

## MEMORANDUM OF AGREEMENT

(Between Innovation Fund Round 3 Project Coordinator and The Innovation Fund Trust)

ALL UNDERLINED SPACES MUST BE DULY COMPLETED. ALL PARTS OF THE AGREEMENT THAT ARE NOT APPLICABLE MUST BE CROSSED OUT AND BOTH PARTIES MUST SIGN IN FULL AT SUCH COMPLETED AND/OR CROSSED OUT PARTS. EVERY PAGE MUST BE INITIALLED BY BOTH PARTIES AT THE FOOT OF THE PAGE.

### 1. PARTIES

**MEMORANDUM OF AGREEMENT ENTERED INTO AND CONCLUDED BETWEEN -**

1.1 **THE GOVERNMENT OF THE RSA (through the INNOVATION FUND TRUST)** (hereinafter referred to as "the Trust"), herein duly represented by **Dr Robert Martin Adam**, ID number \_\_\_\_\_, in his capacity of **Chairperson**

and

1.2 **«BenOrgName»**, (hereinafter referred to as "the Beneficiary"), herein duly represented by **«CntrPersTitle» «CntrPersInit» «CntrPersSurn»**, ID number **«CntrPersID»**, in his capacity of **«CntrPersCapac»**,

in respect of

1.3 the financial support granted by the Trust to the Beneficiary for the Project: **«PropTitle»** (hereinafter referred to as "the Project"), which is to be conducted in the Republic of South Africa over the period: \_\_\_\_\_, in accordance with the registered Innovation Fund Project Proposal (No. **«PropID»**) and the amendments to the proposal at Addendum A.

## 2. INTERPRETATION

2.1 The headings of the clauses in this Agreement shall be merely for reference purposes and shall not affect the interpretation of the clauses.

2.2 Unless inconsistent with the context, the words and expressions used in this Agreement shall have the following meanings:

“Agreement”: this Agreement and all the schedules and annexures thereto.

“account”: the bank account of the Beneficiary with the following details:

Bank name: **«BenBankName»;**  
 Account number: **«BenBankAccNo»;**  
 Account type: **«BenBankAccType»;**  
 Branch name: **«BenBankBrName»;**  
 Branch code; **«BenBankBrCode»;**  
 Account holder name: **«BenBankAccHold».**

“allocation”: an amount established as the agreed cost of the Project and defined in clause 3.1 of this Agreement.

“co-ordinator”: a person who has the legal right to sign on behalf of the consortium and is identified in the project proposal with reference number **«PropID»**.

“consortium”: member organisations identified in the project proposal as having responsibility for executing the project activities.

## 3. INTRODUCTION

3.1 The Trust is authorised - and it is hereby agreed - to grant an allocation to the Beneficiary of **R«PropAmountTotal»** (**«PropTotalSpell»**), being the agreed cost of the project.

3.2 The allocation shall be used in a provident and responsible manner exclusively for the project.

3.3 The allocation referred to in clause 3.1 shall be made available to the Beneficiary at the times and on the conditions set out below.

4. **DURATION AND TIME SCHEDULE**

4.1 This Agreement shall extend over the period 2000 to 2003, and the total allocation payable shall be available over that period only.

4.2 The allocation is available as follows:

**Financial Year 1 - R«PropAmountY1» payable as follows:**

**Financial Year 2 - R«PropAmountY2» payable as follows:**

**Financial Year 3 - R«PropAmountY3» payable as follows:**

4.3 The allocation as set out in clause 4.2 above shall be paid into the account of the Beneficiary.

5. **OBLIGATIONS OF THE BENEFICIARY**

5.1 The Beneficiary understands that the following requirements have to be fulfilled:

5.2 The Beneficiary is obliged to indicate clearly in any documentation or statement where other contributors are mentioned that the project is a Government initiated project of the Trust.

5.3 The Beneficiary understands that support for the project is available to South Africans and cannot be held by a Foreign National.

5.4 Ownership of Intellectual Property Rights generated by the project shall be vested in South African beneficiaries.

5.5 The Trust reserves the right to claim ownership of the intellectual property rights of the beneficiaries for the Innovation Fund, if after a period of five years it is established that no attempt has been made to exploit the results of the project supported by public funds.

- 5.6 The Beneficiary understands that measures are being developed to secure self-sustainability for the Innovation Fund, which currently draws on the public purse. This may involve a levy of 5% on Intellectual Property Rights earnings accruing to the consortium. The beneficiary agrees to accept such a levy should one be imposed in the future.
- 5.7 The Beneficiary undertakes to furnish the Trust with interim reports on a quarterly basis and within 90 days of the conclusion of the project, with a final report. Both the interim and final reports must provide detail on progress in terms of set milestones and a financial summary that is supported by documented proof of expenditure. The documented proof of expenditure is to be made available for audit purposes.
- 5.8 The Beneficiary must facilitate the progress evaluation efforts of the technical experts appointed by the Trust in respect of on-site project inspections and access to project quarterly progress reports.
- 5.9 The Beneficiary may disclose confidential information to the Trust in order for the Trust to evaluate the progress of the project. Such information shall be safeguarded and not disclosed to anyone without a “need to know” within the Trust. The Trust shall also strictly protect such information from disclosure to third parties. The obligation to keep confidential shall, however, not apply to information which:
- 5.9.1 Is already known to the Trust;
- 5.9.2 Becomes part of the public domain without breach of this agreement;
- 5.9.3 Is obtained from third parties who are not under a confidentiality obligation to the source of the information.
- 5.10 The Beneficiary must facilitate the financial audits that will be conducted for the Trust at random intervals on randomly selected projects.
- 5.11 The Beneficiary understands that the Trust may, in response to the recommendations arising out of the progress evaluations, and after receiving comment from the beneficiary, re-direct the project objectives and/or activities. The Beneficiary also understands that should he/she fail to fulfil any of his/her obligations

or the requirements arising from this Agreement, or if the actual expenditure is less than the amount allocated, the Trust may determine that the allocation be reduced or forfeited.

- 5.12 The Beneficiary understands that if, after a scheduled payment of the allocation, it appears that the condition in clause 5.11 has not been complied with, no further amounts will be payable and any amounts already paid to the beneficiary in respect of redirected work, shall be repayable in terms of this agreement.

6. **GENERAL**

- 6.1 Should an application be lodged for the liquidation of the Beneficiary, or should the Beneficiary be placed under judicial management, or should an agreement be concluded by the Beneficiary with its creditors, the Trust may immediately discontinue any further payment of the allocation and may cancel the Agreement, in which case all amounts already paid shall be claimable immediately and without further notice.

- 6.2 The Beneficiary undertakes to give the Trust immediate notice of any action referred to in clause 6.1, including full particulars thereof.

7. **CANCELLATION OF THE PROJECT**

- 7.1 Should the Project be postponed or cancelled, the Beneficiary shall inform the Trust forthwith, and amounts already paid to it in terms of this Agreement shall be refunded to the Trust in accordance with the provisions of this Agreement.

- 7.2 In the event that the beneficiary has already met some of the agreed milestones, comment will be taken from the beneficiary and, after considering the recommendations of the progress evaluations, any amounts advanced for the postponed or cancelled work, shall be refunded to the Trust, in accordance with the provisions of this agreement.

- 7.3 The Trust alone, after receiving comment from the Beneficiary, shall determine which amounts already paid shall be refundable, subject to the terms of this

agreement, and, in the case of postponement, what portion of the allocation shall still be payable. Interest a tempore morae shall be charged on amounts already paid.

8. **FORCE MAJEURE**

8.1 In the event that the Trust or the Beneficiary is unable to perform any of their respective obligations in this Contract and such non-performance is caused by acts of God, rained out venues, riots, civil insurrection, acts of a public enemy, accidents, acts of a civil or military authority, floods, earthquakes or winds, beyond the reasonable control of the parties concerned, such failure to perform shall not constitute a breach of this Agreement.

8.2 The party incapable of performing in terms of clause 8.1 shall immediately notify the other party of the reason or reasons and cause for its inability to perform and shall submit an estimated duration of such inability to perform.

8.3 The party incapable of performing shall, at no cost to the other party, exercise due diligence to shorten the duration and to avoid the cause of the inability to perform and shall keep the other party informed of all steps taken to enable performance under this Agreement.

8.4 During such period of non-performance in terms of clauses 8.1 to 8.3 the relevant terms of the Agreement will be suspended.

9. **ACCELERATION CLAUSE**

Should the Beneficiary, in the opinion of the Trust, fail to meet any of its obligations in terms of this Agreement, all outstanding amounts owing to the Trust for current objectives, shall be claimable immediately and all further payments shall be discontinued, subject to the terms of this agreement.

10. **CANCELLATION CLAUSE**

Should the Beneficiary fail to meet any of its obligations arising from this Agreement in terms of the set milestones or use the allocation for any purpose other than as set

out in this Agreement, the Trust shall, without prejudice to any rights to which the Trust is entitled in terms of the law or by virtue of this Agreement -

- 10.1 give written notice of the beneficiary of the reason for the cancellation and give the beneficiary reasonable time to remedy the reason for the cancellation, failing which the Trust may, without further notice to the Beneficiary, discontinue any further payment and cancel the Agreement immediately, and shall reclaim any amounts already paid for the current objectives, in which case interest a tempore morae shall be charged; and
- 10.2 recover from the Beneficiary the collection fees of the Trust's attorneys and any other legal costs in this regard on an attorney-client-basis.

11. **DOMICILE**

The parties choose as their domicilium citandi et executandi and for the serving of any notices and legal proceedings the following addresses:

- 11.1 **The Innovation Fund Trust**  
**C/O Science and Technology Branch**  
**Department of Arts, Culture, Science and Technology**  
**188 Schoeman Street**  
**PRETORIA**  
**0002**

- 11.2 The Beneficiary:

**«DomDept»**  
**«DomFac»**  
**«DomOrg»**  
**«DomBuilding»**  
**«DomStreet»**  
**«DomSuburb»**  
**«DomCity»**  
**«DomCode»**

12. **PARTIES NOT AFFECTED BY RELINQUISHMENT**

12.1 The relinquishment (whether expressly or by implication) by any of the Parties of any rights arising out of breach of contract in respect of the Agreement shall not prejudice any remedies of the relinquishing party with regard to any continuing or other breach of contract in respect of the Agreement.

12.2 No grace, delay, relaxation or leniency on the part of the Parties in exercising any rights by virtue of this Agreement may be considered to be a relinquishment of such rights. Neither shall a single or partial exercising of such rights exclude any other or further exercising thereof in terms of the Agreement.

12.3 The expiry or termination of this Agreement shall not prejudice the rights of any party in respect of any of the preceding breaches of contract or of non-compliance with any of the conditions of the Agreement by any of the Parties.

13. **FULL AGREEMENT**

This agreement comprises the full agreement and no other representation, amendment or document not herein contained in accordance with clause 14 shall form part of the agreement.

14. **VARIATIONS**

No variation, modification or relinquishment of any condition of this Agreement or consent to deviate therefrom shall be valid, unless such variation, modification or relinquishment is in writing and has been signed by both Parties, and such variation, modification, relinquishment or consent shall be valid only for a specific case and for the purpose for which and the extent to which it was made or given.

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_ 200\_.

WITNESSES:

\_\_\_\_\_  
FOR THE BENEFICIARY

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_ 200\_.

WITNESSES:

\_\_\_\_\_  
FOR THE TRUST

1. \_\_\_\_\_

2. \_\_\_\_\_

(wb25/6innofu/contract\_successful\_appl\_trust\_cleaned/20000831)