Draft

[redacted]

MODEL AGREEMENT ON ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

(Recipient - Provider State)

[redacted]

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 provider institution and the full contact details*] [1]
(*"the **Provider**"*)

AND:

(1)

_____

[*Insert the name of the recipient researcher and full contact details*

(2)

_____

[insert the recipient institution and its representative with and full contact details] [2]
(*"the **Recipient**")*

hereinafter referred to as "the **Parties**", and constitutes a contract:

[1] Only state institutions should be contract parties.
[2] The individual responsible researcher as well as the institution for which he or she works should become contract partner. The involvement of the institution is expected to facilitate the implementation of the contract obligations.

PREAMBLE

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;

States have sovereign rights over their own biological resources and the authority to determine access to genetic resources rests with national governments;

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

It is essential to establish conditions that facilitate access and support scientific research, while honouring the principles of prior informed consent and benefit-sharing;

It is essential to share the benefits arising from the use of genetic resources and their derivatives fairly and equitably with the country of origin that provided the genetic resources and with other stakeholders, as appropriate;

It is essential to honour the terms and conditions under which genetic resources have been acquired.[3]

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 location/place where they are found. 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.

[3] 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.

"Commercial use" means the use or exploitation of the genetic resources accessed, with the object of, or resulting in, financial gain, and includes but is not limited to the following activities: sale, applying for, obtaining or transferring intellectual property rights or other tangible or intangible rights by sale or licence, or in any other manner, commencement of product development, conducting market research, and seeking pre-market approval.

"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 a state institute with power to grant authorization for access of genetic resources based on advance research information provided by the user.

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

§ 2. ACCESS TO AND TRANSFER OF MATERIALS

2.1. Subject to the law of the provider state the recipient is obliged to obtain the consents and permits listed below prior to access.[4]

(a) X

(b) Y

(c) Z

2.2 In compliance with subparagraph 2.1, the recipient must independently obtain consents and permits No. _____ to/and No. _____. The provider is satisfied that these consents and permits were obtained or will be obtained in due course.

2.3 Consents and permits No. _____ to/and No. _____ shall be obtained by the provider institution.

2.4 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:[5]

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[4] The permits and consents demanded under the national law may include, among others, a permit from an authority competent for research activities, the permit from an authority competent for ABS, the prior informed consent of indigenous people or a traditional local community, or their representative(s), the permit of a local authority, and the consent of a landowner.

[5] 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

(a) X

(b) Y

(c) Z

2.5 If the recipient intends to conduct the approved research outside the provider country, he/she shall transfer the materials accessed in accordance and in compliance with subparagraphs 2.1 and 2.2 to his/her research facility located at

_____

[*insert the detailed physical address of the facility*]

2.6 The recipient shall deposit a sample of the materials with a local collaborating institution or a local repository.

2.7 The recipient shall pay a down payment of _____ [*insert the amount*] as a compensation for access.[6]

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

§ 3. USE OF THE MATERIALS

3.1 The recipient shall use any materials transferred in accordance with subparagraph 2.4. only for environmentally sound uses in compliance with Article 15.2 of the Convention on Biological Diversity.

3.2 The recipient shall use the samples of the materials transferred under subparagraph 2.4 of this agreement only:

(a) for the approved research; and

(b) in accordance with the access permit.

3.3 Subject to subparagraph 3.2 the recipient is entitled to use the accessed genetic resources for the following non-commercial purposes (approved research):

_____

_____

_____

large number of materials and/or locations 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.

[6] This provision may be deleted if no down payment is required.

3.4 The recipient must keep the materials secure and under his personal care and/or the control of the lead researcher.

3.5 The recipient will conduct research in collaboration with the following provider state institution(s):

(a) X

(b) Y

(c) Z

and shall involve the following phases and activities:

(a) X

(b) Y

(c) Z

3.6 The recipient must not, without the prior written consent of the provider:

(a) sell, loan, or otherwise provide the materials to any third party;

(b) use the materials or the results for any purpose other than the approved research; or

(c) use or store the materials in any location other than in his facility [or the laboratory of the lead researcher] and under his or the lead researcher's direct supervision, or, if the approved research is been conducted locally, in the facility of the local cooperating institution.

3.7 Subject to subparagragh 3.6, the provider agrees that the recipient might wish to transfer the materials to the following persons/institutions:

(a) X

(b) Y

(c) Z

3.8 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.

3.9 The recipient must ensure that the use of the materials complies with all relevant laws, codes of practice and ethical principles.

§ 4. REPORTING AND SHARING OF INFORMATION

4.1 The recipient shall maintain records concerning the handling, storage and physical movement of the samples and provide such records to the provider.

4.2 The recipient shall report in writing to the provider every _____ [*insert duration*] days / months [*delete what does not apply*] providing details of progress with and the results of the approved research.

4.3 Each report under subparagraph 4.2 must set out the progress of the approved research since the last report and anticipated activities during the next reporting period.

4.4 The recipient shall provide the provider with the results, assessment of data and samples as reasonably requested, and with reasonable assistance in their assessment or interpretation.

4.5 Within _____ [*insert duration*] days / months [*delete what does not apply*] of the conclusion of the approved research, and prior to publication under § 6, the recipient shall provide the provider with _____ [*insert number of copies*] copies of the final written report setting out the results, and certifying compliance with the recipient's obligations under § 3. The recipient shall take reasonable steps to involve experts from the collaborating institution in the authoring of publications.

4.6 The provider shall ensure that the final results of the approved research provided by the recipient in accordance with subparagraph 5.5 remain secure and undisclosed to third parties until the recipient publishes them as required under § 6.

§ 5. SHARING OTHER BENEFITS

5.1 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:[7]

☐ transfer of knowledge and technology, especially that is relevant to taxonomy, conservation and sustainable use of biological diversity. The terms of transfer will be negotiated with the receiving institution, and should be developed under fair and favourable terms, including concessional and preferential terms:

_____

☐ strengthening local capacities for technology transfer:

_____

☐ strengthening local capacities for administration and enforcement of ABS regulations:

[7] The activities should be specified as appropriate and possible. The parties may include other benefits as well as determine their sizes in an annexure to this agreement.

_____

☐ education and training:

_____

☐ research funding to a local research institution to conduct research on species collected as samples or the ecosystem from which they were collected:

_____

☐ benefits arising from unintended and deviating activities that go beyond the scope of the approved research:

_____

5.2 The parties shall, prior to the execution of this agreement, determine the [likely] time frames of payment of any benefits under subparagraph 5.1.

§ 6 PUBLICATIONS

6.1 The recipient is entitled to publish or publicly disclose genomic sequence data and all other related data, including a limited and reasonable description of the materials consistent with generally accepted database curation standards. In doing so the recipient shall take all reasonable steps to ensure that data taken from the data bank shall not be put to commercial use without sharing benefits with the provider.

6.2 The recipient may, at the time of publication or public disclosure, under subparagraph 6.1, publish an article of other results relating to the approved research in an appropriate magazine or journal or other publication.

6.3 The recipient shall acknowledge, in any publication or public disclosure arising out of the recipient's use of the materials, 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, the role of local scientists, and, where any significant advice or recommendations have been provided by such scientists, their (co-)authorship. The recipient shall furnish the provider with _____ [*insert number of copies*] copies of any such publication.

6.4 Subject to the recipient's rights under § 8, the provider may disclose publicly, copy or otherwise use the publication for promotional purposes.

§ 7 CONSERVATION AND SUSTAINSBLE 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 2.3 only from the geographical areas 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.[8]

7.4 Subject to subparagraph 7.2, the recipient shall, if it has been established that the [permitted] activities under subparagraph 2.3 have or are 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.

7.5 The recipient shall take all reasonable steps and give good faith consideration to sharing, with the provider, data derived from research on the transferred samples of the materials under subparagraph 2.3 which is or may be useful in the support of conservation efforts related to a species, environment, or habitat wherefrom the samples were collected.

§ 8 CONFIDENTIALITY

8.1 The recipient shall restrict access to the materials, the results, and the reports required under § 4, 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.

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 and his representatives and agents 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.

[8] This clause may be deleted if it is obvious that the access will not cause environmental damage.

9.2 The recipient assumes full responsibility for complying with the quarantine and biosafety regulations and other rules of the recipient's country, and international and regional laws and policies, dealing with import, handling, transportation, storage, use, and misuse or other wrongdoing with respect to the acquired material.

9.3 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 2.3 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.

9.4 The provider indemnifies the recipient against all travel and accommodation costs incurred for the conclusion of this agreement if the provider breaches his obligation under subparagraph 2.4 of this agreement.

§ 10 SANCTIONS

A party who breaches the material provisions of this agreement shall be liable to the following sanctions:

(a) Breach of subparagraph 3.2: …

(b) Breach of subparagraph 3.6:…

(c) Breach of subparagraph 3.8:…

(d) Breach of subparagraph 4.2:…

§ 11 TERMINATION OF AGREEMENT

11.1 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 13.1, if either party, prior to a similar notice, informs the other party of its intent to terminate the agreement.

11.2 Upon termination of this agreement, the recipient shall:

☐ return, at his/her cost, any received materials to the provider, if the recipient terminates the agreement or the provider terminates it because of breach by the recipient.

☐ keep and have the right to use for further research any received materials, if the provider terminates the agreement or the recipient terminates it because of breach by the provider.

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

§ 12 DISPUTE RESOLUTION

12.1 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 § 12.

12.2 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.

12.3 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].

12.4 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 shall choose mediation by a neutral third party mediator, to be mutually agreed.

12.5 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 12.2, the parties shall submit the dispute for arbitration by an arbitrator, to be mutually agreed.

12.6 Upon nomination of a mediator under subparagraph 12.4 or an arbitrator under subparagraph 12.5, 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.

§ 13 GENERAL PROVISIONS

13.1 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.

13.2 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.

13.3 The obligations and rights contained in subparagraph 3.6, 3.8,, paragraph 6 and subparagraph 7.4 shall survive the expiration or other termination of this agreement.

13.4 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.

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

13.6 Any failure or delay by the provider to exercise any right, remedy or power under this agreement or to insist on strict compliance by the recipient with any obligation under this agreement, and any custom or practice of the parties which varies with the terms of this agreement, shall not constitute a waiver of the right of the provider to demand full compliance with this agreement.

13.7 If any provision of this agreement, or any part thereof, is unenforceable or invalid for any reason, the relevant provision or part will be deemed to be modified to the extent necessary to remedy such unenforceability or invalidity or, if this is not possible, then such provision or part will be deleted from this agreement, without affecting the enforceability or validity of any other provision of this agreement.

13.8 Any matters not stipulated in this agreement or/and clarifications in connection with the interpretation or execution thereof shall be discussed by the parties in good faith in search of an amicable solution.

13.9 This agreement may not be extended, cancelled or amended otherwise other than by a written agreement signed by the parties.

13.10 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:

_____
[Full name of provider]

Signature:

_____
[Full name of witness]

Signed for and on behalf of:

Signature:

_____
[Full name of recipient]

Signature:

_____
[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.