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## GENERAL NOTICE

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### NOTICE 329 OF 2007

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

#### NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004: REGULATIONS ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING

I, Marthinus Christoffel Johannes Van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby in terms of section 100 of the Act, publish for public comment, the following:

Draft regulations relating to bio-prospecting, access and benefit-sharing in terms of section 97(1)(d), (e), (f), (g) and (h) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft regulations are invited to do so before **4 May 2007**. All representations or comments must be submitted in writing to the Director-General of the Department of Environmental Affairs and Tourism:

By post to: The Director-General, Department of Environmental Affairs and Tourism,

Private Bag X447,

PRETORIA, 0001

By fax to: (012) 320 7026; and by e-mail to: [jkharika@deat.gov.za](mailto:jkharika@deat.gov.za) or [lmabadahane@deat.gov.za](mailto:lmabadahane@deat.gov.za).

Any enquiries in connection with the draft regulations can be directed to Mr Muleso Kharika at Tel. (012) 310 3451 or Mrs Lactilia Tshitwamulomoni at Tel. (012) 310 3986.

**CLOSING DATE: 04 May 2007**



MARTHINUS VAN SCHALKWYK, MP

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

DATE: 13 MAR 2007

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

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**NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004:  
REGULATIONS ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING**

The Minister of Environmental Affairs and Tourism has in terms of section 97(1)(d), (e), (f), (g) and (h) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), made regulations relating to bio-prospecting, access and benefit-sharing, as set out in the Schedule hereto.

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**CHAPTER 1****INTERPRETATION AND PURPOSE OF REGULATIONS****Definitions**

1. (1) In these Regulations, unless the context indicates otherwise –

**“applicant”** means a person who has submitted, a permit application;

**“benefit”** means any benefit, whether commercial or not, arising from bio-prospecting involving such resources, and includes both monetary and non-monetary returns;

**“benefit-sharing agreement”** means an agreement in the form of Appendix 5 between an applicant for a permit and a stakeholder, that provides for sharing by the stakeholder in any future benefits that may be derived from the research or bio-prospecting to which the application relates;

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

**“bio-prospecting”** means any research on, or development of 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 utilisation 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;

**“bio-prospecting permit”** means a permit, issued in terms of regulation 9 of these regulations to engage in the commercialisation phase of a bio-prospecting project;

**“Bio-prospecting Trust Fund”** means the Fund established by section 85 of the Biodiversity Act, and **“Fund”** has a corresponding meaning;

**“commercialisation”** includes, but is not limited to the following activities in relation to indigenous biological resources or indigenous knowledge –

- (a) the filing of a patent application, an application for a plant breeder’s right, or any other intellectual property application;
- (b) obtaining or transferring any intellectual property rights or other tangible or intangible rights;
- (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval; or
- (d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means;

**“commercialisation phase of a bio-prospecting project”** means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialisation;

**“community”** means a coherent, social group of persons, or a part of such a group, that is organised in terms of a democratically agreed founding document that protects the rights and interests of each member of the community;

**“confidential information”** means information referred to in regulation 15;

**“Department”** means the national Department of Environmental Affairs and Tourism;

**“Director-General”** means the Director-General of the Department;

**“discovery phase of a bio-prospecting project”** means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is not sufficiently clear or known to begin the process of commercialisation;

**“export permit”** means a permit, issued in terms of regulation 9 of these regulations, for exporting from the Republic any indigenous biological resources for the purposes of bio-prospecting or any other kind of research;

**“ex situ indigenous biological resources”** means indigenous biological resources that occur in collections outside their natural habitats;

**“indigenous biological resources”** -

(a) include -

- (i) any living or dead animal, plant or other organism of an indigenous species; any derivative of such animal, plant or organism; or any genetic material of such animal, plant or organism, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;
- (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i); and
- (iii) any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical compounds found in any indigenous species or in any animals, plants or other organisms referred to in subparagraphs (i) or (ii); but

(b) exclude -

- (i) any genetic material of human origin;

- (ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a)(iii); and
- (iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture;

**“indigenous community”** means a community in which indigenous knowledge resides;

**“indigenous knowledge”** includes knowledge of, discoveries about or the traditional use of indigenous biological resources, if that knowledge, discovery or use has initiated or will contribute to or form part of a proposed bio-prospecting or research project to which an application for a permit relates;

**“indigenous species”** means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;

**“issuing authority”** means the person refers to in regulation 4;

**“material transfer agreement”** means an agreement in the form of Appendix 4 between an applicant for a permit and a person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;

**“MEC”** means the member of the executive council of a province responsible for environmental management or nature conservation;

**“Minister”** means the cabinet member responsible for national environmental management;

**“permit”** means a research permit, a bio-prospecting permit or an export permit;

**“research permit”** means a permit, issued in terms of regulation 9 of these regulations, to carry out the discovery phase of a bio-prospecting project involving indigenous knowledge;

**“stakeholder”** means –

- (a) a person, an organ of state or a community providing or giving access to the indigenous biological resources to which an application for a permit relates; or
- (b) an indigenous community.

**Purpose of Regulations**

2. The purpose of these regulations is to -
- (a) further regulate the permit system set out in Chapter 7 of the Biodiversity Act insofar as that system applies to bio-prospecting involving any indigenous biological resources or export from the Republic of any indigenous biological resources for the purpose of bio-prospecting or any kind of research; and
  - (b) set out the contents of, the requirements and criteria for benefit-sharing and material transfer agreements.

**Application of Regulations**

3. (1) These regulations govern –
- (a) the discovery phase of a bio-prospecting project that involves indigenous knowledge;
  - (b) the export from the Republic of any indigenous biological resources for the purpose of bio-prospecting or any other kind of research; and
  - (c) the commercialisation phase of a bio-prospecting project.
- (2) These regulations do not affect the implementation of other national and provincial legislation regulating the discovery phase of a bio-prospecting project that does not involve indigenous knowledge.



