

REPORT TO BID ADJUDICATION COMMITTEE

(Deviations from, and ratification of minor breaches of, procurement processes: Regulation 36 of the Municipal Supply Chain Management Regulations)

To:	Bid Adjudication Committee
Contract Description:	Contract for the Operation and Management of the Oceanarium and Marine Life Facility at Durban Marine Theme Park t/a uShaka Marine World
Date:	18 June 2025

Contract no:	UMW322	Unit:	uShaka Marine World
Project Manager:	Ndabezitha Khoza	Department:	CEO's Office
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Project Objective/s:	Periodic Review of the pre-MFMA indefinite contract with South African Association for Marine Biological Research in terms of section 116 (1)(b)(iii) of the Municipal Finance Management Act.
Scope of Works:	Operation and management of the oceanarium and marine life facility
IDP Linkage:	2E. Developing a Competitive Tourism Sector

1. CATEGORY:

Goods		Professional Services (Built Environment)	
Services	X	Professional Services (Other)	
Engineering & Construction Works		Movable Asset Disposal	
Leases		Immovable Asset Disposal	

2. ELEMENT OF REGULATION 36 APPLICABLE:

1(a)	(i)	An emergency	
	(ii)	The goods or services are produced or available from a single provider only	
	(iii)	The acquisition of special works of art or historical objects where specifications are difficult to compile	
	(iv)	The acquisition of animals for zoos; or	
	(v)	Exceptional case where it is impractical or impossible to follow the official procurement processes; and	X
1(b)	To ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature		

Motivation overleaf

MOTIVATION FOR APPLICABILITY OF REGULATION 36

- 2.1. The Municipality established Durban Marine Theme Park (DMTP) trading as uShaka Marine World, a private company, whose objective was to construct and operate a world-class tourist attraction in the form of a Theme Park, including a marine park, waterpark, a retail mall and other tourist facilities.
- 2.2. The Marine facility comprises of sea aquarium, dolphinarium, shark tank and various additional charge activities.
- 2.3. The Municipality engaged a nonprofit, non-government organization called South African Association for Marine Biological Research (SAAMBR) which was operating independently to relocate and undertake to operate the Marine Park at DMTP but still remaining a separate company. The relationship between SAAMBR and DMTP is that of an independent contractor not partnership. A Heads of Agreement was concluded between DMTP and SAAMBR. (Annexure A).
- 2.4. Although the City initiated and negotiated these engagements, they were not a signatory in these Heads of Agreement.
- 2.5. SAAMBR remains the owner of all the marine animals at DMTP, retain their own staff compliment who are experts at management of the animals and are also responsible for the maintenance of the infrastructure housing the animals. They also remain as the only Pan-African Association of Zoos and Aquaria (PAAZA) accredited aquarium in Africa. PAAZA is an internationally recognised organisation and a member of the World Association of Zoos and Aquariums.
- 2.6. The Heads of Agreement was entered into before the commencement of the Municipal Finance Management Act 56 of 2003 (MFMA). The Heads of Agreement is a perpetual agreement as opposed to the prescribed three-year period as stipulated in section 116(1)(b) of the MFMA. The Heads of agreements provides for the signature of a Service Level Agreement (SLA) between SAAMBR and DMTP to provide detailed service level and other terms of engagement not included in the Heads of agreement. The SLA is reviewed and signed every three years. The current SLA is up for review (Annexure B).
- 2.7. The Heads of Agreement provided for the funding of SAAMBR operations from the gate takings of the Marine Park, however the Marine Park has never been in a profit position since inception of the theme park and therefore operations of SAAMBR have been funded by the Municipality through an annual grant. The Municipality has undertaken this responsibility to ensure that SAAMBR has sufficient funding to carry out properly their obligations and cover costs to ensure animal health; husbandry without reduction in stock; continuation of research; education and conservancy capacity of SAAMBR, all of which is provided for in the Heads of Agreement.
- 2.8. Up until 2016, SAAMBR was paid directly by the Municipality at which time that the Auditor General issued a finding to the City around the direct disbursement as the agreement with SAAMBR was between DMTP and the SAAMBR. From 2017 to' date the City budgets for the SAAMBR grant but it is paid to DMTP who in turn disburses it to SAAMBR.
- 2.9. The services provided by SAAMBR fall within the scope defined in section 76 (b)(iv) of the Municipal Systems Act of 2000 (MSA). Furthermore, section 81 of the MSA defines the responsibilities of a municipality when providing a service through a service delivery agreement with an external mechanism.
- 2.10. As stated in paragraph 6 above, the agreement with SAAMBR is perpetual but is reviewed every three years in terms of section 116(1)(b)(iii) of the MFMA. Hence the Entity also



enters into a 3 year SLA. With the pending expiry of the current SLA, the Entity has started negotiations for the new 3 year SLA covering the period 01 July 2025 to 30 June 2028. The municipality has also confirmed availability of grant funding for SAAMBR for this purpose over the MTERF as set out paragraph 3 below.

- 2.11. Based on the background and the current circumstances provided above, it is impractical for the municipal entity to procure services of SAAMBR through a competitive bidding process. Thus, the Entity is submitting this matter to the Committee for it to note that a new SLA will be entered into with SAAMBR for the MTREF period stated above including the provision of grant funding using section 36(i)(v) of the SCM Policy.

3. PROJECT ESTIMATES, FINANCIAL AUTHORITY & RECOMMENDED COMPANY:

	2025/2026	2026/2027	2027/2028	Total Excl. VAT
Services Rendered – Animal Care	86 400 000	86 400 000	864 00 000	R259 200 000

Financial Provision has been made for the project as follows:

BU	Item	Funding	Costing	Project	Region	Provision	Commitment to Date	Amount Available
97540	10530	11200	0000	MRC01	0010	R259 200 000		R259 200 000

Financial Provision:

This is an operational expense for services of oceanarium and marine life facility at uShaka Marine World. The amount is funded through the City budget allocation which is transferred to UShaka Marine World. The financial provision R259 200 000 (Excluding. VAT)

4. RECOMMENDATIONS:

It is recommended that the Committee:

4.1 Notes that the appointment and the continued utilisation of SAAMBR as a service provider is the best possible solution as the only service provider capable of providing the services required by the entity and the municipality, considering that:

- There is already a perpetual Heads of Agreement in place which was entered into prior to the MFMA coming into effect; and
- SAAMBR has the ownership of the marine animals at DMTP as well operational rights (licenses), staff compliment and the expertise to operate the aquarium.

5.2 Notes that the Entity will be entering into a new SLA with SAAMBR for the MTREF period stated above including the provision of grant funding using section 36(i)(v) of the SCM Policy.



Ndabezitha Khoza		
Name of Project Manager	Signature	Date
031 328 8038 Contact Telephone Number	Declaration by Project Manager: <i>I have prepared this report in a fair and proper manner in accordance with the conditions of contract, and relevant Codes of Conduct</i>	
Nokwazi Nzimande: Procurement Manager		
Name of SCM Committee Member	Signature	Date
031 328 8244		
Contact Telephone Number		
Saloshini Govender: Compliance Officer		
	Saloshini Govender (Jul 2, 2025 15:49 GMT+2)	
Name of SCM Committee Member	Signature	Date
031 328 8239		
Contact Telephone Number		
Zimbali Khwela: Finance Manager		
Name of SCM Committee Member	Signature	Date
031 328 8026		
Contact Telephone Number		
Mbali Ngubane: CFO		
Name of SCM Committee Member	Signature	Date
031 328 8026		
Contact Telephone Number		
Musa Ndaba: SCM Compliance and Monitoring Manager		
SCM Compliance and Monitoring	Signature	Date
031 322 6082		
Contact Telephone Number		

HEADS OF AGREEMENT : MARINE PARK

between

DURBAN MARINE THEME PARK (PTY) LIMITED

and

SOUTH AFRICAN ASSOCIATION FOR MARINE BIOLOGICAL RESEARCH

Garlicke & Bousfield Inc ATTORNEYS



INDEX

1. PARTIES	1
2. DEFINITIONS	1
3. PREAMBLE	2
4. STATUS OF HEADS OF AGREEMENT	4
5. RECORDAL	6
6. INITIAL CO-OPERATION	6
7. NEWCO'S FUNCTION IN RESPECT OF THE THEME PARK	7
8. ORGANISATIONAL STRUCTURE	10
9. APPOINTMENT AND RESPONSIBILITIES OF SAAMBR	14
10. OPERATING POLICIES AND PROCEDURES	17
11. DURATION OF SAAMBR'S APPOINTMENT AND TERMINATION ON BREACH	18
12. RELOCATION OF SAAMBR	19
13. STOCK OF SEA AND PLANT LIFE	20
14. FINANCIAL ARRANGEMENTS	22
15. RESEARCH AND CONSULTANCY	28
16. EDUCATION	29
17. STAFF	30
18. PREMISES	31
19. MARKETING	33
20. COMMERCIAL RIGHTS	34
21. RESOLUTION OF DISPUTES : MEDIATION AND ARBITRATION	35
22. TIMETABLE	39
23. GENERAL	40
24. SIGNATORIES	41
25. ANNEXURES	



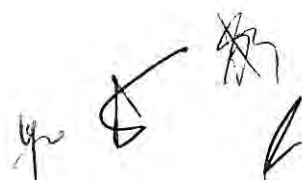
HEADS OF AGREEMENT : MARINE PARK

1. PARTIES

- 1.1 Durban Marine Theme Park (Pty) Limited
(Registration No. 2001/020025/07);
- 1.2 South African Association for Marine Biological Research
(Association incorporated under Section 21);

2. DEFINITIONS

- 2.1 "NEWCO" means the company referred to in 1.1 above;
- 2.2 "SAAMBR" means the company referred to in 1.2 above;
- 2.3 "METRO" means eThekwinj Municipality;
- 2.4 "MORELAND" means Moreland Developments (Pty) Limited, Registration No. 1981/012378/07;
- 2.5 "the POINT PROPERTY" means the property in the Point area of Durban, the location of which is indicated on the plan attached hereto marked "A";
- 2.6 "the THEME PARK" means the proposed world-class tourist attraction which is intended to be established on the POINT PROPERTY, which THEME PARK will include a MARINE PARK, a water park and various related tourist facilities and attractions, all as more fully described in the feasibility study currently being prepared by MORELAND;



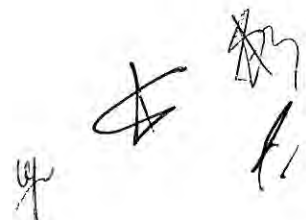
- 2.7 "the MARINE PARK" means the proposed world-class oceanarium and marine life facility, to be operated by SAAMBR, which is to be incorporated as an integral part of the THEME PARK and which is intended to include a sea aquarium, dolphinarium, shark tank and various additional-charge activities and facilities such as the proposed dolphin encounter, swim with the dolphins and snorkel lagoon;

3. **PREAMBLE**

- 3.1 METRO wishes to stimulate the economy of the Province of KwaZulu Natal, in general, and of the area of jurisdiction of METRO, in particular, by the establishment of the THEME PARK on the POINT PROPERTY. METRO has procured the formation of NEWCO whose object is to construct and to operate the THEME PARK on the POINT PROPERTY.
- 3.2 It is the intention that the THEME PARK will be a world-class, "must-see" attraction which will integrate the MARINE PARK with a participative water park and various other related entertainment activities and facilities.
- 3.3 SAAMBR is a not-for-profit, non-government organisation which over the past 40 years, has developed a highly credible local and international reputation for its work in marine conservation. SAAMBR's mission is achieved through research, relevant marine education and the operation of "Sea World", a popular tourist attraction in Durban. Through strict adherence to globally accepted conservation ethics and methods/standards, SAAMBR qualifies as a member of such bodies as the World Association of Zoos and Aquariums (WAZA), the Pan African Association for Zoological Gardens, Aquaria and Botanic Gardens (PAAZAB) and the World Conservation Union (WCN).



- 3.4 SAAMBR's ethic is one of dedication to the conservation of the marine environment and its resources, which it pursues through research (Oceanographic Research Institute - "ORI"), public awareness and tourism ("Sea World") and education (Sea World Education Centre - "SWEC"). As a non-government organisation with non-profit status, SAAMBR enjoys support from a wide range of local and international institutions and has established itself as the primary Oceanographic Research Institute on the Eastern Seaboard of Africa.
- 3.5 It is the intention that SAAMBR will be appointed by NEWCO to operate the MARINE PARK in accordance with the principles more fully set out in these Heads of Agreement.
- 3.6 The MARINE PARK's oceanarium will have a significantly larger capacity than the aquarium and dolphinarium currently operated by SAAMBR and will afford SAAMBR the opportunity of operating in significantly larger and upgraded facilities.
- 3.7 MORELAND will direct the management of the constructions of the THEME PARK and the integration of the numerous contractual arrangements leading up to the opening, by NEWCO, of the THEME PARK.
- 3.8 SAAMBR has indicated its willingness to undertake the operation of the MARINE PARK and is currently co-operating with METRO and MORELAND in regard to the initial planning and the design of the proposed MARINE PARK.
- 3.9 The parties wish to record the main principles and terms upon which SAAMBR will be integrated and incorporated into the larger and more modern facilities of the THEME PARK and how SAAMBR will operate

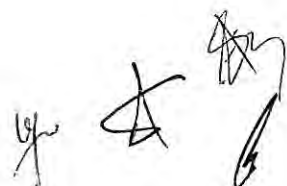
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within the THEME PARK'S organisational and financial framework. This document sets out those terms and principles.

