



GRANT AGREEMENT

between

SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

And

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

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1. **PARTIES**

- 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 Project Implementing Agency; and
- 1.2. **South African National Biodiversity Institute**, a public entity established under section 11 of the National Environmental Management: Biodiversity Act (10 of 2004), as the Project Executing Agency.

2. **DEFINITIONS**

For the purpose of this Agreement, unless the context indicates otherwise, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

- 2.1. **"Agreement"** means this Grant agreement including any schedules hereto;
- 2.2. **"Applicable Laws"** mean 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 competent jurisdiction;
- 2.3. **"Application"** means the CEO Endorsement document submitted to the GEF Council in respect of the Project;
- 2.4. **"Approval Date"** means the date upon which the Application was approved by the DBSA being 28 October 2016;
- 2.5. **"Authorisations"** mean all authorisations (governmental, regulatory or otherwise) that are necessary for the implementation of the Project;
- 2.6. **"Availability Period"** means a period calculated from the date of the Signature and ending on the date falling 66 months thereafter;
- 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;



- 2.8. **"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;
- 2.9. **"Collusive Practice"** means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 2.10. **"Confidential Information"** means all information confidential to a Party (including any information confidential to GEF), 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;
- 2.11. **"Connected Person" or "Connection"** shall mean in relation to a company connected with another person:
- 2.11.1. the person has control of the company, or
 - 2.11.2. the person together with persons connected with them have control of the company;
 - 2.11.3. the person is an associate of the company;
 - 2.11.4. the person is a joint venture in which the company is a venturer;
 - 2.11.5. the person is a member of the key management personnel of the company or its parent;
 - 2.11.6. the person is a close member of the family of any individual referred to in clause 2.11.1, 2.11.2, or 2.11.5;
 - 2.11.7. the person is an entity that is controlled, jointly controlled or significantly influenced by or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in 2.11.5 or 2.11.6; or
 - 2.11.8. the person is a post-employment benefit plan for the benefit of employees of the company, or of any entity that is a related party of the company.

- 2.12. **"Constitutional Documents"** means in respect of any person at any time, the then current and up-to-date constitutional documents of such person at such time (including, without limitation, such person's memorandum of incorporation, certificate of incorporation, certificate to commence business, trust deed, letter of authority, certificate of change of name (if applicable), special resolutions or any other document/s constituting or evidencing the incorporation of such person) as may be required by the Project Implementing Agent;
- 2.13. **"Corrupt Practice"** means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another;
- 2.14. **"Disbursement"** means an amount drawn down by the Project Executing Agency and disbursed by the Project Implementing Agency under and in terms of a Disbursement Request and in accordance with the Implementation Plan and Project Budget, and **"Disbursed"** shall be construed accordingly;
- 2.15. **"Disbursement Request"** means a request made by the Project Executing Agency for utilization of the Grant to be released upon the Signature of the Grant Agreement and the fulfilment of the Conditions Precedent;
- 2.16. **"Effective Date"** means the first Business Day after the Project Implementing Agency notifies the Project Executing Agency upon being satisfied that all of the Conditions Precedent have been fulfilled or waived, as the case may be as set out in clause 7.3;
- 2.17. **"Endorsement Date"** means the date upon which the Application was approved by the GEF being **14 June 2017**;
- 2.18. **"Event of Default"** means any one or more events or circumstances as envisaged in clause 17;
- 2.19. **"FICA"** means the Financial Intelligence Centre Act, 2001 and all notices and regulations passed thereunder;
- 2.20. **"Financial Year"** means each year commencing on 1 April of each year and ending on 31 March of the following year;
- 2.21. **"Force Majeure Event"** means any event or circumstance occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes (excluding strikes which are specific to the Project site, the Project Executing Agency or any of its subcontractors, only), blockade, embargo, sanctions,

epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party;

- 2.22. **"GAAP"** means the Generally Accepted Accounting Principles as approved from time to time by the International Accounting Standards Committee;
- 2.23. **"GEF"** means the Global Environmental Facility;
- 2.24. **"Grant"** means a facility in the form of grant funding made available by the Project Implementing Agency, acting in its capacity as an Accredited Agency of GEF, to the Project Executing Agency under this Agreement in an aggregate sum not exceeding the Grant Amount;
- 2.25. **"Grant Amount"** means an amount of \$ 7 201 835 (Seven million two hundred and one thousand eight hundred and thirty five US Dollars) inclusive of value-added tax and all applicable taxes thereon;
- 2.26. **"IFRS"** means the International Financial Reporting Standards as approved from time to time by the International Accounting Standards Board;
- 2.27. **"Implementation Plan and Project Budget"** means the implementation plan prepared by the Project Executing Agency and approved in writing by the Project Implementing Agency setting out the deliverables in line with the CEO Endorsement document, against which to measure the progress of the Project and the Project Budget and to ensure compliance with the obligations as set out therein accompanied, including any amendments thereof as may be agreed in writing between the Parties as set out in Schedule 1;
- 2.28. **"Implementing Agency Oversight Committee"** means the committee established by the Project Implementing Agency with representatives from the Project Executing Agency, to oversee the overall administrative and management arrangements for implementation of the overall project outcomes and approve project progress reports and plans as described in Schedule 3;
- 2.29. **"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 registerable

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;

- 2.30. **"IPR Act"** means the Intellectual Property Rights from Publicly Funded Research and Development Act 51 of 2008;
- 2.31. **"Material Adverse Event"** means any event or combination of events and/or circumstances which, in the opinion of the Project Implementing Agency, has or might reasonably be expected to have a material adverse effect on:
- 2.31.1. the Project, business, operations, property, condition (financial or otherwise) or prospects of the Project Executing Agency; and/or
- 2.31.2. the ability of the Project Executing Agency to perform its obligations in terms of this Agreement, as more fully set out in the Implementation Plan and Project Budget; and/or
- 2.31.3. the ability of the Project Executing Agency to exercise and enforce any right granted or intended or purported to be granted to it under this Agreement; and/or
- 2.31.4. the validity, enforceability and/or legality of this Agreement or any other Project document;
- 2.32. **"Parties"** means the Project Implementing Agency and the Project Executing Agency;
- 2.33. **"Patent Rights"** means a Party's rights in patents or patent applications, whether domestic or foreign, claiming Inventions arising directly from research, including but not limited to, any patents that may issue thereon and any and all provisional, divisions, continuations, reissues, re-examinations or extensions thereof;
- 2.34. **"Permitted Recipients"** means employees, directors, officers, professional advisors, financiers and consultants of the Project Executing Agency;
- 2.35. **"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;



- 2.36. **"Project Executing Agency"** means the South African National Biodiversity Institute;
- 2.37. **"Project Implementing Agency"** means the Development Bank of Southern Africa Limited.
- 2.38. **"Project Progress Reports"** means the Quarterly progress reports to be submitted by the Recipient to the Project Implementing Agency containing, *inter alia*:
- 2.38.1. the Project's progress for the Quarter and cumulative for the Financial Year, against the Project Implementation Plan;
 - 2.38.2. any factors that have or could reasonably be expected to have a Material Adverse Effect;
 - 2.38.3. if applicable, any proposed changes to the Project Implementation Plan;
 - 2.38.4. a description of the planned progress for the next Quarter in accordance with the Project Implementation Plan; and
 - 2.38.5. any such other information as may be required by the Project Implementing Agency;
- 2.39. **"Project"** means *"unlocking biodiversity benefits through development finance in critical catchments"*, as described more fully in the Implementation Plan;
- 2.40. **"Project Account"** means the ring-fenced cost code account to be opened by the Project Executing Agency exclusively for the Purpose in which the Grant Amount shall be recorded and tracked and from which all transactions related to the Purpose shall be recorded and tracked;
- 2.41. **"Project Budget"** means the budget which sets out all expenses related to the Project, submitted to and approved in writing by the Project Implementing Agency, as set out in the Implementation Plan and Project Budget Schedule;
- 2.42. **"Project Completion Date"** means the date upon which the Project is expected to be finally completed, as set out in the Implementation Plan;
- 2.43. **"Project Leader"** means the person appointed by the Project Executing Agency to lead the Project Executing Team, provide high level strategic and technical direction across the project, and provide direction to the Project Management Unit on project implementation and management.



- 2.44. **"Project Executing Team"** means the team established by the Project Executing Agency and led by the Project Leader tasked with delivery of the successful execution and implementation of the Project.
- 2.45. **"Project Management Unit"** means the unit established by the Project Executing Agency tasked with the role of providing administrative and operational support to the project and procurement.
- 2.46. **"Professional Service Providers"** means the service providers appointed by the Project Executing Agency to implement the Project;
- 2.47. **"Project Steering Committee"** means the committee established by the Project Executing Agency and shall have representatives from the Project Implementing Agency and project partners, to oversee the implementation of the Project as provided under clause 11;
- 2.48. **"Purpose"** means utilising the Grant Amount solely for payment of the Project expenses as set out in the Project Budget;
- 2.49. **"Quarter"** means a period of 3 (three) consecutive calendar months during the Financial Year, beginning from the first day of the month falling after the Effective Date, and **"Quarterly"** shall be construed accordingly;
- 2.50. **"Related Party"** means a Connected Person;
- 2.51. **"Related Party Transactions"** mean a transfer of resources or obligations between Connected Persons, regardless of whether or not a price is charged which transfer is undertaken in respect of any of the following transactions:
- 2.51.1. Transactions involving the sale or purchase of goods;
 - 2.51.2. Transactions involving the sale or purchase of property and/or assets;
 - 2.51.3. Transactions involving the lease of property and/or assets;
 - 2.51.4. Transactions involving the provision or receipt of services or leases;
 - 2.51.5. Transactions involving the transfer of intangible items (e.g. research and development, trademarks, license agreements);
 - 2.51.6. Transactions involving the provision, receipt, or guarantee of financial services (including loans and deposit services);



- 2.51.7. Transactions involving the assumption of financial/operating obligations;
 - 2.51.8. Transactions that include the subscription for debt/equity issuances; and
 - 2.51.9. Transactions that involve the establishment of joint-venture entities.
- 2.52. **"Signature Date"** means the date upon which this Agreement is signed by the Party signing last, provided that all Parties sign this Agreement;
- 2.53. **"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;
- 2.54. **"Termination Date"** means the date falling on the sixty-sixth month anniversary of the Effective Date;

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.

4. **INTRODUCTION**

- 4.1. The Project Implementing Agency has applied for GEF support by submitting the Application. The Application was approved by GEF on the Endorsement Date and by the Project Implementing Agency on the Approval Date. The Project Implementing

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Agency intends advance the Grant to the Project Executing Agency to 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 develop policy and capacity incentives for mainstreaming biodiversity and ecosystems values into national, regional and local development policy and finance and demonstrated in two water catchments.
- 4.3. 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 and conditions of this Agreement, the Project Implementing Agency undertakes to make available to the Project Executing Agency the Grant Amount subject to clause 5.2 below.
- 5.2. The Grant shall be used by the Project Executing Agency solely for the Purpose.
- 5.3. The Grant Amount will not exceed the Project Budget required by the Project Executing Agency for funding the Project.
- 5.4. The Grant Amount is fixed and shall not exceed the amount set out in the Implementation Plan and Project Budget without the prior written consent of the Project Implementing Agency.
- 5.5. The Project Executing Agency shall, subject to this clause 5, request a Disbursement by delivering to the Project Implementing Agency the Disbursement Request within 5 (five) Business Days from the Effective Date.
- 5.6. The Grant transferable to the Project Executing Agency under this Agreement will be paid within 20 (twenty) Business Days after the receipt, consideration and approval by the Project Implementing Agency, of the complete and acceptable Disbursement Request. The Project Implementing Agency shall make payment of the Disbursement under this Agreement into the Project Executing Agency's Bank Account.
- 5.7. The Project Executing Agency hereby acknowledges and agrees that the amount Disbursed in accordance with clause 5.6 shall constitute a valid Disbursement made by Project Implementing Agency (or other funder), the benefit of which shall have been received by the Executing Agency.
- 5.8. Reimbursement of unsupported Disbursement:



5.8.1. To the extent that an audit of the Project Executing Agency's Bank Account in connection with the Project by the auditors of the Project Executing Agency does not provide evidence satisfactory to the Auditors of the Project Implementing Agency that the Disbursement has been used or has been committed to be used consistently with or in full for the Purpose in accordance with this Agreement, then the Project Executing Agency shall, upon the Project Implementing Agency's demand, within 5 (five) Business Days of notification by the Project Implementing Agency, reimburse the Project Implementing Agency any amount of the Disbursement not so used.

5.8.2. For the avoidance of doubt, the Disbursement will, for the purposes of this Agreement, not have been used consistently with this Agreement if the Disbursement (or any part thereof) is used for any purpose other than the Purpose, including in relation to:

5.8.2.1. a Corrupt Practice, Coercive Practice, Collusive Practice or Fraudulent Practice; or

5.8.2.2. any event that may lead the Project Implementing Agency to cancel the Grant in terms of this Agreement.

6. UTILISATION OF THE GRANT

6.1. The Grant shall be used by the Project Executing Agency solely for the purposes under the Project as set out in the Project Implementation Plan.

6.2. The Grant shall not be utilised for, *inter alia*, any of the following activities:

6.2.1. payment of existing debts;

6.2.2. payment of costs unrelated to the Project;

6.2.3. payments to related persons of the Project Executing Agency, save for services actually rendered by such related persons in the ordinary course of business of the Project Executing Agency and subject to the prior approval of the Project Implementing Agency;

6.2.4. any illegal activities;

6.2.5. any success fees or facilitation fees with the exception of facilitation fees payable to conferences/symposia facilitators in line with Project; and/or

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- 6.2.6. any other purpose not included in the Project Implementation Plan unless approved by Project Implementing Agency in writing.

7. CONDITIONS PRECEDENT

7.1. Save for clauses 2 to 4, 14 and 18 to 33 (both inclusive), all of which will become effective immediately, this Agreement is subject to the fulfilment of the following Conditions Precedent:

- 7.1.1. the Project Executing Agency shall have opened a dedicated cost code account (or similar cost code account) for the Project ("**Project Account**"), which shall reflect the Grant received in respect of the Project, such Project Account which shall form part of the financial audit report annexures of the Project Executing Agency;
- 7.1.2. the Project Executing Agency shall have provided documentary proof of its bank account details;
- 7.1.3. the Project Executing Agency shall have submitted to the Project Implementing Agency all information and documentation requested by the Project Implementing Agency for purposes of conducting and completing a legal due diligence of the Project Executing Agency, all to the satisfaction of the Project Implementing Agency, and shall have taken steps to the satisfaction of the Project Implementing Agency to remedy any material risks identified by the Project Implementing Agency in terms of the abovementioned due diligence investigation;
- 7.1.4. the Project Executing Agency shall have submitted its latest audited financial statements to the Project Implementing Agency (if applicable);
- 7.1.5. a certified copy of the Constitutional Documents in respect of the Project Executing Agency;
- 7.1.6. a certified copy of a resolution of the Board of Directors of the Project Executing Agency or a delegation of authority approving the terms of this Agreement and authorising the authorised representatives of the Project Executing Agency to execute the Agreement;
- 7.1.7. Receipt by the Project Implementing Agency of the Implementation Plan and Project Budget in final form as agreed with the Project Implementing



Agency, all duly initialled/signed by the Project Executing Agency and the Project Implementing Agency, as the case may be; and

7.1.8. the Project Executing Agency shall have provided the Project Implementing Agency with all documents required to comply with the obligations imposed on the Project Implementing Agency by FICA and the regulations pertaining thereto and in terms of internal procedures which the Project Implementing Agency may, from time to time, be required to adhere to in order to establish and verify identities of contracting parties to this Agreement.

7.2. The Parties shall use their reasonable commercial endeavours and the Parties will cooperate in good faith to procure the fulfilment of the Conditions Precedent contained in clause 7.1.

7.3. The Conditions Precedent set out in clause 7.1 above have been inserted for the benefit of the Project Implementing Agency, which will be entitled to waive the fulfilment of such Conditions Precedent, in whole or in part, by written notice to the Project Executing Agency.

7.4. Unless all the Conditions Precedent have been fulfilled or waived, the provisions of this Agreement, save for clauses 2 to 4, and clauses 14 and 18 to 33 (both inclusive) which will remain of full force and effect, will never become of any force or effect and the status quo ante will be restored as near as may be and neither of the Parties will have any claim against the other in terms hereof or arising from the failure of the Conditions Precedent, save for any claims arising from a breach of clause 7.2.

8. DURATION

8.1. The Parties agree that subject to:

8.1.1. the fulfilment or waiver, as the case may be, of the Conditions Precedent;

8.1.2. there being no Event of Default or Potential Event of Default,

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

9. ROLES AND RESPONSIBILITIES OF THE PROJECT IMPLEMENTING AGENCY

9.1. The role and responsibility of the Project Implementing Agency shall include but not be limited to the following activities in relation to the Project:



- 9.1.1. facilitating the Disbursement of the Grant in terms of the provisions of this Agreement;
- 9.1.2. ensuring any interest earned or generated, in respect of the Grant, is reinvested into the Project;
- 9.1.3. appoint an Independent Auditor for the Project;
- 9.1.4. ensure that the audit certificate, verifying all the expenditures, is available as and when the Project audit is completed by the Auditors;
- 9.1.5. oversee the implementation of the Project in line with its role as a GEF Agency;
- 9.1.6. ensure that an Implementing Agency Oversight Committee is established and meets quarterly, prior to the PSC where applicable, to oversee the overall administrative and management arrangements for implementation of the project and to approve project progress and plans;
- 9.1.7. serve on the Project Steering Committee (PSC). The PSC is to facilitate oversight and direction regarding project implementation and is to be established, maintained and chaired by the Project Executing Agency;
- 9.1.8. provide guidance to the Project Executing Agency on GEF and Project Implementing Agency project cycle requirements, milestones and targets;
- 9.1.9. periodically reviewing the Project and outlining any discrepancies in respect of the Project Implementation Plan, which the Project Executing Agency is obliged to rectify;
- 9.1.10. reviewing the Project Progress Reports submitted by the Project Leader to ensure that the Project is progressing in accordance with this Agreement;
- 9.1.11. perform the liaison function with the GEF Secretariat on the project;
- 9.1.12. if the Project Implementing Agency, in its sole discretion deems necessary, undertaking periodic on-site visits to the Project to verify that progress of the Project;
- 9.1.13. ensuring and maintaining on-going communication with the Project Executing Agency throughout the Agreement;
- 9.1.14. Ensure all monitoring and evaluation frameworks and implementation plans apply the measures required by the Project Implementing Agency and the GEF.

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- 9.1.15. providing oversight to the Project in conjunction with the Project Executing Agency to ensure delivery in line with the approved Project Implementation Plan;
 - 9.1.16. 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 Annual Project Report/Project Implementation Review (APR/PIR);
 - 9.1.17. undertake the Mid-Term Evaluation and the Terminal Evaluation of the Project.
- 9.2. The Parties hereby agree that the Project Implementing Agency reserves the right to undertake the necessary measures to ensure delivery in line with the approved Project Implementation Plan.

10. ROLES AND RESPONSIBILITIES OF THE PROJECT EXECUTING AGENCY

- 10.1. The role and responsibility of the Project Executing Agency shall include but not be limited to the following activities in relation to the Project:
- 10.1.1. Procure the Professional Services Providers;
 - 10.1.2. with regard to the procurement of goods and services for the Project, in consultation with the Project Implementing Agency, preferably procure the services on an open tender basis from natural entities in terms of the SANBI procurement policies. Carry out international procurement with due consideration to the principles of competition, value for money, economy and efficiency;
 - 10.1.3. substantive issues of procurement will be addressed at the Implementing Agency Oversight Committee. SANBI to provide a report of all procurement matters at the Implementing Agency Oversight Committee. This report will be in line with the work plan;
 - 10.1.4. in the case where the appointment of Project Service Providers has to be made or revision of the brief of appointed Project Service Providers is necessary, shall engage such an appointment or revision in terms of the Recipient's Procurement Policy based on the relevant procurement laws and the following criteria shall be utilised, in as much as it is not contrary to relevant laws:
 - 10.1.4.1. past experience with similar projects;
 - 10.1.4.2. knowledge of local conditions;



- 10.1.4.3. abilities and qualifications;
- 10.1.4.4. membership of professional institutions; and
- 10.1.4.5. employment equity and empowerment.
- 10.1.5. Appoint a Project Leader;
- 10.1.6. ensuring that the deliverables are completed by the Professional Service Providers within the timeframes agreed upon as set out in the Project Implementation Plan provided herewith as Schedule 1;
- 10.1.7. ensure that the Professional Services Providers carry out the Project with due diligence and efficiency;
- 10.1.8. ensuring that the Project Budget is adhered to;
- 10.1.9. submit Disbursement Requests in line with the terms of this Agreement;
- 10.1.10. appoint representatives to the Project Steering Committee;
- 10.1.11. 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 Project Implementing Agency evidence acceptable to the Project Implementing Agency regarding the use of the proceeds of each Disbursement;
- 10.1.12. submit annual financial statements;
- 10.1.13. under no circumstances, terminate, abandon, interrupt or suspend the implementation of the Project without the prior written consent of the Project Implementing Agency;
- 10.1.14. facilitate the completion of the Project by no later than the Project Completion Date, unless otherwise agreed in terms of clause 12;
- 10.1.15. ensure that risk management procedures are in place to deal with the identified risks to the Project;
- 10.1.16. promptly notify the Project Implementing Agency upon the occurrence of an Event of Default or Potential Event of Default and the steps that the Project Executing Agency is taking to remedy it;



- 10.1.17. as soon it comes to the Project Executing Agency's attention, promptly inform the Project Implementing Agency 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 Project Executing Agency of its obligations under this Agreement;
 - 10.1.18. comply with all Applicable Laws including all environmental laws;
 - 10.1.19. 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**");
 - 10.1.20. insure and keep insured, all its assets and business against all insurable losses as required by Applicable Laws in terms of the Project Executing Agency's Asset Management and Insurance Protocol;
 - 10.1.21. ensure that no changes in the nature or scope of the Project are made without the prior written consent of the Project Implementing Agency and that there are no changes to the Project which would be inconsistent with the terms of this Agreement;
 - 10.1.22. permit the Project Implementing Agency or any other duly authorised representatives of the Project Implementing Agency (whose appointment as such it shall not be necessary to prove), with reasonable notice and during normal business hours: to visit the premises of the Project Executing Agency and the place where the Project is being conducted and all other premises of the Project Executing Agency.
- 10.2. To the extent that it is possible to do so, the Project Executing Agency hereby undertakes that any information or document submitted by it in terms of this Agreement shall be true and correct.
 - 10.3. Notwithstanding anything contained in this Agreement, the Project Implementing Agency reserves the discretion to verify and confirm any information or document submitted by the Project Executing Agency in the performance or execution of its duties and obligations in terms of this Agreement.

11. PROJECT STEERING COMMITTEE

- 11.1. The Parties shall establish and maintain for the duration of the Project a Project Steering Committee to be housed at the Project Executing Agency's offices consisting of representatives of each of the following entities:



- 11.1.1. The Project Executing Agency who shall appoint the Chair of the Committee;
- 11.1.2. The Project Implementing Agency;
- 11.1.3. Any other suitable member(s) nominated by the Project Implementing Agency and the Project Executing Agency.

11.2. The role of the Project Steering Committee is to direct and steer the project, including approving project outcomes, annual work plan and budget.

12. EXTENSION OF DURATION OF THE PROJECT

12.1. If at any time the Project Executing Agency anticipates it will be unable to complete the Project by the Project Completion Date, the Project Executing Agency shall without delay notify the Project Implementing Agency in writing of:

12.1.1. the projected period for which the Project is anticipated to be delayed;

12.1.2. the reason/s for the anticipated delay; and

12.1.3. the steps, if any, which the Project Executing Agency has taken and/or intends to take to avoid or mitigate the anticipated delay.

12.2. Upon receipt of notification from the Project Executing Agency in terms of clause 12.1, the Project Implementing Agency in consultation with GEF shall be entitled, but not obliged, without prejudice to its other rights in terms of this Agreement, to:

12.2.1. extend the period of the Project from that recorded in the Project Implementation Plan to such longer period as the Project Implementing Agency may in its sole discretion determine; and/or

12.3. If the contents of the documentation referred to in clause 12.1 are not true and correct or are not free from any misrepresentations, whether intentional or negligent, the Project Implementing Agency shall be entitled to exercise its rights as set out in clause 17 without prejudice to any other rights it may have.

12.4. Any expenses incurred in respect of preparing the Application will not be considered as part of the Project Budget.

12.5. The decision of the Project Implementing Agency regarding the validity and/or amount of expenses is final.

12.6. The Project Implementing Agency 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



Project Executing Agency shall provide the Project Implementing Agency 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.

13. MONITORING

- 13.1. The Project Implementing Agency will be responsible for the monitoring of the implementation of the Project. This will be accomplished by the monitoring of reports submitted by the Project Executing Agency in accordance with the provisions and time-lines set out in the Implementation Plan, together with any additional information which may be required by the Project Implementing Agency in its sole discretion from time to time for monitoring purposes.
- 13.2. The Project Implementing Agency may, at its own discretion, appoint a technical expert to monitor and evaluate the Project to assess the progress and authenticity of the results.

14. CONFIDENTIALITY

- 14.1. The Parties undertake to treat all Confidential Information as strictly confidential between themselves and not to divulge any Confidential Information and/or proprietary information in respect of each other to other parties (including in relation to GEF), unless otherwise required by law or agreed to in writing or required by the Project Implementing Agency in order to fulfil the conditions of this agreement. The Project Implementing Agency will nevertheless not be liable for information wrongfully obtained from the Project Implementing Agency. The following may however be made public by the Project Implementing Agency:
- 14.1.1. after this Agreement has been signed, the Application Date, name of the Project Executing Agency, Grant Amount and the Project Completion Date; and
- 14.1.2. 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.
- 14.2. The Project Executing Agency may disclose the Confidential Information of the Project Implementing Agency to its Permitted Recipients, provided that:



- 14.2.1. the Project Executing Agency will take such steps as are necessary to ensure that its Permitted Recipients to which Confidential Information is disclosed adhere to this Agreement;
 - 14.2.2. any disclosure by a Permitted Recipient of the Project Implementing Agency's Confidential Information contrary to this Agreement will be an unauthorised disclosure by the Project Executing Agency.
- 14.3. The Project Executing Agency will not use the Confidential Information for any purpose other than:
- 14.3.1. that for which it is disclosed in connection with this Agreement;
 - 14.3.2. as otherwise permitted by the Project Implementing Agency in writing; or
 - 14.3.3. in accordance with this Agreement.
- 14.4. The Project Implementing Agency does not warrant that the Confidential Information it discloses is accurate or complete and the Project Implementing Agency will not be liable for any losses, damages, costs or penalties suffered by, or claims made against, the Project Executing Agency as a result of any inaccuracies in, or incompleteness of, the Confidential Information disclosed.
- 14.5. The Project Executing Agency hereby indemnifies the Project Implementing Agency against any loss, cost, damages, expense or liability arising from, or in connection with, disclosure of Confidential Information contrary to this Agreement by the Project Executing Agency, or Permitted Recipients or third parties to which the Project Executing Agency has made disclosure.
- 14.6. Upon the request of the Project Implementing Agency, the Project 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 Project Executing Agency; provided that if required by Law or for purposes of this Agreement, the Project Executing Agency may retain 1 (one) copy of the Confidential Information for the period so required.
- 14.7. Notwithstanding the provisions of this Clause 14, it is recorded that the Project Implementing Agency may be required to disclose information to GEF in terms of the GEF Practises on Disclosure of Information. The Project Executing Agency holds the Project Implementing Agency harmless against any and all costs, losses, suits and



damages arising out of the disclosure of information by GEF in terms of their Practises on Disclosure of Information.

15. UNDERTAKINGS BY THE PROJECT EXECUTING AGENCY

The Project Executing Agency hereby undertakes:

- 15.1. to provide for a separate cost centre in its accounting system in order to record expenses related to the Project as well as the income originating from the Project and to keep full, true and accurate books of account and records in accordance with GAAP or IFRS. Such books of accounts and records shall be kept at the premises where the Project Executing Agency carries on business. The Project Implementing Agency shall be permitted at any time during business hours to have an independent auditor of the Project Implementing Agency's selection examine all of the aforementioned books of accounts and records, including information stored in computer readable form, and to take copies of all such documents, books and records;
- 15.2. to immediately inform the Project Implementing Agency in writing of the material details of any financing the Project Executing Agency acquires from other private sector or governmental sources, banking and/or financial institutions in respect of the Project;
- 15.3. to ensure that any activities undertaken as part of the Project, including but not limited to, employment, recruitment or any other labour, are sourced locally and only sourced externally where such capabilities and skills cannot be readily obtained locally or where the external sourcing of such capabilities and skills is crucial to ensure the Project Executing Agency adequately performs and achieves in terms of the Project Implementation Plan;
- 15.4. to respond, to the best of its ability, to any questionnaires for the purpose of evaluating the Project Implementing Agency for the Republic of South Africa;
- 15.5. not to use any portion of the Grant for any expenses other than those provided for in the Project Budget;
- 15.6. all sub-contracting will be to entities that the Project Executing Agency has no interest in or connection to. If the Project Executing Agency has an interest in or connection with the sub-contractor which the Project Executing Agency intends to use, the Project Executing Agency shall disclose such information to the Project Implementing Agency and obtain prior written consent from the Project Implementing Agency before the Project Executing Agency can appoint the sub-contractor. Any change of the sub-contractor shall require the prior written consent of the Project Implementing Agency;



15.7. All transactions between the Project Executing Agency and Connected Persons must be effected on arm's length terms.

16. REPRESENTATIONS AND WARRANTIES

16.1. The Project Executing Agency represents and warrants that:

16.1.1. it has the power to enter into and perform, and has taken all the necessary action to authorise its entry into and performance under this Agreement;

16.1.2. the entry into and performance by it of the terms and conditions as contemplated by this Agreement will not conflict with:

16.1.2.1. any Applicable Law;

16.1.2.2. its Constitutional Documents; and/or

16.1.2.3. any agreement or instrument binding upon it or any of its assets;

16.1.3. it has disclosed to the Project Implementing Agency all information at its disposal pertaining to the Project as required in clause 7.1 and during the Project Implementing Agency's investigation thereof;

16.1.4. it has disclosed to the Project Implementing Agency 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;

16.1.5. No transactions or arrangements involving any of the Project Executing Agency has taken place or are in existence, which are such that a South African Revenue Services is able to ascribe terms to such transactions or arrangements that differ from the terms agreed by the Project Executing Agency, and which would affect the Tax position of the Project Executing Agency;

16.1.6. Insofar required by Law, the Project Executing Agency has made or obtained records or documents in respect of transactions between the Project Executing Agency, and transactions between the Project Executing Agency and Connected Persons that meet the requirements of the appropriate Law;



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

16.1.8. **Compliance with laws**

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

16.1.9. **Constitutional documents**

16.1.9.1. The Project Executing Agency shall ensure that no change is made to its respective constitutional documents where that change has or might reasonably be expected to have a Material Adverse Effect.

16.1.10. **Environmental compliance**

The Project Executing Agency shall:

16.1.10.1. comply with all Environmental Law;

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

16.1.10.3. 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.

16.1.11. **Environmental Claims**

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

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

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



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

16.1.12. Anti-corruption law

The Project 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 Project Executing Agency shall:

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

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

16.1.13. Sanctions

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

16.1.13.1. 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

16.1.13.2. contribute or otherwise make available the proceeds of the Funding to any other person or entity if the Project 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.

16.1.14. no Event of Default or Potential Event of Default:



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

16.1.14.2. 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 Project Executing Agency;

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

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 Project Implementing Agency has or could be expected to have a Material Adverse Effect;

17.1.2. the Project 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 Project Implementing Agency notifies the Project Executing Agency of that failure or, if earlier, the date on which such Project 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, or the Project has not been completed by the Project Completion Date;

17.1.4. the Project Executing Agency deviates materially from the Implementation Plan and Project Budget without the prior written consent of the Project Implementing Agency;

17.1.5. any representation or warranty made by the Project Executing Agency in this Agreement or in connection with the execution and implementation of this Agreement is found to have been incorrect in any respect;



- 17.1.6. the Project Executing Agency commits any fraud or gross misconduct with respect to the Grant or the Project or in any way does not use the Disbursements in accordance with this Agreement;
 - 17.1.7. the Project Executing Agency has modified the nature or the objective of the Project without the prior written approval of the Project Implementing Agency;
 - 17.1.8. 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 Project Implementing Agency shall in its sole and absolute discretion be entitled (but not obliged), without prejudice to any other rights which the Project Implementing Agency may have, by notice to the Project Executing Agency to:
- 17.2.1.1. declare that the obligations of the Project Implementing Agency in terms of this Agreement shall be cancelled forthwith, whereupon the same shall be so cancelled; and
 - 17.2.1.2. 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 Project Executing Agency in terms of this Agreement.
- 17.3. The exercise by the Project Implementing Agency of the right of suspension shall not preclude the Project Implementing Agency from exercising its right of cancellation as provided in this Agreement, either for the same or another reason, and shall not limit any other provision of this Agreement.
- 17.4. Notwithstanding any provision to the contrary in this Agreement, the Project Implementing Agency may by notice to the Project Executing Agency cancel the Agreement, as the case may be, if:
- 17.4.1. the Project activities are interrupted for a consecutive period of 2 (two) calendar months save for Force Majeure; or
 - 17.4.2. the Project Implementing Agency determines that any person who is engaged in Corrupt Practice, a Coercive Practice, a Collusive Practice or a fraudulent practice, without the Project Executing Agency having taken timely and appropriate action satisfactory or to address such practice when they occur; or



- 17.4.3. the Project Executing Agency has modified the nature or the objective of the Project without the prior approval of the Project Implementing Agency.

18. INTELLECTUAL PROPERTY

- 18.1. Subject to the Provisions of this clause 18, all Intellectual Property generated in the course of the execution of the Project shall vest in the Project Executing Agency, and the Project Executing Agency shall be entitled to use the Intellectual Property for any purposes whatsoever.
- 18.2. The Parties acknowledge that such Intellectual Property shall be governed by the IPR Act, the object of this Act is to make provision for the identification, protection, utilisation and commercialisation of Intellectual Property emanating from publically financed research and development for the benefit of the people of the Republic of South Africa, whether it be for a social, economic, military or any other benefit.
- 18.3. The Project 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.
- 18.4. The Project Executing Agency undertakes to use reasonable endeavours to ensure that, to the extent feasible, Intellectual Property developed during the course of the Project is filed and prosecuted for purposes of patenting the rights and is licensed royalty-free to South African public entities as defined in the IPR Act.

19. DISPUTE RESOLUTION

- 19.1. Prior to the initiation of formal arbitration procedures, the Parties shall, within 10 (ten) business days after the arise of any dispute, first attempt to resolve their dispute informally by reference to a joint committee comprised of a single designated representative of each Party who shall have the authority of the Party he/she represents to settle the dispute.
- 19.2. Should the designated representatives, within 10 (ten) business days after the dispute has been referred to them, conclude in good faith that they are unable to settle the dispute or should either Party have failed to appoint a designated representative on the written request of the other within 10 (ten) business days after being requested to do so, then either Party may refer the matter for arbitration in terms of clause 20 (Arbitration) below or to the court specified in clause 255 (Jurisdiction).

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 Project Implementing Agency'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 Project 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 Project Implementing Agency.

22.2. The Project Implementing Agency shall be entitled, without the Project 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 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. Project Implementing Agency:

Physical: 1258 Lever Road
Headway Hill
Midrand, 1685

Facsimile: 011 206 3611

Attention: Group Executive: Project Preparation and General Counsel

27.2.2. Project Executing Agency:

Physical: 2 Cussonia Avenue,
Brummeria,
Pretoria, 0184

Facsimile:

Attention: Chief Executive Officer



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.

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 and 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. To the extent permissible in law, the Project Executing Agency, including any authorised person acting for or on behalf of the Project Executing Agency, shall exercise due care and diligence in the performance of its duties in terms of this Agreement and the Project Executing Agency, including any authorised person acting for or on behalf of the Project Executing Agency, shall be liable to the Project Implementing Agency where the Project Executing Agency has failed to exercise such due care and diligence.
- 31.2. The Project Executing Agency indemnifies and holds the Project Implementing Agency harmless against any liabilities, arising out of the conduct of the Project Executing Agency, its employees, agents and or other natural or juristic persons connected with the Project Executing Agency, in conducting the work pursuant to this Agreement.
- 31.3. Notwithstanding anything to the contrary set out in this Agreement and to the extent permissible in law, the Project Executing Agency hereby indemnifies and shall hold the Project Implementing Agency 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 Project Executing Agency, to the extent permissible in law, shall indemnify and hereby indemnifies the Project Implementing Agency 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 Project 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 8th day of February 2018.

For and on behalf of THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

Rakgale

Name: MOHALE RAKGALE

Capacity: GROUP EXECUTIVE

Who warrants authority

[Signature]

Name of Witness: EDWIN MAITHO

SIGNED at SARDIOM on the 22 day of January 2018.

As authorised signatory for and on behalf of SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

[Signature]

Name: M. E. Magamola

Capacity: Chairperson

Who warrants authority

[Signature]

Name of Witness: Jenifa Zungu [Signature]

[Handwritten initials]

SCHEDULE 1. IMPLEMENTATION PLAN AND PROJECT BUDGET

High Level Action Plan and Budget for Year 1-5

High-level annual actions and deliverables linked to outputs of the GEF 6 Biodiversity and water security project		ZAR (USD)
<p>Year 1:</p> <ul style="list-style-type: none"> • See detailed action plan and budget for year 1. • Annual project report against the annual workplan. • Detailed action plan and budget for year 2 developed. 		<p>R 6 700 205,04 (\$ 515 400,39)</p>
<p>Year 2:</p> <ul style="list-style-type: none"> • Output 1.1.1. Hold several work sessions on detailed catchment-level water accounts for demonstration catchments • Output 1.1.2. Strategic Advisory Committee for Ecosystem Accounting has met once • Output 1.3.1. Calculation of full costs of management of ecological infrastructure at catchment level are underway • Output 1.3.2. Commence work with finance institutions to identify key elements for natural capital/ ecological infrastructure risk inclusion in the tool • Output 2.1.1 and 2.2.1. Dedicated focal point for ecological infrastructure in Berg-Breede and Greater uMngeni demonstration catchments in place • Output 3.1.1. Strategy for knowledge management and social learning for change developed and being implemented • Output 3.2.2. Monitoring and evaluation system developed and being implemented • Two steering committee meetings convened • Annual project report against the annual workplan and detailed action plan and budget for year 3 developed 		<p>R 25 033 623,88 (\$ 1 925 663,38)</p>
<p>Year 3:</p> <ul style="list-style-type: none"> • Output 1.1.1.1 Works sessions held with key users based on draft accounts • Output 1.1.2. Strategic Advisory Committee for Ecosystem Accounting has met once and community of practice has been convened once. • Output 1.2.1. Evidence of participation in policy processes related to the NWRs/ National Water and Sanitation Strategy (NwASS). • Output 1.3.2. Key elements for natural capital/ ecological infrastructure risk inclusion in the tool are agreed with finance institutions and a systematic tool/method designed for integrating natural capital (particularly ecological infrastructure) considerations into finance institutions' operations, products or services. • Output 2.1.1 and 2.2.1. Ecological infrastructure management plan in Berg-Breede and Greater uMngeni demonstration catchments under development • Output 3.2.2. Three learning products/events have been held • Two steering committee meetings convened. • Annual project report against the annual workplan and detailed action plan and budget for year 4 developed. 		<p>R 26 802 299,69 (\$ 2 061 715,36)</p>
<p>Year 4:</p> <ul style="list-style-type: none"> • Output 1.1.1. Detailed catchment-level water accounts for Berg-Breede and Greater uMngeni demonstration catchments completed • Output 1.1.2. Strategic Advisory Committee for Ecosystem Accounting has met once • Output 1.2.2. Natural Resource Management land user incentive framework strengthened for water outcomes • Output 1.3.1. Review of financial flows from water price • Output 3.2.1. Knowledge products that demonstrate the value of ecological infrastructure for water security produced 		<p>R 22 563 768,25 (\$ 1 735 674,48)</p>

High-level annual actions and deliverables linked to outputs of the GEF 6 Biodiversity and water security project		ZAR (USD)
<ul style="list-style-type: none"> Two steering committee meetings convened Annual project report against the annual workplan and detailed action plan and budget for year 4 developed 		R 12 523 957,28 (\$ 963 381,33)
<p>Year 5:</p> <ul style="list-style-type: none"> Output 1.1.1. Lessons on application of accounts synthesised Output 1.1.2. Strategic Advisory Committee for Ecosystem Accounting has met once and community of practice has been convened once. Output 1.2.1. Implementation plan for the National Water and Sanitation Strategy has ecological infrastructure targets Output 1.2.2. Water resource development planning and options analysis incorporates ecological infrastructure (evidence in options analysis processes undertaken for particular water infrastructure projects) Output 1.3.1. Statement of full costs of management of ecological infrastructure determined at catchment level, and mechanisms identified for flow of funds to ecological infrastructure rehabilitation and maintenance. Output 1.3.2. Tool/method to strengthen the assessment and management of environmental risk within investment decision-making linked to water infrastructure finance developed, tested and peer reviewed. Output 2.1.1 and 2.2.1. Institutional arrangements for beyond project ecological infrastructure coordination agreed; Ecological infrastructure management plan being implemented as part of the Catchment Management Strategy. Output 2.1.2. Studies in the Berg-Breede demonstration catchment to determine the full costs associated with the rehabilitation and maintenance of water-related ecological infrastructure are completed Output 2.2.2. Studies in the Greater uMngeni demonstration catchment to confirm the eligibility of catchments for implementing the WDCC are completed. Output 2.2.3. One ecological infrastructure investment plan for an infrastructure development in the Greater uMngeni demonstration catchment under implementation. Output 3.1.1. Updated strategy for knowledge management and social learning for change implemented, and post project road map developed; and eight learning products/events. Two steering committee meetings convened. Annual project report against the annual workplan. 		
TOTAL BUDGET		R 93 623 854,33 (\$ 7 201 834,93)

Detailed Action Plan and Budget for Year 1

PLANNED ACTIVITIES TOWARDS ACHIEVING PROJECT OUTCOMES		BUDGET	
		Months 1-6	Months 7-12
Towards Outcome 1.1 Natural capital accounts developed to enable policy, planning and decision-making in favour of ecological infrastructure		R 146 931.20	R 766 788.80
<ul style="list-style-type: none"> 1.1.a Appoint Natural Capital Accounts Project Manager 1.1.b Hold several work sessions on national ecosystem accounts. 1.1.c Initiate software tool development towards developing detailed catchment-level water accounts for demonstration catchments. 			
Towards Outcome 1.2 Relevant policy frameworks, regulatory instruments and planning tools enable the integration of biodiversity and ecosystem services into water sector planning, finance and development		R 177 258.97	R 622 458.97
<ul style="list-style-type: none"> 1.2.a Appoint a Water Sector Senior Policy Advisor and conduct inception workshops for detailed work planning with implementing partners. 1.2.b Initiate work to strengthen relevant compensation/offsets policy framework and tools for infrastructure to streamline implementation and maximize benefits to water security, including possible development of a guideline. 1.2.c Initiate work to support improved practice of setting water use license conditions (particularly for developments with significant water impacts). 			
Towards Outcome 1.3 Mechanisms for rehabilitation and ongoing maintenance of ecological infrastructure are in place and operationalized		R 76 744.00	R 690 696.00
<ul style="list-style-type: none"> 1.3.a Initiate work with Catchment Management Agencies to reconcile value of downstream water services and costs of ecological infrastructure rehabilitation and maintenance within water pricing structures and water resource plans (Catchment Management Strategies) which include ecological infrastructure 1.3.b Initiate work to develop a decision-support tool to ensure finance institutions incorporate ecological infrastructure into their decision making and project approval processes for financing water infrastructure, and that ecological infrastructure considerations are incorporated in the planning and prefeasibility stages of water infrastructure development. 1.3.c Initiate work with interested private sector infrastructure funders to improve understanding of the potential for water related ecological infrastructure to reduce financial risk, both at the project and systemic level linked to water security issues in South Africa. 1.3.d Initiate work with DWS to ensure that ecological infrastructure is incorporated in business plans submitted for funding of water infrastructure. 			
Towards Outcome 2.1 Enhanced organizational capacity and investment in ecological infrastructure in the Berg and Breede catchments have improved water resource management		R 107 832.50	R 235 032.50

PLANNED ACTIVITIES TOWARDS ACHIEVING PROJECT OUTCOMES

BUDGET

Months 1-6

Months 7-12

- 2.1.a Appoint an Ecological infrastructure coordinator to assist key stakeholders to coordinate activities in the Berg-Breedse demonstration catchment
- 2.1.b Commence assessment of full costs associated with the rehabilitation and maintenance of water-related ecological infrastructure.

Towards Outcome 2.2 Enhanced organizational capacity and investment in ecological infrastructure in the Greater uMngeni catchment have improved water resource management

R 289 516.50 R 888 628.50

- 2.2.a Appoint an Ecological Infrastructure coordinator to coordinate activities in the Greater uMngeni demonstration catchment.
- 2.2.b Initiate work on the ecological infrastructure plan and implementation strategy for the Catchment Management Agency (focusing on priority tertiary catchments).
- 2.2.c Initiate development of detailed costing of the Catchment Management Agency to better calculate the costs of ecological infrastructure protection, rehabilitation and maintenance and compliance management in the Water Resource Management Charge
- 2.2.d Initiate investigation of the full costs of water for different user groups in the catchment and explore opportunities within the water value chain that ensure more equitable allocation of full costs for water amongst different users.

Towards Outcome 3.1. Project impact and sustainability is enhanced through targeted engagement with key stakeholders

R 212 000.00 R 143 585.00

- 3.1.a Appoint a knowledge management and social learning coordinator
- 3.1.b Review the current institutional arrangements for Catchment Management Agencies and identify current entry points

Towards Outcome 3.2 Evidence of the value of ecological infrastructure for water security is credible, salient and relevant

R 593 600.00 R 614 800.00

- 3.2.a Develop partnership arrangements with Water Research Commission and other stakeholders and design programme for research and generation of evidence of the impact of project interventions.
- 3.2.b Initiate the development of a monitoring and evaluation system that supports project impact assessment.
- 3.2.c Conduct a knowledge exchange between GEF 6 project design team and project implementers around the project inception.

Towards 4.1. Establishment of Project Management Unit

R 567 165.04 R 567 166.04

- 4.1.a Appoint a Project Leader. Project coordinator and finance officer
- 4.1.b Develop Terms of Reference for and convene 2 steering committee meetings a year

Totals per 6-month period

R 2 171 049.22 R 4 529 155.82

TOTAL FOR YEAR 1

R 6 700 205.04

SCHEDULE 2. DISBURSEMENT REQUEST FORM

To: Development Bank of Southern Africa Limited

[physical address]

Attention: [•]

Date: [•] 20__

Dear Sirs

GRANT AGREEMENT BETWEEN THE DBSA AND THE PROJECT EXECUTING AGENCY DATED [•] 20__ ("AGREEMENT"): DISBURSEMENT REQUEST FORM NO: [•]

1. Please refer to the agreement dated [*insert date*] between the Project Executing Agency and the Development Bank of Southern Africa Limited ("DBSA") ("**Agreement**"). Terms defined in the Agreement have their defined meanings whenever used in this request.
2. The Project Executing Agency requests the disbursement on or before [*insert date*] (or as soon as practicable thereafter) of the aggregate amount of [*insert numerals*] [*insert words*] (the "**Disbursement**"). You are kindly requested to pay such amount to the account of the Project Executing Agency, Account No. [•] Branch Code [•].
3. The Project Executing Agency further certifies as follows:
 - 3.1 the representation and warranties made in the Agreement are true on the date of this request and will be true on the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date except as set forth on the certificate accompanying this request;
 - 3.2 the Project Executing Agency is not aware (after due enquiry) that any Potential Event of Default, Event of Default, Insolvency Event or Material Adverse Effect has occurred, is continuing or about to occur;
 - 3.3 since the date of the Agreement no changes in the Project or in the financial condition of the Project Executing Agency has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;
 - 3.4 the proceeds of the Disbursement are at the date of this request required by the Project Executing Agency exclusively for the Purpose;
 - 3.5 after receipt of the Disbursement the Project Executing Agency will not be in violation of:



- 3.5.1 Its Constitutional Documents;
 - 3.5.2 any provision contained in any document to which the Project Executing Agency is a Party or by which the Project Executing Agency is bound; or
 - 3.5.3 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Project Executing Agency's borrowing power or authority or its ability to borrow,
- 3.6 all invoices and related supporting documentation in respect of our Disbursement Request are enclosed in accordance with the provisions of the Agreement; and
- 3.7 all documentation delivered by us pursuant to the Agreement are available for inspection by the DBSA.
- 3.8 The above certifications are effective as at the date of this Disbursement Request and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Project Executing Agency undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully

For and on behalf of [insert]

Name:

Capacity:

Who warrants his/her authority hereto

Handwritten initials 'MR' and a signature.

SCHEDULE 3. FRAMEWORK GUIDELINES FOR THE IMPLEMENTING AGENCY OVERSIGHT COMMITTEE

1. Introduction

1.1. It is a condition to the Agreement that the Parties shall formally establish an Implementing Agency Oversight Committee (hereafter referred to as the "Oversight Committee").

1.2. Accordingly, and in order to give effect to the above, the Parties agree as set out herein.

2. Establishment of the Oversight Committee

Upon the Agreement becoming unconditional in accordance with its terms (save for any condition therein requiring the establishment of the Oversight Committee and the appointment of the Parties' representatives to the Oversight Committee), it is agreed that:

2.1. the Oversight Committee is hereby established as the joint oversight committee in terms of the Agreement; and

2.2. the role of the Oversight Committee is to **oversee** the overall administrative and management arrangements for implementation of the overall project outcomes and approve project progress reports and plans..

3. Mandate of the Oversight Committee

3.1. serve as the primary interface between the Project Implementing Agency and the Project Executing Agency;

3.2. oversee the overall administrative and management arrangements for implementation of the overall project outcomes;

3.3. Review substantive issues of procurement (SANBI to provide a report of all procurement matters at the Oversight Committee).

3.4. monitor the progress of the project against the Project Implementation Plan;

3.5. ensure conformity with the Project Implementation Plan;

4. Members of the Oversight Committee

4.1. The Oversight Committee shall consist of representatives from Project Implementing Agency and Project Executing Agency (each representative being a "Member").

4.2. The members shall be (but not be limited to):

4.2.1. From the Project Implementing Agency: Nomsa Zondi and Julie Clarke.

4.2.2. From the Project Executing Agency: Kristal Maze and Mathlodi Tau

4.3. Members shall remain as members of the Oversight Committee until such time as their appointment is withdrawn on written notice to the chairperson of the Oversight Committee. Members shall be entitled to nominate any representative to act as their proxy to attend and vote at any meeting of the Oversight Committee.

4.5. The Project Implementing Agency shall select and appoint one of its members to act as chairperson of the Oversight Committee.

4.6. The Project Implementing Agency shall ensure that minutes of all meetings of the Oversight Committee are duly recorded and circulated to the members and the stakeholders.

4.7. Members who are absent for 3 consecutive Oversight Committee meetings, without an apology, may be requested to relinquish their seats on the committee.

5. Meetings of the Oversight Committee

5.1. The Oversight Committee shall meet quarterly unless otherwise agreed between the members.

5.2. Meetings of the Oversight Committee shall be co-ordinated through and called on by the chairperson whenever required in accordance with these Framework guidelines.

5.3. Notice of any meeting of the Oversight Committee shall be sent to each member and shall confirm the venue, time and date, together with the proposed agenda for the meeting (including any supporting papers).

5.4. As far as is reasonably practicable, at least 30 (thirty) days' notice shall be given of any meeting of the Oversight Committee.

5.5. The first meeting of the Oversight Committee shall be held at a time and place to be agreed between the members.

5.6. Meetings may be held telephonically or via teleconference or videoconference, if applicable.

5.7. A quorum of the Oversight Committee shall be constituted by the attendance of 50% plus 1 members (or their alternates), 1 (one) of whom shall have been appointed by the Project Implementing Agency, and 1 (one) of whom shall have been appointed by the Project Executing Agency. If a meeting is not quorate within 30 minutes of its start time it shall be adjourned to the same place and time one week later where the quorum shall be two members (1 (one) of whom shall have been appointed by the Project Implementing Agency, and 1 (one) of whom shall have been appointed by the Project Executing Agency).

5.9. All costs associated with the attendance of meetings of the Oversight Committee, unless otherwise specifically agreed between the members, shall be for the account of the member incurring the costs.

6. Recommendations of the Steering Committee

6.1. All recommendations of the Oversight Committee shall be achieved by consensus, and if consensus cannot be reached, a majority vote (following reasoned discussion) of all members present at that meeting.

6.2. The chairperson shall not have a casting vote.

6.3. The chairperson shall ensure that the secretary of the Oversight Committee accurately records all recommendations made and that copies of such decisions are provided to each member and the stakeholders as soon as is reasonably possible thereafter.

7. Principles

In performing the tasks assigned to the Oversight Committee, the members will observe the following principles, namely to:

7.1. work together in a spirit of transparency and openness in which the achievement of the project to a standard of excellence is a prime consideration;

- 7.2. promote trust, fairness, mutual cooperation, dedication to the agreed common goal while understanding each other's expectations and values;
- 7.3. be cognisant of the expectations and interests of each of the stakeholders and to seek to promote "win-win" solutions when balancing the interests of the stakeholders;
- 7.4. to accept that conflict is natural but in such situations to promote teamwork in order to work constructively through disagreements;
- 7.5. show flexibility whilst still ensuring that the project achieves excellence in its construction and operational standard;
- 7.6. promote a culture of zero tolerance towards corruption and other improper activities and ensure adherence to applicable anti-corruption legislation; and
- 7.7. bring full commitment to achieving effective interfacing between the members in order to make decisions with respect to the project and solve any issues that may arise in connection with the project in an effective and efficient manner.

