

REPUBLIQUE DU CAMEROUN
Paix - Travail - Patrie

Ministry of Environment,
Protection of Nature and
Sustainable Development



REPUBLIC OF CAMEROON
Peace - Work - Fatherland

Ministère de l'Environnement,
de la Protection de la Nature
et du Développement Durable



Access to Cameroon Genetic Resources, their Derivatives and Associated Traditional Knowledge

Providers' guide on genetic resources and associated traditional knowledge

Yaounde, June 2023



MINEPDED
Ministère de l'Environnement, de la
Protection de la Nature et du
Développement Durable



giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



Table of contents

| | |
|--|----|
| Preface | 5 |
| Definitions | 7 |
| 1. Introduction..... | 11 |
| 2. Why this Guide? | 12 |
| 3. To whom is this Guide intended?..... | 12 |
| 4. Who is a provider?..... | 13 |
| 5. Developing Biocultural Community Protocol (BCP) - a key prerequisite for preparing communities for ABS contract negotiations..... | 14 |
| 6. Negotiating the “best” Mutually Agreed Terms (MAT): the main challenge facing providers..... | 17 |
| 7. What are the basic conditions for successful negotiation?..... | 18 |
| 8. Who should request the signing of the Mutually Agreed Terms (MAT) ? | 22 |
| 9. What are the various stages to be followed until a MAT is signed? ... | 23 |
| Mobilization, information, awareness-raising and training..... | 23 |
| Organisation and structuring of the legal entity | 24 |
| 10. What are the key points in negotiating a MAT? | 26 |
| Research or commercialisation ? | 27 |
| Benefit-sharing | 27 |
| Sustainable resource management..... | 29 |
| Monitoring and evaluation mechanisms | 30 |
| Biodiversity funding | 30 |
| Annex MAT Template..... | 32 |



Preface

Cameroon's richness in terms of soil and subsoil resources, variety of floral and faunal species, climatic and cultural diversity, cannot be over-emphasized. Thus, earning Cameroon the nickname of *Africa in miniature*. This is evident considering its wide biodiversity, which includes thousands of species of plants, birds, mammals and fish, as well as a large number of reptiles, amphibians and other micro-organisms that have not yet been quantified.

These valuable natural resources are not always economic benefits. This is because these resources are often used as "raw materials", or with levels of processing that are far too embryonic to generate real added value or a significant impact on local development. However, around the ecosystems, a significant proportion of indigenous and local communities live in contact with their environment. This has enabled them to develop extensive knowledge of these resources and their derivatives.

This raises the question of the necessary correlation between the richness of Cameroon's biological and genetic resources and the development of an economy around this potential. An introductory response has been initiated since Cameroon signed several Multilateral Environmental Agreements (MEAs), including the Convention on Biological Diversity (CBD) and its related Protocols, notably the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS).

Many actions have been taken since then to reverse the trend and attract more investors in local genetic resources. However, this will not be as effective as it should be if, at the other end of the chain, the providers of these resources are

not sufficiently equipped to make the most of the Mutually Agreed Terms (MAT) negotiations.

This **Providers' Guide** aims to provide the various stakeholders, from state entities to local communities and regional and local authorities, tools to understand and facilitate their role within the implementation of the ABS process.

In addition to describing the different operations step by step, the document identifies the conditions for negotiations, the prerequisites, and the various actors who can take part and their roles. The Guide focusses on the means of support and resource persons who can assist the process, but also at the nature of the benefits to be gained. The development of a Biocultural Community Protocol (BCP), which is a key prerequisite for preparing communities for ABS negotiations, is also given a prominent place.

This Guide, which is now available, is the result of a long process. My special thanks go to all those who have contributed to the development of this valuable tool, including the National ABS Focal Point and her team, the National ABS Committee and the GIZ BioInnovation project, whose technical and financial support made this guide possible. I hope that everyone will make judicious use.



**The Minister of Environment,
Protection of Nature and
Sustainable Development**

Le Ministre
The Minister

HELE Pierre

Definitions

Access :

possibility for a person or group to acquire, own and master knowledge. It entails collection and acquisition including any transaction on genetic resources, their derivatives or associated traditional knowledge by the user.

Administrative act:

writing or service of an administration or institution in the form of a law, ordinance, decree, decision, convention, treaty, agreement, instruction, circular, communiqué, attestation, certificate, memorandum, report, authorization, approval, minutes;

ABS:

access and Fair and Equitable Sharing of Benefits arising out of the utilization of genetic resources;

Competent National Authority (CNA):

person vested with State authority, responsible for issuing the Prior Informed Consent and the ABS permit;

Benefit:

monetary or non-monetary gain derived from the utilization of genetic resources, their derivatives and associated traditional knowledge;

CH-ABS (Clearing House-ABS):

platform for exchanging information on access and fair and equitable sharing of benefits arising from the utilization of genetic resources;

Mutually Agreed Terms (MAT):

contract between a provider and a user that generally states that the user and the provider of a resource must agree on the terms and conditions governing its use as well as the terms and conditions for sharing the benefits that may arise.

Associated traditional knowledge:

dynamic and evolving body of knowledge, developed within a traditional context, collectively preserved and passed on from one generation to another, including know-how, techniques, innovations, practices and learning, that subsists in biological and genetic resources;

Prior Informed Consent (PIC):

authorization issued by the National Competent Authority granting an applicant access to a genetic resource and/or associated traditional knowledge under specific conditions.

Convention on Biological Diversity (CBD):

international treaty adopted at the Earth Summit in Rio de Janeiro in 1992, for: 1) the conservation of biodiversity; 2) the sustainable use of its components; 3) the fair and equitable sharing of benefits.

National Focal Point:

natural person designated to provide information on access to genetic resources and associated traditional knowledge, and on the national competent authority, indigenous and local populations and relevant stakeholders;

Applicant:

natural or legal person seeking access to a genetic resource, its derivatives and/or associated traditional knowledge for scientific or commercial use.

Derivative:

any naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

Holder of associated traditional knowledge:

any natural or legal person belonging to an indigenous population or local community, or to any community in control of the said associated traditional knowledge.

Customary law:

set of customs, practices and beliefs that are accepted as binding rules of conduct in indigenous and local communities.

Intellectual property rights:

set of legal rules aimed at protecting the creation of intellectual works, including those relating to : literary, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human activity, scientific discoveries, industrial designs and models, trademarks, service marks and commercial or trade names, protection against unfair competition, and all other rights relating to intellectual activity in the industrial, scientific, literary and artistic fields;

Provider:

the State, as holder of genetic resources, or indigenous and local communities, as primary custodians and providers of biological resources and holders of traditional knowledge associated with genetic resources;

Genetic material:

any material of plant, animal, microbial or other origin containing functional units of heredity.

