

Appendix 1

DRAFT
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THE CONSTITUTION
for benefit sharing through trust funds
under the Convention on Biological Diversity
(OF THE “FUND”)

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Appendix 1.
THE CONSTITUTION
For Benefit Sharing through Trust Funds under the CBD
OF THE “FUND”¹

PREAMBLE

WHEREAS, indigenous and local communities in [**Country**] have been conserving and sustainably developing biological resources in their lands and territories for millennia;

WHEREAS, the indigenous and local communities in [**Country**] have developed a wide variety of medicinal and other uses from biological resources;

WHEREAS, the people of the indigenous and local communities possess traditional knowledge that provides critical clues to scientists in the agricultural, medicinal and industrial fields;

WHEREAS, traditional knowledge provides important directives for natural resource use and ecosystem management;

WHEREAS, the United Nations Convention on Biological Diversity (“CBD”) recognizes the obligations of each CBD-contracting party to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and to promote the wider application of such knowledge with the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;²

WHEREAS, the Government of [**Country**], a signatory to the CBD, acknowledges the Fund as providing a vehicle for the establishment of an integrated program for promoting conservation of biological diversity and the discovery of biologically active plants useful in drug development and other sustainable economic product development, while ensuring that indigenous and local source communities derive maximum benefits for their biological resources and their intellectual contribution;³

¹ The Constitution of the Fund is intended to serve as general operative document establishing the goals, objectives, rights and duties of the Fund. It is made as detailed as possible to provide transparency and thus accountability among the Members and Directors and credibility vis-a-vis potential contributors. At the same time, the Constitution implicitly recognizes that certain aspects of the Fund’s operations must be entrusted to its Members and Directors.

² This section of the preamble reiterates Article 8(j) of the CBD.

³ It is important to acknowledge the consent and support of each host country government for the activities of the Fund in order to minimize the risk that the Fund is perceived as a threat to the sovereign right of the host country government to exploit its own natural resources. However, this acknowledgement should not be viewed as undermining the independence of the Fund and its autonomous operating authority as a non-governmental organization (“NGO”).

WHEREAS, the [“Group ”] of [Country], an independent, private, non-profit, voluntary group, supports and encourages the goals and objectives of the Fund and has served as the sponsoring entity for the formation of the Fund;⁴

NOW, WHEREFORE, the Fund is being established to ensure the conservation and sustainable use of biological diversity in [Country] and ensure the equitable distribution of the benefits to be derived from the activities of the Fund with respect to the commercialization of biological resources.

ARTICLE I

NAME, LEGAL STATUS, OFFICES

Section 1.1 Name

The Fund shall be formally known as and called the [_____].

Section 1.2 Legal Status

The Fund shall exist as a non-profit, charitable, international, non-governmental organization.⁵

Section 1.3 Registered Office

The registered office of the Fund shall be situated in [City, Country].

Section 1.4 Other Offices

The Fund may have offices at such other places, both within and without [City or Country], as the Board of Directors may from time to time determine to further the objectives of the Fund or as the operations of the Fund may require.

ARTICLE II

AIMS AND OBJECTIVES

⁴ The use of a sponsoring entity is intended to facilitate the establishment of the Fund, as was the case in Nigeria and the role played by the Bioresources Development and Conservation Programme. Of course, such an entity may not exist in every country, and it may be necessary in certain cases to rely on other sponsors, such as indigenous organizations, governmental entities or universities, to establish the Fund. It may also be possible to have the Fund established independently by various groups joining together as founding members. This model assumes that the Fund will have a sponsoring entity.

⁵ The precise legal status of the Fund will depend on the host country laws wherein the Fund is established. However, it is important that the Fund be able to obtain the benefits normally associated with non-profit and charitable entities, such as exemption from taxation. The “international” character of the Fund is intended to permit the Fund to collaborate with similar entities established in other countries. The NGO status of the Fund is equally important as it reinforces the independence of the Fund from the host government, and permits the Fund to participate in other NGO fora.

The aims and objectives of the Fund are as follows:

Section 2.1 Provision of Benefits

To serve as the channel through which the benefits and economic rewards resulting from the commercialization of products derived from local bioresources are distributed to the areas from which such resources for the development of drugs or other products are found, and, in accordance with this Constitution, compensate individuals, indigenous groups, scientists, rural communities and local institutions for their contributions to the activities of the Fund.

