

# CONFIDENTIALITY (NON-DISCLOSURE) AGREEMENT





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This sample confidentiality agreement is provided for general information purposes. We recommend that you obtain advice from a legal professional on your specific matter.

This booklet was prepared by:

**Terri Janke and Company Pty Ltd**

Lawyers and Consultants

PO Box 780

ROSEBERY NSW 1445

Phone: 02 9693 2577

Fax: 02 9693 2566

[www.terrijanke.com.au](http://www.terrijanke.com.au)

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**For Further information please contact:**

[bushharvest@aboriginalbushtraders.com](mailto:bushharvest@aboriginalbushtraders.com)

[www.aboriginalbushtraders.com](http://www.aboriginalbushtraders.com)

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This Agreement dated [.....20xx] is made

**BETWEEN**

**The Knowledge Holder**

[List of individuals or name of an incorporated entity]

[Address]

[‘The Knowledge Holder’]

**AND**

**The Researcher**

[Name of Individual researcher(s)]

[‘The Researcher’]

**AND**

**The Research Institution**

[Name of researcher or research institution]

[Address]

[ABN:]

[‘The Research Institution’]



## BACKGROUND

A. The Knowledge Holder is [or represents] an Aboriginal [person/group] of the [name] community and holds information and know-how (‘Traditional Plant Knowledge’) regarding the properties and uses of certain plants occurring in the [name of region/area]. This Traditional Plant Knowledge has been developed, acquired and handed down over many generations by the [name] community through close association with their ancestral lands.

B. The Researcher is [an independent researcher] OR [researcher employed by the Research Institution] that conducts research for the development of [insert details].

C. The Knowledge Holder and the Researcher/Research Institution wish to discuss the possibility of entering into a collaborative research project with a view to commercialising the Traditional Plant Knowledge held by the Knowledge Holder. This is likely to involve the Knowledge Holder disclosing certain Traditional Plant Knowledge to the Researcher that is currently only held by the Knowledge Holder and his/her community.

D. The Knowledge Holder agrees to disclose certain Traditional Plant Knowledge to the Researcher on the condition that the Researcher (and the Research Institution) treats the Traditional Plant Knowledge confidentially according to the terms of this Agreement.



## 1. DEFINITIONS

**‘Confidential Information’** means:

- (a) all Traditional Plant Knowledge disclosed to the Researcher by the Knowledge Holder;
- (b) any Information disclosed to the Researcher by the Knowledge Holder which is identified as Confidential Information by the Knowledge Holder at the time or before the Information is disclosed;
- (c) any Traditional Plant Knowledge which the Researcher has accessed from or through the Researcher and includes (without limitation):
  - (i) Traditional Plant Knowledge belonging to a third party which is disclosed by the Knowledge Holder to the Researcher;
  - (ii) Traditional Plant Knowledge belonging to a third party which has been accessed by the Researcher through the Knowledge Holder;
- (d) Information developed by the Researcher using any Traditional Plant Knowledge or Information received from the Knowledge Holder.

**‘Information’** means all information including inventions, discoveries, knowledge, know-how, skills, innovations, practices, inventions, ideas and [Indigenous] stories, words or names, whether written, spoken, recorded or stored in any form of media including video, audio recording or any digital file.

**‘Intellectual Property’** means patents, trade marks, service marks, registered designs, copyright materials, Confidential Information and trade secrets and applications for any of the above.

**‘Plant Resources’** means plants, plant materials, compounds occurring within plants, and any biological resources or genetic resources therein.

**‘Specified Personnel’** means those employees of the Research Institution referred to in Clause 6 and/or listed in Annexure A.

**‘Specified Purpose’** is the purpose stated in Clause 3 of this Agreement.

**‘Traditional Plant Knowledge’** means all Information held by the Knowledge Holder relating to Plant Resources including (without limitation) their properties (whether medicinal or otherwise), uses, names, whereabouts and occurrence, life-cycles, and cultural significance.

## 2. OBLIGATION OF CONFIDENCE

2.1 In consideration of the Knowledge Holder disclosing the Confidential Information to the Researcher, the Researcher (and the Research Institution) hereby agree and undertake:

- (a) to only use the Confidential Information for Specified Purpose;
- (b) to not use the Confidential Information for any other purpose;
- (c) to not disclose to any third party the Confidential Information without the prior written consent of the Knowledge Holder;
- (d) to not permit or assist any third party to make any unauthorised use of the Confidential Information



(e) to not copy the Confidential Information other than as required for the Specified Purpose (and to mark all such copies as ‘Confidential’);

(f) to keep the Confidential Information secure and protect it from unauthorised access, destruction or damage;

(g) to notify the Knowledge Holder immediately if it becomes aware that this Agreement has been breached in any way; and

(h) to do all things necessary or requested by the Knowledge Holder in order to prevent any unauthorised use of the Confidential Information or breach of this Agreement.

### **3. SPECIFIED PURPOSE**

3.1 The Knowledge Holder agrees to disclose the Confidential Information in order for the Researcher (and the Research Institution) to discuss with the Knowledge Holder and consider the viability of entering into a collaborative research project with the Knowledge Holder regarding the Traditional Plant Knowledge (and associated Plant Resources) disclosed under this Agreement (‘the Specified Purpose’).

3.2 For the sake of clarity, the Specified Purposes does not authorise the Researcher (or the Research Institution) to carry out research or otherwise utilise the Confidential Information or associated Plant Resources, which research is expressly excluded from the Specified Purpose.

### **4. TERM**

4.1 This Agreement will begin on the earlier of:

(a) the date on which it is signed and dated by both parties; or

(b) the date on which Confidential Information is or was first disclosed to the Researcher by the Knowledge Holder.

4.2 This Agreement will continue until the date on which the parties sign a written agreement that supersedes this Agreement (for example a Service Agreement or a Research Collaboration Agreement) or upon termination by the Knowledge Holder in accordance with Clause 8.

### **5. INTELLECTUAL PROPERTY**

5.1 Nothing in this Agreement grants any rights or licence (other than as required to achieve the Specified Purpose) for any copyright, patent, trade mark, trade secret or any other Intellectual Property.

5.1 Any copyright material created by the Researcher or otherwise arising as a result of the disclosure of Confidential Information by the Knowledge Holder under this Agreement including in written works, field notes, databases, computer files, videos or films, drawings and sketches, photographs, and audio recordings will be jointly owned in equal shares by the Researcher and the Knowledge Holder.



## 6. SPECIFIED PERSONNEL

6.1 The Researcher will only disclose the Confidential Information to other employees of the Research Institution who have a specific need to access or view the Confidential Information in order to achieve the Specified Purpose. These people ('Specified Personnel') should be identified and listed in Appendix A before this Agreement is signed.

6.2 All Specified Personnel must be made aware of the terms of this Agreement before being given access to the Confidential Information.

6.3 The Research Institution and all Specified Personnel will be subject to the same obligations of confidence as those placed on the Researcher by this Agreement.

## 7. RETURN OF CONFIDENTIAL INFORMATION

At the request of the Knowledge Holder, and subject to any agreements entered that supersede this Agreement, the Researcher (and the Research Institution) will immediately return to the Knowledge Holder or destroy (as requested by the Knowledge Holder) all documents, films, sound recordings, videos, digital files and documents in any other format (including all originals and copies) that contain Confidential Information.

## 8. INDIGENOUS CULTURAL & INTELLECTUAL PROPERTY

The Researcher (and the Research Institution) agrees to fully respect the laws and customs of the [name] community regarding Indigenous Cultural and Intellectual Property (ICIP), and in doing so will obtain the prior informed consent of the [name] people before making any use of ICIP obtained or accessed under this Agreement.

## 9. ACCESS TO BIOLOGICAL RESOURCES

9.1 The Researcher (and the Research Institution) agrees to fully inform itself regarding the requirements of Part 4 of the *Biological Resources Act 2006* (NT) and Part 8A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

9.2 The Researcher and Research Institution agree to do all things necessary to abide by the above mentioned laws regarding access to biological resources and benefit sharing agreements. The Researcher (and the Research Institution) agrees that for the purposes of the above mentioned laws any knowledge disclosed by the Knowledge Holder to the Researcher is 'Indigenous people's knowledge'.

## 9. TERMINATION

The Knowledge Holder may terminate this Agreement without reason at any time. If this occurs the Researcher (and the Research Institution) must comply with its obligations under clause 7.



## 10. NO ASSIGNMENT

Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party.

## 11. VARIATION

A variation of any term of this agreement must be in writing and signed by the parties.

## 12. GOVERNING LAW

This Agreement is governed in accordance with the laws of the Northern Territory, and the parties submit to the non-exclusive jurisdiction of the courts of the Northern Territory and courts hearing appeals from those courts.

<b>SIGNED by the Knowledge Holder</b>  ..... <b>Signature of [name]</b>	<b>Witnessed by:</b>  ..... <b>Signature of Witness</b>  ..... <b>Name of Witness</b>	
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<b>SIGNED by the Researcher</b>  ..... <b>Signature</b>  <b>Title:</b> .....	<b>Witnessed by:</b>  ..... <b>Signature of Witness</b>  ..... <b>Name of Witness</b>	
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<b>SIGNED for and on behalf of The Research Institution</b>  ..... <b>Signature</b>  <b>Title:</b> .....	<b>Witnessed by:</b>  ..... <b>Signature of Witness</b>  ..... <b>Name of Witness</b> <b>Date of signing: 2010</b>	
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## ANNEXURE A- SPECIFIED PERSONNEL

NAME	POSITION HELD