## CHAPTER 2

### PERMIT SYSTEM

#### Part 1: Issuing Authorities

##### Designation of Issuing Authorities

4. (1) The Minister is the issuing authority for –
- (a) bio-prospecting permits; and
  - (b) export permits, if the indigenous biological resources are being exported for the purposes of bio-prospecting.
- (2) The MEC is designated as the issuing authority for –
- (a) research permits, if the research involves indigenous knowledge;
    - (i) the indigenous community that is the holder of that knowledge resides within the boundaries of that province;
    - (ii) the indigenous biological resources to which the research application relates are collected, gathered or curated in that province; and
  - (b) export permits, if the indigenous biological resources are being exported for research purposes other than bio-prospecting, and the indigenous biological resources to be exported are collected, gathered or curated in that province.

##### Delegation by Issuing Authorities

5. (1) An issuing authority may delegate the power to perform any function assigned to it in terms of these regulations to any other body provided the delegation –
- (a) is in writing;
  - (b) does not divest the issuing authority of responsibility for the exercise of the power;
  - (c) may be subject to any limitations, conditions or directions of the issuing authority;

- (d) does not include the power to sub-delegate; and
- (e) an issuing authority may confirm, vary or revoke any decision taken in consequence of a delegation of its powers, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

#### **Powers and Duties of Issuing Authorities**

- 6. (1) An issuing authority must process all permit applications within a reasonable time.
- (2) Before issuing a permit, an issuing authority must satisfy him or herself that –
  - (a) the relevant stakeholders have been identified using, if necessary, the principles set out in regulation 10(3);
  - (b) there has been disclosure of relevant information to any stakeholders that have been identified;
  - (c) the prior consent of any person, including any organ of state or community providing or giving access to the indigenous biological resources to which the application relates, has been obtained, and a material transfer agreement and a benefit-sharing agreement have been entered into with the applicant;
  - (d) the prior consent of any indigenous community has been obtained, and a benefit-sharing agreement has been entered into with such community;
  - (e) the impact of the relevant activity on the environment will be negligible or will be minimised and remedies; and
  - (f) the relevant activity will not deplete an indigenous biological resource beyond a level where its integrity is jeopardised as demonstrated in a risk assessment.
- (3) An issuing authority may require an applicant to:
  - (a) Show what steps have been taken to identify stakeholders;
  - (b) take further specified steps to identify stakeholders;
  - (c) provide evidence that relevant information relating to the proposed research or bio-prospecting has been disclosed to the identified stakeholders;

- (d) provide evidence that the prior consent of any stakeholders has been obtained; or
  - (e) provide a risk assessment report in relation to the resource.
- (4) An issuing authority must –
- (a) forward any benefit-sharing or material transfer agreement referred to in regulations 13 and 14 to the Minister for approval;
  - (b) ensure that the relevant permit fee, as set out in Appendix 1, has been paid;
  - (c) issue every permit subject to appropriate conditions as determined by the issuing authority, which conditions must include –
    - (i) that all money as stipulated in benefit-sharing agreements must be paid into the Bio-prospecting Trust Fund, as required by section 85(1) of the Act;
    - (ii) that all permit holders must submit a status report to the issuing authority on an annual basis;
    - (iii) that the indigenous biological resources to which a permit relates may not be transferred to any third party without the written consent of the issuing authority; and
  - (d) monitor all permit holders to ensure compliance with permit conditions.
- (5) An issuing authority may withdraw a permit –
- (a) if the permit holder fails to comply with a permit condition or any foreign law governing the permitted activity;
  - (b) if the permit was or as a result of misleading information; or
  - (c) for any other reason recognised by the Act.

## Part 2: Application for Permits

### Who may apply

7. (1) No permit may be issued to –

(a) a juristic persons that are not registered in South Africa; or

(b) a natural person, who is not a South African citizen or a permanent resident of South Africa;

(2) Sub-regulation (1) does not prevent a -

(a) juristic body that is registered in South Africa from entering into an agreement and making an application jointly with a foreign person or juristic body, which is not registered in South Africa; or

(b) natural person, who is a South African citizen or a permanent resident of South Africa from entering into an agreement and making an application jointly with a foreign person or juristic body, which is not registered in South Africa.

(3) An applicant for a permit must attach all information that may be relevant for a proper consideration of the application and that will enable the issuing authority to make the assessment.

(4) An applicant for a permit must disclose if, in respect of the indigenous biological resources or the indigenous knowledge to which the application relates –

(a) any other application for a permit in terms of the Act or in terms of any other legislation has been submitted to any authority either previously or simultaneously with the current application; and

(b) that application was refused or granted.

**Application procedure**

8. (1) An application for a research permit –
- (a) must be in the form of Appendix 2;
  - (b) must contain information concerning the proposed project and the indigenous biological resources to be used for such research that is relevant for a proper consideration of the application. and
  - (c) must be submitted to the relevant MEC.
- (2) An application for an export permit must be in the form of Appendix 3 and is subject to the conditions in regulation 9;
- (3) An applicant for an export permit must comply with all requirements of any other relevant legislation.
- (4) An application for a bio-prospecting permit must -
- (a) be in the form of Appendix 2;
  - (b) contain information concerning the proposed project and the indigenous biological resources to be used for such bio-prospecting that is relevant for a proper consideration of the application; and
  - (c) be submitted to the Minister.

**Issuing of permits and contents of a permit**

9. (1) Before issuing a permit, the issuing authority must comply with Regulation 6.
- (2) A research permit issued in terms of these regulation –
- (a) may only be issued after the Minister has –
    - (i) approved any material transfer agreements and benefit-sharing agreements concluded with any person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;
    - (ii) approved any benefit-sharing agreements concluded with any indigenous communities; and

- (iii) complied with the requirements of Regulation 10.
- (b) must be in the form of Appendix 6;
- (c) is issued for a specified period, not exceeding two years;
- (d) may be renewed, on application;
- (e) is subject to the following conditions:
  - (i) The indigenous biological resources to which the permit relates, may only be used for non-commercial research purposes;
  - (ii) if the permit holder wants to commence commercialisation of the indigenous biological resources, the permit holder must apply for a bio-prospecting permit.
  - (iii) if the applicant for a research permit intends exporting the indigenous biological resources to which the application relates, the applicant must also apply for an export permit in terms of Regulation 9(3).
- (3) An issuing authority may only issue an export permit –
  - (a) if it is satisfied that the bio-prospecting or research that is the subject of the permit will be for a purpose that is in the public interest, including –
    - (i) the conservation of biodiversity in South Africa or elsewhere;
    - (ii) biocontrol purposes; and
    - (iii) the economic development of South Africa;
  - (c) after –
    - (i) approving any material transfer agreements and benefit-sharing agreements concluded with any person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;
    - (ii) approving any benefit-sharing agreements concluded with any indigenous communities; and
    - (iii) complying with the requirements of Regulation 10.

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- (4) An export permit issues in terms of this regulation -
- (a) must be in the form of Appendix 8;
  - (b) must indicate the period for which it is valid;
  - (c) may be renewed on application; and
  - (d) must provide that indigenous biological resources being exported may only be used for the purpose indicated in the permit.
- (5) If the applicant intends exporting the indigenous biological resources for a research purpose other than bio-prospecting and that research involves indigenous knowledge, the issuing authority may only issue an export permit if the applicant has been granted a research permit in terms of these regulations.
- (6) An issuing authority may only issue an export permit to an applicant who intends exporting the indigenous biological resources for the purposes of bio-prospecting if the applicant has been granted a bio-prospecting permit in terms of these regulations.
- (7) A bio-prospecting permit issued in terms of these regulations -
- (a) may only be issued after –
    - (i) approving any material transfer agreements and benefit-sharing agreements concluded with any person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;
    - (ii) approving any benefit-sharing agreements concluded with any indigenous communities; and
    - (iii) complying with the requirements of Regulation 10.
  - (b) must be in the form of Appendix 7;
  - (c) must indicate the period for which it is valid; and
  - (d) may be renewed, on application.

**Principles for identifying stakeholders**

10. (1) If an organ of state is providing or giving access to the indigenous biological resources to which an application relates the following people must be parties to the material transfer agreement and the benefit sharing agreement:
- (a) The Member of Cabinet responsible for administration of that land, if the indigenous biological resources are collected or gathered on land owned by national government;
  - (b) the MEC if the indigenous biological resources are collected or gathered on land owned by the relevant provincial government;
  - (c) the municipality if the indigenous biological resources are collected or gathered on land owned by the relevant municipality.
- (2) If the indigenous biological resources to which an application relates are collected or gathered on communal land, the relevant community will be the party to both the material transfer and benefit sharing agreements.
- (3) In determining whether any person or indigenous community is a stakeholder whose interests are to be protected in terms of these regulations, the following principles apply –
- (a) if there is evidence that the indigenous knowledge is held by a distinct part of a community, that part of the community will be the stakeholder;
  - (b) in the absence of clear evidence that indigenous knowledge in respect of a particular indigenous biological resource, resides in a distinct part of a community, the community as a whole will be the stakeholder;
  - (c) if there is evidence that indigenous knowledge in respect of a particular indigenous biological resource was shared by a number of identifiable communities, those communities will all be stakeholders;
  - (d) if there is evidence that indigenous knowledge in respect of a particular indigenous biological resource was shared extensively by communities throughout South Africa, the Minister will be presumed to be the stakeholder;
  - (e) if there is evidence that indigenous knowledge in respect of a particular indigenous biological resource was shared by a number of identified communities but it is not



possible or desirable for all those communities to be stakeholders, the Minister will act on behalf of those communities as a stakeholder.

### **Part 3: Conditions under which bio-prospecting activities may be carried out**

#### **Discovery phase of bio-prospecting**

11. (1) The discovery phase of a bio-prospecting project involving indigenous knowledge may only be carried out if a research permit has been issued by the relevant MEC.
- (2) An applicant for a permit must attach all information that may be relevant for a proper consideration of the application and that will enable the issuing authority to make the assessment required in terms of Regulation 6(2).
- (3) An applicant for a permit must disclose if, in respect of the indigenous biological resources or the indigenous knowledge to which the application relates –
- (a) any other application for a permit in terms of the Act or in terms of any other legislation has been submitted to any authority either previously or simultaneously with the current application; and
  - (b) that application was refused or granted.
- (4) The Issuing Authority may only issue a research permit in respect of indigenous biological resources after the Minister has –
- (a) approved any material transfer agreements and benefit-sharing agreements concluded with any person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;
  - (b) approved any benefit-sharing agreements concluded with any indigenous communities; and
  - (c) complied with the requirements of Regulation 10.

#### **Commercialisation phase of bio-prospecting**

12. (1) The commercialisation phase of bio-prospecting may only be carried out with a bio-prospecting permit issued by the Minister.

- (2) If the applicant for a bio-prospecting permit intends exporting the indigenous biological resources to which the application relates –
- (a) the applicant must also apply for an export permit in terms of Regulation 9; and
  - (b) the Minister may issue an integrated bio-prospecting and export permit.
- (3) The Minister may only issue a bio-prospecting permit after –
- (a) approving any material transfer agreements and benefit-sharing agreements concluded with any person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates;
  - (b) approving any benefit-sharing agreements concluded with any indigenous communities; and
  - (c) complying with the requirements of Regulation 10.

### **CHAPTER 3**

## **MEANS OF ENTERING INTO AGREEMENTS AND BENEFIT-SHARING ARRANGEMENTS**

### **Part 1: Agreements**

#### **Material Transfer Agreements**

13. (1) Parties to the material transfer agreement must be the applicant, the provider of biological resources and any other party that may be affected.
- (2) The Minister is the authority vested with approving and signing off on all material transfer agreements.

