

DRAFT GUIDELINES ON ACCESS AND BENEFIT SHARING

I. Preliminary

1. Objectives

1.1 These Guidelines on Access and Benefit Sharing Regarding the Utilization of Biological Resources and knowledge associated thereto (hereinafter “the Guidelines”) provides an objective and non-discriminatory framework for granting approvals for access to Biological Resources and Knowledge associated thereto and the fair and equitable sharing of the benefits arising from their utilization, in conformity with the Biological Diversity Act 2002 (hereinafter “the Act”) and the Biological Diversity Rules 2004 (hereinafter “the Rules”).

1.2 The Guidelines lay out the conditions under which access to Biological Resources and Knowledge associated thereto shall be granted and under which the sharing of benefits arising out of the utilization of Biological Resources and Knowledge associated thereto shall be qualified as fair and equitable.

1.3 The CBD recognized the sovereign rights of States over the genetic resources within their jurisdiction and accordingly the Act requires that all Users of Biological Resources shall, unless otherwise provided in the Act, seek the consent of the State prior to access to Biological Resources.

2. Definitions

2.1 In these Guidelines, unless the context otherwise requires:

- a) *Access* means any access to the Biological Resources and/or knowledge associated thereto made under the Act
- b) *Net Profit* means profit after expenses have been deducted from gross revenue.
- c) *Provider* means any natural or legal person(s) which has the legal right of disposal over the Biological Resources and/or knowledge associated thereto being made available to the Users
- d) *User* means any natural or legal person(s) which has requested for Access to Biological Resources and/or knowledge associated thereto under the Act.

2.2 words and expressions used but not defined in these Guidelines and defined in the Act and/or Rules shall have the meaning respectively assigned to them in the Act and/or Rules.

II. User Obligations

3. User Obligations Prior to Access

3.1 The Users shall request for Access by using the appropriate Forms provided for in the Rules and shall, in addition to the details therein, disclose the following:

A. Biological Resources which are Plants, their parts or Genetic Material

- i. Whether cultivated or collected from natural areas
- ii. Whether BR procured from Private Land or Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

B. Biological Resources which are Animals, their parts or Genetic Material

- i. Whether domesticated or wild
- ii. Whether BR procured from Private owners or from Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

C. Biological Resources which are Micro organisms, their parts or Genetic Material

- i. Whether developed/maintained in controlled conditions or collected from natural areas
- ii. Whether BR procured from Private areas or Public areas
- iii. If Public Area, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

D. Knowledge associated with Biological Resources

- i. Whether the knowledge is owned by individual, family, group, organisation or a community
- ii. What BR is associated with the knowledge?
- iii. What Benefit Sharing is proposed by the owners?

3.2 The Users shall submit a report on the possible impact to environment that may be caused by their relevant activities prior to Access. The User shall continue to report changes to this report as an when the User identifies any such changes at any stage during or after the Access.

Provided that in the event, the User reports a possibility of any adverse impact on environment, the report shall also mention the ameliorative measures in place and precautions taken to cause no damage to the environment or Biological Diversity. Any Access falling within this proviso will require the approval of the NBA prior to access and in the event the report is made during or after the Access, the User shall ensure that it shall stop any and all activities of Access.

3.3 The users are encouraged to make an audio video recording of the negotiations with the Providers and in the event such a recording is made, a copy of the same shall be deposited with the concerned SBB or the NBA.

4. User Obligations During and After Access

4.1 The Users shall after collecting the Biological Resources and Knowledge associated thereto, describe and record all relevant data and share the same with the nodal agency identified by NBA for the Purpose. Users shall respect customs, traditions and values of the Provider, if any during and after Access.

Provided that in the event of Knowledge associated with Biological Resources are accessed, the same shall be handled by the User in the manner requested by the Provider.

4.2 Users shall utilize Biological Resources and Knowledge associated thereto strictly for the purposes for which the Access was made obtained. Any change in the purpose shall be notified to NBA and NBA shall at its sole discretion allow such use or direct fresh application to be made under the Act.

4.3 Users shall conduct scientific study on the Accessed Biological Resources to ensure the conservation and sustainable use of the Biological Resources. The Users shall ensure that this knowledge shall be transferred free of cost to the Providers.

III.Provider Obligations

5. Provider Obligations

5.1 Once the Access is approved by the NBA, the Providers shall ensure that the Access is facilitated within the prescribed time.

5.2 If the Provider feels the need of professionals in assisting them with the negotiations with the Users, the Providers shall make a request for the same to the BMC, SBB or NBA and it shall be the responsibility of the BMC, SBB or the NBA as the case may be to provide the requested professionals to the Providers to assist them with the negotiations

5.3 The Providers shall record the advantages and disadvantages as informed to them by the Users while negotiating the terms for the Access to Biological Resources and Knowledge associated thereto. In the event the Providers are not in a position to record the same, the User shall notify the concerned BMC, SBB or the NBA and the BMC, SBB or the NBA as the case

may be shall ensure the presence of a suitably qualified person who shall record the negotiations under this Clause.

