

## **AGREEMENT**

**between**

**THE UNIVERSITY OF THE WEST INDIES ACTING ON  
BEHALF OF THE COCOA RESEARCH UNIT (CRU),**

**THE GOVERNMENT OF TRINIDAD AND TOBAGO**

**and**

**THE FOOD AND AGRICULTURE ORGANIZATION OF THE  
UNITED NATIONS (FAO) ACTING ON BEHALF OF THE  
GOVERNING BODY OF THE INTERNATIONAL TREATY ON  
PLANT GENETIC RESOURCES FOR FOOD AND  
AGRICULTURE**

### **PREAMBLE**

The University of the West Indies acting on behalf of the Cocoa Research Unit, custodian of the International Cocoa Genebank, Trinidad (hereinafter referred to as the "CRU"), the Government of Trinidad and Tobago, as host government to the CRU (hereinafter referred to as the "Government") and the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") acting on behalf of the Governing Body for the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the "Governing Body");

*Considering* the importance to humanity of protecting and conserving plant genetic resources for food and agriculture for future generations;

*Considering* the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the FAO Conference at its Thirty-first Session in 2001, which entered into force on 29 June 2004 (hereinafter referred to as the "Treaty");

*Noting* that in Article 15 of the Treaty, the Contracting Parties to the Treaty recognize the importance to the Treaty of the *ex situ* collections of plant genetic resources for food and agriculture, and that Article 15 provides that the Governing Body will also seek to establish agreements for the purposes stated in this Article with relevant international institutions;

*Reaffirming* the commitment of the Parties to this Agreement to the conservation, sustainable use and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture;

*Noting* that both the CRU, and the Governing Body on 16 June 2006, have approved the terms of the present Agreement;

Have agreed as follows:

## Article 1

### Application and interpretation of this Agreement

1. This Agreement shall be construed and applied in a manner consistent with the provisions of the Treaty.
2. The terms used in this Agreement that are also used in the Treaty shall have the same meanings assigned to them as in the Treaty.
3. Any reference in this Agreement to the CRU shall include its successors in title.

## Article 2

### Basic Undertaking

The CRU hereby agrees to place the *ex situ* collection held by it in trust within the purview of the Treaty in accordance with the following terms and conditions:

- (a) Plant genetic resources for food and agriculture listed in *Annex I* of the Treaty and held by the CRU shall be made available in accordance with the provisions set out in Part IV of the Treaty.
- (b) Plant genetic resources for food and agriculture other than those listed in *Annex I* of the Treaty and collected before its entry into force that are held by the CRU shall be made available in accordance with the provisions of the Material Transfer Agreement (hereinafter referred to as the MTA) endorsed by the Governing Body at its second session to be used by International Agricultural Research Centres for Plant Genetic Resources for Food and Agriculture not included in *Annex I* of the Treaty,<sup>1</sup> and under the following conditions:
  - (i) The CRU shall periodically inform the Governing Body about the MTAs entered into, according to a schedule to be established by the Governing Body;
  - (ii) The Contracting Parties in whose territory the plant genetic resources for food and agriculture were collected from *in situ* conditions shall be provided with samples of such plant genetic resources for food and agriculture on demand, without any MTA;

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<sup>1</sup> **Explanatory note:** At its second session, “the Governing body endorsed the option that an interpretative footnote or series of footnotes would be included to relevant provisions of the SMTA indicating that these provisions should not be interpreted as precluding the use of the SMTA for transfers of non-Annex I material, collected before the entry into force of the Treaty [...] The interpretative footnote or footnotes should not be seen as amendments to the SMTA, so much as clarifications of its meaning. They would be included in all versions of the SMTA used by the IARCs under Article 15.1(b), and thus avoid the need for two versions of the SMTA. The Governing Body decided that it would review these measures during its consideration of the SMTA at its Third Session”. Document IT/GB-2/07/Report, paragraph 68.



- (iii) Benefits arising under the above MTA that accrue to the mechanism mentioned in Article 19.3f of the Treaty shall be applied, in particular, to the conservation and sustainable use of the plant genetic resources for food and agriculture in question, particularly in national and regional programmes in developing countries and countries with economies in transition, especially in centres of diversity and the least developed countries;
  - (iv) The CRU shall take appropriate measures, in accordance with its capacity, to maintain effective compliance with the conditions of the MTAs, and shall promptly inform the Governing Body of cases of non-compliance; and
  - (v) The measures endorsed under the MTA will be reviewed by the Governing Body at its third regular session, in consultation with the International Agricultural Research Centres, in accordance with the relevant provisions of the Treaty, especially Articles 12 and 13.
- (c) The CRU recognizes the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by it and subject to the provisions of the Treaty.
  - (d) The scientific and technical facilities in which such *ex situ* collections are conserved shall remain under the authority of the CRU, which undertakes to manage and administer these *ex situ* collections in accordance with internationally accepted standards, in particular the Genebank Standards as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture.
  - (e) Upon request by the CRU, the Secretary of the Governing Body of the Treaty (hereinafter referred to as the "Secretary") shall endeavour to provide appropriate technical support.
  - (f) The Secretary shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material covered by this Article.
  - (g) If the orderly maintenance of these *ex situ* collections held by the CRU is impeded or threatened by whatever event, including force majeure, the Secretary, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.
  - (h) The CRU shall be included in the list of International Agricultural Research Centres of the CGIAR and other relevant international institutions to be held by the Secretary, and will have facilitated access to plant genetic resources for food and agriculture listed in *Annex I* under the Multilateral System, in accordance with Article 15.2 of the Treaty.
  - (i) The Governing Body will encourage Contracting Parties to provide the CRU with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in *Annex I* that are important to the programmes and activities of the CRU.

- (j) The CRU shall be invited to attend sessions of the Governing Body as an observer.

**Article 3**  
**Plant genetic resources for food and agriculture received**  
**after the coming into force of the Treaty**

Plant genetic resources for food and agriculture other than that listed in *Annex I* of the Treaty, which are received and conserved by the CRU after the coming into force of the Treaty, shall be available for access on terms consistent with those mutually agreed between the CRU that receives the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

**Article 4**  
**Consultations regarding implementation**

The CRU and the Government shall consult periodically with the Secretary or such other person or entity as the Governing Body may designate regarding the effective implementation of this Agreement. The results of such consultations shall be reported to the Governing Body.

**Article 5**  
**Amendment**

1. The Governing Body, the Government or the CRU may propose that this Agreement be amended by giving notice thereof.
2. Should the Treaty be amended in such a way as to significantly change the rights or obligations of the Parties to this Agreement, the Parties to this Agreement hereto shall consult regarding any amendments to the provisions of this Agreement that may be required or such other measures as may be required.
3. If there is a mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

**Article 6**  
**Duration of the Agreement**

1. It is the intention of the Parties that this Agreement should remain in force in perpetuity. However, should circumstances beyond its control make it impossible for either Party to fulfil its obligations under this Agreement or fulfil them in a manner compatible with its mandate, either Party may, after a period of two years from the entry into force of this Agreement, give notice to the other Party of its withdrawal from this Agreement. Such withdrawal shall take effect one year from the date of receipt of such notice. In the event of such a withdrawal, the Parties to this Agreement hereto shall consult with a view to ensuring that the in-trust collections are maintained consistently with the Treaty through other arrangements.



2. This Agreement may be terminated by mutual agreement between the Parties to this Agreement hereto.

### **Article 7** **Settlement of disputes**

Any dispute concerning the implementation of this Agreement, which cannot be settled by negotiations between the Parties to this Agreement, shall be settled by arbitration in accordance with the procedures set out in Part I of *Annex II* to the Treaty, except that the references to the Director-General of FAO shall be replaced by references to the Secretary-General of the Permanent Court of Arbitration.

### **Article 8** **Depositary**

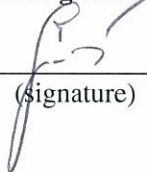
The Director-General of the FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Contracting Parties to the Treaty, to all the Members of the FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform the Contracting Parties to the Treaty, and FAO Members of:
  - (i) the signature of this Agreement in accordance with Article 9; and
  - (ii) the adoption of amendments to this Agreement in accordance with Article 5.

### **Article 9** **Coming into Force**

This Agreement shall come into force on the ninetieth day after its signature by the authorized representative of the FAO acting on behalf of the Governing Body and by the authorized representatives of the University of the West Indies acting in respect of the CRU, and of the Government.


**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**

by:  Date: 11/06/09  
(signature)

**The University of the West  
Indies acting on behalf of the Cocoa  
Research Unit (CRU)**

by:  Date: 13/3/09  
(signature)

**The Government of Trinidad and  
Tobago, as host government to the  
International Cocoa Genebank  
(ICG,T)**

by:  Date: April 29, 2009  
(signature)  
ARNOLD PLAGOTT