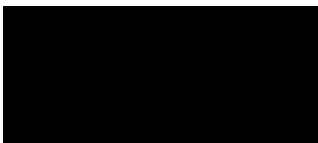


**Draft**

**MODEL AGREEMENT ON  
ACCESS TO GENETIC RESOURCES  
AND  
BENEFIT SHARING**



## AGREEMENT ON ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

Between

---

(Insert the name of the indigenous/traditional local community<sup>1</sup>)

And

---

(Insert the name of the recipient researcher and institution<sup>2</sup>)

---

<sup>1</sup> Only indigenous/traditional local communities should be contract parties.

<sup>2</sup> The responsible/lead researcher as well as the institution for which he or she works should become contract partner. The involvement of the institution facilitates the implementation of the contract obligations.

**THIS AGREEMENT** is made on this \_\_\_\_\_ [*insert number of the day of the week*] day of \_\_\_\_\_ [*insert the month and the year*]

**BETWEEN:**

---

[*Insert the name of the indigenous/traditional local community and/or the representative and the full contact details*]<sup>3</sup>  
(*“the **Provider**”*)

**AND:**

---

[*Insert the name of the recipient researcher and institution and full contact details*]  
(*“the **Recipient**”*)

**REPRESENTED BY:**

---

[*If the recipient is represented by an agent, the name, capacity and full contact details of the agent*]

hereinafter referred to as “the **Parties**”, and constitutes a contract.

---

<sup>3</sup> The representative must provide his/her full identification and prove capacity to represent.

## **PREAMBLE**

*Whereas access to genetic resources and benefit-sharing is vital for the conservation and sustainable use of biodiversity;*

*Whereas it is essential to establish conditions that facilitate access and support scientific research;*

*Whereas it is essential to share the benefits arising from the use of genetic resources fairly and equitably with providers and the general public as appropriate;*

*Considering the need to compensate indigenous and local traditional communities for conserving and sustainably using the biological diversity on their lands;*

*Whereas activities involving access to genetic resources and associated traditional knowledge should be consistent with the provisions of the Convention on Biological Diversity and other international, regional, national and sub-national laws and policies concerning biodiversity;*

*Whereas the authority to determine access to genetic resources rests with national governments;*

*Considering therefore that the recipient shall enter into another agreement with the state specifying details of access;*

*Whereas it is essential to honour the terms and conditions under which genetic resources have been acquired.<sup>4</sup>*

This agreement sets out the terms that the parties agree are to apply to the taking and use of the genetic resources by the recipient.

The **Parties to this Agreement** hereby agree as follows:

### **§ 1. DEFINITIONS**

As used in this agreement, the following terms shall have the meaning provided below.

**"Access"** means collecting genetic resources and removing them from the provider's land. Access may consist of various activities, including:

- (i) entering a location/place where genetic resources are found;
- (ii) surveying activities;
- (iii) obtaining/acquiring genetic resources;
- (iv) possession of genetic resources; and
- (v) keeping genetic resources.

**"Access permit"** means a permit issued by a public authority that allows a person to access genetic resources issued.

---

<sup>4</sup> The parties may add other recitals here, especially concerning themselves, their capacity and their activities.

**"Genetic resources"** means any material of plant, animal, microbial or other origin containing functional units of heredity and having actual or potential value.

**"Passport data"** means detailed information comprising identification, agronomic characteristics, morphological characteristics, organoleptic and technological characteristics and cultural practices.

**"Prior informed consent"** means consent given by the indigenous/traditional local community to collect genetic resources on land traditionally occupied by the community based on advance research information provided by the recipient or consent to access knowledge of the community associated with the genetic resources accessed.

**"Approved research"** means the non-commercial research the recipient is authorised to conduct using the accessed genetic resources

**"Third party"** means any person other than the recipient and the provider.

## **§ 2. ACCESS TO AND TRANSFER OF MATERIALS**

2.1 The provider hereby grants the recipient access to the following genetic resources and any available passport data associated with specimens thus obtained subject to the terms and conditions set out in the provisions of this access agreement:<sup>5</sup>

- (a) X
- (b) Y
- (c) Z

2.2 The recipient shall bear all the costs incurred in accessing and transferring the materials.

2.3 The recipient shall respect traditions, customs and practices of indigenous and local communities associated with the materials under subparagraph 2.1 and shall not access any knowledge of the community providing access to genetic resources other than after written prior informed consent of the community.

## **§ 3. USE OF THE MATERIALS**

3.1 The uses of the materials accessed by the recipient are laid down in a permit issued by the competent provider state authority and/or an access agreement concluded between that authority and the recipient.

---

<sup>5</sup> Describe the materials to be accessed as detailed as possible indicating the type, samples and quantity to be collected and removed. Describe also the geographical area of access and time frame of entry into the area. If a large number of materials are to be accessed, descriptions of the materials may be placed in an annex (see for example Annex 1). Alternatively, several transfer agreements may be used, particularly if materials have different uses or are subject to different benefit-sharing arrangements.

