



UMBRELLA IMPLEMENTATION PROTOCOL

BETWEEN THE

THE MARINE LIVING RESOURCES FUND

AND THE

KWAZULU NATAL NATURE CONSERVATION BOARD

1. Definitions

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement have the following meaning:

- "the Agreement"** means this Agreement together with all Workplans and annexures attending hereto or referred to herein, each of which shall be signed and dated by the Parties;
- "the Department"** means the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management. A reference to the Fund shall where applicable include a reference to the Department;
- "Financial year"** Means the financial year of the Marine Living Resources Fund from 1 April to 31 March;
- "the Fund"** means the Marine Living Resources Fund, a statutory fund listed as a Schedule 3A Public Entity in Government Gazette 22047 of 16 February 2001 under the Public Finance Management Act, 1999 (Act no 1 of 1999) and established in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) and falls under the control of the Department of Environmental Affairs and Tourism;
- "KZN Wildlife"** means the KwaZulu-Natal Nature Conservation Board, a statutory body, established in terms of the KwaZulu-Natal Conservation Management Act, 1997 (Act No. 9 of 1997) and includes Ezemvelo KwaZulu-Natal Wildlife, the scientific team - under the auspices of the KwaZulu-Natal Nature Conservation Board;
- "the Main Agreement"** means this Agreement which is an umbrella agreement governing the general relationship between the Parties and to which individual Workplans will be appended as annexures; but does not include the Workplans;
- "Project Leader"** means the Project Leader appointed by KZN Wildlife in respect of each Workplan;
- "Project Officer"** means the Project Officer appointed by the Fund in respect of each Workplan;
- "Public Finance"** means the Public Finance Management Act, 1999

Management Act”	(Act No.1 of 1999) and the Treasury Regulations promulgated thereunder;
“the Parties”	means the Fund and KZN Wildlife;
“the projects”	means the services provided in respect of the individual Workplans and “the individual projects” has the same meaning;
“the service/s”	means the tasks specified in each Workplan; and
“Workplans”	means attached Annexures being the detailed plans for individual projects
“the effective date”	means the date of signature by the last signing party to the agreement

2. Parties to the Agreement

The Parties to this Agreement are as follows -

- 2.1 *the Marine Living Resources Fund, a statutory fund listed as a Schedule 3A Public Entity in Government Gazette 22047 of 16 February 2001 under the Public Finance Management Act, 1999 (Act No. 1 of 1999) and established in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) and falls under the control of the Department of Environmental Affairs and Tourism; as represented by the Ms. Pamela Bulelwa Yako in her capacity as Accounting Officer of the Fund, being duly authorised;*

hereinafter referred to as (**“the Fund”**) and

- 2.2 the KwaZulu-Natal Nature Conservation Board, a statutory body, established in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997), accountable to the Member of the Executive Council responsible for environment and conservation in KwaZulu-Natal, represented by Mr. Khulani Mkhize in his capacity as Chief Executive Officer, being duly authorised;

hereinafter referred to as (**“KZN Wildlife”**).

3. Recordal

Whereas the Fund and KZN Wildlife have developed a partnership in various projects which were previously governed by separate agreements, in terms of which KZN Wildlife provided assistance to the Fund in the provision of services relating to its statutory functions, and the Fund provided financial support for such services;

And whereas the parties now desiring to consolidate the various agreements under one umbrella agreement, and continuing the partnership in an integrated manner; and desiring to encourage closer working relations through projects and publications;

The parties hereby agree as follows:

4. Objectives of the Agreement

The objectives of this Agreement are through the combined efforts of the parties—

- (a) to regulate the relationship between the parties by creating an overarching agreement (Main Agreement) that regulates a number of individual projects (Workplans);
- (b) to set up a Steering Committee to manage the Main Agreement and to provide a forum for Project Leaders and Project Officers to report on individual projects;
- (c) to provide for the exchange of skills between the parties; and
- (d) to generally provide for all matters governing the association between the parties.

5. Commencement and duration

- 5.1 This Agreement shall operate as from the date of signature by the last signing party to the agreement (“the effective date”) and endure for a period of 3 (three) years, unless terminated prior thereto by mutual written consent of the parties or in terms of clause 12.
- 5.2 This Agreement may, after expiry thereof, be renewed by the parties, subject to the prior written consent of both parties and on such terms and conditions as the parties may then agree.

6. Projects / Workplans

- 6.1 New projects may be proposed by either party at any time during the course of this Agreement and shall be considered by the other Party.
- 6.2 The Parties shall consider each proposed project timeously and shall work together to develop an appropriate Workplan and budget.
- 6.3 For each project:
 - (a) KZN Wildlife must appoint a project leader and the Department must appoint a Project Officer;

- (b) the parties shall agree upon a detailed workplan with clear deliverables and time frames and an approved budget, which shall be in compliance with each party's internal policy with respect to terms and approval processes in a format agreed to by the parties; and
- (c) such agreed Workplan shall be—
 - (i) initialled on each page and signed and dated on the last page by the Project Leader for KZN Wildlife, the Chief Director responsible for the relevant project in the Department and the CFOs of both parties;
 - (ii) stipulate the relevant posts (not names) of the Project Leader and Project Officer;and attached to the Main Agreement, after which it will be incorporated into this Agreement.

6.4 The Parties shall agree on a format of reporting on deliverables.

6.5 The Parties agree to the attached Workplans, and any subsequent Workplans arising from new projects.

6.6 If new projects or ad hoc tasks are undertaken, additional written Workplans must be added to this agreement in the agreed format and will be duly incorporated into this agreement and there will be no need to amend the Main Agreement to effect such incorporation.

6.7 Any existing Workplans that are amended in terms of clause 14 or new Workplans added in terms of clause 6.6 shall take effect upon signature hereof.

7. General Roles and Responsibilities

7.1 KZN Wildlife undertakes to in respect of each Workplan:

- (a) Provide the services as specified in the Workplan;
- (b) Provide the *Department/Fund*, free of charge, with three copies of all publications resulting from the projects;
- (c) Keep proper financial records in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999) of all expenses relating to the individual projects;
- (d) Provide the *Department/Fund* with cashflows to be signed by the Project Leader and the responsible Chief Director in the Department and the CFOs of both parties as detailed in each workplan;

- (e) Deliver to the *Department/Fund* within one month of the end of each financial year, a detailed statement of expenditure relating to all projects;
- (f) Comply with the provisions of Sections 38(1)(j) and 55 (1)(d) of the Public Finance Management Act. Specific reference is made to S38(1)(j) which states:

“38. General Responsibilities of accounting officers. – (1)
The accounting officer for a department, trading entity or constitutional institution—

(j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial and internal control systems;”

- (g) Submit annually before 30 November the proposed budget and revised workplan for the forthcoming year which must contain the following information:

Name of service

project leader, project officer and responsible Chief Director in the Department;

Workplan for the current year and subsequent years;

Year of completion;

Amount provided for current year; and

Amount required for forthcoming year, specified under the headings:

(i) Personnel;

(ii) Running expenses; and

(iii) Capital equipment;

- (h) Upon completion or termination of this Agreement refund all moneys not spent by KZN Wildlife;
- (i) Pay all revenue generated from the services to the Fund;
- (j) Make available for inspection by the *Department/Fund* any information, records, documents relevant to the performance of the services;
- (k) Co-operate on an agreed skills exchange programme between the Parties where required in the Workplans; and
- (l) Submit annually before 30 September 10 copies of the KZN Wildlife Annual Report.

7.2 Subject to the availability of funds, **the *Department/Fund* undertakes to pay KZN Wildlife agreed funds as stipulated in the individual work plans. In respect of new projects, the *Department/Fund* will pay an agreed amount at the inception of the project** and the project officer, project leader and the respective CFOs will agree on the payment structure in the relevant workplan.

7.3 The *Department/Fund* may adjust the payment percentages according to the budget presented and/or according to progress made.

7.4 The *Department/Fund* may upon reasonable notice to KZN Wildlife conduct audits or call for inspection any information, records, documents relevant to the performance of the services.

8. Contributing Resources

The Parties agree that **in respect of each Workplan:**

- (a) All movable and immovable capital assets as well as plant and/or equipment acquired or built with funds made available by the *Department/Fund* to KZN Wildlife shall remain the property of the Fund, or if required, be disposed of after consultation with KZN Wildlife on completion and approval of the final report in terms of each Workplan. KZN Wildlife agrees to manage the assets of the *Department/Fund* properly and to the best of their ability.
- (b) A detailed list of assets must be signed by the Project Leader, Project Officer and the Director: Supply Chain Management of the Department, and attached to the relevant Workplan. Any amendment to the list must

be so signed and added, but it is not necessary to amend the Main Agreement to reflect such amendment.

- (c) All assets purchased for any projects are subject to approval of the CFO of the Fund.
- (d) All confiscated products or items with the exception of abalone, accruing to the Fund in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), will be disposed of by KZN Wildlife in accordance with the policy of the Fund and after consultation with the Fund. Confiscated abalone will be disposed of by the Fund.

9. Intellectual property

The parties agree that the results of the tasks are jointly owned by the parties, *Provided that:*

- (a) The *Department/Fund* has the unlimited right to use or implement results and findings of the service in the execution of its functions.
- (b) KZN Wildlife or any member, servant, agent, appointed officer or other person acting in the interests of KZN Wildlife may not sell, disseminate or otherwise dispose of data gathered by means of funds from the *Department/Fund* without the prior written consent of the Fund.
- (c) No data, or any portion thereof, gathered by means of funds from the *Department/Fund* shall be made available to a third party without the prior written consent of the *Department/Fund*; and
- (d) Copies of all databases, inventory and all other products resulting from the tasks shall be returned by KZN Wildlife upon finalisation or termination of the said project together with an undertaking that no such data will be used for any other purpose than that stated in the agreement, without the written consent of the *Department/Fund*.
- (e) Any publications arising from the projects shall be approved by the *Department/Fund* and shall contain an acknowledgement of the contribution of both Parties.
- (f) Copies of any publications referred to in (e) above, shall be provided to both parties.

10. Managing the Agreement

The Parties agree that the Agreement will be managed as follows:

- 10.1 Each Workplan will be managed and implemented by the Project Officer appointed by the *Department/Fund* and the Project Leader appointed by KZN Wildlife who must liaise with each other at least once a month;
- 10.2 The Main Agreement will be managed and implemented by a Steering Committee comprising –
 - (a) the Deputy Director-General of *Marine and Coastal Management* or delegate;
 - (b) the Chief Executive Officer of the KwaZulu-Natal Nature Conservation Board or delegate;
 - (c) the Chief Financial Officers of both parties;
 - (d) the Project Leaders and Project Officers of each workplan; and
 - (e) 2 additional members appointed by each party.
- 10.3 The Steering Committee must meet bi-annually.

11. Good Faith and Reasonableness

- 11.1 In their dealings with each other for purposes of the Agreement, the Parties -
 - (a) undertake to act in good faith and reasonably; and
 - (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other or public image of each other.
- 11.2 This Agreement does not in any way limit any statutory powers and functions of the Parties.

12. Cancellation / Termination of this Agreement

- 12.1 The Main Agreement and/or a Project(s) may be cancelled by either party on 90 calendar days written notice on the following grounds—
 - (a) should funding not be available;
 - (b) the other Party fails to perform its obligations in terms of this agreement; or
 - (c) upon breach of any terms of the main agreement or a project.

- 12.2 Upon such cancellation, KZN Wildlife undertakes to deliver certified copies of all material resulting from the relevant Project as well as any balance of the money paid to KZN Wildlife for that project.

13. Dispute Resolution

Any disagreement or dispute arising between the Parties with regard to implementation, application, interpretation or breach of this Agreement shall be settled as follows:

- 13.1 A disagreement or dispute must be initiated in writing.
- 13.2 The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation.
- 13.3 Should either party allege that there has been any non-compliance by the other Party, in respect of any of the material terms and conditions of this agreement, the duly appointed on-site representatives of the parties must first attempt to resolve the matter amicably.
- 13.4 Should settlement not be achieved in terms of clause 13.3 above, the Party alleging non-compliance with this agreement shall, in writing, advise the other party of its non-compliance.
- 13.5 The party against whom material non-compliance is alleged must respond to the written allegation of the other party within 7 (seven) days of receiving written notification of non-compliance from the other party.
- 13.6 The Parties should convene a meeting within 10 calendar days after the date of the correspondence referred to in paragraph 13.5 above has been received by the particular party.
- 13.7 At the aforesaid meeting, the parties shall attempt to reach agreement in relation to whether or not any party has failed to comply with any of the material terms and conditions of this agreement.
- 13.8 If the parties fail to reach agreement as envisaged in 13.7, a formal intergovernmental dispute may be declared by the aggrieved party in terms of section 41 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005 – the Intergovernmental Relations Framework Act)
- 13.9 If a formal intergovernmental dispute is declared, the procedures in sections 42 to 45 (inclusive) of the Intergovernmental Relations Framework Act shall apply.

14. Amending the Agreement

- 14.1 This Agreement constitutes the whole Agreement between the Parties relating to the subject matter of the Agreement.
- 14.2 There are no other conditions, representations, whether oral or written and whether expressed or implied, applicable to this Agreement, save for those contained in this Agreement.
- 14.3 Subject to clause 6:
- (a) no amendment, alteration, addition or variation of the Main Agreement and/or Workplans shall be of any force or effect unless reduced to writing and signed by the Parties; and
 - (b) such changes shall be incorporated as a written change to the Main Agreement and/ or Workplans, and the Agreement and/or Workplan shall be re-issued in full as a new version.
- 14.4 Any additional Workplans shall be incorporated as contemplated in clause 6.
- 14.5 Neither party shall be entitled without the prior written consent given by the duly authorised official of the other party to cede, delegate or otherwise transfer any of its rights and/or obligations in terms of the Main Agreement and/or the attached work plans.

15. Domicilium

- 15.1 The Parties choose the physical addresses set out hereunder as their *domicilia citandi et executandi* for all purposes under this Agreement:

THE FUND

The Deputy Director-General:
Marine and Coastal Management
Department of Environmental Affairs and Tourism

OR

THE DEPARTMENT

.....

Physical Address: 7th Floor , Foretrust House
Martin Hammerschlagh Way
CAPE TOWN
8000

Postal Address: Private Bag X2

ROGGEBAAI
8012

KZN WILDLIFE

CHIEF EXECUTIVE OFFICER
KwaZulu-Natal Nature Conservation Service

Physical Address: Queen Elizabeth Park
CASCADES
PIETERMARITZBURG

Postal Address: KwaZulu-Natal Nature Conservation Service
Queen Elizabeth Park
PO Box 13053
CASCADES
3202

- 15.2 Notice of change of address must be given in writing, by the Party concerned and delivered by registered mail to the other Parties.

16. CONFIDENTIALITY

- 16.1 Any Party shall treat information furnished by another Party or another person for purposes of the execution of this Agreement, as confidential.
- 16.2 Subject to this clause, the Party(s) so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 16.3 The parties agree that this Agreement is not intended to restrict use or disclosure of any portion of such information which:
- (a) is made known to the public through no default by the receiving Party of its obligations under this Agreement;
 - (b) is rightfully received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
 - (c) is independently developed by the Receiving Party by persons who did not have access to Confidential Information of the Disclosing Party; or

- (d) is disclosed by the Receiving Party after receipt of written permission from the disclosing Party

17. Indemnity

- 17.1 KZN WILDLIFE indemnifies the *Department/Fund* from and holds the *Department/Fund* harmless against any and all liabilities arising from any acts and/or omissions of KZN WILDLIFE and/or any of its servants, agents, members and/or appointed officers arising out of this Agreement.
- 17.2 KZN WILDLIFE has no authority to bind the *Department/Fund* contractually. KZN WILDLIFE hereby indemnifies the *Department/Fund* against any actions or applications, including all costs that arise in this regard.
- 17.3 KZN WILDLIFE undertakes to obtain the necessary consent in the event of it utilising the works and/or rights or any other intellectual property of others, and hereby indemnifies the *Department/Fund* against any action or application, including all costs, which might arise out its failure to do so. If KZN WILDLIFE is unable to obtain the required consent it will advise the *Department/Fund* accordingly in writing in which case KZN WILDLIFE will not be liable for the use of such intellectual property by the *Department/Fund*.
- 17.4 KZN WILDLIFE and the appointed officers undertake to use their best endeavours to perform their duties in the execution of their obligations in terms of this agreement diligently and with due competence, and to render work of the highest standard required by persons of such professions.

18. Signatures of the Parties

- 18.1 This Agreement is hereby signed by Ms. Pamela Bulelwa Yako of the Department of Environmental Affairs and Tourism, in her capacity as the *Accounting Officer/Director-General* of the *Marine Living Resources Fund/DEAT* (being duly authorised thereto) aton this day of 200

.....
Ms. Pamela Bulelwa Yako
MARINE LIVING RESOURCES FUND
Or
DEAT

As Witnesses:

- 1.
- 2.

18 This Agreement is hereby signed by Mr. Khulani Mkhize, in his capacity as Chief Executive Officer of Ezemvelo Kwa-Zulu Natal Wildlife, the operational arm of the KwaZulu-Natal Nature Conservation Board, (being duly authorised thereto) at on this day of 200

.....
Mr. Khulani Mkhize
KWAZULU-NATAL CONSERVATION BOARD

As Witnesses:

- 1.
- 2.