Agreement on Access and Benefit Sharing for Non-Commercial Research

Sector specific approach containing Model Clauses

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Introduction

This document contains a sample agreement on mutually agreed terms (MAT) for Access to Genetic Resources and Sharing of Benefits, for the use by providers and non-commercial academic researchers.

At the same time it provides a sample for the potential of model clauses within a sector specific approach; as comprised in Art. 15 of the Draft Protocol on ABS under the CBD.[1]

The agreement aims at creating transparent, and legally secure relations that are appropriate to the needs and intentions of all parties involved. The suggested terms and clauses are intended to meet the needs of both the providers of the genetic resources and the researchers seeking access. The agreement proposes language to ensures fair and equitable sharing of benefits.

The agreement may be considered for use in various scenarios of access and benefit sharing, such as inventories of biodiversity; research in systematics, ecology and evolution; identification and isolation of active compounds; and genetic research.

Background

Since the publication of "Access and Benefit Sharing – Good practice for academic research on genetic resources[2]" by the ABS team of the Swiss Academy of Sciences (2006), we have been frequently asked by researchers to develop standardized agreements that could be used to provide legal security. ABS authorities and clear national regulations may be unavailable in many countries where genetic resources are sought. The ABS agreement presented here aims to fill the gap where no national tools are available or in cases where agreements focus on commercial activities and are not applicable to non-commercial research. Its goal is to ease the negotiations of the MATs, to support transparency and enhance mutual trust, and to prevent unnecessary transaction costs in its negotiation and implementation.

Elaboration

The Swiss Academy of Science's ABS team assessed existing agreements, material transfer agreements and other documents, analysed them for content and language and compiled a list of issues to be addressed. In addition, the team defined the research steps that are essential in view of access and benefit sharing and elaborated a matrix that meticulously analyses the research

[1] In the version of 16 July 2010 as negotiated by the Interregional Negotiating Group: UNEP/CBD/COP/10/5/Add.4, Annex

[2] Susette Biber-Klemm, Sylvia Martinez, Swiss Academy of Sciences (Ed.) 2009: Access and Benefit Sharing – Good pratice for academic research on genetic resources. Bern, Switzerland. http://abs.scnat.ch

fields and steps from this perspective.[3] A broad international network of providers and users from different fields of research reviewed the matrix and a first agreement draft. Feedback was incorporated into successive drafts that were repeatedly reviewed.

Our core goal was to use concise legal language while keeping the wording understandable to non-lawyers. Explanatory text was included to enhance the applicability of the agreement and to give background information.

Concepts

The Agreement is adapted to the specific situation of non-commercial research sponsored by public funding. Its basic premise is that the Mutually Agreed Terms, as stipulated in CBD Art 15, are a bilateral contract concluded between providers and users, resulting from their fair negotiations on the terms of access and benefit sharing.

Involved parties are encouraged to take account of each others specific needs and circumstances, reflecting on the type of envisaged research (e.g. ecological vs. phytopharmacological research) and the specifics of the research (e.g. difficulties in identifying taxa, sharing of material). For the provider, this may include means to monitor the use of genetic resources.

We assumed the following basic scenario:

- The resources are accessed by a researcher under the lead and responsibility of a research institute.
- The research is non-commercial, aiming at providing publicly available results. The results have therefore to be published.
- Unexpected research results may trigger reflections towards their utilisation in a commercial context.
- Benefits are non-monetary as a rule. They usually accrue during the research process.
- Genetic resources might be transferred to third parties under a framework of customary cooperation by research institutes.

The analysis of research types and access situations carried out by the ABS-team led to the following conclusions:

1. One of the challenges in implementing the ABS system consists in controlling the flow of the acquired resources throughout the value chain, especially in the user country. At the centre of the problem lies the risk that the resources and related information accessed under the conditions for non-commercial intent enter the R&D sector without corresponding MATs for potential commercial developments.

[3] See: Swiss Academy of Sciences (2010) ABS Program 2003–2010.

