

IMPLEMENTATION PROTOCOL TEMPLATE

INSTRUCTIONS

The comments in brackets/bold and/or italics:

1. Indicate whether further information would need to be inserted according to the specific agreement.
2. Provides alternatives depending on whether the agreement is concluded with DEAT or the Fund.
3. Provides an explanation for a specific clause.



IMPLEMENTATION PROTOCOL

BETWEEN THE

THE MARINE LIVING RESOURCES FUND

Or

(The Department of Environmental Affairs and Tourism)

AND

(The relevant government department or statutory body)

ON

TRANSITION OF THE TWELVE FISHING HARBOURS

(Above is an example of a simple title which incorporates the purpose of the agreement)

Date

1. Definitions

For the purpose of this Agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated -

1. **"This Agreement"** means the Agreement together with all schedules and appendices attached hereto or referred to herein which schedules and appendices shall be signed and dated by the Parties hereto;
- 1.1 "DDG" means the Deputy Director-General: Department of Environmental Affairs & Tourism: Branch Marine & Coastal Management
- 1.2 "CFO:MLRF" means the Chief Financial Officer: Marine Living Resources Fund
- 1.3 "Chief Director: ICM" Chief Director: Integrated Coastal Management
- 1.4. "MLRA" Marine Living Resources Act 18 of 1998
- 1.5. "the Fund" 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, (Act no 1 of 1999) and established in terms of section 10 of the MLRA, and falls under the control of the Department of Environmental Affairs and Tourism;
- 1.6 "Local Authority" or "Municipality" means the local authority within the local government sphere;
- 1.7 "DG" means the Director-General: National Department of Environmental Affairs and Tourism
- 1.8 "Steering Committee" means the joint Steering Committee

represented by delegates from both departments.

- 1.9 “the Department” means the Department of Environmental Affairs and Tourism, Branch.....
- 1.10 “the Parties” means for the *Department/Fund* and **(the relevant department or statutory body)**
- 1.11 “the project leader” Means the individual appointed by the **(name of party)** to manage this agreement;
- 1.12 “the project officer” Means the individual appointed by the *Department/Fund* to manage this agreement
- 1.13 “CFO” Means the Chief Financial Officers of both departments
- 1.14 “DG’s” Means the Directors-General of both the departments
- 1.15 ‘signature date’ means the date on which the last signing party signs this agreement.

1.16 *In this Agreement all references to the Fund shall, where applicable, include a reference to the Department and visa versa.*

2. Background

The Parties:

2.1 **Having regard** to *the letter from the Minister of Environmental Affairs & Tourism dated 03 February 2005(Annexure A), Cabinet Memorandum: No 4 of 2005 dated 23rd March 2005(Annexure B) and the Minister of the National Department of Public Works letter, reference 24/57/1, dated the 14 April 2005(Annexure C), and the letter from the Director-General of the Department of Environmental Affairs & Tourism to the Director-General National Department of Public Works (Annexure D) relating to the joint transition process of the twelve proclaimed fishing harbours from the current joint control of the Department of Public Works and the Department of Environmental Affairs and Tourism, to a management authority.*

2.2 **Desiring** to *jointly manage the above mentioned transition process through the establishment of a joint Harbour Steering Committee.*

Recognising the *interest and responsibility of both departments and all the relevant stakeholders in the fishing harbours*

Hereby agree as follows:

3. Purpose of the Agreement

3.1 The aims and objectives of this Agreement are -

- (a)
- (b); and
- (c)

4. Parties to the Agreement

The Parties to this Agreement are as follows -

4.1 *The Marine Living Resources Fund, a statutory fund listed as a Schedule 3A Public Entity in Government Gazette 22047 of 16 February 2001 in terms of the Public Finance Management Act, (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 Ms. Pamela Bulelwa Yako in her capacity as Accounting Officer of the Fund, being duly authorised hereto;*

OR

*The Department of Environmental Affairs and Tourism Branch.....
Herein represented by,,,,,,, in his/her capacity as*

4.2 the(**full name of department or statutory body**).... as represented by the(**position or portfolio**).....;

5. Roles and Responsibilities

5.1 The role and responsibilities of the Parties are:

5.1.1 **The Department/Fund:**

- (a)
- (b); and
- (c)

- (d) Subject to the availability of funds pay (**name of party**) the agreed funds annually as follows:

- (e) For the duration of the agreement, pay a percentage of the agreed annual sum at the commencement of each contract year, and pay further agreed percentages of the annual sum as set out in (d) above within thirty (30) calendar days of acceptance by the Fund of the relevant progress report / final report as envisaged in the Work plan, *provided that:*
 - (i) the *Department/Fund* may adjust the payment percentages according to the budget presented and/or according to progress made; *and*
 - (ii) if, in the opinion of the *Department/Fund* the obligations of (**name of party**) as stipulated in clause 5.1.2 below, have not been met, the *Department/Fund* shall be entitled to withhold payment of the agreed percentage until satisfied with the relevant progress/final report; and

- (f) The *Department/Fund* may upon reasonable notice to **(name of party)** conduct audits or call for inspection any information, records, documents relevant to the performance of the services.

