ACCESS AND BENEFIT SHARING

And Bio-trade

GUIDELINES

FOR THE KINGDOM OF ESWATINI

2017

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LIST OF ACRONYMS

ABS	Access and Benefit Sharing
ABS CH	Access and Benefit Sharing Clearing House
CBD	Convention on Biological Diversity
ECC	Environmental Compliance Certificate
IRCC	Internationally Recognised Certificate of Compliance
IPR	Intellectual Property Rights
MAT	Mutually Agreed Terms
NEF	National Environment Fund
NGOs	Non-Governmental Organizations
PIC	Prior Informed Consent
EEA	Eswatini Environment Authority
SNL	Swazi Nation Land
ENTC	Eswatini National Trust Commission

1. INTRODUCTION

The Kingdom of Eswatini is adopting these Guidelines to implement an effective national Access and Benefit Sharing (ABS) system under the Convention on Biological Diversity (CBD) and 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 (the Nagoya Protocol). In accordance with these international instruments and the national goals on the sustainable use of biological diversity, it is necessary to put in place user-friendly procedures, including prescribed forms and procedures to be used when applying for and granting of consent to utilise the country's genetic resources and their associated traditional knowledge.

Through these Guidelines, it is expected that in most instances the Competent National Authority will oversee the process of granting consent by a provider, in particular a community and the conclusion of the relevant benefit sharing agreements between providers and users and to ensure the fairness of the agreement. The role of the National Focal Point will therefore be necessary to provide legal and technical support and capacity development in the ABS regime for the country.

The Government acknowledges the wealth that comes with research and have put in place institutions to promote and encourage research including research which contributes to the conservation and sustainable use of biological diversity. The ABS system for the country is therefore aimed at promoting collaborative research on biodiversity as an important mechanism for capacity development and technology transfer for the people of the Kingdom of Eswatini.

The Government further recognises the need to ensure that utilization of the country's genetic resources should promote fair partnerships that will support economic development and conservation between users and providers of such resources. In this regard it is the country's policy that users and providers of genetic resources including traditional knowledge associated with it should build a mutually beneficial relationship through efficient access to the country's biological resources and associated traditional knowledge and attains fair and equitable sharing of benefits arising from their use.

2. OBJECTIVE AND SCOPE OF THE GUIDELINES

2.1 OBJECTIVE

It is the policy and legal requirement of the Government of Eswatini that access to the country's genetic resources as well as the trade/export in its biological resources (Bio trade) be regulated. The overall objective of these Guidelines , is to provide for simple arrangements and procedures including measures for accessing genetic resources and traditional knowledge associated with these genetic resources of Eswatini, their products and derivatives for scientific research, commercial and any other purposes connected therewith and to ensure equitable sharing of the benefits accruing therefrom. They are further aimed at regulating bio trade, in particular that which is not regulated under existing national legal frameworks. This is in line with the objectives of the Nagoya Protocol to which Eswatini is a Party..

These Guidelines lay out the procedures and conditions under which access to Eswatini's genetic resources shall be granted and the sharing of benefits arising out of the utilisation of biological resources shall be qualified as fair and equitable. The Guidelines apply to the genetic resources, or parts thereof, naturally occurring or naturalised, biological resources bred, or intended for commercial purposes within Eswatini, or for export, whether *in-situ* or *ex-situ* conditions.

It is expected that these Guidelines will assist the relevant stakeholders including the Government of Eswatini, the private sector, NGOs, communities, academic and research institutions, foreign institutions and independent researchers to access the country's genetic resources for academic, research, commercial and other uses in a clear and simplified manner with easily understood procedures and conditions guiding that access.

2.2 SCOPE

These Guidelines apply to:

1. commercial or industrial sectors that utilize any genetic and biological resources for bio-trade or for research, application or development of drugs, complementary medicines, pharmaceuticals, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts, and essential oils.

2. Commercial or industrial sectors that utilize traditional knowledge associated with any biological resources for bio-trade or for research, application or development of drugs, complementary medicines, pharmaceuticals, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts, and essential oils.

3. Non-commercial sectors that export from the Kingdom of Eswatini any biological/genetic resources for research to generate scientific data.

3. INTERPRETATION

The terms used in these Guidelines have the same meaning as is given to them under the CBD and the Nagoya Protocol. A glossary is provided for those terms that are specifically used in these Guidelines.

4. MANAGEMENT OF BIOLOGICAL RESOURCES

4.1 RIGHTS OVER BIOLOGICAL RESOURCES

The rights over Eswatini's biological resources are vested in the State for the benefit of Swazis. It follows therefore that no person shall access any genetic resources occurring in Eswatini or knowledge associated therewith for research or for commercial utilization or for bio-prospecting and utilization or transfer the results of any research relating to genetic resources occurring in, or obtained from Eswatini without a permit granted by the National Competent Authority.

4.2 Institutional Roles and Responsibilities

These Guidelines acknowledge and recognises the institutions and their roles as identified by the Eswatini ABS Strategy and any other legislation in force and yet to be adopted to give specific functions to any institution dealing with issues of access to genetic l resources and benefit sharing.

4.2.1 The Competent National Authority

The Eswatini Environment Authority (EEA) is the principal agency in Eswatini for management of the environment with specific mandate to coordinate, monitor and supervise all activities in the field of environment management as established by the Environment Management Act, 2002. The Authority is the designated National Competent Authority in administering issues of access to genetic resources and benefit sharing.

4.2.1.1 Functions of the Competent National Authority

The Competent National Authority shall be responsible for the general management of issues related to access to genetic resources and benefit sharing, as well as bio-trade issues, in particular those that have a potential for bioprospecting In this regard, the functions of the Competent National Authority include:

1. Policy formulation - development of policies at the national level and giving overall guidance in development of other policies that are relevant to access to genetic resources and bio-trade. To prepare, coordinate and implement the national policy on access to genetic resources, with a view to conserving the diversity and integrity of the resource and ensure equitable sharing of benefits

2. Public awareness – ensuring that the public is aware about the need for sustainable management of biological resources in Eswatini in general and under these Guidelines specifically in the regulation of access to genetic resources as well as export of the country's biological resources and in the sharing of benefits derived from them.

3. Capacity building (in collaboration with relevant institutions) - ensuring that the capacity of all stakeholders, and in particular the communities/cultural clan/traditional healers' association who own genetic resources, is built to the required level to enable them offer Prior Informed Consent (PIC) at an effective level and negotiate mutually agreed terms (MAT).

4. Enforcement and ensuring compliance with all environmental policy and legal requirements in Eswatini.

5. Coordinating other agencies involved in activities related to access to genetic resources and or bio-trade.

6. Monitoring the use of biological and genetic resources both within and transferred outside Eswatini. Supervise and control compliance with contractual conditions and provisions and accordingly establish such monitoring and evaluation mechanisms as is deemed necessary.

7. Ensuring that Eswatini benefits from her genetic resources when accessed.

8. Facilitating the progress of negotiating and concluding PIC and MAT.
9. Ensuring that agreements concluded contain sufficient provision for sharing benefits accruing from access to genetic resources.
10. Ensuring that the rights of owners of genetic resources are protected and facilitate access where necessary.
11. Establishing and maintaining a register of permits issued and information relating thereto.
12. Establishing measures for the purpose of monitoring and tracking genetic resource or traditional knowledge associated with that resource with the aim of monitoring and tracking of the resource accessed;
13. Supporting customary laws and norms, the development of community protocols and procedures by communities;
14. Receiving, evaluating, approving or deny applications for access to genetic resources;
15. Issuing Access Permits;
16. Amending, suspending, nullifying or terminating Access Permits and arranging their cancellation, as the case may be, in keeping with the conditions and terms of those permits and contracts;
17. Ensuring that Eswatini keeps representative samples and specimen of the genetic resource collected under these Guidelines and approve their depository;
18. Establishing general procedures for accessing information on genetic resources and determining fees to be charged for such access;
19. Ensuring compliance with all relevant laws and conditions of permits including terms of MAT by those accessing genetic resources in Eswatini;

4.2.2 Other Government Agencies

Other Government Agencies are responsible for the management and regulation of biological resources under their mandate. The Competent National Authority shall take into consideration the roles and mandates of other respective government agencies, in particular Lead Agencies for that particular resource when issuing access permits.