Section 2.2 Biodiversity Conservation

To designate revenues available to the Fund to such projects or ventures that will promote conservation of biological diversity as well as the sustainable economic development of new medicinal agricultural and other products and the economic well-being of indigenous and local communities.

Section 2.3 Improvement of Standard of Living

To improve the standard of living of indigenous and local communities through community development initiatives, information, education and communication, and to mobilize volunteer efforts of the people towards improving themselves and the environment and ensuring the sustainable utilization of biological resources.

Section 2.4 Alleviation of Poverty

To garner and channel support and assistance to indigenous groups and rural families, particularly women and children, and engage in other activities that will help alleviate poverty.

Section 2.5 Promotion of Local Collaboration

To collaborate and consult, based on the particular circumstances of each case, with indigenous groups, town associations, village leaders and professional healers guilds in determining the nature of compensation to apply or projects to embark on in their localities.

Section 2.6 Securing Collaborative Agreements

To enter into collaborative agreements with pharmaceutical companies and other commercial entities and organizations that share the objectives of the Fund in the conservation of biodiversity and the equitable distribution of benefits derived therefrom.

Section 2.7 Obtaining Contributions

To obtain contributions, in funds and in kind, for the development and support of the projects to be undertaken by the Fund.

Section 2.8 Other Activities

To engage in all such other activities as may be necessary to further the attainment of the objectives for which the Fund is established, and, towards this end, to combine or cooperate with institutions and agencies whose activities are consistent with the purposes of the Fund.

ARTICLE III

MEMBERS⁶

Section 3.1 Founding Members

The Founding Members of the Fund shall be those individuals appointed as Members by the [**Group**] and identified as Founding Members on Attachment A to this Constitution.⁷

Section 3.2 Additional Members

Any individual who shares a commitment to the aims and objectives of the Fund, irrespective of his or her ethnic, political, religious or racial group, shall be entitled to become a Member of the Fund upon application and approval of the application for membership by a two-thirds (2/3) majority vote of all the existing Members.⁸

Section 3.3 Removal of Members

Any Member shall be removed as a Member of the Fund upon the occurrence of any of the following events:

The Member is no longer capable of carrying out the duties of a Member of the Fund by reason of incompetence, ill health or any other inability to perform the functions and duties of a Member, as determined by a two-thirds (2/3) majority of the remaining Members of the Fund; or

Upon the recommendation of a majority of the Board of Directors and the unanimous vote of all remaining Members.⁹

⁶ It is also possible to structure the Fund as not having any Members and have the Fund managed directly by a Board of Directors. This model incorporates a membership component in order to promote greater community participation in the activities of the Fund.

⁷ As noted above, the use of a Group as the sponsor of the Fund would permit the Group to appoint the initial Members of the Fund. In the event the Fund is established by Members directly without the sponsorship of a Group or another entity, then this section would be modified accordingly.

⁸ The Fund must be an open forum and it should be easy to become a Member. The provision requiring a two-thirds majority vote of all members is intended to ensure that there is general agreement for the admission of a new Member. It is possible that a sponsoring entity of the Fund may insist on having ultimate approval for the admission of new members. While the sponsoring entity should be advised on who is made a new member of the Fund, the sponsor should not be able to veto the admission of new Members.

⁹ Unlike the admission of a Member, removal of a Member is intentionally made difficult and subject to a unanimous vote requirement to ensure that a single Member is not removed by a simple majority of the Members due to some disagreement over one or more policies of the Fund.

Section 3.4 Resignation of Members

Any Member may resign from the Fund upon written notice to the Chairman of the Board of Directors. Such resignation shall become effective upon delivery of the notice of resignation or otherwise mutually agreed between the resigning Member and the Board of Directors.

Section 3.5 Annual Meetings

The Members shall meet annually for the purpose of electing the Board of Directors eligible for election at such Annual Meeting. The meetings of the Members shall be held during the last week of the month of _____, at such time and place as shall be designated by the Board of Directors. The Chairman of the Board of Directors shall provide notice to each Member of the time, date and place of the Annual Meeting of the Members at least thirty (30) days prior to the Annual Meeting.

