Formalizing the transition arrangements

Adopting decisions for the System Management Office
to assume functions of the Fund Office

Purpose:
This document sets out the decisions required to move the functions of the Fund Office to the
System Management Office in relation to the existing CGIAR agreements for current CRPs and
system costs after the transition to the reformed CGIAR System, with a System Council and
CGIAR System Organization comprised of its two component parts, the System Management
Board and System Management Office.

The decisions have been prepared by the System Management Office based upon the work
of the transition team and World Bank legal team in formulating the equivalent text that the
System Council will be asked to approve at its 1st meeting on 12 July 2016.

For the transitional arrangements to take effect, both the System Council and the System
Management Board must approve the proposed decision text.

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Finalizing the Transition Arrangements
For Decision

Background:

1. This paper provides the decisions that are required for the legal arrangements for the transition based on the premise that following establishment of the System Council and the CGIAR System Organization ("System Organization"), the outstanding functions of the Fund Council and the Fund Office with respect to the current CRPs and system costs will be transferred to the System Council and the System Management Office of the System Organization, respectively, and that upon transfer of their respective functions, the Fund Council and the Fund Office will be dissolved. The Trustee will establish a new trust fund to operate under the new structure, while continuing to administer the current CGIAR Fund until such time that all outstanding transactions thereunder will have been completed.

2. The paper on the *Revised proposed approach to existing CGIAR agreements for current CRPs and 2016 system costs* set out at Appendix 1 provides more detail on:
   a. the existing legal arrangements in place for the current CRPs and System Costs;
   b. the legal implications of the transition on the Consortium of International Agricultural Research Centers ("Consortium") as a legal entity;
   c. the impact of the transition on the organizational structure of the CGIAR Fund; and
   d. lays out the proposed approach for addressing the legal arrangements for the current CRPs and CGIAR System costs after establishment of the System Council and the System Organization.

3. From a legal perspective the establishment of the System Organization does not change the legal personality of the Consortium/System Organization. It is simply that the name of the legal entity is being changed from the Consortium to the CGIAR System Organization. From a contractual perspective, the System Organization automatically replaces the Consortium, and the rights and obligations of the Consortium under its agreements become the rights and obligations of the System Organization upon the effectiveness of the amendments to the Consortium Constitution to replace the Constitution with the Charter of the CGIAR System Organization ("Charter").

4. In order to finalize the transfer of the Fund Office obligations under the various agreements to the System Management Office and to finalize the transition, the System Management Board will need to agree the decisions as set out below, which decisions have been formulated based on the companion decisions that the System Council has been asked to make in regard to continuing obligations of the Fund Council after 1 July 2016.
Recommended Decisions:

The System Management Board, recognizing the agreement of the CGIAR System Centers and Funders to establish a new governance structure as described in the CGIAR System Framework and the Charter of the CGIAR System Organization, and having reviewed the paper, ‘Revised proposed approach to existing CGIAR agreements for current CRPs and 2016 system costs’ (circulated to all Centers on 1 June 2016, as a document for the Third Meeting of Centers and Funders on the CGIAR System):

A. Approves the following decisions to implement the transitional arrangement:

1. **Agrees** that the System Management Office assume the functions of the Fund Office under the Joint Agreement (Joint Agreement) between the Consortium of International Agricultural Research Centers (Consortium) and the Fund Council, represented by the International Bank for Reconstruction and Development (IBRD); provided that the Joint Agreement will be terminated upon the closing of the CGIAR Fund;

2. **Agrees** that the System Management Office assume the functions of the Fund Office under the Consortium Performance Agreements (CPAs) between the Consortium and the Fund Council, represented by IBRD; provided that the CPAs will be terminated upon the completion of the relevant CRP;

3. **Agrees** that the System Management Office assume the functions of the Fund Office under (i) the Fund Use Agreement (FAO Fund Use Agreement) among FAO for itself, ISPC, IEA and GFAR, the Fund Council, represented by IBRD, and the Trustee, and (ii) the Fund Use Agreement (Consortium Fund Use Agreement) among the Consortium, the Fund Council, represented by IBRD, and the Trustee (FAO Fund Use Agreement, and together with Consortium Fund Use Agreement, referred to as the Fund Use Agreements); provided that the Fund Use Agreements will be terminated upon the closing of the CGIAR Fund.