Breeder:

any person who has discovered and developed a genetic variety. The term does not include a person who has redeveloped or rediscovered a variety

whose existence is publicly known or is the subject of ordinary knowledge.

Sharing:

division or distribution of monetary or non-monetary benefits among the contracting parties to Mutually Agreed Terms (MAT).

ABS Permit:

legal document attesting that conditions of access to a genetic resource, its derivatives, and/or its associated traditional knowledge, have complied with the procedure for obtaining Prior Informed Consent and establishing Mutually Agreed Terms.

Biocultural community protocol:

a participatory toolkit which elaborates the lifestyles, values, procedures and priorities of indigenous and local communities living in the same territory. It establishes rights and responsibilities under customary, State and international law as the basis for interacting with external actors.

Biological resource:

any component of the biological diversity of plant, animal or microbial origin that has a direct, indirect or potential use for humans.

Genetic resource:

any genetic material of actual or potential value.

Phytogenetic resource:

any genetic material of plant origin with actual or potential value for food and agriculture.

Private sector:

sector of activity of the economy that does not depend on the Government, at least, where the Government is not an employer and only intervenes as a legal framework and legal referent. They are mainly private companies run by individuals with a focus on making only profit.

Transfer of associated traditional knowledge:

action/act by which the provider, through Mutually Agreed Terms, makes associated traditional knowledge available to the user.

Transfer of genetic resources:

action/act by which the provider, through an agreement, makes available to the user the genetic resource, its derivatives and/or the biological resource.

User:

any natural or legal person, with an ABS permit, who uses genetic resources, their derivatives, and/or associated traditional knowledge.

Utilization of genetic resources and associated traditional knowledge:

process of exploring the properties of plants, animals and micro-organisms and their associated traditional

knowledge and derivatives in order to increase understanding, information and scientific knowledge, or to develop commercial products.

Sustainable use of biodiversity:

use of components of biological diversity in a way and at a rate that does not lead to their long-term decline, thereby maintaining their potential to meet the needs and desiderata of today and future generations.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

Convention on international trade in endangered species of wild fauna and flora. It aims at ensuring that international trade in wild animal and plant specimens does not threaten the survival of these species.



1. Introduction

The Convention on Biological Diversity (CBD) which was adopted on 5 June 1992 at the Earth Summit in Rio de Janeiro. It is made up of three (3) pillars, namely : (i) conservation of biodiversity, (ii) sustainable use of its components, and (iii) access and fair and equitable sharing of the utilization of genetic resources (ABS). The 3rd pillar on ABS is the key pillar both for countries and for local and decentralized entities that provide resources.

To activate the 3rd pillar, the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (ABS) was adopted in 2010 in Nagoya and entered into force in 2014.

Cameroon, which is endowed with a rich biodiversity, is strongly committed to the implementation of the Nagoya Protocol at the national level as a framework to strengthen the conservation and sustainable use of its biological diversity. Thus, the country acceded to the Nagoya Protocol on ABS in 2014, ratified it in 2017 and enacted Law No.2021/014 of 09 July 2021 to govern access to genetic resources, their derivatives, traditional knowledge associated with genetic resources and the fair and equitable

sharing of benefits arising from their utilization (ABS Law).

Under the ABS law, no one may use genetic resources and their derivatives of national origin belonging to the State for scientific, commercial or cultural purposes without having first obtained the Prior Informed Consent (PIC) from the Competent National Authority (CNA).

Once PIC has been granted, the applicant/user must approach the “primary holders” of the resource to negotiate the signing of Mutually Agreed Terms (MAT). Upon presentation of PIC and MAT, the National Competent Authority shall issue to the user an ABS permit .

Negotiation of Mutually Agreed Terms is one of the main interests for primary entities “providing” the resource.

This Providers’ Guide focuses on the various stages of MAT negotiation and provides some useful guidelines to assist providers in the negotiations. It also aims to give potential users of genetic resources and associated traditional knowledge greater visibility on the efforts to be made and the procedure to follow with their providers.

2. Why this Guide?

This Guide is a toolkit to assist in the negotiation of Mutually Agreed Terms in the ABS process. It is intended to provide advice and guidance to providers. This Guide emanates from the ABS legislative and regulatory framework.

It capitalizes on the experiences and lessons learned from the first MAT negotiation initiatives supported under the *Deutsche Gesellschaft für International Zusammenarbeit (GIZ) GmbH BioInnovation Africa* project between 2019 and 2022.

The Guide also capitalizes on other existing tools such as the ABS Management Tool (ABS-MT), which is a best practice standard and guide

for implementing genetic resource access and benefit-sharing activities developed by the International Institute for Sustainable Development (IISD) and the Swiss State Secretariat for Economic Affairs (SECO). It also takes into account the ABS Implementation Companion Guide developed in 2017 with support from UNDP, the African Union Guidelines for the Implementation of the ABS, the Capitalization Document on Lessons Learned from Experiences in Implementing Community Protocols in Africa, the Capacity-Building Initiative for ABS and Natural Justice, the Training Material on ABS Contracts developed by the BIA project with support from GeoMedia GmbH.

3. To whom is this Guide intended?

This Guide is a scoping, information, awareness-raising and orientation toolkit intended primarily for use by providers of biological and genetic resources, and associated traditional knowledge. It also outlines the

important and practical steps to be followed in ABS transactions.

As such, it is equally a capacity-building toolkit for State and non-State actors involved in ABS transactions.

4. Who is a provider?

Pursuant to the ABS Law, the provider shall be the State, as holder of genetic resources, or **indigenous and local communities**, as holders of traditional knowledge associated with genetic resources.

In some cases, after opinion from the National ABS Committee and in agreement with the National Competent Authority, providers may also be:

- **Regional and Local Authorities (Council or Region)** which, in conjunction with indigenous and local communities, provide genetic resources of their traditional area within the council or region. They are, in this case, identified as the most suitable entities to represent several communities for resources collected or originating from the entire territory of a council or region;
- **Institutions with legal powers to manage natural resources** in situ (a parks and wildlife authority) or ex situ (a museum, botanical garden, gene bank or microbial collection);
- **Public and private research institutions**, including universities, which may provide genetic resources or information that they have developed, cultivated or engineered;

➤ **The Government, through the CNA** may in some cases directly assume its function as a 'provider' entity, particularly for access to genetic information in the public database by foreign users.

➔ In all circumstances, the provider of genetic resources and/or associated traditional knowledge must be the one with the recognized legal authority to sign a contract.

➔ Individuals or researchers should not act as natural persons, but as authorized representatives on behalf of their institution.

