

MEMORANDUM OF PARTNERSHIP AGREEMENT

Entered into by and between

NATIONAL YOUTH DEVELOPMENT AGENCY

AND

MANTSOPA LOCAL MUNICIPALITY

MEMORANDUM OF AGREEMENT

Entered into by and between

NATIONAL YOUTH DEVELOPMENT AGENCY

Established in terms of the National Youth Development Agency Act 54 of 2008
(Hereinafter referred to as "The NYDA")

AND

MANTSOPA LOCAL MUNICIPALITY

Established in terms of the Local Government Municipal Structure Act Number 117 of 1998
(Hereinafter referred to as "The Municipality")

PREAMBLE

WHEREAS the NYDA is an institution established in terms of the National Youth Development Agency Act 54 of 2008 with the mandate to advance youth development through guidance and support to initiatives across sectors of society and spheres of government, embark on initiatives that seek to advance the economic development of young people and develop and coordinate the implementation of the Integrated Youth Development Plan and Strategy for the Republic;

WHEREAS the Municipality was established in terms of the Local Government Municipal Structure Act Number 117 of 1998.

WHEREAS the Parties agree to co-operate on the Youth Advisory Centre aimed at providing unemployed, disabled and school going young people in and around the Municipality with counselling, career guidance, internet services, life skills and health and well-being and other products and services offered by the Agency.

NOWHEREFORE, the Parties agree as follows: —

1 INTERPRETATIONS AND DEFINITIONS

1.1 In this Agreement, unless the context indicates otherwise:-

Clause headings are for convenience only and shall not be used in their interpretation, and the following expressions shall bear the meaning assigned thereto and cognate expressions shall bear corresponding meanings:-

- | | | |
|-------|-----------------------------|---|
| 1.1.1 | "Agreement" | means this Memorandum of Agreement and all the annexures thereto; |
| 1.1.2 | "Business Day" | means any calendar day excluding Saturday, Sundays, and recognised Holidays within the Republic of South Africa; |
| 1.1.3 | "Duration of the Agreement" | means 24 (twenty four) calendar months for the implementation of the Agreement; |
| 1.1.4 | "Effective date" | means the date of signature of the Agreement by the last Party signing; |
| 1.1.5 | "Municipality" | means Mantsopa Local Municipality, established in terms of the Local Government Municipal Structure Act Number 117 of 1998; |
| 1.1.6 | "The NYDA" | means National Youth Development Agency, an institution established in terms of the National Youth Development Agency Act 54 of 2008; |
| 1.1.7 | "Parties" | means collectively, the NYDA and the Municipality and Party shall refer to either of them; |
| 1.1.8 | "Republic" | means the Republic of South Africa as constituted from time to time; |
| 1.1.9 | "Youth/young people" | means historically disadvantaged persons between the ages 14 (fourteen) – 35 (thirty five) years; |

1.2 In this Agreement:-

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 the masculine gender shall include the feminine and neuter genders and vice versa;
- 1.2.3 unless otherwise indicated, meanings ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears, thereafter;
- 1.2.4 headings to the clauses are only for convenience of reference and shall not be utilised in the interpretation of this Agreement;

1.3 This Agreement shall bind the Parties and their respective successors-in-title.

2. POSITIVE UNDERTAKINGS

- 2.1 The Parties confirm their distinct complementary and respective roles in the implementation of this Agreement.
- 2.2 The Parties further commit to collaborate in promoting the objectives of the Agreement.
- 2.3 The Parties endeavour to assist the young people to access sustainable livelihoods and to continue assisting the said young people to obtain employment, self employment and/or further information, education and training opportunities.
- 2.4 Each Party shall remain entitled to engage in and receive full benefits from its independent business activities and operations without any consultation or other obligation to the other Party.

3. OBJECTIVES OF THE AGREEMENT

- 3.1 The Parties shall endeavour to work together to promote the interests of young people of the Republic in the previously disadvantaged communities.

4. ROLE OF THE PARTIES

4.1 The NYDA shall:

- 4.1.1 Provide the Municipality with NYDA specifications for site establishment.
- 4.1.2 Provide support to the Municipality with regard to the activities related to Youth Development, in particular the Youth Office within the Municipality and outreach activities.
- 4.1.3 Provide content to all its information products by supplying brochures, pamphlets and other marketing materials for distribution.
- 4.1.4 Provide on going capacity building and support to the Youth Office staff on NYDA products and services.
- 4.1.5 Provide training to Community Development Workers currently employed by the Municipality for information dissemination on the NYDA's products and services.
- 4.1.6 Assist with data collection from Youth beneficiaries and reporting.
- 4.1.7 Ensure that monthly statistics are collated on time.
- 4.1.8 Ensure connectivity to the NYDA portal and other business systems through the Municipality's internet connectivity.
- 4.1.9 Encourage the use of help desk at the NYDA head office by availing this resource to the Municipality for any enquiries.
- 4.1.10 Develop fixed schedules for visitation to the Youth Office. During these visits all services and products not available at the Youth Office will be taken to target audiences especially in remote rural areas.

4.1.11 Arrange and attend quarterly steering committee meetings with the Municipality and other relevant stakeholders.

4.1.12 Avail outreach vehicles upon invitation to communities in need of services in addition to the scheduled visits.

4.1.13 The following services will be available from the Youth Office to the local community:

4.1.13.1 Internet access

4.1.13.2 Access to the NYDA internet portal

4.1.13.3 Access to the JOBS database

4.1.13.4 Career and bursary information

4.1.13.5 Applications for micro finance loans

4.1.13.6 Application for business development services

4.1.13.7 Information on loans greater than R100,000 in value

4.1.13.8 Information on National Youth Service projects

4.2 Municipality shall:

4.2.1 Assume overall responsibility for the recruitment and management of staff at the Youth Office.

4.2.2 Submit an activities report to the NYDA on a quarterly basis.

4.2.3 Attend quarterly steering committee meetings with the NYDA and other relevant stakeholders.

4.3 Project Steering Committee

4.3.1 The Parties shall establish a Project Steering Committee (PSC) whose responsibility shall be to guide the overall objectives set out in this Agreement. The Parties shall endeavour to have equal representation and voting powers on the PSC.

4.3.2 The PSC team shall develop its own operating rules and regulations in line with project management imperatives.

5. DURATION OF THE AGREEMENT

This Agreement commences on the effective date and shall remain in existence for a period of 24 (twenty four) calendar months unless the Parties agree otherwise.

6. PUBLIC ANNOUNCEMENT, PRESS RELEASES, MARKETING AND BRAND

6.1 The Parties shall communicate to the public this Agreement as a joint initiative by them and both Parties shall endeavour to inform each other of any press release to be developed in connection with the Agreement prior to it being released to the media or public;

6.2 The Parties undertakes not to make any disclosure, issue any press release, any public announcement in respect of this agreement and the project, without prior written approval of the other party.

6.3 A party shall not use the other party's brand without prior written approval of the other party.

6.4 The Parties undertake not to market the products, service or materials using the brand and name of the either party without prior written approval of the party.

6.5 Any reference to the Agreement by any of the Parties during an interview and or any interaction with the media that Party shall, accordingly mention the existence of a partnership in terms of this Agreement.

7. COMMUNICATION

The Parties agree that:

7.1 It is necessary to keep the channels of communication open between the Parties at all times and on all aspects of the Agreement.

7.2 The contact persons for communication between the Parties shall be the following persons:

• THE NYDA:

Ms Mphonyana Tsoanyane

• MUNICIPALITY:

Mrs CLM Rampai

8. WHOLE AGREEMENT

- 8.1 This document contains the entire agreement between the parties, and therefore neither Party relies in entering into this Agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement.

9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1 The Parties choose as their *domicilia citandi et executandi* for all purposes arising from this Agreement the following addresses:

9.1.1 THE NYDA

NYDA House
11 Broadwalk Avenue
MIDRAND
1685

Fax: (011) 805 9709

9.1.2 Municipality

38 Jourbet Street
Ladybrand

Fax: (051) 924 0020

- 9.2 Any Party may change its *domicilium citandi et executandi* by means of a written notice to

the other Party provided that such *domicilium* shall be a physical address within the Republic of South Africa.

- 9.3 All notices contemplated under this Agreement shall be delivered by hand or sent by pre-paid registered post, in such event such notice shall be deemed to have been received at the address within 7 (seven) business days after the proven date of posting.

10. BREACH

- 10.1 Should either Party commit a breach of its obligations under this Agreement, the non-defaulting Party shall give the defaulting Party written notice, calling upon the defaulting Party to remedy the breach or default within a period of 14 [fourteen] Business Days. If the defaulting Party fails to remedy the breach within that period, the non-defaulting Party will be entitled to cancel this Agreement without prejudice to any other rights which the Party may have against the defaulting Party.

- 10.2 The remedies set out in this clause 10 shall not be construed to be exhaustive of any other remedies available to the Parties.

11. DISPUTE RESOLUTION AND ARBITRATION

- 11.1 Should any difference or dispute at any time arise between the parties, the duly authorised Senior Officials of each party shall meet within fourteen (14) days, or such period as the parties may agree, from the date on which the dispute arose to resolve the dispute amicably.

- 11.2 If the dispute is not resolved at such a meeting, or extended meeting as the Parties may agree to in writing, then either of the parties shall be entitled to refer the dispute to the Arbitration Foundation of Southern Africa (AFSA) to be determined by arbitration in terms of Arbitration Act 42 of 1965 as amended, such arbitration shall be held in Johannesburg.

- 11.3 The appointment of the arbitrator shall be agreed upon between the Parties in writing but, failing agreement between them, within a period of 10 (ten) Business Days after the arbitration has been demanded in terms of clause 11.2, above either Party shall be entitled to request the Arbitration Foundation of South Africa to make the appointment and, in making such appointment, to have regard to the nature of the dispute.

- 11.4 The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act, 1965 (as amended), but shall not be obliged to follow the procedures prescribed in that Act. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of any court of competent jurisdiction.

12. AMENDMENTS

No amendments or consensual termination of this Agreement will be binding unless reduced to writing and signed by the Parties.

13. GOOD FAITH

The Parties undertake to act in good faith at all times in pursuance of their respective roles in terms of this Agreement as well as to give effect to the spirit and intent of the Agreement.

14. INTELLECTUAL PROPERTY

- 14.1 All Intellectual Property Rights owned by the Party prior to this agreement shall remain the sole property of that Party.

- 14.2 Neither Party shall, without the prior written consent of the other party, make use of the other Party's Intellectual Property.

- 14.3 Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property of the other Party, unless agreed otherwise in writing by both Parties.

- 14.4 Any Intellectual Property, in any media or format, prepared, created or authored prior to the effective date of this Agreement, by or specifically for either of the contracting Party in terms of this Agreement shall belong exclusively to that contracting Party and, in this regard, the Parties may not cede, assign and make over all rights, title and interest in and to any such material or documentation to the other Party, unless agreed otherwise in writing by both Parties.

- 14.5 The Parties co-own intellectual property developed during the currency of this Agreement and in the event that the Party utilises any intellectual property that is owned by the other Party for provision of services to a third party, the Party shall pay to the other Party a portion of the fee received from such third party, to be agreed to in writing by the Parties.
- 14.6 The parties hereby acknowledge each other's Intellectual Property rights and undertake to one another that they shall not challenge those rights and shall do all things necessary to ensure that the Intellectual Property of the other is not removed from the premises on which it is ordinarily and lawfully located, without the other's prior written consent.
- 14.7 Both Parties shall list all their pre-existing intellectual property rights in Annexure "A" attached herein.

15. CONFIDENTIALITY

The parties undertake towards each other:

- 15.1 Not to disclose or otherwise reveal directly or indirectly to any third Party, any confidential information provided by one Party to the other, or otherwise acquired, particularly, contract terms, project information, trade secrets, fees, financing arrangements, annexure's, schedules, and information concerning the identity of each parties logos, clients, intellectual property, clients, dealers, borrowers, brokers, lenders, distributors, developers, technology owners, or their representatives, and specific individual names, addresses, principals, or telex/fax/telephone numbers, references, technology information, and/or all other information, advised by one party to another as being confidential or privileged, without the prior specific written consent of the Party providing such information. The Party may be held liable if, through no action or fault of the latter, any of the above mentioned confidential information is released by the owner or a third Party.
- 15.2 To exercise reasonable care to prevent disclosure of confidential information to any third Party, except as may be authorised in writing by the other Party, internal dissemination of the confidential information shall be limited to those employees whose duties justify their need to know such information and then only on the basis of a clear understanding by these employees of their obligations to maintain the trade secrets status of such confidential information and to restrict the use of such information solely to the use

granted to the other Party under this agreement. The Parties shall each be liable for any improper disclosure of confidential information by their employees.

15.3 The above undertakings shall not apply to:

15.3.1 Information which at the time of disclosure is published or otherwise generally available to the public;

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

15.3.3 Information which the parties can show was in their possession at the time of disclosure and which was not acquired directly or indirectly from each other;

15.3.4 Information rightfully acquired from others who did not obtain it under pledge of secrecy to either of the parties;

15.3.5 Information which the Recipient is obliged to disclose in terms of an Order of Court, subpoena or other legal process;

15.4 In the event that either party hereto is required by legal process to disclose any of the confidential information of the other party, covered by this clause 15, it shall:

15.4.1 Provide the other party with prompt notice of such requirement so as to enable such party to seek a protective order or waive compliance with the provisions of this clause;

15.4.2 In the event that a protective order or other remedy is obtained, the party concerned shall use all reasonable efforts to ensure that only the information covered by such order or other remedy is disclosed;

15.4.3 Whether or not a protective order or other remedy is obtained or a party has waived compliance with the provisions of this agreement, the other party shall take all reasonable steps to ensure that only that portion of the information that it is legally required to disclose is so disclosed.

15.5 The provisions of this clause 15 shall survive termination of this agreement, for whatever reason.

15.6 The limitations imposed in terms of this clause shall perpetuate for a full period of the contract between the Parties, shall furthermore extend from the effective date and shall survive the expiration or termination of the contract.

16. REPRESENTATIONS

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. No agreements, guarantees or representations, whether verbal or in writing, have been concluded, issued or made, upon which either party is relying in concluding this Agreement, unless the representation or guarantee is recorded in this Agreement.

17. NO PARTNERSHIP

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute either Party the agent of the other Party for any purpose.

18. APPLICABLE LAW AND COMPLIANCE WITH THE LAW

18.1 The interpretation, performance and implementation of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

18.2 Without limitation of any obligations and/or rights under any law, the Parties shall comply with any other acts, regulations and nationally and/or internationally recognized standards, in which by law and practice the party is required to adhere to.

19. COSTS

Each Party shall bear its own legal costs of and incidental to the negotiation, preparation, settling, signing, and implementation of this Agreement.

20. SIGNATURES

THUS SIGNED AT _____ THIS _____ DAY OF _____ 2011

FOR THE NYDA:

Duly Authorised

Name:

Designation:

AS WITNESSES

1. _____

2. _____

THUS SIGNED AT Ladybrand THIS 31st DAY OF Marche 2011

FOR MUNICIPALITY:



Duly Authorised

Name: CLM Rampa

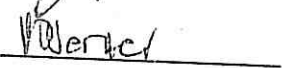
Designation: Municipal Manager

AS WITNESSES

1.



2.



ANNEXURE "A"

PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES