IIFB Secretariat Note:

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Item 9
Digital sequence information on genetic resources

The following draft decision is taken from recommendation 2/1 of the Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources.

The Conference of the Parties,

[*Recognizing* the lack of accountability, transparency and inclusive governance in existing public databases and data-sharing practices that do not align with international instruments on access and benefit-sharing, which limits the fair and equitable benefit distribution from the use of digital sequence information on genetic resources, and acknowledging that insufficient national capacity in developing countries further constrain their ability to benefit fairly and equitably from those resources,]

[*Placeholder for additional preambular paragraphs*,]

1. *Adopts* the modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including a global fund, as set out in the annex to the present decision;

[

2. *Requests* the Executive Secretary to establish a database for digital sequence information on genetic resources under the clearing-house mechanism, to facilitate the fair and equitable sharing of benefits arising from the use of such information;

3. *Decides* that the digital sequence information on genetic resources database shall:

(a) Enable a safe, secure, accountable and legitimate method of making digital sequence information on genetic resources and associated traditional knowledge publicly available in accordance with applicable national law, and with the prior and informed consent of the provider of the genetic material from which such information is generated, and to secure benefits in line with the present decision;

(b) Provide to developing country Parties that lack capacities facilities to generate, store, share and use digital sequence information on genetic resources, and to receive benefits from such use in accordance with their national access and benefit-sharing systems;

(c) Support non-monetary benefit-sharing by enabling capacity-building, technology transfer, training opportunities and information-sharing among all Parties, in particular developing country Parties;

4. *Requests* the Executive Secretary to report on the progress of those actions at the eighteenth meeting of the Conference of the Parties;

5. *Decides* to develop specific frameworks for sharing non-monetary benefits for the sectors listed in enclosure A to the annex, on the basis of the needs identified by Parties;

6. *Requests* the Executive Secretary to facilitate the development of the frameworks, incorporating input from Parties and relevant stakeholders;

7. *Invites* Parties to submit their identified needs and relevant information by [specified date];

8. *Requests* that the draft frameworks be presented to the Subsidiary Body on Scientific, Technical and Technological Advice for review, with a view to having them adopted at the [XXth] meeting of the Conference of the Parties.

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Annex

Modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information on genetic resources, including a global fund

1. [All] [commercial] users of digital sequence information on genetic resources [held in [public] databases] [are encouraged to][will][should][shall] share [monetary or non-monetary] benefits arising from its use in a fair and equitable manner.

2. [Users of digital sequence information on genetic resources [in all countries][in developed countries] that generate [monetary benefits][profits][revenue][turnover][sales] from its use [are encouraged to][will][should][shall] [share monetary benefits through][contribute] [mandatory] payments to the global fund [, *placeholder for a threshold/exemption*].

[3. The following options are proposed:

Option A. Users of digital sequence information on genetic resources [are encouraged to][will][should][shall] contribute to the global fund [X] per cent of the [profits][revenue][turnover] generated by products [and services] placed on the market that have benefited from the use of digital sequence information on genetic resources in their development.

Option B. Users of digital sequence information on genetic resources [that [in sectors that are highly reliant on][directly or indirectly benefit from] the use of digital sequence information on genetic resources in their commercial activities][in sectors that [have benefited from][rely on] the use of digital sequence information on genetic resources] [are encouraged to][will][should][shall] contribute to the global fund [X] per cent [as an indicative rate, depending on their circumstances] of their [profits][revenue][turnover][sales]. [A][An indicative] list of [such sectors][sectors to which such users may belong] is contained in enclosure A.

Option C. A contribution to the global fund of 1 per cent of the retail value of all products [and services] [that have been developed or created using][linked to the utilization of] [digital sequence information on genetic resources][biological resources].

Option D. Users of digital sequence information on genetic resources that actively use digital sequence information on genetic resources [are encouraged to][will][should][shall] contribute a portion of their [revenue][profit] to the global fund.

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[4. Entities active in the sectors mentioned in enclosure A that do not directly or indirectly benefit from the use of digital sequence information on genetic resources in their commercial activities will have the option to provide information in this regard.]

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5. [All users of digital sequence information on genetic resources[, in line with their individual circumstances,] [are encouraged to][will][should][shall] share non-monetary benefits in a fair and equitable manner, [regardless of their specific monetary contributions, and as agreed between Parties and in the Kunming-Montreal Global Biodiversity Framework], noting that the sharing of such non-monetary benefits does not replace any responsibilities arising from the provisions of the multilateral mechanism with respect to the sharing of monetary benefits through the global fund set out in paragraphs 2, 3 and 4.]

6. Non-monetary benefits should be shared[[, including through][in the form of] capacity-building and development, [participatory and community-based research,] knowledge-sharing, technology transfer[, upon mutually agreed terms,] and technical and scientifical cooperation, including to support, among other things, the generation of, access to and use and storage of digital sequence information on genetic resources, as well as the self-identified needs of indigenous peoples and local communities, [and people of African descent],[1] including women and youth from those communities. The sharing of non-monetary benefits [may][will] [continue to be undertaken in the context of existing and] build on ongoing [activities][practices and arrangements] and [may][will] be facilitated through the long-term strategic framework of the Convention on Biological Diversity[2] for capacity-building and development and its mechanism to strengthen technical and scientific cooperation in support of the Kunming-Montreal Global Biodiversity Framework.]

7. [The sharing of non-monetary benefits may be facilitated by enhancing the effectiveness of the clearing-house mechanism under the Convention by including a database to facilitate the exchange of information on digital sequence information on genetic resources and its use, thus enhancing collaboration and cooperation among Parties and providing information on demand for capacity-building.][The sharing of non-monetary benefits may be facilitated through [a][an existing] clearing house under the Convention, which could provide information on demand [from Parties] for capacity-building and allow the showcasing and voluntary reporting of ongoing non-monetary benefit-sharing [against headline indicator C.2]. [The sharing of non-monetary benefits could be further facilitated by the global fund.]] [Specific frameworks for sharing non-monetary benefits should be developed for the sectors listed in enclosure A and based on the needs identified by Parties.]

8. [Database and academic institutions are not expected to make monetary contributions to the global fund.]

9. Entities operating [large] public databases on digital sequence information on genetic resources [are invited to][will][should][shall][, as appropriate]:

(a) Make information on the multilateral mechanism available to [users][those accessing their] databases[, including information on the [requirements][possibilities and procedures] for users of digital sequence information on genetic resources related to the fair and equitable sharing of benefits arising from its use];

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[1] Terminology relating to indigenous peoples and local communities and the possible inclusion of references to people of African descent will be aligned throughout the document according to the decision on Article 8(j) and related provisions to be adopted at the sixteenth meeting of the Conference of the Parties.

[2] United Nations, *Treaty Series*, vol. 1760, No. 30619.

[(b) [Inform [users][uploaders] of the requirement][Require users] to comply with applicable national and international access and benefit-sharing obligations with respect to [genetic resources and] digital sequence information on genetic resources[, for user registration through clickwrap agreements];]

(c) Require[, where possible,] the provision of information on the country of origin [and the legal access] of the genetic resources [from which digital sequence information was derived[, as well as, when applicable, [traditional knowledge associated with those genetic resources][biocultural metadata indicating the use of traditional knowledge];]

(d) [Provide open access to digital sequence information on genetic resources, consistent with current international practices, taking into consideration][When operating an open access database, take into account][Apply] the principles of findability, accessibility, interoperability and reusability (FAIR) and of collective benefits, authority to control, responsibility and ethics (CARE) to data governance, as well the recommendations set out in [section III of] the United Nations Educational, Scientific and Cultural Organization *Recommendation on Open Science*;

[(e) Ensure that any new submissions of digital sequence information on genetic resources will only be accepted when accompanied by a verifiable document indicating permission for publication from the national authorities of the country of origin of the genetic resource from which the digital sequence information is derived.]

[10. Parties funding, sponsoring or hosting sequence databases shall ensure that entities operating such databases will take measures to ensure the effective implementation of the present decision and other relevant future decisions of the Conference of the Parties.]

11. Parties [are invited to][should][must] take administrative, policy or legislative measures, consistent with national legislation, to [incentivize][facilitate][require][ensure] contributions [from users in their jurisdiction] to the global fund[, in particular from large and transnational companies,] in line with the modalities of the multilateral mechanism.

[12. Parties may, by notification or other measures, determine that digital sequence information on genetic resources is under the scope of the multilateral mechanism and require users to use Convention on Biological Diversity sequence databases to share benefits, in line with the modalities of the multilateral mechanism.]

13. Contributions to the global fund may be made directly or through a national authority, as determined by the relevant Government. [Receipts will be issued annually for each year that contributions are made.]

[14. Users that make monetary contributions to the fund in line with the modalities of the multilateral mechanism are considered to be in [compliance][conformity] with the requirements related to the fair and equitable sharing of monetary benefits arising from the use of digital sequence information on genetic resources under the multilateral mechanism [*placeholder for a definition of digital sequence information on genetic resources under the multilateral mechanism*].]

15. [Receipts will be issued annually for each year that contributions are made.][For each annual contribution, receipts will be issued [automatically] when payments are made[, serving as certificates of compliance].][Receipts for the required annual contributions from users of digital sequence information on genetic resources will indicate compliance with the multilateral mechanism, provided that the used sequences have been published in a public database with the approval of the national authorities of the country of origin of the genetic resource from which the digital sequence information is derived.] [Certificates will be

issued providing proof of compliance of the respective users and excluding them from any additional benefit-sharing claims from the use of digital sequence information on genetic resources.]

16. [Additional] [voluntary] contributions [additional to those provided for in the paragraphs above] to the global fund from businesses, non-profit or philanthropic organizations and Governments are encouraged.

17. Funding in the global fund should be allocated in a fair, equitable, transparent, accountable and gender-responsive manner.

18. [Funding should support the conservation and sustainable use of biological diversity [and, inter alia, benefit indigenous peoples and local communities, including women and youth within those communities,] [in all countries] and the building of capacity and technology transfer on mutually agreed terms to generate, access, use, analyse and store digital sequence information on genetic resources[in developing countries] [to foster the conservation and sustainable use of biodiversity and contribute to scientific research on biodiversity].] [In particular,] funding should be used to support the realization of the objectives of the Convention and the achievement of the goals and targets of the Kunming-Montreal Global Biodiversity Framework, including through the delivery of activities described in national biodiversity strategies and action plans.

19. Funding will be allocated taking into account [the overall level of funding available in the global fund and] [an indicative list of elements for a][an initial] formula, as set out in enclosure B. [X] per cent of the global fund will be set aside to support the self-identified needs of indigenous peoples and local communities, including women and youth within those communities [in all countries][, in particular in developing countries], [through direct payments through their self-identified institutions or through government, according to circumstances][through national Governments, with a mandatory component for supporting indigenous peoples and local communities to be included within governmental proposals submitted to the fund]. [In addition, [X] per cent of the fund will be specifically set aside to support [technology transfer and] technical development, ensuring that all Parties, in particular developing country Parties, have access to the tools and expertise necessary to fully participate and benefit from digital sequence information on genetic resources.] [The formula will be reviewed by the Conference of the Parties at its seventeenth meeting on the basis of the work of a group established with the terms of reference provided in enclosure C.]

20. [With regard to disbursement, the following options are proposed:

Option A. Funding will be disbursed on the basis of projects developed though a country-driven or community-driven process, as appropriate, that meet criteria that may be established by the Conference of the Parties, taking into account indicative allocations, as described in paragraph 19.

Option B. Funding will be disbursed through direct allocations to countries, as described in paragraph 19. Each recipient Party is invited to designate or establish, as appropriate, a national entity, such as a national biodiversity fund, to receive funds and distribute them to support the activities set out in paragraph 18. Such entities should [operate according to internationally accepted fiduciary standards and] provide [annual] reports through national focal points on the activities supported by the funds [and be audited by the international entity]. Recipient Parties, at their own discretion, may alternatively designate an international, regional or subregional entity to fulfil those functions.]

21. The fund will be administered by [*place holder for final decision by the Conference of the Parties, taking into consideration, inter alia, recommendations of the Ad Hoc Open-ended Working Group on Benefit-sharing from the*

Use of Digital Sequence Information on Genetic Resources and the Advisory Committee on Resource Mobilization] [, in accordance with decisions of the Conference of Parties, and under the authority of and accountable to the Conference of Parties].

22. The multilateral mechanism and its fund will operate according to the principles of inclusivity, equity and transparency.

23. The multilateral mechanism must respect the rights of indigenous peoples and local communities[3] over their traditional knowledge, traditional knowledge associated with genetic resources and genetic resources [and data related to them], including with respect to species and places considered as sacred, which should only be [provided][published] with their free, prior and informed consent[4] [, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law].

24. [Parties with national][Where Parties put in place] measures on access and benefit-sharing from digital sequence information on genetic resources, [the measures] should be [compatible][in alignment] with the multilateral mechanism and should not result in a duplication of [the benefits shared from the use of such information][obligations to share benefits from the use of digital sequence information on genetic resources][through the multilateral mechanism].

[25. The multilateral mechanism will be implemented in [cooperation][a mutually supportive manner] with other international access and benefit-sharing instruments [associated with the use of digital sequence information on genetic resources][, with a view to enhancing mutual supportiveness and coherence][and avoiding duplicative payments]. It should be able to adapt in response to developments in other forums[, and this could be facilitated] [through, for example, a collective arrangement with those instruments]. [Where specialized access and benefit-sharing mechanisms instrument establish a multilateral mechanism on digital sequence information on genetic resources that is consistent with and does not run counter to the objectives of the Convention and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,[5] the multilateral mechanism under the Convention does not apply for the Party or Parties to the specialized instrument in respect of the specific digital sequence information on genetic resources covered by and for the purpose of the specialized instrument.]] [Bodies established under other international access and benefit-sharing instruments are invited to collaborate with the multilateral mechanism and streamline benefit-sharing processes, where appropriate.] [The provisions of the mechanism will not affect the rights and obligations of any Party deriving from any existing international agreement.]]

26. The multilateral mechanism, including the global fund, will operate under the authority and guidance of and be accountable to the Conference of the Parties.

27. The effectiveness of the multilateral mechanism, including the global fund, will be reviewed by the Conference of the Parties at its [eighteenth] meeting and at its every second subsequent meeting against the principles established in decision 15/9, taking into consideration the factors set out in enclosure D [and a methodology to be adopted by the Conference of the Parties at its seventeenth meeting], noting also the relevance of the review[s] of the Framework as a whole due to be conducted for the seventeenth and nineteenth meetings of the Conference of the Parties further to decision 15/6.

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[3] See footnote 10 regarding terminology related to "indigenous peoples and local communities".

[4] All references to "free, prior and informed consent" refer to the tripartite terminology of "prior and informed consent", "free, prior and informed consent" and "approval and involvement".

[5] United Nations, *Treaty Series*, vol. 3008, No. 30619.

28. The review will also be informed by the relevant indicators of the monitoring framework for the Kunming-Montreal Global Biodiversity Framework, including the headline indicators for Goal C and Target 13 and a [binary] indicator for Target 13 [to support adaptive management].

29. In the light of the review described in paragraph 27, [and to support adaptive management,] the Conference of the Parties will consider at its [eighteenth] meeting the need, if any, to adjust the modalities [or design] of the mechanism, including the global fund, to improve its effectiveness with respect to the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources.

Enclosure A

[

[Indicative] list of sectors or subsectors [that directly or indirectly benefit from][[highly] reliant on] the use of digital sequence information on genetic resources [for their commercial activities]

1. Sectors or subsectors **[**that directly or indirectly benefit from][[highly] reliant on] the use of digital sequence information on genetic resources include:

(a) Pharmaceuticals, such as pharmaceuticals manufacturing, biopharmaceutics [and life science research];

[(b) Nutraceuticals (food and health supplements);]

(c) Cosmetics, such as the development and production of new cosmetics or the production of existing cosmetics using synthetic production means;

(d) [Plant and] animal breeding and [agricultural] biotechnology [industries][, such as agricultural technology (which includes [plant breeding and crop modification research,] the genetic modification of livestock [and support activities for plant production and veterinary pharmaceuticals, crop protection products, animal breeding, plant breeding and improving food safety])];

(e) Industrial biotechnology;

(f) [Laboratory equipment associated with the sequencing and use of digital sequence information on genetic resources, including reagents and supplies;]

[(g) Information, scientific and technical services related to digital sequence information on genetic resources (information services such as software and artificial intelligence used to characterize and analyse or store big data associated with digital sequence information on genetic resources, as well as industrial sequencing or characterizing of digital sequence information on genetic resources as a third-party producer for other industries, such as pharmaceuticals, cosmetics and agriculture).]

2. The present list will be kept under review.

[3. Companies in the aforementioned sectors or subsectors may be excluded when they demonstrate that they do not highly rely on the use of digital sequence information on genetic resources.]

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[Enclosure B

[Indicative list of elements for a][Initial] formula for allocation

To be [adopted][elaborated] at the sixteenth meeting of the Conference of the Parties, taking into account the following [potential] criteria:

[

[(a) Biodiversity richness (terrestrial, freshwater and marine) and related concepts, such as endemicity and level of threat and vulnerability;]

[(a)alt.1

(i) Biodiversity contribution: species diversity and genetic resource uniqueness, and regional biodiversity relevance;

(ii) Conservation needs: threat levels to biodiversity and protected area coverage;]

[(a)alt.2

(i) Biodiversity richness (terrestrial, freshwater and marine);

(ii) Level of endemicity;

(iii) Level of threat;]

]

(b) Capacity needs for the conservation and sustainable use of biodiversity, taking into account the circumstances of developing countries, in particular the least developed countries and small island developing States and those with economies in transition, and of indigenous peoples and local communities [from all regions];

[(c) Level of development;]

[(d) Threat to biodiversity;]

[(e) Geographical origin of the genetic resources from which digital sequence information in the database was generated;]

[(f) Variety of ecosystems;]

[(g) Presence of extreme ecosystems;]

[(h) Presence of unique ecosystems;]

[(i) Level of threat to species and biodiversity.]

