

United Nations Conference on Trade and Development

**Guidelines and Model Clauses on Access and Benefit-
Sharing and BioTrade
in the
Lao People's Democratic Republic**

DRAFT

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Note

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For further information on UNCTAD's BioTrade Initiative please consult the following website: <http://www.unctad.org/biotrade> or contact us at: biotrade@unctad.org

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Acronyms and Abbreviations

ABS	Access to genetic resources and benefit sharing
ASEAN	Association of South East Asian Nations
BEI	Biotechnology and Ecology Institute
BTI	BioTrade Initiative
CBD	Convention on Biological Diversity
GEF	Global Environment Facility
IPR	Intellectual property rights
MAF	Ministry of Agriculture and Forestry
MoA	Memorandum of Agreement
MoNRE	Ministry of Natural Resources and Environment
MoST	Ministry of Science and Technology
MoU	Memorandum of Understanding
NAFRI	National Agriculture and Forestry Research Institute
NBSAP	National Biodiversity Strategy and Action Plan
PIC	Prior informed consent
R&D	Research and development
SECO	Swiss State Secretariat for Economic Affairs
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WIPO	World Intellectual Property Organization

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1. Introduction

1. The United Nations Conference on Trade and Development (UNCTAD) launched the BioTrade Initiative (BTI) in 1996 “...to contribute to the conservation and sustainable use of biodiversity through the promotion of trade and investment in BioTrade products and services in line with the objectives and principles of the Convention on Biological Diversity (CBD)”¹.
2. The seven BioTrade principles are: conservation of biodiversity; sustainable use of biodiversity; fair and equitable sharing of benefits derived from the use of biodiversity; socio-economic sustainability (productive, financial and market management); compliance with national and international regulations; respect for the rights of actors involved in BioTrade activities; and clarity about land tenure, use and access to natural resources and knowledge.² UNCTAD identified criteria for each BioTrade principle and the BTI and its partners promotes the implementation of these principles and criteria using a value-chain approach, an adaptive

“BioTrade is understood to include activities related to the collection or production, transformation, and commercialization of goods and services derived from native biodiversity (genetic resources, species and ecosystems) according to criteria of environmental, social and economic sustainability.”

management approach, the ecosystem approach, and a sustainable livelihoods approach.³

3. Under the BTI, UNCTAD with the support of the State Secretariat for Economic Affairs SECO is implementing the programme "Linking trade, biodiversity and sustainable development". This programme contributes to national and regional policy frameworks by facilitating access, mobilizing research and addressing relevant policy topics required under regulations and requirements for access to biological and genetic resources and benefit sharing (ABS). Project interventions support actions by partners on the ground to enable BioTrade-friendly implementation and effective use of ABS regulations.
4. This report documents a BTI initiative in Lao People’s Democratic Republic which is part of a sub-regional collaboration between UNCTAD and Helvetas Swiss Intercooperation⁴ in Lao People’s Democratic Republic, Myanmar, and Viet Nam. The UNCTAD-Helvetas Swiss Intercooperation collaboration is developed under the UNCTAD Global BioTrade Programme, and Helvetas Swiss Intercooperation project “BioTrade: Ethical Trade in Plant-Based Resources”, both of which are funded by the Swiss State Secretariat for Economic Affairs SECO. Lao People’s Democratic Republic had not regulated ABS and related traditional knowledge as of late 2018. Thus, BTI commissioned a study to provide inputs and guidance to the Government of Lao People’s Democratic Republic and national ABS stakeholders, to develop sample model clauses for eventual ABS or BioTrade contracts to be used in the country. This report is based on an assessment of a prior national undertaking that developed a draft policy and decree on ABS and BioTrade, as well as on the responses of questionnaires and interviews conducted jointly with the Biotechnology and Ecology Institute (BEI) of the Ministry of Science and Technology (MoST), which is the competent national authority for ABS in Lao People’s Democratic Republic. Finally, the study also considered examples of ABS

¹ United Nations Conference on Trade and Development. 2007. *UNCTAD BioTrade Initiative BioTrade Principles and Criteria*. United Nations: New York and Geneva. p. 1. The definition of BioTrade quoted just below is from the same page in this document.

Available online: https://unctad.org/en/Docs/ditcted20074_en.pdf

² UNCTAD. 2007.

³ UNCTAD. 2007. Page 2.

⁴ Helvetas Swiss Intercooperation is an independent Swiss development organization. See: <https://www.helvetas.org/en/switzerland>

contracts and guidelines for ABS contracts currently being used in other countries and regions including those from UNCTAD BTI experience in Peru⁵ as well as inputs from a Lao national expert in commercial law. Afterwards, BEI convened a consultation on the draft model clauses that was held in Vientiane, Lao People's Democratic Republic, on 1 November 2019. See Annex 6 for the list of participants.

2. ABS in Lao People's Democratic Republic

5. The Lao People's Democratic Republic is one of many countries that are Parties to the CBD and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol) which still face, at national and local levels, significant challenges in understanding the issues involved in ABS and differentiating them from other issues involved in conserving and sustainably using biological resources. Lao People's Democratic Republic acceded to the Nagoya Protocol and became a Party in 2014⁶. In preparation for becoming a Party, with support from a Global Environment Facility (GEF) project⁷ implemented by the United Nations Environment Programme (UNEP) and executed by the ASEAN Centre for Biodiversity, Lao People's Democratic Republic developed a document that contained drafts of a government policy on ABS, a law on genetic resources, ABS administrative systems, and mechanisms for public education awareness and participation, which was completed in 2013.⁸ The draft law on genetic resources was not adopted and ABS regulations, including provisions for an administrative system for ABS, are not yet in place. With increased interest from companies and institutions seeking access to genetic resources in the country, Lao People's Democratic Republic wants to develop contractual guidance for ABS negotiations while efforts to adopt the national regulatory framework continue. UNCTAD's BTI is providing support for that process in order facilitate compliance with ABS requirements by BioTrade organisations. This report reflects the results.
6. The barriers to implementing the Nagoya Protocol in Lao People's Democratic Republic are considerable:
 - There is currently no national knowledge base for implementing the Nagoya Protocol;
 - ABS, traditional knowledge associated with genetic resources, and intellectual property rights (IPR) protection for traditional knowledge remain new issues for Lao People's Democratic Republic. Awareness and understanding of these issues is limited to government specialists and a few academics. There is very limited, or no, awareness and understanding of these issues at the local level, as well as among some users, and no mechanisms for coordination and stakeholder involvement;
 - The policy and regulatory framework is minimal and incomplete, there are *ad hoc*, case-by-case administrative procedures, and there are no guidelines for users and providers.
7. Reconciling the needs of Lao People's Democratic Republic's predominantly rural population with facilitating access to genetic resources and traditional knowledge and sharing benefits is a major challenge for the country. While Lao People's Democratic Republic's rural communities may have an idea of the value of the biological resources they manage, they are generally unaware of the potential additional value of the genetic resources. In Lao People's Democratic

⁵ Further information available (in Spanish) at <https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1887> and the document *Propuesta de Estrategia de Negociación para la Elaboración de Contratos de Acceso a los Recursos Genéticos, sus Derivados y el Biocomercio para el Perú* (UNCTAD/DITC/TED/INF/2018/2).

⁶ See: <https://www.cbd.int/abs/nagoya-protocol/signatories/default.shtml>

⁷ Building Capacity for Regionally Harmonized National Processes for Implementing CBD Provisions on Access to Genetic Resources and Sharing of Benefits. 2011-2014. Lao People's Democratic Republic country component. Project documents are not available on the GEF website.

⁸ Ministry of Science and Technology. Biotechnology and Ecology Institute. 2013. Lao National Framework on the Access to Genetic Resources and the Fair and Equitable Sharing of Benefit Arising from their Utilization. Draft dated 30 October. The draft has chapters on: ABS policy; ABS regulatory framework; ABS administrative system; and mechanisms for public education, awareness, and participation.

Republic, as well as globally, there is a generalized lack of knowledge and exchange of information among scientific researchers, policy makers and decision-makers, the private sector, and the public. The country has minimal capacity for non-commercial research or commercial research and development (R&D), which makes it difficult or impossible to do the work required to add value to genetic resources in-country. This means that international collaboration will be essential to generating value from genetic resources. Implementing the Nagoya Protocol will require sustained coordination and cooperation between the public and private sectors and civil society, particularly the local people and their communities that are the stewards of biological resources, and the genetic resources they contain, as well as the holders of valuable associated traditional knowledge.

8. Since becoming a Party to the CBD in 1996⁹, Lao People's Democratic Republic has identified ABS as part of the efforts the country intends to make to institutionalize biodiversity conservation. During 2000-2004, the country produced its first National Biodiversity Strategy and Action Plan¹⁰ (NBSAP) which noted the following key issues with respect to ABS: the lack of regulations relating to the protection of biodiversity and traditional knowledge; limited cooperation with international partners; insufficient understanding of access to genetic resources and benefit sharing within the relevant agencies; lack of information and knowledge concerning the use of genetic resources at an international level. The NBSAP included a programme on biodiversity management. Objective 5 of that programme, on ensuring that the social and economic benefits from the use of genetic material and products originating in Lao People's Democratic Republic accrue to the nation, included the following actions to be taken by 2010: draft and enact legislation on ABS for genetic resources originating in Lao People's Democratic Republic; and establish national rules for the protection and use of traditional knowledge. A 2011 assessment of the first NBSAP¹¹ documented that the actions identified for ABS had not been implemented. The second NBSAP, for the period 2016-2025, noted that minimal progress had been made on ABS and set targets to enact legislation for both ABS and traditional knowledge.¹²
9. Under the BTI- Helvetas Swiss Intercooperation collaboration, two back-to-back regional workshops were organized on BioTrade for stakeholders in Lao People's Democratic Republic, Myanmar, and Viet Nam: the 'Regional Mekong Workshop on Access and Benefit Sharing'¹³ and 'Improving coordination in technical assistance delivery on BioTrade and Access and Benefit Sharing in Southeast Asia'¹⁴ in June 2018 in Luang Prabang, Lao People's Democratic Republic. At the coordination meeting, a Mekong Plan of Action was adopted that laid the groundwork for collaboration between UNCTAD, Helvetas Swiss Intercooperation and other regional actors on BioTrade and ABS.

⁹ See <https://www.cbd.int/information/parties.shtml>

Lao People's Democratic Republic also acceded to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in 2006 (See <http://www.fao.org/plant-treaty/countries/membership/country-details/en/c/359312/?iso3=LAO>).