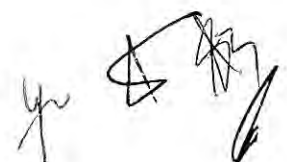
4. STATUS OF HEADS OF AGREEMENT

4.1 These Heads of Agreement –

- 4.1.1 are entered into in anticipation of the future establishment of the THEME PARK and provide, *inter alia*, for the relocation of SAAMBR's "Sea World" facility, including its research, conservation and education facility, to the POINT PROPERTY and for the operation of the MARINE PARK by SAAMBR.
- 4.1.2 record the broad principles and parameters upon which it is intended that NEWCO will operate the THEME PARK and indicate the basis upon which SAAMBR is to be appointed to operate the MARINE PARK facility as an integral component of the THEME PARK;
- 4.1.3 provide the basis upon which the parties hereto will continue to co-operate with each other so as to facilitate –
 - 4.1.3.1 the exchange of further information presently within the exclusive domain of the respective parties, which information is necessary to clarify a range of further considerations to be spelt out in the detailed agreement(s) to be entered into in due course;
 - 4.1.3.2 confirmation of various details and assumptions which constitute an integral part of MORELAND's feasibility study as referred to above;



- 4.1.3.3 the planning and conclusion of various other contractual arrangements that will follow from SAAMBR's participation in the THEME PARK;
 - 4.1.3.4 the planning and implementation of SAAMBR's relocation to the MARINE PARK;
 - 4.1.3.5 the preparation of designs and plans for the MARINE PARK and its integration in the THEME PARK and the timeous completion of the numerous planning issues that will need to be finalised in order to facilitate the construction and timeous opening of the MARINE PARK as an integral component of the THEME PARK.
- 4.2 These Heads of Agreement constitute an agreement on the terms, policies and principles set out herein but must be construed in the perspective that there are numerous details and contractual arrangements to be finalised and concluded that could impinge on the contents of this agreement which may necessitate amendments, variations or additions in due course. Furthermore, it is acknowledged that more detailed agreements are intended to be entered into between the parties to govern, more precisely, their future contractual relationships. These Heads, therefore, provide a foundation to the proposed relationship between the parties and the parties undertake to deal and negotiate with each in good faith with a view to resolving the issues which are as yet unforeseen or otherwise not dealt with in these Heads and with a view to agreeing the precise terms of the more detailed agreement(s) between them which are foreshadowed or anticipated in these Heads of Agreement.

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- 4.3 These Heads of Agreement are the sole memorandum of the agreement between the parties to date in respect and incidental to the subject matter hereof and no variation or amendment hereof shall be of any force or effect unless reduced to writing and signed by the relevant parties.

5. **RECORDAL**

It is recorded that, at the inaugural board meeting of NEWCO on 3 December 2001, resolutions were passed which indicated a clear commitment to proceed with the development of the THEME PARK. It was also resolved, by NEWCO, to enter into this agreement with SAAMBR.

6. **INITIAL CO-OPERATION**

- 6.1 SAAMBR undertakes to provide its expertise at no cost and to co-operate with and assist third party consultants to be appointed by MORELAND, for the purposes of the preparation and furnishing of all such information as may be reasonably required of it in order to assist with the planning of the proposed THEME PARK and, in particular, of the MARINE PARK, including, without limitation –

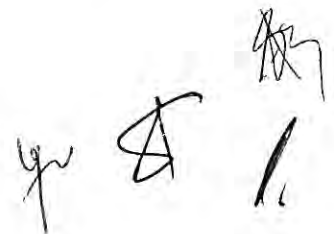
- 6.1.1 conceptual ideas and details relating to the planning for the design of the MARINE PARK and its various facilities;
- 6.1.2 information and details reasonably required to facilitate the relocation of SAAMBR's animal and plant stock to the MARINE PARK and the establishment of appropriate, interim holding facilities for the additional stock which will be required for the MARINE PARK;



- 6.1.3 information and details regarding its reasonable requirements for the accommodation of its staff at the MARINE PARK and to facilitate the proper and efficient carrying out of SAAMBR's functions at the MARINE PARK;
 - 6.1.4 the rendering of assistance, as reasonably required, to MORELAND and such consultants as may be employed in respect of the planning and establishment of the THEME PARK, for their various purposes relating to the THEME PARK including the information required for the preparation of the proposed development budget covering the planning, construction, establishment and pre-opening period of the THEME PARK and its various elements;
 - 6.1.5 the rendering of such advice and suggestions as SAAMBR, utilising its expertise, considers necessary and/or useful to facilitate the planning, establishment and/or operation of the MARINE PARK.
- 6.2 METRO shall co-operate with SAAMBR and shall use its best endeavours to procure that SAAMBR is accommodated as an integral part of the THEME PARK and in such a manner that it will be able to preserve, maintain and enhance its conservation, research and educational ethic and expertise whilst at the same time providing a world-class tourist attraction through the operation of the MARINE PARK.

7. NEWCO'S FUNCTION IN RESPECT OF THE THEME PARK

- 7.1 NEWCO will be the owner of the THEME PARK and will be responsible for procuring the design and construction of the THEME PARK. It is the intention that NEWCO will operate the THEME PARK as one cohesive entity notwithstanding that it is the intention that NEWCO will

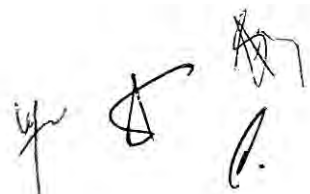
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outsource, lease or contract many of the operating elements, functions and operations of the THEME PARK.

7.2 NEWCO will provide an overarching centralised facility to deal with various functions that would otherwise be duplicated if assigned to the individual operators at the THEME PARK. These functions shall include but are not necessarily limited to –

- 7.2.1 marketing;
- 7.2.2 human resources;
- 7.2.3 ticket sales, cash control and payroll and general financial administration;
- 7.2.4 information technology;
- 7.2.5 landscaping;
- 7.2.6 parking;
- 7.2.7 security;
- 7.2.8 custodial/cleaning;
- 7.2.9 wardrobe and the like;

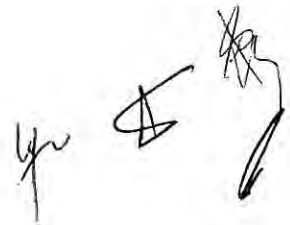
the object being that NEWCO will provide such centralised support services to major contractors and possibly even lessees at the THEME PARK so that such contractors/lessees can concentrate on providing,



through outstanding service, a world-class experience for visitors whilst at the same time reducing costs through economies of scale.

7.3 A service agreement will be entered into between NEWCO and SAAMBR to provide, where appropriate, additional detail and to incorporate the requisite service levels relating to SAAMBR's operation of the MARINE PARK. It is the intention that the detailed service agreement will adopt and extend the principles and terms contained in these Heads of Agreement. The parties acknowledge, however, that, at this early stage, it is not feasible to anticipate and incorporate all of the detailed operating terms and procedures that will be appropriate for the said agreement and the parties undertake to negotiate in good faith with a view to facilitating the conclusion in due course of the said service agreement. For the avoidance of doubt, the determination of the final terms of the Service Agreement to be concluded between NEWCO and SAAMBR as well as the terms of the Lease Agreement to be concluded between NEWCO and SAAMBR (see also clause 18.2 below), shall not be subject to arbitration in terms of clause 21 but shall require agreement between the parties which parties shall co-operate and act in good faith with a view to incorporating in those agreements, the terms and principles set out herein (until such agreements have been finalised, the terms as contained herein shall constitute the agreement between the parties).

7.4 NEWCO shall employ an onsite general manager for the THEME PARK. It is the intention that the general manager will be a person having significant knowledge and experience in operating quality leisure facilities and he will be charged with the responsibility of procuring, through the establishment of standards of excellence throughout the

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multifaceted elements of the THEME PARK, that visitors are given a world-class entertainment experience.

- 7.5 NEWCO shall be responsible for the accommodation of SAAMBR as a key component in the integrated facilities of the THEME PARK and shall use its best endeavours to ensure that the purpose, ethos and vision that drive SAAMBR are not compromised by the operation of the THEME PARK and that SAAMBR is given the opportunity, within the parameters of reasonable budgetary constraints (see clause 14 below), to further develop and expand its ability, knowledge and reputation for excellent marine research and conservation, relevant environmental education and the provision of an outstanding visitor experience.

8. ORGANISATIONAL STRUCTURE

- 8.1 SAAMBR will be appointed to manage the day-to-day operations of the MARINE PARK. In this respect, although SAAMBR'S essential focus has been and will continue to be in the field of marine research and conservation, the primary object of the MARINE PARK will be to provide, as an integral part of the THEME PARK, a world-class tourism experience. It is accordingly with the focus on the "visitor experience" that SAAMBR will be required by NEWCO to apply its skills and expertise and to rise to the challenges implicit in the abovementioned objectives. It is not, however, the intention that the research and educational operations of SAAMBR should in any way be prejudiced by its relocation to the MARINE PARK and, on the contrary, SAAMBR will be encouraged to continue its pursuit of excellence in the field of marine research and education. SAAMBR acknowledges, however, that the MARINE PARK will be required to operate as a productive and economically viable component within the THEME PARK and that, in the

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final analysis, the success of the MARINE PARK will depend upon its economic viability. SAAMBR acknowledges further that the THEME PARK, as a whole, will be operated as a business by NEWCO and that the THEME PARK will be expected to generate an operating surplus. In the circumstances, NEWCO, as the owner of the THEME PARK, will expect SAAMBR, through its operation of the MARINE PARK, to contribute towards the creation of the economic viability of the THEME PARK. NEWCO'S object shall be to ensure that all of the "operating divisions" in the THEME PARK function in an integrated manner to provide a consistent and world-class visitor experience and to generate in due course, and in accordance with reasonable expectations, an appropriate operating profit.

- 8.2 SAAMBR, in its capacity as the party responsible for the day-to-day operations of the MARINE PARK, will provide its professional expertise and experience and, although it will operate within the organisational framework contemplated herein, will function essentially as an expert, independent contractor with full operational responsibility for the MARINE PARK. In this regard, SAAMBR will be expected to collaborate with and advise NEWCO on all matters falling within the expertise of SAAMBR insofar as they relate to the proper operation of the MARINE PARK. On the other hand, while NEWCO will not in any way compromise the professional integrity and ethic of SAAMBR, SAAMBR will be required to report to NEWCO and to comply with the reasonable requirements of NEWCO from time to time. It is recorded that SAAMBR shares the vision of NEWCO which is to establish the THEME PARK as a world-class, must see "tourist attraction" and SAAMBR shall at all times use its best endeavours to ensure that the MARINE PARK is operated in a manner consistent with that vision.

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- 8.3 It is recorded that SAAMBR, as a Section 21 Company, is a public company limited by guarantee. It is managed by a Board of Directors which is referred to as a "Council". The Council members include representatives from the University of Natal, METRO and other prominent individuals. The Council meets quarterly and elects from its number an Executive Committee. It also appoints a Director to lead and manage a team of permanently employed and contracted staff members and volunteers. The organisational structure referred to below deals only with the Executive Directors of SAAMBR and the paid employees and shall not be construed as requiring SAAMBR to amend its internal structures relating to its public membership or its council, the object being that SAAMBR will, subject only to such changes as may be agreed upon in order to cater for the requirements of its agreement with NEWCO and/or which may arise pursuant to an investigation which is being commissioned by SAAMBR into its organisational structure, not be obliged to change from the form in which it is currently constituted.
- 8.4 The organisational structure for the THEME PARK, in general, and for NEWCO and SAAMBR, in particular, will be substantially in accordance with the organisational charts attached hereto marked "B1 to B7" (subject to such changes as might be agreed upon in the process of the more detailed planning which will precede the opening of the THEME PARK and which, in respect of SAAMBR, may arise pursuant to the investigation referred to in 8.3 above). In this regard, it is recorded that –
- 8.4.1 NEWCO will be headed by a General Manager (see 7.7 above) who will have under him 3 (THREE) department heads; namely, a Director of Marketing/Special Events, a Director of Operations and a Director of Finance;



- 8.4.2 the Chief Executive of SAAMBR represents SAAMBR in liaising and consulting with the Director of Operations of NEWCO, the object being that the persons holding the said offices in SAAMBR and NEWCO, respectively, will constitute the main channel for reporting, liaison and consultation;
- 8.4.3 the Chairman/President for the time being of SAAMBR shall, *ex officio*, be a Director of NEWCO and, in addition, SAAMBR shall be entitled to appoint one of its Senior Executives (preferably its Chief Executive) as a co-opted but non-voting "Member of the Board" of NEWCO (such appointee will be entitled to attend Board Meetings of NEWCO but will not be a Director of NEWCO) provided always, however, that the SAAMBR representatives shall not be entitled to participate in discussions of the Board of Directors of NEWCO relating to the finalisation of the Service/Management Agreement to be entered into between NEWCO and SAAMBR as contemplated in 8.5 below.
- 8.5 SAAMBR acknowledges that a necessary consequence of its appointment to manage and operate the MARINE PARK is that it will be accountable to NEWCO in accordance with the terms of the Service/Management Agreement to be entered into between SAAMBR and NEWCO. Whilst it is the intention that the Service/Management Agreement will provide service levels which are to be maintained by SAAMBR in carrying out its functions relating to the MARINE PARK, and whilst SAAMBR'S "operating autonomy" will be subject to the terms of its agreement with NEWCO, it shall at all times be the object that any constraints placed upon SAAMBR by NEWCO will be limited to those which are reasonably necessary for the achievement of the abovementioned objects of NEWCO and it shall, at all times, be a

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fundamental principle that SAAMBR should be allowed, within reasonable constraints (including budgetary constraints), to operate in such a way that the quality of its research and its conservation ethic are not compromised. In this regard, NEWCO shall not do anything in respect of the THEME PARK which is likely to undermine SAAMBR's conservation ethic or damage its good reputation or otherwise bring it into disrepute.

- 8.6 SAAMBR undertakes to use its best endeavours to procure that its organisational structure shall, subject to the outcome of the investigation referred to in 8.3 above and the implementation of possible structural changes arising therefrom, be substantially in conformity with the organisational structure depicted in exhibits B3 to B6 by the time of the official opening of the MARINE PARK.
- 8.7 NEWCO shall be entitled to appoint a representative onto SAAMBR's Board of Directors (that is, its "Council"). In addition NEWCO shall be entitled to appoint an individual representative onto the Executive Committee of SAAMBR until the official opening of the MARINE PARK provided always, however, that such representative shall not be entitled to participate in discussions of the said Executive Committee relating to the finalisation of the Service/Management Agreement to be entered into between NEWCO and SAAMBR as contemplated in 8.5 above.

