# Agreement on Access and Benefit-sharing for Academic Research: Toolbox for drafting Mutually Agreed Terms

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This version of the Agreement-Toolbox has been converted into a .doc-file. The aim is to facilitate the compilation of a tailor-made contract when parties engage in negotiations on Mutually Agreed Terms

Paragraphs that are considered basic items are printed in black; details and options to be defined and chosen from by the parties of the negotiation are printed in blue.

We recommend that both parties possess the full text of the Agreement. We suggest to refer to the commented version contained in the manual (pages 9 to 31) when drafting your agreement.

# Agreement: Clauses and Options

## Preamble

The objective of this Agreement 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.

Its purpose is to define the Mutually Agreed Terms between its parties relating to access to and utilization of the Genetic Resources as well as the sharing of benefits resulting from their Utilization in accordance with the Nagoya Protocol to the Convention on Biological Diversity.

### Option 1

As the User seeks access to Traditional Knowledge Associated to Genetic Resources, he/she will conclude an ancillary agreement with the holder(s) of Associated Traditional Knowledge, according to the domestic ABS regulatory requirements of the provider country.

### Option 2

As the Genetic Resources to be accessed are situated on private land/a collectively owned territory, or are in private property, an ancillary agreement will be concluded with the owner, according to the domestic ABS regulatory requirements of the Provider Country.

## 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 National Authority, according to Article 13 of the Nagoya Protocol and the domestic regulations of the Provider)*

*– 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]*

Together hereinafter referred to as the *“User“.*

## 1 Use of Terms in the Agreement

This Agreement uses the terms as defined in Article 2 of the Nagoya Protocol, unless otherwise defined in this Agreement.

#### 1.1 Genetic Resources

Genetic Resources means any material of plant, animal, microbial or other origin containing functional units of heredity and of actual or potential value (Article 2.10 of the Convention on Biological Diversity).

#### 1.2 Utilization of Genetic Resources

Utilization of Genetic Resources means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology (Article 2 [c] Nagoya Protocol).

#### 1.3 Derivatives

### Option 1.3.1

“Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity (Art. 2 [e] Nagoya Protocol).

### Option 1.3.2

Derivative means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources,contained in the Genetic Resource accessed*,* even if it does not contain functional units of heredity.

### Option 1.3.3

Derivative means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity, accessed in the country of origin/from the producers of the derivative, also if separated from the Genetic Resource.

#### 1.4 Commercial Intent

Within the scope of this Agreement, Commercial Intent is indicated by actions such as filing a patent application, obtaining intellectual property rights or other tangible or intangible rights; or the transfer of the Genetic Resources to a for-profit organization.

#### 1.5 Commercialization

Commercialization means the generation of any kind of economic benefits from utilized Genetic Resources [and/or Associated Traditional Knowledge]. It means in particular any sale, lease, licensing of utilized Genetic Resources, as well as applying for market admission/marketing of the Products generated thereof.

#### 1.6 Prior Informed Consent

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 Genetic Resources.

#### 1.7 Mutually Agreed Terms

The Mutually Agreed Terms are an agreement negotiated between the Provider and the User of the Genetic Resources [and/or holders of Associated Traditional Knowledge] according to the ABS regulatory requirements of the country providing the resources. The Mutually Agreed Terms regulate conditions for the access to the Genetic Resources [and/or 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.

#### 1.8 Traditional Knowledge Associated with Genetic Resources

Associated Traditional Knowledge is knowledge resulting from intellectual activity in a traditional context that is specific or general in its relationship to genetic resources. It includes know-how, practices, skills and innovations. It can be found in a wide variety of contexts, including: agricultural knowledge; scientific knowledge, technical knowledge, ecological knowledge, medicinal knowledge, including related medicines and remedies; and biodiversity-related knowledge.

#### 1.9 Product

Product means the result produced, obtained, extracted or derived from the utilization of the Genetic Resource [and Associated Traditional Knowledge].

#### 1.10 Provider

The Provider is the national competent authority designated according to Article 13.2 of the Nagoya Protocol. In some cases the Provider might also be an institution established in accordance with domestic regulations of the provider country that is competent and responsible for the negotiation and conclusion of this ABS contract. The provider is represented by the contact person responsible for the implementation of the Agreement on behalf of the institution.

#### 1.11 User

The User is the research institution responsible for the execution of the research project. It may be represented by the person leading the project.

#### 1.12 Third Party

Third Party means any person or institution other than the Provider, the User and any collaborator under their control or supervision.

#### 1.13 Unauthorized Person

Unauthorized Person means any person that came into possession of the Genetic Resources without the authorization of the User and/or the Provider.

## 2 Prior Informed Consent

### Option 2.1

The Agreement is based on the Prior Informed Consent issued beforehand by the Provider to the User granting access to the Genetic Resources concerned. The document on Prior Informed Consent [and the research project it is based on] is attached to this Agreement and is considered its integral part.

### 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/orex-situ necessary to carry out the research in accordance with the research project attached to this Agreement. He/she herewith gives his/her Prior Informed Consent.

## 3 Genetic Resources to be accessed

### Option 3.1

The User shall have access to the following Genetic resource(s): [INSERT list of the Genetic Resources to be accessed (Scientific name, place of collection)].

### Option 3.2

Since the species/strains present at the collection site are not known 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 [INSERT XX] of this Agreement.

### Option 3.3

1. A list of the collected samples according to the researcher’s field-notes is presented to the Provider within [INSERT XX] months after having gathered the samples.

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

## 4 Utilization

### Option 4.1

Genetic Resources [and Associated Traditional Knowledge] may be utilized non-commercially, including for academic research and collections, and for training, teaching and education.

### Option 4.2

The Genetic Resources may be used to conduct research and development on their genetic and/or biochemical composition.

### Option 4.3

The Genetic Resources shall be used exclusively for the following purposes:[INSERT allowed activities and/or uses].

## 5 Commercial Intent

### Option 5.1

If the Utilization of the Genetic Resources [and Associated Traditional Knowledge] changes from non-commercial research to research with a Commercial Intent, such change requires a new Prior Informed Consent in writing issued by the Provider. The terms for the new Utilization shall be subject to a separate agreement (Mutually Agreed Terms) between the involved parties.

### Option 5.2

The Provider herewith consents to change from non-commercial research to research with a Commercial Intent in the utilization of the Genetic Resources; in particular to the patenting of the research results.

## 6 Commercialization

### Option 6.1

Any Commercialization of the Genetic Resources shall require a new Prior Informed Consent in writing issued by the Provider. The terms of such Commercialization shall be subject to a separate agreement (Mutually Agreed Terms) between the involved parties.

### Option 6.2

The Provider herewith consents to the Utilization with Commercial Intent and the Commercialization of the product resulting from the Utilization of the Genetic Resources. In the case of Commercialization, the User shall provide [INSERT percentage]of the net profit to the Provider.

## 7 Intellectual Property Rights

### Option 7.1

The User shall not claim any Intellectual Property Rights over the Genetic Resources [in the form received].

### Option 7.2

The Provider agrees that the User applies for Intellectual Property Rights for the results of his research.

### Option 7.3

If the User wants to obtain Intellectual Property Rights on research results such act shall be treated as a Commercial Intent. An additional agreement (MAT) shall be negotiated in good faith under clause 5.1 of the present Agreement.

### Option 7.4

If the Provider wishes to obtain Intellectual Property Rights, the Provider has the right to propose/require the application for IPRs by the User. Details are regulated in an ancillary agreement.

## 8 Transfer of Genetic Resources [and Associated Traditional Knowledge] to Third Parties

### Option 8.1

Transfer of the Genetic Resources [and of Associated Traditional Knowledge] 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 [and Associated Traditional Knowledge] under the same obligations to any further recipient.

### Option 8.2

The User shall require the Third Party to sign an agreement containing identical obligations on Utilization and transfer of the Genetic Resources [and their Associated Traditional Knowledge] as set out in this Agreement.

### Option 8.3

The User delivers to the Provider annually [INSERT date] a list of the Third Parties to whom the Genetic Resources [and Associated Traditional Knowledge] have been transferred.

### Option 8.4

The User shall maintain retrievable records of any transfer of the Genetic Resources [and Associated Traditional Knowledge] to Third Parties under the conditions corresponding to this Agreement.

### Option 8.5

The Genetic Resources [and their Associated Traditional Knowledge] may be transferred to Third Parties only after having obtained the written consent of the Provider. Exempted is a temporary transfer of the Genetic Resources to taxonomic specialists for scientific identification.

## 9 Storage of Genetic Resources

### Option 9.1

The User is entitled to deposit the Genetic Resources in collections that are accessible for the public as well as for research purposes.

### Option 9.2

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

### Option 9.3

The special conditions or restrictions regarding the Utilization or storage of the Genetic Resources agreed upon have to be clearly stated on the label or otherwise linked to any samples, including the indication of where the information concerning the special conditions/restrictions can be found.

## 10 Benefit-sharing

The following benefits arising from the utilization of the Genetic Resources [and/or Associated Traditional Knowledge] shall be shared fairly and equitably by the User.

– Acknowledgment of the source of Genetic Resources [and Associated Traditional Knowledge]

- In case of publication or oral presentation of the research results, full acknowledgement shall be given to the source of the Genetic Resource.

- In the case of Associated Traditional Knowledge, the research results published or presented orally will include full acknowledgement of the source, if so required by the Provider.

– Sharing the results of the research

- The Provider will receive a copy of all publications.

- 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;

- Duplicate specimens will be shared with the repository in the provider country in accordance with good scientific practice.

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

*Insert a detailed lists of benefits here or in an annex [INSERT Annex XX].*

### Option 10.1 Education and Training

The User contributes as follows to education and training of students/staff of the provider country *[INSERT].*

### Option 10.2 Cooperation with research institutes

The User will cooperate with the following research institutes in the provider country *[INSERT].*

### Option 10.3 Data Sharing with research partners

Given the cooperative approach of the research, access to and the use of the data among the research partners is agreed upon in a separate agreement. It is annexed to this Agreement *[INSERT Annex XX]* and forms its integral part.

### Option 10.4 Data Sharing with the Provider

1. Access to and the use of the data by the Provider is agreed upon in a separate agreement. It is annexed to this Agreement *[INSERT Annex XX]* and forms its integral part.

2. The Provider agrees that for using the data in his own research, he needs the consent of the User.

## 11 Rights and Obligations of the Provider

1. The Provider is the responsible contact point for the User for the entire duration of the present Agreement.

2. 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 facilitation of export permits.

3. The Provider has the right to request information on the state of the research from the User as agreed upon (see clause 13 on Reporting).

### Option 11.1

1. The following analyses, as set out in the project description, are performed in the provider country:

*[INSERT a list of analyses to be performed in the provider country].*

2 The Provider confirms that all necessary conditions (equipment, staff and consumables) for conducting the analyses are available;

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

### Option 11.2

The Provider has the right to propose/request the application for intellectual property rights by the User. An ancillary agreement providing for the regulation of ownership, bearing of patent costs, income, and invention management will be negotiated.

## 12 Rights and Obligations of the User

1. The User is entitled to administrative support and guidance from the Provider to facilitate the acquisition of all other permits required by the providing country.

2. The User shall commercialize Products generated through the utilization of the Genetic Resources [and Associated Traditional Knowledge] only in accordance with the conditions agreed upon in this Agreement.

3. The User shall take all reasonable precautions to prevent the Genetic Resources from coming into the possession of any Unauthorized Person.

4. The User shall inform the Provider about any unforeseen research results that are of potential commercial interest, prior to publication or other disclosure of this information.

### Option 12.1

As the research implies Associated Traditional Knowledge, the User shall respect any relevant international law and the national and regional regulations in the provider country. The User shall proceed according to the indications of the Provider as foreseen in Annex *[INSERT Annex XX].* He shall respect the customary law of the holders of the Associated Traditional Knowledge as listed in Annex *[INSERT XX]* and apply current ethical standards.

### Option 12.2

Corresponding to national law the User will conclude an ancillary contract with the [holders of the Associated Traditional Knowledge] [the private land owners].

## 13 Reporting

### Option 13.1

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

### Option 13.2

The User shall submit to the Provider an annual written report on the research accomplished. The report is due on the *[INSERT date].*

### Option 13.3

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

### Option 13.4

The User submits an annual written report on the research accomplished. The report shall include a list of Third Parties to whom the Genetic Resources were transferred.

### Option 13.5

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 Publication

### Option 14.1

The User has the right to publish the results of the research related to the Genetic Resources [and Associated Traditional Knowledge] utilized according to clause 4 (Utilization) of the present Agreement, and according to good scientific practice. The source of the Genetic Resources [and of Associated Traditional Knowledge] has to be acknowledged.

### Option 14.2

For spiritual reasons; to prevent the depletion of the genetic resources; and/or to prevent unsafe or hazardous applications of the Associated Traditional Knowledge, the providing holder of Associated Traditional Knowledge requests confidentiality of the following specific information: *[INSERT the information subject to confidentiality].*

### Option 14.3

If the User, in the course of the research, discovers any unforeseen potential to utilize the Genetic Resources [and Associated Traditional Knowledge] for commercial ends, he/she shall share on a confidential basis such information with the Provider prior to any publication of such information.

### Option 14.4

If the Provider intends to pursue a potential commercialization of an unforeseen discovery, this is subject to negotiations between the Provider and the User according to Clauses 5 and 6 (Commercial Intent and Commercialization) and Clause 7, Option 7.4 (intellectual property rights). The Provider agrees not to hold up the User’s research work unless concerns are concrete and justified in terms of well-defined proprietary interests.

### Option 14.5

If upon mutual agreement on the filing of a patent application in the interest of the Provider (Clause 7 Option 4) the User is prevented from publishing the research results, the Provider agrees that the patent application shall be filed within *[INSERT XX]* months. After the agreed period the User has the right to proceed with the publication of the research results.

## 15 Duration and Termination of the Agreement

1. The present agreement is effective upon signature by both Parties and terminates upon completion of the research project with the provided Genetic Resources according to the project description *[Annex XX]* on *[INSERT Date].*

2. It may be terminated at any time by mutual agreement of the Parties.

3. If a Party to the present Agreement wants to terminate the Agreement prior to the completion of the project, the Party shall give written notice *[INSERT XX]* months in advance.

4. In the case of significant contract violations, both Parties shall have a right of termination for cause which shall be exercised within *[INSERT XX]* weeks from the notice of violation.

Significant reasons for the Provider for exercising the right of termination for cause are e.g. *[INSERT XX].*

Significant reasons for the User for exercising the right of termination for cause are e.g. *[INSERT XX].*

The other side must be given a period of *[INSERT XX]* month[s] to comply with its contractual obligations.

5. Clauses *[INSERT XX]* shall survive termination of the present Agreement.

## 16 Handling of the Genetic Resources after Termination of the Agreement

### Option 16.1

Upon termination of the Agreement, the Genetic Resources that have not been used up will be stored according to the terms of Utilization agreed under Clause 9.

### Option 16.2

If upon expiration of the Agreement or its termination the Genetic Resources have been deposited in e.g. an academic repository/stock centre, the Genetic Resources shall be made available for Utilization under the same conditions as contained in this Agreement.

### Option 16.3

Upon termination of the Agreement, the remaining Genetic Resources will be returned to the Provider.

## 17 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.

### Option 17.1

If the Parties are not able to resolve a dispute within a period of *[INSERT XX]* months, such dispute shall be finally settled by an arbiter to be mutually agreed between the Parties *[INSERT arbiter].*

### Option 17.2

If the Parties are not able to resolve any dispute within a period of *[XX]* months, such dispute shall be resolved before the *[INSERT XX]* court law as the only competent body for resolving disputes arising under this Agreement and in accordance with *[INSERT applicable law; jurisdiction, language].*

## 18 Other provisions

If any or more of the provisions of this Agreement become invalid or unenforceable in any respect, parties shall make a reasonable attempt to negotiate in good faith a provision which shall reflect the legal and economic substance of the invalid or unenforceable provision as closely as possible.

If the invalidity of a provision of this Agreement is not fundamental to its performance, the validity and enforceability of the remaining provisions shall not in any way be affected.