The leading government agency with the legal mandate over a particular biological resource may sign the MAT where access to such a resource is granted. The responsibilities of the Lead Agencies in general include but are not limited to:

1. Reviewing applications and advising the Competent National Authority on whether consent or access should be allowed;

2. Ensuring protection of the rights of the communities;
3. Verifying compliance with consent requirements;
4. Ensuring conclusion of PIC Agreements;
5. Establishing depositories for representative samples or specimen of biological materials taken out of Eswatini.

4.2.3 Resource Owners

Resource owners have direct control over access to the resources they own. They are empowered to:

1. Give PIC for access to the genetic resources.
2. Enter into PIC Agreements with applicants for access to genetic resources in Eswatini for purposes of enabling the applicant to proceed with the application for an Access Permit.
3. Allow access to the genetic resources once the applicant presents an Access Permit.

4.2.4 Research Institutions

Local and international research institutions are empowered to:

1. Carry out research that feeds into effective management of biological resources;
2. Ensure information gained under their mandate is made available to the public as much as possible;
3. Ensure that research activities do not impede, in any way, the continuation of traditional use of biological resources.

4.2.5 National Checkpoints

Checkpoints have been designated in accordance with article 17 of the Nagoya Protocol, although some would be identified upon implementation of the guideline as and when the need may arise. . Their main function would be to collect or receive, as appropriate, relevant information related to Prior Informed Consent, to the source of the genetic resource, to the establishment of Mutually Agreed Terms, and/or to the utilization of genetic resources, as appropriate;

The following institutions/departments are the proposed checkpoints at present;

1. Ministry of Commerce (IP office)
2. Ministry of Agriculture (Malkerns Research Station)
3. Big Game Parks

The other lead agencies may from time be designated as national checkpoints as well.

5. PROCEDURE FOR ACCESS TO GENETIC RESOURCES

Persons wishing to access genetic resources have to acquire a permit, conclude written agreements where required by applicable law and best practice, setting out the terms and conditions under which the genetic resource may be acquired, used and supplied and resulting benefits shared.

Use and supply of a genetic resource is permitted on terms and conditions consistent with those under which they were acquired.

5.1 RIGHTS OF COMMUNITIES/CULTURAL CLANS

1. A community/cultural clan shall be the lawful users and custodians of the genetic resources on land on which the community/clan owns rights as well as knowledge and innovation related to the use of genetic resources on their land.

2. Communities/cultural clans shall exercise their inalienable right to, use, exchange or share their genetic l resources in sustaining their livelihood systems.

3. The genetic resources and the intellectual and cultural knowledge and practices and any innovations arising from these shall not be sold, assigned, transferred or dealt with without the prior informed consent and effective participation of the communities/cultural clans concerned.

4. Communities/cultural clans have the right to refuse consent or access to their genetic resources, innovation, practices, knowledge or technologies if such access will be detrimental to the integrity of their natural and cultural heritage.

5. No genetic resource, intellectual, cultural knowledge and practices related to genetic resources or innovations arising out of them shall be sold, assigned, transferred or dealt with in any way which shall adversely affect the resource rights of the community/cultural clan.

6. A community/cultural clan shall have the right to enforce, monitor and further its innovations and any matters in relation to the utilization or exchange of genetic resources.

7. If a community/cultural clan desires to use a genetic resource for research, bio - prospecting, commercial purposes or for export, then an access and/or export permit is a requirement and to be granted by the Competent National Authority or relevant Lead Agency

5.2 Access Procedures

5.2.1 Requirements for Prior Informed Consent

1. The Competent National Authority shall subject all applications for access to a genetic resource, and associated traditional knowledge to the prior informed consent of the concerned community or communities.

2. The Kingdom of Eswatini adopts PIC as a prerequisite of the contractual process of getting access to genetic resources. The requirement for PIC applies to all individuals, institutions and companies wishing to access genetic resources in Eswatini. This includes their products and derivatives for scientific research, commercial use, bio-prospecting, conservation, industrial application and any other purposes.

3. PIC requires the provider of the resource to fully appreciate the nature of the resource being sought, its potential or actual value and potential use before consenting to the access. Therefore, consent not based on full appreciation of the context of the agreement is considered invalid.

4. The applicant must reveal all available and relevant information so that the provider and/or Competent National Authority can make an informed decision about whether or not to allow the proposed utilisation; to do this a detailed application form is needed.

5. PIC is obtainable from the following categories of providers:

   a) Communities/Cultural Clans - in cases where the access will be undertaken within their ancestral domains / lands or traditional knowledge associated with the genetic resource.

   b) Traditional Authorities - in cases where the access will be undertaken within their area(s) of jurisdiction.

   c) Overseers of protected areas - in cases where the access will be undertaken within a protected area.

   d) Lead Agency – where the genetic resource is under the control or mandate of a specific institution.

   e) A Traditional Healers' Association – where the access is for traditional knowledge associated with the genetic resource held by (a) traditional healer/s.

6. Any person, institution or company intending to access or collect biological resources has to apply to the relevant category of biological/genetic resource owners for a PIC. This application has to be made on the form set out in Annex 1 obtainable from the Competent National Authority on payment of a fee prescribed in Annex 4.

7. The PIC Agreement will be executed in the form set out in Annex 2.

8. In order to obtain PIC, the applicant is required to provide a full explanation of how the genetic resources will be acquired and used as follows:

   a) When acquiring genetic resources from in-situ conditions, obtain PIC from the providers of the resource and any other relevant stakeholders, according to applicable law and best practice.

   b) When acquiring biological or genetic resources from *ex-situ* collections (such as botanic gardens), obtain PIC from the body governing the *ex-situ* collection and any additional consents required by that body.

   c) When acquiring genetic resources from ex-situ sources, whether from *ex-situ* collections, commercial sources or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure that the genetic resources were acquired in accordance with applicable law and best practice.

5.2.2 Prior Informed Consent Procedure in relation TO COMMUNITIES or cultural clans

1. The applicant shall obtain the prior informed consent of, and enter into a fair and equitable benefit sharing agreement with, the relevant community or cultural clan/traditional healers' association for access to:

   a) a genetic resource on land to which such community/cultural clan has a right as established by customary law; and

   b) Traditional knowledge associated with a genetic resource that is held by such community or cultural clan or traditional healers' association.

2. The prior informed consent of communities or cultural clans shall be obtained in accordance with communities'/cultural clans' customary laws, community protocols and procedures, as the case may be.

3. The prior informed consent of communities/cultural clans/traditional healers' association shall be obtained through, and the benefit sharing agreement shall be entered into with, the representative or organization identified:

   a) in accordance with the customary laws, community protocols and procedures of the said communities/cultural clans; or

   b) in the absence of the same, by the holders of the traditional knowledge associated with a genetic resource within the communities/ cultural clans/ traditional healers associations.

4. Where no such representative or organization of the traditional knowledge associated with a genetic resource can be identified under 3. Above, the prior informed consent shall be obtained from the

Competent National Authority, and the benefit sharing agreement shall be entered into with the Competent National Authority.

5. Where the same traditional knowledge associated with a genetic resource is shared by more than one community/cultural clan/traditional healers association:

    a) the applicant shall obtain the prior informed consent of, and enter into benefit sharing agreement with, the duly identified representative or organization of all the holders of the traditional knowledge associated with the genetic resource;

    b) where it is not practicable in all the circumstances of the case to ascertain all such holders, and this is proven to the satisfaction of the Competent National Authority, then the applicant shall obtain the prior informed consent of, and enter into the benefit sharing agreement with, the duly identified representatives or organization of such of the holders as the applicant may ascertain.

6. In the event that, after the application is approved, there is a claim by any community/cultural clan/traditional healers' association that it is the rightful holder of the traditional knowledge associated with a genetic resource then the Competent National Authority shall:

    a) Determine the said claim in consultation with the community/cultural clan/ traditional healers' association whose prior informed consent has been obtained and benefit sharing agreement entered under point 5 above.

    b) if the claim is proven to the satisfaction of the Competent National Authority, declare that the said community or clan or traditional healers' association is entitled to share the benefits due to the community or clan or association under the agreement entered under point 5 above.

    c) Determine the quantum or nature of benefits to which the community or clan or association is entitled under paragraph (b), in consultation with all the communities or cultural clan or traditional healers' association concerned.

Box 1

Guidance to Persons Seeking Access to Genetic Resources

The first point of contact for any applicant seeking to access genetic resources in Eswatini is the Competent National Authority. It is here that the applicant will receive the application forms and be directed to the relevant lead agency in charge of management of the required biological resources.

The applicant, who shall either be an individual or a corporate body, must have both the legal capacity to sign a contract and proven technical capacity relating to handling of biological resources. The applicant must provide information about all the persons or institutions to be involved in the procedures of access.

The applicant must provide:

1. detailed and specified description of the genetic resources, derived products or traditional knowledge to which access is intended, including their current and potential uses, their environmental sustainability, and the risks which may arise from such access;

2. detailed description of the methods, techniques, collection systems and tools to be used;

3. the precise location of the areas where the procedures of access will be carried out;

4. indication of the destination of the material collected and of its probable future use;

5. in the case of access to traditional knowledge a written consent,.

5.3 Access to Traditional Knowledge

The Government of Eswatini recognises and protects the rights of communities/cultural clans to benefit from their traditional knowledge collectively, and to receive compensation for the conservation of genetic resources. The Government therefore adopts the following principles to guide traditional knowledge associated with genetic resources:

1. The application of the principle of PIC to the rights of communities/clans association is mandatory.

2. The Competent National Authority shall not issue an access permit to an applicant who has not obtained PIC from a holder of traditional knowledge.

3. Holders of traditional knowledge have the right to be informed about requests from other parties to access their knowledge, and to extend or refuse their approval for such access.

4. Holders of traditional knowledge associated with genetic resources must be actively included in the negotiation of benefits on the basis of a full disclosure of potential benefits and risks arising from the use of traditional knowledge. Any benefit sharing arrangements that may be entered into shall not negatively interfere with traditional knowledge systems and practices of the providers of the traditional knowledge.

5. The Competent National Authority shall maintain a national registry, where providers of traditional knowledge and any other interested parties may deposit records of knowledge associated with genetic resources..

6. Intellectual property rights with respect to products or processes related to traditional knowledge associated with genetic resources or derived products shall not be recognised if the access has not taken place in accordance with the provisions of these Guidelines.

For the purposes of these Guidelines, any traditional knowledge associated with management and use of Eswatini's genetic resources may be owned by the community, cultural clan even if only one single member of the community/clan holds that knowledge.

5.1.2 PIC Agreements

1. Where the provider of a genetic resources or traditional knowledge associated with the resource is satisfied with an application for PIC referred to in paragraph 5.2.1 above, they may sign a PIC Agreement with the applicant, before access is given.

2. When negotiating PIC Agreements, each party shall make reasonable effort to clarify in writing the respective roles, rights and responsibilities, as found appropriate. The PIC Agreement shall be made on the form set out in Annex 2 obtained from the Competent National Authority.

3. It should be noted here that the granting of a PIC or executing of a PIC Agreement do not entitle the applicant to access the genetic resources or traditional knowledge concerned. This document only enables the applicant to proceed with making an application to the Competent National Authority for an Access Permit.

4. It should further be noted that there may be more than one owner for a particular genetic resource, or the applicant may wish to access genetic resources from several areas in which case there may be more than one provider. In the case of the former, all the providers of the resource will be signatory to the agreement. In the case of the latter, each owner will enter into an agreement with the applicant.

5. The resource provider has to sign a PIC Agreement as set out in Annex 2 with the applicant.

6. Before signing a PIC Agreement, a provider of genetic resources has to consider, among other things, the following:

   a) The environmental or social impact of access is not detrimental to the local environment from where the genetic resource is to be obtained;

   b) The terms and benefit sharing are in line with national development goals;

   c) The relevant permits or other authorisations have been obtained;

d) Where applicable, communities/cultural clan that may be affected or derive livelihood from the same resource have been consulted;

e) The applicant is capable of observing the conditions against which the Agreement may be issued;

f) The applicant possesses the legal capacity to enter into a PIC Agreement;

7. In considering whether a provider has given informed consent, the following shall be put under consideration:

a) whether the resources provider had adequate knowledge of his rights and was able to engage in reasonable negotiations with the applicant on benefit-sharing;

b) whether the resources provider was given adequate time to consider the application, consult with relevant people and negotiate the MAT;

c) if the genetic resources are in an area that is communally owned, whether the views of the community, at the lowest level, have been sought;

d) whether the provider was aware of the value of the resources being accessed

Box 2

In order to obtain authorisation to access Eswatini's genetic resources, the applicant must obtain PIC from the owner of the resource. After issuing of the PIC, the applicant and the resource provider shall negotiate and sign a PIC Agreement as highlighted in Para 5.1.2 above. It is this PIC and the PIC Agreement that the applicant uses to obtain an MAT and subsequently an Access Permit.

5.3.1 Mutually Agreed Terms

1. A MAT is an agreement between the provider of the genetic resource and a user, setting out the terms under which genetic resources can be transferred from one party to another. Where the desired genetic resource will be collected and/or transferred to other third parties, the applicant has to enter into a MAT with the Competent Authority or its representative before obtaining an Access Permit. No person shall transfer any genetic resources outside Eswatini unless such person has executed a MAT.

2. A MAT shall contain such terms and conditions as may be agreed between the parties as provided for in Annex 5 of these Guidelines. Nothing in the Annex 5 shall preclude the parties from providing for others that are not mention in the form under the Annex.

3. The benefits accruing from the collection, modification and use of genetic resources shall be shared in accordance with the principle of fairness and equity, and on mutually agreed terms.

4. Benefits accruing from access to genetic resources shall vary on a case by case basis

5. The MAT shall clearly state the rights and obligations of any party who may have ownership of, or authority over genetic resources to which access is being sought and shall in particular contain the information prescribed in Annex 5.

6. A MAT must provide for reasonable benefit-sharing arrangements, including protection for, recognition of and valuing traditional knowledge to be used, and must include the following:

   a) **Full details must be declared of the Parties to the Agreement** – declare the parties that are entering into agreement. This should be the agency, community/cultural clan responsible for management of the genetic resource, the applicant who wants to access the resource and the Competent National Authority

   b) **Description of the genetic material** – describe the material that is going to be accessed. Name the species or lowest level of taxon to which the resources belongs too and the parts that are going to be collected and if relevant the amounts / quantity to be collected plus the quantity of the resources that may be removed from the area.

   c) Details regarding the **time and frequency of entry into the area** that contains the genetic resources

   d) **Intended purpose and use of the material** – list the use to which the material is going to be put. This could be research, whereby the type of research should be described, trade, bio-prospecting, etc.

   e) **Authorised users** – mention those who are authorised to use the material after it has been collected, including the institutions to which they are affiliated.

   f) **Storage of the material** – the proposed means of labelling of samples and where they shall be deposited both inside Eswatini and outside in the case of the genetic material that is intended for export.

   g) **Destination** – the final destination of the genetic material. Give this in detail, including physical address and other contact details. This will help in keeping track of the material once it has been collected.

   h) **Period of use** – for how long is the applicant allowed to use the genetic materials? What happens to the materials after this period is over?

i) **Restrictions on use of the material** – are there any restrictions as to who can use the materials and the purpose for which they can be used?

j) **Ownership of derivatives / products** – specify the agreed nature of ownership of collected samples and their derivatives and any products there from plus details of any proposed transmission to third parties. This should include the ownership of commercialisation rights and publication rights.

k) **Use of traditional knowledge** – where applicable, details of the source of the knowledge, e.g. whether it was obtained from scientific or other public documents, or from the resource owner or from the community/cultural clan/traditional healers' association.

l) **Benefits to be shared** – describe the benefits that are to be shared as a result of the allowed access to the genetic material. Include benefits to be provided or any agreed commitments given in return for the use of the traditional knowledge. Indicate who is to benefit from what and when the benefits are expected. Include expected technology transfer (from whom to whom and when).

m) **Governing law** – the governing law is that of Eswatini for all MATs made for access of Eswatini's genetic materials.

n) **Responsibilities** – Specify any particular responsibilities held by each of the parties under the agreement e.g. who produces reports, who pays which fees, who is responsible for depositing the specimen within Eswatini, etc.

o) **Termination** – state how the agreement shall be terminated, and by who and how long a period of notice is expected once the decision to terminate has been reached.

p) **Period before expiry** – indicate for how long the agreement is valid and what happens when it has expired.

q) **Fees** – indicate the amount and type of fees that have to be paid. Specify the recipients and the amounts that they shall receive and when.