2. Non-commercial researchers depend largely on public funding. For continued financial support the publication of research results is a crucial step and has to happen in a timely manner. Scholarly standards for disclosure of information for scientific transparency and the exchange of material among peers may collide with the need of providers to control the use of genetic resources. In turn, too strict control measures could put research at stake.
3. *Different fields of research* with genetic resources imply *different degrees of probability* that the research results flow (intentionally or unintentionally) into the commercial value chain. It is, however, essential to realize that some fields of research show very low probability, for example the elaboration of biodiversity inventories or ecological studies. In such cases the providing country could require less control over the uses and instead request periodic reports on research progress to monitor the user's compliance with the MATs.

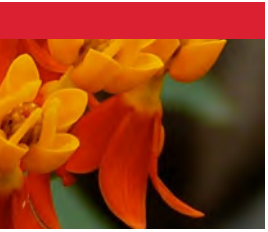
The Agreement takes account of various research activities by proposing options for the following conditions:

1. Different situations (e.g. access to genetic resources vs. access to related traditional knowledge; access to specified taxa vs. the need to identify the samples after collection);
2. Different models of research cooperation; and diverse needs to monitor the implementation of the agreement;
3. Specific aspects of academic research, such as the need to publish results and the exchange of data, storage and accessibility of samples etc.

How to use the Agreement

The Agreement on Access to Genetic Resources and Sharing of Benefits (ABS) for Non-commercial Academic Research containing Model Clauses is based on the conviction that mutually agreed terms are a contract that needs to be negotiated and concluded between the parties, i.e. the providers and the users of genetic resources. The proposed Agreement provides a toolbox for composing a contract on mutually agreed terms tailored to accommodate the needs of the stakeholders. We recommend that both parties possess the *full text* of the Agreement in order to foster discussions on options and provide solutions to disagreements that might arise.

The Agreement consists of different types of clauses: 1) General clauses, like the preamble, or the definition of the purpose (article 4); 2) Clauses on substantive issues (articles 5 to 17); 3) Clauses on procedural issues. Most of the clauses on substantive issues offer a basic clause



(marked green in the sample agreement) and include options that can be added to the basic clause or used as a stand-alone solution. Other clauses offer only options to choose from as needed.

In drafting the Agreement, we intended to cover most issues that might arise in the relationship between providers and non-commercial public researchers. The basic clauses by themselves may form a full contract for simple non-commercial research situations. Not all cases will need all clauses; each agreement must be modelled according to the specific needs of the parties engaged in the negotiations. The Agreement is therefore made freely available as Word Document under a Creative Commons Licence that allows for changes in the document[4].

Outlook

It is with great pleasure that the Swiss Academy of Sciences makes available to interested stakeholders this example of an ABS agreement with contractual clauses. It is a tool to actively support the implementation of ABS regulations and focuses on academic non-commercial research. The proposed Agreement still needs to prove its applicability to real ABS situations. Accordingly, it should be considered as a draft that needs to be adapted to the final version of the CBD ABS protocol and which will need improvement over time. Suggestions and feedback by both providers and users are most welcome.

At the Swiss Academy of Sciences we firmly believe that non-commercial public good research is essential to achieve the first two goals of the CBD, the conservation and sustainable use of biological diversity. Moreover it generates (non-monetary) benefits that contribute to education, advancement of science and technology transfer. The Swiss Academy of Sciences advocates research in a mutually trustful atmosphere and encourages scientists to conduct their research in accordance with existing international codes and standards.

[4] http://creativecommons.org/licences/by-nc/3.0

The Agreement

Comments

The Convention on Biological Diversity (CBD) in its Article 1 sets out the following objectives: the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Under Article 15 CBD access to genetic resources is to be facilitated for environmentally sound use. Access is based on the prior informed consent of the Party providing the resource. Providers and Users are to negotiate the mutually agreed terms defining the sharing of benefits.

Article 16 CBD recognizes that both access to and transfer of technology are essential elements for achieving the objectives of the Convention. It requires the Parties to provide and facilitate access to and transfer of technologies relevant for conservation and sustainable use of biological diversity as well as to use the technology in an environment friendly way.

