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*The world's largest plant conservation network*



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# Module 6: Developing Contracts and Agreements



# Introduction to Module 6



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Model agreements and clauses are standard, off-the-shelf contracts and contractual terms that a garden may develop in order to comply with the Nagoya Protocol and national ABS legislation. In this module, we will outline some examples to consider.

This module will specifically cover:

- advantages and disadvantages to using model contracts
- example model agreements
- model clauses in non-commercial research access agreements
- useful sources of model agreements

There are advantages and disadvantages to using model agreements and clauses.

# Advantages of using model contracts

The advantages of using model agreements and clauses include that:

- they help to plan work – to focus and realise expectations
- they are transparent and legally secure
- model terms = predictability and standard practice – this helps with curation and implementation
- they speed up the process – saving time and money
- they clarify best practice where national legislation is not clear

# Disadvantages of using model contracts

Disadvantages include that:

- they can take time to set up
- a model is only a model - terms need to be *mutually* agreed
- when both parties have a model, there can be problems
- sometimes models lead to complacency and failure to check/record terms
- models need to be flexible to be used with other sectors and governments, who may have own models – capacity-building may be required to ensure that everyone understands the process and the final agreed terms

# Examples of model agreements

It is useful to have a range of model agreements suitable for your garden's circumstances and uses of material:

- Use of material letter, setting out how material will be used by your garden
- Donation letter, for potential donors (if no Material Transfer Agreement)
- Material Transfer Agreements (MTAs) including terms of transfer to third parties (if allowed); different models for different departments if necessary
- Memoranda of Collaboration (MoC) including terms of transfer to third parties (if allowed) – for simpler partnerships (e.g. for herbarium exchanges)
- Access and Benefit-Sharing Agreement (ABSA) – for more complex partnerships/more sensitive material (e.g. for live germplasm)
- MoC and ABSA renewal letters – simpler documents to continue a partnership
- Approved translations

# Model clauses in non-commercial research access agreements



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Key terms to include in non-commercial research access agreements include:

- Parties to the agreement
- Nature of relationship/purpose of contract
- Definition of genetic material being accessed – seeds, herbarium specimens, DNA, data/TK/information
- PIC/legal access from provider
- Definitions
- Use of material (non-commercial/commercial)
- Steps to take if change of use required
- Terms of transfer and supply to third parties
- Storage/disposal of the material

# Model clauses in non-commercial research access agreements (2)

- Benefit-sharing (monetary/non-monetary; short term/long term)
- Intellectual property
- Conservation/Sustainable Use
- Reporting requirements and/or other means of sharing information on the implementation of the terms
- Dispute settlement, including possible options for alternative dispute resolution (mediation or arbitration)
- Choice of applicable law
- Signatures



# Useful sources for model agreements

The ABS Clearing House has links to these and other model agreements:

- Bonn Guidelines
- Swiss Academy of Sciences sample agreement and model clauses on ABS for non commercial research
- Common Policy Guidelines for botanical institutes
- MOSAICC project for transfer of microbial resources
- ITPGRFA Standard Material Transfer Agreement
- Case studies on BGCI ABS web pages



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## End of Module Six (Model Contracts and Agreements)

Congratulations, you have finished the  
Learning Tool

Are you ready to give us some [feedback?](#)



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Our Mission is to mobilise botanic gardens and engage partners in securing plant diversity for the well-being of people and the planet

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