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1. INTRODUCTION

This Policy follows and builds upon the [CGIAR Principles on the Management of Intellectual Assets](#) (“CGIAR IA Principles”) and the [CGIAR Policy on Open Access and Data Management](#) (“CGIAR OA Policy”), and takes into account the [Guidelines on the Nagoya Protocol for CGIAR Research Centers](#) and any other current and future policy or implementation tools issued by One CGIAR.

Likewise, this Policy adheres to and upholds commitments made by the Alliance constituent Centers under the *International Treaty on Plant Genetic Resources for Food and Agriculture* (“Plant Treaty”), and reflects the international principles defined by the *International Plant Protection Convention* and its phytosanitary measures, and the *Convention on Biological Diversity* (“CBD”) and its protocols: the *Cartagena Protocol on Biosafety* and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* (“Nagoya Protocol”). The Alliance commits to comply with regional and national regulatory instruments implementing such international instruments.

Standing on the precedent international context, this Policy reflects the Alliance’s focus on research-based and research-oriented solutions, more integration and commingling of research areas (the “nexus”) and on building upon our current partnerships and collaborations to expand innovation networks through fostering new alliances and partnerships with investors, the private sector, innovators, and the like.

While this policy regulates the intellectual assets of the Alliance as a whole, the organizations forming the Alliance are the owners of the intellectual property rights associated to the intellectual assets as long as such organizations are the entities with legal personality recognized by the governments that host them.

2. PURPOSE


The goals of this Policy are:

- a. To establish a common standard for the management and administration of the intellectual assets (IAs) and associated intellectual property rights (IPRs) of the Alliance.
- b. To develop and foster among the Alliance Staff a common understanding on the baseline parameters for managing the research and development products of the Alliance.
- c. To provide the Alliance Staff with tools for asserting rights and negotiating ownership in collaborations and work involving varied stakeholders, including the private sector.
- d. To describe ways in which the Alliance can use IPRs as tools for a more effective adoption and adaptation of IAs by their target beneficiaries, assist in the transfer of technology and on having a positive impact on people’s livelihoods.

3. SCOPE

This policy is applicable to:

- a. All IAs invented or found, created, generated, developed, or acquired by Alliance staff, and the associated IPRs, stemming from work carried out for, under, or at the Alliance, using Alliance resources.
- b. All IAs and IPRs resulting from collaborations, cooperative engagements and from services carried out by Alliance Staff for the Alliance.

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c. Alliance Staff, wherever located, who have established a legal relationship with the Alliance.

4. DEFINITIONS AND ACRONYMS

Alliance Resources: resources provided by the Alliance to undertake work such as, but not exclusively, monetary resources, infrastructure, equipment, capacity building, and IAS and IPRs of the Alliance.

Alliance Staff: employees and non-employees in scientific/technical and non-scientific/non-technical roles such as, but not exclusively, Associated Members of Staff, visiting researchers, students, hired consultants, seconded staff, contractors or any other person or entity with a legal relationship with the organizations members of the Alliance. Such relationship may arise pursuant to the provision of law, collective agreement or an individual agreement, where the latter may refer to an employment contract or any other legal statement or document.


Annex 1 PGRFA: Plant Genetic Resources for Food and Agriculture listed in the Annex 1 of the International Treaty on Plant Genetic Resources for Food and Agriculture (referred to as the “International Treaty”, the “Plant Treaty” or the “ITPGRFA”).

Article 15 Agreements: The agreements signed by CGIAR Centers and other international organizations with the Governing Body of the Plant Treaty in accordance with Article 15 the Treaty. In Article 15, the contracting parties of the Plant Treaty call upon the CGIAR Centers to sign agreements with the Governing Body to bring their *ex situ* collections under the purview of the Plant Treaty and make Annex 1 PGRFA held by them available in accordance with the Treaty’s Multilateral System of Access and Benefit Sharing, including the use of the Standard Material Transfer Agreement.

Background Intellectual Assets (IAs)/Intellectual Property Rights (IPRs): IAs and IPRs previously held or developed independently by the Alliance, which are provided or shared by the Alliance as inputs in collaborations or in services.

Collaboration or Collaborative Agreements: agreements or contracts between two or more natural or legal persons who want to collaborate to achieve a defined, common purpose. The collaborators contribute resources, including Background IAs and IPRS, to generate collaboratively Resulting IAs. The collaborators determine, among other things, the ownership applicable to the Resulting IAs and associated IPRs and the rights of use among themselves and by third parties during and after the period of collaboration.

Commercialization or Commercial: the sale, lease, license or transfer of Alliance IAs to any third party to generate an income. It also includes, without any limitation, producing or manufacturing IAs products for sale; carrying out research or development activities that result in any sale, license, lease or transfer of IAs to a third party, generating an income; and providing a service for third parties incorporating, derived from or using Alliance IAs and obtaining a payment or generating an income or revenue for this.

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Copyright Assignment (or Transfer) Agreements¹: written agreement where the owner of the copyright assigns or transfers its ownership and all associated rights to a third party. In the case of the Alliance, the Centers hold the copyrights on the employees' work. As authors, Alliance Staff members maintain the corresponding Moral Rights over their work.

FAIR Principles²: refers to make data, information and any Information Products that can be digitalized: findable, accessible, interoperable and reusable.

Food Emergency Exemption: “a food-security-related occurrence that poses imminent threat of a significant loss of human life and which is declared an “emergency” by a national government or a multilateral and internationally recognized institution based on generally accepted benchmarks, such as the ‘level 4 emergency’ or ‘level 5 catastrophe’ categories of the Integrated Food Security Phase Classification (IPC) (available at www.ipcinfo.org)” (*CGIAR IA Principles*, Article 6.2.1. b) (ii)).