The mentioned provisions, in our view, express the very essential principles of access and benefit sharing embraced by the CBD. Parties are however free and encouraged to regulate their relation in accordance with other principles and rules stipulated in the CBD

The Agreement

Preamble

The purpose of this Agreement is to set out the conditions for the use of genetic resources, any associated Traditional Knowledge (TK) and the sharing of resulting benefits between the parties concerned in accordance with the Convention on Biological Diversity (the "CBD"), particularly in respect with the principles established under its Articles 1, 8(j), 15, and the Bonn Guidelines.

The Agreement contains Mutually Agreed Terms (MAT) according to Article 15.7 CBD.

The Agreement is designed to promote non-commercial academic research, such as research in taxonomy, ecology, biochemistry and genetics, and to foster conservation and the environmentally sound and sustainable use of genetic resources.

Its objective is to provide a sound basis for cooperation, transparency, communication and trust between the parties to the Agreement, taking account of the concerns of both providers and users of genetic resources.

such as Article 7 (Identification and Monitoring), Article 12 (Research and Training), Article 17 (Exchange of Information), Article 18 (Technical and Scientific Cooperation) or Article 19 (Handling of Biotechnology and Distribution of its Benefits).

The Agreement has been drafted solely for the relevant institutions as the parties to the Agreement. The "Provider" is the national authority of the involved provider country in accordance with its national law. It is responsible for fulfilling the obligations under Article 10.
The Agreement could also be applied in negotiations with delegated entities such as federal governments. However, it is not apt to cover cases where, according to the national law of the provider, (additional, ancillary) agreements have to be concluded with private parties, such as a land owner.
The User can only be a research institution; an individual researcher may only act on behalf of it.
If the Provider is a holder of traditional knowledge (TK)[5], a separate Agreement between researchers (as the User) and the holder of traditional knowledge (individual, community, legitimate representative of the community) needs to be concluded.
The present Agreement takes into account the concerns of the TK holders to the extent possible in nego-

[5] The drafting of specific agreements and codes of conduct is planned.

1. Parties to the Agreement

The Agreement is entered into on *[insert the date]* by and between

[insert the name and details of the following:

- *State and Institution (competent ABS national authority)*
- *The contact person responsible for the implementation of the Agreement on behalf of the institution]*

together hereinafter referred to as the *"Provider"*.

and

[insert the name and details of

- *The responsible research institution*
- *The representative of the research institution responsible for the implementation of the Agreement]*

tiations between research institutes and governmental agencies.
The data of both the User and Provider serve as reference and contact point in the communication between the parties. From the perspective of the Provider, the relevant research institution shall be held as the responsible body during the term of the Agreement. On the side of the User, a relevant national agency or authority will be responsible for maintaining the Agreement.

Represented by the authorized head or member of the research team; authorized researcher

[insert the name and details of researcher].

together hereinafter referred to as the *"User"*.

Article 15 CBD states that access to the genetic resource shall be subject to prior informed consent of the Party providing access.
Article 2 provides for two different solutions.

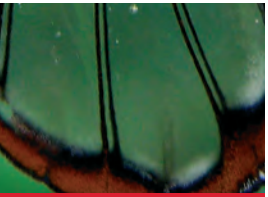
2. Prior Informed Consent

Option 2.1. applies to cases where access to genetic resources is subject to a formal Prior Informed Consent (PIC) by the Provider.

Option 2.1
The Agreement is based on the Prior Informed Consent (PIC) issued beforehand by the Provider to the User for the access to the genetic resources concerned. The PIC document is attached to this Agreement and is considered an integral part of the Agreement.

Option 2.2 applies to cases where the Provider determined that PIC can be included in the MAT.
The research project of the User should include information on resources to be access, planned utilization and prospective or intended benefits to be shared.

Option 2.2
The Provider hereby confirms that he/she has been informed on the research project by the User and consents to provide access to genetic resources in situ and/or ex situ necessary to carry out the research in accordance with the research project attached to this Agreement.



If access is requested for a research project that includes Traditional Knowledge (TK) associated to the genetic resources, the sharing of benefits in relation to TK is to be agreed upon in a separate, ancillary agreement with the holders of the TK and according to the national law of the providing country if such legislation exists.

This Article contains standard definitions of the terms used in the Agreement. The Parties are however free to replace or customize the terms in accordance with their needs and in particular in accordance with the planned research activities. They can also opt between narrow or broader definitions by excluding or including different options.

