

Model Scoping Agreement

AGREEMENT FOR GRANTING ACCESS TO GENETIC RESOURCES AND/OR ASSOCIATED TRADITIONAL KNOWLEDGE FROM BHUTAN FOR THE SCOPING PHASE OF RESEARCH AND/OR COMMERCIAL UTILIZATION OF SUCH RESOURCES AND KNOWLEDGE

This Agreement is entered on the day of 20..... at Thimpu, Bhutan.

Between

Authorized Agency acting through and represented by (Name of the incumbent), Chairperson being the authorised officer of the Authority having its office at(hereinafter referred to as "the **AA**")

And

ABC..... is established and existing under the laws of(name of the country & Act) having its registered office at..... (hereinafter referred to as **ABC**)

WHEREAS:

The **AA** has been established by the Government of Bhutan under the powers granted to it by Section of the Access and Benefit Sharing Policy of Bhutan (hereafter referred to as the Policy)..... Under the Policy, the **AA** is the authority to permit access to any genetic resources and /or associated traditional knowledge found within the territory of Bhutan.

ABC seeks to engage in the scoping phase of the utilization of Bhutan's genetic resources and/or associated traditional knowledge has made an application to the **AA** to seek its approval under Section of the Policy.

This Agreement is for granting approval for access to Bhutan's genetic resources and/or associated traditional knowledge.

The Parties hereto agree as follows:

1. Definitions

In this Agreement, unless the context otherwise requires:

Act means the Policy of 2012.

Genetic Resources means as defined in the Policy.

Access to Genetic Resources

Traditional knowledge associated with Genetic Resources meansas defined under the Policy.

The scoping phase of the research and/or commercial utilization of genetic resources and/or associated traditional knowledge means as defined under the Policy.

The actualization phase of the research and/or commercial utilization of genetic resources and/or associated traditional knowledge meansas defined under the Policy.

2. Grant of Approval

2.1 The AA hereby grants approval for access to genetic resources and/or associated traditional knowledge (**delete as appropriate**) for the scoping phase of its research and/or commercial utilization subject to the terms and conditions set forth in this Agreement.

2.2 Any activity/usage involving the genetic resources and/or associated traditional knowledge (**delete as appropriate**) that is not expressly authorized by the provisions of this Agreement and any additional annexures hereto shall be deemed as prohibited.

2.3 ABC hereby agrees that this Agreement shall not in any way constitute or be presumed to constitute a partnership, joint venture or joint enterprise in any way or for any purpose between the Parties hereto or make them in any way liable as partners of or as agents for one another. No Party has the authority to act for or to assume any obligation or responsibility on behalf of the other Party and the relationship between the Parties is that of a legal or natural person and a statutory authority competent to approve access to genetic resources and/or associated traditional knowledge under the Act.

3. Assignment

3.1 Without the prior written consent of the AA in each instance, neither this Agreement nor the approval granted hereunder shall be transferred or assigned in whole or in part by ABC to any natural or legal person whether voluntarily or involuntarily, by operation of act or omission on the part of ABC or otherwise.

3.2 This Agreement is strictly between the Parties and shall be deemed to be terminated in the event of any substantial changes in the management or shareholding of ABC, that alters the control structure of ABC and includes changes brought by a transfer of business units, merger, demerger or any other kind of corporate restructuring.

4. Conditions for Access to Genetic Resources and/or Associated Traditional Knowledge

4.1 ABC shall have access only to (quantity/kind/type) of genetic resources and/or associated traditional knowledge (**delete as appropriate**) from the location(s) and/or communities as specified in the Annexures and undertakes to access the same in accordance with the Policy and directions given by the AA from time to time.

4.2 ABC undertakes to abide with the provisions of the Policy and other related legislations in force in Bhutan.

4.3 ABC undertakes that it shall access the genetic resources and/or associated traditional knowledge for which approval is granted only through the person(s)/agencies specified in the Annexures and shall take necessary and appropriate measures to protect the genetic resources and/or associated traditional knowledge from any claim by third parties.

4.4 ABC undertakes to facilitate measures for the conservation and sustainable use of genetic resources and to minimize any negative environmental or social impact of the collecting and research activities.

4.5 ABC shall not distribute, transfer or part with the accessed genetic resources and/or associated traditional knowledge to any third party or engage in the 'actualization phase' of the accessed resources and/or knowledge under this Agreement.

4.6 ABC undertakes to submit status report in English on yearly basis on the progress of the research and other related developments to the AA.

4.7 ABC shall deposit the voucher specimen of genetic material /type specimens with the AA.

4.8 The AA reserves its right to supervise the access process to the genetic resources and/or associated traditional knowledge and the research as it may deem fit.

4.9 Any violation of above conditions will be deemed to be material breach of this Agreement.

5. Other conditions

5.1 ABC shall submit in English a hard and soft copy of its scoping findings in the form of reports, publications, thesis or any other documents to the AA as soon as the scoping is completed or published whichever is earlier.

5.2 ABC shall pay such sum, if any, as prescribed by the AA as a processing fee for the Scoping Permit.

5.3 ABC shall pay such sum, if any, as prescribed by the AA as a guarantee deposit returnable on the completion of the scoping phase by ABC in compliance with the terms of this Agreement.

6. Liabilities and Indemnification

6.1 ABC shall be solely responsible for any claims by third parties arising from the ABC's acts or omissions in the course of performing this Agreement and under no circumstances shall the AA be held responsible or liable for any claims by such third parties.