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[Enclosure C

Terms of reference for the [Ad-hoc Technical Expert Group][Working Group] Group on Allocation Methodology

1. The Group on Allocation Methodology is to provide technical advice and guidance on remaining and unresolved issues relating to the disbursement of funds from the global fund established in decision 15/9 (para. 16) and on the basis of paragraph [xx] of decision 16/--. In particular, the Group will develop an allocation methodology for disbursing funding from the global fund for [consideration][review] by the Conference of the Parties at its seventeenth meeting.

[2. The Group will comprise 10 technical experts nominated by Parties, 7 experts nominated by representatives of indigenous peoples and local communities from the seven sociocultural regions and 4 experts from relevant organizations. The Executive Secretary, in consultation with the Bureau, will select experts on the basis of nominations received from Parties, taking gender and the relevant technical expertise of the candidates into account and applying the procedure for avoiding or managing conflicts of interest set out in decision 14/33.]

3. The Group may draw on existing expertise and liaise with relevant organizations, as appropriate, in the execution of its mandate.

4. Subject to the availability of financial resources, the Group will meet, as needed, to ensure the timely provision of advice and will, wherever possible, meet back-to-back with other relevant meetings. Where possible, the Secretariat will use available means of electronic communication to reduce the need for in-person meetings.]

[Enclosure D
[Indicative factors][Factors] to be considered in the review

To be elaborated taking into consideration the following, which is drawn from document CBD/WGDSI/2/2/Add.1:

(a) Amount of funds mobilized through the global fund, in total and disaggregated by contributors and recipients (countries and indigenous peoples and local communities);

[(b) The [indicative] list of sectors, as provided in enclosure A, taking the experience of the multilateral mechanism and new technical and commercial developments into account;]

(c) Summary information on the activities supported by the fund[, inter alia, effectiveness evaluation of each project];

(d) Estimates of the scope and value of the non-monetary benefits facilitated by the multilateral mechanism;

(e) An assessment of the efficiency of the multilateral mechanism[, including the global fund], taking into account the costs of its operations and the suitability of the trigger for monetary contributions;

(f) An assessment of the contribution of the multilateral mechanism to the realization of the three objectives of the Convention on Biological Diversity – [and the implementation of the goals and targets of the Kunming-Montreal Global Biodiversity Framework];

[(g) An assessment of the effectiveness of the multilateral mechanism in providing legal certainty to providers and users of digital sequence information on genetic resources;]

[(h) Information on any interactions between the multilateral mechanism and benefits from the utilization of genetic resources under the Convention and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;]

(i) Information on any multiple payments related to digital sequence information on genetic resources, taking into account benefits shared through the multilateral mechanism and those related to such information shared under national access and benefit-sharing measures;

(j) Information on any implications of the operation of the multilateral mechanism on the rights of indigenous peoples and local communities, including with respect to their traditional knowledge and associated genetic resources, as well as possible implications on other groups, including women and youth;

(k) Information on any implications of the operation of the multilateral mechanism on the operations of public databases on digital sequence information on genetic resources, in particular with respect to open access, as well as any implications on research and innovation, including potential implications for data governance;

(l) Information on the interactions and any synergies between the operation of the multilateral mechanism and other multilateral access and benefit-sharing instruments;

(m) A review of the interaction between the multilateral mechanism and any existing national [measures][arrangements] for access and benefit-sharing on digital sequence information on genetic resources;

[(n) The possibility of the voluntary extension of the multilateral mechanism to genetic resources in future;]

[(o) Information on other issues arising from new and emerging technologies that are relevant to the operation of the multilateral mechanism;]

[(p) Information on any implications of the operation of the multilateral mechanism on the operation of public databases on digital sequence information on genetic resources, including potential implications for data governance and measures taken by entities operating such databases pursuant to paragraph 9 of the annex;]

[(q) Information on the measures taken by Parties pursuant to paragraph 10 of the annex.]

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