Gold and Green Open Access³: Gold Open Access (OA) is where the final post-print version of an article (or any other published work) is freely and permanently accessible for everyone, immediately after publication. The authors retain copyright over the article or published work, and most of the restrictions for use of the published work are removed. Green OA is where the final version of an author's manuscript is placed into a repository, making it freely accessible and available to everyone. The version deposited into a repository depends on the funder or publisher. Unlike Gold OA, the publisher retains copyright ownership over the published work and there are restrictions as to how the work can be reused.

Information Products: works based on data and information, including peer-reviewed journal articles, reports and other papers, books and book chapters, data and databases, data collection and analysis tools (e.g. models and survey tools), video, audio, images, computer software, web services (e.g. data portals, modeling on-line platforms), and metadata associated with these products (*CGIAR Open Access and Data Management Policy*, Article 3).

Intellectual Assets (IAs): any results or products of research and development activities of any nature whatsoever (including, but not limited to, knowledge, publications and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software, and distinctive signs), whether or not they are protected by Intellectual Property Rights (*CGIAR IA Principles*, Preamble). The Alliance refers to the IAs also as **Intellectual Property (IP)**.

Intellectual Property Rights (IPRs): ownership rights (or applications for protection) of Intellectual Assets, whether registered or not, granted in any jurisdiction, including but not limited to, copyright and related rights, database rights, patents, industrial design rights, plant variety rights, trademarks and service marks, geographical indications, and trade secrets (*CGIAR IA Principles*, Article 5).


¹ Definition also found in the *Alliance Delegation of Authority Policy*.

https://cgiar.sharepoint.com/:b:/s/Bioversity_CIAT_Alliance/EYf3plo5ncpPnZ_e_gMJ1fwBMHts4xbJlxka_bHdW4FFIQ?e=KFhMXW

² Wilkinson, M., Dumontier, M., Aalbersberg, I. et al. The FAIR Guiding Principles for scientific data management and stewardship. *Sci Data* 3, 160018 (2016). <https://doi.org/10.1038/sdata.2016.18>

See also GoFAIR for a guide on its implementation, <https://www.go-fair.org/fair-principles/>

³ Same definition found in the *Alliance Delegation of Authority Policy*.

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Limited Exclusivity Agreements (LEAs): agreements where Centers grant limited exclusivity for commercialization of the Intellectual Assets they produce. CGIAR permits these agreements provided the following conditions are met:

- (i) the exclusivity is necessary for the further improvement of such Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries, in furtherance of the CGIAR Vision; and
- (ii) the exclusivity is as limited as possible in duration, in territory and/or in field of use (CGIAR IA Principles, Article 6.2, and CGIAR Implementation Guidelines).

Moral Rights⁴: are the author's or creator's rights of attribution (to be recognized as author or creator of the work) and to the integrity of their work (the right to object to alteration, mutilation or distortion of the work in a way that it becomes unrecognizable or prejudices the author' or creator's honor or reputation).

Non-Disclosure Agreement (NDA)⁵: A legally binding contract in which parties promise to treat specific information as confidential and not disclose it to others without proper authorization. It allows the parties to share sensitive information without fear that it will end up in the hands of competitors. It could be one-way NDA, when one of the parties provides information and the other one receives, or mutual NDA, when both or all parties provide and receive confidential information. The NDA describes sorts of confidential information transferred or exchanged, ways to identify it, duration and consequences for breaching confidentiality.

Open Access: the immediate, irrevocable, unrestricted and free online access by any user worldwide to information products, and unrestricted re-use of content (which could be restricted to non-commercial use and/or granted subject to appropriate licenses in line with the CGIAR IA Principles), subject to proper attribution (CGIAR Open Access and Data Management Policy, Article 6).


Owner of IAs/IPRs: a natural or legal person who owns IAs and IPRs over IAs. Only natural or legal persons can be legal owners. Thus, as long as each of the organizations that constitute the Alliance retains its own legal personality, they will be and can be the owners of IAs and IPRs developed under/at/by/for the Alliance. The Alliance will be/can become an owner of IAs/IPRs once it obtains legal personality.

Research Exemption: "the Intellectual Assets remain available (either free-of-charge (except for actual costs or reasonable processing fees) or at a reasonable cost) in all countries and for non-commercial research conducted by public sector organizations (i.e. government entities, such as national governments, national agricultural research institutions, publicly funded international agriculture research centers, and publicly funded educational institutions) in furtherance of the CGIAR Vision" (CGIAR IA Principles, Article 6.2.1. b) (i) and corresponding Implementation Guidelines).

Restricted Use Agreements (RUAs): agreements for the acquisition and use of **third-party** Intellectual Assets that restrict the global accessibility of the products/services resulting from the use of such Intellectual Assets for commercialization, research and development. CGIAR permits these agreements provided: (i) they are, to the best of Centers' knowledge, unable to acquire equivalent Intellectual Assets from other sources under no or less restrictive conditions; (ii) the products/ services that are intended to

⁴ Same definition found in the Alliance Delegation of Authority Policy.

⁵ Idem.

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result from the use of such third party Intellectual Assets will further the CGIAR Vision in the countries where they can be made available; and (iii) the Centers shall use their best efforts to ensure that such third-party Intellectual Assets are only used in relation to, or incorporated into, such intended products/services. The RUAs are not obliged to fulfil the Research Exemption and the Food Emergency Exemption (*CGIAR IA Principles*, Article 6.3, and corresponding *Implementation Guidelines*).