Section 3.6 Special Meetings

A Special Meeting of the Members may be called by a majority of the Members of the Fund or by a vote of three Directors. Written notices of any special meeting shall be provided by the Members or Directors calling such meeting at least fifteen (15) days prior to such Special Meeting, and the notice of the Special Meeting shall state the purpose of such meeting.¹⁰ **The only matters to be discussed and voted upon at such Special Meeting shall be the matters stated on the notice of the Special Meeting¹¹**

Section 3.7 Election of Board of Directors

The Director or Directors to be elected to the Board of Directors at the Annual Meeting of the Members shall be elected by a majority vote of the Members. The Chairman of the Board of Directors shall put forth the nominees of the existing Board of Directors, if any. Any Member may present a nominee for Director which may be accepted by the Board of Directors as a nominee upon (i) acceptance of the nominations by the person so nominated and (ii) the nomination being seconded by another Member. Upon completion of the nominations, the Members shall vote for each position available on the Board of Directors. Any Director who is also a Member shall be entitled to vote.

Section 3.8 Compensation

Members of the Fund shall not receive any remuneration or payment for their participation as Members of the Fund.¹²

Section 3.9 Quorum

¹⁰ The form of notice to be given should be made to reflect the options available in the country where the Fund is located.

¹¹ It is anticipated that any Special Meeting of Members would be a rare event.

¹² This provision is not meant to prohibit the payment to Members for any activities undertaken on behalf of the Fund outside their capacity as Members.

A quorum of the Members shall consist of a majority of the Members as set forth in this Constitution.

At each meeting of the Members at which a quorum is present, all questions and business shall be determined by a vote of a majority of the Members present, unless a different vote is required by law or this Constitution.

Any Member may participate in a meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1 Number

The number of Directors on the Board of Directors shall be **[nine (9)]**.¹³ The initial Directors on the Board of Directors shall be appointed by the **[Group]** and identified on Attachment B of this Constitution.¹⁴

Section 4.2 Term of Office

Each Director shall serve for a period of one (1), two (2) or three (3) years as indicated on Attachment B.¹⁵

Section 4.3 Qualifications

Any Member of the Fund and any individual who shares a commitment to the purpose and objectives of the Fund may be nominated and elected as a Director of the Board of Directors of the Fund irrespective of his or her ethnic, political, religious or racial group.¹⁶

Section 4.4 Duties, Powers and Responsibilities

¹³ The number of Directors should be sufficient to ensure that the Board is representative of the membership but not too large so as to impede the decisionmaking process. The appropriate number of Directors should take into consideration the size of overall membership and degree of anticipated activity of the particular Fund. Generally, a Board of Directors of five to nine members is appropriate.

¹⁴ In the event the Fund is established initially by Members without a sponsoring entity, then this section should be modified accordingly.

¹⁵ The concept of a staggered Board is designed to both ensure continuity of management and serve as a protective device against a possible “hostile takeover” of the Fund.

¹⁶ Permitting non-Members to serve on the Board is designed to have the same effect as an “outside Director” that can provide objective advice to the Board. Inclusion of the reference to the selection of Board members without regard to their ethnic, political or other background is particularly important for countries where the absence of such a provision may result in disparate treatment among various ethnic or other groups.

The Board of Directors shall be the administrative body of the Fund and may act on behalf of the Fund with respect to all matters within the capacity of the Fund. The Board of Directors shall manage the business of the Fund and shall perform all such acts as may be exercised or done by the Fund subject, however, to any provisions of this Constitution or any relevant legislation.

The Board of Directors shall appoint the officers of the Fund in accordance with Article V of this Constitution. The Board of Directors shall also designate the allocation of benefits to be provided by the Fund pursuant to the provisions of Article VIII of this Constitution.

Section 4.5 Annual Meetings

The Board of Directors shall hold an Annual Meeting immediately following the Annual Meeting of the Members.

Section 4.6 Quarterly Meetings

The Board of Directors shall hold a Quarterly Meeting every three months following the Annual Meeting at such time and place specified by the Chairman of the Board of Directors.¹⁷

Section 4.7 Special Meetings

Any three (3) Directors may call a Special Meeting of the Board of Directors. Notices of Special Meetings shall be provided to each Director at least ten (10) days prior to the date of such Special Meetings, and the notice of the Special Meeting shall state the purpose of such meeting. The only matters to be discussed and voted upon at such Special Meeting shall be the matters stated on the notice of the Special Meeting, unless additional matters are added by unanimous vote of the Directors present and voting at such Special Meeting.

Section 4.8 Quorum and Voting.

