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KINGDOM OF CAMBODIA

NATIONAL RELIGION KING

Royal Government of Cambodia



No: 104 ANK.BK

SUB-DECREE

ON

Access to and Sharing of Benefits Arising from Utilization of Genetic Resources

The Royal Government

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Royal Decree No. NS/RKT/0918/925 dated 6 September 2018 on the appointment of the Royal Government of the Kingdom of Cambodia
- Having seen the Royal Decree No. NS/RKT/0320/421 dated 30 March 2020 on the appointment and adjustment to the composition of the Royal Government of the Kingdom of Cambodia
- Having seen the Royal Kram No. NS/RKM/0618/012 dated 28 June 2018 promulgated the law on the organization and functioning of the Council of Ministers
- Having seen the Royal Kram No. NS/RKM/0196/21 dated 24 January 1996 promulgated the law on the establishment of the Ministry of Environment
- Having seen the Royal Kram No. NS/RKM/1014/024 dated 23 October 2014 promulgated the law on the Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
- Having seen the Royal Decree No. NS/RKT/0515/403 dated 9 May 2015 on the organization and functioning of the National Council for Sustainable Development

- Having seen the Royal Decree No. NS/RKT/0416/413 dated 22 April 2016 on the adjustment of article 2 of the Royal Decree No. NS/RKT/0515/403 dated 9 May 2015 on the law on the organization and functioning of the National Council for Sustainable Development
- Having seen the Royal Decree No. NS/RKT/1121/794 dated 24 November 2021 on the adjustment of article 2 (New) of the Royal Decree No. NS/RKT/0416/413 dated 22 April 2016 on the adjustment of article 2 of the Royal Decree No. NS/RKT/0515/403 dated 9 May 2015 on the organization and functioning of the National Council for Sustainable Development and article 5 and 10 of the Royal Decree No. NS/RKT/0515/403 dated 9 May 2015 on the organization and functioning of the National Council for Sustainable Development
- Having seen Sub Decree No. 234 ANK.BK dated 17 November 2021 on the organization and functioning of the Ministry of Environment
- As the request of Minister of Environment

CHAPTER 1

GENERAL PROVISION

Article 1: Purpose

This Sub-decree stipulates about formalities, procedures, and requirements for fair and equitable sharing of the benefits arising from Access to Genetic Resources, their Derivatives, or Associated Traditional Knowledge for the purpose of establishing a clear mechanism to implement the Nagoya Protocol of the Convention on Biological Diversity to contribute to the conservation of biodiversity and sustainable use of its components.

Article 2: Scope

This Sub-decree applies to Access to Genetic Resources, their Derivatives, and Associated Traditional Knowledge originated from or existing in Cambodia, or taken by Cambodia or anyone under jurisdiction of Cambodia for the purpose of Utilization of Genetic Resources and Associated Traditional Knowledge.

This Sub-decree shall not apply to Access to Genetic Resources and their Derivatives for being directly used as commodities. “Directly as commodities” shall not include the purpose of studying or developing the Genetic Resources.

Article 3: Use of Terms and Definitions

Terms used in this Sub-decree have the following meanings:

1. “**Access**” means collecting Genetic Resources, genetic materials, or Associated Traditional Knowledge from the location where they are found, whether in-situ or ex-situ;
2. “**Utilization of Genetic Resources or Associated Traditional Knowledge**” means to conduct research and development of Genetic Resources and/or their biochemical

- composition, including through the application of Biotechnology for commercial or non-commercial purpose;
3. **“Prior Informed Consent”** means the Provider’s consent to commencement of negotiation for Mutually Agreed Terms in accordance with article 16 of this Sub-decree;
 4. **“Commercial Purpose”** means User’s intention to Access to Genetic Resources or Associated Traditional Knowledge for the purpose other than Non-commercial Purpose;
 5. **“Non-commercial Purpose”** means User’s intention to Access to Genetic Resources or Associated Traditional Knowledge for the purpose of publicizing the Genetic Resources or Associated Traditional Knowledge and/or relevant research results to public domain without generating commercial value for the benefit of the User;
 6. **“Associated Traditional Knowledge”** means knowledge, know-how, skills, and practices which are associated with Genetic Resources and that are developed and maintained by individuals, within a community, or beyond multiple communities, often forming part of its cultural or spiritual identity;
 7. **“National Focal Point”** means the person who was assigned in accordance with the Letter 335 following paragraph 4 of article 13 of Nagoya Protocol and notified to the Secretariat of Convention by the Ministry of Environment for the purpose of facilitating preparation of legal instruments and effective implementation of Nagoya Protocol in Cambodia;
 8. **“Biotechnology”** means any technological application that uses biological systems, living organisms, or Derivatives thereof, to make or modify products or processes for specific use;
 9. **“Genetic Resources”** means any material of plant, animal, microbial, or other origin containing functional units of heredity which has actual or potential value, including biochemical composition of genetic resources, genetic information, and Derivatives;
 10. **“Derivative”** means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;
 11. **“Nagoya Protocol”** means the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity;
 12. **“Mutually Agreed Terms”** means the formalities and conditions on Access and fair and equitable sharing of the benefits arising from Access to and Utilization of Genetic Resources or Associated Traditional Knowledge concluded by and between Users and Providers in accordance with article 17 of this Sub-decree;
 13. **“Access Permit”** means the written permission to access Genetic Resources or Associated Traditional Knowledge which Competent National Authority issues for Users in accordance with article 21 of this Sub-decree;
 14. **“Secretariat of Convention”** means the Secretariat established by article 24 of the Convention on Biological Diversity;
 15. **“Convention”** means the Convention on Biological Diversity;

16. **“Relevant Technical Authority”** means public institutions, private sector, or individuals which have expertise about the Genetic Resources or Associated Traditional Knowledge;
17. **“Competent National Authority”** means the authority which the Minister of Environment assigns and notifies to the Secretariat of Convention in accordance with paragraph 4 of article 13 of the Nagoya Protocol;
18. **“User”** means the party who is seeking for Access to and Utilization of Genetic Resources or Associated Traditional Knowledge in accordance with article 4 of this Sub-decree;
19. **“Transferee (third party)”** means the party who receive transfer of Genetic Resources from Users for which transfer of Genetic Resources is permitted based on Mutually Agreed Terms and Access Permit;
20. **“Provider”** means the party who is determined by Competent National Authority to be the party who provides Genetic Resources or information of Associated Traditional Knowledge in accordance with article 10 of this Sub-decree.

CHAPTER 2
REQUIREMENTS AND PROCEDURES FOR ACCESS TO GENETIC RESOURCES
OR ASSOCIATED TRADITIONAL KNOWLEDGE
PART 1
REQUIREMENTS

Article 4: Requirements for Access to Genetic Resources

Before obtaining the right to conduct Access to Genetic Resources or Associated Traditional Knowledge, Users shall fulfill the following requirements:

- a. Fill-in the information prescribed in article 5 and submit the application for Access to Genetic Resources or Associated Traditional Knowledge to the National Focal Point;
- b. Obtain a decision to the application by the Competent National Authority in accordance with article 11 of this Sub-decree;
- c. Obtain Prior Informed Consent from Provider in accordance with article 16 of this Sub-decree;
- d. Negotiate with Providers through National Focal Point and conclude Mutually Agreed Terms in accordance with article 17 of this Sub-decree;
- e. Obtain Access Permit from Competent National Authority in accordance with article 21 of this Sub-decree.

PART 2
PROCEDURES FOR ACCESS TO
GENETIC RESOURCES OR ASSOCIATED TRADITIONAL KNOWLEDGE

Article 5: Application

Application to obtain permission to Access to Genetic Resources and Associated Traditional Knowledge shall be made in a written form which shall describe the following points and fulfil the information stipulated in annex 1 of this sub-decree:

- a. Name, address, and contact information of Users;
- b. Name of Genetic Resources to be accessed;
- c. Expected quantity / amount of samples to be taken;
- d. Purpose of Access to Genetic Resources or Associated Traditional Knowledge;
- e. Planned duration for Access to the samples;
- f. Place for Access to the samples;
- g. Information about the expected Providers, if known;
- h. If the Users have a plan of taking Genetic Resources out of the territory of Cambodia, or transferring Genetic Resources to third parties without any change of purpose of Access to Genetic Resources or Associated Traditional Knowledge, summary of such plan;
- i. Description of method of Access;
- j. Name, address, and contact information of domestic organizations and individuals conducting investigation of and Access to Genetic Resources, if any;
- k. Description of Associated Traditional Knowledge to be Accessed, if any;
- l. Description of the project where Genetic Resources or Associated Traditional Knowledge will be used;
- m. Role of each User in the project.

Article 6: Documents Attached

Together with the application for Access to Genetic Resources or Associated Traditional Knowledge, all Users shall attach the following document:

- a. for User being individual:
 1. original or certified copy of passport, residency letter, birth certificate, or other documents to prove the status and check the name and address of the User issued by a competent authority;
 2. original letter issued by the organization to which the User belongs to certify the User's position and identification in the organization.
- b. for the User being organization:
 1. certified copy of certificate of incorporation, certificate of registration, or other documents to prove the existence, name, and address of the organization issued by a competent authority;
 2. original letter issued by the organization to appoint individual(s) who act on behalf of the organization.

Article 7: Filing an Application

1. Application for Access to Genetic Resources or Associated Traditional Knowledge shall be filed to National Focal Point.
2. When submitting application for Access to Genetic Resources or Associated Traditional Knowledge, the Users shall pay the application fee which is prescribed by joint-prakas by Ministry of Environment and Ministry of Economy and Finance.

Article 8: Review of Application by National Focal Point

1. Upon receipt of an application for Access to Genetic Resources or Associated Traditional Knowledge from the User, National Focal Point shall review the application as stipulated in article 5 and attached documents as stipulated in article 6.
2. If National Focal Point finds that the application and attached documents contains all information prescribed in article 5 and 6, and application fee is paid in accordance with paragraph 2 of article 7 of this Sub-decree, National Focal Point shall without delay forward the application and attached documents to Competent National Authority.
3. If National Focal Point finds the application or attached documents do not comply with article 5 or 6, or application fee is not paid in accordance with paragraph 2 of article 7, National Focal Point shall without delay notify the applicant to correct insufficient points with noting the reasonable period of time for correction.
4. If the applicant fails to correct the insufficient point in accordance with the paragraph 3 of this article, the application shall be deemed to be withdrawn by the applicant.

PART 3

Decision

Article 9: Decision on Application

1. After receiving from National Focal Point the application and attached documents for Access to Genetic Resources or Associated Traditional Knowledge in accordance with paragraph 2 of article 8 of this Sub-decree, Competent National Authority shall issue a decision within 30 working days counting from the day of Competent National Authority's receipt of these documents.
2. The decision of the preceding paragraph could be either:
 - a. Decision to commence the process;
 - b. Decision to request further submission;
 - c. Decision to conduct further investigation; or
 - d. Decision to deny the application.

Article 10: Issuance of Decision to Commence the Process

1. After Competent National Authority receives application and attached documents from National Focal Point in accordance with paragraph 2 of article 8 of this Sub-decree, Competent National Authority shall issue a decision to commence the process within the period stipulated in paragraph 1 of article 9 of this Sub-decree if submitted documents are sufficient and it does not find:
 - a. Any User described in the application has insufficient capacity or does not have enough evidences to prove its capacity to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge;

- b. the Access to Genetic Resources or Associated Traditional Knowledge may have harmful impact on human's health or living, biodiversity, economics, society, traditional culture, or national security or interest; or
 - c. there exists final judgment of guilty against any of the Users which could cause doubt to capacity or credibility of the User to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge.
2. To issue the decision to commence the process as stipulated in paragraph 1 above, Competent National Authority shall identify the Providers. When conducting this identification, Competent National Authority shall take into consideration:
 - a. Owner of the Genetic Resources;
 - b. Possessor of the Genetic Resources;
 - c. Those who use, manage, or provide benefit to the Genetic Resources, which is detailed by prakas by the minister of the Ministry of Environment.

Article 11: Decision to Commence the Process

Decision to commence the process shall describe the following points:

- a. All information contained in application for Access to Genetic Resources or Associated Traditional Knowledge with necessary revisions, additions, or omissions, if any;
- b. Name of all Providers;
- c. Conditions imposed on the Users, if any;
- d. Instruction for Providers to let them clearly understand the purposes and procedures of Prior Informed Consent and Mutually Agreed Terms

Article 12: Validity Period of Decision to Commence the Process and Extension of Validity Period

1. Decision to commence the process shall be valid for 6 months.
2. After expiration of the validity period of paragraph 1 above, Users shall not be allowed to continue the negotiation for Mutually Agreed Terms.
3. If the Users wish to extend the period of time of the decision, the Users shall submit a written request for extension to National Focal Point which shall be submitted at least 1 month before the date of expiration.
4. When National Focal Point receives the request for extension from the applicant of extension, National Focal Point shall forward the request to Competent National Authority for decision.
5. If Competent National Authority finds fair possibility of successful conclusion of Mutually Agreed Terms during the extended period, it may issue a decision to extend the validity period of the decision to commence the process but shall request for Providers opinions in advance.
6. This extension of validity period of decision to commence the process as stipulated in paragraph 5 above can be granted only once and for the period of not more than 6 months.

Article 13: Issuance of Decision to Deny the Application

1. The Competent National Authority shall issue a decision to deny the application if it finds existence of any of the item a, b, or c in paragraph 1 of article 10 of this Sub-decree within the period stipulated in paragraph 1 of article 9 of this Sub-decree.
2. Decision to deny the application shall state the reason for denial.
3. Decision to deny the application cannot be objected. However, filing a complaint to the court regarding the decision shall not be prohibited.

Article 14: Issuance of Decision to Request Further Submission

1. Notwithstanding paragraph 1 of article 10 of this Sub-decree, if Competent National Authority considers that it shall have more documents to confirm item a, b, or c of paragraph 1 of article 10 of this Sub-decree, Competent National Authority shall issue a decision to request further submission within the period stipulated in paragraph 1 of article 9 of this Sub-decree and shall promptly notify the party who filed the application.
2. Decision to request further submission shall describe the period of time allowed for the party who is obliged to submit the additional documents to submit the additional documents which shall not exceed 30 days from the day when the person receives the notice from Competent National Authority.
3. If Competent National Authority receives additional documents in accordance with paragraph 2 of this article, the Competent National Authority shall issue, within 30 days after the Competent National Authority's receipt of the additional documents:
 - a. a decision to commence the process if the submitted documents are sufficient and it does not find a, b, or c of paragraph 1 of article 10 of this Sub-decree; or
 - b. a decision to deny the application if it finds a, b, or c of paragraph 1 of article 10 of this Sub-decree, or the submitted documents are still insufficient.
4. If Competent National Authority issues decision to request further submission but does not receive the additional documents within the period described in the decision as stipulated in paragraph 2 of this article, the Competent National Authority shall issue the decision to deny the application promptly after expiration of the period described in the decision.

Article 15: Decision to Conduct Further Investigation

1. Notwithstanding paragraph 1 of article 10 of this Sub-decree, if Competent National Authority needs additional time to identify Providers in accordance with paragraph 2 of article 10 of this Sub-decree, Competent National Authority shall issue a decision to conduct further investigation within the period stipulated in paragraph 1 of article 9 of this Sub-decree. This decision shall describe the additional period of time for further investigation which shall not exceed 30 days. If Competent National Authority could not identify the Providers within the additional period described in the decision to conduct further investigation, the party determined based on the prakas by the Ministry of Environment shall be deemed to be the Providers.
2. After issuing the decision to conduct further investigation, Competent National Authority shall:

- a. Notify the decision to:
 - Applicant (Users); and
 - Prospective Providers (if necessary).
 - b. Request information or documents which are helpful for identification of Providers from relevant authority, minority ethnic group, or local community.
3. During the additional period described in the decision to conduct further investigation, the Competent National Authority shall issue any one decision among the following decisions:
- a. a decision to commence the process in accordance with paragraph 1 of article 10 of this Sub-decree.
 - b. a decision to deny the application in accordance with paragraph 1 of article 13 of this Sub-decree.
 - c. a decision to request further submission in accordance with paragraph 1 of article 14 of this Sub-decree.

PART 4

PROCEDURES AFTER OBTAINING DECISION TO COMMENCE THE PROCESS

Article 16: Request for Prior Informed Consent

1. After obtaining a decision to commence the process, Users shall make a request to obtain Prior Informed Consent, which shall be attached with a copy of decision to commence the process.
2. Submission of the request for consent as stipulated in paragraph 1 above shall be made by Users to National Focal Point. When National Focal Point receives the request, it shall forward the copy of this request for consent and decision to commence the process to Providers by specifying the time for the Providers to reply to National Focal Point regarding whether or not to provide the consent to the request.
3. If Users do not receive reply from Providers within the period as stipulated in 2nd sentence of paragraph 2 above, Users are eligible to ask National Focal Point to remind the Providers of the reply on whether or not to provide consent to the request. Notwithstanding this paragraph, National Focal Point shall by its discretion be eligible to make the remind to Providers.
4. Each Provider shall have the right to make a free decision regarding giving consent or not giving consent on the request for consent as stipulated in paragraph 1 of this article.

Article 17: Mutually Agreed Terms

1. After Users obtain Prior Informed Consent from Providers, Users shall be allowed to commence negotiation with each Provider on Mutually Agreed Terms.
2. During the whole process of negotiation on Mutually Agreed Terms, all Users and Providers shall be given fair opportunities to participate in the negotiation, provide information, and express their opinions. If multiple Users or Providers exists for one Genetic Resource, all of them shall be given equal rights in negotiation.

