Form X

(Regulation 13(2))

(To be completed in duplicate)



**THE PATENTS AND COMPANIES REGISTRATION AGENCY**

**The Protection of Traditional Knowledge, Genetic Resources**

**and Expressions of Folklore Act**

**(Act No. 16 of 2016)**

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**The Protection of Traditional Knowledge, Genetic Resources and**

**Expressions of Folklore Regulations, 2021**

**Model Access Agreement**

**THIS AGREEMENT** made the…………………….day of…………….Two thousand and………………………………………………………………………………………………..

**BETWEEN** …………………………..of …………………………….. (hereinafter referred to as “the holder”) of the one part and ………………………………………of…………….[[1]](#footnote-1) (hereinafter referred to as “the User”) of the other part.

**WHEREAS** the holder of the traditional knowledge/genetic resource\* described in the First Schedule is a traditional community/group/individual\*.

**AND WHEREAS** the holder confirms that the holder has been informed of the research/exploitation\* by the User and consents to provide access to the traditional knowledge/genetic resources\* in situ or ex situ\* necessary to carry out the research/exploitation\* in accordance with the project described in the Second Schedule.

**AND WHEREAS** this Agreement is intended to specify the terms for accessing traditional knowledge/genetic resources,\* its utilisation in accordance with the prior informed consent, and for sharing the benefits resulting from the utilisation of traditional knowledge/genetic resources.\*

**NOW THIS AGREEMENT WITNESSETH** as follows:

* 1. **INTERPRETATION**
	2. The words defined in the Act shall have the same meaning in this Agreement, unless otherwise defined in this clause.
	3. In this Agreement, unless the context otherwise requires-

 “associated traditional knowledge” means any experimental or observational data, information and other findings on the composition, life conditions and functions of the accessed genetic resources.

“commercialisation” means the use of the traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\* for the generation of any kind of actual or potential economic profit;

 “product” means the result produced, obtained, extracted or derived from the traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\* through research or research and development activities, including data and information generated through analysis of the traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\*;

“utilisation for proprietary purposes” means research and development that aims at protecting the traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\*, including products and processes developed, by intellectual property rights, keeping the associated traditional knowledge secret, making the associated traditional knowledge accessible at minimal cost for dissemination or bringing the products and processes developed from the accessed genetic resources on the market;

“utilisation for the public domain” means research and development that aims at making the genetic resources or associated traditional knowledge, including products and processes developed, available to the public at a minimal cost for dissemination, and without being protected by patent rights or further restricted by other intellectual property rights;

“utilisation of traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\*” means research and development on the genetic or biochemical composition of the accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\*, including through the application of biotechnology to make or modify products or processes for specific use.

1. **ACCESS TO GENETIC RESOURCES**

**2.1** The User shall be entitled to collect samples as follows:[[2]](#footnote-2) ……………………………………………………………………………………………………………………………………………………………………………………

**2.2.** The User shall within ……………………[[3]](#footnote-3) \*after collection of the samples notify the holder/representative of the holder\* the types of samples the User intends to utilise. The holder/representative of the holder\* may, within ………… (3) after receiving the notice, raise an objection in which case the parties will have to agree on the types of samples allowed to be utilised.

**2.3** The User shall bear all the costs incurred in accessing and preserving the traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\***.**

1. **UTILISATION OF THE TRADITIONAL KNOWLEDGE/GENETIC**

**RESOURCES\***

**3.1** The User shall be entitled to utilise the accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\* in accordance with clause 2.0.

**3.2** The accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\* shall be for commercialisation/utilisation for proprietary purposes/ utilisation for public domain\*.

Specifications [[4]](#footnote-4)

**3.3** Where the accessed traditional knowledge/genetic resources\* is for commercialisation/utilisation for public domain\* and after the conclusion of this Agreement, the User intends to utilise the accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources\* for proprietary purposes, the User shall seek the consent of the Holder.

**3.4** Where the User intends to change the utilisation of the accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources from non-commercial to commercial the User shall obtain a new prior informed consent issued by the Holder or the Agency. In this case, the terms of the commercialisation shall be subject to a separate benefit sharing agreement between the parties.

1. **TRANSFER OF GENETIC RESOURCES TO THIRD PARTIES**

**4.1** A User may transfer the genetic resources and their associated traditional knowledge to third parties after having obtained the written consent of the Holder and in accordance with mutually agreed terms between the Holder and the third party unless where a transfer is for purposes of scientific identification by a taxonomic specialist.

**4.2** Despite clause 4.1, the User shall be entitled to deposit the genetic resources in collections that are accessible without restrictions for research purposes such as herbaria, museums and culture collections.

**4.3** Where the User transfers the collection of living genetic resources, for educational purposes, to a site outside their natural habitat or ecosystem, the User shall take appropriate precautions to prevent an unauthorised person from being in possession of the genetic resources.

**4.4** The User shall maintain retrievable records of any transfer of the genetic resources to third parties under the conditions corresponding to this Agreement and allow access to such records to the holder or the authority designated by the Agency. ……………………………… (insert name and address of authority if applicable)

**5.0 SCIENTIFIC COLLABORATION AND CAPACITY-BUILDING**

The User agrees to collaborate with scientists from within Zambia in the utilisation activities based on this Agreement. The collaboration shall be as follows: [[5]](#footnote-5)

………………………………………………….

