



CBD



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SUBMISSION BY THE GOVERNMENT OF THE UNITED KINGDOM:  
COMMON POLICY GUIDELINES FOR PARTICIPATING BOTANIC GARDENS ON  
ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING

PILOT PROJECT: BOTANIC GARDEN POLICY ON ACCESS AND BENEFIT-SHARING  
INFORMATION DOCUMENT

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The entry into force of the Convention on Biological Diversity in December 1993 and its subsequent ratification by 175 parties provides a new mandate for botanic gardens and presents them with both policy and practical challenges. For the *ex situ* collections held in botanic gardens to be of value to science and conservation, they must be maintained and improved. To achieve this, continued access to plant, fungal, microbial and animal genetic resources is essential. The exchange of genetic resources between botanic gardens is also necessary to facilitate taxonomic and other scientific research and to ensure that the levels of diversity held in *ex situ* collections are adequate for conservation. Additionally, botanic gardens act as an important 'clearing house' as the genetic resources they collect may be supplied to a wide range of organisations including other botanic gardens, universities, research institutions and industry.

The CBD and national laws on access to genetic resources have introduced certain legal obligations with which botanic gardens must comply. However, in some important respects, for example, access to collections made prior to the entry into force of the CBD, there is little legal or policy guidance for botanic gardens. By taking a voluntary, proactive approach to find a clear and practical way to operate in the current situation, botanic gardens can help devise solutions which meet the requirements of the CBD and relevant national law, and which are appropriate to their activities. As there are some 1,775 botanic gardens in the world, if each garden were to adopt its own approach on access to genetic resources and differing material transfer agreements, the exchange of materials could become extremely complicated and time consuming. In order to facilitate access to genetic resources directly from countries of origin and through exchange with other botanic gardens, it is highly desirable that botanic gardens harmonise their policies, practices and agreements.

With this in mind, seventeen botanic gardens from Australia, Brazil, Cameroon, Canada, China, Colombia, Malaysia, Germany, Ghana, Mexico, Morocco, the Russian Federation, South Africa, the UK and the USA have been working together in a project coordinated by the CBD Unit of the Royal Botanic Gardens, Kew and funded by the UK Department for International Development. Botanic Gardens Conservation International and the International Association of Botanic Gardens have also taken part. The objectives of the project, which started in November 1997, have been to develop a harmonised approach for the participating gardens on access to genetic resources and the sharing of benefits that implements the letter and spirit of the Convention on Biological Diversity; to produce model material transfer agreements for the acquisition and supply of genetic resources by botanic gardens; and to prepare a publication explaining the choices made and their implications.

The project has involved three workshops for participants. The first was held at the Royal Botanic Gardens, Kew, UK in December 1997 and the second at Kirstenbosch Botanical Garden in Cape Town, South Africa, in September 1998. At the third workshop, hosted by the Institute of Botany in Beijing from 17-19 May 1999, the representatives from 14 botanic gardens from 11 countries who attended agreed by consensus on the language of the Common Policy Guidelines set out in this Information document. Over the coming months, it is hoped that the Boards of Directors and other governing bodies of the botanic gardens that have participated in the pilot project, and any others who would like to do so, will adopt the Common Policy Guidelines. An explanatory note is being developed to accompany the Common Policy Guidelines, which will be contained in the publication referred to above.

**This project was funded by the UK Department for International Development. However, the approach set out in the Common Policy Guidelines reflects the views of the participating botanic gardens, and not necessarily those of DFID.**

**COMMON POLICY GUIDELINES FOR PARTICIPATING BOTANIC GARDENS  
ON ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING<sup>1</sup>**

**PREAMBLE**

***THE BOTANIC GARDENS SUBSCRIBING TO THESE COMMON POLICY GUIDELINES,***

***Recognising*** the vital role of botanic gardens world wide in conservation, research and education;

***Affirming*** their commitment to cooperate fairly and equitably with Stakeholders for the benefit of humankind and the conservation and sustainable use of biological diversity;

***Recognising*** the sovereign rights of States over their own biological resources and the authority of national governments to determine access to genetic resources, subject to national legislation;

***Acknowledging*** the interests of other Stakeholders, including indigenous and local communities and farmers, in biological resources and associated information;

***Determined*** to honour the letter and spirit of the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and other international, regional, national and sub-national laws and policies concerning biodiversity; and

***Committed*** to honouring the terms and conditions under which they have acquired biological resources in the past;

***HAVE AGREED AS FOLLOWS:***

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<sup>1</sup> An explanatory note is being developed to accompany these Common Policy Guidelines.