3. When Users and Providers agree on the terms and conditions of benefit sharing and procedure of providing and receiving thereof, they shall conclude the terms and conditions on which they agreed through negotiation in accordance with the format and contents as prescribed in annex 2 of this Sub-decree.
4. Terms and conditions agreed on in accordance with paragraph 3 of this article shall be signed by Users and Providers.
 - a. In case there are multiple Providers, all Providers shall sign by itself or by its representative. However, Provider shall not be allowed to be representative of other Providers.
 - b. In case there are multiple Users, all Users shall sign by itself or by its representative. A part of Users may sign on behalf of other Users.
 - c. In case any Provider or User may sign by its representative, a document to certify the authorization must be attached to the Mutually Agreed Terms.
5. After Users and Providers conclude Mutually Agreed Terms, National Focal Point or any person who is authorized by National Focal Point shall:
 - a. confirm identity of each signing person and confirm these persons truly understand contents of Mutually Agreed Terms;
 - b. confirm the Mutually Agreed Terms was entered into during the valid period of the relevant decision to commence the process; and
 - c. after confirmation as stipulated in the item a and b above, affix certification on the document of Mutually Agreed Terms to certify that the document is genuine, and certifier shall sign and write the certifier's name. This certified document of Mutually Agreed Terms shall be made in 3 originals, and:
 - 1 will be kept by Users
 - 1 will be kept by Provider
 - 1 will be kept by National Focal Point.
6. If the certification is made by the person who was authorized by National Focal Point, the certifier shall promptly send 3 original of the documents of item b of paragraph 5 of this article to National Focal Point.
7. National Focal Point shall return the original document for Users and Providers as stipulated in item b paragraph 5 above to the Users and Providers.

Article 18: Communication between Users and Providers

All communications between Users and Providers related to article 16 and 17 of this Sub-decree shall be made through National Focal Point unless National Focal Point permits direct communication.

Article 19: Request for Access Permit

1. User shall prepare documents and submit them to National Focal Point to request Access Permit.
2. Documents stipulates in paragraph 1 of this article includes:
 - a. Written request for Access Permit.
 - b. Certified copy of Prior Informed Consent.
 - c. Certified copy of Mutually Agreed Terms.

3. Upon finding that the submitted documents satisfies paragraph 2 of this article, National Focal Point shall promptly forward these documents to Competent National Authority.

Article 20: Decision to Provide or Deny Access Permit, or Request Further Submission

1. When Competent National Authority receives documents to request Access Permit from National Focal Point, Competent National Authority shall decide:
 - a. to issue Access Permit;
 - b. to deny issuance of Access Permit; or
 - c. to request submission of additional documents.
2. Decision of paragraph 1 above shall be made:
 - a. Within 30 days if the application is for the purpose of academic research, generation of knowledge useful for conservation, and other non-commercial research.
 - b. Within 90 days, if the application is for commercial purposes.
3. If subject of request for Access Permit is related to Relevant Technical Authority, Competent National Authority shall, before making a decision of paragraph 1 of this article, request a written opinion from Relevant Technical Authority regarding the subject of application of Users and consider the opinion of Relevant Technical Authority.

Article 21. Decision to Issue Access Permit

If Competent National Authority finds that the documents for requesting Access Permit are proper and sufficient, it shall issue Access Permit to Users within the period specified in item a and b in paragraph 2 of article 20 of this Sub-decree.

Article 22. Access Permit

Access Permit shall describe:

- a. Name of all Users;
- b. Name of all Providers;
- c. Name of Genetic Resources;
- d. Description of Associated Traditional Knowledge, if any;
- e. Purpose of access;
- f. Permitted access place;
- g. Permitted access method;
- h. Conditions imposed on Users, if any;
- i. Permitted amount of Genetic Resources to be taken; and
- j. Validity period.

Article 23. Validity Period of Access Permit and Extension of Validity Period

1. Competent National Authority shall not prescribe validity period of Access Permit exceeding 3 years.

2. If Users wish to extend validity period of Access Permit, Users shall submit a written request for extension to National Focal Point at least 3 months before expiration. The request shall describe the reason for necessity of extending validity period of the Access Permit.
3. After receiving the request to extend validity period of Access Permit from Users, National Focal Point shall forward this written request to Competent National Authority for decision.
4. If Competent National Authority finds that the request for extending validity period of Access Permit has proper reason, Competent National Authority may decide to extend validity period of Access Permit, but shall request for Providers' opinions in advance. Competent National Authority shall have discretion to extend the Access Permit:
 - even though any Provider oppose to the extension, unless there is a clause to prohibit the extension stipulated in the Mutually Agreed Terms.
 - even though there is a clause to prohibit the extension stipulated in the Mutually Agreed Terms, if all Providers agree on such extension.
5. Extension of validity period of Access Permit as stipulated in paragraph 4 above may be given multiple times but each extension shall not exceed the period originally given.
6. When submitting request for extension of validity period of Access Permit, the Users shall pay the request fee which is prescribed by a separate joint-prakas by Ministry of Environment and Ministry of Economy and Finance.

Article 24. Request for Further Submission

1. Competent National Authority may issue a decision to request further submission if it finds any one of the following items:
 - a. Information contained in the request for Access Permit is incomplete or inaccurate;
 - b. Mutually Agreed Terms does not contain sufficient matters or agreed benefit sharing mechanism is unfair or inequitable;
 - c. Any User does not have sufficient capacity to successfully conduct the proposed Access to or Utilization of Genetic Resources or Associated Traditional Knowledge, or perform the proposed benefit sharing mechanism;
 - d. Impact of Access to Genetic Resources or Associated Traditional Knowledge on human's health or living, biodiversity, economics, society, traditional culture, or national security or interest may exceed acceptable level;
 - e. Any User failed to follow this Sub-decree or request, instruction, or warning issued by National Focal Point or Competent National Authority; or
 - f. Any User received guilty decision from court which could cause doubt to capacity or credibility of the User to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge.
2. Decision to request further submission on the request for Access Permit as stipulated in article 19 of this Sub-decree shall clearly state the period of time allowed for the party who is obliged to make further submission to make the further submission by describing the

period of time not exceeding- 30 days counting from the day when the party receives the request from the Competent National Authority.

Article 25 Denial of Access Permit

1. Competent National Authority may decide to deny issuance of Access Permit if:
 - a. Competent National Authority finds any problem as stipulated in a to f of paragraph 1 of article 24 of this Sub-decree and applicant cannot correct the problem;
 - b. Users fail to submit further documents in accordance with article 24 of this Sub-decree; or
 - c. Users submitted further documents in accordance with article 24 of this Sub-decree but Competent National Authority finds any problem as stipulated in a to f of paragraph 1 of article 24 of this Sub-decree.
2. Decision to deny Access Permit shall clearly describe the reason for denial.
3. Decision to deny Access Permit cannot be objected. However, filing a complaint to the court regarding the decision shall not be prohibited.

Article 26: Scope of Access to Genetic Resources and Associated Traditional Knowledge

1. Users shall be allowed to Utilize Genetic Resources or Associated Traditional Knowledge only within the scope and for the purpose described in Access Permit.
2. If Users want to access the Genetic Resources or Associated Traditional Knowledge beyond the scope or for purposes other than the scope and purpose stipulated in Access Permit, it shall go through the process stipulated in part 2 and part 3 of chapter 2 of this Sub-decree to obtain new Access Permit.

Article 27: Transfer of Genetic Resources

1. Users shall not transfer Genetic Resources to third party unless such transfer is permitted by Mutually Agreed Terms and Access Permit.
2. If Genetic Resources are transferred to third party based on permission by Mutually Agreed Terms and Access Permit, Users shall promptly notify National Focal Point about the transfer.
3. Transferee (third party) shall be bound by obligations under Mutually Agreed Terms and Access Permit. The above paragraph 1 shall apply mutatis mutandis to the transferee (third party).
4. If the transferee (third party) of paragraph 2 violates Mutually Agreed Terms or Access Permit, such violation shall be deemed as violation by Users and article 29 of this Sub-decree shall apply.
5. The above paragraph 1 to 4 of this article shall apply mutatis mutandis to further successive transfers of Genetic Resources.

Article 28: Amendment to Mutually Agreed Terms

1. If Users or Providers want to amend Mutually Agreed Terms, including addition or reduction of Users or Providers prescribed in the Mutually Agreed Terms, both parties (Users and Providers) shall make a written agreement on the Mutually Agreed Terms by indicating the points which have been amended, and all Users and Providers shall sign. In case of addition of Users or Providers, the new User or Provider shall also sign.

2. Paragraph 2,4,5, 6, and 7 of article 17 of this sub-decree shall apply mutatis mutandis to the agreement to amend Mutually Agreed Terms.
3. Users shall promptly forward the amended Mutually Agreed Terms to Competent National Authority through National Focal Point.
4. Competent National Authority shall review the amended Mutually Agreed Terms and issue a decision in accordance with article 20, 21, 22, 23, 24, and 25 of this sub-decree.
5. If Competent National Authority accepts the amended Mutually Agreed Terms, Competent National Authority shall issue new Access Permit and this new Access Permit shall have new validity period as stipulated there.

Article 29: Revocation of Access Permit

1. Competent National Authority may issue a decision to revoke Access Permit if it finds any one of the following problems:
 - a. User has provided false information to Competent National Authority or National Focal Point, whether intentionally or unintentionally;
 - b. Access to Genetic Resources or Associated Traditional Knowledge caused harmful impact on human's life or health, biodiversity, economics, society, traditional culture, or national security or interest;
 - c. User accessed Genetic Resources or Associated Traditional Knowledge beyond the scope or for other purpose described in Access Permit;
 - d. User failed to follow any one of the conditions stipulated in Access Permit;
 - e. User failed to follow request, instruction, or warning issued by Competent National Authority, as well as the report required in paragraph 2 of article 30; or
 - f. User receives final judgment of guilty against any of the Users issued by a court which could cause doubt to capacity or credibility of the User to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge.
2. Decision to revoke Access Permit as stipulated in paragraph 1 above shall clearly describe the reason for the revocation.
3. In the decision to revoke Access Permit, Competent National Authority shall add the decision to impose administrative penalty as stipulated in article 51 of this sub-decree.
4. Competent National Authority shall immediately inform Users and Providers about the decision of paragraph 1 of this article through National Focal Point.
5. Objection cannot be filed against this decision. However, filing a complaint to the court regarding the decision shall not be prohibited.

CHAPTER 3

OBLIGATIONS OF USERS, INFORMATION, AND DATA UPDATING

PART 1

OBLIGATIONS OF USERS

Article 30: Obligations of Users during Validity Period of Access Permit

1. During the validity period of Access Permit, Users shall:
 - a. Make a report once every 6 months and when the Users finish the research or development about Users' activity related to the Access and Utilization of Genetic Resources or Associated Traditional Knowledge under the Access Permit as well as performance of Mutually Agreed Terms.
 - b. Make a report regarding publication of information of Genetic Resources, Associated Traditional Knowledge, or relevant research results (if any).
 - c. Make a report regarding registration of intellectual property rights related to Genetic Resources or Associated Traditional Knowledge (if any).
 - d. Make a report of Users' change of their name, address, or contact information.
2. Notwithstanding the paragraph 1 above, National Focal Point or Competent National Authority shall not be prohibited from requesting Users to make a report regarding Access and Utilization of Genetic Resources or Associated Traditional Knowledge at any time if National Focal Point or Competent National Authority finds it necessary.
3. Report as stipulated in paragraph 1 and 2 above shall be made in writing and sent to National Focal Point without delay.

Article 31: Obligation of Users after Revocation of Access Permit

After decision to revoke Access Permit, the User shall not be allowed to Access to Genetic Resources or Traditional Knowledge, and shall:

- a. Return to Providers all remaining samples of Genetic Resources and shall inform National Focal Point about the return;
- b. Provide all research results and related documents to National Focal Point;
- c. continue to perform its obligation under Mutually Agreed Terms; and
- d. Compensate for damages caused by or in connection with the User's Access to Genetic Recourse or Associated Traditional Knowledge, if any, according to applicable laws and regulations of Cambodia.

Article 32: Confidential Obligation of Users about Information of Genetic Resources or Associated Traditional Knowledge

1. If Competent National Authority considers it necessary for the purpose of conserving the Genetic Resources or Associated Traditional Knowledge, Competent National Authority may impose confidential obligation on Users regarding information about the origin of Genetic Resources and Associated Traditional Knowledge.
2. Method of imposing the confidential obligation as stipulated in paragraph 1 above shall be to write down the confidential obligation in decision to commence the process or Access Permit.
3. If confidential obligation is imposed on the Users, all the Users shall not disclose the origin of the Genetic Resources or Associated Traditional Knowledge to any other party. The origin which shall not be disclosed includes the name and location of the name of administrative

district where the Access to Genetic Resources or Associated Traditional Knowledge was conducted.

4. If Users under the confidential obligation are required by applicable law or regulation of the country which is relevant to the Access to Genetic Resources or Associated Traditional Knowledge to submit Access Permit and any documents regarding the name and location of the administrative district of the origin of the Genetic Resources or Associated Traditional Knowledge to Checkpoint or other relevant authority of the country, the Users shall request the Checkpoint or the relevant authority of the country not to disclose the information regarding the origin of the Genetic Resources or Associated Traditional Knowledge.
5. Request as stipulated in paragraph 4 above shall be implemented in accordance with the laws and regulations of the country.

PART 2 INFORMATION

Article 33: Preparation of Information and Uploading of Information

1. National Focal Point shall make information available as follows:
 - a. (for applicants seeking Access to Genetic Resources) information on procedures for obtaining Prior Informed Consent and establishing Mutually Agreed Terms, as well as the benefit-sharing.
 - b. (for applicants seeking Access to Associated Traditional Knowledge) information on procedures for obtaining Prior Informed Consent and involvement of indigenous and local communities and establishing mutually Agreed Terms as well as benefit-sharing.
 - c. Information on Competent National Authority, relevant indigenous and local communities, and relevant stakeholders.
2. The information stipulated in paragraph 1 above shall be provided through ABS Clearing House and other possible methods.

Article 34: Information related to Genetic Resources and Associated Traditional Knowledge

1. Ministry of Environment may prepare list of information related to Genetic Resources and Associated Traditional Knowledge with prescription that which information can be publicly disseminated and which information shall be confidential.
2. Regarding confidential information, Competent National Authority shall clearly stipulate in the decision to commence the process as stipulated in item c of article 11 or Access Permit as stipulated in item h of article 22 of this Sub-decree.

Article 35: Update of Data

1. National Focal Point shall upload necessary documents which are submitted by Users to National Focal Point to ABS Clearing House.

2. Competent National Authority shall send to National Focal Point the documents submitted by Users and held by Competent National Authority and every decision made by Competent National Authority.
3. After National Focal Point receives documents or decision from Competent National Authority as stipulated in paragraph 2 above, National Focal Point shall immediately conduct uploading of necessary documents to and updating of data in the ABS Clearing House.

CHAPTER 4

LIST OF NAMES OF PROVIDERS OF GENETIC RESOURCES, PREPARATION OF POLICY AND NATIONAL REPORT, AND DISSEMINATION OF TRAINING

PART 1

LIST OF NAMES OF PROVIDERS OF GENETIC RESOURCES, PREPARATION OF POLICY AND NATIONAL REPORT

Article 36: Inspection of List of Names of Providers of Genetic Resources

1. Competent National Authority shall inspect the name list of Providers of each Genetic Resources which National Focal Point prepared by extracting from Access Permit.
2. If Competent National Authority finds that name list of Providers as stipulated in paragraph 1 above is appropriate, Competent National Authority shall affix signature and date on the name list.

Article 37: Preparation of Policy

1. Competent National Authority shall prepare policy, strategic plan, and legal framework related to implementation of Nagoya Protocol.
2. Competent National Authority shall cooperate with relevant parties, national or international developing partners, research institution, private sector, local community, and indigenous people in order to effectively implement and follow-up implementation of policy, strategic plan, and legal framework related to Nagoya Protocol.

Article 38: Contact with Secretary

National Focal Point shall liaise with Secretary of Convention in order to provide information and to effectively implement Nagoya Protocol.

Article 39: Preparation and Delivery of National Report

1. National Focal Point shall lead and cooperate with relevant institutions, national or international developing partners, private sector, local communities, indigenous people, and so on, in order to prepare national report regarding Nagoya Protocol.
2. Competent National Authority shall inspect and provide opinion on the above national report, and deliver the report to the Minister of the Ministry of Environment for inspection and affixing signature.
3. After the Minister of the Ministry of Environment affix signature on the national report, National Focal Point shall deliver the report to Secretariat of Convention.

PART 7
DISSEMINATION, TRAINING, AND COOPERATION

Article 40: Dissemination, Training, and Cooperation with Relevant Institutions

1. National Focal Point shall disseminate the policy and legislative letters regarding Access and Benefit Sharing to and arrange capacity building for relevant parties, especially to local community and indigenous people.
2. In order to effectively implement Nagoya Protocol, National Focal Point may request technical cooperation from relevant ministries and institutions, private study and research institute, and relevant parties.

CHAPTER 5
BENEFIT SHARING MODALITIES AND PROCEDURE

Article 41: Type of Benefits arising from Access to Genetic Resources

1. Type of benefits arising from Access to Genetic Resource or Associated Traditional Knowledge includes both monetary and non-monetary benefits, and those benefits shall be shared to all Providers fairly and equally.
2. Monetary benefits shall include all monetary benefits acquired by Users from or in connection with Access to Genetic Resources or Associated Traditional Knowledge regardless of title or method of the payment. Monetary benefits shall include income from copyright or trading Derivatives, etc.
3. Non-monetary benefits shall include all benefits other than monetary benefits which are acquired by Users from or in connection with Access to Genetic Resources or Associated Traditional Knowledge. Non-monetary benefits shall include result exchange, participation to joint research project, development of commercial product, access to relevant information, joint ownership of intellectual property, capacity building, publicity, and reputation, etc.

Article 42: Sharing of Monetary Benefits

1. Monetary benefits shall be shared in accordance with the rules determined by Mutually Agreed Terms.
2. During negotiation of Mutually Agreed Terms:
 - a. Regarding sharing of monetary benefit arising from or in connection with Access to Genetic Resources or Associated Traditional Knowledge, the sharing of benefits to the Providers shall not be less than 1% of the total income received from Access to Genetic Resources or Associated Traditional Knowledge.
 - b. Regarding sharing of monetary benefit arising from or in connection with transfer of Genetic Resources, Derivatives of Genetic Resources, or intellectual property rights, the sharing of benefits to Providers shall not be less than 2% of the total income received from the transfer of Genetic Resources, Derivatives of Genetic Resources, or intellectual property rights.

3. Paragraph 2 above shall not prohibit the Ministry of Environment to establish detailed modalities regarding benefit sharing. These modalities can stipulate the minimum rate of benefit sharing for each type of Access and Utilization or type of benefit of Genetic Resources and Associated Traditional Knowledge, but cannot violate the paragraph 2 above.
4. 20% of the total monetary benefit received by the Providers as stipulated in paragraph 2 and 3 above shall be allocated to the separate fund for Access and Benefit Sharing made by the Ministry of Environment.
5. In case the Mutually Agreed Terms as stipulated in paragraph 1 above does not stipulate about sharing of the benefits, benefit shall be shared according to consultation between Users and Providers with intervention by National Focal Point. If Users and Providers cannot reach an agreement, benefits received by shared to Providers shall be:
 - a. Deemed to be 1% of the total revenue received from Access to Genetic Resources or Associated Traditional Knowledge as stipulated in item a of paragraph 2 above.
 - b. Deemed to be 2% of the total revenue received from transfer of Genetic Resources, Derivatives of Genetic Resources, or intellectual property as stipulated in paragraph item b of paragraph 2 above.
 - c. In case there is prakas by the Ministry of Environment regarding benefit sharing as stipulated in paragraph 3 above, the prakas by the Ministry of Environment shall be followed.

Article 43: Sharing of Non-monetary Benefits

Non-monetary benefits shall be shared to Providers in accordance with their agreement stipulated in Mutually Agreed Terms.

Article 44: Disclosure of Name of Origin and Name of Providers

The Users shall disclose the name of origin of the Genetic Resource or Associated Traditional Knowledge and the name of Providers when publishing the information about Genetic Resource or Associated Traditional Knowledge or relevant research result or registering intellectual property right, unless:

- a. The Users are under confidential obligation in accordance with article 32 of this Sub-decree;
- b. Otherwise stipulated in the Mutually Agreed Terms; or
- c. Any of the Providers object to such disclosure.

Article 45: Procedure to Provide and Receive Monetary Benefits

1. Ministry of Environment shall establish separate fund for Access and Benefit Sharing in order to receive monetary benefits derived from Utilization of Genetic Resources and Associated Traditional Knowledge.
2. Monetary benefit derived from Utilization of Genetic Resources and Associated Traditional Knowledge shall be divided as follows:
 - a. 20% shall be reserved in the separate fund for ABS for the benefit of conservation and sustainable use of biodiversity and enhancement of local livelihoods; and

- b. 80% shall be provided to Providers in accordance with the agreement stipulated in the Mutually Agreed Terms as stipulated in paragraph 3 of article 17 of this Sub-decree.

Article 46: Procedure to Provide and Receive Non-monetary Benefits

Non-monetary benefits derived from Utilization of Genetic Resources and Associated Traditional Knowledge shall be:

- a. provided to the Provider in accordance with the procedure stipulated in the Mutually Agreed Terms as stipulated in paragraph 3 of article 17 of this Sub-decree.
- b. if the User and Provider do not stipulate the conditions regarding providing and receiving the non-monetary benefit in the Mutually Agreed Terms as stipulated in paragraph 3 of article 17 of this Sub-decree, the User and Provider shall have mutual consultation with intervention by National Focal Point.

CHAPTER 4 CHECKPOINT

Article 47: Checkpoint

1. Ministry of Environment may set up and implement one or more Checkpoint to monitor and ensure transparency about the Utilization of Genetic Resources and Associated Traditional Knowledge in accordance with article 17 of Nagoya Protocol.
2. Formality and procedure to establish and implement Checkpoint as stipulated in paragraph 1 above shall be stipulated in prakas by the minister of the Ministry of Environment.

Article 48: Important Roles of Checkpoint

1. Important roles of the Checkpoint regarding the Genetic Resources and Associated Traditional Knowledge which are Accessed in Cambodia shall include:
 - a. check every document related to permission to export Genetic Resources or Associated Traditional Knowledge from Cambodia issued by the Competent National Authority.
 - b. Verify the correctness of Genetic Resources or Associated Traditional Knowledge with documents of permission by Competent National Authority as stipulated in item a above.
 - c. Liaise with National Focal Point of Cambodia when finding suspect on the documents related to the permission to export Genetic Resources and Associated Traditional Knowledge issued by Competent National Authority.
 - d. Liaise with checkpoints of other states which took Genetic Resources or Associated Traditional Knowledge for Utilization for the purpose of:
 - Following-up and receive information regarding Utilization of Genetic Resources or Associated Traditional Knowledge which was permitted by the Competent National Authority of Cambodia.
 - Following-up and receive information regarding Utilization of Genetic Resources or Associated Traditional Knowledge when having suspect that the Utilization of the Genetic Resources or Associated Traditional Knowledge is not permitted by Competent National Authority of Cambodia.

- e. After receiving the above information, Checkpoint should check and provide the information received herein to Competent National Authority through National Focal Point.

CHAPTER 7 SANCTIONS

Article 49: Access for Commercial Purpose without holding Access Permit and Contravention of Conditions under Access Permit

1. Any person who Accesses Genetic Resources or Associated Traditional Knowledge for commercial purpose without holding Access Permit in accordance with article 21 of this Sub-decree shall be liable to administrative fine of not exceeding 500,000,000 (Five Hundred Million) Riel for individual, and 5,000,000,000 (Five Thousand Million) Riel for legal entity.
2. Any User holding Access Permit or transferee (third-party) as stipulated in paragraph 3 or successive transferee as stipulated in paragraph 5 of article 27 for commercial purpose:
 - a. who contravenes any condition under the Access Permit or exceeds the scope of the Access Permit shall be liable to administrative fine of not exceeding 500,000,000 (Five Hundred Million) Riel for individual, and 5,000,000,000 (Five Thousand Million) Riel for legal entity; and
 - b. who contravene the condition stipulated in paragraph 1 of article 27 shall be liable to administrative fine of not exceeding 200,000,000 (Two Hundred Million) Riel for individual, and 500,000,000 (Five Hundred Million) Riel for legal entity.

Article 50: Access for Non-commercial Purpose without holding Access Permit and Contravention of Conditions under Access Permit

1. Any person who Accesses Genetic Resources or Associated Traditional Knowledge for non-commercial purpose without holding Access Permit in accordance with article 21 of this Sub-decree shall be liable to administrative fine of not exceeding 100,000,000 (One Hundred Million) Riel for individual, and 1,000,000,000 (One Thousand Million) Riel for legal entity.
2. Any User holding Access Permit or transferee (third-party) as stipulated in paragraph 3 or successive transferee as stipulated in paragraph 5 of article 27 for non-commercial purpose:
 - a. who contravenes any condition under the Access Permit or exceeds the scope of the Access Permit shall be liable to administrative fine of not exceeding 100,000,000 (One Hundred Million) Riel for individual, and 1,000,000,000 (One Thousand Million) Riel for legal entity; and
 - b. who contravene the condition stipulated in paragraph 1 of article 27 shall be liable to administrative fine of not exceeding 40,000,000 (forty Million) Riel for individual, and 100,000,000 (One Hundred Million) Riel for legal entity.

Article 51: User's Violation of Obligation after Revocation of Access Permit

1. When User holds Access Permit but the Access Permit is revoked based on article 29 of this sub-decree, and the User fails to fulfil the obligations as stipulated in item a and b of article 31 of this sub-decree, the User shall be liable to administrative fine as follows:

- a. If the User fails to fulfil the obligation within 30 days after receiving the decision to revoke the Access Permit, the User shall be liable to administrative fine not exceeding 200,000,000 (Two Hundred Million) Riel for individual, and 500,000,000 (Five Hundred Million) Riel for legal entity; and
 - b. If the User fails to fulfil the obligation from the 31st day until 60th day after the User's receipt of the decision to revoke the Access Permit, the User shall be liable to administrative fine not exceeding 5,000,000 (Five Million) Riel per day for individual and 10,000,000 (Ten Million) Riel per day for legal entity in addition to the administrative fine stipulated in item 1 above until the User fulfils the obligations.
 - c. If the User fails to fulfil the obligation on or after 61st day, paragraph 3 of article 53 of this sub-decree shall apply.
2. Imposition of administrative fine as stipulated in paragraph 1 of this article shall be ordered by the Competent National Authority in the decision to revoke the Access Permit as stipulated in article 31 of this sub-decree.

