DRAFT LEGISLATIVE PROVISIONS:

ACCESS TO GENETIC RESOURCES AND SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION

# Interpretation

1. In this Act, unless the context otherwise requires –

“ABS Subgroup” means the Subgroup established under Section []

“ABS Agreement” means legally binding contractual agreement stipulating conditions under which genetic resources and their derivatives may be accessed and used, and mutually agreed terms for equitable sharing of benefits arising from the utilization of genetic resources as well as subsequent application and commercialization;

“ABS Permit” means the permit issued by the appropriate Competent National Authority allowing access to or use of genetic resources and stipulating conditions for activities related to access and use;

“Access to genetic resources” means to obtain and/or use genetic resources *in situ* or *ex situ,* or derivatives thereof for purposes of scientific research, biodiversity prospecting, industrial application, biotechnology, or commercial use.

“Bio-survey” means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterisation, inventorisation and bioassay;

“Biodiversity prospecting” means any activity undertaken to harvest or exploit, for purposes of research, product development, conservation or industrial or commercial applications samples of genetic resources or their derivatives, and includes investigative research or sampling, characterization, inventorization and bio-assay.

“Competent National Authority” means authority responsible for receiving, managing, processing and deciding on applications for access and negotiating mutually agreed terms.

“Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, including, but not limited to oils, secretions, resins, chemicals or honey.

“Genetic resource” means material of plant, animal, microbial or other origin containing functional units of heredity and having actual or potential value.

“National Focal Point” means authority responsible for making information available on ABS procedures and liaising with the CBD Secretariat.

“Permitting Authority” means authority designated by the Department of Environment with competence to issue permits for access to genetic resources.

“Prior informed consent (PIC)” means authorization by a legally competent representative based on complete and accurate disclosure of relevant information.

“Scientific research” means investigation into and study of material, genetic and/or biochemical properties, including but not limited to: bio-assay, DNA sequencing and chemical analysis.

“Traditional use” means knowledge,innovations and practices oflocal communities, passed on from generation to generation;

“Use of genetic resources” means conducting scientific research and development on the genetic and/or biochemical composition of genetic resources and/or their derivatives;

“User” means any person or entity involved in or seeking to be involved in use of or access to genetic resources or derivatives thereof.

# Scope and Application

1. This Act shall apply to *in situ* or *ex situ* access to and use of genetic resources as well as their natural and synthetic derivatives where such access or use occurs in Saint Lucia or concerns genetic resources or associated traditional knowledge originating within Saint Lucia.
2. This Act applies to genetic resources accessed or used for the purpose of scientific research relating to their genetic properties and derivatives accessed or used for the purpose of scientific research.
3. This Act shall not apply to
4. access to or trade in biological resources as commodities, except insofar as such trade relates to use of genetic resources;
5. traditional use, cultivation or exchange of biological resources carried out by and between local communities based on customary practices for purposes other than scientific research.
6. Biological resources accessed for purposes other than scientific research which are subsequently used for scientific research fall under this policy at the point at which they are subject to scientific research activities as defined in Section […]

# Administration

1. The Department of Environment shall serve as the Competent National Authority and National Focal Point for access and benefit sharing in relation to genetic resources.
2. The functions of the National Focal Point shall be to:
   1. Respond to requests for information relating to procedures for accessing genetic resources in Saint Kitts and Nevis;
   2. Provide information on Saint Kitts and Nevis’ national ABS framework to the CBD, including through publication on the ABS Clearing House;
   3. Share information on applications received and permits granted with regional partners and the public;
   4. Refer applications for access to genetic resources to the Competent National Authority;
3. The functions of the Competent National Authority shall be to:
   1. Receive and process applications for access to genetic resources;
   2. Coordinate negotiation of mutually agreed terms;
   3. Make a final determination on applications for access to genetic resources and mutually agreed terms;
   4. Issue ABS Permits.
4. The Competent National Authority may delegate the power to issue ABS permits to permitting authorities.
   1. Permitting authorities shall refer any applications received directly to the Competent National Authority for processing and determination.
   2. Permitting authorities shall issue permits only in accordance with final determination of the Competent National Authority.

