

Access and Benefit Sharing for academic non-commercial research

Draft Model Agreement

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Overview

1. The Problem
2. Analysis of the Problem
3. Goals of the Agreement
4. Method
5. Model Agreement
 - System
 - Overview of Content
 - Options examples
6. Conclusions

1 THE PROBLEM





2 GOALS OF THE MODEL AGREEMENT

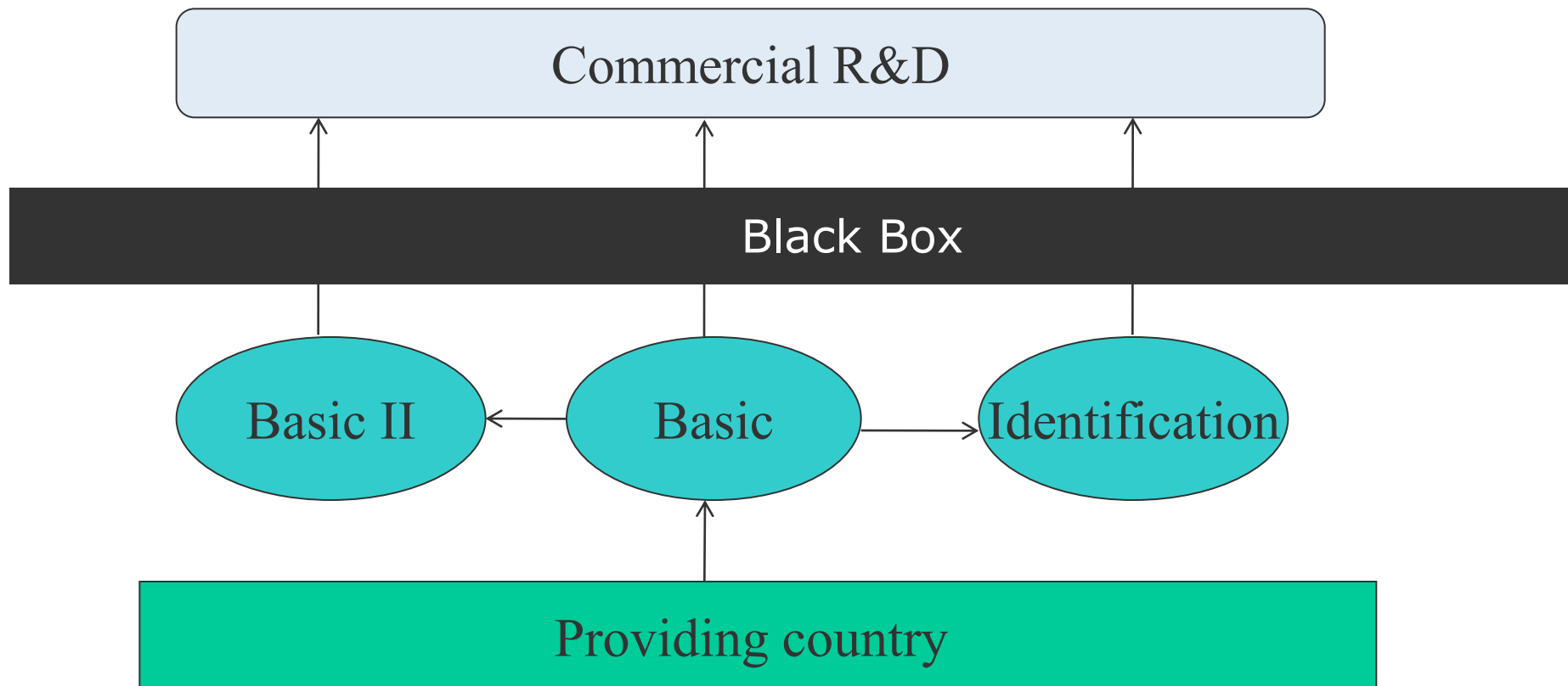
Goals of the Model Agreement

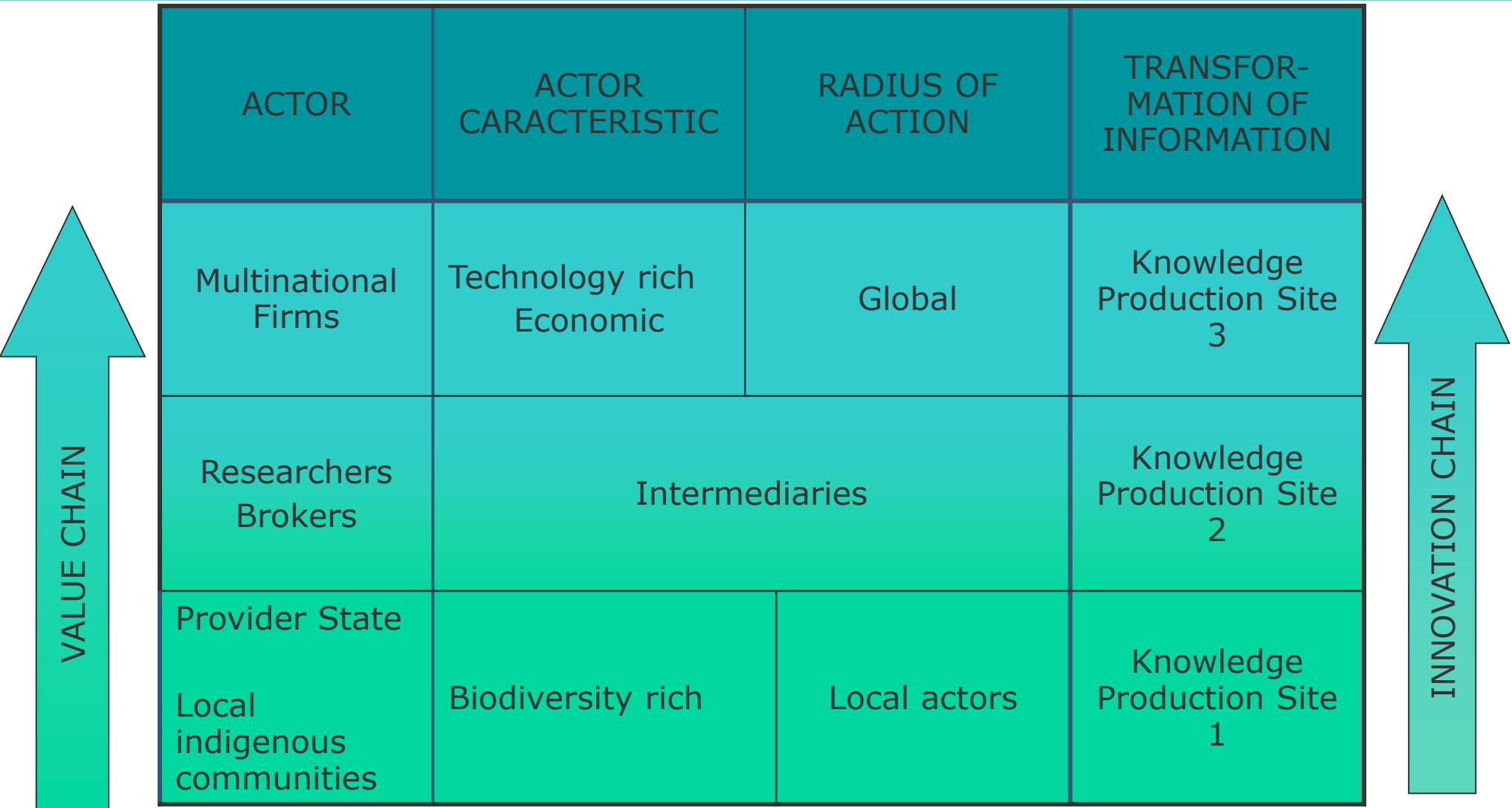
Preamble

1. This Agreement has the purpose to regulate the **conditions for the transfer of genetic resources and their use** 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, 15 and 16, and the Bonn Guidelines.
2. It establishes **the Mutually Agreed Terms (MAT)** according to Article 15.7 of the CBD.
3. The present Agreement is designed to **promote non-commercial** academic research, including taxonomic, systematic, chemical and genetic research, to **foster conservation and environmentally sound and sustainable use of genetic resources**.
4. 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.

3 ANALYSIS

How is the flow of the resources and related information?





Analysis of ABS relevant research steps

- Type of accessed resources
- Overall goal of research activity
- Use made of the genetic resource
- Storage of samples
- Transfer of genetic resources to third parties
- Products of research
- Potential for further use of research results towards commercial product development.
- Benefits of research

Categories of research

- Inventories
- Analysis of Functionality
- Multiplication
- Modification
- (Research & Development
- Commercialisation)

Analysis of research steps and utilization of genetic resources in the ABS context

Types of research with genetic resources ABS relevant research steps	Inventories (characterization & evaluation)	Functionality, Multiplication & Modification		[R&D]
Overall goal of research activity	Inventories of biodiversity Knowledge increase in systematics, ecology and evolution	Identification, isolation, and characterization of active compounds Genomics and proteomics	Improvement of products in agriculture, forestry, horticulture and aquaculture; development of pharmaceuticals Biological engineering	
Transfer of genetic resources to third parties (including exchange with peers)	Scientific cooperation with peers For identification purposes; loans for scientific work Sharing of duplicate specimens with other collections	Scientific cooperation with peers Stock centres, culture collections		

Types of research with genetic resources ABS relevant research steps	Inventories (characterization & evaluation)	Functionality, Multiplication & Modification	[R&D]
Products of research	<p>Publications, determination keys, presentations and reports</p> <p>Distribution maps</p> <p>Collections for scientific or educational purposes (museums, herbaria, botanical or zoological garden, culture collections)</p> <p>Organismic and molecular data in private or public data bases</p>	<p>Publications, presentations and reports</p> <p>Purified samples; chemical formulas, isolated and identified genes</p> <p>Elaboration of new methods and technologies</p> <p>Organismic and molecular data in private or public data bases</p>	
Potential for further use of research results towards commercial product development	<p>Low potential</p> <p>Further use of stored samples</p>	<p>Higher potential</p> <p>Published results (e.g. chemical formulae) can be further developed into commercial products</p> <p>Further use of GR through culture collections, stock centres or stored samples</p>	

4 ELABORATION OF THE AGREEMENT

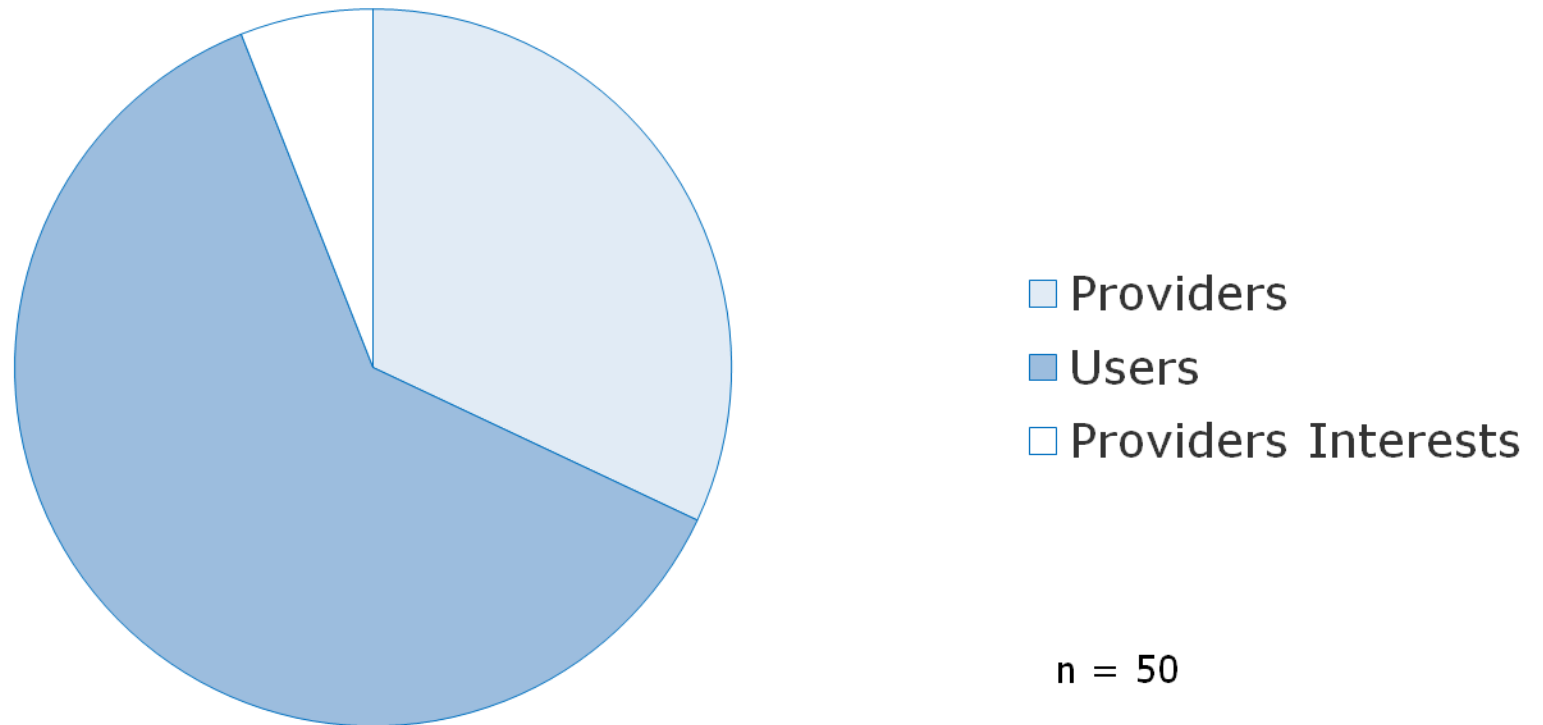
Overview of methodological steps

1. Creation of a network of partners
2. Collection of MTAs
3. Analysis of MTAs
4. Elaboration of Draft Agreement
5. Assessment within partner network

