**ANNEXURE 11**

## **MATERIAL TRANSFER AGREEMENT**

**Notes:**

1. This agreement must be entered into by an applicant for a permit and any stakeholders identified in terms of the Act and the Regulations for access to any indigenous genetic and biological resources.
2. If there is more than one stakeholder a separate agreement must be entered into with each stakeholder.
3. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, parties can elect to use their own forms with sufficient space provided for each regulation, as long as those forms follow the general format of this form.
4. Both parties to this agreement must sign the agreement in the space indicated and must initial every page of the agreement, including any annexures.

**For office use only**

*Permit application reference number here*

## **MATERIAL TRANSFER AGREEMENT**

## **Between**

## **[Company name]**

## **[Legal address]**

## **Represented by [name of ACCESS PROVIDER representative]**

## Hereafter referred to as the ACCESS PROVIDER

## **And**

## **Represented by [name of PERMIT APPLICANT/RECIPIENT representative]**

## Hereafter referred to as the PERMIT APPLICANT/ RECIPIENT

## **[Company name]**

## **[Legal address]**

## **ACCESS AND PRIOR CONSENT**

## The RECIPIENT/PERMIT APPLICANT will receive [parts, extracts or other derivatives] of indigenous genetic and biological resources from the ACCESS PROVIDER as raw material for [product development and/or product manufacturing, or for resale to other organizations or further commercial exploitation].

## The ACCESS PROVIDER is [collecting / harvesting / cultivating/ farming/breeding] the indigenous genetic and biological resources used in the preparation of [parts, extracts or other derivatives] from [province, exact name of the area] in South Africa.

## The PERMIT APPLICANT/RECIPIENT is [developing and/or manufacturing] the [name of product] that utilize these indigenous genetic and biological resource [parts, extracts on other derivatives] in [country].

## The PERMIT APPLICANT/RECIPIENT and ACCESS PROVIDER are committed to implementing the agreement in the spirit of the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilisation as well as the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), and the Bioprospecting, Access and Benefit Sharing Amendments Regulations, 2015 of South Africa.

**RECIPIENT(S) OF INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES/ PERMIT APPLICANT**

1. The PERMIT APPLICANT/RECIPIENT is […….], as [registered company/ or natural person] in terms of South African Laws
   1. The relevant details of the [company/natural person] are:
      1. Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
      2. Registration Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
      3. Contact details and Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACCESS PROVIDER(S) OF INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES (if applicable)**

1. The ACCESS PROVIDER of Indigenous Biological Resources is […….], as a [natural person or indigenous community] in terms of South African Laws
   1. The relevant details of the [natural person or indigenous community]are:
      1. Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
      2. Contact details, Capacity and Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
      3. If entering into agreement in a representative capacity, state name of principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## **THE INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES**

## The RECIPIENT/PERMIT APPLICANT enters into this agreement on the basis of which it is receiving the indigenous genetic and biological resources [extracts/parts/ other derivatives] listed in clause 10 from the ACCESS PROVIDER.

## The terms of this agreement cover the indigenous genetic and biological resource [extracts/ parts/ other derivatives] listed in clause 10; other indigenous genetic and biological resource that may have been transferred, even inadvertently, along with them; and any genetic material, biological molecules and biochemical compounds naturally occurring in these indigenous genetic and biological resources.

## **RIGHTS AND DUTIES**

## The RECIPIENT/PERMIT APPLICANT shall use the indigenous genetic and biological resources furnished by the ACCESS PROVIDER exclusively as raw material for [product development and/or manufacturing, or for resale to other organizations/ for other commercial exploitation].

## The RECIPIENT/PERMIT APPLICANT shall only claim patents or other intellectual property rights connected or referring to the indigenous genetic and biological resources [for new methods of utilizing the indigenous genetic and biological resources, or new process for preparing, producing or manufacturing the indigenous genetic and biological resources], if there is compliance with the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and the Bioprospecting, Access and Benefit Sharing Amendments Regulations of 2015 by the RECIPIENT/PERMIT APPLICANT and if there is prior expression and written permission from the issuing authority.

