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## GENERAL NOTICE

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### NOTICE 492 OF 2007

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT, 2005  
(ACT NO. 13 OF 2005)

### GAZETTE FOR PUBLIC COMMENT

I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, acting in terms of section 47(1)(d) of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), hereby publish for public comment the draft guidelines contained in schedule 1 to this notice.

Any person wishing to submit comments on these guidelines should do so on or before 31 May 2007 at email address: [TshepoK@dplg.gov.za](mailto:TshepoK@dplg.gov.za) or fax number 012 -3340903/0614, or mail to: Private Bag X804, Pretoria, 0001. For attention: Mr Tshepo Khasi.

FHOLISANI SYDNEY MUFAMADI

MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT

# **DRAFT GUIDELINES FOR MANAGING JOINT PROGRAMMES**

## CHAPTER 1

### INTERPRETATION, PURPOSE AND APPLICATION OF THESE GUIDELINES

#### **Interpretation**

1. (1) In these Guidelines, a word or expression which is defined in the Intergovernmental Relations Framework Act has the same meaning as in that Act, and unless the context otherwise indicates -

**"arbitration"**, in relation to an intergovernmental dispute, means a process by which a facilitator hears the respective cases of the organs of state involved in the dispute and then makes a final and binding determination of the dispute;

**"conciliation"**, in relation to an intergovernmental dispute, means a consensus-building process by which a facilitator assists the organs of state involved in the dispute to reach an agreement by providing a recommendation or advice;

**"coordinating department"**, in relation to a joint programme, means the department that regulates and coordinates the planning and implementation of a joint programme;

**"department"** means a national or provincial department as defined in section 1 of the Public Finance Management Act;

**"dispute resolution process"**, in relation to an intergovernmental dispute, means a formal process other than judicial proceedings aimed at resolving the dispute, and includes-

- (a) mediation;
- (b) conciliation; and
- (c) arbitration;

**"dispute settlement manager"** means an official designated as dispute settlement manager as proposed in terms of clause 7;

"executive authority" means an executive authority as defined in section 1 of the Public Finance Management Act;

"facilitator" means a person designated as facilitator in terms of section 42(1)(d), section 42(5) or section 44(2) of *the Act* to assist the parties to a formal intergovernmental dispute to settle the dispute;

"formal intergovernmental dispute" means a dispute between organs of state from different spheres of government which has formally been declared as such in terms of section 41 of *the Act*;

"government business enterprise" means a national or provincial government business enterprise as defined in section 1 of the Public Finance Management Act;

"Intergovernmental Relations Framework Act" means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

"joint programme" means a national development priority, the planning and implementation of which requires the involvement of various organs of state either within a particular sphere of government, or in different spheres of government;

"joint programme manager", in relation to a joint programme means a person appointed in terms of clause 7;

"joint programme steering committee" means a committee established in terms of clause 8;

"municipality" means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"municipal entity" means a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"organ of state" means -

- (a) a department;
- (b) a government business enterprise;
- (c) a municipality;
- (d) a municipal entity; or
- (e) any other organ of state;

"partnering protocol", in relation to a joint programme, means an agreement entered into in terms of clause 14 by the executive authorities of sector departments involved in the implementation of a joint programme;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No 1 of 1999);

"sector department" means the department that is responsible for a sector which is involved in the implementation of a joint programme;

"strategic plan" in relation to a national or provincial department, means a strategic plan referred to in section 15 of the Public Finance Management Act.

(2) In these Guidelines a word or expression which is a derivative or other grammatical form of a word or expression defined in subclause (1) or in the Intergovernmental Relations Framework Act, has a corresponding meaning unless the context indicates that another meaning is intended.

### **Purpose of these Guidelines**

2. The purpose of these Guidelines is to provide for the establishment of a framework to promote effective management of joint programmes, and in particular to provide for -

- (a) the carrying out of scoping studies before joint programmes are implemented to determine the scale of and timeframes for the programme;
- (b) the establishment of joint management mechanisms to ensure accountability for a joint programme, including -
  - (i) a joint programme steering committee; and
  - (ii) a joint Panel of Executive Authorities;
- (c) coordinating funding arrangements and budgeting for a joint programme;

### **Application of these Guidelines**

3. These Guidelines are not obligatory, but should in the interest of sound intergovernmental relations and of effective, accountable and coordinated achievement of national development goals be followed by all organs of state involved in implementing joint programmes.

