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Third meeting
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Item 4.2 of the provisional agenda*

SURVEY OF MODEL CONTRACTUAL CLAUSES, CODES OF CONDUCT, GUIDELINES, BEST PRACTICES AND STANDARDS BY THE UNITED NATIONS UNIVERSITY – INSTITUTE OF ADVANCED STUDIES

Note by the Executive Secretary

1. At the request of the Government of Japan, the Executive Secretary is circulating herewith, for the information of participants in the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From their Utilization, a survey of model contractual clauses, codes of conduct, guidelines, best practices and standards. The survey was prepared by the United Nations University – Institute of Advanced Studies for the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol organized by the Government of Japan.

2. The document is being circulated in the form and language in which it was made available to the Secretariat.

* UNEP/CBD/ICNP/3/1.

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Articles 19 and 20 of the Nagoya Protocol on Access and Benefit-sharing – Survey of Model Contractual Clauses, Codes of Conduct, Guidelines, Best Practices and Standards

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Prepared for the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol

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Keio Plaza Hotel Tokyo

Part I. Background

About the Study

In accordance with decision XI/1 of the Conference of the Parties, the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ICNP-3) will exchange views on the development, updating and use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards, pursuant to Articles 19 and 20 of the Protocol[1].

In order to support this exchange of views, the Ministry of Foreign Affairs of the government of Japan, in collaboration with the Secretariat of the Convention on Biological Diversity (SCBD) and the United Nations University Institute of Advanced Studies (UNU-IAS) convened an informal meeting to enable experts from developed and developing countries, as well as stakeholders representing different groups of users of genetic resources, to discuss their views of and experiences with such tools in advance of ICNP-3. It is intended that the outcomes of this informal meeting will be conveyed to the ICNP-3.

This study was developed to inform and support these discussions. Specifically, the study provides an overview of:

1) Model contractual clauses developed by governments or by particular user groups to support the negotiation and development of access and benefit-sharing (ABS) agreements.
2) Codes of conduct, guidelines, and best practices and standards developed to assist with the implementation of the ABS provisions of the Convention on Biological Diversity (CBD) and/or the Nagoya Protocol.

In each case the study reflects on common features and differences among these tools, considering parameters such as the relevant sector, authoring organization, whether the tool was developed prior to or after the adoption of the Nagoya Protocol, scope, purpose and any distinctive features in light of the particular needs of the sector for which they were developed. The discussion is supported by examination of a selection of Article 19 and 20 tools, chosen to represent a cross section of the different types of tools available. The study concludes by offering some preliminary reflections on the nature of any further research that would be needed to provide a more comprehensive and detailed analysis of the best ways of supporting the implementation of the Protocol through Articles 19 and 20, including any further information that could be provided by Parties and others to this end.

Articles 19 and 20 in Context – the Convention on Biological Diversity and Nagoya Protocol

Pursuant to Articles 19 and 20 of the Nagoya Protocol, each Party[2] agrees to encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually

[1] UNEP/CBD/COP/11/35 Report of the eleventh meeting of the Conference of the Parties to the Convention On Biological Diversity, Hyderabad, India, 8-19 October 2012, Decision XI/1.

[2] Note that to avoid confusion, throughout this study 'Party' refers to a state that, having ratified or acceded to the Protocol is bound by the Nagoya Protocol once it enters into force, whereas 'party' refers to one of the principals in a contract.

agreed terms, as well as for voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing. The full text of Articles 19 and 20 are set out in Box 1 below.

Box 1. Articles 19 and 20 of the Nagoya Protocol

Article 19. Model Contractual Clauses

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Article 20. Codes of Conduct, Guidelines, and Best Practices and/or Standards

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

The value of model contractual clauses, codes of conduct, guidelines, best practices and standards in facilitating effective implementation of the access and benefit-sharing provisions of the CBD has long been recognized. Most tools available were first developed in the years between the adoption of the CBD in 1992 and the adoption of the Nagoya Protocol in 2010. Many of these tools followed and were informed by the voluntary Bonn Guidelines adopted by the Conference of the Parties (COP) to the CBD in 2002[3].

The fair and equitable sharing of the benefits arising out of the utilization of genetic resources is one of the three objectives of the CBD[4]. The CBD reframed international governance of biodiversity by recognizing that the sovereign right of States over their natural resources includes the authority to determine access to genetic resources[5] and requires the prior informed consent (PIC) of the Contracting Party[6]. Further, and subject to national legislation, Parties to the Convention agreed to promote the application of knowledge, innovations and practices of indigenous and local communities, with the approval and involvement of the holders of such knowledge, innovations and practices, and to encourage the equitable sharing of any benefits arising from their use[7]. That ABS was to be based on mutually agreed terms[8] led to agreements between the providers and users of genetic resources being viewed as a primary vehicle through which genetic resources would be transferred from the provider to the user, and through which arrangements for the sharing of benefits with the provider could be defined (see Box 2 for the texts of Article 8(j) and Article 15 of the CBD).

[3] Adopted pursuant to decision VI/24. UNEP/CBD/COP/6/20 Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity.

[4] Article 1 Convention on Biological Diversity.

[5] Article 15(1) Convention on Biological Diversity.

[6] Article 15(5) Convention on Biological Diversity.

[7] Article 8(j) Convention on Biological Diversity.

[8] Article 15(4) Convention on Biological Diversity.

Box 2. Articles 8(j) and 15 of the CBD

Article 8(j)

Each Contracting Party shall, as far as possible and as appropriate: …

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 15

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.
2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.
3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.
4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.
5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.
7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

It became clear then, that effective implementation of the access and benefit-sharing obligations set out in the Convention would rely not only on government measures, but on the active involvement of the users of genetic resources, including the private sector and research institutions, and, where access to traditional knowledge from indigenous and local communities was sought, with the involvement of the holders of such knowledge. This new regime thus created new steps to be taken by the providers and users of genetic resources alike[9].

In the early days of the Convention in particular, there was limited experience in implementing ABS arrangements, accompanied by concerns as to transaction costs associated with the new regime[10]. There was also concern among some users as to how they might proceed with accessing genetic resources within those States in which government measures had not yet been developed or did not provide what they perceived as adequate certainty[11].

[9] See, for example, Tvedt MW and Young T (2007) Beyond Access: Exploring Implementation of the Fair and Equitable Sharing Commitment in the CBD, IUCN Environmental Policy and Law Paper No. 67/2. IUCN, Gland, Switzerland.

[10] Noting that the Bonn Guidelines were prepared with a view to reducing transaction costs - see section I A 7(c).

[11] See, Young TR (2008) The Challenge of a New Regime: The Quest for Certainty in "Access to Genetic Resources and Benefit-Sharing." Asian Biotechnology and Development Review, Vol. 10, No 3; UNEP/CBD/WG-ABS/3/INF/10 Summary Analysis: Legal Certainty for Users of Genetic Resources under Existing Access and Benefit-sharing (ABS) Legislation and Policy February 2005.

In this context, the Bonn Guidelines were adopted to inform and support practical implementation of the Convention's access and benefit-sharing obligations[12]. These voluntary guidelines were designed to serve as inputs when developing and drafting legislative, administrative or policy measures on ABS and contracts and other arrangements under mutually agreed terms for ABS. Development of tools such as model contractual clauses, codes of conduct, guidelines and best practices and standards was equally encouraged, and many of those tools that were subsequently developed directly reference the Bonn Guidelines[13].

Through Articles 12[14], 14[15], 19[16], 20[17] and 21[18], the Nagoya Protocol continues to directly support the use of model contractual clauses, codes of conduct, guidelines, best practices and standards as valuable aids to effective implementation of ABS principles. At the same time, and as provided in Articles 19 and 20, the Conference of the Parties serving as the meeting of the Parties to the Protocol is to periodically take stock of the use of these tools.

At various junctures (COP-8, COP-10 and COP-11) Parties have been invited to provide information about their experiences with model contractual clauses, codes of conduct, guidelines, best practices and standards. Information provided was made available on the CBD website[19] and in document UNEP/CBD/WG-ABS/5/INF/2[20].

In accordance with Article 14(3)(b) of the Protocol, the ABS Clearing-House, currently in its pilot phase, will be an important source of information on model contractual clauses, codes of conduct, guidelines, best practices and standards. The Conference of the Parties, at its eleventh meeting held in October 2012, invited Parties, other governments, relevant international organizations, indigenous and local communities and all interested stakeholders to submit information to the SCBD on model contractual clauses, codes of conduct, guidelines, best practices and standards and requested the Executive Secretary to make this information available through the pilot phase of the ABS Clearing-House and to compile and analyze and structure this information for consideration by ICNP-3[21].

Articles 19 and 20 in Context - Research Purpose and Practice

Different types of genetic resources are used by different types of users, for different purposes, across a range of sectors. These include the biotechnology, pharmaceutical, medical product, agriculture, plant breeding, cosmetics and natural product sectors, as well as in basic research in fields such as taxonomy and ecology. Research may be commercially or non-commercially oriented, noting that the intent of the research may change over time. Depending on sector and context, research practices may vary

[12] UNEP/CBD/COP/6/20 Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity Decision VI/24

[13] See example model contracts, codes of conduct, standards, best practices described in Annex I and II of this study.

[14] Article 12(3)(c) of the Nagoya Protocol provides that Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

[15] Article 14 of the Nagoya Protocol includes model contractual clauses, codes of conduct and best practices among the additional information that may be made available to the Access and Benefit-Sharing Clearing-House.

[16] See Box 1 for the text of Article 19.

[17] See Box 1 for the text of Article 20.

[18] Article 21 of the Nagoya Protocol provides that measures that each Party shall take to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit sharing issues may include promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders (21(e)).

[19] See: http://www.cbd.int/abs/instruments/default.shtml

[20] UNEP/CBD/WG-ABS/5/INF/2 Compilation of Submissions by Parties on Experiences in Developing And Implementing Article 15 Of The Convention at the National Level and Measures Taken to Support Compliance with Prior Informed Consent and Mutually Agreed Terms, Note by the Executive Secretary 20 July 2007.

[21] UNEP/CBD/COP/11/35 Report of the eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity, Hyderabad, India, 8-19 October 2012, Decision XI/1.

significantly. For example, users may seek to screen samples of genetic resources for particular properties and/or to isolate and extract particular compounds. Screening might be broad, or more narrow and targeted. Research might be informed by traditional knowledge, or traditional knowledge may have no relevance to the research process at all. The resources sought might be *in situ*, or held in *ex situ* collections. As the examples of Article 19 and 20 tools demonstrate, this diversity means that certain tools and elements therein will be more applicable and useful in some contexts than others. Overall, however, such tools tend to have several broad substantive and structural similarities, reflecting the objectives and provisions of the Convention and Protocol.

Part II. Article 19 on Model Contractual Clauses

Sources of Information about Model Contractual Clauses

Sources of information about model contractual clauses include the CBD website[22], the database of Biodiversity Related Access and Benefit-sharing Agreements[23] hosted by the World Intellectual Property Organization (WIPO), through the national focal points[24], the databases of other institutions such as the Bioprospector Database of the United Nations University – Institute of Advanced Studies (UNU-IAS)[25], and the authoring institutions themselves[26]. In some cases, codes of conduct, guidelines, best practices and standards contain links to or include model contractual clauses[27]. In addition, various analyses have considered particular model contractual clauses, and/or the use and utility of model agreements more broadly[28].