A quorum of the Board of Directors shall consist of a majority of the Directors as set forth in this Constitution.

At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a vote of a majority of the Directors present, unless a different vote is required by law or this Constitution.

Any Director may participate in a meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though transacted at a meeting duly held after regular notice, provided, however, (i) a quorum is present and (ii) either before or after the meeting, each Director shall sign a written waiver

¹⁷ The provision may, of course, be modified to provide for more frequent meetings if appropriate and depending on the level of activities to be undertaken by the Board.

of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the business records or made a part of the minutes of the meeting.

Section 4.9 Fees and Compensation

Members of the Board of Directors and committees shall receive no compensation for their services. They shall, however, be reimbursed for reasonable travel expenses incurred in connection with attending meetings of the Board of Directors.

Section 4.10 Vacancies

Vacancies of Directors may be filled by a majority vote of the Directors then in office, and each Director so elected shall hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until his or her successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this section if any of the following circumstances occur with respect to a Director:

The Director is removed from office as provided in this Constitution or resigns.

The Director is no longer capable of carrying out his or her duties by reason of death or incompetence, ill health or other inability to perform the duties of a Director as determined by a unanimous vote of the remaining Directors.

The Director becomes insolvent; or

The Director is convicted of a felony or any offense involving fraud or dishonesty.

Section 4.11 Resignations and Removals

Any Director may resign at any time by delivering his or her written resignation to the Chairman of the Board of Directors or the President of the Fund, such resignation to specify whether it will be effective at a particular time, or at the pleasure of the Board of Directors. If no such specification is made it shall be deemed effected at the pleasure of the Board of Directors. A Director may be removed from office upon a two-thirds (2/3) majority vote of all Members at any duly constituted meeting of the Members.

Section 4.12 Fiduciary Duties and Duty of Loyalty

Each Director of the Fund shall owe a duty of care to the Fund. As fiduciaries, the Directors shall exercise due care in handling the assets and other properties of the Fund, in a manner that would be expected of a reasonable person acting in such capacity.

Each Director shall owe a duty of loyalty to the Fund. The Directors are prohibited from entering into agreements or taking any action that would in effect produce a disadvantageous position, economically or otherwise, for the Fund.

Section 4.13 Chairman

The Board of Directors shall from among their number appoint a Chairman who shall be the Chief Executive Officer of the Fund for a term of one (1) year. The Chairman shall:

Preside at all meetings of the Fund and the Board of Directors;

Supervise all activities of the Fund, its officers or officials and preserve order and take such measures as are reasonably necessary to do so;

With the approval and consent of the Board of Directors set up ad-hoc committees in respect of specific projects or activities;

Ensure that proceedings of meetings are conducted in a peaceful manner and that each meeting resolves any issue that arises before it; and

Make quarterly reports to the Board of Directors.

Section 4.14 Committees

The Board of Directors shall, [in consultation with the BDCG],¹⁸ appoint individuals to the following committees which are designed to assist the Directors in fulfilling the Fund's aims and objectives and for the promotion of activities in furtherance of such objectives.¹⁹

Benefits Allocation Committee. This Committee shall ensure that the benefits provided by the Fund are allocated consistent with Article VIII of this Constitution.

Training Committee. This Committee shall serve as the liaison between the Fund and scientists, traditional healers and any other individuals or organizations as the Committee sees appropriate and actively promote the implementation of programs or other mechanisms designed to train individuals in the areas of biodiversity conservation and traditional medicinal knowledge.

Educational Committee. This Committee shall serve as the liaison between the Fund and universities and other educational institutions and support university departments and other individuals or groups that are committed to the education of individuals in the areas of biodiversity conservation and traditional medicinal knowledge.

Credit Union Committee. This Committee shall supervise the activities of the Fund with respect to its lending programs and make recommendations to the Board of Directors as to appropriate credit activities of the Fund.

Other Committees. The Board of Directors may, by resolution, approve the establishment of such other committees as may be required to achieve the objectives of the Fund and as permitted by law.

¹⁸ The consultation provision may be required as a means of permitting the sponsoring entity some degree of oversight in the activities of the Fund.

¹⁹ The Committees are intended to assist the Board of Directors in allocating the benefits to be distributed by the Fund. It is not intended that the committee membership be limited to Members of the Fund.

The Board of Directors shall determine the number and qualifications and the procedural rules, duties and responsibilities of the committees of the Fund.

