

**ANNEX 2
GENERAL TERMS AND CONDITIONS
2019**

These are the agreed General Terms and Conditions applicable to the Subgrant Agreement between CIMMYT and Subgrantee, including all Annexes thereto (the "Agreement").

If conflicts or inconsistencies arise between the Subgrant Agreement and Any of its Annexes, the terms in Subgrant Agreement shall prevail.

1. DEFINITIONS

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

Background Intellectual Property. Any Intellectual Property developed by a Party, or acquired through transfer or license from any third party prior to the commencement, or during the period, of the Research Project, which said Party may use and license for the Research Project.

Confidential Information. All proprietary and/or confidential information marked as such that:

- (a) Either Party discloses to the other for the Research Project, and
- (b) Any Resulting Intellectual Property that may, for at least a temporary period, be considered confidential data, including personal, household, political, and other sensitive data that: (i) are the subject of an impending publication; or (ii) relate to a discovery that is the subject of an intellectual property application (until published).

Funder. Any entity or entities contributing to Subgrant Funds.

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, and applications for any such rights; and
- (b) any information and results of research and development activities including without limitation Project Data and Information Products, software, inventions, designs, drawings, process information, know-how, germplasm, and Confidential Information, whether protected or not under any laws.

Main Project. The project financed by the Funder(s) of which this Research Project is part.

Principal Investigator. The authorized representative of Subgrantee, or CIMMYT, respectively, for technical aspects of the Research Project and of Subgrant Funds named in the Agreement.

Project Data and Information Products. All Intellectual Property and elements generated in the Research Project comprising, for example, 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, modelling 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.

Subgrantee. The recipient of Subgrant Funds named in the Agreement (and, to the extent of any permitted subcontract, parties acting on its behalf).

Subgrant Agreement. The Agreement awarding Subgrant Funds to Subgrantee containing the specific Subgrant terms.

Subgrant Funds. The Agreement sum provided for Research Project funding.

Research Project. The research program, as further described in the workplan attached at Agreement **Annex 1**.

Resulting Intellectual Property. Any Intellectual Property generated in the Research Project.

2. SUBGRANT FUNDS

2.1 CIMMYT disburses Subgrant Funds to Subgrantee solely for carrying out activities under the Research Project, and are contingent on satisfactory performance of the Research Project.

2.2 CIMMYT shall only cover the costs incurred by Subgrantee during the Research Project specified execution period, up to the amount of Subgrant Funds, provided all expenses correspond to the budget and activities authorized by CIMMYT. Within sixty (60) days, Subgrantee must return any Subgrant Funds that: (i) remain unspent as of the earlier of: the conclusion of the Research Project and termination of the Agreement; (ii) are not aligned with the budget, requirements, manuals or record-keeping guidelines communicated to Subgrantee; (iii) refer to CIMMYT-disallowed expenses (on any grounds); or (iv) represent activities that are non-compliant with the Agreement.

2.3 Disbursements of Subgrant Funds to Subgrantee shall be made thirty (30) days following approval of required report(s), and in all cases are

subject to receipt of funds from the Funder(s). CIMMYT will incur no liability for delay or non-payment of Subgrant Funds to Subgrantee.

2.4 The first disbursement of Subgrant Funds to Subgrantee shall not be greater than seventy-five percent (75%) of the Subgrant Funds. CIMMYT shall make future disbursements only upon approval of the Subgrantee financial report, as further described in Section 4.2 below. Notwithstanding the above, CIMMYT shall not disburse additional Subgrant Funds until expenditure are reflected in an amount not less than sixty percent (60%) of the previous disbursement.

2.5 Subgrantee must invest all unspent Subgrant Funds in liquid, minimum-risk investments (such as an interest-bearing bank account), with the primary objective of preserving principal until the Subgrant Funds are required to fund Research Project activities.