Implications of the Convention and Protocol for Model Contractual Clauses

Model contractual clauses, on the whole, are intended to guide parties in the negotiation of ABS agreements that meet the requirements of the Convention and the Nagoya Protocol.
Taking only the Convention into account, core functions that an ABS arrangement must achieve include to:

- Establish the PIC of the Party providing the genetic resources[29], for access based on mutually agreed terms[30];

- Establish arrangements for fair and equitable benefit-sharing with the Party who is the provider of genetic resources, on mutually agreed terms[31];

- Respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the

[22] See: http://www.cbd.int/abs/resources/contracts.shtml

[23] See: http://www.wipo.int/tk/en/databases/contracts/index.html

[24] See: http://www.cbd.int/doc/lists/nfp-cbd.pdf

[25] See: http://www.bioprospector.org

[26] Refer to the list of authoring organizations in Annexes I and II to this study.

[27] For example, see Swiss State Secretariat for Economic Affairs (2012) ABS Management Tool (ABS-MT), available at http://www.sib.admin.ch/en/nagoya-protocol/abs-management-tool/index.html

[28] See, for example: the ipHandbook available at www.ipHandbook.org; Correa, CM (2010) A Legal Perspective on options for the exchange of ANGRS including standard and model material transfer agreements and clauses, presentation to the International Technical Expert Workshop Exploring the Need for Specific Measures on Access and Benefit Sharing in Animal Genetic Resources for Food and Agriculture, held in Wageningen, 8 – 10 December, 2010; Kamau, EC, Fedder B and Winter G (2010) The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is new and What are the Implications for Provider and User Countries and the Scientific Community? 6/3 Law, Environment and Development Journal, p.246

[29] Article 15(5) Convention on Biological Diversity.

[30] Article 15(4) Convention on Biological Diversity.

[31] Article 15(7) Convention on Biological Diversity.

equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;[32]

- Support the sustainable use and conservation objectives and provisions of the Convention; and,

- Support the technology transfer provisions of the Convention.

Certain other specific provisions of the Convention may also be relevant depending on context, such as Article 15(6) on the role of the provider country in research collaboration[33].

With the adoption of the Nagoya Protocol, and reflecting that one of the drivers of the Protocol was to provide greater legal certainty for users and providers[34], the obligations of Parties concerning ABS have now been further defined[35]. While the basic core functions required by a model ABS arrangement that has been developed consistent with the Convention still apply, the Protocol's provisions have a number of implications for both the development and scope of model contractual clauses.

The Protocol's main implications for model contractual clauses result in particular from its provisions on access to genetic resources, benefit-sharing, special considerations, traditional knowledge, monitoring, compliance with mutually agreed terms, capacity, technology transfer, collaboration and cooperation. These are summarized as follows.

(i) On access to genetic resources and fair and equitable benefit-sharing:

- The Protocol obliges each Party requiring PIC to take the necessary legislative, administrative or policy measures, as appropriate, to establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms are to be set out in writing and may include a dispute settlement clause; terms for benefit-sharing, including in relation to intellectual property rights, subsequent third-party use, and changes of intent[36]. Model contractual clauses developed to facilitate implementation of such legislative, administrative or policy measures may thus cover these issues, as appropriate to context.

- The Protocol's Annex provides an indicative list of the types of monetary and non-monetary benefits that might be shared, so providing guidance for the scope of benefits that might be considered within model contractual clauses.

(ii) On special considerations:

- The Protocol provides that each Party is to create conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity, including through simplified measures on access for non-commercial research purposes, and taking into account the need to address changes of intent for such research[37]. Model contractual clauses and arrangements may be developed such that they embody a simplified approach and incorporate processes for addressing a change of intent.

[32] Article 8(j) Convention on Biological Diversity.

[33] Article 15(6) Convention on Biological Diversity.

[34] As reflected in the preamble to the Nagaya Protocol.

[35] For an analysis of the implications for users, providers and the scientific community, see, Kamau, EC, Fedder B and Winter G (2010) The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is new and What are the Implications for Provider and User Countries and the Scientific Community? 6/3 Law, Environment and Development Journal, p.246

[36] Article 6(3)(g) Nagoya Protocol.

[37] Article 8(a) Nagoya Protocol.

(iii) On traditional knowledge associated with genetic resources and access to genetic resources held by indigenous and local communities:

- The Protocol requires that each Party take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities[38] and traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge, on mutually agreed terms[39]. The Protocol also requires that, in accordance with domestic law, each Party take measures, as appropriate, with the aim of ensuring that the PIC or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources[40]. It further requires that Parties take measures in accordance with domestic law, with the aim of ensuring that traditional knowledge associated with genetic resources held by indigenous and local communities is accessed with the PIC or approval and involvement of those indigenous and local communities, and that mutually agreed terms have been established[41]. In each of these cases, model contractual clauses to give effect to such measures could be designed.

- Note that the Protocol expressly provides that Parties are to endeavor to support, as appropriate, the development by indigenous and local communities, including women within these communities, of model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources[42]. This provision guides Parties as to the appropriate process for the development of model contractual clauses concerning traditional knowledge.

(iv) On monitoring the utilization of genetic resources:

- The Protocol provides that, to support compliance, each Party is to take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Measures to support compliance are to include the designation of one or more checkpoints to collect or receive, as appropriate, relevant information related to: PIC; the source of the genetic resource; the establishment of mutually agreed terms; and/or to the utilization of genetic resources, as appropriate[43]. These requirements, alongside the Protocol's requirements as to the minimum information to be included within an internationally recognized certificate of compliance[44], have implications for the type of information that might be required from users, as provided for within model contractual clauses.

- That such measures are to encourage users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms,

[38] Article 5(2) Nagoya Protocol.
[39] Article 5(5) Nagoya Protocol.
[40] Article 6(2) Nagoya Protocol.
[41] Article 7 Nagoya Protocol.
[42] Article 12(c) Nagoya Protocol.
[43] Article 17(a) Nagoya Protocol.
[44] Article 14(4) Nagoya Protocol.

including through reporting requirements[45] also has implications for the design of model contractual clauses.

(v) On compliance with mutually agreed terms:

- The Protocol states that each Party shall encourage providers and users of genetic resources and/or traditional knowledge to include provisions in mutually agreed terms that cover dispute resolution, including the jurisdiction to which they will subject any dispute resolution processes, the applicable law and options for alternative dispute resolution, such as mediation or arbitration[46]. Model contractual clauses might thus cover dispute resolution.

(vi) On capacity building:

- Model contractual clauses can have a role in furthering implementation of the Protocol's capacity building goals, namely by enhancing capacity to negotiate mutually agreed terms and by including options that further the capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources[47].

(vii) On technology transfer, collaboration and cooperation:

- The Protocol provides that Parties are to collaborate and cooperate in technical and scientific research and development programs, including biotechnological research activities, and to promote and encourage access to technology by, and the transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and Protocol. Where possible and appropriate such activities are to take place in and with a Party or the Parties providing genetic resources that is the country or that are the countries of origin of such resources or a Party of Parties that have acquired the genetic resources in accordance with the Convention[48]. Such goals can potentially be furthered through collaborative arrangements captured by model contractual clauses and agreements.

Overview of Model Contractual Clauses

A selection of model agreements are examined in detail in Annex I, each one containing several model contractual clauses. Following from this detailed examination, a number of observations are offered, as follows.

Those model agreements currently available include examples from each of the following groups:

- Authored by a public or private sector institution not expected to be a party to the agreement, and taking the form of a broad template designed to be adapted and applied across sectors or in a given context, and applicable across jurisdictions. May be restricted to non-commercial or

[45] Article 17 (b) Nagoya Protocol. Note also Article 6(3)(g).

[46] Article 18 Nagoya Protocol.

[47] Article 22 Nagoya Protocol.

[48] Article 23 Nagoya Protocol.

commercially focused research, or may apply to both. May be accompanied by a code of conduct, guideline, best practice or standard[49].

- Authored by governments and linked to the fulfillment of legislative or other regulatory requirements[50].
- Authored by a potential party to the agreement, such as a research or collection institution, and focused on either commercial or non-commercial research or both. May cover either *ex situ* or *in situ* resources, or be applicable to both. May set out the terms of a research collaboration between the provider and user institution[51].
- Actual agreements, from a range of sources and applicable to a range of contexts, that have been made model contracts retrospectively through the removal of the names of one or both parties to the agreement[52].

Although a key element of the implementation of another treaty, the model provided by the Standard Material Transfer Agreement (SMTA) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) is also relevant, particularly to the plant breeding sector.[53] The SMTA was negotiated by governments and adopted by the Governing Body of the ITPGRFA in order to provide access to and benefit-sharing from the plant genetic resources for food and agriculture in the Multilateral System established by the Treaty. Use of the SMTA is mandatory for accessing material in the Multilateral System, and while certain descriptive details are specific to each agreement (e.g. the names of the provider and recipient of the material), the standard terms of the SMTA otherwise apply without scope for modification. Although designed to apply in a very specific context, the SMTA also serves as an informative model, many elements of which could be adapted for the purpose of private agreements for ABS concerning genetic resources outside the scope of the Multilateral System (e.g. provisions on third party transfer, applicable law and dispute settlement).

Depending on the model used, and as illustrated by the examples set out in Annex I, ABS arrangements consistent with the obligations set out under the Convention and Protocol might be created through a

[49] Examples include the Swiss Academy of Sciences Agreement on Access and Benefit-sharing for Non-Commercial Research - Sector specific approach containing Model Clauses; the SECO ABS Management Tool (ABS–MT); the Model Material Transfer Agreement developed by the Biotechnology Industry Organization (BIO); and the Model Agreement accompanying the Micro-Organisms Sustainable use and Access Regulation International Code of Conduct (MOSAICC) (See Annex I).

[50] Examples include the Australian Deed of Agreement between Commonwealth of Australia and (Name of Access Party) in relation to Access to Biological Resources in Commonwealth Areas for Commercial or Potential Commercial Purposes and Benefit Sharing; the Australian simplified produced for non-commercial access and benefit sharing; the Argentinian Model 1. General Agreement, Model 2. Project Research Collaboration Agreement and Model 3. Terms of Material Transfer Agreement including minimum clauses common to all; and South Africa's Department of Environmental Affairs Model Material Transfer Agreement and Model Benefit Sharing Agreement (See Annex I). In this context note that an agreement is taken, for the purposes of this study to be a model rather than a standard agreement where it leaves some room for tailoring based on negotiation between the parties, and/or where its use is not obligatory by parties.

[51] Examples include the Model Transfer Agreement: Terms and Conditions of limited non-exclusive license model agreement to use genetic material of the Culture Collection of Dairy Microorganisms (CCDM) of the Czech Republic; the Model Material Transfer Agreement between the American National Cancer Institute (NCI) and Applicant Investigators; the Model Letter of Collaboration between the Developmental Therapeutics Program Division of Cancer Treatment/Diagnosis National Cancer Institute, United States of America (DTP/NCI) and a Source Country Government (SCG)/Source Country Organization(s) (SCO); the Model Material Transfer Agreement of the Korean Research Institute of Bioscience and Biotechnology; and the Material Transfer Agreement of the Korean Agricultural Culture Collection (See: http://www.cbd.int/abs/resources/contracts.shtml; and http://www.wipo.int/tk/en/databases/contracts/index.html).

[52] Examples include the Model Agreement between the National Institute for Pharmaceutical Research and Development, Nigeria and a Consultant Herbalist, 1997 (See http://www.wipo.int/tk/en/databases/contracts/index.html).

[53] The text of the SMTA is available from http://www.planttreaty.org/content/what-smta

single agreement, or through an interconnecting series of agreements and other instruments that together form an ABS arrangement[54].