Resulting Intellectual Assets (IAs)/Intellectual Property Rights (IPRs): any and all IAs and associated IPRs generated by Alliance Staff as outputs of work carried out in/at/by/for the Alliance, regardless of its stage of development or maturity, using Alliance Resources.

Service Contracts or Service Agreements: legal instruments used to define the terms and conditions applicable to Work-for-hire arrangements. Typically, the entity paying for the work is the (sole) owner of the Resulting IAs and associated IPRs.

Standard Material Transfer Agreement (SMTA)⁶: international standard non-negotiable legal instrument adopted by the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (referred to as “International Treaty”, “Plant Treaty” or “ITPGRFA”) for transfers of Annex 1 PGRFA in the multilateral system of access and benefit sharing of the International Treaty. The Governing Body of the ITPGRFA, in 2009, endorsed the Centers’ practice of providing access to non-Annex 1 PGRFA that they maintain in the international PGRFA collections under the Plant Treaty framework using the SMTA.

Work-for-hire: means work carried out by an independent contractor (a natural or legal person), where an entity orders a particular work and pays the contractor for the creation and delivery of such work.

5. PRINCIPLES AND OVERALL CONSIDERATIONS


IAs as International Public Goods: Observing the *CGIAR IA Principles*, Alliance regards its IAs as International Public Goods, and accordingly, the Alliance commits to “its widespread diffusion and use to achieve their maximum possible access, scale, scope of impact, and sharing of benefits to advantage the poor, especially farmers in developing countries.”

Valuing and respecting Alliance IAs: As a research-for-development organization, IAs are our products, our assets, our means and tools to achieve positive impact and reach the Alliance goals. Therefore, Alliance Staff must respect, look after, work with and for, be accountable and responsible for, value and promote the value of the IAs of the Alliance.

Registering and reporting Alliance IAs: Alliance Staff must register the IAs created, generated or produced in their Alliance projects or work to feed a registry at institutional level. Further, in cases where the IAs generated reach a stage where they can be applied to solve a problem, Alliance Staff must file an invention disclosure and submit it to the Legal Office.

Collaborative engagements preferred over service engagements: Alliance Staff must engage in and favor as much as possible collaborative, cooperative engagements or endeavors with third parties instead of

⁶ Same definition found in the *Alliance Delegation of Authority Policy*.

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engaging in the provision of services as Work-for-hire, due to the potential loss of IPRs and rights of use associated with the latter type of engagements.

Granting access to and use of Alliance-generated IAs for research purposes: Alliance IAs must be findable, accessible, usable and reusable by anyone for further research and development (R&D), particularly for the public common good and for developing countries. Exceptions to this general principle may come from third-party rights over technologies or inputs used for generation of the Alliance IAs, confidentiality obligations, rules over the use of personal data or personally identifiable information, contracted R&D as service, and other third-party rights such as rights over traditional knowledge, genomic information, and farmers’ rights. Further, according to *CGIAR IA Principles*, the Alliance and its constituent organizations must uphold the Research Exemption where engaging in Limited Exclusivity Agreements (LEAs) and when applying for IPRs.

Securing access and use to Alliance generated IAs: Outputs obtained as R&D results by Alliance Staff or non-staff must be at least (i) publishable, without breaching third-party confidentiality, and (ii) usable for further R&D purposes.

Restricted IAs as inputs, unrestricted IAs as outputs: Alliance Staff must secure terms for access and use of third-party assets that enable further R&D and the deployment of results or outputs, even if the accessed third-party IAs used as inputs in R&D may be in themselves not subsequently available or accessible, as in the case of Restricted Use Agreements (RUAs).


Use of legal instruments to define ownership and rights of IAs: Alliance Staff must define ownership and ascertain rights of access and use for both acquired and generated IAs through legal instruments or document of different kinds, e.g., contracts, letter of agreement, memorandum of agreement, material transfer agreement, service contract, collaboration agreement, invoice, etc.

Make Information Products Open Access and FAIR: Information Products must be made Open Access and be offered under FAIR Principles as much as possible. Open Access is always subject to the legal rights and legitimate interests of stakeholders and third parties, including intellectual property rights, confidentiality, sensitivity (including, personally identifiable information, price and politically sensitive information), farmers’ rights and privacy (*CGIAR Open Access and Data Management Policy*, Article 4.1.1).

Ensure disclosure, diffusion and delivery (3Ds) of Alliance IAs: Alliance Staff must implement effective and efficient dissemination mechanisms for the disclosure, diffusion, and delivery of Alliance IAs, on its own or in collaboration with other entities, to increase the likelihood of their direct adoption or of their adaptation to generate products derived from such assets.

Pursuing equity in access and usability of Alliance IAs: Alliance Staff must do their best to ensure that our target beneficiaries, particularly less resourced or less technology-abled people in developing economies, are able to access and use Alliance IAs in ways that they can understand, adopt and adapt our IAs to address their needs and to reach their potential.

Apply and assert IPRs to further access and use of IAs: CGIAR calls for the “prudent and strategic use of IPRs,” meaning that Alliance Staff must apply and assert Intellectual Property Rights such as copyrights and Moral Rights “in a way that maximizes and preserves global access to the protected IAs”. Likewise, application for and registration of IPRs such as patents, plant variety protection and trademarks “must be necessary for

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the further improvement of the protected Intellectual Assets or to enhance the scale or scope of impact on target beneficiaries” (*CGIAR IA Principles*, Article 6.4).

Respect third-party IAs and IPRs: Staff must recognize and respect the terms applicable to access to and use of third-party IAs, including rights established through any agreement, contract or legal document, Moral Rights, farmers’ rights, rights to traditional knowledge, rights that demand prior informed consent by providers and/or ethics clearance by government or institutional bodies, proprietary rights such as IPRs, rights to tangible assets, confidentiality, commercial rights, privacy rights, and protection to personal data or personally identifiable information.