## SECTION 1 - OBJECTIVES

The objectives are:

- a) to ensure that the activities of the Participating Gardens involving access to genetic resources are consistent with the provisions of the Convention on International Trade in Endangered Species, the Convention on Biological Diversity and other international, regional, national and sub-national laws and policies concerning biodiversity;
- b) to promote cooperation between botanic gardens, individuals, organisations, groups, and other Stakeholders dealing with genetic resources;
- c) to establish conditions that facilitate access by others to the genetic resources within the collections held by the Participating Gardens and that may help each Participating Garden to access the genetic resources worldwide, whether found in *in situ* or *ex situ* conditions;
- d) to promote the fair and equitable sharing of the benefits arising from the use of genetic resources, their progeny and derivatives, with the country of origin that provided the genetic resources and with other Stakeholders, as appropriate. The benefits to be shared arise both from the use of genetic resources, their progeny and derivatives, by the Participating Gardens and from the use by others of genetic resources, their progeny and derivatives, provided by Participating Gardens; and
- e) to encourage other botanic gardens to become Participating Gardens and follow a harmonised system of access to genetic resources and benefit sharing.

## SECTION 2 - DEFINITIONS

In this document, the following terms have the following meanings:

**Accession** means a sample or specimen of biological material held in a botanic garden or herbarium;

**Access to genetic resources** means the ability to acquire and use genetic resources;

**Acquisition** means obtaining possession of a material or resource, through collection, receipt or other means;

**Benefit-sharing** means sharing the benefits arising from the use, whether commercial or not, of genetic resources, their progeny and derivatives;

**Biological material** includes, but is not limited to, plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves), fungi or other fungal material, and any other material of plant, animal, fungal, microbial or other origin and the genetic resources contained therein;

**Biological resources** include, but are not limited to, organisms or parts thereof, populations or any biotic component of ecosystems of actual or potential value, including genetic resources;

**Botanic garden** means, but is not limited to, an institution holding collections of documented and living plant accessions for the purposes of scientific research, conservation, display and education. For the purposes of this document, the term 'botanic garden' includes herbarium;

**Commercialisation** means the use or exploitation of genetic resources, their progeny or derivatives, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval;

**Country of origin** of genetic resources means the country which possesses those genetic resources in *in situ* conditions;

**Derivatives** include, but are not limited to, modified or unmodified extracts and any compounds or chemical structures based on or derived from genetic resources and their progeny, including analogues;

**Ex situ conservation** means the conservation of components of biological diversity outside their natural habitats;

**Genetic resources** mean any material of plant, animal, fungal, microbial or other origin containing functional units of heredity of actual or potential value;

**Herbarium** means a reference collection of preserved and documented plant specimens, including those that are dried and pressed and those that are preserved in liquid;

**In situ conditions** mean conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties;

**In situ conservation** means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties;

**Material acquisition agreement** means an agreement between two or more organisations or individuals setting out the terms and conditions under which certain biological resources are acquired. A material acquisition agreement is a type of material transfer agreement;

**Material supply agreement** means an agreement between two or more organisations or individuals setting out the terms and conditions under which certain biological resources are supplied. A material supply agreement is a type of material transfer agreement;

**Material transfer agreement** means an agreement between two or more organisations or individuals setting out the terms under which one party will transfer biological materials, which may contain genetic resources, to or from another. Material transfer agreements can take many forms, ranging from the simple exchange of letters to specific contracts containing standard clauses such as the model material acquisition agreement and model material supply agreement set out in Annexes 2 and 3 hereto, respectively. Both material acquisition agreements and material supply agreements are types of material transfer agreements;