¹⁰ Lao People's Democratic Republic. 2004. *National Biodiversity Strategy to 2020 and Action Plan to 2010*. p. 11. Available online: <https://www.cbd.int/doc/world/la/la-nbsap-01-en.pdf>

¹¹ IUCN. 2011. *NBSAP Assessment: An assessment of Lao People's Democratic Republic National Biodiversity Strategy to 2020 and Action Plan to 2010*. Gland, Switzerland: IUCN. p. 21. Available online: <https://www.cbd.int/doc/world/la/la-nbsap-oth-en.pdf>

¹² Ministry of Natural Resources and the Environment (MoNRE). 2016. *National Biodiversity Strategy and Action Plan for Lao People's Democratic Republic 2016-2025*. Vientiane Lao People's Democratic Republic. Table 18: Strategy 3 - Strengthen the knowledge base for strategic decision making. p. 74. Available online: <https://www.cbd.int/doc/world/la/la-nbsap-v2-en.pdf>

¹³ <https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1834>

¹⁴ <https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1835>

10. The Association of South East Asian Nations (ASEAN) has an Intellectual Property Rights Action Plan for the period 2016-2025. Strategic Goal 4 calls for enhancing regional mechanisms to promote asset creation and commercialization, particularly geographical indications and traditional knowledge. Initiative 19 under Strategic Goal 4 calls for ASEAN member states to develop national policies and laws to protect traditional knowledge associated with genetic resources. Lao People's Democratic Republic is one of three pilot countries for this ASEAN initiative. The first step in the process for Lao People's Democratic Republic to meet its commitment to this regional goal is to develop a national policy on traditional knowledge and IPR. The World Intellectual Property Organization (WIPO) supported Lao People's Democratic Republic by providing technical assistance for a workshop on traditional knowledge and genetic resources, in Vientiane in October 2018. As of September 2019, the policy had not been issued.
11. Despite limited resources and substantial gaps in the regulatory framework as well as in institutional and individual capacities, Lao People's Democratic Republic has already demonstrated progress toward implementing the Nagoya Protocol. The country has basic elements of a legal framework for implementing the Nagoya Protocol, but the framework is incomplete. Article 24 of the 2014 Biotechnology Safety Law enables regulation of ABS but requires an implementing decree. Article 22 of the same law enables protection of traditional knowledge associated with genetic resources, but there is no national policy on traditional knowledge and IPR and no implementing decree. The 2017 Law on Intellectual Property protects plant breeders' rights and traditional cultural expressions, but does not enable protection of other types of traditional knowledge which may be associated with genetic resources.
12. The current institutional context for biodiversity conservation in Lao People's Democratic Republic favors inter-ministerial coordination and collaboration. The Ministry of Natural Resources and Environment (MoNRE) houses the CBD Focal Point. MoST houses the focal points for the CBD protocols on ABS and biosafety. The Ministry of Agriculture and Forestry (MAF) is generally responsible for managing biological resources, including protected areas. The National Agriculture and Forestry Research Institute (NAFRI) has established a seed bank for rice. BEI has established Lao People's Democratic Republic's national herbarium. The Ministry of Health, through its Institute of Traditional Medicine, administers a list of medicinal natural resources which includes species that are important for traditional medicine, including endangered species. Representatives of all these institutions responded to the questionnaire and provided input for this project (see section 3).
13. In 2013, Lao People's Democratic Republic developed a draft regulatory regime and administrative systems for ABS, which have yet to be adopted (see paragraph 2). In the absence of regulations and a formal administrative system, BEI created an informal administrative procedure that enables it to handle requests for access to genetic resources on a case-by-case basis. The country does not have guidelines or directives that specify which activities do and do not constitute 'access' or 'use' of genetic resources and derivatives, or that specify when it is necessary to make a contract or license to use traditional knowledge. There is no registry of national supporting institutions.

3. Stakeholder Input

14. UNCTAD, in collaboration with BEI, is carrying out this study to compile inputs for the process of developing model clauses for ABS contracts and links with BioTrade. BEI also adapted and

translated into Lao a questionnaire that was used for a similar UNCTAD project in Peru¹⁵. Questionnaires were prepared for three target stakeholder groups: government authorities; users of genetic resources¹⁶; and experts. A total of 31 individuals, representing 13 government authorities from six ministries and institutions, 14 representatives of donors and current and potential users of genetic resources, and four experts – two national and two international – responded to the questionnaire. The list of respondents is in Annex 1. The English translations of the questionnaires are attached as annexes 2-4, respectively.

15. The questionnaires asked each target group about 10 issues that were common to at least two of the groups. The questionnaire for each target group also included questions that were specifically for that group only. The responses to the questions on common issues are discussed first and the discussion of the responses to the target group-specific questions follows. The text in italics under each issue in paragraphs 16-28 is copied from the questionnaires. See Annex 2, the questionnaire for government authorities; Annex 3, the questionnaire for users; and Annex 4, the questionnaire for experts.

16. ABS contracts

- The questions for government authorities were: (1) *As of today, how many ABS contracts have been signed?* (2) *How many of those were for commercial purposes?*
- The questions for users were: (1) *Does your company/institution currently have any contracts for access to genetic resources?* (2) *If so, what are the genetic resources?*
- The question for experts was: *Have you participated in negotiating a contract for access to genetic resources? If yes, please briefly describe your experience.*

Two ABS contracts have been signed in Lao PDR – one by BEI and the other by the Lao Traditional Medicine Institute, Ministry of Health. Both contracts are with international users of genetic resources, and both provide for eventually commercializing one or more products. Several national institutions – users as well as government authorities – reported no contracts, but did report multiple Memoranda of Understanding (MoU), Memoranda of Agreement (MoA), and project agreements that include working with genetic resources. The genetic resources involved include plants, animals, and microorganisms.

Each of the international experts reported that their institutions have an ABS contract with Lao People's Democratic Republic. One expert noted that the experience of negotiating the contract was very positive because the staff of the competent national authority are very professional.

17. Building local capacity as an obligation in ABS contracts

- Government authorities and experts were asked: *Do you think that access contracts should contain obligations regarding building local capacity for research and development involving genetic resources, derivatives, and associated traditional knowledge?*
- The question for users was: *What obligations do you think access contracts should contain regarding building local capacity for research and development involving genetic resources, derivatives, and associated traditional knowledge?*

Government authorities and users specified that ABS contracts should contain clear and separate obligations for providers and users. All government authorities responding agreed that ABS contracts should contain an obligation to build local capacity, organize communities, and

¹⁵ UNCTAD and Ministerio del Ambiente del Peru (MINAM) [Environment Ministry of Peru]. 2018. *Propuesta de Estrategia de Negociación para la Elaboración de Contratos de Acceso a los Recursos Genéticos y sus Derivados* (Proposal for Negotiation Strategy to Develop Contracts for Access to Genetic Resources and their Derivatives). September.

¹⁶ In Lao People's Democratic Republic, as of 2019, users of genetic resources included private sector companies, the National University, and central government agencies.

assist them in using ABS as a tool for their local development. In particular, they noted that Lao People's Democratic Republic has few R&D experts and limited research facilities and equipment for R&D, all of which need to be strengthened, and that the country has limited finances to do this.

Users similarly agreed that ABS contracts should contain obligations to build local capacity and that there should be clear provisions in the contract on how local partners are involved and on sharing benefits with agencies as well as with communities. Users also noted the following: sustainable use of genetic resources should be the first priority; users should conduct research in the country, if possible, to build local capacity as a form of benefit sharing; and that users should provide feedback to providers. One user observed that providers think non-monetary benefits are easier to obtain than monetary benefits, but that monetary benefits are easier for users to provide.

Three experts also agreed, saying that ABS contracts should ensure that communities and other institutions receive benefits from complying with ABS regulations. One international expert disagreed, saying that an obligation to build local capacity would be too difficult for private companies and should be optional.

18. Powers of the competent national authority

Government authorities and experts were asked: *Do you think that the competent national authority should have other functions/duties?* This question was not asked of users.

All government authorities said that the competent national authority should have powers in addition to those it exercises now.¹⁷ The additional powers should include: leading, coordinating, and making recommendations to other government agencies and local authorities; advising on negotiations; creating a database; supporting basic R&D up to commercialization; and monitoring and evaluation.

The national experts felt that the competent national authority should have additional powers, specifically assigning a technical team in different departments to support target audiences that have different requirements for individual R&D cases, particularly with commercialization, and facilitating academic as well as private sector users. The international experts did not believe that the competent national authority should have additional powers.

19. Single authority

Government authorities and users were asked: *Do you think that the process of physically collecting or otherwise accessing resources should be administered by the same authority that negotiates the access contract?* This question was not asked of experts.

The majority of the government respondents said that there should be two national authorities for ABS – a management/administrative authority and a scientific/technical authority. Three respondents noted that it would be a good idea to have separate authorities but that doing so would depend on the capacity available.

Almost all users said that there should be a single authority. Two respondents supported a single authority because the current one is very professional. Among the reasons users gave for supporting a single authority were that a single authority understands regulations and understands what users want and need. Users also noted that a single authority will keep

¹⁷ Lao PDR has not yet regulated ABS. Article 24 of Lao PDR's Law on Biotechnology generally enables ABS. Article 61 of the law stipulates that the Ministry of Science and Technology is responsible for administering biotechnology. The Ministry has designated BEI as the Competent National Authority for ABS. Because Lao PDR has not regulated ABS, BEI exercises powers to administer ABS on an *ad hoc* basis.

administrative costs down and make monitoring and evaluation and inspection easier. One user noted that it preferred a single authority as long as that authority has the capacity and resources and can provide advice. Another said that there should be a single authority with participation of local stakeholders. One responding user said that the number of authorities is not the issue and that what is important is which authority or authorities have the capability to do what is required. Another user respondent supported the idea of separate authorities to guarantee reliability and transparency. A third user noted that different authorities would be feasible as long as all authorities have all information required.

20. Genetic resources and traditional knowledge found in other countries as well as Lao People's Democratic Republic

- The questions for government authorities were: (1) *Have there been cases in Lao People's Democratic Republic of access to genetic resources that are also found in other countries? (2) If so, in these cases were different criteria used to negotiate the agreement?*
- The question for experts was: *In your experience, how should Lao People's Democratic Republic handle cases in which the genetic resources and/or traditional knowledge for which access is being requested in Lao People's Democratic Republic, are found in other countries as well? A similar question was not asked of users.*

BEI assumes that access has been requested in Lao PDR to genetic resources that are also found in other countries; other authorities indicated that they did not have information on this issue. Government authorities did not express opinions on how such cases should be handled.

One international expert advised that Lao People's Democratic Republic should not make procedures more complicated because, if they are, users interested in such genetic resources will go elsewhere. The other international expert was of the opinion that there is no need for special procedures for genetic resources found in other countries as well as Lao People's Democratic Republic.

21. Valuing genetic resources and benefits

Lao People's Democratic Republic does not have a methodology for valuing either genetic resources or benefits and none of the respondents addressed the question of how benefits should be valued.

All target groups were asked one or both of these questions: (1) *How do you think possible benefits that may be obtained for using genetic resources should be valued? (2) How do you think possible benefits that may be obtained for using genetic resources should be valued?*

Three government authorities said that value is discussed with the user and that it is based on commercialization, while two said that value is not discussed with the users; other government respondents had no information on the issue. BEI reported that, of the two existing ABS contracts, one provides for sharing benefits – 70% for the company and 30% for the government – and the other calls for new negotiation if research results lead to a marketable product or products.

One user said that value should be based on the contribution of genetic resources to the economy and the environment, and another noted that the contribution of genetic resources is linked to commercialization¹⁸. Three users specified that there should be non-monetary and

¹⁸ This user's comment implicitly raises the issues involved in BioTrade. "BioTrade activities are characterized by respect for environmental, economic and social criteria. For example, BioTrade activities must maintain the characteristics of ecosystems and natural habitats of the species being collected or cultivated. Income should be generated and distributed at all levels and to all actors of the value chain." UNCTAD. 2017. *BioTrade and Access and Benefit Sharing: From concept to practice*. A

monetary benefits as well as benefits for rural community development. Other users responded with suggestions for mechanisms for sharing benefits, including: a government tax for using genetic resources that ensures that benefits can be disseminated to communities and to the conservation of genetic resources; biodiversity offsets; and environmental protection fees.