4. **Agrees** to the modifications to Annex 2 to the Contribution Agreements to provide for the transitional arrangements, as described in paragraph B.8 below; and

5. **Agrees** that the decisions in paragraphs 1 - 4 above shall only become effective upon the adoption of decisions by the Fund Council and System Council to agree to the following:

5.1 the Fund Council shall adopt decisions in July 2016, to agree to the following:
5.1.1 to have the functions of the Fund Council and the Fund Office under the Joint Agreement, CPAs and Fund Use Agreements transferred to the System Council and the System Management Office, respectively; provided that the Joint Agreement, CPAs and Fund Use Agreements will be terminated as indicated in paragraphs 1 - 3 above; and

5.1.2 to the modifications to Annex 2 to the Contribution Agreements to provide for the transitional arrangements, as described in paragraph B.8 below; and

5.2 The System Council shall adopt decisions, at its first meeting in July 2016, to agree to the following:

5.2.1 the System Council will assume the functions of the Fund Council as transferred to it under the Joint Agreement, CPAs and Fund Use Agreements; provided that the Joint Agreement, CPAs and Fund Use Agreements will be terminated as indicated in paragraphs 1 – 3 above; and

5.2.2 the System Council will assume the functions of the Fund Council as transferred to it under the Contribution Agreements as indicated in paragraph B.8 below.

B. Notes the following with respect to the transition:

6. That with respect to the FAO Fund Use Agreement, the System Council intends to propose to the FAO and the Trustee to add the following paragraphs as new Section E to the FAO Fund Use Agreement, to become effective, notwithstanding Section D.8 of the FAO Fund Use Agreement, upon (i) signatures of written agreement by FAO and the Trustee, and (ii) effectiveness of the System Council’s decision in paragraph A.3 above:

“E. Transitional Arrangement

E.1 Should there be any situation which requires actions of the Fund Council and/or the Fund Office under this Agreement upon the dissolution of the Fund Council and the Fund Office, the System Council and the System Management Office (each, as defined in the CGIAR System Framework) will act in place of the Fund Council and Fund Office, respectively, and all references in this Agreement to (i) Fund Council will be construed as meaning System Council and (ii) Fund Office will be construed as meaning System Management Office.
E.2 Notwithstanding Section C.5 of this Agreement, this Agreement shall be terminated upon closure of the CGIAR Fund and the course of action specified under Section C.5 following any termination event shall apply accordingly.”

7. That with respect to the Consortium Fund Use Agreement, the Fund Council intends to propose to the Consortium (now known as the System Organization as of 1 July 2016) and the Trustee, to add the following paragraphs as new Section 22 to the Consortium Fund Use Agreement, to become effective, notwithstanding Section 18 of the Consortium Fund Use Agreement, upon (i) signatures of written agreement by the Consortium (or the CGIAR System Organization that will operate with effect from 1 July 2016 based on the legal personality of the CGIAR Consortium) and the Trustee and (ii) effectiveness of the Fund Council’s decision in paragraph A.3 above:

“22. (i) Should there be any situation which requires actions of the Fund Council and/or the Fund Office under this Agreement upon the dissolution of the Fund Council and the Fund Office, the System Council and the System Management Office (each, as defined in the CGIAR System Framework) will act in place of the Fund Council and Fund Office, respectively, and all references in this Agreement to (a) Fund Council will be construed as meaning System Council and (b) Fund Office will be construed as meaning System Management Office.

(ii) Notwithstanding Section 17 of this Agreement, this Agreement shall be terminated upon closure of the CGIAR Fund and the course of action specified under Section 17 following any termination event shall apply accordingly.”

8. That pursuant to paragraph 8.2 of Section A of Annex 2 to the Contribution Agreements and Contribution Arrangements (collectively, Contribution Agreements) between the Fund Donors and the Trustee, the Fund Council, in its representative capacity for all Fund Donors, intends to add the following paragraphs as paragraph 10 of Section A of Annex 2 to the Contribution Agreements:

“10. Transitional Arrangement

10.1 Should there be any situation which requires actions of the Fund Council and/or the Fund Office under the Contribution Agreements and Arrangements upon the dissolution of the Fund
Council and the Fund Office, the System Council and the System Management Office (each, as defined in the CGIAR System Framework) will act in place of the Fund Council and Fund Office, respectively, and all references in the Contribution Agreements and Arrangements to (i) Fund Council will be construed as meaning System Council and (ii) Fund Office will be construed as meaning System Management Office.

10.2 Notwithstanding paragraph 7.2 of Section A of this Annex, any withdrawal by the Fund Donor of all or part of its Fund Donor Share following the establishment of a new trust fund by the Trustee to replace the CGIAR Fund may be made with the prior written notice of less than 180 days if such shorter period is agreed with the Trustee.”
Revised proposed approach to existing CGIAR agreements for current CRPs and 2016 system costs
Introduction

1. The purpose of this note is to outline a proposed approach and steps to be taken to address the transition for the current CRPs after the establishment of the System Council and the System Organization under the new CGIAR System. In particular, this note examines possible legal arrangements for the transition based on the premise that following establishment of the System Council and the System Organization, the outstanding functions of the Fund Council and the Fund Office with respect to the current CRPs and System Costs will be transferred to the System Council and the System Management Office, respectively, and that upon transfer of their respective functions, the Fund Council and the Fund Office will be dissolved. The Trustee will establish a new trust fund to operate under the new structure, while continuing to administer the current CGIAR Fund until such time that all outstanding transactions thereunder will have been completed.

2. The rest of the note is organized as follows: First is a summary of the existing legal arrangements in place for the current CRPs and System Costs. Second are the legal implications of the transition on the Consortium as a legal entity. Third includes the impact of the transition on the organizational structure of the CGIAR Fund and lays out a proposed option for addressing the legal arrangements for the current CRPs and System Costs after establishment of the System Council and the System Organization. Fourth is a proposal of how the transition from the current CGIAR Fund to the new CGIAR Trust Fund might be made. Fifth is a discussion of what amendments may be needed to the existing agreements in order to implement such arrangements.

Existing Legal Arrangements

3. By way of background, the following summarizes the existing legal arrangements in place for the current CRPs and System Costs that are funded out of the CGIAR Fund:

(i) The CGIAR Fund Governance Framework (the “Governance Framework”) sets out the organizational structure for and governance arrangements of the CGIAR Fund, which is governed by the Fund Council and supported by the Fund Office.

(ii) Contribution Agreements (the “Contribution Agreements”) were entered into between the Fund Donors and the Trustee, for contributions from Fund Donors to the CGIAR Fund, to be administered by the Trustee in accordance with the terms of Contribution Agreements.

(iii) The Fund Council approved the CGIAR Fund funding to the current CRPs and System Costs in accordance with the CGIAR Fund Governance Framework and the Contribution Agreements.

(iv) The Joint Agreement between the Consortium of International Agricultural Research Centers (“Consortium”) and the Fund Council, represented by IBRD (the “Joint Agreement”), sets out the overarching framework of arrangements between the Consortium and the Fund Council, including, among others, roles of the Consortium and the Fund Council, terms relating to use of CGIAR Fund funds and reporting to the Fund Council.
Council on CRPs and System Costs, and remedial measures available to the Fund Council.

(v) In accordance with the Joint Agreement, the Consortium and the Fund Council, represented by IBRD, also entered into the Consortium Performance Agreements (“CPAs”) for each of the CRPs, setting out the Consortium’s responsibilities with respect to the relevant CRP and use of Window 1 or Window 2 funds.

(vi) Reflecting the terms of the Joint Agreement and the CPAs, the Consortium in turn entered into Program Implementation Agreements (“PIAs”) with the respective CRP Lead Centers, for the Window 1 or Window 2 funding for the relevant CRP.

(vii) With respect to Window 3 funding, in accordance with the Contribution Agreements, under which such amounts are provided, the Trustee and respective Centers entered into W3 Transfer Agreements for transfer of such funding to the respective Centers.

(viii) For System Costs, the Fund Use Agreement (the “Consortium Fund Use Agreement”) was entered into between the Consortium, the Fund Council represented by IBRD, and the Trustee, as a framework agreement for transfer of the CGIAR Fund funding to the Consortium for System Costs approved by the Fund Council. In addition, the Fund Use Agreement (the “FAO Fund Use Agreement”, and together with the Consortium Fund Use Agreement, hereinafter defined as the “Fund Use Agreements”) was entered into among FAO for itself, ISPC, IEA and GFAR, and the Fund Council, represented by IBRD, and the Trustee for System Costs approved for the FAO/ISPC/IEA/GFAR.

Legal Impact of the Transition on the Consortium

4. The rights and obligations of the Consortium (as a legal entity) under the Joint Agreement, CPAs, PIAs and Consortium Fund Use Agreement will not be affected by the establishment of the System Organization.

5. From a legal perspective, there is no change in the legal personality of the Consortium/System Organization, as it will be the same legal entity. The name of the legal entity is being changed from the Consortium to the System Organization. While the other parties to the agreements should be notified of the name change, there is no need to amend the agreements to reflect this change.

6. From a contractual perspective, the System Organization automatically replaces the Consortium, and the rights and obligations of the Consortium under the above mentioned agreements become the rights and obligations of the System Organization upon the effectiveness of the amendments to the Consortium Constitution to replace the Constitution by the System Organization Charter.
Legal Impact of the Transition on the Organizational Structure of the CGIAR Fund and proposed Transitional Arrangements for Current CRPs and System Costs

7. As to the organizational structure of the CGIAR Fund, the Fund Council is currently a party to the Joint Agreement, CPAs and Fund Use Agreements, as described above.

8. In order to avoid undue disruptions to the current CRPs and the payment of System Costs, it is proposed that the existing operating arrangements be maintained as currently applied to the current CRPs and System Costs, except that once the System Council and the System Management Office are established, the System Council and the System Management Office assume, respectively, the functions of the Fund Council and the Fund Office stipulated under those agreements to the extent necessary.

9. To implement such transition, it is proposed that the Fund Council adopt decisions, by electronic means, in [the second half of June 2016] that provide for:

(i) a transfer of the functions of the Fund Council and the Fund Office under the Joint Agreement to the System Council and the System Management Office, respectively, upon establishment; provided that the Joint Agreement will be terminated upon the closing of the CGIAR Fund;

(ii) a transfer of the functions of the Fund Council and the Fund Office under the CPAs to the System Council and the System Management Office, respectively, upon establishment; provided that the CPAs will be terminated upon the completion of the relevant CRP;

(iii) an amendment to the FAO Fund Use Agreement to cover System Costs until December 2016 (including System Costs that may be approved by the Fund Council to cover the period from July to December 2016); and a transfer of the functions of the Fund Council and Fund Office under the Fund Use Agreements to the System Council and the System Management Office, respectively, upon establishment; provided that the Fund Use Agreements will be terminated upon the closing of the CGIAR Fund;

(iv) termination by the Fund Council of the CGIAR Fund Governance Framework;

(v) dissolution of the Fund Council and the Fund Office; and

(vi) modifications to Annex 2 to the Contribution Agreements to provide for the transitional arrangements, as described in paragraph 15 (a) and (b) below, provided that the Fund Council’s decisions in paragraphs (i) – (v) above shall only become effective upon satisfaction of the following:

(a) adoption of a decision by the Fund Council under paragraph (vi) above;

(b) adoption of decisions by the System Council, at its first meeting in July 2016, to agree to the following:
(A) the System Council will assume the functions of the Fund Council as transferred to it under the Joint Agreement, CPAs and Fund Use Agreements; provided that the Joint Agreement, CPAs and Fund Use Agreements will be terminated as indicated in the proposed Fund Council’s decisions above; and

(B) the System Council will assume the functions of the Fund Council as transferred to it under the Contribution Agreements; and

(c) adoption of decisions by the System Organization, at the first meeting of the System Management Board in July 2016, to agree to the following:

(A) the System Management Office will assume the functions of the Fund Office as transferred to it under the Joint Agreement, CPAs and Fund Use Agreements; provided that the Joint Agreement, CPAs and the Consortium Fund Use Agreement will be terminated as indicated in the proposed Fund Council’s decisions above; and

(B) the System Management Office will assume the functions of the Fund Office as transferred to it under the Contribution Agreements.

Transition from the current CGIAR Fund to the new CGIAR Trust Fund

10. In addition to the proposal above, it will be necessary to decide how to transition from the existing trust fund arrangements into a new CGIAR Trust Fund.

11. More specifically, the terms of the existing CGIAR Fund assume the existing CGIAR structure, which will no longer be appropriate after establishment of the System Council and the System Organization.

12. Therefore, it is proposed that a new CGIAR Trust Fund be established to reflect the new structure and arrangements with the System Council and the System Organization following its establishment.

13. In order to avoid undue disruptions to the current CRPs and System Costs already approved for 2016, it is also proposed that the existing CGIAR Fund be maintained under the existing terms (except for certain modifications to facilitate the transition as described below) until such time that all outstanding transactions thereunder, including transfers of all CGIAR Fund funds approved by the Fund Council for the current CRPs and System Costs, have been completed.

14. To implement such a proposal, it will be necessary to consider the mechanism for winding up the existing CGIAR Fund and transitioning into the new CGIAR Trust Fund, including:

(i) the cut-off date of accepting new contributions in the existing CGIAR Fund;
(ii) the disposition of the remaining balance in the existing CGIAR Fund (including procedures for the transfer of the balance to the new CGIAR Fund);

(iii) the treatment of any outstanding receivables from CGIAR Fund donors that still remain to be paid in to the existing CGIAR Fund; and

(iv) the treatment of Window 3 funding where the underlying activities, for which CGIAR Fund donors contractually committed to Centers to provide funding, have disbursement periods beyond July 2016.

15. The following approach is proposed to address these points:

(a) The Trustee may continue receiving new contributions in the existing CGIAR Fund until such time that all transfers of CGIAR Fund funding to the current CRPs and 2016 System Costs are completed (i.e., end-December 2016) (except as provided in (d) below). However, any receipt of new contributions to the existing CGIAR Fund will be limited only for the purposes of providing funding to the current CRPs and 2016 System Costs (including any increase of allocated amounts thereto). If any increase of budget with respect to the current CRPs and 2016 System Costs is proposed, such request may be submitted to the System Council for approval. Annex 2 (Trustee Provisions for the CGIAR Fund) to the Contribution Agreements will need to be modified to include a supplemental provision to recognize the roles of the System Council and the System Management Office so that if any situation arises which requires actions of the Fund Council and the Fund Office under the terms of the Contribution Agreements, the System Council and the System Management Office may act in place of the Fund Council and the Fund Office, respectively, during the transition period. Such modification may be made by acceptance by the Trustee and a decision of the Fund Council without signatures by Fund Donors.¹

(b) As to the disposition of the remaining balance (cash) in the current CGIAR Fund, once all commitments and transfers of funds for the current CRPs and 2016 System Costs have been completed (expected to be at the end of December 2016), it is proposed that the remaining balance in cash will be transferred to the new CGIAR Trust Fund as follows:

(A) In accordance with paragraph 2.6 of Annex 2 to the Contribution Agreements, unless any Fund Donor objects with respect to its share of contribution, the Trustee may, at any time after end-December 2016, transfer any remaining balance in Window 2 of the CGIAR Fund to Window 1 for further transfer of the balance to the new CGIAR Trust Fund as described in (B) below.

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¹ Section A.8.2 of Annex 2 provides that Annex 2 “may be modified by acceptance of the Trustee and a decision of the Fund Council, in its representative capacity for all Fund Donors, either (i) by consensus of the Fund Council on the basis of proposed modification text that is properly tabled for decision at a Fund Council meeting or (ii) electronically by affirmative written consent of each Fund Council Member, as decision by no objection not being sufficient: provided, however that no Fund Donor will be obligated to make any additional contributions under any such modification, unless it expressly decides to do so […].”
(B) The Trustee will enter into a new Contribution Agreement for the new CGIAR Trust Fund with each Fund Donor, under which that Fund Donor’s pro rata share in the existing Fund will be transferred to the new CGIAR Trust Fund as its contribution thereto, while cancelling the corresponding pro rata share in the existing CGIAR Fund.