7. The MAT is given only:

    a) for a specified period of time;

    b) after payment of a fee prescribed in Annex 4. This fee shall be paid to the provider of the resource according to agreed percentages.

    c) and when other fees as provided for under other complimentary laws.

8. After concluding the MAT, an Access Permit is granted by the Competent National Authority to allow the applicant to access and collect the genetic resources.

9. A MAT takes effect only if an access permit for the proposed access is issued by Competent National Authority. At the expiration of the MAT, it shall be re-negotiated if considered necessary. Otherwise,

the genetic material originating from Eswatini should be returned to the country through the Competent National Authority.

10. PIC and MAT for genetic resources originating from Eswatini is required for utilisation even when physical access has already occurred including for *ex-situ* collections. In this instance, the MAT shall be concluded with the Competent National Authority.

11. Future use of genetic resources must be negotiated in the MAT right from the beginning of the process. Renegotiation of the MAT is required in case of future use of the genetic resources after the expiry of the agreement and all parties to the MAT must be informed.

12. Should the materials that are subject of a MAT obtain unforeseen commercial value after conclusion of the agreement, the applicant is required to go back to the Competent National Authority to declare this value. The benefits to be shared shall be re-negotiated and the MAT revised accordingly.

13. The parties involved in a transaction on genetic resources are encouraged to seek support by a mediator when negotiating MAT. The mediator shall facilitate the negotiations of MAT between the concerned parties with the aim of obtaining a balanced outcome.

14. Should there be any disagreement in the implementation of the MAT, the laws of Eswatini shall be applied. Any disputes that may arise with other countries must be settled according to the provisions of the agreements and national law. If a dispute arises with a country which is Party to the CBD including the Nagoya Protocol, a solution adopted must be in accordance with the principles established in these international instruments.

5.1.4 Access Permit

1. Any person wishing to access and/or collect genetic resources of Eswatini shall be required to submit a formal application to the Competent National Authority 30 (thirty) days in advance in the form set out in Annex 3 to these Guidelines.

2. An application for an Access Permit shall be accompanied by:

   a) a written PIC Agreement, given by the relevant resource provider;

   b) an Environmental Compliance Certificate (ECC) where required;

   c) a duly negotiated and signed MAT, plus copies of receipts indicating payment of the relevant fees; and

   d) a detailed account highlighting the nature of genetic resource to be accessed including the species of interest, location, quantities, activities, equipment, duration, purpose and any other relevant information as may be required by the Competent National Authority.

3. The Competent National Authority may, where it deems necessary for the purposes of authentication of documents, request an applicant to submit the originals of the documents specified above or request for further information from the applicant.

4. The Competent National Authority shall, immediately after receiving an application for access to genetic resources register the said application and within 14 days acknowledge receipt thereof.

5. Within (30) thirty days of receipt of an application or, when further information is requested of the applicant, within 30 (thirty) days of receipt of that further information, Competent National Authority shall either:

   a) approve; or

   b) approve subject to conditions; or

   c) refuse the application; and/or

   d) Inform the applicant of its decision on the application accordingly.

6. Once issued, the access permit constitutes an Internationally Recognised Certificate of Compliance (IRCC) issued by Eswatini. The Competent National Authority shall notify ABS CH of every permit issued in order to comply with the requirements of the Nagoya Protocol.

5.1.4.1 Terms, conditions of an access permit

1. An access permit shall be prepared in the manner specified in Annex 6 and shall contain such terms and conditions as the Competent National Authority may deem necessary to impose.

2. In addition to such terms and conditions as may be contained in an access permit, the following conditions shall be implied in every access permit:

   a) Duplicates and holotypes of all genetic resources collected shall be deposited with the relevant lead agency.

   b) Records of all intangible components of plant genetic material collected shall be deposited with the Competent National Authority.

   c) Reasonable access to all genetic resources collected shall be guaranteed to all Swazi citizens whether such genetic resources and intangible components are held locally or abroad.

   d) All agreements entered in respect to access of genetic resources shall be strictly for the purposes for which they were entered.

   e) The furnishing of progress reports to the Competent National Authority on the status of research, including all discoveries from research involving genetic resources and/or intangible components thereof.

f) The holder of an access permit shall inform the Competent National Authority of all discoveries made during the exercise of the right of access granted under the access permit.

g) The holder of an access permit shall provide environmental compliance reports to the Competent National Authority.

i. compliance report on the environmental impacts of any ongoing collection of genetic resources or intangible components thereof;

ii. a final status report on the environmental impacts of collection of biological/genetic resources or intangible components thereof, in the event that the collection is of a duration of three months or less.

h) The holder of an access permit shall abide by the laws of Eswatini as may be in place from time to time.

3. The Competent National Authority may, on its own volition or on the application by an access permit holder, vary the conditions of an access permit.

5.1.4.2 Conditions Pertaining to Academic and Research Institutions, Public Agencies and Inter-governmental Institutions

1. These Guidelines are not intended to restrict innovative research on genetic resources, but serve to ensure that the Government of Eswatini is committed to promote research, proper management and sustainable utilization of biodiversity for research so that Eswatini benefits from the utilization of her genetic resources.

2. The Competent National Authority shall determine the appropriate conditions to be met under the written agreement by academic and research institutions, public agencies and inter-governmental institutions.

3. The application for access for research purposes shall clearly state the objective of the research and the relation of the applicant to industry. Neither the sample nor the associated information shall be transferred without an Materials Transfer Agreement (MTA) reserving the prior rights of the State and/or community or communities.

4. Where the institutions referred to in this paragraph change their activities to be predominantly the commercialization of a genetic resource, the Competent National Authority shall cause the conditions and terms to be varied.

5.1.4.3 Access Permit Exemption

1. There are some activities that lead to access of the country's genetic resources which are exempted from the requirement of an Access Permit. These include:

a) the exchange of genetic resources done by the community/cultural clan amongst themselves and for their own consumption;

b) genetic resources in transit through Eswatini;

c) accessing genetic resources for conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping, in Eswatini;

d) Where use is intended for approved research for educational purposes by an institutions recognised by the Competent National Authority designated for this purpose within Eswatini.

2. Exempted use must not have commercial motivations or should not be intended to result in export of such resources or parts thereof. Should commercial value be discovered later, after exempted access, then the procedures for obtaining an access permit must be followed.

6.0 BIO-TRADE

6.1 BIO-TRADE PERMIT

1. A person who wishes to engage in bio-trade within and outside the country as well as exporting genetic resources that are not regulated in the other statutes (i.e. Game Act, Flora Protection Act etc.) must obtain a bio-trade or export permit from the Competent National Authority including the relevant lead agency regulating that resource

2. The applicant shall complete an application form in the manner provided for in Annex 3

3. The Competent National Authority may delegate its function to issue a bio-trade permit to any Lead Agency to facilitate ease of access of such permits to local bio traders in the various regions of Eswatini.

4. The Competent National Authority shall enter into Memorandums of Agreement with each Lead Agency delegated to issue bio-trade permits. Such Agreements shall provide for, *inter alia*,

    a) the procedures for submission and evaluation of bio-trade applications;

    b) procedure for administering PIC or any access agreements;

    c) procedure for evaluating MAT or any other agreements as may be necessary in any bio-trade transaction;

    d) the type of a Bio-trade Permit that may be issued by the Lead Agency;

    e) the nature of genetic resources falling within their scope;

    f) requirements and frequency of reporting to the Competent National Authority; and

    g) any other requirement as may be necessary.

5. A bio-trade permit referred to in paragraph 1 above, may also be used to export from Eswatini any genetic resources covered in the permit application.

6. An application for a bio-trade permit must be submitted in the form of Annexure 5 to these Guidelines.

6. An application for a bio-trade permit must be accompanied by the following:

    a) Proof of prior consent from the stakeholder or stakeholders concerned;

    b) signed MAT between the applicant and the stakeholder concerned;

    c) Signed benefit-sharing agreement between the applicant and the stakeholder concerned; or

d) if there has not been possible to conclude agreements referred to in paragraphs (b) or (c) above, a request for the intervention of the Competent National Authority for the purposes of facilitating the negotiations of such agreements; and

(e) non-refundable fee specified in Annexure 4 in these Guidelines.