Furthering IAs through collaborations and relationships with other entities: Staff foster and establish collaborations and relationships with public and private entities of different kinds to ensure access to and use of more and better information, technology or know-how, as well as access to and use of other resources, including financial ones, to accelerate the development and widen the scope and reach of research-based IAs and products.


Facilitating access and use of crop genetic resources for research and breeding using the SMTA⁷: In accordance with the Article 15 Agreements signed by CIAT and Bioversity International, the Alliance will use the SMTA when providing facilitated access to PGRFA for the purposes of “utilization and conservation for research, training and breeding for food and agriculture” (as per article 12.3 of the Plant Treaty).

Restoring PGRFA: Following the opinions of the *Ad Hoc* Technical Advisory Committee on the Plant Treaty’s Multilateral System, the Alliance will restore samples of PGRFA to the provider or to the competent authority of the territory in which they were collected from *in situ* conditions, or to the legal or natural person that placed the PGRFA in the Alliance’s genebanks; or in case of bred PGRFA, the Alliance will restore such materials to the original breeding program. All of the former if needed and as requested by the original provider or breeder. In doing this, the Alliance will not use the SMTA, except otherwise directed by the recipient.

Providing PGRFA to farmers for direct use: Following the opinions of the *Ad Hoc* Technical Advisory Committee on the Plant Treaty’s Multilateral System, when access is granted to farmers for direct use, the PGRFA are transferred with a material transfer agreement or document stating that the PGRFA are for direct use only by the farmer and not for the purposes set out in the SMTA. When in doubt as to the purposes of the farmer’s use, the Alliance uses the SMTA.

Complying with Access and Benefit Sharing rules or norms for genetic resources and traditional knowledge: Alliance Staff must work in compliance with applicable national access and benefit-sharing laws and regulations on access and benefit sharing of genetic resources and traditional knowledge (TK). In absence of such laws or regulations, the Alliance commits to observe internationally recognized principles, CGIAR

⁷ In 2006, CGIAR Centers hosting international collections of food and feed crops signed Article 15 Agreements with the Governing Body of the Plant Treaty (represented by the Food and Agriculture Organization (FAO) of the United Nations) to place such collections under the purview of the ITPGRFA. This means, Annex 1 PGRFA are part of the multilateral system of access and benefit sharing of the Plant Treaty and the terms and conditions of the SMTA regulate their access and use. Furthermore, the Governing Body of the Plant Treaty confirmed in 2009 that the CGIAR Centers should use the SMTA when distributing PGRFA of species/genera not included in Annex 1 of the Plant Treaty and collected before the entry into force of the Treaty.

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guidelines and good practices when collecting, accessing and using genetic resources and TK, and when transferring genetic resources and TK to third parties.

Respecting and recognizing Farmers’ Rights: As stated by the *CGIAR IA Principles* (Article 3), the Alliance must “comply, in the countries where they work, with applicable national laws protecting and promoting farmers’ rights.” Where such laws do not exist, the Alliance should, where possible, “seek to work in ways that promote: the “protection of traditional knowledge relevant to PGRFA”; farmers’ “right to equitably participate in sharing benefits arising from the utilization of PGRFA”; farmers’ “right to participate in making decisions, at national level, on matters related to the conservation and sustainable use of PGRFA”; and farmers’ right to “save, use, exchange and sell farm-saved seed/propagating material, subject to national laws and as appropriate” (as stipulated by Article 9 of the Plant Treaty). The Alliance undertakes, as feasible and as appropriate, actions such as the ones described in the *Implementation Guidelines of the CGIAR IA Principles* to foster farmers’ rights.

Agreements categorized as LEAs, RUAs or that include application for registered IPRs: The Alliance abides by the requirement specified in section 6 of the *CGIAR IA Principles* and corresponding section in the *Implementation Guidelines*, when it enters into LEAs, RUAs, or when it contemplates protecting Resulting IAs under registered IPRs, on its own or allows third parties or collaborators to do it. In particular, the Alliance includes the Research Exemption and the Food Emergency Exemption as part of the terms of LEAs and agreements contemplating application of IPRs, except if such exemptions may be contrary to stewardship or biosafety regulations applicable to specific Resulting IAs (e.g., genetically modified crops). As necessary, the Alliance stipulates in LEAs, RUAs and agreements including application for registered IPRs the duty to issue public disclosures about such agreements according to *CGIAR IA Principles* and provided guidelines.


Transparency: The Alliance will manage its IAs in a transparent manner. Information about the Alliance’s IA policies will be made available on the Alliance’s website, and communicated to donors, partners, and the public on an ongoing basis. The Alliance will publish in a timely manner comprehensive descriptions of cases (‘disclosures’) in which the Alliance IAs have been subject to restrictive arrangements that may limit its public access, in particular LEAs, RUAs and IP applications, following the Guidance Notes for Centers Disclosures concerning Restrictive Licenses and Intellectual Property Applications over Centers’ Intellectual Assets.

6. GENERAL RULES

6.1 Ownership of Alliance IAs according to Partnership Agreement

As per the Partnership Agreement between the Centers forming the Alliance in force since 1 January 2020, ownership of IAs is as follows:


- a. **Background IAs and Background IPRs:** Each of the Centers is and remains the sole owner of the Background IAs and Background IPRs, developed prior to the Partnership Agreement, or acquired or developed in parallel to such Agreement without being related to its execution. The Centers must inform each other on any restrictions that may prevent or condition the use of their own Background IAs and IPRs for activities under the Alliance.

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- b. **Resulting IAs and Resulting IPRs:** During 2020, unless otherwise decided in agreements with third parties, Centers will jointly own Resulting IAs or Resulting IP from Alliance activities, including any associated IPRs, according to their contribution in creating or developing the Resulting IAs. From 2021, both Centers will equally own the Resulting IAs of the Alliance. Where one of the Centers is the sole owner of Resulting IP, the owner Center will grant, on request, to the other Center a non-exclusive, worldwide, royalty free, irrevocable license to use and sublicense the Resulting IAs and associated IPRs for Alliance activities.


6.2. Ownership and Rights of Use of IAs generated by the Alliance

- a. **IAs generated by employees:** The legal entity of the Alliance that is the employer is the Owner of all Resulting IAs generated by its employees within the scope of their employment.
- b. **IAs generated by non-employees:** ownership of Resulting IAs generated by non-employees may vary according to terms and conditions established in contracts or legal instruments used to describe the relationship with such persons or entities. As a baseline, the following conditions must apply:
- i. Under “Service” conditions: The legal entity of the Alliance contracting a natural or legal person for a Work-for-hire will own the Resulting IAs and associated IPRs. This category includes, for instance, IAs generated or work carried out by consultants, independent contractors, service providers, and others alike.
 - ii. Under “Collaborative” conditions: IAs generated by non-employees will be in line with the principles and overall considerations stated in section 5 and be subject to the “*Securing access and use to Alliance generated IAs*” principle described in such section, in addition to any specific ownership terms agreed in the collaborative agreement or contract with the Alliance. This category includes, for instance, Students, Visiting Researchers, Associated Member Staff, Seconded Staff, and others alike.
- c. **IAs generated according to type of contract or agreement**
- i. Service Contracts: An entity contracting the Alliance (through Bioversity International or CIAT) to do Work-for-hire will normally be the Owner of the Resulting IAs and associated IPRs. Although the Alliance may have no ownership over the Resulting IAs and IPRs, the Alliance and its Staff must ensure the **two rights of use** stated in the “*Securing access and use to Alliance-generated IAs*” principle (section 5), while the second right could be limited to internal R&D, non-Commercial use. If applying this principle is not possible (due to a Donor, Partner or Client request), the Associate Director General must approve the contract to proceed. When the Alliance is the one contracting the other entity for a Work-for-hire, the Alliance will be the Owner of the Resulting IAs and associated IPRs.
 - ii. Collaborative Agreements: Ownership of IAs generated under Collaborative Agreements will be defined between the Alliance (meaning Bioversity or CIAT) and the other party(ies). The Alliance can be the sole Owner of the Resulting IAs and IPRs, a joint Owner together with the party(ies) of the collaboration or have no ownership of the Resulting IAs and IPRs. Yet, regardless of the ownership arrangement, the Alliance must secure **rights of use** by applying the principle of “*Securing access and use to Alliance-generated IAs*” described in section 5. Further, in Collaborative Agreements, the Alliance must also be able to disseminate the

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Resulting IAs under the principle of “Ensure disclosure, diffusion and delivery (3Ds) of Alliance IA”, including for Commercial purposes.

IAs generated by/at the Alliance				
GENERATED BY:	TYPE OF CONTRACT	OWNED BY:	SUBJECT TO:	TYPE OF RELATIONSHIP
Alliance Employees:	Employment Contract	Legal entity of the Alliance that is the employer	according to Section 6.1 a)	Employee
Non-Alliance Employees:	Service	The Center that executes the contract	according to Section 6.1 b)	Consultants, independent contractors, and service providers
	Collaborative Agreements	According to the terms of the Agreement	In line with all principles and considerations of section 5; subject to "Securing access and use of Alliance generated IAs" as per Section 5	Students, Visiting Researchers, Associated Member Staff, Seconded Staff
Generated under contracts and agreements	Service Contracts (Alliance is contracted)	Usually the other institution	"Securing access and use of Alliance generated IAs" (right of use can be limited to internal R&D for non-commercial purposes); or approved by the Associate Director General when this is not possible	Alliance as service provider
	Service Contracts (Alliance is contracting)	The Alliance	NA	Alliance as the contractor of the service
	Collaborative Agreements	According to the terms of the Agreement	The Alliance must apply the “Securing access and use to Alliance generated IAs” and “Ensure disclosure, diffusion and delivery (3Ds) of Alliance IA”	Any collaborator or partner

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			principles (section 5), including for Commercial purposes.	
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6.3. Management of IAs by the Alliance

In the management of IAs, Alliance Staff must consider the IAs *acquired from* third parties and the IAs *generated* through their work under the Alliance. Alliance Staff shall consult with the Legal Office on matters related to IA management.