For example, a given ABS arrangement might involve a material transfer agreement or export permit, a research permit application incorporating mutually agreed terms including benefit-sharing obligations (executed simultaneously or triggered through the commercialization of products), and a research collaboration agreement, and may be supported by one or more codes of conduct, guidelines, best practices or standards. If traditional knowledge from indigenous and local communities is sought, evidence of an ABS arrangement with the holders of that knowledge may be required. Note too, that legal instruments containing elements relevant to the obligations of the Convention and the Nagoya Protocol may have a central purpose that is broader than but that incorporates ABS obligations, such as for example, an agreement that defines a collaborative research process between research institutions.

Codes of conduct, guidelines, best practices and standards may support the legal arrangements that underpin ABS, and might be relevant to the process of negotiation, the content of agreements, or both. In some cases, such support tools might be directly referred to in ABS agreements, and so become legally relevant to the obligations of contracting parties under that agreement. Compliance with such codes may be encouraged in other ways also, such as through becoming the condition of a research grant[55].

In most cases, the single or constellation of legal instruments evidencing a given ABS arrangement must, as described, fulfill a range of functions based on the requirements of the Convention, the Nagoya Protocol (when it comes into force), any national or sub-national ABS legislation or policy measures, as well as any other applicable national or sub-national legislation, for example, regulations concerning entry into, and the collection and taking of biological samples from protected areas[56].

As reflected in the examples provided, note that although the language of the Nagoya Protocol refers to model contractual clauses, in reality most clauses are provided within the context of a complete contract that has been designed to work as an integrated whole. While some of these model contracts offer various optional clauses that represent different ways of approaching a given issue[57], many do not[58]. It is thus important not only to consider model contractual clauses separately and in isolation, but model contractual agreements in their entirety.

Of those model contracts examined, few have been revised since the Protocol's adoption. Nevertheless, elements consistent with the additional requirements of the Protocol are found in certain model contracts even though their development pre-dated the Protocol. For example, the Australian simplified procedure for non-commercial research gives effect to Article 8(a), even though it was developed prior to adoption of the Protocol[59]. In other cases, revision of existing models in light of the Protocol may be warranted. Note, however, that a number of model contracts were developed as a way of implementing national legislation or regulations. In such cases any revision of a given model contract in light of the Protocol

[54] Note that throughout this text use of the term access and benefit sharing 'arrangement' refers to the combined set of legal instruments that, when taken together, give effect to the access and benefit sharing provisions of the Convention and Protocol, and/or the specific access and benefit sharing requirements of a particular jurisdiction. Where the text uses the word 'agreement', a single legal instrument (i.e. containing several clauses) is referred to.

[55] As is the case in the example of the ABS-Working Group of the Deutsche Forschungsgemeinschaft, Supplementary Instructions for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity, available through www.dfg.de

[56] Note, for example, the relationship between the Australian model agreement and the Environment Protection and Biodiversity Conservation Regulations: Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2012) Deed of Agreement between Commonwealth of Australia and (Name of Access Party) in relation to Access to Biological Resources in Commonwealth Areas for Commercial or Potential Commercial Purposes and Benefit Sharing, available at www.environment.gov.au/biodiversity/science/access/model-agreements/index.html

[57] See, for example, Swiss Academy of Sciences (2010) Agreement on Access and Benefit-sharing for Non-Commercial Research - Sector specific approach containing Model Clauses, available at http://abs.scnat.ch/downloads/documents/NonCommResearch_ABS_Agreement.pdf

[58] See, for example, Argentina Ministry of Environment and Sustainable Development (2010) Model 2. Project Research Collaboration Agreement, available at www.cbd.int/abs/resources/contracts.shtml.

[59] Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2005) Simplified procedure for Access and Benefit Sharing available through http://www.environment.gov.au/biodiversity/science/access/permits/non-commercial.html

might need to follow from policy and/or legislative reforms that implement the Protocol in that jurisdiction.

Overall, model agreements tend to have several broad substantive and structural similarities, reflecting the objectives and provisions of the Convention and, in some cases, the Protocol. The range of issues that model clauses tend to cover, alongside ways in which they are commonly dealt with, are set out in Table 1 below.

Table 1. Issues Often Considered in Model Agreements	
Issue	**Description**
Identification of parties	Generally the provider and user. There may be scope for additional parties to the agreement, such as traditional knowledge holders. Alternately, a separate agreement may be required.
Duration of agreement	Will vary according to the specific circumstances of the research. Model agreements may provide for a given duration but allow the agreement to be renewed, or allow for the duration of the agreement to be determined on a case-by-case basis.
Definition of terms	Defines how terms are to be used in the specific context of the agreement.
Statements as to scope of agreement	Going to issues such as whether the agreement covers biological resources or genetic resources more specifically, whether certain types of resources are excluded, and whether derivatives are covered by the agreement.
Statements as to commercial or non-commercial intent	Defines whether the agreement covers commercial or non-commercial research, and detailing requirements in the case of a change of intent. For example, a new agreement might need to be concluded if the research becomes commercially oriented at a given point.
Statement as to the exact material to which the agreement applies, and the intended process of analysis	Generally, parties to list, for example, the genus or species and the quantity of the material that may be collected. Often to be listed in a schedule to the agreement. The process via which the samples are to be analyzed may also need to be described.
Status of unused material	Determines how material that is unused at the conclusion of the agreement is to be handled, for example, whether it should be destroyed or returned to the providing party.
Requirements upon transfer of material or research information to third parties	Concerning whether material or information resulting from the research can be provided to a third party and under what conditions. Conditions might include, for example, conclusion of an additional agreement between the provider and the third party, the requirement that the third party be bound by the terms of the agreement between the user or provider, or a prohibition of transfer of material to a third party.
Statement as to any ancillary related instruments to comply with or requirements that must be met	For example, permits that must be sought, codes of conduct or standards that must be respected.
Evidence of the prior informed consent of the providing party	Signing of the agreement by the provider may imply PIC or specific PIC requirements may need to be met – such as a separate attestation of PIC
Statement of principle that benefits are to be shared	General statement indicating that benefits are to be shared.
Statement as to intellectual property rights	Defines the respective intellectual property rights of the parties to the agreement.
Statements as to fixed benefits to be shared	Generally in the main body of the agreement, statements as to the standard, generally non-monetary, benefits that must accrue to the provider, such as co-authorship of publications. Even where the provider is not the state, certain benefits may be identified as directly accruing to the state, for example that the state should be provided copies of publications or reports, a requirement that some of the research be done in the country of origin, a requirement to identify in publications the source of origin of the genetic material in question, or a requirement to provide taxonomic samples to the government or a research institution. Note that many fixed benefits accrue even in the context of non-commercial research. These benefits often do not rely on any particular research outcome and for the provider are often certain, direct, and immediate.

Description of variable benefits to be shared	Describes those monetary and non-monetary benefits to be shared subject to negotiation between the parties. May be included within the body of the agreement, or as a schedule. Generally, in the case of model agreements, an illustrative list of the types of benefits that might be considered is included. A sliding scale of monetary benefits to be provided, depending on revenue, may be applied. In the case of agreements covering only non-commercial research, a model agreement may only identify the trigger point at which a separate benefit-sharing agreement should be negotiated.
Traditional knowledge	General statements as to respect for the knowledge, innovations and practices of indigenous and local communities, the utilization of such knowledge with the PIC or approval and involvement of the holders of such knowledge and the requirement that benefits be shared, and/or statements reflecting the related language of the Protocol on traditional knowledge and access to genetic resources held by indigenous and local communities. These take various forms depending on the model contract in question, such as requirements to comply with applicable codes of conduct, to recognize the source of the knowledge in publications and reports, to provide documentary evidence of PIC and benefit-sharing, to include the knowledge holder as a party to the contract or a requirement that a separate benefit-sharing agreement be concluded with the holder of any such knowledge.
Applicable law and jurisdiction	Stating the applicable law and jurisdiction for contract interpretation and resolution of disputes.
Dispute resolution	Stating processes to apply in the event of disputes.
Compliance and Termination	Stating the consequences for failing to comply with the agreement, noting sanctions in the event of breach, and noting when and how the agreement might be terminated.

Note that the sector in which the agreement is to be applied tends to be only one factor among several responsible for differentiation between the models available. For example, differences of approach between those model contracts examined tends to go more to issues such as whether the research is expected to be commercial or non-commercial in nature than to the specific sector of application. The sector of research, and, by implication the research practices used within a given sector, tend to be more relevant to issues such as the type or quantity of genetic samples required, the duration of the agreement, the range and quantity of benefits to accrue to the provider, and whether traditional knowledge is accessed as part of the research process, than to the basic structure of the model contract. That is, all of these issues go more to the particulars to be provided and agreed between parties when an actual agreement is executed, rather than the basic structure of a model agreement.

A key and central difference among the model agreements examined was whether the model provided a range of options for dealing with a given issue, or offered a more fixed approach. That is, whether the model offered several model contractual clauses for dealing with a given issue, or just one. Unsurprisingly, models that were developed for potential global application tended to set out a range of options, such as in the case of the Swiss Academy of Sciences Agreement on Access and Benefit-sharing for Non-Commercial Research[60], whereas model contracts designed for application in a specific jurisdiction and developed consistent with specific legislative requirements tended to offer a more fixed approach, such as in the case of the model agreements provided by the South African and Australian governments, noting that even in these cases there is room for and the expectation that contracts may be tailored to the circumstances of actual agreements[61].

[60] See, Swiss Academy of Sciences (2010) Agreement on Access and Benefit-sharing for Non-Commercial Research - Sector specific approach containing Model Clauses, available at http://abs.scnat.ch/downloads/documents/NonCommResearch_ABS_Agreement.pdf.

[61] See: Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2012) Deed of Agreement between Commonwealth of Australia and (Name of Access Party) in relation to Access to Biological Resources in Commonwealth Areas for Commercial or Potential Commercial Purposes and Benefit Sharing, available through www.environment.gov.au/biodiversity/science/access/model-agreements/index.html; Republic of South Africa Department of Environmental Affairs, Benefit-Sharing Agreement South Africa – Department of Environmental Affairs, available at

Finally, note that several of the model agreements available were developed alongside and complement codes of conduct, guidelines, statements of best practice or standards, such as the model agreements accompanying or integrated within the ABS Management Tool[62], and the BIO Guidelines[63].

Part III Article 20 on Codes of Conduct, Guidelines, Best Practices and Standards

Sources of Information about Codes of Conduct, Guidelines, Best Practices and Standards

Sources of information about codes of conduct, guidelines, best practices and standards include the CBD website[64], the authoring institutions[65], and other institutions who have compiled lists or databases of such resources[66]. In some cases, Article 20 tools may themselves provide links to other codes of conduct, guidelines, best practices or standards, and to model contractual clauses[67]. In addition, various analyses have considered particular codes of conduct, guidelines, best practices or standards, as well as the use and utility of such tools more broadly[68].

Overview of Codes of Conduct, Guidelines, Best Practices and Standards

Codes of conduct, guidelines, best practices and standards apply across a range of sectors, including pharmaceuticals, biotechnology, agriculture, plant science, trade in natural products generally and in non-commercial research including taxonomy, ecology, conservation biology, among other basic research fields. Authors include government departments[69], public sector collections institutions and botanic gardens[70], industry organizations[71], scientific or professional member organizations, and research and academic institutions[72]. Representative examples are examined in detail in Annex II.

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https://www.environment.gov.za/?q=content/documents/forms; Republic of South Africa Department of Environmental Affairs, Model Material Transfer Agreement available at https://www.environment.gov.za/?q=content/documents/forms.

[62] Swiss State Secretariat for Economic Affairs (2012) ABS Management Tool (ABS-MT),

available through http://www.sib.admin.ch/en/nagoya-protocol/abs-management-tool/index.html

[63] Biotechnology Industry Organization, Guidelines for BIO Members Engaging in Bioprospecting, available through http://test.bio.org/intl/ip/international/

[64] See: http://www.cbd.int/abs/instruments/default.shtml

[65] See the list of authoring institutions in Annex II to this study.

[66] For example, as provided within Bioprospector database of the United Nations University Institute of Advanced Studies www.bioprospector.org, the International Cooperative Biodiversity Groups: http://www.icbg.org/resources/abs.php and the *online resources* of the BGCI: http://www.bgci.org/resources/abs/.

[67] Such as in the case of the Swiss State Secretariat for Economic Affairs (2012) ABS Management Tool (ABS-MT): http://www.sib.admin.ch/en/nagoya-protocol/abs-management-tool/index.html

[68] For example, see: Society for Economic Botany (1995). Guidelines of Professional Ethics: A Brief History of the Society for Economic Botany's Guidelines of Professional Ethics; Latorre García F, Williams, C, ten Kate, K and Cheyne, P (2001) Principles on Access to Genetic Resources and Benefit-Sharing for Participating Institutions. Results Of The Pilot Project For Botanic Gardens - Principles On Access To Genetic Resources And Benefit-Sharing, Common Policy Guidelines To Assist With Their Implementation And Explanatory Text. Royal Botanic Gardens, Kew; Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2012) Explanatory Guide available through www.environment.gov.au/biodiversity/science/access/model-agreements/index.html. Also see more general consideration of Article 20, such as in: Greiber T, Peña Moreno S, Åhrén M, Nieto CarrascoJ, Chege Kamau E, Cabrera Medaglia J, Oliva MJ, Perron-Welch F in cooperation with Ali N and Williams C (2012). An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing; Morgera E, Buck M, Tsioumani E (Eds.) (2012) The 2010 Nagoya Protocol on Access and Benefit-sharing in Perspective: Implications for International Law and Implementation Challenges, Volume 1 Legal Studies on Access and Benefit-sharing, Martinus Nijhoff Brill, Netherlands.

[69] Tools authored or commissioned by government departments include the Swiss ABS Management Tool (ABS-MT) (See Annex II).

[70] Tools authored by public sector collections institutions, including botanic gardens include the Micro-organisms Sustainable Use and Access Regulation International Code of Conduct (MOSAICC) and the Botanic Gardens Principles on Access to Genetic Resources and Benefit-sharing

IPEN Code of Conduct for botanic gardens governing the acquisition, maintenance and supply of living plant material (See Annex II).

[71] Tools authored by private sector institutions include: The Ethical Biotrade Standard; BIO Guidelines for Members Engaging in Bioprospecting; International Federation of Pharmaceutical Manufacturers and Association (IFPMA) Guidelines for Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization (see Annex II).

[72] Tools authored by the academic research community include: the Swiss Academy of Sciences Access and Benefit-sharing – Good Practice for academic research on genetic resources; the German Research Foundation - Guidelines for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity; the Society of Economic Botany Guidelines of Professional Ethics and the International Society of Ethnobiology (ISE) Code of Ethics (See Annex II).

In addition, note that government departments may release guidelines or explanatory documents that serve as default implementation tools inasmuch as they assist users and others to undertake their activities consistent with national ABS legislative, policy and administrative measures that implement the Convention and/or the Nagoya Protocol in that jurisdiction[73]. A number of Article 20 tools have been revised to take into account the Nagoya Protocol, such as the Ethical Bio-Trade Standard[74], the ABS Management Tool[75] and the IFPMA Guidelines[76], while others pre-date the Protocol[77]. Where tools have been updated in light of the Protocol they tend to incorporate direct references to the background, history and objectives of the Protocol, and incorporate the language and concepts introduced in the Protocol as appropriate to the scope and focus of the particular tool in question. In some cases, such as the ABS Management Tool, this has resulted in substantial revision[78]. As Article 20 tools tend to be quite broad in focus and provide a general background on the source of international ABS obligations, the revision of tools in light of the Protocol is likely to result in substantive additions to such tools, particularly around issues on which the Protocol provided significantly further definition such as its provisions on traditional knowledge, as described in relation to model contractual clauses above.

Note also the relevance to and overlap with Article 20 of tools supporting implementation of access to and benefit-sharing from traditional knowledge consistent with the provisions of the Convention and the Protocol.[79] While most often not focused solely on ABS, these complement Article 20 tools by providing guidance to users and providers of genetic resources on specific issues relating to ABS when it concerns the traditional knowledge, innovations and practices of indigenous and local communities. For example, such tools may assist those seeking access to the traditional knowledge, innovations and practices of indigenous and local communities to understand what constitutes ethical behavior in the process of seeking consent, conducting research and negotiating benefit-sharing agreements with indigenous and local communities. Community protocols developed by indigenous and local communities for their own use may play a role in assisting communities to understand and assert their rights and interests during ABS negotiations, and to communicate their expectations and processes to those seeking access[80]. Examples of such tools include those adopted multilaterally such as the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity[81], community protocols,

[73] For example, Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2012) Explanatory Guide available through www.environment.gov.au/biodiversity/science/access/model-agreements/index.html; Republic of South Africa Department of Environmental Affairs (2012) South Africa's Bioprospecting,Access and Benefit-Sharing Regulatory Framework Guidelines for Providers, Users and Regulators, available at http://www.eeu.org.za/DEA%20BABS%20Guidelines%20Web.pdf

[74] Union for Ethical Biotrade (2012) Ethical Biotrade Standard available through http://www.ethicalbiotrade.org/resources/index.html

[75] Swiss State Secretariat for Economic Affairs (2012) ABS Management Tool (ABS-MT),

available at http://www.sib.admin.ch/en/nagoya-protocol/abs-management-tool/index.html

[76] International Federation of Pharmaceutical Manufacturers and Association (2011) Guidelines for IFPMA Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization, available through www.ifpma.org

[77] See Annex II to this study.

[78] See Annex II, for example, the ABS-MT and the Ethical Biotrade Standard.

[79] For example, see Article 8(j) of the Convention and Article 12 of the Nagoya Protocol, which, in the context of traditional knowledge associated with genetic resources, provides that in implementing the Protocol, Parties need to take into consideration indigenous and local communities' customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources (12.1.) and encourage the development by indigenous and local communities of community protocols, minimum requirements for mutually agreed terms and model contractual clauses for access to and benefit-sharing from traditional knowledge associate with genetic resources. All these tools will support the full involvement and participation of indigenous and local communities in the implementation of the Protocol (12.3).

[80] For a discussion of the nature and role of community protocols, see, for example, Jonas H, Bavikatte K, Shrumm H. (2010) Community Protocols and Access and Benefit Sharing. Asian Biotechnology and Development Review Vol. 12 No.3, pp 49-76.

[81] Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity Adopted by the Conference of the Parties to the Convention on Biological Diversity, at COP 10, 2010, following the recommendation of the United Nations Permanent Forum on Indigenous Issues available at http://www.cbd.int/traditional/code/ethicalconduct-brochure-en.pdf

and standards or other tools used in various professional fields, such as the Society for Applied Anthropology's statement of Ethical and Professional Responsibilities[82].

Whether they take the form of codes of conduct, guidelines, best practices or standards, Article 20 tools have in common that they support and provide specific guidance to users and providers seeking to develop and implement ABS arrangements. In the case of tools such as the Ethical BioTrade Standard, these tools may have added significance in that member organizations undertake to adhere to them[83], and may choose to market their products on that basis. Article 20 or other tools that support implementation of the provisions of the Convention and the Protocol dealing with traditional knowledge may also be referenced in contractual agreements, and so become part of contractual terms[84]. Adherence to Article 20 tools may also have other implications – for example, they may form a condition of the receipt of research funding for non-commercial research, as in the case of the German Research Foundation Guidelines[85].

Article 20 tools may be intended to support compliance with national ABS legislative, policy and administrative measures, and may also be designed to support ABS agreements consistent with the Convention and the Nagoya Protocol where no such measures have been developed but where parties to an ABS agreement want to be confident that they are respecting established international principles[86]. This extends not only to those principles established in the CBD and the Nagoya Protocol, but to other relevant international principles, such as those reflected in the United Nations Declaration on the Rights of Indigenous Peoples[87]. As discussed in relation to Article 19, certain Article 20 tools are accompanied by model agreements that demonstrate how the principles outlined in the Article 20 tool might be practically implemented.

The tools available take various forms and structures, although there are significant substantive similarities across the different tools. The main difference tends to be one of emphasis, and that tends to be informed by the needs of the stakeholder who will be using the tool and the context and sector in which it will be applied.

With these differences in mind, and depending on context, Article 20 tools may provide content including:

- Summaries of the goals and principles of the Convention and the Nagoya Protocol, and, in some cases, other relevant instruments.

- Background on the history and development of ABS agreements, and research practice involving access and benefit-sharing across sectors.

[82] Society for Applied Anthropology Society for Applied Anthropology (SfAA): Statement of Ethical and Professional Responsibilities Available at http://www.sfaa.net/sfaaethic.html

[83] See description of the Ethical BioTrade Standard in Annex II to this study and the resources provided by the authoring organization available at http://www.ethicalbiotrade.org/resources/index.html

[84] For example, under the terms of the Australian model agreement examined, researchers are to adhere to the Guidelines for Ethical Research in Australian Indigenous Studies of the Australian Institute of the Aboriginal and Torres Strait Islander Studies. See Schedule 5 of the Commonwealth of Australia Department of Sustainability, Environment, Water, Population and Communities (2012) Deed of Agreement between Commonwealth of Australia and (Name of Access Party) in relation to Access to Biological Resources in Commonwealth Areas for Commercial or Potential Commercial Purposes and Benefit Sharing, available at www.environment.gov.au/biodiversity/science/access/model-agreements/index.html

[85] See Annex II description of the ABS-Working Group of the Deutsche Forschungsgemeinschaft, Supplementary Instructions for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity, and available at www.dfg.de

[86] For example, this is an explicit goal of tools such as the Guidelines for BIO Members Engaging in Bioprospecting Guidelines of the Biotechnology Industry Organization, as described in Annex II and available at http://test.bio.org/intl/ip/international/.

[87] See http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

- Guidance on appropriate conduct, including behavioral and ethical guidelines, such as in seeking PIC from local and indigenous communities and in liaising with national focal points.

- Guidance on the principles and practicalities involved in establishing PIC.

- Guidance on considerations involved when seeking to access and/or use traditional knowledge within a research process.

- Guidance on ensuring sustainable use in the process of collection and use, consistent with the Convention and the Nagoya Protocol.

- Guidance on supporting the technology transfer provisions of the Convention and the Protocol.

- Explanation of requirements to enter into formal contractual benefit-sharing agreements on mutually agreed terms, and noting benefit-sharing options, including monetary and non-monetary benefits.

- Explanation of requirements to comply with national ABS measures, including any requirements for obtaining PIC or permits to remove materials found *in situ*.

- Guidance on intellectual property rights issues and options.

Part IV Concluding Observations

The information and analysis presented in this study informed and supported discussions by invited experts in Tokyo in March 2013, during the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol. As previously described, at this meeting experts from developed and developing countries, as well as stakeholders representing different groups of users of genetic resources, discussed their views of and experiences with such tools in advance of ICNP-3, with the intention of conveying outcomes of the informal meeting to ICNP-3.

The conclusions of the informal meeting are captured in the report of the meeting. The discussions generated a wealth of observations and recommendations concerning: the role of Articles 19 and 20 in the implementation of the Nagoya Protocol; the remaining questions of Parties concerning their obligations in respect of the implementation of Articles 19 and 20 of the Protocol; trends in use and user experience; lessons learned through the development and implementation of Article 19 and 20 tools; the respective value of diversity and standardization of model tools; and on needs for the further collection, analysis and communication of information on Articles 19 and 20.