6.2 ABC shall indemnify and protect the AA and its employees from and against all claims, demands, losses, damages, costs (including attorney fees), actions, suits or other proceedings, all in any manner based upon, arising out of, related to, occasioned by or attributable to, any acts or conduct of ABC, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of ABC of the provisions of this Agreement or any activity undertaken or purported to be undertaken under ABC's authority or pursuant to the terms of this Agreement.

6.3 The ABC undertakes to pay a sum offor any material breach of this Agreement and in addition pay such sum as determined by the AA, as the loss incurred by Bhutan.

7. Term of the Agreement and Termination

7.1 This Agreement, unless terminated as provided herein, shall remain in effect for a period of years (case to case basis) from the date of signing of this Agreement by the Parties.

7.2 The AA may terminate this Agreement and revoke the Scoping Permit by a written notice on the happening of any of the following:

(a) If ABC does not make a payment due hereunder and fails to do so within 30 days after the date of notice in writing of such non-payment by the AA.

(b) If ABC defaults in the performance of any obligations under this Agreement and the default has not been remedied within sixty (60) days after the date of notice in writing of such default by AA.

7.3 ABC agrees to forfeit its deposit in situations where the AA terminates this Agreement and revokes the Scoping Permit under the conditions listed in 7.2(a) and/or 7.2(b).

7.4 ABC may terminate this Agreement by giving sixty (60) days advance written notice stating valid reasons for the same. However, such termination shall come into effect only on acceptance of the same by the AA given in writing not later than thirty (30) days after the notice period and payment of all outstanding dues and submission of mandatory reports on scoping conducted until then by ABC.

7.5 ABC agrees to return the genetic resources remaining and/or associated traditional knowledge to the AA no later than thirty (30) days after the termination of this Agreement. The costs incurred in transferring these resources back to the AA will be borne by ABC.

7.6 The AA shall not be liable for any loss or damage whatsoever caused to ABC due to revocation of approval for access and/ or termination of this Agreement on any ground whatsoever.

7.7 ABC, on termination of the Agreement, agrees not use any of the data/results/conclusions from the research on the accessed material for any purpose whatsoever without the prior approval of the AA.

8. Notice

8.1. Wherever in this Agreement, it is required or permitted that any communication, notice or demand be given or served by either Party to or on the other Party, such communication, notice or demand will be in English and in writing and will be validly given or sufficiently communicated if forwarded by Registered post with acknowledgement due, e-mail, telegram, telex or facsimile as follows:

The addresses of the Parties for communication:

1. The AA:

.....

2. The ABC:

.....

8.2 Notice will be deemed to have been delivered:

- (a) if delivered by hand/courier, upon receipt;
- (b) if sent by electronic transmission, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays;
- (c) if sent by certified post, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.

8.3 The Parties may change their respective addresses for delivery by delivering notice of change as provided in this paragraph.

9. Confidentiality

Upon request from the ABC, the AA agrees to keep the research being carried out and the progress achieved as confidential. However, confidential information may be disclosed to the extent required by any law or regulation or order of any governmental/administrative/judicial authority having jurisdiction over any of the Parties.

This confidentiality clause does not apply in cases where the AA terminates this Agreement and revokes the Scoping Permit under Section 7.2 (a) and/or (b).

10. Interpretation

Any interpretation of words or phrases of this Agreement shall be in accordance with the purpose, spirit and letter of the Policy and as defined in this Agreement.

11. Arbitration

11.1. If any difference in interpretation or dispute (hereinafter referred to as a ‘Dispute’) between the Parties arises under this Agreement, any Party may give the other Party a written notice clearly identifying and providing details of the Dispute. On receipt of such notice by the other Party, the Parties shall try to settle the Dispute amicably between them by negotiating in good faith within 30 days of the receipt of such notice.

11.2. If the Dispute is not resolved by such negotiations within the period mentioned, the Parties agree to settle the Dispute through arbitration conducted by the sole arbitrator appointed by the AA. The place of arbitration shall be in Thimpu, Bhutan. The language to be used in the arbitration proceedings shall be normally in English or another language mutually agreed by both the Parties.

11.3. The Parties agree that the award and determination of the arbitrator shall be final and binding on the Parties.

12. Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Bhutan without regard of the principles for the conflicts of laws. The Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts in Bhutan.

13. Severability

If any part of this Agreement is declared or held invalid by a court of law for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.

14. Modification

No amendment or modification to this Agreement shall be valid or binding upon the Parties, unless agreed upon by the Parties, made in writing, and signed on behalf of each Party by their duly and legally authorized signatories and made as annexure to this Agreement.

15. Entirety of Agreement

This Agreement constitutes the culmination of all prior negotiations, understanding, representations and commitments and sets down the complete terms and conditions of Agreement between the parties as to the subject matter.

16. Representations

16.1. The Parties represent to each other that they have the legal right and power to enter into this Agreement and to perform its obligations under the terms of this Agreement and its execution, delivery and performance by and has been duly and validly authorized by all necessary corporate action or Government action on its part.

16.2. The signatories to this Agreement shall be duly authorized by the Parties and certified copies of such authorization are appended as Annexures.

16.3. Documents attached hereto as Annexures form an integral part of this Agreement as fully as if it were set forth herein *in extenso*, and consists of:

Annex. A:

Annex. B:

Annex. C:

Annex D:

Annex E:

and any other Annexure that may be added subsequently under the provisions of this Agreement.

This Agreement has been executed in duplicate, each of which shall be deemed to be original; one shall be retained by the AA and other by the ABC and both shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by duly authorized representatives of the Parties on the day and the year first mentioned

Signed by the Authorized Officer
of the AA with official seal

Signed by duly authorized representative
of ABC

For AA

Witness

1.

2.

For ABC

Witness

1.

2.