3. The Purpose of the Agreement

The purpose of this Agreement is to specify the terms for

1. Accessing genetic resources,
2. Their utilization in accordance with the PIC,
3. Their possible transfer to third parties, and
4. For sharing the benefits resulting from the utilization of genetic resources.

4. Terminology

In this Agreement the terms defined in Article 2 CBD shall have the same meaning, unless otherwise defined in this article.

4.1 Genetic Resources

Genetic Resources means genetic material of actual or potential value.

Option 4.1.1

Genetic Material means any material of plant, animal, microbial or other origin containing functional units of heredity.

Option 4.1.2

The term "Genetic Material" includes living and dead resources.

The definition of commercialization was drafted to reflect acts and activities that simultaneously serve as indicators of commercialization.
In our view it is more practical to focus on activities for identifying the transfer of resources to commercial sectors than to rely on the intent of the user.

Option 4.1.3
The term "Genetic Material" includes derivatives as defined below.

4.2. Derivatives
Option 4.2.1
Derivatives means products based on Genetic Resources and generated through techniques such as expression, replication, characterization or digitalization
Option 4.2.2
Derivatives mean substances created from Genetic Resources that are substantially modified to have new properties.

4.3 Commercialization
Commercialization means the use of the Genetic Resource for the generation of any kind of actual or potential economic profit.
It means in particular any sale, lease, licensing of the Genetic Resource, and/or Products generated from its use through actions such as filing a patent application, obtaining intellectual property rights or other tangible or intangible rights.
It includes any transfer of the Genetic Resource to a for profit organization.

The Mutually Agreed Terms can be contained in one document, or in a main document and ancillary agreements with specific stakeholder groups.

4.4 Mutually Agreed Terms (MAT)

The Mutually Agreed Terms are an agreement negotiated between the Provider and the User of the Genetic Resources and/or holders of Traditional Knowledge associated to the Genetic Resources according to the national law of the country providing the resources. The MAT regulate conditions for the access to the Genetic Resources and to their associated Traditional Knowledge and the fair and equitable sharing of benefits that result from their use. They are adapted to the specific access situation.

4.5 Traditional Knowledge

Option 4.5.1

Traditional Knowledge is the accumulated knowledge that is vital for the conservation and sustainable use of biological resources and/or which is of socioeconomic value, and which has been developed over the years in indigenous/local communities.

Option 4.5.2

Traditional Knowledge means "information or individual or collective practices of an indigenous or local community associated with the genetic heritage having real or potential value".

PIC may consist in a research permit.

Regarding the relation with Third Parties see Art. 8.

4.6 Prior Informed Consent (PIC)
Prior Informed Consent means the unilateral declaration of the Provider that he/she has been informed about the planned research and that he/she is willing to provide the required access to the Genetic Resource.

4.7 Product
Product means the result produced, obtained, extracted or derived from the Genetic Resource through research or research & development (R&D) activities, including data and information generated through analyses of the Genetic Resources.

4.8 Progeny
Progeny means unmodified offspring from the Genetic Resource

4.9 Third Party
Third Party means any person or institution other than the Provider, the User and any collaborator under their control or supervision. A Third Party is not bound to the terms and conditions of this Agreement unless otherwise agreed with the User.

4.10 Unauthorized Person
Unauthorized Person means any person that came into possession of the Genetic Resources without the authorization of the User.

Here, the Parties may list names of species or strains of the material to be accessed or any other attributes that may help to define the genetic resources.

The list may include identified and unidentified species. If there are unidentified species/strains in the submitted list, option 5.2 applies.

5. Genetic Resources to be accessed

The User shall have access to the following Genetic Resource(s):
[Insert list of the Genetic Resources to be accessed].

Option 5.1

Since the species/strains present at the collection site are not know to the User at the time of concluding this Agreement, a general account of species/strains most likely to be collected is given in Annex XX.
A list of the collected samples according to the researcher's field-notes is presented to the Provider within XX months after having gathered the samples.

Option 5.2

If the collected samples cannot be identified in the list of collected samples within the above prescribed period, their identification has to be shared with the User as soon as it is available.

6. Utilization

The Material may be utilized for non-commercial purposes including for academic research and collections, and for training, teaching and education.
The User must comply with the User's and Provider's national regulations and with relevant international law. The utilization of the Material or derived information for any type of Commercialization is prohibited.

It is important that the User binds Third Parties to the terms of this Agreement in order to avoid uncontrolled flow of genetic resources.
If institutions or persons are appointed for specified analytical and technical auxiliary work, the conditions of this Agreement must be included in the contract regulating the cooperation.

Option 6.1
The Genetic Material shall be used exclusively for the following purposes: *[insert allowed activities and/or uses]*.

7. Change in Utilization from Non-commercial to Commercial

The Commercialization of the Genetic Material and related information is prohibited.
Any change in utilization from non-commercial to commercial shall require a new Prior Informed Consent in writing issued by the Provider. In this case, the terms of such Commercialization shall be subject to a separate agreement (MAT) between the involved parties.

8. Transfer of Genetic Resources (and associated TK) to Third Parties

Transfer of the Genetic Resources for the purposes of academic research and collections, and for training, teaching and education, or any other non-commercial activities is allowed under the condition that the User ensures that the subsequent person or institution (Third Party) is informed about the provisions under this Agreement and undertakes to pass on the Genetic Resources under the same obligations to any further recipient.

Options 8.1–8.4 establish different levels of control. Parties should include those that reflect the appropriate level of control in accordance with their needs.

Option 8.4 is an extremely limiting measure. It is meant primarily in cases where the Material has associated TK. Given the current problem regarding the protection of TK, we assume that the Provider may have an interest to keep knowledge secret and therefore may want strict control on any further transfer of the Material and TK.

Option 8.1

The User delivers to the Provider annually a *list of the Third Parties* to whom the Genetic Resource was transferred to.

Option 8.2

The User shall maintain retrievable records of any transfer of the Genetic Resources to Third Parties under the conditions corresponding to this Agreement.

Option 8.3

The User shall require the Third Party to sign an agreement containing identical obligations on Use and Transfer of the Genetic Resources (and associated TK) as set out in this Agreement.

Option 8.4

The Genetic Resources [and their associated TK] may be transferred to Third Parties only after having obtained the *written consent of the Provider* and in accordance with Mutually Agreed Terms between the Provider and the Third Party. Excempted is a temporary transfer of the Genetic Resource to taxonomic specialists for scientific identification.

Researchers may face the problem that the conditions or restrictions with respect to handling the Material are not clearly known or indicated (e.g. on the sample). Therefore even if they want to comply with restrictions they fail.
This provision aims at eliminating any liability of the User in cases where the special conditions/restrictions of use are not communicated properly. This includes not marking the sample itself or not providing reference to information e.g. in the internet.

Option 8.5
The User is entitled to deposit the Genetic Resources in collections that are accessible without restrictions for research purposes such as herbaria, museums and culture collections.

Option 8.6
If the Genetic Resources are transferred to an *ex situ collection of living Genetic Resources for educational purposes* (such as zoos, botanic gardens), this institution is – in addition to the obligations of this Agreement – obliged to take any appropriate precautions to prevent the Genetic Resource coming into the possession of any Unauthorized Person.

Option 8.7
If the use or storage of the Genetic Resource is subject to *special conditions or restrictions*, such conditions/restrictions have to be *clearly indicated on the label* or otherwise linked to the sample, when transferring the Genetic Resource to Third Parties, including the indication of where the information concerning the special conditions/restrictions can be found.

The list under Article 9 enumerates a minimal standard of benefits that in our view should always be shared if applicable.
Parties to the Agreement are encouraged to extend the list and add other benefits as well. For this purpose, we attach as an annex to this Agreement a list of non-monetary benefits as specified in the Bonn Guidelines. These benefits may be included in Article 9 of the Agreement. The Parties are free to go beyond the benefits encountered in the list and add others as well.

9. Benefit Sharing

The benefits arising from the access and use of the Genetic Resources shall be shared fairly and equitably by the User, in accordance with the principles established in the CBD. Basic benefits to be shared include:

1. The offer to the Provider to include local researchers in the research activities, if such interest exists.
2. In case of publications or oral presentation of the research results, full acknowledgement is to be given to the source of the Genetic Resource;
3. If TK associated to the Genetic Resources is involved, the research results published or presented orally will include full acknowledgement of the source of the Genetic Resources and the TK, if so required by the providers.
4. The Provider will receive a copy of all publications;
5. Research results will be communicated to involved stakeholders (e.g. communities, indigenous people) in an adequate manner and according to reasonable requirements of the Provider;
6. If applicable, share duplicate specimens wih the repository in the Provider country in accordance with good scientific practice.

In addition, the User agrees to share the following benefits:

[Choose from the list of benefits appended to this Agreement; insert a detailed lists of benefits here or in an annex]

This is a technical contact point. It might be a different institution than defined in Article 1. The technical contact point will act on behalf of and as mandated by the institution in Article 1.
Different options regarding the Providers' right to obtain information on the state of research are defined in Article 12 (Reporting).

By performing part of the research in the Provider's country, researchers in the host country have the opportunity to be fully integrated in the research. However, we prefer to treat the provision as a "right of the Provider" rather than as a "benefit sharing" arrangement due to the fact that such right is highly dependent on the technical capacity of the Provider.

10. Rights and Obligations of the Provider

The Provider defined in Article 1 is the responsible contact point for the User for the entire duration of the present Agreement.
The Provider has the obligation to facilitate access to the Genetic Resources. This includes the facilitation of the acquisition of other permits required in accordance with the relevant national or regional regulations in the Provider country as well as export permits.

Option 10.1

The Provider designates the following institution *[insert the relevant institution]* as the responsible contact point for the User for the entire duration of the present Agreement.
Contact details of the technical contact point are provided in Annex [XX] to this Agreement.
The Provider has the right to receive information on the state of the research from the User as agreed upon (see Article 12 on Reporting).

Option 10.2

The Provider requests that the following analytical parts as set out in the project are performed in the providing country: *[insert a list of analyses to be performed in the Provider's country].*
The Provider confirms that all necessary conditions (equipment, staff and consumables) for conducting the analyses are available;

If the Provider (in contrast to the User) intends to obtain a patent on the results, it is necessary to refrain from disclosing information (e.g. publishing research results in journals). It would impede the protection of the results by intellectual property rights due to the lack of novelty.

The reference to international law regulating TK includes for example: 1948 Universal Declaration of Human Rights, International Labour Organization ILO Convention 169, The Rio Declaration and Agenda 21, the Convention on Biological Diversity, etc.
It is a right of the Provider to instruct the User how to exploit the material if it is associated with TK. Instructions may be included in this Agreement as its integral

The User confirms that he/she has the necessary resources (funding, time) for such an arrangement.

11. Rights and Obligations of the User

The User is entitled to administrative support and guidance to facilitate the acquisition of the necessary permits required by the Providing country.
The User shall not use the Genetic Resource nor derivatives generated in the research for any commercial purposes, nor shall the User commercialize any Product derived from the Genetic Resource, unless with the written consent of the Provider.
The User is obliged to take all reasonable precautions to prevent the Genetic Resource coming into the possession of any Unauthorized Person.
The User is obliged to inform the Provider about any unforeseen research results that are of potential commercial interest, prior to any disclosure of this information to the public.

Option 11.1

If the research implies TK associated to the Genetic Resource, the User is obliged to respect any relevant international law and the national and regional regulations in the Provider's country, and has to proceed according to the instructions of the Provider. In any case the User is obliged to respect the customary law of the holders of the TK and has to apply ethical standards.

part either through an additional article stipulating the terms and conditions of use or annexed to the Agreement.
For ethical standards see: International Society of Ethnobiology (2006). ISE Code of Ethics (with 2008 additions). Online: http://ise.arts.ubc.ca/global_coalition/ethics.php;
Elements of a Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities. Report of the Sixth Meeting of the Ad Hoc Open-ended inter-sessional Working Group on Article 8 (j) and related provisions of the Convention on Biological Diversity. UNEP/CBD/COP/10/2; 21 November 2009.

Such an ancillary contract will depend on the requirements of the relevant national law in the Provider country regarding the obligation to conclude contracts with sub-national entities (federal governmental bodies, TK holders, indigenous or local communities, private land owners)

Option 11.2
Corresponding to national law the User will conclude an ancillary contract with the holders of TK and/or the private land owners of the genetic resources.
The ancillary contract forms an integral part of this Agreement.

This provision has the purpose to establish a long-term access to data generated by the User, which goes beyond the information that can be found in publications. It is up to the Provider to spell out the information of the vital interest for him/her. This provision should

12. Data Sharing

The User agrees that the Provider has the right to access the following data resulting from the research:

- *[insert type of data]*

contain the precise description of the information/data required and the manner of the data transfer, such as time period, communication means, etc.
Parties to the Agreement should account for potential barriers that transfer of data may bring along and regulate it as detailed as possible. For example, if there is a language barrier between the Provider and the User, the Parties should define the official language to operate with, or to define the particular standard to be used, if there would be more options, and so on.

The Reporting obligation may depend on the particular nature of the research and the interest of the Provider. He/she may request different amounts of information in a varying periodicity.

Therefore, we offer different options that may meet the needs of the parties, depending of the complexity of data included and the time schedule.
However, Parties may tailor any of these options to make it more suitable to their convenience or they can stipulate a new provision that will entirely reflect their needs. They are free to specify in a more detailed manner the reasonable content and the structure of the Report as well as the time period within which the Report should be submitted.

The User shall facilitate access to the above defined data for the Provider.
The Provider agrees that for using the data in his own research, he needs the consent of the User.

Option 12.1
Given the cooperative approach to the research, the Provider and the User agree in a separate agreement on the use of the data, annexed to this Agreement *[Annex XX]* and forming its integral part.

13. Reporting
The User will deliver a written report in accordance with the Provider´s instructions as to its structure, information included, etc, upon his/her request.

Option 13.1
The User shall submit an annual written report on the research accomplished.

Option 13.2
Upon request of the Provider, the User submits a written report on the research accomplished.

Article 15 on Publication treats in its option 15.3 the case where a Provider himself wants to apply for an intellectual property right.
Article 7 deals with the Change of Utilization from non-commercial to commercial.

Option 13.3
Upon request of the Provider, the User submits an annual written report on the research accomplished. The report shall include a list of Third Persons to whom the Genetic Material has been transferred.

Option 13.4
Since the *Provider* is a private citizen, upon his/her request, the report is translated into the local language by the User and adapted to a non-scientific audience.

14. Intellectual Property Rights

The User shall not claim any intellectual property rights over the Genetic Resource in the form received.
If the *User* wants to obtain intellectual property rights on research results such act shall be treated as change in utilization and thus shall be regulated under Article 7 of the present Agreement.
If the *Provider* wishes to obtain IPR on research results, such act shall be treated as change in utilization and shall be regulated under Article 7 of the present Agreement. In particular the ownership of the IPR and the distribution of the value derived from the IPR are to be negotiated.

15. Publications

The User has the right to publish the results of the research related to the Genetic Resource according to Article 6 of the present Agreement, and according to good scientific practice. The origin of the Genetic Resource has to be acknowledged.

Option 15.1

The User has the right to publish the results of the research related to the Genetic Resource according to good scientific practice. The origin of the Genetic Resource has to be acknowledged, as well as the sources of TK associated with the Genetic Resource.

Option 15.2

The holder of TK associated to the Genetic Material has the right to request confidentiality of specific information *[describe the information subject to confidentiality]* such as for spiritual reasons; to prevent the depletion of the genetic resources; and/or to prevent unsafe/hazardous applications of the TK in the health sector.

This option takes account of the Provider's concerns that published results may reduce his/her opportunity to derive commercial value from his/her genetic resources. On the other side, it takes account of the User's interest that the Provider's decision to commercialize the material does not significantly impede or delay research.

Option 15.3

If the User, in the course of the research, discovers any unforeseen commercial potential of the Genetic Material, he/she is obliged to share such information with the Provider prior to any publication of such information.
If the Provider intends to pursue a potential commercialization, this is subject to negotiations between the Provider and the User according to Article 7. The Provider agrees not to hold up the User's research work unless concerns are concrete and justified in terms of well-defined proprietary interest.

Option 15.4

If the User is prevented from publishing the results of the research due to the Provider's wish to obtain a patent over the research results, the Provider shall file the patent application within *[XX]* months. After the agreed period, if the Provider has failed to file a patent application, the User has the right to proceed with the publication of the research.

16. Handling of the Genetic Material after Termination of the Agreement

Upon completion of the project, Genetic Material will be stored or disposed of according to the utilization agreed under Article 6.

The purpose of the provision is to preserve certain rights and obligations that are independent of the duration or termination of the present Agreement. This, in general, means that even if the present Agreement is not in force the User is obliged to keep secret all the information defined as a trade secret by the Provider and not disseminate it to any Third Party after the present Agreement ceases to exist.

Option 16.1

If the Genetic Material has been placed in storage, or in public collections, upon expiration of the Agreement or its termination, the Genetic Material may be available for use only under the same conditions as contained in this Agreement.

17. Duration and Termination of the Agreement

The present Agreement shall end on *[insert the date]* and may be renewed upon the mutual agreement of the Parties.

Option 17.1

The present Agreement shall be deemed to be in force until the Genetic Material is returned to the satisfaction of the Provider upon completion of the Project. Regarding the Genetic Material related information, the present Agreement shall be subject to any associated rights, such as copyright or trade secrets.

Option 17.2

When a Party to the present Agreement wants to terminate the Agreement prior to the completion of the Project, the Party shall give written notice [XX] months in advance.

The present Agreement may be terminated at any time by mutual agreement of the Parties.
The present Agreement may be terminated immediately, in case of its breach.

The Parties to the Agreement are free to establish competence of any court they agreed upon for potential disputes arising from the Agreement. They can also opt for arbitrage or to include any independent third party. However, we believe that it is important to encourage them to try to negotiate any disputes before reverting to any court.

18. Settlement of Disputes

The Parties agree to make attempts in good faith to negotiate the resolution of any disputes that may arise under this Agreement. If the Parties are not able to resolve a dispute within a period of [XX] months, such dispute shall be finally settled by an arbiter to be mutually agreed between the Parties.

Option 18.1

If the Parties are not able to resolve any dispute within a period of [XX] months, such dispute shall be resolved before the [XXXX] Court law as the only competent body for resolving disputes arising under this Agreement and in accordance with [XXX].
[Insert applicable Law; Jurisdiction]

Parties may also include provisions on other matters of their importance and regulate issues such as Warranties, Force Majeure, Disclaimer.

19. Other Provisions

Annex 1 Indicative list of non-monetary benefits (adapted from the CBD Bonn Guidelines)

- Sharing of research and development results;
- Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the provider country;
- Performing certain analytical parts of the research in the providing country to the extent that adequate equipment is available and the User has the necessary resources (funding, time) for such arrangement.
- Participation in product development;
- Collaboration, cooperation and contribution in education and training;
- Admittance to ex situ facilities of genetic resources and to databases;
- Transfer to the provider of the genetic resources of knowledge and technology under fair and most favorable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- Strengthening capacities for technology transfer to user developing country Parties and to Parties that are countries with economies in transition and technology development in the country of origin that provides genetic resources. Also to facilitate abilities of indigenous and local communities to conserve and sustainably use their genetic resources;
- Institutional capacity-building;
- Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- Training related to genetic resources with the full participation of providing Parties,and where possible, in such Parties;
- Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- Contributions to the local economy;
- Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in provider countries;
- Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- Food and livelihood security benefits;
- Social recognition;
- Joint ownership of relevant intellectual property rights.

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They contributed Material Transfer Agreements, indicated additional sources and critically evaluated and commented former drafts.

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The purpose of this ABS agreement for non-commercial research is to create transparent and legally secure relations in the negotiation of Mutually Agreed Terms under the CBD. The suggested terms and clauses are intended to meet the needs of both, the providers of genetic resources and the researchers seeking access and can be adapted to their respective needs.
The agreement proposes generally understandable language to ensure fair and equitable sharing of benefits.

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