## CHAPTER 2

### **MANAGEMENT OF JOINT PROGRAMMES**

#### ***Part 1: Scoping studies and reports***

#### **Scoping studies when joint programmes are initiated**

4. (1) When a joint programme is initiated, the programme should be subjected to a scoping study -
- (a) to determine -
    - (i) the exact nature of the programme;
    - (ii) its primary objective;
    - (iii) its priority status;
    - (iv) timescales for implementation of the programme; and

- (v) key performance indicators and performance targets for implementing the programme;
- (b) to identify-
  - (i) the organs of state that will participate in implementing the programme;
  - (ii) the role of each of those organs of state in implementing the programme; and
  - (iii) the extent to which each of those organs of state will be involved in implementing the programme;
- (c) to determine the capacity required for each of those organs of state to implement the programme;
- (d) to determine the estimated cost of implementing the programme, including how and by whom implementation of the programme, or aspects of the programme, is to be funded and budgeted for; and
- (e) to identify a department best suited to act as the coordinating department for the programme.

(2) The timing of a scoping study referred to in subclause (1) should be aligned with the government's budget processes in order to enable the affected organs of state to comply with clause 15.

### **Scoping reports**

5. (1) A report should be compiled on the findings of a scoping study performed in terms of clause 4.

(2) The accounting officer of the coordinating department should manage the scoping report in respect of a joint programme.

### **Department responsible for scoping study and report**

6. (1) The Cabinet should mandate a national department to be responsible for carrying out a scoping study and preparing a scoping report on the study, if-



- (a) the national government is to participate in the implementation of the relevant joint programme;
- (b) two or more provincial governments are to participate in the implementation of the relevant joint programme; or
- (c) the relevant joint programme is to be implemented on an intersphere basis.

(2) The executive council of a province should mandate a provincial department to be responsible for carrying out a scoping study and preparing a scoping report on the study, if participation in the implementation of the relevant joint programme is to be confined to -

- (a) provincial organs of state in the province;
- (b) municipalities or municipal entities in the province; or
- (c) such provincial organs of state and municipalities or municipal entities.

*Part 2: Joint programme manager and joint programme steering committee*

Appointment of joint programme manager

7. (1) The executive authority of the coordinating department for a joint programme should appoint a person with qualifications, expertise and skills appropriate to, and or necessary for, the achievement of the primary objective of the joint programme as the joint programme manager.

(2) A joint programme manager appointed in terms of subclause (1) should, together with the joint programme steering committee, be responsible for overseeing the planning and implementation of the joint programme, including-

- (a) driving the planning and implementation process and making all logistical arrangements;
- (b) overseeing the management of the partnering protocol referred to in clause 14;

- (c) determining the human resource requirements for implementation of the joint programme and making recommendations to the appropriate authorities;
- (d) establishing a joint programme office and designating persons with appropriate skills to perform the work associated with the office;
- (e) assisting in budgeting arrangements in respect of the joint programme;
- (f) preparing documentation required for the joint programme;
- (g) facilitating communications between the joint programme steering committee, the Joint Panel of Executive Authorities and all stakeholders in respect of the joint programme;
- (h) giving regular progress reports to the Joint Panel of Executive Authorities on the implementation of the joint programme; and
- (i) handling disputes arising from the implementation of the joint programme, including the referral of such disputes for resolution in terms of the Intergovernmental Relations Framework Act.

(3) In performing the duties set out in subclause (2) a joint programme manager must take into account the scoping report referred to in clause 5.

### **Establishment and composition of joint programme steering committee**

8. (1) The executive authority of the coordinating department should establish a joint programme steering committee for the implementation of a joint programme.

(2) A joint programme steering committee should consist of -

- (a) the joint programme manager appointed as proposed in clause 7(1), who should also act as the chairperson of the committee;
- (b) an official representing each of the organs of state involved in the joint programme, nominated by that organ of state; and
- (c) any persons representing other stakeholders participating in the implementation of the joint programme.

(3) External consultants with expertise and skills appropriate and necessary for the achievement of the primary objective of the joint programme may be co-opted to a joint programme steering committee, as necessary.

#### Functions of Joint Steering Committee

9. A Joint Steering Committee is responsible for the implementation of a joint programme and should -
- (a) develop plans and strategies for the implementation of the joint programme;
  - (b) compile and submit regular progress reports to -
    - (i) the executive authority of the coordinating department; and
    - (ii) the Joint Panel of Executive Authorities; and
  - (c) assist the joint programme manager in performing any of the functions of joint programme manager proposed in clause 7(2).

#### Submission of progress reports

10. (1) A Joint Steering Committee should at regular intervals or at intervals as determined by the Joint Panel of Executive Authorities submit progress reports to the Joint Panel in respect of the implementation of a joint programme.

- (2) A progress report should -
- (a) state objectives and performance targets in respect of each role player / organ of state involved in implementation of the programme;
  - (b) evaluate the performance of every organ of state involved against those targets;
  - (c) bring any problems or difficulties experienced in respect of the implementation of the programme to the attention of the Joint Panel;
  - (d) bring any material variances from the partnering protocol to the attention of the Joint Panel;

## **Rules for internal procedures**

11. A joint programme steering committee should adopt rules to govern its internal procedures, including –

- (a) the functions of the chairperson;
- (b) procedures for the designation of a person to preside at a meeting in the absence of the chairperson;
- (c) procedures for the functioning of the committee;
- (d) the frequency of meetings and the manner in which the meetings should be convened and the agenda for meetings should be determined; and
- (e) procedures for the adoption of recommendations.

### ***Part 3: Joint Panel of Executive Authorities***

#### **Establishment of Joint Panel of Executive Authorities**

12. A Joint Panel of Executive Authorities consisting of the executive authorities of departments involved in the implementation of the relevant joint programme should –

- (a) ensure that a partnering protocol is drawn up in which –
  - (i) joint responsibility is assumed by the relevant departments for the implementation of the joint programme; and
  - (ii) the roles and responsibilities of each department involved in the implementation of the joint programme is set out, including performance targets;
- (b) oversee the implementation of the joint programme;
- (c) monitor the implementation of the joint programme by-
  - (i) considering progress reports submitted by the joint steering committee;
  - (ii) identifying any issues in the progress reports that might be problematic; and
  - (iii) instructing the joint programme steering committee to take preventive or corrective action in respect of any issues identified in the progress reports; and

- (d) intervene in the implementation of a joint programme if requested to do so by the joint programme manager or when the joint programme faces the risk of being compromised, including by sector interests.

#### Meetings of Joint Panel

13. (1) The executive authority responsible for the coordinating department

should -

- (a) convene meetings of the Joint Panel; and
- (b) determine the agenda for meetings.

(2) Suggestions for inclusion in the agenda for a meeting may be submitted to that executive authority.

#### *Part 4: Other matters*

##### Partnering protocols

14. Sector departments involved in the implementation of a joint programme should adopt a partnering protocol in which -

- (a) accountability should be assumed -
  - (i) jointly by all the relevant sector departments for the implementation of the joint programme; and
  - (ii) by each sector department for the performance of organs of state in its sector that are involved in the implementation of the joint programme;
- (b) the roles and responsibilities of each sector department should be set out in respect of the planning and implementation of a joint programme;
- (c) performance targets and timeframes should be agreed to by the relevant sector departments.

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**Joint programmes to be included in strategic and other plans**

**15.** An organ of state's involvement in a joint programme should be reflected -

- (a) in the case of a department, in that department's strategic plan;
- (b) in the case of a public entity listed in Schedule 2 to the Public Finance Management Act or a public entity which is a government business enterprise, in that entity's corporate plan referred to in section 52(b) of that Act;
- (c) in the case of a municipality, in that municipality's integrated development plan referred to in section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or
- (d) in the case of a municipal entity, in that entity's multi year business plan referred to in section 87(5)(d) of the Local Government: Municipal Finance Management Act, 2003.

**Budgeting for joint programmes**

**16.** Budgeting for joint programmes should be done in accordance with any applicable legislation and the requirements of the National Treasury.

NOTICE 493 OF 2007

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT, 2005  
(ACT NO. 13 OF 2005)

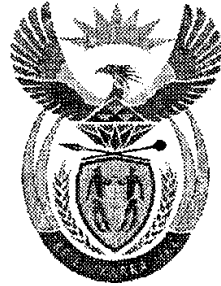
GAZETTE FOR PUBLIC COMMENT

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FHOLISANI SYDNEY MUFAMADI

MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT



**DRAFT**

**IMPLEMENTATION PROTOCOL GUIDE**



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## 1. Introduction

The Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005 - "the IGR Act") establishes a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations, and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes.

Chapter 3 of the IGR Act provides for organs of state<sup>1</sup> to enter into an implementation protocol as an Agreement where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depends on the participation of organs of state in different spheres of government<sup>2</sup>.

In November 2005, the Cabinet approved a Framework for Managing Joint Programmes in the Public Service ("the Framework"). The Cabinet also approved that the Framework be incorporated into the regulations and guidelines that may be issued in terms of Chapter 5 of the IGR Act.

The Framework further extends the principles of participation and co-ordination between organs of state in the different spheres of government, in terms of the IGR Act, to also include integration, participation and co-ordination of joint programmes within a particular sphere of government. The Framework defines joint programmes as "Those programmes that transcend the conventional organisational boundaries in planning, budgeting and implementation resulting in a number of departments/agencies/ministries responsible for one aspect of the programme, although none is responsible for it in its entirety".

At the January 2006 Cabinet Lekgotla, the Cabinet approved the development of templates for interdepartmental protocols to further strengthen the frameworks for intergovernmental relations.

## 2. Purpose of the Guide

Section 35(2) of the IGR Act specifies that an implementation protocol must be considered when -

- (a) the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been identified as a national priority;
- (b) an implementation protocol will materially assist the national government or a provincial government in complying with its constitutional obligations to support the local sphere of government or to build capacity in that sphere;

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<sup>1</sup> Organ of state means an organ of state as defined in section 239 of the Constitution.

<sup>2</sup> Spheres of Government means the National, Provincial and Local spheres of government.

- (c) an implementation protocol will materially assist the organs of state participating in the provision of a service in a specific area to co-ordinate their actions in that area; or
- (d) an organ of state to which primary responsibility for the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been assigned lacks the necessary capacity.

An implementation protocol may be considered to assist the national sphere of government with rendering support to the provincial sphere of government.

Section 35(3) of the IGR Act also specifies the aspects that must be covered in an implementation protocol. These aspects are incorporated into the Guide.

The Framework labelled joint programmes as having the following characteristics:

- (a) Programmes that require a cross-departmental involvement in the planning, budgeting and delivery of services.
- (b) A number of departments are often responsible for a specific aspect of the programme, but none is responsible for it in its entirety.
- (c) Programmes that require integration rather than mere coordination.

The purpose of the Guide is to consolidate the requirements in terms of the IGR Act and the Framework into a single document that could be practically applied when organs of state enter into an implementation protocol. The Guide is a generic tool that should be adapted for each protocol being prepared.

### 3. Definition and Purpose

An implementation protocol ("Protocol") is a document constituting a formal agreement between Parties. It also represents a code of conduct for the Parties to the Protocol. An implementation protocol is sometimes also referred to as a memorandum of understanding.

A Protocol aims to promote good conduct, integration, participation, co-operation and co-ordination between Parties and includes, but is not limited, to aspects such as policy development and implementation, the exercise of statutory powers, the performance of a statutory function, the development and provision of a service or product, the implementation of a government programme, or managing a joint programme or project. Without digressing from the requirements set out in the IGR Act or the Framework and to broaden the scope of application for practical reasons, the general purpose of a Protocol is - To conclude an agreement between organs of state within or between spheres of government regarding any matter to achieve a government objective.

Any organ of state may initiate the process for the conclusion of an implementation protocol after consultation with other affected organs of state (Section 35(5) of the IGR Act).

#### 4. Commonly Included Clauses in a Protocol

Consistent/y, institutions are faced with the challenge of developing Protocols that adequately address the needs of a variety of stakeholders. This section of the Guide describes the commonly included clauses that are necessary to prepare Protocols.

The commonly included clauses mentioned below are divided into two subsections as far as possible. The details outlined in the **Instruction** section provide the specific information to be addressed in that particular section. The information provided in the **Guidance** section is provided to promote understanding of the topic and its usefulness.

Annexure A contains an Implementation Protocol Template.

##### 4.1 Preamble

Instruction. Identify and state any challenges that may be experienced and state how these challenges are to be addressed.

Guidance. Wording that typically could be used to state the challenges and how they are to be addressed are:

1. "Having regard to" - previous events or circumstances that are being honoured (esteemed or respected or well regarded), feelings of friendship and esteem, close connection, an attitude of admiration or co-operation.
2. "Desiring to" - fulfil particular expectations or to change an unsatisfied state, and with strong intention within a framework of co-operation amongst the Parties.
3. "Recognising the" - to know and accept that something is legal, true or important.

##### 4.2 Definitions

(Clause 1 of the Implementation Protocol Template - Annexure A)

Instruction. Provide definitions to describe acronyms, abbreviations or terms used in the Protocol.

#### 4.3 Purpose of Protocol

(Clause 2 of the Implementation Protocol Template – Annexure A)

Instruction. Section 35(2) of the IGR Act contemplates four instances when an implementation protocol must be considered. Without reproducing what is stated there, the Protocol must make provision for a statement as to why the Protocol is considered necessary and then state the exercise of a particular power, and/or the performance of a particular function. All parties should be clear as to what the driving force behind the Protocol is.

Flowing from this statement, the aims and objectives that the Protocol should achieve and an outline of the priorities must be stated.

#### Guidance.

1. "Purpose / Aim" means the broad, long-term purpose or aim(s) of the Protocol.
2. "Objective" means a concrete statement describing what the Protocol intends to achieve in support of the purpose/aim. The objective should be written at a low level so that it can be evaluated at the conclusion of a project to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/ achievable, realistic and timebound.
3. "Priority" refers to the relative importance of the outcomes in order of importance or urgency.
4. If necessary, this clause of the Protocol could also provide for terms and conditions that should apply or principles (e.g. principles of co-operation) that Parties should observe to achieve the desired aims and outcomes.

#### 4.4 Parties to Protocol

(Clause 3 of the Implementation Protocol Template - Annexure A)

Instruction. State all the Parties to the Protocol.

Guidance. At this stage it is important to state the authorised signatories to the Protocol.

The implementation of a programme involving local government may require political support from an Executive Mayor. The Protocol Template should accordingly be amended to accommodate the role of an Executive Mayor as a party and signature to the Protocol.

#### 4.5 Roles and Responsibilities

(Clause 4 of the Implementation Protocol Template - Annexure A)

#### Instruction.

1. State the role and responsibilities of the political principal.
2. State the role and responsibilities of the principal department.
3. State the role and responsibilities of each Party to the Protocol.

4. If necessary, state the role and responsibilities of other key stakeholders.

#### Guidance.

1. A political principal would promote, facilitate and co-ordinate aspects of a political nature that may be required in terms of the Protocol and to support the work of the various intergovernmental forums established in terms of the IGR Act. An example would be cases where policy is jointly developed in a particular area and a political principal (Cabinet Minister) would promote and lead particular aspects in the relevant Cabinet Committee and the Cabinet. A political principal may not necessarily be a signatory to the Protocol but still has an important role to play to initiate and promote aspects pertaining to the Protocol.
2. The principal department would be responsible for overall co-ordination and facilitation of the Protocol. An example would be the department leading a particular Directors-General Cluster or a component of Government's Programme of Action. This department should preferably be a department within the portfolio of the political principal to ensure appropriate co-ordination and support to the political principal. In the case of Cluster projects, the Protocol should give guidance as to who should lead.
3. A key stakeholder is not a signatory to the Protocol but may have an important role to play to promote aspects pertaining to the Protocol. The Parties may not have direct control/influence over key stakeholders or their decision-making, which could lead to delays in implementing the Protocol. Key stakeholders are included in this clause to ensure that the Parties can manage their involvement. An example would be participation of the Parties in the relevant intergovernmental forum or consultation with organised Labour to promote a particular policy.

#### 4.6 **Workplan**

(Clause 5 of the Implementation Protocol Template – Annexure A)

Instruction. The Parties must agree on a workplan to implement the Protocol. The Workplan is an instrument to measure the effective implementation of the Protocol. The Workplan must state the following minimum information:

1. Objectives.
2. Measurable Indicators.
3. Outcomes and/or Outputs.
4. Allocated Responsibilities.
5. Timelines.
6. Budget.

Guidance: It is not the intention to unnecessarily include project management principles in this guide, but rather for Parties to agree on the definitions and terminology used in the workplan:

1. "Objective" means a concrete statement describing what the Protocol aim(s) are trying to achieve. The objectives should be written at a low level so that it can be evaluated at the conclusion of a project to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/achievable, realistic and timebound.
2. A "Measurable Indicator" indicates progress (or lack thereof) towards a result. It is a specific, observable, and measurable characteristic that shows the progress toward achieving a specified objective.
3. "Outcome" means the result or the effect that the objective intends to achieve.
4. "Output" means the desired or anticipated measurable product or result that is normally tangible.
5. "Responsibility" means the department responsible for the stated outcome or output.
6. "Timeline" means the end date on which the stated outcome or output should be achieved.
7. "Budget" means the amount committed to achieve the stated outcome or output.
8. The Workplan, duly initialised by the Parties, should be attached to the Agreement.
9. The Parties should also supplement the Workplan with their individual departmental workplans.

Annexure B contains an example of a Workplan.

#### 4.7 **Contributing Resources**

(Clause 6 of the Implementation Protocol Template - Annexure A)

Instruction. The Parties must determine, agree on and state the financial and non-financial resources and associated costs each will contribute in terms of the Protocol.

An inventory of assets, liabilities, contractual rights and obligations must be compiled and attached to the Agreement

Each Party must ensure that its financial contribution is authorised for the purpose of implementing the Protocol.

Guidance. The following types of resources could be considered:

1. Personnel and human resource management matters.
2. Funding, service and operating costs and financial arrangements. The Parties should be clear how the **costs** of the co-operation should be borne by the Parties through contributions by the Parties. This part of the Protocol should include information describing the costs for services, identifying the methods to be used to allocate the costs of services and operating costs, providing a detailed description of the payment system and identifying the cost-sharing methods for all partners.
3. Procurement of services and service providers (consultants). Individual departments should be responsible for procuring service providers.
4. Assets such as facilities, equipment, property and supplies.
5. Accommodation and travel arrangements.
6. Legal expertise.
7. Rent.
8. Identify assumptions and risks of the programme! project and the steps to be taken to manage the programme.

#### **4.8 Managing the Protocol**

(Clause 7 of the Implementation Protocol Template - Annexure A)

Instruction. The Parties must determine, agree on and state the institutional mechanisms, including their composition and functions that are necessary for the effective management and implementation of the Protocol.

Guidance. The following institutional and management instruments could be considered:

1. Oversight mechanisms and procedures to monitor and review the effective implementation of the Protocol. Measures to annually review mum-year Workplans or the Protocol.
2. Decision-making mechanisms and procedures.
3. Standard operating mechanisms and procedures. These include technical committees, liaison, consultation and communication required or permitted under the Protocol.
4. Project management mechanisms and procedures. These include developing and managing time-schedules, reporting, secretarial services, data collection, record keeping and document management.
5. Management of possible conflicts that may arise with respect to contributing to cluster projects versus the department's line function responsibilities.
5. The appropriate intergovernmental forum may co-ordinate the implementation of the Protocol (Section 35(6) of the IGR Act).



#### 4.9 **Good Faith** and Reasonableness

(Clause 8 of the Implementation Protocol Template - Annexure A)

Instruction. The Parties must undertake to act in good faith and reasonably and warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the powers or functions of each other in the implementation of the Protocol.

#### 4.10 **Dispute Resolution**

(Clause 9 of the Implementation Protocol Template – Annexure A)

Instruction. In the spirit if the IGR Act, the Parties have a duty to avoid disputes and to settle disputes without resorting to judicial proceedings. The Protocol must specify dispute-settlement mechanisms and procedures should disagreement or dispute arise in the:

1. Implementation of the Agreement.
2. Interpretation of the Agreement.
3. Non-compliance with the Agreement.
4. Exercising statutory powers or performing statutory functions.

Guidance. It is suggested that the following aspects be considered to settle disagreement or disputes:

1. The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation. A disagreement or dispute must be initiated in writing.
2. If the difference remains unresolved, any Party may refer it for arbitration by an arbitrator agreed to by the Parties.
3. If the Parties fail to reach agreement on the appointment of an arbitrator, the political principal must nominate an arbitrator. If the political principal is a Party to the Protocol, the Cabinet member responsible for provincial and local government must be requested to nominate an arbitrator.
4. The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.
5. The arbitrator's determination is final and binding on the Parties.
6. The Parties to the disagreement/dispute must share the costs of the arbitration equally.
7. If a Party is not satisfied with the determination of the arbitrator, Chapter 4 of the IGR Act will apply to settle a dispute.
8. The Arbitration Act, 1965 (Act 42 of 1965) does not apply to settle disputes.

Despite the intergovernmental requirement that organs of state must strive to avoid judicial proceedings against each other, current legislation may contemplate criminal proceedings against parties that transgress certain legislative requirements. In the event that there is a Protocol between two or more parties where one party has the power to institute criminal or civil action against another party, the Protocol must:

1. Acknowledge such a fact.
2. Within the framework of existing legislation, specify intergovernmental processes and procedures that will precede the institution of criminal or civil actions.

#### 4.11 Confidentiality

(Clause 10 of the Implementation Protocol Template - Annexure A)

Instruction. All Parties must treat information furnished by any other Party or another person for purposes of the execution of the Protocol, as confidential.

#### 4.12 Duration, Execution and Amending the Agreement

(Clause 11 of the Implementation Protocol Template - Annexure A)

Instruction. The Protocol must specify:

1. The date of its commencement.
2. The duration of the Protocol.
3. That it will remain in effect until a date stipulated in the Protocol or terminated through mutual agreement of all the Parties, in writing.
4. That the Protocol constitutes the whole agreement.
5. The Protocol may be amended in terms of an Addendum to the Protocol.
6. An Addendum to the Protocol must be in writing and signed by all the Parties.

Guidance. It is suggested that the following aspects be considered as part of the wording contained in the Protocol:

1. The Protocol should commence on the date of its signing and will remain in effect until a date stipulated in the Protocol or terminated by all the Parties in writing.
2. The Protocol constitutes the whole agreement between the Parties relating to the subject matter of the Protocol.
3. The Parties should agree that there are no other conditions, representations, whether oral or written and whether expressed or implied, applicable to the Protocol, save for those contained in the Protocol.
4. No amendment, alteration, addition or variation of the Protocol should be of any force or effect unless reduced to writing and signed by the Parties.

#### **4.13 Domicilium**

(Clause 12 of the Implementation Protocol Template -- Annexure A)

Instruction.

1. Parties must state their physical addresses as their *domicilia citandi et executandi* for all purposes under the Protocol.
2. Notice of change of address must be given in writing by the Party concerned and delivered by registered mail to the other Party(s).

#### **4.14 Miscellaneous Provisions**

(Clause 13 of the Implementation Protocol Template - Annexure A)

Instruction. Other provisions or special circumstances that are important to the success of implementing the Protocol that do not fall under one of the other headings already discussed should be included in the miscellaneous clause of the Protocol.

#### **4.15 Legal Certification**

Instruction.

1. The head of legal services of each Party must ensure that the Protocol is consistent with the exercise of statutory powers or the performance of statutory functions of that Party.
2. The head of legal services, or his/her duly authorised representative, of the Principal Department, after consultation with the heads of legal services of the other Parties must certify in the Protocol that the Protocol is consistent with the exercise of statutory powers or the performance of statutory functions of the Parties to the Protocol.

#### **4.16 Signatures of the Parties**

Instruction. The Protocol concludes with the signature page. The duly authorised persons representing the Parties must confirm their acceptance of its terms by signing the Protocol.

Signatories must append their signatures at the right-hand corner of each page, except for the signature page **where** they sign in full.

## 5. Conclusion

This Guide is intended to be a living document, which should be updated with the best practice experiences of departments and be shared by all. The Guide will be accessible online. Departments are invited to share their best practice experiences with us and are welcome to contact us for further information. Contact particulars are as follows:

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Preamble

The Parties:

1.1 Having regard to .

1.2 Desiring to .

1.3 Recognising the .

Now therefore the Parties agree as follows:

1. Definitions

For the purpose of this Protocol, unless the context indicates otherwise -

(a) "this Protocol " means the agreement set out in this document and the Annexure/s attached hereto;

(b) " " means ;

2. Purpose of Protocol

2.1 The aims of this Protocol are -

(a) .....

(b) .....; and

(c)

2.2 The objectives and priorities of this Protocol are -

(a) .....,

(b) .....; and

(c)

2.3 The Parties agree to act in common in pursuit of the aims and objectives of this Protocol which shall be implemented in accordance with the following terms and conditions / principles -

- (a) -----,
- (b) .....; and
- (c)

### 3. Parties to Protocol

The Parties to this Protocol are as follows -

- (a) the ..... (*full name of department*) ..... as represented by the ..... (position or portfolio) .....
- (b) the ..... (*full name of department*) ..... as represented by the ..... (position or portfolio) ; and
- (c) the .....

### 4. Roles and Responsibilities

4.1 The political principal concerning this Protocol is the ..... (*name of political portfolio*)..... The role and responsibilities of the political principal are -

- (a) .....
- (b) .....; and
- (c)

4.2 The role and responsibilities of the Parties are:

- (a) Name of principal department: ..
  - (i) ..
  - (ii) ; and
  - (iii) ..
- (b) Name of department: .
  - (i) ..
  - (ii) ; and
  - (iii) ..
- (c) Name .

4.3 The role and responsibilities of other key stakeholders are:

(a) Name of institution ..'  
(e.g., *Intergovernmental forum*)

(i) ..

(ii) , ; and

(iii) ..

(b) Name of institution .

(i)

(ii) .....; and

(iii)

## 5. **Workplan**

5.1 The Parties agreed to the Workplan attached as Annexure A.

5.2 The Parties undertake to supplement the Workplan with their individual departmental workplans.

5.3 Individual departmental workplans are attached as Annexure B.

## 6. **Contributing Resources**

The Parties agree to contribute the financial and non-financial resources and associated costs as follows:

(a) Name of principal department .

(i) .

(ii) ;and

(iii) .

(b) Name of department ' ..

(i) .

(ii) ; and

(iii) .

(c) Name ..



## 7. Managing Protocol

The Parties undertake to establish the following institutional mechanisms, including their composition and functions, for the effective management and implementation of this Protocol -

- (a) .....
- (b) .....; and
- (c)

## 8. Good Faith and Reasonableness

8.1 In their dealings with each other for purposes of this Protocol, the Parties -

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the powers or functions of each other.

8.2 This Protocol does not make any legal or otherwise enforceable commitments on behalf of any of the Parties, nor does it in any way limit any statutory powers and functions of the Parties.

## 9. Dispute Resolution

9.1 Any disagreement or dispute arising between the Parties with regard to implementation, application, interpretation or breach of this Protocol shall be settled as follows:

- (a) A disagreement or dispute must be initiated in writing.
- (b) The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation.
- (c) If the difference remains unresolved, any Party may refer it for arbitration by an arbitrator agreed to by the Parties.
- (d) If the Parties fail to reach agreement on the appointment of an arbitrator, the political principal must nominate an arbitrator. If the political principal is a Party to the Protocol, the Cabinet

member responsible for provincial and local government must be requested to nominate an arbitrator.

- (e) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.
- (f) The arbitrator's determination is final and binding on the Parties.
- (g) The Parties to the disagreement/dispute must share the costs of the arbitration equally.
- (h) If a Party is not satisfied with the determination of the arbitrator, Chapter 4 of the IGR Act will apply to settle a dispute.
- (i) The Arbitration Act, 1965 (Act 42 of 1965) does not apply to settle disputes.

9.2 In the event that a Party has the power to institute criminal or civil action against another party, in terms of legislation, the Protocol must:

- (a) State such a fact.
- (b) Within the framework of existing legislation, state inter-governmental processes and procedures that will precede the institution of criminal or civil actions.

## 10. Confidentiality

10.1 Any Party shall treat information furnished by another Party for purposes of the execution of this Protocol, as confidential.

10.2 Subject to this clause, the Party(ies) so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.



**Legal Certification**

To the best of my knowledge, this Protocol adheres to acceptable legal rules and is consistent with the exercise of statutory -powers or the performance of statutory functions of the Parties to this Protocol.

This Protocol is hereby certified and signed by \_\_\_\_\_ of the Department of \_\_\_\_\_, in his/her capacity as the \_\_\_\_\_ (having been duly authorised thereto) at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200....

**NAME:** \_\_\_\_\_

**DEPARTMENT OF** \_\_\_\_\_

**Signatures of the Parties**

Thus done and signed by \_\_\_\_\_ of the Department of \_\_\_\_\_, in his/her capacity as the \_\_\_\_\_ (having been duly authorised thereto) at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200...

**NAME:** \_\_\_\_\_

**DEPARTMENT OF** \_\_\_\_\_

As Witnesses:

- 1.
- 2.

Thus done and signed by \_\_\_\_\_ of the Department of  
....., in his/her capacity as the ..  
(having been duly authorised thereto) at \_\_\_\_\_ on this \_\_\_\_\_ day of  
..... 200...

..  
**NAME:** ..  
**DEPARTMENT OF** ..

As Witnesses:

- 1.
- 2.

**ANNEXURE B - EXAMPLE WORKPLAN**

**PURPOSE / AIM<sup>1</sup>;**

Objective <sup>2</sup>	Indicator <sup>3</sup>	Outcome <sup>4</sup> / Output <sup>5</sup>	Responsibility	Timelines	Budget

<sup>1</sup> Purpose / Aim(s) means the broad, long-term purpose or aim of the Protocol.

<sup>2</sup> Objective means a concrete statement describing what the Protocol aim(s) is trying to achieve to support the purpose/aim. The objective should be written at a low level so that it can be evaluated at the conclusion of a Protocol to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/achievable, realistic and timebound.

<sup>3</sup> An indicator indicates progress (or lack of) toward a result. It is a specific, observable, and measurable characteristic that shows the progress a program is making toward achieving a specified objective.

<sup>4</sup> Outcome means the result or the effect that the objective intends to achieve.

<sup>5</sup> Output means the desired or anticipated measurable product or result normally tangible.