5.4 Providers shall ensure the conservation and sustainable use of the Biological Resources and if need be request the Users to conduct further studies under clause 4.3 after reporting their findings to the Users to ensure the conservation and sustainable use of the Biological Resources.

IV. NBA Approvals and Benefit Sharing principles

6.1 Where the Access to Biological Resources is obtained for Commercial utilization from Providers who are owners of the same, the User shall ensure that the Access ensures Sustainable Livelihoods¹ to the Providers. The User shall further share with the Providers its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

6.2 Where the Access to Biological Resources is obtained for commercial utilization from local communities who collect the same from Public Land, the Users shall make fair payments² to the Providers and shall ensure ___% of the total price of the purchase towards welfare measures³ /NBF for the community. The User shall further share with the Providers its knowledge of best practices to ensure conservation and sustainable use of the Biological Resources.

6.3 Where the Access is made for Research Purposes, the User shall ensure effective participation of Providers, wherever possible or collaborate with any research institution (collaborative Research) identified by the NBA.

A. In case of non commercial research

- i. The research shall ensure the participation of at least one researcher from a research institute designated by NBA and all results of research shall be shared freely with the government research institutions and any know how for production shall be passed to non commercial producers free of any costs.
- ii. Any IP rights sought shall have the name of a government research institute designated for this purpose as one of the inventors or co owners of the IP.

B. In case of Collaborative Commercial Research

- i. Where the research is a Collaborative Research, any IP rights sought shall name the research institution involved as one of the inventors or co owners of the IP. Any know-

¹ Sustainable Livelihoods For eg. Would mean direct procurement of the BR from the farmers through contract farming with a pre determined price for the produce and supply of the best seeds/insuring the produce etc. If the procurement is with the involvement of Agents, then a undertaking from the Agents about having paid the producers/farmers minimum wages for their labour etc.

² Fair payment means the payment fixed by the Government for such products (JFM's) or a minimum wage per day prescribed by the government

³ Welfare measures may be building community centers/infrastructure/scholarships etc for the community

how required for the production shall be transferred free of any costs if requested by the NBA for any use by government entities or if the products are required by the Government for Public good.

- ii. ___% of the Net Profit shall be paid to the National Biodiversity Fund and in the event of involvement of any community as Providers of the Biological Resources, the NBA may also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

C. In case of non Collaborative Commercial research

- i. Where results are shared

In cases where the results of a non collaborative commercial research is shared with any designated Government Research Facilities, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

- ii. Where Results are not shared

In cases where the results of a non collaborative commercial research is not shared, the User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

6.4 Where the NBA approval is sought for seeking any Intellectual Property Rights under sec 6 of the Act, the following benefit sharing shall be qualified as fair:

- i. Where the IP is for non commercial use

The User shall file an affidavit with the NBA stating that the IP is for non commercial use and the same shall be made available to the Government use free of cost. In the event the IP is later sought to be commercialized then sub clause (ii) of clause 6.4 shall be applicable.

- ii. Where IP is for commercial use

The User shall pay to the NBF ___% of the Net Profit and the NBA shall also direct the User to provide any of the non monetary benefit sharing measures provided for in Annexure I

6.5 Where the Access is made for knowledge associated with Biological resources

The Benefit Sharing shall be in accordance with the terms and conditions negotiated between the Users and Providers and the NBA shall interfere only in the event of a gross inadequacies to the disadvantage of the Providers is found in the negotiated terms. The Benefit sharing may have a

monetary part and any non monetary benefits that may be listed in Annexure I of these Guidelines or any legislation/mechanism made on TK.

6.6 The NBA while determining the mode for the sharing of benefits shall consider the short, medium and long term interests of all stakeholders involved. NBA acknowledges that some modes of benefit sharing may become effective immediately, whereas others become effective only in the distant future due to the period of time needed for the benefits to arise.

7. Certification of Compliance

The NBA shall develop a system of certification and a certification mark will be provided for by the NBA that shall certify the compliance with the Act and highlight the fair and equitable benefit sharing.

Annexure I – Non Monetary Benefit Sharing⁴

- a) Sharing of research and development results;
- b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities
- c) Participation in product development;
- d) Collaboration, cooperation and contribution in education and training;
- e) Admittance to *ex situ* facilities of genetic resources and to databases;
- f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- g) Strengthening capacities for technology transfer to facilitate abilities of indigenous and local communities to conserve and sustainably use their genetic resources;
- h) Institutional capacity-building;
- i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- j) Training related to genetic resources with the full participation of providing Parties
- k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- l) Contributions to the local economy;
- m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in India
- n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- o) Food and livelihood security benefits;
- p) Social recognition;
- q) Joint ownership of relevant intellectual property rights.
- r) Collaboration in education and training;
- s) Collaboration in scientific research and development programs;
- t) Participation in product development;
- u) Joint ventures;
- v) Co-authorship of publications.
- w) Admittance to *ex situ* facilities of genetic resources and to databases;
- x) Admittance to taxonomic, biochemical, ecological, horticultural and other information and data;
- y) Transfer of knowledge and technology, in particular knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity.

⁴ This list contains the non monetary benefits identified and set out in Bonn Guidelines