
- 10.5 The obligations in this clause shall survive the termination or expiry of the Subgrant Agreement.

11. CONTINUING REPRESENTATION AND UNDERTAKINGS

- 11.1 Unless otherwise specified in the Subgrant Agreement, the Subgrantee makes the following representations and undertakings on behalf of itself during the time that any Subgrant Funds are held or expended by the Subgrantee as part of the implementation of the Research Project:
- (a) The Subgrantee has full power, capacity and authority to enter into the terms of the Subgrant Agreement and carry out its obligations hereunder.
 - (b) The Subgrantee shall carry on its own operations in accordance with sound administrative, technical, financial, economic, environmental and social standards and practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.
 - (c) The Subgrantee shall use Subgrant Funds received as part of the Subgrant Agreement with due regard to economy and efficiency and uphold the highest standards of integrity in the administration of such Subgrant Funds, including the prevention of fraud and corruption.
 - (d) The Subgrantee shall agree that Subgrant Funds received shall not be used for payments for any corrupt, fraudulent, collusive, obstructive, or coercive practices.
 - (e) The Subgrantee shall promptly report to CIMMYT any occurrence of which the Subgrantee becomes aware of any Subgrant Funds disbursed for use in the Research Project is being used for purposes other than as provided in the Subgrant Agreement.
 - (f) The Subgrantee shall confirm that, given the activities funded by Subgrant Funds, the Subgrantee does not believe that Subgrant Funds would be diverted in support of drug trafficking or terrorism as provided below.
 - (g) The Subgrantee shall use its best efforts, to the extent allowed by applicable agreements, laws and regulations, to ensure that the Subgrant Funds made available by CIMMYT under the Subgrant Agreement will be free from any taxation or fees imposed under local laws. In this regard, the Subgrantee shall assert all exemptions from taxes and duties to which it believes the Subgrant Funds may be entitled.
 - (h) The Subgrantee is not aware of information that indicates the need for further scrutiny of the use of the Subgrant Funds (including non-frivolous allegations that corrupt, fraudulent, collusive or coercive practices were undertaken in relation to such use). In the event that the Subgrantee becomes aware of information that indicates the need for further scrutiny of use of the Subgrant Funds in violation of this section of the Subgrant Agreement (including non-frivolous allegations that corrupt, fraudulent, collusive or coercive practices were undertaken

in relation to the use of the Subgrant Funds), the Subgrantee shall promptly notify CIMMYT thereof.

- (i) The Subgrantee agrees to carry out all regulated research activities under high standards (set with reference to internationally accepted practices) and in accordance with applicable laws and regulations. The Subgrantee agrees to indemnify and hold CIMMYT harmless of any damages arising from the Research Project and/or financed by Subgrant Funds, except to the extent that such damages are the result of CIMMYT's actions.

- 11.2. None of the Donor(s) or CIMMYT shall be responsible for the activities of any person or third party engaged by the Subgrantee with use of Subgrant Funds or as a result of the Subgrant Agreement, or any sub-agreement; nor will the Donor(s) or CIMMYT be liable for any costs incurred by the Subgrantee in terminating the engagement of any such person. Subgrantee will keep CIMMYT and Donor(s) harmless from any such action or procedure filed.

12. USE OF SUBGRANT FUNDS

- 12.1. The Subgrantee shall promptly return to CIMMYT without request any portion of Subgrant Funds disbursed for use in the Research Project that:
 - 12.1.1. is unexpended at the termination of the Subgrant Agreement;
 - 12.1.2. cannot be justified by supporting records of the expense made, or;
 - 12.1.3. is used for purposes or in a manner other than as provided in the Research Project or the terms and conditions of the Subgrant Agreement.
- 12.2. Recognizing the obligations of countries that are members of the United Nations under various United Nations Security Council resolutions to take measures to prevent financing of terrorists, the Subgrantee agrees to undertake to use reasonable efforts, consistent with their governing arrangements and policies, including those pertaining to combating financing for terrorists, to ensure that the Subgrant Funds disbursed from CIMMYT for use in the Research Project are used for their intended purposes and are not diverted to individuals or entities associated with terrorism, as identified in accordance with relevant United Nations Security Council resolutions. The Subgrantee shall (i) not use such Subgrant Funds for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import, to the Subgrantee's knowledge or belief, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, including under United Nations Security Council Resolution 1373 and related resolutions, and (ii) include a corresponding provision in any sub-agreements that the Subgrantee enters into with entities to which the Subgrantee makes such Subgrant Funds available. While the Subgrantee must comply with the prohibition set forth in this Clause 12.1, for the avoidance of doubt, this Clause 12.1 does not prevent the Subgrantee from operating or partnering in territories where threats of terrorism may be present.
- 12.3. The Subgrantee shall not partner with any other organization or subcontractor in implementing the Research Project that (a) appears on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury's Office of Foreign Assets Control or any similar list maintained by the European Union, or (b) within the past five years, has been found guilty or liable under any anti-money laundering, trading with the enemy, anti-bribery or similar statutes of any country, or is under investigation with respect to any of the foregoing and such investigation has been publicly announced by the investigating entity or body. The Subgrantee shall also make sure that no debarred person works in the Research Project, neither as part of Subgrantee's personnel nor as staff, consultant or any other from any partner or subcontractor.
- 12.4. The Subgrantee agrees not to discriminate against persons with disabilities in the implementation of the Research Project activities financed by Subgrant Funds, and to make every effort to respect the principles of the UN Convention on the Rights of Persons with Disabilities in performing such activities. To that end, and to the extent this goal can be accomplished within the scope of the objectives of the

Research Project, the Subgrantee should demonstrate a comprehensive and consistent approach for including men, women and children with disabilities consistent with such principles: (1) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (2) non-discrimination; (3) full and effective participation and inclusion in society; (4) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (5) equality of opportunity; (6) accessibility; (7) equality between men and women; and (8) respect for the evolving capacities of children with disabilities. The full text of the UN Convention on the Rights of Persons with Disabilities can be found at the following website: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

- 12.5. The Subgrantee agrees that no portion of the Subgrant Funds disbursed under the Subgrant Agreement for use in the Research Project is earmarked for lobbying activity, defined as attempting to influence legislation (1) through affecting the opinion of the general public or any segment thereof (i.e. grassroots lobbying), or (2) through communications with any member or employee of a legislative body.
- 12.6. The Subgrantee confirms that Subgrant Funds disbursed under the Subgrant Agreement for use in the Research Project shall not be used to influence the outcome of any specific public election or to directly or indirectly carry on any voter registration drive.

13. TERMINATION OR SUSPENSION

- 13.1. CIMMYT reserves the right to suspend or terminate the Subgrant Agreement, and/or to discontinue making payments under the Subgrant Agreement by providing notice to that effect to Subgrantee, if CIMMYT's funding is discontinued or suspended for any reasons whatsoever.
- 13.2. The Subgrant Agreement shall immediately terminate solely with respect to the defaulting Party if that Party:
 - 13.2.1. breaches any provision of the Subgrant Agreement that is not capable of being remedied;
 - 13.2.2. materially breaches any provision of the Subgrant Agreement that is capable of being remedied but not remedied within sixty (60) days after notice is sent to that Party by the other Party; or
 - 13.2.3. enters into an arrangement for the benefit of creditors, becomes insolvent, files for protection under the bankruptcy laws or otherwise seeks relief from creditors or anything analogous to the matters stated hereinbefore shall occur to that Party under any applicable law.
- 13.3. The Parties may suspend or terminate the Subgrant Agreement by mutual agreement and after full discussion of the reasons and implications for such suspension or termination.
- 13.4. The Subgrant Agreement shall be automatically terminated if the implementation of the Research Project is rendered impossible or the obligations hereunder become incapable of performance due to Force Majeure reasons.
- 13.5. In the event of termination due to any reason, Parties shall co-operate and work together to effectively fulfill all obligations, safeguard and preserve the assets of the Subgrant including all Intellectual Property created and if applicable, facilitate the reimbursement of non-spent funds or funds related to activities that will not be performed. An appropriate winding up period for completion of post-termination obligations shall be agreed between the Parties if necessary.

14. GENERAL

- 14.1. **Force Majeure**
Neither Party shall have any liability or be deemed to be in breach of the Subgrant Agreement for any delays or failures in performance which result from circumstances beyond the reasonable control of

the Parties, including, without limitation, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes and governmental actions or decrees. A Party will immediately notify the other Party in the event of a Force Majeure.

14.2. Relationship between the Parties

14.2.1. In the performance of all activities hereunder, the Subgrantee shall be deemed to be and shall be an independent contractor.

14.2.2. Neither Party is authorized to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

14.3. Liabilities

The Donor(s) and CIMMYT will not be held responsible for any accident, illness, loss or damage experienced by the Subgrantee which may occur during the implementation of the Research Project.

14.4. Amendment

The Subgrant Agreement and this General Terms and Conditions may only be amended in writing signed by duly authorized representatives of the Parties.

14.5. Assignment

The Subgrant Agreement shall not be assigned by the Subgrantee without the prior written consent of CIMMYT.

14.6. Non-Waiver of Remedies

14.6.1. No failure or delay by either Party in exercising any of its rights under the Subgrant Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Subgrant Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.6.2. Any provision of the Subgrant Agreement or this General Terms and Conditions may be waived if, but only if, such waiver is in writing and is signed, by the Party against whom the waiver is to be effective.

14.7. Invalid Clauses

If a court determines that a provision is unenforceable, illegal or void then the court may sever that provision. The Parties agree that the unenforceability, illegality or voidness of the severed provision will not affect the validity of the other Provisions of this Agreement.

14.8. Interpretation

In the Subgrant Agreement and this General Terms and Conditions:

14.8.1. the headings are used for convenience only and shall not affect its interpretation;

14.8.2. references to person shall include incorporated and unincorporated persons;

14.8.3. references to the singular include the plural and vice versa; and

14.8.4. references to the masculine include the feminine.

14.9. Entire Agreement

The Subgrant Agreement, including its annexes, sets out the entire agreement between the Parties relating to the Research Project and supersedes all prior oral or written agreements, arrangements or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in the Subgrant Agreement or this General Terms and Conditions.

14.10. Dispute Resolution

14.10.1. Any disagreements between the Parties concerning the interpretation or application of the Subgrant Agreement will be settled amicably by negotiation in the first instance, failing

which all disputes arising out of or in connection with it 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. Arbitration language will be English and place of arbitration will be Mexico City, Mexico.

- 14.10.2. The Subgrant Agreement and this General Terms and Conditions shall be governed by general principles of law to the exclusion of any national system of law. Such general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts 2010.
- 14.10.3. Subgrantee hereby waives the right to claim for any other applicable jurisdiction or legislation derived from its domicile.

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