

ANNEXURE 12

BENEFIT-SHARING 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 and/or Traditional Knowledge associated with 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. The 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

BENEFIT SHARING AGREEMENT (ACCESS PROVIDER)

Between

[Name]

[Legal address]

Represented by [name of ACCESS PROVIDER representative]

Hereafter referred to as the ACCESS PROVIDER

And

Represented by [name of RECIPIENT/PERMIT APPLICANT representative]

Hereafter referred to as the RECIPIENT/PERMIT APPLICANT

[Company name]

[Legal address]

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

1.1 The PERMIT APPLICANT/ RECIPIENT is [.....], as registered company/
or natural person in terms of South African Laws

1.2 The relevant details of the company/natural person are:

1.2.1 Name:

1.2.2 Registration Number:

1.2.3 Contact details and Contact Person:

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

2.1 The ACCESS PROVIDER of Indigenous Biological Resources is [.....], as a
natural person or Indigenous Community in terms of South African Laws

2.1 The relevant details are:

2.1.1 Name:

2.1.2 Contact details, Capacity and Contact Person:_____

2.1.2 If entering into agreement in a representative capacity, state name of principal:

INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES

4. 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)
<i>Aloe ferox</i> Bitter aloe	Sap from leaves	Crystals	100 kg	xxS ## E Mosselbaai

SHARING OF BENEFITS

5. Sharing in benefits arising including non-monetary, monetary or any kind of benefits:

Note: Benefits will vary considerably from case to case and in particular, benefits will vary depending on the nature of the project. The lists below provide examples of monetary and non-monetary benefits that may arise from bioprospecting projects. Tick each block that applies to this agreement and provide details of the selected benefits in a form of Addendum.

6.1 The benefits derived from the utilisation of the indigenous genetic and biological resources to [insert name of **ACCESS PROVIDER**] would be as follows:

Non-monetary, monetary or any kind of benefits			
Acknowledgement of parties giving access to resources		Voucher specimens with national institutions	
Research results and copies of papers		Participation of South Africans in research	
Support for conservation		Access to international collections by South Africans	
Species inventories		Recognition and promotion of traditional knowledge/ use	
Student training and support		Community development projects	
Scientific capacity development		Environmental education	
Technology transfer		Fees	
Joint Research		Royalties	
Information		Upfront payments	
Equipment and infrastructure		Milestone payments	
Other (specify)		Other financial benefits (specify)	
Other (specify)		Other (specify)	

PAYMENT OF BENEFITS

6. Any monetary benefits arising out of this agreement and due to the ACCESS Provider in this agreement, with the exception of direct payments of fees/charges to the beneficiaries, must be paid into the Bioprospecting Trust Fund. This benefit sharing agreement serves as a deed of trust in terms of the Public Finance Management Act, of money due to the ACCESS PROVIDER of the indigenous genetic and biological resources.

REVIEW OF AGREEMENT

7. This agreement will be reviewed every _____ (**fill in agreed timeframe**), with a view to amending the agreement if necessary.

One month prior to every review, the permit holder must disclose any new material information with regard to the biotrade / bioprospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

THIRD PARTY TRANSFER

8. The RECIPIENT/PERMIT APPLICANT undertakes not to transfer the indigenous genetic and biological resources to a Third Party, without the written authorization of the ACCESS PROVIDER; and then only under a legally binding written agreement with the ACCESS PROVIDER based on this Agreement.

OTHER MATTERS

10. Any other matters or conditions which the parties to this agreement wish to record: _____

Note: A copy of this agreement must be lodged with the Director-General of the Department of Environmental Affairs within 30 days of the agreement being concluded.

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 within 30 days.

BREACH AND TERMINATION

11. 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)

- 11.1 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
- 11.2 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

--	--	--

Name of ACCESS PROVIDER

Capacity

Date

ENDORSEMENT OF TRADITIONAL AUTHORITY / JURISTIC BODY, IF APPLICABLE

--	--	--

Name

Signature of duly authorized officer

Date

--	--	--

Name of PERMIT APPLICANT

Capacity

Date

APPROVAL BY THE MINISTER OF ENVIRONMENTAL AFFAIRS

--	--

SIGNATURE

DATE

BENEFIT SHARING AGREEMENT (TRADITIONAL KNOWLEDGE)

Between

[Name]

[Legal address]

**Represented by [name of TRADITIONAL KNOWLEDGE HOLDERS
representative]**

Hereafter referred to as the TRADITIONAL KNOWLEDGE HOLDER

And

Represented by [name of RECIPIENT/PERMIT APPLICANT representative]

Hereafter referred to as the PERMIT APPLICANT

[Company name]

[Legal address]

**USER OF TRADITIONAL KNOWLEDGE ASSOCIATED WITH INDIGENOUS
GENETIC AND BIOLOGICAL RESOURCES/ PERMIT APPLICANT**

1.3 The PERMIT APPLICANT is [.....], as registered company/ or natural person in terms of South African Laws

1.4 The relevant details of the company/natural person are:

1.4.1 Name:

1.4.2 Registration _____ Number:

1.4.3 Contact details and Contact Person:

**TRADITIONAL KNOWLEDGE HOLDER ASSOCIATED WITH INDIGENOUS
BIOLOGICAL RESOURCES**

2.1 The TRADITIONAL KNOWLEDGE HOLDER associated with Indigenous Biological Resources is [.....], as a [natural person or Indigenous Community] in terms of South African Laws

2.2 The relevant details are:

2.2.1 Name:

2.1.2 Contact details, Capacity and Contact Person: _____

2.2.2 If entering into agreement in a representative capacity, state name of principal:

IF INDIGENOUS COMMUNITY WHOSE TRADITIONAL KNOWLEDGE IS ASSOCIATED WITH INDIGENOUS GENETIC AND BIOLOGICAL RESOURCE(S)

3. Name and Description of [indigenous community / individual / association / organisation]:

3.1 The relevant details are:

3.1.1 Name:

3.1.2 Contact details, Capacity and Contact Person:

3.1.3 If entering into agreement in a representative capacity, state name of principal: _____

INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES

4. 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	Physical state of resource	Quantity	Locality / source information (coordinates)
-----------------------------	------------------------	----------------------------	----------	---

	utilised			
<i>Aloe ferox</i> Bitter aloe	Sap from leaves	Crystals	100 kg	xxS ## E Mosselbaai

TRADITIONAL USES OF INDIGENOUS GENETIC AND BIOLOGICAL RESOURCES

1. Provide the brief details of Traditional Knowledge associated with the use of each indigenous genetic and biological resource listed in clause 4.

SHARING OF BENEFITS

2. Sharing in benefits arising including non-monetary, monetary or any kind of benefits:

Note: Benefits will vary considerably from case to case and in particular, benefits will vary depending on the nature of the project. The lists below provide examples of monetary and non-monetary benefits that may arise from bioprospecting projects. Tick each block that applies to this agreement and provide details of the selected benefits in a form of Addendum.

- 6.1 The benefits derived from the utilisation of the indigenous genetic and biological resources to [insert name of **TRADITIONAL KNOWLEDGE HOLDER**] would be as follows:

Non-monetary, monetary or any kind of benefits			
Ongoing communication of bio-prospecting objectives, methods and findings, translated into local languages		Copies of proposals, reports and publications	
Simplified and popularised posters, manuals, pamphlets and other documents translated into local languages		Recognition and promotion of traditional knowledge/use	
Co-authorship of publications		Lodging of specimens	

Non-monetary, monetary or any kind of benefits			
Access to research data		Grants for development and environmental education projects	
Copies of photographs and slides		Fees (e.g. for consultation, assistants, guides, use of facilities and infrastructure)	
Inclusion in the research of local collaborators, assistants, guides and informants		Royalties	
Training of local people as appropriate in relevant scientific, legal and management issues		Upfront payments	
Equipment and infrastructure support		Milestone payments	
Co-ownership of any intellectual property rights		Other financial benefits (specify)	
Other (specify)		Other (specify)	

PAYMENT OF BENEFITS

- Any monetary benefits arising out of this agreement and due to any party to this agreement must be paid into the Bioprospecting Trust Fund. This benefit sharing agreement serves as a deed of trust in terms of the Public Finance Management Act of money due to the **TRADITIONAL KNOWLEDGE HOLDER** of the indigenous genetic and biological resources.

REVIEW OF AGREEMENT

4. This agreement will be reviewed every _____ (fill in agreed timeframe), with a view to amending the agreement if necessary.

Note: One month prior to every review, the permit holder must disclose any new material information with regard to the biotrade / bioprospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

THIRD PARTY TRANSFER

9. The PERMIT APPLICANT undertakes not to transfer the traditional knowledge associated with indigenous biological resources to a Third Party, without the written authorization of the TRADITIONAL KNOWLEDGE HOLDER; and then only under a legally binding written agreement with the TRADITIONAL KNOWLEDGE HOLDER based on this Agreement.

OTHER MATTERS

10. Any other matters or conditions which the parties to this agreement wish to record: _____

Note: A copy of this agreement must be lodged with the Director-General of the Department of Environmental Affairs within 30 days of the agreement being concluded.

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.

BREACH AND TERMINATION

11. 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)
- 11.1 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
- 11.2 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

--	--	--

Name of TRADITIONAL KNOWLEDGE HOLDER Capacity Date

ENDORSEMENT OF TRADITIONAL AUTHORITY / JURISTIC BODY, IF APPLICABLE

--	--	--

Name Signature of duly authorized officer Date

--	--	--

Name of Permit applicant Capacity Date

APPROVAL BY THE MINISTER OF ENVIRONMENTAL AFFAIRS

--	--

SIGNATURE

DATE