Article 52: Failure of Timely Submission of Report

Any User who fails to timely submit the report in accordance with article 30 of this sub-decree shall be liable to administrative fine not exceeding 100,000,000 (One Hundred Million) Riel for individual, and 500,000,000 (Five Hundred Million) Riel for legal entity.

Article 53: Contravention of Confidential Obligation

Any User who contravenes the confidential obligation as stipulated in article 32 of this sub-decree shall be liable to administrative fine not exceeding 200,000,000 (Two Hundred Million) Riel for individual, and 1,000,000,000 (One Thousand Million) Riel for legal entity.

Article 54: Enforcement of Administrative Fine

1. Administrative fine as stipulated in this Chapter shall be imposed by written order for payment of administrative fine issue by the Competent National Authority. The written order for payment of administrative fine shall be sent to the offender through National Focal Point.
2. If the offender of article 49, 50, 51, 52, and 53 of this Sub-decree receives the written order of Competent National Authority to impose administrative fine and fails to pay the administrative fine within 30 days after receiving the written order to impose administrative fine, the Competent National Authority shall send the case to the competent court to process according to the applicable procedures.
3. If the offender who commits violation as stipulated in item a and b of paragraph 1 of article 51 of this sub-decree receives the order to impose administrative fine and fails to pay the administrative fine within 60 days after receiving the order to impose administrative fine, the Competent National Authority shall send the case to the competent court to process according to the applicable procedures.
4. Competent court of the paragraph 2 and 3 of this article shall be the Phnom Penh First Instance Court.

5. The Law on Non-suit Civil Case shall apply mutatis mutandis to the court proceedings to make a decision on the administrative fine. In this case, Competent National Authority is deemed as the petitioner and the offender is deemed as the opposing party of the petitioner.

Article 55: Repeated Violation

Any person who repeatedly commits the same offence again after receiving the order by Competent National Authority to impose administrative fine as stipulated in this sub-decree shall be liable to double amount of administrative fine.

Article 56: Non-release from Obligation

Payment of administrative fine as stipulated in this chapter shall not release the offender from the obligation which the offender contravened.

Article 57: Non-obstruction of Criminal Charge and Civil Claim

Imposition of administrative fine as stipulated in this chapter shall not obstruct criminal charge or civil claim under Criminal Code or Civil Code or other relevant laws if the act of violation as stipulated in this chapter constitutes the act subject of criminal charge or civil claim under other laws.

Article 58: Competent Authority related to Administrative Fine

Imposition of administrative fine as stipulated in this chapter shall be under the competence of Competent National Authority. Money collected as administrative fine shall be under the control of the Ministry of Environment.

CHAPTER 8 TRANSITIONAL PROVISIONS

Article 59: Letter of Permission Issued Before the Date of Application of this Sub-decree

1. Letters of permission which were issued before the date of application of this sub-decree shall be deemed to be the Access Permit.
2. Letters of permission which were issued before the date of application of this sub-decree shall continue to be valid until the expiration date stipulated in the letter of permission.
3. If letter of permission which were issued before the date of application of this sub-decree does not stipulate the expiration date in the letters of permission, the letter of permission shall be deemed expired after passage of 3 years after the date of application of this sub-decree.

Article 60: Application and Procedures Conducted before the date of application of this Sub-decree

Activities of application and procedures conducted before the date of application of this sub-decree shall continue to apply for the remaining activities in accordance with this sub-decree.

CHAPTER 9
FINAL PROVISIONS

Article 61: Validity of Provisions Inconsistent with this Sub-decree

Provisions applicable as of the date of application of this sub-decree which is inconsistent with provisions of this sub-decree shall be deemed invalid to the extent inconsistent with this sub-decree from the date of application of this sub-decree.

Article 62: Application

Minister in charge of the Council of Ministers, Minister of the Ministry of Economy and Finance, Minister of the Ministry of Environment, and Ministers of all relevant Ministries and Institutions shall be responsible for applying this Sub-decree according to each function from the day of signature.

Phnom Penh, 26 May 2023

Prime Minister

[Signature and Stamp]

Samdech Akka Moha Sena Padei Techo HUN SEN

Presented for the signature of Samdach Aka Moha
Sena Padei Decho Prime Minister
Minister of Environment

[Signature]

SAY SAMAL

Receivers:

- Ministry of Royal Palace
- Secretariat General of Constitutional Council
- Secretariat General of Senate
- Secretariat General of National Assembly
- Secretariat General of the Royal Government
- Cabinet of Samdach Aka Moha Sena Padei Decho Prime Minister
- Cabinet of Excellencies Deputy Prime Minister
- As mentioned in article 62
- Royal affairs
- Documents

Annex 1 of Sub decree No: 104 ANK.BK dated 26 June 2023 on Access to and Sharing of Benefits Arising from Utilization of Genetic Resources

**KINGDOM OF CAMBODIA
NATION – RELIGION – KING**

**APPLICATION TO OBTAIN PERMISSION FOR ACCESS TO
GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE**

Note:

1. Please submit this application form to National Focal Point of the Kingdom of Cambodia.
2. You must pay the prescribed application fee.
3. When National Focal Point finds that sufficient information and attached documents are provided and prescribed filing fee is paid, this application form and attached documents will be forwarded to the Competent National Authority.
4. Competent National Authority will issue a Decision to Commence the Process which will allow you to move forward to the next step, unless Competent National Authority finds that:
 - a. *Any User described in the application has insufficient capacity or does not have enough evidences to prove its capacity to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge;*
 - b. *the Access to Genetic Resources or Associated Traditional Knowledge may have harmful impact on human's health or living, biodiversity, economics, society, traditional culture, or national security or interest; or*
 - c. *there exists final judgment of guilty against any of the User which could cause doubt to capacity or credibility of the User to appropriately conduct Access to and Utilization of Genetic Resources and Associated Traditional Knowledge.*
5. In case of multiple User, decision issued by the Competent National Authority and all relevant documents will be sent to **the address or email address of the User 1.**

To: Competent National Authority

I/we are applying for the decision to commence the process for obtaining Access Permit to access the below-mentioned Genetic Resources and/or Associated Traditional Knowledge for the below-mentioned purpose.

1. Information about User:

(Please describe the identification and contact information of the User.)

User 1

Name:

Nationality:

Address (postal address to which relevant documents will be sent):

Name and title of the person who represents the User (if any), and who may be contacted by the relevant authority:

Phone number and email address:

Name and address of the professional organization to which the User belongs (individual only):

Expected roles the User will perform in the project:

Relevant qualification and experience of the User:

User 2

Name:

Nationality:

Address (postal address to which relevant documents will be sent):

Name and title of the person who represents the User (if any), and who may be contacted by the relevant authority:

Phone number and email address:

Name and address of the professional organization to which the User belongs (individual only):

Expected roles the User will perform in the project:

Relevant qualification and experience of the User:

User 3

Name:

Nationality:

Address (postal address to which relevant documents will be sent):

Name and title of the person who represents the User (if any), and who may be contacted by the relevant authority:

Phone number and email address:

Name and address of the professional organization to which the User belongs (individual only):

Expected roles the User will perform in the project:

Relevant qualification and experience of the User:

User 4

Name:

Nationality:

Address (postal address to which relevant documents will be sent):

Name and title of the person who represents the User (if any), and who may be contacted by the relevant authority:

Phone number and email address:

Name and address of the professional organization to which the User belongs (individual only):

Expected roles the User will perform in the project:

Relevant qualification and experience of the User:

User 5

Name:

Nationality:

Address (postal address to which relevant documents will be sent):

Name and title of the person who represents the User (if any), and who may be contacted by the relevant authority:

Phone number and email address:

Name and address of the professional organization to which the User belongs (individual only):

Expected roles the User will perform in the project:

Relevant qualification and experience of the User:

2. Purpose of Access

(Please check “Non-commercial purpose” if you intend to Access the Genetic Resource and/or Associated Traditional Knowledge for the purpose of publicizing the Genetic Resource and/or Associated Traditional Knowledge and/or relevant research results to public domain without generating commercial value for your benefit.

Please check “Commercial Purpose” if you intend to Access the Genetic Resource and/or Associated Traditional Knowledge for the purpose other than non-commercial purpose.)

- Non-commercial purpose
- Commercial purpose

3. Information about Genetic Resources to be Accessed

(Please describe scientific name and common name of the Genetic Resource which you intend to Access. If the Genetic Resource has other names such as local name, please describe the other names too.

Please describe the amount of the Genetic Resource which you intend to Access by specifying how many or how much samples you intend to Access.

Please also describe planned duration of Access, planned place of Access, and method of Access.

If you know the information about the expected Provider of the Genetic Resource, please describe the information.)

Genetic Resource 1

Name (common name, scientific name, and other names if any)

Amount to be Accessed (number or quantity of samples):

Planned duration of Access (maximum 3 years):

From: (day)_____, (month)_____, (year)_____

To: (day)_____, (month)_____, (year)_____

Expected place of Access:

Information about the expected Provider, if known:

Access method (How do you intend to Access? Do you intend to use any tool?):

Genetic Resource 2

Name (common name, scientific name, and other names if any)

Amount to be Accessed (number or quantity of samples):

Planned duration of Access (maximum 3 years):

From: (day)_____, (month)_____, (year)_____

To: (day)_____, (month)_____, (year)_____

Expected place of Access:

Information about the expected Provider, if known:

Access method (How do you intend to Access? Do you intend to use any tool?):

Genetic Resource 3

Name (common name, scientific name, and other names if any)

Amount to be Accessed (number or quantity of samples):

Planned duration of Access (maximum 3 years):

From: (day)_____, (month)_____, (year)_____

To: (day)_____, (month)_____, (year)_____

Expected place of Access:

Information about the expected Provider, if known:

Access method (How do you intend to Access? Do you intend to use any tool?):

Genetic Resource 4

Name (common name, scientific name, and other names if any)

Amount to be Accessed (number or quantity of samples):

Planned duration of Access (maximum 3 years):

From: (day)_____, (month)_____, (year)_____

To: (day)_____, (month)_____, (year)_____

Expected place of Access:

Information about the expected Provider, if known:

Access method (How do you intend to Access? Do you intend to use any tool?):

Genetic Resource 5

Name (common name, scientific name, and other names if any)

Amount to be Accessed (number or quantity of samples):

Planned duration of Access (maximum 3 years):

From: (day)_____, (month)_____, (year)_____

To: (day)_____, (month)_____, (year)_____

Expected place of Access:

Information about the expected Provider, if known:

Access method (How do you intend to Access? Do you intend to use any tool?):

4. Local Partner (if any)

(If there is any local partner in Cambodia which will support your Access to the Genetic Resource, such as local consultant or local research institution, please specify the name, address, phone number, and email address of the local partner.)

Local Partner 1

Name:

Address:

Phone number and email address:

Local Partner 2

Name:

Address:

Phone number and email address:

Local Partner 3

Name:

Address:

Phone number and email address:

5. Planned Activity (if any)

- Please check this box if you plan to take the Genetic Resource out of the territory of the Kingdom of Cambodia. If yes, please describe the name of destination state:

Destination state:

- Please check this box if you plan to transfer the Genetic Resource to third parties without any change of the intent of Access. If yes, please describe the name, address, phone number, and email address of the third party.

Name of the third party:

Address of the third party:

Phone number and email address of the third party:

6. Access to Associated Traditional Knowledge (if any)

- Please check this box if you plan to Access and Utilize Associated Traditional Knowledge. If yes, please describe general information of the Associated Traditional Knowledge and how you will utilize the knowledge.

7. Project Summary

(Please provide the summary of the project.)

What is the purpose of your project?

How, when, and where will you proceed with your project?

8. Confidentiality of Project

- Please check this box if any part of your project is confidential. If you checked this box, please indicate the confidential part, and describe on what conditions you would disclose the confidential part to Competent National Authority. **PLEASE DO NOT INCLUDE THE CONFIDENTIAL PART IN THIS APPLICATION FORM.**

Description of confidential part:

Conditions on which you would disclose the confidential part to Competent National Authority:

9. Attached Documents

You must attach the documents required under article 6 of the Sub-decree on Access to and Sharing of Benefits Arising from Utilization of Genetic Resources as below.

a. for User being individual:

- 1) original or certified copy of passport, residency letter, birth certificate, or other documents to prove the status and to check the name and address of the User issued by a competent authority;*

- 2) *original letter issued by the organization to which the User belongs to certify the User's position and identification in the organization.*
- b. *for the User being organization:*
- 1) *certified copy of certificate of incorporation, certificate of registration, or other documents to prove the existence, name, and address of the organization issued by a competent authority;*
 - 2) *original letter issued by the organization to appoint individual(s) who act on behalf of the organization.*

You may attach other relevant documents, such as the documents relevant to “your capacity to appropriately Access and Utilize Genetic Resources and Associated Traditional Knowledge” and/or “whether your Access to Genetic Resources or Associated Traditional Knowledge may have harmful impact on human’s health or living, biodiversity, economics, society, traditional culture, or national security or interest”.

Commitment of User:

By signing below, I/we commit that all the information provided in this form is true and correct, and understand that I/we will be liable for any incorrect information under the legislation of the Kingdom of Cambodia.

User 1

- I am User 1, or am duly authorized representative of User 1, and by checking this box, I swear that there has never been a final judgment of guilty against User 1 which could cause doubts to the capacity or credibility of User 1 to appropriately conduct Access to and Utilization of Genetic Resources and/or Associated Traditional Knowledge.

(signature for individual / signature and seal for company or organization)

Name:

Date:

User 2

- I am User 2, or am duly authorized representative of User 2, and by checking this box, I swear that there has never been a final judgment of guilty against User 2 which could cause doubts to the capacity or credibility of User 2 to appropriately conduct Access to and Utilization of Genetic Resources and/or Associated Traditional Knowledge.

(signature for individual / signature and seal for company or organization)

Name:

Date:

User 3

- I am User3, or am duly authorized representative of User 3, and by checking this box, I swear that there has never been a final judgment of guilty against User 3 which could cause doubts to the capacity or credibility of User 3 to appropriately conduct Access to and Utilization of Genetic Resources and/or Associated Traditional Knowledge.

(signature for individual / signature and seal for company or organization)

Name:

Date:

User 4

- I am User 4, or am duly authorized representative of User 4, and by checking this box, I swear that there has never been a final judgment of guilty against User 4 which could cause doubts to the capacity or credibility of User 4 to appropriately conduct Access to and Utilization of Genetic Resources and/or Associated Traditional Knowledge.

(signature for individual / signature and seal for company or organization)

Name:

Date:

User 5

- I am User 5, or am duly authorized representative of User 5, and by checking this box, I swear that there has never been a final judgment of guilty against User 5 which could cause doubts to the capacity or credibility of User 5 to appropriately conduct Access to and Utilization of Genetic Resources and/or Associated Traditional Knowledge.

(signature for individual / signature and seal for company or organization)

Name:

Date:

Annex 1 of Sub decree No: 104 ANK.BK dated 26 June 2023 on Access to and Sharing of Benefits Arising from Utilization of Genetic Resources

This is a sample format of Mutually Agreed Terms as stipulated in article 17 of the Sub-decree. However, because Mutually Agreed Terms should be negotiated on a case by case bases, this sample format should be used as guiding principles, not as a fixed template. The real Mutually Agreed Terms should consist of the clauses drafted in accordance with the actual situation of each case.

**MUTUALLY AGREED TERMS
ON ACCESS AND BENEFIT SHARING ARISING FROM THE UTILIZATION OF
GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE**

DESCRIPTION OF USER(S) (in case of multiple Users, all Users are collectively referred to as the “**User**”)

(please describe information relevant to all User, such as, name; nationality; address; name and title of the person who represent the User (if any); email address; phone number; etc.)

DESCRIPTION OF PROVIDER(S) (in case of multiple Providers, all Providers are collectively referred to as the “**Provider**”)

(please describe information relevant to all Provider, such as name; address; name and title who represent the Provider (if any); email address; phone number; etc.)

This MUTUALLY AGREED TERMS ON ACCESS AND BENEFIT SHARING ARISING FROM THE UTILIZATION OF GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE (this “**Agreement**”) is entered into on *(please enter the date of concluding this Agreement)* _____ by and between the User and Provider pursuant to article 17 of Sub-decree on Access to and Sharing of Benefits Arising from Utilization of Genetic Resources (“**Sub-decree on Access to and Sharing of Benefits Arising from Utilization of Genetic Resources, and/or calls as ABS Sub-decree**”).

RECITALS

WHEREAS, User has prepared and filed an **APPLICATION TO OBTAIN PERMISSION FOR ACCESS TO GENETIC RESOURCES AND ASSOCIATED TRADITIONAL**

KNOWLEDGE pursuant to article 5, 6, and 7 of the ABS Sub-decree, and obtained a **DECISION TO COMMENCE THE PROCESS** pursuant to article 10 of the ABS Sub-decree. **WHEREAS**, Provider has provided Prior Informed Consent to User pursuant to article 16 of the ABS Sub-decree.

WHEREAS, User and Provider have been negotiating on the methods and conditions on access to Genetic Resources and/or Associated Traditional Knowledge and sharing of the benefits arising from utilization of Genetic Resources and/or Associated Traditional Knowledge pursuant to paragraph 1 and 2 of article 17 and article 18 of the ABS Sub-decree.

THEREFORE, User and Provider agree as follows.

ARTICLE X DETAILED CONDITIONS ON ACCESS TO GENETIC RESOURCES

1. Name of Genetic Resources to be accessed
(please describe the common name, scientific name, and other names of the Genetic Resources, if any)

2. Amount of samples to be accessed
(please describe the number or quantity of the samples to be accessed)

3. Duration of access
(please describe the planned duration of the access, which shall be 3 years or less)

4. Place of Access
(please describe the place where the User will access to the Genetic Resources)

5. Access method
(how will the User access to the Genetic Resources? Will the User use any tool?)

6. Scheduled access date
(when will the User conduct the access?)

7. Exclusivity
(will the User be given the exclusive right to access the Genetic Resources? Or may the Provider provide the right to access to other parties who are willing to access the same Genetic Resources?)

