**4.2. MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN ORGANS OF STATE**

**4.2.1. PURPOSE**

The objectives of entering into Memorandum of Understanding/Agreement (MOU/MOA) is to improve consultation and cooperation between the parties, and to avoid duplication of efforts and activities on areas identified for collaboration in respect of support provided to municipalities.

**4.2.2. LEGISLATION**

Intergovernmental Relations is underpinned by:

**The Constitution of the Republic of South Africa (act 108 of 1996**); The Constitution states that the National, Provincial and Local spheres of government are distinctive, interdependent and integrated. Section 41 (1) of the Constitution alludes to cooperation, mutual trust and good faith between the three (3) spheres. The constitution further binds the three spheres of government and organs of state to the basic principles of co-operative government and intergovernmental relations.

**The Intergovernmental Relations Framework Act (13 of 2005);** The IGR framework act was introduced in 2005. Section (5) of the IGR Act makes provision for the three spheres of Government in conducting their affairs to seek to achieve the object of this act, by –

1. Taking into account the circumstances, material interests and budget of other spheres of government and organs of state when exercising their statutory powers or performing their statutory functions;
2. Avoiding unnecessary and wasteful duplication or jurisdictional contests;
3. Taking all reasonable steps to ensure that they have sufficient institutional capacity and effective procedures.

The three Acts that govern the operations of local government viz; Municipal Finance Management Act, (Act No. 117 of 1998), Municipal Structures Act, (Act No. 32 of 2003) and the Municipal Systems Act, (Act No. 32 of 2000) provide for legal co-operation governance to take course, emphasising the monitoring and supporting role that the national and provincial government should play in the affairs of local government.

**4.2.3. APPLICATION**

Memorandum of Understandings are drafted such that the stakeholders are enabled to fulfil their mandates, provided that the implementation of the objective must be in keeping with the strategic objectives of the parties; seek exclusivity, reciprocity, mutual respect and equity in achieving the goals established by the Agreement; undertake to ensure that value is added through their work in realising the objectives of the Agreement; and the parties agree to the implementation of the Agreement within their respective capacities through maximum utilisation of their available resources.

**REFER TO ANNEXURE 1 – GENERIC MOU**

**ANNEXURE 1**

**MEMORANDUM OF UNDERSTANDING**

**Entered into by and between:**

**DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS KWAZULU-NATAL**

Herein represented by **Mr SE Hlomuka, MPL**, in his duly authorised capacity as the **Member of the Executive Council** of the **Department of Cooperative Governance and Traditional Affairs**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Herein represented by \_\_\_\_\_\_\_\_\_\_, in his/her duly authorised capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WHEREAS**

**A.** The KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, have the municipalities in KwaZulu-Natal as their common clients, whilst acknowledging and respecting the independence of the parties, as enshrined in their respective legislative mandates;

**B.** The parties acknowledge and recognise the commonalities, as well as the relatedness, of the work conducted by the parties in pursuance of their legislative and other mandates when supporting local government;

**C.** In furtherance of the objectives of cooperative governance envisaged in Chapter 3 of the Constitution, 1996, the parties have agreed to complement each other’s efforts for better realisation of common goals within KwaZulu-Natal, and to establish a collaborative relationship in order to jointly achieve their respective objectives of supporting municipalities; and

**D.** The parties deem it expedient to record the terms of their Agreement in writing, in order to establish the framework and conditions upon which the parties will cooperate with each other in the Project contemplated in this Agreement,

**NOW THEREFORE THE PARTIES AGREE THAT:**

**INTERPRETATION AND DEFINITIONS**

1. In this Agreement, unless the context indicates otherwise –

1.1 an expression, which denotes any gender, includes the other gender, a natural person includes any juristic person and vice versa, and the singular includes the plural and vice versa.

1.2 clause headings are for convenience only and will not be used in its interpretation, and the following expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

**“Agreement”** means this Collaborative Agreement and all the Annexures thereto;

**“CoGTA”** means the KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“Parties”** mean CoGTA and \_\_\_\_\_\_\_\_\_; and

1.3 words and expressions defined in any sub-clause, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause; and

1.4 this Agreement is governed by and construed in accordance with the law of the Republic of South Africa.