a. Acquisition of IAs from third parties

- i. Least restrictions as possible: IAs from third parties used as inputs in projects or work for Alliance purposes must allow the Alliance to carry out R&D as well as dissemination and deployment of Resulting IAs. Even under Restricted Use Agreements (RUAs), the Alliance must follow the principle of “*Restricted IAs as inputs, unrestricted IAs as outputs*” (section 5 of this Policy). That is, even in cases where third-party inputs could be used only internally, for specific purposes and could not be subsequently shared or disseminated, the Alliance must be able to share, release and deploy Resulting IAs generated with such third-party inputs, without or with few restrictions. The Legal Office provides an opinion and counsels about the acceptability of the proposed terms, as needed.
- ii. Clear and explicit terms of use: The terms of use applicable to IAs of third parties must be explicit and clearly described in writing. As possible, a legally binding document between the third-party provider and the Alliance must describe the conditions of use. Alliance Staff must be aware of such terms of use, abide by such terms, particularly if preceded or accompanied by Non-Disclosure Agreements, and record or register them in a way that they are findable, accessible, and remain associated to the acquired third-party IAs.
- iii. Ascertain freedom to operate: As much as possible, the Alliance and its Staff must ascertain if they have the rights to use the acquired third-party IAs in the way intended and for the purpose sought after (“freedom to operate”). Depending on the type of IAs, this would imply finding out the origin or source of the IA; obtaining or requesting proof of prior informed consent from the original provider of the IA; verify the ownership applicable to the IA (e.g., if the third party provider is a sole Owner or a joint Owner of the IA, if a government or donor has also ownership and rights over the IA); applicability of IPRs over the IA (e.g., whether the IAs are copyrighted, patented, trademarked, or protected plant varieties); establish if the license provided is exclusive or non-exclusive; existence of claims or disputes affecting the validity of the IPR or the provided license; and the existence of other rights over the IAs having an effect on their use (e.g., data privacy rights, ethics clearance requisites, confidentiality, rights held by farmers, indigenous or local communities over biological or genetic resources and information

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or knowledge). The Legal Office provides support in ascertaining freedom to operate, as required.

- iv. Abiding by applicable terms of use: As per the principle of “*Respect third-party IAs and IPRs*” (section 5 above), Alliance Staff abides by the terms of use established by third parties over the provided IAs. Clear and explicit terms of use, as per numeral (ii) of this section, assist the Alliance Staff to follow such applicable terms.
- v. Entrusted IAs: The Alliance holds in trust the international collections of PGRFA under the purview of the Treaty. The Alliance, as a trustee, conserves, regenerates, and transfers the PGRFA for the benefit of humanity. Neither the Alliance nor a recipient can claim ownership over such PRGFA materials as received or as transferred. To enter PGRFA materials into such international collections, the Alliance only accepts: an SMTA, or a Material Transfer Agreement (MTA) with explicit terms of access and use equivalent to the SMTA that allows the Alliance to use the SMTA for subsequent transfers.
- vi. Accessing genetic resources and traditional or farmers’ knowledge as inputs: To access and use plant genetic resources that **are not** under the multilateral system of the Plant Treaty (e.g., quinoa, cacao, tea, coffee, cassava wild relatives, or plants from countries that are not parties to the Plant Treaty), genetic resources or compounds from biological resources such as animals, viruses, fungi and microorganisms, and traditional, indigenous or farmers’ knowledge, the Alliance must comply with the applicable national or regional laws and regulations. In general, this implies requesting official permits and/or access and benefit sharing agreements before undertaking *in situ* collections and entering into contracts for access and use of such resources or knowledge with competent national authorities. Under all circumstances, the Alliance follows the principles of “*Complying with Access and Benefit Sharing rules or norms for genetic resources and traditional knowledge*” and “*Respecting and Recognizing Farmers’ Rights*” stated in section 5 of this Policy. The Legal Office provides support in applying for permits and contracts, as required.

b. Resulting IAs

For all IAs generated by the Alliance, the Alliance Staff abide by all of the guiding principles stated in section 5. The Alliance and its Staff put into practice the following actions to comply with the principles:

- i. Recognizing and upholding Moral Rights: The legal entities of the Alliance and all the Staff recognize and uphold Moral Rights for all the works performed by Alliance Staff and by third parties.
- ii. Recording Resulting IAs: Alliance Staff maintain appropriate records of the IAs generated as outputs in lab notebooks, databases and institutional registries. The Associate Director General of the Alliance and the Lever Directors together with relevant units or offices decide on the appropriate means and tools to carry out such registration at the level of projects and programs. The Alliance establishes an institutional registry for all Resulting IAs, open for internal consultation by anyone at the Alliance.
- iii. Reporting on Inventions: Alliance Staff fill out an Invention Disclosure form, file it with the Legal Office to report new or unique Resulting IAs that can be used and be useful to solve a problem (“Invention”). The Legal Office analyzes the disclosed Invention and recommends the

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suitability of IPRs (e.g. patents, trademarks, plant variety protection (PVP) certificates, registered copyrights, design rights or others) for its protection.


- iv. Defining terms of access and use: The Alliance and its Staff provide written explicit and clear terms and conditions that apply to access and use of Resulting IAs. This applies irrespective of the type of IAs (e.g., an Information Product, a physical tool, a biological tool, an extract or compound, an Artificial Intelligence-based tool, a new plant variety); the media used for its disclosure or transfer; whether it is available free of charge or at a price; and the type of arrangement established for its provision (e.g., collaborative agreement, service arrangement, any type of agreement or contract, a franchise, or a license, among others). For the absence of doubt, the expression “Open Access” alone *does not* define the applicable terms and conditions of access and use of an IA. The Legal Office provides the baseline criteria and applicable terms of access and use for the Alliance IAs as well as the terms applicable for any of the legally binding or not binding arrangements, and discusses with Alliance Staff the suitability of such terms on case-by-case basis, if needed.

Besides the criteria outlined as part of the principles and general rules in the above-mentioned sections of this Policy, the Alliance applies the following:

- Explicitly attaches a **copyright notice** to Resulting Information Products (including photos, audiovisuals) created by the Alliance (Bioversity International or CIAT), provided it is in line with previously established conditions for the release of Information Products agreed with funders, collaborators or clients, as applicable. Unless otherwise applicable, the copyright notice contains: Copyright© [year of release] [name of the legal entity creating the product]. In case of photos or audiovisuals, the copyright notice contains: Copyright© [year of release] [name of the legal entity creating the product]/ [name of photographer or audiovisual maker]. The Legal Office provides further procedures or guidelines for the implementation of copyright.
- For the transfer or distribution of **PGRFA under development** (e.g., breeding materials or improved materials that are not finalized products), the Alliance appends **additional terms and conditions to the SMTA**, in a separate yet attached document to the SMTA.
- Provides a **license** to third parties granting rights of use and/or rights for the Commercialization of Alliance Resulting IAs or products derived from Alliance Resulting IAs, as applicable. As suitable, the Alliance uses standard licenses drafted and provided by the Legal Office or adopted from international and widely approved sources. The Legal Office drafts and provides tailored-made licenses if needed.