## The RECIPIENT/PERMIT APPLICANT shall only utilise the indigenous genetic and biological resources for other purposes, in particular research and development linked to new and useful properties of the indigenous genetic and biological resources, after having received prior consent from, and entered into benefit sharing agreement with regards to the proposed changes in the utilization of the indigenous genetic and biological resources with the ACCESS PROVIDER.

## The RECIPIENT/PERMIT APPLICANT shall not utilize the indigenous genetic and biological resources for [germination, propagation, breeding, tissue breeding, cloning or in any way seek to capture genetic material for the purpose of reproduction without prior consent from, and under mutually agreed terms with the issuing authority and the ACCESS PROVIDER.

## **TRANSFER TO THIRD PARTIES**

## The RECIPIENT/PERMIT APPLICANT shall only sell, transfer or make available the indigenous genetic and biological resources to third parties with the assurance that these and any further RECIPIENTS/PERMIT APPLICANTS are equally bound by the terms and conditions of this agreement.

**INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES**

1. This agreement concerns the following indigenous genetic and biological resources:

* Scientific and common names of the indigenous genetic and biological resource e.g. plant, animal, microorganism, genetic material, derivative.
* The part or state of the resource to be collected / utilized.
* The quantity required.
* The locality data where the material will be sourced from.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Scientific and common names | Part of resource to be utilised | Physical state of resource | Quantity | Locality / source information  (coordinates) |
| Example:  *Aloe ferox*  Bitter aloe | Sap from leaves | Crystals | 100 kg | xxS ## E  Mosselbaai |
|  |  |  |  |  |

**PURPOSE OF ACCESS TO INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES**

1. The purpose of access to Indigenous Genetic and Biological Resources is to:………………………………………………………………………………………………………………………………………………………………………………………………..

## **ENTIRE AGREEMENT**

1. This agreement constitutes the entire agreement between the parties in regard to the subject matter of this agreement and no addition to, variation or cancellation of this agreement or waiver of any rights under this agreement will be of any force or effect unless reduced to writing and signed by the parties to this agreement and submitted to the Director-General of the Department of Environmental Affairs.
2. A copy of this agreement must be lodged with the Director-General of the Department of Environmental Affairs within one month of the agreement being concluded.

**BREACH AND TERMINATION**

1. If a party to this agreement (“the breaching party’’) breaches any material provision of this agreement, the other party ( “the aggrieved Party’’) shall be entitled to deliver to the breaching party a written notice requiring the breaching party to rectify that breach within 30 days of receipt. If the breaching party remains in breach of such provision within 30 days after receipt of the notice, the aggrieved party shall be entitled( without derogating from any of its other rights or remedies under this agreement or at law)

14.1. To sue for immediate specific performance of any of the defaulting party’s obligations under this agreement, whether or not such obligation is then due, or

14.2. To cancel this agreement, in which case written notice of the cancellation shall be given to the defaulting Party, provided that the remedy of specific performance or damages would not adequately prevent the aggrieved party from being prejudiced.

## **SIGNATURES**

|  |  |  |
| --- | --- | --- |
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**Name of** **ACCESS PROVIDER** **Capacity** **Date**

|  |  |  |
| --- | --- | --- |
|  |  |  |

**Name of PERMIT APPLICANT/RECIPIENT Capacity**  **Date**

**ENDORSEMENT OF JURISTIC BODY, IF APPLICABLE**

|  |  |  |
| --- | --- | --- |
|  |  |  |

**Name** **Signature of duly authorized officer** **Date**

**APPROVAL BY THE MINISTER OF ENVIRONMENTAL AFFAIRS**

|  |  |
| --- | --- |
|  |  |

SIGNATURE DATE