

MEMORANDUM OF UNDERSTANDING

BETWEEN

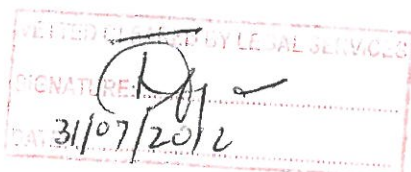
**National Department of Tourism
(Hereinafter referred to as "NDT")**

**Herein represented by
Ambassador LM Makhubela
In his capacity as the Director-General
Duly authorised thereto**

And

**National Department of Arts and Culture
(Hereinafter referred to as "DAC")**

**Herein represented by
Mr Sibusiso Xaba
In his capacity as the Director General
Duly authorised thereto**



PREAMBLE

WHEREAS both parties are committed to the integration of Arts, Culture and Heritage into the ambit of tourism product development for sustainable development, and for the benefit of the present and future generations;

RECALLING Section 41(1)(h) of the Constitution of the Republic of South Africa, 1996, which provides that all spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and good faith by fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on matters of common interest; coordinating their actions and legislation with one another; adhering to agreed procedures; and avoiding legal proceedings against each other;

RECALLING that the White Paper on the Development and Promotion of Tourism in South Africa (1996) makes provision for tourism to take note of cultural heritage resources within specific communities and environments. The White Paper on Arts and Culture (1996) calls for synergies to be formed with Tourism and Heritage Institutions in order to boost Cultural Tourism;

AND WHEREAS the both Parties are committed to supporting effective policy making and implementation in the promotion and management of heritage resources;

AND WHEREAS both the Departments of Arts and Culture and Tourism aim to promote the arts and cultural heritage through tourism development and sustainable management;

AND WHEREAS the two Departments wish to collaborate in these mutual aims inspired by the Inter-Governmental Relations Framework, Act of 2005;

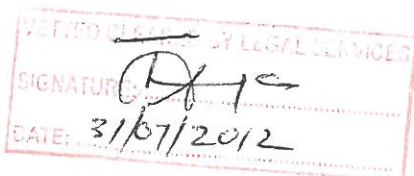
AND WHEREAS the Parties intend to conclude this Memorandum of Understanding ("MOU") incorporating the terms and conditions herein below, which will constitute an agreement between the Parties on the understanding that will form the foundation for a continuing collaboration between the Parties for a range of potential collaborative interactions, which will be outlined on a project-to-project basis and on project specific agreements.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INTERPRETATION

In this Agreement, unless the context otherwise indicates:-

- 1.1 the headings to clauses of this Agreement are inserted for reference purposes only and shall not govern or affect the interpretation thereof;

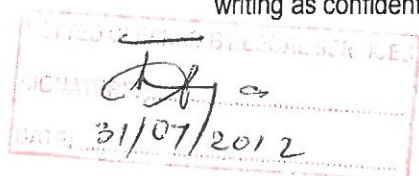


-
- 1.2 unless the context clearly indicates a contrary intention, words importing the singular shall include the plural and *vice versa*;
 - 1.3 reference to any one gender shall include the other gender and any reference to a natural person shall include a legal persona and *vice versa*;
 - 1.4 where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
 - 1.5 where any number of days is prescribed in this Agreement, these shall be reckoned as calendar days, exclusively of the first, inclusively of the last day, unless the last day falls on a weekend or on a public holiday, in which case the last day shall be the next succeeding day which is not a weekend or a public holiday.

2. DEFINITIONS

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 2.1 'this **Agreement**' means this Memorandum of Understanding for the establishment of a formal relationship between the Parties to govern future collaborations and interactions between the Parties, as captured in this document, together with any Annexures incorporated herein by reference.
- 2.2 "**Arts**" refers to but are not restricted to all forms and traditions of dance, drama, music, music theatre, visual arts, crafts, design, written and oral literature all of which serve as means for individual and collective creativity and expression through performance, execution, presentation, exhibition, transmission and study, as defined by the white paper on Arts, Culture and Heritage.
- 2.3 "**Audiovisual and new media**" refers to film, video recording, radio and television programs, entertainment software (video games, educational programs, etc) Internet creative sites, virtual reality, broadband video broadcasting (video streaming), radio and television services, radio broadcasting service, services for the production, distribution, operation, dissemination and promotion of film, video recording, and radio and television programs, royalties and license fees.
- 2.4 "**Book Publishing**" means printing and literature, books, newspapers, periodicals, other printed matter, e-books, e-magazines, services for the publication, distribution, dissemination and promotion of books, newspapers, printed matter, electronic publication etc, library services, etc, royalties and license fees.
- 2.5 "**Confidential Information**" means information disclosed by the Disclosing Party that (a) relates to the Disclosing Party's past, present or future research, development, business activities, products, services and technical knowledge, and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should



CHECKED BY LEGAL DEPT

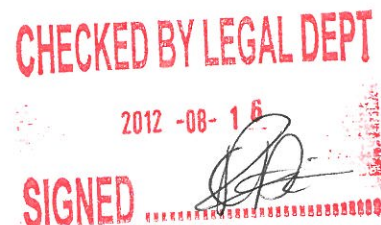
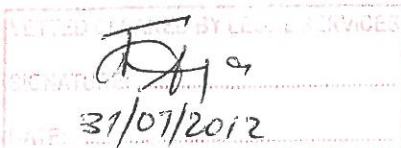
2012 -08- 16

SIGNED

A handwritten signature in black ink, written over a red dotted line. The signature is stylized and appears to be "J. B. ...".

be obvious to the other Party that it is claimed as confidential. As used herein, the Party disclosing Confidential Information is referred to as the "Disclosing Party" and the Party receiving the Confidential Information is referred to as the "Recipient" or "the Receiving Participant".

- 2.6 **"Crafts, design and architecture"** refers to ceramics, fabrics, embroidery, basketry, glass, jewelry, leather, wood, wrought metal work, metals, garments and accessories, furniture, interior decoration, designer objects, architectural services, services for the production, distribution and promotion of crafts and design, royalties and license fees;
- 2.7 **"Culture"** refers to the dynamic totality of distinctive spiritual, material, intellectual and emotional features which characterise a society or social group. It includes the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions, heritage and beliefs developed over time and subject to change, as defined by the white paper on Arts, Culture and Heritage.
- 2.8 **"Cultural Industries"** according to the UNESCO preliminary draft convention on the protection of the diversity of cultural contents and artistic expression "Cultural industries" refers to industries producing cultural goods and services, which are the goods, services and activities that embody or yield cultural expressions. The Cultural Industries are often referred to as the Creative Industries, and the areas of focus differ from one area to another. Cultural goods and services – 'of the cultural industries' include, but are not limited to, the following categories.
- 2.9 **"Cultural heritage"** means antiquities, collectors items, museum services, archive services (documents, recordings of items of the intangible cultural heritage, preservation services for historic sites and monuments, service relating to the safeguarding and transmission of rituals, narratives, traditional cultural expressions and folktales.
- 2.10 **"Effective Date"** means the date of signature of the last Party to sign this Agreement.
- 2.11 **"Intellectual Property"** means intellectual property relating to this Agreement in the form of any and all technical or commercial information, including, but not limited to the following: specifications and formulae; know-how, data, systems and processes; production methods; trade secrets; undisclosed inventions, financial and marketing information; as well as registered or unregistered intellectual property in the form of patents, trademarks, designs, and copyright in any works, including literary works or computer software programs'
- 2.12 **"Heritage"** means the sum total of wildlife and scenic parks, sites of scientific and historical importance, national monuments, historic buildings, works of art, literature and music, oral traditions and museum collections and their documentation which provides the basis for a shared culture and creativity in the arts, as defined by the white paper on Arts, Culture and Heritage.
- 2.13 **"Heritage Tourism"** for the purposes of this agreement, means the packaging of heritage resources as tourism products and attractions to enhance the tourist experience.
- 2.14 **"Heritage Resources"** means both tangible and intangible aspects heritage as defined by the



National Heritage Resource Act of 1999, National Heritage Councils Act of 1999 and the White Paper of Arts, Culture and Heritage (1996).

- 2.15 **"Publication"** means any method, whether written, oral or visual by which information is disclosed to persons and entities other than the Parties to this Contract and other than to third parties bound to the Parties under binding and enforceable confidentiality agreements.
- 2.16 **"Steering Committee"** refers to the Implementation team referred to in clause 8 of this Agreement.

3. COMMENCEMENT AND DURATION


- 3.1 This Agreement will commence on the Effective Date and shall continue to remain in effect for a period of five years, taking into account the Medium Term Expenditure Framework and National Growth Path as prioritized by the state. It is the intention of the Parties to have a long-term mutually beneficial relationship.
- 3.2 The Parties may agree to terminate this Agreement at an earlier date by mutual written consent.

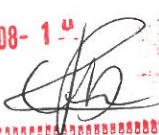
4. RELATIONSHIP BETWEEN THE PARTIES

- 4.1 No party shall present itself as the representative or agent of the other party for any business, legal or any other reason, nor shall it have the power of authority to commit the other party, unless it receives the other party's prior written consent.
- 4.2 Nothing in this Agreement shall be interpreted as establishing a partnership or joint venture between the Parties and both parties shall act as independent contractors.
- 4.3 Nothing contained in this Agreement shall be construed as binding the Parties to any form of exclusivity and both Parties shall be entitled to conduct business independently of each other where market requirements so dictate, unless otherwise agreed upon in writing in a formal agreement as envisaged in Clause 5.1 herein below.

5. SCOPE OF AGREEMENT

- 5.1 This Agreement sets out the basis upon which the Parties shall negotiate and conclude project specific agreements for projects falling within the areas of collaboration set out in clause 6 below. Such contractual agreements shall incorporate the terms of this Agreement in addition to such other terms that the parties may consider necessary or desirable to such specific projects.
- 5.2 The Parties agree to review this Agreement as and when circumstances necessitate such a

SIGNED: 
DATE: 31/07/2012

CHECKED BY LEGAL DEPT
2012-08-14
SIGNED: 

review.

- 5.3 A breakdown of the required financial contribution for undertaking the programme will be formulated prior to commencement for each programme. The extent of each party's financial contribution shall be determined on a project-to-project basis.

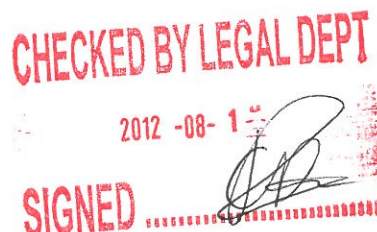
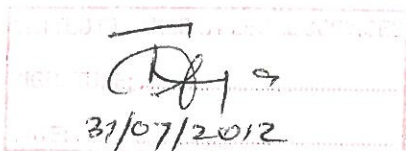
6. AREAS OF COLLABORATION AND SUPPORT

Following are key areas for collaboration and support by both Departments:

- 6.1 Both Parties will form a Steering Committee with clear terms of reference to implement the agreement (refer paragraph 8);
- 6.2 The Parties will share information on projects being planned and/ or implemented to identify overlapping interests and possible areas of collaboration;
- 6.3 Alignment of the strategy to relevant policy to enable the integration of the Arts, Culture and Heritage into the Tourism mainstream;
- 6.4 The parties will jointly develop and promote the Arts, Culture, Heritage and Tourism strategy;
- 6.5 Cooperation in the implementation of the Arts, Culture, Heritage and Tourism Strategy across the three spheres of government, including both public and private sectors;
- 6.6 The Parties will jointly identify, develop, promote and implement projects flowing from the heritage and cultural tourism strategy;
- 6.7 Both parties will facilitate meetings for joint planning and collaboration in terms of specific projects with the relevant sections in their departments;
- 6.8 Both parties will monitor and evaluate the development and implementation of the Arts, Culture, Heritage and Tourism Strategy and associated with identified the projects, and provide periodic reports on progress;
- 6.5 Both parties will facilitate government and other stakeholders to ensure that the relevant parties are part of the planning and implementation processes.

7. MUTUAL OBLIGATIONS OF THE PARTIES

The following mutual obligations shall apply to both Parties in respect of this Agreement and all project specific agreements resulting from this Agreement:

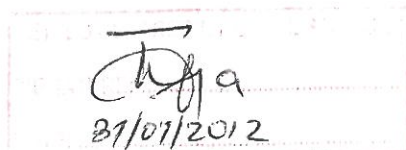


7.1 INTELLECTUAL PROPERTY

- 7.1.1 Each formal project agreement entered into in terms of clause 6.1 hereinabove shall contain provisions providing for the ownership and management of intellectual property developed during the course of the specific project or projects undertaken in terms of that agreement.
- 7.1.2 This Agreement shall not confer rights to any invention, discovery, improvement or know-how currently existing or emerging from the execution of this Agreement, on either Party. It is therefore specifically recorded that the rights to any Intellectual Property created prior to the effective date hereof, shall vest exclusively with the Party who created and/ or invented it.
- 7.1.3 Both Parties record their commitment to conducting research that is independent and in the public interest, to contributing to and promoting public debate on research findings and policy issues in an open and accountable manner, and to trying to ensure that the findings of the research are disseminated to stakeholders as widely as resources, capacity and expertise allow. Dissemination of research findings shall be subject to any reasonable restrictions on disclosure of information and use of confidential information.
- 7.1.4 The contents of any results, findings or reports issued in terms hereof may be published by the Departments. The parties will mutually agree on the approach to publishing and dissemination associated with each project. Care will be taken to respect the institutional requirements of each party. The publication of findings will not be unreasonably delayed by either Party after the conclusion of each Project.
- 7.1.5 Recognition of the role of the Departments will be offered in each publication, unless otherwise agreed by the Parties.

7.2 CONFIDENTIALITY

- 7.2.1 The Parties shall:
- 7.2.1.1 Treat as strictly confidential any and all Confidential Information given or made known to them arising from this association;
- 7.2.1.2 Keep all such information confidential towards third parties and only use it in co-operation with each other for the purpose expressly agreed upon by the Parties and to disclose same to their employees only on the basis of the need to know;
- 7.3.1.3 Accept responsibility for the observance of the Confidentiality Agreement by their employees;
- 7.3.1.4 If required, cause all of their employees who are directly or indirectly given access to the said proprietary and Confidential Information to execute Confidentiality Undertakings in a form acceptable to the Parties in order to protect the Parties against the unauthorized disclosure of such Confidential Information to any third party and to fully cooperate in the enforcement of such


Handwritten signature and date: 8/1/2012

CHECKED BY LEGAL DEPT

2012 -08- 1

SIGNED


Handwritten signature and red stamp

Undertakings.

7.2.2 The above undertakings shall not apply to:

7.2.2.1 Confidential Information which at the time of disclosure is published or otherwise generally available to the public.

7.2.2.2 Confidential Information which after disclosure by the disclosing party is published or becomes generally available to the public; otherwise than through any act or omission on the part of the disclosing party.

7.2.2.3 Confidential Information which the Parties can show was in their possession at the time of disclosure and which was not acquired directly or indirectly from each other.

7.2.2.4 Confidential Information rightfully acquired from others who did not obtain it under pledge of confidentiality to either of the Parties.

7.2.2.5 Confidential Information which a party is obliged to disclose in terms of an Order of Court, subpoena or other legal process.

7.2.3 The provisions of this Clause 7.2 shall continue to apply after any termination/ cancellation of this Agreement, for whatever reason, for a period of 5 (Five) years following such termination/ cancellation.

8. STEERING COMMITTEE (SC)

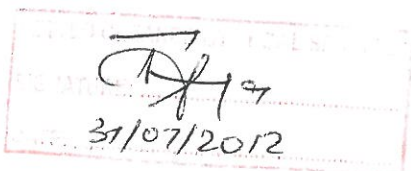
8.1 The Parties will formalize a Steering Committee comprising representatives from the various relevant Branches of the two Departments to oversee and guide the relationship. This will not replace the meetings required to carry out specific projects agreed in terms of this MOU.

8.2 The Steering Committee will meet on a quarterly basis to monitor and evaluate the collaboration between the parties in terms of specific projects that are being implemented.

8.3 Joint planning processes should be included to refer to the Task Teams that will be required to carry out specific projects in relation to terms of reference that will form part of the Agreement as an Annexure.

9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.


31/07/2012

CHECKED BY LEGAL DEPT

2012 -08- 17

SIGNED



10. 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:

- 10.1 A disagreement or dispute must be initiated in writing;
- 10.2. The Parties must initially make reasonable efforts to settle any such difference or dispute through consultation and negotiation held by and between representatives of the parties;
- 10.3 If the Parties fail to reach agreement as envisaged in terms of sub-clause 10.2 above, a formal intergovernmental dispute may be declared by the aggrieved Party in terms of section 41 of the Intergovernmental Relations Framework of 2005 (Act No 13 of 2005);
- 10.4 If a formal intergovernmental dispute is declared, the procedures in terms of section 42 to 45 (inclusive) of the Intergovernmental Relations Framework Act shall apply.

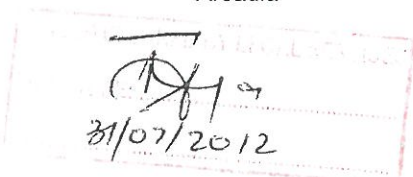
11 NOTICES AND DOMICILIA

- 11.1 Parties chose the following domicilia citandi et executandi for the purposes of service of legal documents and notices arising out of this memorandum of understanding:

The NDT:

The Director General
Department of Tourism
Tourism House
17 Trevenna Street
Pretoria
South Africa

The DAC
The Director General
Department of Arts and Culture
Kingsley Centre
481 Church Street
Arcadia


31/07/2012

CHECKED BY LEGAL DEPT
2012 -08- 1
SIGNED 

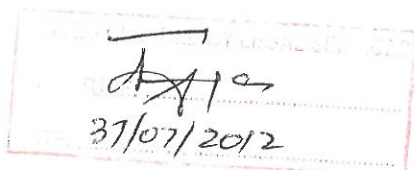
11.2 Notices and correspondence for the purpose of daily communication must be addressed to:

The NDT:
The Director General
Department of Tourism
Private Bag X424
Pretoria
0001
South Africa

The DAC:
The Director General
Department of Arts and Culture
Private Bag X897
PRETORIA
0001

12. GENERAL

- 12.1 This Agreement contains the entire agreement between the Parties and no Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.
- 12.2 No alteration, variation, addition or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing as an addendum to this Agreement and signed by the Parties or their duly authorized signatories.
- 12.3 No failure or delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.
- 12.4 No indulgence, leniency or extension of time which any Party ('the grantor') may grant


31/07/2012

CHECKED BY LEGAL DEPT

2012 -08- 1

SIGNED



or show to the other/s shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

12.5 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

SIGNED ATon this the day of 2012.

AS WITNESSES

1.

2.

.....
For the NDT
(Duly authorised)

SIGNED AT on this the day of 2012.

AS WITNESSES

1.

2.

.....

For the DAC
(Duly authorised)

CHECKED BY LEGAL SERVICE
31/07/2012

CHECKED BY LEGAL DEPT

2012 -08- 1

SIGNED

.....