The following general criteria apply, unless otherwise provided:

- **For copyrighted IAs**: Use of less restrictive Creative Commons (CC) licenses such as Creative Commons Attribution (CC-BY) or Creative Commons Attribution-NonCommercial (CC-BY-NC) licenses that provide ample rights of use *as long as* credit to authors and owners is provided and the copyright notice and chosen license remain attached to the IA. The “NonCommercial” criterion **must apply** if the IA is or contains **images or voices of people** that can be identified and for whom the Alliance *does not* have prior informed consent for Commercial uses.
- **For non-copyrighted Information Products**: For data sets or databases that may not be copyrightable, use of the Open Data Common (ODC) licenses such as ODC-Attribution (ODC-BY)


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or ODC Attribution Share-Alike for databases (ODbL) that provide ample rights of use *as long as* credit to authors and owners is provided.


- **For the eventual Commercialization of products derived from plant materials bred by the Alliance:** Include in the license, in addition of the tailored-made terms, conditions for payment into the International Benefit Sharing Fund administered by the Secretariat of the Plant Treaty according to the conditions established by the SMTA.
- Provides a **Permission or authorization for the registration of commercial plant materials** (clones, varieties or hybrids) derived from Alliance-held or Alliance-bred plant materials, when a recipient or a collaborator request so.
- Solicits a **formal cession of rights** from Alliance Staff to the pertinent legal entity of the Alliance, in case this formal cession is required by the Alliance to apply for IPRs such as patents, PVP certificates or design rights over Alliance IAs. Alliance Staff swiftly collaborates with providing such cession of rights.
- Provides a **formal cession of IPRs** in case a collaborator or third party is granted the right to apply on its own name for the protection of Alliance-derived IAs under IPRs (copyright, patent, trademark, PVP certificates).
- v. Publications and disclosures: The Alliance and its Staff issue publications and disclosures for Information Products according to criteria set by the *CGIAR Open Access Policy* and any other CGIAR and Alliance procedures or guidelines issued on this regard. In addition to following Open Access and FAIR Principles, Alliance Staff:
 - Abide by Non-disclosure Agreements signed or by confidentiality and publication terms contained in contracts signed in relation to work intended for publication or disclosure.
 - Abide by applicable data privacy laws and regulations at national or at international level⁸ as well as applicable national regulations and institutional norms on ethics clearance.⁹
 - Observe brand and publication donor or funder guidelines, as applicable.
 - Respect authorship, Moral Rights and follow Alliance-issued or applicable accepted standards for determining authorship.

⁸ General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) is the European data regulation effective as of 25 May 2018. The GDPR harmonizes data privacy laws across Europe and protects individual data privacy. It applies 1) when an entity established in the European Union (EU) (e.g., Bioversity International, headquarters of the Alliance) collects or processes personal data, even if the processing happens outside of the EU; and 2) when a controller or processor not established in the EU (e.g., any of the regional offices of the Alliance) processes personal data of data subjects who are in the EU (regardless of their citizenship) and this is related to: a) the offering of goods or services, whether or not payment is involved; or b) the monitoring of behavior as far as behavior takes place within the EU (Art. 3 of the GDPR). EU donor agencies are bound to enforce GDPR. Therefore, receipt of EU funds provided for its execution within or outside Europe normally requires compliance with GDPR.

⁹ Undertaking research that involves human subjects (e.g., nutrition, farmers' or producers' practices, participatory breeding, among others) requires previous clearance by the Alliance Institutional Review Board (IRB). Alliance Staff must contact the Alliance IRB to obtain such clearance. Further, some countries also require by law previous clearance of research involving human subjects. Check with Legal Office in case of doubt. Where the country regulations exist, they precede over the Alliance IRB and Alliance Staff can submit to the Alliance IRB the obtained country clearance.

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- Publish, as much as possible, in journals or with publishers that allow to retain copyright (Gold Open Access) or to retain most rights of use as author (Green Open Access).
 - As employees of the Alliance are entitled to sign as author Copyright Assignment (or Transfer) Agreement with a publisher *if* as author maintains Moral Rights and publishes, at least, in a Green Open publication/publisher. When in doubt of retaining authors' rights, Alliance Staff should add an Author's Addendum to the Copyright Assignment Agreement (or Publication Agreement) and seek advice from the Legal Office.
 - Have a duty to issue a written public disclosure (public communiqué) when the legal entities of the Alliance have entered into collaborations categorized as Limited Exclusivity Agreements (LEAs) and Restrictive Use Agreements (RUAs). This duty also applies when Resulting IAs are protected under registered IPRs such as patents, plant variety protection (PVP) certificates or plant breeders' rights (PBRs), trademarks, and design rights, either by the Alliance itself or when it allows third parties or collaborators to protect Resulting IAs. In all cases, the Alliance follows the *CGIAR Guidance Note on CGIAR Research Center Public Disclosures related to the Management of Intellectual Assets*.
- vi. Use of IPRs: The Alliance abides by Article 6.4 of the *CGIAR IA Principles* and corresponding section in the *CGIAR Implementation Guidelines*. Likewise, the Alliance follows the principle of "Apply and assert IPRs to further access and use of IAs" stated in section 5 of this Policy and under all circumstances, it applies and asserts IPRs in compliance with all the principles and considerations stated in this Policy. In addition:
- The Alliance follows applicable international regimes (e.g. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, The International Convention for the Protection of New Varieties of Plants (UPOV) Convention) and national laws and regulations when applying for IPRs.
 - Alliance Staff consult with the Legal Office before agreeing with collaborators, clients or third parties on accepting to apply for IPRs or to allow other to claim IPRs on Alliance Resulting IAs.
 - Where application of IPRs is envisioned for jointly owned Resulting IAs, the Alliance and the concerned joint owners look for or provide for, as much as possible, the monetary resources required for the protection of the sought registered IPR.
 - The Legal Office may suggest the application of IPRs after analyzing Invention Disclosures submitted by Alliance Staff. The Legal Office communicates recommendations to the Associate Director General, the relevant Lever Director and Staff.
 - The Associate Director General in consultation with pertinent Staff takes the decision on the application for registered IPRs for Resulting IAs from R&D. The Director General, in consultation with pertinent Staff, decides on the protection of institutional IPRs such as trademarks for institutional logo.
 - Staff from pertinent areas of the Alliance devise a strategy for the exploitation of the protected IPR.

