1. REQUEST FOR PROPOSAL (RFP)

1.1. The objective of this RFP is to appoint a suitable independent Service Provider/s that can support DEA to undertake research on the scope and extent of industries engaged in bioprospecting activities in South Africa and the scope and extent of utilization of indigenous biological resources for bioprospecting.

1.2. Preference may be given to a Service Provider/s that is not already performing consultancy work within DEA.

2. SCOPE AND EXTENT OF WORK

2.1. The role of the Service Provider/s is to assist the Department of Environmental Affairs with research to determine the extent and scope of the bioprospecting industries in South Africa and the scope and extent of utilization of indigenous biological resources for bioprospecting.

2.2. The appointed service provider/s will undertake the following:

2.2.1. Identification and analysis of the scope of South African industries engaged in bioprospecting activities;

2.2.2. Determination of the contribution of the bioprospecting industries to the country’s economy;

2.2.3. Categorization of bioprospecting industry sub-sectors that have short, medium and long term advantages;

2.2.4. Assess the state of the bioprospecting industries in South Africa using indigenous biological resources to develop and produce drugs, industrial enzymes, food flavours, fragrance, cosmetics,
emulsifiers, oleoresins, colour and extracts, including access provider categories such as cultivation (farmers), propagation (nurseries), cloning (biotechnology / synthetic production) or other means (resource traders, academic and other research institutes);

2.2.5. Determine the scale and scope of the industry from insights into the following factors:
(a) The economic scale of the bioprospecting industry and its components.
(b) The extent of foreign currency generation from the industry.
(c) The key revenue drivers within the industry (key indigenous biological resource use types within the wildlife ranching industry).
(d) Temporal and spatial patterns and trends in the extent and type of bioprospecting.
(e) The extent to which indigenous biological resources are obtained from the wild versus cultivated.
(f) The extent to which South African value-addition industries (multi-owner collaboratively managed units) have been developed.

2.2.7 Assess the social contributions of the bioprospecting industry, including:
(a) The extent to which bioprospecting industry contributes to food security through foreign exchange generation, specific product development and production (drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colour and extracts); and employment.
(b) The extent and quality of employment generated by the bioprospecting industry.
(c) The extent of utilisation of cultivated indigenous biological resources.
(d) The conditions/contexts in which the social benefits from the utilisation of indigenous biological resources are greatest.

2.2.8 Assess the drivers and constraints affecting the bioprospecting industry, including global issues that affect, or have potential to affect the bioprospecting industry. These may be examined by assessing the following:
(a) Global patterns in use of indigenous biological resources for product development
(b) Global economic performance
(c) Global patterns in the prices of indigenous biological resources

2.2.9 Assess of how national and provincial trends, issues and policies within South Africa affect the bioprospecting industry, including the examination of factors such as:
(a) Indigenous biological resources prices
(b) Exchange rate trends
(c) Phyto-sanitation and other export control policies
(d) Taxation laws (e.g. cosmetic ad valorem tax)

2.2.10 Identify possible means by which the ecological, economic and social benefits of the bioprospecting industry can be increased, through assessment of:

(a) Current strategies being developed / implemented to balance the conservation and utilisation value of indigenous biological resources
(b) The scope for developing certification for indigenous biological resource based products to enhance the conservation of the resource and social value of the product.
(c) The scope for developing best practise guidelines for the bioprospecting industries.
(d) The potential for state incentives to enhance the conservation, social and sustainable use values of indigenous biological resources, such as tax incentives or preferential access to permits to incentivize best practise.

2.3 The service provider/s shall submit a preliminary budget containing the hours and amount to be spent on each case, before work can commence.

2.4 Companies may be invited to give presentation as and when required.

3. TIMING OF ASSIGNMENT

3.1 All work is to be carried out in accordance with the time schedule as agreed with the Programme Manager within a timeframe of approximately four (4) months.

4. PERFORMANCE MEASURES

4.1. The performance measures for the delivery of the research results in the determination of the extent of the bioprospecting industries in South Africa and the utilisation of indigenous biological resources for bioprospecting in cooperation and partnership with different government departments and spheres of government, the business community and civil society including NGOs, communities and scientists will be closely monitored by DEA.

5. REPORTING

5.1. The Service Provider/s will submit monthly and quarterly progress reports to the Programme manager, within 4 days after the end of each month for the duration of the project.
6. **MONITORING PROGRESS ON ASSIGNMENTS**

6.1. The Programme Manager shall undertake the ongoing management of the Service Level Agreement.

7. **CONTINUITY AND PROFILE OF SENIOR STAFF ON THE PROJECT**

7.1. The Service Provider/s must guarantee the presence of the senior in charge of fieldwork throughout the duration of the contract. If the senior consultant has to leave the project, a period of at least a month is required in which the senior consultant must work parallel with the next person (senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.

8. **CONDITIONS OF BID**

8.1. Bids will be subject to the following Supply Chain Management conditions:

8.1.1 The Preferential Procurement Regulations, 2011 issued in terms of section 5 of the Preferential Procurement Policy Framework Act (Act No 5 of 2000), aligned with the aims of the Broad Based Black Economic Empowerment Act and its Codes of Good Practice. In accordance with this Act, submissions will be adjudicated in two stages: firstly, on functionality which must be done in terms of the evaluation criteria indicated in section 14 and the minimum threshold referred to in paragraph 9.3 below. A bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation and secondly, only the qualifying bids will be evaluated in terms of the 80/20 or 90/10 preference points systems, where the 80/90 points will be used for price only and the 20/10 points will be awarded in terms of the of the B-BBEE Contributor level as per the B-BBEE Verification Certificate submitted by the service provider.

8.2 The proposal should include, amongst other, the following:

8.2.1 A proposed plan of action;

8.2.2 A list of references; and

8.2.3 Ability to ensure continuing of staff on the project.

9. **SPECIAL CONDITIONS**

9.1. The Curriculum Vitae of the staff who will be available for the duration of the work.
9.2. The bid proposals should be submitted with all required information containing technical information as well as price information (NB: DEA Entity Maintenance form included in the bid documents must be completed and returned with the bid proposals).

9.3. Only bidders who score at least 75% or 75 points for the technical information will be preferred.

9.4. Suppliers/Service Providers are requested to submit the original and valid B-BBEE Status Level Verification Certificate or certified copies thereof issued by verification agencies accredited by SANAS or registered auditors approved by IRBA together with their bids, to substantiate their B-BBEE rating claims, failing which the B-BBEE preference points claimed will be forfeited.

9.5. Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but will not be disqualified from the bidding process. They will score zero (0) points out of 20/10 for B-BBEE.

9.6. A trust, consortium or joint venture must obtain and submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.

9.7. Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.

9.8. A bidder will not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME (Exempted Micro Enterprise) that has the capacity and the ability to execute the sub-contract.

A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME (Exempted Micro Enterprise) that has the capability and ability to execute the sub-contract.

9.9. DEA reserves the right to invite short listed suppliers/companies to present their bid proposals for final decision.

9.10. Bidders must be prepared to work at rates not exceeding those prescribed by the office of the Auditor-General or the Department of Public Service and Administration (DPSA).

9.11. A service level agreement shall be signed with the successful bidder. The successful bidder may not alter its B-BBEE status during the contract period. DEA reserves the right to terminate the contract should the successful bidder no longer meet the B-BBEE requirement.
10. ADDITIONAL INFORMATION ON BID PROPOSAL

10.1. The supplier / service provider should provide details of staff training, highlighting training and development policies and procedures, with specific reference to affirmative action policies and initiatives.

10.2. A breakdown of the hourly tariff inclusive of value-added tax for services rendered. Expenditure incurred without the prior approval of the Programme Manager will not be reimbursed.

10.3. In so far as possible, a comprehensive budget, showing the charge out rates of all the staff to be involved in investigations and also including all other costs factors such as traveling.

10.4. How a joint venture (if the bidders are a joint venture between a BEE firm and a non BEE firm) will split the work between the firms. The detail must be such that DEA can audit the actual work allocation during the delivery to enforce the transfer of skills between the two firms. (The percentage involvement of each company in the joint venture should also be indicated). Please note that all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment.

10.5. DEA will not be held responsible for any costs incurred by the bidder in the preparation and submission of the bids.

10.6. Please take note that DEA is not bound to select any of the firms submitting proposals. DEA reserves the right not to award any of the bids and not to award the contract to the lowest bidding price as well as to renegotiate the bid of the preferred applicant.

10.7. Traveling costs and time spent or incurred between home and office of consultants and DEA head office will not be for the account of DEA.

11. FURTHER INFORMATION

11.1. Should you require any further information in this regard, contact Mrs. Carina Malherbe, tel no. (012) 310 3799 or cmalherbe@environment.gov.za

12. INFORMATION REQUIRED

12.1. Bid Evaluation can only be done on the basis of information, which we asked for. The comprehensiveness of the bid can therefore be decisive in the awarding thereof.
13. **PAYMENT TERMS**

13.1. DEA undertakes to payout in full within 30 (thirty) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

14. **EVALUATION CRITERIA**

14.1. All bid proposals submitted will be evaluated in accordance with the 80/20 principle and the following evaluation criteria.

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>PRICE</td>
<td>80</td>
</tr>
<tr>
<td>B.</td>
<td>FUNCTIONALITY</td>
<td>100</td>
</tr>
<tr>
<td>1.</td>
<td>Bidder understands the brief and the methodology to be employed.</td>
<td>15</td>
</tr>
<tr>
<td>2.</td>
<td>Capability (number) of project team members to handle the project (submit names and Curricula Vitae).</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Project work plan / timeframes to achieve and complete the project (project work flow) with clear indication of understanding the purpose and scope of the work and the respective parties’ roles and functions in this project.</td>
<td>20</td>
</tr>
<tr>
<td>4.</td>
<td>Appropriate experience in the fields of research and compiling simplified research information/results on biodiversity and biotechnology and appropriate experience in economics and market analyzes.</td>
<td>35</td>
</tr>
<tr>
<td>6.</td>
<td>Quality of the Bid – The bid is well structured, laid-out, formatted and organized.</td>
<td>10</td>
</tr>
<tr>
<td>C.</td>
<td>B-BBEE Status Level Contributor</td>
<td>20</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>B-BBEE Status Level Contributor</th>
<th>Number of points (80/20)</th>
<th>B-BBEE Status Level Contributor</th>
<th>Number of points (80/20)</th>
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<tbody>
<tr>
<td>1</td>
<td>20</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>2</td>
<td>18</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>16</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>12</td>
<td>Non–compliant contributor</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
NB: A bid will not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score 0 out of a maximum of 10 or 20 points for B-BBEE.

IN EVALUATING THE TECHNICAL INFORMATION CONTAINED IN THE BID, THE EVALUATION COMMITTEE WILL BE GUIDED BY THE FOLLOWING:

- Bidder’s understanding of the brief – The bid provides a clear indication that the bidder fully understands the purpose and scope of the work and the bidders’ own roles and functions in this regard.
- Capability and experience – The bid provides a clear indication that the bidder’s team comprises people with the necessary experience, skills, qualifications, knowledge and skills required to ensure the efficient and effective generation of the required deliverables to the highest standards of quality.
- Track Record – The bid provides clear information on previous, relevant projects that confirm that the bidder has the required experience and success track record in the area of general project management and management related projects.
- Quality of the Bid – The bid is structured, laid-out, formatted and organised in such a way that the evaluation committee is easily able to access the bid in accordance with the evaluation criteria and are provided with an insight into the quality of deliverables that may be expected from the bidder if successful.
PART 2

To be signed between the Service Provider awarded and the department

AGREEMENT

between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS DEPARTMENT OF ENVIRONMENTAL AFFAIRS

and

******
AGREEMENT

between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS DEPARTMENT OF ENVIRONMENTAL AFFAIRS, HEREINAFTER REFERRED TO AS "THE DEPARTMENT"
Address: Fedsure Forum Building
Corner of Van der Walt and Pretorius Streets
PRETORIA

Represented by .................................................................
In his/her capacity as ...........................................................
Duly authorised to enter into this Agreement

and

.................................................................
HEREINAFTER REFERRED TO AS "THE CONSULTANT"

Address:

Represented by .................................................................
In his/her capacity as ...........................................................
Duly authorised to enter into this Agreement
1. **DEFINITIONS**

1.1. “Director-General” refers to the person appointed as the Head of the Department of Environmental Affairs;

1.2. “the Agreement” means this Agreement, all Annexures and amendments hereto;

1.3. “the Department” means the Government of the Republic of South Africa in its Department of Environmental Affairs;

1.4. “the Parties” means the Department and the Consultant;

1.5. “Accounting Officer” means the Director-General.

1.6. “Project” means the projects referred to in clause 2.3

2. **APPOINTMENT AND ACCEPTANCE**

2.1. The Department hereby appoints the Consultant to act as an independent contractor and not as an agent or employee of the Department.

2.2. The Consultant hereby accepts the appointment and undertakes to execute his/her duties and responsibilities in accordance with the terms and conditions of the Agreement.

2.3. The Consultant agrees to make the services of_________________ available for the performance of the____________________ on the following project/projects:

   2.3.1. ………………………………………………………………

   2.3.2. ………………………………………………………………

   2.3.3. ………………………………………………………………

3. **DURATION OF THE AGREEMENT**

3.1. The rights and obligations of the parties of this agreement shall commence on the date of signature by the department and terminate work has been accepted and payment effected.

4. **RIGHTS AND RESPONSIBILITIES OF THE CONSULTANT**

4.1. The Consultant shall not have the power to enter into any agreement(s) or to otherwise bind or incur liability on behalf of the Department.

4.2. The Consultant shall ensure that its actions do not result in a legal claim against the department by any party being investigated.
4.3. The Consultant shall exercise the highest degree of skill, care and diligence that can be expected of its profession.

5. **DUTIES OF THE DEPARTMENT**

5.1. The Department shall ensure that the Consultant is afforded reasonable, necessary support and assistance by the Department to effectively perform its duties and responsibilities in terms of the Agreement.

5.2. I, (Designated person) shall act as the Project Officer, for control, ad hoc instructions and communication between the parties.

6. **SCOPE OF WORK**

6.1. The research to determine the extent and scope of the bioprospecting industries in South Africa and the scope and extent of utilization of indigenous biological resources for bioprospecting, costing and business for each project activity must provide the following information in a format to be provided by the department:

   6.1.1. A costing of the project which must include the following –

   6.1.1.1. A breakdown of the cost per standard item, activity and deliverable. (definitions could change after re-evaluation of business plan)

   6.1.1.2. An opinion as to whether the cost is reasonable in relation to the outputs the project will deliver.

7. **DELIVERABLES**

7.1. The Consultant must submit a schedule of expected deliverables on the project within 2 weeks of the date of signature of this agreement.

8. **FEES PAYABLE**

8.1. The fee for the project will be R____________. Interim payments could be arranged coupled to deliverables or this fee will be broken up into both upfront payments and monthly payments as agreed by the parties involved.

8.2. Payment shall be made to the consultant within 30 days after receipt of a satisfactory and specified accounts, certified done and payable by the____________________

8.3. All payments shall be made directly into the bank account of the Consultant.
9. **REIMBURSABLE EXPENSES**

9.1. The Consultant will be compensated directly by the Department during his/her contract period for the following expenses which are reasonably directly related to the appointment, at rates approved for the Public Service and in accordance with normal departmental procedures:

9.1.1. The cost of accommodation (three star equivalent) and meals in accordance with the Department’s policy, if the Consultant performs duties away from his/her headquarters.

9.1.2. Air transport (economy class equivalent).

9.1.3. The use of a private motor vehicle for purposes relating to this contract.

9.1.4. Class A Car rental in cases where the Consultant is away from headquarters when performing official duties.

9.1.5. Other expenses such as but not limited to parking, and toll gate fees, incurred in the execution of his / her duties.

9.1.6. Expenses that are not provided for in this agreement will not be paid.

9.2. The address of the headquarters of the Consultant in this regard is ____________________________________.

10. **OVERHEADS OF THE CONSULTANT**

10.1. The Consultant will be responsible for the provision of all accommodation, equipment and other office infrastructure required for the execution of this contract.

11. **OWNERSHIP AND PUBLICATION OF REPORTS**

11.1. The Department will become the owner of the information, documents, programmes, advice, recommendations and reports collected, furnished and/or compiled by the Consultant during the course of, and for the purpose of executing this Agreement, all of which will be handed over to the Department on request, but in any event on the termination of this Agreement for whatever reason. The Consultant relinquishes its right of retention of any other rights to which it may be entitled.

11.2. The copyright of all documents, programmes, recommendations and reports compiled by the Consultant during the course and for the purposes of finalising the project will vest in the Department, and may not be reproduced or distributed or made available to any person outside the Department’s service, or to any institution in any way, without the prior written consent of the Department.
11.3. In the event of the Consultant providing documents or any other data to the Department, the development of which has not been at the expense of the Department, copyright shall not be vested in the Department. The Consultant shall be required to indicate in advance to which documents and/or materials, this provision applies.

11.4. The Consultant hereby indemnifies the Department against any action, claim, damage or legal cost that may be instituted against the Department on the grounds of an alleged infringement of copyright of any other intellectual property which results directly from an action of the Consultant acting in the execution of the scope of work referred to in clause 6.

11.5. All information, documents, recommendations, programmes, project records and reports collected or compiled must be regarded as confidential and may not be communicated or made available to any person outside the Department’s service and may not be published either during the currency of the Agreement, or after termination thereof without the prior written consent of the Department.

11.6. The Department hereby permits the Consultant to copy and distribute all information, documents, recommendations, programmes and reports collected and compiled by the Consultant during the course and for the purpose of the finalisation of the project, solely for the purpose and in the execution of the Consultant's obligations in terms of this Agreement.

12. NO AGENCY OR PARTNERSHIP

12.1. The relationship between the Parties in terms of the Agreement shall involve a close collaboration between two independent contracting Parties and in the circumstances shall not imply any partnership in the legal sense, nor shall it constitute either Party the agent or authorised representative of the other Party unless a specific delegation or instruction to act on behalf of the Department is given by the Director-General.

13. LIMITATION OF CESSION

13.1. The rights and obligations of the Parties in terms of this Agreement shall be personal and incapable of being ceded, assigned or delegated by either of them to any other person outside of the Consultant or the Department, save with the written consent of the other Party.

13.2. Each Party warrants that he is acting as a principal and not as an agent for an undisclosed principal.
14. **INDULGENCES**

14.1. No extension of time, latitude or other indulgence which may be given or allowed by either Party to the other shall constitute a waiver or alteration of this Agreement, or affect such Party’s rights, or prevent such Party from strictly enforcing due compliance with each and every provision of this Agreement.

15. **INTELLECTUAL PROPERTY**

15.1. The Consultant undertakes to obtain the necessary consent from the proprietors or their licensees should it make use of the intellectual property of any other person.

15.2. The Consultant further indemnifies the Department against any claim of action (including costs) caused by or arising from the failure to obtain such consent.

16. **TERMINATION OF AGREEMENT**

16.1. In the event of a breach by the Consultant of any of the terms and conditions of this Agreement, and in the event that the Consultant fails to remedy such breach within seven (7) working days after receiving written notice from the Department to do so, the Department shall be entitled without prejudice to any other right it might have, to exercise all or any number of the following rights:

16.1.1. To suspend further payments to the Consultant;

16.1.2. To appoint any other person or persons to complete the execution of the project, in which event the Consultant shall be held liable for costs incurred in the appointment of such person or persons as well as reasonable costs related to the delayed project.

16.2. Any dispute arising from or in connection with this Agreement shall be referred to arbitration.

16.3. The Department may terminate the Agreement should the Consultant make himself guilty of misconduct in terms of the code of conduct of its profession or if the Consultant acts dishonestly or contrary to the integrity which is required by its profession.

16.4. In the event of any breach by the Department of the terms and conditions of this Agreement, and in the event of the Department remaining in default after seven (7) working days written notice calling for rectification of the matter, the Consultant shall be entitled to:

16.4.1. Enforce strict compliance with the terms and conditions of the Agreement; or

16.4.2. To cancel the Agreement.

16.5. In the event of the Agreement being terminated for whatever reason, the Consultant will be entitled to payment for work done for acceptable deliverables for which it had not yet been paid.
16.6. If, owing to circumstances beyond the control of the Consultant, it becomes impossible for the Consultant to fulfil any of its obligations in terms of this Agreement, the Department, upon receipt of a written request from the Consultant, shall consider granting the Consultant the necessary permission to defer such performance for such period as may be required under the circumstances, which permission shall not be withheld unreasonably.

16.7. The Department reserves the right to terminate this Agreement or temporarily defer the work, or any part thereof, at any stage of completion, should it be decided not to proceed with the project. The Department may terminate the agreement by giving ten (10) days notice to the Consultant. Should the Agreement be so terminated the Consultant shall only be paid for the appropriate portion of the work completed.

17. **DISPUTE RESOLUTION**

17.1. The terms of this clause shall apply if the Parties agree in writing within ten (10) working days after failure of negotiations of the parties to reach an agreement on a dispute, that the dispute be submitted to arbitration.

17.2. Notwithstanding anything to the contrary contained in this Agreement, it is agreed that irrespective of the fact that the matter is referred to negotiation, litigation in court or arbitration, the decision of the Department on the issue involved will immediately be given effect to by the Consultant and the Consultant shall proceed with the project works with all diligence, unless the parties agree otherwise in writing.

17.3. The arbitrator shall be a person agreed upon between the Parties and failing agreement, the arbitrator shall be nominated by the President of the Transvaal Law Society or its successors.

17.4. The Party instituting these proceedings shall appoint the arbitrator and the arbitrator shall notify the Parties beforehand of the remuneration required by him/her for his/her services.

17.5. Within thirty (30) working days after receipt of the notice in 17.4 each Party shall submit to the arbitrator a full statement of its case in which shall be set out all the evidence, sworn statements, facts, submissions and expert opinions supporting or proving such Party’s contention in regard to the matter in dispute and serve a copy thereof on the other Party.

17.6. Within fourteen (14) working days of receipt of such a copy of the other party’s statement of case either Party may submit a further supplementary statement to the arbitrator and serve a copy on the other Party.
17.7. If requested by the arbitrator, the Parties may submit and serve further statements within fourteen (14) working days of the request.

17.8. The arbitrator shall then consider and decide the dispute on the papers before him/her without any legal representation or appearance by the Parties.

17.9. If the arbitrator considers that he/she cannot decide the matter on the papers before him/her he/she may call for other evidence or for witnesses to testify at a place determined by him/her in the presence of the Parties who may also question such witnesses.

17.10. The arbitrator shall be entitled to make such award, including an award for specific performance, an interdict, damages or otherwise as his/her discretion may deem fit and appropriate.

17.11. The arbitrator shall decide the dispute according to the Law of South Africa.

17.12. The arbitrator shall at all times have regard to the intention of the Parties and shall resolve the dispute in a summary manner.

17.13. Any award made by the arbitrator:

17.13.1. Shall be final and binding upon the Parties;

17.13.2. Shall be carried into effect by the Parties;

17.13.3. May only be made an order of the Court if the Party concerned fails to heed to the terms of the award; and

17.13.4. May include an order directing the unsuccessful Party to pay the costs of the arbitrator and the necessary and proper expenses incurred by the successful Party.

17.14. This clause shall survive the termination of the Agreement after termination thereof for whatever reason.

17.15. This clause shall constitute each Party’s irrevocable consent to the arbitration proceedings and no Party shall be entitled to withdraw therefrom or to claim that such Party is not bound by this clause.

17.16. If a Party fails to take part in these proceedings, such conduct shall constitute consent to an award being made against such Party.

18. INTERPRETATION

18.1. In this Agreement, except where the context otherwise requires

18.2. The singular includes the plural; and

18.3. Any reference to a natural person includes a body corporate, firm or association.

18.4. The headnotes to the clauses of this Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.
18.5. Words and phrases defined in any clause shall bear the meanings assigned thereto.
18.6. The various parts of the Agreement are severable and may be interpreted as such.
18.7. The expressions listed in Clause 1 bear the meaning assigned to them and cognate expressions bear corresponding meanings.
18.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.

19. GENERAL
19.1. Any waiver of any term or condition of this Agreement shall be of no force and effect unless reduced to writing and duly signed by both Parties.
19.2. The Agreement shall be governed by, construed and interpreted according to the law of the Republic of South Africa.
19.3. The Parties agree that the High Court, Pretoria shall have jurisdiction in respect of any matter arising from this Agreement.

20. DOMICILium CITANDI ET EXECUTANDI
20.1. The Department chooses as its domicilium citandi et executandi for all purposes arising from this Agreement, to serve all notices and legal documents:

STREET ADDRESS: FEDSURE FORUM BUILDING
CNR VAN DER WALT & PRETORIUS STREETS
PRETORIA
0001
POSTAL ADDRESS: PRIVATE BAG X447
PRETORIA
0001
TELEPHONE NUMBER: (012)
FAX NUMBER: (012)

20.2. The Consultant chooses as its domicilium citandi et executandi for all purposes arising from this Agreement, to serve all notices and legal documents
20.3. Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its domicilium citandi et executandi to another physical address within the Republic of South Africa.

20.4. Any notice in terms of the conditions of the Agreement must either be:
   20.4.1. Delivered by hand during normal business hours of the recipient; or
   20.4.2. Sent by prepaid registered post to the address chosen by the addressee; or
   20.4.3. Sent via facsimile.

20.5. A notice in terms of the provisions of the Agreement will be considered to be duly received:
   20.5.1. if hand-delivered on the date of delivery; or
   20.5.2. if sent by registered post, ten (10) days after the date it was posted unless the contrary is proved;
   20.5.3. if sent via facsimile, on the same day of dispatch.

20.6. Notwithstanding anything to the contrary contained or implied in this Agreement, the written notice of communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

THUS DONE AND SIGNED BY THE DEPARTMENT AT ........................................ON THIS............... DAY OF ............................................. 2012

AS WITNESS

__________________________
SIGNATURE
For THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA IN ITS
DEPARTMENT OF ENVIRONMENTAL
AFFAIRS

___________________________________________
SIGNATURE

THUS DONE AND SIGNED BY THE DEPARTMENT AT ................................... ON THIS.......... DAY
OF ............................................. 2012
AS WITNESS

___________________________________________
SIGNATURE

For THE CONSULTANT

___________________________________________
SIGNATURE
SUPPLEMENTARY INFORMATION

South Africa is the third most biological diverse country in the world. This biological richness provides an important basis for economic growth and development that underpins the well being of our society. At the same time, loss of biodiversity places features of this country’s economic growth and quality of life at risk, and reduces socio-economic options for the future generations.

There is an increasing recognition of the value of biodiversity in quantifiable economic terms, and its essential role in promoting sustainable development and poverty alleviation. If the economic value of biodiversity is not included in decision making processes, sustainable development will not be achieved. In an effort to start addressing this challenge, South Africa held a Green Economy Summit in May 2011, where a Green Economy model was developed. This Green Economy model was subsequently adopted by Cabinet as one of the key economic drivers in the New Growth Path.

Some of the possibilities of use of biodiversity includes the development and production of drugs (medicines), industrial enzymes, food flavours, cosmetics, emulsifiers, oleoresins, colours and extracts. Such uses are however regulated through the National Environmental Management Biodiversity Act, 2004 (Act no 10 of 2004) (NEMBA) and the Bioprospecting, Access and Benefit Sharing Regulations, 2008.

The legislation defines bioprospecting as any research on, development or application of indigenous biological resources for commercial or industrial exploitation, and includes:

- The systematic search, collection or gathering of indigenous biological resources or making extractions from such resources for purposes of research, development or application;
- The utilization of information of traditional uses of indigenous biological resources by indigenous communities as basis for research and development; and
- Research on, or the application, development or modification of, any such traditional uses for commercial or industrial exploitation.

Furthermore, the legislation defines commercialisation in relation to indigenous biological resources as follows:

- The filing of a complete intellectual property (patent) application in South Africa and elsewhere;
- Obtaining or transferring any intellectual property rights or other rights;
Commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; or the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours and extracts.

The effective implementation of the legislative provisions on the use of indigenous biological resources depends on knowledge and understanding of the sectors which utilize such material for research, development or application. Therefore, a consultant is required to assist the Department of Environmental Affairs to determine the extent of bioprospecting industries in South Africa and the utilization of indigenous biological resources for bioprospecting, and identify possible areas of development.