

FORESTS (PARTICIPATION IN SUSTAINABLE
FOREST MANAGEMENT) RULES, 2009

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

1. Citation.
2. Application.
3. Interpretation.
4. Objectives and purpose of the Rules.
5. Management plan.

PART II – PRIVATE SECTOR PARTICIPATION

6. Service to invite private sector.
7. Types of agreements for private sector.
8. Eligibility of applicant.

Permits

9. Permits for utilization of forest goods and services.
10. Variation or cancellation of permit.

Timber Licenses

11. Determination of areas to be offered.
12. Content and duration of timber licence.
13. Pre-qualification procedure.
14. Consideration of applications.
15. Offering and advertisement.
16. Bidding procedure.
17. Selection of a bidder.
18. Award of timber license.
19. Monitoring and evaluation of licensee.
20. Non-transferability.

Special-Use Licence

21. Content and procedure in grant of special-use licence.

Contract

22. Procedure in the grant of contracts.

Joint Management Agreements

23. Main features.
24. Procedure in the grant of a joint management agreement.
25. Evaluation of the application.
26. Joint management agreement.

Concession Agreements

Rule

27. Determination of areas to be offered.
28. Content of concession agreement and duration.
29. Pre-qualification.
30. Consideration of an application.
31. Offering and advertisement.
32. Concession bidding procedure.
33. Consideration of the bids.
34. Announcement of intention to award.
35. Award of concession.
36. Performance of bond.
37. Review and evaluation.
38. Evaluation and renewal.
39. Employment of professional foresters.
40. Transferability.

PART III – COMMUNITY PARTICIPATION

41. Service to invite community participation.
42. Types of agreements for community participation.

PART IV – COMMUNITY FOREST MANAGEMENT AGREEMENTS

43. Forest management agreements.
44. Management units.
45. Procedure for entering into a community forest management agreement.
46. Forest-level management committee.
47. Monitoring of implementation.
48. Technical assistance from the Service.
49. Commercial activities.

Non-Resident Cultivation

50. Agreement with forest association.
51. Zoning of forest areas.
52. Where plots may not be allocated.
53. Allocation of plots.
54. Conditions for permits.
55. Period of cultivation.
56. Planting of seedlings.
57. Monitoring of forests association.
58. Operational guidelines.

PART IV – GENERAL PROVISIONS

59. Transitional provisions.
60. Verification of various existing authorizations.
61. Forms and documents under these rules.
62. Fees.

Rule

- 63. Applicable law.
- 64. Repeat advertisement.
- 65. Registers.
- 66. Compliance with other laws.
- 67. Liability under other laws.
- 68. Forest to remain property of State.
- 69. Appeals.

SCHEDULE
PRESCRIBED FORMS

- FORM 1 – PERMIT
 - FORM 2 – TIMBER LICENCE
 - FORM 3 – SPECIAL-USE LICENCE
 - FORM 4 – JOINT FOREST MANAGEMENT AGREEMENT
 - FORM 5 – COMMUNITY MANAGEMENT AGREEMENT
 - FORM 6 – NON-RESIDENT CULTIVATION PERMIT
-

FORESTS (PARTICIPATION IN SUSTAINABLE FOREST MANAGEMENT) RULES, 2009

[L.N. 165/2009.]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Forests (Participation in Sustainable Forest Management) Rules, 2009.

2. Application

These Rules—

- (a) shall apply to the participation of the private sector and forest communities in the sustainable management of state forests;
- (b) may, with the necessary modifications, be applied by a local authority, with the consent of the Minister responsible for local authorities, to the participation of the private sector and forest communities in the management of local authority forests; and
- (c) shall apply to the authorisations issued by the Service in the management of provisional forests declared as such under section 26 of the Act.

3. Interpretation

In these Rules, unless the context otherwise requires—

“**authorisation**” includes a permit, timber-licence, special-use licence, contract, joint management agreement, concession, community forest management agreement and cultivation-permit;

“**community forest management plan**” means a plan prepared by a forest association in partnership with the Service to govern implementation of a community forest management agreement;

“**concession management plan**” means a site-specific management plan prepared by an applicant or holder for a concession;

“**contract management plan**” means a site-specific management plan prepared by an applicant or holder for a contract;

“**cultivation-permit**” means an authorisation issued under rule 53;

“**forest general guidelines**” means administrative guidelines issued from time to time by the Service for effective carrying out of the functions of the Service;

“**joint management agreement**” means an agreement under rule 26;

“**joint management plan**” means a site-specific management plan prepared by an applicant or holder in partnership with the Service to govern implementation of a joint management agreement;

“**licence management plan**” means a site-specific management plan prepared by an applicant for a licence;

“**site-specific management plan**” includes a concession management plan, contract management plan, joint management plan, or licence management plan prepared pursuant to section 37(3) of the Act and a community forest management plan prepared pursuant to section 46 of the Act.

4. Objective and purpose of the Rules

The objective and purpose of these Rules is to provide for the circumstances under which authorisations may be applied for, granted, varied, cancelled or declined and the manner in which a person granted such authorisation may exercise a right or privilege conferred by the authorisation.

5. Management plan

(1) The Service shall prepare or adopt a management plan covering a period of at least five years in respect of every state forest.

(2) A person who wishes to make an application to the Service for an authorisation under these rules shall prepare a site-specific forest management plan in accordance with guidelines prescribed by the Service.

(3) The Service shall evaluate the site-specific forest management plan submitted under paragraph (2) based on social, economic, environmental and sustainability factors and shall, with or without modification, review and approve the application.

(4) A person authorised under these rules to undertake activities for more than one year shall prepare an operations plan for every year, on which all operations shall be based, and activities shall not commence unless such operations plan has been approved by the Service.

(5) The Service shall evaluate the operations plan prepared under paragraph (4) to ensure that it conforms to the site-specific management plan and to sustainable forest use.

(6) The Service shall not issue an authorization without a site-specific plan in place, except for forest management agreements and permits for minor activities not significantly and irreversibly affecting forest resources.

PART II – PRIVATE SECTOR PARTICIPATION

6. Service to invite private sector

The Service may, whenever circumstances make it necessary or appropriate to do so, invite the private sector to participate in the sustainable management of state forests.

7. Types of agreements for private sector

(1) The Service may issue authorisations for forestry activities for purposes of rule 6 in the form of—

- (a) a permit, which may be issued to a person to undertake a specified forestry-related activity or service;
- (b) a timber-licence, which may be issued to a person by the Service for timber harvesting in a specified forest area;
- (c) a special-use licence, which may be issued to a person to undertake an activity whose primary purpose is to yield public benefit in transportation, communication, energy, research or education;
- (d) a contract, which is entered into with a third party for performance of the activities specified in rule 22(2) on behalf of the Service in a forest area for a specified fee;

- (e) a joint management agreement, which is an agreement where the Service agrees to enter into partnership with other persons for the joint management of a specified plantation or indigenous forest area, specifying the contribution, rights and obligations of each party and setting out the methods of sharing the costs and benefits accruing from the forest so managed; and
- (f) a concession agreement, which is a long term agreement that may be issued by the Service for the management of a specified forest area at a price determined after forest valuation and bidding under these rules.

(2) No authorisation shall be issued in respect of a forest for which there is a pre-existing authorisation, except on terms mutually agreed upon by all the parties involved.

8. Eligibility of applicant

(1) A person shall not be eligible to apply for an authorization under these rules unless that person—

- (a) possesses the necessary legal capacity to enter into binding agreements, and has the technical and financial capacity to undertake the forestry activities for which the authorization is sought; and
- (b) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners.

(2) In the case of timber-licences, contracts and concessions—

- (a) legal capacity includes the competence to enter into contracts which for business entities shall be demonstrated through proof of registration;
- (b) technical capacity includes the competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance and a record of good compliance with the laws and standards; and
- (c) financial capacity includes solvency and ability to conform to good business practices as demonstrated by the applicant's financial statements for the past three years, where applicable, and tax compliance certificates.

Permits

9. Permits for utilization of forest goods and services

(1) A person who wishes to utilize forest goods or services other than in exercise of a customary right shall make an application to the Service for a permit in the prescribed form.

(2) The Service shall evaluate the application, and may grant the permit if satisfied that the proposed utilization is sustainable.

(3) A permit issued under these Rules shall be in Form 1 set out in the Schedule.

10. Variation or cancellation of permit

(1) The Service may vary or cancel a permit—

- (a) on the request of the permit-holder; or
- (b) on its own, after giving fourteen days notice to the permit-holder thereof with reasons for such variation or cancellation in writing.

(2) The Service may cancel the permit with immediate effect and without notice where the permit-holder breaches any of the conditions attached to it.

Timber Licences

11. Determination of areas to be offered

(1) The Service shall in every year determine the areas of State forest suitable for private sector harvesting under timber licenses.

(2) The Service shall only issue a timber license for a plantation area identified in the management plan as suitable for commercial harvesting.

12. Content and duration of timber licence

(1) A timber licence issued under these Rules shall be in Form 2 set out in the Schedule.

(2) A timber licence shall be valid for one year from the date of issue.

13. Pre-qualification procedure

(1) The Service shall, once every year, pre-qualify suitable persons for the harvesting of timber in state forests following the procedure set out in this rule.

(2) The Service shall invite applications for pre-qualification by placing a notice—

- (a) at a conspicuous place at the Service Headquarters;
- (b) in two newspapers of national circulation; and
- (c) on the website of the Service, or equivalent electronic means available to the public,

detailing where a person can obtain an application form for pre-qualification, where the completed application form may be submitted, and when submission is due.

(3) An application under paragraph (2) shall be made to the Service and shall—

- (a) specify the name of the applicant, and where the applicant is a business entity, or a forest association, shall be accompanied by the appropriate registration documents;
- (b) present a statement of the applicant's technical and financial capacity to harvest timber; and
- (c) specify the area where they would be interested in conducting harvests.

(4) The Service may forward applications to the appropriate forest conservation committee for evaluation and recommendations.

14. Consideration of applications

(1) The Service shall consider the recommendations of the forest conservation committee and select an applicant qualified to harvest timber based on technical and financial capacity.

(2) The Service shall issue a pre-qualification certificate to a person pre-qualified under paragraph (1) subject to such terms and conditions as the Service may determine.

(3) Where the Service rejects an application for a pre-qualification certificate, the Service shall within seven days of the decision notify the applicant in writing.

(4) Unless earlier revoked, a certificate of pre-qualification shall be valid for a period of two years from the date of issue.

15. Offering and advertisement

(1) The Service shall, before advertising for bids on a timber license and in compliance with the existing management plan, prepare a draft timber licence and a prospectus containing—

- (a) information on the identity and description of the forest area, specifying the boundaries on maps;
- (b) an inventory and valuation of the forest resources;
- (c) the specific activities to be undertaken in the area;
- (d) a reserve price for the timber licence; and
- (e) a performance bond reasonably reflecting the commercial value of the timber license.

(2) The Service shall in writing invite interested pre-qualified bidders to submit bids for the timber license and shall publish a notice of the bidding process, at the Service Headquarters, and at the forest stations responsible for the area.

(3) The Service shall make available to an interested pre-qualified bidder, a copy of the notice prepared under paragraph (1).

(4) A pre-qualified bidder may, after notifying the Service, visit the forest area that is subject of the announced bidding.

16. Bidding procedure

(1) A pre-qualified person wishing to bid for a timber license shall purchase the bid documents and submit a bidding package to the Service, consisting of—

- (a) a bid of a fixed payment in a sealed envelope;
- (b) a proposed licence management plan; and
- (c) a bidder's bond equivalent to two percent of the reserve price, which the bidder shall forfeit in case the Service awards the timber licence to the bidder and the bidder decides not to accept it.

(2) The Service shall, before opening the sealed bids, review the proposed license management plan and inform the bidder of any modifications that may be necessary, at which a bidder may withdraw without forfeiture of the bidder's bond under paragraph (1).

(3) The Service shall open the sealed bids and read them out in a meeting to which all bidders are invited and the public allowed to attend.

17. Selection of a bidder

(1) The highest bidder above the reserve price shall be awarded the timber license and in case of a tie, the Service shall conduct another round of bidding involving the parties who tied.

(2) If the highest bidder declines the timber-license, it shall be awarded to the next highest bidder above the reserve price.

(3) The Service shall return all bonds and declare no award if there is no bidder above the reserve price.

(4) The Service shall inform any unsuccessful bidder of the results within a period of seven days from the time the bidding is completed.

18. Award of timber licence

(1) The Service shall award the timber licence to the successful bidder.

(2) A licensee shall, before commencing any harvesting operations post the performance bond specified under rule 15, to cover any damage which might be incurred.

(3) The Service may, at the request of the licensee, divide the harvest area into units and divide the bid price among the units.

(4) A licensee shall, before commencing harvest in a particular unit, pay the Service the bid price assigned to such unit.

19. Monitoring and evaluation of licensee

The Service shall periodically monitor the operations of the licensee.

20. Non-transferability

A timber licence shall not be transferable.

Special-Use Licence

21. Content and procedure in grant of special-use licence

(1) A person who wishes to undertake an activity inside a state forest whose primary purpose is to benefit the public in transportation, communication, energy, water supply, research and education or such other purpose as the Service may approve, may apply to the Service in writing for a special-use licence.

(2) The Service shall evaluate an application received under paragraph (1) and may, after completion of any environmental impact assessment required under the law, issue a special-use licence if satisfied that the proposed activity is in the public interest.

(3) A special-use licence shall be in Form 3 set out in the Schedule.

(4) The Service may vary, suspend or cancel a special-use license—

- (a) on the request of the holder upon completion of the activity, or for any other cause; or
- (b) on its own after giving fourteen days notice to the holder with reasons for such variation, suspension or cancellation:

Provided that the Service may cancel the special-use licence with immediate effect where the holder breaches any of the conditions attached to the licence.

Contracts

22. Procedure in the grant of contracts

(1) The Service may, whenever it deems it appropriate to do so, enter into a contract with a suitably qualified person for the performance of a specified activity on its behalf within a State forest which is under its control.

(2) The activities referred to in paragraph (1) shall be those set out in the management plan, and shall include—

- (a) raising of seedlings;
- (b) tree planting;
- (c) silviculture;
- (d) forest management and protection;
- (e) preparation and review of management plans;
- (f) resource assessment and valuation;
- (g) road construction;

- (h) construction of buildings;
- (i) general improvement of infrastructure;
- (j) logging; and
- (k) other similar activities within the responsibility of the Service.

(3) The Service shall consider an offer made under this rule, and subject to the procurement law where appropriate, accept the lowest offer for the performance of a specified activity.

(4) The Service shall prepare a contract management plan containing details of the contract period, specific activities to be undertaken, the output expected, the expected standard of performance and such other matters as the Service may deem necessary.

(5) A contract that involves logging shall not grant the contract holder title to the felled timber for off-site use or disposal.

Joint Management Agreements

23. Main features

(1) The Service may enter into a joint management agreement in the management of state forests.

(2) The primary purpose of a joint management agreement is to conserve the forest and allow non-consumptive uses. However, an agreement may also allow limited consumptive use of forest resources if sustainable.

(3) A joint management agreement—

- (a) shall be between the Service and a professional association, an educational institution, a research institution, a co-operative society, a forest association, a government agency, or a non-governmental organisation;
- (b) may apply to state plantation or indigenous forests; and
- (c) shall be non-transferable.

24. Procedure in the grant of a joint management agreement

(1) The Service shall, before entering into a joint management agreement—

- (a) identify, delineate and describe the forest area for possible joint management;
- (b) conduct an inventory and valuation of the forest resources therein to support the preparation of the joint management plan; and
- (c) invite applications from interested persons by placing a notice on the availability of the area for joint management—
 - (i) in two newspapers of local circulation near the forest area;
 - (ii) at the Service Headquarters;
 - (iii) at the forest station where the forest is located; and
 - (iv) in such other place as may be suitable to bring the notice to the attention of the local community.

(2) A person interested in forest management shall submit an application to the Service through the forest conservation committee responsible for that area within three months from the date of the notice.

(3) An application under paragraph (2) shall be accompanied by—

- (i) a statement of the applicant's technical and financial capability; and

- (ii) a proposed joint management plan prepared in accordance with the guidelines set by the Service.

25. Evaluation of the application

(1) The forest conservation committee shall evaluate an application and submit its comments and recommendations on the qualifications of the applicant to the Service within a period of one month from the date of expiry of the period specified under paragraph (2).

(2) The Service shall evaluate an applicant on the basis of technical and financial capacity, and invite a qualified applicant to present a proposal for the management of the forest at a public hearing held by the Service.

(3) The Service shall, after the evaluation and hearing under paragraph (2), select the most suitable applicant or, if pooling applications would lead to a stronger proposal, the most suitable coalition of applicants.

(4) The Service shall facilitate the formation of a joint management team composed of representatives from the Service and from the selected joint managers to negotiate the creation of a joint management agreement and oversee its implementation.

(5) The Service shall sign the agreement with the selected joint managers after successful negotiation under paragraph (4).

(6) The Service shall in writing inform all unsuccessful applicants within fourteen days from the date of the conclusion of the process under this rule.

26. Joint management agreement

(1) A joint management agreement shall be in Form 4 set out in the Schedule.

(2) A joint management agreement shall be valid for ten years, and shall not be renewable for more than two terms.

Concession Agreements

27. Determination of areas to be offered

(1) The Service shall from time to time determine the areas of state forest suitable for management under concessions.

(2) The Service shall issue concessions for areas identified as suitable for long-term private-sector management in the relevant management plans of the Service.

28. Content of concession agreement and duration

(1) The Service shall prepare a model concession agreement which shall specify—

- (a) the name of the concession holder;
- (b) the land involved and the activities to be carried out under the concession;
- (c) the duration of the concession;
- (d) the charges payable to the Service including any fees in addition to the annual fees set by bidding, which shall be reviewed every year;
- (e) a requirement to comply with applicable environmental standards, including forest general guidelines and laws relating to environmental impact assessment;
- (f) the mechanism for settlement of disputes arising with respect to the concession;
- (g) monitoring and evaluation procedures;

- (h) the obligations of the concession holder by way of social responsibility to ensure equity for the local community; and
- (i) any other terms and conditions applicable to the concession.

(2) The maximum duration of a concession shall be thirty years, which may be renewed once subject to rule 38.

29. Pre-qualification

(1) The Service shall at least once a year offer a person an opportunity to pre-qualify for bidding on concession agreements following the procedure set out in this rule.

(2) The Service may, before inviting a person to pre-qualify, establish classes of concessions, including but not limited to eco-tourism or large-scale plantation management.

(3) The Service shall invite applications for pre-qualification by placing an advertisement

- (a) at a conspicuous place at the Service Headquarters;
- (b) in two newspapers of national circulation;
- (c) on the website of the Service, or equivalent electronic means available to the public; and
- (d) in such other place as may be suitable for bringing it to the attention of the local communities where the forest is located.

(4) The advertisement shall specify—

- (a) where a person can obtain an application form for pre-qualification;
- (b) what classes of concessions are open for pre-qualification; and
- (c) where the completed application forms may be submitted, and when the application forms are due for submission.

(5) An application for pre-qualification under paragraph (3) shall be made to the Service in writing and shall—

- (a) specify the name of the applicant, and where the applicant is a business entity, or a forest association, be accompanied by the appropriate registration documents;
- (b) specify the class or classes of concession for which the application is made; and
- (c) be accompanied by a statement of the applicant's technical and financial capacity to undertake long-term forest management activities.

(6) The Service shall submit all applications to the appropriate forest conservation committee for evaluation and recommendation.

30. Consideration of an application

(1) The Service shall consider the recommendations of the forest conservation committee and select a qualified person based on technical and financial capacity.

(2) The Service shall issue a pre-qualification certificate, to a person pre-qualified under paragraph (1), subject to such terms and conditions as it may determine.

(3) Where the Service rejects an application for pre-qualification, it shall, within seven days of the decision, notify the applicant in writing.

(4) Unless earlier revoked by the Service for just cause, a certificate of pre-qualification shall be valid for a period of five years from the date of issue.

(5) Pre-qualified bidders shall inform the Service the areas in which they are interested in conducting concessions.

31. Offering and advertisement

(1) The Service shall, before advertising for bids on a concession—

- (a) ensure that offering the concession is consistent with the applicable strategic management plan;
- (b) hold consultations with the local communities; and
- (c) specify the activities to be undertaken in the area.

(2) The Service shall prepare a draft concession agreement in accordance with rule 28 and a prospectus containing—

- (a) the identity and description the forest area, specifying the boundaries on maps;
- (b) an inventory and valuation of the forest resources;
- (c) specific mode, terms and conditions of the payment;
- (d) a reserve price for the concession; and
- (e) a performance bond reasonably reflecting the concession's commercial value.

(3) The Service shall in writing invite interested pre-qualified bidders to submit bids for the concession and shall publish a notice of the bidding process, at the Forest Service Headquarters, and at the forest stations responsible for the area.

(4) The Service shall make available a copy of the prospectus prepared under paragraph (2) to a person who requests it.

(5) A pre-qualified bidder may, after notifying the Service, visit the forest area subject of the concession.

32. Concession bidding procedure

(1) A person wishing to bid for a concession agreement under rule 29 shall purchase the bid documents and submit to the Service an expression of interest consisting of a proposed concession management plan.

(2) The Service shall, in consultation with the forest conservation committee of the concession area, review the proposed concession management plans and, within forty-five days after the bid submission deadline, either withdraw the concession for lack of sufficient bidder interest or inform each bidder of any modifications that may be necessary to the plan of the bidder of the concession management agreement.

(3) A pre-qualified bidder shall, within fifteen days after receiving the results of the Service's review of the proposed concession management plan, modify the plan if required to do so and submit a bidding package consisting of—

- (a) a bid in a sealed envelope; and
- (b) a bidder's bond equivalent to two percent of the reserve price, which the bidder shall forfeit in case the Service awards the concession and the bidder declines to accept it.

(4) The Service shall open the sealed bids and read them out in a meeting to which all bidders are invited and the public is allowed to attend.

33. Consideration of the bids

(1) The concession shall be awarded to the highest bidder above the reserve price and in case of a tie; the Service shall conduct another round of bidding involving the tied parties.

(2) If the highest bidder refuses the concession, it shall be awarded to the next highest bidder above the reserve price.

(3) If no bidder is above the reserve price, the Service shall return all bonds and declare no award.

(4) The Service shall inform all unsuccessful bidders the results of the bidding within a period of seven days from the time the bidding is completed.

34. Announcement of intention to award

(1) The Service shall publish its intention to award the concession to the successful bidder in two daily newspapers of national circulation at least thirty days before the concession is to be signed.

(2) The Service shall hear and consider all presentations and objections that may be raised in a process of public consultation.

(3) The Service shall, based on the consultation made under paragraph (2)—

- (a) disqualify the bidder based on evidence of improper processor false, misleading, or no longer valid representations by the bidder who pre-qualified or qualified for the concession; or
- (b) award the concession under rule 31 with an appropriate modification in the draft concession agreement to accommodate concerns expressed in the consultation, however the modification may not lower the annual bid or materially increase the value of the agreement to the winning bidder; or
- (c) withdraw the concession and make no award, with the option of restarting the process of soliciting bids using a new draft concessions agreement; or
- (d) award the concession under rule 35 following the terms of the draft concession agreement.

(4) If a bidder is disqualified under paragraph (3), the Service shall select the next highest bidder eligible for the award, and it shall then hold new consultations under this rule.

(5) If the Service makes a minor modification to the concession agreement under paragraph (2)(b), the bidder may opt to withdraw the bid, in which case—

- (a) the Service shall return the bidder's bond; and
- (b) the Service may either—
 - (i) choose the next highest eligible bid and hold new consultations under this rule; or
 - (ii) withdraw the concession and re offer it in modified form.

35. Award of concession

(1) The Service shall, after the public consultations specified in rule 34, award the concession to the successful bidder.

(2) The concession holder shall, before commencing operations—

- (a) post the performance bond, as set under rule 36, to cover any damage which might be incurred; and
- (b) pay the Service the bid price as set in the concession agreement.

(3) The performance bond under paragraph (2) shall be reviewed annually to take into account inflation.

36. Performance bond

(1) The Service may draw a performance bond against a concession holder to recover unpaid annual fees or to cover damages to the forest caused by the concession holder or the agent of the concession holder.

(2) The Service shall require the concession holder to make up the difference when it draws upon the bond under paragraph (1).

(3) The Service shall return the remainder of the bond within six months after the expiry of the concession agreement, unless the agreement is renewed.

(4) If the winning bidder fails to—

- (a) pay the initial bid amount;
- (b) post the performance bond; or
- (c) sign the agreement,

within sixty days after a request by the Service, the Service shall collect the bidder's bond posted under rule 32(3)(b), and either—

- (a) select the highest of the remaining bidders above the reserve price; or
- (b) reject all remaining bids with the option of restarting the process, and invite all pre-qualified applicants to re-submit bids.

(5) After the completion of the award process as described in this rule, the Service shall return the bidder's bond of the unsuccessful bidders.

37. Review and evaluation

(1) A concession holder shall revise and submit to the Service a concession management plan at least once every five years.

(2) The Service shall review the concession management plan and may require such modifications as may be necessary from time to time in compliance with these Rules.

(3) A concession holder shall prepare and submit an annual operations plan to the Service.

(4) The Service shall review the annual operations plan and require such modifications, if any, as may be necessary to meet the requirements of the existing management plan and the concession agreement.

(5) A concession holder shall only undertake activities consistent with the applicable management plans, except in cases where an emergency action is required because of imminent danger to human life or property.

(6) The Service shall undertake a comprehensive evaluation of the management of the concession area once in every five years.

38. Evaluation and renewal

(1) The Service shall, at least three years before the concession agreement expires, begin a comprehensive evaluation, including public consultation, of the activities of the concession holder under the agreement.

(2) The Service may, if the concession holder has carried out a sustainable management of the forest, negotiate a renewal of the concession at an adjusted fee greater than the original annual fee to cover inflation.

39. Employment of professional foresters

Where the activities under a concession agreement are forestry activities, the concession holder shall employ professional foresters registered by the Forest Society of Kenya to assist in the management of the forest.

40. Transferability

A concession agreement may, with the approval of the Service, be transferred to a third party only if—

- (a) the transferee has been in existence for at least six years;
- (b) the transferee is pre-qualified under these rules to apply for a concession; and
- (c) the transfer is not being done for the purposes of speculation.

PART III – COMMUNITY PARTICIPATION

41. Service to invite community participation

The Service may, whenever circumstances make it necessary or appropriate to do so, invite forest associations to participate in the sustainable management of state forests.

42. Types of agreements for community participation

The Service may issue authorizations for community participation for purposes of rule 41 in the form of—

- (a) a community forest management agreement which shall be issued to a forest association to undertake community forestry activities; and
- (b) a cultivation-permit which shall be issued to members of a forest association to undertake non-resident cultivation.

PART IV – COMMUNITY FOREST MANAGEMENT AGREEMENTS

43. Forest management agreements

(1) The Service may enter into a community forest management agreement with a forest association wishing to conserve and utilize a forest for purposes of livelihood, cultural or religious practices.

(2) A community forest management agreement shall be in Form 5 as set out in the Schedule to these Rules.

44. Management unit

(1) For purposes of community participation, the management unit for a forest shall comprise—

- (a) the forest area under the jurisdiction of one forest station; or
- (b) where geographical factors make separation of the unit into blocks more practical, individual forest blocks within the jurisdiction of one forest station.

(2) Each management unit shall be under a separate forest association, and the Service may decide whether the parties shall develop individual community management plans for each management unit or combined community management plans covering more than one unit.

(3) Where more than one forest association makes an application in respect of the same management unit, the Service shall encourage them to consolidate themselves into one association for purposes of the application.

(4) In cases where forest associations fail or refuse to consolidate into one, the Service may conclude an agreement with the forest association which—

- (a) has the capacity to implement the activities set out in the community management plan; and
- (b) is most representative of the interests of the wider forest community.

45. Procedure for entering into a community forest management agreement

(1) The Service and the forest community shall, before entering into a community forest management agreement—

- (a) identify the forest area proposed to be the subject of the agreement and its resources;
- (b) assess the method in which the forest community utilises the forest and the impact of such method; and
- (c) facilitate the formation of forest associations based on existing community structures.

(2) Once a forest association is formed, the Service and the forest association shall—

- (a) facilitate the preparation or adoption of a community forest management plan in respect of the forest area; and
- (b) negotiate, draft and sign a community forest management agreement in respect of the forest area.

(3) The Service shall apply the Participatory Forest Management Guidelines in the implementation of community participation in forest management.

(4) The Service shall, in consultation with the stakeholders, from time to time review and revise the guidelines specified under paragraph (3).

46. Forest-level management committee

The Service shall initiate the formation of a forest-level management committee consisting of—

- (a) representatives from the Service;
- (b) representatives from the forest association; and
- (c) other stakeholders in the area,

to assist the forest association in the implementation of the community forest management agreement.

47. Monitoring of implementation

(1) The Service shall monitor and evaluate the implementation of the community forest management plan.

(2) The forest association shall review the findings made under paragraph (1) and together with the Service, may revise or alter the community forest management plan based on the findings.

48. Technical assistance from the Service

The Service shall provide technical assistance and capacity building to a forest association so as to empower it to perform its functions under these rules.

49. Commercial activities

(1) Where a forest association, in implementing a community forest management agreement, engages in commercial activities, the association shall comply with all the laws for the time being in force for the regulation of such activities.

(2) Any violation of laws under paragraph (1) shall be deemed to be a breach of the community forest management agreement.

Non-Resident Cultivation

50. Agreement with forest association

(1) The Service may enter into a written agreement with a forest association to allow its members to engage in non-resident cultivation in adjacent forest areas.

(2) The Service shall only allow non-resident cultivation in areas intended for the establishment of industrial plantations.

51. Zoning of forest areas

(1) The Service shall for the purposes of Rule 50—

- (a) identify and zone off the forest areas available for such cultivation;
- (b) demarcate individual plots, which shall be of a minimum size of one quarter hectare and of a maximum size set by the Service based on local conditions; and
- (c) prepare a sketch map of all the plots, and display it prominently at the forest station responsible for the forest area.

(2) The Service may open up new areas for cultivation in accordance with the approved planting programmes.

52. Where plots may not be allocated

The Service shall not allocate a plot—

- (a) within an important water catchment area or a source of a spring;
- (b) on a slope exceeding thirty percent inclination;
- (c) within thirty metres on either side of a river course or wetland, spring or other water source; or
- (d) in a firebreak, road reserve, natural glade, natural forest area and an area under mature plantation.

53. Allocation of plots

(1) The Service shall allocate a plot using a balloting system organised through the forest association.

(2) A person allocated a plot under paragraph (1) shall be issued with a cultivation-permit, in Form 6 as set out in the Schedule to these Rules.

(3) The Service and the forest association shall ensure that the method of allocation gives preference to the poor and vulnerable members of the community.

54. Conditions for permits

(1) A holder of a cultivation-permit issued under rule 53 shall be subject to the following conditions—

- (a) plant only annual crops approved by the Service;

- (b) render assistance to the Service upon request in—
 - (i) beating up or replanting, whichever may be appropriate, in cases of low survival rate of seedlings;
 - (ii) controlling illegal forest activities; and
 - (iii) preventing or fighting forest fires;
- (c) not lease, sublet or sell the allocated plot;
- (d) use only hand tools for land preparation; and
- (e) not erect any structure on the plot allocated, except, with written permission from the Service, in areas with high incidences of game damage.

(2) A holder of a cultivation permit shall pay the annual rental fees upon allocation of the plot and subsequently after every twelve months.

(3) A person who breaches the conditions of a cultivation-permit shall be guilty of an offence under the Act, and the Service shall withdraw the permit forthwith.

55. Period of cultivation

(1) The holder of a cultivation permit shall vacate the plot to which the cultivation permit relates after a period of three years.

(2) The Service shall not be under any obligation to allocate another plot to a holder of cultivation permit after the cultivation-permit issued to the holder has expired.

56. Planting of seedlings

The planting of tree seedlings shall be done after the completion of one crop season, and the holder of the cultivation permit shall not interfere with the growth or development of the seedlings or trees.

57. Monitoring by forest association

The forest association shall assist the Service in the monitoring of the activities of permit-holders and shall ensure that none of its members or agents takes any action which harms the planted seedlings.

58. Operational guidelines

(1) The Service shall, before issuing a cultivation-permit, issue a comprehensive operational guideline for the implementation of non-resident cultivation.

(2) The Service may from time to time revise the guidelines.

PART IV – GENERAL PROVISIONS

59. Transitional provisions

(1) For an authorisation other than a concession applied for within five years of the commencement of these Rules, where there is no management plan governing the area of an application, the Service shall evaluate the site-specific management plan based on whether it is consistent with sustainable management of resources.

(2) Where there is no forest conservation committee in a forest conservancy area, an application made under these Rules shall be evaluated by the Service.

60. Verification of various existing authorizations

(1) A person who holds an authorisation issued prior to coming into effect of these Rules shall, submit a copy to the Service within a period of twelve months from the date of commencement of these Rules for verification and confirmation.

(2) The Service shall, within one month after the commencement of these Rules, notify, by appropriate means, the person referred to in paragraph (1).

(3) Failure to submit an authorisation as required under paragraph (1) may be used by the Service as a ground for the revocation, amendment or cancellation of the authorisation.

61. Forms and documents under these rules

An application or authorisation under these Rules shall be in the form prescribed in the schedule.

62. Fees

(1) Where these Rules call for the Service to charge fees and do not set those fees by public bidding, the Service shall, by notice in *Gazette*, publish a schedule of the fees or an objective formula for calculating such fees.

(2) The Service shall from time to time review and revise the fees payable under these Rules.

(3) The fees payable under these Rules shall be subject to the approval of the Board.

(4) In this Rule, "fees" includes royalties and other charges payable to the Service.

63. Applicable law

The provisions of the Public Procurement and Disposal Act and the principles of the law of contract shall apply to the procedure for the award of a licence, contract and concession under these Rules.

64. Repeat advertisement

Where no suitable applicant is found after advertising for the issuance of an authorisation, the Service may repeat the advertisement in the same or different terms.

65. Registers

The Service shall maintain a register of all authorizations issued under these Rules, and a member of the public may inspect it or obtain a copy or an excerpt during working hours, upon payment of such fees as may be prescribed.

66. Compliance with other laws

These rules shall not exempt a person authorised pursuant to these rules from the requirements of the any written law governing environmental matters or other written law.

67. Liability under other laws

The suspension or cancellation of an authorization shall not exempt the holder or where the holder is a body corporate, its Board of Directors or officers, from liability under the Act or any other written law.

68. Forest to remain property of State

(1) A forest which is the subject of an authorisation under these Rules shall be and remain the property of the State.

(2) The rights to the land and underlying minerals or other resources shall not be deemed to be transferred to any person who is a holder of an authorisation or party to an agreement under these Rules.

69. Appeals

A person who is aggrieved by the decision of the Service with respect to an application for an authorisation or the action of the Service with respect thereto may appeal to Appeals Tribunal under Environmental Management and Coordination Act.

SCHEDULE

FORM 1

(r. 9)

KENYA FOREST SERVICE

PERMIT

To Station
 Date 20

Permission is hereby granted to you for exercise of the following rights/removal of the following forest products:

	Description of Forest Product/Service	Price	Total
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	Grand Total		

Signed:
 Authorized Forest Officer

FORM 2

(r. 12)

KENYA FOREST SERVICE

TIMBER LICENCE

1. PARTIES

This licence is made this day of 20
 between the Kenya Forest Service of P.O. BOX
 Nairobi ("the Service") and of

SCHEDULE—*continued*

P.O. BOX bearer of pre-qualification certificate number ("the licensee"). The Service and the licensee are jointly referred to as "the parties".

2. OBJECTIVES AND PURPOSE

- (a) The Service grants this licence to the licensee for the sole purpose of harvesting timber in Sub-Compartment at Forest Station in Forest Division ("the forest area").
- (b) The forest area(s) measures hectares comprising of species and its boundaries are better described as an annex to this form.
- (c) This annex forms an integral part of this licence.

3. TRANSFERABILITY

This licence is not transferable.

4. DURATION

This licence is for a period of from the date of issue ("the licence period").

5. AUTHORISED ACTIVITIES

- (a) The licensee shall carry out only those activities outlined in this licence.
- (b) The licensee shall comply with the provisions of the Forests Act and any rules made there under and also with the terms and conditions of this licence.
- (c) The Service may cancel this license should the licensee commit any breach of the Forests Act or of any rules made there under or of the terms, obligations and conditions of this licence.

6. BASIC WARRANTIES OF THE LICENSEE

- (a) The licensee is duly incorporated or registered or validly existing and in good standing.
- (b) The licensee shall retain its power, ability and competence in carrying out the rights and obligations under this agreement.

7. RIGHTS OF THE SERVICE

- (a) This licence is subject to the provisions of the Forests Act.
- (b) The Service allows harvest of coupes or trees under this license on an "as-is-where-is" basis and offers no warranty or guarantee as to the conditions of the trees.

8. RIGHTS OF THE LICENSEE

- (a) The licensee has the exclusive right to harvest the coupe or trees under this licence.
- (b) The licensee, its servants, employees and agents may enter the forest area for the purposes of carrying out activities to fulfill the requirements of this licence.

9. OBLIGATIONS OF THE SERVICE

- (a) The Service shall permit the licensee, its servants, employees and agents access to the forest area using a designated path, road or route for the purposes of carrying out activities to fulfill the requirements of this licence.
- (b) The Service shall periodically monitor the operations of the licensee.

10. OBLIGATIONS OF THE LICENSEE

- (a) The licensee shall cut all trees or coupes and within the duration required under this licence.
- (b) The licensee is responsible for the acts of his agents or employees in the forest area.
- (c) The licensee shall supply the Service a nominal roll of employees, agents and servants giving registration number and any other details required by the Service. The licensee shall supply the roll at the commencement of the licence period and monthly thereafter. The licensee may not employ more than persons during any one month on work to be carried out

SCHEDULE—*continued*

- (d) All equipment which may be used for logging operations shall be removed from the forest area not more than thirty days after the date on which the licence expires or has been cancelled. Should the licensee fail to comply with this condition all claim to such equipment shall be forfeited which then shall be deemed to be the property of the Service and may be disposed of in such manner as the Director of the Service may deem fit.
- (e)
 - (i) The licensee may use only such roads on the forest as are approved by the Service. The Service may prohibit the use of such roads at any time and may also specify the type of vehicle to be used on them.
 - (ii) The Service may require the licensee to repair to the Service's satisfaction, any damage caused to roads and bridges in the forest area of the licensee, agents, servants or employees.
 - (iii) The licensee must ensure that no road, track, footpath, watercourse or stream is obstructed as a result of its operations.
- (f)
 - (i) The licensee must ensure that his operations do not pollute any stream, water body or wetland and it must take such actions as may be required by the Service to prevent such pollution.
 - (ii) The licensee must ensure also that his operations do not directly affect the amount of flow of any stream or watercourse.
 - (iii) The licensee shall observe the provisions of the Water Act.
 - (iv) The licensee shall comply with the applicable environmental standards, including laws relating to environmental impact assessment.
 - (v) The licensee shall honor any customary rights existing in the forest area.
 - (vi) The licensee shall protect other forest resources in the forest area.
- (g) The licensee must ensure that his operations do not cause soil erosion and must take such action as may be required by the Service to prevent or cure soil erosion.
- (h) The licensee, its employees, servants or agents shall extinguish any fire that may occur in or near its forest area.
- (i) The licensee, its employees, servants or agents shall give assistance to the Service, if required, in preventing, reporting, apprehending and prosecuting offenders under the Forests Act.
- (j) The licensee shall not cut forest produce unless the Service has marked the produce for that purpose or has given written authority for cutting in a coupe demarcated on the ground. If the licensee cuts any other forest produce, the licensee shall pay the Service the market value of the unprocessed forest produce, delivered to the mill or market, multiplied by three.
- (k) The Licensee must fell and cross-cut all trees by saw, axes being used only to obtain felling direction and to trim branches from the trees. All trees must be felled as close as possible to ground level. All trees must be cross-cut to give the maximum length of log down to a diameter of centimeters. The Service may measure timber wasted by leaving high stumps or by incorrect cross-cutting and the licensee shall pay for that wasted timber at double the royalty rate.
- (l) The licensee shall pay compensation for any damage done to standing trees due to faulty felling and extraction or due to any other cause occasioned by carelessness or negligence. The Service shall calculate compensation based on the estimated volume of the damaged tree or trees at the market value. The damaged tree or trees remain the property of the Service.
- (m) The licensee shall not remove forest produce from the forest area until the Service has measured where necessary, the forest produce, marked it with a marking hammer where necessary, and collected the appropriate fee in full in accordance with the Timber Act (Cap. 386) Laws of Kenya.
- (n) All forest produce not removed within thirty days after the expiry of the licence period or after the termination of the licence are the property of the Service and the Service shall dispose of the forest produce as it deems fit.
- (o) The Director of the Service shall appoint an appropriate officer of the Service to represent the Service in implementing the provisions of this licence in the forest area.

SCHEDULE—continued

11. FEES, TAXES, LEVIES, CHARGES AND BID PRICES

- (a) The licensee undertakes to pay such fees, charges or bid prices as prescribed under the Forests Act and regulations and as follows—
 - (i)
 - (ii)
 - (iii) etc.
- (b) The licensee shall be responsible to pay salaries and emoluments to its employees, agents and servants that it may engage for the implementation of this licence.
- (c) Nothing under this licence exempts the licensee from paying taxes required under the laws of Kenya.

12. INDEMNITY, RISK AND LIABILITY

- (a) The licensee shall indemnify the Service against all losses claims demands actions proceedings damages costs or expenses or other liability arising in any way from this licence or any breach of any of the obligations on the part of the licensee contained in this licence or the exercise or purported exercise of the rights given herein.
- (b) The licensee shall ensure that its employees, servants and agents take precaution and other necessary measures to protect themselves against risks such harm from wildlife, fires, rivers, falling trees and other objects associated with the licence and the forest area.
- (c) In this regard, the Service shall not be liable for any injury, loss or damage occurring to the licensee its members, employees, servants, agents, goods or equipment.

13. DISPUTE RESOLUTION

- (a) Where the licensee is aggrieved by the decision of the Service, it may within thirty days after being notified of the decision, appeal to the Board of the Service against the decision.
- (b) In the event of either of the parties being dissatisfied thereafter, the dissatisfied party may submit the dispute for arbitration, in accordance with the Arbitration Act, 1995 (No. 4 of 1995), Laws of Kenya.
- (c) The cost of arbitration shall be borne equally by both parties.
- (d) The arbitration shall take place at the headquarters of the forest conservancy area where the forest area is situated.

14. TERMINATION AND WITHDRAWAL OF LICENCE

- (a) The Service may terminate or withdraw this licence where the licensee breaches its terms or conditions.
- (b) Where the Service intends to terminate or withdraw the licence it shall give the licensee thirty days' notice to show cause why the licence should not be terminated or so withdrawn. During this period the licence shall be suspended.

SEALED with the common seal of the)

KENYA FOREST SERVICE)

In the presence of)

Director)

Witnessed by)

SIGNED for and on behalf of the)

LICENSEE)

In the presence of)

.....)

.....)

SCHEDULE—continued

ANNEX

No.	Forest Division	Forest Station	Sub-compartment	Lot	Area (Ha)	Volume (M3)	Species	Remarks
1								
2								
3								
4								
5								

FORM 3

(r. 21)

KENYA FOREST SERVICE

SPECIAL-USE LICENCE

1. PARTIES

This licence MADE between the Kenya Forest Service (hereinafter "the Service") of
P.O. BOX Nairobi and of P.O. BOX
..... (hereinafter "the licensee"). The Service and the Licensee are
jointly referred to as "the parties".

2. OBJECTIVES AND PURPOSE

- (a) This licence is issued to the licensee for the purposes of permitting the licensee to undertake the activities listed in Annex 1 to this Form hereto in Sub-compartment in the Forest Block located at Forest Station in Forest Division ("the Forest Area").
- (b) This special use licence is issued pursuant to the determination by the Service that the primary purposes of those activities listed in the Annex 1 to this Form are in the public interest.
- (c) The forest area in which the activity will be carried out by the parties shall comprise (in words) hectares and its boundaries are better described in the Annex 2 to this Schedule.
- (d) These Annexes form an integral part of this licence.

3. TRANSFERABILITY

- (a) This licence shall not be transferable.
- (b) This licence may be assigned only with the written approval of the Service.
- (c) The Service shall not approve an assignment of this licence which would depart from the main objectives and purpose set out in this licence.
- (d) The licensee is liable for all the activities, acts and omissions of the assignees of its rights under this licence.
- (e) This licence does not give the licensee exclusive possession of the forest area or any part thereof and does not create nor is it intended to create a lease or tenancy in any way whatsoever.

4. DURATION

This licence shall be for a term of years from the date of issue.

SCHEDULE—*continued*

5. FEES AND OTHER CHARGES

- (a) The licensee shall make payment as follows—
 - (i) Licence fees
 - (ii) Annual fees
 - (iii) Any other fees as determined by the Service
- (b) The licence fees shall be paid immediately prior to the issue of this licence.
- (c) The annual fees and any other fees shall be paid within thirty (30) days of being due and failure to pay such fees shall render this licence void.
- (d) The Service shall review the annual fees payable by the licensee and where this occurs the licensee shall be informed in writing.

6. BASIC WARRANTIES OF THE SERVICE

- (a) The forest area is a state forest.
- (b) At the time of making this licence, the property rights attached to the forest area consist of the easements, rights of way, servitudes, mineral rights, any customary rights established under section 22 of the Forests Act, 2005 or other claims of record and the Government's own right of ownership.

7. BASIC WARRANTIES OF THE LICENSEE

- (a) The licensee is duly incorporated or registered or validly existing and in good standing.
- (b) The licensee shall retain its power, ability and competence in carrying out its rights and obligations under this licence.

8. RIGHTS OF THE SERVICE

- (a) This licence is subject to the Forests Act.
- (b) The Service shall have the right to inspect records kept by the licensee.

9. RIGHTS OF THE LICENSEE

- (a) The licensee has a right to carry out those activities listed in Annex 1 to this licence.
- (b) The licensee, its servants, employees and agents shall have the right to enter the forest area for the purposes of carrying out the activities to fulfill the requirements of this licence.

10. OBLIGATIONS OF THE SERVICE

The Service shall allow access to the forest area of the licensee, its servants, employees and agents using a designated route, road or path for the purposes of carrying out activities to fulfill the requirements of this licence.

11. OBLIGATIONS OF THE LICENSEE

- (a) The licensee shall—
 - (i) ensure that its employees, servants and agents take precaution and other necessary measures to protect themselves against risks and harm from wildlife, fires, rivers, falling trees and other objects, risks and harms in the forest and in the event of such events occurring shall not hold the Service liable.
 - (ii) protect sacred groves and protected trees.
 - (iii) assist the Service in enforcing the provisions of the Forests Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce and hunting of game.
 - (iv) inform the Service if the licensee becomes aware of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity.
 - (v) take precautions against fire, and where it occurs take all necessary measures to put out the fire.
 - (vi) take precautions against destruction of trees and other forest resources and produce and where it occurs report to the Service.
 - (vii) do any other act that is necessary for the efficient conservation and management of the forest.

SCHEDULE—*continued*

- (viii) use the forest area in a manner consistent with the approved management plan.
 - (ix) keep written records of all activities conducted in the forest area and preserve such records for at least six years from when first written or for duration of this licence, whichever is longer.
 - (x) obtain and maintain at its own cost all other necessary consents, licences and approvals from the relevant authorities for its permitted use.
 - (xi) pay to the Service the licence fees, annual fee and other fees and levies when due for the duration of the licence.
 - (xii) not do or permit any act that would interfere with the work of the Service.
 - (xiii) not pollute, damage, or disturb land or water, except with permission of the Service or other appropriate agency of the Government of Kenya.
 - (xiv) not cause or permit a nuisance or trespass, whether on lands of the Service or lands owned or occupied by others.
 - (xv) not interfere with the use of the land by the Service or any other person authorized by the Service.
 - (xvi) remove all equipment from the site and the land within thirty days of termination of this licence.
 - (xvii) observe all the Service's security, access and other rules, regulations, procedures and reasonable instructions that may from time to time be issued by the Service.
 - (xviii) maintain public liability or other third party liability insurance in respect of any injury loss or damage to any persons or property arising out of the exercise of the licensee's rights and upon written request provide proof of such insurance to the Service.
 - (xix) pay all charges and keep the Service indemnified in respect of the electricity, water and other utilities consumed by the licensee.
 - (b) This licence does not give the licensee the right to mining, quarrying, logging, timber extraction or other activities.
 - (c) Nothing under this licence exempts the licensee from paying such taxes, fees and levies as it may be required under the Laws of Kenya.
12. DISPUTE RESOLUTION
- (a) In the event of a dispute concerning this licence or its implementation the parties may submit the dispute for arbitration, to be resolved in accordance with the Arbitration Act, 1995 (No. 4 of 1995), Laws of Kenya.
 - (b) The cost of arbitration shall be borne equally by both parties.
 - (c) The arbitration shall take place in Nairobi.
13. VARIATION This licence may be cancelled by the Service
- (d) on the request of the licensee; or
 - (e) on its own after giving fourteen days' notice to the holder with reasons for such variation or cancellation; or
 - (f) immediately if the licensee is in breach of any terms and conditions prescribed herein.
14. INDEMNITY, RISK AND LIABILITY
- (g) The licensee shall indemnify the Service against all losses claims demands actions proceedings damages costs or expenses or other liability arising in any way from this licence or any breach of any of the obligations on the part of the licensee contained in this licence or the exercise or purported exercise of the rights given herein.
 - (h) The licensee shall ensure that its employees, servants and agents take precaution and other necessary measures to protect themselves against risks such as harm from wildlife, fires, rivers, falling trees and other objects associated with the license and the forest area.
 - (i) In this regard, the Service shall not be liable for any injury, loss or damage occurring to the licensee its members, employees, servants, agents, goods or equipment.

SCHEDULE—*continued*

SEALED with the common seal of the)
 KENYA FOREST SERVICE)
 In the presence of.....)

Director.....)

Witnessed by.....)

SIGNED for and on behalf of the.....)
 LICENSEE.....)

In the presence of.....)

Director.....)

Secretary.....)

ANNEX 1

<i>Forest name</i>	<i>Forest Division</i>	<i>Forest Station</i>	<i>Forest Activity</i>	<i>Remarks</i>

ANNEX 2

<i>Forest Name</i>	<i>Forest Division</i>	<i>Forest Station</i>	<i>Forest area in hectares</i>	<i>Forest boundary</i>	<i>Remarks</i>

FORM 4 (r. 26)

KENYA FOREST SERVICE
 JOINT FOREST MANAGEMENT AGREEMENT

1. PARTIES

This agreement is made this day of 20
 between the Kenya Forest Service of P.O. BOX Nairobi on one
 hand (hereinafter referred to as "the Service") and..... of
 PO BOX..... on the other hand (hereinafter referred to as "Joint Manager").
 The Service and the Joint Manager are jointly referred to as "the parties".

SCHEDULE—*continued*

2. OBJECTIVES AND PURPOSE

- (a) The parties make this agreement for the purposes of jointly managing the
Forest located at Forest Station in Forest Division
("the forest area") as per the attached joint management plan in the Annex 1 to this Form.
- (b) The forest area comprises (In words) hectares
and its boundaries are for the purposes of identification described in the sketch plan
bordered in red in the Annex 2 to this Form.
- (c) The primary purpose of this joint management agreement shall be to conserve the forest
and allow non-consumptive uses of the forest area in accordance with the joint
management plan.¹
- (d) The Annexes are an integral part of this agreement.

3. TRANSFERRABILITY

- (a) This agreement is not transferable.
- (b) Subject to section 37(8) of the Forests Act, the Joint Manager may assign all or any of the
rights under this agreement only with the written approval of the Director of the Service.
- (c) The Director of the Service shall not approve an assignment of this agreement which would
depart from the main objectives and purpose set out in this agreement.
- (d) The Joint Manager remains liable for all the activities, acts and omissions of the assignees
of its rights under this agreement.

4. DURATION

This agreement is for a term of Years from

5. AUTHORISED ACTIVITIES

- (a) The Joint Manager shall carry out those activities as outlined in the joint management plan.
- (b) The Joint Manager may, with the written approval of the Service enter into partnership with
other persons for the purposes of ensuring efficient and sustainable conservation and
management of the forest area.

6. BASIC WARRANTIES OF THE SERVICE

- (a) The forest area is state forest.
- (b) At the time of making this agreement, the property rights attached to the forest area consist
of the easements, rights of way, servitudes, mineral rights, any customary rights
established under section 22 of the Forests Act, other claims of record and the
Government's own right of ownership.

7. BASIC WARRANTIES OF THE JOINT MANAGER

- (a) The Joint Manager is duly incorporated or registered or validly existing and in good
standing.
- (b) The Joint Manager shall retain its power, ability and competence in carrying out its rights
and obligations under this agreement.

8. RIGHTS OF THE SERVICE

- (a) This agreement is subject to the Forests Act.
- (b) The Service may inspect such records kept by the Joint Manager.

9. RIGHTS OF THE JOINT MANAGER

The Joint Manager, its servants, employees and agents may enter the forest area using such
designated roads, routes or paths to carry out activities to fulfill the requirements of this
agreement.

10. OBLIGATIONS OF THE SERVICE

- (a) The Service shall allow access to the forest area of the Joint Manager, its servants,
employees and agents for the purposes of carrying out activities to fulfill the requirements
of this agreement.

SCHEDULE—*continued*

- (b) The Service shall approve the annual operations plans subject to the plans being consistent with the objectives of the joint management plan.
- (c) The Service shall keep written records of all activities conducted in the forest area.

11. OBLIGATIONS OF THE JOINT MANAGER

- (a) The Joint Manager shall ensure that its employees, servants and agents take precaution and measures to protect themselves against risks and harm from wildlife, fires, rivers, cliffs, falling trees and other objects, risks or harms associated with the forest area and in the event of such events occurring shall not hold the Service liable.
- (b) The Joint Manager shall protect sacred groves and protected trees.
- (c) The Joint Manager shall assist the Service in enforcing the provisions of the Forests Act and any rules and regulations made pursuant thereto, in particular, those concerning illegal harvesting of forest produce and hunting of game.
- (d) The Joint Manager shall keep the Service informed of any developments, changes and occurrences within the forest which affect the conservation of biodiversity.
- (e) The Joint Manager shall patrol the forest area, in close co-operation with the Service, to protect the forest. The Joint Manager shall provide the patrols with means of communication to enable communication with the appropriate Service forest guard station.
- (f) The Joint Manager shall provide labour, tools and equipment for the forest management operations.
- (g) The Joint Manager shall take precautions against theft or destruction of tress and other forest resources and produce.
- (h) The Joint Manager shall take such precautions against occurrence fire and where it occurs, help in fire fighting.
- (i) The Joint Manager shall in consultation with the Service, prepare an annual operations plan for the forest area. The Joint Manager shall ensure that the annual operations plan is consistent with the management plan and the annual operations plan shall be subject to the approval of the Service.
- (j) The Joint Manager shall keep written records of all activities conducted in the forest area and preserve those records for at least six years from when first written or throughout the duration of this agreement whichever is longer.
- (k) This joint agreement does not give the Joint Manager the right to mining, quarrying, logging, timber extraction or other activities.

12. JOINT MANAGEMENT TEAM

- (a) To ensure effective implementation of this joint agreement a joint management team shall be appointed consisting of the following persons—
 - (i) Two officers of the Service designated by the Director, one who is a disciplined officer and the other a professional officer of the Service.
 - (ii) Two persons appointed by the Joint Manager.
 - (iii) One person representing the community forest association in the forest station appointed by the Service.
- (b) With the assistance of the Service and the Joint Manager, the joint management team shall update the forest management plan every five years, and the updated forest management plan shall be subject to approval by the Service.
- (c) The joint management team shall meet on a periodic basis to be agreed by the parties to monitor the progress of implementation of this agreement in accordance with the joint management plan. However, the Service shall have the ultimate authority in monitoring the implementation of this agreement.
- (d) The joint management team shall keep written records of their meetings and they shall submit these records to the Service on a regular basis in accordance with the joint management plan.

13. COSTS AND BENEFIT SHARING ARRANGEMENT

- (a) The Joint Manager undertakes to pay such fees as prescribed under the Forests Act and regulations including annual fees and other fees to facilitate such other activities as may fall within the ambit of this agreement.

SCHEDULE—*continued*

- (b) Except as otherwise stated in this agreement, the costs of implementing this agreement and the benefits accruing shall be shared according to the Annex 3 to this Form. This Annex is an integral part of this agreement.
- (c) Nothing under this agreement exempts the Joint Manager from paying such taxes, fees and levies as it may be required under the Laws of Kenya.

14. DISPUTE RESOLUTION

- (a) In the event of a dispute concerning this agreement or its implementation the parties may submit the dispute for arbitration, to be resolved in accordance with the Arbitration Act, 1995 (No. 4 of 1995), Laws of Kenya.
- (b) The cost of arbitration shall be borne equally by both parties.
- (c) The arbitration shall take place in Nairobi.

15. VARIATION

This agreement may be varied by mutual consent of both parties provided that the variation does not alter the objectives and purpose of this agreement, is within the provisions of the Forests Act, rules and regulations and is in writing.

16. SUSPENSION

The Service may suspend this agreement in the following circumstances—

- (a) Where the Joint Manager is found by an arbitrator to have breached the terms of this agreement and does not remedy the breach as provided in the arbitral award.
- (b) Where overwhelming acts of third parties or nature make it temporarily impossible for a party to comply with this agreement.
- (c) Where the implementation of this agreement is not consistent with the forest management plan.
- (d) Where the employees, agents or servants of the Joint Manager carry out activities that are contrary to the provisions of the Forests Act, the Wildlife (Conservation and Management) Act, the Water Act and such other Acts, regulations and rules that may apply.

17. TERMINATION

This agreement may be terminated in the following circumstances—

- (a) By operation of law, where the Joint Manager is deregistered, dissolved or in receivership.
- (b) By the written order of an arbitrator, where an arbitrator finds a party to this agreement having breached the agreement and the breach is not remedied as provided in the arbitral award.
- (c) By the Service delivering written notice to the Joint Manager, if any fees, levies or dues payable to the Service under this agreement remain unpaid for thirty days.
- (d) By either party delivering a written notice of termination to the other party, at least three months after either party issues written notice to the other of its intention to terminate this agreement.

18. MONITORING AND EVALUATION

- (a) The Joint Manager shall make such periodic reports to the Service as may be required under the joint management plan as agreed by the parties.
- (b) The Joint Manager shall keep written records of all activities conducted in the forest area and preserve those records for at least six years from when first written or throughout the duration of this agreement whichever is longer.

19. INDEMNITY, RISK AND LIABILITY

- (a) The Joint Manager shall indemnify the Service against all losses claims demands actions proceedings damages costs or expenses or other liability arising in any way from this agreement or any breach of any of the obligations on the part of the Joint Manager contained in this agreement or the exercise or purported exercise of the rights given herein.
- (b) The Joint Manager shall ensure that its employees, servants and agents take precaution and other necessary measures to protect themselves against risks such as harm from wildlife, fires, rivers, falling trees and other objects associated with the agreement and the forest area.

SCHEDULE—continued

(c) In this regard, the Service shall not be liable for any injury, loss or damage occurring to the Joint Manager its members, employees, servants, agents, goods or equipment.

20. RELATIONSHIP OF PARTIES

- (a) This agreement does not create any kind of joint venture or partnership between the parties.
- (b) This agreement does not make either party the agent of the other.
- (c) This agreement does not give the Joint Manager exclusive possession of the forest area or any part thereof and does not create nor is it intended to create a lease or tenancy in any way whatsoever.

SEALED with the Common Seal of)
 KENYA FOREST SERVICE in the)
 presence of:-)
)
)
 Director)
)
 Witnessed by)
)
 SIGNED for and on behalf of)
)
 in the presence of:-)
)
 Director)
)
 Secretary)

- ANNEX 1
- JOINT MANAGEMENT PLAN
- ANNEX 2
- SKETCH PLAN
- ANNEX 3
- COST / BENEFIT SHARING MODE

FORM 5

(r. 43)

KENYA FOREST SERVICE
 COMMUNITY MANAGEMENT AGREEMENT

1. PARTIES

This agreement is made this day of 20.....
 between the Kenya Forest Service of P.O. BOX
 Nairobi on one hand (hereinafter referred to as "the Service") and
 Community Forest Association of P.O. BOX on the other
 hand (hereinafter referred to as "the Association"). The Service and the Association are jointly
 "the parties".

SCHEDULE—continued

2. OBJECTIVES AND PURPOSE

- (a) The parties enter into this agreement for the purposes of granting the Association permission to participate in the conservation and management of Forest located at Forest Station in Division ("the forest area") as per the attached site-specific management plan.
- (b) The forest area comprises hectares and its boundaries are better described in the sketch plan.
- (c) The sketch map and the management plan form an integral part of this agreement.

3. ASSIGNMENT OF RIGHTS UNDER THIS AGREEMENT

- (a) The Association may only assign this agreement with the written approval of the Service.
- (b) The Service through the Director shall not approve an assignment of this agreement which would depart from the main objectives and purpose set out in this agreement.
- (c) The Association is liable for all the activities, acts and omissions of the assignees of its rights under the agreement.

4. DURATION

This agreement has a term of years from

5. AUTHORISED ACTIVITIES

- (i) The Association may carry out those activities outlined in the site-specific forest management plan.
- (ii) The Association may, with the written approval of the Service, enter into partnership or agreements with other persons for the purposes of ensuring efficient and sustainable conservation and management of the forest area.

6. BASIC WARRANTIES OF THE SERVICE

- (i) The forest area is a state forest.
- (ii) At the time of making this agreement, the property rights attached to the forest area consist of—
 - (a) the easements, rights of way, servitudes, mineral rights, or other claims of records listed in the schedule to this agreement;
 - (b) any customary rights established under section 22 of the Forests Act; and
 - (c) the Government's own right of ownership and these rights shall remain during the tenure of this agreement.

7. BASIC WARRANTIES OF THE ASSOCIATION

- (i) The Association is duly incorporated or registered or validly existing and in good standing.
- (ii) The Association shall retain its power, ability and competence in carrying out its rights and obligations under this agreement.

8. RIGHTS OF THE SERVICE

- (i) This agreement is subject to the provisions of the Forests Act.
- (ii) The Service may inspect records kept by the Association from time to time.

9. RIGHTS OF THE ASSOCIATION

The Association, its members, servants, employees and agents shall have the right to enter the forest area for the purposes of carrying out activities to fulfill the requirements of this agreement.

10. USER RIGHTS

- (i) The Association shall have the following user rights:²
 - (i)
 - (ii)
 - (iii)

SCHEDULE—*continued*

11. OBLIGATIONS OF THE SERVICE

- (i) The Service shall allow access to the forest area of the Association, its members, servants, employees and agents for the purposes of carrying out activities to fulfill the requirements of this agreement provided that such access is done in an orderly manner, on designated paths, routes and roads and without committal of any offences under the Forest Act or regulations or under any law.
- (ii) The Service shall monitor and evaluate the implementation of the site-specific management plan.

12. OBLIGATIONS OF THE ASSOCIATION

- (i) The Association shall protect, conserve and manage the forest or part thereof pursuant to this management agreement and the provisions of the approved management plan for the forest.
- (ii) The Association shall protect sacred groves and protected trees.
- (iii) The Association shall assist the Service in enforcing the provisions of the Forests Act and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce and hunting of game.
- (iv) The Association shall inform the Service if the Association becomes aware of any developments, changes and occurrences within the forest which are critical for the conservation of biodiversity.
- (v) The Association shall take precautions against occurrence of fire and where it occurs, help in fire fighting.
- (vi) The Association shall maintain a roll of its members, agents, servants and employees and shall update the same regularly and furnish the details of the roll to the Service upon request.
- (vii) The Association shall keep written records of all activities conducted in the forest area and preserve those records for at least six years from when first written or throughout the duration of this agreement whichever is longer.
- (viii) Where the Association engages in commercial activities, the association shall comply with all the laws for the time being in force for the regulations of such activities, and any violation of those laws is a breach of this agreement.

13. INDEMNITY, RISK AND LIABILITY

- (i) The Association shall indemnify the Service against all losses claims demands actions proceedings damages costs or expenses or other liability arising in any way from this agreement or any breach of any of the obligations on the part of the Association contained in this agreement or the exercise or purported exercise of the rights given herein.
- (ii) The Association shall provide adequate security for its members, employees, servants and agents and shall ensure that precaution and other necessary measures are taken to protect themselves against risks such harm from wildlife, fires, rivers, falling trees and other objects associated with management of the forest.
- (iii) In this regard, the Service is not liable for any injury, loss or damage occurring to the Association, its members, employees, servants, agents, goods or equipment.
- (iv) The user rights may vary from agreement to agreement and should be inserted as necessary as provided in section 47(2) of the Act.

14. DISPUTE RESOLUTION

- (i) Where the Service is dissatisfied with the implementation of this agreement, it may submit the dispute for arbitration, to be resolved in accordance with the Arbitration Act, 1995 (No. 4 of 1995), Laws of Kenya.
- (ii) Where the Association is aggrieved by the decision of the Service on the implementation of this agreement—
 - (a) it may within thirty days after being notified of the decision, appeal to the Board of the Service against the decision.
 - (b) in the event of the parties being dissatisfied thereafter, the parties may submit the dispute for arbitration, to be resolved in accordance with the Arbitration Act, 1995 (No. 4 of 1995), Laws of Kenya.

SCHEDULE—continued

- (iii) Where a dispute is submitted to arbitration under the provisions of this agreement,
 - (a) the cost of arbitration shall be borne equally by both parties.
 - (b) The arbitration shall take place at the headquarters of the forest conservancy area where the forest area is situated.

15. TERMINATION OR WITHDRAWAL OF USER RIGHT

- (i) The Service may terminate this agreement in the following circumstances—
 - (a) Where the Association is deregistered;
 - (b) Where the Association breaches any of the terms and conditions of this agreement;
 - (c) Where the Service considers termination as necessary for purposes of protecting and conserving biodiversity;
 - (d) Where the Association itself so requests.
- (ii) The Service may withdraw a particular user right in the following circumstances:
 - (a) Where the Association breaches any of the terms and conditions of this Agreement;
 - (b) Where the Service considers withdrawal as necessary for purposes of protecting and conserving biodiversity;
 - (c) Where the Association itself so requests.
- (iii) Where the Service intends to terminate this agreement or withdrawal of a particular user right it shall give the Association thirty days' notice in writing to show cause why the management agreement should not be terminated or the user right so withdrawn. During this period, this agreement or the right in question shall be suspended.

16. RELATIONSHIP OF PARTIES

- (i) This agreement does not create any kind of joint venture or partnership between the parties.
- (ii) This agreement does not make either party the agent of the other.
- (iii) This agreement does not give the association exclusive possession of the forest area or any part thereof and create nor is it intended to create a lease or tenancy in any way whatsoever.

SEALED with the common seal of the)
 KENYA FOREST SERVICE)
 In the presence of)
 Director)
)
 In the presence of)
)
 SIGNED for and on behalf of the)
 Community Forest)
 Association)
 In the presence of)
 Chairman)
 Secretary)

SCHEDULE—continued

FORM 6

(r. 53)

KENYA FOREST SERVICE

NON-RESIDENT CULTIVATION PERMIT

This non-resident cultivation permit is granted to Mr /Mrs /Miss /Ms ID No.

Member of Community Forest Association of P. O. BOX to cultivate plot number, measuring hectares for purposes of identification marked in red and numbered accordingly on the sketch plan on this permit in Sub-Compartment Number in Forest Station for a period of one (1) year, subject to the following terms and conditions—

1. This permit only allows the permit-holder to use the plot. This permit does not make the permit-holder owner of the plot. The permit-holder may keep other people off the plot (except for people from the Service), but the permit-holder has no right to sell, rent, or act as owner of the plot in any way.
2. The permit-holder shall plant only annual crops on the plot. The Service has a list of approved crops. The permit-holder shall choose his crops from this list and plant only annual crops.
3. The permit-holder shall help the Service upon request in—
 - (a) Beating up or replanting, whichever may be appropriate, in cases of low survival of tree seedlings;
 - (b) Controlling illegal forest activities;
 - (c) Preventing or fighting forest fires; and
 - (d) Any other activity for the benefit of the forest.
4. The permit-holder shall use only hand tools to work the plot.
5. The permit-holder shall not build anything on the plot, except with written permission of the Service.
6. Breaking the terms of this permit is an offence and if that happens, the Service may withdraw this permit. A permit-holder who breaks the terms of this permit may also have to pay the Service an administrative fee.
7. The permit-holder accepts the risk of injury, harm or death from trees, logs, wild animals, game, rivers and streams, and other hazards on the plot and neighboring forest. Whether the injury happens to property, the permit-holder, or another person, the Service is not responsible.
8. This permit does not give the permit holder exclusive possession of the plot or any part thereof and does not create nor is it intended to create a lease or tenancy in any way whatsoever.

Signed by the Permit holder Date

Name of Issuing Officer

Official Stamp Date

