

**SERVICE LEVEL AGREEMENT TO PROVIDE SAFEGUARDS
FOR BATHERS AGAINST SHARK ATTACKS**

between

THE UMDONI MUNICIPALITY

and

KWAZULU-NATAL SHARKS BOARD

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SERVICE LEVEL AGREEMENT TO PROVIDE SAFEGUARDS FOR BATHERS AGAINST SHARK ATTACKS

1 PARTIES

1.1 UMDONI MUNICIPALITY

1.2 KWAZULU-NATAL SHARKS BOARD

2 DEFINITIONS

2.1 "MUNICIPALITY" means the municipality referred to in 1.1;

2.2 "KZNSB" means the juristic person referred to in 1.2 above, it being recorded that the KZNSB was established in terms of the ACT";

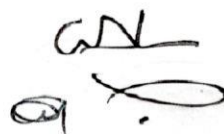
2.3 "ACT" means the KwaZulu-Natal Sharks Board Act No. 5 of 2008;

2.4 "EFFECTIVE DATE" means the 1st of July 2024;

2.5 "SCHEME" means a "scheme" as defined in the ACT; that is, a method of providing safeguards against shark attacks upon bathers.

3 INTERPRETATION AND GENERAL

3.1 Where the context so indicates, reference to the singular shall be deemed to include the plural and vice versa and reference to one gender shall be deemed to include the other genders.

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3.2 This Agreement constitutes the sole Memorandum of the Agreement between the parties relating to the subject matter hereof and no variation or addition hereto or consensual cancellation hereof shall be of any force or effect unless reduced to writing and signed by both parties.

3.3 No indulgence granted by either party to the other in regard to the enforcement of its rights under this Agreement shall be construed as a waiver of such rights (unless expressed as such in a written document signed by the indulgent party) nor shall it serve to stop the indulgent party from strictly enforcing its rights in the event of a subsequent breach thereof.

4 **BACKGROUND**

It is recorded that -

4.1 the KZNSB was established in terms of the ACT with the object of, *inter alia*, undertaking, initiating, controlling and approving measures for safeguarding bathers against shark attacks;

4.2 in terms of Section 5(1)(a) of the ACT, the KZNSB must research, develop, install and maintain schemes, devices or measures necessary to safeguard bathers against shark attacks;

4.3 in terms of Section 5(1)(b) of the ACT, the KZNSB must consider existing or proposed schemes to determine whether such schemes are reasonably effective to protect bathers from shark attack, provided that the KZNSB shall also endeavour to introduce schemes that will reduce negative impact on all biodiversity and will enhance the survival of caught sharks and other marine animals;

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- 4.4 in terms of Section 5(1)(c) of the ACT, the KZNSB must undertake research in order to consider and determine the feasibility of applying new or known methods of protection against shark attacks and determine any environmental impact arising from the implementation of any such schemes or any methods of protection against shark attacks;
- 4.5 in terms of Section 5(1)(f), KZNSB must render assistance or place its services at the disposal of any municipality, where such municipality is obliged by law to exercise powers, duties or functions in connection with the sea and the sea-shore; inland waters; life-saving and other emergency services; or scientific research, studies and surveys undertaken by or on behalf of such municipality; Annexure "C"
- 4.6 the KZNSB is granted, in terms of Section 6 of the ACT, powers to enable it to perform its functions and duties, which powers include the following –
- 4.6.1 to determine and approve the extent of any SCHEME and to specify the procedures and control measures to be adopted in connection with any such SCHEME;
- 4.6.2 to develop and maintain, on the sea-shore, sea-bed and in the sea, such SCHEMES as it deems necessary and practicable for the safety of bathers provided that, where the SCHEME is to be located within the area of jurisdiction of a municipality, the prior consent of that municipality is obtained alternatively, where agreement cannot be reached with the municipality regarding the nature or extent of the SCHEME or the basis upon which the Board is to be remunerated, with approval of the responsible Member of the Executive Council for Economic Development, Tourism and Environmental Affairs;
- 4.6.3 to enter the sea and seashore for the purpose of investigating the efficacy and proper maintenance of any SCHEME or for carrying out, after consultation



with the municipality having jurisdiction, any work deemed necessary to determine the suitability of any site or location of any SCHEME;

4.6.4 to undertake research into measures to safeguard bathers against shark attacks;

4.7 the MUNICIPALITY is currently utilising the services of the KZNSB in providing SCHEMES, in the form of shark safety gear, within the MUNICIPALITY's area of jurisdiction;

4.8 the MUNICIPALITY and the KZNSB wish to formalise the agreement pursuant to which the KZNSB provides services to the MUNICIPALITY aimed at safeguarding bathers against shark attacks or at least reducing the risk of shark attacks upon bathers;

4.9 this document sets out the formal agreement between the parties that shall apply with effect from the EFFECTIVE DATE.

5 **APPOINTMENT OF KZNSB TO PROVIDE SERVICES**

5.1 The MUNICIPALITY hereby appoints the KZNSB to provide, on behalf of the MUNICIPALITY and at the beaches specified in the schedule attached hereto marked "A", the services specified in clause 7 below.

5.2 KZNSB accepts the appointment.

6 **DURATION**

This agreement shall commence (or be deemed to have commenced, as the case may be) on the EFFECTIVE DATE and shall endure **FOR A PERIOD OF 36 MONTHS** subject to the right of either party to terminate this agreement by way of not less than 3 (THREE) calendar months written notice to the other.



7 NATURE OF SERVICES

The services to be provided by KZNSB at the beaches specified in annexure "A" hereto shall be as follows -

- 7.1 to provide and install the shark safety gear which KZNSB deems reasonably necessary for the purposes of providing a reasonably effective, but not infallible, measure in order to provide bathers with some protection against the risk of shark attacks;
- 7.2 to maintain the shark safety gear, where reasonably practicable, in good condition. The maintenance of the shark safety gear requires daily servicing from Monday to Friday of each week, weather permitting. To the extent that the KZNSB is not able to service the shark safety gear on any particular Friday, the servicing will be carried out on the following Saturday or Sunday;
- 7.3 to repair damaged shark safety gear and, if the gear is irretrievably damaged, to replace it;
- 7.4 to use its best endeavours to find and recover any shark safety gear which may become dislodged by heavy seas;
- 7.5 to substitute existing shark safety gear with such alternative protective gear as it deems appropriate from time to time provided that no material change to the nature or extent of the SCHEME will be implemented without prior consultation with the MUNICIPALITY.
- 7.6 to install shark safety gear other than shark nets as and when the KZNSB deems appropriate. In this regard, it is recorded that the KZNSB may elect, from time to time, and at various locations, to substitute shark nets with drum lines and, in such event, the terms of this Agreement relating to the provision of shark nets shall apply, *mutatis mutandis*, in respect of the drum lines. This will include, but not be limited to, the provisions of clause 10 regarding the removal of shark



safety gear. It is also recorded that the KZNSB will be involved in research and development relating to "electronic beach barrier systems" which, if successful, could revolutionize the whole process and nature of SCHEMES. However, should this occur, and should the MUNICIPALITY be agreeable to installing any such new SCHEME, it is anticipated that a new Service Agreement will be necessary in order to properly deal with such new SCHEME. (See also clause 12 below.);

- 7.7 to use its reasonable endeavours to provide the abovementioned services in a proper and efficient manner.

8. **CONSIDERATION**

As consideration for the services to be provided by the KZNSB, the MUNICIPALITY shall pay to the KZNSB a monthly fee, the amount as agreed in Annexure "B." Increases in respect of the 2024/25, 2025/26 and 26/2027 financial year fees will be communicated as soon as the prevailing CPI has been published by Stats SA and agreed by signature of the new "annexure B", which increase/s shall, in any event, be in terms of the prevailing Consumer Price Index (CPI) on the 1st of July of each year. The monthly fee shall be payable in advance on or before the first day of each month and payment shall be affected by depositing the relevant funds into the KZNSB's bank account, the details of which are as follows:

Account Number:	Kwazulu-Natal Sharks Board
Registration Number:	Provincial Government
Absa Account Number:	101 234 1080
Account Type:	Cheque Account
Branch Name:	Absa Umhlanga
Branch Code:	632005
Absa Swift Code:	ABSAZAJJ

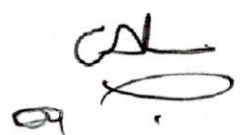


9. ACCESS

The MUNICIPALITY shall provide the KZNSB with reasonable access to, and onto, the beaches at which the shark safety gear is to be installed so that KZNSB is able to perform its functions and duties under this agreement and, generally, in accordance with the ACT, without unreasonable interference or impediment.

10. REMOVAL OF THE SHARK SAFETY GEAR

- 10.1 The KZNSB shall be entitled, whenever it deems such to be necessary appropriate (for example, during the sardine run or during periods of exceptionally heavy seas) to remove temporarily the shark safety gear. In such circumstances, it shall, as soon as reasonably practicable in the circumstances, notify the MUNICIPALITY of its decision and the MUNICIPALITY shall then be obliged to take such steps as may be reasonably necessary to ensure that the public is made aware of the removal of the shark safety gear. Whilst it is the general policy of the KZNSB that bathing ought to be banned at beaches when the shark safety gear is removed, the decision in this regard shall in all cases lie with the MUNICIPALITY if there is a permanent or long-term removal of the shark safety gear, use its reasonable endeavours to ensure that notices are published in newspaper(s) and, where reasonably practicable, use its reasonable endeavours to ensure that appropriate announcements are made over the local radio station(s).
- 10.1 Where a decision is taken by the MUNICIPALITY, after consultation with the KZNSB, to remove any shark safety gear permanently from a beach, the MUNICIPALITY shall use its reasonable endeavours to ensure that similar notices as specified in. above and public announcements in the media are made so that bathers are made aware that the beach is no longer protected by the provision of shark safety gear and advising bathers that they enter the water entirely at their own risk and disclaiming any liability on the part of the MUNICIPALITY and the
- 10.2 The cost of producing, erecting and, when necessary, replacing signs and



publishing notices as contemplated in this clause 10 shall be for the account of the MUNICIPALITY.

10.3 Under no circumstances shall the temporary removal of shark safety gear entitle the MUNICIPALITY to any abatement or refund of the consideration payable by it to KZNSB.

11 LIAISON

11.1 The KZNSB and the MUNICIPALITY shall each appoint an appropriate representative, having managerial status, as its liaison person for the purpose of this agreement. Each of the appointees may be substituted, from time to time, by the party appointing him. The said appointees shall be given the responsibility of liaising with each other on a regular and ongoing basis with a view to dealing with issues relating to this agreement. Their purpose will be to ensure that the channel of communication between the parties is kept open at all reasonable times. Should either party substitute its appointed "liaison manager", it will promptly notify the other, in writing, of such substitution together with the details of the new appointee.

11.2 The liaison representatives of the parties, as from the EFFECTIVE DATE, shall be as follows –

11.3 for the MUNICIPALITY

The Manager, ^{Beach}~~Aquatic Safety~~

11.4 for the KZNSB -

The Head of Operations

11.5 NEW TECHNOLOGY

In terms of its general functions under the ACT, KZNSB may devise or discover new SCHEMES that may be capable of being utilised by the MUNICIPALITY to provide more effective safeguards than the current system of nets or the alternative system of drum lines. In such circumstances, the KZNSB shall notify the MUNICIPALITY of any such development and may make recommendations in regard to the installation of such new

SCHEMES. The substitution of the shark nets and/or drum lines by any such new systems will, however, require negotiation and the conclusion of a new agreement to substitute this agreement.

12 BREACH


Should either party breach any of its obligations under this agreement and fail to remedy such breach within a period of 14 (FOURTEEN) days (or such longer period as may be reasonably necessary to procure the remedying of the breach) of receipt of written notice from the aggrieved party calling upon the defaulting party to do so, the aggrieved party shall, without prejudice to any of its other rights, be entitled to claim specific performance (if such is a competent remedy in the circumstances) or to cancel this agreement by way of written notice to the other and, in either event, to claim such damages as it may thereby have suffered.

13 RESOLUTION OF DISPUTES

Any dispute between the parties arising out of or incidental to this Agreement or pursuant to the performance by the KZNSB of its functions and duties in terms of the ACT, which the parties are unable to resolve by negotiation between them (and following reference of the dispute to the Chief Executive Officers of each of the parties), shall be dealt with in accordance with the Intergovernmental Relations Framework Act, Act 13 Of 2005.

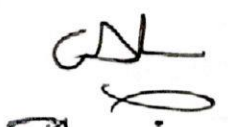
14 CONFLICT WITH LEGISLATION

The parties acknowledge that the functions and duties of the KZNSB are set out in the ACT and, in addition, there is other applicable legislation (such as, the Seashore Act No. 21 of 1935) and, to the extent that there is any conflict between the provisions of this agreement and the provisions of any applicable legislation, the latter shall prevail. Furthermore, nothing in this agreement shall be construed as limiting or undermining in any way the general powers, duties and functions of the KZNSB as provided for in the ACT



15 LIMITATION OF LIABILITY

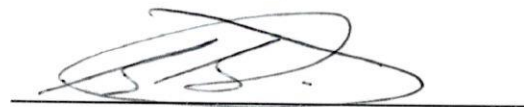
Save to the extent that the KZNSB shall be liable for any breach of its obligations under this agreement or for any loss or injury caused by its own gross negligence, the KZNSB shall not be liable for any damages arising out of its acts or omissions under this agreement, unless such is attributable to the gross negligence of the KZNSB, nor in any event, shall the KZNSB be liable for such consequential or indirect damage.



16 SIGNATORIES

SIGNED by the MUNICIPALITY at Scottburgh on this day 11TH of
SEPTEMBER 2024

AS WITNESS:

For: **Umdoni Municipality**

Name of signatory:

Mr SE NXELE (Acting) MM

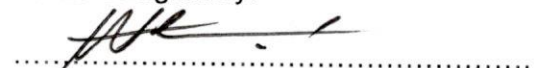
... The Signatory warrants by his
signature that he is duly authorised
hereto.

SIGNED by the KZNSB at UMHLANGA ROCKS on this day _____ of
2024

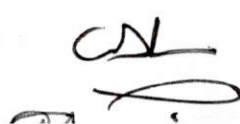
AS WITNESS:

For: **KwaZulu-Natal Sharks Board**
GL**Grayson Love****Harry Mbambo**

Name of signatory:



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



ANNEXURE "A"

Beaches within the MUNICIPALITY's area of jurisdiction to be protected by shark safety gear in terms of this agreement.

SCOTTBURGH

ANNEXURE "B"

CONSIDERATION

As consideration for the services to be provided by the KZNSB, the UMDONI MUNICIPALITY shall pay to the KZNSB a **monthly fee of R173 588.95** for the period 1st July 2024 to the 30th June 2025. Monthly fee is subject to change based on the prevailing CIP on the 1st of July 2024.

The annual fee increase will be calculated according to the consumer price index that prevails in the month of July in the years of 2024/2025, 2025/2026 and 2026/2027.

Late payment penalties calculated at the prevailing Prime rate plus one percentage point shall be charged on all overdue accounts.

The Board reserves its rights to remove all its shark safety gear protecting bathing areas in the Municipalities area of jurisdiction should a non- payment of meshing fees in excess of two consecutive months occur.

