

MEMORANDUM OF AGREEMENT TEMPLATE

INSTRUCTIONS

This template contains the essential terms that should appear in a service level agreement. However, some terms may not be relevant to a specific kind of MOA and the nature of the relationship between the parties will therefore determine this.

The comments in square brackets/bold and/or italics:

1. indicate whether further detail would need to be inserted according to the specific contract;
2. provide an explanation or guidance as to the necessity for a clause;
3. provide alternative wording depending on whether the agreement is concluded with DEAT.

**MEMORANDUM OF AGREEMENT**

**between**

***THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS  
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM***

***(Hereinafter referred to as 'the Department')***

***Represented by PAMELA BULELWA YAKO***

***in her capacity as Accounting Officer/ Director-General***

**and**

***WALKER BAY CANNERS LTD***

***REGISTRATION NO:...***

***(Hereinafter referred to as the service provider/consultant)***

***Represented by.... In his or her capacity as Director***

## IT IS HEREBY RECORDED

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:-

- 1.1.1 “the Department” means the Department of Environmental Affairs and Tourism, Branch: .....
- 1.1.2 “the service provider” means (*service provider’s name and registration number*);
- 1.1.3 “the parties” means the *Department* and (*service provider’s name*);
- 1.1.4 “this agreement” means this service level agreement and the bid documentation together with all the annexures thereto;
- 1.1.5 “services” means the services to be rendered by the service providers to the *Department* as set out in this agreement, the bid documentation together with all the annexures thereto;
- 1.1.6 ‘bid documents’ means all documents submitted by the service provider as their bid proposal for *DEAT / MLRF Bid Number ....*
- 1.1.7 “signature date” means the date on which the last signing party signs this agreement;
- 1.1.8 “termination date” means the date following the last day of this agreement, unless the agreement is terminated earlier in terms of clause 7 below, or is extended for further period based on mutual agreement between the parties;
- 1.1.9 ‘*the Fund*’ means the *Marine Living Resources 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 section 10 of the

*Marine Living Resources Act, 1998 (Act 18 of 1998); and falls under the control of the Department of Environmental Affairs and Tourism.*

- 1.1.10 “financial year” means the Department’s financial year 1 April to 31 March
- 1.2 Expressions defined in this agreement shall bear the same meanings in the annexures to this agreement, unless expressly stated otherwise in this agreement.
- 1.3 In this Agreement:
- 1.3.1 the singular shall include the plural and vice versa;
- 1.3.2 the masculine gender shall include the feminine and neuter genders and vice versa;
- 1.3.3 unless otherwise indicated, any meaning ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears thereafter;
- 1.3.4 headings to the clauses are only for convenience of reference and shall not be utilised in the interpretation of this Agreement.
- 1.4 This Agreement shall bind the Parties and their respective successors-in-title.
- 1.5 Where the contents of the bid documents conflict with the provisions of this agreement, the provisions of this agreement shall take preference.  
*(See comment)*
- 1.6 In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such term will be severable from the remaining terms, which will continue to be valid and enforceable.

## 2. PAYMENT

- 2.1 The service provider shall render services to the *Department* in accordance with the cost structure as set out in Annexure 'A' to this agreement, which amounts include VAT and all disbursements and is in South African Rand. *(See comment)*

The *Department* shall pay to the service provider the sum of ..... upon delivery of the .....Such amount includes VAT, delivery costs, installation costs, labour and any disbursements and is in South African Rand.

Comment [n1]: This must go into the A2 template

- 2.2 The service provider shall provide the *Department* with a detailed *monthly (only include where payment is to take place monthly)* tax invoice for *(the services provided)*. Once the *Department* has approved such invoice *and the relevant report in terms of clause...*, it will make direct payments to the service provider within 30 calendar days of approval of such invoice.
- 2.3 The Department may implement a penalty of ..% (...percent) of the agreed payment per phase (as per Annexure ... ) for the deliverables not delivered within the timeframes and/or to the satisfaction of the Department as indicated in this agreement.
- 2.4 The service provider will keep full and proper financial records of all payments made by the *Department*, and will provide all supporting documentation or information related to budgeted expenditure at the request of the Department.
- 2.5 Payment will be made by means of electronic transfer into the following bank account:

Name of account:

Bank:

Account number:

Branch Code:

### **3. COMMENCEMENT AND DURATION**

3.1 The agreement will commence from date of signature.

ALTERNATIVELY

The agreement will commence on .....notwithstanding date of signature.

3.2 This agreement may be extended with the prior written consent of both parties and on such terms as the parties may then agree.

3.3 This agreement shall endure for a period of .... *years/months*. It may be extended for a further period upon mutual agreement between both parties.

### **4. OBLIGATIONS OF THE SERVICE PROVIDER**

4.1 The service provider shall provide the services as set out in Annexure 'B' to this agreement.

4.2 During the performance of duties as per this Agreement, the Service Provider shall provide its own resources.

4.3 The Service Provider shall faithfully and diligently devote time to the service of the *Department* in terms of this Agreement.

- 4.4 The Service Provider shall undertake such assignments as the *Department* requires to be performed in terms of this Agreement.
- 4.5 The Service Provider acknowledges and agrees that the *Department* is bound by the rules and regulations governing the *Department/Fund* and that any obligations arising from this agreement can only be carried out in light thereof.
- 4.6 The service provider shall ensure that all work shall be of a high standard, skill and executed to the satisfaction of the Departmental official responsible for the management of this agreement.
- 4.7 The service provider shall keep proper financial records in accordance with the Generally Accepted Accounting Practice (GAAP) of all expenses relating to the service;
- 4.8 The service provider shall deliver to the *Department* by **(stipulated date)** of the financial year, audited statements, reflecting expenses relating to the service.
- 4.9 The service provider shall deliver to the *Department* within two (2) weeks of the end of each financial year, a detailed statement of expenditure.
- 4.10 The service provider shall ensure that it enables the *Department* to comply with the provisions of Sections 38(1)(j) of the Public Finance Management Act, 1999 (Act 1 of 1999), 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;"*

- 4.11 The service provider shall submit annually before 30 September for consideration by the *Department*, a proposed budget and work programme for the forthcoming year. *(See comment)*
- 4.12 The service provider shall upon completion or termination of this Agreement refund to the *Department* all funds paid by the *Department* and not spent by the service provider.
- 4.13 The service provider shall pay any Value Added Tax payable in respect of services rendered in terms of this Agreement - the *Department* bears no responsibility therefore.
- 4.14 The service provider shall pay all revenue generated from the services to the Department. *(See comment)*
- 4.15 The service provider shall make available for inspection by the *Department* any information, records, documents relevant to the performance of the services.
- 4.16 Progress reports in the format specified by the Department must be submitted on a quarterly basis by the .... of the month following the expiry of a three-month period, showing progress made in relation to each of the Outputs as detailed in Annexure 'B' attached hereto, as well as a summary of the expenditure incurred during the three month period.
- 4.16 **The service** provider warrants that the goods supplied are new, unused, are of the most recent or current models and incorporate all recent

**Comment [n2]:** This clause must be put in template A2

improvements in design and materials. The service provider guarantees for a period of twelve months from the date of delivery, that no faulty material or workmanship was used in the manufacture, supplies and/or in the execution of services and the final product is not defective. If any defect or malfunction is discovered by the *Department* within this period, the service provider shall replace the supplies and/or services at no additional cost to the *Department*.

## 5. OBLIGATIONS OF THE DEPARTMENT

The *Department* shall provide the service provider with such information, documentation and other details requested in writing by the service provider to enable the service provider to fulfil its obligations in terms of this agreement. If such documentation is not provided by the *Department* the service provider shall indicate in writing which documentation is outstanding. The *Department* shall only be obliged to provide that information or documentation which is relevant to this agreement and which is in the possession of the *Department*.

## 6. MANAGEMENT OF THE AGREEMENT

- 6.1 The parties undertake to appoint the following individuals as contact persons to ensure the proper management of this agreement:

The Department: Chief Director/Director,,,,,,of the Department  
or his delegate

The Service Provider: Mr/Ms,,,,, or his delegate

## 7. CANCELLATION AND BREACH

- 7.1 The *Department* may, in addition to any other remedies it may be entitled to in law and in terms of this Agreement, appoint another service provider to render the required Services at the expense of the Service Provider should the Service Provider default in any of the following respects:
- 7.1.1 Without reasonable cause, wholly suspend the services before completion of the contract period;
  - 7.1.2 Fail and/or refuse and/or neglect to provide the service with the required diligence;
  - 7.1.3 Fail and/or refuse and/or neglect, after 7 calendar days written notification from the *Department* to render the services in accordance with this Agreement.
- 7.2 If the *Department* is dissatisfied with the quality of the performance of any of the services referred to in clause 4 and the annexures and/or the service provider has failed to comply with any timeframes for delivery, the *Department* will be entitled to withhold payment of any invoice received. In such event the *Department* must notify the service provider in writing, within 14 (fourteen) calendar days of the task giving rise to the complaint and the service provider must remedy the identified cause of complaint within 7 (seven) calendar days of such notification, or such longer period as the *Department* may authorize in writing, at no additional cost to the *Department*, failing which the *Department* will be entitled to cancel this agreement.
- 7.3 This agreement may be terminated by the *Department* as a result of a breach of the terms of this agreement by the Service Provider or a lack of available funds, on 30 calendar days written notice. Upon such cancellation, the service provider undertakes to deliver all work done.

***Depending on the nature of the payment structure***

***ALTERNATIVE 1***

The *Department* undertakes to remunerate the Service Provider for any work completed up until the date of termination, provided the service provider renders an invoice as stipulated in clause ... above and the work completed is approved by the *Department* and the service provider shall have no further claim for payment or damages.

***ALTERNATIVE 2***

The service provider undertakes to pay to the *Department*, any pro rated balance of remuneration already paid to the service provider as a consideration for any services which were to be performed after the date of cancellation.

- 7.4 In the event of either party committing a breach of any of the terms and/or conditions of this agreement and failing to remedy such breach within the period of 30 calendar days of having been given written notice by the aggrieved party requiring such breach to be remedied, the aggrieved party may, without prejudice to any rights it may have to claim for damages suffered as a result of the breach, either cancel this agreement or enforce performance of the terms of the agreement.
- 7.5 This Agreement may be terminated immediately by the *Department*, upon the happening of one of the following events by giving written notice of the cancellation to the Service Provider if the Service Provider:

- 7.5.1 Is liquidated/sequestered or placed under judicial management or enters into a compromise with its creditors;
  - 7.5.2 Wilfully damages the *Department's* property, business, reputation or goodwill;
  - 7.5.3 Discloses to any other party or unauthorised person confidential information of the *Department*;
  - 7.5.4 Provided incorrect or false information in its bid proposal and which is subsequently discovered by the *Department*;
  - 7.5.5 Should the Service Provider, inter alia, make *himself/itself* guilty of misconduct in terms of the code of conduct of its profession or if the Service Provider acts dishonestly or contrary to the integrity required from its profession.
- 7.6 If the ownership, shareholding, HDI status and any of the key staff members (management/professional/skilled) of the service provider or equipment, facilities or infrastructure necessary for the effective provision of the services changes during the period of this agreement, the service provider shall notify the *Department* immediately, and the *Department* reserves the right to cancel this agreement. (See comment)
- 7.7 The Department reserves the right to terminate this Agreement or temporarily defer the work, or any part thereof, at any stage of completion, should it be decided not to proceed with the project. The Department may terminate the agreement by giving thirty (30) days notice to the service provider/Consultant. Should the Agreement be so terminated the service provider/Consultant shall only be paid for the appropriate portion of the work completed.

## 8. GOVERNING LAW AND ARBITRATION

- 8.1 Should any disputes and/or difference of opinion arise between the parties regarding the interpretation of any or all the provisions of this Agreement during the term of or on the termination thereof that cannot be amicably settled, the aggrieved party shall forthwith give the other party 14 (fourteen) calendar days written notice to this effect.
- 8.2 After notice in terms of clause 8.1 disputes and/or differences shall be resolved in the following manner:
- 8.2.1 Both parties shall, by agreement, appoint an impartial mediator. Should the parties not be able to agree on a mediator, then it is agreed that the Law Society of the *Western Cape/Gauteng* shall appoint a mediator.
- 8.2.2 Should the matter not be resolved through mediation, both parties shall have the right to have the matter resolved through arbitration as set out below, or the court having jurisdiction in this matter in which case the defaulting party may be liable for all legal costs incurred on a scale as between attorney and client.
- 8.3 This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 8.4 Any dispute arising out of this Agreement or the interpretation thereof, both while in force and after its termination, may be, with the written consent of the *Department* submitted to and determined by an appropriate arbitration forum agreed to by both parties

- 8.5 Such arbitration shall be held at an agreed venue, and in a summary manner with a view to it being completed as soon as possible.
- 8.6 There shall be one arbitrator appointed by agreement between the parties.
- 8.7 The arbitration proceedings shall be held in the English language.
- 8.8 The decision of the arbitrator shall be final and binding on the parties, and may at the request of either party be made an Order of Court of competent jurisdiction, and each of the parties hereby agrees to submit itself to the jurisdiction of such Court.

## 9. GENERAL

### Indulgence

- 9.1 No amendment of this agreement or of any provisions or terms hereof, and no extension of time or waiver or relaxation or suspension of any of the provisions or terms of this agreement shall be of any force or effect unless reduced to writing and signed by both parties .
- 9.2 No waiver on the part of either party of any rights arising from a breach of any provision of this agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

### Cession

- 9.3 Neither party shall be entitled without the prior written consent given by the duly authorised official of the other party to cede, delegate, subcontract or otherwise transfer any of its rights and/or obligations in terms of this agreement.

**Notices**

9.4 Any notice to be given in terms of this agreement shall be given in writing and shall be deemed validly served within ten calendar days after the day on which it shall have been posted by prepaid registered post to the postal address of the other party that is mentioned in this contract:

The Department  
The Deputy Director-General: Marine and Coastal Management  
Department of Environment Affairs and Tourism  
Private Bag X2  
ROGGEBAAI  
8012  
Att :  
    Tel :  
    Fax :

The Department  
.....  
.....  
.....

***(Service provider)***  
***(Postal address)***

Att :  
Tel :  
Fax :

- 9.5 All notices in terms of this agreement shall in addition to clause 9.4, be faxed to the facsimile numbers of the parties as detailed above.

### **Domicillium**

- 9.6 The following addresses are respectively chosen by the parties as their *domicilium citandi et executandi* for all purposes arising out of this contract and for the service of legal documents and delivery of notices:

The Department:

Department of Environmental Affairs and Tourism  
7<sup>th</sup> Floor, Foretrust Building  
Martin Hammerschlag Way  
Cape Town  
8000,

***(Service Provider)***

***(Street address)***

- 9.7 Any hand-delivered notice shall be deemed validly delivered when that party acknowledges receipt of the notice in writing.
- 9.8 Each party shall have the right at any time to substitute its said *domicilium*/postal address with another address by giving written notice of the appointment of the new address to the other party in accordance with the terms of this contract, which change of its said *domicilium*/postal address shall only become applicable 10 calendar days after the date of notice.

**Vis major**

9.9 The parties hereby agree that neither party shall be liable to the other for any loss, injury or any other casualty suffered or incurred by the other party or any failure to comply with its obligation in terms of this contract due to strike, irregular industrial action short of strike, riots, storms, explosions, *vis major*, war (whether declared or undeclared) or any other similar cause beyond the reasonable control of either party and any failure or delay by either party in their performance of any of the obligations under this agreement due to any of the foregoing causes, shall not be considered as a breach of this agreement.

**10. CONFIDENTIALITY**

10.1 Any Party shall treat information furnished by another Party or another person for purposes of the execution of this Agreement, as confidential.

10.2 Subject to this clause, the Party(ies) 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.

10.3 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

10.4 The provisions of this clause will survive the termination of this Agreement.

## 11. INTELLECTUAL PROPERTY

11.1 Insofar as may be necessary, the Service Provider assigns to the *Department* the copyright in all present and future works eligible for copyright including, without limitation, software programmes of which it may be the author, which works were or are created, compiled, devised or brought into being during the subsistence and fulfilment of this Agreement. No consideration shall be payable by the *Department* to the Service Provider in respect of this assignment.

11.2 All research, data, information, documents gathered by the Service Provider from individual interviews and or group discussions, field research, supplementary sources and expert reports, written instructions, drawings, notes, memoranda, records, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled, devised or brought into being or come into the possession of the Service Provider during the subsistence of this Agreement, shall be the property of the *Department*, and upon the termination of this Agreement, or earlier if required by the *Department*, such documents and all copies shall be handed over to the *Department*.

11.3 In addition, the *Department* shall retain exclusive control and rights to all the Service Provider's work undertaken in terms of this Agreement, and more specifically, the right to edit and publish such work.

11.4 All policies, documents, programmes or reports of the *Department* and any work completed in terms of this agreement shall remain the intellectual property of the *Department* all documents in this respect shall be submitted to the *Department*. No publication of any material or communication in the media or other fora regarding the content of these policies, documents, programmes or reports and any work completed in terms of this agreement is allowed except with the express written consent of the *Department*.

## 12. **CONTRIBUTING RESOURCES (See comment)**

12.1 All movable and immovable capital assets as well as equipment acquired or built with funds made available by the *Department* to the service provider shall remain the property of the *Department*, or if required, be disposed of after consultation with the *Department* on completion and approval of the final report or termination services in terms of this agreement.

12.2 The service provider shall be liable for insurance, running expenses and repairs to said capital assets as well as equipment for the duration of this agreement.

- 12.3 No vehicles may be acquired with funds made available by the *Department* unless specifically indicated in writing by the Director-General/Chief Financial Officer.
- 12.4 All computer hardware and/or software to be purchased by the service provider with funds from the *Department* must be approved beforehand by the *Department*.
- 12.5 The Department may demand proof of adequate and continuous insurance for all capital assets acquired and/or built with funds from the Department as referred to in 12.1 above, and the service provider must furnish same on demand.
- 12.6 Any movable or immovable assets owned by the *Department* and supplied to the service provider for the execution of this agreement, remains the property of the *Department* and shall at any time be available for inspection by the *Department*. Any property which remains in the possession of the Service Provider when the agreement is terminated shall be returned to the *Department* within 5 calendar days and at the service provider's own expense. The service provider shall at all times while such property is in the possession of the service provider, be responsible for any loss or damage to such property.
- 12.7 The proceeds of the sale of any assets purchased with funds from the *Department* shall accrue to the *Department*.

### 13. **INDEMNITY**

- 13.1 The service provider indemnifies the *Department* and holds the *Department* harmless from and against any or all liabilities arising from

any acts or omissions of its employees and/or agents and/or appointed agents arising out of this agreement.

- 13.2 The Service Provider acts as an independent contractor and not as an agent, official or employee of the *Department* and has no authority to bind the *Department*.
- 13.3 The *Department* is indemnified against any claims or court action, including legal costs as well as attorney and client costs, which any person may institute resulting from a failure to comply with paragraph 13.1 and 13.2 above.
- 13.4 The Service Provider undertakes to obtain the necessary consent in the event of it making use of the works and rights or any other intellectual property of third parties. The Service Provider hereby indemnifies the *Department* against any action or application, including all costs, which might arise out of such breach.
- 13.5 The Service Provider indemnifies the *Department* against all claims for costs and liabilities arising from the presence of the Service Provider and/or its representatives on the *Department's* property. This indemnity shall apply to any claims by the Service Provider and/or its employees, agents and representatives for their injury or death while carrying out their duties/services in terms of this agreement and shall include loss or damage to the Service Provider's property and the personal effects of the Service Provider's employees, representatives and/or agents.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
in the presence of the undersigned witnesses.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

**PAMELA BULELWA YAKO (or DDG)**  
**DIRECTOR-GENERAL OF THE**  
**DEPARTMENT**  
who is duly authorised thereto.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
in the presence of the undersigned witnesses.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

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For the service provider who warrants that  
he/she is duly authorised thereto.

Full Name:

Capacity:

Authorisation:

