

# MEMORANDUM OF AGREEMENT

(DRAFT 3; 04 September 2006)

Between



## **SWIMMING SOUTH AFRICA ("SSA")**

Hereto represented by **Jace Naidoo** in his capacity as **President**,  
he being duly authorized to enter into this Contract

With the chosen domicilium citandi et citandi at  
124 Van Beek Street, Johannesburg Athletic Stadium, North Wing,  
Ground Floor

and



**water & forestry**

Department:  
Water Affairs and Forestry  
**REPUBLIC OF SOUTH AFRICA**

## **DEPARTMENT OF WATER AFFAIRS AND FORESTRY ("DWAF")**

Hereto represented by in his capacity as , he being duly authorized  
to enter into this Contract

With the chosen domicilium citandi et citandi at  
124 Van Beek Street, Johannesburg Athletic Stadium, North Wing,  
Ground Floor

# Contents

<b>1. DEFINITIONS.....</b>	<b>3</b>
<b>2. INTRODUCTION .....</b>	<b>4</b>
<b>3. RESPONSIBILITIES OF SSA.....</b>	<b>5</b>
<b>4. RESPONSIBILITIES OF DWAF .....</b>	<b>5</b>
<b>5. ACKNOWLEDGEMENT OF DWAF.....</b>	<b>6</b>
<b>6. RELATIONS BETWEEN THE PARTIES.....</b>	<b>6</b>
<b>7. TERMINATION OF AGREEMENT .....</b>	<b>6</b>
<b>8. GENERAL .....</b>	<b>6</b>
<b>9. FORCE MAJEURE .....</b>	<b>7</b>
<b>10. WHOLE AGREEMENT .....</b>	<b>7</b>
<b>11. GOVERNING LAW .....</b>	<b>7</b>

WHEREAS. The parties intend to set forth in this Agreement the terms and conditions by which SSA will manage and implement a skill development programme for Water safety and Aquatics activities for communities that live in proximity to dams and rivers.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties hereby agree as follows:

## 1. Definitions

- 1.1 The headings to the clauses of this agreement are for reference purpose only and shall not aid in the interpretation of the clause to which they relate.
- 1.2 Unless the context clearly indicates contrary intentions, words importing:
  - 1.2.1 Any one gender shall include the other gender
  - 1.2.2 The singular shall include the plural and vice versa;
  - 1.2.3 Natural persons shall include corporations and vice versa.
- 1.3 The following expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:
  - 1.3.1 **“effective date”**  
Means 01 October 2006
  - 1.3.2 **“2006”**  
Means to the period 01 October 2006 to 31 March 2007
  - 1.3.3 **“2007”**  
Means to the period 01 April 2007 to 31 March 2008
  - 1.3.4 **“2008”**  
Means to the period 01 April 2008 to 31 March 2009
  - 1.3.5 **“Swimming South Africa” (hereinafter referred to as “SSA”)**  
Means the governing body in the Republic of South Africa for the aquatic disciplines of Swimming, Water Polo, Synchronised Swimming, Platform Diving and Open Water Swimming
  - 1.3.6 **“DEPARTMENT OF WATER AFFAIRS AND FORESTRY” (hereinafter referred to as “DWAFF”)**  
Means the Department of Water Affairs and Forestry, responsible for the management and implementation of Water Affairs and Forestry policy, in the Republic of South Africa.
  - 1.3.7 **“Account”**  
Means the bank account in the name of Swimming South Africa with account number 01003790807 at ABSA bank, 160 Jan Smuts Avenue branch.
  - 1.3.8 **“ Learn-to- Swim Course/s**

Means courses conducted in terms of the Learn-to-Swim Program, which train persons as Learn-to-Swim Instructors; as outlined in the Learn to Swim Instructor's Manual and Course material.

**1.3.9 “Learn-to-Swim Program”**

Means the official SSA Learn-to-Swim Program.

**1.3.10 “Technical Officials Course/s”**

Means courses conducted in terms of the SSA Technical Officiating Course, which trains persons as Technical Officials; as outlined in the SSA Technical Officials Training Manual.

**1.3.11 “Administrators Course/s”**

Means courses conducted in terms of the Sport & Recreation South Africa (hereinafter referred to as “SRSA”) Administrators Training Course, which trains persons as Sports Administrators; as outlined in the SRSA Sports Administrators Training manual.

**1.3.12 “Coaches Course/s”**

Means courses conducted in terms of the SSA Level 1 Swim Coaches Course, which train persons as Level 1 Swim Coaches; as outlined in the Level 1 Swim Coaches Training Manual.

**1.3.13 “SSA provincial affiliates”**

Means the provincial SSA affiliates

**1.3.14 “DWAF substructures”**

Means the DWAF regional offices

**1.3.15 “Province”**

Means the political boundaries of the Republic of South Africa;

**1.3.16 “Rural Splash”**

Means the SSA activity programme that is directed at the introduction of water safety education and aquatic skill development in mainly dams and rivers. Although the programme focus is rural communities, it includes urban areas where communities are living in proximity to such water resources.

**1.3.17 “Community”**

DWAF to add definition

## 2. Introduction

This Agreement is made and entered into by and between SSA and the DWAF and is effective from 01 October 2006. Although the agreement focus is between DWAF and SSA, the National Departments of Education (DOE) and Sport & Recreation South Africa (SRSA) are key stakeholders in the implementation phase of the Rural Splash programme. The roles of the stake holders can be outlined as follows:

- 2.1 **Awareness**-refers to information i.e. technical information regarding water resources. DWAF is the lead agent in this regard, meaning that DWAF will be responsible for providing technical information and support relating to water resource safety;
- 2.2 **Education**-refers to training i.e. for educators and learners and DoE will be the lead agent in this regard, meaning that DoE will be responsible for providing access to their schools, educators and learner should the need arise;
- 2.3 **Skills Development**-refers to swimming i.e. the activity or development of the sport itself may it be through mechanisms such as swimming lessons. SRSA is the leading agent and in this regard will be responsible for ensuring that resources (e.g. equipment, instructors) for this purpose are availed.

### 3. Responsibilities of SSA

SSA will accept responsibility for the managing and implementation of the Rural Splash Programme. SSA agrees to:

- 3.1 Appoint the Manager of the Learn to Swim programme as the project manager for liaison with the DWAF and overall management of the project.
- 3.2 Train selected educators and community members as:
  - 3.2.1 Learn To Swim Instructors
  - 3.2.2 Provide all logistical needs as required for the training courses, that is, the provision of technical resource material and catering for candidates who attend the courses.
- 3.3 Train all candidates that are not able , to swim as a technical competency requirement of the Learn To Swim Instructor Course.
- 3.4 Arrange for candidates to complete their practical training hours (logging).
- 3.5 Arrange for the Theoretical assessment of candidates who attended the course.
- 3.6 Arrange for the Practical assessment of candidates.
- 3.7 Assist identified clusters of schools to set up formal club structures.
- 3.8 Arrange for inter – school competitions for clusters identified clusters of schools.
- 3.9 Arrange for the induction of trained candidates into the SSA regional affiliate structures.
- 3.10 Arrange for publicity and promotion of the programme.
- 3.11 Liaise with DOE and SRSA for their responsibilities in relation to the scope of the project.
- 3.12 Report to DWAF on the progress and status of the project.

### 4. Responsibilities of DWAF

- 4.1 Appoint an official to act as project manager on behalf of the DWAF and for liaison with SSA for the duration of the project.
- 4.2 Inform all substructures of the intent and content of the programme
- 4.3 Inform all of its substructures about the Partnership agreement with SSA.
- 4.4 Assist with the identification of target areas
- 4.5 Affect by means of electronic transfer payment to SSA the funds for the implementation and management of the awareness (Advertising & Promotion) project.

- 4.6 The DWAF will pay SSA an annual fee (by means of electronic transfer) to manage and implement the project. The rate for 2006 is, one hundred and fifty thousand, rand (**R 150 000.00**) rands, excluding any VAT payable.
- 4.7 The DWAF will make the electronic transfer payment of one hundred and fifty thousand, rand (**R 150 000.00**) Rands, excluding any VAT payable, into the account of Swimming South Africa by means of an electronic bank transfer by 10 October 2006.
- 4.8 Payment for the years, 2007 and 2008, as agreed upon by SSA and DWAF by 15 February of each year, will be effected by electronic bank transfer,

## 5. Acknowledgement of DWAF

SSA will give a clear indication that the DWAF contributes financially towards the project in the following manner:

- 5.1 A clear logo of the DWAF will be displayed on all printed material produced for projects funded by the DWAF
- 5.2 The contribution of the DWAF will be acknowledged in all annual reports
- 5.3 The contribution of the DWAF will be acknowledged in conjunction with all the funders of the project, proportionate to the total contributions, in all places where the SSA's funders are displayed.
- 5.4 SSA shall invite officials of DWAF to attend activities within the different projects.

## 6. Relations between the Parties

- 6.1 The parties are entering into this agreement in good faith and shall at all times cooperate and act reasonably in making effective all the terms and provisions of this agreement.
- 6.2 Each party recognizes that pursuant to the terms and conditions of this agreement, it is the independent contractor of the other. Accordingly, this agreement shall not constitute either party, the legal representative, agent, partner, employee or joint venturer of the other, nor shall either party have the right or authority to assume, create or incur any liability or obligation of any kind, expressed or implied, against or in the name of or on behalf of the other.
- 6.3 SSA warrants that it has the necessary skills, training and infrastructure to carry out the management and implementation of the project, as the only official provider of the swimming Training courses.

## 7. Termination of Agreement

- 7.1 This programme will be run over a period of three years starting in 01 October 2006 and finishing on 30 April 2009.
- 7.2 SSA and the DWAF will review this Agreement in January/February of each year for the duration of the agreement period.

## 8. General

- 8.1 This document and its annexure constitute the sole record of the agreement between the parties in relation to the subject matter hereof.

- 8.2 No party shall be bound by any representation, warranty, promise or the like not recorded herein.
- 8.3 No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 8.4 No indulgence which any party grant to any other shall constitute a waiver of any of the right of the grantor, who shall not thereby be precluded from exercising any right against the grantee which may have arisen in the past or which might arise in the future.
- 8.5 No party shall be entitled to cede any of their rights or delegate any of their obligations in terms of this agreement to any other party without the prior written consent of the other party to this agreement.

## 9. Force Majeure

- 9.1 In the event that SSA or the DWAF is unable to perform any of their respective obligations in the Agreement and such non-performance is caused by acts of God, rained out events, riots, civil insurrection, acts of public enemy, accidents, acts of civil or military authority, floods, earthquakes, or winds, beyond the reasonable control of the Parties concerned, such failure to perform shall not constitute a breach of the Agreement.
- 9.2 The party incapable of performing in terms of clause 8.1 shall immediately notify the other party of the reason or reasons and cause for its inability to perform and shall submit an estimated duration of such inability to perform.
- 9.3 The party incapable of performing shall, at no cost to the other party, exercise due diligence to shorten and avoid the cause of the inability to perform and shall keep the other party advised of all steps taken to enable performance under the Agreement.
- 9.4 During such period of non-performance in terms of clauses 8.1 to 8.3 the relevant terms of the Agreement will be suspended.

## 10. Whole Agreement

This agreement constitutes the whole agreement between the parties as to the subject-matter hereof and no agreements, representations or warranties between the parties other than these set out herein shall be binding on the parties.

## 11. Governing Law

This agreement is executed and intended to be performed in the Republic of South Africa, and the laws of the Republic of South Africa shall govern its interpretation and effect.

IN WITNESS THEREOF, the authorized representatives of the parties have executed this Agreement.

THUS DONE and SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day

of \_\_\_\_\_ 2006.

**Name:** \_\_\_\_\_

**ID Number:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

For **SSA, who** warrants that he/she is authorized hereto.

**AS WITNESSES:**

1. \_\_\_\_\_ (Signature)

2. \_\_\_\_\_ (Signature)

THUS DONE and SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of  
\_\_\_\_\_ 2006.

**Name:** \_\_\_\_\_

**ID Number:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

For the **DWAF, who** warrants that he/she is authorized hereto.

**AS WITNESSES:**

1. \_\_\_\_\_ (Signature)

2. \_\_\_\_\_ (Signature)