3.2 The landowner declares to have been duly informed about the approved uses and rights and limits of transfer of the materials to third parties.

3.3 The recipient warrants that the approved research is non-commercial and that the recipient, and to the best of the recipient's knowledge no associated entity of the recipient, or any entity that carries on or proposes to carry on any business with the recipient, holds any option, licence or other rights to the use or commercialization of the materials or the results, [patent or intellectual property] arising from the approved research.

**§ 4. COMPENSATION AND BENEFIT SHARING<sup>6</sup>**

4.1 The recipient shall make a down payment of \_\_\_\_\_ [*insert the amount*] as a compensation for access to be paid out or transferred in the following way and at the following date.<sup>7</sup>

---

4.2 The recipient shall take all reasonable steps to provide employment for the landowner and/or his/her workers to collect the agreed genetic resources from the landowner's land.

4.3 The recipient shall give the provider access to the results of the approved research from the genetic resources accessed from the community land that are useful for conservation, sustainable use or upgrading of the same on the provider's land.

4.4 The recipient shall share with the provider other benefits arising from the utilization of the accessed genetic resources which shall include but not limited to the following:<sup>8</sup>

---

<sup>6</sup> The compensation and benefit sharing provided in this paragraph is meant to compensate the landowner for having preserved and cultivated the accessed materials. If in addition to this the law of the provider state allocates to the landowner rights to shares in benefits from uses of the genetic properties of the materials §§ 4, 5 and 6 of the model agreement between provider state and recipient must be included in this agreement.

<sup>7</sup> This provision may be deleted if no down payment is required.

- 8 The parties may consider the following options:
- employment of a mutually agreed number of members of the community to collect genetic resources from the landowner's land;
  - transfer of knowledge and technology, especially which is relevant to conservation and sustainable use of biological diversity on the landowner's land;
  - transfer of technology and capacity building that is useful for upgrading indigenous production based on accessed genetic resources;
  - capacity building that is relevant for transferred technology;
  - community training, education and awareness programmes in environmental issues;
  - funding of research activities on the provider's land in connection to species collected as samples or the ecosystem from which they were collected;
  - financing of livelihood projects such as erection and/or restoration of health, water and education facilities; and
  - monetary benefits arising from unintended and deviating activities that go beyond the scope of the approved research.

The parties may also choose to attach them to this agreement in form of an annexure.

## **§ 5. REPORTING**

5.1 The recipient shall, in seminars, workshops and other programmes, make reports to the community detailing the progress and results of the approved research.

5.2 The recipient shall make and submit other reports to the authority granting permit for access as agreed between him/her and that authority.

## **§ 6 PUBLICATIONS**

6.1 The recipient shall acknowledge, in any publication arising out of the recipient's use of the materials, the indigenous/traditional local community and the provider country as the source of the materials and that the materials were obtained in accordance with the laws and requirements of the provider country.

6.2 If community knowledge associated with accessed genetic resources was used, the recipient shall acknowledge, in any publication arising out of the recipient's use of the materials, the role of that community, and, where any significant advice or recommendations have been provided by such a community, its co-authorship. The recipient shall furnish the provider with \_\_\_\_\_ [*insert number of copies*] copies of any such publication.

## **§ 7 CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY**

7.1 Access to any genetic resources under this agreement shall take into account the precautionary principle, be ecologically sustainable and consistent with conservation of the provider country's biological diversity.

7.2 The recipient shall collect and remove the materials agreed upon in accordance with subparagraph 2.1 only from the land of the provider under this agreement and in quantities affixed thereon.

7.3 The recipient shall carry out environmental impact assessment at regular intervals to determine the impact of the access on the ecosystem.<sup>9</sup>

7.4 Subject to subparagraph 7.2, the recipient shall, if it has been established that access to genetic resources under subparagraph 2.1 has or is likely to cause adverse impact on any species or population, or any ecosystem or ecological community, discontinue collection and removal of the materials and, at the recipient's cost, undertake measures to remedy, mitigate or hinder such impact as the case may demand.

## **§ 8 CONFIDENTIALITY**

8.1 The recipient shall restrict access to the materials, the results, and the reports required under § 5, to those persons who are directly involved in the approved research and who are placed under an obligation to observe the terms of this agreement.

---

<sup>9</sup> This clause may be deleted if it is obvious that the access will not cause environmental damage.

8.2 Each party shall treat all confidential information owned by the other party as confidential, and shall not disclose any confidential information owned by the other party relating to this agreement to any third person without prior written approval from the other party.

8.3 The obligations of the parties under § 8 will not be taken to have been breached where confidential information referred to is legally required to be disclosed.

8.4 Subject to subparagraph 8.5, the obligations of the parties under § 8 will survive the expiration or termination of this agreement.

