



MEMORANDUM OF AGREEMENT

ENTERED INTO BETWEEN

THE KWAZULU-NATAL DEPARTMENT OF SPORT AND RECREATION

(hereinafter referred to as "**the Department**") herein duly represented as authorised, by **MS. SHANITHA KHAN**, Identity Number **5905230155082**, in her capacity as **HEAD OF THE DEPARTMENT**,

and

(hereinafter referred to as "**the Beneficiary**") herein duly represented as authorised, by _____, Identity Number _____, in _____ capacity as _____, by way of resolution dated _____, proof of which is attached hereto as Annexure B.

[NOTE: All underlined spaces must be duly completed, with both parties authorising each such completion by affixing their full signature. In addition thereto, each party must initial at the foot of each page.]

1. PURPOSE OF THE AGREEMENT

The granting of financial support by the Department to the Beneficiary as a subsidy for the execution of the project (hereinafter referred to as “**the project**”), as detailed in the project plan, which shall, once approved, form part of this agreement as Annexure A.

2. INTERPRETATION

2.1 The headings of the clauses in this Agreement shall be merely for reference purposes and shall not affect the interpretation of the clauses.

2.2 Unless inconsistent with the context, the word and expressions used in this agreement shall have the following meanings:

"account": In the name of _____ with
account number _____ at
_____ Bank _____ branch;

"agreement": this agreement and all the schedules and annexures thereto;

"parties" the Department and the Beneficiary;

"PFMA": The Public Finance Management Act, 1999 (Act No. 1 of 1999); and

"subsidy": an amount up to a maximum as contemplated in clause 3.1 of this agreement.

3. SUBSIDY AND PAYMENT

- 3.1 The Department, duly authorised, hereby agrees to grant a subsidy to the Beneficiary for the funding of the project to the maximum amount of _____, which will be paid to the Beneficiary as contemplated clause 3.2.
- 3.2 The subsidy contemplated in clause 3.1 shall be paid by electronic transfer directly into the account of the Beneficiary within 30 (thirty) days after the agreement has been signed by both parties and after the Department has received and approved the project plan of the Beneficiary.
- 3.3 The subsidy shall be used in a provident and responsible manner exclusively for the project: Provided that in the event that there is a dispute as to whether or not the grant has been used solely for such purpose, the Department's decision in this regard shall be final.

4. DURATION AND TIME SCHEDULE OF THE PROJECT PLAN

- 4.1 The agreement shall commence upon signature of the agreement, and shall be subject to the compilation by the Beneficiary of a detailed project plan, including a budget, and the approval of the project plan by the Department.
- 4.2 In the event that the Beneficiary is unable to complete the project within the period stipulated in the project plan, the Beneficiary must furnish the Department with a written request for an extension of the period, stating the reasons for such a request.
- 4.3 The approved project plan shall be incorporated into this agreement as Annexure A hereto.

4.4 The parties may from time to time agree to the amendment of the project plan: Provided that all amendments shall be in writing and shall be signed by both parties and any such amendments to the approved project plan shall likewise be incorporated to this agreement as a schedule thereto.

5. OBLIGATIONS OF THE BENEFICIARY

5.1 The Beneficiary shall consider all information concerning the agreement as confidential, and shall not divulge any information in this regard, except with the express, written consent of the Department.

5.2 The Beneficiary shall:

5.2.1 furnish the Department with documentation proving the sound financial position of the Beneficiary to the satisfaction of the Department, before any payment is made by the Department to the Beneficiary as contemplated in clause 3; and

5.2.2 provide the Department with a certificate as required by the PFMA, in the format provided for in Annexure C.

5.3 The Beneficiary shall allow the Department reasonable access to inspect all documentation, books and accounts of the Beneficiary and shall allow the Department to make copies of such documentation, books and accounts in order to ensure that -

5.3.1 the agreement is being duly complied with;

5.3.2 the grant is being correctly utilised; and

- 5.3.3 there are adequate measures and procedures for the proper application of sound economic, efficient and effective management, as required by the PFMA.
- 5.4 The Beneficiary hereby authorises the Department to gain access to financial information in respect of its bank account and hereby duly authorises its bank manager and auditors to make such financial information available.
- 5.5 The Beneficiary shall reflect all subsidies received from the Department as an income in its annual audited financial statements, and shall also reflect the expenditure resulting from the project in its annual financial statements, which statements must be submitted to the Department within 90 (ninety) days of the end of their financial year: Provided that the Department may request such further documentation or information it in its discretion deems necessary to determine whether the grant has been utilised in accordance with the provisions of the agreement.
- 5.6 The Beneficiary shall provide the Department with a report on the project upon completion of the said project.
- 5.7 The annual audited financial statements of the Beneficiary shall be prepared by independent auditors, whose report shall state separately in respect of each of the following matters whether in the auditor's opinion -
- 5.7.1 effective, efficient and transparent financial management and internal control systems are in place;
- 5.7.2 the annual financial statements in respect of the project fairly present the financial position and the results obtained by the Beneficiary in accordance with generally accepted accounting practice;
- 5.7.3 the transactions of the Beneficiary in terms of the project that have come to the auditor's notice in the course of his or her examination

are in accordance with the applicable laws and as contemplated in this Agreement; and

5.7.4 the transactions regarding the project that have come to the auditor's attention during auditing are in all material respects in accordance with the mandatory functions of the Beneficiary determined by law or in terms of the Agreement.

5.8 In regard to the project, the Beneficiary shall:

5.8.1 display a clear logo of the Department on all printed material produced for projects funded by the Department;

5.8.2 acknowledge the Department's contribution in all annual reports;

5.8.3 acknowledge the Department's contribution of in conjunction with all the sponsors of the Beneficiary, proportionate to the total contributions, in all places where the Beneficiary's sponsors are displayed; and

5.8.4 invite officials of the Department to attend activities of the project.

6. OBLIGATIONS OF THE DEPARTMENT

The Department shall:

6.1 evaluate and approve the project plan;

6.2 monitor the progress of the project, and

6.3 ensure that the project outcomes as contemplated in the Project Plan are achieved.

7. VIS MAJOR

7.1 The inability of either party to perform any of their respective obligations in this agreement shall not constitute a breach of this agreement, where such inability to perform is caused by:

7.1.1 Acts of God;

7.1.2 rained out venues;

7.1.3 riots;

7.1.4 civil insurrection;

7.1.5 acts of a public enemy;

7.1.6 accidents;

7.1.7 acts of a civil or military authority;

7.1.8 floods;

7.1.9 earthquakes;

7.1.10 winds; and/or

7.1.11 any other incident beyond the reasonable control of either party.

7.2 Any party incapable of performing as contemplated in clause 7.1 shall immediately notify the other party of the reason or reasons and cause for its inability to perform, and shall submit an estimated duration of such inability to perform.

7.3 Any party incapable of performing as contemplated in clause 7.1, shall at no cost to the other party:

7.3.1 exercise due diligence to shorten the duration and to avoid the cause of the inability to perform; and

7.3.2 inform the other party of all steps taken to enable performance under this agreement.

8. CANCELLATION AND BREACH

8.1 Should the Beneficiary, in the opinion of the Department, fail to meet any of its obligations in terms of this agreement, all payments by the Department to the Beneficiary may be discontinued, without prejudice to any other rights to which the Department is entitled in terms of the law or by virtue of the provisions of this agreement.

8.2 If the Beneficiary fails to meet its obligations in terms of this agreement, the Department may, at its choice, and after giving 30 (thirty) days written notice to the Beneficiary at its domicilium, calling on the latter to remedy the breach, do one of the following –

8.2.1 cancel the agreement and reclaim all amounts paid to the Beneficiary, including interest *a tempore morae*; or

8.2.2 enforce the terms of the agreement; and in any event

8.2.3 claim any damages that it may have suffered as a result of the breach, including all legal costs on the Attorney and own client scale and collection costs.

8.3 Notwithstanding the above, the Department, without giving any notice to the Beneficiary, may refuse to make any payments to the latter, before a Project Plan is approved, as contemplated in clause 4 of this agreement.

8.4 Should –

8.4.1 an application be lodged for the liquidation of the Beneficiary;

8.4.2 the Beneficiary be placed under judicial management; or

8.4.3 the Beneficiary reach a compromise with any of its creditors,

the Department may at its sole discretion, cancel the agreement without any further notice, and the Department may then claim a refund of all monies entrusted to the Beneficiary, which have not yet been expended as contemplated in this agreement.

8.5 No grace, delay, relaxation or leniency on the part of the Department to the Beneficiary party shall be considered as an abandonment of any right by the Department in terms of this agreement, and shall not prevent the Department from insisting on strict future compliance with all the terms of this agreement after any indulgence shown to the Beneficiary.

9. DOMICILE

9.1 The parties choose as their ***domicilium citandi et executandi*** for the serving of notices and legal proceedings at the following addresses:

The Department: 8th Floor
Truro House
17 Victoria Embankment
DURBAN

The Beneficiary: _____

9.2 The parties may change their respective ***domicilia*** by giving the other party written notice of its new ***domicilium***, by pre-paid registered post.

10. DISPUTE SETTLEMENT

10.1 Either party to the agreement may, in the event of any dispute arising out of the agreement, refer the dispute to arbitration in terms of the Arbitration Act, Act No. 42 of 1965 (as amended).

10.2 The parties shall agree on an Arbitrator within 30 (thirty) days after a dispute has been declared, failing which either of the parties to the dispute may request the State Attorney (KZN) to appoint a suitable Arbitrator.

10.3 The agreement to refer disputes to arbitration shall not bar either of the parties to refer any dispute between them to a court for adjudication.

11. GENERAL

11.1 It is agreed that -

11.1.1 regardless of any change of name or change in the legal structure of the Beneficiary, the conditions of this agreement shall apply;

11.1.2 in the event that the provisions in Annexures A conflicts with this agreement the provisions of the agreement shall take precedence.

11.2 In order to comply with the PFMA concerning Transfer Payments, the Department reserves the right to stipulate any further conditions which it regards desirable, after consultation with the Beneficiary, in respect of any payment contemplated in this agreement.

12. RELINQUISHMENT

12.1 The relinquishment, whether expressly or by implication, by the Department of any rights arising out of breach of contract in respect of the agreement shall not prejudice any remedies of the Department with regard to any continuing or other breach of contract in respect of the agreement.

12.2 No grace, delay, relaxation or leniency on the part of the Department in exercising any rights by virtue of the agreement shall be considered to be a relinquishment of such rights, nor shall a single or partial exercising of such rights exclude any other or further exercising thereof in terms of the agreement.

12.3 The expiry or termination of the agreement shall not prejudice the rights of the Department in respect of any of the preceding breaches of contract or of non-compliance with any of the conditions of the agreement by the Beneficiary.

13. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties other than these set out herein shall be binding on the parties.

14. VARIATIONS

No variation, modification or relinquishment of any condition of this agreement or consent to deviation therefrom shall be valid unless such variation, modification or relinquishment or consent is in writing and has been signed by both the Department and the Beneficiary, and such variation, modification, relinquishment or consent shall be valid only for a specific case and only for the purpose for which and the extent to which it was made or given.

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 200__.

AS WITNESSES:

1. _____

THE DEPARTMENT

2. _____

SIGNED AT _____ ON THIS THE _____ DAY OF _____ 200__.

AS WITNESSES:

1. _____

THE BENEFICIARY

2. _____

ANNEXURE A

PROJECT PLAN

ANNEXURE B

AUTHORISATION CERTIFICATE

This serves to confirm that the following person is authorised to sign contracts on behalf of:

- 1. **Name of Organisation:** _____
- 2. **Full Names and Surname of Authorised Person:** _____

- 3. **ID Number:** _____
- 4. **Capacity:** _____
- 5. **Authorisation approved at a meeting on:** _____
- 6. **Telephone/ Cell number :** _____

**THIS AUTHORISATION CERTIFICATE MUST BE SIGNED BY AT
LEAST TWO OF THE FOLLOWING EXECUTIVE MEMBERS**

CAPACITY	SIGNED	DATE
President	_____	_____
Vice President	_____	_____
General Manager / CEO	_____	_____
Treasurer	_____	_____

ANNEXURE C

CERTIFICATE BY THE BENEFICIARY'S REPRESENTATIVE

I, _____ authorised representative of
_____ hereby declare that effective, efficient
and transparent financial management and internal control systems are in place, as
required by the PFMA.

DATE: _____

CERTIFICATE BY THE BENEFICIARY'S AUDITOR

I, _____ auditor of
_____ hereby declare that effective, efficient
and transparent financial management and internal control systems are in place, as
required by the provisions of the PFMA.

DATE: _____