(C) If any Fund Donor does not wish to have its pro rata share in the CGIAR Fund balance to be transferred to the new CGIAR Trust Fund, the Trustee may return such portion to that Fund Donor.

(D) In order to implement the above, Annex 2 to the Contribution Agreements would need to be modified to include a supplemental provision allowing transfer of Fund Donors’ respective pro rata shares to the new CGIAR Trust Fund without subjecting to the existing 180 days’ prior notice requirement for withdrawal of funds by Fund Donors under paragraph 7.2 of Annex 2 to the Contribution Agreements.

(c) With respect to any outstanding receivables from CGIAR Fund donors that are yet to be paid into the existing CGIAR Fund, once the new CGIAR Trust Fund is established, such outstanding contributions (receivables) will be transferred from the existing CGIAR Fund to the new CGIAR Trust Fund by entering into a new contribution agreement for the new CGIAR Trust Fund (which may be done under the same contribution agreement entered into under (a) above, together with the transfer of pro rata share of the CGIAR Fund balance, if a scheduled payment date of outstanding contribution is after the end-December 2016). Those CGIAR Fund donors will thereupon pay their outstanding contributions into the new CGIAR Trust Fund, to be administered in accordance with the terms of the contribution agreement entered into for the new CGIAR Trust Fund, whilst cancelling the corresponding outstanding contributions under the existing CGIAR Fund.

(d) With respect to the treatment of Window 3 funding where the underlying activities have disbursement periods beyond July 2016, CGIAR Fund donors may provide Window 3 contributions to the current CGIAR Fund until (A) the new Trust Fund is established or (B) end-November, 2016, whichever is later.

Amendments to the existing agreements

16. Based on the foregoing, the below sets out the analysis by each legal document of proposed steps to be taken.

CGIAR Fund Governance Framework

17. To be terminated upon effectiveness of decisions by the Fund Council to that effect, as described in paragraph 9 above.
Contribution Agreements

18. Modifications to be made, by acceptance by the Trustee and a decision of the Fund Council, to include supplemental provisions, addressing the transitional arrangements with respect to: (a) the functions of the System Council and the System Management Office in place of the Fund Council and the Fund Office as described in paragraph 15 (a) above; and (b) transfer of any remaining balance in the current CGIAR Fund to the new CGIAR Trust Fund as described in paragraph 15 (b) above.

Joint Agreement

19. To remain in effect until closing of the CGIAR Fund; provided that the functions of the Fund Council and the Fund Office under the Joint Agreement to be transferred to, and assumed by, the System Council and the System Management Office, respectively, as described in paragraph 9 above. [For CRP2 portfolio, undertakings by the System Organization towards Funders regarding oversight of, and reporting on, use of CGIAR Trust Fund funds and activities financed therewith will be incorporated in the Agreements between each Funder and the System Organization as appropriate.]

Consortium Performance Agreements

20. To remain in effect until the completion of the relevant CRP; provided that the functions of the Fund Council and the Fund Office under the CPAs to be transferred to, and assumed by, the System Council and the System Management Office, respectively, as described in paragraph 9 above. [For CRP2 portfolio, undertakings by the System Organization towards Funders regarding oversight of, and reporting on, use of CGIAR Trust Fund funds for, and implementation of, CRPs financed therewith will be incorporated in the Agreements between each Funder and the System Organization as appropriate.]

Program Implementation Agreements

21. No amendments required for the current CRPs. A new Financial Framework Agreement will be signed by the System Organization and each Center for the CRP2 portfolio implementation period (from 2017).

Fund Use Agreements

22. To amend the FAO Fund Use Agreement to cover System Costs until December 2016. The functions of the Fund Council and the Fund Office under the Fund Use Agreements to be transferred to, and assumed by, the System Council and the System Management Office, respectively. The System Management Office to notify to FAO/ISPC/IEA/GFAR of such transfer under the FAO Fund Use agreement. The Fund Use Agreements to be terminated upon closing of the CGIAR Fund. In addition, a new Fund Use Agreement will be signed by the System Organization and the FAO for 2017 onwards.
W3 Transfer Agreements

23. No amendments required.