Section 4.15 Ancillary Staff

The Board of Directors shall have the authority to appoint and dismiss any ancillary staff of the Fund, and to establish the duties and remuneration of any such ancillary staff.

ARTICLE V

OFFICERS

Section 5.1 Designated Officers

The officers of the Fund shall be a President, a Secretary, and a Treasurer. The Board of Directors may also appoint such other officers and agents as it shall deem necessary. The Board of Directors may assign additional titles to one or more of the officers as it shall deem appropriate. No one person may hold more than one office of the Fund at any one time.

Section 5.2 Appointment and Tenure of Officers

All officers shall hold office at the pleasure of the Board of Directors and any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors.²⁰ If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors. Nothing in this Constitution shall be construed as creating any kind of contractual right of any officer to employment with the Fund.

Section 5.3 President

The President shall be the Chief Operating Officer of the Fund responsible for the daily administrative functions of the Fund. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

Section 5.4 Secretary

The Secretary shall attend all meetings of the Fund and of the Board of Directors and any committee thereof, and record all acts and proceedings thereof in the minute book of the Fund. The Secretary shall also give notice in conformity with this Constitution of all meetings of the Fund and of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

Section 5.5 Treasurer

The Treasurer shall keep or cause to be kept the books of account of the Fund in a thorough and proper manner, and shall render statements of the financial affairs of the Fund in

²⁰ Placing the officers terms at the discretion of the Board is designed to ensure that effective control of the operations and activities of the Fund remain with the Board.

such form and as often as required by the Board of Directors or the Chairman. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all records of account of the Fund. The Treasurer shall perform such other duties and have such other powers as the Board of Directors or the Chairman shall designate from time to time.

Section 5.6 Reimbursement of Expenses

The officers of the Fund shall receive compensation for their services as determined by the Board of Directors. The officers shall also be entitled to reimbursement for reasonable expenses incurred in performance of the official duties, provided, however, that any individual expense above [____] or any cumulative monthly expense above [____] shall have been previously approved by the Board of Directors.²¹

ARTICLE VI

TRUSTEES²²

Section 6.1 Composition of Board of Trustees

The Board of Directors, with the approval and consent of the Members and the BDCG, shall establish and maintain a Board of Trustees consisting of seven (7) Members. Each Trustee shall be either a distinguished expert in the areas related to the activities of the Fund or an eminent leader who identifies with the activities and who may reside within or without [**Country**].

Section 6.2 Term

A member of the Board of Trustees shall not be removed from office unless the Trustee engages in one of the following acts:

Resigns his or her office;

Becomes incapable of carrying out his or her duties by reason of death, incompetency, ill health or other inability to perform the duties of a Trustee as determined by a two-thirds (2/3) majority of the Board of Directors;

Is officially declared bankrupt;

²¹ While the officers of the Fund should have certain monetary discretion, this should be limited to basic operating expenses of the Fund.

²² The role of the Trustees is to have an outside reviewing body ensure that the decisions of the Board of Directors help to further the aims and objectives of the Fund and that decisions of the Fund are consistent with the Fund's purpose as set forth in the Constitution of the Fund. The Trustees can also be used as means of bringing into the scope of the Fund's activities certain dignitaries that could publicize the activities and accomplishments of the Fund and serve in a fund raising capacity as well. Furthermore, the Trustees may be appropriate to hold certain properties of the Fund, as was done with respect to the Nigerian Fund. In this model the Trustees serve in an advisory capacity with power to block certain key decisions.

Is convicted of a criminal offense involving dishonesty by a court of competent jurisdiction;

Is recommended for removal from office by a two-thirds (2/3) majority vote of Members present in any Annual Meeting or other meeting of which due notice was given [and the Group consents to such recommendation].²³

Section 6.3 Obligations and Responsibilities

The Board of Trustees shall meet from time to time, as it deems appropriate, for the purpose of reviewing the activities of the Fund. The Board of Directors shall consult with the Board of Trustees with respect to all matters set forth in this Constitution requiring a two-thirds or greater majority vote of the Members of the Fund or the Board of Directors and any other matters as the Board of Directors may deem appropriate.

The Board of Directors shall provide the Board of Trustees with notices of all meetings of the Fund and any of its committees.

Section 6.4 Replacement

Upon a vacancy occurring in the number of Trustees or as the need may arise, the Board of Directors shall, in consultation with the Members and the [**Group**], appoint, a Trustee to fill such vacancy.