8.5 The obligations of the parties under subparagraph 8.2 will continue for a period of \_\_\_\_\_ [*insert the number of years*] years after the date of expiration or termination of this agreement.

## **§ 9 LIABILITY AND INDEMNITY**

9.1 The recipient indemnifies the provider against all loss, liability, damage (whether to persons or property), costs and expenses (including without limitation legal expenses), claims, demands, suits and other actions arising out of the recipient's taking, use and disposal of the materials and publication or disclosure of the results of the approved research, including a limited and reasonable description, of the materials.

9.2 The recipient represents, warrants, and covenants, that all information provided by the recipient to the provider in connection to the request for access to materials under subparagraph 2.1 is true, correct and complete, including, without limitation, any information provided for use in obtaining any licence, permit or other authorization with respect to the requested materials.

## **§ 10 TERMINATION OF AGREEMENT**

10.1 This agreement may be terminated by either party at any time prior to a written notice of \_\_\_\_\_ [*insert the duration*] to the other party, for material breach of the agreement, or, notwithstanding subparagraph 12.1, if either party, prior to a similar notice, informs the other party of its intent to terminate the agreement.

10.2 The recipient shall not assign any of the recipient's rights under this agreement to any person upon termination of this agreement.

## **§ 11 DISPUTE RESOLUTION**

11.1 No party shall, in case of a dispute arising from this agreement, commence court or arbitration proceedings (except proceedings for urgent interlocutory relief) other than in full compliance of § 11.

11.2 A party to this agreement claiming that a dispute has arisen under or in relation to this agreement must serve the other party with a written notice specifying the nature of the dispute on receipt of which the dispute resolution shall forthwith begin.



11.3 Any dispute arising from this agreement shall be resolved expeditiously foremost by negotiation in good faith failure to which the parties shall engage informal dispute resolution techniques such as mediation and arbitration or similar techniques agreed to by them.

11.4 If the dispute is not resolved by negotiation within \_\_\_\_\_ [*insert the duration*] [days] from the day of receipt of the notice by the party therewith served, the parties may choose mediation by a neutral third party mediator, to be mutually agreed.

11.5 Failure by the parties to reach agreement by negotiation or mediation within \_\_\_\_\_ [*insert the duration*] [days] from the day of receipt of the notice by the party therewith served in accordance with subparagraph 11.2, the parties shall submit the dispute for arbitration by an arbitrator, to be mutually agreed.

11.6 Upon nomination of a mediator under subparagraph 11.4 or an arbitrator under subparagraph 11.5, the person nominated to mediate or arbitrate the dispute shall determine the procedure for mediation or arbitration, respectively. The decision of the arbitrator shall be final and binding.

## **§ 12 GENERAL PROVISIONS**

12.1 This agreement shall be in effect for a term of \_\_\_\_\_ [*insert the number of years of the agreement's validity*] years from the date of its execution [and would be automatically renewable for a further \_\_\_\_\_ [*insert the number of years of automatic renewal*] years], unless otherwise agreed to by the parties.

12.2 Any notice under this agreement may be served by hand delivery or by forwarding by prepaid post, return receipt requested, to the address of the party or to such other address as may be notified in writing by the party from time to time and in the case of service by post it shall be deemed to have been received upon receipt. Notices may be served by recognized overnight courier, facsimile transmission, fax or e-mail and are valid if in fact received, as demonstrated by a valid transmission report or notification of delivery.

12.3 The obligations and rights contained in subparagraph 3.3, § 6 and subparagraph 7.4 shall survive the expiration or other termination of this agreement.

12.4 This agreement constitutes the entire agreement between the parties relating to the subject matter. The parties do not make any representations or warranties except those contained in this agreement.

12.5 None of the rights or obligations under this agreement are assignable or otherwise transferable without the prior written consent of the other party.

12.6 This agreement shall be construed and enforced in accordance with and governed by the laws and regulations of \_\_\_\_\_ [*insert the country having jurisdiction*], without regard to its conflict of law principles.

**IN WITNESS WHEREOF** the **PARTIES** have duly executed this **AGREEMENT** this \_\_\_\_\_ *[insert the number of the day of the week]* day of \_\_\_\_\_ *[insert the month and the year]*.

**Signed for and on behalf of:**

Signature:

Signature:

\_\_\_\_\_  
[Full name of provider]

\_\_\_\_\_  
[Full name of witness]

**Signed for and on behalf of:**

Signature:

Signature:

\_\_\_\_\_  
[Full name of recipient]

\_\_\_\_\_  
[Full name of witness]

## ANNEX 1

	Type of organism	Family, genus or species (scientific and common names if possible)	Part of organism to be collected	quantity		Full locality date (GIS* readings if possible)
				To be collected	To be removed	
Example	Plant	Aloe ferox	Leaves	8 kg	4 kg	x
1.	x	x	x	x	x	x
2.	x	x	x	x	x	x

---

\* Geographic Information System or Geographical Information System.