

GRANT AGREEMENT

between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED



and

CITY OF JOHANNESBURG



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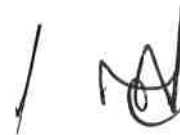
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1. PARTIES

1.1. The Parties to this Agreement are:

1.1.1. **The Development Bank of Southern Africa Limited**, a development finance institution reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997, as the implementing agent and administrator of the Green Fund as set out in the Memorandum of Agreement (the "DBSA"); and

1.1.2. **The City of Johannesburg**, a municipality established or deemed to be established in terms of section 12 of the Local Government Municipal Structures Act, as amended from time to time; (referred to as "**Executing Agency**" in this document).

2. DEFINITIONS

2.1. The headings to the clauses, schedules and annexures of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause, schedule or annexure hereof.

2.2. Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1. "**Accounting Officer**" means the Municipal Manager or his or her delegate;

2.2.2. "**Agreement**" means this Grant agreement including any schedules or annexures hereto;

2.2.3. "**Applicable Laws**" means all applicable laws, ordinances, regulations, judgments and orders of any competent court or executive authority having the force of law in the Republic of South Africa and/or other applicable and competent jurisdiction;

2.2.4. "**Application**" means the Project Identification Form submitted to the GEF Council in respect of the Project;

2.2.5. "**Approval Date**" means the date upon which the Application was approved by the DBSA committee;

2.2.6. "**Availability Period**" means a period of 60 months from the Signature Date;



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- 2.2.7. "**Business Day**" means any day other than a Saturday, Sunday or a day which is a statutory public holiday in the Republic of South Africa;
- 2.2.8. "**Coercive Practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a Party;
- 2.2.9. "**Collusive Practice**" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 2.2.10. "**Confidential Information**" means all information confidential to a Party, to the extent that it is not freely and publicly available, commercial, financial, technical, scientific and research information; trade secrets, passwords, or other secret codes, information disclosed with the permission of third parties in which the third parties have confidentiality rights, information legally protected from disclosure, any information the unauthorised disclosure of which could be expected to cause harm or risk to the Party having disclosed the confidential information and any other information designated by such disclosing Party as confidential or which is manifestly confidential;
- 2.2.11. "**Corrupt Practice**" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another;
- 2.2.12. "**Disbursement**" means any amount draw down amount requested by the Executing Agency and disbursed by the DBSA to a Professional Services Provider in terms of the Project Implementation Plan attached herein as Schedule 4 respectively, and "**Disbursed**" shall be construed accordingly;
- 2.2.13. "**Endorsement Date**" means the date the Project was approved by the GEF CEO in a letter dated 8 May 2017 appended herein as Schedule 5;
- 2.2.14. "**Event of Default**" means any one or more events or circumstances as envisaged in clause 17;
- 2.2.15. "**Executing Agency**" means the City of Johannesburg;
- 2.2.16. "**Executing Agency Contribution**" means an amount of \$ 4,220,000 (four million two hundred and twenty thousand US Dollars only) to be deposited into the Project Bank Account on or before the first Disbursement at the prevailing rate;



- 2.2.17. "**FICA**" means the Financial Intelligence Centre Act, 2001 and all notices and regulations passed thereunder;
- 2.2.18. "**Financial Year**" means each year commencing on 01 July of each year and ending on 30 June of the following year;
- 2.2.19. "**GAAP**" means the Generally Accepted Accounting Principles as approved from time to time by the International Accounting Standards Committee;
- 2.2.20. "**GEF**" means the Global Environmental Facility;
- 2.2.21. "**Grant**" means the grant funding made available by the DBSA in support of the Executing Agency under this Agreement in an aggregate sum not exceeding the Grant Amount;
- 2.2.22. "**Grant Amount**" means an amount of \$ 4,093,875 (four million, ninety three thousand, eight hundred and seventy five US Dollars) inclusive of each amount value added tax and all applicable taxes thereon, at the prevailing rate;
- 2.2.23. "**IFRS**" means the International Financial Reporting Standards as approved from time to time by the International Accounting Standards Board;
- 2.2.24. "**Insolvency Event**" means, in relation to any person, any of the following events or circumstances:
- 2.2.24.1. an order or declaration is made or a meeting of the directors or shareholders of such person is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up or dissolution (whether provisional or final) of it or its estate or placing it in business rescue;
- 2.2.24.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared or takes effect by operation of law in respect of or affecting all or a material part of its indebtedness;



- 2.2.24.3. is "financially distressed" as stipulated under the Municipal Finance Management Act 56 of 2003 or is reasonably likely to become "financially distressed" within the immediately ensuing 12 (twelve) month period;
- 2.2.24.4. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
- 2.2.24.5. any receiver, administrative receiver, administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, practitioner, business rescue practitioner or the like is appointed in respect of it or any material part of its assets or it requests any such appointment;
- 2.2.24.6. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
- 2.2.24.7. it takes or any affected person takes any steps to invoke business rescue proceedings; or
- 2.2.24.8. enforcement of any security interest over any assets;
- 2.2.25. **"Intellectual Property"** means any intellectual property, including but not limited to all technical, commercial, financial and marketing information and know-how, including all concepts, specifications, data, diagrams, chemical structures, manufacturing and production techniques and designs, specifications and formulae, products, systems, methods, processes, formulae, memoranda, reports, manuals, and computer modelling; all inventions, designs, trade-marks and other works, whether registrable or the subject matter of an application for such registration or of copyright or not; as well as all statutory intellectual property, comprising all patents and trade-marks, whether registered or being or yet to be applied for, and all copyright in any works, including but not limited to, literary works and computer programmes; relating to any research, development and/or Commercialisation;



- 2.2.26. **"Material Adverse Effect"** means any event or combination of events and/or circumstances which, in the opinion of the DBSA, has or might reasonably be expected to have a material adverse effect on:
- 2.2.26.1. the Projects, business, operations, property, condition (financial or otherwise) or prospects of the Executing Agency; and/or
 - 2.2.26.2. the ability of the Executing Agency to perform its obligations in terms of this Agreement, and/or
 - 2.2.26.3. the ability of the Professional Services Provider to perform its obligations as more fully set out in the Project Implementation Plan; and/or
 - 2.2.26.4. the ability of the Executing Agency to exercise and enforce any right granted or intended or purported to be granted to it under this Agreement; and/or
 - 2.2.26.5. the validity, enforceability and/or legality of this Agreement or any other Project document;
- 2.2.27. **"Minimum Information"** means the minimum information to be provided with the Disbursement Request as set out in Schedule 2 all in form and substance satisfactory to the DBSA;
- 2.2.28. **"Parties"** means the DBSA and the Executing Agency;
- 2.2.29. **"Potential Event of Default"** means any event or circumstance which, with the giving of notice, lapse of time or expiry of a grace period or making of any determination under this Agreement or fulfilment of any other condition, would be or constitute an Event of Default;
- 2.2.30. **"Project"** means building a resilient and resource-efficient Johannesburg: Increased access to urban services and improved quality of life as described more fully in the Project Implementation Plan ;
- 2.2.31. **"Project Bank Account"** means the ring-fenced bank account to be opened by the DBSA exclusively for the Purpose into which the Grant Amount and the Executing Agency's Contribution shall be deposited and from which the draw-downs shall be paid and all transactions related to the Purpose shall be operated;



- 2.2.32. "**Project Budget**" means the budget which sets out all expenses related to the Project, submitted to and approved in writing by the DBSA, as set out in the Project Implementation Plan;
- 2.2.33. "**Project Completion Date**" means the date upon which the Project is expected to be finally completed, as set out in the Project Implementation Plan;
- 2.2.34. "**Project Completion Report**" means the report to be prepared by the Project Manager in consultation with the DBSA and the Executing Agency following the Project Completion Date and approved in writing by the DBSA for purposes of Project closure;
- 2.2.35. "**Project Implementation Plan**" means the implementation plan prepared by the Professional Service Providers in consultation with the Executing Agency and approved in writing by the DBSA setting out the Project deliverables against which to measure the progress of the Project and the Project Budget accompanied by a Disbursement Schedule, including any amendments thereof as may be agreed in writing between the Parties which shall be appended to this Grant Agreement in fulfilment of clause 1.7 of Schedule 1 (Conditions Precedent);
- 2.2.36. "**Professional Service Providers**" means the service providers appointed by the DBSA and the Executing Agency to develop a Biodegradable waste management strategy, pilot waste segregation at source, conduct full feasibility studies for priority projects as identified in the biodegradable waste management strategy, the engineering, procurement, construction, commissioning and operation of the biogas plant, implement gender mainstreaming strategies, undertake data collection and baseline and audits;
- 2.2.37. "**Project Director**" means the authorized representative of the Executing Agency;
- 2.2.38. "**Project Manager**" means a manager appointed by the DBSA to manage the Project Management Unit;
- 2.2.39. "**Project Management Unit**" means a unit established by the DBSA tasked with the role of providing overall operational management for the successful execution and implementation of the Project.
- 2.2.40. "**Project Steering Committee**" means the committee established by the DBSA and shall have representatives from the Executing Agency and UNEP, to oversee the implementation of the Project as provided under clause 10;



- 2.2.41. "**Purpose**" means utilising the Grant Amount solely for payment of the Project expenses as set out in the Project Budget;
- 2.2.42. "**Permitted Recipients**" means employees, directors, officers, professional advisors, financiers and consultants of the Executing Agency;
- 2.2.43. "**Repeating Representations**" means each of the representations set out in Clauses 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, and 13.15;
- 2.2.44. "**Signature Date**" means the date upon which this Agreement is signed by the Party signing last, provided that all Parties sign this Agreement;
- 2.2.45. "**Taxes**" means all taxes (including value added tax), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and "**Tax**" and "**Taxation**" shall be construed accordingly;
- 2.2.46. "**Termination Date**" means the date on which the Project has reached Project Completion Date and the Executing Agency has no further actual or contingent obligation in respect of the Projects;
- 2.2.47. "**Terminal Disbursement Date**" means the last Disbursement date referred to in the Disbursement Schedule;
- 2.2.48. "**UNEP**" means the United Nations Environment Programme (hereinafter referred to as "UN Environment", an international inter-governmental organization established by the General Assembly of the United Nations, represented by the Director of its Economy Division.

3. INTERPRETATION OF AGREEMENT

- 3.1. Any reference in this Agreement to:
- 3.1.1. an amendment includes a supplement, novation or re-enactment and amended is to be construed accordingly;
- 3.1.2. Law shall be construed as any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, directive, requirement, request or guideline (whether or not having the force of law but, if not having the force of



- law, is generally complied with by the persons to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court and the common law, as amended, replaced, re-enacted, restated or reinterpreted from time to time;
- 3.1.3. a **month** means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one;
- 3.1.4. a **schedule** shall, subject to any contrary indication, be construed as reference to an appendix to this Agreement.
- 3.2. In this Agreement, unless the context otherwise indicates:
- 3.2.1. all words and expressions referring to any one gender shall be capable of being construed as a reference to the other genders;
- 3.2.2. the words signifying the singular shall include the plural and vice versa;
- 3.2.3. a reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;
- 3.2.4. where figures are referred to in numerals and in words in this Agreement, if there is any conflict between the two, the words shall prevail;
- 3.2.5. words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement;
- 3.2.6. words and phrases used in this Agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods, or services shall be construed in accordance with the applicable statute or regulations; and
- 3.2.7. headings of clauses and schedules are for convenience only and shall not govern or affect the interpretation, modify or amplify the terms within this Agreement, nor any clause or appendix thereof.
- 3.3. In the event of a conflict between the provisions of this Agreement and those of its schedules, the provisions of this Agreement will supersede those of its schedules.



- 3.4. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.5. In the event that a day for performance of any obligation in terms of this Agreement falls on a day that is not a Business Day, the day for performance of the obligation shall be the next Business Day.

4. INTRODUCTION

- 4.1. The Executing Agency has applied to the DBSA for GEF support by submitting the Application. The Application was approved by GEF on the Endorsement Date and by the DBSA on the Approval Date. The Executing Agency intends that the Grant be used for the Purpose, all on the terms and conditions contained in this Agreement.
- 4.2. The main objective of the Project is to foster-city level resilience, resource efficiency, emissions, reductions and other co-benefits through area-based pilot demonstrations, systems analysis (food), and improved integrated planning.
- 4.3. The Parties agree to make available funding for the Project as outlined in this Agreement.
- 4.4. This Agreement records the terms and conditions for the cooperation of the Parties in the implementation of the Project.

5. GRANT

- 5.1. Subject to the terms of this Agreement, the DBSA makes available the Grant equal to the Grant Amount.
- 5.2. The Grant shall be solely used for the Purpose.

6. CONDITIONS PRECEDENT AND CONDITIONS OF DISBURSEMENTS

6.1. Conditions Precedent

- 6.1.1. All rights and obligations of the Parties under this Agreement shall be subject to the DBSA notifying the Executing Agency that it has received the documents and evidence set out in Schedule 1 ("**Conditions Precedent**"), in form and substance satisfactory to the DBSA.



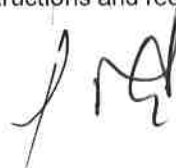
- 6.1.2. The DBSA may, at the request of the Executing Agency, in its discretion, on written notice to the Executing Agency waive any of the Conditions Precedent (where capable of being waived). The DBSA shall promptly notify the Executing Agency upon being satisfied that all of the Conditions Precedent have been fulfilled or waived, as the case may be.

6.2. Disbursements

- 6.2.1. The DBSA shall manage the Disbursement process. However, the obligation of the DBSA to make any Disbursement in terms of this Agreement is subject to the fulfilment of the following conditions:
- 6.2.1.1. no Event of Default or Potential Event of Default having occurred and/or is continuing; and
 - 6.2.1.2. the representations and warranties made in terms of this Agreement by the Executing Agency are true and correct in all respects; and
 - 6.2.1.3. the Disbursement (or any part thereof) is not a reimbursement of, or to be used for the benefit of any Person who is prohibited from doing business with the Government of the Republic of South Africa.

6.3. Disbursement Procedure

- 6.3.1. Subject to the terms and conditions of this Agreement, the DBSA shall make Disbursements to the Professional Services Provider in accordance with the terms of this Agreement.
- 6.3.2. The DBSA shall make the Disbursements to the Professional Services Providers (and to no third party) in South African Rand following receipt of a Disbursement Request from the Accounting Officer or his or her delegate together with the corresponding invoice from the Professional Services Provider.
- 6.3.3. The Disbursement Date shall be a Business Day within the Availability Period and within 30 (thirty) Business Days of a DBSA approved Disbursement Request.
- 6.3.4. Notwithstanding anything to the contrary herein contained, the DBSA may validly act on all information, instructions and requests contained in or attached



to a Disbursement Request without liability or responsibility to check the accuracy of such information.

6.4. The Executing Agency hereby acknowledges and agrees that all Disbursements shall constitute valid Disbursements made by the DBSA to the Professional Services Provider, the benefit of which shall have been received by the Executing Agency. It is expressly recorded herein that the Executing Agency authorises the DBSA to make Disbursements directly to the Professional Services Provider in terms of the appointment letter attached herewith as Schedule 5.

6.5. If any monies are Disbursed by the DBSA in terms of this Agreement in the mistaken belief that all of the Conditions Precedent or Disbursement conditions, as the case may be, have been fulfilled or waived in accordance with this Agreement and it is subsequently discovered that not all the Conditions Precedent or the Disbursement Conditions have been fulfilled or waived, then the DBSA, acting reasonably, reserves the right to withhold the next Disbursement until such time as the relevant Condition Precedent or Disbursement Condition has been fulfilled or waived.

6.6. **Limitation**

6.6.1. Notwithstanding anything provided in this Agreement, the DBSA shall only be obliged to make a Disbursement on the Project:

6.6.1.1. if the DBSA is satisfied with the outcome of its consideration of a Disbursement Request submitted by the Accounting Officer (or his or her delegate) of the Executing Agency.

6.6.2. The Disbursement Request shall be considered by the DBSA:

6.6.2.1. according to satisfactory achievement of agreed milestones;

6.6.2.2. on the basis that proforma invoice of the service provider is approved by the Project Steering Committee(PSC); and

6.6.2.3. against the Project cash-flows to date and Disbursement Schedule.

7. **DURATION**

The Parties agree that subject to:

7.1 The fulfilment or waiver, as the case may be, of the Conditions Precedent;

7.2 There being no Event of Default or Potential Event of Default,

7.3 This Agreement shall commence on the Effective Date and shall continue until the Termination Date.

8. ROLES AND RESPONSIBILITIES OF THE DBSA

- 8.1. The role and responsibility of the DBSA shall include but not be limited to the following activities in relation to the Project:
- 8.1.1. facilitating the Disbursement of the Grant in terms of the provisions of this Agreement;
 - 8.1.2. Procure in consultation with the Project Steering Committee the Professional Services Providers to conduct all outstanding project activities that the Executing agency hasn't procured ;
 - 8.1.3. Appoint a Project Manager;
 - 8.1.4. ensuring that the deliverables are completed by the Professional Service Providers within the timeframes agreed upon as set out in the Project Implementation Plan;
 - 8.1.5. ensuring any interest earned or generated, in respect of the Project Bank Account, is reinvested into the Project;
 - 8.1.6. ensuring that the Project Budget is adhered to;
 - 8.1.7. ensure that the audit certificate, verifying all the expenditures, is available as and when the Project audit is completed by the Auditors;
 - 8.1.8. ensure that the Professional Services Providers carry out the Project with due diligence and efficiency;
 - 8.1.9. ensure that a Project Steering Committee (PSC) is and meets at regular intervals suitable to the duration of the Project. The PSC is to provide strategic oversight over the implementation of the project and is to be chaired by a senior official designated by the DBSA;
 - 8.1.10. Provide guidance to the Executing Agency on GEF and DBSA project cycle requirements, milestones and targets;
 - 8.1.11. periodically reviewing the Project and outlining any discrepancies in respect of the Project Implementation Plan, which the Executing Agency is obliged to rectify;



- 8.1.12. reviewing the Project Progress Reports submitted by the Project Manager to ensure that the Project is progressing in accordance with this Agreement;
 - 8.1.13. perform the liaison function with the GEF Secretariat on the project in coordination with UNEP;
 - 8.1.14. if the DBSA, in its sole discretion deems necessary, undertaking periodic on-site visits to the Project to verify that progress of the Project;
 - 8.1.15. ensuring and maintaining on-going communication with the Executing Agency throughout the Agreement;
 - 8.1.16. providing oversight to the Project in conjunction with the Executing Agency to ensure delivery in line with the approved Project Implementation Plan;
 - 8.1.17. jointly with UNEP rate, on an annual basis, progress in meeting project objectives, project implementation progress, risk and quality of project monitoring and evaluation and submit a consolidated report to the GEF Secretariat through the Project Implementation Review (PIR) report;
 - 8.1.18. undertake the Mid-Term Evaluation and the Terminal Evaluation of the Project.
- 8.2. The Parties hereby agree that the DBSA reserves the right to undertake the necessary measures to ensure delivery in line with the approved Project Implementation Plan.

9. ROLES AND RESPONSIBILITIES OF THE EXECUTING AGENCY

- 9.1. The role and responsibility of the Executing Agency shall include but not be limited to the following activities in relation to the Project:
- 9.1.1. submit Disbursement Requests in line with the terms of this Agreement;
 - 9.1.2. appoint representatives to the Project Steering Committee;
 - 9.1.3. maintain an accounting and control system, management information system and books of account and other records, which together are adequate to reflect truly and fairly its financial condition and the results of its operations with respect to the Project, all in conformity with GAAP or GRAP, as the case may be, and promptly provide to the DBSA evidence acceptable to the DBSA regarding the use of the proceeds of each Disbursement;
 - 9.1.4. procure the audit of its accounts and operations in respect of the Project by the Auditor General;



- 9.1.5. under no circumstances, terminate, abandon, interrupt or suspend the implementation of the Project without the prior written consent of the DBSA;
- 9.1.6. facilitate the completion of the Project by no later than the Project Completion Date, unless otherwise agreed in terms of clause 10;
- 9.1.7. ensure that risk management procedures are in place to deal with the identified risks to the Project;
- 9.1.8. promptly notify the DBSA upon the occurrence of an Event of Default or Potential Event of Default and the steps that the Executing Agency is taking to remedy it;
- 9.1.9. as soon it comes to the Executing Agency's attention, promptly inform the DBSA of any Material Adverse Effect and/or event or circumstance that interferes or threatens to interfere with the accomplishment of the purposes of the Project or the Grant or the performance by the Executing Agency of its obligations under this Agreement;
- 9.1.10. comply with all Applicable Laws including all environmental laws;
- 9.1.11. obtain and maintain in force (and where appropriate, renew in a timely manner) all authorisations (governmental, regulatory or otherwise) that are necessary for the implementation of the Project ("**Authorisations**");
- 9.1.12. insure and keep insured, with financially sound and reputable insurers, all its assets and business against all insurable losses to include the insurances required by Applicable Laws;
- 9.1.13. ensure that no changes in the nature or scope of the Project are made without the prior written consent of the DBSA and that there are no changes to the Project which would be inconsistent with the terms of this Agreement;
- 9.1.14. permit the DBSA or any other duly authorised representatives of the DBSA (whose appointment as such it shall not be necessary to prove), with reasonable notice and during normal business hours:
 - 9.1.14.1. to visit the premises of the Executing Agency and the place where the Project is being conducted and all other premises of the Executing Agency; and
- 9.1.15. the Executing Agency will allow the DBSA to review and approve the text of any proposed publicity concerning this Grant prior to its release;



- 9.2. Following the Termination Date, the Executing Agency shall sign off its acceptance of the outputs of the infrastructure planning support provided through the Professional Services Provider.
- 9.3. To the extent that it is possible to do so, the Executing Agency hereby undertakes that any information or document submitted by it in terms of this Agreement shall be true and correct and hereby waives any right it may have over the professional work contained and within such document or information following therefrom.
- 9.4. Notwithstanding anything contained in this Agreement, the DBSA reserves the discretion to verify and confirm any information or document submitted by the Executing Agency in the performance or execution of its duties and obligations in terms of this Agreement.

10. PROJECT STEERING COMMITTEE

- 10.1. The Parties shall establish and maintain for the duration of the Project a Project Steering Committee to be housed at the Executing Agency's offices consisting of representatives and an alternate of each of the following entities:
- 10.1.1. The Executing Agency who shall appoint the Chair of the Committee;
- 10.1.2. The DBSA;
- 10.1.3. UNEP; and
- 10.1.4. Any other suitable member(s) nominated by DBSA, Executing Agency and UNEP.

11. EXTENSION OF DURATION OF THE PROJECT

- 11.1. If at any time the Executing Agency anticipates it will be unable to complete the Project by the Project Completion Date, the Executing Agency shall without delay notify the DBSA in writing of:
- 11.1.1. the projected period for which the Project is anticipated to be delayed;
- 11.1.2. the reason/s for the anticipated delay; and
- 11.1.3. the steps, if any, which the Executing Agency has taken and/or intends to take to avoid or mitigate the anticipated delay.
- 11.2. Upon receipt of notification from the Executing Agency in terms of clause 11.1, the DBSA in consultation with UNEP shall be entitled, but not obliged, without prejudice to its other rights in terms of this Agreement, to:



- 11.2.1. extend the period of the Project from that recorded in the Project Implementation Plan to such longer period as the DBSA may in its sole discretion determine; and/or
- 11.3. If the contents of the documentation referred to in clause 10.1 are not true and correct or are not free from any misrepresentations, whether intentional or negligent, the DBSA shall be entitled to exercise its rights as set out in clause 17 without prejudice to any other rights it may have.
- 11.4. Any expenses incurred in respect of preparing the Application will not be considered as part of the Project Budget.
- 11.5. The decision of the DBSA regarding the validity and/or amount of expenses is final.
- 11.6. The DBSA shall be entitled at any time and for any reason whatsoever to perform an audit on any expenses incurred in relation to the Project. The Executing Agency shall provide the DBSA with all information and assistance as expected to conduct such audit and consents to any adjustments to the Project Budget which may arising from such an audit.

12. MONITORING

The DBSA will be responsible for the monitoring of the implementation of the Project. Two levels of monitoring of the Project will be carried out:

- 11.1 the DBSA through the Project Management Unit will monitor the output of the activities carried out by the Professional Services Provider. This will be accomplished by the monitoring of reports submitted by the Professional Services Provider in accordance with the provisions and time-lines set out in the Project Implementation Plan, together with any additional information which may be required by the DBSA in its sole discretion from time to time for monitoring purposes; and
- 11.2 the DBSA will monitor the measurable Project outcomes by monitoring progress made and the deliverables achieved by the Professional Services Provider.

13. CONFIDENTIALITY

- 13.1. The Parties undertake to treat all Confidential Information as strictly confidential between themselves and not to divulge any Confidential Information and/or or proprietary information in respect of each other to other parties unless otherwise required by law or agreed to in writing or required by the DBSA in order to fulfil the conditions of this agreement. The following may however be made public by the DBSA:



- 13.1.1. after this Agreement has been signed, the Application Date, name of the Executing Agency, Grant Amount and the Project Completion Date; and
 - 13.1.2. after the final deliverables have been completed or the Project has been cancelled or terminated, the name of the Project, actual Grant Amount paid, Project Completion Date and a concise generic description of the Project.
- 13.2. The Executing Agency may disclose the Confidential Information of the DBSA to its Permitted Recipients, provided that:
- 13.2.1. the Executing Agency will take such steps as are necessary to ensure that the Executing Agency's employees to which Confidential Information is disclosed adhere to this Agreement;
 - 13.2.2. any disclosure by the Executing Agency's employees of the DBSA's Confidential Information contrary to this Agreement will be an unauthorised disclosure by the Executing Agency.
- 13.3. The Executing Agency will not use the Confidential Information for any purpose other than:
- 13.3.1. that for which it is disclosed in connection with this Agreement;
 - 13.3.2. as otherwise permitted by the DBSA in writing; or
 - 13.3.3. in accordance with this Agreement.
- 13.4. The DBSA does not warrant that the Confidential Information it discloses is accurate or complete and the DBSA will not be liable for any losses, damages, costs or penalties suffered by, or claims made against, the Executing Agency as a result of any inaccuracies in, or incompleteness of, the Confidential Information disclosed.
- 13.5. The Executing Agency hereby indemnifies the DBSA against any loss, cost, damages, expense or liability arising from, or in connection with, disclosure of Confidential Information contrary to this Agreement by the Executing Agency, or Permitted Recipients or third parties to which the Executing Agency has made disclosure.
- 13.6. Upon the request of the DBSA, the Executing Agency will, within 5 (five) Business Days, return, destroy or expunge from any storage device all Confidential Information other than documents prepared by the Executing Agency; provided that if required by Law or for purposes of this Agreement, the Executing Agency may retain 1 (one) copy of the Confidential Information for the period so required.



14. REPRESENTATIONS

14.1. The Executing Agency makes the representations and warranties out in this Clause 14 to the DBSA on the Signature Date.

14.2. Status

14.2.1. It is a municipality, duly incorporated and validly existing under the law of its Original Jurisdiction.

14.3. Power and authority

14.3.1. It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into this Agreement.

14.4. Validity and admissibility in evidence

14.4.1. all Authorisation have been obtained or effected and are of full force and effect and no steps have been taken against the Executing Agency for the revocation, variation or refusal of any material authorisation in respect of the Project and all fees (if any) payable in connection therewith, if due, have been paid and no Event of Default (howsoever described) has occurred in the performance of any of the terms or conditions thereof which is material to the effectiveness of any of the foregoing;

14.5. Insolvency and Financial Distress

No:

14.5.1. municipal action, legal proceeding or other procedure or step is taken in relation to:

14.5.1.1. the suspension of payments, a moratorium of any indebtedness, administration, judicial management, of the Executing Agency other than a solvent liquidation or reorganisation of the Executing Agency a composition, compromise, assignment or arrangement with any creditor of the Executing Agency;

14.5.1.2. the appointment of administrator, judicial manager, or other similar officer in respect of the Executing Agency or any of its assets; or

14.5.1.3. the enforcement of any Security over any assets of the Executing Agency, or



14.5.1.4. any analogous procedure or step is taken in any jurisdiction,

this Clause 14.5.1 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

14.5.2. meeting proposed or convened by the directors of the Executing Agency, a resolution proposed or passed, application made or an order applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of the Executing Agency or any analogous procedure or step is taken in any jurisdiction.

14.5.3. creditors' process taken in relation to:

14.5.3.1. an expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution that affects any asset or assets of the Executing Agency having an aggregate value of one percent of the Executing Agency's revenue and is not discharged within 30 days,

has been taken or, to the knowledge of the Executing Agency, threatened in relation to it and is deemed by any authority or legislation to be:

14.5.3.2. unable or admits inability to pay its debts as they fall due;

14.5.3.3. unable to make payments on any of its debts; or

14.5.3.4. by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the DBSA in its capacity as such) with a view to rescheduling any of its indebtedness.

14.5.3.5. the Executing Agency is or is deemed by any authority or legislation to be Financially Distressed (as stipulated in Municipal Finance Management Act 56 of 2003);

14.5.3.6. the value of the assets of the Executing Agency is less than its liabilities (taking into account contingent and prospective liabilities);
or

14.5.3.7. a moratorium is declared in respect of any indebtedness of the Executing Agency.



14.6. Funding

14.6.1. it has disclosed to the DBSA any financing for the Project made available by or applied for from any governmental source and private sector including any banking and/or financial institution;

14.7. Intellectual Property Rights

14.7.1. all the Intellectual Property rights existing and developed as a result of the Project, which the Executing Agency owns or claims to own is not in any manner whatsoever owned by any other party;

14.8. Event of Default or Potential Event of Default

no Event of Default or Potential Event of Default:

14.8.1. has occurred or is continuing under or in respect of any agreement or document to which the Executing Agency is a party or by which it may be bound, including this Agreement;

14.8.2. might reasonably be expected to result from the conclusion of this Agreement to which it is a party or the making of any of the Disbursements to the Executing Agency;

14.9. No misleading information

14.9.1. Any factual information provided by the Executing Agency for the purposes of obtaining this Facility was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

14.9.2. The financial projections contained in the Application provided by the Executing Agency and subsequent due diligence have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

14.9.3. Nothing has occurred or been omitted from the Application and subsequent due diligence and no information has been given or withheld that results in the information contained in the Application being untrue or misleading in any material respect.

14.9.4. All other written information provided by the Executing Agency(including its advisers) to the DBSA was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

The block contains two handwritten signatures in black ink, one on the left and one on the right. To the right of the signatures is the logo for DBSA (Development Bank of South Africa), which includes the letters 'DBSA' in a bold, sans-serif font, with a stylized tree icon above it and the full name 'Development Bank of South Africa' in smaller text below.

14.10. No proceedings pending or threatened

14.10.1. No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

14.11. No breach of laws

14.11.1. It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

14.11.2. No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), is threatened against it which have or are reasonably likely to have a Material Adverse Effect.

14.12. Environmental Laws

14.12.1. It is in compliance with Clause 16.3 (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

14.12.2. No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim has or is reasonably likely, if determined against it, to have a Material Adverse Effect.

14.13. Authorised Signatures

14.13.1. Any person specified as its authorised signatory under **Error! Reference source not found.** (Conditions precedent) or Clause 15.4 (Information: miscellaneous) is authorised to sign Disbursement Requests and other notices on its behalf.

14.14. No immunity

14.14.1. In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement.



14.15. Private and commercial acts

14.15.1. Its execution of this Agreement constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

14.16. Taxation

14.16.1. No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, it of ZAR 100,000 (one hundred thousand Rands only) (or its equivalent in any other currency) or more is reasonably likely to arise.

14.16.2. It is resident for Tax purposes only in its Original Jurisdiction.

14.17. Anti-corruption law

14.17.1. It has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintains as at the Signature Date policies and procedures designed to promote and achieve compliance with such laws.

14.18. Public procurement rules

14.18.1. All public procurement rules in its jurisdiction of incorporation which are applicable to its entry into and the exercise of its rights and performance of its obligations under this Agreement to which it is a party have been complied with or have been irrevocably and unconditionally waived by the relevant authorities in that jurisdiction.

14.18.2. With regard to the procurement of goods and services for the Project, with the exception of the procurement of the Professional Services Providers, procurement shall be carried out in accordance with a competitive procurement procedure as outlined in the Executing Agency's SCM policies in consultation with DBSA (where applicable).

14.19. Repetition

14.19.1. The Repeating Representations are deemed to be made by the Executing Agency by reference to the facts and circumstances then existing on the date of each Disbursement Request.



14.20. The DBSA is entering into this Agreement relying on each of the representations and warranties made by the Executing Agency, each of which shall be deemed to be a separate representation and warranty which is material and having induced the DBSA to enter into this Agreement.

15. INFORMATION UNDERTAKINGS

15.1. The undertakings in this Clause 15 remain in force from the Signature Date for so long as any amount is outstanding under this Agreement:

15.2. Project Budget

15.2.1. The Executing Agency shall supply to the DBSA in sufficient copies, as soon as the same become available but in any event within 30 Business Days before the start of each of its financial years, an annual Project Budget for that financial year.

15.3. Project Reports

15.3.1. The Project Manager in consultation with the Executing Agency shall prepare and deliver to the DBSA:

15.3.1.1. Inception Workshop Report within one month of Project inception detailing:

15.3.1.1.1. Detailed Work Plan and budget for the first year, as well as an overview of AWP's for subsequent years, divided per output and inputs (budget lines);

15.3.1.1.2. A more detailed narrative of roles of Project Management Unit and the Project Steering Committee: institutional responsibilities, coordinating actions and feedback mechanisms; and

15.3.1.1.3. Detailed Project Supervision and a M&E Plan.

15.3.1.2. Quarterly Progress Report prepared and delivered bi-annually for any given year on or before 31 January and 31 July detailing:



- 15.3.1.2.1. the actual progress of the Project during the preceding months;
 - 15.3.1.2.2. actual expenditure during the preceding months;
 - 15.3.1.2.3. milestone listed in the Project implementation plan;
 - 15.3.1.2.4. a presentation of quantitative and qualitative data collected from the monitoring of outcome indicators;
 - 15.3.1.2.5. any factors that have or could reasonably be expected to have a Material Adverse Effect;
 - 15.3.1.2.6. if applicable, any proposed changes to the Project Implementation Plan;
 - 15.3.1.2.7. a description of the planned progress for the next month in accordance with the Project Implementation Plan;
 - 15.3.1.2.8. Describes constraints experienced in the progress towards results and the reasons;
 - 15.3.1.2.9. Describes Work Plan for the next period in an Annex and the detailed budget divided per output and inputs (budget lines); and
 - 15.3.1.2.10. any other or additional information that the DBSA might reasonably request the Executing Agency to provide in relation to the progress of the Project.
- 15.3.1.3. Quarterly financial reports due within 30 days from the end of the quarter under review;
- 15.3.1.4. Project Implementation Review in consultation with the DBSA on or before 30 June every year detailing:



- 15.3.1.4.1. The analysis of the project performance over the reporting period;
- 15.3.1.4.2. A description of the constraints experienced in the progress towards results and the reasons; and
- 15.3.1.4.3. The lessons learnt and clear recommendations for future orientation in addressing the key problems in the lack of progress.
- 15.3.1.5. Co-financing Report prepared on or before 30 June of each year detailing any Co-financing received by the Executing Agency with respect to the Project; and
- 15.3.1.6. Final Report prepared and delivered three months post the Project Completion Date providing a comprehensive summary of all activities, achievements, lessons learned, objectives met or not achieved structures and systems implemented, amongst others and lays out recommendations for any further steps that may need to be taken to ensure the sustainability and replication of project activities.

15.4. Information: miscellaneous

- 15.4.1. The Executing Agency shall supply to the DBSA promptly upon becoming aware of them, the details of any litigation, arbitration, administrative proceedings, which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect.

15.5. "Know your client" checks

If:

- 15.5.1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signature Date; or
- 15.5.2. any change in the status of the Executing Agency after the Signature Date;

obliges the DBSA to comply with "know your customer" or similar identification procedures (whether in terms of the Financial Intelligence Centre Act, 2001 or any other applicable legislation) in circumstances where the necessary



information is not already available to it, the Executing Agency shall promptly upon the request of the DBSA supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the DBSA.

- 15.5.3. The Executing Agency shall promptly upon the request of the DBSA supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the DBSA in order for the DBSA to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

16. GENERAL UNDERTAKINGS

16.1. Authorisations

The Executing Agency shall promptly:

- 16.1.1. obtain, comply with and do all that is necessary to maintain in full force and effect; and

- 16.1.2. supply certified copies to the DBSA of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- 16.1.2.1. enable it to perform its obligations under this Agreement;

- 16.1.2.2. ensure the legality, validity, enforceability or admissibility in evidence of this Agreement; and

- 16.1.2.3. carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect;

16.2. Compliance with laws

- 16.2.1. The Executing Agency shall comply in all respects with all laws to which it may be subject.

16.3. Environmental compliance

The Executing Agency shall:

- 16.3.1. comply with all Environmental Law;

16.3.2. obtain, maintain and ensure compliance with all requisite Environmental Permits;

16.3.3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

16.4. Environmental Claims

The Executing Agency shall, promptly upon becoming aware of the same, inform the DBSA in writing of

16.4.1. any Environmental Claim against it which is current, pending or threatened; and

16.4.2. any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened the Executing Agency,

where the claim, if determined against it, has or is reasonably likely to have a Material Adverse Effect.

16.5. Anti-corruption law

The Executing Agency shall not directly or indirectly use the proceeds of the Facility for any purpose which would breach the Prevention and Combatting of Corrupt Activities Act, 2004, Bribery Act, 2010, the United States Foreign Corrupt Practices Act, 1977 or other similar legislation in other jurisdictions.

The Executing Agency shall:

16.5.1. conduct its businesses in compliance with applicable anti-corruption laws; and

16.5.2. maintain policies and procedures designed to promote and achieve compliance with such laws.

16.6. Sanctions

Notwithstanding any other provision in this Agreement, the Executing Agency shall not:

16.6.1. use the proceeds of the Funding for the purpose of financing directly or indirectly (or otherwise make available) the activities of any person or entity which is currently listed on the Sanctions List or in a country which is currently



subject to any Sanctions, to the extent such financing would currently be prohibited by Sanctions; and/or

- 16.6.2. contribute or otherwise make available the proceeds of the Funding to any other person or entity if the Executing Agency has actual knowledge that such party intends to use such proceeds for the purpose of financing the activities of any person or entity which is currently on the Sanctions List or in a country which is subject to any Sanctions, to the extent such financing would currently be prohibited by Sanctions.

16.7. Audit

- 16.7.1. The Executing Agency shall procure the audit of its financials by the Auditor General.

17. EVENTS OF DEFAULT

- 17.1. Each of the following shall constitute an Event of Default under this Agreement:

- 17.1.1. any event or condition has occurred which in the opinion of the DBSA has or could be expected to have a Material Adverse Effect;
- 17.1.2. the Executing Agency fails to comply with any of its obligations under this Agreement, and any such failure continues for a period of 14 (fourteen) days after the date on which the DBSA notifies the Executing Agency of that failure or, if earlier, the date on which such Executing Agency becomes or should have, with diligence, become aware of such failure;
- 17.1.3. the Project is abandoned, suspended or terminated for any reason whatsoever by the Executing Agency;
- 17.1.4. any representation or warranty made by the Executing Agency in this Agreement or in any Disbursement Request or in connection with the execution and implementation of this Agreement is found to have been incorrect in any respect;
- 17.1.5. an Insolvency Event in relation to the Executing Agency occurs;
- 17.1.6. any Authorisation necessary for the Executing Agency to comply with its obligations under this Agreement or to carry out the Project for any reason ceases to be in full force and effect and is not restored or reinstated within 14 (fourteen) days of written notice by the DBSA to the Executing Agency;



- 17.1.7. any Project document or any of its provisions are revoked, terminated, repudiated, declared void, becomes unlawful or ceases to be in full force and effect without, in each case, the prior written consent of the DBSA, and in that event, if capable of being remedied, is not remedied to the satisfaction of the DBSA within 14 (fourteen) days of the DBSA's notice to the Executing Agency;
- 17.1.8. the Executing Agency has modified the nature or the objective of the Project without the prior written approval of the DBSA;
- 17.1.9. in the opinion of the DBSA, it is imminent that any authority will condemn, nationalise, seize, expropriate, or otherwise assume custody or control of, all or any substantial part of the business, operations, property or other assets of the Executing Agency or take any action for the dissolution of the Executing Agency or any action that would prevent the Executing Agency or its employees from carrying on all or a substantial part of the Business or operations;
- 17.1.10. it appears that material information in the Application is incorrect or that material information was not disclosed;
- 17.2. Forthwith upon the occurrence of an Event of Default and at any time thereafter, if such event continues, the DBSA shall in its sole and absolute discretion be entitled (but not obliged), without prejudice to any other rights which the DBSA may have, by notice to the Executing Agency to:
- 17.2.1. suspend any amounts available but not Disbursed under the Grant or declare any amounts available but not Disbursed under the Grant to be automatically cancelled and to declare that no further Disbursement be made available under the Grant; and/or
- 17.2.2. declare that the obligations of the DBSA in terms of this Agreement shall be cancelled forthwith, whereupon the same shall be so cancelled; and/or
- 17.2.3. claim immediate payment of any amount disbursed under the Grant, any damages costs and other amounts incurred in consequence of such Event of Default from the Executing Agency in terms of this Agreement.
- 17.3. Notwithstanding any provision to the contrary in this Agreement, the DBSA may by notice to the Executing Agency cancel the whole or part of the Grant, as the case may be, if:
- 17.3.1. the Project activities are interrupted for a consecutive period of 2 (two) calendar months; or



- 17.3.2. the DBSA determines that any person who is engaged in Corrupt Practice, a Coercive Practice, a Collusive Practice or a fraudulent practice, without the Executing Agency having taken timely and appropriate action satisfactory or to address such practice when they occur; or
- 17.3.3. the Executing Agency has modified the nature or the objective of the Project without the prior approval of the DBSA.

18. PUBLICATIONS

Should the Executing Agency wish to publish results of the Project deliverables carried out pursuant to this Agreement, the Executing Agency shall first obtain written approval from the DBSA and supply it with a copy of the proposed publication, who shall review the proposed publication and notify the Executing Agency, within 30 (thirty) calendar days after receipt, in writing whether the DBSA consents to such Publication.

19. INTELLECTUAL PROPERTY

- 19.1. Any Intellectual Property already existing at Signature Date and utilised in terms of this Agreement shall remain the Intellectual Property of the Party in whom that Intellectual Property had vested at the Signature Date but each Party hereby grants the other Party a non-exclusive right to use such Intellectual Property for the purposes of the project.
- 19.2. Subject to clause 19.3 below, all Intellectual Property generated by the DBSA through the Professional Services Provider in the Project shall vest in both the Executing Agency and the DBSA, and the Executing Agency shall be entitled to use the Intellectual Property for any purposes whatsoever, including without limitation for Commercialisation.
- 19.3. The Executing Agency hereby grants the DBSA a non-exclusive right to use any and all of the Intellectual Property generated by the Project for purposes of publicity, marketing, and further research.
- 19.4. Should this Agreement be terminated by reason of breach by the Executing Agency, the Intellectual Property generated by the Professional Services Provider in terms of the Project shall remain vested in the DBSA and the DBSA shall be entitled to use the Intellectual Property however it may elect in its sole discretion, including without limitation for purposes of Commercialisation.
- 19.5. The Executing Agency furthermore grants non-exclusive right to any and all third parties to use the Intellectual Property generated by the Project for any purposes within the border of the Republic of South Africa which are for the benefit of the Republic of South Africa. This clause 19.5 is a *stipulatio alteri* capable of acceptance at any time. This



clause 19.5 shall not preclude the Executing Agency from having exclusive rights to the Intellectual Property outside the borders of the Republic of South Africa.

- 19.6. The Executing Agency shall enter into appropriate agreements with third parties participating in the Project to ensure the effective management of intellectual Property generated in the course of the Project.

20. ARBITRATION

- 20.1. Should any dispute between the Parties with regard to the interpretation, the carrying into effect and implementation of any one or more of the provisions of this Agreement, any of the rights and obligations or either Party arising from the Agreement, the termination or purported termination of, or arising from the termination of, or the rectification or proposed rectification of the Agreement, or pursuant to this Agreement, or any other matter which in terms of this Agreement requires agreement by the Parties, the Parties shall, in the first instance, attempt to come to an agreement in relation to any such dispute by consultation and negotiation in good faith and in the second instance proceed to arbitration.
- 20.2. A dispute shall be determined in terms of this clause after written notice has been given by the aggrieved Party to the other Party.
- 20.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 20.4. The arbitration shall be held:
- 20.4.1. at a venue to be agreed between the disputing Parties, failing which at the offices of the Arbitration Foundation of South Africa ("AFSA") closest to the DBSA's *domicilium* address;
- 20.4.2. with only the legal and other representatives of the Parties present thereat;
- 20.4.3. *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, 1959, the rules made in terms of that Act and the practice of the division of the High Court referred to in clause 25;
- 20.4.4. otherwise in terms of the Arbitration Act, 1965;
- 20.4.5. it being the intention that the arbitration shall be held and completed as soon as possible.



- 20.5. The arbitrator shall failing agreement between the Parties be such person as appointed by AFSA.
- 20.6. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of the court referred at the instance of any of the Parties.
- 20.7. The Parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone unless required by Law.
- 20.8. The provisions of this clause:
 - 20.8.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
 - 20.8.2. are severable from the rest of this Agreement and shall remain in effect despite determination of or invalidity for any reason of this Agreement.

21. SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

22. CESSION AND DELEGATION

- 22.1. The Executing Agency shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party, without the prior written consent of the DBSA.
- 22.2. The DBSA shall be entitled, without the Executing Agency's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party.



23. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

24. GOVERNING LAW

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

25. JURISDICTION

The parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (South Gauteng High Court, Johannesburg) (or any successor to that division) in regard to all matters arising from this Agreement.

26. COSTS

- 26.1. Each Party shall bear its own costs of and incidental to the negotiation and preparation of this Agreement.
- 26.2. If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

27. NOTICES AND DOMICILIA

27.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

27.2. For purposes of this Agreement the Parties' respective addresses shall be as follows:

27.2.1. DBSA:

Physical address: 1258 Lever Road




Headway Hill
 Midrand
 1685
 South Africa

Telephone number: +27 11 313 3911

Fax number: +27 11 313 3086

Email address: claimadmin@dbsa.org

Attention: General Manager: Metros, Water Utilities and
 General Counsel: Group Legal

27.2.2. Executing Agency

Physical address: Metro Centre
 158 Civil Boulevard
 Braamfontein
 2001

Fax number: +27 11 339 1118

Email address: amolemomo@joburg.org.za

Attention: Executive Director: Development Planning
 Group Head: Legal and Contracts

or at such other address in the Republic of South Africa of which the Party concerned may notify the other in writing provided that no street address shall be changed to a post office box or post *restante*.

27.3. Any notice given in terms of this Agreement shall be in writing and shall:

- 27.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 27.3.2. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.



The block contains a handwritten signature on the left and the DBSA logo on the right. The logo consists of a stylized 'D' and 'B' above the letters 'DBSA'.

27.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party.

28. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement. No single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

29. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

30. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

31. INDEMNITY

31.1. The Executing Agency, including any person acting for or on behalf of the Executing Agency, shall exercise due care and diligence in the performance of its duties in terms of this Agreement and the Executing Agency, including any person acting for or on behalf of the Executing Agency, shall be liable to the DBSA where the Executing Agency has failed to exercise such due care and diligence.

31.2. The Executing Agency indemnifies and holds the DBSA harmless against any liabilities, arising out of the conduct of the Executing Agency, its employees, agents and or other natural or juristic persons connected with the Executing Agency, in conducting the work pursuant to this Agreement.



- 31.3. Notwithstanding anything to the contrary set out in this Agreement, the Executing Agency hereby indemnifies and shall hold the DBSA harmless against any claims, damages, expenses and costs (including those asserted by third parties) directly or indirectly related to this Agreement, in delict, for breach of statutory duty or otherwise.
- 31.4. The Executing Agency shall indemnify and hereby indemnifies the DBSA against any expenditure incurred in vain, any fruitless or wasteful expenditure incurred and any expenditure which could have been avoided had reasonable care been exercised or expenditure incurred as a result of fraud, theft or negligence or commission and/or omission during the execution of the Project.

32. ANTI-CORRUPTION AND GOOD FAITH

- 32.1. In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe utmost good faith and to give effect to the intent and purpose of this Agreement.
- 32.2. The Executing Agency will not make or cause to be made any offer, gift or payment or consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement including any activity contained in the Prevention and Combating of Corrupt Activities Act, 2004.
- 32.3. Any such practice will be a ground for termination of this Agreement.

33. ATTESTATION

The Parties hereby acknowledge having read and signed this Agreement and its schedules, the contents of which are understood and accepted by both the Parties.



Signed at Midrand on the 5th day of June 2018

For and on behalf of

Development Bank of Southern Africa Limited



Name: M. Raksute

Capacity: GE: Project Preparation

Who warrants authority

Signed at Braamfontein on the 30th day of May 2018

For and on behalf of

Executing Agency



Name: DR. NDLOVU NDONISWANI LUKHAPHENI

Capacity: COS. City Manager

Who warrants authority