2.6 Any interest or other income yielded by such Subgrant Funds, including currency fluctuations, shall be: (i) reported in the financial report; (ii) used only for the Research Project; or (iii) if not needed for such purposes, returned to CIMMYT. Subgrantee may exchange Subgrant Funds into other currencies to facilitate their application and disbursement. Financial reports shall reflect properly any currency conversion in the financial reports, including any gain or loss resulting from the exchange. Subgrantee agrees to absorb any losses in such exchanges, without recourse to CIMMYT.

3. RESPONSIBILITIES OF SUBGRANTEE

3.1 Subgrantee shall commence performance of the Research Project promptly after the commencement date of the Research Project and shall perform the same under the terms of the Agreement, including compliance with the Work Plan and budget in its **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 execution of the Research Project, Subgrantee shall immediately give written notice to CIMMYT of this circumstance. Parties shall agree on a replacement within thirty (30) days of the notice, or, failing such agreement, either Party may terminate the Agreement by giving thirty (30) days' written notice to the other. Under any circumstance, Subgrantee shall take the necessary measures to avoid any damages, whether to CIMMYT or a third party, arising from the Principal Investigator's departure.

3.3 Subgrantee warrants it has, and shall maintain for the term of the Agreement, the facilities and skilled personnel necessary to maintain and fulfill the Agreement.

3.4 CIMMYT and/or its Funders(s) reserve the right to supervise and review of the Research Project for technical or financial aspects, and Subgrantee general performance, to the extent deemed necessary or appropriate.

3.5 Whenever relevant and possible, Subgrantee shall carry acceptable liability insurance in the Research Project, given the insurance available, the activities undertaken by Subgrantee, and the Subgrant Funds.

3.6 Subgrantee shall obtain prior written approval from CIMMYT to revise the Research Project materially. A material revision includes, without limitation:

- (a) Modification of the scope, deliverables or objectives of the Research Project;
- (b) Addition of a new material activity;
- (c) Without altering the Subgrant Funds, the modification of any specific budget line summary item by over ten percent (10%) or over fifty thousand US dollars (US\$50,000.00), whichever is lower; and
- (d) Request for an increase in Subgrant Funds.

Approval for modifications (a), (b) and (d) above shall be formalized through written amendment to the Agreement; approval for modifications for (c) above shall be given in prior writing by CIMMYT's Administrative and Technical Authorized Representatives, both as defined below. In any proposal for revisions to the CIMMYT template reports, Subgrantee shall make any proposal for include justification for the request.

3.7 Subject to the conditions below, Subgrantee may subcontract part of the Research Project activities:

- (a) There are no Funder restrictions on subcontracting;
- (b) Subgrantee previously notifies CIMMYT in writing of its intention to subcontract part of the activities, specifying the planned collaborators and the activities to be subcontracted; such notification shall be incorporated into the Work Plan (**Annex 1**) approved by CIMMYT;
- (c) Subgrantee provides assurances that the subcontracted third parties are bound by Subgrantee Agreement obligations assigned to subcontracted parties; and
- (d) Notwithstanding any such subcontract, Subgrantee remains solely responsible for its obligations to CIMMYT under the Agreement.

Subgrantee, and any of its staff, consultants or subcontracted party/ies, shall conduct the activities of the Research Project with integrity and in full compliance with applicable regulations and CIMMYT Policies, including the Code of Conduct, Ethics in Research Policy, and those listed below in Section 7 (the "CIMMYT Policies"). Before commencing performance under the Agreement, Subgrantee, and those acting on its behalf, shall ensure that their respective policies are consistent with CIMMYT Policy content.

4. REPORTING, RECORD KEEPING AND AUDIT

4.1 Subgrantee shall provide CIMMYT written technical and financial reports as specified in the Reporting and Subgrant Fund Disbursement Schedule, observing the format of any template provided as an Exhibit to Section 9 of the Agreement, and any other information/report requested by CIMMYT for monitoring and evaluation purposes. CIMMYT specifies its requirements in the Agreement, which always require, without limitation, the following information:

- (a) The expenditure status, in the currency established in the Agreement, compared to budget line items identified in the Agreement. Such report shall i) reflect all amounts in US Dollars (unless otherwise agreed in writing), ii) calculate exchange rate gains and losses, iii) reference to formalized amendments incorporating budget modifications; and iv) include a cash flow report on previous payments;
- (b) A brief description on progress towards the achievement of each milestone, deliverable, and results obtained, as defined in the Agreement; a summary of any factors that may affect (positively or negatively) the agreed timelines; and
- (c) A description of Intellectual Assets created in the Research Project, including the deliverables to be provided to CIMMYT under the Agreement.

