



**GRANT AGREEMENT**

**between**

**AFRICA INSTITUTE**

**And**

**THE DEVELOPMENT BANK OF SOUTHERN AFRICA**

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be the name 'John' followed by a surname.

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## **PARTIES**

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 Agency; and
2. **Africa Institute**, an Intergovernmental Organisation established through a treaty that member states ratify to become full members ratified on 31<sup>st</sup> March 2004, as the Executing Agency.

## **1. 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:

- 1.1. **"Agreement"** means this Grant agreement including any schedules hereto;
- 1.2. **"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;
- 1.3. **"Application"** means the Project Identification Form submitted to the GEF Council in respect of the Project;
- 1.4. **"Approval Date"** means the date upon which the Application was approved by the DBSA being 21 July 2016;
- 1.5. **"Authorisations"** mean all authorisations (governmental, regulatory or otherwise) that are necessary for the implementation of the Project;
- 1.6. **"Availability Period"** means a period calculated from the date of the Signature and ending on the date falling 30 March 2019 thereafter;
- 1.7. **"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;
- 1.8. **"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;



- 1.9. **"Collusive Practice"** means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 1.10. **"Confidential Information"** means all information confidential to a Party (including any information confidential to the DEA and 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;
- 1.11. **"Connected Person" or "Connection"** shall mean in relation to a company connected with another person:
- 1.11.1. the person has control of the company, or
  - 1.11.2. the person together with persons connected with them have control of the company;
  - 1.11.3. the person is an associate of the company;
  - 1.11.4. the person is a joint venture in which the company is a venturer;
  - 1.11.5. the person is a member of the key management personnel of the company or its parent;
  - 1.11.6. the person is a close member of the family of any individual referred to in 1.11.1, 1.11.2, or 1.11.5;
  - 1.11.7. 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 1.11.5 or 1.11.6; or
  - 1.11.8. 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.
- 1.12. **"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 DBSA;

- 1.13. **"Corrupt Practice"** means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another;
- 1.14. **"DBSA"** means 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;
- 1.15. **"DEA"** means the national Government of the Republic of South Africa acting through its national Department of Environmental Affairs;
- 1.16. **"Disbursement"** means an amount drawn down by the Executing Agency and disbursed by the DBSA under and in terms of a Disbursement Request and in accordance with the Implementation Plan and Project Budget, and **"Disbursed"** shall be construed accordingly;
- 1.17. **"Disbursement Request"** means a request made by the Executing Agency for utilization of the Grant to be released upon the Signature of the Grant Agreement and the fulfilment of the Conditions Precedent;
- 1.18. **"Effective Date"** means the first Business Day after the DBSA notifies the 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 6.3;
- 1.19. **"Endorsement Date"** means the date when the project was endorsed by GEF being 30 October 2017
- 1.20. **"Event of Default"** means any one or more events or circumstances as envisaged in clause 15;
- 1.21. **"Executing Agency"** means the Africa Institute;
- 1.22. **"FICA"** means the Financial Intelligence Centre Act, 2001 and all notices and regulations passed thereunder;
- 1.23. **"Financial Year"** means each year commencing on 1 April of each year and ending on 31 March of the following year;



- 1.24. **"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 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;
- 1.25. **"GAAP"** means the Generally Accepted Accounting Principles as approved from time to time by the International Accounting Standards Committee;
- 1.26. **"GEF"** means the Global Environmental Facility;
- 1.27. **"Grant"** means a facility in the form of grant funding made available by the DBSA to the Executing Agency under this Agreement in an aggregate sum not exceeding the Grant Amount;
- 1.28. **"Grant Amount"** means an amount of \$ 200,000 (Two Hundred Thousand US Dollars) inclusive of value-added tax and all applicable taxes thereon;
- 1.29. **"IFRS"** means the International Financial Reporting Standards as approved from time to time by the International Accounting Standards Board;
- 1.30. **"Implementation Plan and Project Budget"** means the implementation plan prepared by the Executing Agency and approved in writing by the DBSA setting out the deliverables 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;
- 1.31. **"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;

- 1.32. **"IPR Act"** means the Intellectual Property Rights from Publicly Funded Research and Development Act 51 of 2008;
- 1.33. **"Material Adverse Event"** 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:
- 1.33.1. the Project, business, operations, property, condition (financial or otherwise) or prospects of the Executing Agency; and/or
- 1.33.2. the ability of the 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
- 1.33.3. 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
- 1.33.4. the validity, enforceability and/or legality of this Agreement or any other Project document;
- 1.34. **"Parties"** means the DBSA and the Executing Agency;
- 1.35. **"Patent Rights"** means a Party's rights in patents or patent applications, whether domestic or foreign, claiming inventions arising directly from the Project, including but not limited to, any patents that may issue thereon and any and all provisional, divisions, continuations, reissues, re-examinations or extensions thereof;
- 1.36. **"Permitted Agents"** means employees, directors, officers, professional advisors, financiers and consultants of the Executing Agency;
- 1.37. **"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;
- 1.38. **"Project"** means conducting a feasibility study with the aim of developing a business case for an environmentally sound management and disposal of polychlorinated



biphenyls pilot project in South Africa, as described more fully in the Implementation Plan;

- 1.39. **"Project Account"** means the ring-fenced Pastel™ cost code account to be opened by the 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;
- 1.40. **"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 Implementation Plan and Project Budget Schedule;
- 1.41. **"Project Completion Date"** means the date upon which the Project is expected to be finally completed, as set out in the Implementation Plan;
- 1.42. **"Purpose"** means utilising the Grant Amount solely for payment of the Project expenses as set out in the Project Budget;
- 1.43. **"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;
- 1.44. **"Related Party"** means a Connected Person;
- 1.45. **"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:
  - 1.45.1. Transactions involving the sale or purchase of goods;
  - 1.45.2. Transactions involving the sale or purchase of property and/or assets;
  - 1.45.3. Transactions involving the lease of property and/or assets;
  - 1.45.4. Transactions involving the provision or receipt of services or leases;
  - 1.45.5. Transactions involving the transfer of intangible items (e.g. research and development, trademarks, license agreements);
  - 1.45.6. Transactions involving the provision, receipt, or guarantee of financial services (including loans and deposit services);
  - 1.45.7. Transactions involving the assumption of financial/operating obligations;



- 1.45.8. Transactions that include the subscription for debt/equity issuances; and
- 1.45.9. Transactions that involve the establishment of joint-venture entities.
- 1.46. "**Signature Date**" means the date upon which this Agreement is signed by the Party signing last, provided that all Parties sign this Agreement;
- 1.47. "**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;
- 1.48. "**Termination Date**" means the date falling on the eighteen month anniversary of the Effective Date;
- 1.49. "**USD**" means United States Dollars, the lawful currency of the United States of America; and
- 1.50. "**VAT**" means (i) any value-added tax as provided for in the Value-Added Tax Act, 1991, (ii) any general service tax and (iii) any other tax of a similar nature.

## 2. INTERPRETATION OF AGREEMENT

- 2.1. Any reference in this Agreement to:
- 2.1.1. an **amendment** includes a supplement, novation or re-enactment and amended is to be construed accordingly;
- 2.1.2. **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;
- 2.1.3. 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;

2.1.4. a **schedule** shall, subject to any contrary indication, be construed as reference to an appendix to this Agreement.

2.2. In this Agreement, unless the context otherwise indicates:

2.2.1. all words and expressions referring to any one gender shall be capable of being construed as a reference to the other genders;

2.2.2. the words signifying the singular shall include the plural and vice versa;

2.2.3. a reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;

2.2.4. 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;

2.2.5. words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement;

2.2.6. 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

2.2.7. 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.

2.3. 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.

2.4. 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. INTRODUCTION**

- 3.1. The DBSA has applied 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 DBSA intends advance the Grant to the Executing Agency to be used for the Purpose, all on the terms and conditions contained in this Agreement.
- 3.2. The main objective of the Project is to undertake a feasibility study with the aim of developing a business case for an environmentally sound management and disposal of polychlorinated biphenyls pilot project in South Africa.
- 3.3. This Agreement records the terms and conditions for the cooperation of the Parties in the implementation of the Project.

### **4. DISBURSEMENTS**

- 4.1. 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 clause 6.1 and to the fulfilment prior to or concurrently with the making of such Disbursement of the following conditions:
  - 4.1.1. no Event of Default or Potential Event of Default having occurred and/or is continuing; and
  - 4.1.2. the representations and warranties made in terms of this Agreement by the Executing Agency are true and correct in all respects;
  - 4.1.3. 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; and
  - 4.1.4. the Project Implementation Plan shall have been approved by in writing by the DBSA together with any proposed changes and Quarterly projections from time to time.
- 4.2. **Disbursement Procedure**
  - 4.2.1. Subject to the terms and conditions of this Agreement, the DBSA shall make the Grant Amount available to the Executing Agency in accordance with this Agreement.
  - 4.2.2. The Executing Agency shall, subject to this clause 4.2 request each



Disbursement by delivering to the DBSA the Disbursement Request Form.

- 4.2.3. The Disbursement Request for each Disbursement shall be irrevocable.
  - 4.2.4. The DBSA shall make the Disbursements to the Executing Agency and/or any other third party as directed by the Executing Agency through the Disbursement Request Form in USD.
  - 4.2.5. The Disbursement Date shall be a Business Day within the Availability Period and within 20 (twenty) Business Days of a DBSA approved Disbursement Request.
  - 4.2.6. 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.
- 4.3. The Executing Agency hereby acknowledges and agrees that all Disbursements shall constitute valid Disbursements made by the DBSA, the benefit of which shall have been received by the Executing Agency.
  - 4.4. The DBSA shall not be obliged to disburse any portion of the Grant Amount remaining undrawn at expiry of the Availability Period.
  - 4.5. 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 Grantor, 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.
- 4.6. **Limitation**
    - 4.6.1. Notwithstanding anything provided in this Agreement, the DBSA shall only be obliged to make a Disbursement if the DBSA is satisfied with the outcome of its consideration of a Disbursement Request pursuant to clause 4.6.2.
    - 4.6.2. The Disbursement Request shall be considered by the DBSA:
      - 4.6.2.1. alongside the Project Progress Report;



4.6.2.2. in the context of the Project Budget and financing to date; and

4.6.2.3. against expenditure to date.

#### **4.7. Reimbursement of unsupported Disbursement**

4.7.1. To the extent that an audit of the Executing Agency in connection with the Project by the Auditors does not provide evidence satisfactory to the Auditors of the DBSA that a 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 Executing Agency shall, upon the DBSA's demand, within 5 (five) business days of notification by the DBSA, reimburse the DBSA any amount of the Disbursement not so used.

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

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

4.7.2.2. any event that may lead the DBSA to cancel the Grant in terms of this Agreement.

### **5. UTILISATION OF THE GRANT**

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

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

5.2.1. payment of existing debts;

5.2.2. payment of costs unrelated to the Project;

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

5.2.4. any illegal activities;

- 5.2.5. any success fees or facilitation fees; and/or
- 5.2.6. any other purpose not included in the Project Implementation Plan unless approved by DBSA in writing.

## **6. CONDITIONS PRECEDENT**

- 6.1. Save for clauses 1 to 3, 12 and 16 to 32 (both inclusive), all of which will become effective immediately, this Agreement is subject to the fulfilment of the following Conditions Precedent:
  - 6.1.1. the Executing Agency shall have opened a dedicated Pastel™ 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 Executing Agency;
  - 6.1.2. the Executing Agency shall have provided documentary proof of its bank account details;
  - 6.1.3. the Executing Agency shall have submitted to the DBSA all information and documentation requested by the DBSA for purposes of conducting and completing a legal due diligence of the Executing Agency, all to the satisfaction of the DBSA, and shall have taken steps to the satisfaction of the DBSA to remedy any material risks identified by the DBSA in terms of the abovementioned due diligence investigation;
  - 6.1.4. the Executing Agency shall have submitted its latest audited financial statements to the DBSA (if applicable);
  - 6.1.5. a certified copy of the Constitutional Documents in respect of the Executing Agency;
  - 6.1.6. a certified copy of a resolution of the Board of Directors of the Executing Agency or a delegation of authority approving the terms of this Agreement and authorising the authorised representatives of the Executing Agency to execute the Agreement;
  - 6.1.7. Receipt by the DBSA of the Report template in final form as agreed with the DBSA, all duly initialled/signed by the Executing Agency and the DBSA, as the case may be;



- 6.1.8. Receipt by the DBSA of the Implementation Plan and Project Budget in final form as agreed with the DBSA, all duly initialled/signed by the Executing Agency and the DBSA, as the case may be; and
- 6.1.9. the Executing Agency shall have provided the DBSA with all documents required to comply with the obligations imposed on the DBSA by FICA and the regulations pertaining thereto and in terms of internal procedures which the DBSA may, from time to time, be required to adhere to in order to establish and verify identities of contracting parties to this Agreement.
- 6.2. 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 6.1.
- 6.3. The Conditions Precedent set out in clause 6.1 above have been inserted for the benefit of the DBSA, which will be entitled to waive the fulfilment of such Conditions Precedent, in whole or in part, by written notice to the Executing Agency.
- 6.4. Unless all the Conditions Precedent have been fulfilled or waived, the provisions of this Agreement, save for clauses 1 to 3, and clauses 12 and 16 to 32 (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 6.2.

## **7. DURATION**

- 7.1. The Parties agree that subject to:
  - 7.1.1. the fulfilment or waiver, as the case may be, of the Conditions Precedent;
  - 7.1.2. 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.

## **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. periodically reviewing the Project and outlining any discrepancies in respect of the Project Implementation Plan, which the Recipient is obliged to rectify;
  - 8.1.3. reviewing the Project Progress Reports and Disbursement Requests to be submitted by the Executing Agency to ensure that the Project is progressing in accordance with this Agreement;
  - 8.1.4. if the DBSA, in its sole discretion deems necessary, undertaking periodic on-site visits to the Project to verify that progress of the Project;
  - 8.1.5. ensuring and maintaining on-going communication with the Executing Agency throughout the Agreement; and
  - 8.1.6. providing oversight to the Project to ensure delivery in line with the approved Project Implementation Plan.
- 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. SCOPE OF THE PROJECT**

- 9.1. The scope of the Project, the roles of the Executing Agency, time frames and budget shall be as stipulated in Schedule 1 of this Agreement.

**10. RESPONSIBILITIES OF THE EXECUTING AGENCY**

- 10.1. The role and responsibility of the Executing Agency shall include but not be limited to the following activities in relation to the Project:
  - 10.1.1. ensuring that the Project Implementation Plan is accompanied by sufficient detailed planning documentation to substantiate all information contained therein;
  - 10.1.2. ensuring that the deliverables are complied with by the Executing Agency within the timeframes agreed upon as set out in the Project Implementation Plan;
  - 10.1.3. ensuring that the Project Budget is adhered to;
  - 10.1.4. ensure that the audit certificate, verifying all the expenditures, is available as and when the Project audit is conducted by the Auditors;
  - 10.1.5. under no circumstances, terminate, abandon, interrupt or suspend the

- implementation of the Project without the prior written consent of the DBSA;
- 10.1.6. carry out the Project with due diligence and efficiency;
  - 10.1.7. complete the Feasibility Study by no later than the Completion Date, unless otherwise agreed in terms of clause 8 (*Extension of Duration of the Project*);
  - 10.1.8. 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 IFRS, as the case may be, and promptly provide to the Grantor evidence acceptable to the Grantor regarding the use of the proceeds of each Disbursement;
  - 10.1.9. appoint and maintain as its Auditors a firm of recognised independent accountants for the account of the Recipient, which shall be acceptable to the DBSA, and irrevocably authorize the Auditors to communicate directly with the DBSA at any time regarding the Recipient's accounts and operations in respect of the Project;
  - 10.1.10. engage consultants, contractors and subcontractors to implement the Project pursuant to contracts negotiated on an arm's length basis following standard commercial practices in the Republic of South Africa;
  - 10.1.11. maintain the Project Bank Account for managing cash flow;
  - 10.1.12. ensure that risk management procedures are in place to deal with the identified risks to the Project;
  - 10.1.13. promptly notify the DBSA upon the occurrence of an Event of Default or Potential Event of Default and the steps that the Recipient is taking to remedy it;
  - 10.1.14. as soon it comes to the Recipient'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 Recipient of its obligations under this Agreement;
  - 10.1.15. comply with all Applicable Laws including all environmental laws and ensure that each consultant, contractor or subcontractor engaged to perform services



in connection with the Project complies with all Applicable Laws;

- 10.1.16. 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**");
- 10.1.17. 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;
- 10.1.18. 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;
- 10.1.19. 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:
  - 10.1.19.1. 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
  - 10.1.19.2. to have access to their respective books and accounts related to the Project.
- 10.1.20. on the 7th (seventh) Business day after the end of each Quarter, furnish the DBSA with a Project Progress Report in form and substance satisfactory to the DBSA:
- 10.1.21. within 120 (one hundred and twenty) days after the end any of the Financial Year, furnish the DBSA with:
  - 10.1.21.1. the Annual Performance Report;
  - 10.1.21.2. a certified copy of its complete and audited financial statements for the Financial Year prepared in accordance with GAAP or IFRS;
  - 10.1.21.3. the Auditors' report; and
  - 10.1.21.4. Audited Financial Statement;
- 10.1.22. the Executing Agency will allow the DBSA to review and approve the text of



any proposed publicity concerning this Grant prior to its release; and

- 10.1.23. promptly notify the DBSA of any event or condition which has or could be expected to have a Material Adverse Effect.
- 10.2. Following the Termination Date, the Executing Agency shall prepare the Feasibility Study Report.
- 10.3. Without limiting the reporting requirements stipulated in this Agreement, a final financial accounting of all projects costs incurred and all funds received by the Executing Agency, together with a cheque for the amount equal to the unexpended balance of the Grant Amount, if any, shall be submitted to the Executing Agency within 90 (ninety) days following the Completion Date.
- 10.4. 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.
- 10.5. 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.
- 10.6. The Executing Agency shall in addition submit to the DBSA, on a Quarterly basis, a financial report on expenditure in respect of personnel, budget, and other relevant financial information for the preceding unreported period.
- 10.7. If requested by the DBSA or GEF, the Executing Agency shall make periodic oral reports at times agreed to by the Parties.
- 10.8. GEF and DEA shall have the right to use information disclosed in these reports, subject to the terms of this Agreement.

## 11. **MONITORING**

- 11.1. The DBSA will be responsible for the monitoring of the implementation of the Project in terms of the Implementation and Project Budget. This will be accomplished by the monitoring of reports submitted by the 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 DBSA in its sole discretion from time to time for monitoring purposes.



- 11.2. The DBSA may, at its own discretion, appoint a technical expert to monitor and evaluate the Project to assess the progress and authenticity of the results.

**12. CONFIDENTIALITY**

- 12.1. 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 (including in relation to the DEA and GEF), 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 DBSA will nevertheless not be liable for information wrongfully obtained from the DBSA or the DEA. The following may however be made public by the DBSA:

12.1.1. after this Agreement has been signed, the Application Date, name of the Executing Agency, Grant Amount and the Project Completion Date; and

12.1.2. 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.

- 12.2. The Executing Agency may disclose the Confidential Information of the DBSA to its Permitted Recipients, provided that:

12.2.1. the 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;

12.2.2. any disclosure by a Permitted Executing Agency of the DBSA's Confidential Information contrary to this Agreement will be an unauthorised disclosure by the Executing Agency.

- 12.3. The Executing Agency will not use the Confidential Information for any purpose other than:

12.3.1. that for which it is disclosed in connection with this Agreement;

12.3.2. as otherwise permitted by the DBSA in writing; or

12.3.3. in accordance with this Agreement.



- 12.4. 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.
- 12.5. 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 Agents or third parties to which the Executing Agency has made disclosure.
- 12.6. 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.
- 12.7. Notwithstanding the provisions of this Clause 12, it is recorded that the DBSA may be required to disclose information to GEF in terms of the GEF Practises on Disclosure of Information. The Executing Agency holds the DBSA 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.

### **13. UNDERTAKINGS BY THE EXECUTING AGENCY**

The Executing Agency hereby undertakes:

- 13.1. 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 Executing Agency carries on business. The DBSA shall be permitted at any time during business hours to have an independent auditor of the DBSA'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;
- 13.2. to immediately inform the DBSA in writing of the material details of any financing the Executing Agency acquires from other private sector or governmental sources, banking and/or financial institutions in respect of the Project;
- 13.3. 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 Executing Agency adequately performs and achieves in terms of the Project Implementation Plan;

- 13.4. to respond, to the best of its ability, to any questionnaires for the purpose of evaluating the DBSA for the Republic of South Africa;
- 13.5. not to use any portion of the Grant for any expenses other than those provided for in the Project Budget;
- 13.6. all sub-contracting will be to entities that the Executing Agency has no interest in or connection to. If the Executing Agency has an interest in or connection with the sub-contractor which the Executing Agency intends to use, the Executing Agency shall disclose such information to the DBSA and obtain prior written consent from the DBSA before the Executing Agency can appoint the sub-contractor. Any change of the sub-contractor shall require the prior written consent of the DBSA;
- 13.7. All transactions between the Executing Agency and Connected Persons must be effected on arm's length terms.

#### **14. REPRESENTATIONS AND WARRANTIES**

- 14.1. The Executing Agency represents and warrants that:
  - 14.1.1. 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;
  - 14.1.2. the entry into and performance by it of the terms and conditions as contemplated by this Agreement will not conflict with:
    - 14.1.2.1. any Applicable Law;
    - 14.1.2.2. its Constitutional Documents; and/or
    - 14.1.2.3. any agreement or instrument binding upon it or any of its assets;
  - 14.1.3. it has disclosed to the DBSA all information at its disposal pertaining to the Project as required in clause 6.1 and during the DBSA's investigation thereof;

- 14.1.4. 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;
- 14.1.5. All transactions between the Executing Agency and any other "Connected Persons" as defined in section 1 of the Companies Act read together with clause 1.11 or any other person referred to in section 31(3)(a)(ii) of the Income Tax Act ("Tax Act") 58 of 1962 as amended read with section 31(3)(b) of the Tax Act are not capable of being challenged by the South African Revenue Services under any Tax law including, but not limited to, section 31, section 56 and/or section 103 of the Tax Act;
- 14.1.6. All transactions between the Executing Agency and Connected Persons were effected, before the signing of this Agreement, on arm's length terms;
- 14.1.7. No transactions or arrangements involving any of the 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 Executing Agency, and which would affect the Tax position of the Executing Agency;
- 14.1.8. Insofar required by Law, the Executing Agency has made or obtained records or documents in respect of transactions between the Executing Agency, and transactions between the Executing Agency and Connected Persons that meet the requirements of the appropriate Law;
- 14.1.9. all the Intellectual Property rights existing and developed as a result of the Project, which the Executing Agency own or claim to own is not in any manner whatsoever owned by any other party;
- 14.1.10. no Event of Default or Potential Event of Default:
- 14.1.10.1. 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;
- 14.1.10.2. 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;



14.2. 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. EVENTS OF DEFAULT**

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

15.1.1. any event or condition has occurred which in the opinion of the DBSA has or could be expected to have a Material Adverse Effect;

15.1.2. 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;

15.1.3. the Project is abandoned, suspended or terminated for any reason whatsoever, or the Project has not been completed by the Project Completion Date;

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

15.1.5. any representation or warranty made by the 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;

15.1.6. the 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;

15.1.7. the Executing Agency has modified the nature or the objective of the Project without the prior written approval of the DBSA;

15.1.8. it appears that material information in the Application is incorrect or that material information was not disclosed.

15.2. 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:

- 15.2.1.1. declare that the obligations of the DBSA in terms of this Agreement shall be cancelled forthwith, whereupon the same shall be so cancelled; and
  - 15.2.1.2. 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 Executing Agency in terms of this Agreement.
- 15.3. The exercise by the DBSA of the right of suspension shall not preclude the DBSA 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.
- 15.4. Notwithstanding any provision to the contrary in this Agreement, the DBSA may by notice to the Executing Agency cancel the Agreement, as the case may be, if:
- 15.4.1. the Project activities are interrupted for a consecutive period of 2 (two) calendar months save for Force Majeure; or
  - 15.4.2. 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
  - 15.4.3. the Executing Agency has modified the nature or the objective of the Project without the prior approval of the DBSA.

## 16. PUBLICATIONS

- 16.1. Subject to the provisions of clause 16.1.1 to 16.1.3 the Parties recognise that the results of the Project may be publishable and agree that the Parties shall be permitted to present at symposia, international, national or regional meetings ("public presentations") and to publish through any methods of reporting of their own choice in accordance with the following conditions:

### 16.1.1. Advertising, Publicity, Marketing or Promotional Materials

Neither party is, by virtue of their association hereunder, authorised to use the name, logo(s) or trademarks of the other in connection with any

advertising, publicity, marketing or promotional materials or activities, or for any other purpose whatsoever, without the prior written consent of the other party. For purposes of this clause, the Parties recognises that, the use of abbreviation or the logo of a Party, may be prohibited in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods, and therefore the use thereof may only be with the consent of the Party whose trademark, logo or abbreviation is to be used.

**16.1.2. Publications for Journals and Public Presentations**

Should the Executing Agency wish to publish the results of the Project deliverables carried out pursuant to this Agreement, the Executing Agency shall first obtain written approval from DEA and supply DEA with a copy of the proposed publication/presentation, who shall review the proposed review the proposed publication/presentation and notify the Executing Agency, within 21 (twenty one) business days after receipt, in writing whether DEA consents to such publication/presentation.

**16.1.3. Theses or Dissertations**

Where a student works or participates in the Project, nothing in this Agreement will prevent a registered student from submitting for a degree, a university a research project report based on the results from the Project. The DBSA shall be given a copy of the draft research project report, where after the DBSA may within thirty (30) days of receipt request the exclusion of its Confidential Information, or to correct any errors of fact.

**17. INTELLECTUAL PROPERTY**

17.1. Subject to the Provisions of this clause 17, all Intellectual Property generated in the course of the execution of the Project shall vest in the Executing Agency, and the Executing Agency shall be entitled to use the Intellectual Property for any purposes whatsoever.

17.2. 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.

- 17.3. 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.
- 17.4. The 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.

## **18. DISPUTE RESOLUTION**

- 18.1. 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 and a designated representative of DEA who shall have the authority of the Party he/she represents to settle the dispute.
- 18.2. 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 19 (Arbitration) below or to the court specified in clause 24 (Jurisdiction).

## **19. ARBITRATION**

- 19.1. 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.
- 19.2. A dispute shall be determined in terms of this clause after written notice has been given by the aggrieved Party to the other Party.
- 19.3. 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.

- 19.4. The arbitration shall be held:
- 19.4.1. 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;
  - 19.4.2. with only the legal and other representatives of the Parties present thereat;
  - 19.4.3. *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 24;
  - 19.4.4. otherwise in terms of the Arbitration Act, 1965;
  - 19.4.5. it being the intention that the arbitration shall be held and completed as soon as possible.
- 19.5. The arbitrator shall failing agreement between the Parties be such person as appointed by AFSA.
- 19.6. 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.
- 19.7. 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.
- 19.8. The provisions of this clause:
- 19.8.1. 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
  - 19.8.2. are severable from the rest of this Agreement and shall remain in effect despite determination of or invalidity for any reason of this Agreement.

## 20. 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.

**21. CESSION AND DELEGATION**

21.1. 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.

21.2. 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.

**22. 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.

**23. GOVERNING LAW**

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

**24. 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.

**25. COSTS**

25.1. Each Party shall bear its own costs of and incidental to the negotiation and preparation of this Agreement.

25.2. 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.

**26. NOTICES AND DOMICILIA**

26.1. 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.

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

**26.2.1. DBSA:**

Physical: 1258 Lever Road  
Headway Hill  
Midrand, 1685

Facsimile: 011 206 3611

Attention: Group Executive: Project Preparation and General Counsel

**26.2.2. Executing Agency:**

Physical: Environment House  
473 Steve Biko Road  
Pretoria  
0083

Facsimile:

Attention: Joseph Molapisi

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*.

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

26.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

26.3.2. 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.

26.4. 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.



**27. 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.

**28. 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.

**29. 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.

**30. INDEMNITY**

30.1. The Executing Agency, including any authorised 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 authorised 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.

30.2. 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.

30.3. 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.

30.4. 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.

**31. ANTI-CORRUPTION AND GOOD FAITH**

31.1. 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.

31.2. 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.

31.3. Any such practice will be a ground for termination of this Agreement.

**32. 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 25<sup>th</sup> day of September 2018.

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

Rakgate

Name: Mohale Rakgate

Capacity: Group Executive: Project Preparation

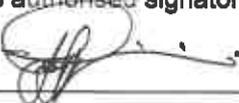
Who warrants authority

Edwin Martho 

Name of Witness:

SIGNED at PRETORIA on the 12<sup>th</sup> day of SEPTEMBER 2018.

As authorised signatory for and on behalf of AFRICA INSTITUTE



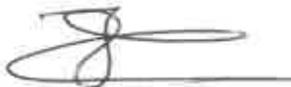
Name: Joseph Molapisi

Capacity: Executive Director

Who warrants authority

James Muloto

Name of Witness:



Please witness the contract

**Schedule 1- Implementation Plan and Project Budget**

**ACTION PLAN FOR THE PPG PHASE**

ENVIRONMENTALLY SOUND MANAGEMENT AND DISPOSAL OF POLYCHLORINATED BIPHENYLS (PCBS) IN THE REPUBLIC OF SOUTH AFRICA																			
TASKS	ACTIVITIES	DELIVERABLES	SCHEDULE IN MONTHS FROM APRIL 2018 TO MARCH 2019												RESOURCES/ DISBURSEMENTS				
			A	M	J	J	A	S	O	N	D	J	F	M		A			
1	Recruitment of consultants	1.1	Terms of Reference for Lead Consultant															-	
		1.2	Advertising & Contracting of Lead consultant																1 000.00
		1.3	Consultant inception																15 000.00
		1.4	Hiring and training of Field workers for PCB tracking																3 000.00
		1.5	Administrative cost for task 1																2 000.00
2	Stakeholder engagement	2.1	Stakeholder Analysis and selection															-	
		2.2	National Stakeholder Workshop															8 000.00	
		2.3	Production of IEC materials for stakeholder engagement															3 000.00	
		2.4	Administrative cost for task 2															1 000.00	
3	Baseline data	3.1	Desktop baseline review														10 000.00		





## Schedule 2

To: Development Bank of Southern Africa Limited

[physical address]

Attention: [•]

Date: [•] 20\_\_

Dear Sirs

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

1. Please refer to the agreement dated [*insert date*] between the 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 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 Executing Agency, Account No. [•] Branch Code [•].
3. The 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 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 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 Executing Agency exclusively for the Purpose;
  - 3.5 after receipt of the Disbursement the 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 Executing Agency is a Party or by which the Executing Agency is bound; or
  - 3.5.3 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the 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 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]

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Name:

Capacity:

Who warrants his/her authority hereto