**Benefit-Sharing Agreements**

14. (1) Parties to a benefit-sharing agreement must be a juristic person that is registered in South Africa, the applicant and any other stakeholder referred to in Regulation 10.
- (2) The Minister is the authority vested with approving and signing off on all benefit-sharing agreements.
- (3) A benefit-sharing agreement must –
- (a) stipulate any monetary or non-monetary benefits that may result from the bio-prospecting or research;
  - (b) indicate the extent to which any identified stakeholders will be entitled to share in any monetary or non-monetary benefits; and
  - (c) provide that all moneys arising out of the agreement must be paid into the Bio-prospecting Trust Fund.
- (4) Before approving a benefit-sharing agreement, the Minister –
- (a) must be satisfied that the agreement is fair and equitable to all parties;
  - (b) may consult any person competent to provide technical advice on the agreement; and
  - (c) may invite public comment on the agreement provided that no confidential information is made public.
- (5) If no organ of state or indigenous community is a party to a benefit-sharing agreement, the Minister may refuse to approve such a benefit-sharing agreement unless such agreement makes some provision for –
- (a) enhancing the scientific knowledge and technical capacity of South African people and institutions to conserve, use and develop indigenous biological resources; or
  - (b) any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa.

- (6) Permit holders must lodge a copy of all benefit-sharing agreements with the Director-General, within one month of an agreement being concluded.

### **Confidential Information in Benefit-Sharing Agreements**

15. (1) Confidential information in relation to a benefit-sharing agreement means information that may be detrimental to the commercial or financial interests of a party to the agreement.

(2) Confidential information may include –

- (a) information about research being or to be carried out including details of species to be collected and the areas in which specified species are to be collected;
- (b) trade secrets;
- (c) financial, commercial, scientific or technical information, other than trade secrets; or
- (d) indigenous knowledge.

(3) Information is not confidential if –

- (a) the parties to the agreement consent to its disclosure; or
- (b) the information is already publicly available.

### **Part 2: Stakeholders**

#### **Money received by organs of state in their capacity as parties to benefit-sharing agreements**

16. (1) If an organ of state receives money as a party to a benefit-sharing agreement, that money may only be used for the following purposes -

- (a) to conserve the particular indigenous biological resources to which the agreement relates;
- (b) to support or benefit indigenous communities whose knowledge or traditional uses of an indigenous biological resource may have contributed or could contribute to a bio-prospecting project but who have not, for whatever reason, received adequate recompense for the knowledge or use;

- (c) to build capacity amongst indigenous communities –
  - (i) as to their rights in terms of the Biodiversity Act; and
  - (ii) to enable them to negotiate benefit-sharing agreements that are fair and equitable;
- (d) to support further research on indigenous knowledge;
- (e) to enhance the scientific knowledge and technical capacity of South African people and institutions to conserve, use and develop indigenous biological resources; or
- (f) any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa.

#### **Stakeholder Obligations**

17. (1) Stakeholders who may become entitled to a monetary benefit in terms of a benefit-sharing agreement must notify the Director-General –
- (a) of their contact details;
  - (b) of the bank account into which any moneys arising from a benefit-sharing agreement must be paid; and
  - (c) if there is any change in their contact details or bank account details.

#### **Dispute Resolution**

18. (1) An issuing authority or the Director-General may appoint a mediator and, if necessary, an arbitrator to resolve any dispute that arises in relation to –
- (a) the identity of stakeholders;
  - (b) the information disclosed to stakeholders;
  - (c) the interpretation or application of any benefit-sharing agreement;
  - (d) the distribution of monies to stakeholders by the Bio-prospecting Trust Fund; or
  - (e) any other dispute that may arise including from the implementation of a material transfer or benefit-sharing agreement

- (2) An arbitration instituted in terms of this regulation will be governed by the Arbitration Act, 1965 (Act No. 42 of 1965).

## CHAPTER 4

### MISCELLANEOUS

#### Information

19. (1) The Department must develop and regularly update a national bio-prospecting database for use by issuing authorities.
- (2) The national bio-prospecting database must contain details of all permit applications and in respect of each application state –
- (a) whether a permit was granted or refused;
  - (b) whether conditions attach to a permit and the nature of such conditions;
  - (c) the names and contact details of any stakeholders identified; and
  - (d) the current status of any prospective or actual benefit-sharing agreements.
- (3) The Department must maintain a bio-prospecting register, containing at least the following information –
- (a) the name and contact details of all permit holders;
  - (b) the duration of each permit and any specific conditions that attach to a permit;
  - (c) the date on which any permit is withdrawn; and
  - (d) summaries of all benefit-sharing agreements, including the names of the parties to a benefit-sharing agreement and any other relevant information, provided that no confidential information may be included in the register.
- (4) The Director-General must ensure that the following information is accessible to the public –
- (a) permit application forms and guidelines on completing those forms;

- (b) contact details of all issuing authorities; and
- (c) the bio-prospecting database referred to in sub-regulation (2).

### **The Bio-prospecting Trust Fund**

- 20.** (1) In terms of these regulations, monies to be paid into the Bio-prospecting trust fund will be as stipulated in the relevant material transfer and benefit-sharing agreements.
- (2) The Director-General is the accounting officer for the Fund and must comply with the requirements of the Public Finance Management Act, 1999 (Act No 1 of 1999).
- (3) The Director-General must –
- (a) notify all issuing authorities of the banking details of the Fund, which details must be handed to permit holders on issue of every permit;
  - (b) advise parties to a benefit-sharing agreement of –
    - (i) any money received in respect of that agreement;
    - (ii) the amount due to each stakeholder in terms of the agreement;
  - (c) invite parties to a benefit-sharing agreement to comment on a proposed distribution of monies received; and
  - (d) distribute all monies received in accordance with the relevant benefit-sharing agreement, and after having considered any comment received in terms of paragraph(c).
- (4) Unless a different time period is agreed with parties to a benefit-sharing agreement, the Director-General's obligations in terms of regulation 20(3) may be discharged annually.
- (5) If for whatever reason, there is surplus money in the Fund that is not due to any party in terms of a benefit-sharing agreement, the Director-General must use the money –
- (a) for a purpose listed in regulation 16; or
  - (b) to meet the administrative expenses of the Fund.

- (6) If it is not possible, for whatever reason, to pay any party money due to them in terms of a benefit-sharing agreement, the Director-General must –
- (a) ascertain if there is any other person or body to whom the money should legally be paid.
- (7) if there is no identifiable person or body to whom the money must be paid, consult any other party to the relevant agreement as to the distribution of that money and thereafter distribute the money fairly and equitably between remaining stakeholders, if any. (8) if there are no other stakeholders, distribute the money in accordance with sub-regulation (6).
- (9) The Director-General may appoint a person to investigate the financial records relating to a benefit-sharing agreement or the implementation of any provisions contained in such an agreement.

### Offences

21. (1) A person is guilty of an offence if that person –
- (a) without a permit -
- (i) undertakes bio-prospecting involving an indigenous biological resources;
  - (ii) exports from the Republic any indigenous biological resources for the purpose of bio-prospecting or any other research;
  - (iii) undertakes research involving indigenous biological resources;
- (b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which a permit was issued;
- (c) permits or allow any other person to do, or to omit to do anything which is an offence in terms of these regulations;
- (d) fabricates or forges any document for the purpose of passing it off as a permit;;
- (e) fraudulently alters any permit;
- (f) passes, uses or has in his possession any altered or false document purporting to be a permit; or



- (g) knowingly makes any false statement or report for the purpose of obtaining a permit.

**Penalties**

22. (1) A person convicted of an offence in terms of regulation 21 is liable to –

- (a) a fine of R300 000-00;
- (b) to imprisonment for a period not exceeding five years; or
- (c) to both a fine and such imprisonment.

**Short Title and Commencement**

23. These Regulations are called Bio-prospecting, Access and Benefit-Sharing Regulations, 2006 and take effect 30 days after the date on which they are promulgated.

**APPENDIX 1****PERMIT FEES**

**An applicant for a permit must pay the following non-refundable fee to the issuing authority when the relevant permit is lodged.**

Research permit for projects involving indigenous knowledge	R1 000
Bio-prospecting permit	R5 000
Export permit	R200

## APPENDIX 2

- 1) APPLICATION FOR A RESEARCH PERMIT FOR A PROJECT INVOLVING INDIGENOUS KNOWLEDGE
- 2) APPLICATION FOR A BIO-PROSPECTING PERMIT

**Notes on completing form:**

1. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, applicants can elect to use their own forms with sufficient space provided for each regulation, as long as those forms follow the general format of this form.
2. If the indigenous biological resources to which this application relates are intended to be exported, an application for an export permit must also be made.

**KIND OF PERMIT APPLIED FOR (Tick relevant box)**

Research permit for a project involving indigenous knowledge:

Bio-prospecting permit:

**APPLICANT**

1. Full name of institution: \_\_\_\_\_
2. Registration number: \_\_\_\_\_
3. Contact person: \_\_\_\_\_
4. Capacity: \_\_\_\_\_
5. Identity number of contact person: \_\_\_\_\_
6. Names and contact details of all other applicants: \_\_\_\_\_  
\_\_\_\_\_

7. Names and contact details of the individuals who will conduct the research:

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8. If the applicant is not a research institution, is the applicant affiliated to a research institution?

Y/N

9. If yes, the name, contact details and contact person of that research institution are required.

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### SPONSORS

10. Are there any international sponsors funding this project? Y/N

11. If yes, provide their names and contact details:

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12. Are there any South African sponsors funding this project? Y/N

13. If yes, provide their names and contact details:

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### INDIGENOUS BIOLOGICAL RESOURCES

14. Set out the type of indigenous biological resources for which a permit is sought, the family, genus or species, the part of the organism to be collected, the quantity of the resources to be collected or obtained and the specific area or source from which each resource is to be collected or obtained.

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>


**PREVIOUS PERMITS**

15. In respect of the indigenous biological resources set out above, has any other application for a permit in terms of the Act or in terms of any other legislation been submitted, either previously or simultaneously with this application? Y/N

16. If yes, was the application granted, refused or is it still pending? \_\_\_\_\_

17. If the application was granted, provide the following detail and attach a copy of the permit.

Permit number	Issuing authority	Date of issue

18. If the application is still pending, provide the issuing authority's reference number. \_\_\_\_\_  
 \_\_\_\_\_

**DISCLOSURE OF INFORMATION**

19. Has all material information been disclosed to any person or body providing or giving access to the resources and to any identified indigenous communities with knowledge of the resources? Y/N

20. Substantiate your answer to the above paragraph by setting out all information disclosed.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**STAKEHOLDERS**

**NOTE:** If any person, body or community (including any organ of state) is required to provide or give access to the indigenous biological resources, their consent must be obtained and a material transfer agreement (MTA) in the form of Appendix 4 and a benefit-sharing agreement (BSA) in the Appendix 5 must be attached to this application.

21. Identify the people, bodies or communities whose consent is required and in each instance indicate if a MTA and a BSA have been concluded with them. These agreements must be attached to this application.

Access provider	MTA concluded and attached?	BSA concluded and attached?

**NOTE:** If any indigenous communities have been identified, a benefit-sharing agreement (BSA) in the form of Appendix 5 must be concluded with those communities and must be attached to this application.

22. What steps have been taken to identify any indigenous communities whose use or knowledge of the indigenous biological resources to which this application relates, may have initiated or contributed to the proposed research? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

23. Describe any indigenous communities identified and in each instance indicate if a BSA has been concluded with them and if that agreement is attached to this application.

Indigenous community	BSA concluded?	BSA attached?

24. Have any agreements been concluded in relation to the indigenous biological resources with parties that are not stakeholders in terms of the Act? Y/N

25. If yes, have those agreements been disclosed to –

➤ any people, bodies or communities who are providing access to the resources; Y/N

➤ any indigenous communities with indigenous knowledge of the resources? Y/N

26. Is any assistance required from the issuing authority to conclude the necessary agreements? Y/N

27. If yes, specify the nature of the assistance required and why this assistance is required.

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**PROJECT PROPOSAL**

28. A detailed project proposal must be attached to this application setting out the following –

- the objectives of the research;
- the benefits that may result from the project;
- the proposed methodology;
- the proposed time-frames (i.e. required period of validity of permit);
- any relevant environmental considerations including impacts of the collection of the resources and proposed steps to minimise or remedy those impacts;
- details of any collaborating parties;
- reporting processes;
- desired outcomes of the project; and
- what will happen to the specimens at the end of the study.