4.3 CIMMYT reserves the right to reject a report, or to request from Subgrantee additional reports (such as audited financial statements) or information as may be reasonably necessary for review by CIMMYT, governmental agencies, or Funder(s).

4.4 Subgrantee shall maintain sufficient books, records, documents, and other evidence under its usual accounting procedures to substantiate, in a manner reasonably satisfactory to CIMMYT and its Funder(s), financial information relating to Subgrant Funds. When Funder(s) have specific requirements, manuals or guidelines related to record keeping for incurred expenses, financial and/or technical reporting, such documents as provided by CIMMYT shall thereafter be used and followed by Subgrantee.

4.5 Subgrantee shall:

- (a) Retain all records evidencing expenditures of disbursed Subgrant Funds for at least five (5) years following termination of the Agreement;
- (b) Allow designated representatives of CIMMYT, government agencies, or Funder(s) to examine such records; and
- (c) Provide to CIMMYT or Funder(s) such further information as they may request.

4.6 Funder(s) or CIMMYT may commission an independent audit of the Subgrant Funds provided to Subgrantee, and Subgrantee shall cooperate fully with, and facilitate such independent audit.

5. MONITORING AND EVALUATION

5.1 Subgrantee agrees that CIMMYT and the Funder(s) may commission evaluations of Subgrantee and on the activities undertaken by Subgrantee under the Agreement, and Subgrantee shall cooperate fully with such evaluations. CIMMYT and/or Funder(s) shall inform Subgrantee of such evaluations promptly.

5.2 Subgrantee agrees to adhere to procedures communicated by CIMMYT and/or the Funder(s) for monitoring progress under, and for evaluation of, the Research Project.

6. AUTHORIZED REPRESENTATIVES

CIMMYT and Subgrantee each shall designate authorized representatives for administrative and technical matters related to the 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 activity applicable to each Party, including its implementation and assessing of progress against the contractual objectives and milestones. Technical Representatives may request (Subgrantee) or issue (CIMMYT) modifications to the Research Project to ensure the achievement of results.
- (b) Administrative Representatives will serve as liaison regarding financial, project management, and other administrative matters related to the Research Project, including financial reporting and budget realignment.

7. MANAGEMENT OF INTELLECTUAL PROPERTY

7.1 Subgrantee agrees that all Resulting Intellectual Property shall be managed as International Public Goods and as further described in CGIAR and CIMMYT internal policies, which are available at <http://www.cimmyt.org/en/who-we-are/policies> as amended from time to time (the "IP Policies"), including but not limited to:

- (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; and
- (e) CIMMYT Germplasm Policy.

If any inconsistency occurs between CGIAR and CIMMYT internal policies, provisions related to Limited Exclusivity Agreements and Restrictive Use Agreements in the CGIAR Principles, and timelines to provide Data and Information Products in the CGIAR Open Access Policy, shall prevail.

7.2 Parties shall own all rights to Resulting Intellectual Property under the Research Project either solely or jointly, in accordance with their contribution in creating Resulting Intellectual Property.

7.2.1 Where a Party solely owns Resulting Intellectual Property, the owner Party hereby grants to the other a non-exclusive, worldwide, royalty-free, irrevocable license to use, further develop, disseminate and sublicense the Resulting Intellectual Property, generated in the Research Project.

7.2.2 Where Parties jointly own Resulting Intellectual Property, Parties agree to grant each another a non-exclusive, worldwide, royalty-free, irrevocable, perpetual license to use, further develop, disseminate and sublicense their respective share of Resulting Intellectual Property. A Third party may request to use jointly owned Resulting Intellectual Property to either joint owner. Each joint owner may use, and to sublicense Resulting Intellectual Property to third parties, without the express consent of the other, provided any such use or sublicense does not prevent the other joint owner from using and/or sublicensing the same on a non-exclusive basis. Each Party agrees, upon written request from the other Party, to provide all documentation required to confirm the other Party's joint ownership.

7.3 Subject to compliance with any confidentiality obligation, either Party introducing Background Intellectual Property to the Research Project hereby grants to the other Party a worldwide, royalty-free, perpetual license to use, further develop and sublicense the Background Intellectual Property for the Research Project. Parties agree that if 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, under sections 7.2.1 and 7.2.2 above. Where such Background Intellectual Property contains restrictions that prevent its incorporation into, or use for, the Research Project (for example if certain Background Intellectual Property is licensed-in from a third party), the Party introducing it shall inform the other Party prior to the start of the activities or immediately after the restrictions become known. Further, if a Party introduces Background Intellectual Property licensed from a third party to the Research Project, it is the responsibility of the Party introducing such Background Intellectual Property to have confirmed approval (from the third party) of its use in the Research Project prior to its introduction.

7.4 Parties shall jointly assess the possibility of filing for a patent, plant breeder's right, or any other Intellectual Property protection or registration in relation to the Resulting Intellectual Property, in the light of the Policies in section 7.1.

7.5 CIMMYT, as an international agricultural organization holding in trust ex-situ collections of maize and wheat germplasm, on October 16, 2006, 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) (the "FAO Agreement"). The purpose of the FAO Agreement is to re-affirm its commitment to the conservation, sustainable use, and equitable sharing of benefits arising from the utilization of maize and wheat genetic resources for food and agriculture. Subgrantee is 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 another, consistent material transfer agreement, for exchange of germplasm under the Research Project.

7.6 The Main Project Plan(s) establish the Management of Resulting Intellectual Property. In absence of any plan or guidelines for that purpose, Parties shall agree on results management, attribution, authorship, and data sharing, in compliance with CGIAR and CIMMYT policies.

7.7 This Section 7 will survive termination or expiration of the Agreement.

8. STORAGE AND DISSEMINATION OF PROJECT DATA AND INFORMATION PRODUCTS

8.1 Parties shall make available Project Data and Information Products 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 Information, under CGIAR and CIMMYT internal policies.

8.2 CIMMYT dissemination of Project Data and Information Products provided to CIMMYT as per Section 7. CIMMYT makes such dissemination under timeframes defined in CGIAR and CIMMYT internal policies, CIMMYT implementation plans, and any Data and Information Products Management Plan communicated to Subgrantee. CIMMYT reserves the right, in its sole discretion, to decide whether to make available the Project Data and Information Products, or any part thereof, through CIMMYT repositories. CIMMYT's determination shall not prevent Subgrantee from disseminating Project Data and Information Products.

8.3 To disseminate Project Data and Information Products, CIMMYT repositories and webpages of the Main Project, and links to the approved or chosen repository for the Main Project shall be preferred. Notwithstanding the foregoing, Subgrantee may disseminate the Project Data and Information Products through other channels.

8.4 Parties acknowledge and agree that dissemination of Project Data and Information Products, as provided in Sections 7.1, 7.2, and 7.3 above, may be subject to additional limitations or restrictions, in accordance to CGIAR and CIMMYT internal policies. Parties agree to discuss and document any Project Data or Information Product restrictions or limitations before the start of the Research Project. Permitted limitations and restrictions include, 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), and farmers' and privacy rights.

8.5 For storage purposes, Subgrantee shall deposit in CIMMYT-approved repositories all Project Data and Information Products according to the following timeframes:

- (a) Upon completion: Source code of developed software; and
- (b) Within three (3) months of publication or completion: (1) scholarly research article; (2) any Information Product 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 version 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 Upon CIMMYT's communication to Subgrantee of a Data and Information Products Management Plan derived from the Main Project, Subgrantee agrees to follow such Plan.

8.7 This Section 8 will survive termination or expiration of the Agreement.

9. BRANDING AND COMMUNICATION

9.1 Subgrantee shall abide by CIMMYT branding and communication guidelines, shared from time to time. Subgrantee shall accomplish all public communications made in the Research Project, and branding of Resulting Intellectual Property and Project's Data and Information Products in compliance with CIMMYT's guidelines.

9.2 In all Resulting Intellectual Property, Project Data and Information Products, Subgrantee shall give appropriate acknowledgement to:

- (a) Financial contributors, including Funder(s) and CIMMYT, with reference to the Main Project;
- (b) Technical contributions, including the institutions leading and/or collaborating in developing the Resulting Intellectual Property, Project Data, or Information Product, and author(s) of the same, under CGIAR and CIMMYT internal policies.

If a question arises in relation to acknowledgements, Subgrantee shall consult with CIMMYT in advance. CIMMYT reserves the right to request Subgrantee to correct any acknowledgement (or lack thereof) in Resulting Intellectual Property, Project Data, and Information Product. Subgrantee agrees to make the necessary corrections as soon as practicable, and at its own cost.

9.3 Inclusion of any logo from Funder(s) or CIMMYT in Resulting Intellectual Property, Project Data, and Information Products shall be subject to written authorization granted, specific to the identified purpose. CIMMYT grants such authorization, so long as:

- (a) Usage of the logos is as permitted in any branding guidelines shared by CIMMYT;
- (b) Usage of the logos is as provided in a Data and Information Products Management Plan;
- (c) Usage of the logos is pursuant to a request by any authorized representative of Funder(s) or CIMMYT, as part of any revision made to the Resulting Intellectual Property, Project Data, or Information Products; or
- (d) CIMMYT and/or Funder(s) issued a written authorization for such inclusion.

10. CONFIDENTIAL INFORMATION

10.1 Each Party (the "Receiving Party") will take appropriate and reasonable care to keep confidential any proprietary or confidential information marked as such ("Confidential Information") received from the other Party (the "Disclosing Party") in relation to the Research Project and will not disclose or transfer it to any third party without prior written consent from the Disclosing Party. Each Party shall grant access only to those of its employees or consultants with a need to know, provided they have executed undertakings to confirm their obligation of confidentiality in compliance with the Research Project and the Agreement. If oral disclosure of Confidential Information occurs, the disclosing Party shall identify in writing the confidential nature of the oral communication to the receiving Party and reduce the Confidential Information to writing, clearly marking it as Confidential Information and, within ten (10) days of disclosure, providing it to Receiving Party.

10.2 Each Party shall:

- (a) Ensure compliance with this Section 10 by all persons who gain access to the Confidential Information through it;
- (b) Exercise at least the same care it uses for its own Confidential Information; and
- (c) Maintain adequate security to prevent unauthorized disclosure, theft, loss or destruction of the Confidential Information.

10.3 The foregoing confidentiality obligations shall not apply to Confidential Information that:

- (a) Was in a Party's possession and at its unrestricted disposal prior to disclosure by the other Party, as evidenced by written records; or
- (b) Was in the public domain at the time of disclosure by a Party; or
- (c) Subsequently comes into the public domain through no fault, action or omission of the Party; or
- (d) becomes available to the Party with no obligation of confidence from a third party having the right to transmit the same.

10.4 The foregoing, shall not prevent a Receiving Party from disclosure of the Disclosing Party's Confidential Information to comply with any law or if required to do by a judicial or administrative body with jurisdiction over the Party, prior to making such disclosure, the Receiving Party shall provide to the original Disclosing Party (i) notice of the requirement of further disclosure; (ii) a description of the information to be disclosed; and (iii) the opportunity, if available, to seek any legal redress prior to such further disclosure.

10.5 This Section 10 will survive the termination or expiration of the Agreement.

11. CONTINUING REPRESENTATION AND UNDERTAKINGS

11.1 Unless otherwise specified in the Agreement, Subgrantee makes these representations and undertakings on its own behalf while Subgrantee holds or expends any Subgrant Funds as part of implementing the Research Project:

- (a) Subgrantee shall carry on its own operations under adequate 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.
- (b) Subgrantee shall use Subgrant Funds received as part of the 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.
- (c) Subgrantee shall not use Subgrant Funds received for payments for any corrupt, fraudulent, collusive, obstructive, or coercive practices.
- (d) Subgrantee shall promptly report to CIMMYT usage of Subgrant Funds for purposes outside the Agreement.
- (e) Subgrantee shall confirm that, given the activities funded by Subgrant Funds, Subgrantee will not allow diversion of Subgrant Funds to support illegal activities, including but not limited to: drug trafficking, trafficking in persons, child labor, or acts of terrorism.
- (f) Subgrantee shall use its best efforts, to the extent allowed by agreements, laws and regulations, to ensure that the Subgrant Funds provided by CIMMYT under the Agreement will be free from any taxation or fees imposed under local laws. Subgrantee shall assert all exemptions from taxes and duties to which it believes the Subgrant Funds may be entitled.
- (g) If Subgrantee learns of information that indicates the need for further scrutiny of the Subgrant Funds to address non-frivolous allegations that corrupt, fraudulent, collusive or coercive practices occurred in relation to use of the Subgrant Funds, Subgrantee shall notify CIMMYT immediately.
- (h) Subgrantee agrees to carry out all regulated research activities under the high standards established by internationally accepted practices, subject to applicable laws and regulations.

11.2 Neither Funder(s) nor CIMMYT shall be responsible for the activities of any person or third party engaged by Subgrantee with Subgrant Funds or because of the Subgrant Agreement, or any sub-agreement; nor will the Funder(s) or CIMMYT be liable for any costs incurred by Subgrantee in terminating the engagement of any such person. Subgrantee will keep CIMMYT and Funder(s) harmless from any such action or procedure filed.

12. USE OF SUBGRANT FUNDS

12.1 Subgrantee shall promptly return to CIMMYT, without the need for written request, any portion of Subgrant Funds disbursed for the Research Project that:

- (a) Is unexpended at the termination of the Subgrant Agreement;
- (b) Is not justified by supporting records of the expense claimed; or
- (c) Is used for purposes or in a manner other than as provided in the Research Project or the terms of the Agreement.
- (d) Is diverted or used for activities prohibited under Resolution 1373 (2001) of the United Nations Security Council or under Chapter VII of the United Nations Charter.

12.2 In implementing the Research Project, Subgrantee shall not collaborate with any individual, entity, or organization 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 United Nations or the European Union;

- (b) Within the past five (5) years, has been found guilty or liable under any anti-money laundering, trafficking in persons, trading with the enemy, anti-bribery or similar statutes of any country;
- (c) Is under an officially announced investigation regarding the foregoing; or
- (d) Has been debarred or suspended from participating in grants or subgrants by any authority or Funder.

12.3 Subgrantee agrees not to discriminate against persons based upon individual characteristics in implementing 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, 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 is found at: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

12.4 Subgrantee agrees that no portion of the Subgrant Funds disbursed is earmarked for or will be used 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 communication with any member or employee of a legislative body.

12.5 Subgrantee confirms that it will not use or allow use of Subgrant Funds to influence the outcome of any specific public election, or to carry on any voter registration drive directly or indirectly.

13. TERMINATION OR SUSPENSION

13.1 Termination Without Cause. CIMMYT reserves the right to suspend or terminate the Agreement, and/or to discontinue making payments under Agreement by providing written notice to Subgrantee in the event CIMMYT's funding is discontinued, decreased, or suspended. CIMMYT shall include, in its termination notice, the further conditions of the termination, including an appropriate winding-up period for completion of post-termination obligations.

