**Benefit-sharing Agreement**

**BETWEEN:**

**northern territory of australia care of its agency the department of Industry, Tourism and trade**

**AND:**

**[insert bioprospector entity]**

**Solicitor for the Northern Territory**

68 The Esplanade, Darwin

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DETAILS

PARTIES

**NORTHERN TERRITORY OF AUSTRALIA** care of its agency the **Department of Industry, Tourism and Trade (ABN 84 085 734 992)** in the Northern Territory of Australia (“**the** **Territory**”)

|  |  |
| --- | --- |
| Address for service of notices: | Attention: [Insert name], Director |
| Physical address: Level 5, Charles Darwin Centre, 19 The Mall, Darwin NT 0800 |
| Postal address: GPO Box 3200, Darwin, NT 0801 |
| Email address: Industry.Strategy@nt.gov.au  |

**AND**

**[INSERT NAME] (ABN [insert])** (“**the** **Bioprospector**”)

|  |  |
| --- | --- |
| Address for service of notices: | Attention: [Insert Bioprospector entity details] |
| Physical address: [Insert Physical Address] |
| Postal address: [Insert Postal Address] |
| Email address: [Insert Email Address] |

BACKGROUND

1. Pursuant to the *Biological Resources Act 2006* (NT) (Act), the Territory has the right, title and interest in Biological Resources in the Access Area, including the Permitted Biological Resource in the Access Area.
2. The parties agree the Bioprospector may conduct bioprospecting for the Permitted Biological Resource in accordance with this benefit sharing deed, including the Bioprospector’s Permit, the Permitted Purpose and for the Permitted Quantities.
3. The parties agree that the Bioprospector will conduct Research on the Permitted Biological Resource, and that may result in Commercialisation or a Proposal.
4. The Bioprospector agrees to share any Benefits and Commitments arising from the Bioprospecting, Research or Permitted Biological Resource with the Territory, including the Biological Resources Intellectual Property, on the terms set out in this Agreement.
5. The Bioprospector and the Territory have entered into this Agreement to:
6. satisfy the requirements of sections 27 and 29(1) of the Act; and
7. otherwise record their agreement for and in respect of the sharing of Benefits and Commitments from the Bioprospecting, Research or Permitted Biological Resource.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION
	1. Defined Terms

In this Document, unless a contrary intention appears:

1. **Access Area** means the land or area described in Item A;
2. **Act** means the *Biological Resources Act 2006* (NT);
3. **Agreement** means this Benefit Sharing Agreement;
4. **Annual Report** means the Bioprospector’s annual report referred to in clause 10;
5. **Benefits and Commitments** means those as described in Items I, J and K, and **Benefit** has a corresponding meaning;
6. **Biodiscovery** has the meaning given under section 4 of the Act;
7. **Biological Resources** has the meaning given under section 4 of the Act;
8. **Biological Resource Income** means the gross income and benefits derived either directly or indirectly from the Research, Permitted Biological Resource or the Biological Resource Intellectual Property including the proceeds of sale, licensing or other disposal or exploitation of:
	* + 1. any Biological Resource Intellectual Property; and
			2. any other products or results from the Research and the Permitted Biological Resource;
9. **Biological Resource Intellectual Property** means any Intellectual Property Rights created, resulting from or arising out of Bioprospecting in accordance with this Agreement for the Permitted Biological Resource (including Permitted Biological Resources used by the Bioprospector for Bioprospecting prior to issue of the Bioprospector’s Permit), or Research including, Derivatives, Direct Products and Leads whether created, acquired, invented, designed, developed, identified or otherwise brought into existence before or after the Execution Date or the date of issue of the Bioprospector’s Permit;
10. **Bioprospecting** has the meaning given under section 5 of the Act;
11. **Bioprospector’s Permit** means the permit issued by the Permit Issuing Authority to the Bioprospector under the *Territory Parks and Wildlife Conservation Act 1976* (NT) (as renewed or replaced from time to time) permitting the Bioprospector to engage in Bioprospecting in respect of the Permitted Biological Resource;
12. **Business Day** means a day which is not a Saturday, Sunday or public holiday in Darwin in the Northern Territory;
13. **CEO** has the meaning given to that term in the Act;
14. **Commercialisation or Commercialise** means to make, develop, use, sell, hire, licence, transfer, assign, novate, dispose or otherwise exploit any Biological Resources Intellectual Property or a product or process that uses or incorporates part or all of the Biological Resources Intellectual Property;
15. **Conditions Precedent** means the condition precedent to this Agreement as described in clause 3.1;
16. **Derivatives** means any products derived from either the Permitted Biological Resource or Direct Products and may include, but is not limited to:
	* + 1. Complementary DNA (cDNA) libraries;
			2. genomic expression products; or
			3. synthetic analogues (for example analogues based on structural scaffolds identified in the Biological Resources or Direct Products) and materials produced synthetically or via biosynthetic means or combination thereof where the natural product provided the chemical basis for the material;
17. **Direct Products** means any chemical, compound and genetic extract obtained from the Permitted Biological Resource;
18. **Disposition of Ownership** means disposition of ownership in samples of Permitted Biological Resources as described in Item F;
19. **Execution Date** means the date the last party signs this Agreement;
20. **Indigenous People’s Knowledge** means the knowledge as described in Item G;
21. **Intellectual Property Rights** means any intellectual property right and all rights in relation to:
	* + 1. inventions, including copyright and neighbouring rights, patents, plant varieties, registered and unregistered trade marks (including service marks) and registered designs;
			2. trade secrets;
			3. confidential know-how; and
			4. other intellectual property and related proprietary rights, interests and protections,

resulting from activities in the industrial, scientific, literary or artistic fields, recognised anywhere in the world;

1. **Item** means an item to Schedule 1 of this Agreement;
2. **Labelling Requirements** means those as described in Item E;
3. **Law** means any legally binding law, legislation, statute, act, rule order or regulation which is enacted, issued, promulgated or brought into effect by or in the Northern Territory or the Commonwealth of Australia;
4. **Lead** means a compound, substance or attribute of some Biological Resource or system which has been shown to have potential as a new biotechnology product with commercial applications;
5. **Permit Issuing Authority** has the meaning given under section 4 of the Act;
6. **Permitted Biological Resource** means the Biological Resource for and in respect of which the Bioprospector may engage in Bioprospecting as described in at Item B;
7. **Permitted Purpose** means the purpose described in Item D;
8. **Permitted Quantities** means the quantity of the Permitted Biological Resource described at Item C (if any);
9. **Pre-existing Bioprospector IP** means Intellectual Property Rights brought into existence by the Bioprospector and incorporated into (or used in the course of creating) Biological Resources Intellectual Property but does not include IP developed, created or resulting from the Permitted Biological Resource;
10. **Proposal** means a proposal as defined in clause 7.4;
11. **Proposed publication** has the meaning given to it in clause 12;
12. **Resource Access Provider** has the meaning given to that term in the Act; and
13. **Research** means any research and or development undertaken in relation to any genetic resources, or biochemical compounds, comprising or contained in the Permitted Biological Resource.
	1. Interpretation

In this Agreement, unless the contrary intention appears:

* + 1. a reference to a person, partnership, body corporate, unincorporated body, government or local authority or agency or other entity includes any of them;
		2. the words “including”, “includes” or similar words are not words of limitation;
		3. a reference to a person or to any party includes a reference to that person’s or party’s executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
		4. a reference to this Agreement, or to any other agreement, deed, document or instrument includes this Agreement, or that other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
		5. all references to statutes also refer to statutes amending or re-enacting or replacing the statutes referred to and include a reference to all proclamations, orders in council, regulations, rules by-laws, ordinances and any other instruments and directions (if any) made there under;
		6. any monetary amounts are expressed in Australian currency;
		7. all covenants warranties undertakings and agreements herein are, if entered into by more than one (1) person, deemed to be joint and several;
		8. headings and sub-headings have been included for ease of reference only and this Agreement is not to be construed or interpreted by reference to such headings or sub-headings; and
		9. the schedules and annexures to this Agreement are to be read and construed as part of this Agreement.
1. Agreement and acknowledgements
	* 1. In consideration for the Territory agreeing to the Bioprospector engaging in Bioprospecting in respect of the Permitted Biological Resources, the Bioprospector agrees to share the Benefits arising from the Bioprospecting or Research, including the Permitted Biological Resource Intellectual Property on the terms of this Agreement.
		2. The Territory acknowledges that by signing this Agreement it hereby provides its consent to the terms of the Agreement as required by section 27(3) of the Act and to the Bioprospector engaging in Bioprospecting in respect of the Permitted Biological Resources on the terms of this Agreement.
		3. The parties acknowledge and agree that notwithstanding the provisions of the Act, they are bound by the terms and conditions of this Agreement, and that pursuant to the section 41 of the Act it is an offence for the Bioprospector to breach a condition of this Agreement.
2. Conditions Precedent and Commencement
	1. Conditional Agreement

This Agreement (other than this clause 3 and 19) is subject to and conditional upon the Permit Issuing Authority issuing, and does not take effect until issue of, the Bioprospector’s Permit.

* 1. General Obligations
		1. The Bioprospector must at its cost and expense:
			1. immediately following the execution date apply to the Permit Issuing Authority for the Bioprospector’s Permit;
			2. execute all documents and provide all information required by the Permit Issuing Authority for the Bioprospector’s Permit; and
			3. do all reasonable things within its own capacity for the issue of the Bioprospector’s Permit,

to procure the satisfaction of the Condition Precedent.

* + 1. The Territory must comply with its obligations under the Act for and in respect of the issue of the Bioprospector’s Permit.
1. OWNERSHIP of taken SAMPLES
	1. Ownership and Destruction of Permitted Biological Resource upon Expiration
2. The parties acknowledge and agree that ownership in the Permitted Biological Resource remains with the Territory, except for any Disposition of Ownership.
3. At the expiration or earlier termination of this Agreement, the Bioprospector agrees, if the Territory requires, to:
	1. either immediately destroy or return to the Territory the Permitted Biological Resource (and any material propagated from the Permitted Biological Resource); or
	2. otherwise deal with the Permitted Biological Resource in accordance with any disposition of ownership requirements, which requirements shall prevail to the extent of any inconsistency between it and this clause 4.1.
4. no exclusive rights

This Agreement does not grant, and is not intended to be construed as to grant, the Bioprospector any exclusive rights to any Biological Resources.

1. biological resources and Research
	1. Bioprospector Obligations and Compliance with Bioprospector’s Permit
		* 1. The Bioprospector agrees to, and warrants that at all times it will:
				1. only take the Permitted Quantities of the Permitted Biological Resources from the Access Area or as otherwise permitted under the Bioprospector’s Permit (for the avoidance of doubt, this does not prevent the use of information otherwise lawfully sourced from outside the Access Area);
				2. only access the Permitted Biological Resources for the Permitted Purpose;
				3. not collect or undertake Bioprospecting on any Biological Resources except on the Permitted Biological Resources;
				4. use no more than the Permitted Quantities of the Permitted Biological Resources for Bioprospecting;
				5. comply with the Labelling Requirements; and
				6. only collect or undertake Bioprospecting in accordance with the terms and conditions of the Bioprospector’s Permit, this Agreement and the Act.
			2. The Bioprospector must ensure delivery of the Benefits and Commitments.
			3. The Bioprospector warrants that it has not used or sourced indigenous peoples’ knowledge otherwise than the Indigenous Peoples Knowledge.
	2. Performance standards for collection and research

The Bioprospector must ensure that all work undertaken under the Bioprospector’s Permit or in relation to the Research or Permitted Biological Resources:

1. is undertaken in accordance with best bioprospecting industry practice;
2. complies with any relevant policies, codes of practice or guidelines as notified by the Territory from time to time during the term of the Research; and
3. complies with all Laws, including the Act.
	1. Reporting on collection
4. Upon taking the Permitted Biological Resources, the Bioprospector must provide a report to the Permit Issuing Authority in accordance with section 24 of the Act. The report must contain the following details and as otherwise required by section 24(2) of the Act:
	* + - 1. the date the sample was taken;
				2. the location from which the sample was taken (by GPS coordinates using the WGS84 datum);
				3. species of each sample; and
				4. the quantity of the sample taken.
5. biological resources intellectual property
	1. Creation

The Bioprospector will as soon as practicable, and in any event within ten (10) Business Days of becoming aware of any Biological Resources Intellectual Property, provide to the Territory notice of the details of that Biological Resources Intellectual Property.

* 1. Ownership

The Territory and Bioprospector shall share title to and ownership of all Biological Resources Intellectual Property whether acquired, invented, designed, developed, created, identified or otherwise brought into existence by the Bioprospector or any other person or party, as tenants in common, in equal shares. For the avoidance of doubt, there is no transfer to the Territory of any Pre-existing Bioprospector IP.

* 1. Licence and Use of Biological Resources Intellectual Property
1. Subject to clause 7.3(b), the Territory grants to the Bioprospector a non-transferable, non-exclusive, royalty free licence to use the Territory’s share of any Biological Resources Intellectual Property for the purpose of carrying out any Research.
2. The Bioprospector must not licence or sublicense the Biological Resources Intellectual Property to any person without the Territory’s prior written consent.
3. Where the Bioprospector wishes to use the Biological Resources Intellectual Property in any way other than as permitted under clause 7.3(a), it must obtain the Territory’s prior written consent, which must not be unreasonably withheld.
	1. Commercialisation Proposal
4. From Execution Date, where the Bioprospector wishes or proposes to assign or Commercialise any Biological Resources Intellectual Property (**Proposal**), it must:
	* + 1. obtain the Territory’s prior written consent, which must not be unreasonably withheld; and
			2. in seeking the consent must inform the Territory in writing of details of the Proposal, including:
				1. anticipated costs of the Proposal;
				2. funding for the Proposal;
				3. anticipated Biological Resource Income from the Proposal and manner of sharing those returns with the Territory;
				4. anticipated risks for the Proposal;
				5. rights to further intellectual property invented, discovered, created or generated from the Proposal, including an explanation of any expected further intellectual property;
				6. terms of the Proposal, including the structure for the parties to proceed to Commercialisation and the identification of any third parties to whom the Bioprospector wishes to sublicence the Biological Resource Intellectual Property;
				7. anticipated benefits to relevant industries or communities from the Proposal;
				8. estimated period before commercial gains are achieved from the Proposal; and
				9. any other relevant information for the Proposal whether or not requested by the Territory,

and for the avoidance of doubt (but without limiting the terms that it may reasonably require) the Territory may require as a condition of its consent that it is entitled to a share of profits, right in relation to Intellectual Property or other benefits (whether commercial or otherwise) from the Proposal.

* 1. Consistency of terms of third party arrangements with this Agreement
		1. The Bioprospector warrants that it has not entered and will not enter into any agreements or arrangements (with staff or other persons or parties) for, in relation to or otherwise in connection with the Bioprospector’s Permit, Research or Permitted Biological Resource on terms that are inconsistent with the parties rights and obligations under (and otherwise with the terms of) this Agreement, including agreements or arrangements with staff or other persons:
			1. engaged in activities as agent or on behalf of the Bioprospector; or
			2. carrying out the Bioprospector’s obligations pursuant to the Bioprospector’s Permit or otherwise under this Agreement.
		2. The Bioprospector must provide the Territory with a copy and all details and information relating to any agreement or arrangement of the type referred to in clause 7.5(a) prior to entering into the agreement or arrangement and otherwise within three (3) Business Days of the Territory requesting a copy or any other details or information.
		3. Nothing in this clause 7.5 limits or derogates from the Bioprospector’s obligation to obtain the Territory’s consent under clauses 7.3, 7.4 and 7.6.
	2. Agreements for use of Biological Resources Intellectual Property
		1. Subject to clause 7.6(b), the Bioprospector warrants that it has not entered and will not enter into any agreements or arrangements (with staff or other persons or parties) for or in relation to the use, creation or development of Biological Resource Intellectual Property which in any way:
			1. precludes, reduces, compromises, limits or encumbers the Territory’s share of ownership, use or other present or future rights and powers in respect of the Biological Resource Intellectual Property; or
			2. precludes, reduces, compromises or limits the Territory’s rights, powers or ability to share in profits or benefits (whether commercial or otherwise) from the Biological Resource Intellectual Property, including pursuant to any Proposals.
1. The Bioprospector will not be in breach of clause 7.6(a) if the Bioprospector has obtained the Territory’s prior written consent to the Bioprospector entering into an agreement or arrangement of the kind referred to in clause 7.6(a).
2. For the purpose of clause 7.6(b) the Territory reserves the right to make a condition of its consent to any agreement or arrangement with a third party that the third party agrees to enter a separate or multiparty agreement with the Territory that may include provision for the payment of royalties to the Territory for any use of the Territory’s rights and entitlements to the Biological Resources Intellectual Property.
	1. Associated costs
3. Subject to clause 8.5, the Territory is not responsible for any cost associated with or related to the Permitted Biological Resources or Biological Resources Intellectual Property or any other incidental cost incurred by the Bioprospector in relation to undertaking the Research whatsoever.
4. The Bioprospector must pay the Territory’s costs (including legal costs) incurred as a result of or in connection with any request by the Bioprospector for the Territory’s consent under this Agreement or as a result of the Bioprospector’s breach of this Agreement (on an indemnity basis).
5. Registration, maintenance and defence of Biological Resource Intellectual Property
	1. Obligation to register

Unless the parties otherwise agree, the Bioprospector must promptly apply for registration, renewal or extension of any Biological Resources Intellectual Property that is capable of being registered, renewed or extended.

* 1. Registration
		1. In relation to any application for a grant, registration, renewal or extension of any Biological Resources Intellectual Property that is owned in accordance with clause 7.2, the Bioprospector will make that application in the joint names of the Bioprospector and the Territory.
		2. The Bioprospector will be responsible for the payment of all and any application fees or charges related to the grant, registration, renewal or extension of any Biological Resources Intellectual Property unless otherwise agreed in writing.
	2. Infringement in third party proceedings
		1. The Bioprospector must give the Territory notice of:
			1. any claim or allegation that the exercise of any rights under this Agreement constitute an infringement of the rights of any third party; and
			2. any actual or possible infringement, by a third person, of the Biological Resources Intellectual property,

immediately upon the Bioprospector becoming aware of the claim, allegation or infringement.

* 1. Infringement

Unless the parties otherwise agree, the Bioprospector must take steps to:

* + 1. make a claim where there has been possible infringement, by any third party, of Biological Resources Intellectual Property; or
		2. defend any infringement claim made by another concerning the Biological Resources Intellectual Property.
	1. Costs

Subject to clause 7.7, the Bioprospector and the Territory will share the costs of any claim in relation to clause 8.4 equally, unless the claim is the result of a breach of Laws, this Agreement or negligence on the part of one party in which case the costs must be borne by that party.

* 1. Disagreement

Where the Territory considers that a claim referred to in clause 8.4 is not worth pursuing or defending (as the case may be) the Territory may give the Bioprospector notice to this effect and the Bioprospector may then choose whether to proceed with the claim in its own name and at its own expense.

1. Record keeping

The Bioprospector will keep full and accurate:

* + 1. accounting records of all receipts of money used or applied in relation to the Permitted Biological Resources including carrying out the Research, all Biological Resources Income derived carrying out the Research and any other income or revenue from any Commercialisation; and
		2. records in relation to the Biological Resources Intellectual Property including, without limitation, records in relation to the registration, renewal or extension of any Biological Resources Intellectual Property or any claim in relation to the Biological Resources Intellectual Property,

and the Bioprospector will provide any such records to the Territory upon request.

1. ANNUAL REPORT
	1. Annual Report
2. In accordance with this clause, the Bioprospector must by 1 March each year provide the Territory with an Annual Report on activities under this Agreement in the period from the date this Agreement commences to the end of the calendar year (**Annual Report**).
3. In accordance with section 24 of the Act and to facilitate equitable sharing of Benefits arising from the Biological Resource as contemplated by the Act, the Annual Report must contain the following details:
	* + 1. identification of this Deed as the Benefit Sharing Agreement to which the report relates;
			2. the date samples were taken, including:
				1. the location from which samples were taken (by GPS coordinates using the WGS84 datum);
				2. the species of each sample; and
				3. the quantity of the sample taken.
			3. a summary of all data generated;
			4. any other relevant information arising from the Research undertaken during the previous calendar year, including publications and conference presentations arising from research into the Samples;
			5. any activities undertaken towards Commercialisation of the Biological Resources Intellectual Property or any other products or results from the Research and the Permitted Biological Resources; and

* + - 1. provide a true statement in respect to all Biological Resource Income for the preceding calendar year and identify the Territory’s share of the Benefits under this Agreement.
1. In the event that the Territory reasonably considers that information contained in the report referred to in clause 10.1(b) is not a complete or accurate summary of the Research, the Territory may, on providing the Bioprospector with thirty (30) Business Days prior written notice, appoint an independent party to undertake an audit of the Research, any Commercialisation or the Biological Resource Intellectual Property.
2. In the event of an independent party being appointed under clause 10.1(c), the Bioprospector will provide access to the appointed person to any facilities, records, reports or documentation of any kind related to the Research and Commercialisation.
3. PAYMENT OF BIOLOGICAL RESOURCE INCOME
	1. Payment of Biological Resource Income
		1. Informed by the Bioprospector’s Annual Report, the Territory will issue to the Bioprospector a tax invoice for its share of the Biological Resource Income for the previous calendar year.
		2. The Bioprospector must within thirty (30) days of the date of a correctly rendered tax invoice by the Territory, pay the Territory the amount due under clause 11.1(a) in respect of Biological Resource Income for that period.
4. publications
	1. Approval
5. The Bioprospector will provide to the Territory copies of any proposed publication (**Proposed Publication**) relating to the Research, Permitted Biological Resources or Biological Resources Intellectual Property.
6. The Territory will have thirty (30) days from its receipt to review the Proposed Publication and:
	* + 1. recommend modifications to the Proposed Publication; or
			2. refuse the publication of the Proposed Publication.
7. If the Territory recommends modifications to the Proposed Publication, the parties have thirty (30) additional days to agree the form and content of the Proposed Publication and if no agreement is reached, the Bioprospector must not publish the Proposed Publication.
8. If the Territory refuses the publication of the Proposed Publication, it must provide reasons to the Bioprospector.
9. If the Territory refuses the publication of the Proposed Publication the Bioprospector must not publish the Proposed Publication.
10. If the Territory fails to respond within thirty (30) days of receipt of the Proposed Publication as set out in clause 12.1(b), the Territory will be deemed to approve the publication of the Proposed Publication.
11. CONFIDENTIAL INFORMATION
	1. Interpretation
12. For the purposes of this clause 13 “Confidential Information” means any information or material relating to this Agreement provided by or for one party to the other party or brought into existence as a result of this Agreement (including Biological Resource Intellectual Property), including but not limited to:
	* + 1. any information that by its nature is confidential;
			2. any information designated as confidential by the party by or for whom the information is provided; and
			3. any information that the recipient of the information knows is confidential.
	1. Use of Confidential Information
13. Each party must hold all Confidential Information provided or brought into existence by the other party in confidence and must not make any use of it, except for the purposes of performing its obligations or exercising its rights under this Agreement and must not disclose or permit or cause the Confidential Information of the other party to be disclosed to any person, except:
	* + 1. as authorised by the other parties under this Agreement or otherwise;
			2. to its employees or contractors, to the extent needed to perform their obligations under this Agreement;
			3. which is required to be disclosed by Law or the rules and requirements of a stock exchange;
			4. in the case of the Bioprospector, to any staff or students participating in the Research or the collection of the Permitted Biological Resources;
			5. in the case of the Territory, to the Parliament, the Administrator, any Parliamentary Committee of the Territory, or to any Minister of the Government of the Northern Territory for the purposes of carrying out such Minister’s duties or functions; or
			6. if the information was known by the disclosing party prior to it being brought into existence or provided by the other party;
			7. if the information was provided to the disclosing party by a third party and the information was known by the third party without breach of this Agreement;
			8. if the information is generally and publicly available other than as a result of breach in confidence by the person receiving the information;
			9. use of the information is reasonably required in order to facilitate Commercialisation activity and such disclosure will not compromise any other legitimate interests of the Territory.
14. Each party must ensure that any person to which they disclose Confidential Information provided by the other party complies with the terms of this clause 13.2 as if they are a party to this Agreement, unless the exceptions in clause 13.2(a)(i) to (ix) apply.
15. Dispute Resolution
	1. Notice of Dispute

If a dispute arises between the parties as to any matter concerning this Agreement (Dispute), the party claiming the Dispute will give immediate notice in writing to the other party providing details of the Dispute.

* 1. Appointment of Independent Expert
1. Within five (5) Business Days of notice of a Dispute being received by a party, one or both parties will nominate an independent expert to determine the Dispute.
2. If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties must refer the Dispute to the Chairperson of an accredited mediation organisation to appoint an independent expert to determine the Dispute.
3. For the avoidance of doubt, in the event that there are separate referrals by the parties under clause 14.2(b), the parties agree they must participate in the independent expert process which follows the referral received first in time by the respective accredited mediation organisation.
	1. Decision of Independent Expert
4. The decision of the independent expert will be in writing and will be absolute and final and will bind the parties accordingly and this Agreement will be deemed to be amended to incorporate the terms of the independent expert's decision.
5. The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.
	1. Costs and materials
6. The parties will bear the costs of the independent expert’s determination equally.
7. The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.
8. NO representation, release and indemnity
	1. No representation
9. The Bioprospector acknowledges that it has not relied on any representation of the Territory, its agents or employees, but that it has entered into this Agreement freely and of its own accord.
10. The Territory makes no representation and accepts no responsibility as to the suitability of the Permitted Biological Resource for any particular purpose.
	1. Release and indemnity
11. The Bioprospector releases to the full extent permitted by Law, the Territory, its employees, servants, agents and contractors from any claim that the Bioprospector may (but for this release) have against the Territory for any of the Bioprospector’s responsibilities or liability for loss arising from or in respect of the Permitted Biological Resource or Biological Resources Intellectual Property.
12. The Bioprospector indemnifies the Territory from and against all liability, actions, claims, proceedings and demands for losses (including economic loss), liability, damages, costs or expenses by any third party arising:
	* + 1. out of any performance or non-performance of the express or implied obligations of the Bioprospector under this Agreement;
			2. as a result of the Research or the Bioprospector’s use or activities performed in respect of the Permitted Biological Resource; or
			3. the Bioprospector’s use or misuse of the Biological Resources Intellectual Property.
13. Insurance
14. The Bioprospector must have and maintain:
	* + 1. workers’ compensation insurance as required by Law;
			2. a public liability insurance policy for a value of at least $20 Million Dollars in relation to any single event, for the duration of the Agreement; and
			3. any other insurances required by Law.
15. The insurances must be effected with an insurer approved by the Territory and be maintained for the duration of the Agreement.
16. The Bioprospector must:

(i) within ten (10) Business Days of the date it signs the Agreement; and

(ii) upon request in writing at any time by the Territory,

produce evidence to the Territory that the insurances required by this clause have been effected and maintained.

1. If the Bioprospector fails to produce evidence of compliance with its insurance obligations to the satisfaction of the Territory, this will constitute a breach of this Agreement and, without limiting any other remedies that may be available to the Territory, the Territory may terminate this Agreement in accordance with clause 19.
2. The Bioprospector must inform the Territory in writing of any claim or of the occurrence of any event that may give rise to a claim under the policies of insurance effected pursuant to the Agreement within five (5) Business Days thereof and must ensure that the Territory is kept fully informed of subsequent actions and developments concerning the event or claim.
3. NOTICES
	1. Form and Service of Notices
4. All notices, approvals, consents, demands or other communications (**Notices**) required or permitted to be given under this Agreement must be in writing, and signed by a person duly authorised by the sender and served:
	* + 1. personally; or
			2. by pre-paid certified post; or
			3. by email,
5. at the recipient’s address for the service of notices specified in the Details, as varied by any notice given by the recipient to the sender.
	1. Receipt of Notices
6. Notices are deemed to be given by the sender and received by the recipient, if:
	* + 1. given by delivery in person, when delivered to the recipient;
			2. sent by mail, on the fifth Business Day from and including the date of posting; or
			3. sent by email, on the email entering the receiving party’s mail server if it enters the server before 4:00pm (receiving party's time) on a Business Day on that day otherwise it is deemed to be received at 9:00am on the next Business Day in the place of receipt,
7. But if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm (recipient’s time) on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
	1. Changes in form of service and addresses

Either party must notify the other of any change of address for service of notices within five (5) Business Days of the change.

1. GOODS AND SERVICES TAX
	1. Interpretation

For the purposes of this clause unless the context otherwise requires:-

1. “GST” means any tax imposed on a Supply by or through the *A New Tax System (Goods and Services Tax) Act 1999* (“the GST Act”) and any related law imposing a relevant supply tax. Any other term is used in this clause which is defined in the GST Act has the meaning it bears in the GST Act;
2. “GST Rate” means the percentage amount of GST payable determined under section 9-70 of the GST Act as amended from time to time; and
3. “Input Tax Credit”, “Recipient”, “Supplier” and “Supply” have the meaning they bear in the GST Act.
	1. Consideration inclusive of GST

The parties acknowledge that if there is a Supply under this Agreement, consideration for the Supply will be inclusive of GST, where GST is calculated using the GST Rate at the time of forming this Agreement.

1. termination
2. This Agreement may be terminated with the agreement of both parties.
3. The Territory may terminate this Agreement:
	* + 1. immediately by written notice to the Bioprospector where the Bioprospector commits a breach of this Agreement; or
			2. any time by thirty (30) days’ notice to the Bioprospector.
4. Termination of this Agreement will not affect ownership of any Biological Resource Intellectual Property or existing rights of the Bioprospector to Commercialise shared Biological Resource Intellectual Property brought into existence prior to the effective date of termination.
5. SURVIVAL

Clauses 6, 8, 13 and 15 survive the expiration or termination of this Agreement.

1. General
	1. Time is of the Essence

Time is of the essence for all obligations under this Agreement.

* 1. Compliance with Laws

The parties will comply with all Laws in force in the Northern Territory from time to time.

* 1. Costs and Stamp Duty

Each party must pay its own legal costs incurred in the negotiation, preparation and execution of this Agreement. The Bioprospector is responsible for any stamp duty which may be assessable or payable on this Agreement.

* 1. Jurisdiction and Governing Law
1. This Agreement is governed by and construed in accordance with the Law as it exists from time to time in the Northern Territory.
2. The parties submit to the jurisdiction of the Supreme Court of the Northern Territory at Darwin in respect of all matters arising under this Agreement.
	1. Injunction

The Bioprospector acknowledges that the Territory may obtain injunctive relief against the Bioprospector for any breach of this Agreement.

* 1. Amendments to Agreement and Waiver
1. No alteration, addition or amendment may be made to this Agreement other than in writing signed by each of the parties.
2. Any waiver of any rights of a party has no effect unless and until it is in writing signed by the party granting the waiver.
	1. Assignment

A party cannot assign or otherwise deal with this Agreement or any right under this Agreement without the prior written consent of the other party which will not be unreasonably withheld.

* 1. Severability

If a court determines that a word, phrase, sentence, paragraph or provision in this arrangement is unenforceable, illegal or void then it will be severed and the other provisions of this arrangement will remain operative.

* 1. Counterparts

This Agreement may be signed in any number of counterparts and all such counterparts when taken together constitute one instrument.

* 1. Further Acts

Each party will promptly do and perform all acts and execute and deliver all documents (in a form and context reasonably satisfactory to that party) required by Law or reasonably requested by the other party to give effect to this Agreement.

* 1. Entire Agreement

This Agreement terminates and supersedes all previous written and oral agreements between the parties and constitutes the entire agreement between the parties as to its subject matter.

SIGNING PAGE

**Executed** as an Agreement:

|  |  |  |
| --- | --- | --- |
| **SIGNED** by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for and on behalf of the **NORTHERN TERRITORY OF AUSTRALIA** care of its agency the Department of Industry, Tourism and Trade pursuant to a delegation under the *Contracts Act 1978 (NT)* in the presence of: | ))))) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature of Witness |  | . . . . . . . . . . . . . . . 2022Date |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Name of Witness |  |  |
|  |  |  |
| **EXECUTED** by [insert details of Bioprospector] in accordance with [e.g. section 127 of the *Corporations Act 2001* (Cth)] in the presence of: | ))) | Date: .…….…………………..…………... 2022 |
| ……………………………………………………Director |  | ……………………………………………………Director/Secretary |
| ……………………………………………………Name of Director |  | ……………………………………………………Name of Director/Secretary |

Schedule 1 –Particulars (section 29 of the Act)

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Detail** |
| 1.
 | Access Area (including time and frequency of entry if known).*(s29(1)(b) of the Act)* | As set out in the Bioprospector’s Permit (if any).[insert address and details of access, including time and frequency of entry]  |
| 1.
 | Permitted Biological Resources *(s29(1)(c) of the Act)* | As set out in the Bioprospector’s Permit[insert name of species, or lowest level of taxon, to which the resources belong]  |
| 1.
 | Permitted Quantities *(s29(1)(d) of the Act)*  | As set out in the Bioprospector’s Permit (if any).[insert permitted/agreed quantity of Biological Resources] |
| 1.
 | Permitted Purpose *(s29(1)(e) of the Act)* | Bioprospecting for [insert purpose of the access] |
| 1.
 | Labelling Requirements *(s29(1)(f) of the Act)* | Bioprospector to advise of its proposed means of labelling samples to be agreed by the Territory.[insert details] |
| 1.
 | Disposition of Ownership in samples of Permitted Biological Resources*(s29(1)(g) of the Act)* | [insert details]If none state N/A. |
| 1.
 | Use of and source of Indigenous People’s Knowledge*(s29(1)(h) of the Act)* | Bioprospector to confirm any use of Indigenous Peoples Knowledge (if any) and include details of the source of such knowledge.If none state N/A. |
| 1.
 | Benefits or Commitments in return for use of Indigenous People’s Knowledge*(s29(1)(i) of the Act)* | Bioprospector to confirm any Benefits or Commitments to be provided in return of the use of Indigenous Peoples Knowledge (if any).If none state N/A. |
| 1.
 | Proposals to Benefit Biodiversity Conservation in Access Area*(s29(1)(j) of the Act)* | Bioprospector to confirm any proposals to benefit Biodiversity conservation in the Access Area (if any).If none state N/A. |
| 1.
 | Benefits to the Resource Access Provider in return for taking the Permitted Biological Resource for the purpose of Bioprospecting*(s29(1)(k) of the Act)* | [List the Benefits or Commitments by the Bioprospector to the Resource Access Provider (the Territory)] |