Experts provided examples of non-monetary benefits but did not assign a value to them: increased knowledge and understanding of particular genetic resources and their proper protection and preservation, including through R&D; capacity building for students; publications in scientific journals; short reports; communication in national newspapers; and conferences in-country. Indicators for these benefits would include the number of students trained, number of scientific papers published, and number of communications in various media.

22. Establishing a percentage for benefits

All target groups were asked: *Would you agree with establishing a minimum or maximum percentage of benefits (for example, calculated based on a sales price) that could be used as a limiting factor in negotiations?*

The majority of the government authorities responded that benefits should be calculated case-by-case on the basis of sales price or as a percentage of product revenue. One suggested that benefits depend on the authority's capability to negotiate maximum benefits for Lao People's Democratic Republic, as well as contributions between users and providers. Four government respondents said that a law or regulation should establish a maximum percentage and one said that a minimum percentage should be established. One indicated that a regulation should set a standard benefit and detail how to calculate it on a case-by-case basis.

Users said that determining benefits on a case-by-case basis is more practical but that setting a percentage in a regulation is easier for administrators. Most of the respondents who supported case-by-case determination said that it should be a percentage of the sales price of the product.¹⁹ Half of the users responding supported a maximum percentage, set by regulation. The academic respondents indicated that a maximum percentage at an acceptable level would be most interesting for their institutions and one user noted that the private sector would prefer a maximum percentage. One user said that benefits should depend on the period of doing business because in the first year there has to be investment in building capacity in communities and with government authorities. One user did not agree with setting any percentage for benefits, and another said that a benefit standard and benefit percentage should be in ABS contracts.

Three experts agreed with establishing a percentage of benefits; one did not. Of those who agreed, one said that it should be a maximum percentage and one favored a minimum percentage and/or in-kind benefit. Those who agreed noted the following: it is useful to set some basic criteria or standards for benefits that are fair to all stakeholders, with reference to actual practice; percentages should be clearly categorized and applied differently for commercial purposes and for research purposes; in the case of access for R&D, there should be monetary and/or in-kind benefits for capacity development.

handbook for policymakers and regulators. Box 2. Page 8. <https://unctad.org/en/Pages/DITC/Trade-and-Environment/BioTrade.aspx>

¹⁹ The BioTrade Initiative notes that determination of fair pricing for biological resources and genetic resources is a very important issue for regulating ABS. UNCTAD. 2017. *BioTrade and Access and Benefit Sharing: From concept to practice. A handbook for policymakers and regulators*. Box 2. Page 8. <https://unctad.org/en/Pages/DITC/Trade-and-Environment/BioTrade.aspx>

In particular, see pages 35-39 for discussion of fair pricing and pages 59, 76, and 78 for examples of how countries have approached the issue.

23. Guidance for contract negotiations

All three target groups were asked one or both of these questions: (1) *Do you think it would be useful to have supporting documents (for example: guides, methodologies, model clauses) to facilitate negotiations?* (2) *What documents (for example: guides, methodologies, model clauses) would be most useful for facilitating negotiations?*

Government respondents said that any guidance – guidelines and methodologies, among other things – is important and that model clauses or a model contract are most important. One government respondent suggested that all guidance should be part of an online system.

All users responded that guidance for contract negotiations is very important and noted that commercial guidelines and a model contract or model clauses for reference would be very useful.

Three experts said that documentary guidance for contract negotiations is important; one suggested that such guidance should not be over-developed because most people would not understand the content and it would be a waste of time. One expert said that there is no need for additional guidance for contract negotiations because the procedures the competent national authority uses currently are already very clear.

24. Issues affecting access contracts

- The questions for government authorities were: (1) *What are the aspects of negotiating an access contract that are most complicated for a provider of genetic resources?* (2) *Has your institution identified specific issues that delay the process of issuing access contracts?* (3) *Please provide a list of the issues affecting access contracts that your institution has identified.*

Government authorities identified three issues as the aspects of negotiating an access contract that are most complicated for providers. Four respondents specified that monitoring what happens with genetic resources after a contract or MoU is signed is most complicated, particularly because it is difficult to carry out R&D in-country due to capacity limitations. Three government respondents said that understanding ABS and how to apply related laws and regulations during negotiation was most complicated, while two felt that valuing benefits was the most complicated issue.

They identified the following issues that affect access contracts: no clear policy or specific regulations and guidelines; a lack of supporting documentation to facilitate negotiations that is publicly available and easy to access; lack of clarity on what the competent national authority is; lack of coordination; limited understanding of ABS and limited experience with negotiating ABS; and reconciling the interests of users and providers.

- The question for users and experts was: *What were the most complex aspects of the process of accessing genetic resources?*

Four user respondents said that lack of clarity on whether or not a project constitutes access is the most complex aspect of accessing genetic resources. Five respondents mentioned four issues: the difficulty of complying with legal requirements because there are no regulations or technical guidelines; the challenges of establishing monetary and non-monetary benefits; the fact that during negotiation it is essential for applicants to have a fee agreement on facilitation and administration from the national competent authority; and that providers must be encouraged to participate in the negotiation process. Two users noted that it is difficult for them to explain what they would like to do or what they can contribute to the country when they are interested in bioprospecting and do not have specific target genetic resources at the outset of negotiations. One respondent highlighted that the Forestry Law should clearly differentiate

between plantations and wild forests, and that there should be different fees and supporting guidelines to facilitate BioTrade. Another indicated that there should be a mechanism for linking ABS with sustainable forestry management through benefit sharing schemes. One user stated that there were no difficulties because the competent national authority clearly specified the documentation required and the questionnaire for applicants is clear.

Two experts identified the same two issues in their responses: lack of information about the scope of access and requirements for it; and lack of adaptability for different types of users – public research institutions, private research centers, universities, and private sector companies. Other issues that different experts noted only once were: limitations in experience and capacity for negotiation; lack of clarity on what should be done when there are changes in the purpose of access from basic research to commercial application; and lack of online information procedures.

25. Lessons learned

- Both government authorities and users were asked: *What lessons has your institution/company learned about the process of accessing genetic resources?* This question was not asked of experts.
- Users were also asked a related question: *Based on your experience and your company's/institution's experience, what needs to be improved about the process of accessing genetic resources and negotiating an access contract?*

Three government respondents noted that their staff capacity is limited because ABS is a new issue for them. Two said that they had learned the importance of having regulations and guidelines; two others highlighted how important it is for users to respect and recognize providers. Other lessons include: how limited public awareness of ABS is and the need for guidelines on accessing genetic resources and using them appropriately; that Lao People's Democratic Republic needs to better identify the nature of genetic resources from wild plants and plantations; that complicated processes and system delays make projects run slowly and make it difficult to access funding; that there needs to be a detailed mechanism and guidance for implementation; that Lao People's Democratic Republic needs negotiation experts so that it can benefit from cooperation projects and a sample contract that is easy to modify during negotiations; how important initial negotiations are, that agreements should include activities, sharing results and sharing benefits, and that an ABS contract should be clear by the time it goes for signature; and understanding the monetary and non-monetary value of genetic resources and the challenges and limitations of negotiations for benefit sharing, which should be monetary and non-monetary.

Responding to the first question, users noted that it is important to have regulations or guidelines in place and that there should be a requirement for public hearings. A civil society user pointed out that getting guidance from government authorities can take a long time. Another user learned that mutual trust is most important and that only good practice on a user's part proves that the user is genuine.

Responding to the second question, users said that they have learned that they need clear and specific regulations and guidelines and information on good practice. They said that applicants need to understand regulations on using and exporting genetic resources, particularly the documents required, and need accessible information with guidance for each step of the permitting process. Two users suggested a single window or short process for getting access permits or that, at a minimum, applicants should be given an indication of the time required to process a permit to access genetic resources. Two users said that they need only support from the government and that the current process was clear and fast after they had talked with the competent national authority.

Questions for specific target groups

26. Government authorities. There were four questions for government authorities only.

1. *Are there any guidelines or directives that specify which activities constitute ‘access’ or ‘use’ of genetic resources and derivatives, and which activities do not constitute ‘access’ or ‘use’?*

Answers: no

2. *Is there a registry of National Supporting Institutions?*

Answers: no

3. *Does Lao People’s Democratic Republic have guidelines that specify when it is necessary to make a contract or license to use traditional knowledge?*

Answers: no

4. *Do you think it is sufficient to require a user who is entering into an access contract to make a sworn statement about whether or not the user has also accessed traditional knowledge?*

Answers: Nine government authorities answered this question. Two of them said that a sworn statement would be sufficient. The others said such a statement would not be sufficient and that performance on ABS contracts should be monitored.

27. Users. There were five questions for users only.

1. *If your company/institution currently has a project that is using genetic resources, is the project financed by the company’s/institution’s own funds? If the answer to question a. is ‘no’ or ‘partially’, what is the source of the financing?*

Answers: Eight users responded to this question. The majority said that their projects involving genetic resources were financed totally or partially from sources other than their own funds. Two of the academic users indicated that their projects were partially or fully funded by users.

2. *If your company/institution currently has a project that is using genetic resources, when the project was designed was your company/institution aware of the requirements for accessing genetic resources in Lao People’s Democratic Republic?*

Answers: Five of the respondents were aware of Lao People’s Democratic Republic’s requirements for accessing genetic resources when they designed projects. Two of the academic respondents noted that they had not been aware of ABS but now that they are, it is factored into the design of all cooperation projects. Another academic respondent became aware of ABS when overseas partners requested access as part of a project and the Lao national academic learned that a permit was required.

3. *In the process of complying with the requirements and negotiating the access contract, did your company/institution have support from external advisors, or was the process carried out entirely by your company’s/institution’s own staff?*

Answers: Six users replied that they handled the process themselves, with support from the competent national authority. Two reported that they handled the process entirely by themselves. Since only two users have ABS contracts, the others were responding to the way in which they developed MoUs or MoAs for their projects.

4. *How would you describe your company’s/institution’s experience with the process of negotiating an access contract?*

Answers: Eight users described the process as positive thanks to support from the competent national authority and because arrangements for access reflect the parties’ agreement. Two academic users noted that it takes time to develop the MoU/contract, which delays project implementation, and that their staff have limited negotiating skills which has meant that they did not receive all of the benefits they could have when they partnered with non-national institutions on projects involving genetic resources.

5. *What benefits do you think access contracts provide for your company/institution?*

Answers: Information exchange (12 users); prestige (10); links with other companies (9); ensuring compliance/proof of compliance (5); and that national and international partners have faith in them (2). Other perceived benefits include: building relationships with communities for long-term cooperation; exchanging research results; responsibility, reliability and transparency with customers; and working closely with government.

28. Experts. There were three questions for experts only.

1. *What additional functions does the Nagoya Protocol require that are not already included in the existing system in Lao People's Democratic Republic?*

Answer: A monitoring unit to monitor genetic resources incoming from neighboring countries.

2. *In your experience, in which step of the process of accessing genetic resources should users address the distribution of monetary and non-monetary benefits?*

Answers: One expert said that it should be at the beginning of the process, one said that it should be done only when the objective of access is to obtain or develop a commercial product, a third said that it should be done during the entire process, and the fourth said that third-party benefit sharing should be enabled, depending on the nature of the transaction.

3. *What is your opinion of the possibility of an information system for managing genetic resources?*

Answers: Experts said that an online information system should be introduced as soon as possible and updated regularly. One expert suggested that the access/contracting procedure should be online along with a list of all projects that have obtained agreements/contracts. Another recommended that support teams should be assigned for different departments/sectors so that users can store and access information.

4. Issues to be addressed in contracts, based on stakeholder input

29. The input received from the target stakeholder groups included their opinions on issues that will have to be addressed in a national law and/or regulations on ABS, rather than in an ABS contract. Those issues include:

- Whether there should be a single competent national authority/single window permitting system or multiple competent national authorities responsible for ABS;
- If there is a single competent national authority, whether there should also be a national registry of supporting institutions;
- Whether there should be a shortened administrative process when access is for non-commercial purposes;
- What the powers and functions of the competent national authority or authorities should be;
- An indicative timeframe for the permitting process;
- Whether national regulations should establish a standard monetary benefit or a minimum and/or maximum percentage for monetary benefits;
- Whether there should be a tax for using genetic resources;
- Requirement for public hearings as part of the process of authorizing access to genetic resources;
- Creating a body of technical experts and/or sectoral support teams who assist providers in negotiating ABS contracts;
- Building capacity to negotiate ABS contracts;
- Creating an online information system for ABS that includes, at a minimum, technical guidelines on ABS, a detailed explanation of the requirements of the permitting process, a list of all activities that have permits to access genetic resources, and information on good practice;

- Fees charged by the competent national authority;
- Exporting genetic resources;
- How Lao People's Democratic Republic handles requests for access to genetic resources that are also found in neighboring countries;
- Monitoring imports of genetic resources from other countries; and
- How ABS contributes to sustainable use of biological resources in the country.

The 2013 draft ABS law (see paragraph 2) provided for multiple competent national authorities under MoST as the central ABS management and monitoring authority, and provided generally for decentralizing responsibilities to the provincial, district, and municipal levels. The 2013 draft did not provide for dealing with genetic resources that are also found in neighboring countries.

30. Stakeholders specified that Lao People's Democratic Republic needs technical guidelines on all aspects of ABS, particularly how to determine:
 - Whether a proposed activity constitutes access; and
 - When it is necessary to include provisions on traditional knowledge in an ABS contract.

31. Stakeholder input on issues that should be addressed in ABS contracts includes:
 - Provision substantiating that the user party has obtained prior informed consent from the provider and how it was documented;
 - Provision specifying the activities that can be carried out under the contract;
 - Specific obligations for the provider;
 - Specific obligations for the user;
 - Differentiated obligations when a potential user wants to conduct general bioprospecting and when a potential user wants to access a specific genetic resource;
 - Provision specifying the genetic resource to be accessed, if the contract is not for general bioprospecting;
 - Differentiated obligations for commercial R&D and non-commercial research;
 - Requirement to notify the competent national authority if the purpose of access changes from non-commercial research to commercial use;
 - Specific obligations for bioprospecting in natural habitats;
 - Provisions specifying how traditional knowledge is to be protected, when it is also provided;
 - Obligations to build local capacity, involve local partners, and help communities learn how to use ABS as a tool for community development;
 - Obligation that R&D be carried out in-country to the extent possible;
 - Obligations to provide updates on the use of genetic resources and share results;
 - Provisions stating the value of genetic resources and benefits;
 - Establishing a percentage for monetary benefits;
 - Defining non-monetary benefits;
 - Specifying how monetary and non-monetary benefits will be distributed to providers and the competent national authority; and
 - Monitoring contract performance, particularly what the user party does with the genetic resources after acquiring them.

Annex 1 Respondent Institutions and Companies

Government Authorities	
Ministry of Science and Technology ²⁰	Biotechnology and Ecology Institute
	Biotechnology Division
	Ecology Division
Ministry of Agriculture and Forests	Fisheries and Livestock Division
	Agriculture Division
	Plant Protection Division
	Protected Area Management Division
Ministry of Natural Resources and Environment	Climate Change Division
	Information Center
Ministry of Health	Institute of Traditional Medicine
Ministry of Industry and Commerce	Trade Cabinet Office
National Agriculture and Forestry Research Institute	
Users	
National University of Laos ²¹	Faculty of Environmental Sciences
	Faculty of Sciences
	Faculty of Forestry
Lao Biodiversity Association	
Lao National Chamber of Commerce and Industry	
DakDae Social enterprise	
Burapha Agro-Forestry Co. Ltd.	
European Chamber of Commerce and Industry (ECCIL) in Lao People's Democratic Republic	
French National Research Institute for Sustainable Development (IRD)	
Nimura Genetic Solution Co., Ltd., Japan	
IUCN International Union for Conservation of Nature	
World Bank	
Experts	
Helvetas Lao People's Democratic Republic	
Green Community Development Association	
French National Research Institute for Sustainable Development (IRD)	
Nimura Genetic Solution Co., Ltd., Japan	

²⁰ Multiple respondents from BEI.

²¹ Multiple respondents from two faculties.

Annex 2 Questionnaire – Government Authorities

Questionnaire for ABS-BioTrade Interviews

Government authorities:

1.
 - a. As of today, how many ABS contracts have been signed?
 - b. How many of those were for commercial purposes?
2. How is the value of genetic resources determined in order to negotiate access to them?
3. Are model clauses and/or contracts used in the negotiations?
4. Do you think that contracts to access genetic resources should include obligations to strengthen local capacity for research and development involving genetic resources, derivatives, and associated traditional knowledge?
5. Existing access contracts are based on the competent national authority playing the role of negotiator.
 - a. Do you think that the competent national authority should have additional powers and/or duties?
 - b. If so, what should these additional powers and/or duties be?
6. Are there any guidelines or directives that specify which activities constitute ‘access’ or ‘use’ of genetic resources and derivatives and which activities do not constitute ‘access’ or ‘use’?
7.
 - a. Have there been cases in Lao People’s Democratic Republic of access to genetic resources that are also found in other countries?
 - b. If so, in these cases were different criteria used to negotiate the agreement?
8. Is there a registry of National Supporting Institutions?
9.
 - a. Has your institution identified specific issues that delay the process of issuing access contracts?
 - b. Please provide a list of the issues affecting access contracts that your institution has identified.
10. Do you think that the process of physically collecting or otherwise accessing resources should be administered by the same authority that negotiates the access contract?
11.
 - a. Does Lao People’s Democratic Republic have a methodology for valuing the possible benefits that may arise from using genetic resources?
 - b. Would you agree with establishing a minimum or maximum percentage of benefits (for example, calculated based on a sales price) that could be used as a limiting factor in negotiations?
12. Does Lao People’s Democratic Republic have guidelines that specify when it is necessary to make a contract or license to use traditional knowledge?
13. Do you think it is sufficient to require a user who is entering into an access contract to make a sworn statement about whether or not the user has also accessed traditional knowledge?
14.
 - a. What are the aspects of negotiating an access contract that are most complicated for a provider of genetic resources?
 - b. What documents (for example: guides, methodologies, model clauses) would be most useful for facilitating negotiations?

15. What lessons has your institution learned about the process of implementing the system for access to genetic resources?

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Annex 3 Questionnaire – Users

Questionnaire for ABS-BioTrade Interviews

Users (Companies, universities, etc.)

1.
 - a. Does your company/institution currently have any contracts for access to genetic resources?
 - b. If so, what are the genetic resources?
2.
 - a. If your company/institution currently has a project that is using genetic resources, is the project financed by the company's/institution's own funds?
 - b. If the answer to question a. is 'no' or 'partially', what is the source of the financing?
3. If your company/institution currently has a project that is using genetic resources, when the project was designed, was your company/institution aware of the requirements for accessing genetic resources in Lao People's Democratic Republic?
4. In the process of complying with the requirements and negotiating the access contract, did your company/institution have support from external advisors, or was the process carried out entirely by your company's/institution's own staff?
5. How would you describe your company's/institution's experience with the process of negotiating an access contract?
 - a. Positive. Why?
 - b. Negative. Why?
 - c. Transcendental – beyond the usual scope of your company's/institution's experience.
 - d. Other. What?
6. What were the most complex aspects of the process of accessing genetic resources?
 - a. Please provide details.
 - b. Compliance with legal requirements. Which ones? Please provide details.
 - c. Negotiation
 - d. Establishing monetary and non-monetary benefits
 - e. Clarity about the process
 - f. Other issues. Please provide details.
7. What lessons has your company/institution learned about the process of accessing genetic resources?
8. What benefits do you think access contracts provide for your company/institution?
 - a. Information exchange
 - b. Links with other companies/institutions
 - c. Prestige
 - d. Other. What?
9. What obligations do you think access contracts should contain regarding building local capacity for research and development involving genetic resources, derivatives, and associated traditional knowledge?
10. Do you think that the process of physically collecting or otherwise accessing resources should be administered by the same authority that negotiates the access contract?
11.
 - a. How do you think possible benefits that may be obtained for using genetic resources should be valued?

b. Would you agree with establishing a minimum or maximum percentage of benefits (for example, calculated based on a sales price) that could be used as a limiting factor in negotiations?

12. Based on your experience and your company's/institution's experience, what needs to be improved about the process of accessing genetic resources and negotiating an access contract? Please consider the entire process when you answer this question.

13. Do you think it would be useful to have supporting documents (for example: guides, methodologies, model clauses) to facilitate negotiations?

14. Please provide any comments that you think are useful in the light of BioTrade and ABS.

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Annex 4 Questionnaire – Experts

Questionnaire for ABS-BioTrade Interviews

Experts:

1.
 - a. Have you participated in negotiating a contract for access to genetic resources?
 - b. If yes, please briefly describe your experience.

2. What additional functions does the Nagoya Protocol require that are not already included in the existing system in Lao People's Democratic Republic?

3. What do you think are the most complex aspects of the process for accessing genetic resources?
 - a. Lack of information (clarity about the scope, requirements, etc.)
 - b. Lack of adaptability for different types of users (research centers, universities, companies, public research institutions, etc.)
 - c. Experience and capacity for negotiation
 - d. Changes in the purpose of access (from basic research to commercial application, for example)
 - e. Others. Please provide details

4. Do you think that access contracts should contain obligations regarding building local capacity for research and development involving genetic resources, derivatives, and associated traditional knowledge?

5. Existing agreements for access to genetic resources in Lao People's Democratic Republic are based on the fact that the competent national authority is both the provider and the negotiator.
 - a. Do you think that the competent national authority should have other functions/duties?
 - b. If so, what should those other functions/duties be?

6.
 - a. How do you think possible benefits that may be obtained for using genetic resources should be valued?
 - b. Would you agree with establishing a minimum or maximum percentage of benefits (for example, calculated based on a sales price) that could be used as a limiting factor in negotiations?

7. In your experience, how should Lao People's Democratic Republic handle cases in which the genetic resources and/or traditional knowledge for which access is being requested in Lao People's Democratic Republic, are found in other countries as well?

8. Do you think it would be useful to have supporting documents (for example: guides, methodologies, model clauses) to facilitate negotiations?

9. In your experience, in which step of the process of accessing genetic resources should users address the distribution of monetary and non-monetary benefits?
 - a. At the beginning of the project
 - b. Only when the objective of access is to obtain or develop a commercial product
 - c. During the whole process
 - d. Other. Please specify

10. What is your opinion of the possibility of an information system for managing genetic resources?

Annex 5 Model contract clauses

1. As Lao People's Democratic Republic has not yet regulated ABS, there are no legally-binding national obligations for an ABS contract, other than what is required under national contract law²², which specifies that a contract may contain:
 - Name, family [name] and addresses of the contracting parties;
 - Purpose, price, execution term, payment, delivery;
 - Scope, quantity and quality of the objective;
 - Place of contract execution and obligation to notify each other;
 - Form and dispute resolution body; and
 - Conditions of modification and termination of the contract before term.

The purpose, price and term of execution of the contract are mandatory for all types of contracts.

2. It may be advisable to include in an ABS contract the following additional general contract clauses:
 - Indemnification and insurance;
 - Confidentiality;
 - Severability; and
 - Governing law.
3. Most of the issues that stakeholders identified as being essential for ABS contracts are in addition to the minimum contract content stipulated by national law. The exceptions are the following issues that stakeholders identified (section 5, paragraph 28) that are related to the price and which, under the Contract Law, must be specified in a contract:
 - Provisions stating the value of genetic resources and benefits;
 - Establishing a percentage for monetary benefits; and
 - Defining non-monetary benefits.
4. The Government of Japan and the CBD Secretariat commissioned the United Nations University - Institute of Advanced Studies (UNU-IAS) to carry out a study on articles 19 and 20 of the Nagoya Protocol²³ which listed issues to be included in ABS contracts, in addition to the ones Lao People's Democratic Republic stakeholders identified:
 - Definition of terms;
 - Statement of principle that benefits are to be shared;
 - Statements as to intellectual property rights;
 - Statements as to fixed benefits to be shared;
 - Description of variable benefits to be shared;
 - Status of unused material;
 - Requirements upon transfer of material or research information to third parties; and
 - Statement as to any related instruments to be complied with or requirements that must be met.

5. Additional provisions in existing model ABS contracts²⁴ include:

²² Law on Contract and Tort No. 01/NA, 8 December 2008, Article 16.

²³ The UNU-IAS report is summarized in: CBD. 2014. 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. *Report of the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol*. UNEP/CBD/ICNP/3/INF/3. Available online: <http://www.cbd.int/icnp3/submissions>

²⁴ Ethiopia Model contract on access to genetic resources and benefit sharing and MicroB3 Model Agreement on Access to Marine Microorganisms and Benefit Sharing. Available online: <https://www.cbd.int/icnp3/submissions/>; Model Access and Benefit Sharing Agreement between Australian Government and Access Party. Available online: www.wipo.int; Swiss Academy of Sciences. 2016. *Agreement on Access and Benefit-sharing for Academic Research*. Available online: http://www.swiss-academies.ch/dms/E/Publications/Reports/AccessBenefitSharing_ABS_Model_Clauses.pdf;

- A preamble;
 - A requirement for the user to deposit samples of the genetic resources accessed with the provider;
 - Storage of genetic resources;
 - A requirement to acknowledge the contribution of the provider State;
 - Dissemination of knowledge;
 - Penalties/consequences of a breach; and
 - Guaranties/warranties.
6. The African Union adopted guidelines for implementing the Nagoya Protocol which include most of the issues listed in paragraphs 1-5 of this Annex and provide detailed information on the rationale for each one.²⁵
 7. One stakeholder commented that model clauses would be useful for negotiations but that such guidance should not be over-developed (see paragraph 21). The draft proposed model clauses which follow attempt to balance the need to keep them as simple as possible, and at the same time, offer guidance for the issues Lao People's Democratic Republic stakeholders identified while also providing options for additional issues, based on international experience. The drafters of each ABS contract will need to determine, on a case-by-case basis, which clauses are relevant for their particular situation. As contract drafters adapt these model clauses, they should keep in mind the need for the contract to be as concrete, clear, and specific as possible, to create legal certainty for both parties and ensure that the contract is enforceable.
 8. The clauses that are required by Lao People's Democratic Republic's Contract Law are identified; other standard clauses that should be part of a contract are highlighted as optional but recommended. These draft proposed model clauses are presented in the order in which they may occur in a contract, but the order may of course be changed when a contract is drafted.
 9. It is assumed that a material transfer agreement will be used when a party applies for access to biological resources or genetic resources in *ex situ* collections for academic, non-commercial research, and for purposes related to food and agriculture as stipulated in the International Treaty on Plant Genetic Resources for Food and Agriculture²⁶, and that the model clauses provided below will be used for contracts for all other cases of access.
 10. A consultation on the draft model clauses was held in Vientiane, Lao People's Democratic Republic, on 1 November 2019, with ABS stakeholders in Lao People's Democratic Republic. The list of participants is attached as Annex 6. The consultations were supported by Helvetas Swiss Intercooperation and organized by BEI. The substantive comments made during the consultations were incorporated in the draft model clauses below. One comment noted that guidelines should be separated from the model clauses. However, it was decided that separating the existing guidelines from the text of the draft model clauses would not be suitable while there is no specific ABS regulation. When Lao People's Democratic Republic issues its ABS Decree, separate guidelines will be developed that reflect the substance of the ABS Decree. Those guidelines can also include the structural guidelines that are indicated **IN ALL CAPS AND HIGHLIGHTED IN GRAY** in the draft model clauses below.

Young, T.R. and Tvedt, M.W. 2017. Drafting successful ABS contracts – practical examples. Fridtjof Nansen Institute. Dakar, 7 March. PowerPoint presentation. Available online: http://www.abs-initiative.info/fileadmin//media/Events/2017/6-10_March_2017_Dakar_Senegal/07_Tvedt_17030714_Contracts_for_Dakar.pdf

²⁵ African Union Commission. 2015. *African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa*. Annexes 3 and 4. Available online: http://www.abs-initiative.info/fileadmin//media/Knowledge_Center/Publications/African_Union_Guidelines/AU_Practical_Guidelines_On_ABS_-_20150215.pdf

²⁶ Lao People's Democratic Republic acceded to the International Treaty on Plant Genetic Resources for Food and Agriculture in 2006. <http://www.fao.org/plant-treaty/countries/membership/en/>

Model Clauses for ABS Contracts in Lao People’s Democratic Republic

In the model clauses which follow:

- TEXT IN ALL CAPS AND HIGHLIGHTED IN GRAY IS BACKGROUND INFORMATION OR INDICATES OPTIONS AND MUST BE DELETED WHEN THE CONTRACT IS FINALIZED;
- [Text in brackets and underlined indicates where the Parties need to insert information].

1. Parties

This Contract is made between

The Biotechnology and Ecology Institute (BEI) of the Ministry of Science and Technology, Doon Taew Village, Km. 14 Thangon Road, Xaythany District, P.O. Box 2279, Vientiane, Lao People’s Democratic Republic

OR

[full name and acronym or abbreviation, and complete contact details of other competent national authority²⁷]

and

[full name and acronym or abbreviation of the receiving institution²⁸ and its complete contact details], collectively referred to as “the Parties”.

2. Preamble

WHEREAS Lao People’s Democratic Republic is a Party to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity and seeks to ensure that access to genetic resources, and associated traditional knowledge, in its territory is subject to prior informed consent, based on mutually agreed terms, and results in benefits to the country and its people;

WHEREAS sustainable use of biological and genetic resources is the Parties’ first priority;

WHEREAS [insert information on the interest of the competent national authority in entering into a contract for this particular purpose]; and

WHEREAS [insert information on the interest of the receiving institution in entering into a contract for this particular purpose including, specifically, whether it adheres to the BioTrade principles and criteria]

[WHEREAS any other information the Parties agree to add]

3. Purpose THIS IS REQUIRED BY LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW

The purpose of this contract is to support academic, non-commercial research.

OR

The purpose of this contract is to enable bioprospecting and utilization that seek to identify genetic resources with potential for development into a marketable product.

OR

The purpose of this contract is to support non-commercial research with the understanding that such research may identify genetic resources with potential for development into a marketable product, in which case the Parties shall enter into a new contract for commercialization.

²⁷ BEI is Lao People’s Democratic Republic’s designated ABS Focal Point and Competent National Authority. In the event that the national ABS decree stipulates that one or more other national institutions are competent national authorities with the power to enter into ABS contracts, the name and complete contact details for the respective contracting authority must be entered here.

²⁸ This must not be an individual. The entity that receives genetic resources must be an institution or enterprise.

4. Scope LAO PEOPLE'S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY IF THE CONTRACT IS FOR BIOPROSPECTING WITH NO SPECIFIC BIOLOGICAL OR GENETIC RESOURCE TARGETED:

The scope of this contract is to:

1. Document the commitment that [acronym or abbreviation of the name of the receiving institution] has made to contribute to the conservation of any protected area in which bioprospecting is carried out, which is attached as Annex [number of the annex] to this contract;
2. Define the Parties' mutually agreed terms related to bioprospecting in [specific area or areas of the country where bioprospecting will be allowed, with coordinates, and include a map or maps as an annex to the contract]; and
3. Define the Parties' mutually agreed terms related to access to and use of the accessed [biological and/or genetic] resources [, and the related traditional knowledge], and the sharing of benefits resulting from their utilization.

IF THE CONTRACT IS FOR ACCESS TO AND USE OF A SPECIFIC BIOLOGICAL OR GENETIC RESOURCE *IN-SITU*:

The scope of this contract is to:

1. Document the commitment that [acronym or abbreviation of the name of the receiving institution] has made to contribute to the conservation of any protected area from which [biological and/or genetic] resources are accessed, which is attached as Annex [number of the annex] to this contract;
2. Document the prior informed consent given by the provider or providers of [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed], which is attached as Annex [number of the annex] to this contract;

INSERT THE FOLLOWING CLAUSE IF TRADITIONAL KNOWLEDGE ASSOCIATED WITH A BIOLOGICAL OR GENETIC RESOURCE WILL BE ACCESSED AS WELL:

- [3. Document the prior informed consent given by the provider or providers of traditional knowledge related to [scientific classification of the biological or genetic resource or resources to be accessed], which is attached as Annex [number of the annex] to this contract;
- [3. OR 4.] Document the process of analysis that [acronym or abbreviation of the name of the receiving institution] intends to use with [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed] [and the associated traditional knowledge], which is attached as Annex [number of the annex] to this contract;
- [4. OR 5.] Define the Parties' mutually agreed terms related to access to and use of [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed] [, and the associated traditional knowledge], and the sharing of benefits resulting from their use.

IF THE CONTRACT IS FOR ACCESS TO AND UTILIZATION OF A SPECIFIC BIOLOGICAL OR GENETIC RESOURCE FROM AN *EX-SITU* COLLECTION:

1. Document the agreement of [insert name of the institution holding the *ex-situ* collection], which is attached as Annex [number of the annex] to this contract, to provide [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed] for utilization;
2. Document the process of analysis that [acronym or abbreviation of the name of the receiving institution] intends to use with [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed] [and the associated traditional knowledge], which is attached as Annex [number of the annex] to this contract;
3. Define the Parties' mutually agreed terms related to access to and use of [scientific classification – genus and species – of the biological or genetic resource or resources to be accessed] [, and the associated traditional knowledge], and the sharing of benefits resulting from their use.

5. Definition of terms

THE TERMS LISTED BELOW ARE DEFINED IN THE 2013 DRAFT OF THE PROPOSED ABS LAW. ALL BUT FOUR OF THE DEFINITIONS LISTED COME FROM THE CBD AND THE NAGOYA PROTOCOL. THE PARTIES TO AN ABS CONTRACT WILL DETERMINE WHICH OF THESE DEFINITIONS ARE NEEDED, DELETE THE DEFINITIONS THAT ARE NOT, AND/OR ADD ANY OTHER DEFINITIONS WHICH MAY BE REQUIRED.

- “Access” means collecting genetic resources from the location where they are found, whether *in-situ* or *ex-situ*.
- “Accessed genetic resources” means the genetic resources collected on the basis of this contract.
- “Biological diversity” means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- “Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- “Bioprospecting” means looking for ways to commercialize biodiversity through a systematic search for and development of economically valuable genetic and biochemical resources originating in nature.²⁹
- “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.
- “Country of origin of genetic resources” means the country which possesses those genetic resources in *in-situ* conditions.
- “Country providing genetic resources” means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.
- “Derivative” means a 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.
- “*ex-situ* conservation” means the conservation of components of biological diversity outside their natural habitats.
- “Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.
- “Genetic resources” means genetic material of actual or potential value.
- “*in-situ* conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.
- “Protected area” means all land, with or without forest coverage and including rivers, creeks, rills, channels, lakes, ponds, wetlands, and all other types of natural areas which the government designates under any category of protection and at any level whether national, provincial, district, municipal, or village.³⁰
- “Research and development” means work directed towards the innovation, introduction, and improvement of products and processes.³¹
- “Traditional knowledge” means knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.³²

²⁹ Adapted from World Health Organization. 2001. *TRIPS, CBD and Traditional Medicines: Concepts and Questions. Report of an ASEAN Workshop on the TRIPS Agreement and Traditional Medicine*. Jakarta. 13-15 February. Section 2.3. <https://apps.who.int/medicinedocs/en/d/Jh2996e/6.3.html#Jh2996e.6.3>

³⁰ Adapted from the Decree on Protected Areas No. 134/G dated 13/5/2015, articles 3.1, 5, and 7.

³¹ Definition from the Oxford English Dictionary. The Parties may replace this definition with another one on which they agree.

³² WIPO. Traditional Knowledge. <https://www.wipo.int/tk/en/tk/>

- “Utilization of genetic resources” means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology.

6. Duration THIS IS REQUIRED BY LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW

This contract shall enter into force on the date it is signed by both Parties and shall remain in force [for enter the period of time the contract will remain in force] OR [until enter a specified termination date].

7. Place of execution LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. [BEI] OR [acronym of other competent national authority] shall carry out its obligations under this contract in Vientiane [and in names of other places in the country, if applicable], Lao People’s Democratic Republic.
2. [acronym or abbreviation of the name of the receiving Party] shall carry out its obligations under this contract in [name or names of the place or places in Lao People’s Democratic Republic and/or another country or countries, as applicable].

8. Benefits THIS IS REQUIRED BY LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW

BENEFITS MAY BE MONETARY OR NON-MONETARY OR BOTH.

1. The Parties agree that all benefits obtained under this contract shall be equitably shared between the Parties and with the provider or providers of biological and/or genetic resources [and the provider or providers of associated traditional knowledge].

IF THE PURPOSE OF THIS CONTRACT IS TO ENABLE BIOPROSPECTING, COLLECTION *IN-SITU*, OR OBTAINING BIOLOGICAL OR GENETIC RESOURCES FROM AN *EX-SITU* COLLECTION, AND UTILIZATION THAT SEEKS TO IDENTIFY BIOLOGICAL OR GENETIC RESOURCES WITH POTENTIAL FOR DEVELOPMENT INTO A MARKETABLE PRODUCT:

2. [acronym or abbreviation of the name of the receiving Party] shall share monetary benefits with [BEI] OR [acronym of other competent national authority] as follows:

LAO PEOPLE’S DEMOCRATIC REPUBLIC HAS NOT REGULATED ABS AND THEREFORE THERE ARE NO LEGALLY-SPECIFIED MINIMUM OR MAXIMUM PERCENTAGES FOR SHARING MONETARY BENEFITS AND NO STIPULATION ON WHETHER MONETARY BENEFITS SHOULD BE VALUED ON THE BASIS OF THE SALES PRICE OF ANY INTERMEDIATE OR FINAL PRODUCT OR PROCESS RESULTING FROM THE CONTRACT OR SOME OTHER BASIS. THE MODEL PROVISIONS MUST BE MODIFIED TO COMPLY WITH NATIONAL LAW AND/OR REGULATIONS WHEN THEY ARE ADOPTED.

- [a. minimum percentage of sales price of product or process] OR [maximum percentage of sales price] OR [specify a range from minimum to maximum percentage of sales price];

OR

- [a. a lump sum equal to [specify the percentage] of net profit after taxes from the sale of the product or process.]

- [b. Payments shall be based on the financial report specified in [reference to the clause in the contract that corresponds to ‘Clause 17. Monitoring contract performance’ in these model clauses] and shall be made [specify how often payments must be made – annually, every six months, every month, other frequency].

3. [acronym or abbreviation of the name of the receiving Party] shall provide in-kind and/or non-monetary benefits [as follows:] OR [as set out in Annex [number of the annex] to this contract:]

IN ADDITION TO ITEM a., ALL TYPES OF NON-MONETARY BENEFITS LISTED BELOW, AND PARTICULARLY TRAINING AND EDUCATION, SHOULD BE OPTIONS FOR SUPPORT TO COMMUNITIES AS WELL AS GOVERNMENT INSTITUTIONS

[a. infrastructure support for provider community/communities – this may be anything the community needs and the receiving Party can provide, for example: water supply, building a school or clinic, assistance with road construction, among other things. Specify the community or communities that will receive such assistance, what type of assistance will be provided, when and how it will be provided, and any other issue related to providing the support;]

[b. equipment – a detailed list of all equipment provided and give the complete name and contact information for the community or communities, institution or institutions that will receive the equipment];

[c. involve Lao scientists in the research – specify who will be involved and in what capacities, for what period of time, where, and any other issue related to involvement in the research];

[d. training – specify who will be trained, the subject matter of the training, where training will be done, how often training will be done, and any other issue related to the training that will be provided as a non-monetary benefit];

[e. scholarships and/or other educational opportunities for human resource development – specify who will receive the educational opportunity, the field or fields that each individual will study, where each individual will study, for how long each individual will study, whether a specified number of educational opportunities will be supported each year, and/or any other issue related to educational benefits that will be provided as a non-monetary benefit];

[f. technical advice or support – specify what the technical advice or support will be and how and when it will be offered];

[g. assistance with fund raising – specify the type of assistance to be provided and the basis on which it will be provided];

[number/numbers. Any other in-kind and/or non-monetary benefit agreed by the Parties.]

4. [BEI] OR [acronym of other competent national authority] has entered into an agreement with the provider or providers of biological and/or genetic resources [and associated traditional knowledge] which is attached as Annex [number of the annex] to this contract, and shall share monetary benefits as stipulated in the agreement.

OR

IF THE PURPOSE OF THIS CONTRACT IS TO SUPPORT ACADEMIC, NON-COMMERCIAL RESEARCH

THERE MAY OR MAY NOT BE MONETARY BENEFITS TO SHARE IN THE CASE OF NON-COMMERCIAL RESEARCH. IF THERE ARE, THE FOLLOWING CLAUSE MAY BE USED. IF NOT, THIS CLAUSE CAN BE DELETED:

[2. [acronym or abbreviation of the name of the receiving Party] shall share [percentage or lump sum] of research funding with [BEI] OR [acronym of other competent national authority [as follows:] OR [as set out in Annex [number of the annex] to this contract:]

IF THERE ARE NO MONETARY BENEFITS TO SHARE, THE SECOND AND THIRD CLAUSES OF THIS ARTICLE IN A CONTRACT FOR ACADEMIC, NON-COMMERCIAL RESEARCH WOULD BE THE FOLLOWING:

2. [acronym or abbreviation of the name of the receiving Party] shall provide in-kind and/or non-monetary benefits [as follows:] OR [as set out in Annex [number of the annex] to this contract:]

IN ADDITION TO ITEM a., ALL TYPES OF NON-MONETARY BENEFITS LISTED BELOW, AND PARTICULARLY TRAINING AND EDUCATION, SHOULD BE OPTIONS FOR SUPPORT TO COMMUNITIES AS WELL AS GOVERNMENT INSTITUTIONS

[a. infrastructure support for provider community/communities – this may be anything the community needs and the receiving Party can provide, for example: water supply, building a school or clinic, assistance with road construction, other. Specify the community or communities that will receive such assistance, what type of assistance will be provided, when and how it will be provided, and any other issue related to providing the support;]

[b. equipment – a detailed list of all equipment provided and give the complete name and contact information for the community or communities, institution or institutions that will receive the equipment];

[c. involve Lao scientists in the research – specify who will be involved and in what capacities, for what period of time, where, and any other issue related to involvement in the research];

[d. training – specify who will be trained, the subject matter of the training, where training will be done, how often training will be done, and any other issue related to the training that will be provided as a non-monetary benefit];

[e. scholarships and/or other educational opportunities – specify who will receive the educational opportunity, the field or fields that each individual will study, where each individual will study, for how long each individual will study, whether a specified number of educational opportunities will be supported each year, and/or any other issue related to educational benefits that will be provided as a non-monetary benefit];

[f. technical advice or support – specify what the technical advice or support will be and how and when it will be offered];

[g. assistance with fund raising – specify the type of assistance to be provided and the basis on which it will be provided];

[number/numbers. Any other in-kind and/or non-monetary benefit agreed by the Parties.]

3. [BEI] OR [acronym of other competent national authority] has entered into an agreement with the provider or providers of biological and/or genetic resources [and associated traditional knowledge] which is attached as Annex [number of the annex] to this contract, and shall share monetary benefits as stipulated in the agreement.

9. Activities that may be carried out under the contract

IF THE CONTRACT IS FOR BIOPROSPECTING *IN-SITU*:

1. [acronym or abbreviation of the name of the receiving Party] has obtained the required permits [, which are attached as annexes to this contract,³³] and shall be entitled to collect specimens of [biological and/or genetic] resources from *in-situ* conditions as follows:

- a. Types of specimens³⁴, if known:
- b. Number of specimens and quantity of each type of specimen:
- d. Geographical location of collection for each type of specimen³⁵:
- e. Time period for collection of each type of specimen:
- f. Collection method for each type of specimen:

OR

IF THE CONTRACT IS FOR ACCESS TO A SPECIFIC BIOLOGICAL OR GENETIC RESOURCE *IN-SITU*:

1. [acronym or abbreviation of the name of the receiving Party] shall be entitled to collect specimens of [scientific classification – genus and species – of each biological or genetic resource to be accessed] from *in-situ* conditions as follows:

- a. Types of specimens³⁶:
- b. Number of specimens and quantity of each type of specimen:

³³ This is optional. Model Clause 18 requires the receiving Party to guarantee that it has obtained all required permits.

³⁴ For example: give the scientific classification of the biological resource whether it is plant, animal, fungi, or microorganism, including bacteria and viruses. If parts of plants or samples from animals are to be collected, specify the parts or samples.

³⁵ If specimens of different biological resources will be taken from different locations in the country, specify which resources will be taken from which locations and provide the GPS coordinates for each location.

³⁶ For plants, specify, for example, whether the entire plant will be collected, or only leaves, or only the roots, or only seeds, or some other part of the plant. For fungi, specify whether the entire organism will be collected, or only a part. For animals, specify whether the entire animal will be collected.

- c. Geographical location of collection for each type of specimen³⁷:
- c. Total weight and characteristics of the specimens/material to be transferred³⁸:
- d. Time period for collection of each type of specimen:
- e. Collection method for each type of specimen:

OR

IF THE CONTRACT IS FOR ACCESSING BIOLOGICAL OR GENETIC RESOURCES FROM *EX-SITU* COLLECTIONS FOR A COMMERCIAL PURPOSE:

1. [acronym or abbreviation of the name of the receiving Party] shall be entitled to obtain from [name and complete contact information for the institution holding the *ex-situ* collection] the following resources: [scientific classification – genus and species – of each biological or genetic resource to be accessed and specify the form in which it will be accessed].
2. [acronym or abbreviation of the name of the receiving Party] shall be entitled to move the accessed resources to its premises as specified in [reference to the clause in the contract that corresponds to ‘Clause 7. Place of execution’ in these model clauses].
[number/numbers. Any other activity or activities agreed by the Parties.]

10. Activities that may not be carried out under the contract

1. [acronym or abbreviation of the name of the receiving Party] shall not transfer to any third party any [biological and/or genetic resources] or any associated traditional knowledge unless [BEI] OR [acronym of other competent national authority] has given its prior, express written permission for transfer of the [biological and/or genetic] resources and entered into a contract with the third party, and the provider or providers of the traditional knowledge have given their prior, express written permission for transfer of the traditional knowledge.
2. [acronym or abbreviation of the name of the receiving Party] shall not use the accessed genetic resources for any purpose or activity not specified in this contract without the prior, written consent of [BEI] OR [acronym of other competent national authority]. IF THE CONTRACT IS FOR ACADEMIC, NON-COMMERCIAL RESEARCH If [acronym or abbreviation of the name of the receiving Party] determines that it wants to use the accessed genetic resources for any commercial purpose, it shall not do so unless it has entered into a new contract with [BEI] OR [acronym of other competent national authority] for that purpose.
3. [acronym or abbreviation of the name of the receiving Party] shall not claim nor obtain intellectual property rights over the accessed [biological and/or genetic] resource or any part of the accessed [biological and/or genetic] resource, unless explicitly authorized.
4. [BEI] OR [acronym of other competent national authority] shall not, for the duration of this contract, grant to any other party access to the same [biological and/or genetic] resources in the same area to which this contract applies unless it secures the prior, written consent of [acronym or abbreviation of the name of the receiving Party].
5. Neither Party shall assign its rights, benefits, or obligations under this contract to any third party without the prior written consent of the other Party.
[number/numbers. Any other activity or activities agreed by the Parties.]

11. Specific obligations of BEI OR [acronym of other competent national authority]

1. When the provider or providers of [biological and/or genetic] resources have given their prior informed consent or [acronym or abbreviation of the name of the receiving Party] has entered into an agreement with the institution responsible for an *ex-situ* collection to access genetic resources, issue the permit that will serve as the internationally recognized certificate of compliance under the Nagoya Protocol and upload it to the Nagoya Protocol ABS Clearing-House;

³⁷ If specimens of different biological resources will be taken from different locations in the country, specify which resources will be taken from which locations and provide the GPS coordinates for each location.

³⁸ For example: complete, parts, live, in extracts, transformed, etc.

2. Comply with all obligations of Lao People’s Democratic Republic under the Nagoya Protocol to disclose non-confidential information concerning this contract on the ABS Clearing-House;
3. Advise [acronym or abbreviation of the name of the receiving Party] on other permits that may be required from other government authorities and facilitate contact with those authorities;
4. any other obligations agreed by the Parties].

12. Specific obligations of [acronym or abbreviation of the name of the receiving Party]

[acronym or abbreviation of the name of the receiving Party] shall.³⁹

1. Ensure that the collection, storage, transport, use and export of the accessed biological and/or genetic resources comply with all applicable laws of the Lao People’s Democratic Republic that govern issues including but not limited to the protection of human health and the environment, endangered species, taxation, and customs;
2. Bear all costs incurred in bioprospecting or accessing [biological and/or genetic] resources in-situ or from *ex-situ* collections, delivering duplicate samples, if required, [carrying out research] [utilizing genetic resources], and sharing the results;
3. Involve [list the full names of individual and institutional local partners and the activity or activities in which each will be involved]⁴⁰;
4. Contribute to building capacity in Lao People’s Democratic Republic for bioprospecting, utilization of [biological and/or genetic] resources, and [insert any other activity specific to the contract] [by insert specific information on what the receiving Party will do to build capacity] OR [as set out in Annex { number of the annex } to this contract];
5. Utilize the accessed [biological and/or genetic] resources in Lao People’s Democratic Republic [insert agreement of the Parties on the extent to which it is possible to utilize biological and/or genetic resources in-country];
6. Share with [BEI] OR [acronym of other competent national authority] the results of [research] OR [utilization] involving the accessed [biological and/or genetic] resources, including free access to any online resource where the results may be made available for a fee, and provide [BEI] OR [acronym of other competent national authority] with any assistance that may be required to interpret the results;
7. Acknowledge the contribution of Lao People’s Democratic Republic, national scientists and researchers, local partners, and all providers of [biological and/or genetic] resources in all of its communications and publications concerning the activities carried out under this contract;
8. Provide to [BEI] OR [acronym of other competent national authority] [any other institution the Parties may designate] [number] of printed copies of any publication based on the use of the accessed [biological and/or genetic] resources and links to the site or sites where the publication may be accessed online;

IF THE CONTRACT IS FOR COLLECTING *IN-SITU*, WHETHER FOR ACADEMIC RESEARCH OR A COMMERCIAL PURPOSE, INCLUDE THESE ADDITIONAL CLAUSES:

[number]. If there is no alternative to collecting in a legally designated protected area, enter into a written agreement with the protected area management authority, which is attached as Annex [number of the annex] to this contract, to offset or mitigate any damage caused by collection activities and contribute to the conservation of the protected area.

[number]. Involve the members of [list the names of the communities in or adjacent to the areas where bioprospecting will be carried out], as specified in [reference to the clause in the contract that corresponds to “Clause 4. Scope” in these model clauses].

[number]. Within [time period to be specified by the Parties] after the time period for collection expires, notify [BEI] OR [acronym of other competent national authority] of the scientific classification of each resource [acronym or abbreviation of the name of the receiving Party] intends to use. [BEI] OR

³⁹ It is recommended that all ABS contracts include clauses 1-8.

⁴⁰ If there will be numerous local partners, this list may be given in an annex to the contract.

[acronym of other competent national authority] may, within [time period to be specified by the Parties], raise objections, in which case the Parties will seek agreement on the [biological and/or genetic] resources which may be used.

[number]. Deliver duplicate samples of the accessed [biological and/or genetic] resources to [BEI] OR [acronym of other competent national authority]. Duplicate samples must be delivered in the following form or forms: [insert requirements for samples].

OR

[number]. Deliver duplicate samples of the accessed [biological and/or genetic] resources to the following [institutions] OR [institutions] designated by [BEI] OR [acronym of other competent national authority]: [insert complete name/s and contact information for each institution designated]. Duplicate samples must be delivered in the following form or forms: [insert requirements for samples].

IF THE PURPOSE OF THIS CONTRACT IS TO SUPPORT ACADEMIC, NON-COMMERCIAL RESEARCH OR TO ENABLE BIOPROSPECTING AND RESEARCH AND DEVELOPMENT THAT SEEK TO IDENTIFY BIOLOGICAL OR GENETIC RESOURCES WITH POTENTIAL FOR DEVELOPMENT INTO A MARKETABLE PRODUCT, INCLUDE THIS ADDITIONAL CLAUSE:

[number]. Notify [BEI] OR [acronym of other competent national authority] if the purpose of access under this contract changes from non-commercial research to any commercial utilization and enter into a new contract for the commercial utilization.

IF ACCESS WILL INCLUDE TRADITIONAL KNOWLEDGE ASSOCIATED WITH THE BIOLOGICAL OR GENETIC RESOURCES, INCLUDE THIS ADDITIONAL CLAUSE:

[number]. Enter into a written agreement with the provider or providers of traditional knowledge associated with the accessed resources that clearly describes the traditional knowledge and clearly expresses the provider's or providers' prior informed consent to its use.

[number/numbers. Any other activity/activities agreed by the Parties.]

13. Delivery LAO PEOPLE'S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. [acronym or abbreviation of the name of the receiving Party] shall deliver monetary and non-monetary benefits to [BEI] OR [acronym of other competent national authority] as stipulated in [reference to the clause in the contract that corresponds to "Clause 8. Benefits" in these model clauses].

2. [BEI] OR [acronym of other competent national authority] shall deliver monetary benefits to providers of [biological and/or genetic] resources [and associated traditional knowledge] as stipulated in [reference to the clause in the contract that corresponds to "Clause 8. Benefits" in these model clauses] OR [Annex [number of the annex] to this contract.]

14. Intellectual property rights⁴¹

All intellectual property rights arising from activities carried out in the execution of this contract shall be co-owned by the Parties unless one Party advises the other Party in writing that it does not want an interest in such intellectual property rights.

OR

If any activity under this contract generates any intellectual property rights, such rights shall be owned by the Government of Lao People's Democratic Republic. [BEI] OR [acronym of other competent national authority] and any other party that participated in the activity that generates intellectual property rights shall have a free, non-exclusive global license to use that intellectual property. [acronym or abbreviation of the name of the receiving Party] and [BEI] OR [acronym of other competent national

⁴¹ This clause reflects current practice in Lao People's Democratic Republic.

authority] [and [full name of any other party or parties that are eligible for the license] shall enter into a licensing agreement.

15. Communications LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. All communication between the Parties related to the execution of this contract, including but not limited to reports, minutes, records, instructions, notices, advice, and correspondence, shall be made in English.

2. All communication between the Parties shall be directed as follows:

To the Government of Lao People’s Democratic Republic	To <u>[complete name of the receiving institution]</u>
<u>[name]</u>	<u>[name]</u>
<u>[title]</u>	<u>[title]</u>
<u>[Postal address]</u>	<u>[Postal address]</u>
<u>[Email address]</u>	<u>[Email address]</u>
<u>[Telephone and fax]</u>	<u>[Telephone and fax]</u>

16. Dissemination of knowledge⁴²

1. The Parties may disclose digital sequence information on the genetic resources that are the subject of this contract [insert text describing what the Parties agree] OR [as may be determined by the Meeting of the Parties to the Nagoya Protocol].

2. The Parties may agree, on a case-by-case basis, to jointly or separately publish information on results of research and/or R&D undertaken under this contract in scientific journals, short reports, communication in national and/or international newspapers, and/or to present such results during academic conferences and other events in Lao People’s Democratic Republic and/or internationally. [insert text specifying in detail the extent, timing, and nature of any limits on publishing or disclosing information, or include that detail in an annex to this contract.]

3. The Parties shall not disclose information on traditional knowledge associated with the accessed [biological and/or genetic] resources unless the providers of such traditional knowledge give their written prior informed consent to such disclosure.

17. Monitoring contract performance

1. [BEI] OR [acronym of other competent national authority] shall have the right to monitor at any time all activities under this contract that are carried out in Lao People’s Democratic Republic.

2. [acronym or abbreviation of the name of the receiving Party] shall give to [BEI] OR [acronym of other competent national authority], or to any persons authorized in writing by [BEI] OR [acronym of other competent national authority], access to the premises specified in [reference to the clause in the contract that corresponds to “Clause 7. Place of execution” in these model clauses] and permit those persons to participate in audits, inspect, and take copies of any material relevant to this contract.

3. [acronym or abbreviation of the name of the receiving Party] shall maintain records concerning the storage and any transfer of the accessed genetic resources from the premises designated in [reference to the clause in the contract that corresponds to ‘Clause 7. Place of execution’ in these model clauses] and allow [BEI] OR [acronym of other competent national authority] access to such records

4. [acronym or abbreviation of the name of the receiving Party] shall report in writing to [BEI] OR [acronym of other competent national authority] every [insert reporting period – month, six months, other period], beginning [insert date for first report] and ending [insert date for final report], providing:

a. details of what is being done with the accessed [biological and/or genetic] resources including the progress of the [research] OR [utilization, including any steps taken towards obtaining intellectual property rights and/or marketing products or processes based on the accessed biological and/or genetic resources]; and

⁴² The Parties to an ABS contract may use one, both, or neither of the proposed clauses and may substitute any provision on which they agree.

b. comprehensive financial accounting related to the implementation of this contract and its results.

5. Each progress report that [acronym or abbreviation of the name of the receiving Party] submits shall be in two parts: one part shall include non-confidential information and the other part shall include any information that [acronym or abbreviation of the name of the receiving Party] considers to be confidential, including financial audit reports, in order to protect any existing or future intellectual property rights.

6. Each Party shall retain all records related to the execution of this contract for [insert period of time] from the date this contract expires or is terminated for any reason.

7. Either Party may request the other to schedule a face-to-face or virtual meeting at any time as may be required to discuss contract performance.

18. Guarantees, indemnification and insurance

1. [BEI] OR [acronym of other competent national authority] does not guarantee:

- a. the quality, viability or purity of the accessed [biological and/or genetic] resources;
- b. title to the accessed [biological and/or genetic] resources;
- c. the truthfulness or accuracy of any associated traditional knowledge and any other information provided with the accessed [biological and/or genetic] resources;
- d. that use of the accessed [biological and/or genetic] resources for research or utilization does not infringe any third party intellectual property rights.

2. [BEI] OR [acronym of other competent national authority] shall not be liable for any loss incurred by [acronym or abbreviation of the name of the receiving Party] in the course of any activity carried out under this contract and/or in the event that bioprospecting does not identify a [biological and/or genetic] resource that can be utilized.

3. [acronym or abbreviation of the name of the receiving Party] guarantees that it has obtained all permits required under the laws and regulations of Lao People's Democratic Republic to collect, store, transport, and export the accessed biological and/or genetic resources.

4. [acronym or abbreviation of the name of the receiving Party] guarantees that its facilities specified in [reference to the clause in the contract that corresponds to "Clause 7. Place of execution" in these model clauses] and the qualifications of its personnel who will carry out the activities described in [reference to the clause in the contract that corresponds to "Clause 9. Activities that may be carried out under the contract" in these model clauses] are appropriate and adequate for the purpose of this contract.

5. [acronym or abbreviation of the name of the receiving Party] is solely responsible for insuring its personnel, equipment, and operations for all activities under this contract in Lao People's Democratic Republic and on its own premises.

6. This contract shall not affect the sovereign rights of Lao People's Democratic Republic over the accessed [biological and/or genetic] resources and [BEI] OR [acronym of other competent national authority] shall always retain the authority to grant to any other party access to any genetic resources/biological resources of the same type except as provided under Article [reference to the clause in the contract that corresponds to 'Clause 10.4. Activities that may not be carried out under the contract' in these model clauses].

19. Confidentiality

1. All traditional knowledge associated with [biological and/or genetic] resources accessed under this contract shall be considered confidential and shall not be disclosed by either Party without the written, prior informed consent of the provider or providers of the traditional knowledge.

2. The Parties may designate data, technical specifications and procedures, methodologies and other information related to the subject of this contract as confidential by informing the other Party in writing.

3. Neither Party may disclose any information that the other Party has designated as confidential unless the Party holding the confidential information has given its prior, written consent to the disclosure.

20. Severability

1. As far as possible, all provisions of this contract must be construed so as not to be invalid, illegal or unenforceable.
2. If anything in this contract is unenforceable, illegal or void, it shall be severed and the rest of this contract shall remain in force.

21. Modification LAO PEOPLE'S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. This contract may be amended at any time by mutual agreement between the Parties.
2. Any amendment to this contract must be made in writing and signed by both Parties.

22. Consequences of a breach

IF THE PURPOSE OF THIS CONTRACT IS TO SUPPORT ACADEMIC, NON-COMMERCIAL RESEARCH

If [acronym or abbreviation of the name of the receiving Party] utilizes the accessed [biological and/or genetic] resources or associated traditional knowledge for any commercial purpose, and has not entered into a new contract for that purpose as specified in [reference to the clause in the contract that corresponds to 'Clause 10.2 Activities that may not be carried out under the contract in these model clauses'] it is in breach of this contract and shall pay to [BEI] OR [acronym of other competent national authority] [minimum percentage of sales price of product or process] OR [maximum percentage of sales price] OR [a lump sum equal to [specify the percentage] of net profit after taxes from the sale of the product or process] [based on the financial report specified in [reference to the clause in the contract that corresponds to 'Clause 17. Monitoring contract performance' in these model clauses]] [plus a penalty in the amount of [insert lump sum or percentage]].

IF THE PURPOSE OF THIS CONTRACT IS TO ENABLE BIOPROSPECTING, COLLECTION *IN-SITU*, OR OBTAINING GENETIC RESOURCES FROM AN *EX-SITU* COLLECTION, AND UTILIZATION THAT SEEKS TO IDENTIFY GENETIC RESOURCES WITH POTENTIAL FOR DEVELOPMENT INTO A MARKETABLE PRODUCT:

If [acronym or abbreviation of the name of the receiving Party] utilizes the accessed genetic resources or associated traditional knowledge for any purpose or activity not authorized in this contract, it is in breach of this contract and shall pay to [BEI] OR [acronym of other competent national authority], in addition to the payments stipulated in [reference to the clause in the contract that corresponds to 'Clause 8. Benefits' in these model clauses], a penalty in the amount of [lump sum or percentage].

23. Termination LAO PEOPLE'S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. This contract may be terminated at any time by mutual written agreement between the Parties.
2. This contract may be terminated by default if [acronym or abbreviation of the name of the receiving Party] fails to satisfy any of the following obligations under this contract: [list each provision whose breach will result in default].
 - a. In the case of default, [BEI] OR [acronym of other competent national authority] must give written notice to [acronym or abbreviation of the name of the receiving Party] requesting that it rectify or explain to the satisfaction of [BEI] OR [acronym of other competent national authority] the reasons for the default.
 - b. If [acronym or abbreviation of the name of the receiving Party] does not respond to the written notice of default within [insert period of time], [BEI] OR [acronym of other competent national authority] may terminate this contract by giving written notice to [acronym or abbreviation of the name of the receiving Party] of the termination.
 - c. If this contract is terminated by default, [acronym or abbreviation of the name of the receiving Party] must immediately stop all activities involving the [biological and/or genetic] resources that are the subject of this contract.
4. This contract shall terminate on declaration of bankruptcy by [acronym or abbreviation of the name of the receiving Party].
5. Termination of this contract shall not affect the obligations and/or the rights that were due to accrue to either party prior to the effective date of termination.

6. On expiration of this contract or its termination for any reason, [acronym or abbreviation of the name of the receiving Party] must transfer back to [BEI] OR [acronym of other competent national authority] or destroy, at the discretion of [BEI] OR [acronym of other competent national authority], all accessed genetic resources. The operation of this clause survives the termination of this agreement.

24. Governing law

1. This contract shall be governed by the applicable laws and regulations of the Lao People’s Democratic Republic.

[2. Insert a statement that includes the complete citation to any other legal instrument that also applies to this contract.]

25. Dispute resolution LAO PEOPLE’S DEMOCRATIC REPUBLIC NATIONAL CONTRACT LAW LISTS THIS BUT DOES NOT MAKE IT MANDATORY

1. If either Party wishes to dispute any issue regarding the interpretation or execution of this contract, that Party must notify the other Party in writing.

2. Any dispute regarding the interpretation or execution of this contract must, as far as reasonably practicable, be resolved through good faith consultation between the Parties.

3. Any dispute arising from the interpretation or execution of this contract that cannot be settled by good faith efforts to resolve it, shall be referred to mediation in Vientiane, Lao People’s Democratic Republic as stipulated by the law of Lao People’s Democratic Republic in force at the time of the dispute.

4. Any dispute regarding the interpretation or execution of this contract that cannot be settled amicably by the Parties or by mediation shall be subject to the jurisdiction of the competent courts in Vientiane, Lao People’s Democratic Republic.

26. Warranty

Each Party warrants to the other Party that it has full powers and authority to enter into this contract.

27. Entire agreement

This contract constitutes the entire agreement between the Parties.

SIGNED

[name]	[name]
[title]	[title]
On behalf of the Government of Lao People’s Democratic Republic	On behalf of [<u>complete name of the receiving institution</u>]
[date]	[date]
[place]	[place]

Annex 6 List of Participants: Consultation on the Draft Model Contract Clauses

1 November 2019

ລ/ດ No.	ຊື່ ແລະ ນາມສະກຸນ Full Names	ຕຳແໜ່ງ Positions	ພາກສ່ວນ Organizations	ໂທລະສັບ Contact numbers	ອີເມວ Email addresses	ລາຍເຊັນ Signatures
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4	Dr. Kongmany SYDARA	Director	Institute of Traditional Medicine, Ministry of Health	22201836	kmnkong@gmail.com	
5	Ms. Kongchay PHIMMAKONG	Deputy Director	Department of Science, MOST	020 23042746	kongchaybeechn@yahoo.com	
6	Ms. Somphavanh RADAVANH	Director	Biosafety Division, BEI, MOST	020 55663611	radavanh@gmail.com	
7	Ms. Viengpasith VANISAVETH	BCH NFP	Ministry of Science and Technology	020 23174777	viengpasith@yahoo.com	

ລ/ດ No.	ຊື່ແລະ ນາມສະກຸນ Full Names	ຕຳແໜ່ງ Positions	ພາກສ່ວນ Organizations	ໂທລະສັບ Contact numbers	ອີເມວ Email addresses	ລາຍເຊັນ Signatures
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9	Mr. Somchay INDAVONG	Project Official Value chair	Helvetas Lao, BioTrade Project	59903366		
10	Mr. Phonexay SENGSOULICHANH	Project Official Standard	Helvetas Lao, BioTrade Project	54779741		
11	Ms. Khamphachanh SIHAVONG	Deputy Director	Biosafety Division, BEI, MOST		ksihavong@live.com	
12	Mr. Khamkeo SENGINVONG	Secretariat to the Vice Minister	Ministry of Science and Technology		senginvong82@yahoo.com	
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16	Ms. Vilaysoth NORKEOMAMY	Technical Staff	Genetic Resource Division	97676400	vilaysoth@hotmail.com	

ລ/ດ No.	ຊື່ແລະ ນາມສະກຸນ Full Names	ຕຳແໜ່ງ Positions	ພາກສ່ວນ Organizations	ໂທລະສັບ Contact numbers	ອີເມວ Email addresses	ລາຍເຊັນ Signatures
17	Ms. Kitsamone SIHAVONG	Deputy Director	Ecology Division			
18	Mr. Keo PHOMMAVONG	Deputy Director	Biotechnology Division			
19	Ms. Kompheng PHONEMAVONG	Deputy Director	Chemistry Division			
20	Ms. Kantheo SENTHAMMAVONG	Deputy Director	Silk Biotechnology			
21	Ms. Phetdalaphone PATHOMTHONG	Technical Staff	Genetic Resource Division			
22	Mr Khemkham Hongphakdy	Technical Staff	Plant Genetic Resources Conservation Unit, Rice Research Center			
23	Ms Touktadaling Keobounthan	Technical Staff	Agriculture Department, MAF			
25	Mr Soulivanh Larfasanah	Head of Unit	Faculty of Science, NUOL			