**FEES**

29. If this application is for a research permit for a project involving indigenous knowledge, has the fee of R1,000 been paid? Y/N

30. If this application is for a bio-prospecting permit, has the fee of R5,000 been paid? Y/N

**Signature of applicant for permit** \_\_\_\_\_ **Date** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_



**Endorsement of research institution, if applicable**

**Name of institution** \_\_\_\_\_

**Signature of duly authorised officer from institution** \_\_\_\_\_ **Date** \_\_\_\_\_

**APPENDIX 3****APPLICATION FOR AN EXPORT PERMIT****Notes on completing form:**

1. If the resources are to be exported for the purpose of bio-prospecting , an applicant must also apply for a bio-prospecting permit. In this case, the applicant need only fill out Parts 1, 2, 3 and 7 of this form.
2. If the resources are to be exported for a research purpose other than bio-prospecting , and the research involves indigenous knowledge, the applicant must also apply for a research permit in terms of regulation 8 of the regulations. In this case, the applicant need only fill out Parts 1, 2, 3 and 7 of this form.
3. If the resources are to be exported for a research purpose other than bio-prospecting , but the research does not involve indigenous knowledge, the applicant must complete this whole form.
4. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, applicants can elect to use their own forms with sufficient space provided for each regulation , as long as those forms follow the general format of this form.

**PART 1: CONTACT DETAILS****APPLICANT**

1. Full name of institution: \_\_\_\_\_
2. Registration number: \_\_\_\_\_
3. Contact person: \_\_\_\_\_
4. Capacity: \_\_\_\_\_
5. Identity number of contact person: \_\_\_\_\_
6. Names and contact details of all other applicants: \_\_\_\_\_  
\_\_\_\_\_

7. Names and contact details of the individuals who will conduct the research:

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8. If the applicant is not a research institution, is the applicant affiliated to a research institution?

Y/N

9. If yes, the name, contact details and contact person of that research institution are required.

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10. Have you complied, or have you taken steps to comply, with other legislative requirements for the export of the indigenous biological resources? Provide details, including reference numbers or waybill numbers where appropriate.

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#### **SPONSORS**

11. Are there any international sponsors funding this project? Y/N

12. If yes, provide their names and contact details:

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13. Are there any South African sponsors funding this project? Y/N

14. If yes, provide their names and contact details:

**PART 2: PURPOSE OF EXPORT**

15. State the purpose for which the indigenous biological resources are to be exported. \_\_\_\_\_

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16. If the resources are to be exported for the purpose of bio-prospecting, is an application for a bio-prospecting permit being made simultaneously with this application? Y/N

17. If not, have you already obtained or made application for a bio-prospecting permit? Y/N

18. If the resources are to be exported for a research purpose, other than bio-prospecting is an application for a research permit being made simultaneously with this application? Y/N

19. If not, have you obtained or made application for a research permit in terms of these regulations or in terms of any other legislation? Y/N

20. If a bio-prospecting permit or a research permit has already been issued, provide the permit number and attach a copy of the application and a copy of the permit.

Permit Number: \_\_\_\_\_

21. If application for a permit in terms of these regulations or in terms of any other legislation has been made but the permit has not yet been issued, attach a copy of the application and provide the following detail –

Issuing authority	Type of permit	Reference number

**PART 3: BENEFITS THAT WILL ACCRUE FROM EXPORT OF RESOURCES**

22. Will the intended bio-prospecting or research that is the subject of the permit application, have some benefit for –

a. the conservation of biodiversity in South Africa or elsewhere; Y/N

- b. biocontrol purposes; Y/N
- c. the economic development of South Africa; Y/N
- d. any other matter that is in the public interest? Y/N

23. If yes, provide details: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PART 4: INDIGENOUS BIOLOGICAL RESOURCES<sup>1</sup>**

24. Set out the type of indigenous biological resources for which a permit is sought, the quantity of the resources to be collected or obtained and the area or source in which each resource is to be collected or obtained.

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>

**PART 5: DISCLOSURE OF INFORMATION AND STAKEHOLDERS**

25. Has all material information been disclosed to any person or body providing or giving access to the resources and to any identified indigenous communities? Y/N

26. Substantiate your answer to the above paragraph by setting out all information disclosed.

(a)

<sup>1</sup> Parts 4 – 6 need only be completed by an applicant who will be exporting indigenous biological resources for a research purpose other than bio-prospecting and where the research does not involve indigenous knowledge.

**NOTE:** If any person, body or community (including any organ of state) is required to provide or give access to the indigenous biological resources, their consent must be obtained and a material transfer agreement (MTA) in the form of Appendix 3 and a benefit-sharing agreement (BSA) in the form of Appendix 4 must be attached to this application.

27. Identify the people, bodies or communities whose consent is required and in each instance indicate if a MTA and a BSA have been concluded with them. These agreements must be attached to this application.

Access provider	MTA concluded and attached?	BSA concluded and attached?

28. Is any assistance required from the issuing authority to conclude the necessary agreements? Y/N

29. If yes, specify the nature of the assistance required and why this assistance is required.

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**PART 6: PROJECT PROPOSAL**

30. A detailed project proposal must be attached to this application setting out the following –

- the objectives of the research;
- the benefits that may result from the project;

- the proposed methodology;
- the proposed time-frames(i.e. required period of validity of permit);
- any relevant environmental considerations including impacts of the collection of the resources and proposed steps to minimise or remedy those impacts;
- details of any collaborating parties;
- reporting processes;
- desired outcomes of the project; and
- what will happen to the specimens at the end of the study.

**PART 7: FEES**

31. Has the fee of R200 been paid?

Y/N

**Signature of applicant for permit** \_\_\_\_\_ **Date** \_\_\_\_\_**Capacity of signatory if applicant is a juristic person:** \_\_\_\_\_**Endorsement of research institution, if applicable****Name of institution** \_\_\_\_\_**Signature of duly authorised officer from institution** \_\_\_\_\_**Date** \_\_\_\_\_

## APPENDIX 4

## MATERIAL TRANSFER AGREEMENT

**1 Parties to the agreement****1.1. Recipient of indigenous biological resources:**

Name of institution: \_\_\_\_\_

Contact person: \_\_\_\_\_

Capacity: \_\_\_\_\_

Identity number of contact person: \_\_\_\_\_

Contact details: \_\_\_\_\_

**1.2. Provider of access to indigenous biological resources**

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

If entering into agreement in a representative capacity, state name of principal: \_\_\_\_\_

\_\_\_\_\_

Contact details: \_\_\_\_\_

**2 Indigenous biological resources**

The type, quantity and source of indigenous biological resources to which this agreement relates are –

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>



**3 Current uses of the indigenous biological resources -**

The present potential uses of the indigenous biological resources to be collected are the following -

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**4 Purpose of export (if applicable)**

The indigenous biological resources are to be exported for the following purposes --

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**5 Third parties**

The recipient may only provide any such indigenous biological resources or their progeny to third parties in terms of the following conditions (fill in detail below) -

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The recipient agrees to take every reasonable precaution to prevent the identified resources coming into the possession of any unauthorised third party.

**Applicant for permit:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Access provider of resource:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Approved by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**APPENDIX 5**  
**BENEFIT-SHARING AGREEMENT**

**Notes:**

1. This agreement must be entered into by an applicant for a permit and any stakeholders identified in terms of the regulations.
2. If there is more than one stakeholder a separate agreement must be entered into with each stakeholder.
3. If insufficient space is provided in this form, additional information may be included by way of annexures. Alternatively, parties can elect to use their own forms with sufficient space provided for each regulation, as long as those forms follow the general format of this form. Parties can also attach as an annexure a detailed agreement provided that the parties refer in each regulation of this form to the relevant paragraphs or pages of their attached agreement.
4. The parties to this agreement must sign the agreement in the space indicated and must initial every other page of the agreement, including any annexures.

**1. Applicant for permit<sup>2</sup>**

Name of institution: \_\_\_\_\_

Contact person: \_\_\_\_\_

Capacity: \_\_\_\_\_

Identity number of contact person: \_\_\_\_\_

Contact details: \_\_\_\_\_

**2. Provider of access to indigenous biological resources (if applicable)**

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

If entering into agreement in a representative capacity, state name of principal: \_\_\_\_\_

\_\_\_\_\_

Contact details: \_\_\_\_\_

### 3. Indigenous community (if applicable)

Description of community: \_\_\_\_\_

Legal form of community (if any): \_\_\_\_\_

Name of community representative who will sign this agreement on behalf of the community: \_\_\_\_\_

Capacity: \_\_\_\_\_

Contact details of community: \_\_\_\_\_

*A resolution adopted in terms of the founding document of the community must be attached to this form. The resolution must confirm that the community representative indicated above has been authorised to enter into this agreement on behalf of the community; that the community has full knowledge of the research or bio-prospecting project; and that it consents to entering into this benefit-sharing agreement.*

### 4. Type and quantity of indigenous biological resources

This agreement concerns the following indigenous biological resources - (specify below type of resources, quantity of resources and area or source from which the resources are to be collected or obtained)

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>

(b) \_\_\_\_\_

<sup>2</sup> This may be an applicant for a research permit, a bio-prospecting permit, or an export permit.


**5. Current uses of resources**

The present potential uses of the indigenous biological resources to be collected are the following –

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**6. Intended use of indigenous biological resources**

The manner in which and the extent to which the indigenous biological resources are to be used or exploited for purposes of the bio-prospecting are (set out details) –

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**7. Traditional knowledge (if applicable)**

The indigenous community that is a party to this agreement has traditionally used the indigenous biological resources in the following way –

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### 8. Sharing in benefits

Benefits will vary considerably from case to case and in particular, benefits will vary depending on whether the stakeholder is providing access to the indigenous biological resources or is an indigenous community. The lists below provide examples of monetary and non-monetary benefits that may arise from a research or bio-prospecting project. This first list is more relevant if the stakeholder party to this agreement is providing or giving access to the resources while the second list is more relevant if the stakeholder party to this agreement is an indigenous community. Tick each block that applies to this agreement and identify below who will be the beneficiary of each benefit and the extent of the benefit (provide supporting documentation where necessary).

**To be completed if stakeholder is providing or giving access to the indigenous biological resources**

Non-monetary, monetary and 'in kind' benefits			
Acknowledgement of parties giving access to resources		Voucher specimens with national institutions	
Research results and copies of papers		Participation of South Africans in research	
Support for conservation		Access to international collections by South Africans	
Species inventories		Recognition and promotion of traditional knowledge	
Student training and support		Community development projects	
Scientific capacity development		Environmental education	

Technology transfer		Fees	
Joint Research		Royalties	
Information		Upfront payments	
Equipment and infrastructure		Milestone payments	
Other (specify)		Other financial benefits (specify)	
Other (specify)		Other (specify)	

**To be completed if stakeholder is an indigenous community**

<b>Non-monetary, monetary and 'in kind' benefits</b>			
Ongoing communication of research objectives, methods and findings, translated into local languages		Copies of proposals, reports and publications	
Simplified and popularised posters, manuals, pamphlets and other documents translated		Recognition and promotion of traditional knowledge	

into local languages			
Co-authorship of publications		Lodging of specimens	
Access to research data		Grants for development and environmental education projects	
Copies of photographs and slides		Fees (eg for consultation, assistants, guides, use of facilities and infrastructure)	
Inclusion in the research of local collaborators, assistants, guides and informants		Royalties	
Training of local people as appropriate in relevant scientific, legal and management issues		Upfront payments	
Equipment and infrastructure support		Milestone payments	
Co-ownership of any intellectual property rights		Other financial benefits (specify)	
Other (specify)		Other (specify)	

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**9. Review of agreement**

This agreement will be reviewed every \_\_\_\_\_ (fill in agreed timeframe), with a view to amending the agreement if necessary. One month prior to every review, the permit holder must disclose any new material facts with regard to the research or bio-prospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

**10. Other matters**

Any other matters or conditions which the parties to this agreement wish to record may be attached to this agreement as an annexure.

