Food and Agriculture Organization of the United Nations

The International Treaty ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

DIVSEEK INTERNATIONAL NETWORK INC.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Acting on behalf of the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture

AND

DivSeek International Network Inc

This Memorandum of Understanding (hereinafter referred to as the "MoU") is entered into between the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO"), acting on behalf of the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the "Secretariat of the ITPGRFA") and DivSeek International Network Inc (hereinafter referred to as "DivSeek").

Whereas the International Treaty on Plant Genetic Resources for Food and Agriculture (the "ITPGRFA") was adopted under Article XIV of the FAO Constitution by the Thirty-First Session of the FAO Conference on 3 November 2001, and entered into force on 29 June 2004;

Whereas the objectives of the ITPGRFA are the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA) and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security;

Whereas the implementation of the ITPGRFA is overseen by the Governing Body of the ITPGRFA, which is the highest organ of the ITPGRFA as established in Article 19 thereof and composed of representatives of all Contracting Parties;

Whereas the Secretariat of the ITPGRFA cooperates with other organizations and bodies in accordance with the provisions of the ITPGRFA and the guidance of the Governing Body of the ITPGRFA, which has repeatedly called for mutually supportive cooperation with other organizations and bodies;

Whereas Article 17 of the ITPGRFA calls for cooperation to develop and strengthen a global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental matters related to PGRFA;

Whereas DivSeek is a not-for-profit organization incorporated under the laws of Canada, guided by its principles and values of 'respect for biodiversity and associated traditional and indigenous knowledge', 'social acceptance and empowerment', 'inclusiveness, collaboration and open access', alongside 'scientific rigor, innovation and integrity';

Whereas DivSeek aims to enable those who conserve and benefit from the sustainable utilization of plant biodiversity to access and harness expertise, scientific evidence, technologies and global best practices that facilitate the characterization, exchange and traceability of genetic resources;

Whereas DivSeek helps to leverage and promote the sharing of digital information in three focus areas in order to achieve the following key strategic goals, to: i) catalyze the advanced conservation, management, utilization and traceability of plant genetic resources; ii) add value to plant genetic resources, facilitating wider utilization and accelerating crop improvement; iii) increase awareness and education about the biodiversity and relevance of plant genetic resources, with a focus on access and benefit sharing obligations and proposing best practices for the implementation of such obligations by the DivSeek community and other researchers;

Whereas the Governing Body of the ITPGRFA, through Resolution 4/2019, took note of the progress made by DivSeek and requested the Secretary of the ITPGRFA to explore possible arrangements for further engagement with DivSeek;

Now, therefore, FAO and DivSeek (hereinafter collectively referred to as "Parties" and individually as "Party") hereby agree as follows:

ARTICLE 1

Purpose

1. The purpose of this MoU is to establish a framework for cooperation on a range of activities related to access to and exchange of information and the sharing of expertise. The Parties will collaborate in areas of mutual interest as further elaborated under Article 3 below, with the aim of promoting their objectives.
2. Any Annex to this MoU shall be considered an integral part of this MoU. References to this MoU shall be construed as including any Annexes, as varied or amended in accordance with the terms of this MoU.

ARTICLE 2

General Provisions

1. Whenever desirable, the Parties may seek each other's cooperation with a view to promoting the development of specific activities in fields of common interest. Implementation of any activities pursuant to this MoU, including those involving the transfer of funds between the Parties, shall require the execution of appropriate separate legal agreements between the Parties in accordance with their respective rules and regulations. The terms of such agreements shall be subject to the provisions of this MoU.

2. Separate legal agreements concluded under this MoU as expressed in Article 2(1) above shall define the agreed activities, the manner and extent of participation by each Party, financial aspects, including contributions in-kind, and arrangements on intellectual property rights.