**LEGISLATIVE MANDATES**

3. The primary legislative mandates of–

3.1 CoGTA are the following sections contained in the Constitution:

(a) section 139 provides for provincial invention in local government, including the issuing of directives, and managing interventions by the Provincial Executive Council in accordance with the provisions of section 139(1)(b) and (c);

(b) section 154 determines that provincial governments must provide support and capacity-building to municipalities by legislative and other means, in order to assist municipalities to manage their own affairs, to exercise their powers and to perform their functions;

(c) sections 155(5) and (6) determine the manner in which CoGTA must monitor and support local government by legislative and other measures, in addition to which CoGTA must promote the development of local government capacity, to enable municipalities to perform their functions and manage their own affairs; and

(d) section 155(7) stipulates that provincial governments have legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1); and

3.2 **Mandates of the Institution**

(a)

(b)

**OBJECTIVES OF COLLABOARTION**

4. The objective of this Agreement is to improve consultation and cooperation between the parties, and to avoid duplication of efforts and activities on areas identified for collaboration in respect of support provided to municipalities to enable them to fulfill their mandates, provided that–

4.1 the parties have agreed that the implementation of the above objective must be in keeping with the strategic objectives of the parties;

4.2 all collaborations generated by this Agreement must be geared towards realising the vision and objectives of the parties;

4.3 the parties agree to seek exclusivity, reciprocity, mutual respect and equity in achieving the goals established by the Agreement;

4.4 the parties undertake to ensure that value is added through their work in realising the objectives of this Agreement; and

4.5 the parties agree to the implementation of this Agreement within their respective capacities through maximum utilisation of their available resources.

**SCOPE OF AGREEMENT**

5. The Parties hereby agree to collaborate on the terms and conditions of this Agreement, provided that–

5.1 each of the Parties must fund its own participation in, and contributions to, any joint Programme or Activities;

5.2 the Parties agree that this Agreement will not be construed so as to create a legal relationship of exclusivity between them to the exclusion of all third parties, and that they each shall be free to pursue projects with third parties, either independently or in collaboration with each other; and

5.3 the Parties agree that the provisions of this Agreement will not be interpreted so as to place a binding legal obligation on them to take part in any Project, or to enter into any proposed Project Agreement with each other or any third party, nor will this Agreement be interpreted to compel any Party to make any contribution to any Project.

**FORMATION AND RESPONSIBILITIES OF THE STEERING COMMITTEE**

6. The parties agree to establish a Steering Committee with duly appointed and authorised representatives, whose functions and duties include, but are not limited to–

6.1 overseeing the implementation of this Agreement by, among other things, coordinating, directing, and ensuring implementation of this Memorandum of Understanding;

6.2 exploring and identifying areas of further collaboration and ties between the Parties;

6.3 discussing feedback on challenges encountered in implementing this Agreement and suggesting how such challenges may be alleviated; and

6.4 monitoring and submitting regular reports to its principals on the impact of the collaboration;

**MEETINGS AND COMPOSITION OF STEERING COMMITTEE**

7. The parties agree that–

7.1 Cogta must convene meetings of the Steering Committee at least once every quarter, or more often as may be necessary, and provide the secretariat services

7.2 the Steering Committee will comprise of a minimum of three representatives of each of the parties, as well as designated alternatives, provided that the position of Chairperson will be rotated between the representatives of the parties; and

7.3 notwithstanding the above, the parties must ensure that all meetings are attended by at least one primary member from each party.

**AREAS OF COLLABORATION**

8. The areas of collaboration include, but are not limited to the following:

8.1 The provision of support to municipalities;

8.2. Support municipalities to conduct effective planning to achieve sustainable service delivery;

8.3. Support and assist municipalities with the implementation of projects as determined by the municipal integrated development plans (IDPs);

8.4. Support and assist municipalities with operation and maintenance

8.5. Build capacity of municipalities to undertake effective planning, delivery, operations and management of municipal functions and

8.6. Sharing of data, reports, and including empirical research studies on matters related to Municipal functioning and service delivery; and

8.7 Support to municipalities towards achievement of the National Development Plan and the Provincial Growth and Development Plan deliverables.

**DURATION OF AGREEMENT**

9. This Agreement commences on the date of signature by the last signing party and continues indefinitely, provided that–

9.1 The Agreement may be terminated as contemplated in clause 10; and

9.2 The parties undertake to review the agreement annually, to assess whether they are still on course with regards to the objectives of this Agreement, and to make necessary changes, where it is desirable to do so.

**TERMINATION OF AGREEMENT**

10. Either party may terminate this Agreement on written notice of not less than 60 calendar days to the other party, in which event any future rights and obligations of the parties under this Agreement will similarly terminate upon the date of termination of the Agreement, provided that any rights or obligations to which any of the parties to this Agreement may have been entitled or subject to, before the date of termination, will remain of full force and effect.

**DISPUTE SETTLEMENT**

11. Either party to the Agreement may, in the event of any dispute arising out of this Agreement, refer the dispute for resolution as contemplated in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

**BREACH OF AGREEMENT**

12. If either party fails to meet its obligations in terms of this Agreement, the innocent party, at its choice, without prejudice to any other rights and remedies the party may have, after compliance with clause 11, and after giving seven days written notice to the defaulting party at its *domicilium*, calling on the latter to remedy the breach, may–

12.1 cancel the Agreement; or

12.2 enforce the terms of the Agreement; and

12.3 in any event claim any damages it may have suffered as a result of the breach.

**DOMICILIUM**

13. The parties choose their *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement, as follows:

**COGTA:** 14th Floor, Natalia Building

330 Langalibalele Street

Pietermaritzburg

3201

**Institution**

**VARIATION TO *DOMICILIUM***

14. Either party, upon written notice to the other party, may vary its physical address or facsimile number to any other physical address or facsimile number within the Republic of South Africa.

**NOTICES**

15. Any notice given by either party to the other party, which–

15.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* will be deemed to have been received by the addressee at the time of delivery;

15.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* will be deemed to have been received by the addressee on the seventh day after the date of posting; and

15.3 is sent by facsimile during the normal business hours of the addressee to the addressee's *domicilium* will be deemed to have been received on the date and time of successful transmission thereof.

**SOLE RECORD**

16. This Agreement constitutes the sole record of the agreement between the parties in regard to its subject matter, and neither party will be bound by any representation, express or implied term, warranty, promise or the like not recorded herein, or reduced to writing and signed by both parties.

**VARIATION**

17. No variation, modification, addition, alteration, erasure or abandonment of any clause of this Agreement or consent to deviation from the Agreement will be valid unless it is recorded in writing and signed by all parties.

**GRACE**

18. No grace, delay, relaxation, leniency or indulgence granted by the either party to the other will be deemed to be an abandonment of any right by the innocent party, and will not prevent the innocent party from insisting on strict future compliance by the defaulting party with all the terms and conditions of this Agreement.

**SEVERABILITY**

19. Each clause of this Agreement is severable from each of the other clauses and if any clause in this Agreement is found to be void, invalid or unenforceable for any reason, the remaining clauses will remain in full force and effect.

**SUCCESSORS-IN-TITLE**

20. The provisions of this Agreement will be binding upon the successors-in-title of the parties, and the rights and obligations of each party arising out of or pursuant to this Agreement will devolve upon and bind its successors in title.

**CESSION AND ASSIGNEMENT**

**21** Neither party may cede, assign, transfer or otherwise make over any of its rights or obligations contemplated in this Agreement.

**SIGNED AT PIETERMARITZBURG ON THIS THE \_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2016**

**AS WITNESSES:**

**1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**COGTA**

**2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ON THIS THE \_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2016**

**AS WITNESSES:**

**1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SALGA**

**2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**