5.1.2 **(Name of other department/institution)** shall.....

- (a) Undertake the activities outlined in the work plan annexed hereto marked 'A';
- (b); and
- (c)
- (d) Keep proper financial records in accordance with the Public Finance Management Act, 1999 (Act1 of 1999) of all expenses relating to the service;
- (e) Deliver to the *Department/Fund* by **(stipulated date)** of the financial year, audited statements, reflecting expenses relating to the service;
- (f) Deliver to the *Department/Fund* within two (2) weeks of the end of each financial year, a detailed statement of expenditure;
- (f) Comply with the provisions of Sections 38(1)(j) of the Public Finance Management Act,1999 (Act 1 of 1999). 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 September for consideration by the *Department/Fund*, a proposed budget and work programme for the forthcoming year;
- (h) Upon completion or termination of this Agreement refund to the Fund all funds paid by the Fund and not spent by **(Name of Party)**;
- (i) Pay any Value Added Tax payable in respect of services rendered in terms of this Agreement - the *Department/Fund* bears no responsibility therefore;
- (j) Pay all revenue generated from the services to the *Department/Fund*;
- (k) Make available for inspection by the *Department/Fund* any information, records, documents relevant to the performance of the services;
- (l) Co-operate on an agreed skills exchange programme between the Parties where required.

5.2 The roles and responsibilities of other key stakeholders are:

5.2.1 **(Name of institution)**
(e.g., Intergovernmental forum/committee)

- (a)
- (b); and
- (c)
- (a)

6. Work plan

- 6.1 The Parties agreed to the Work plan annexed hereto marked 'A'.
- 6.2 The Parties undertake to supplement the Work plan with their individual departmental work plans.

7. Contributing Resources

The Parties agree to contribute the financial and non-financial resources and associated costs as follows:

7.1 **(Name of department)**

- (a)
- (b); and
- (c)

7.2 **(Name of department)**

- (l)
- (m); and
- (n)

7.3 All movable and immovable capital assets as well as equipment acquired or built with funds made available by the *Department/Fund* to **(name of party)** shall remain the property of the *Department/Fund*, or if required, be disposed of after consultation with **(name of party)** on completion and approval of the final report in terms of the Work plan.

7.4 A detailed list of assets must be signed by the Project Leader and Project Officer and attached to the relevant Work plan. Any amendment to the list must be so signed and will automatically be incorporated into this agreement.

7.5 **(Name of Party)** shall be liable for insurance, running expenses and repairs to said capital assets as well as plant and equipment. Such expenses may be drawn from the service budget.

- 7.6 No vehicles may be acquired with funds made available by the *Department/Fund*.
- 7.7 All computer hardware and/or software to be purchased by **(name of party)** with funds from the *Department/Fund*, must be approved beforehand by the *Department/Fund*.
- 7.8 The *Department/Fund* may demand proof of adequate and continuous insurance for all capital assets acquired and/or built with funds from the *Department/Fund* as referred to in 7.3 above, and **(name of party)** must furnish same on demand.
- 7.9 The proceeds of the sale of any assets purchased with funds from the *Department/Fund* shall accrue to the Fund.

8. Managing the Agreement

The Parties undertake to establish the following institutional mechanisms, including their composition and functions, for the effective management and implementation of this Agreement -

- 8.1
- 8.2; and
- 8.3

AND/OR

- 8.4 The Parties agree that the Agreement will be managed as follows:
 - 8.4.1 the Agreement will be managed and implemented by a Project Officer appointed by the *Department/Fund* and a Project Leader appointed by **(name of party)** who must meet at least once a month;

9. Good Faith and Reasonableness

- 9.1 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.
- 9.2 This Agreement does not in any way limit any statutory powers and functions of the Parties.

10. Cancellation / Termination of this Agreement

The Agreement may be terminated by the mutual written consent of both parties or by the *Department/Fund* on 30 calendar days written notice should funding not be available. Upon such cancellation, **(name of party)** undertakes to deliver certified copies of all material resulting from the relevant Project as well as any balance of the money paid to **(name of party)** for that project.

11. 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:

- 11.1 A disagreement or dispute must be initiated in writing.
- 11.2. The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation
- 11.3 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.

- 11.4 Should settlement not be achieved in terms of clause 11.3 above, the party alleging non-compliance with this agreement shall, in writing, advise the other party of its non-compliance.
- 11.5 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.
- 11.6 The Parties should convene a meeting within 10 calendar days after the date of the correspondence referred to in paragraph 11.5 above has been received by the particular party.
- 11.7 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.
- 11.8 If the parties fail to reach agreement as envisaged in 11.7, a formal intergovernmental dispute may declared by the aggrieved party in terms of section 41 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005 – IGRF Act)
- 11.9 If a formal intergovernmental dispute is declared, the procedures in sections 42 to 45 (inclusive) of the Intergovernmental Relations Framework Act shall apply.

12. Confidentiality

- 12.1 Any Party shall treat information furnished by another Party or another person for purposes of the execution of this Agreement, as confidential.
- 12.2 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.
- 12.3 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

13. Duration, Execution and Amending the Agreement

- 13.1 This Agreement will commence on the date of its signing (***or insert a specific date***) and will remain in effect for years unless terminated prior thereto by mutual written consent of the Parties (***or insert a specific period***).

- 13.2 The agreement together with all its annexures constitutes the whole Agreement between the Parties relating to the subject matter of the Agreement.
- 13.3 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.
- 13.4 No amendment, alteration, addition or variation of the Agreement shall be of any force or effect unless reduced to writing and signed by the Parties.
- 13.5 Such changes shall be incorporated as a written change to the Agreement, and the Agreement shall be reissued in full as a new version.
- 13.6 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 this agreement.
- 13.7 Neither party will have the right, according to this agreement, to make a supposition to the effect that it is allowed to act as an agent or official of the other party.

14. Indemnity

- 14.1 The ***(insert particular institution or statutory body)*** indemnifies the *Department/Fund* and holds the *Department/Fund* harmless from and against any or all liabilities arising from any acts or omissions of the ***(insert particular institution or statutory body)***, its employees and/or agents and/or appointed researchers arising out of this contract.

14.2 The **(insert particular institution or statutory body)** undertakes to obtain the necessary consent in the event of it making use of the works and rights or any other intellectual property of persons. The **(insert particular institution or statutory body)** hereby indemnifies the *Department/Fund* against any action or application, including all costs, which might arise out of such breach.

14.3 **(Name of party)** 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.

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:

15.1.1 Name of Party:

Physical Address:

15.1.2 Name of Party:

Physical Address:

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. 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) ***(The other government department or statutory body)*** or any member, servant, agent, appointed officer or other person acting in the interests of ***(the government department or statutory body)*** may not sell, disseminate or otherwise dispose of data gathered by means of funds paid by the Fund.
- (c) No data, or any portion thereof, gathered by means of the Fund's funds shall be made available to a third party without the prior written consent of the Fund ; and
- (d) All databases, inventory and all other products resulting from the tasks shall be returned by ***(the government department or statutory body)*** upon finalization 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 DEAT.

17. Miscellaneous Provisions

The Parties agree to the following miscellaneous provisions:

17.1

17.2

18. Signatures of the Parties

- 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 (having been duly authorised thereto)* at on this day of 200...

.....

NAME: PAMELA BULELWA YAKO
MARINE LIVING RESOURCES FUND

OR
DEAT

As Witnesses:

1.
2.

2. This Agreement is hereby signed by of the Department of
....., in his/her capacity as the
(having been duly authorised thereto) at on this day of
..... 200...

.....
NAME:
DEPARTMENT OF

As Witnesses:

1.
2.

EXAMPLE WORKPLAN

AIM¹:

Objective ²	Indicator ³	Outcome ⁴ / Output ⁵	Responsibility	Timelines	Budget

¹ Aim(s) means the broad, long-term goals of the agreement / project.

² Objective means a concrete statement describing what the project aim(s) is trying to achieve. The objective should be written at a low level so that it can be evaluated at the conclusion of a project to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/achievable, realistic and time bound.

³ An indicator indicates progress (or lack of) toward a result. It is a specific, observable, and measurable characteristic that shows the progress a program is making toward achieving a specified objective.

⁴ Outcome means the result or the effect that the objective intends to achieve.

⁵ Output means the desired or anticipated measurable product or result normally tangible.

EXAMPLE WORKPLAN

Draft