**Model material acquisition agreement** means the model material acquisition agreement developed to implement these Common Policy Guidelines, a *pro forma* of which is attached hereto as Annex 2;

**Model material supply agreement** means the model material supply agreement developed to implement these Common Policy Guidelines, a *pro forma* of which is attached hereto as Annex 3;

**Participating Gardens** means those botanic gardens listed in Annex 1 hereto which subscribe to the principles set out in this document and which have agreed to implement these Common Policy Guidelines;

**Prior informed consent** means the consent of the government and other Stakeholders which must be obtained prior to access to genetic resources and based on full disclosure of information, such as the intended use of the resources;

**Provider** means any individual or organisation, whether governmental or non-governmental, that provides genetic resources, their progeny or derivatives to a Participating Garden;

**Recipient** means any individual or organisation, whether governmental or non-governmental, that acquires genetic resources, their progeny or derivatives from a Participating Garden with its consent;

**Stakeholder** means an individual, organisation or group whether formal or informal, affected by, or with an interest in, the activities relating to the acquisition, use or supply of genetic resources, their progeny or derivatives. Stakeholders involved in conservation and the granting of collecting permits and prior informed consent for access may include relevant departments of government, local authorities, private individuals such as landowners, indigenous peoples, local communities, farmers and non-governmental organisations. Stakeholders such as these are often described in law relating to access and benefit-sharing;

**Tracking** means maintaining records of the location of specimens of genetic resources, their progeny and derivatives, following their distribution within an organisation or their supply to other organisations.

### SECTION 3 - PRINCIPLES

Participating Gardens subscribing to these Common Policy Guidelines will, as far as possible and as appropriate:

- obtain prior informed consent for the acquisition of genetic resources from *in situ* conditions from the government of the country of origin and other Stakeholders;
- obtain the prior informed consent for the acquisition of genetic resources from *ex situ* conditions from the body governing the *ex situ* collection concerned, and such other consents as that body indicates are required;
- acquire and supply genetic resources, their progeny or derivatives under material acquisition and material supply agreements which satisfy these principles;
- maintain records and mechanisms to track the acquisition and supply of genetic resources, their progeny and derivatives, and the benefits that arise from their use; and
- share the benefits arising from the use of genetic resources, their progeny and derivatives fairly and equitably with the country of origin and other Stakeholders.

## SECTION 4 - ACQUISITION

### 4.1 PRIOR INFORMED CONSENT

- 4.1.1 When it collects or otherwise gains access to genetic resources, each Participating Garden will abide by applicable law and best practice. When obtaining access to genetic resources from *in situ* conditions, each Participating Garden will obtain the prior informed consent of the government of the country of origin, in accordance with its applicable legislation, and will make reasonable and sincere efforts to obtain the prior informed consent of other Stakeholders, as appropriate. When obtaining access to genetic resources from *ex situ* conditions, each Participating Garden will obtain the prior informed consent of the body governing the *ex situ* collection, and such other consents as the body governing the *ex situ* collection requires.

### 4.2 PROVIDERS

- 4.2.1 The Participating Gardens recognise the importance of ensuring that Providers of genetic resources subscribe to the principles set out in Section 3 of this document. Each Participating Garden may accept genetic resources from any Provider which subscribes to these principles, and will endeavour, where practicable, to obtain from Providers confirmation of their acceptance of these principles, whether by signature of a material acquisition agreement or by some other means.

### 4.3 MATERIAL ACQUISITION AGREEMENTS

- 4.3.1 When obtaining access to genetic resources, each Participating Garden will make reasonable and sincere efforts to clarify the respective roles, rights and responsibilities of the Participating Garden, the country of origin and relevant Stakeholders in activities involving the utilisation of genetic resources.
- 4.3.2 When obtaining access to genetic resources from *in situ* conditions, each Participating Garden will:
- a) where required, in accordance with applicable law, obtain, in writing, the prior informed consent of the government of the country of origin;
- and will make reasonable and sincere efforts to:
- b) obtain and record the prior informed consent of other Stakeholders, as appropriate, for access to and use of the genetic resources concerned and associated knowledge;
  - c) ensure that any collection, import, export and other handling of the genetic resources has been in accordance with all applicable law; and
  - d) clarify, in writing, the terms and conditions under which the materials are acquired and can subsequently be used, particularly whether the materials, their progeny or derivatives may be supplied to third parties and/or commercialised.

4.3.3 When obtaining access to genetic resources from documented *ex situ* collections, each Participating Garden will:

- a) obtain, in writing, prior informed consent from the officer authorised to agree terms of access on behalf of the *ex situ* collection, and such other consents required as indicated by that officer for access to the genetic resources concerned and for their use;

and will make reasonable and sincere efforts to:

- b) obtain from the authorised officer of the *ex situ* collection a written undertaking that the genetic resources were acquired and are being supplied in accordance with all applicable law and that the *ex situ* collection is entitled to supply them to the Participating Garden;
- c) ensure that the export of the genetic resources, their progeny or derivatives, from the country where the *ex situ* collection providing them is based, and import to the country where the Participating Garden is based, are in accordance with all applicable law; and
- d) clarify, in writing, the terms and conditions under which the materials are acquired and can subsequently be used, particularly whether the materials, their progeny or derivatives may be supplied to third parties and/or commercialised.

4.3.4 When obtaining access to genetic resources from *ex situ* conditions other than those in section 4.3.3. above, for instance from commercial sources, each Participating Garden will ensure that the acquisition conforms with all applicable law, and, if appropriate, will make reasonable and sincere efforts to ascertain from the Provider that the materials were obtained in accordance with the CBD.

4.3.5 The Participating Gardens recognise the need to acquire genetic resources under material acquisition agreements. Where a Provider does not use a material transfer agreement, or where a Provider's material transfer agreement or the collecting permits currently in use in a particular country do not satisfy the requirements set out in Section 4.3.2 and Section 4.3.3, a Participating Garden may propose to the Provider that they enter into the model material acquisition agreement or another form of material acquisition agreement which contains those requirements.



## **SECTION 5 - RECORDS, TRACKING AND MANAGEMENT**

### **5.1 RECORDS**

- 5.1.1 Each Participating Garden acquiring genetic resources will make reasonable and sincere efforts to record and maintain data on their acquisition, including information on the Provider; country of origin; collector; collection date and number; accession number; taxon; prior informed consent and conditions of use (for example as contained in permits and/or material acquisition agreements); and other relevant data associated with the acquisition of accessions in its collections in order to be able to implement these Common Policy Guidelines.
- 5.1.2 Each Participating Garden will make reasonable and sincere efforts to record and maintain information concerning the use of genetic resources, their progeny and derivatives, by that Participating Garden, and the benefits to that Participating Garden arising from such use.
- 5.1.3 Each Participating Garden will make reasonable and sincere efforts to record and maintain data on the supply of genetic resources, their progeny and derivatives, including information on the Recipient and the terms of access and benefit-sharing under which they were supplied. When providing genetic resources, their progeny and derivatives to a Recipient, each Participating Garden will also provide relevant data on their acquisition to the Recipient, as described in Section 5.1.1, particularly information on prior informed consent and conditions of use.

### **5.2 TRACKING**

- 5.2.1 In order to be able to fulfil its commitments under these Common Policy Guidelines now and in the future, each Participating Garden will develop and implement appropriate mechanisms to track the acquisition of genetic resources, the different uses of genetic resources, their progeny and derivatives held in its collections, their supply to Recipients, and the benefits that arise from their use.

### **5.3 MANAGEMENT**

- 5.3.1 Each Participating Garden will establish systems of staff management and individual staff responsibilities for the implementation of and compliance with these Common Policy Guidelines.
- 5.3.2 Each Participating Garden will identify the members of its staff authorised to agree, on its behalf, the terms of access and benefit-sharing associated with the acquisition and supply of genetic resources, their progeny and derivatives.