13.2 Termination For Cause: The Agreement shall terminate immediately if the defaulting Party:

- (a) Breaches any provision of the Agreement that is not capable of being remedied;
- (b) Materially breaches any Agreement provision capable of being remedied but not remedied within sixty (60) days after written notice is sent to that Party by the other Party; or
- (c) Enters an arrangement to benefit creditors, becomes insolvent, files for protection under the bankruptcy laws, or otherwise seeks relief from creditors or if a third party seeks such protection against Subgrantee.

13.3 Termination or Suspension With Mutual Agreement. Parties may suspend or terminate the Agreement by written agreement, detailing each Party's remaining obligations.

13.4 Termination or Suspension For Force Majeure. Neither Party shall have any liability or be deemed in breach of the Agreement for any delays or failures in performance resulting from an event or circumstances beyond the reasonable control of one Parties (a "Force Majeure"). A Force Majeure is defined further to include, 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 timely notify the other Party in writing of a Force Majeure condition, detailing the impact and estimated duration of the Force Majeure condition.

Upon occurrence of a Force Majeure, as defined in this Section, CIMMYT shall suspend the Agreement or, if implementation of the Research Project is rendered impossible, immediately terminated. In such event, Parties shall enter a written agreement, detailing each Party's remaining obligations.

13.5. Termination or Suspension under any of the above causes requires Parties to co-operate to fulfill all obligations, effectively, safeguard and preserve the assets of the Subgrant, including all Intellectual Property created, and, if applicable, facilitate the reimbursement of unearned, uncommitted, and unspent funds.

14. GENERAL

14.1. Relationship between Parties

- 14.1.1. In performing all activities, Subgrantee shall be, act as, and represent itself to be, an independent contractor.
- 14.1.2. Neither Party may act as agent for the other for any purpose, nor sign any contract, obligation, warranty, or representation on the other Party's behalf. Any such signature, act or conduct by a Party shall not bind the other Party.

14.2. Liabilities. Subgrantee, by its signature below, releases and holds harmless Funder(s) and CIMMYT against any claim for losses or damages arising out of performance by Subgrantee or parties acting on Subgrantee's behalf under the Research Project.

14.3. Amendment. Parties may amend the Agreement in a writing signed by their duly authorized representatives.

14.4. Assignment. Subgrantee may not assign the Agreement without the prior written consent of CIMMYT.

14.5. Non-Waiver of Remedies

- (a) No failure or delay by either Party in exercising any of its rights under the Agreement is a waiver of that right, and no effective waiver by either Party of any breach of the Agreement by the other shall be a waiver of any later breach of the same or any other provision; and
- (b) A Party may waive its right to enforce any provision of the Agreement by a writing signed by the waiving Party.

14.6 Invalidity of Provisions. If a court of competent jurisdiction determines a provision of the Agreement is unenforceable, illegal, or void, the court may sever the provision to the extent of its unenforceability. Parties agree that the unenforceability, illegality, or avoidance of the severed provision will not affect the validity of the other provisions of the Agreement.

14.7 Interpretation. In the Agreement:

- (a) Headings are used for convenience only and shall not affect interpretation;
- (b) References to a person shall include incorporated and unincorporated persons;
- (c) References to the singular include the plural and vice versa, as the context may require; and
- (d) References to the masculine include the feminine.

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

14.9 Dispute Resolution.

14.9.1 Parties agree to settle amicably any disagreements between them regarding the interpretation or application of the Agreement, including a referral to the senior management representative for each Party. Failing resolution by such management representatives, Parties agree to submit the disagreements for resolution by the International Chamber of Commerce (the "ICC"), in the English language, by one or more arbitrators appointed under ICC Rules.

14.9.2 General principles of law (including the UNIDROIT Principles of International Commercial Contracts 2010) shall apply to the Agreement, to excluding any national system of law.

14.9.3 The place of ICC arbitration will be Mexico City, Mexico. Subgrantee hereby waives its right to assert another jurisdiction or legislation, including without limitation those derived from its domicile or Agreement performance location.