**Applicant for permit:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Endorsement of research institution, if applicable**

**Name of institution:** \_\_\_\_\_

**Signature of duly authorised officer from institution:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Access provider of resource:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Community representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Approved by the Minister of Environmental Affairs and Tourism**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_

**Date**

## APPENDIX 6

## RESEARCH PERMIT FOR PROJECTS INVOLVING INDIGENOUS KNOWLEDGE

This permit is issued in terms of regulation 8 of the regulations on bio-prospecting , access and benefit-sharing

1. **Permit holder's name:** \_\_\_\_\_

2. **Permit holder's address:** \_\_\_\_\_

\_\_\_\_\_

3. **Name and identity number of representative of permit holder:**

\_\_\_\_\_

\_\_\_\_\_

4. **Nature of permit:** This permit authorises the permit holder to conduct research in respect of the following indigenous biological resources in the quantities specified and to be collected in the specified areas.

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>

5. **Duration of permit:** This permit is valid until \_\_\_\_\_<sup>3</sup>

6. **Benefit-sharing agreements and material transfer agreements:** This permit must be read with the following benefit-sharing agreements and material transfer agreements entered into with stakeholders envisaged in section 82(1) of the Act.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. **Conditions:** This permit is issued subject to the following conditions –

- 7.1. the permit holder may use the identified indigenous biological resources and indigenous knowledge for non-commercial research purposes only;
- 7.2. if at any time in the future, the permit holder wishes to commercialise the identified indigenous biological resources or indigenous knowledge, the permit holder must apply for a bio-prospecting permit;
- 7.3. the permit holder may not transfer the identified indigenous biological resources or indigenous knowledge to any third party without the prior informed consent in writing of the issuing authority and the holders of the knowledge and then only under a written agreement containing terms no less restrictive than those which apply to the permit holder in terms of this permit and any agreements referred to in paragraph 6;
- 7.4. the permit holder must submit an annual report to the issuing authority on the attached report form;
- 7.5. (additional conditions may be inserted here) \_\_\_\_\_
- 7.6. \_\_\_\_\_
- 7.7. \_\_\_\_\_

(b) \_\_\_\_\_

<sup>3</sup> In terms of regulation 8(6)(b) of the regulations, this period may not be longer than 2 years.

## APPENDIX 7

## BIO-PROSPECTING PERMIT

This permit is issued in terms of regulation 9 of the regulations on bio-prospecting , access and benefit-sharing

1. **Permit holder's name:** \_\_\_\_\_

2. **Permit holder's address:** \_\_\_\_\_

3. **Name and identity number of representative of permit holder:**

\_\_\_\_\_

\_\_\_\_\_

4. **Nature of permit:** This permit authorises the permit holder to use the following indigenous biological resources for the purposes of bio-prospecting , in the quantities specified and to collect the resources in the areas set out below:

Type of organism	Family, genus or species (if possible)	Part of organism to be collected	Quantity	Full locality data (GIS readings if possible)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	<i>....</i>

5. **Duration of permit:** This permit is valid until \_\_\_\_\_.

6. **Benefit-sharing agreements and material transfer agreements:** This permit must be read with the following benefit-sharing agreements and material transfer agreements entered into with stakeholders envisaged in section 82(1) of the Biodiversity Act.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. **Conditions:** This permit is issued subject to the following conditions –

- 7.1. the permit holder may not transfer the indigenous biological resources to which this permit relates to any third party without the prior informed consent in writing of the issuing authority and then only under a written agreement containing terms no less restrictive than those which apply to the permit holder in terms of this permit and any agreements referred to in paragraph 6;
- 7.2. any money received in terms of a stakeholder agreement must be paid into the Bio-prospecting Trust Fund;
- 7.3. the permit holder must submit an annual report to the issuing authority on the attached report form;
- 7.4. (additional conditions may be inserted here) \_\_\_\_\_
- 7.5. \_\_\_\_\_

## APPENDIX 8

## EXPORT PERMIT

This permit is issued in terms of regulation 10 of the regulations on bio-prospecting , access and benefit-sharing

1. Permit holder's name: \_\_\_\_\_
2. Permit holder's address: \_\_\_\_\_
3. Name and identity number of representative of permit holder: \_\_\_\_\_

4. Nature of permit: This permit authorises the permit holder to export the following indigenous biological resources, in the quantities specified:

Type of organism	Species and common name	Form in which it will be exported	Quantity	Point of export	Point of import
<i>Example:</i> Plant	<i>Aloe ferox</i> (Bitter Aloe)	Leaf extract	1 litre	Airfreight from Cape Town, South Africa	Hamburg, Germany
Plant	<i>Sclerocarya birrea</i> (Marula)	Oil	100 litres	Port of Cape Town	Port of Dover

5. Duration of permit: This permit is valid until \_\_\_\_\_.
6. Benefit-sharing agreements and material transfer agreements: This permit must be read with the following benefit-sharing agreements and material transfer agreements entered into with stakeholders envisaged in section 82(1) of the Biodiversity Act.

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7. **Conditions:** This permit is issued subject to the following conditions --

7.1. the permit holder may use the indigenous biological resources for the following purposes only:

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7.2. if the resources are being exported for the purpose of bio-prospecting , this permit is only valid if the permit holder has also been issued with a valid bio-prospecting permit in respect of the specified resources;

7.3. if the resources are being exported for a research purpose other than bio-prospecting , and the research involves indigenous knowledge, this permit is only valid if the permit holder has also been issued with a valid research permit in respect of the specified resources and knowledge;

7.4. the permit holder must comply with all other legislative requirements for the valid export of the resources;

7.5. the permit holder may not transfer the indigenous biological resources to any third party without the prior informed consent in writing of the issuing authority in respect of this export permit and then only under a written agreement containing terms no less restrictive than those which apply to the permit holder in terms of this permit and any agreements referred to in paragraph 6;

7.6. the permit holder must submit an annual report to the issuing authority on the attached report form;



7.7. any money received in terms of a stakeholder agreement must be paid into the Bio-prospecting Trust Fund;

7.8. additional conditions may be inserted here \_\_\_\_\_

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