9. **APPOINTMENT AND RESPONSIBILITIES OF SAAMBR**

- 9.1 SAAMBR shall be appointed by NEWCO to operate the MARINE PARK with effect from the opening of the THEME PARK. SAAMBR will operate the MARINE PARK in much the same way as it currently does at its current location, save that –

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- 9.1.1 SAAMBR will also be responsible for operating the additional facilities and activities to be offered by the MARINE PARK such as the dolphin encounter, swim with the dolphins and the snorkel lagoon;
- 9.1.2 SAAMBR will not be responsible for the "centralised" facilities to be provided by NEWCO such as marketing, human resources, ticket sales / access control / accounting; payroll; security; wardrobe and retail (merchandise and food/beverage), the object being that SAAMBR will be able to focus on its main skills of research, education and the daily operation and maintenance of the oceanarium components of the MARINE PARK. (Although it is possible that SAAMBR will, within its staff complement, have individuals who are responsible for SAAMBR'S internal bookkeeping/financial/information technology/human resources functions.)
- 9.2 The relationship between SAAMBR and NEWCO shall be one of an independent contractor. The employees of SAAMBR shall continue to be the responsibility of SAAMBR. SAAMBR shall not be a partner of NEWCO and neither company shall be entitled to bind the credit of the other.
- 9.3 Without derogating from the general obligations of SAAMBR in respect of undertaking the entertainment, research and education functions of the MARINE PARK in accordance with the high standards that will be required to earn a "world-class rating" for the MARINE PARK, SAAMBR shall be responsible, *inter alia*, for the following –
- 9.3.1 SAAMBR shall attend in a proper and diligent manner and out of its budgeted allocation for maintenance, to the routine maintenance

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and upkeep of all operating plant, machinery and equipment serving or utilised in connection with the MARINE PARK and shall expend a predetermined portion of its annual budget allocation on such maintenance, the object being to minimise major remedial work having to be undertaken by following a consistent, ongoing maintenance schedule;

- 9.3.2 SAAMBR shall at all times ensure that all sections of the MARINE PARK are staffed by appropriately trained and experienced personnel;
- 9.3.3 SAAMBR shall be responsible for the procurement and maintenance of all operating stock of fish and other sea life and for the appropriate training thereof where applicable (see also 13 below);
- 9.3.4 SAAMBR shall constantly strive to enhance, augment and liven the entertainment aspects of the MARINE PARK;
- 9.3.5 SAAMBR shall operate the MARINE PARK under the name and/or style, from time to time, as directed by NEWCO;
- 9.3.6 SAAMBR shall not conduct any activity at the THEME PARK which is prejudicial or likely to become prejudicial to the interests of the THEME PARK as a whole nor shall SAAMBR do anything which is calculated or likely to bring NEWCO and/or the MARINE PARK and/or the THEME PARK into disrepute. (A similar obligation will be imposed by NEWCO on the other occupiers of premises in the THEME PARK.);

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- 9.3.7 SAAMBR shall be entitled to carry on providing a consultancy service and to utilise its premises at the MARINE PARK as its base for those purposes provided that it shall keep NEWCO informed in regard to its said consultancy activities;
- 9.3.8 SAAMBR shall, in regard to its operation of the MARINE PARK, comply with the reasonable instructions and requirements from time to time of NEWCO with a view to assisting in the creation of the THEME PARK as a world-class entertainment and tourist attraction and as an economically viable business.

10. OPERATING POLICIES AND PROCEDURES

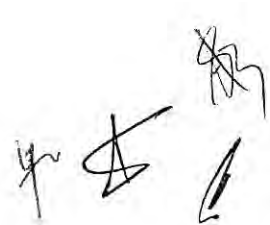
- 10.1 NEWCO and SAAMBR shall jointly establish general and specific rules, regulations, policies and standard operating procedures governing all activities and operations in respect of the MARINE PARK. The standard operating procedures ("SOP's") referred to above will define the quality of the training, job duties, standards for operation and quality of visitor service expected at the MARINE PARK. Any SOP proposed by SAAMBR will require the prior approval of NEWCO, whose approval shall not be unreasonably withheld. Similar SOP's will be developed for the balance of the THEME PARK, the object being that all of the parties who are operating in the THEME PARK will be bound by SOP's aimed at ensuring that certain minimum standards are observed in respect of the THEME PARK.
- 10.2 SAAMBR acknowledges the importance of establishing and maintaining operational standards necessary to achieve a "world-class" rating for the THEME PARK and it shall at all times use its best endeavours to procure that all of its employees will know, understand and comply with the



policies, procedures, rules and regulations aimed at achieving such a rating.

11. DURATION OF SAAMBR'S APPOINTMENT AND TERMINATION ON BREACH

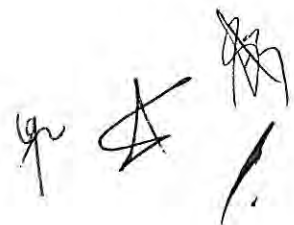
11.1 SAAMBR'S appointment in terms of the Service Agreement with NEWCO as contemplated above is intended to be indefinite and shall be capable of being terminated only by mutual agreement or in consequence of an unremedied material breach. For this purpose, SAAMBR will be accommodated by NEWCO, in terms of a long lease at a peppercorn rental, in appropriate facilities at the MARINE PARK (see also 18 below). Without derogating from the principle that SAAMBR'S appointment shall be for the long term, the parties acknowledge that if either of them materially breaches any of its obligations under the Service Agreement (for example, SAAMBR fails to operate the MARINE PARK in accordance with the high standards necessary to achieve the "world class standards" as referred to above or, on the other hand, if NEWCO fails to provide the budgeted funding to SAAMBR so that SAAMBR cannot continue to operate in the manner envisaged in these Heads of Agreement) and should the "defaulting party" fail to remedy its breach within a reasonable period of receipt of written notice from the "aggrieved party" to do so, then the aggrieved party shall be entitled, without prejudice to any of its other rights in law, to terminate the Service Agreement and claim such damages as it may thereby suffer. However, in the absence of any such breach which entitles either party to terminate or , unless the parties agree to terminate the Service Agreement by mutual agreement, the Service Agreement shall continue in full force and effect.



- 11.2 If there is a dispute between the parties in regard to an alleged breach or the alleged right to terminate this agreement, such dispute shall be referred firstly to mediation and, if that does not result in the dispute being resolved, to arbitration, all as more fully provided for in 21 below.

12. RELOCATION OF SAAMBR

- 12.1 It is the intention that SAAMBR will be relocated to the POINT PROPERTY timeously having regard to the date upon which the THEME PARK is to open. SAAMBR shall be consulted and shall agree on the timing and phasing of the procurement of the stock, the relocation of SAAMBR and the pre-opening programme.
- 12.2 The relocation of SAAMBR and its animal stock will be undertaken in collaboration with NEWCO.
- 12.3 The costs of relocating SAAMBR including the animal stock as well as the cost of establishing additional stock in accordance with the requirements of the MARINE PARK will be an "interim budgetary expense" for the account of NEWCO (see also clause 14 below). (To the extent that SAAMBR is able to make savings in respect of its normal expense commitments as a result of such relocation, such "savings" shall be committed towards the costs of such relocation the object being that SAAMBR should assist with such costs if it is reasonably able to do so having regard to its own financial commitments.) It is recorded that, to the extent that SAAMBR is reasonably obliged to incur retrenchment costs in order to facilitate its relocation to the MARINE PARK, such costs shall constitute part of the costs of relocation as envisaged above. However, SAAMBR shall be obliged to consult with METRO before implementing any retrenchments, it being recorded that it is the objective of METRO that NEWCO will, where appropriate, employ those



current members of the SAAMBR staff whose jobs may become redundant in consequence of the relocation and/or the new organisational structure that will operate at the MARINE PARK. SAAMBR and METRO shall co-operate with each other with a view to dealing fairly and reasonably with the issue of possible retrenchments.

- 12.4 It is recorded that the premises which are currently utilised by SAAMBR are leased to it by METRO. It is the intention that SAAMBR will negotiate with METRO with a view to procuring that the said lease will terminate, by mutual agreement, upon completion of SAAMBR's relocation to the MARINE PARK which relocation shall, in any event, be deemed to have been finalised by the date upon which the MARINE PARK is opened for business.

13. STOCK OF SEA AND PLANT LIFE

- 13.1 It is recorded that the capacity of the oceanariums at the MARINE PARK will be substantially greater than the capacity of SAAMBR's current "Sea World" oceanarium. As such, it will be necessary to build up the operating stock of fish and other sea life to the appropriate level prior to the scheduled opening of the MARINE PARK. Notwithstanding the foregoing, it is recorded that it is the intention to utilise the existing stock of SAAMBR's dolphins augmented by natural progeneration and, if necessary, to augment or replace dolphin stock through capture.
- 13.2 SAAMBR shall be responsible for the procurement of the additional stock as contemplated in 13.1 above.
- 13.3 The build up of the stock shall commence as soon as reasonably practicable after the fulfilment of the condition in clause 5 above and shall continue, on a concerted basis, until the requisite stock level has been obtained. Thereafter, SAAMBR shall be responsible, within its

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reasonable capabilities and subject to the obtaining of such licences and authorities as may be required, for maintaining stock at the optimum level both in regard to quantity and the range of sea life.

13.4 SAAMBR shall contribute its existing stock of fish and other sea life to the MARINE PARK. Ownership of the said stock shall remain vested in SAAMBR. An inventory of the said stock shall be prepared immediately prior to the transfer of the said stock to the "MARINE PARK". If, for any reason, the agreement between NEWCO and SAAMBR is terminated, then –

13.4.1 if the termination is not attributable to a breach by either party, SAAMBR shall have an option to sell all the stock which it owns (that is, including any additional stock as contemplated in 13.5 below) to NEWCO and NEWCO shall have an option to purchase the said stock from SAAMBR, each such option being exercisable by way of written notice given to the other within 30 (THIRTY) days of the termination of the Service/Management Agreement between SAAMBR and NEWCO. The purchase price payable for the said stock shall be the international market value of the live animals at that time. If there is a dispute in regard to the determination of the said value, such shall be determined in accordance with the provisions of clause 21 below save that the "arbitrating expert" shall be an independent person who, by his experience, is qualified to value the stock whose value is in dispute;

13.4.2 if the Service/Management Agreement is terminated as a result of an unremedied material breach by SAAMBR, SAAMBR's ownership of the abovementioned stock as well as all of the other stock of

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marine and plant life at the MARINE PARK shall be forfeited to NEWCO;

13.4.3 if the Service/Management Agreement is terminated in consequence of an unremedied material breach by NEWCO, SAAMBR shall retain ownership of the abovementioned stock.

13.5 NEWCO shall fund the capture, transportation and interim accommodation of the additional stock to be procured by SAAMBR as provided for above. Ownership in and to such additional stock, as well as stock born at the MARINE PARK, shall vest in SAAMBR.

13.6 It is envisaged that special holding tanks will have to be established to accommodate the additional stock as contemplated above pending the completion of the MARINE PARK facilities. The cost thereof shall be funded by NEWCO. SAAMBR shall co-operate with NEWCO with a view to exploring ways of exploiting the commercial opportunities of allowing the public to witness or otherwise become involved with the capture and/or storage of the additional stock with the object of earning income to offset against the expenses which will be incurred during the phase of building up the additional stock.

13.7 SAAMBR shall be responsible for the training of such additional dolphins and other sea animals as may be required for the purposes of the MARINE PARK.

14. FINANCIAL ARRANGEMENTS

14.1 As soon as reasonably practicable after the fulfilment of the condition in clause 5.1 above, the parties hereto shall meet with a view to setting up a steering committee to deal with all of the planning issues as well as

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the implementation of SAAMBR'S relocation to the MARINE PARK. One of the responsibilities shall be the preparation of an "interim budget" to cover the financial implications of such relocation (including the build up and holding of the additional stock referred to in 13 above). It is recorded that it is the intention that NEWCO will provide funding to facilitate the work required to be undertaken during the interim period pending the opening of the THEME PARK.

- 14.2 It is acknowledged that, in order for SAAMBR to operate the MARINE PARK, it will need a source of funds to pay for all of its staff and the operating expenses associated therewith, including the research and education components of the MARINE PARK. SAAMBR shall, at least 3 (THREE) months prior to the commencement of each financial year of NEWCO, provide NEWCO with a proposed operating budget for that year, which budget will provide, *inter alia*, for all of SAAMBR's necessary labour and other expenses directly related to the maintenance, animal husbandry, life support systems, collection of animals, training of animals and general operation of all shows, facilities and exhibits which constitute part of the operations of the MARINE PARK. Such budget shall also provide for the expenses of operating the research and education divisions of SAAMBR. SAAMBR shall collaborate with NEWCO in regard to the draft budget and a final operating budget for the year ahead will then be settled by NEWCO, the object being that the budget should be finalised by consensus, if possible, but with NEWCO, complying with the provisions and applying the principles set out in these Heads of Agreement, having the final say. (It is recorded, in this regard, that if SAAMBR is of the view that a decision is taken by NEWCO not in terms of a consensus decision with SAAMBR but in terms of NEWCO's "final say" and the said decision is made contrary to the principles which, in terms of these Heads of



Agreement, should have been applied, SAAMBR shall be entitled to declare a dispute on the relevant issue. In the event of a dispute, the matter shall be resolved in accordance with the provisions of clause 21.)

- 14.3 All of the income earned in the operation of the MARINE PARK shall be utilised firstly to pay the expenses incurred by SAAMBR in carrying on its business. Expenses shall be subject to budgetary control in terms of the annual budget agreed between SAAMBR and NEWCO (see clause 14.2 above). The surplus arising out of SAAMBR's operations shall, except for such bonuses which SAAMBR earns in respect thereof and subject to the special provisions relating to income from consultancy fees (see 15 below), be for the benefit of NEWCO. Although the MARINE PARK will, for financial purposes, be fully integrated with the THEME PARK, NEWCO shall be responsible for the preparation of management accounts in terms of which the MARINE PARK will be treated as a separate profit centre, the object being that the management accounts will indicate, *inter alia*, the income and expenditure pertaining to the MARINE PARK as though it were a separate operating entity.
- 14.4 The annual operating budgets for the MARINE PARK will, *inter alia*, allow for annual increases in staff salaries in accordance with the cost of living (as reflected in the relevant increase in the Consumer Price Index for all categories in the Republic of South Africa) as well as merit increases to deserving employees of SAAMBR.
- 14.5 A bonus scheme shall be introduced to incentivise SAAMBR to optimise the profits of the MARINE PARK. The precise details of the scheme will be determined by agreement between NEWCO and SAAMBR, but the

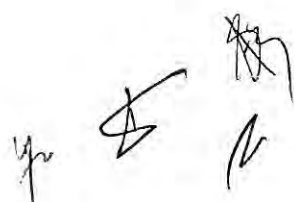
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general principle in this regard shall be to have a bonus scheme which operates at two levels, as follows –

- 14.5.1 SAAMBR will receive a bonus in respect of the operating surplus of the MARINE PARK. Such bonus will be calculated at a % (to be determined) of the revenue in excess of the budgeted amount for the MARINE PARK. The bonus will depend also upon satisfactory ratings of overall experience and of the visitor service based on measurable results from visitor surveys;
- 14.5.2 SAAMBR will share, by way of bonus, in any excesses in the budgeted revenue for the THEME PARK as a whole, at a % (to be determined) of the revenues that are in excess of the revenue budget for the THEME PARK.

(Any bonuses earned by SAAMBR in this respect may be utilised by SAAMBR to reward the efforts of deserving members of its staff or for any other purposes SAAMBR wishes to pursue but which would otherwise not have been funded by NEWCO. The bonuses shall not constitute grounds for reducing SAAMBR's operating budget for the following year. SAAMBR shall liaise with NEWCO in regard to the precise allocation of its bonus and the approval of NEWCO in regard to the proposed allocation will be required, which approval shall not be unreasonably withheld. A certain percentage of the bonuses earned will be applied exclusively to research – see 15 below.)

- 14.6 Although SAAMBR will have the responsibility of operating the MARINE PARK within the THEME PARK complex, the responsibility for selling tickets, admission control and recording attendance will be that of the "visitors service manager" to be employed by NEWCO (and reporting to NEWCO's director of operations) and cash control and all accounting



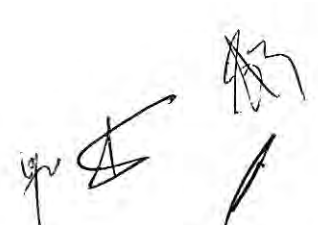
functions will, likewise, be the responsibility of NEWCO (and fall under its Director of Finance). SAAMBR will be given weekly, monthly and annual reports detailing attendance and revenue from all sources for the MARINE PARK.

14.7 A sinking fund shall be established in respect of the MARINE PARK in order to provide for ongoing capital expenditure and extraordinary repair and maintenance items in connection with the MARINE PARK. The sinking fund shall be established by providing for a specified percentage (say 5%) of the MARINE PARK's gross turnover per annum to be allocated to a reserve account which will be utilised as and when needed.

14.8 By way of qualification to the whole of this clause 14, but subject to the principles of a minimum operating budget as more fully set out below in this sub-clause, the funding of SAAMBR by NEWCO shall at all times be subject to the overriding requirement of affordability having regard to the revenues accruing to NEWCO from the THEME PARK, in general, and the MARINE PARK, in particular. It is recorded, however, that the need to provide SAAMBR with sufficient funding to properly carry out its obligations is recognised as a priority item for NEWCO and NEWCO undertakes, in any event that, notwithstanding anything to the contrary herein contained, NEWCO shall be obliged to provide SAAMBR an operating budget which, at the very least, shall cover the costs of –

14.8.1 animal health and husbandry without any reduction in stock;

14.8.2 the continuation of the then existing research, education and conservation capacity of SAAMBR; and



14.8.3 implementing the cutbacks and streamlining that might be required in respect of the normal operating structures and arrangements of SAAMBR including the associated costs arising out of any cutback in the normal operating budget including, for example, staff retrenchment costs in respect of staff other than those who are necessary to give effect to 14.8.1 and 14.8.2, it being recorded that, if staff cutbacks are required, sufficient personnel shall be retained, even with the "skeleton staff" situation, to comply with the abovementioned principles. (For the avoidance of doubt, the principle in 14.8.2, which provides for the continuation of the existing research, education and conservation capacity of SAAMBR, shall not be interpreted to prohibit the retrenchment of any staff from that department. What it shall require is that the staff who are retained are sufficient in number and ability to undertake the then research, education and conservation requirements of SAAMBR during the "cutback period". It will accordingly be necessary, in such circumstances, to distinguish between a luxurious complement of staff and the necessary, minimum complement required to give effect to 14.8.2.)

14.9 To the extent that, in line with the principles set out in 14.8 above, SAAMBR is obliged to implement "cutbacks" in its normal operating budget, it is anticipated that, in consequence thereof, SAAMBR will not be able to maintain the same standards of performance and maintenance levels and due allowance should be made in this regard in the event of the operating budget of SAAMBR having to be reduced.

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15. RESEARCH AND CONSULTANCY

- 15.1 It is recorded that ongoing, "cutting edge" marine research will continue to be a fundamental activity and goal of SAAMBR and the budget and organisational structure shall accommodate the reasonable requirements of SAAMBR to facilitate the continuation of its research activities.
- 15.2 The annual budget of the MARINE PARK will (subject always to the principles provided for in 14.8 above) include a specific allocation for SAAMBR's research. In this regard, it is the intention that a minimum research budget shall be determined by agreement between the parties as soon as reasonably practicable, it being claimed by SAAMBR that, through financial constraints, the current research budget is both insufficient and understated. It is also the intention that the minimum research budget will be subject to an annual escalation at least in line with the rate of inflation. In addition, SAAMBR will be entitled and encouraged, to augment its research budget by raising additional funds through "research grants" and by charging fees for marine consultancy work but shall keep NEWCO informed of the details of any such additional funding and/or consultancy fees.
- 15.3 SAAMBR will be encouraged to raise funds from consultancy work subject to the principle that the amount of consultancy work which it undertakes should be balanced against the overriding interests of continuing to develop its marine research. Furthermore, the consultancy work should not be of such a magnitude as to compromise SAAMBR'S abilities to fulfil its primary obligations to NEWCO in respect of the MARINE PARK. Funds which SAAMBR earns or receives pursuant to consultancy work and research grants which SAAMBR procures will be "ring fenced" and used exclusively by SAAMBR in respect of its

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research activities. (To the extent that such "additional funds" facilitate a reduction, to whatever extent, in the utilisation by SAAMBR of its allocated budget from NEWCO, such "outside funding" will also be advantageous to SAAMBR in regard to qualification for bonuses.)

15.4 SAAMBR and NEWCO shall collaborate with a view to maximising research grants and achieving the right level of consultancy work.

15.5 To the extent that NEWCO can raise funds for research, whether in the form of grants or in the form of additional consideration linked with the grant of some commercial rights relating to the THEME PARK or in any other way, NEWCO shall be entitled to utilise the funds which it raises to substitute the funds which it is committed to provide to SAAMBR in terms of SAAMBR's annual operating budget for research allocation which it is obliged to pay to SAAMBR.

16. EDUCATION

16.1 SAAMBR shall continue to provide "education courses" and teacher workshops and will receive from NEWCO, in the annual budget, an allocation to cover the costs of providing such courses.

16.2 It is recorded that it is the intention that the MARINE PARK will be made accessible to groups of school children (on organised, educational "tours") and also to other groups of individuals who, for financial or other reasons, might not otherwise have been able to visit the MARINE PARK. The scheduling of such tours shall be undertaken with due regard to peak tourist periods with the object of balancing the interest of education and accessibility, on the one hand, with the interests of a "world class tourism experience" on the other. NEWCO and SAAMBR



shall liaise with a view to accommodating these interests in accordance with the overall objectives of the THEME PARK.

17. STAFF

- 17.1 As soon as reasonably practicable after this agreement has been concluded, SAAMBR shall meet with consultants appointed by NEWCO with a view to reviewing any restructuring proposals arising from the investigation referred to in clause 8.3 above and with a view to ensuring that SAAMBR will have the staff complement required for the purposes of operating the MARINE PARK when it opens (see also 8.4 above). The object will be to implement, to the extent possible, the optimal staffing structure and policy having regard to the requirements of the MARINE PARK. SAAMBR shall use its best endeavours to implement the terms of the "staffing arrangements" that are agreed upon pursuant to such liaison.
- 17.2 NEWCO shall provide a centralised, human resources service for the benefit, *inter alia*, of SAAMBR. SAAMBR shall, in this respect, submit requests and proposed criteria for new staff (both permanent and temporary) to NEWCO's human resources department and NEWCO shall be responsible for sourcing, recruiting and interviewing candidates before referring them to SAAMBR for final approval or rejection. This service will be provided free of charge. SAAMBR, however, shall be responsible for providing such training as may be reasonably required in order to ensure that each of its employees is able to perform his/her function in a proper and efficient manner and in accordance with the provisions of this agreement.



18. PREMISES

18.1 NEWCO shall be responsible for the design (with the benefit of SAAMBR's input) and construction of the MARINE PARK and its various facilities, the object being that the said facilities will be commensurate with the world-class standards which NEWCO intends to establish in respect of the THEME PARK. SAAMBR shall be accommodated in appropriate premises at the MARINE PARK.

18.2 A long term lease agreement, at a peppercorn rental, shall be entered into between NEWCO (or, if applicable, the property owning corporate component of NEWCO) and SAAMBR in order to provide for SAAMBR's accommodation at the MARINE PARK premises on the POINT PROPERTY. The object of the arrangement between SAAMBR and NEWCO, in this regard, shall be as follows –

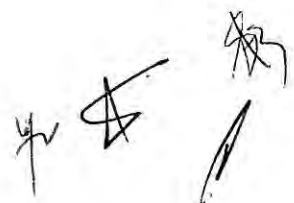
18.2.1 the lease shall be prepared as a Notarial Long-Lease, terminable on 6 (SIX) months' written notice at the instance of SAAMBR save that no such notice shall be given prior to the operative clauses (referred to in 18.2.2 below) coming into effect. The lease will be registered in the Deeds Office with the consent, if applicable, of any bondholders in respect of the POINT PROPERTY, the object being that any such bond will be subject to the lease. The costs of preparing and registering the Lease, including the survey costs and the legal and registration fees, shall be for the account of NEWCO. It is recorded that it is of the utmost importance to SAAMBR that it will have security of tenure and the parties shall accordingly do all such things as may be reasonably necessary in order to give effect thereto. This shall include, if reasonably required by SAAMBR, the registration by the bond holder (which NEWCO undertakes to



procure) of a Waiver of Preference or variation of the terms of the Bond, pursuant to which the provisions of the bond at all times shall be made subject to the rights of SAAMBR in terms of the Lease, as well as a Notarial Deed in Restraint of Free Alienation in terms of which the PROPERTY shall not be sold without the prior written consent of SAAMBR which consent shall not be withheld if SAAMBR's tenure under the Lease is protected;

18.2.2 notwithstanding that the lease will come into full force and effect from the date of execution thereof, the lease shall contain certain "operative clauses" which will be suspended and shall not come into operation unless and until the Service Agreement between NEWCO and SAAMBR is terminated in consequence of an unremedied breach by NEWCO or in the event of the liquidation, whether provisional or final, of NEWCO, in which event the "operative clauses" shall become effective. The said operative clauses will provide for SAAMBR running the MARINE PARK business for its own account. The said clauses will facilitate the independent operation of the MARINE PARK by SAAMBR and will facilitate, for example, control of the MARINE PARK "gate" by SAAMBR in much the same way as applies currently pursuant to SAAMBR's lease with METRO in respect of the "Sea World premises". The current "Sea World" lease shall form the basis (subject to such adaptation as may be reasonably necessary) of the terms which will be applicable in respect of the lease of the MARINE PARK premises in the event of the "operative clauses" coming into effect.

18.2.3 SAAMBR shall be responsible for maintaining, in good and proper condition and throughout the duration of its agreement with

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NEWCO, the interior of the premises which it occupies, it being recorded that maintenance shall be a budgeted expense item;

18.2.4 the exterior and surrounds of such premises shall be the responsibility of NEWCO, the object being that NEWCO shall maintain or, as the case may be, procure the maintenance of, the THEME PARK in good and proper and attractive condition at all times;

18.2.5 SAAMBR shall be responsible for the maintenance, upkeep and, where necessary, the repair, out of its budgeted allocation, of all plant and equipment serving or otherwise constituting an integral part of the MARINE PARK;

18.2.6 SAAMBR shall not be obliged to pay any contribution to the rates payable in respect of the POINT PROPERTY or any part thereof;

18.2.7 in the event SAAMBR's service agreement with NEWCO being terminated, in consequence of an material unremedied breach by SAAMBR, SAAMBR shall co-operate with NEWCO and any party who is appointed by NEWCO to operate the MARINE PARK with effect from the termination of SAAMBR's contract, with a view to facilitating the continuation, without interruption, of the MARINE PARK (unless NEWCO decides to close the MARINE PARK.)

19. MARKETING

NEWCO will market the THEME PARK including, as an integral part thereof, the MARINE PARK. NEWCO will work together with SAAMBR in respect of special marketing programmes aimed specifically at the promotion of the MARINE PARK and events and attractions to be



featured at the MARINE PARK. The marketing services of NEWCO shall be provided at no charge or expense to SAAMBR.

20. COMMERCIAL RIGHTS

- 20.1 All of the commercial rights in and to the THEME PARK, including the MARINE PARK, will vest in NEWCO and it shall be NEWCO's right to exploit such commercial opportunities in respect of the MARINE PARK as it deems fit subject always to the principle that SAAMBR's conservation ethic and reputation should not be prejudiced by the nature or manner of such commercial exploitation.
- 20.2 All signage and graphics within the THEME PARK will be required to be in accordance with the theme, design and standard specified by NEWCO. Any proposed additions and/or changes thereto must be submitted by SAAMBR to NEWCO for prior written approval.
- 20.3 The parties acknowledge that the naming rights in respect of the MARINE PARK have commercial value and SAAMBR, recognising the importance of ensuring the commercial viability of the THEME PARK, shall co-operate with NEWCO and do all such things as may be reasonably required of it in regard to facilitating the granting of naming rights, from time to time, to sponsors with whom NEWCO has reached agreement.
- 20.4 NEWCO shall be entitled to designate official suppliers or grant the exclusive right to supply certain products and/or services to the THEME PARK. If any such products and/or services are intended to be used in respect of the MARINE PARK, SAAMBR will be required to utilise such products and/or services and to purchase solely from such exclusive supply source. NEWCO shall consult with SAAMBR before concluding

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any agreement for the supply of any such product and/or service to be utilised by SAAMBR in respect of the MARINE PARK.

20.5 SAAMBR shall co-operate with NEWCO in regard to the accommodation of special promotions, activities and/or events, from time to time, at the MARINE PARK with a view to maximising the economic potential thereof. Such promotional and marketing programmes shall be jointly conceived by NEWCO and SAAMBR but the finalisation and implementation thereof shall be the responsibility of NEWCO.

20.6 The rights to sell curios, memorabilia and other paraphernalia as well as food and beverage at or pertaining to the MARINE PARK shall vest exclusively in NEWCO. NEWCO shall not, however, sell or allow the sale of such objects as would be contrary to the conservation ethic and ideals of SAAMBR.

21. RESOLUTION OF DISPUTES : MEDIATION AND ARBITRATION

21.1 Should any dispute arise between any of the parties in connection with-

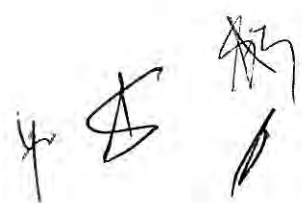
21.1.1 the performance of their obligations under;

21.1.2 the interpretation or application of the provisions of;

21.1.3 the parties' respective rights and obligations in terms of or arising out of;

21.1.4 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;

21.1.5 the alleged breach of or the right to terminate,



this agreement, the party claiming such dispute shall immediately advise the other(s) in writing of that dispute and the parties to the dispute shall be obliged, within 14 (FOURTEEN) days of such notice, to meet and negotiate in good faith in order to resolve such dispute.

- 21.2 Should the parties fail to resolve the dispute or difference within 7 (SEVEN) days of their first meeting or such longer period as the parties may agree, either party may refer the dispute or difference to mediation to be undertaken by a single mediator.
- 21.3 The party referring the dispute to mediation shall, within 7 (SEVEN) days of the parties having failed to resolve the dispute, submit to the other party in writing the names and occupations of three persons proposed by it to act as Mediator and request the other party to agree to the appointment of any one of them in writing within 7 (SEVEN) days of receipt of that notice.
- 21.4 In the event of the parties being unable to agree to the appointment of a Mediator within the period referred to in 21.3 above, the mediator shall, upon the written request of either party, be appointed by the Chairman of the Alternative Dispute Resolution Association of South Africa (ADRASA).
- 21.5 The Mediator shall use every endeavour to facilitate a settlement of the dispute or difference between the parties within 10 (TEN) days of his appointment as Mediator.
- 21.6 Should the parties, notwithstanding such mediation, fail to reach a settlement within the 10 (ten) days referred to in clause 21.5 or such longer period as the parties may agree, the Mediator shall be requested to express in writing and as soon as reasonably practicable in the

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circumstances (and in any event within 7 (SEVEN) days of such request), an opinion on the matter and furnish each of the parties with a copy of his opinion.'

21.7 Each party to such dispute shall bear an equal share of the Mediator's costs and expenses.

21.8 Should the mediation not have induced a settlement within 10 (TEN) days after receipt of the Mediator's opinion, any party to the dispute may refer the dispute to be determined by arbitration on written notice given to the other parties.

21.9 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

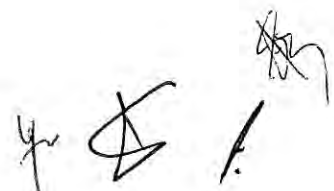
21.10 The arbitration referred to above shall be held:

21.10.1 at Durban unless otherwise agreed in writing by the parties;

21.10.2 in a summary manner; that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the Strict Rules of Evidence;

21.10.3 as soon as is reasonably practicable in the circumstances and with a view to it being completed within 60 (sixty) business days after it is demanded.

21.10.4 with only the parties to the dispute and their legal and other representatives present thereat;

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it being the intention that the arbitration shall be held and completed as soon as possible.

21.11 The arbitrator shall be, if the matter in dispute is principally –

21.11.1 a legal matter, a practising attorney of Durban of at least 10 (ten) years' standing;

21.11.2 an accounting matter, a practising chartered accountant of Durban of at least 10 (ten) years' standing;

21.11.3 any other matter, an expert in that field of at least 10 (ten) years standing;

21.11.4 agreed upon between the parties to the dispute.

21.12 Should the parties fail to agree on an arbitrator within 7 (seven) days after the giving of notice in terms of sub-clause 21.8 above, the arbitrator shall be appointed at the request of either party to the dispute by the President for the time being of the Natal Law Society, or its successor in title.

21.13 The parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for the purposes of an order to be made as set out below.

21.14 The provisions of this clause –

21.14.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw

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therefrom or claim at any such proceedings that it is not bound by such provisions;

21.14.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

21.15 The arbitrator shall determine:

21.15.1 the issue submitted to him according to what he considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the Strict Rules of Law;

21.15.2 which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.

21.16 The parties irrevocably agree that the decision of the arbitrator:

21.16.1 shall be final and binding on them;

21.16.2 shall be carried into effect;

21.16.3 shall be capable of being made an Order of any Court of competent jurisdiction.

22. TIMETABLE

The parties agree that, as at the date of preparation of these Heads of Agreement, the timetable set out in the schedule attached hereto marked "C" is achievable and sets out the timing parameters which the



parties shall use their best endeavours to observe. The parties acknowledge, however, that the said dates and time frames may require revision from time to time, depending on progress with the other related facets of the THEME PARK.

23. GENERAL

- 23.1 The parties recognise that the arrangements described herein are by their very nature incapable of finite definition and/or are subject to variation or modification in line with circumstances that might change. The parties also acknowledge that the successful pursuit of the proposed MARINE PARK project is largely dependent on the good faith of each of the parties and their absolute commitment to the project. All additions and variations to, and matters arising from, the contents of these Heads of Agreement shall be negotiated in good faith and in accordance with the underlying objectives as specified in this agreement.
- 23.2 The parties undertake to treat both the contents hereof as well as all arrangements, discussions, proposals, plans and other information emanating from this contractual relationship as strictly confidential.
- 23.3 Major or significant media releases regarding this agreement will be undertaken by the parties jointly.
- 23.4 These Heads of Agreement will in due course be developed into the detailed agreements as herein envisaged, with the terms and conditions hereof remaining valid and binding on the parties until superseded by such detailed agreement, once fully signed.

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23.5 The parties shall afford due recognition to the opportunity to apply principles of affirmative action in favour of members of the previously disadvantaged sectors of the South African community in respect of employment and professional appointment opportunities arising from the proposed MARINE PARK project.

24. **SIGNATORIES**

24.1 Signed by NEWCO at DURBAN on this _____ day of DECEMBER 2001

As Witness :

For : **Durban Marine Theme Park (Pty) Limited**

Name of signatory :

RICHARD JAMES SQUIRES

Name of signatory :

LOGANATHAN NAIDOO

The abovementioned signatories warrant by their signatures that they are duly authorised hereto in terms of a resolution by the board of directors of NEWCO passed on 3 December 2001.

[Handwritten marks]

24.2 Signed by SAAMBR at Durban on this 16th day of JULY 2002 ~~DECEMBER 2001~~.

As Witness :



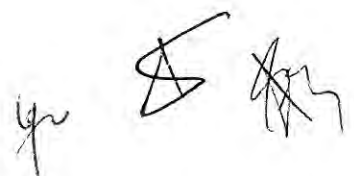
For : South African Association for
Marine Biological Research (Association
incorporated under S21)



Name of signatory :

ROY ERIC PHILLIPS

The signatory warranting by his
signature that he is duly authorised
hereto.



SCHEDULE OF ANNEXURES:

-
- | | | |
|---------------------------------------|---|--|
| A | - | Plan depicting the "Point Property" (i.e. the Theme Park land) (Clause 2.4). |
| | | |
| B¹ to B⁷ | - | organisational charts (clauses 8.4 and 8.6) |
| | | |
| C | - | Timetable (clause 22) |

for  

ANNEXURE A

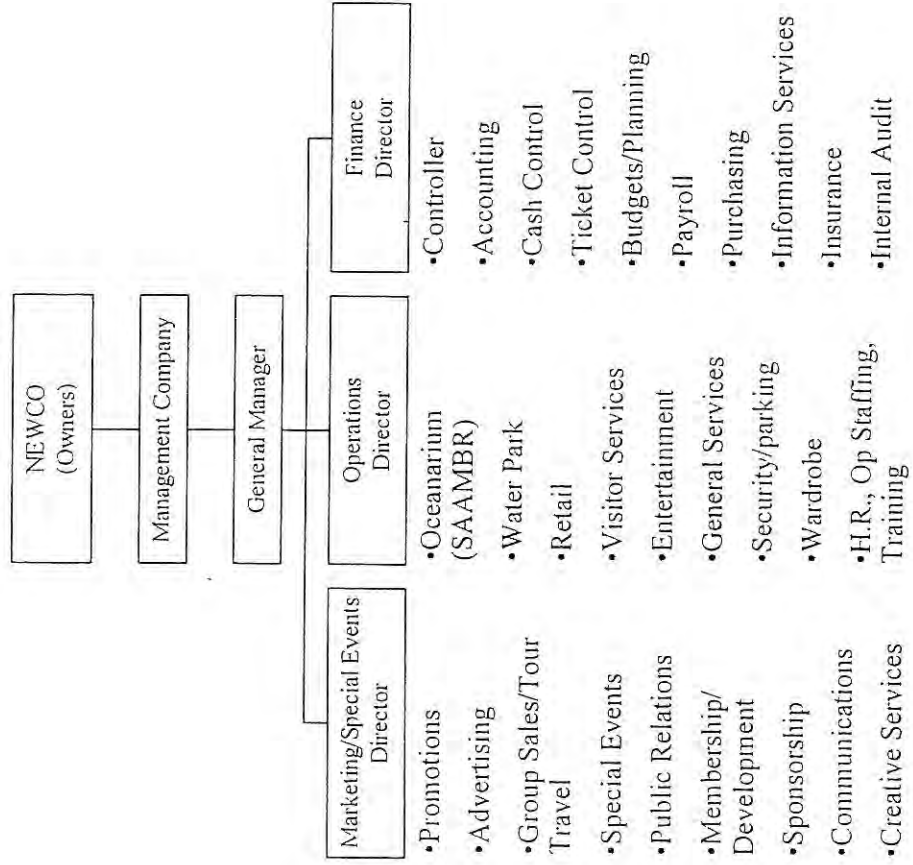
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ANNEXURE B¹ to B⁷

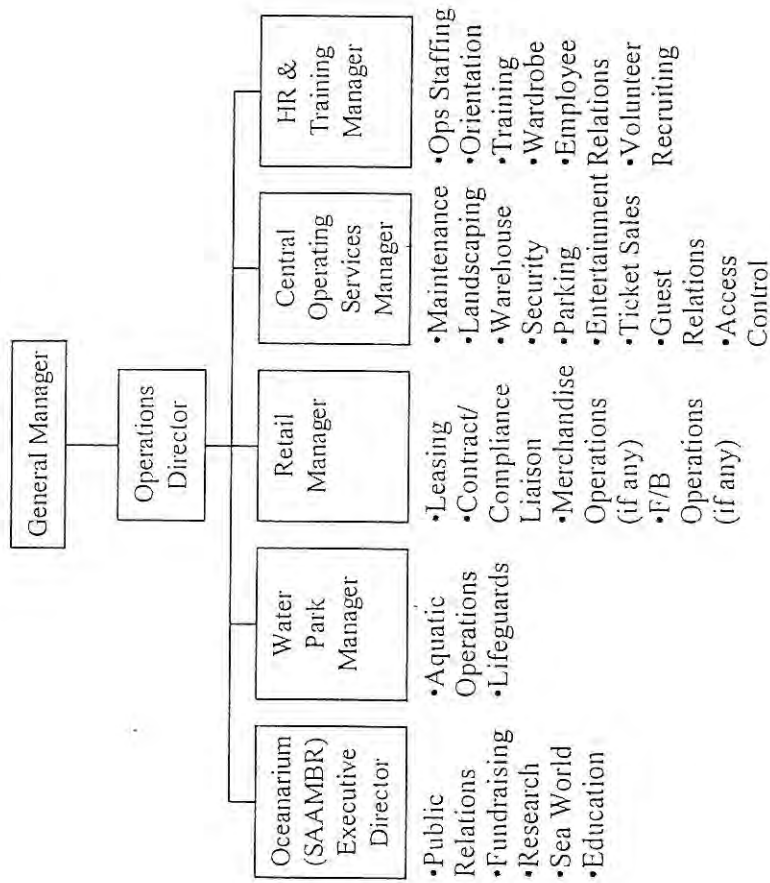
for  

Exhibit I
Point Marine Park
Proposed Functional Organizational Chart
(Top Level)



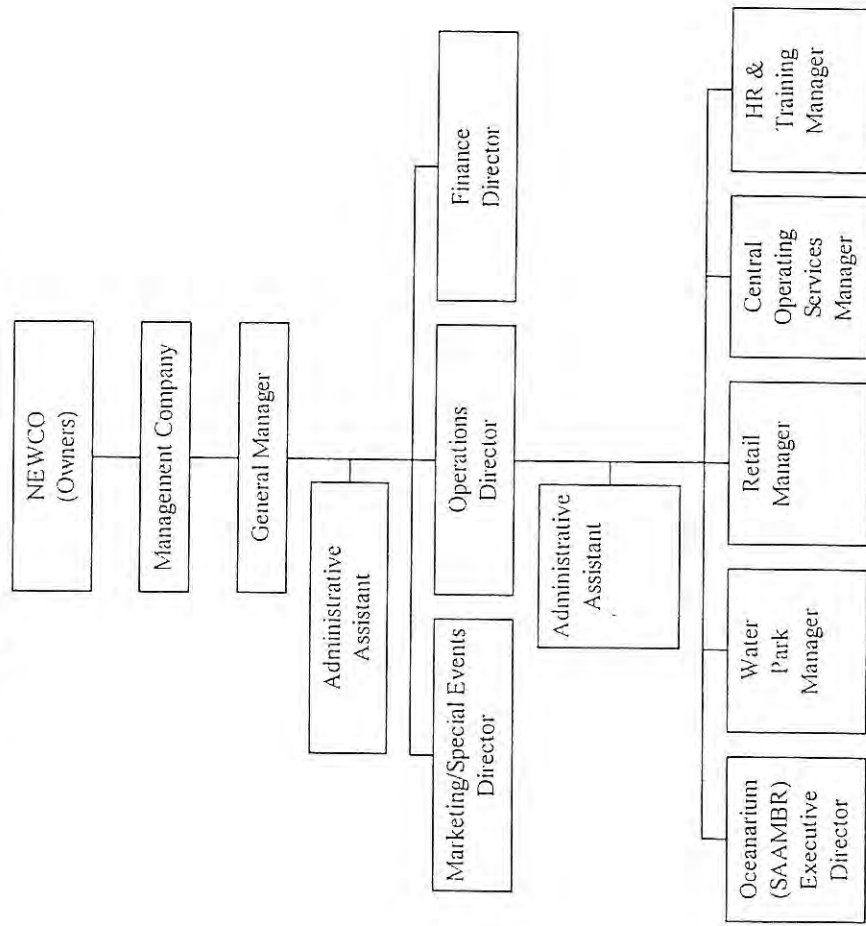
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Exhibit II
Point Marine Park
Proposed Functional Organizational Chart
(Second Level)



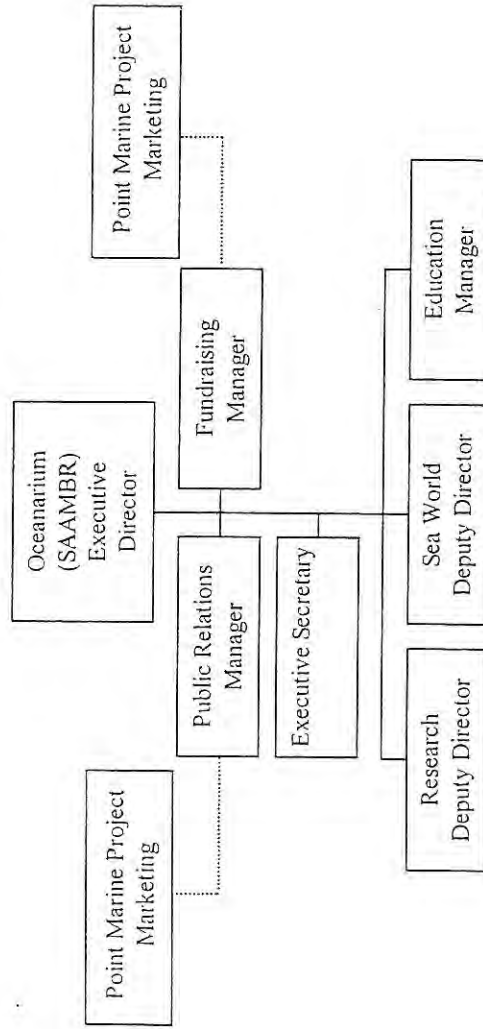
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Exhibit III
Point Marine Park
Management
Proposed Organizational Chart



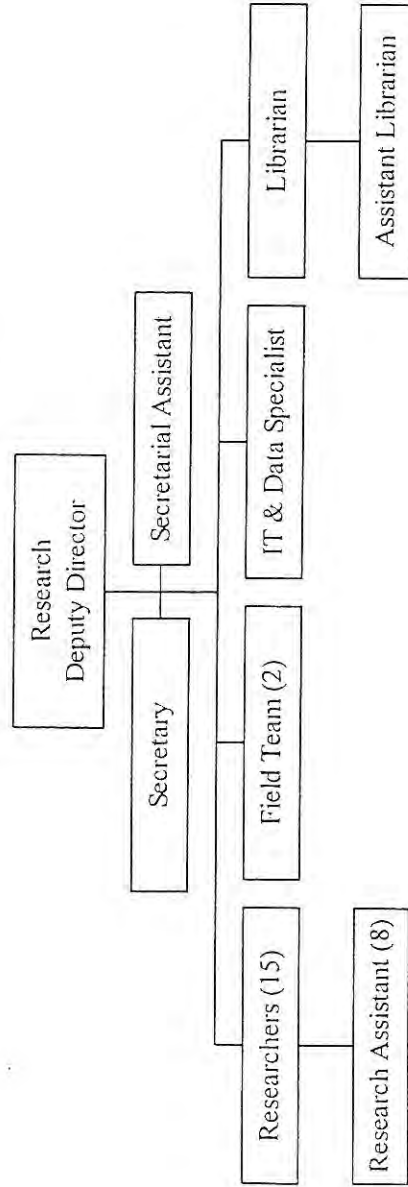
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Exhibit IV
Point Marine Park
Oceanarium
Proposed Organizational Chart



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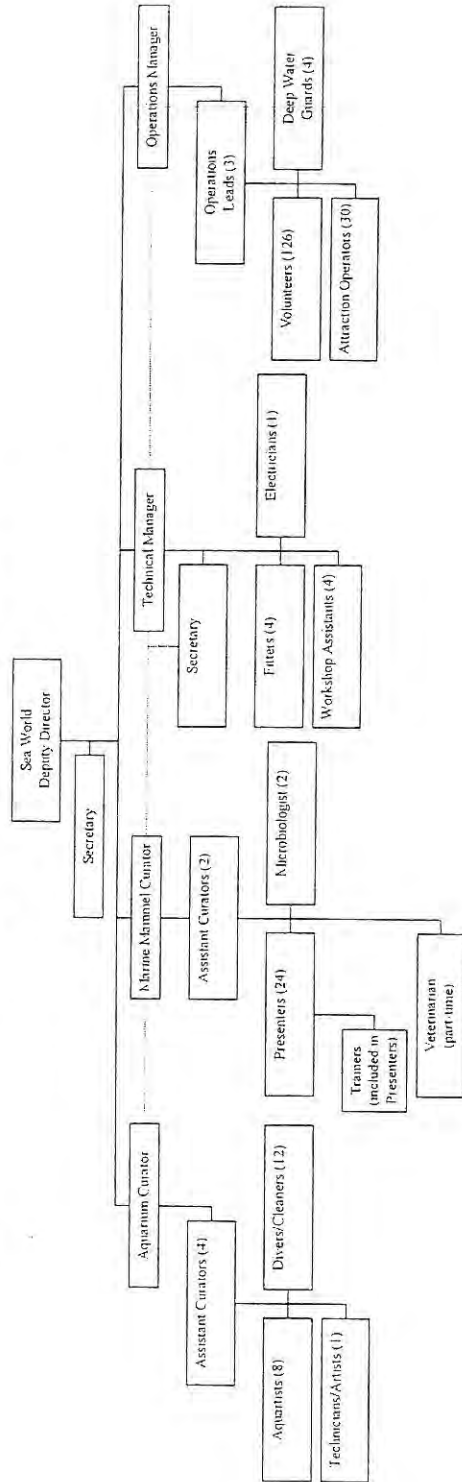
Exhibit V
Point Marine Park
Oceanarium
Proposed Organizational Chart



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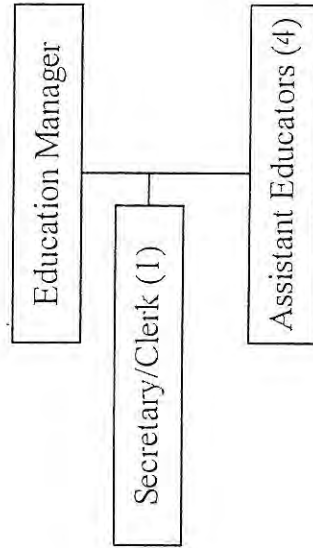
Exhibit VI Point Marine Park Oceanarium

Proposed Organizational Chart



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Exhibit VII
Point Marine Park
Oceanarium
Proposed Organizational Chart



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ANNEXURE C

40 43 44



SIP Project Managers
(Pty) Ltd

7. PROJECT PROGRAMME (INDICATIVE)

- 7.1. Concept Stage – Complete and approved
- 7.2. Instruction to Proceed – 1 October 2001
- 7.3. Formation of Point Marine Theme Park (Pty) Ltd - 30 November 2001
- 7.4. Appoint Professional Team - 30 November 2001
- 7.5. Schematics (Concept Team) - 30 November 2001
- 7.6. Design Development – 1 December 2001 to 31 January 2002
- 7.7. SDP - Municipal Submission - 28 February 2002
- 7.8. Tender Documentation - 1 February 2002 to 31 March 2002
- 7.9. Primary Working Drawings – 1 May 2002
- 7.10. Commence Construction – 1 May 2002
- 7.11. Complete Construction – 29 February 2004
- 7.12. Commence Operators Installation - 1 October 2003
- 7.13. Test Commission & Inspections for Opening - 30 November 2003
- 7.14. Soft Open Inspection - 1 March 2004
- 7.15. Park Opening - 1 April 2004

These dates are very preliminary at this stage and have been extracted from the current indicative programme and could change as the Project develops. The information is offered in good faith as assistance for you to understand the workload, intensity and resource requirements for the project.



SERVICE LEVEL AGREEMENT

Between

DURBAN MARINE THEME PARK SOC UNITED (RF)

REGISTRATION NUMBER 2001/020025/30

(Hereinafter referred to as "DMTP") and herein represented by Mr N Khoza, he being duly authorised and competent thereto in his capacity as Chief Executive of DMTP in the implementation of the KPIs and in the course of executing the mandate of eThekweni Municipality contained in the Agreement between eThekweni Municipality and DMTP for the management of the Durban Marine Theme Park in respect of the 2022/2023, 2023/2024 and 2024/2025 Municipal financial years.

And

SOUTH AFRICAN ASSOCIATION FOR MARINE BIOLOGICAL RESEARCH (RF) NPC

REGISTRATION NUMBER: 1951/000002/08

(Hereinafter referred to as "SAAMBR") and herein represented by Dr LK Oellermann he being duly authorised and competent thereto as Chief Executive of SAAMBR in the implementation of the KPIs.

AND IN RESPECT OF:

THE OPERATION OF THE MARINE PARK



INCORPORATING



Helping people to care for our ocean

TABLE OF CONTENTS

1.	INTRODUCTION.....	3
2.	INTERPRETATION.....	3
3.	APPOINTMENT OF SAAMBR.....	4
4.	DURATION	4
5.	DUTIES/RESPONSIBILITIES OF SAAMBR	4
6.	DUTIES/RESPONSIBILITIES OF DMTP	5
7.	JOINT DUTIES/RESPONSIBILITIES OF THE PARTIES	5
8.	DISPUTE RESOLUTION	5
9.	DOMICILIUM	7
10.	GENERAL.....	7
	APPENDIX "A"	11
	APPENDIX "B"	13



1. INTRODUCTION

- 1.1. Whereas the Parties concluded the Heads of Agreement (hereinafter referred to as the 'Heads'), last signed on 16 July 2002;
- 1.2. Whereas the Parties concluded an Addendum to the Heads of Agreement dated 10 October 2007, in which the financial obligations of the DMTP to SAAMBR were amended to include a Grant in Aid from the eThekweni Municipality;
- 1.3. Whereas the Heads predate the Municipal Finance Management Act 56 of 2003;
- 1.4. Whereas the Heads, specifically clause 7.3 of the Heads, require the Parties to conclude a Service Level Agreement (hereinafter referred to as the 'SLA') to enable the Parties to monitor and evaluate levels of service envisaged in the Heads;
- 1.5. Whereas the Parties agree that the SLA is a product of the Heads and subject to the Heads;
- 1.6. And whereas the Parties have agreed the terms regulating the execution of the SLA;

Now wherefore the Parties deem it prudent to reduce to writing the terms regulating the terms of the SLA as follows:

2. INTERPRETATION

- 2.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this SLA or in any schedules hereto, bear the meanings ascribed to them below and cognate expressions bear corresponding meanings:
 - 2.1.1 "Commencement Date" means 01 July 2022, notwithstanding the date of signature hereof;
 - 2.1.2 "Effective Date" means Signature Date;
 - 2.1.3 "Financial Contribution"/"Amount" means the sum to be tendered by DMTP as a contribution towards SAAMBR's services, in line with the Addendum to the Heads of Agreement (Clause 1.2), and thereafter such sum as agreed between the Parties to enable SAAMBR to effectively and efficiently execute its roles and responsibilities envisaged in the KPIs. SAAMBR will provide DMTP with an annual budget by 1 April each year;
 - 2.1.4 "KPI" means the Key Performance Indicators formulated by SAAMBR and DMTP in conjunction with a team of independent experts, which KPIs are attached hereto, marked Appendix 'A';
 - 2.1.5 "Marine Park" means the world-class oceanarium and marine life facility (branded as uShaka Sea World), operated by SAAMBR, which is incorporated as an integral part of the Theme Park and which includes a marine aquarium, dolphinarium, shark tank, seal show facility, dangerous creatures and various additional-charge activities and facilities such as the dolphin encounter and swim in the snorkel lagoon or any other facilities/attractions that may be added to the Marine Park in the future;
 - 2.1.6 "Parties" means DMTP and SAAMBR in respect of this SLA;
 - 2.1.7 "SAAMBR" means the entity defined as such on page 1 to this SLA;
 - 2.1.8 "Signature Date" means the date of signature by the last signing Party in time to this SLA;
 - 2.1.9 "Termination Date" means the date of termination of the Agreement, three years (3) from the Commencement Date;
 - 2.1.10 "Theme Park" means the world class tourist attraction which includes the Marine Park, the Water Park and various related tourist facilities and attractions;
 - 2.1.11 "DMTP" means the entity defined as such on page 1 to this SLA;
 - 2.1.12 "MFMA" means the Municipal Finance Management Act 56 of 2003 as amended;

- 2.1.13 “PPPFA” means the Preferential Procurement Policy Framework Act 5 of 2000 and its Regulations.
- 2.2 In this SLA:
- 2.2.1 clause and paragraph headings are for purposes of reference only and shall not be used in interpretation;
- 2.2.2 unless the context clearly indicates a contrary intention, any word connoting:
- 2.2.2.1 any gender includes both genders;
- 2.2.2.2 the singular Includes the plural and vice versa;
- 2.2.2.3 insolvency includes provisional or final sequestration, liquidation, or judicial management;
- 2.2.3 when dates are prescribed such number shall exclude the first and include the last day unless the last day is not a business day, in which case the last day shall be the next succeeding business day;
- 2.2.4 a reference to a business day is a reference to any day excluding Saturday, Sunday, and a public holiday in the RSA.
- 2.3 If any definition in 2.1 to this SLA includes a substantive provision conferring rights or Imposing obligations on any party, then notwithstanding that such provision is contained in such clause to this SLA, effect shall be given thereto as if such provision were a substantive provision in the body of the SLA.
- 2.4 Where any term within the context of a particular clause in this SLA, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this SLA, notwithstanding that such term has not been defined in clause 2 to this SLA.
- 2.5 The rule of interpretation that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

3. APPOINTMENT OF SAAMBR

- 3.1 DMTP hereby confirms having appointed SAAMBR to operate the Marine Park, which appointment SAAMBR confirms to have accepted.

4. DURATION

- 4.1 This SLA shall endure from the Commencement Date to Termination Date.

5. DUTIES/RESPONSIBILITIES OF SAAMBR

- 5.1 SAAMBR must ensure, as far as reasonably possible, that all KPIs that relate to it are met.
- 5.2 Should SAAMBR fail to meet a reported KPI, they will be provided with thirty (30) days within which to provide DMTP with reasons and evidence as to why such KPI(s) have not been met.
- 5.3 SAAMBR shall timeously provide the following services to DMTP and shall exercise due care and diligence in the performance of such services:
- 5.3.1 assume the responsibility for coordinating and managing the operation of the Marine Park in an efficient and effective manner;
- 5.3.2 formulate strategies, programming and planning in respect of the operation of the Marine Park;
- 5.3.3 provide advice to DMTP on such matters as may optimise value for DMTP in respect of any aspect of this clause 5;
- 5.3.4 take all reasonable steps to ensure that the interests of DMTP and other stakeholders in respect of the Marine Park are harmonised and that any tension there between is resolved in a manner that does not adversely impact on the operation of the Marine Park;

- 5.3.5. ensure that in the execution of such services, any of its employees, contractors and agents hold any current and requisite permits, licences, authorisations, and any other regulatory instruments necessary for the lawful and compliant operation of the Marine Park;
- 5.3.6. assist DMTP with research services necessary to competitively market the Theme Park and enhance its offerings.

6. DUTIES/RESPONSIBILITIES OF DMTP

- 6.1. DMTP undertakes to execute all obligations due by it and to comply as far as reasonably possible with such KPIs as relate to it in terms of this SLA. The foregoing includes the following:
 - 6.1.1. fully co-operating with SAAMBR with regard to matters contemplated in clause 5 to this SLA;
 - 6.1.2. ensuring that SAAMBR receives each tranche payment of the Financial Contribution referred to in clause 2.1.3 monthly in advance and without any unreasonable delay;
 - 6.1.3. reducing to writing and promptly despatching to SAAMBR all requests as are reasonably necessary for the operation of the Marine Park;
 - 6.1.4. promptly providing such logistical and administrative support as may be reasonably required for the efficient and effective execution of the Parties respective roles and responsibilities in terms of this SLA;
 - 6.1.5. collaborating with SAAMBR in order to ensure that operating the Marine Park is done in an efficient, effective and economical manner;
 - 6.1.6. giving urgent, serious, and reasonable consideration to proposals made by SAAMBR in terms of clause 5.3.2 to this SLA;
 - 6.1.7. generally co-operating and collaborating with SAAMBR in the execution of such roles and responsibilities as are reasonably necessary for the operation of the Marine Park, including secondment of senior internal and/or external resources of DMTP to facilitate urgent execution of certain KPIs if so requested by SAAMBR;
 - 6.1.8. ensuring that the DMTP procurement process (in compliance with the MFMA and the PPPFA and its Supply Chain Management Policy) is expedited with regards to the Marine Park's DMTP-funded Capital Expenditure and major maintenance requirements for SAAMBR to fulfil its responsibilities.

7. JOINT DUTIES/RESPONSIBILITIES OF THE PARTIES

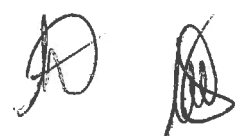
- 7.1. Any joint decision or agreed settlement out of mediation or arbitration insofar as such negotiation or arbitration relates to the KPIs or the Financial Contribution shall constitute an amendment of this SLA.
- 7.2. Where a joint decision is not taken on any such matter in terms of 7.1 then either Party may invoke the dispute resolution procedures set out in clause 8 hereunder.
- 7.3. The parties undertake to leverage off each other's resources and expertise to manage costs. This shall include but not limited to sharing of administrative facilities, joint research projects, sustainability initiatives, office infrastructure, maintenance, etc.
- 7.4. The parties shall explore the establishment and marketing of guest-friendly initiatives, such as an animal rehabilitation facility within the Marine Park.
- 7.5. The parties will support each other for jointly agreed internal events such as Dolphins by Starlight, at no additional cost.

8. DISPUTE RESOLUTION

Save in regard to claims for liquidated amounts of money or where a party is entitled to injunctive relief on an urgent basis (and in respect of which the jurisdiction of the Courts shall

not be ousted) in the event of any disagreement or difference arising between the Parties hereto concerning the interpretation, implementation and execution of the provisions of this SLA and if such disagreement or difference is not resolved within seven (7) days of a dispute being declared, the Parties shall:

- 8.1. in the first instance, have resort to mediation by the appointment of a mutually acceptable independent person as a mediator to preside over a meeting of the Parties with a view to resolving the deadlock between them (acting as an expert and not as an arbitrator). The mediator shall be agreed upon within seven (7) days of the date of declaration of dispute, and the meeting with the mediator convened within fourteen (14) days of the date of declaration of dispute; failing which the mediation option shall fall away and no longer be of any further force or effect;
- 8.2. should mediation not succeed in resolving the dispute the mediator shall forthwith issue a certificate of non-resolution to that effect, whereafter the dispute, difference or disagreement shall be submitted to arbitration within fifteen days (15) in accordance with the provisions set out hereunder.
- 8.3. Failing settlement of the dispute between the Parties by way of mediation, the dispute or difference or disagreement shall be submitted to arbitration in accordance with the provisions set out hereunder:
 - 8.3.1. the arbitration referred to shall be held:
 - 8.3.1.1. at Durban;
 - 8.3.1.2. in a summary manner i.e. on the basis that it shall not be necessary to observe or carry out either the strict rules or evidence or duties or formalities or procedure under the Arbitration Act of 1965 (as amended) (e.g. there shall not be any deadlines or discovery);
 - 8.3.1.3. immediately and with a view to it being completed within twenty-one (21) days after the date referred to in clause 8.1 to this SLA, the date upon which the option of resolving the dispute by way of mediation falls away;
 - 8.3.1.4. the arbitrator shall be, if the dispute in issue is:
 - 8.3.1.5. primarily an accounting matter, an independent Chartered Accountant, who shall be appointed by the President for the time being of the South African Institute of Chartered Accountants;
 - 8.3.1.6. primarily a legal matter, a practicing Advocate of mutually acceptable seniority, who shall be appointed by the Chairman for the time being of the Durban Bar Council;
 - 8.3.1.7. any other matter, a suitably qualified independent person or expert in the field.
 - 8.4. If agreement cannot be reached between the Parties within three (3) days after the arbitration has been demanded as to whether the dispute in issue falls to be determined under the provisions of clauses 8.3.1.5, 8.3.1.6 or 8.3.1.7 then the dispute will be determined by an arbitrator who shall be a practicing Advocate of mutually acceptable seniority and who shall be appointed as provided in clause 8.3.1.6 above.
 - 8.5. The arbitrator shall decide the matter submitted to him/her according to the best interests of the Parties, and according to what he/she considers just and equitable in the circumstances and he/she shall have regard to the desire of the Parties to dispose of such dispute expeditiously, economically and confidentially and the strict rules of law or of evidence need not be observed or taken into account by him/her in arriving at his/her decision, which shall be made as an expert and not necessarily as an arbitrator, save that he/she shall have an unfettered discretion to conduct arbitration as he/she may deem fit.
 - 8.6. The Parties irrevocably agree that the decision in any arbitration proceedings hereunder (inclusive of any costs order made by the arbitrator):
 - 8.6.1. shall be binding on all of them;
 - 8.6.2. shall forthwith be carried into effect; and



- 8.6.3. may be made an Order of any Court of competent jurisdiction upon the application of any party hereto.
- 8.7. The provisions of this clause shall continue to be binding upon the Parties notwithstanding any termination or cancellation of this SLA for any reason.
- 8.8. The costs incurred in relation to the arbitration shall be borne by the Parties hereto, or by either party, as the case may be, in such manner and in such proportions as may be directed by the arbitrator.

9. DOMICILIUM

- 9.1. Each Party to this SLA chooses the addresses set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purpose of this SLA.

DMTP

Attention: Mr. N Khoza
Chief Executive Officer
Durban Marine Theme Park SOC Limited (RF)
1 King Shaka Avenue
Durban
4001
and by E-mail: nkhoza@ushakamarineworld.co.za

SAAMBR

Attention: Dr LK Oellermann
Chief Executive Officer
South African Association for Marine Biological Research (RF) NPC
1 King Shaka Avenue Durban
4001
and by E-mail: loellermann@ori.org.za

- 9.2. Any notice or communication required or permitted to be given in terms of this SLA shall be valid and effective only if in writing.
- 9.3. Any Party may by written notice to the other change its chosen address to another physical address in South Africa, provided that the change shall become effective on the fourteenth (14th) day after receipt of the notice by the other Party.
- 9.4. Any notice or communication to a Party:
- 9.4.1. sent by email to it at its email address; or
- 9.4.2. delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received and, in the event of e-mail on the first business day after transmission thereof.
- 9.5. A copy of any notice or communication sent by email to a Party at its email address shall forthwith be sent by prepaid registered post to it at its chosen address within two days.
- 9.6. Notwithstanding anything to the contrary in this clause 9 to this SLA, a written notice or other communication received by a Party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

10. GENERAL

10.1. REMEDIES

No remedy conferred by this SLA is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise and each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

10.2. **SEVERANCE**

If any provision of this SLA is rendered void, illegal or unenforceable in any respect under any law it shall be severable from this SLA, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.3. **RELAXATION AND WAIVER**

No relaxation which any Party may allow to the other Party at any time in regard to the carrying out of this SLA, shall:

10.3.1. prejudice any of the rights of the Party granting the relaxation under this SLA in any manner whatsoever;

10.3.2. be regarded as a waiver of any of those rights.

10.4. **SURVIVAL OF RIGHTS, DUTIES AND OBLIGATION**

Termination of this SLA for any cause shall not release a Party from any liability which at the time of termination has already accrued to that Party or which thereafter may accrue in respect of any act or omission prior to such termination.

10.5. **ENTIRE CONTRACT**

This SLA constitutes the entire SLA between the Parties in relation to service levels contemplated in clause 7.3 of the Heads.

10.6. **BINDING SLA**

This SLA shall be binding on the Parties hereto and their respective successors and assigns.

10.7. **NO PARTNERSHIPS**

Nothing in this SLA shall be deemed to constitute a partnership between the Parties (or any of them) or constitute any Party the agent of any other Party for any purpose.

10.8. **COUNTERPARTS**

This SLA may be signed in any manner of counterparts, all of which taken together shall constitute one and the same Instrument. Any Party may enter into this SLA by signing any such counterpart.

10.9. **GOVERNING LAW AND JURISDICTION**

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

10.9.2. The Parties submit themselves to the non-exclusive jurisdiction of the Durban and Coast Local Division of the High Court of the Republic.

10.10. **REPRESENTATION**

No party shall be entitled to rely on any representation or understanding or undertaking or commitment or stance or token or overture or anything whatsoever which is claimed to have induced such Party into concluding this SLA, unless such representation or understanding or undertaking or commitment or stance or token or overture or such other things is recorded in this SLA.

10.11. **ANNEXURES**

The status of Appendices to this SLA is that they form an integral part of and are incorporated into

this SLA.

10.12. **BONA FIDES**

The Parties shall always and in respect of this SLA demonstrate the highest degree of honesty, integrity, constructive engagement and good faith in the execution of their roles and responsibilities arising from this SLA.

10.13. **CESSION, ASSIGNMENT AND SUBSTITUTION**

No party to this SLA may cede or assign or transfer or encumber in any way any of its rights, title or interests or obligations arising from this SLA without the informed and written consent of the other party.

10.14. **CONFLICT OR INCONSISTENCY**

Should there be any conflict or inconsistency between the Heads and this SLA, then the Provisions of the Heads shall prevail.

10.15. **COSTS**

Each party shall bear its own costs of and incidental to the negotiation, preparation, and execution of this SLA.

10.16. **CORRUPT PRACTICES**

No office holder/bearer/official or employee of either Party may derive any benefit or reward of any shape, manner or form directly or indirectly as a result of this SLA. It is specifically agreed that the deriving of a benefit or reward in terms of this clause shall constitute a corrupt practice unless derived with the lawful, informed and written consent of the other Party.

10.17. **CHANGE IN SERVICES**

Should the parties by agreement, amend or enhance the services contemplated in this agreement, the parties undertake to amend this SLA to incorporate such changes.

10.18. **FORCE MAJEURE**

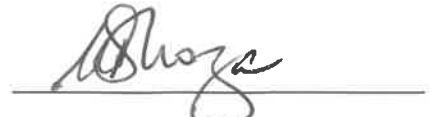
A Party shall not be considered to be in default or breach of this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, arising out of or from any act, omission, or circumstance by or in consequence of any act of God, labour disturbance, sabotage, failure of suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, earthquake, explosion, epidemic, breakage or accident to machinery or equipment or any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the Party or property or equipment of others which is deemed under the Operational Control of the Party. A Force Majeure event does not include an act of negligence or Intentional Wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations herein.

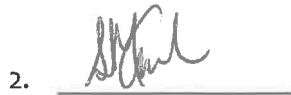


DATED AND SIGNED AT DURBAN THIS 12th OF August 2022

AS WITNESSES:

1. 


FOR AND ON BEHALF OF DMTP

2. 

DATED AND SIGNED AT DURBAN THIS 12th OF AUGUST 2022

AS WITNESSES:

1. 


FOR AND ON BEHALF OF SAAMBR

2. 


MUTHINI GOVENDER
COMPLAINTS
1188
12/08/2022



APPENDIX "A"

No.	SAAMBR KEY PERFORMANCE INDICATORS	ANNUAL TARGET
1	To achieve and maintain PAAZA accreditation	Annual internal review, external review every 5 years
3	To manage and maintain the uShaka Sea World primary seawater intake system to ensure an appropriate volume of quality sea water	A minimum of 160,6000 m ³ seawater/month 
4	To undertake scheduled Preventative Maintenance (PM) to maintain uShaka Sea World plant, machinery, and equipment	A Minimum of 85% scheduled PM completed
5	To provide optimally stocked, attractive and educationally stimulating large aquarium exhibits	A minimum of 6 large exhibits open to public
6	To provide optimally stocked, attractive and educationally stimulating small aquarium exhibits	A minimum of 40 small exhibits open to public
7	To promote conservation through interactive and entertaining dolphin shows	A minimum of 730 dolphin shows
8	To promote conservation through interactive and entertaining seal shows	A minimum of 680 seal shows
9	To promote conservation through engaging penguin presentations	A minimum of 1,030-presentations
10	To inform and engage uShaka Sea World guests through interaction stations manned by trained staff members	A minimum of 9 000 hours
11	To inform and engage guests through new interpretation signage in uShaka Sea World	A minimum of 60 information outputs
12	To disseminate marine & coastal research in accredited publications	A minimum of 15 papers published
13	To disseminate information generated by conservation, research, and education activities in unpublished professional reports	A minimum of 20 reports produced
14	To disseminate conservation, research, and education information at relevant forums, such as conferences, symposia and workshops	A minimum of 20 presentations
15	To play a science engagement role through ongoing membership and input to professional bodies or advisory groups	Membership of professional bodies in the relevant fields and 6 presentations or 

		publication of annual papers/articles.
16	To supervise a minimum number of post graduate students per year (with a special focus on transformation and diversity amongst students - in line with DMTP's transformation objectives).	A minimum of 8 students supervised
17	To encourage learner footfall in uShaka Sea World through education activities	A minimum of 20,000 learner visitors
18	To provide themed, interactive conservation lessons & courses to learners	A minimum of 200 lessons & courses
19	To provide themed, curriculum-based conservation education workshops for educators	A minimum of 5 workshops
20	To provide marine career awareness workshops to learners	A minimum of 6 workshops
21	To provide ad-hoc marine conservation and resource use courses as required	A minimum of 10 courses
22	To provide outreach opportunities to disadvantaged schools and educators	A minimum of 70 outreach trips
23	To report annually on SAAMBR's B-BBEE contribution	To maintain B-BBEE compliance

APPENDIX “B”

No.	REPORTING REQUIREMENTS
1	SAAMBR to submit quarterly expenditure to DMTP
2	SAAMBR to submit audited annual financial statements to DMTP
3	SAAMBR to provide quarterly reports against its risk and business continuity plans to DMTP
4	SAAMBR to provide quarterly performance reports to DMTP in line with performance scorecard

The DMTP reserves the right to request additional documents in support of the reporting requirements arising from this SLA.

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.

CONSOLIDATED MUNICIPAL BIDDING DOCUMENTS

The following SECTIONS are required to be completed

<u>Section</u>	<u>Description</u>	<u>Required?</u>
A	General Enterprise Information	Yes
B	MBD2 : Tax Clearance Certificate Requirements	Yes
C	MBD4 : Declaration of Interest	Yes
D	MBD6.1 : Preference Points Claim Form ITO the Preferential Regulations	Yes
E	MBD8 : Declaration of Bidder's Past SCM Practices	Yes
F	MBD9 : Certificate of Independent Bid Determination.....	Yes
G	Confirmations, Authorities, Certifications, Acknowledgements and Signatures	Yes

NOTES

- MSCM Regulations: "in the service of the state" means to be:
 - a member of—
 - any municipal council;
 - any provincial legislature; or
 - the national Assembly or the national Council of provinces;
 - a member of the board of directors of any municipal enterprise;
 - an official of any municipality or municipal enterprise;
 - an employee of any national or provincial department, national or provincial public enterprise or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
 - a member of the accounting authority of any national or provincial public enterprise; or
 - an employee of Parliament or a provincial legislature.
- "Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.
- Includes price quotations, advertised competitive bids, limited bids and proposals.
- Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

Ref	Description	Complete or Circle Applicable
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SECTION A : GENERAL ENTERPRISE INFORMATION

1.0	Full Name of bidder or his or her representative	Dr Lawrence Keith Oellermann
1.1	ID Number of bidder or his or her representative	6310135074083
1.2	Position occupied in the enterprise	Chief Executive Officer
2.0	Name of enterprise:	South African Association for Marine Biological Research
2.1	Tax Reference number, if any:	9279003207
2.2	VAT registration number, if any:	4390101279
2.3	CIDB registration number, if any:	
2.4	Company registration number, if applicable:	1951/000002/08
2.5	Close corporation number, if applicable:	
2.6	Supplier reference number (PR), if any:	

3.0 The names of all directors / trustees / shareholders / members / sole proprietors / partners in partnerships, their individual identity numbers and state employee numbers must be indicated below. In the case of a joint venture, information in respect of each partnering enterprise must be completed and submitted

Full Name	Identity No.	State Employee No.	Personal income tax No. *
Sandile Matthews Buthelezi	8011305762089	N/A	Not recorded
NIZ Natercia Catherine Dos Santos	9801130136080	N/A	Not recorded
Prakasine Govender	7907240072081	N/A	Not recorded
Zakhele Shakespeare Gumede	5504165827086	N/A	Not recorded
Jeremy Patrick Horthorn	5409285044085	N/A	Not recorded
Haroon Essop Karodia	5604165128087	N/A	Not recorded
Colin Levin	5710195133086	N/A	Not recorded
Clifford Nxomani	6711285798084	N/A	Not recorded
Antonia Thandi Nzama	6010040805080	N/A	Not recorded

Jean Margaret Senogles	3709250042085	N/A	Not recorded
Gladness Thabisile Philisiwe Sikhosana	5903030868087	N/A	Not recorded
Rory Turner	4802075052089	N/A	Not recorded
Suraya Vally	7103270140085	N/A	Not recorded
Andrew Philip Zaloumis	6111015055089	N/A	Not recorded
Use additional pages if necessary			

Ref	Description	Complete or Circle Applicable
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SECTION B : MBD 2 : TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1.0 In order to meet this requirement bidders are required to complete the TCC 001 : "Application for a Tax Clearance Certificate" form and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2.0 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3.0 The original Tax Clearance Certificate must be submitted together with the bid (attached to the inside back cover of this procurement document). Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4.0 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5.0 Copies of the TCC 001 : "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6.0 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

Attach a Tax Clearance Certificate

SECTION C : MBD 4 : DECLARATION OF INTEREST

No bid will be accepted from persons "in the service of the state". Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

- 1.0 Are you presently in the service of the state?
If yes, furnish particulars :
- 2.0 Have you been in the service of the state for the past twelve months?
If yes, furnish particulars :
- 3.0 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?
If yes, furnish particulars :
- 4.0 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?
If yes, furnish particulars :

YES	☒ NO
YES	☒ NO
YES	☒ NO
YES	☒ NO

[Handwritten signature]

5.0 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?

If yes, furnish particulars :

YES NO

6.0 Are any spouse, child or parent of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?

If yes, furnish particulars :

YES NO

7.0 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract ?

If yes, furnish particulars : Refer to CSD...MAAA0089497.....

YES NO

8.0 The names of all directors / trustees / shareholders / members / sole proprietors / partners in partnerships, their individual identity numbers and state employee numbers are indicated in SECTION A.

Ref	Description	Complete or Circle Applicable
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SECTION D : MBD 6.1 : PREFERENCE POINTS CLAIM ITO THE PREFERENTIAL REGULATIONS

Preference points for this tender shall be awarded as per the Tender Data and the Preferential Procurement Regulations (January 2017).

Failure on the part of a tenderer to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or , if an EME, a sworn affidavit confirming a) Annual Total Revenue of R10 million or less, and b) Level of Black ownership, or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

The Employer reserves the right to require of a tenderer, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the Employer.

DECLARATION

1.0 B-BBEE Status Level of Contribution claimed:

Will any portion of the contract be sub-contracted?

YES NO

If YES, indicate:

(i) what percentage of the contract will be subcontracted?

(ii) the name of the sub-contractor?

Name :

(iii) the B-BBEE status level of the sub-contractor?

YES NO

(iv) whether the sub-contractor is an EME?

The undersigned, certify that the B-BBEE status level of contribution indicated in paragraph 1.0 above qualifies the company / firm for preference points and acknowledges that the remedies as per Clause 14 of the Preferential Procurement Regulations (2017) shall apply.

Attach a B-BBEE Verification Certificate

SECTION E : MBD8 : DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

This Municipal Bidding Document must form part of all bids invited. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

The bid of any bidder may be rejected if that bidder, or any of its directors have:

- abused the municipal entity's supply chain management system or committed any improper conduct in relation to such system;
- been convicted for fraud or corruption during the past five years;
- wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

In order to give effect to the above, the following questions must be answered.

1.0 Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?

NO

Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer / Authority of the institution that imposed the restriction after the audi alteram partem rule was applied. The Database of Restricted Suppliers now resides on the National Treasury's website (www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.

If yes, furnish particulars :

- 2.0 Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?

The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.

If yes, furnish particulars :

- 3.0 Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?

If yes, furnish particulars :

- 4.0 Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?

If yes, furnish particulars :

Ref	Description	Complete or Circle Applicable
5.0	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	YES NO
	If yes, furnish particulars :	

SECTION F : MBD9 : CERTIFICATE OF INDEPENDENT BID DETERMINATION

Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a pe se prohibition meaning that it cannot be justified under any grounds.

Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:

- take all reasonable steps to prevent such abuse;
- reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
- cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.

The following MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

In order to give effect to the above, the following Certificate of Bid Determination must be completed and submitted with the bid. The undersigned, in submitting the accompanying bid, in response to the invitation for the bid do hereby make the following statements that I certify to be true and complete in every respect:

- I have read and I understand the contents of this Certificate;
- I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
- I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
- Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
- For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - has been requested to submit a bid in response to this bid invitation;
 - could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
- The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding. (Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
- In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - prices;
 - geographical area where product or service will be rendered (market allocation);
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit or not to submit, a bid;
 - the submission of a bid which does not meet the specifications and conditions of the bid;
 - bidding with the intention not to win the bid.

(Signature)

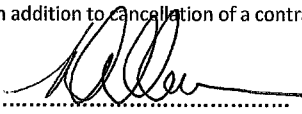
- 8.0 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 9.0 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 10.0 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.



Ref	Description	Complete or Circle Applicable
SECTION G : CONFIRMATIONS, AUTHORITIES, CERTIFICATIONS, ACKNOWLEDGEMENTS and SIGNATURES		

The undersigned, who warrants that he/she is duly authorised to do so on behalf of the enterprise:

- 1.0 Confirms that the contents of these Consolidated MBD returnable questionnaires (comprising 6 pages) are within my personal knowledge and are to the best of my belief both true and correct;
- 2.0 Confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercise, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- 3.0 Confirms that no partner, member, director or other person, who wholly or partly exercise control over the enterprise, has within the last five years been convicted of fraud or corruption;
- 4.0 Confirms that I/we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the bidders or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest;
- 5.0 Certify that the B-BBEE status level of contribution indicated in Section E : Item 1.0 qualifies the enterprise for preference points and acknowledges that the remedies as per Clause 14 of the Preferential Procurement Regulations (2017) shall apply. In the event of a contract being awarded as a result of points claimed, the enterprise may be required to furnish documentary proof to the satisfaction of the employer that the claims are correct;
- 6.0 Accept that, in addition to cancellation of a contract, action may be taken against me should these declarations prove to be false.

Signed 

Date 26 JUNE 2025

Name: Dr Lawrence Keith Oellermann

Position

Chief Executive Officer



GENERIC ENTERPRISE SCORECARD

**SOUTH AFRICAN ASSOCIATION FOR MARINE
BIOLOGICAL RESEARCH**

t/a
SAAMBR

Registration Number: 1951/000002/08

VAT Number: 4390101279

Address: 1 King Shaka Avenue, Point, Durban, Kwa-Zulu Natal, 4001

CERTIFICATE NO: VV480/REV00/01/2025

This certificate is issued in accordance with the DTI Generic Code issued in terms of the Broad-Based Black Economic Empowerment Act (53 of 2003) on 31 May 2019 – 42496. The information used to prepare this scorecard is confidential to Vision Verification.

LEVEL FOUR CONTRIBUTOR		
SCORECARD ELEMENT	ACTUAL SCORE	TARGET SCORE
Management Control	11.60	20.00
Skills Development	19.05	25.00
Enterprise & Supplier Development	51.05	50.00
Socio-Economic Development	0.68	5.00
TOTAL SCORE	82.38	100.00

B-BBEE STATUS

Black Ownership Percentage	0.00%	Procurement Recognition Level	100.00%
Black Female Ownership Percentage	0.00%	Empowering Supplier	Yes
Black Owned Designated Group	0.00%	Black Owned Designated Group	No
Black People Living in Rural Areas	0.00%	Modified Flow-Through Applicable	No
Black Military Veterans	0.00%	Discounting Principle Applicable	No
Black Youth	0.00%	Exclusion Principle Applicable	No
Black Disabled	0.00%	Participated in Y.E.S Initiative	No
Black Unemployed	0.00%	Achieve Y.E.S Target and 2.5% Absorption	No
Black New Entrant	0.00%	Achieve 1.5 x Y.E.S Target and 5% Absorption	No
Financial Year End	30 June 2023	Achieve double x Y.E.S Target and 5% Absorption	No

Date Issued

22 January 2025

Reissue date

N/A

Expiry Date

21 January 2026

This certificate is valid for 12 months from date of issue.

For any enquiries, please contact Riyadh Hoosen on
(031) 312 0618 or riyadh@visionverification.co.za



Director: R. HOOSEN
TECHNICAL SIGNATORY



South African Revenue Service

TAX COMPLIANCE STATUS

PIN Issued

SOUTH AFRICAN ASSOCIATION FOR
MARINE BIOLOGICAL RESEARCH
PO BOX 38034
POINT
4069

Enquiries should be addressed to SARS:

Contact Details

SARS
Alberton
1528

Contact Centre Tel: 0800 00 7277
SARS website: www.sars.gov.za

Details

Taxpayer Reference Number: 9279003207

Always quote this reference
number when contacting SARS

Issue Date: 2024/09/16

Dear Taxpayer

TAX COMPLIANCE STATUS PIN ISSUED

The South African Revenue Service (SARS) has issued your tax compliance status (TCS) PIN as indicated below:

TCS Details:	
Taxpayer Name	South African Association For Marine Bi Ological Research
Trading Name	SOUTH AFRICAN ASSOCIATION FOR MARINE BIOLOGICAL RESEARCH
Taxpayer Reference Number(s)	IT - 9279003207 Vat - 4390101279 PAYE - 7730708643
Purpose of Request	Good Standing
Request Reference Number	0005867766GS1609240958304
PIN	G771988366
PIN Expiry Date	16/09/2025

You may authorise a third party to view your TCS by providing them the PIN. The PIN only allows the third party access to your TCS. All your other tax information remains secure.

Your TCS displayed is based on your compliance as at the date and time the PIN is used.

You may cancel this PIN at any time before the expiry date reflected above. Once cancelled, a third party will not be able to verify your TCS.

SARS reserves the right to cancel the TCS application and associated PIN in the event that it was issued in error or provided on the basis of fraud, misrepresentation or non-disclosure of material facts.

More details regarding our channels, office hours, services, tailored information regarding tax as well as a comprehensive FAQ repository are available on the SARS website: www.sars.gov.za.

We value your support and contribution to our country's economy and prosperity. We strive to ensure that you clearly understand what is expected from you, as well as what your rights as a taxpayer are.

Sincerely

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE



Name: SOUTH AFRICAN ASSOCIATION
Tax reference No: 9279003207
Form ID: TCR00
Content Version: v2022.03.00

Timestamp: 22500249
Year: 2024
Page of Page: 01/01
Template version: v2022.00.01

Signature: 

Email: nnzimande@ushakamarineworld.co.za

Title: Procurement Manager

Signature: 

Saloshini Govender (Jul 2, 2025 15:49 GMT+2)

Email: sgovender@ushakamarineworld.co.za

Title: Legal Compliance Officer

Signature: 

Email: zkhwela@ushakamarineworld.co.za

Title: Finance Manager

Signature: 

Email: mngubane1@ushakamarineworld.co.za

Title: Chief Financial Officer

Signature: 

Email: nkhoza@ushakamarineworld.co.za

Title: Chief Executive Officer