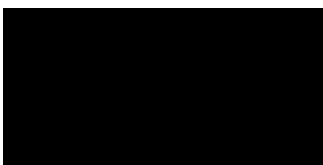


Draft

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

(To be concluded with landowner)



## AGREEMENT ON ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

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

**BETWEEN:**

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[*Insert the name of the landowner and the full contact details*]  
(“the **Provider**”)<sup>1</sup>

**AND:**

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[*Insert the name of the head researcher and full contact details*]  
(“the **Recipient**”)<sup>2</sup>

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

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<sup>1</sup> Only landowners should be allowed to be contract parties. The landowner must prove ownership of the land.

<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.

## **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 for 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 the landowner for conserving and sustainably using the biological diversity on his/her land;*

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

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

*Considering therefore that the recipient shall obtain permission by and enter into another agreement with the state specifying details of access;<sup>3</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 scope of this agreement shall apply to in-situ genetic resources for export and shall exclude genetic resources under exchange through the network of botanical gardens and the International Treaty of Plant Genetic Resources for Food and Agriculture. It shall also exclude access to the use of traditional knowledge.

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.

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<sup>3</sup> The parties may add other recitals here, especially concerning themselves, their capacity and their activities.

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

**"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.

**"Third party"** means any person other than the recipient and the provider and any employee under the direct supervision and control of the recipient.

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

2.1 The provider hereby grants the recipient access to the following genetic resources and any passport data associated with specimens thus obtained that may be available to the provider subject to the terms and conditions set out in the provisions of this access agreement:<sup>4</sup>

(a) X

(b) Y

(c) Z

2.2 The recipient shall notify the provider in due course of any species he/she wishes to access not known to him/her at the time of signing of this agreement.

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

## **§ 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 this authority and the recipient.

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.

## **§ 4. COMPENSATION AND BENEFIT SHARING<sup>5</sup>**

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<sup>4</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.

<sup>5</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, the pertinent paragraphs of the model agreement between provider state and recipient must be included in this agreement.

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>6</sup>

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4.2 The recipient shall take reasonable steps to provide employment for the landowner and/or his/her workers to assist in collection of 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 his/her 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:

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## **§ 5 REPORTS AND PUBLICATIONS**

The recipient shall acknowledge, in any publication arising out of the recipient's use of the materials, the landowner and the provider country as the source of the materials.

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

6.1 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.

6.2 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.

6.3 The recipient shall carry out environmental impact assessment at regular intervals to determine the impact of the access on the ecosystem.<sup>7</sup>

6.4 Subject to subparagraph 6.2, 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.

## **§ 7 LIABILITY AND INDEMNITY**

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<sup>6</sup> This provision may be deleted if no down payment is required.

<sup>7</sup> This clause may be deleted if it is obvious that the access will not cause environmental damage.

The recipient indemnifies the provider against all liability and damage arising out of the recipient's taking, use and disposal of the materials.

## **§ 8 TERMINATION OF AGREEMENT**

8.1 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 11.1, if either party, prior to a similar notice, informs the other party of its intent to terminate the agreement.

8.2 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.

8.3 The obligations and rights contained in subparagraph § 5 and 6.4 shall survive the expiration or other termination of this agreement.

## **§ 9 APPLICABLE LAW**

8.4 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.

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:

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

**Signed for and on behalf of:**

Signature:

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

## 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

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\* Geographic Information System or Geographical Information System.