Box 4

Simple Guide to Applicants for application for an access permit

Once an applicant contacts the Competent National Authority, he/she shall be given information on the access procedure relevant for Eswatini's genetic resources and offered the PIC application form (at the prescribed fee). The applicant shall then be directed to the relevant Lead Agency that is in charge of management of the particular genetic resource of interest for guidance as to where the genetic resource can be accessed.

It is after the applicant has obtained the PIC from the resource provider, the relevant agreements, and environmental assessment and paid the required fees as prescribed in Annex 4 that they shall return to the Competent National Authority to apply for the access permit.

If the application with its accompanying documents is complete, Competent National Authority shall accept it, assign it a presentation or filing date, enter it into the registry kept for that purpose and open the corresponding file. The Competent National Authority shall evaluate the application, make the visits and consultations it deems necessary and shall then accept or deny the application, based on the results of the consultations, the records of visits, and the fulfilment of the conditions established in the Guidelines.

Note that Competent National Authority shall also, where it is deems necessary, require the presentation of a report from an environmental impact assessment.

If all conditions have been met, the applicant shall be advised about the acceptance of the application and the Access Permit shall be granted within 30 (thirty) working days from receipt of the application.

If the application is found to be incomplete, Competent National Authority shall return it immediately to the applicant, indicating the information that is missing, so that it might be completed.

In the event that the application is denied, this decision shall be communicated to the applicant, within thirty days from the date of application, giving justification. The matter shall be considered finished. This does not, however, preclude the applicant from appealing the decision in terms of the Environment Management Act if he so desires.

7. BENEFIT SHARING

Fair and equitable benefit sharing is a complementary objective to sustainable use and conservation of biological resources and is the main reason that justifies the corresponding drive for providers to grant access. Reasonable and sustainable benefit sharing can therefore become an incentive for providers of biological resources or knowledge holders to conserve genetic/biological resources alleviate poverty and develop economically.

Although there is no singularly correct allocation mechanism, the desired result is one which fairly reflects the contributions made. Appropriate beneficiaries are to be identified and institutional channels established through which benefits can be transferred. Relevant to capacity building, providers therefore need to be properly represented, accountable and possess sufficient legal personality entitling them to conclude contractual relationships, own property and receive funds. This falls within the mandate of the National Competent Authority to ensure that the ABS system is complete and undertaken with such fairness.

7.1 Role of the Competent National Authority in benefit sharing

The Competent National Authority has a duty to ensure that the terms and conditions subject to which approval is granted secures equitable benefit sharing. Such determination shall be given effect in all or any of the following manner:

7.1.1 Criteria to determine equitable benefit sharing:

The following criteria shall be borne in mind whenever benefit sharing is to be determined in an equitable manner. These criteria are not exhaustive and their application will depend on a case by case basis:

a) Stages of research and development

b) Market potential

c) Investment in the research and development

d) Application of technology

e) The sector in which the research and development takes place

f) Costs incurred by the applicant for accessing the biological/genetic resource and associated knowledge

g) Likelihood of commercial success of research or product developed

h) Timelines from initiation of research and development to product commercialization

i) Intention to secure intellectual property rights on outcomes of the research and development

j) Milestones in research and development

k) Private or public institutions

l) Annual turnover of the applicant

m) Other kinds of benefit sharing already undertaken by the applicant

7.1.2 OPTIONS FOR BENEFIT SHARING

1. Based on the aforementioned criteria, the following benefit sharing options in isolation or in combination shall be explored in accordance with mutually agreed terms between the applicant and the providers as appropriate. Benefit sharing options may include but not be limited to:

a) Up-front one-time payment;

b) Milestone payments;

c) Equitable share of the royalties;

d) Equitable share of the license fees;

e) Contribution to National Environment Fund (NEF);

f) Funding for research and development in Eswatini;

g) Joint ventures with Swazi institutions and companies;

h) Joint ownership of relevant intellectual property rights (IPR);

i) Sharing of research and development results with Eswatini;

j) Strengthening of capacities for technology transfer and transfer of technology to Eswatini and/or collaborative research and development programmes with national institutions;

k) Contribution to education and training in Eswatini;

l) Location of production, research and development units in Eswatini and contributions to the local economy;

m) Scholarships, bursaries and financial aid to citizens of Eswatini;

n) Institutional capacity building;

o) Access to scientific information relevant to conservation and sustainable use of biological diversity including biological inventories and taxonomic studies;

p) Research directed towards priority needs in Eswatini including food, health and livelihood security;

q) Payment of any other monetary compensation or non-monetary benefit as the Competent National Authority may deem fit.

Decisions regarding the nature and extent of benefit sharing will be justified based on the aforementioned criteria and options with an explanation for the same.

7.1.3 GUIDANCE ON SHARING OF BENEFITS

All the benefits arising out of the collection, modification and use of biological/genetic resources referred to in these Guidelines shall be shared by the parties. The criteria for sharing of such benefits shall be mutually agreed upon by the parties who shall be guided by the principle of fairness and equity.

To give guidance on benefit sharing requires answering a few key questions:

1. What Benefits should be Shared?

2. Who Shares these Benefits?

3. How are the Benefits Shared?

7.1.3.1 WHAT BENEFITS TO BE SHARED

1. Persons acquiring access to biological/genetic resources are required to share fairly and equitably with the country of origin and other stakeholders, the benefits arising from the use of the resources and their derivatives including non-monetary, and, in the case of commercialisation, also monetary benefits.

2. Persons are required to share benefits arising from the use of biological/genetic resources acquired prior to the entry into force of the CBD, as far as possible, in the same manner as for those acquired thereafter.

3. Local institutions that are involved in bio-prospecting collaborations should benefit directly from commercial product development in ways spelt out in MATs.

4. All options must be considered when negotiating the type of benefits to be received from allowing access to biological/genetic resources. Many of the benefits may not accrue directly from the access to biological resources. Benefits to be shared depend on specific circumstances, and upon mutual agreement. And what is equitable also varies depending on circumstances. The said benefits will vary on a case by case basis and cannot be exhaustively listed in these guidelines. A general categorisation is therefore given here to provide guidance to owners of biological resources.

Table 1: Examples of Direct and Indirect benefits

Direct Benefits	**Indirect Benefits**
• "Up-front" payments e.g. payment before access to the resources • Milestone payments • Fees e.g. access, licence and other fees for any services rendered • Royalties • Research funding • License fees in case of commercialisation • Equity and profit-sharing opportunities • Higher sale price of products – more pay to the owner should the sale price go beyond a certain value • Technology transfer • Licenses to manufacture / market resultant products • Development of supply industries or raw materials / extracts • Commercial products e.g. drugs at cost price • Information / knowledge / technology given under favourable terms • Joint ownership of patents and other intellectual property rights • Contributions to trust funds supporting conservation and sustainable use of biodiversity scientists and facilities	• Contributions to local economy and at the community level, e.g. livelihoods improvement such as infrastructure and food security • Community empowerment through improved negotiation capacities • Strengthening capacities of local populations in the sustainable use of natural/biological resources • Exchange of staff and training; • Capacity building e.g. through support to research activities, collaboration in education / training related to biological resources management • Sharing of research results and transfer of technology • Support to small scale industries • Supporting programs aimed at encouraging sustainable harvesting • Establishing professional networks • Payment of salaries / paid use of local guides,

7.1.3.2 WHO SHARES THE BENEFITS?

Institutions that are involved in bio-prospecting collaborations should benefit directly from commercial product development in ways spelt out in MATs.

7.1.3.2.1 GOVERNMENT OF ESWATINI/ GOVERNMENT INSTITUTIONS

Lead Agencies who shall include public bodies charged with management of specific resources like wildlife, forestry, fisheries, wetlands, indigenous food, the National Gene Bank etc. whose benefits shall include:

1. Fees e.g. access fees, sample collected, licence and other fees for any services rendered;

2. Royalties, research funds, training, technology transfer;

3. Information / knowledge / technology given under favourable terms;

4. Joint ownership of patents and other intellectual property rights;

5. Collaboration in education / training related to biodiversity management;

6. Collaborating / participating in research programs;

7. Support for programs aimed at encouraging conservation and sustainable harvesting e.g. contribution to the NEF and/or National ABS Fund;

8. Establishing professional networks etc.

7.1.3.2.2 RESOURCE PROVIDERS

Resource providers may include; local resource users or community group's e.g. traditional healers, among others through an association or through a national body tasked with handling such benefits. Benefit sharing should not always focus entirely on financial benefits. In some instances, the benefits should take the form of infrastructure development or capacity building and similar other benefits as may be agreed with the user concerned. These should be done through established community efforts and structures.

Agreements on the benefits to be shared, identification of persons with whom these benefits are to be shared and how the benefits will be transferred from one party to the other must be concluded prior to accessing the resources.

The mechanism for sharing of any monetary benefits will be mutually agreed with beneficiaries in advance, and may involve the transfer of funds to a nominated account. Other mechanisms will also be agreed upon between the parties according to the type of benefits to be shared.

Providers of the resources e.g. private land owners or communities/cultural clans may share various types of benefits including;

1. Fees e.g. access fees, sample collected, licence and other fees for any services rendered;

2. Royalties, training / capacity building, technology transfer;

3. Licenses to manufacture / market resultant products;

4. Development of supply industries or raw materials / extracts;

5. Commercial products e.g. drugs at cost price;

6. Joint ownership of patents and other intellectual property rights;

7. Support to small scale industries;

8. Support for programs aimed at encouraging conservation and sustainable harvesting

9. INFORMATION MANAGEMENT

Information that is available on the status and access to genetic/biological resources in Eswatini is scattered amongst different institutions that manage the different resources. At times the information is not even available to the relevant Lead Agency with a primary mandate over the resource. The Competent National Authority shall therefore develop national systems for collecting, managing and making available relevant information about the biological resources of the country. The provisions of the Environment Management Act regarding the management of environmental information shall apply to these Guidelines in this regard.

9.1 Information Acquisition and Storage

1. The Competent National Authority is required to keep a register of all permits issued. The Competent National Authority shall further keep the following records for each sample taken through an Access Permit:

    a) a unique identifier for the sample that is also on a label attached to the sample or its container;

    b) the date the sample was taken;

    c) the place from which the sample was taken;

    d) an appropriate indication of the quantity or size of the sample (e.g. the weight or size)

    e) both the English and scientific name of the sample;

    f) the location of the sample when first entered in the record;

g) the details about any subsequent disposition of the sample, including the names and addresses of others having possession of the sample or a part of the sample.

2. The Competent National Authority, through the National Focal Point shall ensure that information to be shared through the ABS CH is shared timeously.

3. The National Focal Point shall be the entry level for all information regarding these guidelines. Disclosure of information shall be in accordance with the Environment Management Act and the respective Agreements signed by the parties.

9.2 MONITORING SYSTEM

1. The Competent National Authority shall develop a monitoring system to enable Eswatini to keep track of all genetic resources that have been accessed within and outside the country and the extent of benefit sharing that has been achieved.

2. The Competent National Authority shall prepare and update the SEA Management Board on the implementation of these Guidelines.

3. It shall be the duty of the Lead Agency under whose mandate a genetic resource to provide information and monitor the trade on the genetic resource concerned.

GLOSSARY OF TERMS COMMONLY USED IN THE GUIDELINES

Access to genetic resources - obtaining, possessing and using of biological resources, their derivative products and intangible components for purposes of research, bio-prospecting, conservation, industrial or commercial use.

Access Permit - a permit that authorizes a person to access genetic/biological resources. It is obtained from Competent National Authority, that is, the Eswatini Environment Authority.

Benefit Sharing – the sharing of benefits that accrue from the utilisation of biological resources and includes technology, technology transfer, innovations, and practices, results of research, capacity building, community knowledge, awareness and education.

bio-prospecting - in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes-

(a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;

(b) the utilization for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or

(c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;

Biological resources – means genetic resources, organisms or parts thereof including their derivative products and intangible components, populations, or any other component of ecosystems, including ecosystems themselves, with actual or potential use or value for humanity.

Bio-trade - Any activity relating to the commercial collection, processing and sale of products derived from biological resources. This will exclude animal related products such as oils, skin products, animal fats etc.

Collector/user – a person or agent of that person obtaining or intending to obtain access to genetic resources, their derivative products or intangible components occurring or originating from Eswatini.

Chief - means any traditional leader appointed as a Chief in terms of Swazi Law and Custom and the Constitution Act, 2005

Communities' customary laws: these are non-written norms that have evolved in communities' over time, constantly responding to changes in these societies and the surrounding environment.

Derivative Product – an improved or unmodified biologically active chemical compound associated with targeted biological or biological material formed by the metabolic processes of the organism, modified and used in a technological application, and includes molecules, combinations or mixtures of natural molecules including raw extracts of living or dead organisms and soil matter, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) or chemical compounds, modified, created or synthesised from biological material originally obtained in accordance with these Guidelines

Genetic material – any material of plant, animal, microbial or other origin containing functional units of heredity;

Genetic Resource - means genetic material of actual or potential value

Holotype - means the single specimen chosen for designation of new species;

Intangible Component – any knowledge or information associated with biological or genetic resources occurring in or originating from Eswatini and includes local knowledge, technology, innovations, farming practices and traditional lifestyles;

Lead Agency – any organisation, department, or person that has been given responsibility for management of any aspect of Eswatini's genetic resources;

PIC Agreement – an agreement facilitating a prior informed consent, and includes a letter of exchange, a memorandum of understanding, or an academic or research agreement

Provider - includes, where the context admits:

(a) the Competent National Authority, where the resource is under State jurisdiction;

(b) a government department or agency holding a biological resource away from its natural environment, whether in a collection or otherwise;

(c) a resource owner,

(d) the communities/cultural clan, where the resource is on land to which they have a right or where they are holders of the traditional knowledge;

(e) the community/cultural clan including a traditional healers' association where it is the holder of the traditional knowledge associated with the biological resource.

Prior Informed Consent – prior acceptance of a collector/user by the lead agency and the concerned community or owner to access biological resources

Resource owner – means a person that have direct control over a biological resource through ownership of the land in which it is found.

Swazi Nation Land – this refers to land held by the Ingwenyama in trust for the Swazi Nation. Usually the land is communally or collectively utilised by a community under a Chiefdom.

ANNEX 1 APPLICATION FOR PRIOR INFORMED CONSENT

To*: …….. (Lead agency, Community, traditional healers' association, Owner)

I / we* …… ……

of …… ……

(address)

hereby apply for prior informed consent to enable me/us to apply to the National Competent Authority to access genetic resources/traditional knowledge under your ownership / jurisdiction.

The prior informed consent is being applied for, for the genetic resources located at

……

(State location)

The prior informed consent is being applied for in respect of the following genetic resources:

1. ……
2. …… ……

I / we* declare that I am / we* are willing to enter into a Prior Informed Consent agreement with you on terms and conditions acceptable to you.

I / we* hereby further declare that to the best of my / our knowledge that the information given in this application is correct and true and that the prior informed consent will only be used for applying to the Competent National Authority to access the genetic resources/traditional knowledge from Eswatini.

Signature of applicant: …… Date: ……..

FOR OFFICIAL USE ONLY

Application received on: …….

Company Stamp

ANNEX 2: PRIOR INFORMED CONSENT

I / we*…… being the owner(s) / community / lead agency / custodian(s)* of the genetic resources/holders of the traditional knowledge associated with the resource located at: ……

……

(State location)

in ……. Region of the Kingdom of Eswatini

hereby consent that …….. may access the following genetic resources/traditional knowledge associated with the genetic resource:

1……

2……

3……

Hereby consent that …… ……

(Name and address of applicant for prior informed consent) may apply to the competent authority for consideration to access the above stated biological resources found under my / our ownership / custody.

This consent is valid from……..20…..… to……20……

This consent is granted subject to the following conditions:

1……

2……

3……

4……

5……

For the purpose of ……..

(State the purpose e.g. commercial, research, educational etc)

On condition that:

1.……

2.……

3.…… ……

(Attach additional information where necessary)

Date of consent: ……. 20……

Signed: ……..

LEAD AGENCY/COMMUNITY/OWNER*

*Delete whichever is not applicable

ANNEX 3: APPLICATION FORM FOR AN ACCESS PERMIT TO ENGAGE IN A BIOTRADE OR UTILIZE A BIOLOGICAL/GENETIC RESOURCE AND/OR ASSOCIATED TRADITIONAL KNOWLEDGE IN ESWATINI

Serial number: | |

Date of application…. | |

APPLICATION FOR ACCESS TO AND UTILISATION OR ENGAGE IN A BIOTRADE ON A BIOLOGICAL /GENETIC RESOURCE[1] AND/OR ASSOCIATED TRADITIONAL KNOWLEDGE[2] AND EXPORT IN ESWATINI

KIND OF PERMIT APPLIED FOR (Tick relevant boxes[3])

Permit for

Access to and utilisation of

- **Biological/Genetic resources** ☐
- **Traditional Knowledge associated with** ☐

Biotrade in Biological/Genetic resources ☐

- **Locally**
- **For export**

Reference number of the application:……

Date of application:…… ……

[1] **Utilisation of genetic resources:** In this context utilisation means to conduct research and/or development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention on Biological Diversity.

[2] **Utilisation of traditional knowledge**: as defined under use of terms.

[3] Note that several boxes can be ticked at the same time.

APPLICATION FOR BIOTRADE IN OR ACCESS TO AND UTILISATION OF BIOLOGICAL/GENETIC RESOURCES AND/OR ASSOCIATED TRADITIONAL KNOWLEDGE AND EXPORT

PLEASE NOTE THAT THIS APPLICATION FORM, IF IT IS APPROVED, WILL BECOME AN INTEGRAL PART OF A **BASIC** ABS **AGREEMENT** GOVERNING ACCESS TO AND UTILISATION OF THE SUBJECT MATTER OF THE APPLICATION. PLEASE BE AS SPECIFIC AND ACCURATE AS POSSIBLE.

ATTACH ADDITIONAL SHEETS, CLEARLY NUMBERED, AS NECESSARY.

Application Checklist

You will need to provide:

- A PIC Agreement attached to this application[4]
- Written permission/s from the access provider/s attached to this application[5]
- A signed payment form or receipt attached to this application[6]
- Application for an Export Permit, as applicable[7]

I. APPLICANT

(If applicant is a legal person of the Kingdom of Eswatini, please complete 1 – 6 below.)

[4] The PIC Agreement sets out the basic obligations between the PROVIDER and the RECIPIENT of the biological resources and associated traditional knowledge for the utilisation described in the application form only. It affirms the purpose and content of the project and includes, among others, commitments with respect to the sharing of non-monetary and monetary benefits (benefit-sharing agreement), as well as expressly prohibits any form of utilisation not described in the basic ABS agreement.

[5] As indicated in the guidelines additional written permission from the physical access provider to the genetic resource may be needed (e.g. private landowner, indigenous and local communities where they are managers or custodians of the genetic resources). See section II. 3. 11 of this application form.

[6] An application fee of **[amount in Emalangeni**] for administrative costs is payable and non-refundable.

[7] Applicants planning to export samples need to obtain a permit.

(If applicant is a natural person in the Kingdom of Eswatini, please complete 7 – 9 below.)

1. NAME OF INSTITUTION OR BODY:

Name:

2. IS THE LEGAL PERSON REGISTERED OR ESTABLISHED IN THE KINGDOM OF ESWATINI?

Y	N

3. IF YES, PROVIDE THE ESWATINI REGISTRATION NUMBER OR ESTABLISHMENT DETAILS OF THE LEGAL PERSON:

4. IF NOT, IN WHICH COUNTRY IS THE LEGAL PERSON REGISTERED? PROVIDE THE REFERENCE NUMBER:

Country:																		
Type of registration:																		
Ref. Number:																		

5. CONTACT DETAILS OF THE LEGAL PERSON:

Name:	
Tel No:	
Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

6. DETAILS OF CONTACT PERSON IN THE LEGAL PERSON[8]:

Name of contact person:													
Capacity:													
Identity or Passport No: (Attach a certified copy)													
Tel No:													

[8] Note: If the contact person changes, the Competent National Authority (CNA) and/or the ABS National Focal Point (ABS NFP) shall be notified.

Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

(If applicant is a natural person in Eswatini, please complete clause 7 – 9 below.)

7. APPLICATION BY A NATURAL PERSON:

Name of applicant:													
Identity or Passport No: (Attach a certified copy)													
Tel No:													
Fax No:													
E-mail:													
Postal Address:											**Physical Address:**		
Nationality:													

8. IS THE APPLICANT AFFILIATED TO A LEGAL PERSON?

Y	**N**

9. IF YES, CONTACT DETAILS OF LEGAL PERSON:

Name of juristic body:	
Contact person:	
Tel No:	
Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

(The following part is to be completed by ALL applicants. If required, please use additional pages.)

10. NAME AND CONTACT DETAILS OF OTHER PARTNERS[21]:

A.

Name:													
Identity or Passport No: (Attach a certified copy)													
Tel No:													
Fax No:													
E-mail:													
Postal Address:											**Physical Address:**		

B.

Name:													
Identity or Passport No: (Attach a certified copy)													
Tel No:													
Fax No:													
E-mail:													
Postal Address:											**Physical Address:**		

11. NAMES AND CONTACT DETAILS OF INDIVIDUALS WHO WILL BE INVOLVED IN THE ACTIVITIES FOR WHICH ACCESS AUTHORIZATION IS REQUESTED:

A.

Name:													
Identity or Passport No: (Attach a certified copy)													

Tel No:	
Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

B.

Name:													
Identity or Passport No: (Attach a certified copy)													
Tel No:													
Fax No:													
E-mail:													
Postal Address:				**Physical Address:**									

12. DETAILS OF THE RELEVANT QUALIFICATIONS AND EXPERIENCE OF INDIVIDUALS WHO WILL BE INVOLVED IN THE ACTIVITIES FOR WHICH ACCESS AUTHORIZATION IS REQUESTED

Person	Qualifications and Experience

[21],Partners' are persons or institutions who take part in the project with the applicant (e.g. national research institution within the Kingdom of Eswatini.

13. ARE THERE FOREIGN PARTNERS[9] INVOLVED?

Y	N

14. IF YES, CONTACT DETAILS OF FOREIGN PARTNERS

[9] Partners institutions or persons which collaborate in the project or support the project financially /in kind, such as funding agencies, foundations etc.

Name:	
Contact Person:	
Tel No:	
Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

15. ARE THERE SWAZI SPONSORS INVOLVED?:

Y	**N**

16. IF YES, CONTACT DETAILS OF SPONSORS FROM ESWATINI

Name:	
Contact Person:	
Tel No:	
Fax No:	
E-mail:	
Postal Address:	**Physical Address:**

II. THE PROJECT

Please note that, if this application is granted, the applicant will be permitted to carry out ONLY the utilisation of Biological resources and/or a TK described here. All other forms of utilisation will be expressly PROHIBITED unless permitted under a new application. Therefore please be very precise and include all relevant details.

1. TITLE OF THE PROJECT

2. SUMMARY OF THE PROJECT

Provide a summary of **the project**: What? How? With whom? Where? When?

3. DETAILED DESCRIPTION OF THE PROJECT

Please provide a detailed description of the project, including as appropriate information on [3. 1 to 3. 16]. If any of these categories of information is not available, please state "not available" or "not yet known" and provide a brief explanation – further evidence may be requested. If any of the required information is confidential please indicate this AND DO NOT INCLUDE IT IN THIS APPLICATION FORM but state how and on what conditions you would be prepared to disclose it to the Swaziland Environment Authority [3. 14]. Confidential information will be handled in accordance with the applicable provisions in the PIC Agreement.

3. 1. Objectives: Describe the overall objectives (e.g. context of the project, possible end products)

3. 2. Intended utilisation of the genetic resources and methods: Describe the research and/or development on the genetic and/or biochemical composition of the genetic resources that you propose, including the methods in more detail (e.g. research methods, use of equipment/technical capacity etc.)

3. 3. Partners and their role: Provide details on the function, type of contribution of the partners **(IF APPLICABLE)**

3. 4. Biological/Genetic resources: List the Biological/genetic resources to which you are seeking access for utilisation or biotrade, including the quantity of genetic resources to be collected and a collection schedule. If unknown, please provide a description of collection methods and the quantity and type of organisms likely to be collected using those methods.

Common name	**Taxon. (to the most specific taxonomic level known)**	**Amount/number/volume, including schedule (if possible)**	**Method**		

3. 5. Location: Provide details of where the Biological/genetic resources will be taken, including the latitude and longitude or GIS coordinates of the location area. Please also attach a location map or proposed route of voyages on a separate sheet to your application.

Location/s
Latitude/Longitude
Map Attached

3. 6. Time and Duration of the project: Please provide a timeline indicating the different phases and respective milestones of the project (can be attached as annex to this application form). If the resource is accessed for biotrade, provide the duration of the access and the frequency of the collecting.

From:
To:

3. 7. Possible Benefits for Biodiversity: Identify how the project will benefit conservation and sustainable use of biological diversity. Specify any likely benefits for the access area in particular.

3. 8. Possible Threats to Biodiversity: Identify and describe possible environmental impacts of the project according to the Environmental Management Act 2002, Environmental Assessment, Audit and Review Guidelines 2000, Flora Protection 2001, Game Act 1953 as amended etc.

Note: List species, areas etc. which could be threatened according to the stated legislations

3. 9. Describe the methods by which you will minimize or avoid the negative/adverse impact on biodiversity

Methods (e.g. harvesting method):

3. 10. Traditional Knowledge s and/or communities Identify the use (if any) that is proposed to be made of traditional s knowledge in more detail.

Identification of the community/ies:
Describe the type of knowledge (e.g. to determine the Biological/genetic resources to be accessed, and/or the particular areas to be searched, and/or to identify the properties of the Biological/genetic resources; and/or the type of application):

Describe intended utilisation:

3. 11. Written Permission of Physical Access Provider: List the name of each access provider and provide a copy of his/her written permission to access genetic resources for their utilisation from each access provider[10].

Access Provider
Written Permission Attached

3. 12. PIC Agreements with indigenous and/or local communities: Provide further details if the PIC Agreement was made with indigenous and/or local communities in relation to the utilisation of genetic resources where they have established rights to grant access to such resources and /or in relation to the utilisation of traditional knowledge associated with genetic resources that is held by them.

[10] Subject to national legislation or regulatory requirements, also an additional written permission from the physical access provider to the genetic resource may be needed (e.g. private landowner, indigenous and local communities where they are managers or custodians of the genetic resources).

Describe the process of negotiating the Agreement: Include as a minimum what prior information on the project was provided to the indigenous and/or local community while seeking their prior informed consent; describe the nature of the community's governance structure and attach any evidence that reflects that a collective decision was taken regarding the sharing of the traditional knowledge.

3. 13. Other permits: List any other applications for permits or permits and their equivalent issued in relation to the research activity and the planned utilisation of the genetic resources and/ or traditional knowledge associated with the genetic resource. Include applications for permits or permits or their equivalent issued in other countries.

Other Permits: [Include date of application, issuing authority, title of application, permit number & expiry date (if a permit was issued)].

3. 14. Are details of this project confidential?

YES	NO
If yes, regarding which subject matter?	
Indicate on what conditions you would be prepared to disclose the confidential information to the Swaziland Environment Authority.	

III. Declarations

I/ We declare that the information contained in this application form is true and correct, and I/We shall be responsible for any wrong/incorrect information.

By signing below and submitting this application form, I/We agree to it being incorporated as an integral part into the separate MAT that I/We have to sign and submit with this application form for review and approval by the Competent National Authority. The permit will refer to the application form and the MAT as its integral parts and they will be attached to it.

I/We am/are authorised to make this declaration for and on behalf of .....(if applicant is a legal person).

Signature

Receipt stamp

ANNEX 4: FEES PAYABLE DURING THE PROCESS OF ACCESSING ESWATINI'S GENETIC RESOURCES

Item	Amount	Comments/Guidance
Application for Prior Informed Consent		Administrative application fee by the applicant for Prior Informed Consent
PIC Agreement		Fee to be negotiated with the community/ Lead agency giving the consent. It is only paid if the owner wants to give PIC. If PIC is denied, then this fee is not paid.
Mutually Agreed Terms		Fee to be negotiated for benefits arising out of the utilization of the resource. See guide in Guideline 6.
Application for Access Permit		Administrative fee paid to the Competent National Authority

ANNEX 5: THE MUTUALLY AGREED TERMS

This is given only as a guide and shall be adjusted by those entering into the MAT as deemed suitable to all parties.

I / we*……(hereby referred to as the Lead Agency) being the lead agency charged with management of the biological/genetic resources located at:

…… ……

(State full details of location)

Have entered into a materials transfer agreement with:…… (name of collector)

…… (hereby referred to as the Applicant) From:…… ……

(*State origin of collector by nationality and institutional affiliation, etc. curriculum vitae of the person in charge and profiles of other involved persons are hereby attached)*

On this …… day of ……. The agreement shall be valid for a period of …… years from the date of signature and shall be renegotiated during its tenure and on expiry as found appropriate by both parties.

Fees paid by the applicant: ……

…… ……

Collector's access permit No.: …… Issued on: …… (DD/MM/YYYY)

Particulars of the biological resources to be collected including:

(a) Type and quantity of biological resources to be collected, as well as the specific tax to be collected;

(b) A list of broader species categories;

(c) Duration of collection of the biological resources;

(d) Location and site of storage or utilisation;

(e) Location and site of collection;

The following are the purposes for which the collected material can be used

…… ……

…… ……

…… ……

…… ……

…… ……

…… ……

Restrictions:

Should the applicant wish to use the material for new and additional use, they are required to renegotiate this agreement with the provider.

Transfer to third party is only allowable with the consent of the Competent National Authority, the provider who is also signatory to this agreement and any holders of relevant PIC Agreements.

No re-export shall be done without approval from exporting country and approval from the Competent National Authority

Below are the itemised financial resources available or expected to be available

Item	Amount Available
……	……
……	……
……	……
……	……
……	……

…… ……

Research

Indicate where it will take place: ……

How the research will be carried out:

…… ……

…… ……

…… ……

…… ……

…… ……

…… ……

Expected results of a research programme, both scientific and financial, including information on

…… ……

…… ……

…… ……

…… ……

…… ……

…… ……

Identification of local bodies for collaboration in research and development – explain how they will collaborate

i)…… ……

…… ……

…… ……

ii)…… ……

…… ……

…… ……

iii)…… ……

…… ……

…… ……

Confidential Information

Put statement on how any confidential information shall be treated.

Benefit sharing arrangements:

*Expected kinds / types of benefits Beneficiary**

…… ……

…… ……

…… ……

…… ……

…… ……

…… ……

* please attach separate sheet indicating the number of people expected to benefit, their names and location

Depository:

A depository for representative samples or specimens and or intangible components of the biological resources to be collected has been designated as: ……

…… ……

Access to the Biological resources:

It is hereby stated that in relation to the biological resources held inside Eswatini, the Competent National Authority and the respective agency under whose mandate it falls shall have access at any time. And for those biological resources to be taken or held outside Eswatini, the applicant shall allow reasonable access to the biological resources to the Competent National Authority.

Information Handling:

Every …… months / years, the applicant shall inform the Competent National Authority of the status of research and all discoveries from research involving the biological and biological resources, their derivatives, and their intangible components.

The applicant shall also inform the Competent National Authority about the environmental and socio-economic impacts of any on-going collection of biological resources, their derivative products, and their intangible components during the period of collection.

The applicant shall submit a report about the status of the environment in the access area at the end of the collection period.

Technology transfer:

State how Eswatini will benefit from the collection and use of the genetic resources through the transfer of technology and knowledge:

i…… ……

ii…… ……

iii…… ……

iv…… ……

Dispute settlement:

Insert agreed modes of settling disputes arising from the interpretation and implementation of the agreement, including an arbitration.

Law applicable:

This Agreement shall be governed by the Laws of Eswatini.

Amendments:

Insert provisions that allow for amendment of the agreement and how this amendment shall be made

Signed By: Name of Applicant……

Signature …… Date……

Signed By: Name of Resource Provider……

Signature …… Date……

Signed By: Name of Representative for the Competent National Authority……..

Signature …… Date……

ANNEX 6: ACCESS PERMIT

This Permit is Not Transferable

Permission is hereby granted to ……
……
……

(Name and description of applicant)

to access, collect and export the following biological resources……
……..

(Describe the biological resources, derivative products or intangible components as stated in the materials transfer agreement)

Located at……..

……

……..

(State location)

This permit is issued subject to all the necessary agreements and material transfer agreement concluded pursuant to the Guidelines and shall be withdrawn should the holder breach any of the conditions contained in those agreements and the Guidelines.

Signed: …… Date ……

Executive Director

Swaziland Environment Authority

Company Seal