

ANNEX 2
GENERAL TERMS AND CONDITIONS
23 March 2013

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

1. DEFINITIONS

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

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| 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 | Any entity that contributes to the Subgrant Funds. |
| Subgrantee | The recipient of Subgrant Funds named in the Subgrant Letter. |
| Subgrant Funds | The sum stated in the Subgrant Letter for funding of Research Project. |
| Subgrant Letter | The letter awarding the Subgrant Funds to the Subgrantee containing the specific terms and conditions of the Subgrant. |
| Intellectual Property | (a) patents, designs, copyrights (including the copyright in the code for any software), database rights (where applicable), trade marks, plant variety protection, 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. |
| Principal Investigator | The authorized representative of the Subgrantee for technical aspects of the Subgrant Funds named in the Subgrant Letter. |
| Research Project | The program of research described in Annex 1 of the Subgrant Letter. |
| 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 not be obligated to reimburse the Subgrantee for costs incurred retrospectively of the start date specified in the Subgrant Letter or in excess of the Subgrant Funds committed under the Subgrant Letter. Any Subgrant Funds that are unexpended or uncommitted at the conclusion of the Research Project must be promptly returned to CIMMYT without request.

2.3 Disbursements of Subgrant Funds to the Subgrantee shall, at all times, be subject to receipt of funds from the Donor. CIMMYT shall not incur any liability for delay or non-payment of Subgrant Funds to the Subgrantee that is due to delay, default or non-payment by the Donor.

2.4 All yet-to-be spent or committed Subgrant Funds, which have been disbursed to the Subgrantee, must be invested in highly liquid investments (such as an interest-bearing bank account) with the primary objective of preserving principal so that they remain available for funding of activities under the Research Project. 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 Letter, 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.

3. RESPONSIBILITIES OF THE SUBGRANTEE

3.1 The Subgrantee shall commence performance of the Research Project promptly after the commencement date of the Subgrant Letter and shall use reasonable endeavors to perform such Research Project substantially in accordance with the terms and conditions of the Subgrant Letter. Parties may however at any time amend the Research Project by mutual written agreement.

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 substitute within thirty (30) days. If such a substitute cannot be agreed upon, parties shall be entitled to terminate the Subgrant Letter by giving thirty (30) days' notice in writing to the other.

3.3 The Subgrantee warrants that it has, and shall maintain for the term of the Subgrant Letter, the facilities and skilled personnel that are necessary to maintain and fulfill the requirements of the Subgrant Letter.

3.4 CIMMYT and/or its Donor reserves the right to conduct due diligence and review of the Research Project and the Subgrantee to the extent deemed necessary or appropriate.

3.5 Whenever relevant and possible, the Subgrantee shall carry reasonable liability insurance in connection with the Research Project in light of the insurance available, the activities being undertaken by the Subgrantee, and the Subgrant Funds involved.

3.6 The Subgrantee agrees to seek approval from CIMMYT to make material revisions to the Research Project, including for the following reasons: (i) to change the scope or the objectives of the Research Project or to add any new material activity; (ii) to change any budget line item by more than 10% or US\$500,000, whichever is lower; and (iii) to request an increase in the Subgrant Funds.

3.7 In the event that the Subgrantee sub-contracts part of its activities in the Research Project to third parties, it shall ensure that such third parties are bound by the relevant obligations of the Subgrantee under the Subgrant Letter. Notwithstanding this, the Subgrantee remains solely and wholly responsible for its obligations under the Subgrant Letter.

4. REPORTING

4.1 The Subgrantee shall provide to CIMMYT such reports as are specified in the Subgrant Letter, and in accordance with the schedule specified therein.