8. Other conditions, if any

ARTICLE X DESCRIPTION OF ASSOCIATED TRADITIONAL KNOWLEDGE

Description of Associated Traditional Knowledge is as follows:

(Please describe the detailed information about Associated Traditional Knowledge to be accessed, if any. Please also describe how the User will access and utilize the knowledge.)

ARTICLE X PURPOSE OF ACCESS

- Please check this box if the access is for Commercial Purpose
- Please check this box if the access is for Non-commercial Purpose

ARTICLE X PROJECT DETAILS

1. Sector of utilization
(please describe the industry sector or academic sector of the project)

2. Method of utilization
(please describe the method of how the User will utilize the Genetic Resources and/or Associated Traditional Knowledge)

3. Expected result of utilization
(please describe what result does the User expect from the research or development)

4. Expected product, if any
(please describe the product the User intends to develop)

5. Method of selling, if any
(please describe when, where, how, and to whom the User intends to sell the product)

ARTICLE X PLAN TO TAKE GENETIC RESOURCES OUT OF THE TERRITORY OF THE KINGDOM OF CAMBODIA

- Please check this box if the User plan to take the Genetic Resources out of the territory of the Kingdom of Cambodia.
(If yes, please describe relevant information such as: name of destination state; etc.)

ARTICLE X PLAN TO TRANSFER THE GENETIC RESOURCES TO THIRD PARTIES

- Please check this box if the User plans to transfer the Genetic Resources to third parties without any change of the intent of Access.

(if yes, please describe relevant information such as: name, address, phone number, and email address of the third party, etc.)

ARTICLE X PLAN TO OBTAIN INTELLECTUAL PROPERTY RIGHTS

- Please check this box if the User plan to obtain intellectual property right relevant to research or development of the Genetic Resources and Associated Traditional Knowledge.

(if yes, please describe relevant information such as: What is the type of intellectual property right (patent; plant variety right; trademark; geographical indications; etc.)? Will the intellectual property right be under joint ownership of the User and Provider? How should the distribution of the value derived from the intellectual property right be? etc.)

ARTICLE X PLAN OF PUBLICATION

- Please check this box if the User plan to publish relevant research or development.

(if yes, please describe relevant information such as: Is there any limitation imposed on the publication? Will the User be obliged to acknowledge the Provider in the publication? Will the publication be joint authorship of the User and Provider? etc.)

ARTICLE X OBLIGATION OF USER

1. User shall not be allowed to access the Genetic Resources or Associated Traditional Knowledge until they obtain Access Permit from the Competent National Authority.
2. User shall be allowed to access and utilize the Genetic Resource or Associated Traditional Knowledge only within the scope and on condition stipulated in this Agreement and Access Permit.
3. User shall not transfer the Genetic Resources to third party unless such transfer is permitted by both this Agreement and Access Permit. If User transfers Genetic Resources to third party in accordance with the previous sentence, the User shall promptly notify the National Focal Point about the transfer.
4. User shall follow the request, instruction, or warning issued by Competent National Authority, if any.

5. After obtaining Access Permit, User shall make the following reports and submit them to National Focal Point as stipulated in paragraph 2 of article 31 or ABS Sub-decree:
 - a. report on User's activity related to the access and utilization of Genetic Resources or Associated Traditional Knowledge under the Access Permit as well as performance of this Agreement, once every 6 months and when the User finish the research or development;
 - b. report on publication of information of Genetic Resources, Associated Traditional Knowledge, or relevant research results, if any;
 - c. report on registration of intellectual property rights related to Genetic Resources or Associated Traditional Knowledge, if any; and
 - d. report of User's change of name, address, or contact information.
6. If Competent National Authority imposes confidential obligation on the User in accordance with article 32 of ABS Sub-decree, all User shall be prohibited from disclosing the origin of the Genetic Resources or Associated Traditional Knowledge to any other party. The origin which shall not be disclosed includes the name and location of the administrative district where the Access to Genetic Resources or Associated Traditional Knowledge was conducted. If User under the confidential obligation are required by applicable law of the country other than the Kingdom of Cambodia to submit Access Permit and any documents regarding the name and location of the administrative district of the origin of the Genetic Resources or Associated Traditional Knowledge to the Checkpoint or other relevant authority of the country, the User shall request the Checkpoint or the relevant authority of the country not to disclose the information regarding the origin of the Genetic Resources or Associated Traditional Knowledge.
7. The User shall disclose the name of origin of the Genetic Resource or Associated Traditional Knowledge and the name of Provider when publishing the information about Genetic Resource or Associated Traditional Knowledge or relevant research result or registering intellectual property right, unless:
 - a. The User is under confidential obligation in accordance with article 32 of this Sub-decree;
 - b. Otherwise stipulated in the Mutually Agreed Terms; or
 - c. Any of the Provider raises objection against such disclosure.

ARTICLE X OBLIGATION OF PROVIDER

1. When requested by User, Provider shall provide reasonable cooperation for the User to prepare a request for Access Permit.

2. Provider shall provide to User the Genetic Resources and/or Associated Traditional Knowledge in accordance with this Agreement.

ARTICLE X AMENDMENT TO THIS AGREEMENT

To make any amendment to this Agreement, User and Provider shall take the procedures stipulated in article 28 of ABS Sub-decree.

ARTICLE X IN CASE OF REVOCATION OF ACCESS PERMIT

If Access Permit is revoked, the User shall not be allowed to access the Genetic Resources and/or Traditional Knowledge, and shall:

- a. Return to the Provider all remaining samples of the Genetic Resources and shall inform National Focal Point about the return;
- b. Provide all research results and related documents to National Focal Point;
- c. continue to perform its obligation under this Agreement; and
- d. Compensate for damages caused by or in connection with the User's access to Genetic Resources and/or Associated Traditional Knowledge, if any, according to applicable laws and regulations of the Kingdom of Cambodia.

ARTICLE X BENEFIT SHARING

1. User shall share to the Provider the benefits arising from access and utilization of the Genetic Resources and/or Associated Traditional Knowledge. Benefit sharing could be monetary benefit and/or non-monetary benefit.
2. Sharing of monetary benefit shall follow the rules stipulated in article 42 of ABS Sub-decree.
3. Payment of monetary benefit shall be made to the ABS Fund in accordance with article 45.
4. Provider agrees that a part of the shared benefits will be reserved in ABS fund as stipulated in article 45 of ABS Sub-decree.
5. Details of benefit sharing shall be as follows:

(1) Monetary benefits

(please describe detailed information relevant to monetary benefit sharing, such as the amount and/or formula to calculate the amount of monetary benefit sharing, payment method of monetary benefit sharing, and timeline of when and how long each monetary benefit shall be shared. Examples of sharing of monetary benefit are: payment of the price for the materials containing Genetic Resources; upfront payment; royalties; and so on.)

(2) Non-monetary benefits

(please describe detailed information relevant to non-monetary benefit sharing, such as the type of non-monetary benefit, method of performance of non-monetary benefit sharing, and timeline of when and how long each non-monetary benefit shall be shared. Examples of non-monetary benefits are: sharing of research results; sharing of product samples; allowing the Provider to participate in the research; providing scholarships; provide training and capacity building; transferring skills and technologies; developing infrastructure; acknowledgement of the provider on commercialized product; distribution of benefits derived from relevant intellectual property right; etc.)

ARTICLE X CONFIDENTIALITY

1. User shall not disclose the following information:

(please describe the information which the User shall keep confidential. Ex: place where the Genetic Resource was accessed; etc.)

2. Provider shall not disclose the following information:

(please describe the information which the Provider shall keep confidential. Ex. details of the project; etc.)

3. Confidential obligation under this article shall survive after expiration of this Agreement.

ARTICLE X BREACH OF THIS AGREEMENT

1. If User or Provider breaches obligation under this Agreement, the other party may send a written notice to remind the performance of the obligation with specifying the reasonable period for performance. If the breaching party fails to perform the obligation within the period, the other party may terminate this Agreement.
2. If User or Provider breaches obligation under this Agreement, the other party may demand compensation for damages from the breaching party.

ARTICLE X GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Kingdom of Cambodia.

ARTICLE X DISPUTE RESOLUTION

If any dispute arises from or in connection with this Agreement, the competent court of the Kingdom of Cambodia shall have the sole jurisdiction.

This Agreement is made in 3 originals, and shall be certified in accordance with paragraph 5 of article 17 of ABS Sub-decree. After the certification, each of the User, Provider, and National Focal Point will keep 1 set.

User
(Name and signature of all User)

Provider
(Name and signature of all Provider)

Name of User 1:

Name of Provider 1:

Date:

Date:

Certification by National Focal Point or the person authorized by National Focal Point
(in accordance with paragraph 5 and 6 of article 17 of ABS Sub-decree)

I certify that:

- All above signatures are genuine and all the signing persons truly understand contents of this Agreement; and
- This Agreement is entered into during the valid period of the relevant decision to commence the process.

(Signature and stamp of certifier)

Name of certifier:

Date of certification: