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GENERAL NOTICE

NOTICE 73 OF 2014

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS
NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004
(ACT NO. 10 OF 2004)**

DRAFT AMENDMENT REGULATIONS ON BIO-PROSPECTING, ACCESS AND BENEFIT-SHARING

I, Bomo Edna Edith Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention, under section 97(1), (e), (f), (g) and (h) read with section 100 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), to make regulations on bio-prospecting, access and benefit-sharing set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days of publication of this notice in the *Gazette*, written representations on, or objections to, the proposed regulations to the following addresses:

By post to: The Director-General: Environmental Affairs
 Attention: Acting Director: Bioprospecting and Bioeconomy
 Private Bag X447
 PRETORIA
 000

By hand at: 2nd Floor (Reception), Fedsure Forum Building, 315 Pretorius Street, Pretoria.

By fax to: 086 530 9607

By fax to: 086 530 9607, and by e-mail to: BABS@environment.gov.za

Any inquiries in connection with the draft regulations can be directed to Ms Lactitia Tshitwamulomoni at (012) 310 3986 or Mr Ntambudzeni Nepfumembe at (012) 310 3065.

Comments received after the closing date may not be considered.



**BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise—

“applicant” means a person who has submitted a permit application in terms of these Regulations;

“benefit-sharing agreement” means an agreement in the form of Annexure 10 to these Regulations, concluded between an applicant for a permit and a stakeholder or stakeholders identified in terms of section 82(1)(a) and (b) of the Act, which provides for sharing by the stakeholder or stakeholders in any future benefits that may be derived from bioprospecting to which the application relates;

“bioprospecting permit” means a permit issued in terms of these Regulations read with section 88 of the Act, and may be authorised in terms of any of the following types of permits:

- (a) discovery phase export permit;
- (b) biotrade permit;
- (c) bioprospecting permit; or
- (d) integrated biotrade and bioprospecting permit.

“biotrade” means the buying and selling of indigenous biological resources for the purpose of—

- (a) bioprospecting;
- (b) product development; or
- (c) product manufacturing.

“biotrader” means a person who engages in biotrade activity;

“biotrade permit” means a permit issued in terms of these Regulations read with section 88 of the Act;

“Bioprospecting Trust Fund” means the Fund established by section 85(1) of the Act;

“confidential information” means information which, if disclosed, may be detrimental to the commercial or financial interests of a party to a benefit-sharing agreement, and-

(a) includes—

- (i) information about research being or to be carried out including details of species to be collected and areas in which specified species are to be collected;
- (ii) financial, commercial, scientific or technical information including trade secrets;
- (iii) indigenous knowledge if the disclosure of that knowledge may be detrimental to the relevant indigenous community; but

(b) excludes information—

- (i) that has already been disclosed through publication in a scientific journal;
- (ii) if the parties consent to its disclosure;

“discovery phase export permit” means a permit issued in terms of these Regulations read with section 88 of the Act;

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

“integrated biotrade and bioprospecting permit” means a permit issued in terms of these Regulations read with section 88 of the Act;

“material transfer agreement” means an agreement in the form of Annexure 9 to these Regulations, concluded 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 to whom the Premier has assigned responsibility for environmental affairs;

“NEMA” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

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

“traditional use or knowledge” refers to the customary utilisation or knowledge of indigenous biological resources by an indigenous community, in accordance with written or unwritten rules, usages, customs or practices traditionally observed,

accepted and recognised by them, and include discoveries about the relevant indigenous biological resources by that community.

Purpose of Regulations

2. (1) The purpose of the Regulations is to—

- (a) prescribe the notification notice for the discovery phase of bioprospecting involving any indigenous biological resources contemplated in section 81A(2) of the Act;
- (b) regulate the permit system set out in Chapter 7 of the Act insofar as that system applies to bioprospecting involving any indigenous biological resources or export from the Republic of any indigenous biological resources for the purpose of bioprospecting;
- (c) indicate the issuing authorities for bioprospecting permits;
- (d) set out the form and content of, and requirements and criteria for benefit-sharing and material transfer agreements; and
- (e) set out the administration process of the Bioprospecting Trust Fund.

CHAPTER 2

ISSUING AUTHORITY

Identification of issuing authority

3. (1) The Minister is the issuing authority in terms of section 1 of the Act for—

- (a) discovery phase export permits;
 - (b) biotrade permits;
 - (c) bioprospecting permits; or
 - (d) integrated biotrade and bioprospecting permits.
- (2) The Minister and an MEC may agree in writing that the permit or permits contemplated in subregulation (1) may be dealt with by the MEC.
- (3) Assignment of powers and duties between the Minister and an MEC contemplated in subregulation (2) must comply with section 41 of NEMA.
- (4) Delegation of powers and duties between the Minister and an MEC contemplated in subregulation (2) must comply with section 42 of NEMA.

Where to submit notifications and applications

4. (1) The notification notice to the Minister contemplated in section 81A of the Act must be submitted to the Department.

- (2) If the Minister is the issuing authority in respect of an application for any of the permits contemplated in regulation 13 of these Regulations, such application must be submitted to the Department.
- (3) If the Minister has assigned or delegated powers and duties contemplated in regulation 3(1) and (2) of these Regulations to the MEC, the application must be submitted to the relevant provincial department responsible for environmental affairs.

Assistance by issuing authority to applicant

5. (1) The issuing authority may upon request by an applicant—
 - (a) give the applicant access to any guidelines, information on practices that have been developed or any other information in the possession of the issuing authority that is relevant to the permit application; or
 - (b) advise the applicant, either in writing or by way of discussions, of the nature and extent of any of the processes that must be followed in order to comply with the Act and these Regulations.
- (2) The issuing authority may, on written request, furnish the applicant with officially adopted minutes of any meeting held or discussion that took place, contemplated in subregulation (1)(b), between the issuing authority and the applicant.
- (3) The issuing authority and the applicant may, on written request by the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act, provide access to the officially adopted minutes of meetings contemplated in subregulation (2) to such a stakeholder.

Consultation between the issuing authority and relevant stakeholders

6. (1) The issuing authority may consult with the relevant stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act, after the submission of an application by the applicant for any of the applications for permits contemplated in regulation 13 of these Regulations.
- (2) When consulting with the relevant stakeholder or stakeholders the issuing authority must have regard to section 82(4) of the Act as well as protecting any interests that the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act may have in the proposed bioprospecting project.

Issuing authority's right of access to information

7. (1) The issuing authority is entitled to all information that reasonably has or may have the potential to influence any decision with regard to an application for any of the applications for permits contemplated in regulation 13 of these Regulations unless access to that information is protected by law.
- (2) Unless access to the information contemplated in subregulation (1) is protected by law, an applicant or relevant stakeholder or stakeholders

contemplated in section 82(1)(a) and (b) of the Act in possession of that information must, on request by the issuing authority, disclose that information to the issuing authority, whether or not such information is favourable to the applicant.

Criteria to be taken into account by issuing authority when considering applications

8. (1) If the issuing authority considers an application for any of the permits contemplated in regulation 13 of these Regulations, the issuing authority must—

- (a) comply with the Act;
- (b) take into account all relevant factors, which may include—
 - (i) documentary proof that the relevant stakeholders have been identified by the applicant in accordance with section 82(1) of the Act;
 - (ii) documentary proof that there has been disclosure of relevant information to all the stakeholders that have been identified;
 - (iii) documentary proof that the applicant has obtained 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, and material transfer and benefit-sharing agreements have been entered into with such stakeholders;
 - (iv) documentary proof that the applicant has obtained the prior consent of affected indigenous communities, and benefit-sharing agreements have been entered into with such communities;
 - (v) documentary proof that the applicant has complied with Threatened or Protected Species Regulations, 2007, CITES Regulations, 2010 and relevant provincial legislation where applicable.
 - (vi) any comments received from the relevant stakeholders or affected indigenous communities during the consultation meetings between the issuing authority and relevant stakeholders;
 - (vii) the conservation of biodiversity in South Africa;
 - (viii) the economic development of South Africa;
 - (viii) enhancing the scientific knowledge and technical capacity of South African people and institutions; and

- (x) any guidelines and departmental policies that have been adopted or any other information in the possession of the issuing authority that is relevant to the application.

Timeframes for issuing authority

9. The issuing authority must meet timeframes applicable to the issuing authority in terms of these Regulations.

Notification of decision on applications

10. After an issuing authority has reached a decision on any of the applications for a permit contemplated in regulation 13 of these Regulations, the issuing authority must, in writing and within 15 (fifteen) working days—
 - (a) notify the applicant of the decision;
 - (b) notify the stakeholders contemplated in section 82(1)(a) and (b) of the Act; and
 - (c) give reasons for the decision to the applicant and stakeholders.

Registry of applications and record of decisions

11. The issuing authority must keep—
 - (a) a register of all applications received by the issuing authority in terms of these Regulations; and
 - (b) records of all decisions in respect of the applications.

CHAPTER 3

PERMIT SYSTEM FOR BIOPROSPECTING

Part 1: Discovery phase of bioprospecting

Notification notice

12. The notification notice to the Minister contemplated in section 81A of the Act by any person who engages in the discovery phase of bioprospecting involving any indigenous biological resources must be submitted in the form of Annexure 1 to these Regulations.

Part 2: Applications for permits

Permits

13. Bioprospecting may be authorised in terms of any of the following types of permits:

- (a) discovery phase export permit;
- (b) biotrade permit;
- (c) bioprospecting permit; or
- (d) integrated biotrade and bioprospecting permit.

Discovery phase export permit

14. (1) A person who export from the Republic any indigenous biological resources for the purpose of bioprospecting for commercial research must obtain a discovery phase export permit from the issuing authority, after the notification notice to the Minister in terms of section 81A(1) of the Act.
- (2) An application for a discovery phase export permit must be submitted in the form of Annexure 2 to these Regulations.
- (3) An application for a discovery phase export permit must be accompanied by the following:
- (a) prior notification notice to the Minister in terms of section 81A(1) of the Act;
 - (b) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources; and
 - (c) non-refundable fee specified in Annexure 3 to these Regulations.

Biotrade permit

15. (1) A person who engages in biotrade must obtain a biotrade permit from the issuing authority.
- (2) An application for a biotrade permit must be submitted in the form of Annexure 4 to these Regulations.
- (3) An application for a biotrade permit must be accompanied by the following:
- (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (b) signed material transfer agreement between the biotrader and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (c) signed benefit-sharing agreement between the biotrader and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of

the Act for the provision of or access to the indigenous biological resources; and

- (d) non-refundable fee specified in Annexure 3 to these Regulations.
- (4) A biotrade permit may be issued for a period not exceeding the maximum period of validity.

Bioprospecting permit

16. (1) A person who engages in the commercialisation phase of bioprospecting involving any indigenous biological resources must obtain a bioprospecting permit from the issuing authority.
- (2) An application for a bioprospecting permit must be submitted in the form of Annexure 4 to these Regulations.
 - (3) An application for a bioprospecting permit must be accompanied by the following:
 - (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (b) signed material transfer agreement between the bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (c) signed benefit-sharing agreement, if such an agreement has been signed between the bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act, or if it has not been possible to conclude such agreement, a request for the intervention of the issuing authority for the purposes of facilitating the negotiations for such agreement in accordance with section 82(4)(b) of the Act; and
 - (d) non-refundable fee specified in Annexure 3 to these Regulations.
 - (4) A bioprospecting permit may be issued for a period not exceeding the maximum period of validity.

Integrated biotrade and bioprospecting permit

17. (1) A person who engages in biotrade and the commercialisation phase of bioprospecting must obtain an integrated biotrade and bioprospecting permit from the issuing authority.
- (2) An application for an integrated biotrade and bioprospecting permit must be submitted in the form of Annexure 4 to these Regulations.
 - (3) An application for an integrated biotrade and bioprospecting permit must be accompanied by the following:

- (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (b) signed material transfer agreement between the biotrader and or bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (d) signed benefit-sharing agreement, if such an agreement has been signed between the biotrader and or bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act, or if it has not been possible to conclude such agreement, a request for the intervention of the issuing authority for the purposes of facilitating the negotiations for such agreement in accordance with section 82(4)(b) of the Act; and
 - (e) non-refundable fee specified in Annexure 3 to these Regulations.
- (4) An integrated biotrade and bioprospecting permit may be issued for a period not exceeding the maximum period of validity.

Submission of permit applications

18. (1) An application for any of the permits contemplated in regulation 13 of these Regulations must be submitted to the issuing authority in the following manner:
- (a) by e-mail;
 - (b) by registered mail;
 - (c) by ordinary mail;
 - (d) by hand delivery; or
 - (e) electronically on-line.
- (2) An application for any of the permits contemplated in regulation 13 of these Regulations must contain all information that is required in the prescribed application forms.

Part 3: Consideration of permit applications

Timeframes for issuing authority

19. (1) On receipt of an application submitted for any of the permits contemplated in regulation 13 of these Regulations, and if the issuing authority is satisfied that all the prescribed and requested information has been submitted, the issuing

authority must consider and decide such an application within 120 (hundred and twenty) working days after date of receipt of such an application.

- (2) Where an issuing authority requires additional information to be submitted by the applicant, the issuing authority must within 10 (ten) working days after the date of receipt of such an application and in writing request the applicant to submit such information within 20 (twenty) working days after date of receipt of such a request.
- (3) If the additional information requested is not submitted to the issuing authority within 30 (thirty) working days after such a request, such an application must be deemed withdrawn.
- (4) If the information submitted by the applicant to the issuing authority is sufficient, but the issuing authority is unable to comply with the timeframe contemplated in subregulation (1), the issuing authority must-
 - (a) indicate in writing to the applicant, prior to the lapsing of the timeframe contemplated in subregulation (1), that such an application will be decided within 30 (thirty) working days after the lapsing of the timeframe contemplated in subregulation (1); and
 - (b) provide written reasons to the applicant, prior to the lapsing of the timeframe contemplated in subregulation (1), why the issuing authority will not be able to comply with the timeframe contemplated in subregulation (1).
- (5) Upon the lapsing of the extension contemplated in subregulation (4), the provisions of section 6(2)(g) and (3) of the Promotion of Administrative Justice Act, 2000 will apply.

Factors to be taken into account by issuing authority when considering permit applications

20. When considering an application for any of the permits contemplated in regulation 13 of these Regulations, the issuing authority must consider—
 - (a) all the information and documentation contained in the application form and submitted by the applicant, including any additional information requested by the issuing authority in terms of the Act or these Regulations; and
 - (b) non-refundable fee specified in Annexure 3 to these Regulations.

Additional factors to be taken into account by issuing authority when considering discovery phase export permits

21. When considering an application for a discovery phase export permit, the issuing authority must also take into consideration the following factors, in addition to the factors set out in regulation 20 of these Regulations:

- (a) prior notification notice to the Minister in terms of section 81A(1) of the Act; and
- (b) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources.

Additional factors to be taken into account by issuing authority when considering biotrade permits

22. When considering an application for a biotrade permit, the issuing authority must also take into consideration the following factors, in addition to the factors set out in regulation 20 of these Regulations:
- (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (b) signed material transfer agreement between the biotrader and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act; and
 - (c) signed benefit-sharing agreement between the biotrader and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act.

Additional factors to be taken into account by issuing authority when considering bioprospecting permits

23. When considering an application for a bioprospecting permit, the issuing authority must also take into consideration the following factors, in addition to the factors set out in regulation 20 of these Regulations:
- (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
 - (b) signed material transfer agreement between the bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act; and
 - (c) signed benefit-sharing agreement between the bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act.

Additional factors to be taken into account by issuing authority when considering integrated biotrade and bioprospecting permits

24. When considering an application for an integrated biotrade and bioprospecting permit, the issuing authority must also take into consideration the following factors, in addition to the factors set out in regulation 20 of these Regulations:

- (a) prior consent from the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources;
- (b) signed material transfer agreement between the biotrader and or bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act; and
- (c) signed benefit-sharing agreement between the biotrader and or bioprospector and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act.

Circumstances in which permits must be refused

25. The issuing authority must refuse to issue any of the permits set out in regulation 13 of these Regulations if the applicant fails to comply with any of the legal requirements set out in regulations 20, 21, 22, 23 and 24 of these Regulations.

Part 4: Issuing of permits

Decision of issuing authority on permit applications

26. (1) A discovery phase export permit may only be issued if the applicant complies with the legal requirements set out in regulations 20 and 21 of these Regulations.
- (2) A biotrade permit may only be issued if the applicant complies with the legal requirements set out in regulations 20 and 22 of these Regulations.
 - (3) A bioprospecting permit may only be issued if the applicant complies with the legal requirements set out in regulations 20 and 23 of these Regulations.
 - (4) An integrated biotrade and bioprospecting permit may only be issued if the applicant complies with the legal requirements set out in regulations 20 and 24 of these Regulations.
 - (5) The issuing authority may consult, before making a decision on any of the permits contemplated in regulation 13 of these Regulations, any person or persons competent to provide technical advice.
 - (6) If the decision of the issuing authority is to grant any of the permits contemplated in regulation 13 of these Regulations subject to certain conditions, the issuing authority must—
 - (a) give reasons for the decision to the applicant if required by the applicant; and
 - (b) inform the applicant of his or her right to appeal against the decision of the issuing authority to the relevant appeal authority.

- (7) If the decision of the issuing authority is to refuse the application for any of the permits contemplated in regulation 13 of these Regulations, the issuing authority must, in addition to the legal requirement set out in section 88(5) of the Act, inform the applicant of his or her right to appeal against the decision of the issuing authority to the relevant appeal authority.
- (8) The issuing authority must not issue any of the permits contemplated in regulation 13 of these Regulations with retrospective effect.

Content of permits

- 27. (1) A discovery phase export permit must be issued in the prescribed form set out in Annexure 5 to these Regulations.
- (2) A biotrade permit must be issued in the prescribed form set out in Annexure 6 to these Regulations.
- (3) A bioprospecting permit must be issued in the prescribed form set out in Annexure 7 to these Regulations.
- (4) An integrated biotrade and bioprospecting permit must be issued in the prescribed form set out in Annexure 8 to these Regulations.

Compulsory conditions applicable to permit holders

- 28. (1) The notification notice to the Minister contemplated in section 81A(1) of the Act must be subject to the conditions that the person who submitted the notification notice must, on an annual basis or timeframe determined by the issuing authority, submit a status report on the discovery phase of the bioprospecting to the issuing authority in a format determined by the issuing authority.
- (2) A discovery phase export permit must be issued subject to the conditions that the permit holder must, on an annual basis or timeframe determined by the issuing authority, submit a status report on the discovery phase of the bioprospecting to the issuing authority in a format determined by the issuing authority.
- (3) A biotrade permit must be issued subject to the conditions that-
 - (a) all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
 - (b) the permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred or paid into the Bioprospecting Trust Fund;

- (c) the permit holder must notify the stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit-sharing agreement that money was transferred or paid into the Bioprospecting Trust Fund;
 - (d) the permit holder must not engage in the commercialisation phase involving the indigenous biological resources to which the permit relates without a bioprospecting permit or an integrated biotrade and bioprospecting permit; and
 - (e) the permit holder must, on an annual basis determined by the issuing authority, submit a status report to the issuing authority in a format determined by the issuing authority.
- (4) A bioprospecting permit must be issued subject to the conditions that-
- (a) all money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
 - (b) the permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred or paid into the Bioprospecting Trust Fund;
 - (c) the permit holder must notify stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit-sharing agreement that money was transferred or paid into the Bioprospecting Trust Fund; and
 - (d) the permit holder must, on an annual basis or timeframe determined by the issuing authority, submit a status report to the issuing authority in a format determined by the issuing authority.
- (5) An integrated biotrade and bioprospecting permit must be issued subject to the conditions that-
- (a) all money due to stakeholders in terms of a benefit-sharing agreement and must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
 - (b) the permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred or paid into the Bioprospecting Trust Fund;
 - (c) the permit holder must notify stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit-sharing agreement that money was transferred or paid into the Bioprospecting Trust Fund; and
 - (d) the permit holder must, on an annual basis or timeframe determined by the issuing authority, submit a status report to the issuing authority in a format determined by the issuing authority.

Validity of permits

29. Any of the permits contemplated in regulation 13 of these Regulations is only valid within the specific area, within the Republic, and involving only the indigenous biological resources relating to such permit.

Period of validity of permits

30. (1) A discovery phase export permit may be issued for a single consignment use.
- (2) A biotrade permit may be issued with a period of validity not exceeding 5 (five) years.
- (3) A bioprospecting permit may be issued with a period of validity not exceeding 5 (five) years.
- (4) An integrated biotrade and bioprospecting permit may be issued with a period of validity not exceeding 5 (five) years.

CHAPTER 4**MATERIAL TRANSFER AGREEMENTS, BENEFIT-SHARING AGREEMENTS
AND THE ADMINISTRATION OF THE BIOPROSPECTING FUND****Part 1: Material transfer agreements and benefit-sharing agreements****Material transfer agreements**

31. (1) Parties to a material transfer agreement are the applicant and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources to which the application for any of the permits relates.
- (2) A material transfer agreement must be in the prescribed format set out in Annexure 9 to these Regulations.
- (3) Before approving a material transfer agreement or any amendment to such an agreement in terms of section 84(2) of the Act, the Minister—
- (a) must be satisfied that the material transfer agreement is fair and equitable to all parties;
 - (b) may consult any person or persons competent to provide technical advice on the material transfer agreement; or
 - (c) may invite public comment on the material transfer agreement provided that no confidential information is made public.

Benefit-sharing agreements

32. (1) Parties to a benefit-sharing agreement are the applicant and the stakeholder or stakeholders contemplated in section 82(1)(a) and (b) of the Act for the provision of or access to the indigenous biological resources to which the application for any of the permits relates.
- (2) If for whatever reason, the stakeholders contemplated in section 82(1)(a) and (b) of the Act cannot be identified for the provision of or access to the indigenous biological resources to which the application for any of the permits relates, the Director-General must enter into a benefit-sharing agreement with the applicant.
- (3) A benefit-sharing agreement contemplated in subregulation (2) must achieve one or more of the following benefits:
- (a) conservation of the indigenous biological resources;
 - (b) support for further research on indigenous biological resources and indigenous knowledge;
 - (c) enhancement of the scientific knowledge and technical capacity to conserve, use and develop indigenous biological resources; or
 - (d) any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa.
- (4) A benefit-sharing agreement must be in the prescribed format set out in Annexure 10 to these Regulations.
- (5) The Minister may not approve a benefit-sharing agreement if it does not provide for the following:
- (a) enhancement of the scientific knowledge and capacity of indigenous communities or organs of state to conserve, use and develop the indigenous biological resources; or
 - (b) any other activity that promotes the conservation, sustainable utilization or commercial development of the indigenous biological resource.
- (6) Before approving a benefit-sharing agreement or any amendment to such an agreement in terms of section 83(2) of the Act, the Minister—
- (a) must be satisfied that the benefit-sharing agreement is fair and equitable to all parties;
 - (b) may consult any person or persons competent to provide technical advice on the benefit-sharing agreement; or
 - (c) may invite public comment on the benefit-sharing agreement provided that no confidential information is made public.

Part 2: Administration of the Bioprospecting Trust Fund

The administration of the Bioprospecting Trust Fund

33. (1) The Bioprospecting Trust Fund established in terms of section 85 of the Act must be managed by the Director-General in terms of the Treasury Regulations issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) For the purposes of complying with the relevant provisions of the Treasury Regulations—
- (a) each benefit-sharing agreement must be regarded as the trust instrument that details the specific purpose for which money received by the Bioprospecting Trust Fund may be used;
 - (b) the Director-General is responsible for the safekeeping and proper use of all money received by the Bioprospecting Trust Fund, in accordance with the relevant benefit-sharing agreement.
- (3) The Director-General must—
- (a) notify permit holders of any of the permits contemplated in regulation 13 of these Regulations of the banking details of the Bioprospecting Trust Fund, which details must be handed to such permit holders on issuance of any of the permits contemplated in regulation 13 of these Regulations;
 - (b) inform the parties to the benefit-sharing agreement of—
 - (i) any money received in respect of such agreement;
 - (ii) the amount due to each stakeholder or stakeholders in terms of such agreement; and
 - (c) distribute all monies received in accordance with the benefit-sharing agreement.
- (4) The Director-General legal obligations in terms of subregulation (3) may be discharged annually unless a different time period is—
- (a) stipulated in the relevant benefit-sharing agreement; or
 - (b) agreed between the Director-General and the parties to a benefit-sharing agreement.
- (5) If for whatever reason, there is money in the Bioprospecting Trust Fund that is not due to any party in terms of the benefit-sharing agreement, the Director-General must use the money for one or more of the following purposes:

- (a) to conserve the indigenous biological resources;
 - (b) to support further research on indigenous biological resources and indigenous knowledge;
 - (c) to build capacity amongst indigenous communities—
 - (i) as to their rights in terms of the Act; and
 - (ii) to enable them to negotiate benefit-sharing agreements that is fair and equitable;
 - (d) to enhance scientific knowledge and technical capacity to conserve, use and develop indigenous biological resources; or
 - (e) any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa.
- (7) 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 another person or body to whom the money should legally be paid;
 - (b) if there is no identifiable person or body to whom the money must be paid, consult any other parties to the relevant agreement as to the distribution of that money and thereafter distribute the money fairly and equitably between remaining stakeholders, if any;
 - (c) if there are no other stakeholders, distribute the money in accordance with subregulation (6) of these Regulations.

CHAPTER 5

GENERAL MATTERS

Offences

34. A person is guilty of an offence if that person—
- (a) contravenes or fails to comply with a condition of a permit issued in terms of these Regulations;
 - (b) contravenes any provisions of these Regulations permits; or
 - (c) permits or allows any person to contravene any of the provisions of these Regulations.

Penalties

35. A person convicted of an offence in terms of regulation 34 of these Regulations is liable to—
- (a) imprisonment for a period not exceeding 5 (five) years;
 - (b) a fine not exceeding 5 (five) million rand, and in the case of a second or subsequent conviction, to a fine not exceeding 10 (ten) million rand or imprisonment for a period not exceeding 10 (ten) years or in both instances to both a fine and such imprisonment; or
 - (c) both a fine and such imprisonment.

Repeal of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008

36. The Bioprospecting, Access and Benefit-Sharing Regulations published under Government Notice No. R. 138, in *Government Gazette* No. 30739 of 8 February 2008 is hereby repealed.

Continuation of things done and permits issued in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008

37. (1) Anything done in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008 and which can be done in terms of these Regulations must be regarded as having been done in terms of these Regulations.
- (2) Any permits issued in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008 that have not expired on the date of coming into effect of these Regulations, must despite the repeal of those Regulations be regarded as having been issued in terms of these Regulations, and remain valid until expiry date.

Pending applications and appeals lodged in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008

38. (1) An application for a permit submitted in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008 and which is pending when these Regulations take effect must be dispensed with in terms of these Regulations.
- (2) An appeal lodged in terms of the Bioprospecting, Access and Benefit-Sharing Regulations, 2008, and which is pending on the date of coming into effect of these Regulations must be dispensed with in terms of the National Appeals Regulations.

Short title and commencement

39. These Regulations are called Bioprospecting, Access and Benefit-Sharing Regulations, 2013, and takes effect on a date published in the *Gazette*.

ANNEXURE 1**DISCOVERY PHASE NOTIFICATION FORM****NOTES ON COMPLETING THE BIOPROSPECTING DISCOVERY PHASE
NOTIFICATION FORM**

1. If insufficient space is provided in this form, additional information may be included by way of Annexure.
2. Sections to the form:
Section A: Details of the Informant.
Section B: Bioprospecting project information.
Section C: Legal-binding Commitment.
 - 2.1 If informant is a juristic person complete section A: paragraphs 1 – 5.
 - 2.2 If informant is a natural person, complete section A: paragraphs 6 – 8.
 - 2.3 All informants must complete sections B and C.
3. Kindly note that all information submitted will be treated as confidential.
4. Documentation required with the notification form:
 - 4.1. Certified copies of identity document / passport of bioprospecting project leader and duly authorised person of juristic body.
5. Duly authorised person of juristic body and project leader must initial all pages.
6. Completed documents must be mailed or hand delivered to:
DIRECTOR: BIOPROSPECTING AND BIODIVERSITY ECONOMY
DEPARTMENT OF ENVIRONMENTAL AFFAIRS
Private Bag X447
PRETORIA
0001
Fedsure Forum Building
315 Pretorius Street
PRETORIA, 0002
7. For enquiries and assistance, please contact the Department of Environmental Affairs:

Mrs. Lactitia Tshitwamulomoni
Control Biodiversity Officer: Bioprospecting

Tel: 012 310 3986
Cell: 082 593 9893
Email: BABS@environment.gov.za

For more information, go to www.environment.gov.za

SECTION A: DETAILS OF THE DISCOVERY PHASE BIOPROSPECTOR

1. NAME OF INSTITUTION OR BODY

--

2. IS THE JURISTIC BODY REGISTERED IN SOUTH AFRICA?

Y	N
---	---

3. IF YES, PROVIDE THE SOUTH AFRICAN REGISTRATION NUMBER OF THE JURISTIC BODY

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

4. IF NOT, IN WHICH COUNTRY IS THE JURISTIC BODY REGISTERED?

PLEASE PROVIDE THE REGISTRATION NUMBER

Country																					
Registration number	<table border="1" style="width: 100%; text-align: center;"> <tr> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> <td style="width: 25px; height: 20px;"></td> </tr> </table>																				

5. CONTACT DETAILS OF THE JURISTIC BODY

Name of contact person:	
Tel No:	
Cellphone No:	
Fax No:	
E-mail:	
Postal Address:	Physical Address:

6. NOTIFICATION BY A NATURAL PERSON

Name of applicant:										
Identity or Passport No:										
Tel No:										
Cellphone No:										
Fax No:										
E-mail:										
Postal Address:						Physical Address:				

7. IS THE INFORMANT AFFILIATED TO A JURISTIC BODY?

Y	N
---	---

8. IF YES, CONTACT DETAILS OF JURISTIC BODY:

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

SECTION B: BIOPROSPECTING PROJECT INFORMATION

8. DETAILS OF BIOPROSPECTING PROJECT LEADER

Name :												
Identity or Passport No:												
Citizenship:												
Tel No:												
Cellphone No:												
Fax No:												
E-mail:												
Postal Address:						Physical Address:						

10. BIOPROSPECTING PROJECT TITLE

--

11. OBJECTIVE OF BIOPROSPECTING PROJECT

--

12. PROPOSED TIMEFRAME

Please provide information on the proposed timeframe of the discovery phase bioprospecting project.

	to	
--	----	--

13. INDIGENOUS BIOLOGICAL RESOURCES

13.1 Set out the scientific classification of all indigenous biological resources for which the discovery phase bioprospecting project notification is submitted, including the family, genus and species, the projected quantity of the resources to be collected or obtained for the discovery phase of the bioprospecting project and the specific area or source from which each resource is to be collected or obtained.

Type of organism (Kingdom)	Family, genus or species and common names	Projected quantity to be used during discovery phase	Format	Source locality data / coordinates	Conservation status
<u>Example:</u> Plant	Asphodelaceae <i>Aloe ferox</i> Cape Aloe /Bitter Aloe /Red Aloe / Tap Aloe	6 kg	Crystals	Albertinia Western Cape 34.11° S 21.35° E	CITES Appendix II

14. PRIOR PERMIT INFORMATION

14.1 Please provide all information on prior permits obtained / applied for regarding the indigenous biological resources.

Collection/harvesting		Export		Import		Land owner permission	
CITES		TOPS					

Species	Country of import/export (if applicable)	Issuing authority	Permit number	Date of issue	Date of Expiry

15. BIOPROSPECTING PROJECT SPONSORS

15.1 Are there South African and / or international sponsors to the project?

South Africa	Y	N
International	Y	N

15.2 Please provide contact details of the sponsor(s)

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

16. TRADITIONAL KNOWLEDGE

16.1 Is the proposed discovery phase bioprospecting project informed by any traditional knowledge associated with the resource to be used?

Y	N
---	---

16.2 If yes, please provide details and source of information **if not confidential**

SECTION C: COMMITMENT

PLEASE COMPLETE THE FOLLOWING COMMITMENT TO COMPLY WITH PERMIT REQUIREMENTS FOR COMMERCIALISATION PHASE OF BIOPROSPECTING PROJECT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004) (NEMBA)

I, _____

hereby declare that if / when the Project entitled: _____

enters into commercialization phase, I will inform the Department of Environmental Affairs and apply for a permit for the commercialisation phase of the bioprospecting project.

I acknowledge that the bioprospecting / integrated export and bioprospecting permit application for the commercialization phase may require signed benefit sharing and material transfer agreements with stakeholders as outlined in NEMBA section 82.

		c	c	y	y	m	m	d	d
--	--	---	---	---	---	---	---	---	---

SIGNATURE OF PROJECT LEADER CAPACITY

DATE

ENDORSEMENT OF JURISTIC BODY, IF APPLICABLE

		c	c	y	y	m	m	d	d
--	--	---	---	---	---	---	---	---	---

NAME

SIGNATURE OF DULY AUTHORIZED

DATE

OFFICER

ANNEXURE 2**APPLICATION FORM FOR A DISCOVERY PHASE EXPORT PERMIT****For office use only**

Reference number here

Notes on completing form:

If insufficient space is provided in this form, additional information may be included by way of annexures.

APPLICANT

Discovery phase notification number: _____

Do you have a valid CITES and/or TOPS export

YES	No
-----	----

 permit for the material to be exported?

If yes, attach a copy and proceed to Section 13

If applicant is a juristic person complete clauses 1-7 below

1. Full name of institution or body: _____

2. Is the juristic body registered in South Africa? Y/N

3. If yes, provide the South African registration number of the juristic body: _____

4. If not, which country is the juristic body registered in and provide the reference Number: _____

5. Provide the contact details of the juristic body (including postal/physical address, telephone, cellphone, fax and e-mail address): _____

6. Name of contact person in juristic body (attach a certified copy of ID document): _____

7. Capacity of contact person: _____

If applicant is a natural person complete clauses 8-12 below

8. Name of applicant: _____

9. Identity number of the applicant (also attach certified copy of ID): _____

10. Contact details of applicant (including postal/physical address, telephone, cellphone, fax and e-mail address): _____

11. Is the applicant affiliated to any juristic body? Y/N

12. If yes, provide the name and contact details of the juristic body (include name of contact person, postal/physical address, telephone, cellphone, fax and e-mail address): _____

RECIPIENT OF INDIGENOUS BIOLOGICAL RESOURCES BEING EXPORTED (IMPORTER)

13. Name of recipient/Importer: _____

14. Contact details of recipient/importer (include postal/physical address, telephone, cellphone, fax and e-mail address): _____

PURPOSE OF EXPORT

15. State the purpose for which the indigenous biological resource/s are to be exported: _____

INDIGENOUS BIOLOGICAL RESOURCES

16. Set out the type of indigenous biological resources for which a permit is sought, the family, genus and species, the part or 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 (scientific and common names) (if possible)	Part of organism to be collected	Quantity	Full locality data (e.g. coordinates, farm name, district)
<i>Example: Plant</i>	<i>Aloe ferox</i>	<i>Leaves</i>	<i>6 kg</i>	

REQUIREMENTS OF OTHER LEGISLATION

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

FEES

18. Has the permit application fee of R50 been paid? Please attach proof of payment. Y/N

Banking details

Signature of applicant for permit:

_____ Date: _____

Capacity of Signatory: _____

Endorsement of juristic body, if applicable:

Name of Juristic body:

Signature of duly authorised officer from juristic body:

_____ Date: _____

ANNEXURE 3**NON-REFUNDABLE FEES FOR PERMITS APPLICATION**

Permits	Category I	Category II		Category III		Category IV	
Export Discovery Phase	R50	R50		R50		Nil	
Biotrade	R500	R1500	R2500	R5000	R7500	R500	R1500
Bioprospecting	R500	R1500	R2500	R5000	R7500	R500	R1500
Integrated Biotrade and Bioprospecting	R500	R1500	R2500	R5000	R7500	R500	R1500

Category I

- Taxable turnover R 0 – R 300 000

Category II

- Taxable turnover R 300 001 – R 750 000
- Proof of notification = discount of R 1 000

Category III

- Taxable turnover R 750 000 and above
- Proof of notification = discount of R 2 500

Category IV

- Bone fide research institutions as published by the Department responsible for science and technology in the *Gazette*
- Proof of discovery phase notification = discount of R 1 000

ANNEXURE 4**APPLICATION FORM FOR A BIOPROSPECTING PERMIT OR BIOTRADE PERMIT OR INTEGRATED BIOTRADE AND BIOPROSPECTING PERMIT****For office use only**

Reference number here

A. PERMIT APPLIED FOR

	New	Renewal
Biotrade permit:	<input type="checkbox"/>	<input type="checkbox"/>
Bioprospecting permit	<input type="checkbox"/>	<input type="checkbox"/>
Integrated Biotrade and Bioprospecting permit	<input type="checkbox"/>	<input type="checkbox"/>
If renewal, attach progress report(s)		
Previous permit reference number:	_____	
Export registration number:	_____	
VAT registration number:	_____	

B. APPLICANT INFORMATION**1. Details of the permit applicant:**

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

Initial

2. Is the applicant a juristic body or affiliated with a juristic body? Y/N

--

Country of registration:																			
Name of body and affiliation:																			
Accountable person in the juristic body:																			
Tel No:																			
Cellphone No:																			
Fax No:																			
E-mail:																			
Postal Address:										Physical Address:									

4. In respect of the indigenous biological resources set out above, has a notification on the discovery phase bioprospecting research previously been submitted? Y/N

5. Discovery phase notification reference number: _____

6. Provide the following information in the Table below:

- Scientific and common names of the indigenous biological resource (IBR) e.g. plant, animal, microorganism, genetic material, derivative;
- The part or state of the resource to be collected / utilized;
- The quantity required; and
- The locality data where the material will be sourced from.

Initial

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099
1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	

D. INDIGENOUS BIOLOGICAL RESOURCES

Scientific and common names	Part of resource to be utilised ¹	Physical state of resource ²	Quantity ³	Locality / source information ⁴	Traditional Knowledge ⁵ (Y/N)
<i>Aloe ferox</i> Bitter alwyn	Sap from leaves	Crystals	100 kg	xxS ## E Mosselbaai	

E. APPLICATIONS FOR OTHER PERMITS

7. Has any other application for a permit (e.g. CITES, TOPS) in terms of this Act or in terms of any other legislation (e.g. provincial ordinance for harvesting, Phyto-sanitation, customs, export) been submitted, either previously or simultaneously with this application in respect of the indigenous biological resources included in this permit application?

Permit	√	Reference number	Issuing authority
CITES			
ToPS			
Phyto-sanitation			
Trade Export			
Other, please list			

Initial

¹ Part of the IBR collected.

² Format in which IBR is commercialised.

³ Total amount of the resource per year for which permit is required. Conclude a MTA and BSA with each access provider.

⁴ Coordinates from where material will be harvested / name of access provider.

⁵ Traditional knowledge used for commercialisation. Conclude a BSA with TK holders.

F. STAKEHOLDERS

8. List all access providers (community / farmer / trader) to the resource and/or traditional knowledge holders (traditional leader / healer / individual) and indicate the agreements concluded and attached to the application

Access provider: ☐

Traditional knowledge holder: ☐

Indicate the agreements concluded:

☐ **MTA**

☐ **BSA**

Name of stakeholder:

Access provider: ☐

Traditional knowledge holder: ☐

Indicate the agreements concluded:

☐ **MTA**

☐ **BSA**

Name of stakeholder:

Access provider: ☐

Traditional knowledge holder: ☐

Indicate the agreements concluded:

☐ **MTA**

☐ **BSA**

Name of stakeholder:

Initial

--

G. BUSINESS PLAN**9. Complete the following business information:**

9.1 What are the desired outcomes of the biotrade / bioprospecting project?

9.2 The proposed time-frames of the activities:

9.3 List benefits to the conservation of South African biodiversity that may result from the biotrade / bioprospecting:

9.4 List benefits to the South African economic development that may result from the biotrade / bioprospecting:

9.5 List any other benefits that are in the interest of the public that may result from the biotrade / bioprospecting:

9.6 What will the impact of the collection and utilization of the indigenous biological resources is on the resource?

9.7 What are the proposed steps to minimise or remedy the impacts listed in question 9.6?

9.8 Describe how any unused / discarded materials are disposed.

Initial

--

H. USER OF IBR INFORMATION**10. Provide information on the recipient(s) of the indigenous biological resources being traded**

Name of recipient:		
Country of recipient:		
Indicate the agreements concluded:	<input type="checkbox"/> MTA	<input type="checkbox"/> BSA

Name of recipient:		
Country of recipient:		
Indicate the agreements concluded:	<input type="checkbox"/> MTA	<input type="checkbox"/> BSA

Name of recipient:		
Country of recipient:		
Indicate the agreements concluded:	<input type="checkbox"/> MTA	<input type="checkbox"/> BSA

I. LIST OF ANNEXURES TO THE PERMIT APPLICATION / ADDITIONAL INFORMATION

J. SIGNATURES

--	--	--

APPLICANT**CAPACITY****DATE****ENDORSEMENT OF JURISTIC BODY, IF APPLICABLE**

--	--	--

NAME**SIGNATURE OF DULY AUTHORISED OFFICER****DATE**

Initial

--

Notes on completing the form

If insufficient space is provided in this form, additional information may be included by way of Annexures.

Permit application fee payment

Payment of the permit application fee must be paid to the following bank account after receipt of the permit application reference number.

Departmental of Environmental Affairs ABSA Bank Account number: 1044240072 Account type: Current Branch code : 632005 Swift Account : ABSA ZAJJ CPT (outside SA) Reference Number: 00946420 & Depositors Details (surname / name of company and reference number)
--

Submission of applications

Completed documents may be mailed, or delivered to any one of the following addresses:

Postal Address

Department of Environmental Affairs
The Director-General
Attention: Director: Resource Use
Private Bag X447
PRETORIA
0001

Physical Address

Department of Environmental Affairs
The Director-General
Attention: Director: Resource Use
Private Bag X447
PRETORIA
0002

E-mail address: BABS@environment.gov.za

Enquiries

Mrs. Lactitia Tshitwamulomoni

Tel: 012 310 3986 / 3065

Fax: 012 320 4087

E-mail: BABS@environment.gov.za

For more information, please visit www.environment.gov.za

Do not submit this page with the permit application

ANNEXURE 5

DISCOVERY PHASE EXPORT PERMIT



NAME OF ISSUING AUTHORITY	
NAME	
ADDRESS	

DETAILS OF PERMIT HOLDER	
Name of applicant:	
Identity or Passport No: (Attach a certified copy)	
Tel No:	
Cellphone No:	
Fax No:	
E-mail:	
Postal Address	Physical Address

NATURE OF PERMIT						
Type of organism	Family, Genus, or species (Scientific and Common names)	Form in which it will be exported	Quantity (Indicate if there are limitations on the quantity of samples)	Point of export	Point of import	Full locality data (GIS readings if possible)

PERMIT VALIDATION			
PERIOD OF VALIDITY	FROM:	TO:	

STANDARD PERMIT CONDITIONS

1. The indigenous biological resources to which the permit relates, may only be used for the following non-commercial research purposes: _____
2. The permit-holder must comply with all other legislative requirements for the collection and export of the indigenous biological resources;
3. The indigenous biological resources to which the permit relates may not be used for commercialisation phase of bioprospecting without a permit issued in terms of the Bioprospecting, Access and Benefit Sharing Regulations;
4. The permit-holder may not transfer the indigenous biological resources to any third party without the prior 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. The issuing authority will not give this consent if the third party intends using the resources for commercialisation phase of bioprospecting without a permit;
5. The permit-holder must submit a progress report to the issuing authority annually;
6. If new collaborators join the research project for which this permit has been issued, the permit-holder must notify the issuing authority in writing;
7. Additional condition (if any): _____
8. Additional condition (if any): _____
9. Additional condition (if any): _____

RECEIPT NUMBER		
SIGNATURE ISSUING OFFICER:		DATE:
DATE STAMP:		
SIGNATURE OF PERMIT HOLDER		DATE:
FULL NAMES OF PERMIT HOLDER		

ANNEXURE 6

BIOTRADE PERMIT



NAME OF ISSUING AUTHORITY	
NAME	
ADDRESS	

DETAILS OF PERMIT HOLDER	
Name of applicant:	
Identity or Passport No:	
Tel No:	
Cellphone No.	
Fax No:	
E-mail:	
Postal Address	Physical Address

NATURE OF PERMIT				
Scientific and common names	Part of resource to be utilised/collected	Physical state of resource	Quantity (Total amount of the resource per year)	Locality / source of information

PERMIT VALIDATION				
PERIOD OF VALIDITY	FROM:		TO:	
MUST BE READ WITH MTA AND BSA (IF APPLICABLE)				

STANDARD PERMIT CONDITIONS

1. The permit is issued for a period of 5 years, subject to submission of annual trade reports;
2. The permit holder must comply with all other legislative requirements of any other law or regulation related to this.....;
3. The material transfer agreement should include a clause stating that the use of South African indigenous biological resources for bioprospecting is subject to NEMBA and that a bioprospecting permit is required;
4. All money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
5. The permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred to or paid into the Bioprospecting Trust Fund;
6. The permit holder must notify stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit sharing agreements that money was transferred or paid into the Bioprospecting Trust Fund;
7. The permit holder must not engage in the commercialisation phase involving the indigenous biological resources to which the permit relates without a bioprospecting permit or an integrated biotrade and bioprospecting permit;
8. The permit holder must on annual basis or timeframes determined by the issuing authority, submit a status report to the issuing authority in a form determined by issuing authority; and
9. Failure to comply with any of the permit conditions renders the permit invalid and may result in criminal proceedings, cancellation of the permit/s and seizure of the consignment/s.

SIGNATURE OF ISSUING OFFICER:	DATE:
DATE STAMP:	
SIGNATURE OF PERMIT HOLDER	DATE:
FULL NAMES OF PERMIT HOLDER	

ANNEXURE 7

BIOPROSPECTING PERMIT



NAME OF ISSUING AUTHORITY	
NAME	
ADDRESS	

DETAILS OF PERMIT HOLDER	
Name of applicant:	
Identity or Passport No: (Attach a certified copy)	
Tel No:	
Cellphone No:	
Fax No:	
E-mail:	
Postal Address	Physical Address

NATURE OF PERMIT				
Type of organism	Family, genus or species (scientific and common names) (if possible)	Part of organism to be collected	Quantity (Indicate if there are limitations on the quantity of samples)	Full locality data (GIS readings if possible)

PERMIT VALIDATION				
PERIOD OF VALIDITY	FROM:		TO:	
MUST BE READ WITH MTA AND BSA				

STANDARD PERMIT CONDITIONS

1. The permit holder may not transfer the indigenous biological resources to which this permit relates to any third party without the prior 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 above;
2. The permit holder must submit a progress report to the issuing authority within one year of the date of this permit and annually thereafter.
3. If new collaborators join the bioprospecting project for which this permit is being issued, the permit holder must notify the issuing authority in writing.
4. All money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
5. The permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred or paid into the Bioprospecting Trust Fund. The permit holder must notify stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit-sharing agreement that money was transferred or paid into the Bioprospecting Trust Fund;
6. Additional condition (if any): _____
7. Additional condition (if any): _____
8. Additional condition (if any): _____

RECEIPT NUMBER		
SIGNATURE ISSUING OFFICER:		DATE:
DATE STAMP:		

SIGNATURE OF PERMIT HOLDER	DATE:
FULL NAMES OF PERMIT HOLDER	

ANNEXURE 8**INTEGRATED BIOTRADE AND BIOPROSPECTING PERMIT**

NAME OF ISSUING AUTHORITY	
NAME	
ADDRESS	

DETAILS OF PERMIT HOLDER	
Name:	
Surname:	
Identity or Passport No:	
Tel No:	
Cellphone No:	
Fax No:	
E-mail:	
Postal Address	Physical Address

NATURE OF PERMIT				
Scientific and common names	Part of resource to be utilised	Physical state of resource	Quantity	Locality / Source information

PERMIT VALIDATION				
APPLICATION REFERENCE NUMBER				
PERIOD OF VALIDITY	FROM:		TO:	
MUST BE READ WITH MTA AND BSA				

PERMIT CONDITIONS

1. All money due to stakeholders in terms of a benefit-sharing agreement must be paid into the Bioprospecting Trust Fund, as required by section 85(1) of the Act;
2. The permit holder must notify the Department when money due to stakeholders as specified in the benefit-sharing agreement will be transferred to or paid into the Bioprospecting Trust Fund;
3. The permit holder must notify stakeholder or stakeholders entitled to a monetary benefit in terms of the benefit sharing agreements that money was transferred or paid into the Bioprospecting Trust Fund;
4. The permit holder must not engage in the commercialisation phase involving the indigenous biological resources to which the permit relates without a bioprospecting permit or an integrated biotrade and bioprospecting permit;
5. The permit holder must on annul basis or timeframes determined by the issuing authority, submit a status report to the issuing authority in a form determined by issuing authority; and
6. Failure to comply with any of the permit conditions renders the permit invalid and may result in criminal proceedings, cancellation of the permit/s and seizure of the consignment/s.

SIGNATURE ISSUING OFFICER:	DATE:
DATE STAMP:	

SIGNATURE OF THE PERMIT HOLDER	DATE:
FULL NAMES OF THE PERMIT HOLDERS	

For office use only

Permit application
reference number
here

ANNEXURE 9**MATERIAL TRANSFER AGREEMENT**

Between

[Company name]

[Legal address]

Represented by [name of PROVIDER representative]

Hereafter referred to as the PROVIDER

And

Represented by [name of RECIPIENT representative]

Hereafter referred to as the RECIPIENT

[Company name]

[Legal address]

ACCESS AND PRIOR CONSENT

1. The RECIPIENT will receive parts, extracts or other derivatives of indigenous biological resources from the PROVIDER as raw material for product development and/or product manufacturing, or for resale to other organizations for these purposes.
2. The PROVIDER is collecting / harvesting / cultivating the indigenous biological resources used in the preparation of plant parts and/or extracts from [region] in South Africa. The RECIPIENT is developing and/or manufacturing the products that utilize these indigenous biological resource parts and/or extracts in [country].
3. The RECIPIENT and PROVIDER are committed to implementing the letter and the spirit of the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefit Sharing as well as the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), and the Bioprospecting, Access and Benefit Sharing Regulations, 2008 of South Africa.

Initials

THE INDIGENOUS BIOLOGICAL RESOURCES

4. The RECIPIENT enters into this agreement on the basis of which it is receiving the indigenous biological resources extracts/parts listed in clause 11 from the PROVIDER.
5. The terms of this agreement cover the indigenous biological resource extracts and/or plant parts listed in clause 4; other indigenous biological resource parts that may have been transferred, even inadvertently, along with them; and any genetic material, biological molecules and biochemical compounds naturally occurring in these indigenous biological resources, IBR parts and extracts.

RIGHTS AND DUTIES

6. The RECIPIENT shall use the IBR furnished by the PROVIDER exclusively as raw material for product development and/or manufacturing, or for resale to other organizations for these purposes.
7. The RECIPIENT shall only claim patents or other intellectual property rights connected or referring to the IBR, new forms or uses of the IBR, or new process for preparing, producing or manufacturing the IBR, if there is compliance with the National Environmental Management Biodiversity Act, Act no. 10 of 2004 and the legislation / regulations of the RECIPIENT if there is prior, express and written permission from the National Competent Authority in South Africa.
8. The RECIPIENT shall only utilise the IBR for other purposes, particular research and development linked to new and useful properties of the IBR parts and/or extracts, after having received prior consent from, and entered into mutually agreed terms with regards to the proposed changes in use of the IBR with the Competent National Authority of the country of the PROVIDER.
9. The RECIPIENT shall not utilise the IBR for planning, germination, propagation, breeding, tissue breeding, cloning or in any way seek to capture genetic material for the purpose of reproduction without prior consent from, and under mutually agreed terms with the Competent National Authority of the country of the PROVIDER.

TRANSFER TO THIRD PARTIES

10. The RECIPIENT shall only sell, transfer or make available the IBR to third parties with the assurance that these and any further RECIPIENTS are equally bound by the terms and conditions of this agreement.

SIGNATURES

Initials

--	--	--

Name of Access PROVIDER**Capacity****Date**

--	--	--

Name of Permit applicant / holder**Capacity****Date****ENDORSEMENT OF JURISTIC BODY, IF APPLICABLE**

--	--	--

Name**Signature of duly authorized officer****Date****ENDORSEMENT OF NATIONAL COMPETENT AUTHORITY**

--	--

Minister of Water and Environmental Affairs**Date**

11. INDIGENOUS BIOLOGICAL RESOURCES**PROVIDE THE FOLLOWING INFORMATION:**

- Scientific and common names of the indigenous biological resource (IBR) e.g. plant, animal, microorganism, genetic material, derivative.
- The part or state of the resource to be collected / utilized.
- The quantity required.
- The locality data where the material will be sourced from.

Scientific and common names	Part of resource to be utilised	Physical state of resource	Quantity	Locality / source information (coordinates)
<i>Aloe ferox</i> Bitter alwyn	Sap from leaves	Crystals	100 kg	xxS ## E Mosselbaai

END OF THE MATERIAL TRANSFER AGREEMENT

ANNEXURE 10

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 Act and the Regulations for access to any indigenous biological resources.
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.

The parties to this agreement must sign the agreement in the space indicated and must initial every page of the agreement, including any annexures.

For office use
only

*Permit
application*

BENEFIT SHARING AGREEMENT

Between

[Name]

[Legal address]

Represented by [name of ACCESS PROVIDER representative]

Hereafter referred to as the ACCESS PROVIDER/SELLER

And

Represented by [name of IBR MATERIAL RECIPIENT/BUYER representative]

Hereafter referred to as the RECIPIENT/BUYER

[Company name]

[Legal address]

1. The Seller agrees to sell, and the Buyer agrees to buy, the indigenous biological resources as listed in the following material transfer agreement:

Initials

2. Benefits

Benefit	Monetary	Non-monetary
Conservation of the IBR	<input type="checkbox"/>	<input type="checkbox"/>
Support for research on IBR and/or TK	<input type="checkbox"/>	<input type="checkbox"/>
Enhancement of scientific knowledge, technical capacity to conserve, use and develop IBR	<input type="checkbox"/>	<input type="checkbox"/>
Activity to promote conservation, sustainable use and development of IBR	<input type="checkbox"/>	<input type="checkbox"/>
Monetary benefits		

Upfront payment ☐ Other, specify ☐

2.1 In exchange for the indigenous biological resource, the buyer agrees to pay to the Seller the amount of R_____ as upfront monetary benefit; AND/OR

2.2 Specify the details any other monetary benefit given to the seller by the buyer in exchange for the IBR:

2.3 Any monetary benefits arising out of this agreement and due to any party to this agreement with the exception of upfront payments must be paid into the Bioprospecting Trust Fund. This benefit sharing agreement serves as a deed of trust in terms of the Public Finance Management Act of money due to the provider/seller of the indigenous biological resources.

3. Benefits: Non-monetary

3.1 Specify the details any non-monetary benefit given to the seller by the buyer in exchange for the IBR:

4. 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 information with regard to the bio trade / bioprospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

Initials

Other matters

Any other matters or conditions which the parties to this agreement wish to record: _____

A copy of this agreement must be lodged with the Director-General of the Department of Environmental Affairs within one month of the agreement being concluded.

This agreement constitutes the entire agreement between the parties in regard to the subject matter of this agreement and no addition to, variation or cancellation of this agreement or waiver of any rights under this agreement will be of any force or effect unless reduced to writing and signed by the parties to this agreement and submitted to the Director-General of the Department of Environmental Affairs.

<u>Initials</u>

SIGNATURES

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Name of Access PROVIDER**Capacity****Date****ENDORSEMENT OF TRADITIONAL AUTHORITY / JURISTIC BODY, IF APPLICABLE**

--	--	--

Name**Signature of duly authorized officer****Date**

--	--	--

Name of Permit applicant / holder/**Capacity****Date****RECIPIENT****ENDORSEMENT OF TRADITIONAL AUTHORITY / JURISTIC BODY, IF APPLICABLE**

--	--	--

Name**Signature of duly authorized officer****Date****ENDORSEMENT OF NATIONAL COMPETENT AUTHORITY**

--	--

Minister of Water and Environmental Affairs**Date**

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