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- vii. Charging fees: The Alliance follows Article 7 of the *CGIAR IA Principles* and corresponding *Implementation Guidelines* when charging fees for Resulting IAs. In particular, the Alliance:
- Makes subservient charging fees or receiving revenue to the commitment expressed under the principle of “IAs as International Public Goods” and puts first all the principles and considerations stated in section 5 of this Policy.
 - Reinvests obtained fees or revenue in furthering R&D in line with the Alliance strategy and its mission and vision.
 - Does not apply fees or requests revenue for the PGRFA held in trust at the international collections. If a fee is charged, it shall not exceed the minimal costs involved in the provision of the specific PGRFA.

6.4. Reporting to the CGIAR System Organization


The Alliance reports yearly to the CGIAR System Office on the management of IAs and IPRs carried out during the preceding year. The Alliance follows Article 10 of the *CGIAR IA Principles* and the corresponding *Implementation Guidelines* on this aspect as well as any guideline or format issued by CGIAR to carry out the report. Moreover, to carry out the report:

- a. Alliance Staff assist the Legal Office and the designated IP Focal Point in gathering and providing the information necessary for preparing the report.
- b. Alliance Staff, as applicable, and the Legal Office and IP Focal Point designate information that is confidential as such while ensuring its reporting as required by the *CGIAR IA Principles*.
- c. The Legal Office and IP Focal Point provide links to the public disclosures related to the reported RUAs, LEAs and to the application of registered IPR. Alliance Staff, in particular concerned scientists and communications personnel, collaborate with the Legal Office to have public disclosures released prior to the reporting period, as possible.
- d. The Legal Office makes sure that the final version of the report is endorsed by the appropriate Alliance Staff before submission to the CGIAR System Office.
- e. The Legal Office seeks the assurance of compliance by the Alliance Board of Trustees according to the criteria stated in Article 10 of the *CGIAR IA Principles* and corresponding *Implementation Guidelines*.

7. RELATED POLICIES/ REFERENCES FOR MORE INFORMATION

7.1 International Regimes

- a. [International Treaty on Plant Genetic Resources for Food and Agriculture](#) (“Plant Treaty”)
- b. [Convention on Biological Diversity](#) (CBD)
- c. [The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity](#) (“Nagoya Protocol”)
- d. [The Cartagena Protocol on Biosafety to the Convention on Biological Diversity](#) (“Cartagena Protocol”)

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- e. [The Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (“TRIPS Agreement”)
- f. [The International Convention for the Protection of New Varieties of Plants](#) (“UPOV Convention”)
- g. [The International Plant Protection Convention](#) (“Plant Health Treaty”)

7.2 CGIAR documents

- a. [CGIAR Principles on the Management of Intellectual Assets](#) (“CGIAR IA Principles”)
- b. [Implementation Guidelines for the CGIAR IA Principles](#)
- c. [CGIAR Open Access and Data Management Policy](#) (“CGIAR Open Access (OA) Policy”)
- d. [CGIAR Open Access and Data Management Implementation Guidelines](#)
- e. [Guidelines on the Nagoya Protocol for CGIAR Research Centers](#)
- f. Guidance Note on CGIAR Research Center Public Disclosures related to the Management of Intellectual Assets
- g. [CGIAR Open Access Publications –Guidance for Authors - Author’s Addendum](#)
- h. [Responsible Data Guidelines](#) – Managing Privacy and Personally Identifiable Information in the Research Project Data Lifecycle (2018; By Rodrigo Sara on behalf of the CGIAR Platform for Big Data in Agriculture)

7.3 Alliance documents


[Alliance Delegation of Authority Policy](#)

8. POLICY AUTHORITY

- a. The Alliance Board of Trustees approves this Policy.
- b. The Legal Office oversees compliance by Alliance Staff with this Policy and associated procedures and guidelines. As such, the Legal Office is in charge of issuing complementary procedures, guidelines and other documents and training materials as considered necessary for its implementation and adoption.

9. VERSION CONTROL

VERSION	DATE OF APPROVAL OF THE NEWEST VERSION	DESCRIPTION OF CHANGE	PREPARED BY:
00	02 November 2020	First Alliance Intellectual assets and intellectual property rights policy	Legal Office

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Reviewed by:

Approved by:

Executive Committee (ExCo)	Whole Executive Committee on 02 November 2020
Julia Marton-Lefèvre Alliance Board Chair	