ARTICLE VII

REVENUES AND FUNDING

Section 7.1 Collaboration Agreement

The Board of Directors shall actively seek to enter into collaboration agreements with commercial for-profit entities that provide a return to the Fund based on profits resulting from the commercialization of products resulting from indigenous bioresources.²⁴

Section 7.2 Gifts and Donations

The Board of Directors shall actively seek gifts and donations to the Fund. The Board of Directors shall not be permitted to receive any contributions that are for a specially designated purpose unless approved by a two-thirds (2/3) majority vote of the Board of Directors and the consent of the Trustees is obtained. The Board of Directors shall not accept contributions conditioned on terms that are inconsistent with the goals and objectives of the Fund.

ARTICLE VIII

EQUITABLE DISTRIBUTION OF BENEFITS

²³ Group consent for the removal of a Trustee is recommended to ensure the independence of the Board of Trustees.

²⁴ The Board of Directors should specify the terms of such collaboration agreements.

Section 8.1 Distribution of Benefits

The Board of Directors shall distribute the funds available to be provided as benefits in accordance with the following guidelines:²⁵

- (a) At least 50 percent, but not more than 70 percent, of available funds shall be distributed to traditional healers' organizations and community development funds.
- (b) At least 10 percent but not more than 15 percent of available funds shall be distributed to national universities and other national institutions that share a commitment to the aims and objectives of the Fund.
- (c) At least 10 percent but not more than 15 percent of available funds shall be distributed to the [**Group**] for its furtherance of conservation and development activities in the [**Country**].

Section 8.2 Specially Designated Contributions

Contributions provided to the Fund for a specified stated purpose that is consistent with the aims and objectives of the Fund shall be segregated from the general account of the Fund and be distributed according to the terms specified by the grantor, provided, however, the acceptance of this contribution is approved as provided for in Section 7.2 of this Constitution.

Section 8.3 Use of Income and Property

The income and property of the Fund ,when and wheresoever derived, shall be applied solely towards the promotion of the goals and objectives of the Fund as set forth in this Constitution and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to any Member or Director of the Fund save insofar as any such Member or Director is employed or retained in a remunerative capacity by the Fund. However, nothing in this Constitution shall prevent the Fund from allocating its income and property for the fulfillment of any legal obligation of the Fund.

ARTICLE IX

ACCOUNTS

Section 9.1 Recording of Accounts

Full accounts shall be entered in proper books of accounts to be provided for that purpose of all money received and paid respectively on account of the Fund. A statement of such accounts as well as the statement of the assets and liabilities of the Fund shall be made for each year and shall be examined and passed by the Board of Directors at its first ordinary meeting in the ensuing year or at some other meeting appointed for that purpose.

Section 9.2 Payments

²⁵ These guidelines are intended to ensure that all cash contributions to the Fund are distributed in accordance with the Fund's objectives.

The Board of Directors may authorize the issuance of checks drawn on the Fund's bank account or accounts, or make other forms of payments on behalf of the Fund as provided for in this Constitution.

Section 9.3 Authorization of Expenses

With respect to the payment of expenses less than [_____] incurred as general and administrative expenses of the Fund, the Chairman, President or Treasurer shall have authority to be the signatory to the issued check or otherwise authorize the payment of such expenses. An approval by the Chairman or the Board of Directors as a whole shall not be necessary.

With respect to the payment of expenses exceeding [_____] incurred as general and administrative expenses of the Fund, any authorization of payment shall require the signature of any two of the following: the Chairman, a Director, the President or the Treasurer.²⁶

Section 9.4 Payment of Benefits and Distributions

The payment of any funds as benefits or distributions made pursuant to a specially designated fund shall require the two-thirds (2/3) majority approval of the Board of Directors of the Fund authorizing the amount of such payment or disbursement. The signature of the Chairman and at least one Director shall be required on any instrument authorizing such payment.

ARTICLE X

AUDITOR

The Board of Directors shall appoint an official external auditor of the Fund who shall audit the books of account of the Fund present to the Board of Directors a financial report at every quarterly meeting of the Fund and present an annual audited financial report at the Annual Meeting of the Members of the Fund.

All properly audited accounts in relation to the Fund shall in each year be made out and certified and copies thereof, with the annual report, transmitted to the [**Group**] and filed with the [**Official Tax Authority of the Country**].

ARTICLE XI

THE SEAL

The Chairman of the Board of Directors shall provide for the safe custody of the seal, which shall be affixed on any instrument to be executed by or on behalf of the Fund.

ARTICLE XII

INDEMNIFICATION OF BOARD OF DIRECTORS AND OFFICERS

²⁶ The Board should set clear limits on the authority of the officers to authorize expenses of the Fund.

As long as the Directors and Officers of the Fund shall have exercised due care in managing the affairs of the Fund, the Directors and Officers shall be held harmless for any losses or other form of liability arising against the Fund. The Directors and Officers shall have no such right of indemnification if they engage in acts constituting gross negligence or willful default, which acts have the effect of imposing losses or other form of liability upon the Fund.

Each Director or Officer who has not acted with gross negligence or willful default and is made a party to any action by reason of the fact that he or she is or was a Director or Officer shall be indemnified and held harmless by the Fund to the fullest extent authorized by law, as it exists or may hereafter be amended or interpreted, against all expenses, liability, and loss reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, participating in, or preparing for any of the foregoing in any such action.

ARTICLE XIII

AMENDMENT OF THE CONSTITUTION

This Constitution may be repealed, altered or amended or a new Constitution adopted by a written consent of the Members of the Fund or at any Meeting of the Members of the Fund by the affirmative vote of a two-thirds (2/3) majority of all Members and the consent and approval of the Board of Trustees.

ARTICLE XIV

DISSOLUTION OR WINDING UP

Section 14.1 Causes of Dissolution

The following events shall constitute events of dissolution of the Fund:

A decree or order by a court is entered adjudging the Fund bankrupt or insolvent.

The Fund has less than [____] Members or less than [____] Directors or less than [____] Trustees.

Any governmental authority interferes with the operations of the Fund as determined by a two-thirds (2/3) majority vote of the Directors or a unanimous vote of the Trustees.

Section 14.2 Distribution of Property

In the event of a winding up or dissolution of the Fund and there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the Members of the Fund, but shall be given or transferred to some other institution or institutions having objectives similar to the objectives of the Fund.

.....
CHAIRMAN

.....
SECRETARY

THE CONSTITUTION
For Benefit Sharing through Trust Funds under the CBD

ATTACHMENT A

LISTING OF INITIAL MEMBERS OF THE FUND

THE CONSTITUTION
For Benefit Sharing through Trust Funds under the CBD

ATTACHMENT B

LISTING OF INITIAL DIRECTORS OF THE FUND

Appendix 2. Social Forestry Projects: List of Species for Cultivation

The following plants are possible species for cultivation by villagers in the main vegetation zones of Nigeria:

MANGROVE SWAMPS

Anthocleista vogelii Planch
Carapa procera D.C.
Crudia klainei Pierre ex De Wild.
Uapaca Guinensis Muell. Arg.

RAIN FOREST

Albizia lebeck Benth.
Anogeissus leiocarpus (DC.) Guill. & Perr.
Borassus aethiopum Mart.
Butyrospermum parkii (G. Don) Kotschy
Casuarina equisetifolia Forst.
Dalbergia heudelotti Stapf.
Dracaena mannii Baker
Erythrina milbraedii Harms.
Garcinia kola Heckel
Irvingia gabonensis Baill
Physostigma venenosum Balfour
Picralima nitida (Stapf.) Th. & H. Dur
Tamarindus indica Linn.
Zanthoxylum zanthoxyloides Waterman

RELIC RAIN FOREST

Adonsonia digitata Linn.
Azadirachta indica A. Juss.
Bauhinia purpurea Linn.
Cassia alata Linn.
Eucalyptus citrioda Hook
Ficus capensis Thunb.
Salvadora persica Linn.

GUINEA SAVANNA

Acacia spp. L.
Anacardium occidentale Linn.
Annona senegalensis Pers.
Euphorbia balsamifera Alt.
Parkia biglobosa Benth.
Scerocarya birrea (A. Rich) Hochst

SAHEL SAVANNA

Acacia albida Del.
Acacia senegal (L.) Willd.
Balanites aegyptiaca (L.) Del.
Boscia senegalensis Lam.-Holl.
Commiphora molmol Engl.
Parkinsonia aculeata Linn.
Prosopis africana Taub.
Terminalia catapa Linn.
Zizyphus mucronata Willd.