➔ **The case of commercial intermediaries.**

ABS Law does not recognize commercial intermediaries as resource providers. Although these actors are a key link in the development of genetic resource value chains, the Law requires that primary providers (indigenous and local communities) be clearly identified and that the terms be directly negotiated between the provider and the end-user. Commercial intermediaries play only a facilitating role for the end-user and not a role as a front for alienating the rights of primary providers.

5. Developing Biocultural Community Protocol (BCP) - a key prerequisite for preparing communities for ABS contract negotiations

As a prelude to contract negotiations on access and benefit-sharing arising from the utilization of their genetic resources and/or associated traditional knowledge, it is recommended that “provider” communities should develop their Biocultural Community Protocol (BCP).

A biocultural community protocol (BCP) is a framework document that sets out clear conditions for access to genetic resources and associated traditional knowledge for potential users in conjunction with one or more indigenous and local communities (ILCs) concerned.

Within the framework of ABS, various communities and organizations use the terms “community protocols”, “biocultural community protocols” and “biocultural protocols” interchangeably.

The biocultural community protocol is developed through a participatory process, which is culturally rooted in each community, based on its customary norms, values and laws.

Each community protocol is distinct because of the unique biological and cultural diversity of the communities that develop them. However, they tend to include the following elements:

- *a definition of the community, its organisational structure and representation, and its decision-making processes;*
- *a description of the community’s natural resource management systems, knowledge, innovations, and practices (i.e., in situ conservation and sustainable use: of indigenous flora and fauna), as well as details about these natural resources;*
- *ways of life, including the links between culture, spirituality and customary laws and values;*
- *rights, responsibilities and duties of the community under customary, national and international law;*
- *conditions set by the community for granting access to its lands, resources and knowledge, such as prior informed consent procedures.*

The protocol addresses two challenges, namely:

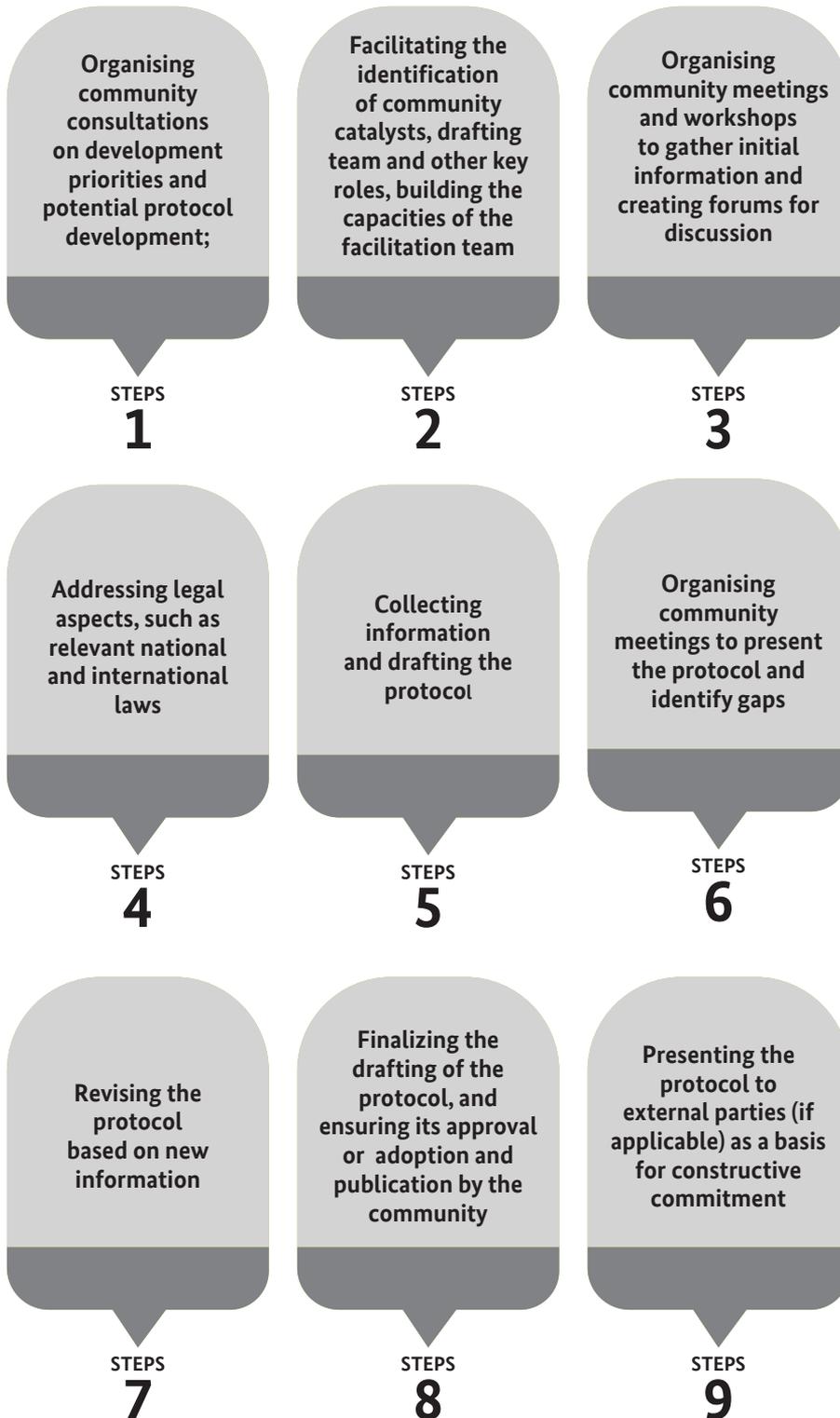
- (i) illegal access to resources, unsustainable collection practices, and
- (ii) preparedness for future negotiations on access and benefit-sharing terms.

It also reaffirms community leadership over their territories, resources and knowledge, and builds capacities to ensure better negotiation of benefit-sharing in support to sustainable

local development, conservation and restoration of biodiversity.

Owing to these considerations, each community protocol development process shall begin with open discussions within the community. (Based on lessons learned from the experiences of implementing community protocols in Africa conducted with the support of the ABS Capacity Development Initiative and Natural Justice, it shall comprise the following stages:





6. Negotiating the “best” Mutually Agreed Terms (MAT): the main challenge facing providers

Article 5(2) of the Nagoya Protocol requires that measures be taken, as appropriate, to ensure that benefits are shared with relevant indigenous and local communities based on MAT. Therefore, benefit sharing must be based on MAT.

The ABS Law enables the provider of genetic resources, their derivatives and associated traditional knowledge to negotiate conditions for access and sharing of benefits arising from their utilization.

Thus, negotiating more equitable and cost-effective Mutually Agreed Terms (MAT) is the main challenge faced by providers.