- 4.2 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.
- 4.3 The Subgrantee shall maintain books, records, documents, and other evidence in accordance with its usual accounting procedures to sufficiently substantiate, in a manner reasonably satisfactory to CIMMYT, financial data relating to the Subgrant Funds.
- 4.4 The Donor or CIMMYT may commission independent audit of the Subgrant Funds provided to the Subgrantee and the Subgrantee shall fully cooperate with and facilitate such independent audit.
- 4.5 The Subgrantee shall: (i) retain all records evidencing expenditures of Subgrant Funds disbursed pursuant to the Subgrant Letter for at least five (5) years after the termination of the Subgrant Letter; (ii) permit designated representatives of CIMMYT or the Donor to examine such records; (iii) provide to CIMMYT or the Donor all such information concerning such records as they may from time to time reasonably request.

5. MONITORING AND EVALUATION

- 5.1 The Subgrantee agrees that CIMMYT and the Donor have the right to commission evaluations of the Subgrantee in connection with activities undertaken by the Subgrantee under the Subgrant. CIMMYT and/or the Donor 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 for monitoring progress, and for evaluation, of the Research Project, from time to time.

6. MANAGEMENT OF INTELLECTUAL PROPERTY

- 6.1 All Intellectual Property in the Research Project shall be managed in a way that is consistent with the CGIAR Principles on the Management of Intellectual Assets available at <http://www.cimmyt.org/en/subgrant-documents>.
- 6.2 The party introducing Background Intellectual Property for use in the Research Project hereby grants to the other party a license to use and sublicense the Background Intellectual Property for the purposes of the Research Project. Where Background Intellectual Property used contains restrictions that may prevent its incorporation into, or use for the Research Project, the party introducing the same shall inform the other party prior to the start of the activities or immediately after this is known by the said party.
- 6.3 All rights to Resulting Intellectual Property under the Research Project shall be owned either solely or jointly between the parties, in accordance with their contribution in creating Resulting Intellectual Property.
- 6.4 Where Resulting Intellectual Property is owned solely by a party, the owner party shall, on request, grant a non-exclusive, worldwide, royalty-free, irrevocable license to use and sublicense the Resulting Intellectual Property to the other.
- 6.5 Where Resulting Intellectual Property is jointly owned, the joint owners agree to grant one another a non-exclusive, worldwide, royalty-free, irrevocable license to use and sublicense their respective share of Resulting Intellectual Property. Any request by third parties to use jointly owned Resulting Intellectual Property may be made to either one of the joint owners. Each joint owner is free to use, and sublicense Resulting Intellectual Property to third parties, without the express consent of the other provided that such use and sublicense do not prevent the other joint owner from using and/or sublicensing the same.

- 6.6 In the event that an owner of Resulting Intellectual Property decides that it is appropriate to file for a patent application or application for other intellectual property protection on the results of the Research Project in its name, parties shall consult with one another prior to such application.
- 6.7 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.
- 6.8 Parties shall work together to develop guidelines for the management of Intellectual Property created in the Research Project, which may include guidelines on attribution, authorship and data sharing.
- 6.9 In the event of early termination of the Research Project, all Resulting Intellectual Property at the date of termination shall continue to be subjected to this Clause 6.

7. CONFIDENTIAL INFORMATION

- 7.1 Parties will take appropriate and reasonable care to keep any information marked as “confidential” (“Confidential Subject Matter”) received from another party in relation to the Research Project confidential and will not disclose or transfer it to any third party. 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 reduce the Confidential Subject Matter (including marking it confidential) to writing within thirty (30) days after disclosure.
- 7.2 The parties shall:
- 7.2.1 assume responsibility for the observance of their obligations by all persons having had access to the Confidential Subject Matter through the said party;
 - 7.2.2 exercise at least the same degree of care that it uses for its own proprietary information; and
 - 7.2.3 maintain adequate security to prevent unauthorized disclosure, theft, loss or destruction of the Confidential Subject Matter.
- 7.3 However, the foregoing confidentiality obligations shall not apply to Confidential Subject Matter which:
- 7.3.1 was in a party’s possession and at its free disposal prior to disclosure by the other party, as evidenced by written records; or
 - 7.3.2 was in the public domain at the time of disclosure by a party; or
 - 7.3.3 subsequently comes into the public domain through no fault, action or omission of the party; or
 - 7.3.4 becomes available to the party without any obligation of confidence from a third party having the right to transmit the same.
- 7.4 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.

7.5 The obligations in this clause shall survive the termination or expiry of the Subgrant Letter.

8. CONTINUING REPRESENTATION AND UNDERTAKINGS

8.1 Unless otherwise specified in the Subgrant Letter, 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 Letter 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 Letter 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 which corrupt, fraudulent, collusive, obstructive, or coercive practices were engaged in by representatives of the Subgrantee.
- (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 Letter.
- (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.
- (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 Letter 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 Letter (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 CIMMYT for 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.

8.2 None of the Donors 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 Letter, or any sub-agreement; nor will the Donors or CIMMYT be liable for any costs incurred by the Subgrantee in terminating the engagement of any such person.

9. PROHIBITED USE OF SUBGRANT FUNDS

- 9.1 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 9.1, for the avoidance of doubt, this Clause 9.1 does not prevent the Subgrantee from operating or partnering in territories where threats of terrorism may be present.
- 9.2 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.
- 9.3 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>.
- 9.4 The Subgrantee agrees that no portion of the Subgrant Funds disbursed under the Subgrant Letter 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.
- 9.5 The Subgrantee confirms that Subgrant Funds disbursed under the Subgrant Letter 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.
- 9.6 The Subgrantee shall promptly return to CIMMYT without request any portion of Subgrant Funds disbursed for use in the Research Project that is unexpended or uncommitted at the termination of the Subgrant Letter, or used for purposes or in a manner other than as provided in the Research Project or the terms and conditions of the Subgrant Letter.

10. TERMINATION OR SUSPENSION

- 10.1 CIMMYT reserves the right to suspend or terminate the Subgrant Letter, and/or to discontinue making payments under the Subgrant Letter, if CIMMYT's funding is discontinued or suspended for any reasons whatsoever.
- 10.2 The Subgrant Letter shall immediately terminate solely with respect to the defaulting party if that party:
- 10.2.1 breaches any provision of the Subgrant Letter that is not capable of being remedied;
 - 10.2.2 materially breaches any provision of the Subgrant Letter that is capable of being remedied but not remedied within sixty (60) days as of the date of notice sent to that party by the other party; or
 - 10.2.3 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.
- 10.3 The parties may suspend or terminate the Subgrant Letter by mutual agreement and after full discussion of the reasons and implications for such suspension or termination.
- 10.4 The Subgrant Letter 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.
- 10.5 In the event of termination due to any reason, the 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. An appropriate winding up period for completion of post-termination obligations shall be agreed between the parties if necessary.

11. General

11.1 Force majeure

Neither party shall have any liability or be deemed to be in breach of the Subgrant Letter 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.

11.2 Relationship between the Parties

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

11.2.2 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.

11.3 Liabilities

The Donor 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.

11.4 Amendment

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

11.5 Assignment

The Subgrant Letter shall not be assigned by either party without the prior written consent of the parties hereto.

11.6 Non-Waiver of Remedies

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

11.6.2 Any provision of the Subgrant Letter 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.

11.7 Invalid Clauses

If any provision or part of the Subgrant Letter or this General Terms and Conditions is held to be invalid, amendments to the Subgrant Letter or this General Terms and Conditions may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of the Subgrant Letter or this General Terms and Conditions to the maximum extent permissible under applicable law.

11.8 Interpretation

In the Subgrant Letter and this General Terms and Conditions:-

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

11.8.2 references to person shall include incorporated and unincorporated persons;

11.8.3 references to the singular include the plural and vice versa; and

11.8.4 references to the masculine include the feminine.

11.9 Entire Agreement

The Subgrant Letter, 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 Letter or this General Terms and Conditions.

11.10 Dispute Resolution

11.10.1 Any disagreements between the parties concerning the interpretation or application of the Subgrant Letter 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.

11.10.2 The Subgrant Letter 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.

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