



## **CGIAR Principles on the Management of Intellectual Assets (“CGIAR IA Principles”)**

**(effective as part of the Common Operational Framework as of 7 March 2012; approved by the Consortium Board on 1 March 2012 and by the Fund Council on 7 March 2012)**

Whereas the CGIAR means the global scientific research-for-development partnership consisting of the Consortium, Centers, CGIAR Funders, Partners and other CGIAR Participants to implement the Strategy and Results Framework (“**SRF**”) based on the goals expressed in the CGIAR Principles and the aspirations expressed in the Joint Declaration<sup>1</sup>.

Whereas the vision of the CGIAR is to reduce poverty and hunger, improve human health and nutrition, and enhance ecosystem resilience through high-quality international agricultural research, partnership and leadership (“**CGIAR Vision**”);

Whereas the CGIAR, guided by the SRF, pursues the CGIAR Vision through CGIAR Research Programs (“**CRPs**”) with a wide range of partners;

Whereas each CRP is subject to a series of agreements governing its implementation and funding (i.e. the Joint Agreement, a Consortium Performance Agreement, a Program Implementation Agreement and sub-agreements as required) which incorporate by reference the Common Operational Framework, including these CGIAR IA Principles;

Whereas the eleven Centers hosting ‘in-trust’ collections of Plant Genetic Resources for Food and Agriculture for the benefit of the international community<sup>2</sup> signed agreements in 2006 with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (“**Treaty**”), placing those collections within the purview of the Treaty;

Whereas these CGIAR IA Principles and the management of ‘in-trust’ collections hosted by Centers are intended to be consistent with the Treaty;

Whereas these CGIAR IA Principles are intended to be consistent with the Convention on Biological Diversity (“**CBD**”) and its objectives, including the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources;

Whereas these CGIAR IA Principles are intended to be consistent with fundamental human rights as stated in particular in the Universal Declaration on Human Rights and other relevant international treaties;

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<sup>1</sup> Cf. As defined in the Glossary.

<sup>2</sup> In-trust collections may include improved germplasm placed in trust by Centers.

**Therefore, the Consortium and the Fund Council have agreed on the following Principles with respect to the management of Intellectual Assets<sup>3</sup> produced or acquired by the Consortium and/or the Centers:**

**1. International Public Goods**

The CGIAR regards the results of its research and development activities as international public goods and is committed to their widespread diffusion and use to achieve the maximum possible access, scale, scope of impact and sharing of benefits to advantage the poor, especially farmers in developing countries.

**2. Partnerships**

The CGIAR recognizes that partnerships (i) are critical to ensuring access to the best knowledge and innovation, harnessing efficiencies in product development, and achieving maximum impact through effective delivery and deployment, and (ii) may require incentives that must be innovatively designed, carefully managed and diligently monitored.

**3. Farmers' Rights**

3.1 The CGIAR recognizes the indispensable role of farmers, indigenous communities, agricultural professionals and scientists in conserving and improving genetic resources.

3.2 The CGIAR seeks to be respectful of national and international efforts to protect and promote farmers' rights as envisaged by the Treaty<sup>4</sup> and support the development of appropriate policies and procedures for their recognition and promotion.

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<sup>3</sup> **'Intellectual Assets'** means any results or products of research and development activities of any nature whatsoever (including, but not limited to, knowledge, publications and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software, and distinctive signs), whether or not they are protected by IP Rights.

<sup>4</sup> **The preamble of the Treaty** affirms "that the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels", and **Article 9 of the Treaty** provides that farmers' rights include: "a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture".

#### **4. Genetic Resources for Food and Agriculture**

- 4.1 The CGIAR supports the effective conservation and widespread use of all genetic resources for food and agriculture.
- 4.2 Facilitated access to Plant Genetic Resources for Food and Agriculture within the purview of the Treaty shall be provided in accordance with the Treaty and these CGIAR IA Principles. In addition, the acquisition or transfer of any other genetic resources by the Centers shall be conducted in accordance with all applicable laws including those implementing the CBD, as well as these CGIAR IA Principles.

#### **5. Sound Management of Intellectual Assets and Intellectual Property Rights**

- 5.1 The CGIAR is committed to the sound management of Intellectual Assets and Intellectual Property Rights (“**IP Rights**”)<sup>5</sup> to further the CGIAR Vision, in accordance with all applicable laws and best practices.
- 5.2 The Consortium and the Centers shall manage their respective Intellectual Assets and IP Rights with integrity, fairness, equity, responsibility, and accountability, wherever they operate.
- 5.3 The Centers shall use their best endeavors to engage in IP Rights due diligence for the activities that they carry out, and, in particular, to secure where appropriate (e.g. through licenses or non assert covenants) the IP Rights that are necessary for the development and delivery of products/services without infringing third party IP Rights.

#### **6. Maximizing Global Accessibility and Impact**

All Intellectual Assets produced or acquired by the Consortium and/or the Centers shall be managed in ways that maximize their global accessibility and/or ensure that they lead to the broadest possible impact on target beneficiaries in furtherance of the CGIAR Vision.

- 6.1 **Prompt Dissemination of Research Results.** The Consortium and the Centers shall promptly and broadly disseminate their research results, subject to confidentiality obligations as may be associated with restrictions permitted under Articles 6.2 and 6.3 below, or subject to limited delays to seek IP Rights under Article 6.4 below.

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<sup>5</sup> ‘**Intellectual Property Rights**’ means ownership rights (or applications for protection) of Intellectual Assets, whether registered or not, granted in any jurisdiction, including but not limited to, copyright and related rights, database rights, patents, industrial design rights, plant variety rights, trademarks and service marks, geographical indications, and trade secrets.

## 6.2 Limited Exclusivity Agreements

6.2.1. The Consortium and/or the Centers may grant limited exclusivity for commercialization of the respective Intellectual Assets they produce (“**Limited Exclusivity Agreements**”), provided that:

- a) such exclusivity is:
  - (i) necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision, and
  - (ii) as limited as possible in duration, territory and/or field of use,
- b) and the Limited Exclusivity Agreements provide that the Intellectual Assets remain available<sup>6</sup> in all countries:
  - (i) for non-commercial research conducted by public sector organizations<sup>7</sup> in furtherance of the CGIAR Vision (“**Research Exemption**”), and
  - (ii) in the event of a national or regional Food Security Emergency<sup>8</sup> for the duration of the emergency (“**Emergency Exemption**”).

6.2.2. A Center may, in certain cases, deviate from the Research and Emergency Exemptions mentioned above, provided that this deviation is first approved by the Consortium. To obtain such approval, the Member Center shall submit a request in writing to the Consortium (i) showing that the Limited Exclusivity Agreement meets the conditions provided under Article 6.2.1 (a), (ii) explaining the reasons for the requested deviation and (iii) showing that the deviation does not jeopardize the furtherance of the CGIAR Vision. The Consortium shall determine whether the reasons are compelling<sup>9</sup>. The Consortium shall have 30 days from notification to approve by affirmative consent or reject such request.

6.2.3 For the avoidance of doubt, the requirements set forth in article 6.2.1 above shall apply subject to third party restrictions permitted under Article 6.3 below.

6.3 **Incorporation of Third Party Intellectual Assets.** The Consortium and/or the Centers may enter into agreements for the acquisition and use of third party Intellectual Assets that restrict the global accessibility of the products/services resulting from the use of such Intellectual Assets for commercialization, research and development (“**Restricted Use Agreements**”), provided that:

- a) they are, to the best of their knowledge, unable to acquire equivalent Intellectual Assets from other sources under no or less restrictive conditions,

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<sup>6</sup> **Available** means free-of-charge (except for actual costs or reasonable processing fees) or at a reasonable cost consistent with Article 7 of these CGIAR IA Principles.

<sup>7</sup> **Public sector organizations** means government entities, such as national governments, national agricultural research institutions, publicly funded international agriculture research centers, and publicly funded educational institutions.

<sup>8</sup> **‘Food Security Emergency’** means a food security related occurrence that poses imminent threat of a significant loss of human life and which is declared an “emergency” by a national government or a multilateral and internationally recognized institution based on generally accepted benchmarks, such as the ‘level 4 emergency’ or ‘level 5 catastrophe’ categories of the Integrated Food Security Phase Classification (IPC) (available at [www.ipcinfo.org](http://www.ipcinfo.org)).

<sup>9</sup> In making this determination, the Consortium may take into account the source of funding, the potential for impact, the alternative means of access to the Intellectual Assets, the opportunity cost, etc.

- b) the products/ services that are intended to result from the use of such third party Intellectual Assets will further the CGIAR Vision in the countries where they can be made available, and
- c) the Consortium and/or the Centers shall use their best efforts to ensure that such third party Intellectual Assets are only used in relation to, or incorporated into, such intended products/services<sup>10</sup>.

#### 6.4 Intellectual Property Rights

6.4.1 The CGIAR is committed to the prudent and strategic use of IP Rights.

6.4.2 The Centers shall carefully consider whether to register/ apply for (or allow third parties to register/apply for) patents and/or plant variety protection (“**IP Applications**”) over the Centers’ respective Intellectual Assets. As a general principle, such IP Applications shall not be made unless they are necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision.

6.4.3 All IP Rights shall be exercised consistently with Articles 6.1 to 6.3 above.

### 7. Fees

7.1 The Consortium and the Centers may charge reasonable financial fees, beyond actual costs and reasonable processing fees, in return for providing access to their respective Intellectual Assets on the condition that this possibility of charging fees does not divert them from the fulfillment of the CGIAR Vision.

7.2 For the avoidance of doubt, Article 7.1 above does not apply to Plant Genetic Resources for Food and Agriculture held in-trust by Centers and placed within the purview of the Treaty, for which facilitated access shall be provided in accordance with the Treaty<sup>11</sup>.

7.3 The Consortium and the Centers shall use any revenue generated from Intellectual Asset management in line with and to support the CGIAR Vision. The use of such revenue shall be transparently reported in the regular financial reporting by the Consortium and the Centers.

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<sup>10</sup> For example, Centers shall use best practices in field, greenhouse, laboratory, and livestock structure management to reduce the risk of unintended contamination of CGIAR biological materials by/with third party Intellectual Assets.

<sup>11</sup> Cf. Article 12.3(a) of the Treaty provides that facilitated access under the Multilateral System of access and benefit-sharing shall be “free of charge or when a fee is charged, it shall not exceed the minimal cost involved”.

## **8. Capacity**

- 8.1 The Consortium and the Centers are expected to have the capacity required for the proper implementation of these CGIAR IA Principles.
- 8.2 The Consortium is expected to provide a mechanism to ensure more effective and consistent management of Intellectual Assets and IP Rights through the sharing of knowledge and leveraging of experience, the provision of training and the development of relevant tools and templates.
- 8.3 The CGIAR funders are expected to provide adequate resources to support such capacity, including through both budget resources for the Consortium Board and Consortium Office and full cost recovery arrangements under the CRPs and other research proposals to implement the SRF.

## **9. Implementation**

- 9.1 The Consortium and the Centers, in consultation with the Fund Council, shall determine how best to implement these CGIAR IA Principles. These CGIAR IA Principles shall be effective as of the date as of which both the Fund Council and the Consortium have approved them (“**Effective Date**”)<sup>12</sup>.
- 9.2 The Consortium and the Centers shall be responsible for the management of their respective Intellectual Assets and IP Rights in accordance with these CGIAR IA Principles. Any policies and practices adopted by them shall be consistent with these CGIAR IA Principles and shall be made public. The Consortium shall oversee Center compliance with these CGIAR IA Principles and shall ensure that all policies, guidelines and practices adopted at the Consortium and Center levels are consistent with them.
- 9.3 For the avoidance of doubt, these CGIAR IA Principles shall not affect, except to the extent expressly provided herein, the Consortium and the Centers’ respective rights over their Intellectual Assets.

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<sup>12</sup> For the avoidance of doubt, these CGIAR IA Principles shall form part of the Common Operational Framework and thereby be incorporated by reference, with effect as of the Effective Date, in the Joint Agreement, Consortium Performance Agreements, Program Implementation Agreements and any downstream sub-agreement, whether concluded before or after the Effective Date. These CGIAR IA Principles shall however apply only to the agreements, or amendments of renewal, extension or involving additional funding, concluded with third parties after the Effective Date.

## 10. Reporting

### 10.1 Reporting by the Centers to the Consortium

**10.1.1 Assurance of Compliance.** Each Center shall provide annually to the Consortium a written assurance by its Board of Trustees that such Center has, during the preceding year, complied with these CGIAR IA Principles and, in particular, with the provisions of Article 5 on the sound management of Intellectual Assets and the requirements laid down in Article 6.

**10.1.2 Center IA Report.** Each Center shall provide annually to the Consortium a report, satisfactory to the Consortium, regarding the implementation of these CGIAR IA Principles during the preceding year (“**Center IA Report**”). The Center IA Report shall, in particular, list and provide a general description of each Limited Exclusivity Agreement, Restricted Use Agreement and IP Application that was concluded/made during the preceding year, as well as clear and relevant information showing that the requirements laid down in Articles 5 and 6 have been met<sup>13</sup> (“**Justifications**”). The information contained in the Justifications shall be subject to the confidentiality obligations to which the Center may otherwise be bound vis-à-vis third parties. Centers shall not undertake confidentiality obligations which would prevent them from providing the necessary Justifications as per this article.

**10.1.3 Confidentiality.** Subject to Article 10.3 below, the Consortium shall treat all information reported as per this Article as confidential.

### 10.2 Reporting from the Consortium to the FC IP Group

**10.2.1 FC IP Group.** The Fund Council shall establish an Intellectual property Group (“**FC IP Group**”) with the role, membership, rights and obligations set forth in Annex 1 attached hereto.

**10.2.2 Consolidated IA Report.** The Consortium shall annually make available<sup>14</sup> to the FC IP Group a consolidated report (“**Consolidated IA Report**”) consisting of:

- a) all Center IA Reports received by the Consortium under Article 10.1.2 for the preceding year,
- b) the list, general description and Justifications of any Limited Exclusivity Agreement, Restricted Use Agreement and IP Application concluded/made by the Consortium during the preceding year and
- c) any reservations the Consortium may have with regard to the Justifications provided to it by Centers<sup>15</sup>.

**10.2.3 Confidentiality.** The FC IP Group shall treat all information reported as per this article as confidential.

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<sup>13</sup> Includes any deviations under Article 6.2.2

<sup>14</sup> Protocols for the transmission or provision of such report to be developed in the Implementation Guidelines

<sup>15</sup> The Consortium shall share any reservations it makes to the FC IP Group with the Center in question.

- 10.3 **Reporting from the Consortium to the Fund Council.** The Consortium shall provide annually to the Fund Council a high level report<sup>16</sup>, satisfactory to the Fund Council, regarding the implementation of these CGIAR IA Principles during the preceding year (“**CGIAR IA Report**”). The CGIAR IA Report shall, in particular, contain general and aggregated information on the Limited Exclusivity Agreements, Restricted Use Agreements or IP Applications that were concluded/ made by the Consortium and the Centers, subject to any confidentiality obligations of the Consortium and/or the Centers<sup>17</sup>. The CGIAR IA Report shall be developed by the Consortium after consultation with the Centers involved and the FC IP Group.
- 10.4 **Public disclosure.** The CGIAR IA Report shall be made available to the public. The CGIAR is committed to the dual and equally important principles of (i) recognizing the legitimate interests of the private sector and other partners to maintain and protect confidential information and (ii) observing the need for transparency and accountability with respect to the use of public sector funds and activities financed in connection therewith.
11. **Audit Right.** The Consortium reserves the right to audit, on an exceptional basis, any agreement that is reported as, or otherwise may be, a Limited Exclusivity Agreement or a Restricted Use Agreement and any IP Application concluded/made by a Center, solely for the purpose of verifying compliance with these CGIAR IA Principles. The Consortium shall make all audit reports available to the FC IP Group and the relevant Center. Centers shall not undertake confidentiality obligations which would prevent the Consortium from exercising this audit right. The Consortium shall treat the content of all Limited Exclusivity Agreements, Restricted Use Agreements and IP Applications as confidential.
12. **Review and Amendment.** These CGIAR IA Principles shall be reviewed by the Consortium, in consultation with the Centers, and the Fund Council in 2014 and every two years thereafter in light of experiences gained<sup>18</sup>. These CGIAR IA Principles may be amended any time by agreement of the Consortium, in consultation with the Centers, and the Fund Council.

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<sup>16</sup> Details to be developed in Implementation Guidelines

<sup>17</sup> Such general information is not expected to be agreement- or IP Application-specific

<sup>18</sup> Particularly in light of Center competitiveness, as well as operational and administrative efficiency





## **Annex 1 to the CGIAR IA Principles**

### **Terms of Reference for the Fund Council Intellectual Property Group (“FC IP Group”) established under the CGIAR IA Principles**

1. The role of the FC IP Group is to facilitate coordination between the Fund Council and the Consortium by working in cooperation with the Consortium with regard to the implementation of the CGIAR IA Principles and advising the Fund Council in order to enable the Fund Council to provide adequate oversight of Intellectual Asset management in the CGIAR while safeguarding sensitive and confidential information.
  
2. The FC IP Group will have the following rights and duties:
  - 2.1 the right to receive from the Consortium:
    - the Consolidated IA Report described in Article 10.2.2 of the CGIAR IA Principles, which shall include the following specific information with respect to each Limited Exclusivity Agreement and Restricted Use Agreement, when relevant:
      - 1) a general description, including the purpose,
      - 2) the name and address of any contracting parties,
      - 3) any target beneficiary markets reached through market segmentation,
      - 4) any geographies reached through splitting territories,
      - 5) any market terms associated with the developed products/services (e.g., whether they will be provided royalty-free or at “reasonable cost”),
      - 6) the duration of any restrictions, and
      - 7) the basis for allowing such restrictions (e.g., required for Intellectual Asset enhancement, or scope or scale of impact on target beneficiaries), and
    - any audit reports produced under Article 11 of the CGIAR IA Principles;
  
  - 2.2 the right to request from the Consortium further information about any Limited Exclusivity Agreement, Restricted Use Agreement or IP Application, including the agreements themselves, where the FC IP Group has a reasonable concern about the corresponding Justifications;
  
  - 2.3 the right to provide the Consortium with any comments or concerns about the Limited Exclusivity Agreements, Restricted Use Agreements and IP Applications or the nature of the corresponding Justifications or any recommendations with respect to the CGIAR IA Principles;
  
  - 2.4 subject to Article 10.3 of the CGIAR IA Principles, the duty to treat all information received under Articles 2.1 and 2.2 of this Annex 1 as confidential, it being understood that the underlying agreements with third parties will have been concluded in a manner to make disclosure to the FC IP Group in accordance with this Annex 1 operative, and it being further understood that such information will be provided to the FC IP Group members subject to confidentiality agreements; if legal action or a serious and credible threat of legal action is made against the Consortium or a Center for an alleged breach of any confidentiality obligation with a third party relating to information received by the FC IP Group under Articles 2.1 and 2.2 of this Annex 1, the Center shall promptly notify the Consortium and/or the Consortium shall promptly notify the Fund Council.

The Fund Council, Consortium and Center shall work in concert to investigate the alleged breach and cooperate among themselves, as appropriate, to address the legal action or threat of legal action. The Fund Council and Consortium acknowledge and agree that these CGIAR IA Principles, including this Annex 1, have the force of contract through their incorporation (as part of the Common Operational Framework) into agreements between the Consortium and Fund Council, including the Joint Agreement, and into any relevant downstream fund use agreements, in accordance with the relevant enforceability provisions contained in such agreements subject to reasonably negotiated remedies by the affected parties.

- 2.5 subject to Article 2.4 of this Annex 1, the duty to report to the Fund Council as appropriate about its work;
  - 2.6 subject to Article 2.4 of this Annex 1, the duty to be responsive to the Fund Council with respect to any requests relating to the Consortium or the Centers in connection with the CGIAR IA Principles.
3. The FC IP Group will consist of no more than three members and one alternate, who shall be representatives of the Fund Council, which for the purposes of this Article 3 may include a representative of the ISPC, in order to receive its independent perspective, each designated by the Fund Council on a two-year basis. The FC IP Group members shall have demonstrated expertise and practical experience in the management of Intellectual Assets and IP Rights. The FC IP Group members will be selected by the Fund Council after informed discussion and consultation with the Consortium, which will have consulted the Centers, including consideration of any concerns expressed by the Consortium. FC IP Group members may serve for more than one term.