# Sovereign Right

1. All genetic resources and associated traditional knowledge originating in Saint Kitts and Nevis or within its territorial waters and EEZ are subject to the country’s sovereign right.
2. It is the duty of the Government of Saint Kitts and Nevis together with civil society to manage access to genetic resources as well as community knowledge and technologies to facilitate scientific research and sharing of knowledge and ensure conservation and sustainable use of biological diversity.

# Ownership

1. Ownership of the genetic resources of Saint Kitts and Nevis shall be vested in the State and its people, as represented by the Government of Saint Kitts and Nevis.
2. Ownership of traditional knowledge associated with genetic resources in Saint Kitts and Nevis shall be vested in the holders of that knowledge.

# Access to genetic resources

1. Access to genetic resources shall be subject to the prior informed consent of the State and People of Saint Kitts and Nevis as represented by the Government of Saint Kitts and Nevis.
2. No person may access or utilize genetic resources and associated traditional knowledge without a valid and duly authorized ABS Permit issued by the Competent National Authority, the Department of Environment, in accordance with the procedures laid out in Sections 27 and 28 of this Act.
3. ABS Permits shall only be issued following signing of an ABS Contract incorporating conditions on access and mutually agreed terms for sharing of benefits, as provided in Sections 29, 20 and 31 of this Act.
4. Prior informed consent for access to genetic resources and their derivatives does not constitute prior informed consent for access to traditional knowledge.
5. The Department of Environment shall promulgate regulations detailing procedures for application for and issuance of ABS Permits, consistent with Sections 27 and 28 of this Act.
6. Procedures for considering access to genetic resources and sharing of benefits shall be transparent, participatory and inclusive, and shall recognize and protect the rights of local communities, private landowners and the public.

# Access to traditional knowledge

1. The Government of Saint Kitts and Nevis shall recognize and protect the rights of local communities and traditional knowledge holders.
2. Access to traditional knowledge shall be subject to the prior informed consent of holders of that knowledge.
3. No person may access, utilize, or transfer traditional knowledge without prior informed consent of knowledge holders.
   1. In all cases, the rights of traditional knowledge holders shall be protected and represented by Department of Environment in consultation with community groups, civil society, and members of the public.
4. Prior informed consent for access to traditional knowledge does not constitute prior informed consent for access to genetic resources and their derivatives.

# Rights of private property owners

1. Nothing in this Act shall prejudice the rights of private property owners in relation to their property.
2. Where proposed activities take place in or are likely to impact private property, ABS Permits shall not be granted in the absence of written evidence of prior informed consent of the private property owner.
3. Where ownership of property on which resources are located is unknown and cannot be determined, ABS Permits shall not be granted except in accordance with procedures provided in legal framework regulating use of property where owner is unknown.

# Application for ABS Permits

1. Application
   1. Persons seeking access to genetic resources and associated traditional knowledge shall make an application to the Competent National Authority or the appropriate Permitting Authority.
   2. The Competent National Authority shall provide guidelines for applications.
   3. Applications shall include, *inter alia*,
      1. Identification of the applicant and documents that testify to their legal capacity to contract;
      2. Specific description of the resources to be accessed and associated traditional knowledge;
      3. Detailed methodologies for collection, research and development, including location of proposed activities and intended purpose, including potential commercial development or involvement of third parties;
      4. Identification of risks posed by the proposed activities, including an environmental impact assessment if required in accordance with the Development Control and Planning Act or any other relevant legislation;
      5. Proposal for monetary and/or non-monetary benefit sharing, in accordance with Sections 29,30 and 31 of this Act;
      6. Plan and methodology for monitoring and reporting on activities, impacts, progress and results.

The CNA shall review and shall consider, *inter alia*,

* + 1. Potential risks, impact or harm, including environmental, social and economic harm, considering the conservation status of the resource, related existing uses or activities, and other potential harms;
    2. Intended and potential monetary and non-monetary benefits accruing to Saint Kitts and Nevis, including the extent to which research and development will be carried out within Saint Kitts and Nevis, involve researchers from Saint Kitts an d Nevis, and/or align with national research priorities of Saint Kitts and Nevis;
    3. Ability of the applicant to ensure compliance with the ABS Agreement, including existence of laws in the applicant’s country of residence/operation which support the terms of the ABS Permit and Agreement;
    4. Any other information within and outside the application that the CNA determines to be relevant.
  1. Based on the conclusions determined relating to the aforementioned, the CNA may:
     1. Request additional information or revision of the application;
     2. Deny the application;
     3. Approve the application conditional on signing of an ABS Agreement in accordance with Section 28, 29 and 30 of this Act.

1. ABS Permit
   1. The CNA shall issue an ABS permit after the signing of an ABS Agreement with the user.
   2. The Permit shall specify:
      1. Permitted activities and methodology relating to access or use of genetic resources and derivatives, including number and type of samples to be collected;
      2. Permitted activities and methodology relating to access to or use of traditional knowledge, where applicable;
      3. Required procedures for monitoring and reporting;
      4. Required conditions including measures for mitigating risks;
      5. Any additional requirements of the permitting authority.
   3. The ABS Permit is non-transferable unless otherwise explicitly agreed.
   4. The ABS Permit does not constitute permission for export, in accordance with Section 35 and 36 of this Act.

# Mutually agreed terms for sharing of benefits

1. Prior to issuance of an ABS Permit, the Government of Saint Kitts and Nevis shall enter into an ABS Agreement which shall include mutually agreed terms for sharing of benefits.
   1. The Agreement shall be negotiated by the CNA with involvement relevant key stakeholders.
   2. The Department of Environment shall promulgate regulations establishing procedures for negotiation of mutually agreed terms, which shall include standards for monetary and non-monetary benefit-sharing, and model templates for ABS agreements.
   3. The ABS Agreement shall include provisions on, *inter alia*:
      1. Nature, timelines and procedures for sharing of monetary benefits;
      2. Nature, timelines and procedures for sharing of non-monetary benefits;
      3. Rights relating to genetic resources, derivatives, and associated traditional knowledge transferred to the User;
      4. Rights relating to genetic resources, derivatives, and associated traditional knowledge retained by Saint Kitts and Nevis;
      5. Transfer of samples to third parties;
      6. Change in intent;
      7. Dispute resolution provisions, including fines or penalties in case of breach of contract.
2. The ABS Permit shall constitute an integral part of the ABS Agreement.
3. The CNA may unilaterally withdraw consent and terminate the Permit and Agreement where it has become apparent that the collector has violated mutually agreed terms or the overriding public interest so demands.

# Benefit sharing fund

1. Monetary benefits received pursuant to ABS Agreements shall be deposited to the Conservation Trust Fund and used to support conservation and sustainable use of biodiversity within Saint Kitts and Nevis.

# Requirement for PIC for use of genetic resources within Saint Kitts and Nevis

1. No import, export or use of any genetic resource shall be allowed in Saint Kitts and Nevis unless the CNA determines that prior informed consent has been obtained from the country of origin.

# Export of genetic resources

1. All specimens and samples of genetic resources and derivatives accessed in Saint Kitts and Nevis, as well as research products developed in Saint Kitts and Nevis will be subject to export permit requirements.
   1. ABS Permit holders seeking to export specimens, samples, derivatives or products shall apply to the CNA.
   2. The CNA shall issue an ABS export permit only where it has determined that the proposed removal is in compliance with the ABS Permit, ABS Agreement, and all relevant laws, policies and regulations of Saint Kitts and Nevis.
2. The ABS export permit does not substitute for a CITES permit.

# Offences

1. Persons contravening Section 15 are guilty of an offence under this Act and are subject to penalties as provided in [relevant criminal statute?].
2. Without prejudice to the provisions of Section 36, sanctions and penalties to be provided may include:
   1. Termination of ABS Permit and ABS Contract;
   2. Confiscation of collected biological and genetic specimens and equipment;
   3. Ban from access to biological resources in the country;
   4. Fines [specify amount?].
3. Any violation committed under Section 15 shall be publicized in the national and international media and shall be reported by the competent national authority to the secretariats of relevant international governments and regional bodies.