Providers should never transfer biological or genetic resources, including derivatives and/or associated traditional knowledge, to users without establishing MAT.



The following basic provisions should be included in the MAT for non-commercial purposes, that is:

- i. *Enabling the user to negotiate new MAT contracts for commercial*

purposes to ensure an equitable sharing of benefits;;

- ii. *Requiring the applicant to commit to the sustainable use, conservation and restoration of biological diversity;*
- iii. *Agreeing on monetary and non-monetary benefit-sharing measures;*
- iv. *Information sharing and reporting arrangements;*
- v. *Measures to enable traceability of research results for non-commercial purposes during subsequent stages;*
- vi. *Terms of transfer to third parties (including patents, data and information);*
- vii. *Procedures to be followed in the event of a change in the intent/purpose disclosed prior to obtaining genetic resources;*
- viii. *Confidentiality rules;*
- ix. *Dispute settlement, applicable law and jurisdiction, and enforcement provisions;*

7. What are the basic conditions for successful negotiation?

The ABS Management Tool (ABS-MT)'s Best Practice Standard set out by the International Institute for Sustainable Development (IISD) proposes 3 basic conditions for countries to conduct successful MAT negotiations. These include:

- *Willingness to participate in ABS negotiations (understanding of*

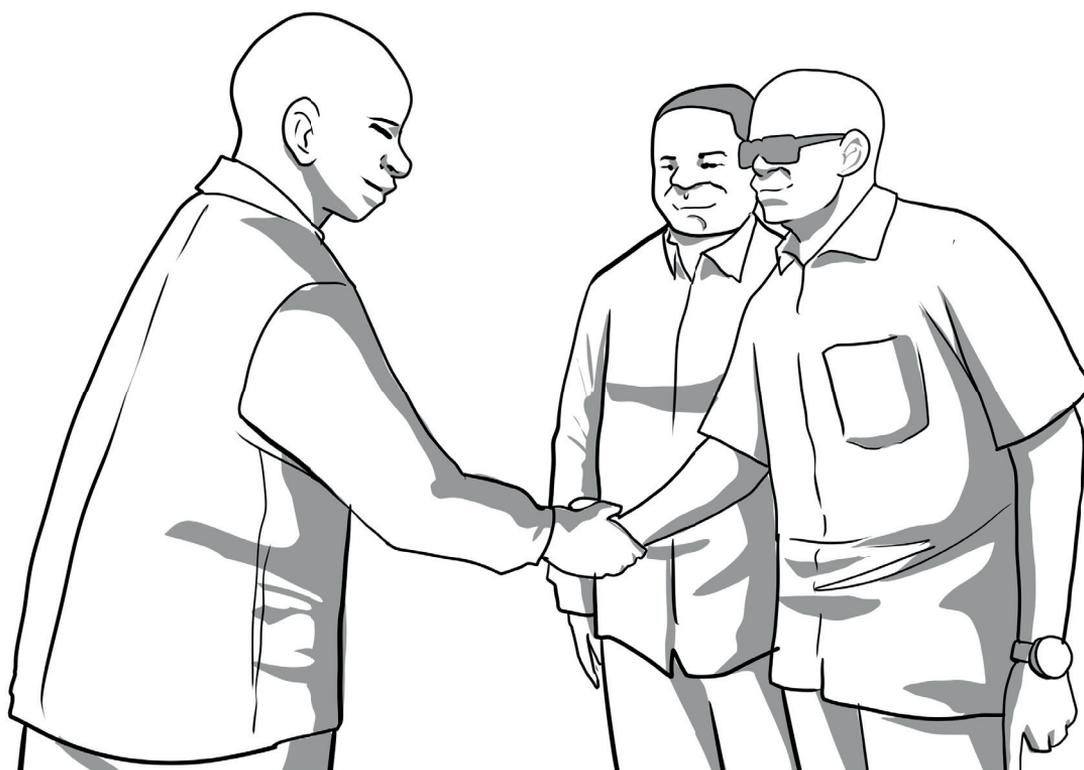
the values of the ABS contract, partners' economic model and negotiation elements);

- *Capacity for negotiating and decision-making;*
- *Minimum legal framework in place.*



| Conditions | Details |
|--|--|
| <p>Willingness to Participate in ABS Negotiations</p> | <ul style="list-style-type: none"> • Both the provider and prospective user of a genetic resource must have the willingness to participate in good faith in ABS negotiations. • If there is a lack of trust between potential parties involved in an ABS negotiation, the possibility of reaching a successful agreement that benefits all parties will be reduced. • Relationships should be based on trust, dialogue and mutual benefits. • Negotiations on access, as well as benefit-sharing arrangements, therefore, must be established and implemented in a manner that advances the participation of all relevant stakeholders, allows effective dialogue among these stakeholders and promotes mutual accountability. • Understanding the specificities of the ABS contracts. • Understanding of partners' business model. • Enhancing ownership of negotiated contract clauses. |
| | <p>Lessons learned</p> <ul style="list-style-type: none"> • Local support organizations that are known and accepted by communities can play a crucial role in the awareness-raising process. To this end, communities should be vigilant enough to avoid any sort of conflict of interest if the local organization accompanying the process is funded and supported by the user. |
| | <ul style="list-style-type: none"> • ABS negotiations are complex. For communities, Government officials, and other stakeholders, ABS is an unknown legal and administrative area. • The fear of making mistakes and the risk of responsibility/liability for possible improper activities, limits the willingness of providers to participate in ABS negotiations. • ABS capacity of all stakeholder groups need to be substantially increased. |

| Conditions | Details |
|---|---|
| Capacity for Negotiating and Decision-making | Lessons learned <ul style="list-style-type: none">• It is important to rely on local and traditional leaders to build community buy-in and trust in the development of ABS compliance value chains.• To ensure the capacity-building of all stakeholders involved in the ABS process. It is crucial to develop and disseminate adapted, simple and illustrated awareness-raising and communication tools for communities. Depending on the means and stakes, local providers could request the support from a local expert trained in ABS contracts and negotiations. |



| Conditions | Details |
|--|--|
| <p>Minimum Legal Framework in Place</p> | <p>The ABS Law on access and benefit-sharing from the utilization of genetic resources and associated traditional knowledge has been enacted and its implementing instruments are being adopted.</p> <p>Traditional communities are organized into chiefdoms recognized by an administrative instrument and headed by a chief. Depending on the extent of the territory of influence of chiefdoms and their importance, a distinction is made between 1st, 2nd and 3rd class chiefdoms. These chiefdoms may be the legal entity recognized as providers of the genetic resource and associated traditional knowledge, and to this end, they are engaged in negotiations for the signing of a MAT contract with a user.</p> <p>Law 1990 on freedom of association in Cameroon and Law 1992 relating to cooperatives and Common Initiative Groups also provide a framework for communities to organize themselves as legal entities within the ABS process and, above all, to define and clarify in the basic instruments, the management modalities and governance structure of benefits arising from the utilization of genetic resources and/or associated traditional knowledge.</p> <p>The weak recognition and especially the poor structuring of indigenous peoples as a distinct group are limiting factors that do not facilitate their assertion as an autonomous legal entity in the ABS process.</p> |
| | <p>Lessons learned</p> <ul style="list-style-type: none"> • The form of the legal entity under which the provider (notably local communities) should organise itself, has to be discussed and analysed in a participatory manner in order to agree on the option to be chosen. • It is important to support local and indigenous communities in the development of their community protocols and minimum requirements for negotiating Mutually Agreed Terms (MAT). |

8. Who should request the signing of the Mutually Agreed Terms (MAT)?

It is the applicant of the genetic resource and/or associated traditional knowledge who must, in compliance with the ABS Law, request the signing of a MAT with the community or entity, provider of the resource.

In this regard, the applicant, who has already identified the local

community, shall apply through official correspondence to the Minister in charge of environment, Competent National Authority (CNA), who supervises the negotiations of the MAT with the local community or communities concerned.



9. What are the various stages to be followed until a MAT is signed?

Once a community is requested access to its biological/genetic resources, its derivatives and/or associated traditional knowledge, the following stages are necessary to enable the community to better prepare for negotiations.

These mainly include:

- *the mobilization, information, awareness-raising and training stage;*
- *the organisation and structuring stage of the legal entity (cooperative);*
- *the actual negotiation stage.*

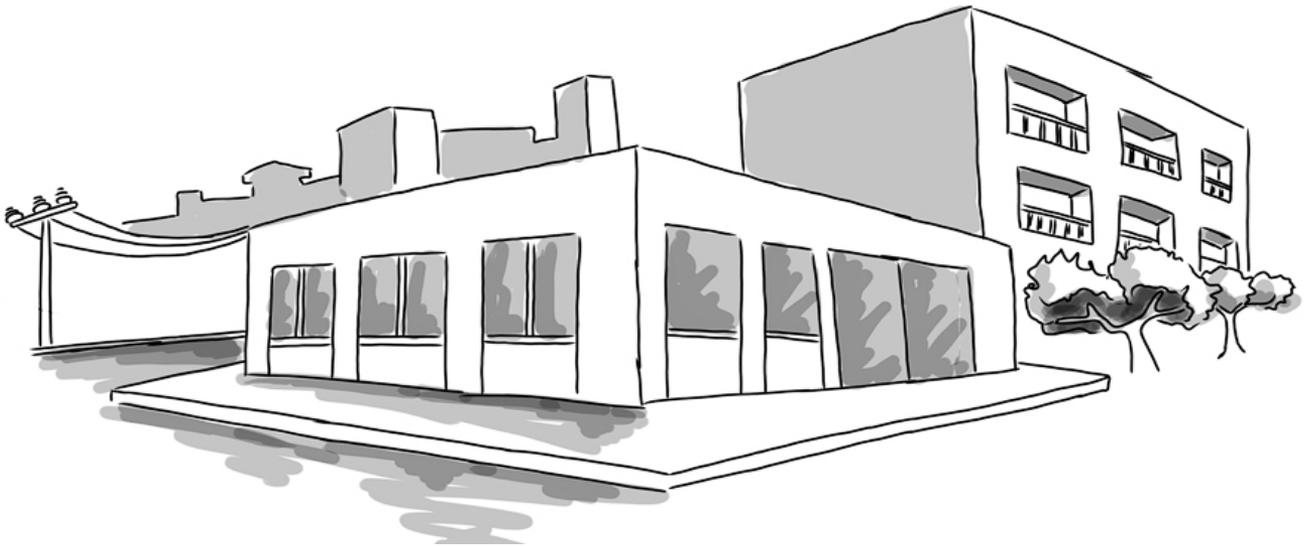
Mobilization, information, awareness-raising and training

This stage is triggered when the community is approached by a user wishing to access genetic resources and/or traditional knowledge or when the community commits to developing its biocultural community protocol.

Awareness-raising and capacity-building campaigns can be conducted by knowledgeable persons of the community, who have been previously trained on the ABS process.

This stage makes it possible to:

- *Inform and mobilise communities on the ABS process and its stakes (benefits, commitments expected from the population, etc.);*
- *Raise awareness, encourage participation and show commitment of community members;*
- *Inform on the various stages to follow.*



Organisation and structuring of the legal entity

Local communities, under the leadership of their traditional chiefs, may be recognised as entities to engage in ABS contract negotiations if this is a unanimously agreed option, or as mentioned in the biocultural community protocol.

In concrete terms, the cooperative is the most suitable governance legal entity for ABS negotiations and transparent management of benefits arising from ABS contracts.



Legal personality is an issue for groups that are not legally

constituted, such as indigenous and local communities.

These groups will need to be recognised as legal entities in order to become parties to a contract. It is impossible to enforce a contract that has been concluded with a person without legal personality.

In all cases, the full participation of indigenous and local communities must be ensured through their own decision-making and management structures, which can be facilitated by the development of biocultural

community protocols (BCPs) to self-regulate and codify the terms of access to biological and genetic resources and associated traditional knowledge.

The governance structure set up at Community level must ensure that it takes into account all the community components by considering gender and minority aspects. In compliance with national gender regulations, the governance structures set up for the negotiation and management of benefits must include **at least 30 percent women, particularly in the management offices.**

 **At the community level, the legal entity in charge of the management of monetary and non-monetary benefits must be placed under the supervision of the territorially competent council to ensure the monitoring of the proper use of the funds in its prerogative of**

guarantor of local development. To this end, the chairperson of the legal entity concerned must draw up an annual report listing the achievements of the revenues from the utilization of genetic resources, their derivatives and/or associated traditional knowledge.

Copies of this report must be sent for information to the municipal council of the municipality concerned, the Divisional Delegate of Environment and the Divisional Controller of Finance territorially competent.

The Competent National Authority (CNA) may, if necessary, convene meetings to evaluate the management of benefits arising from the utilization of genetic resources and their derivatives in conjunction with the Minister of Decentralisation at the level of regional or local authorities



10. What are the key points in negotiating a MAT?

MAT are negotiated by users and providers, in compliance with the terms and conditions of Prior Informed Consent (PIC), which allows owners, managers or custodians of genetic resources to take advantage of the benefits they generate, and facilitates access to the resource concerned to the user.

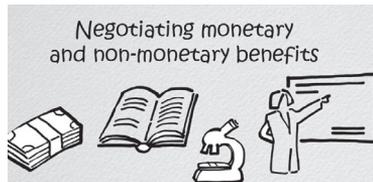
MAT are in fact a legal instrument, and therefore a private law contract binding both parties. It must be a well-

drafted contract and also binding in other jurisdictions, i.e. the jurisdiction of the user or of the utilization of the resource. This implies that the CNA, through its legal services, will guide and support communities.

It is important in the negotiation process to clearly identify key stakeholders as having the established right to grant access to genetic resources or holding associated traditional knowledge.

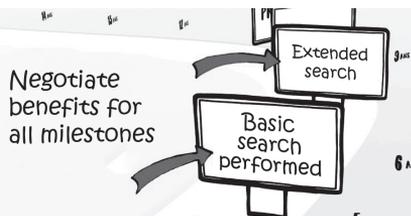


A good ABS contract should:



Negotiating monetary and non-monetary benefits

- Define the biological resource/traditional knowledge
- Specify the conditions of access and utilization
- Agree on benefits (monetary and non-monetary)



Negotiate benefits for all milestones

Basic search performed

Extended search

- Clarify with the provider whether it is a MAT negotiation for the research and development (R&D) phase or a MAT negotiation for the commercialisation phase

The nature and value of a resource change over time



- Take into account that the nature and value of a resource change over time

Research or commercialisation ?

When negotiating, it is important for communities to clarify with the provider whether it is a MAT negotiation for research and development (R&D) stage or a MAT negotiation for the commercialisation stage. The requirements for monetary and non-monetary benefits may be different in one case or the other.

The research and development stage is a dynamic process that is likely to take many diverse paths and may lead to a marketable outcome or not. For some value chains, the biological material accessed is the same as the final product sold. For others, the biological material undergoes a process of research and development to produce a new product to be commercialized.

The utilization of the material may take new forms. This includes for instance biological material to digital information or a synthetic form of the material that can be mixed with

other ingredients to obtain the final product. The final product can take several months or years, depending on the sector. The challenge is to draw up a legal instrument that will take into account the dynamic characteristics of research and development.



Technology transfer, mainly through collaboration and cooperation in technical and scientific research and development programmes, must be a priority to be considered in the agreements.



The export of large quantity of biomass of biological resources for research purposes in laboratories abroad should be limited. It is an important point of attention to be taken into account in the negotiations, in order to promote technology transfer and the strengthening of national research in terms of technical and material capacity.

Benefit-sharing

The ABS Law enshrines the principle of benefit-sharing arising from the utilization of genetic resources and associated traditional knowledge.

Benefits may be monetary or non-monetary.

Benefit-sharing may consist of:

- *enriching or preserving biodiversity in situ or ex situ, while ensuring its sustainable use;*
- *preserving traditional knowledge associated with genetic resources*

through the creation, where appropriate, of databases on the traditional knowledge of the communities of people concerned, with their Prior Informed Consent, as well as the preservation of other traditional practices and knowledge that are biodiversity-friendly;

- *contributing at local level to the creation of green jobs and the development of related industries;*
- *sustainably using genetic resources or associated traditional knowledge or allowing the enhancement of biodiversity, in connection with the territories that have contributed to the conservation of these resources;*
- *collaborating, cooperating or contributing to research, environmental education, training, public and local professional awareness-raising activities, including technology transfer and skills;*
- *maintaining, conserving, managing, providing or restoring ecosystem services in a given area;*
- *Providing financial contributions (monetary benefits).*

Benefits to be shared should take into account benefits arising from the utilization of the genetic resources,

the digital sequence information (DSI) and those arising from applications and subsequent commercialisation.

Benefits that are shared should take into account all stakeholders who have contributed to the resource management, scientific or commercial process. These may include:

- *Indigenous and local communities;*
- *The State and its components (Government, regional and local authorities, etc.);*
- *Relevant stakeholders who are owners, managers or custodians of the genetic resource and/or associated traditional knowledge.*

In ABS, especially in the research and development stage, the user first accesses samples to undertake research and development. One of the specificities of ABS contracts is that negotiations precede the use of the material, at a time when resources have not yet been utilized and translated into potential added-value or benefits. **An ABS contract will need to go beyond the regulatory obligations at the time of access to the resource and anticipate the outcomes that may result from the utilization of the resource concerned.**



Sustainable resource management

Mutually Agreed Terms (MAT) should include a clear provision that binds users and providers to allocate the benefits arising from the utilization of genetic resources to the conservation and restoration of biological diversity and the sustainable use of its components. Ideally, activities or projects to be funded should be clearly mentioned in the contracts.

Monetary and non-monetary benefits from ABS negotiation contracts should be used primarily to improve the living conditions of local communities, to renew resources exploited and actions geared towards sustainable use, conservation and restoration of biodiversity.



Conservation actions should target genes, species and ecosystems as appropriate

- *Conservation focusing on genetic resources may include ex-situ approaches such as gene banks, botanical gardens, zoos, natural history museums, pedigree animal management, gene cradle management, in vivo conservation and collections of micro-organisms and others, and gene sequence information (GSI) stored in databases.*
- *Species-level conservation approaches include: pedigree animal management, gene cradle management, in vivo conservation, ex situ collections*



such as botanical gardens and zoos, sustainable harvesting from the wild, domestication of endangered or economically important species, as well as approaches to changing unsustainable practices of endangered or economically important species...

✦ *Landscape and ecosystem-level approaches may include protected areas, projects that integrate conservation, community-based natural resource management, migration corridors, buffer zone management around protected areas, sacred forests, urban green spaces and legal allocation of community and council forests.*

Monitoring and evaluation mechanisms

To build a long-term communication relationship based on transparency and respect, parties should formalise the periodicity of their meeting and

periodically measure compliance with Mutually Agreed Terms, identify bottlenecks and take corrective action where necessary.

Biodiversity funding

ABS requirements for sharing the potential commercial value of genetic resources must provide incentives and mobilize financial resources both for the central Government and for regional and local authorities to allocate to biodiversity conservation.

At the local level, with communities, investments in conservation should be further encouraged in the context of ABS. This should help to recognise and formalise the role of indigenous and local communities as the primary custodians of biodiversity and steer

them away from activities that are harmful to natural resources.

The monetary benefits to communities to be agreed in the contracts come from three (3) sources:

- ✦ *Direct benefits arising from the commercialization or research and development, as specified in Mutually Agreed Terms (MAT);*
- ✦ *Through set up mechanisms by the Government to collect royalty and/or tax related to the economic and financial benefits arising from the utilization of genetic*

resources, their derivatives and/or associated traditional knowledge, a share of which is retroceded to communities in compliance with the provisions set out in the regulations, in particular the Finance Law.

- *Spin-offs from the use of Intellectual Property Rights (IPR).*



The share of monetary and/or non-monetary benefits received and allocated by the

communities for biodiversity conservation activities must be at **least equal to 25 per cent** and well recorded in the agreements to be agreed upon according to the instructions formulated in *The Cameroon Guidelines on Equitable Benefit Sharing for Biodiversity Conservation, Sustainable Use and Restoration*.



Annex MAT Template

(Source: MINEPDED, 2022, Just for guidance, but to be enriched and adapted on a case-by-case basis taking into account the advice in this guide)

REPUBLIC OF CAMEROON
Peace – Work – Fatherland

MINISTRY OF ENVIRONMENT,
PROTECTION OF NATURE AND
SUSTAINABLE DEVELOPMENT

CONVENTION ON BIOLOGICAL DIVERSITY

NAGOYA PROTOCOL ON ABS

NATIONAL FOCAL POINT



MINEPDED



REPUBLIC OF CAMEROON
Peace – Work – Fatherland

MINISTRY OF ENVIRONMENT,
PROTECTION OF NATURE AND
SUSTAINABLE DEVELOPMENT

CONVENTION ON BIOLOGICAL DIVERSITY

NAGOYA PROTOCOL ON ABS

NATIONAL FOCAL POINT

MUTUALLY AGREED TERMS No. _____ OF
_____ FOR THE COMMERCIALIZATION/RESEARCH

DEVELOPMENT/BASIC RESEARCH OF THE GENETIC/BIOLOGICAL
RESOURCE, THEIR DERIVATIVES AND/OR ASSOCIATED
TRADITIONAL KNOWLEDGE¹

PREAMBULE

Mutually Agreed Terms (MAT) for access to genetic resources and their derivatives, and/or associated traditional knowledge of Cameroonian origin, authorizes the applicant to access and use only the Genetic Resources (GR) and/or associated traditional knowledge (ATK) described below. All other forms of access and utilization are expressly prohibited unless authorised by a new application.

Mutually Agreed Terms (MAT) involve a negotiation between the Party granting access to genetic resources and the entity wishing to use those resources, such as an individual, company or institution. In the case of successful negotiation, MAT will lead to an access agreement.

¹ Delete as not applicable

MUTUALLY AGREED TERMS (MAT)

Between

The entity (identification of the entity), represented by (identity of the legal representative) _____, hereinafter referred to as the User;

And,

The provider (name of the community holding the resource) represented by (identity of the legal representative of the community) _____, hereinafter referred to as the Provider;

Under the supervision of the National Competent Authority, represented by (name, first name, and position of the representative of the CNA) _____, hereinafter referred to as the Competent National Authority (CNA), together referred to as the Parties Have agreed as follows:

CHAPTER 1: GENERAL PROVISIONS

Article 1: Purpose of the Mutually Agreed Terms these Mutually Agreed Terms are established in order to define conditions for access to and sharing of benefits arising from the utilization of genetic resource and its derivatives, and/or associated traditional knowledge, hereinafter referred to as, _____ through commercialisation in compliance with the Prior Informed Consent No. _____ of _____, issued for this purpose.

Article 2: Resource location

(1) The resource/recognition referred to in Article 1 above is located/owned by the local community², _____ Region, _____ Division, _____ Sub-division (if applicable) _____ Grouping (if applicable) _____.

²Delete not applicable

(2) The geographical coordinates of the location site are as follows:

Longitude: _____

Latitude: _____

Article 3: Validity of the Mutually Agreed Terms

(1) These Mutually Agreed Terms are valid for a period of three (3) years. They may only be renewed by written request of the applicant.

(2) These Mutually Agreed Terms may only be renewed after a positive evaluation of the previous ones.

Article 4 : Territoire d'application

These Mutually Agreed Terms shall apply in the territory of Cameroon and wherever the resources/knowledge it deals with are likely to be utilized.

Article 5 : Language

(1) The language used for these Mutually Agreed Terms shall be French and shall be translated into English, which is the other official language of Cameroon.

(2) In case of inconsistency between the original version of these Mutually Agreed Terms and the translated version, the original version shall prevail.

CHAPTER 2: OBLIGATIONS OF THE PARTIES

Article 6: Common obligations

(1) Parties agree to implement this Agreement in good faith. Where it is violated, areas of non-compliance shall be resolved in compliance with the dispute resolution mechanisms of this Agreement.

(2) Parties shall comply with all relevant laws and regulations at all times. And when applicable laws and regulations change, they shall amend this Agreement as appropriate.

Armeex

(3) Parties to these Mutually Agreed Terms are required to transmit/submit to the Competent National Authority an annual report describing the implementation of their agreement. The report shall reach the National Competent Authority no later than three (3) months after the end of the current year.

Article 7: User's obligations

The User commits to comply with the regulations in force in Cameroon concerning access to and utilization of genetic resources and their derivatives, and associated traditional knowledge. In particular, he/she is required to:

- carry out a prior environmental and social assessment relating to the utilization of genetic resource;
- guarantee utilization under conditions that allow for the conservation and sustainability of the resource, with the technical support of the National Competent Authority, involving the provider;
- mention the name of Cameroon and the provider holding the resource/knowledge in all publications;
- share best practices on conservation (sustainability), exploitation, utilization of the resource/knowledge in the form of a guide/manual with the provider, the National Competent Authority, the Administration in charge of research;
- build the capacity of the provider in the sustainable management of the resource/knowledge;
- provide environmental scholarships to young people, especially girls, from the resource/knowledge-holding community;
- ensure transparency in the sharing of monetary and non-monetary benefits from the utilization of the resource/knowledge;
- request and negotiate new Mutually Agreed Terms for any products derived from the utilization of the resource/knowledge;
- request the agreement of the National Competent Authority and the provider for any transfer of the genetic resource and its derivatives to a third entity not party to the contract;

- ☛ negotiate and sign with the provider the exploitation of intellectual property rights arising from the utilization of the resource/knowledge.
- ☛ Utilizing utilize the resource/knowledge in compliance with the customs and practices of the provider.

Article 8: Provider's Obligations

(1) The Provider must:

- ☛ guarantee the user access to the resource/knowledge in compliance with these Mutually Agreed Terms;
- ☛ guarantee and provide the user with the quantities foreseen by the resource's Prior Informed Consent;
- ☛ inform the user of any modifications/difficulties that may arise during the implementation of these Mutually Agreed Terms and relating to the quantities provided for in the Prior Informed Consent (PIC);
- ☛ submit to the Competent National Authority an annual report on the positive and negative impacts of the utilization of the resource/knowledge;

Article 9: Intellectual Property Rights

The user may not claim or obtain any intellectual property rights over the genetic resources or any other element of the genetic resources, without having the community as co-applicant and co-owner of these intellectual property rights, unless the local community waives these rights in writing.

Article 10: Associated Traditional Knowledge

In the event that the user has an interest in traditional knowledge associated with genetic resources, outside the primary purpose of these Mutually Agreed Terms, the user shall negotiate a new agreement with the local community, or the individual identified within the local community, for the utilization of that traditional knowledge. This shall be done under the supervision of the Minister of Environment.

Article 11: Guarantees and representations

(1) Parties warrant to each other that they are free to enter into and perform this Agreement and that they are not thereby in breach of any provision of any contract previously signed by them.

(2) Parties shall indemnify each other against any claims by third parties alleged to be made against either of them in respect of material or information provided by the other.

(3) The genetic material(s) is/are intended to be experimental in nature. The Provider makes no warranty, express or implied.

The Provider shall not be liable for any damage resulting from the genetic material(s).

(4) The user shall compensate and hold the provider harmless from any claims, actions, damages or costs arising from or in connection with the utilization by the recipient of the genetic material(s) received. warranty against third party eviction; warranty against hidden defects.

Article 12: Schedule - deadline

Parties undertake to execute this contract according to agreed schedule and deadline.

Article 13: Payment Terms and Accounting

(1) The user shall bear the expenses associated with the performance of the services provided hereunder, including payments to any service providers and any taxes arising from their performance.

(2) In return for the supply of the subject matter hereof by the provider, the user commits to provide as compensation:

- ☛ listing the monetary benefits, as well as the schedule and other details of payment (bank account, payment schedule etc.);
- ☛ listing the non-monetary benefits, as well as the terms and conditions and the deadlines for their delivery.
- ☛ (3) The National Competent Authority will monitor the invoicing and the follow-up of payments

(4) The user shall pay to the provider what is due for the performance of a service within such a period of time (Specify the period of time) _____, upon issuance of a receipt. (5) After the expiry of the term, the provider shall continue to receive the percentage due on the income generated after the expiry of the term by its activity during the performance of the term.

(6) The User shall keep accounts for the services provided hereunder: the User shall provide the Provider and the National Competent Authority with a detailed statement of such accounts on a quarterly or half-yearly basis.

- The User shall keep accounts in compliance with the chart of accounts in force in Cameroon;
- The User shall make available to the Provider and the National Competent Authority all documents on the costs, benefits and other potential benefits arising from the commercialisation of the resource/knowledge. It differentiates between monetary and non-monetary benefits.
- The User shall provide all accounting documents necessary for the accuracy of its accounting statements and for a reliable basis for assessing the value of the benefits attributed to the Provider in connection with the benefits obtained by the User.

Article 14: Force majeure

In the event of force majeure, Parties shall not be liable. The Party invoking force majeure shall bear the burden of notification.

Article 15: Hard ship or adaptation Clause

In the event of unforeseen circumstances preventing the proper implementation of this Agreement, Parties shall undertake to re-examine conditions for its proper continuation.

CHAPTER 3: MISCELLANEOUS AND FINAL PROVISIONS

Article 16: Confidentiality and Disclosure

(1) Parties shall treat as strictly confidential and shall refrain from disclosing any information, documentation, data or concepts that come to their knowledge when implementing this Agreement.

(2) However, confidential information may be disclosed to the extent permitted by law or the applicable regulations of any governmental authority having jurisdiction over either party.

(3) The User commits not to publish or place in the public domain any information on the genetic resources and associated traditional knowledge without the prior written consent of the Provider, after approval by the National Competent Authority.

Article 17: Amendment

Any amendment to these Mutually Agreed Terms shall follow the same procedure as that which led to their negotiation and signature.

Article 18: Attribution of legislation

This Agreement is signed in compliance with the ABS Law and its implementing instruments as well as any other legal and regulatory provision in force in Cameroon.

Article 19: Settlement of disputes

(1) Cameroon's courts shall have exclusive jurisdiction over any dispute arising from these Mutually Agreed Terms.

(2) Any dispute arising out of these Mutually Agreed Terms shall be settled amicably between the User and the Provider as a matter of priority.

- If the dispute persists, both Parties shall have recourse to arbitration by the National Competent Authority;
- if either party is dissatisfied with the arbitration award, either party shall be free to take the matter before competent Cameroonian courts.

Article 20: Termination– punishments

Any failure by either party to fulfil its obligations under the terms of this contract shall, at the discretion of the creditor of the unfulfilled obligation, result in the automatic termination of this contract,

after formal notice to perform has been given by registered letter with acknowledgement of receipt and has remained without effect, without prejudice to any damages.

Article 21: Termination without fault

((1) This contract may be terminated at any time by either party, subject to three (03) months' prior notice.

(2) In this case, Parties shall draw up a statement of the sums due and shall proceed to their payment, as well as to the transmission of any report or other document for the services already provided.

Article 22: Registration

The registration of this Agreement or any other contract relating to it shall be the responsibility of the User.

Article 23: Provision for Address for Service

Parties shall freely provide their address for service

Article 24: Entry into force

These Mutually Agreed Terms shall take effect from the date of signature by both (2) Parties.

Done at, on

(Handwritten mention read and approved)

Authorised signatory

**THE LEGAL REPRESENTATIVE
OF THE USER**

**THE LEGAL REPRESENTATIVE
OF THE PROVIDER**

MINISTER OF ENVIRONMENT, PROTECTION OF
NATURE AND SUSTAINABLE DEVELOPMENT

(In four original copies)

Annex





Disclaimer

Published by :
The Ministry of Environment, Protection of Nature
and Sustainable Development (MINEPDED)

With the technical and financial support of
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

General supervision:
Mr. Helé Pierre, Minister

Coordination:
Dr. Aurelie Dingom, ABS Focal Point, Cameroon
Marcellin Bema, Communication Unit Head, MINEPDED

Conception:
Dr. Guy Merlin Nguenang, Consultant
Okenye Mambo, Project Coordination BioInnovation Africa, GIZ Cameroon

Translation:
Joseph Gouet Gouet, Translation Unit Head, MINEPDED

Graphic design:
Jean Pierre Onomo, ONOGRAPH

Contacts:
ABS Focal Point, MINEPDED
P.O. Box : 320 Yaounde – Cameroon
Tel.: (237) 222 23 60 37
E-mail: cameroon.abs@gmail.com
Fax: (237) 222 23 34 23
www.minepded.gov.cm
<https://abs-cameroon.minepded.gov.cm>

Date of publication:
June 2023

All rights reserved.
No part of this publication may be reproduced, stored in a retrieval system,
or transmitted in any form or by any means, electronic, mechanical,
photocopying, recording, or otherwise, without written permission of
MINEPDED.