ARTICLE 3

Areas of Collaboration and Cooperation

1. The Parties will, where feasible and appropriate, seek to cooperate in their respective activities concerning information associated to PGRFA, including PGRFA available in the Multilateral System of the ITPGRFA, to facilitate research, plant breeding and training.
2. The Parties may jointly carry out activities in support of the Global Information System of Article 17 of the ITPGRFA. In particular, the Parties will, where feasible and appropriate, seek to cooperate on scientific and technical matters related to access to, sharing and use of PGRFA information, and PGRFA documentation.
3. The Parties will, where feasible and appropriate, facilitate the respective participation at meetings organized by them in areas of mutual interest, as observers.
4. The Parties will, where feasible, mutually support one another in the undertaking and promotion of activities and projects including capacity development and public awareness towards the implementation of the ITPGRFA, as relevant to their respective mandates.
5. The Parties will, where feasible and appropriate, seek to exchange information regarding their respective activities of relevance and on joint activities undertaken within the framework of this MoU and on general issues of mutual interest.
6. The Parties may agree on cooperation with other organizations, donors and funding agencies, including for the purpose of raising funds, for the implementation of activities under this MoU.

ARTICLE 4

Financial Implications

The present MoU implies no financial commitment by either Party. Activities to be implemented under this MoU are subject to the availability of personnel and financial resources.

ARTICLE 5

Implementation

1. The Secretary of the ITPGRFA and the Chair of DivSeek shall make the necessary arrangements for ensuring satisfactory implementation of this MoU.
2. The Parties shall, annually and jointly, review the activities that have taken place as a means to further foster and develop their cooperation.
3. All correspondence regarding the implementation of this MoU, including notifications made pursuant to this MoU, shall be addressed to:

For FAO:	Secretary, International Treaty on Plant Genetic Resources for Food and Agriculture, Office of Climate Change, Biodiversity and Environment PGRFA-Treaty@fao.org
For DivSeek:	Chair of the DivSeek Board of Directors DivSeek International Network chair@divseekintl.org

ARTICLE 6

Status of the Parties and their Personnel

1. The Parties acknowledge and agree that DivSeek is an entity separate and distinct from FAO. The employees, personnel, representatives, agents, contractors or affiliates of DivSeek, including the personnel engaged by DivSeek to carry out any of the activities conducted pursuant to this MoU, shall not be considered in any respect or for any purposes whatsoever as being employees, personnel, representatives, agents, contractors or affiliates of FAO, nor shall any employees, personnel, representatives, agents, contractors or affiliates of FAO be considered, in any respect or for any purposes whatsoever, as being employees, personnel, representatives, agents, contractors or affiliates of DivSeek.

2. The Parties shall undertake the activities under this MoU in accordance with the rules and regulations to which they are subject. Where compliance with rules may lead to a difficulty in performing under the MoU, or adhering to its provisions, the Party concerned undertakes to draw this to the attention of the other Party with a view to resolving the matter appropriately and amicably.

3. Neither Party shall be entitled to act or make legally binding declarations on behalf of the other Party. Nothing in this MoU shall be deemed to constitute a joint venture, agency, interest grouping or any other kind of formal grouping or entity between the Parties.

ARTICLE 7

Non-exclusivity

The collaboration between the Parties under this MoU will be on a non-exclusive basis. Either Party may freely engage in similar arrangements and activities with other partners, including in the same field.

ARTICLE 8

Conflict of Interest

1. DivSeek accepts that the collaboration activities under this MoU will be managed with the interests of FAO as paramount.

2. DivSeek warrants that at the time of signing this MoU no conflict of interest exists or is likely to arise in the performance of its obligations under this MoU.

3. If a conflict of interest arises or appears likely to arise during the validity of this MoU, the Party with the actual or potential conflict of interest will:

a) immediately notify the other Party; and

b) make full disclosure of all relevant information relating to the potential conflict; and

c) take such steps as reasonably required to prevent, resolve or otherwise deal with the conflict.

ARTICLE 9

Representation and Warranties

1. Collaboration under this MoU is for operational purposes; it does not imply any right to provide access to the decision-making structures of ITPGRFA or to influence its policies or its position on any scientific and technical issues.

2. DivSeek is a not-for-profit entity and therefore acknowledges that it will not utilize the results of activities performed under this MoU for profit-making purposes.

3. To avoid any perception that the signature of this MoU may provide an unfair advantage to DivSeek or affect FAO's integrity, independence and impartiality with respect to FAO's procurement procedures, both Parties confirm that this MoU will not give DivSeek any preferred relationship with FAO with respect to procurement of its products or services.

ARTICLE 10

Links with other private sector entities

In the event that DivSeek intends to collaborate with for-profit, private sector entities, with the explicit intent to perform activities included in the Workplan designated under this MoU, DivSeek will seek FAO's prior written approval. DivSeek agrees that such approval will not relieve DivSeek of any of its responsibilities under this MoU.

ARTICLE 11

Acknowledgment and Publicity

1. DivSeek may refer to its collaboration with FAO in its internal documents, such as those submitted to board and shareholder meetings and auditors' reports, and will seek and receive FAO's written clearance in advance of any other documents, in particular, materials intended to be made public relating to the collaboration with FAO. To the extent possible, written clearance will be given within 7 days of the request.

2. FAO may refer to its collaboration with DivSeek in its internal documents, such as those submitted to meetings of Member Nations and auditors' reports, and will seek and receive DivSeek's written clearance in advance of any other documents, in particular, materials intended to be made public relating to the collaboration with DivSeek. To the extent possible, written clearance will be given within 7 days of the request.

3. At or near a time to be mutually agreed upon by the Parties, DivSeek and FAO may each issue a press release and make public statements regarding their collaboration, the content of which will be subject to the written agreement of the other Party, which will not unreasonably be withheld or delayed. Neither Party will issue any press release or promotional material, hold any press conference or make any public announcement concerning this MoU and/or the relationship of the Parties hereunder, without obtaining the approval of the other Party.

4. In all cases of acknowledgment and publicity on the collaboration under this MoU, the Parties will use neutral language that accurately reflects the actual contribution of each Party. The Parties will avoid any term that could imply endorsement by FAO of DivSeek, such as, but not limited to, "official partner" or "selected partner" or "sponsor" of FAO.

5. This MoU or information about this MoU may be published on FAO's website after it has entered into force consistent with its policies on transparency, as updated from time to time. This MoU or information about this MoU may also be published on DivSeek's website in a manner that does not imply endorsement by FAO of any of the activities of "DivSeek" and subject to the provisions herein on the use of the Name and Logo below.

ARTICLE 12

Commitment to respect FAO's principles and values

1. DivSeek agrees to respect FAO's constitutional principles and values, and warrants that nothing in its governance or operational activities, or those of its affiliates, is incompatible with FAO's constitutional mandate, principles and policies, or with internationally recognized principles concerning human rights, the environment and anti-corruption as reflected in the United Nations Global Compact Principles.

2. DivSeek warrants that it has zero tolerance for all forms of sexual wrongdoing, and acknowledges that sexual exploitation and abuse and sexual harassment violate human rights and are incompatible with the core values of the United Nations System. DivSeek confirms that it has in place appropriate and effective mechanisms to prevent and address conduct incompatible with those core values. It undertakes to promptly inform FAO of allegations against its employees and any other persons involved in the implementation of activities in relation to this MoU and which have been found to be credible under DivSeek's mechanisms.

ARTICLE 13

Confidentiality

1. It is acknowledged that each Party may possess confidential information, including personal data, which is proprietary to it or to third parties collaborating with it. Any confidential information provided by one Party (as the "Disclosing Party") to the other Party (as the "Receiving Party") in the context of this MoU shall be treated by the Receiving Party as confidential and shall only be used by the Receiving Party for the purpose for which it was provided.

2. Neither the Receiving Party nor its personnel shall (i) communicate to any other person or entity any confidential information made known to it by the Disclosing Party in the course of the implementation of activities under this MoU, nor (ii) use this information to private or company advantage, unless otherwise agreed in writing and with the exception that either Party may disclose such confidential information to its professional advisors or agents who need to receive and consider such confidential information for the purposes of this MoU. The Receiving Party shall ensure that any persons having access to the said information shall be made aware of and be bound by the obligations of the Receiving Party.

3. Notwithstanding the foregoing, there shall be no obligation of confidentiality or restriction on use where (i) the information is publicly available, or becomes publicly available otherwise than by action of the Receiving Party; or (ii) the information was already known to the Receiving Party (as evidenced by its written records) prior to its receipt; or (iii) the information was received from a third party not in breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) the Disclosing Party has given its written consent to disclosure to the Receiving party.

ARTICLE 14

Use of Logos and Emblem

The Parties agree not to use in any press release, memo, report or other published disclosure related to this MoU the other Party's name and logo without prior written consent of the Party concerned.

ARTICLE 15

Intellectual Property Rights

1. Intellectual property rights, in particular copyright of material such as statistical information, software and maps, made available by the Parties to be used to carry out the activities under this MoU shall remain with the originating Party. Appropriate grant or transfer of rights for use of such material may be further described in project agreements or working arrangements, as required.

2. All intellectual property rights in materials such as information, software and designs, developed jointly by the Parties under this MoU will be addressed in supplementary agreements concluded in accordance with Article 2(1) above.

ARTICLE 16

Privileges and Immunities of FAO

Nothing in this MoU or in any document or arrangement relating thereto, shall be construed as constituting a waiver of privileges or immunities of FAO, nor as conferring any privileges or immunities of FAO to DivSeek or to its personnel.

ARTICLE 17

Applicable Law

The present MoU and any document or arrangement relating thereto shall be governed by the general principles of law, to the exclusion of any single national system law.

ARTICLE 18

Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation and execution of this MoU, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. If the dispute is not settled by negotiation between the Parties, it shall, at the request of either Party, be submitted to one conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), as at present in force.

2. Any dispute between the Parties that is unresolved after conciliation shall, at the request of either Party, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force.

3. The conciliation or the arbitration proceeding shall be conducted in English and the place of arbitration shall be Rome.

4. The Parties may request conciliation during the execution of MoU and anyway not later than twelve months after the expiry or the termination of the MoU. The Parties may request arbitration not later than ninety days after the termination of the conciliation proceedings.

5. Decisions of the arbitral tribunal shall be final and binding to the Parties and the arbitral tribunal shall have no authority to award punitive damages.

ARTICLE 19

Amendment

This MoU may be amended by the written mutual consent of the Parties. Such amendments shall enter into force one (1) month following notifications of consent by both Parties to the requested amendments

or on a date otherwise agreed in writing for the amendment to enter into force. Each Party will give sympathetic consideration to an amendment proposed by the other.

ARTICLE 20

Entry into Force, Duration and Termination

1. This MoU shall be signed by the duly authorized representatives of both Parties, and shall enter into force upon the date of last signature. It shall remain in force for a period of four (4) years, unless terminated in accordance with the terms of this Article.
2. Subject to satisfactory past implementation, this MoU may be renewed for similar periods thereafter by written agreement between the Parties through an exchange of letters.
3. The Parties agree that any Party may unilaterally terminate this MoU, subject to three months' written notice.
4. Upon termination of this MoU, the rights and obligations of the Parties defined under any other legal instrument executed pursuant to this MoU shall cease to be effective.
5. Notwithstanding the foregoing, any termination of this MoU shall be without prejudice to (i) the orderly completion of any ongoing collaborative activity and (ii) any other rights and obligations of the Parties accrued prior to the date of termination under this MoU or any legal instrument executed pursuant to this MoU.
6. With the purpose of maintaining FAO's integrity, independence and impartiality, FAO may terminate this MoU with immediate effect in case of a breach of Articles 8, 9, 10, 11, 12, 13 and 14. FAO retains the right to make public the termination of this MoU.
7. The provisions of Articles 13, 15, 16, 17 and 18 shall survive the expiry or termination of this MoU.

The Parties agree that this MoU will be concluded electronically via email exchange of scanned signed copies and that the signed copies exchanged in this manner shall be treated as originals.

Signed:

FAO

Name: Kent Nnadozie

Date: 20 May 2022

Signed:

DivSeek International Network

Name: GRAHAM E. KING

Date: 20TH MAY 2022