## SECTION 6 - SUPPLY

### 6.1 SUPPLY OF GENETIC RESOURCES

- 6.1.1 Each Participating Garden may supply genetic resources, their progeny or derivatives, to other Participating Gardens and third parties for conservation, research, public display, education and other purposes.
- 6.1.2 At the time of supplying genetic resources, their progeny or derivatives, each Participating Garden will clarify with the Recipient whether the supply is for commercial or for non-commercial purposes.
- 6.1.3 When supplying genetic resources, their progeny or derivatives, each Participating Garden will honour any terms and conditions to which it committed when acquiring the genetic resources, such as any conditions set out in collecting permits or material acquisition agreements.
- 6.1.4 To the extent possible, when supplying genetic resources, their progeny or derivatives, each Participating Garden will treat genetic resources acquired prior to the entry into force of the Convention on Biological Diversity and those acquired after its entry into force in the same manner.

### 6.2 RECIPIENTS

- 6.2.1 The Participating Gardens recognise the importance of ensuring that Recipients of genetic resources, their progeny and derivatives, subscribe to the principles set out in Section 3 of this document. Each Participating Garden may supply genetic resources to any Recipient which subscribes to these principles, and will endeavour, where practicable, to obtain from Recipients confirmation of their acceptance of these principles, whether by signature of a material supply agreement or by some other means.

### 6.3 MATERIAL SUPPLY AGREEMENTS

- 6.3.1 When supplying genetic resources, their progeny or derivatives, each Participating Garden will seek to use the model material supply agreement, or another material supply agreement which obliges each Recipient:
- a) to share benefits arising from its use of the genetic resources, their progeny and derivatives, fairly and equitably with the Participating Garden providing them, who will then share them fairly and equitably with the country of origin and other Stakeholders, as appropriate, as set out in Section 7;
  - b) not to commercialise the genetic resources, their progeny or derivatives, without the explicit consent of the Participating Garden providing them; and
  - c) not to pass the genetic resources, their progeny or derivatives, on to third parties without ensuring that the third parties enter into written agreements containing terms that are no less restrictive.

## SECTION 7 - BENEFIT-SHARING

### 7.1 COMMITMENT TO SHARE BENEFITS

- 7.1.1 Each Participating Garden will make reasonable and sincere efforts to share the benefits arising from the use of genetic resources, their progeny and derivatives, fairly and equitably with the country of origin and other Stakeholders, as appropriate.
- 7.1.2 To the extent possible, each Participating Garden will share the benefits arising from the use of materials acquired prior to and after the entry into force of the Convention on Biological Diversity in the same manner.

### 7.2 BENEFITS

- 7.2.1 The object of sharing benefits is to achieve fairness and equity and to create incentives and provide resources for the conservation of biological diversity and the sustainable use of its components.
- 7.2.2 Benefits which Participating Gardens will share, depending upon what is fair and equitable in the circumstances, including commitments made in material acquisition and supply agreements, may include:
- taxonomic, biochemical, ecological, horticultural and other information and data, through research results, publications and educational materials;
  - access to collections and databases;
  - benefits in kind, such as augmentation of national collections in the country of origin and support of community development activities;
  - the transfer of technology such as hardware, software and know-how;
  - training in science, *in situ* and *ex situ* conservation and management, information technology and management and administration of access and benefit-sharing;
  - institutional development, strengthening and management;
  - joint research and development, through collaboration in training and research programmes, participation in product development, joint ventures and co-authorship of publications; and,
  - in the case of commercialisation, also monetary benefits such as royalties.

## **SECTION 8 - IMPLEMENTATION**

### **8.1 PROGRESSIVE IMPLEMENTATION**

- 8.1.1** The Participating Gardens will need to build their respective human and institutional capacities in order to be able to implement these Common Policy Guidelines fully. Therefore, each will develop measures such as procedural manuals and instructions for staff, record keeping systems and mechanisms for sharing benefits.

### **8.2 FEEDBACK AND DEVELOPMENT**

- 8.2.1** Each Participating Garden recognises that this document will need to be revised periodically in order to reflect changes in international, national and other applicable law and acknowledged best practice. The Participating Gardens are committed to the continual development of these Common Policy Guidelines in response to feedback and suggestions.

### **8.3 BROADENING PARTICIPATION**

- 8.3.1** The Participating Gardens subscribing to these Common Policy Guidelines are committed to working with the broader botanic gardens community and with individuals, organisations and groups dealing with genetic resources, in order to develop a harmonised system for access to genetic resources and benefit-sharing.

**ANNEX 1**

**List of Participating Gardens adopting these Common Policy Guidelines**

[Participating Gardens will submit their names for inclusion here in the coming months.]

ANNEX 2

**Note: This model agreement has been prepared for illustrative purposes in connection with the Botanic Garden Pilot Project on Access to Genetic Resources and Benefit-sharing. The language of this draft agreement is appropriate to certain circumstances and to English law only. Consequently, no person should rely on the language of this draft without first consulting his or her own legal adviser.**

**MODEL MATERIAL ACQUISITION AGREEMENT BETWEEN**  
**[PARTNER INSTITUTION]**  
**AND**  
**[PARTICIPATING GARDEN]**

An AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and ninety nine between [*Participating Garden*] (“[PG]”) and [*Partner Institution*] (“[Partner]”).

WHEREAS:

[PG] is a [corporate description], whose mission is [mission statement];

In pursuit of this mission, [PG] exchanges Biological Material with other research institutes worldwide;

In its work, [PG] intends to honour the letter and spirit of the 1992 Convention on Biological Diversity, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (including the relevant implementing European Community Regulations), and other regional, national and subnational laws and policies concerning biodiversity;

[PG] and [Partner] may establish a joint collecting and conservation programme and may instigate collaborative research projects relating to the collection, study and conservation of plant biodiversity; and

[Partner] is interested in providing [PG] with certain Biological Materials;

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement the following expressions shall have the following meanings:
  - 1.1 "Biological material" includes, but is not limited to, plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves), fungi or other fungal material, and any other material of plant, animal, fungal, microbial or other origin and the genetic resources contained therein;
  - 1.2 "Commercialise" and "Commercialisation" means the use or exploitation of genetic resources, their progeny or Derivatives, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval;
  - 1.3 "Derivatives" include, but are not limited to, modified or unmodified extracts and any compounds or chemical structures based on or derived from genetic resources and their progeny, including analogues;
  - 1.4 "Genetic Resources" mean any material of plant, animal, fungal, microbial or other origin containing functional units of heredity of actual or potential value;
  - 1.5 "Material" shall mean the plant, animal, microbial or fungal biological material transferred from time to time under this Agreement;
  - 1.6 "Third Party" shall mean any person other than [PG] and [Partner].
- 2.1 In consideration of the undertaking by [PG] in clause 3.1, below, [Partner] will transfer to [PG] the Material listed in each "Notification of Material Transferred under the Material Acquisition Agreement between [Partner] and the [PG] (the "Notification of Transfer") to be itemised and agreed by the parties for each material transfer under this Agreement. A *pro forma* copy of the Notification of Transfer is attached as Appendix A hereto.
- 2.2 The Material referred to in clause 2.1 will be transferred pursuant to the terms of this Agreement.
- 2.3 The signature of [Partner] on any Notification of Transfer will confirm firstly that [Partner] is satisfied that best efforts have been made by [PG] and/or by [Partner], as appropriate, to obtain all necessary permits, prior informed consents and licenses in connection with the acquisition by [PG] of the Material and secondly that [Partner] is authorised to acquire and supply the Material to [PG].
- 3.1 [PG] undertakes, where reasonably practicable, to provide [Partner] with a fair and equitable share of any benefits obtained by [PG] resulting from the use of any Genetic Resources, their progeny or Derivatives, including the results of processing, monitoring, research, development or other use of such Genetic Resources.
- 3.2 Research publications by [PG] resulting from the use of any Genetic Resources, their progeny or Derivatives, will acknowledge [Partner] as the source of such Genetic Resources.





[Partner Institution]:

Name: [Insert name]  
Position: [Insert title]  
Address: [Insert address]

Any notice or document shall be deemed to have been served (a) if delivered, at the time of delivery; or (b) if posted by air mail, at 10:00 a.m. on the fifth business day after it was put in the post; or (c) if sent by fax at the expiration of two hours after the time of despatch if despatched before 3:00 p.m. (local time of destination) or at 10:00 a.m. (local time) on the next business day after despatch in any other case.

5.6 The provisions of this Agreement constitute the entire Agreement between the parties relating to the subject matter and the parties do not make any representations or warranties except those contained in this Agreement. The Agreement shall not be considered extended, cancelled or amended in any respect unless done so in writing signed on behalf of the parties hereto.

5.7 This Agreement is personal to the parties and none of the rights or the obligations under this Agreement may be assigned or transferred without the prior written consent of the other party.

5.8 The provisions contained in each clause and sub-clause of this Agreement shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any of these provisions is void and would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

5.9 Nothing contained in this Agreement shall constitute a partnership between [PG] and [Partner] or constitute either of them the agent of the other.

5.10 This Agreement is governed by and shall be construed in accordance with [insert appropriate nationality] law.

5.11 This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement.

AS WITNESS the hands of the duly authorised representatives of the parties hereto.

SIGNED BY:  
for and on behalf of [Partner]

Name: DATE:  
Title:

SIGNED BY:  
for and on behalf of [Participating Garden]

Name: DATE:  
Title:

Appendix A

**PRO FORMA**

**NOTIFICATION OF MATERIAL TRANSFERRED  
UNDER THE MATERIAL ACQUISITION AGREEMENT BETWEEN  
[PARTNER INSTITUTION]  
("[PARTNER]") AND [PARTICIPATING GARDEN] ("[PG]")**

The material itemised on the attached sheets, sequentially numbered A1 to A\_\_\_ and each initialled by a duly authorised representative of [Partner] and a duly authorised representative of [PG], is transferred subject to the Material Acquisition Agreement between [Partner] and [PG], dated .....

**SIGNED**

for [*Partner Institution*]

for [*Participating Garden*]

**Name:**  
**Title:**  
**Date:**

**Name:**  
**Title:**  
**Date:**

**CONFIRMATION OF GOVERNMENT APPROVAL**

AS A DULY AUTHORISED REPRESENTATIVE OF [*Government Department/Name of Host Country*], I HEREBY CONFIRM, ON BEHALF OF THE GOVERNMENT OF [*Name of Host Country*] THAT I HAVE REVIEWED AND APPROVED THE MATERIAL ACQUISITION AGREEMENT, DATED ..... BETWEEN [*Partner Institution*] AND [*Participating Garden*].

SIGNED:

FOR [*Government Department/Name of Host Country*]

NAME:

DATE:

TITLE:

DEPARTMENT:

**NOTIFICATION OF MATERIAL TRANSFERRED  
UNDER THE MATERIAL ACQUISITION AGREEMENT BETWEEN  
[PARTNER INSTITUTION]  
("[PARTNER]") AND [PARTICIPATING GARDEN] ("[PG]")**

The material itemised on the attached sheets, sequentially numbered A1 to A\_\_\_ and each initialled by a duly authorised representative of the [Partner] and a duly authorised representative of [PG], is transferred subject to the Material Acquisition Agreement between [Partner] and [PG], dated .....

**SIGNED**

for [*Partner Institution*]

for [*Participating Garden*]

**Name:**  
**Title:**  
**Date:**

**Name:**  
**Title:**  
**Date:**

**Note: This model agreement has been prepared for illustrative purposes in connection with the Botanic Garden Pilot Project on Access to Genetic Resources and Benefit-sharing. The language of this draft agreement is appropriate to certain circumstances and to English law only. Consequently, no person should rely on the language of this draft without first consulting his or her own legal adviser.**

**[PARTICIPATING GARDEN]**

**MODEL AGREEMENT FOR SUPPLY OF BIOLOGICAL MATERIAL**

Upon receipt of this Agreement, **signed by Recipient below**, and because Recipient has agreed to comply with the terms and conditions set forth in this Agreement, [Participating Garden] ("[PG]") will supply to Recipient such of the Biological Material<sup>†</sup> requested by Recipient as is, in [PG]'s sole judgement, reasonable and appropriate. Such Biological Material as is supplied to Recipient will be accompanied by a copy of this Agreement, on the reverse of which the Biological Material being supplied (the "Material") will be itemised.

[PG] intends to honour the letter and spirit of the Convention on Biological Diversity in the use of its collections. Accordingly, the supply of any and all Biological Material by [PG] to Recipient, including any Material to be supplied under this Agreement, will be subject to the following conditions:

1. Subject to Clauses 2 and 4 below, Recipient may use the Material and any progeny or Derivatives\* thereof (such as modified or unmodified extracts) for non-commercial purposes only.
2. Recipient will provide [PG] with a fair and equitable share of any benefits obtained by Recipient arising out of any utilisation by Recipient of the Material or its progeny or Derivatives, including benefits such as research results and copies of publications. In addition, Recipient shall acknowledge [PG] and, where determinable, the Country of Origin, in all research publications resulting from the use of the Material.
3. **Under this Agreement, Recipient may not Commercialise\* the Material or any progeny or Derivatives thereof.**
4. If at any point in the future Recipient wishes to Commercialise the Material or its progeny or Derivatives, Recipient must first obtain the written permission of [PG]. Any Commercialisation to which [PG] agrees will be subject to a separate agreement between Recipient and [PG] consistent with [PG]'s policy that benefits be shared fairly and equitably with the Country of Origin<sup>†</sup> of the Material.
5. **Recipient may not transfer** the Material or any progeny or Derivatives thereof to any party other than Recipient or [PG] without the prior informed consent in writing of [PG], and then only under a legally binding written agreement containing terms no less restrictive than those contained in this Agreement unless otherwise agreed in writing by [PG].

6. [PG] makes no representation or warranty of any kind, either express or implied, (1) as to the identity, safety, merchantability or fitness for any particular purpose of the Material or its progeny or Derivatives or (2) that the Material provided to Recipient under this Agreement is or will remain free from any further obligation to obtain prior informed consent from, to share benefits with or to comply with restrictions on use imposed by the country of origin of the Material or any other country or regional economic integration organisation. Recipient will indemnify [PG] from any and all liability arising out of the Material or its progeny or Derivatives and their use.

7. This Agreement is governed by and shall be construed in accordance with [insert appropriate nationality] law.

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<sup>†</sup> *Biological material* includes, but is not limited to, plants, plant parts or propagation material (such as seeds, cuttings, roots, bulbs, corms or leaves), fungi or other fungal material, and any other material of plant, animal, fungal, microbial or other origin and the genetic resources contained therein; *Genetic resources* mean any material of plant, animal, fungal, microbial or other origin containing functional units of heredity of actual or potential value. This definition of genetic resources is adapted from the definitions of genetic materials and genetic resources set forth in Article 2 of the Convention on Biological Diversity.

\* *Commercialisation* means the use or exploitation of genetic resources, their progeny or Derivatives, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval;

‡ *Country of origin* of genetic resources means the country which possesses those genetic resources in *in situ* conditions;

\* *Derivatives* include, but are not limited to, modified or unmodified extracts and any compounds or chemical structures based on or derived from genetic resources and their progeny, including analogues;

**I understand that any Material supplied to me by [PG] pursuant to this Agreement will be subject to, and I agree to comply with, the conditions above.**

SIGNED BY:

for and on behalf of [Insert name of recipient institution] ("Recipient")

SIGNED BY:

for and on behalf of  
[Participating Garden]

Name: [Insert name of individual]  
Title: [Insert title of individual]  
Date: [Insert d/m]  
Address of Recipient: [Insert address]

Name:  
Date: