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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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Connecting People • Sharing Knowledge • Saving Plants

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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