

MEMORANDUM OF AGREEMENT (MOA)

Entered into by and between:

THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS (NDHS),

(A department within the Government of the Republic of South Africa)

herein represented by Mr Thabane Zulu, in his capacity as Director-General and duly authorized hereto.

Hereinafter referred to as "the NDHS/Department"

And

NELSON MANDELA METROPOLITAN UNIVERSITY (NMMU)

herein represented by Prof. Derrick Swartz in his capacity as Vice Chancellor and duly authorized thereto.

Hereinafter referred to as "NMMU/the University"

In respect of:

**COOPERATION ON THE ESTABLISHMENT OF A CHAIR FOR EDUCATION IN
HUMAN SETTLEMENTS DEVELOPMENT MANAGEMENT**

MOA: NDHS AND NMMU COOPERATION ON THE ESTABLISHMENT OF A CHAIR FOR
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PREAMBLE:

WHEREAS the Department strives to develop viable and sustainable communities through the promotion and provision of mixed income and mixed tenure housing through co-operation with all spheres of government, the private sector, the international community and civil society;

AND WHEREAS the Department wishes to maximize the impact of the University and public sector resources to accelerate the delivery of tenure, with good quality services and human settlements development on well-located land with convenient access to transport options, near jobs and other economic development opportunities, which promotes integrated and sustainable living areas and communities;

AND WHEREAS the Department has recognized the importance of quality education, backed by sound research, which should provide more appropriately educated professionals and practitioners in support of rigorous policymaking, planning and programme implementation;

AND WHEREAS the Department has established a Capacity Building Unit that will lead the development and facilitate the rollout and periodic review of the Human Settlements Education and Capacity Building Programme in South Africa in collaboration with other sector departments, municipalities, institutions of higher learning, civil society organizations, science councils and local and international development agencies;

AND WHEREAS NMMU, which has a vision of ensuring educational excellence in a transformed society and with a sustainable environment for the benefit of the present generation but also for future generations of South Africans, wishes to assist the Department in augmenting its education and capacity building endeavors of this MOA.

Accordingly, the Parties hereby record the terms and conditions upon which this relationship shall be governed.

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NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely;

- 1.1 **“Financial Year”** means the period starting on 1 April of a year and ending on 31 March of the following year;
- 1.2 **“Chair for Education in Human Settlements Development Management”** means the Project that is identified by the Parties and undertaken by the NMMU. This Project will be funded by the Department.
- 1.3 **“Professionalisation of the Sector process”** means a process by which an occupation transforms itself into a true profession of the highest integrity and competence. This process involves establishing acceptable qualifications and a professional body.
- 1.4 **“NMMU”** means the Nelson Mandela Metropolitan University;
- 1.5 **“NDHS/Department”** means the National Department of Human Settlements;
- 1.6 **“the Parties”** means the Department and the NMMU and as fully described on the first page of this Agreement;
- 1.7 **“this MOA”** means this Agreement and all annexure(s) thereto;
- 1.8 **“Steering Committee”** means the committee set up in terms of this MOA and comprising officials from the NMMU and the Department.
- 1.9 **“Agreement”** means this Memorandum of Agreement and any annexure/s attached and to be attached in the future as agreed to in this Agreement.
- 1.10 **“Effective Date”** means the day upon which this Agreement is signed by both Parties.

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- 1.11 “**Parties**” means the parties as fully described on the first page of this Agreement.
- 1.12 “**DHET**” means the Department of Higher Education and Training
- 1.13 “**Management Committee**” means the Management Committee within the NMMU’s Faculty and Department (the Department of Building and Human Settlements Development) that will host the Chair at the NMMU.
- 1.14 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.14.1 Words importing –
- 1.14.1.1 any one gender includes the other gender;
 - 1.14.1.2 the singular includes the plural and vice versa;
 - and 1.14.1.3 Natural persons include created entities (corporate and unincorporated) and vice versa
- 1.15 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the MOA, notwithstanding that it is only contained in the interpretation clause.
- 1.16 If any period is referred to in this MOA by way of reference to a number of days, the days shall be reckoned inclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.
- 1.17 If any provision of this Agreement is in conflict or inconsistent with any law, the invalidity of such provision shall not affect the validity of the remainder of the provisions thereof.
- 1.18 Annexes to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof.
- 1.19 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

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- 1.20 The expiration and termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.21 Each Party warrants that it has the full power and authority to enter into this Agreement.

2 NATURE AND PURPOSE OF THE MOA

- 2.1 The parties will use their best endeavours to deliver on their commitments as stated herein, as this MOA constitutes a binding agreement between the parties. The MOA is intended to formalize the Parties' relationship and to co-ordinate their efforts to establish a Chair for Education in Human Settlements Development Management.
- 2.2 The Parties hereby confirm that this MOA does not intend to create an exclusive relationship between the Parties and therefore does not preclude any of the Parties to engage with other role players on any basis to achieve similar objectives.
- 2.3 The purpose of this MOA is to facilitate co-operation, collaboration, advancement of knowledge of reciprocity, mutual benefit and frequent interactions between the Department and NMMU in the development, review, roll-out, monitoring and evaluation of the education and capacity building aimed at supporting the creation of integrated and sustainable human settlements within South Africa.
- 2.4 The Parties hereby furthermore agree to work closely together to combine their available skills and resources to achieve the objectives of this MOA.
- 2.5 It is recorded that, as the Parties become more experienced in working together as contemplated in this MOA, that this MOA may be amplified and extended, as agreed upon in writing and signed by the Parties, as circumstances dictate.

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3 GENERAL PRINCIPLES OF THIS MOA

- 3.1 The Parties agree to enter into this MOA to promote the policy objectives and priorities of the Parties, as outlined in this Agreement.
- 3.2 The Parties will establish a Chair for Education in Human Settlements Development Management which will be responsible for the development of course material and the teaching of the Bachelor of Human Settlements Development Degree and to further the professionalisation process of the Human Settlements Sector.
- 3.3 For Projects funded by the Department, the identification and approval process shall be as follows:
- 3.3.1 The parties will, by no later than 31st March of every year (or such earlier date(s) as may hereafter from time to time be agreed to in writing), identify specific potential Projects that will give effect to the principles and objectives of the National Sustainable Human Settlement Education and Capacity Building Agenda and this MOA. In this regard, the NMMU will formulate and compile project proposals and submit those to the Department for consideration.
- 3.3.2 The Projects to be identified shall be those that are of high priority to the Department, in that financial year, and their funding sources shall have been confirmed.
- 3.3.3 The Department shall adjudicate the project proposals submitted by NMMU. The Department will then have to follow its normal processes for the consideration and approval of the bids (if applicable) in terms of the Public Finance Management Act of 1999 as amended, Treasury Regulations, Department of Housing Acquisition Policy, including the Accelerated Procurement Policy Guidelines.
- 3.4 The NMMU may also undertake other similar and supportive Projects in areas of interest to the Department and these shall be discussed between the NMMU and the Department and information exchanged as appropriate.

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4 RESPONSIBILITIES OF THE DEPARTMENT

- 4.1 The Department shall within its legal mandate and available resources:
- 4.1.1 Where called upon, take all the necessary initiatives, provide people resources and take compliance measures to ensure that mechanisms are put into place to ensure the implementation of this Chair;
 - 4.1.2 Manage, coordinate and provide leadership for the Chair;
 - 4.1.3 Assist towards facilitating the necessary approvals and co-operation from the relevant Stakeholders, Government Bodies and other necessary third parties;
 - 4.1.4 On approval by the Director General of the Department or his delegate of the Request for Utilization of Funding for the Chair in terms of the Department's Supply Chain Management processes, make funding available for the establishment and running of the Chair for Education in Human Settlements Development Management;
 - 4.1.5 Mobilize external assistance to support the implementation of this project, which assistance may include external funding and/or skills;
 - 4.1.6 Participate in the Steering Committee of the programme that will be offered by the Chair;
 - 4.1.7 Support stakeholders, among other responsibilities, to undertake marketing and recruit candidates for the degree programme, also provide bursaries and scholarships where permissible; and
 - 4.1.8 Monitor programme implementation.

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5 RESPONSIBILITIES OF THE NMMU

The NMMU shall as:

As Primary Responsibilities

- 5.1 Establish a Chair for Education in Human Settlements Development Management at the University;
- 5.2 Support the recruitment of programme participants;
- 5.3 Provide indirect resources for the implementation of the Chair and its operations as deemed possible and sustainable;
- 5.4 Design and develop course material for the Bachelor's Degree in Human Settlements Development;
- 5.5 Implement a professional Bachelor's Degree in Human Settlement Development;
- 5.6 Monitor program and project implementation and submit reports as agreed between the two parties, at least once a year.
- 5.7 Conduct research and supervise post-graduate students to enhance the research undertaken by staff members. In this regard, the research shall be focused on human settlement development management to enhance the education and provide answers to some of the most pressing challenges in housing and human settlement development management practices. The research will add to the debate on human settlement development management in developing countries and provide scholarly input that will, in the long-term, provide solutions to global problems of almost immeasurable proportions, which challenges the humanity of human beings.
- 5.8 Manage organizational and inter-institutional matters and market the activities of the Chair.

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- 5.9 Focus on education and training in human settlements development management, without being discipline-bound, to provide professional management capacity in the human settlement sector.
- 5.10 Strive to become the foremost education facility in South Africa for students in sustainable human settlement development and management.
- 5.11 Provide a consultation service and advice to the Department in support of its capacity building and professionalisation endeavours, including brainstorming, planning and strategizing sessions, accompanying officials upon request to meetings with other third parties and making presentations at appropriate forums.
- 5.12 In terms of clause 5.11 above, the professional time devoted to consultation will be limited to an average of one day per week of the appointed professor's time (as a secondary appointment within the University).
- 5.13 Through consultation, assist the capacity building and professionalisation endeavours of the National Department of Human Settlements to undertake the following projects in conjunction with selected service providers:
- 5.13.1 Establish a Council for Human Settlement Professionals (CHSP) and support its activities such as strategic planning, recruitment and registration of candidates and professionals.
 - 5.13.2 Investigate the need, develop and establish a coordinated national capacity building / continuous professional development programme(s) for current human settlement practitioners.
 - 5.13.3 Develop and establish bridging programmes for other relevant professionals to register with the CHSP.
 - 5.13.4 Engage the Further Education and Training (FET) Sector in education and training of future human settlement practitioners.

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- 5.13.5 Engage other universities in human settlement and related education and training.
- 5.13.6 Network with relevant professional bodies, such as the Council for the Built Environment (CBE) and the Chartered Institute of Housing (CIH).
- 5.13.7 Network with relevant national and international organizations such as UNHABITAT and the World Bank.
- 5.13.8 Respond to calls for presentations at conferences and to other interested parties nationally and internationally.

5.14 The responsibilities outlined above shall be undertaken on a project-by-project basis, and with separate additional operational project-based funding.

As Secondary Responsibilities

The NMMU shall fulfill the following responsibilities on a project-by-project basis (each with its own scope, project plan, additional budget and separate funding sources) and as approved by the appropriate structures and monitored by the Steering Committee:

- 5.15 Provide training, ensuring transfer of skills (in the form of short learning programmes [SLPs], workshops or seminars) to public sector officials;
- 5.16 Conduct skills needs surveys and analyses that align with the human settlement education and capacity building strategy of the Department;
- 5.17 Provide solutions to problems faced by government, CBOs, communities, NGOs, financiers and private sector developers and contractors. This may include, among other forms of support, contract research, facilitation of workshops, writing of proposals, plans or reports and will be done on a project-by-project basis with additional project-based funding.
- 5.18 Other projects that may be assigned to the Chair, as described under paragraph 5.13 above.

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6 DATE OF COMMENCEMENT OF THE MOA

This MOA shall commence on the last signature date.

7 DURATION OF THE MOA

This MOA shall terminate on 31st March 2016 (or such extended date(s) as may hereafter from time to time be agreed to in writing and signed for by both Parties) if no Projects have been identified in terms of 3.3 above.

8 FUNDING WITHIN THE SCOPE OF THE PROJECT

8.1 The Department of Human Settlements shall fund the Chair for three financial years, 2012/13, 2013/14 and 2014/15 while the DHET does not provide funding for preparation and the first two years of offering this new programme. The NMMU will utilize the funds for the academic years (January – December), 2013 (for preparation and developmental work, research and consulting to the DHS) and 2014 and 2015 (for offering the first two years of the BHSD-degree, research and consulting).

8.2 The NMMU will cover the overhead / indirect cost for the offering of the BHSD-degree during 2014 and 2015, as usual per policy for the introduction of new degrees. From 2016, the programme will be funded according to NMMU policies and procedures from the subsidy funding of the DHET and the class fees.

8.3 The annual costs to the Department of Human Settlements shall be as follows:

8.3.1 2012/13: R3 090 000

8.3.2 2013/14; R3 949 000

8.3.4 2014/15: R4 499 000

8.4 The detailed roll-out of the budget is as provided in the attached Project Plan No. 1.

8.5 It is specifically recorded that the Department is compelled to comply with the Public Finance Management Act, 1999 (Act 1 of 1999) when transferring funds to another entity.

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9 INSTITUTIONAL ARRANGEMENTS

9.1 A Steering Committee will be constituted to manage the implementation of this MOA.

9.2 The Steering Committee is comprised of:

9.2.1 NDHS:

The Chief Director: Capacity Building

The Director: Capacity Building or their representatives of the Department; and

9.2.2 NMMU:

Two senior representatives of the NMMU, namely:

The Dean of the Faculty of Engineering, the Built Environment and Information Technology; and

The Human Settlements Programme Coordinator.

9.3 The Steering Committee shall timeously assign other project team members from both the Department and NMMU to each project depending on the specific needs of each project.

9.4 The Steering Committee shall function as a consultative and discussion forum to enable the Parties to discuss and formulate strategies and proposals with regard to Projects.

9.5 The Steering Committee shall not have any powers of approval in respect of projects. The approvals will be granted by the normal organizational structures of the two Parties and operational decisions will be taken by a Management Committee within the NMMU's Faculty and Department that hosts the Chair.

10 GENERAL

This MOA serves as a contractual agreement to facilitate the agreement of obligations that will be contained in contracts to be concluded on specific Projects falling within the spirit of this MOA.

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11 INTELLECTUAL PROPERTY

Intellectual Property will be negotiated on a project-by-project basis within the provisions of Intellectual Property Rights from the Publicly Financed Research and Development Act (Act 51 of 2008).

12 CONFIDENTIALITY

12.1 For the purpose of this clause, "Confidential Information" means specifications, drawings, tapes, discs and other computer-readable media, documents, information, technical and commercial data, techniques and know-how.

12.2 The Parties hereto recognize that information, agreed to or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the MOA, and that Confidential Information may arise from the Research Projects.

12.3 Both Parties undertake to treat Confidential Information strictly confidential, and not to divulge to any third party or sell, trade, publish, reproduce or reverse engineer any of the Confidential Information and not to put in use for any purpose unrelated to the collaboration, in any manner, any Confidential Information without the Disclosing Party's prior written consent, except as provided by the exclusions specified in Clause 12.4 below.

12.4 The obligation of confidentiality of clause 12.3 shall not apply to information which:

12.4.1 Becomes known by third parties through no fault of the Parties hereto;

12.4.2 Is or becomes published otherwise than by unauthorized publication in breach of this Agreement;

12.4.3 Is independently developed by an employee of the recipient who has not had access to any of the Confidential Information disclosed to the recipient by the other Party.

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12.4.4 Is in the public domain;

12.4.5 Can reasonably be demonstrated to be known to the Parties prior to disclosure under this Agreement;

12.4.6 Is disclosed to the Party or Parties by another party entitled to disclose the information;

12.4.7 The Parties hereto agree to release; or

12.4.8 Is required to be disclosed by law.

12.5 The Parties hereto shall take due precautions to ensure that their staff, students and contractors, who have a need to know Confidential Information, undertake the above obligations of confidentiality.

12.6 Each Party may not divulge, and will secure that any of its employees or agents do not divulge, to any person, other than the duly authorised representatives of the other Party and its own staff, and only if this is necessary for the implementation of the MOA or execution of a Research Project, any Confidential Information arising out of the performance of, related to or discovered in the course of the implementation of the MOA or execution of a Project, without the prior written authority of the other Party.

13 PUBLICATION

13.1 It is intended that the results of the research arising from this collaboration should be published in accordance with normal academic practice. In order to protect confidential information and any proprietary rights, neither Party may publish or publicly disclose the results of the research or any confidential information without the prior written consent of the other.

13.2 The Party who wishes to publish as described in clause 13.1 shall submit to the other Party a copy of the proposed publication at least thirty (30) days in advance of the submission of the publication to a third party. If the non-publishing Party determines that the proposed publication discloses confidential or proprietary information that requires protection, that Party shall notify the other of this determination within thirty (30) days of receipt of the proposed publication. The non-publishing Party can require a delay

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of the publication, which delay shall not normally exceed three (3) months, or editing of the proposed publication, such editing not being deemed unreasonable by the Parties hereto.

13.3 If the Party, to whom a proposed publication has been submitted according to clause 13.2 fails to notify the submitting Party within thirty (30) days of receipt of the publication, then the submitting Party is free to submit or present the publication.

14 THESES/DISSERTATIONS/PROJECT REPORTS

14.1 Nothing in this Agreement shall prevent a registered student of NMMU from submitting a thesis, dissertation or project report based on the results from the research arising from this collaboration, for the purposes of obtaining a degree at NMMU. In this regard, and when appropriate, acknowledgement for funding and providing sources for research shall be noted.

14.2 The parties hereto may see the draft material during the writing up period and may, within thirty (30) days of receipt, request the exclusion of confidential or sensitive information, and to correct any errors of fact.

14.3 If required, the examiners shall be appointed by NMMU under an agreement of confidentiality between NMMU and the examiners. Either party may request that access to a thesis, dissertation or project report be restricted for a period up to two (2) years, which request shall not be unreasonably denied.

15 SETTLEMENT OF DISPUTES

15.1 Should any disputes of whatsoever nature arise between the parties hereto concerning this Agreement, then such dispute shall be referred to a Mediation Committee comprising of the Executive Authority of both Parties or to capacities similar thereto.

15.2 The Mediation Committee shall meet within fourteen (14) days of the date on which such dispute is declared, and shall attempt to resolve the dispute by mediation.

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15.3 If the Mediation Committee is unable to settle the dispute with a further fourteen (14) days, then the dispute shall be referred to Arbitration for resolution.

15.4 The decision taken by the Arbitrator shall be appealable should either Party require to appeal, and the appeal award shall be final and binding on the parties.

16 BREACH

Should either Party breach the terms and conditions of this Agreement, the Party not in breach ('the aggrieved party') shall furnish to the other Party ('the defaulting party') notice to rectify the breach within fourteen (14) days failing which the aggrieved Party may, without limiting any of its other legal rights, either terminate this agreement or claim for specific performance.

17 VARIATION NOT EFFECTIVE UNLESS IN WRITING

No variation, modification or waiver of any of the provisions of this Agreement, or consent to any departure there from shall in any way be of any force and effect, unless confirmed in writing and signed by all parties. Then such variation, modification, waiver or consent shall be effective only in the specific instances and for the purpose and to the extent for which made or given.

18 NON-WAIVER

No waiver by either Party shall be binding unless reflected in writing and shall be strictly interpreted as referring only to that particular waiver in respect of which same had been given.

19 ASSIGNMENT

Neither Party hereto may cede and delegate any of its rights and obligations (including liabilities) under this Agreement without prior written consent of the other Party.

20 DOMICILIA AND NOTICES

20.1 The parties choose as their respective domicilium citandi et executandi for purposes of this Agreement as set out hereunder.

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Nelson Mandela Metropolitan
University
Summerstrand Campus (North)
University Way
Summerstrand
Port Elizabeth

Department of Human Settlements
Govan Mbeki House
240 Walker Street
Sunnyside
Pretoria

Tel: 041 504 3283

Tel: 012 421 1312

Fax: 041 504 9283

Fax: 086 546 0490

Att: Prof Rossouw von Solms:
Acting Executive Dean
Faculty of Engineering, the
Built Environment and
Information Technology
NMMU

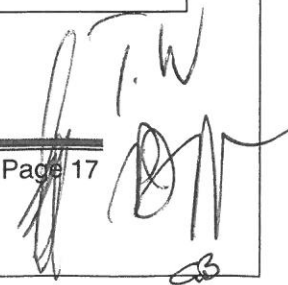
Att: Mr Thabane Zulu:
Director General: National
Department of Human
Settlements

20.1 Every notice to be given by one Party to the other in terms of this MOA shall be in writing and shall be –

20.1.1 Delivered by hand, in which case it shall irrefutably be deemed to have been given and such other Party shall be deemed to have been informed of the contents of the notice when the notice is so delivered; or

20.1.2 Sent by electronic mail or facsimile transmission to a receiving station situated at the domicilium citandi et executandi of the other Party, in which case it shall irrefutably be deemed to have been given and such other Party shall be deemed to have been informed of the contents of the notice upon completion of the relevant transmission, unless the contrary is proved.

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THUS DONE AND SIGNED AT Port Elizabeth ON THIS

6th DAY OF November 2012


NELSON MANDELA METROPOLITAN UNIVERSITY

DEPARTMENT OF HUMAN SETTLEMENTS

and duly authorised

and duly authorised

Signature: 

Signature: 

Name: P.J. NAUDÉ

Name: T Zulu

Designation: DVC: A

Designation: Director-General

Date: 6 Nov. 2012

Date: 21 January 2013

Place: P.E.

Place: Pretoria

Witness: 

Witness: _____

Name: M Scheepers

Name: _____

Witness: C. Baard

Witness: _____

Name: G. BAARD

Name: _____

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