1. **BENEFIT-SHARING IN CASE OF UTILISATION FOR PROPRIETARY**

 **PURPOSES**

 **6.1** The benefits arising from the access and use of the genetic resources shall be shared fairly and equitably by the User, in accordance with the principles established in the Act. Basic benefits to be shared include -

1. an offer to the Holder to include local researchers in the research activities, where necessary;
2. in case of publications or oral presentation of the research results, acknowledgement is to be given to the source of the genetic resource/traditional knowledge\*;

(c) if traditional knowledge associated to the genetic resources is used in the research, results published or presented orally will include full acknowledgement of the source of the genetic resources and the traditional knowledge, if so required by the Holder;

1. the Holder will receive a copy of all publications;
2. research results will be communicated to involved stakeholders in an adequate manner and according to reasonable requirements of the Holder;
3. if applicable the User should share the duplicate specimens with the repository in Zambia in accordance with good scientific practice.

 In addition the parties agree as follows:

 **6.2** The User agrees to pay an up-front compensation of … (amount to be specified) to the Holder, if the User utilises the accessed genetic resources for proprietary purposes. The payment is due to the Holder within ………. months (term to be specified) after consent on the kinds of genetic resources to be utilised has been reached under clause 2.0. The payment shall be transferred to the following account of the holder/representative of the holder\*:[[6]](#footnote-6) ………………………………………

**6.3** Where the User utilises the accessed genetic resources or uses the associated Knowledge for proprietary purposes according to clause 3.3 and 3.4, it must fairly and equitably share with the Holder any monetary benefit obtained.

**6.4** The share shall be determined by further negotiations between the Parties to this agreement.

**6.5** (Alternative to 6.4) The share shall be ………………………percent of the revenue from sales of the product or process based on the accessed genetic resources. It shall be paid on the basis of a financial report to be sent to the holder or an authority designated by the Agency at the end of any year of any revenue generation to the account designated by the same. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(Insert authority and account details if applicable*)

**6.6** If the User utilises the accessed genetic resources or utilises the associated traditional knowledge for proprietary purposes without being entitled according to clause 3.3 or 3.4 and therefore in breach of the conditions of this agreement it must share with the Holder any monetary benefit obtained from such utilization or use. The share shall be …………………. percent of the revenue from sales of the product or process based on the accessed genetic resources. It shall be paid on the basis of a financial report to be sent to the Holder or an authority designated by the Agency in due time upon request by the same.[[7]](#footnote-7)

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(*Insert authority and account details if applicable*)

 **7.0 RESPECT FOR OTHER LAWS**

The User shall ensure that the collection, storage, transfer, utilisation and exportation of the genetic resources complies with all applicable laws of the republic of Zambia on the protection of human health and the environment, on taxes, on customs and any other concern.

**8.0 DURATION OF THE AGREEMENT**

The Agreement shall be for a duration of ……………………commencing from to

**8.0 APPLICABLE LAW**

The applicable law on any matters relating to the interpretation and the application of the present Agreement shall be: ……………………..

­­­­­­­­­ **9.0 DISPUTE SETTLEMENT**

 **9.1** No Party shall, in the event of a dispute arising from this agreement, commence court proceedings (except proceedings for urgent interlocutory relief) before searching for an amicable solution according to paragraphs 9.2 and 9.3 of this clause

**9.2** 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.

 **9.3** 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.

**10. TERMINATION OF THE AGREEMENT**

 **10.1** The agreement may be terminated at any time by mutual agreement in writing.

 **10.2** The agreement may be terminated by default if the User fails to satisfy any of the obligations under this agreement.

 **10.3** In the case of default by the User, the Holder may immediately terminate this agreement by giving written notice to the User of the termination, provided that:

(a) the holder has given prior notice to the User of the alleged default; and

(b) the user fails to respond to the holder within the period specified by the notice (being not less than 20 business days and not more than 60 business days) to rectify or explain to the satisfaction of the holder the reasons for the default.

**11.0 RESPONSIBLE PERSON**

The holder designates the following institution [insert the relevant institution] as the responsible contact point for the entire duration of the present Agreement. Contact details of the technical contact point are follows:

…………………………………………………………………………………………………………………………………………………………………………………….

 **12.0** **INTELLECTUAL PROPERTY RIGHTS**

 **12.1** The User shall not claim any intellectual property rights over the Traditional Knowledge/Genetic Resource\* in the form received. If the User wants to obtain intellectual property rights on research results such act shall be treated as change in utilisation and thus shall be regulated under clause 3.5 of this Agreement. In particular the ownership of the IPR and the distribution of the value derived from the IPR are to be negotiated.

**13.0 DATA SHARING**

 **13.1** The User agrees that the Provider has the right to access the following data resulting from the research/utilisation …………………………………………………………………[insert type of data]

**13.2** The User shall facilitate access to the above defined data for the holder.

**AS WITNESS** the hands of the parties hereto or their duly authorised agents the day and year first before written.

SIGNED by Holder )

in the presence of: )

**WITNESS**

Name:

Address:

Occupation:

**SIGNED by** User )

in the presence of: )

**WITNESS**

Name:

Address:

Occupation:

1. Indicate registered office if it is a company [↑](#footnote-ref-1)
2. indicate the type of samples, quantity of samples and location of collection [↑](#footnote-ref-2)
3. period to be specified by the Parties [↑](#footnote-ref-3)
4. Specify the details of the intended utilisation of the accessed traditional knowledge/genetic resources/traditional knowledge associated with genetic resources [↑](#footnote-ref-4)
5. Here specify the details of the collaboration [↑](#footnote-ref-5)
6. This clause is to be crossed out if not applicable [↑](#footnote-ref-6)
7. This article or single paragraphs of it are to be crossed out if not applicable [↑](#footnote-ref-7)