The scope of this study focuses its conclusions and recommendations on the nature of any further research that would be needed to provide a more comprehensive and detailed analysis of the best ways of supporting the implementation of the Protocol through Articles 19 and 20, including any further information that could be provided by Parties and others to this end. It is recommended, however, that this study be read in conjunction with the report of the informal meeting.

In making recommendations on the information and analytical needs to support implementation of Articles 19 and 20, it is important to recall on whom implementation obligations fall. Recall that:

- Parties shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms, as well as voluntary codes of conduct, guidelines, and best practices and/or standards in relation to access and benefit-sharing,

- The Conference of the Parties serving as the meeting of the Parties to the Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses, as well as voluntary codes of conduct, guidelines, and best practices and/or standards,
- The Conference of the Parties serving as the meeting of the Parties shall consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Keeping this in mind, recommendations as to the nature of any further research that would be needed to provide a more comprehensive and detailed analysis of the best ways of supporting the implementation of the Protocol through Articles 19 and 20, including any further information that could be provided by Parties and others to this end, include that:

- The ways in which Parties might encourage the development, update and use of Article 19 and 20 tools would benefit from further exploration. The authors and users of these tools tend to be diverse, meaning that governments may have limited direct influence.

- The more detailed and specific objectives and provisions of the Protocol have significant implications for the design of model tools under both Articles 19 and 20. While some Article 19 and 20 tools examined have been revised in light of the Protocol, several pre-date it. Of the latter, some, though not all, appear to give more limited effect to the objectives and provisions of the Protocol than may have been the case had they been developed subsequent to the Protocol's conclusion. Whether updates would now be appropriate is a question that must be asked on a case-by-case basis, and is one to which the authors of such tools might give consideration. Given the general background and statements that Article 20 tools tend to include, there would be few examples in which the revision of an Article 20 tool in light of the Protocol would not be warranted and would not provide the opportunity for at least some substantive updates to be made. In the case of model contractual clauses, whether revision is appropriate in light of national laws and policy, and whether revision would in fact alter the context of a given tool, is likely to be more context specific. Consideration should be given to the type of information resources or other input that authors of such tools would find most useful as support for the revision process.

- The sharing of information regarding actual use, user experience and lessons learned is very valuable and should be encouraged over time. The sharing of experience and perspectives through the informal meeting demonstrated the value of such exchanges. Such information exchange would assist Parties to better understand the relevance, importance and utility of Article 19 and 20 tools as compared to other avenues through which the capacity of users and providers to conclude access and benefit-sharing arrangements might be supported.

- The information needs of the Conference of the Parties serving as the meeting of the Parties in periodically taking stock of the use of Article 19 and 20 tools will become clearer as it gains experience completing such a stock taking exercises. Clarity on how often such a stock taking will take place will inform the type of resources that would be most useful to support the exercise.

- Further analysis focused specifically on the advantages and disadvantages of adopting specific codes of conduct, guidelines and best practices and standards may assist the Conference of the Parties serving as the meeting of the Parties in exercising its role pursuant to Article 20. The development of detailed sector specific case studies on the role of Article 19 and 20 tools in supporting ABS, including with reference to whether within each of those sectors examined a more diverse or standardized approach would more useful, may be particularly informative to this end.

- Analysis focused on how to better encourage or require the systematic reporting of user experience and lessons learned, including through but not necessarily limited to the ABS Clearing-House, would be valuable. In addition, where Article 19 and 20 tools have been field-tested in the development process, or revised after a time, the changes made in the course of the field-testing or revision are likely to reflect lessons learned of interest to Parties and others. Authors of tools who have or intend to revise a tool might be requested to provide information on the nature and reason for the revisions made, including for the purposes of the stock-taking that COP-MOP is to undertake.

- It is unlikely that those Article 19 and 20 tools easily available through the SCBD and other sources reflect all those in existence. It is not clear also whether those tools represent all sectors in which access and benefit-sharing agreements do or should form a part of standard practice. Parties might review whether all sectors and tools developed for use in their jurisdiction have been identified, and/or communicated to the SCBD, including through the ABS Clearing-House. The periodic stock-taking of Article 19 and 20 tools to be undertaken by COP-MOP could also consider whether all sectors and tools have been identified.

- The active collection of model tools, whether by the Secretariat of the CBD or another organization, would complement the submission of models by Parties to the ABS Clearing-House, and may be particularly helpful in ensuring that all tools from all relevant sectors are identified and made available more widely.

- It would be useful to consider any overlap in the range of tools suitable for inclusion in WIPO's databases and those tools suitable for reporting through the ABS Clearing-House. In order to streamline the use of resources, and to make information more easily available to Parties and stakeholders, consideration might be given as to whether there would be value in further integration between the WIPO databases and CBD information sources, including continued cross-referencing and sharing of new entries, and the role of the ABS Clearing-House to this end.

- Note that at its Fourteenth Session, the Commission on Genetic Resource for Food and Agriculture made a number of requests to its Secretary, intergovernmental technical working groups and Members of the Commission to take various steps to gather information on voluntary codes of conduct, guidelines and best practices and/or standards in the particular context of genetic resources for food and agriculture, including as relevant to specific subsectors, for consideration at its Fifteenth Session, while acknowledging that voluntary measures should not undermine legally binding provisions developed as part of domestic legislative, administrative or policy measures. These inputs would also contribute to the development of *Draft Elements to Facilitate Domestic Implementation of Access and Benefit-Sharing for Different Subsectors of Genetic Resources for Food and Agriculture*[88]. The sharing of analysis and information among and between the Secretariats of and the different international processes focusing on model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards is encouraged.

Finally, it is important to note that model contractual clauses, codes of conduct, guidelines, best practices and standards can only do so much. While model tools can be very useful in supporting awareness of ABS, particularly in the absence of national policy or regulation, the existence of such model tools does not, in most cases, negate the need for ABS agreements to be tailored to the specific scenario at hand, or for both parties to have independent advice prior to the conclusion of an access and benefit-sharing agreement between them. Difficulties in accessing independent expert advice may be a particular issue for indigenous and local communities who seek to assert their interests in

[88] CGRFA-14/13/Report at part V.

ABS negotiations. Resources for situation specific advice will continue to be needed by such providers on an agreement by agreement basis. Parties might consider such needs when developing national capacity self-assessments under Article 22(3) of the Protocol.

Annexes

Annex I. Examples of Model Contractual Clauses (in order or year last revised or originally developed)

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
Commonwealth of Australia Revised April 2012	Deed of Agreement between Commonwealth of Australia and (Name of Access Party) in relation to Access to Biological Resources in Commonwealth Areas for Commercial or Potential Commercial Purposes and Benefit Sharing	Purpose and Scope: • For use where the Commonwealth is an access provider under applicable regulations (Part 8A of Environment Protection and Biodiversity Conservation (EPBC) Regulations pursuant to Section 301 of the EPBC Act 1999 (Cth). • Provides for access to biological resources in Commonwealth areas. • When executed constitutes a benefit sharing agreement for the purpose of Australian regulations. • Covers access for commercial or potentially commercial purposes. Structure: • Main body of Deed sets out, in standard form, context and purpose, and operative provisions. • Schedules provide for particulars of the agreement, access and use conditions, benefits sharing with the Commonwealth, non-monetary benefits, and use of traditional knowledge and engagement with indigenous people.	• Both monetary and non-monetary benefits expected and to be defined in schedule to agreement. • Monetary benefits based on scale depending on exploitation revenue. • Agreement does not alter existing property rights, including intellectual property right arising from access to biological resources. Rights in samples, products and intellectual property vest in the access party. • Benefits must continue to flow to access provider even where an agreement has been made between the party to the agreement and a third party who further develops or commercializes the samples, products or intellectual property. That may be through maintenance of the obligation of the original access party to provide benefits to the Commonwealth, or through a direct agreement between the third party and Commonwealth. • Certain conditions in regard to the handling and management of samples apply, and sample records kept with taxonomic information. Duplicates of samples and sample records must be offered to an Australian public research or taxonomic institution. Samples' records may be sufficient if it is impractical to provide sample duplicates. • Termination may occur on mutually agreed terms, cancellation of permit, or material breach of obligations. Obligations to supply benefits to the Commonwealth survive despite termination. Any samples and products must be returned to the Commonwealth, or destroyed, at the discretion of the Commonwealth. • Note also that there is also a simplified access procedure for non-commercial research administered by the Commonwealth of Australia, developed in 2005 (see below). • Note that as well as introducing changes relating to traditional knowledge, the revision updates the earlier version of Model Agreement including by revising requirements for the handling and management of samples, and revising the schedule of 'additional benefits', now titled 'non-monetary benefits'. This schedule, as did the previous version, refers to the range of non-monetary benefits set out in the Bonn Guidelines, and requires a statement about the benefits of the research to the conservation of biodiversity in the Access Area.	• Note that this revision updates the earlier version of Model Agreement including by introducing Article 6 on the use of traditional knowledge and engagement with indigenous peoples. The revision requires the access party to comply with specified guidelines, to enter into an agreement with the holders of the knowledge regarding the use of the knowledge, its source and any agreed benefits, and to provide a copy of the agreement to the Commonwealth. • Requirements reflect Regulations that require 'reasonable benefit-sharing arrangements' include 'protection for, recognition of and valuing of any indigenous people's knowledge to be used'. • The model agreement requires research to comply with principles of engagement in guidelines of the Australian Institute of Aboriginal and Torres Strait Islander Studies. Researchers are encouraged to develop specific arrangements with Indigenous groups relevant to their research that are consistent with these guidelines. • The above requirements apply both to access to biological resources, and use of indigenous knowledge.	Department of Sustainability, Environment, Water, Population and Communities http://www.environment.gov.au/biodiversity/science/access/model-agreements/index.html See also Explanatory Guide: Model Benefit Sharing Agreement http://www.environment.gov.au/biodiversity/science/access/permits/pubs/benefit-sharing-guide.pdf Available in English.

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
Argentina 2010	Model 1. General Agreement	Purpose and Scope: Model Agreement for transfer of tissue samples between provider and recipient for use in scientific and academic research. Structure: Simple standard form agreement between the recipient and provider. Clauses cover: • Identification of provider and recipient. • Agreement covers tissue samples identified in the Annex. • Property rights in material. • Material to be destroyed or returned after analysis. • Intellectual property. • Possibility of extension. • Project collaboration. • Publication of research results. • Respect, preservation and maintenance of the knowledge, innovations and practices. • Termination. • Operative jurisdiction.	• Provider supplies samples at no cost to recipient. Species covered identified in an annex to the agreement. • Material remains the property of the provider and is to be used exclusively for academic and scientific research purposes. • Material not used is to be returned to provider or destroyed at conclusion of analysis. • Provider and recipient to collaborate in project. • Country of provider retains all intellectual property rights related to material used and its derivatives. • Research to be published jointly by providing and recipient scientists. • Copies of reports and publications to be provided to Argentinean Ministry of Environment and Sustainable Development.	• Provider and Recipient are to take all necessary measures to ensure the respect, preservation, and maintenance of the knowledge, innovations, and practices of the communities of their respective countries, and shall take all necessary measures to ensure compliance with all the applicable laws, rules, guidelines and regulations of both countries.	Argentinean Ministry of Environment and Sustainable Development. www.ambiente.gob.ar/biodiversidad Available in Spanish and English at http://www.cbd.int/abs/resources/contracts.shtml

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
Argentina 2010	Model 2. Project Research Collaboration Agreement	Purpose and Scope: For use in project collaborations between scientists of an Argentinean and Foreign Institution, where the Argentine party does not have sufficient means or experience to undertake research without foreign collaboration, and where the parties have the means for the research to be financed for one year at least. Structure: Simple standard form agreement between the recipient and provider with no options/optional clauses. Clauses cover: • Preamble. • Identification of parties. • Objective for first year of collaboration in research project. • Joint management. • Intellectual property rights. • Publication. • Respect, preservation, and maintenance of the knowledge, innovations, and practices of communities. • Jurisdiction of agreement. • Transport of biological samples. • Status of unused biological samples. • Joint publication. • Obligations to disseminate. • Duration.	• Requires joint management of project. • Country of provider retains all intellectual property rights related to material used and its derivatives. • Research to be published jointly and source of material acknowledged. • Copies of reports and publications to be provided to Argentinean Ministry of Environment and Sustainable Development. • Option as to what happens to unused material at end of analysis. • Both parties obliged to disseminate the research results as extensively as possible, publishing said results in international periodicals. The Argentine party to disseminate the results across all spheres of administration, particularly those of public administration, which might consider them useful. • Agreement valid for one year.	• Provider and recipient are to take all necessary measures to ensure the respect, preservation, and maintenance of the knowledge, innovations, and practices of the communities of their respective countries, and shall take all necessary measures to ensure compliance with all the applicable laws, rules, guidelines and regulations of both countries.	Argentinian Ministry of Environment and Sustainable Development. www.ambiente.gob.ar/biodiversidad Available in Spanish and English at http://www.cbd.int/abs/resources/contracts.shtml

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
Argentina 2010	Model 3. Terms of Material Transfer Agreement including minimum clauses common to all.	Purpose and Scope: • Agreement for transfer of materials between provider and recipient institution for scientific purposes. Not to be used for commercial purposes. • Materials covered specified in agreement. • References and consistent with national regulations – specifically Resolution No. 226/2010 of the Ministry of Environment and Sustainable Development governing and regulating access to genetic resources in accordance with the Convention on Biological Diversity (National Act No. 24.375). Structure: • Identification of provider and recipient. • Shipping form. • Standard contract including all minimum terms. • List of all minimum terms.	• References Resolution No. 226/2010 of the Ministry of Environment and Sustainable Development which governs and regulates access to genetic resources in order to ensure that the benefits derived from their use are shared fairly and equitably with the providers of said resources in accordance with the Convention on Biological Diversity (National Act No. 24.375). • Material shall not be used for other purposes unless a new authorization is submitted in writing. • No sample component of genetic heritage, provided temporarily or permanently, to be released to a third party by the recipient institution without the prior execution of a new material transfer agreement between the original provider institution and the new recipient institution. • In the event of discovery of a potential commercial use for a product or process and which derives from the sample provided as genetic heritage under these terms, the Recipient Institution shall notify the Provider Institution of the discovery. The activity related to the potential use shall be suspended. A new contract containing the relevant legal provisions shall be executed. Argentina shall have exclusive title to all intellectual property rights related to the material used and its derivatives. • Material used shall be consumed during analysis; otherwise, any material remaining after analysis shall be destroyed or returned as shall any remaining part or by-product of the sample unless the final destination of the material identified beforehand. • Both parties obliged to disseminate the research results as extensively as possible, publishing results in international periodicals. Argentine party to disseminate the results across all spheres of administration, particularly those of public administration, which might consider them useful. • Research results shall be published jointly by recipient and provider. • Source of the material used to be identified in all publications related to the material used. • Copies of publications and reports to be provided to the Argentine Ministry of Environment and Sustainable Development. • Non-compliance with terms entails applicable statutory sanctions. • Headquarters of the provider institution to be forum for the settlement of disputes between the Institutions. • Agreement for one year, may be renewed. • Commitments survive indefinitely, independently of the renewal of the agreement.		Argentinian Ministry of Environment and Sustainable Development. www.ambiente.gob.ar/biodiversidad Available in Spanish and English

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
Swiss Academy of Sciences 2010	Agreement on Access and Benefit-sharing for Non-Commercial Research - Sector specific approach containing Model Clauses	Purpose and Scope: • Sets out the conditions for the use of genetic resources, any associated Traditional Knowledge (TK) and the sharing of resulting benefits between the parties concerned in accordance with the Convention on Biological Diversity particularly in respect with the principles established under its Articles 1, 8(j), 15, and the Bonn Guidelines, and noting that the Agreement contains Mutually Agreed Terms (MAT) according to Article 15.7 CBD. • Designed to promote non-commercial academic research, such as research in taxonomy, ecology, biochemistry and genetics, and to foster conservation and the environmentally sound and sustainable use of genetic resources. • Designed 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. • Covers situations of Non Commercial Research using genetic resources and sponsored through public funding. • Designed to be adaptable enough to cover most issues that might arise in the relationship between providers and non-commercial public researchers. • Not specific to Swiss institutions – designed to be used and adapted anywhere. Structure: The clauses of the Agreement are supplied with explanatory notes. The Agreement itself consists of the preamble, clauses on substantive issues and clauses on procedural issues. Most of the clauses on substantive issues offer a basic clause and include options that can be added to the basic clause or used as a stand-alone solution. Other clauses offer only options to choose from as needed. Issues covered are: • Preamble • Parties to the agreement • Prior informed consent • Purpose • Terminology	• There is an expectation that agreements are to be modeled according to the specific needs of the parties engaged in the negotiations. The tool recommends that both parties use the whole tool so that there is transparency as to the range of options possible. • Should the research change from a non-commercial to commercial orientation, an option provides that a further agreement based on new prior informed consent would need to be negotiated. The user is not to claim intellectual property rights over the genetic resources in the form received. • Under one option the user is obliged to notify the provider if it becomes evident that a commercial application could potentially arise as a result of the research. The user must not publicly disclose related information, in order to prevent such disclosure precluding the later assertion of intellectual property rights by the provider. • An option provides that 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 a certain number of months. After the agreed period, if the provider has failed to file a patent application, the user has the right to proceed with the publication of the research. • An option requires defined research to be done in the provider country.	• An option provides that where a research project requires access to TK associated with genetic resources, a separate ancillary agreement relating to the sharing of benefits is to be agreed with the TK holders. Where it exists, this is to be consistent with any applicable legislation. • An option requires that if TK is relevant to the research, the user is obliged to respect any relevant international law and the national and regional regulations in the Provider's country, and has to proceed according to the instructions of the Provider. In any case, the user is obliged to respect the customary law of the holders of the TK and has to apply ethical standards. • An option provides that the sources of any TK are to be stated in any publications. • An option provides that the holder of TK associated with any genetic resource may require confidentiality.	Swiss Academy of Sciences http://abs.scnat.ch/downloads/documents/NonCommResearch_ABS_Agreement.pdf Available in English.

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
		• Genetic resources to be accessed • Utilization • Change in utilization from non-commercial to commercial • Transfer of the genetic resources (and associated TK) to third parties • Benefit sharing • Rights and obligations of the provider • Rights and obligations of the user • Data sharing • Reporting • Intellectual property rights • Publications • Handling of the genetic material after termination • Duration and termination of the Agreement • Settlement of disputes • Other provisions • Annex 1: Indicative list of non-monetary benefits (adapted from Bonn Guidelines)			
South Africa – Department of Environmental Affairs 2008	Benefit-Sharing Agreement	Purpose and Scope: • Based on requirements of Bioprospecting, Access and Benefit Sharing Regulations 2008. • As the scope is not restricted, applies to all uses of indigenous biological resources whether commercial or non-commercial. However, depending on use, different benefits may be negotiated. • Applicable when applying for a permit for access to Indigenous Biological Resources.	Clauses include those that: • Require agreement to be entered into between recipient and any and all stakeholders identified in the regulations. • Require identification of indigenous community if applicable. • Require identification of type and quantity of indigenous biological resources. • Require identification of intended use of indigenous biological resources. • Include options list of monetary and non-monetary benefits – some more relevant to biological resources, others more relevant to traditional knowledge. • Provide for payment of benefits to a trust fund. • Provide for review of agreement at identified juncture. • Include statement that other matters or conditions can be attached in Annex. Note that as of July 2012, ten bio-prospecting permits based on the requirements of the Regulations had been issued. Note also accompanied by 2012 guidelines titled 'South Africa's Bioprospecting, Access and Benefit-Sharing Regulatory Framework: Guidelines for Providers, Users and Regulators', as well as other resources and fact sheets available online through South Africa's ABS Clearing House. https://www.environment.gov.za/?q=content/bioprospecting_access_benefit_sharing#resources	• A resolution adopted by the indigenous community must be attached. The resolution must confirm that the indigenous community representative indicated above has been authorized to enter into this agreement on behalf of the indigenous community; that the indigenous community has full knowledge of the bioprospecting project; and that it consents to entering into the benefit-sharing agreement. • The traditional knowledge in question must be described and the current uses of relevant biological resources identified. • Indigenous community representative (if applicable) must sign the agreement for it to be valid.	Department of Environmental Affairs, Republic of South Africa https://www.environment.gov.za/?q=content/documents/forms Available in English.

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact
South Africa – Department of Environmental Affairs 2008	Model Material Transfer Agreement	Purpose and Scope: • Based on requirements of Bioprospecting, Access and Benefit Sharing Regulations 2008. • Accompanies application for a permit for access to Indigenous Biological Resources and must be entered into by any stakeholders under regulations.	• Includes agreement to take every reasonable precaution to prevent resources falling into unauthorized hands. • Agreement to be entered into between recipient and any and all stakeholders identified in the regulations. • Note other accompanying resources, as described in relation to Model Benefit Sharing Agreement above.	• Known uses of indigenous biological resources are identified in the agreement.	Department of Environmental Affairs, Republic of South Africa www.environment.gov.za https://www.environment.gov.za/?q=content/documents/forms Available in English.
Biotechnology Industry Association Developed following BIO Guidelines 2005	Suggested Model Material Transfer Agreement	Purpose and Scope: • To provide guidance to BIO Members. • Designed only for use with "regulated genetic resources" as that term is used in paragraph I.B.2 of the BIO Guidelines – essentially materials of non-human animal, plant or microbial origin that contain functional units of heredity and that are subject to the requirements of prior informed consent, *etc.* under the Convention on Biological Diversity Structure: Note the Agreement is provided with an explanatory introduction and commentary. Articles cover: • Definitions • Materials • Transfer • Use of the Materials • Sharing of Benefits • Conservation and Sustainable Use of Biodiversity • General Provisions (Duration, Termination, No assignability, return of samples, indemnity, confidentiality, dispute settlement procedures)	• Document not intended to be static and to be used very flexibly. • Intended to be used in conjunction with BIO Guidelines (See Annex II) • Introduction recognizes guidance value of tool to Members in light of lack of international consistency in how ABS arrangements are implemented, though MTA is not intended to supplant national requirements where they exist. • References Bonn Guidelines	The MTA states in its introduction 'It is recognized that in some instances it is beneficial to transfer "traditional knowledge" associated with a regulated genetic resource along with samples of the resource. While this version of the Model does not include provisions for the transfer of traditional knowledge, this Model could be expanded to transfer traditional knowledge. It should be noted that Part V of the Guidelines entitled "Measures to Protect Interests and Rights of Indigenous and Local Communities" should be applied'.	Biotechnology Industry Association http://test.bio.org/intl/ip/international/200507memo.asp Available in English

Developed By/Year	Title	Purpose, Scope and Structure	Key Features	Traditional Knowledge Considerations	Contact

Commonwealth of Australia
 	
2005
	Australian Simplified procedure for Access and Benefit Sharing	Purpose and Scope:
		To provide a simplified procedure for access and benefit sharing where research is non-commercial.
		
		Structure:
		Statutory declaration of non-commercial intent and acceptance of fixed undertakings. Applicant issued with a non-commercial access permit.
			• Fixed undertakings are:
			  • to give a written report on the results of any research on the biological resources to the Commonwealth of Australia;
			  • to offer a taxonomic duplicate of each sample taken to an Australian public institution that is a repository of taxonomic specimens of the same order or genus as those collected, for permanent loan;
			  • not to give the sample to any person, other than the institution, without permission; and
			  • not to carry out, or allow others to carry out, research or development for commercial purposes on any genetic resources, or biochemical compounds, comprising or contained in the biological resources unless a benefit sharing agreement has been entered into, in accordance with Article 15 of the Convention on Biological Diversity.
			• Note that the making of a false statement by the applicant makes them guilty of a criminal offence under the *Statutory Declarations Act 1959*.
			• Note that although the procedure predates the Nagoya Protocol, it implements Article 8(a) of the Protocol being to 'create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research'.
					Department of Sustainability, Environment, Water, Population and Communities
					http://www.environment.gov.au/biodiversity/science/access/permits/non-commercial.html
					Available in English.

Annex II. Examples of Codes of Conduct, Guidelines, and Best Practices and/or Standards (in order or year last revised or originally developed)

Title/Year	**Developer**	**Users & Sector**	**Type**	**Purpose, Scope and Structure**	**Key Features**	**Contact**
Micro-organisms Sustainable Use and Access Regulation International Code of Conduct (MOSAICC) - Developed 1999 - Revised 2009 - Being revised currently in light of Nagoya Protocol (Transparent User Friendly System of Transfer for Science and Technology (TRUST) Project)	Belgian Coordinated Collections of Micro-organisms with 12 partners.	Users: Partner organizations Sector: Micro-organisms	Voluntary Code of Conduct	Developed to facilitate access to microbial genetic resources (MGRs) and to help partners to make appropriate agreements when transferring MGRs, in the framework of the CBD and other applicable rules of international and national laws. MOSAICC is a tool to support the implementation of the CBD at the microbial level, intended to also serve as a model when dealing with genetic resources other than MGRs. Structured as follows: • Introduction • Terms of Access to MGRs (PIC, Procedure for access to *ex situ*, *in situ* resources, settlement of MTAs, monitoring distribution and utilization of MGRs, Definition of terms, additional terms). • Model Documents (MTA, PIC application, PIC certificate) • An accompanying brochure is also available.	• Covers the terms of access to microbial genetic resources, including the terms of agreement on benefit-sharing, access to and transfer of technology, scientific and technical cooperation and technology transfer. • Proposes a system that works through two operating principles: 1. The *in situ* origin of the MGRs is identified via initial Prior Informed Consent (PIC) procedure providing authorization for sampling. The *in situ* origin of the MGRs is always mentioned when transfer occurs. 2. The transfer of MGRs is monitored and occurs under a Material Transfer Agreement (MTA) the terms of which are defined by both recipient and provider. MTA is a generic term that covers very short shipment document, simple standard delivery notice, standard invoice containing minimal standard requirements, or more detailed specific contract including tailor-made mutually agreed terms. According to the use and intended distribution of the MGRs, mutually agreed terms can be short or very detailed.	Belgian Coordinated Collection of Micro-organisms http://www.belspo.be/bccm/mosaicc Available in English

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact
Ethical Biotrade Standard Original Standard developed 2007 (No longer in use). Revision 2012, in line with ISEAL requirements. Current Version of Standard is STD01 Ethical Biotrade Standard 2012-04-11	Union for Ethical Biotrade (UEBT)	Users: Members of UEBT Sector: Bio-trade, i.e. natural ingredients in the food, cosmetics and pharmaceutical sectors	Standard	UEBT Trading Members use the Ethical BioTrade Standard to shape their biodiversity sourcing practices. They develop biodiversity management systems that further the implementation of the Ethical BioTrade standard in their own operations as well as throughout their supply chains. Trading Members prepare work-plans and report annually on their implementation. This commitment of Trading Members is externally verified with periodic audits of the biodiversity management systems and their effective implementation in supply chains. The Ethical BioTrade Standard applies to all natural ingredients of a company's portfolio. It provides the basis for the UEBT Membership Conditions and Obligations. Note that the Standard was revised in 2012. One reason for the revision was to take into account the Nagoya Protocol, however there were also other drivers for review. The revision took into account user experience and involved a consultation process as described in the report of the revision process: http://www.ethicalbiotrade.org/news/wp-content/uploads/Final-Report-on-public-consultation-phases-of-UEBT-Standard_2012-04-11.pdf. Changes made in light of the Nagoya Protocol in particular include insertion of a direct reference to the Nagoya Protocol in the description of relevant national and international legislation, and adjustments to Principle 3 on fair and equitable benefit sharing to address access to biodiversity and associated traditional knowledge such that even in the absence of any legislation or regulations to that effect that access must be based on prior informed consent and on mutually agreed terms, and with sharing of benefits derived from the use of biodiversity and associated traditional knowledge.	• Based on and seeks to advance CBD objectives. • Addresses social, ecological and economic aspects of biodiversity. • Principle 3: - addresses fair and equitable benefit sharing, which is required for all operations and supply chains involving benefit sharing. - includes requirements on how companies engage with other actors, including on transparency and inclusiveness. - includes requirements linked to fair trade practices, including equitable prices and contributions to local development. - includes requirements linked to compliance with ABS rules and regulations. - includes requirements linked to compliance with ABS principles in biodiversity-based R&D, including prior informed consent, mutually agreed terms, benefit sharing and adequate patent practices. • Principle 5 addresses legal compliance and specifically mentions the Nagoya Protocol. • Principle 6 addresses the rights of actors and has specific requirements linked to the rights of indigenous and local communities.	Union for Ethical Biotrade http://www.ethicalbiotrade.org/resources/index.html Available in English, Spanish, Portuguese, French

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact
Swiss Academy of Science Access and Benefit-sharing – Good Practice for academic research on genetic resources Partially updated 2012 to insert content on the Nagoya Protocol	Swiss Academy of Sciences	Users: Academic community Sector: Academic research	Good practice manual	The good practice manual aims to inform the academic community about the system governing access to genetic resources and the sharing of benefits arising from their use, as established by the Convention on Biological Diversity, and to explain the steps that must be taken when accessing genetic resources for research purposes. In scope, it focuses on Access and Benefit Sharing in the context of academic research. It includes information on the following topics: • Introduction • The Nagoya Protocol • Basics • Case Studies • Guidance on How to Proceed • Checklists (Prior Informed Consent, Mutually Agreed Terms, Benefits Arising from Academic Research) • Glossary, Abbreviations, Sources, Contacts and Support	• The good practice manual accompanies the Swiss Academy of Sciences (SCNAT) Model Contract.	Swiss Academy of Sciences http://abs.scnat.ch/downloads/index.php Available in English, French, Spanish

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact
ABS Management Tool (ABS-MT) - Developed 2007 - Revised version published 2012 in line with Nagoya Protocol	Stratos Inc with Geoff Burton and Jorge Cabrera with support from Swiss State Secretariat for Economic Affairs	Users: Users and providers of genetic resources (companies, researchers, indigenous and local communities, governments) Sector: Cross-sectoral	Best practice standard/handbook	Purpose is to assist the users and providers of genetic resources to comply with the ABS requirements under the Convention on Biological Diversity, including the Bonn Guidelines and the Nagoya Protocol. Structured in two volumes: Volume I - Background Information. - ABS Best practice standards (Access, benefit sharing, compliance, traditional knowledge, conservation and sustainable use, technology and knowledge transfer). - Guidance to governments on the Nagoya Protocol. - Management processes guidance on implementation. - Nagoya Protocol Provisions and national implementation. Volume II - Handbook for Implementing Genetic Resource Access and Benefit Sharing Activities.	• The updated ABS-MT of May 2012 was thoroughly revised to reflect the Nagoya Protocol. It introduces the objectives of the Protocol and includes a new section providing guidance to the Parties to the Convention on Biological Diversity to prepare for the introduction and further implementation of the Nagoya Protocol. • The revision incorporates an article-by-article guide to describe the relationship between the provisions of the Protocol and the relevant section of the ABS-MT. For each provision of the Protocol, it identifies national level actions required, and considers particular obligations for users and providers respectively. • The ABS-MT includes a generic Material Transfer Agreement, based on the requirements of the Bonn Guidelines.	Swiss State Secretariat for Economic Affairs http://www.sib.admin.ch/en/nagoya-protocol/abs-management-tool/index.html Available in English, French, Spanish

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact
Guidelines for International Federation of Pharmaceutical Manufacturers and Association (IFPMA) Members on Access to Genetic Resources and Equitable Sharing of Benefits Arising out of their Utilization - Developed 2006 - Revised 2011 in light of Nagoya Protocol	International Federation of Pharmaceutical Manufacturers and Associations	Users: IFPMA members, which includes leading international companies as well as national and regional industry pharmaceutical associations in both developing and developed countries. Sector: Pharmaceuticals	Guidelines	The IFPMA guidelines identify industry best practice to support IFMPA members to undertake their activities in a way that supports implementation of the Convention and Nagoya Protocol. In scope, the guidelines cover genetic resources. The best practice focuses on resources found *in situ*, however guidelines do not exclude *ex situ* resources. The guidelines have a succinct 2 page structure that includes: • Preamble. • Statement of Objective. • Industry Best Practices. • Enabling Steps by Government.	• Lists best practices to be followed by companies engaging in the acquisition and use of genetic resources. • Best practices identified are: 1. To obtain PIC for the acquisition and use of genetic resources controlled by a country/indigenous people and accessed by the company in accordance with local law. 2. In obtaining PIC, to disclose the intended nature and field of use of the genetic resources. 3. To comply with clear, effective and proportionate domestic regulations implemented by the provider countries. For that purpose, to gain necessary approval from the competent authority to remove materials found *in situ*, based on formal benefit-sharing agreements reflecting the mutually agreed terms on the use of the genetic resources obtained through that removal. These agreements may contain conditions on permissible uses of the genetic resources, transfer of the genetic resources to third parties, and appropriate technical assistance and technology transfer. 4. To avoid taking actions, in the course of use or commercialization of genetic resources obtained as specified under these commitments that impede the traditional use of such genetic resources. 5. To agree that any disputes as to compliance with the clauses contained in formal contractual benefit-sharing agreements are dealt with through arbitration under international procedures or as otherwise agreeable between the parties. • The Guidelines recommend enabling steps by government including to enact national legislation, provide legal certainty in the ways specified in the guidelines, consider establishing databases for the recording of the existence of genetic resources and its uses, undertake to enter into good faith negotiations as to the terms of access and benefit sharing contracts with commercial entities, and agree to dispute resolution approach as recommended for industry parties.	International Federation of Pharmaceutical Manufacturers and Associations www.ifpma.org Available in English

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact

Supplementary Instructions for Funding Proposals Concerning Research Projects within the Scope of the Convention on Biological Diversity (CBD)
 	
Revised such that adherence to guidelines a prerequisite for DFG funding since 2008.
	ABS-Working Group of the Deutsche Forschungsgemeinschaft (DFG)	Users: Researchers whose research is funded by the DFG
		
		Sector: Academic research
			Research Guidelines	The guidelines aim to enable scientists to comply with the principles of the CBD when designing research projects, in order to avoid problems later on during implementation, as well as to promote transparency and trust.
				
				• The Guidelines provides background information, including identifying the type of research in which the CBD becomes relevant, alongside main principles. Also sets out detailed steps for researchers to follow at each step of the research process. They are structured around the following topics:
				
				  • Introduction
				  • Checklist for the ABS System under the CBD
				  • Background
				  • Main Principles for Basic Research under the CBD (Summary)
				  • Main Steps for Access to Genetic Resources
				  • Proposal, Supporting Documents
				  • Annex I: Use of Terms
				  • Annex II: Important Links
					• The Guidelines are based on the Bonn Guidelines – they pertain to all genetic resources and related traditional knowledge, innovations and practices subject to the CBD as well as any benefits derived from the research. Note that DFG only funds non-commercial research projects.
					
					• Proposed grantees are expected to demonstrate that they have made themselves familiar with the guidelines, and to describe steps taken already including the identification of relevant competent authorities in the source country, how the access procedure works in the source country, and how they rate their chances of success (in gaining access). Researchers are encouraged to establish local collaborations and to engage in sharing benefits since the start of activities.
					
					• Note that researchers are advised to use boilerplate/model contracts where possible, and to consult authorities in the source country to see whether such boilerplate clauses are in existence.
						Deutsche Forschungsgemeinschaft
						
						www.dfg.de
						
						Available in English and German

Title/Year	Developer	Users & Sector	Type	Purpose, Scope and Structure	Key Features	Contact
International Society of Ethnobiology (ISE): Code of Ethics - Developed 1998 - Revised 2006 - Further additions in 2008 (Executive Summary/Glossary of Terms)	International Society of Ethnobiology	Users: ISE Members. All Members of the ISE are bound in good faith to abide by the Code of Ethics as a condition of membership. Sector: Professional societies/organizations	Code of Ethics	The ISE Code of Ethics aims to guide the professional behavior of members to optimize positive outcomes and reduce as much as possible the adverse effects of research and related activities of ethnobiologists that can disrupt or disenfranchise indigenous peoples, traditional societies and local communities from their customary and chosen lifestyles. The Code of Ethics is comprised of five parts: (i) Preamble, (ii) Purpose, (iii) Principles, (iv) Practical Guidelines, and (v) Glossary of Terms. The Code of Ethics reflects the vision of the ISE as stated in Article 2.0 of the ISE Constitution.	• The Code of Ethics is based on the concept of mindfulness – a continual willingness to evaluate one's own understandings, actions, and responsibilities to others. • The Code acknowledges that biological and cultural harms have resulted from research undertaken without the consent of indigenous peoples. It affirms the commitment of the ISE to work collaboratively, in ways that: support community-driven development of indigenous peoples' cultures and languages; acknowledge indigenous cultural and intellectual property rights; protect the inextricable linkages between cultural, linguistic and biological diversity; and, contribute to positive, beneficial and harmonious relationships in the field of ethnobiology. • The code provides a set of principles and practices to govern the conduct of all Members of the ISE who are involved in or proposing to be involved in research in all its forms, especially that concerning collation and use of traditional knowledge or collections of flora, fauna, or any other element of biocultural heritage found on community lands or territories. They include principles on the topics of: • Prior Rights and Responsibilities. • Self-Determination. • Inalienability. • Traditional Guardianship. • Active Participation. • Full Disclosure. • Educated Prior Informed Consent. • Confidentiality. • Respect. • Active Protection. • Precaution. • Reciprocity. • Mutual Benefit and Equitable Sharing.	International Society of Ethnobiology http://ethnobiology.net/code-of-ethics/ Available in English, French, Italian, Spanish, Chinese, Bahasa Indonesia

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Guidelines for BIO Members Engaging in Bioprospecting Developed 2005	Biotechnology Industry Organization	Users: Members of the Biotechnology Industry Organization Sector: Biotechnology	Voluntary Guidelines	Developed to provide guidance to members engaged in bio-prospecting. In scope, the Guidelines do not apply to human materials, genetic resources that are not regulated genetic resources as defined in the guidelines, genetic resources maintained in an *ex situ* collection where collected prior to date CBD took effect in the Contracting Party from which the resources were collected, genetic resources made available to the public on an unrestricted basis either on commercial or non-commercial terms or publicly available information. Structured as follows: • Cover Memo. • Preamble. • Definitions; Scope of the Guidelines. • Conduct of Bioprospecting. • Prior Informed Consent. • Benefit Sharing and Sharing of Research Results, Intellectual Property Procurement and Related Provisions. • Measures to Protect Interests and Rights of Indigenous or Local Communities. • Conservation and Sustainable Use of Biological Diversity. • Compliance with Terms of a Bioprospecting Agreement and the Guidelines.	• The guidelines aim to assist members to understand appropriate principles and conduct, particularly where there are no national or other regulations, and noting that members should make themselves acquainted with and follow relevant regulations where they do exist. They take the form of a set of general principles and practices that BIO believes are appropriate to follow when an entity engages in bioprospecting activities. • Guidelines are accompanied by a model material transfer agreement. • Compliance with the guidelines is not compulsory or enforceable.	Biotechnology Industry Organization http://test.bio.org/intl/ip/international/ Available in English

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International Plant Exchange Network (IPEN) Code of Conduct for botanic gardens governing the acquisition, maintenance and supply of living plant material Developed 2001	IPEN was developed by the Verband Botanischer Gärten (an association of gardens in German speaking countries) and since taken over by the European Consortium of Botanic Gardens.	Users: IPEN Member Botanic Gardens Sector: Botanic gardens	Code of conduct	The Code aims to facilitate acquisition and exchange of living plant material consistent with the CBD. In scope, it covers the acquisition and exchange of living plant material within the botanic gardens community. It covers only noncommercial exchange of plant material between botanic gardens. In the case of commercial purposes, the principles on access to genetic resources and benefit-sharing of botanic gardens consortia may apply.	• Covers acquisition, maintenance and supply of living plant material by the gardens as well as benefit-sharing. • Botanic gardens that want to join the network must adopt the IPEN Code of Conduct and use its common documents for plant material transfer. • Accompanied by Standard Material Transfer Agreement for exchanges with institutions not within the IPEN network. • Main principles of the IPEN Code of Conduct are the following (reproduced from BGCI description): • The garden shall only accept plant material which has been acquired in accordance with the provisions of the CBD. • When acquiring plant material from in-situ conditions, the garden shall obtain Prior Informed Consent of the country of origin and any other relevant permits. • The garden will only distribute plant material within IPEN that has been obtained without any restrictions in respect of its use, especially regarding its supply to third parties. • IPEN distinguishes between two types of documentation: The first, so-called 'maximum documentation' has to be kept by the first garden introducing an accession (plant material) into IPEN. In this documentation sheet, all relevant information about the plant accession are recorded, such as taxonomic data, type of material, source, permits related to the acquisition and any conditions or terms of the country of origin. This first garden also has to provide the accession with the "IPEN number", which will follow the accession and all its descendants through all exchanges within IPEN as the so-called 'minimum documentation'. • Plant material distributed through IPEN is intended for use in display, education, raising public awareness, scientific research and conservation activities. In case of intended commercial use and other uses not covered by the IPEN Code of Conduct, the participating garden commits itself to obtain a new Prior Informed Consent of the country of origin. • In the spirit of implementing the objectives of the CBD, the gardens shall do their best to share benefits resulting from the use of plant material with the country of origin. Since the garden's use of the material covered by this exchange network is non-commercial, such Benefit-Sharing will be non-monetary.	Information on IPEN available through the BGCI or any member botanic gardens. http://www.botgart.uni-bonn.de/ipen/conduct.pdf Available in English

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Principles on Access to Genetic Resources and Benefit-sharing Developed 2001	Consortia of 28 botanic gardens and herbaria from 21 countries	User: Botanic Gardens Sector: Botanic gardens Botanic Gardens	Principles, open for endorsement by Botanic Gardens	The Principles provide a framework to help gardens and herbaria develop policies and procedures on access and benefit-sharing consistent with the CBD and laws related to access to genetic resources and associated traditional knowledge and benefit-sharing. In scope, the principles cover genetic resources whether acquired from *in situ* or *ex situ* conditions. The Principles focus on the acquisition of genetic resources, use and supply of genetic resources, use of written agreements, benefit sharing, record keeping and policy preparation. The Principles are part of a common approach on access and benefit sharing that includes: • A set of voluntary principles on access to genetic resources and benefit-sharing for participating institutions; • Common policy guidelines; • Explanatory text.	The Principles suggest that Botanic Gardens: • In order to obtain prior informed consent, provide a full explanation of how the genetic resources will be acquired and used. • When acquiring genetic resources from *in situ* conditions, obtain prior informed consent from the government of the country of origin and any other relevant stakeholders, according to applicable law and best practice. • When acquiring genetic resources from *ex situ* collections (such as botanic gardens), obtain prior informed consent from the body governing the *ex situ* collection and any additional consents required by that body. • When acquiring genetic resources from *ex situ* sources, whether from *ex situ* collections, commercial sources or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure that the genetic resources were acquired in accordance with applicable law and best practice. • Use and supply genetic resources and their derivatives on terms and conditions consistent with those under which they were acquired. • Prepare a transparent policy on the commercialisation (including plant sales) of genetic resources acquired before and since the CBD entered into force and their derivatives, whether by the Participating Institution or a recipient third party. • Acquire genetic resources and supply genetic resources and derivatives using written agreements, where required by applicable law and best practice, setting out the terms and conditions under which the genetic resources may be acquired, used and supplied and resulting benefits shared. • Share fairly and equitably with the country of origin and other stakeholders, the benefits arising from the use of genetic resources and their derivatives including non-monetary, and, in the case of commercialisation, also monetary benefits. • Share benefits arising from the use of genetic resources acquired prior to the entry into force of the CBD, as far as possible, in the same manner as for those acquired thereafter. • Record the terms and conditions under which genetic resources are acquired. • Track the use in the Participating Institution and benefits arising	Information on principles available from: Botanic Gardens Conservation International www.bgci.org Royal Botanic Gardens, Kew www.kew.org/conservation/ Available in English, English, Chinese, French, German, Portuguese, Russian, Spanish

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					from that use. • Record supply to third parties, including the terms and conditions of supply. • Prepare, adopt and communicate an institutional policy setting out how the Participating Institution will implement the Principles.	
Society of Economic Botany (SEB): Guidelines of Professional Ethics Adopted in 1995	Society for Economic Botany	Users: Members of the Society of Economic Botany Sector: Professional societies/organizations	Guidelines	Guidelines aim to provide member organizations with guidance as to what constitutes professional behavior for members of the organization. They are general in nature, taking the form of principles to which Members aim to adhere. The guidelines take the form of a one page statement structured around responsibilities to the public, those studied, host governments and institutions, the profession and those that support their research.	• Responsibilities to the public include that members should: use their knowledge, skills, and training to enhance the well-being of human kind; refuse to work professionally on any research that will result in harm being done to anyone; strive to maintain professional competence and not offer advice on subjects on which they are uninformed; and not engage in nor allow the dissemination of information that is false, misleading, or exaggerated. • Responsibilities to those studied include that members should: communicate clearly and honestly to all with whom they work the objectives and possible consequences of their research; make any commercial intent explicit to those studied and disclose what the commercial results might reasonably be expected to be; comply with all rules and limitations that local people, their communities, or their institutions place on the research, including confidentiality; offer to supply reports or materials resulting from the research; arrange for equitable economic compensation for those who have provided information and/or plants where it involves a commercial gain and do all in their power to ensure that compensation is paid. • Responsibilities to host governments and other host institutions include complying with all regulations requesting disclosure of project objectives, sponsorship and methods. • Responsibilities of members to the profession in general include that they must: maintain integrity and professional behavior in the field so as not to jeopardize future research by others; not present as their own the work of others; and not allow their materials to be used for fraudulent or harmful purposes. • The responsibility of members to those who support their research is to undertake research only in line with the ethical guidelines.	Society for Economic Botany http://cms.gogrid.econbot.org/ Available in English

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