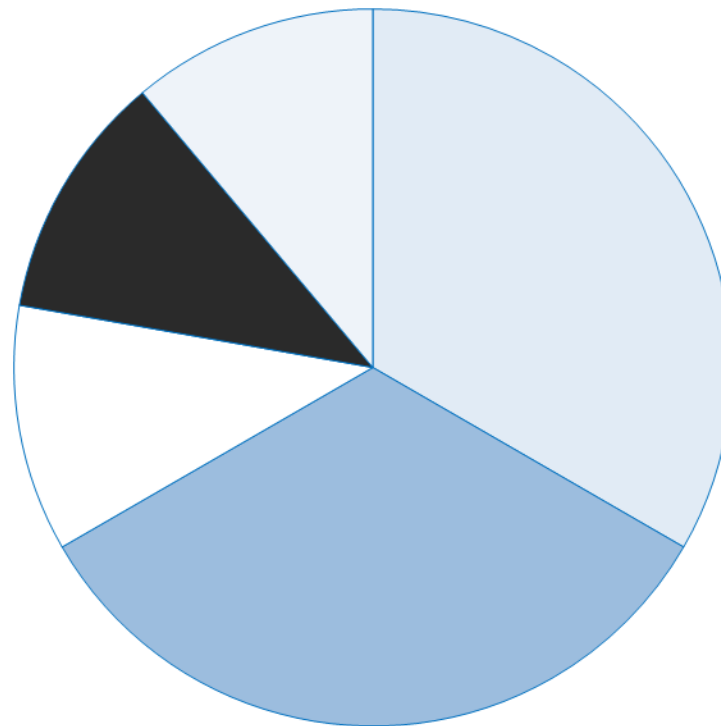
Our partner network

Antonelli Alexandre; Bachofen Reinhard; Becker Barbara; Burton Geoff; Cock Matthew; Alessandro Marco; Davis Kathryn; Desmeth Philippe; Duelli Peter; Girsberger Martin; Haas Fabian; Hermann Doris; Holm-Müller Karin; Kleba John B.; Koopman Jerzy; Lacroix Christophe; Larigauderie Anne; Lapeña Isabel; Lichtschein Victoria; Loizeau Pierre-André; Meienberg François; Meile Leo; Nemoga Soto Gabriel Ricardo; Neupane Laxman Tara; Ong Perry; Oteng-Yeboah Alfred A.; Phillips Ben; Pohlit Adrian Martin; du Plessis Pierre; Prasad Oli Krishna; Ravi Bala; Rosenthal Joshua; Ruiz Manuel; Scheidegger Christoph; Schiesser Brigitte; Sharrock Suzanne; Smith David; Subramanian Suneetha; Stahl Michael; Taeuber Sabine; Tanner Marcel; Thornstrom Carl-Gustaf; Ugalde José Carlos Fernández; van Eeuwijk Piet; Walliser Christine; Wahiche Jean-Dominique; Weckerle Caroline; Williams China; Wolfson Maureen; Zinsstag-Klopfenstein Jakob

Provenience of Partners participating

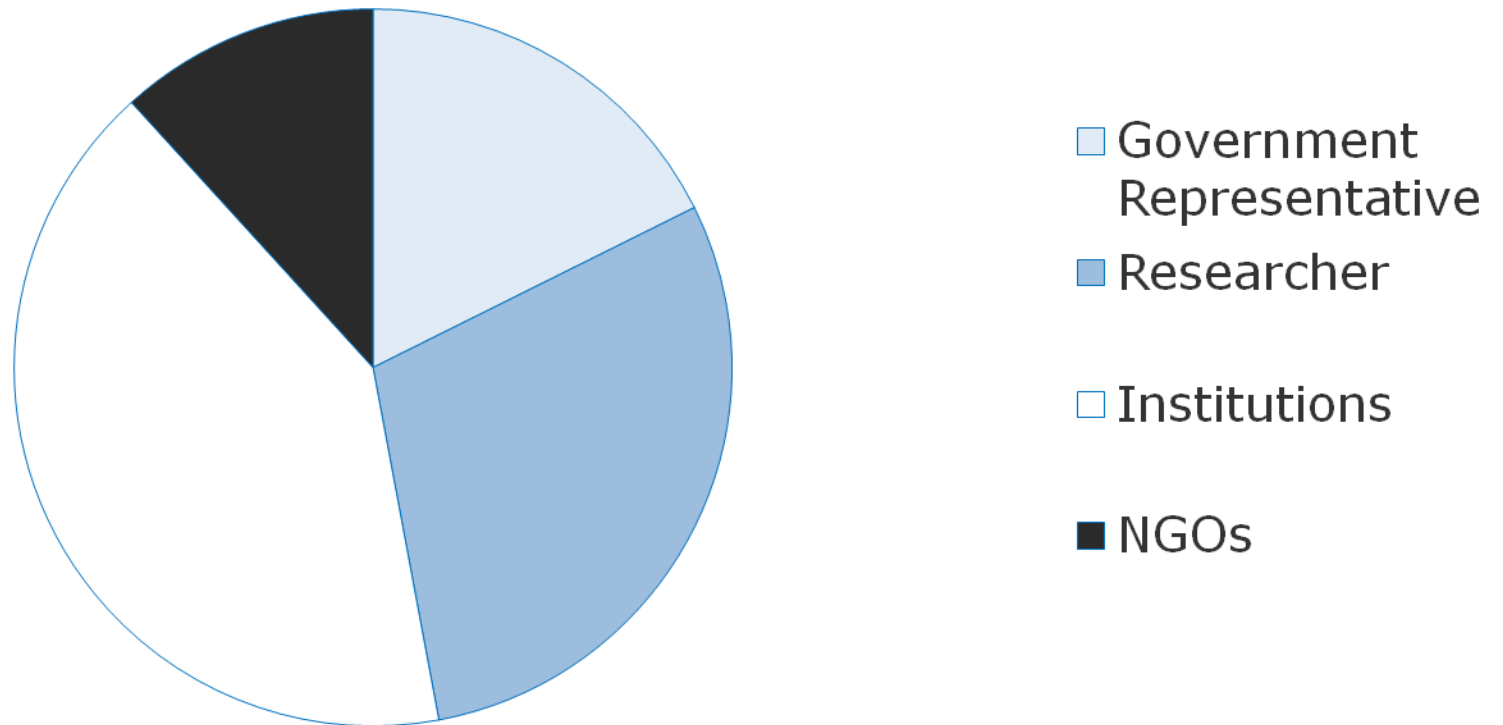


Agreements analysed according to provenience



- Provider country (Government/Governmental agencies)
- Agricultural collections
- Botanical gardens
- User (Research Institutions)

Comments received



5 THE MODEL AGREEMENT

Basic reflections

Preamble

4. Its [the Agreement's] 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

The Agreement needs to answer to

- Needs and interests of users and providers
- Different types of research
- The potential for further use of research results towards commercial product development

Principles

- Provide (legal) security
- Simple structure and clear wording
- Transparency
- Facilitate information and communication
- Provide for streamlined access
- Find an adapted minimum of administration

Basic structure

Basic structure

- **Backbone agreement** for “simple” research (taxonomy, systematics)
- **Options** to answer to other research situations and/or specific needs and interests

6. Utilization

The Material may **be utilized** for non-commercial purposes **in accordance with the laws of the User and Provider Countries** and international laws, including for collection, academic research, in accordance with the project description; and for training, teaching and education . The utilization of the Material for any type of Commercialization is prohibited.

Option 6.1

The Material shall **be used exclusively for the following purposes**: (*insert allowed activities*). The use of the Material for any other purpose will require a written consent from the Provider.

Overview of Agreement content

- Parties to the Agreement
- Informed Consent
- Purpose of the Agreement
- Definitions
- Resources to be accessed
- Utilization
- Change in utilization from non-commercial to commercial
- Transfer of the material to third parties
- Benefit Sharing
- Rights and obligations of the Provider
- Rights and obligations of the User
- Reporting
- Intellectual Property Rights
- Publications
- Handling of the Material after the Termination of the Agreement
- Duration and Termination
- Settlement of Disputes

Change in utilization from non-commercial to commercial

7. Change in utilization

1. The Commercialization of the Material and related information **is prohibited.**
2. 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 the subject of a **separate agreement between the parties (MAT).**

4. Use of Terms

“Commercialization”

1. Means the use of the Material for generating any kind of actual or potential economic profit.
2. It shall in particular mean any sale, lease, licensing of the *Material*, and/or of *information* obtained from its analysis and/or testing; filing a patent application, obtaining intellectual property rights or other tangible or intangible rights in relation to the material.
3. It includes uses and modifications by any organization including the User, to produce or manufacture a product or information for general sale or to conduct research activities that may result in any sale, lease, and license.
4. In addition it shall include any other transfer of the Material to a for profit organization.
5. It does *not* include the commercialization of commodities.

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4. In addition it shall include any other transfer of the Material to a for profit organization.
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Transfer of the material to third parties

8. Transfer of the Material to Third Parties

Transfer of the Material for the purposes of collection, academic research, 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 obtaining the Material is **informed about the provisions under this Agreement**,
and undertakes to **pass on the Material under the same obligations** to any further recipient.

Option 8.1

The User is entitled to deposit the material in *collections* that are *accessible* without restrictions *for research purposes* (culture collections).

Option 8.2

If the Material is transferred to a *public ex situ collection of living material for educational purposes* (zoos, botanic gardens), this institution is in addition to the obligations of this Agreement obliged to take any appropriate precautions to prevent the Material coming into the possession of any Unauthorized Person.

Option 8.3

If the use or storage of the Material 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 Material to third parties, including the indication of where the information concerning the special conditions/restrictions can be found.

Option 8.4

The User provides the Provider annually with a *list of the subsequent users* the material was transferred to.

Option 8.5

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

Option 8.6

The subsequent user(s)/third party sign an *identical Agreement on Use and Transfer* of the Material transferred.

Option 8.7

The Material may be transferred to Third Parties only after obtaining *written consent of the Provider* and in accordance with Mutually Agreed Terms between the Provider and the Third Party. Excepted is the temporary transfer of the Material for taxonomic identification.

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Reporting

Option 12.1

Upon request of the Provider, the User is obliged to send an annual written report on the research accomplished.

Option 12.3

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

Option 12.2

As 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.

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The User is **obliged** to send an **annual written report** on the research accomplished.

Publications

15. Publications

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

Option 15.1

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

Option 15.2

The holder of TK associated to the Material has the right to request confidentiality of specific information: for spiritual reasons; for prevention of the depletion of the genetic resources; and for prevention of unsafe/hazardous application of the TK in the medical sector.

Option 15.3

Before publishing the results of the research, the User will provide notice of intent to publish, along with a summary of the paper. The Provider has 14 days to notify if there are specific concerns relating to defined proprietary rights. The Provider agrees not to hold up basic science unless concerns are concrete and justified in terms of well defined proprietary interest.

Option 15.4

In case the User, in the course of the research, discovers an unforeseen commercial potential of the Material not stated in Art. 6 of this Agreement, he 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 according to Art. 7.

Option 15.5

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 prescribed period, if the Provider has failed to file a patent application, the User has the right to proceed with the publication of the research results in question.

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6 CONCLUSIONS

Taking up the Draft International Regime

Article 15

MODEL CONTRACTUAL CLAUSES

1. Parties shall encourage, as appropriate, the development, update and use of sectoral menus of model contractual clauses for mutually agreed terms in consultation with users and providers from key sectors.

Article 13

MONITORING, TRACKING AND REPORTING THE UTILIZATION OF GENETIC RESOURCES

- 1(b) Encouraging users and providers of genetic resources to share information on the implementation of mutually agreed terms, including through reporting requirements;

Article 14

COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 5, paragraph 1 (e) (i), Parties shall encourage providers and users of genetic resources and/or associated traditional knowledge to include provisions in mutually agreed terms to cover dispute resolution including:
 - (a) The jurisdiction to which they will subject any dispute resolution processes;
 - (b) The applicable law; and
 - (c) Options for alternative dispute resolution, such as mediation or arbitration.

Article 10

NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

... And further steps

- Review of the draft agreement according to inputs and comments received .
- Redaction of explanatory texts.
- Making the Agreement freely available to everyone interested on ABS website of the Swiss Academy of Sciences (<http://abs.scnat.ch>)
- Evaluation of the agreement in selected pilot projects.

Many thanks to everybody who has contributed to our research and ...

- The sponsors
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 - Steering Group
 - Consultative Board
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..... In particular to all project partners

Antonelli Alexandre; Bachofen Reinhard; Becker Barbara; Burton Geoff; Cock Matthew; Alessandro Marco; Davis Kathryn; Desmeth Philippe; Duelli Peter; Girsberger Martin; Haas Fabian; Hermann Doris; Holm-Müller Karin; Kleba John B.; Koopman Jerzy; Lacroix Christophe; Larigauderie Anne; Lapeña Isabel; Lichtschein Victoria; Loizeau Pierre-André; Meienberg François; Meile Leo; Nemoga Soto Gabriel Ricardo; Neupane Laxman Tara; Ong Perry; Oteng-Yeboah Alfred A.; Phillips Ben; Pohlit Adrian Martin; du Plessis Pierre; Prasad Oli Krishna; Ravi Bala; Rosenthal Joshua; Ruiz Manuel; Scheidegger Christoph; Schiesser Brigitte; Sharrock Suzanne; Smith David; Subramanian Suneetha; Stahl Michael; Taeuber Sabine; Tanner Marcel; Thornstrom Carl-Gustaf; Ugalde José Carlos Fernández; van Eeuwijk Piet; Walliser Christine; Wahiche Jean-Dominique; Weckerle Caroline; Williams China; Wolfson Maureen; Zinsstag-Klopfenstein Jakob

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