**Contract N°:**

**Project processing N°:**

**IMPLEMENTATION AGREEMENT**

BETWEEN

The AFRICAN UNION DEVELOPMENT AGENCY – NEW PARTNERSHIP FOR AFRICA’S DEVELOPMENT (AUDA-NEPAD), previously known as the NEPAD PLANNING AND COORDINATING AGENCY, located at 230, 15th Road, Randjespark, Midrand; postal address private Bag 218, Halfway House 1685, Midrand, Gauteng, South Africa (hereinafter referred to as “AUDA-NEPAD”), represented by Ms. Nardos Bekele-Thomas, in her capacity as Chief Executive Officer.

AND

Xxx (hereinafter referred to as “Lead Partner”), represented by xxx; the Lead Partner represents also all other partners, as stipulated below, and the other partners may not be replaced during the project duration.

AUDA-NEPAD and the Lead Partner hereinafter collectively referred to as the “Parties” and individually as a “Party”.

The other partners participating in this project in cooperation with the Lead Partner are:

Xxx

**CONTENTS**

[SUPPLEMENT TO THE GENERAL TERMS AND CONDITIONS (SGTC) 4](#_Toc22220345)

[ARTICLE 1: Purpose of the Contract 4](#_Toc22220346)

[ARTICLE 2: Definition of the Activities 4](#_Toc22220347)

[ARTICLE 3: Conditions Precedent to the Effectiveness of the Contract, Duration and Period for the Use of the Funds 4](#_Toc22220348)

[ARTICLE 4: Financial Provisions 5](#_Toc22220349)

[ARTICLE 5: Sub-Contracting, Procurement of Services/Consultancies, Goods, Equipment and Supplies 10](#_Toc22220350)

[ARTICLE 6: Obligations of the Lead Partner 11](#_Toc22220351)

[ARTICLE 7: Election of Domicile 12](#_Toc22220352)

[ARTICLE 8: AUDA-NEPAD Terms and Conditions 12](#_Toc22220353)

[ARTICLE 9: Language 13](#_Toc22220354)

[ARTICLE 10: Reimbursement 13](#_Toc22220355)

[ARTICLE 11: Conditionality of Acceptance of Counterpart Contributions 13](#_Toc22220356)

[ARTICLE 12: Declaration of Undertaking 13](#_Toc22220357)

[ARTICLE 13: Submission Procedure 13](#_Toc22220358)

[ARTICLE 14: Miscellaneous Provisions 14](#_Toc22220359)

[GENERAL TERMS AND CONDITIONS 16](#_Toc22220360)

[ARTICLE 1: Legal Status 16](#_Toc22220361)

[ARTICLE 2: Source of Instructions 16](#_Toc22220362)

[ARTICLE 3: Lead Partner’s Responsibility for Employees 16](#_Toc22220363)

[ARTICLE 4: Obligations 16](#_Toc22220364)

[ARTICLE 5: Indemnifications 17](#_Toc22220365)

[ARTICLE 6: Eligible and Non-Eligible Costs 17](#_Toc22220366)

[ARTICLE 7: Visibility of Funding Sources and Disclaimer 19](#_Toc22220367)

[ARTICLE 8: Rights of Property/Use of Assets 19](#_Toc22220368)

[ARTICLE 9: Insurances 20](#_Toc22220369)

[ARTICLE 10: Use of Name, Emblem or Official Seal of AUDA-NEPAD or of the African Union 20](#_Toc22220370)

[ARTICLE 11: Force Majeure, Other Changes in Conditions 21](#_Toc22220371)

[ARTICLE 12: Suspension 21](#_Toc22220372)

[ARTICLE 13: Termination 22](#_Toc22220373)

[ARTICLE 14: Officials Not to Benefit 24](#_Toc22220374)

[ARTICLE 15: Privileges and Immunities 24](#_Toc22220375)

[ARTICLE 16: Tax Exemption 24](#_Toc22220376)

[ARTICLE 17: Mines 25](#_Toc22220377)

[ARTICLE 18: Anti-Terrorism 26](#_Toc22220378)

[ARTICLE 19: Child Labor 26](#_Toc22220379)

[ARTICLE 20: Anti-Corruption and Conflict of Interests 26](#_Toc22220380)

[ARTICLE 21: Money Laundering 28](#_Toc22220381)

[ARTICLE 22: Environmental, Social, Health and Safety Standards (ESHS) 28](#_Toc22220382)

[ARTICLE 23: Designated Categories of Offences 28](#_Toc22220383)

[ARTICLE 24: Observance of Laws 29](#_Toc22220384)

[ARTICLE 25: Principles Guiding the Contract 29](#_Toc22220385)

[ARTICLE 26: Notices 29](#_Toc22220386)

[ARTICLE 27: Confidentiality 29](#_Toc22220387)

[ARTICLE 28: Assignment 30](#_Toc22220388)

[ARTICLE 29: Amendments 30](#_Toc22220389)

[ARTICLE 30: Applicable law 30](#_Toc22220390)

[ARTICLE 31: Settlement of Dispute 30](#_Toc22220391)

**ANNEXES**

Annex 1: Project Description

Annex 2: Project Budget

Annex 3: Work Plan

Annex 4: Disbursement and Payment

Annex 5: Procurement

Annex 6: Reporting

Annex 7: Declaration of Undertaking

Annex 8: Special Conditions precedent to certain activities/milestones

The Parties hereby agree as follows:

# SUPPLEMENT TO THE GENERAL TERMS AND CONDITIONS (SGTC)

# Purpose of the Contract

## AUDA-NEPAD as the technical body of the African Union has set up a financing facility for skills development in order to foster the development of best practice skills development projects in the Member States of the African Union (“Facility”). The Facility is implemented with funding from the German Government through KfW (“SIFA Contribution”).

## The overall purpose of this Implementation Agreement (hereinafter referred to as “Contract”) entered into between AUDA-NEPAD and the Lead Partner is to establish the conditions for the implementation of the project called [Insert Title of the Skills Initiative] (the ‘Project’) which is defined in Annex 1 of the Contract and has been awarded to the Lead Partner following consultation and agreement by the parties involved AUDA-NEPAD in the implementation of the Facility.

## This Contract is the outcome of prior negotiations between the Parties. Any amendment to this Contract shall be made in accordance with the General Terms and Conditions attached. Any correction whatsoever is not legally binding unless signed by the duly authorized representative of all Parties.

# Definition of the Activities

The activities to be undertaken by the Lead Partner within the framework of this Contract is defined in Annex 1.

# Conditions Precedent to the Effectiveness of the Contract, Duration and Period for the Use of the Funds

## **Conditions precedent to the Effectiveness of the Contract**

The Lead Partner shall submit to AUDA-NEPAD at the latest at the date of signature of the Contract, the following documents: (i) copies of the certificate of incorporation/registration and its governing documents (by-laws, articles of association, etc.); (ii) audited annual reports of the last available three (3) years; (iii) the proof of the tax registration, if applicable and (iv) a power of Attorney to sign the Contract; if not previously provided. If not provided the contract shall not become effective.

## **Duration of the Contract**

### The duration of this Contract shall be from the date of effectiveness of the Contract, which shall be communicated by AUDA-NEPAD to the Lead Partner and its expiring date not later than ……………………….. [project duration in months or years = works and equipment plus training/teaching period].

### If the Contract is not signed by the Lead Partner and returned to AUDA-NEPAD within twenty eight (28) days after receipt by the Lead Partner, which the Lead Partner shall immediately confirm, it will be considered null and void.

### It shall be noted that there shall not be any no-costs extension for this Contract and all the Lead Partner’s obligations shall be effectively and fully performed by the expiration date as stated above, unless agreed otherwise between the parties.

### If, within the first 3 months from the date of effectiveness of this Contract, the Lead Partner has not provided clear evidence that activities described in the work plan have been implemented during this period, AUDA-NEPAD may, at his own discretion, terminate the Contract, except in cases where GTC Article 11 applies.

## **Period for the Use of the Funds**

### The strict period for the use of the SIFA Contribution for the implementation of the activities described in the Contract is from the date of effectiveness of the contract to …………………... .

### For the purpose of this sub-article, strict period for the use of the SIFA Contribution means that only expenditures incurred for activities carried out in line with the agreed budget (Annex 2) and work plan (Annex 3) shall be declared as eligible in line with GTC 6 and shall be financed from the SIFA Contribution. All costs incurred outside the above mentioned expiration date shall be declared non-eligible.

### The Lead Partner cannot claim payment for an activity not performed on time and hence, such costs will be exclusively borne by the Lead Partner, unless otherwise agreed by the Parties and AUDA-NEPAD may not unreasonable withhold their agreement to substantiated delayed work plans.

# Financial Provisions

## **Contract Value and Execution**

### The total value of the SIFA Contribution under this Contract is fixed at a maximum of EUR **…………………………. (Euro ……………………….) only**.This sum (hereinafter referred to as the “SIFA Contribution”) represents AUDA-NEPAD overall financial contribution to the Project and is subject to the Lead Partner providing the counterpart contribution stipulated in the budget (Annex 2) over the project duration.

### The Project budget (hereinafter, the “Budget”), comprising of the SIFA contribution and the counterpart contribution, is detailed in Annex 2.

### All payments are made in the currency specified in the Contract in article 4.1.1. If the Lead Partner submits invoices in a currency other than the contract currency, AUDA-NEPAD will convert those invoices into the contract currency by using the exchange rate published on <https://www.oanda.com/currency/converter/> (±0%) on the date of the respective invoice; the conversion and the transfer costs as well as the inconvenience from potential delays are exclusively born by the Lead Partner.

### The overall SIFA contribution is not subject to any adjustment or revision.

### As a general rule, the Lead Partner shall strictly abide by the approved budget lines. The budget lines for the eligible costs and expenditures as well as counterpart contributions are detailed in Annex 2. All budget overruns are for the account of the Lead Partner, which may be considered additional counterpart contribution, unless the budget lines are mutually amended without increase of the SIFA contribution ceiling.

### It is the responsibility of the Lead Partner (incl. the other partners) to pay any taxes, duties, levies, social security contributions and similar financial charge due as the result of its activities in the framework of the present Contract and AUDA-NEPAD is released from any responsibility in this respect.

### The activities to be performed by the Lead Partner shall partially be financed by AUDA-NEPAD, in accordance with AUDA-NEPAD financial rules and regulations and the terms and conditions laid down in this Contract. Payment foreseen in this Contract will be conditional on submission by the Lead Partner to AUDA-NEPA of the reports stipulated in Article 4.3 hereinafter.

### Any expenditure(s) incurred by the Lead Partner prior to the entry into force of the Contract is not eligible to be financed from the SIFA Contribution, unless otherwise agreed by the Parties.

### The costs that are actually incurred by the Lead Partner during the implementation of the Project and which are in line with the budget lines for SIFA Contribution as indicated in Annex 2 shall be considered as eligible for financing through the SIFA Contribution. The definition of the eligible and non-eligible costs are set forth in the General Conditions attached to this Contract. Any payment deemed non-eligible shall be paid back by the Lead Partner to AUDA-NEPAD/KfW for the account defined in article 10 AUDA-NEPAD within forty-five (45) days of the issuing of a formal request of refunds.

### Non-budgeted items are not eligible for reimbursement, but may be considered additional counterpart contribution.

### With regard to unspent balances, should there remain a balance from advances, if any, the Lead Partner shall return the unspent funds to KfW for the account AUDA-NEPAD within forty-five (45) days of the issuing of a formal request of refunds.

### Failing to settle the aforesaid amounts in full may lead to the temporary freezing of funding, until such a time that the accounts are settled.

### The bank charges incurred during the transfer of the unspent balances or non-eligible expenditures shall be borne entirely by the Lead Partner.

## **Disbursement**

### The disbursement procedure detailed in Annex 4 shall govern all disbursements.

### The disbursement of the Funds is subject to the satisfaction of each of the conditions precedent to disbursement, in particular the evidence proving that the requested funds are used for the stipulated purpose.

### The Lead Partner shall send the original documents required for disbursement (Annex 4) duly completed with a signed cover letter requesting payment, and submission of reports due, if any, failing which the request for disbursement will be returned to the Lead Partner without (i) processing, (ii) financial or legal responsibility of AUDA-NEPAD and (iii) accruing interest or any other costs.

### Payments shall be made not more than thirty (30) calendar days from the date on which the request for disbursement is validated and accepted by AUDA-NEPAD.

### Suspension of disbursement and repayment

#### AUDA-NEPAD may suspend disbursements, if:

1. The Lead Partner fails to perform its contractual obligations;
2. The Lead Partner violates any of its contractual obligations or any applicable laws;
3. The Lead Partner is unable to prove that the disbursed amounts have been used for the stipulated purposes;
4. In case of occurrence of extraordinary circumstances that preclude or seriously jeopardize the implementation, the operation, or the purpose of the Project of the present Contract.

#### If any of the stipulations specified in Article 4.2.5.1 a), b), and c) has occurred and has not been rectified within a period determined by AUDA-NEPAD, which shall, however be at least 30 days, AUDA-NEPAD, at its own discretion, may:

1. In the case of Article 4.2.5.1 a) and b), demand the immediate repayment of all disbursed amounts;
2. In the case of Article 4.2.5.1 c), demand the immediate repayment of such amounts as the Lead Partner is unable to prove that the disbursed amounts have been used for the stipulated purposes.

## **Reporting Obligations**

## The Lead Partner undertakes to strictly comply with the reporting obligations and the deadline for the submission of the reports as stipulated in this Contract. The Lead Partner also agrees to provide AUDA-NEPAD and/or KfW with any request for additional information within a maximum of thirty (30) days from the request.

## If the Lead Partner fails to supply AUDA-NEPAD with the reports within the deadline or fails to furnish an acceptable and sufficient written explanation of the reason why it is unable to comply with this obligation, AUDA-NEPAD may suspend further disbursement after at least three (3) reminders to comply with reporting requirements.

### Quarterly Reports during the construction/installation phase

#### The Lead Partner must submit, during the construction/installation phase, quarterly reports to AUDA-NEPAD, starting from second full months after contract signature.

#### All quarterly reports shall be drafted in the English language and in a well-structured manner and shall include, but not limited to, detailed indications on:

* The activities undertaken;
* Quantitative and qualitative outputs achieved;
* Any variance from the initial programming and activity scheduled should be explained;
* Challenges during the period covered by the report; if any;
* Sustainability measures undertaken for the Project;
* Statement of actual expenditure; the statement of expenditure should follow the structure of the Project Budget (Annex 2) of the Contract and in the same format. Variances between budget figures and actual expenditure should be explained; and
* Inventory list (if any).

#### When project activities include the production of documents (study reports, brochures, handbook, manuals, seminar proceedings, newsletters, etc.) or production of other media materials (audio tape, video tape, CD-ROM, etc.), one copy, wherever possible as electronic copy, must imperatively be sent to AUDA-NEPAD together with the quarterly report; intellectual property of the Lead Partner is excluded from this requirement.

#### All quarterly reports must first be provided in Word format to facilitate commenting, including a PDF-version, and a final version as PDF-version only (including all financial documents, such as receipts, etc.); any Excel files contained in the reports must also be provided in their original version. All reports shall be provided electronically only. Comments by AUDA-NEPAD will be provided within thirty (30) days from report submission.

### Semi-annual Reports during the training/teaching phase

#### The Lead Partner must submit, after completion the construction/installation phase and during the training/teaching phase, semi-annual reports to AUDA-NEPAD, starting from the last quarterly report.

#### All semi-annual reports shall be drafted in the English language and in a well-structured manner and shall include, but not limited to, detailed indications on:

* The activities undertaken (e.g. training/teaching, student admission, etc.);
* Quantitative and qualitative outputs achieved (e.g. numbers of training students, male/female, student background, etc.);
* Any variance from the initial programming and activity scheduled should be explained;
* Challenges during the period covered by the report; if any;
* Sustainability measures undertaken for the Project;
* Statement of actual expenditure (including both, SIFA funding and counterpart contribution; the statement of expenditure should follow the structure of the Project Budget (Annex 2) of the Contract and in the same format. Variances between budget figures and actual expenditure should be explained; and
* Inventory list (if any).

#### The exchange rate to be use for the reporting shall be as defined in Article 4.1.3 above.

#### When project activities include the production of documents (study reports, brochures, handbook, manuals, seminar proceedings, newsletters, etc.) or production of other media materials (audio tape, video tape, CD-ROM, etc.), one copy, wherever possible as electronic copy, must imperatively be sent to AUDA-NEPAD together with the quarterly report; intellectual property of the Lead Partner is excluded from this requirement.

#### All semi-annual reports must first be provided in Word format to facilitate commenting, including a PDF-version, and a final version as PDF-version only (including all financial documents, such as receipts, etc.); any Excel files contained in the reports must also be provided in their original version. All reports shall be provided electronically only. Comments by AUDA-NEPAD will be provided within thirty (30) days from report submission.

### Draft Final Report

#### The Lead Partner must submit thirty (30) days prior to project completion a draft final report to AUDA-NEPAD. The draft final report shall include representative information and overall picture of the project, considering all topics listed under quarterly and semi-annual reports above.

#### The draft final report must first be provided in Word format to facilitate commenting, including a PDF-version; any Excel files contained in the reports must also be provided in their original version. The report shall be provided electronically only. Comments by AUDA-NEPAD will be provided within thirty (30) days from report submission.

### Final Report

#### After receipt of the comments to the draft final report, the Lead Partner shall incorporate the comments and submit the final report.

#### The final report must be provided in PDF-format; any Excel files contained in the reports must also be provided in their original version. The report shall be provided electronically only.

### SmartME Reporting

In addition to the above listed reports, subject the contract award was based on a SmartME application, the Lead Partner must continue to report on SmartME against indicators and milestones provided during the application.

## **Evaluation and Inspection by AUDA-NEPAD and KfW**

### AUDA-NEPAD and/or KfW may in their own discretion organize interim and/or ex post monitoring and evaluation missions as well as internal and external audits of the Project to assess the extent to which the purpose of the funds granted has been achieved as well as an audit of records in connection with payments made and procurement conducted from the proceeds of the funds. Ex post monitoring includes the submission of relevant information on an annual basis by the Lead Partner, such as statistics on students, for a period of not less than five (5) years after the end of the Contract.

### Notwithstanding 4.4.1 above, KfW has at any time the right to audit or to commission an audit (financial, procurement, etc.) of the Lead Partner (including other partners), and the project. Furthermore, the Lead Partner agrees to enable the representatives of AUDA-NEPAD and KfW at any time to inspect all books and records and any and all other documentation relevant to the implementation of the Project, and to visit the Project and all installations related thereto.

### The Lead Partner agrees to fully co-operate in such evaluation and inspections to enable the representatives of AUDA-NEPAD and KfW at any time to inspect all books and records and any and all other documentation relevant to the implementation of the Project, to visit the Project and all installations related thereto; it shall assist AUDA-NEPAD and/or KfW in the performance of any additional audit, evaluation, follow-ups and financial studies that AUDA-NEPAD and/or KfW may request; including but not limited to enabling the representatives of AUDA-NEPAD and KfW at any time to inspect all books and records and any and all other documentation relevant to the implementation of the Project, and to visit the Project and all installations related thereto; the Lead Partner is responsible for all other partners under this project.

### The Lead Partner shall keep at its head office, originals (where the certified copies have been sent to AUDA-NEPAD for payment) of all documents evidencing its expenditures in terms of this Contract (including procurement files), both for SIFA funding and counterpart contributions, and shall retain such documentation for a period of not less than seven (7) years after date of termination of this Contract. To that end, the Lead Partner shall make available to AUDA-NEPAD and/or KfW all documentations and evidence, such as bill of costs or paid invoices, which may be submitted as photocopy or duplicate, in both cases certified true by a Lead Partner’s Senior Management Official, and shall mention the reference and dates of the payment orders.

### AUDA-NEPAD and/or KfW shall be entitled to request from the Lead Partner any financial information related to an expenditure incurred in terms of this Contract, and the Lead Partner shall furnish such information, within fourteen (14) days of receipt of such request from AUDA-NEPAD and/or KfW.

### In the event the Lead Partner refuses to provide AUDA-NEPAD and/or KfW’s evaluators or auditors with the appropriate information, access and/or records, AUDA-NEPAD shall be at liberty to take the necessary steps and/or actions against the Lead Partner as it may deem fit.

# Sub-Contracting, Procurement of Services/Consultancies, Goods, Equipment and Supplies

## **Sub-Contractors**

### The Lead Partner shall not, without prior written authorization from AUDA-NEPA, sub-contract, in part, the execution of the Contract, unless otherwise agreed in this Contract. Even where such authorization is granted, the Lead Partner is not in any way discharged from his contractual obligations towards AUDA-NEPAD. Moreover, the Lead Partner shall apply all obligations set out under this Contract to its sub-contractor and nominated partners.

### Notwithstanding the prior authorization of AUDA-NEPAD as mentioned above, the Lead Partner shall retain full responsibility for the activities implemented by any sub-contractor.

### The Lead Partner is under no circumstances authorized to act as a legal representative of AUDA-NEPAD, be it vis-à-vis a sub-contractor or nominated partner or any other natural or legal person. Should the Lead Partner conclude sub-contracting agreements, either formally or de facto, without prior authorization, AUDA-NEPAD may cancel the Contract without formal notice and, if need be, demand compensation.

## **Applicable Procurement Rules**

### The Lead Partner shall carry out any procurement of Goods/Equipment, Works, and Services/Consultancies, as necessary and defined in this Contract, and as stipulated in Annex 5 of this Contract.

### No-objection procedure for the Procurement of Goods/Equipment, works and services:

### At each stage of the procurement mechanisms described below, the Lead Partner shall submit all procurement documents to AUDA-NEPAD for prior written approval, unless otherwise agree in Annex 5. It is important to note that AUDA-NEPAD’s prior written no-objection at each stage of the procurement process is mandatory, failing which the expenses incurred by the Lead Partner shall be considered as non-eligible costs. All required No-objection steps are listed in Annex 5.

### The Lead Partner shall keep full written records of the complete procurement cycle including tendering/evaluation/award procedure for at least seven (7) years and shall allow AUDA-NEPAD and/or KfW and/or agents or auditors assigned by AUDA-NEPAD and/or KfW at any time full access to any and all documents and records of the procurement procedure.

# Obligations of the Lead Partner

The Lead Partner undertakes to be held accountable for the funds directly attributable for the implementation of the Contract. Therefore, the Lead Partner agrees:

## To implement the Project under its own responsibility and in accordance with the terms and conditions of this Contract with a view to achieving the objectives laid down therein.

## To seek AUDA-NEPAD’s formal no-objection at each stage of the implementation of the Project’s activities, before its execution; the relevant stages requiring a no-objection are listed in Annex 5.

## To maintain or cause to maintain, detailed, complete, accurate and up-to-date books, records and documentations clearly identifying all expenditure incurred under this Contract (SIFA Contribution and counterpart contributions) and to ensure that any obligations entered into and all disbursements made are in conformity with the Contract.

## To implement all activities/services defined in the Contract with the utmost care, efficiency, transparency and diligence, in line with best professional practices in the field concerned and in compliance with this Contract. For this purpose, the Lead Partner shall mobilize all the financial, human and material resources required for the full implementation of the Project activities as specified therein.

## To maintain the discretion usual in contractual matters and keep confidential all information relating to AUDA-NEPAD it acquires during the execution of the Contract.

## To keep at AUDA-NEPAD’s disposal the evidence that the persons working for it in the context of the present Contract are covered by an adequate insurance scheme against any risk of civil liability.

## To hold AUDA-NEPAD harmless for any tort or other act resulting or likely to result in claims for financial and/or moral losses suffered by a third party.

## To promptly notify AUDA-NEPAD in writing, but not later than fourteen (14) days, of any of the following events occurring:

### Any event which could reasonably be regarded as materially altering the nature of the Project from the manner in which it is described in the work plan;

### Changes in the work plan or in the budget for AUDA-NEPAD’s prior approval;

### Unlikelihood in the performance of any of the Project’s key objectives or activities;

### Any and all circumstances precluding or seriously jeopardizing the implementation, the operation, or the purpose of the Project.

## Not without the prior written consent of AUDA-NEPAD to: (i) issue loans or grants to third parties from the funds; (ii) Incur any obligation which is not contemplated for in the Project; (iii) postpone or suspend the Project in part or in full, nor cancel or abandon the Project; (iv) cede or assign any of its rights or obligations in respect of the Project; and (v) grant any part of the funds to any other organization unless this has been contemplated by the Project and with AUDA-NEPAD’s prior and formal approval.

## To ensure the full financing of the Project and, upon request, furnish to AUDA-NEPAD evidence proving that the costs not paid from the SIFA Contribution are covered by the Lead Partner counterpart contributions.

## To comply with national law in each of the country in which the Project is implemented.

# Election of Domicile

**For AUDA-NEPAD:**

*Physical Address:*

230, 15th Road, Randjespark, Midrand, Gauteng, South Africa

*Postal Address:*

Private Bag 218, Halfway House 1685, Midrand, Gauteng, South Africa

Telephone number: +27 (0) 11256 3600

**For the Lead Partner:**

………………

………………

# AUDA-NEPAD Terms and Conditions

## This contract is subject to AUDA-NEPAD General Terms and Conditions as attached. Each page of those General Terms and Conditions, as well as these Supplements to the General Terms and Conditions, shall be initialled by both the Lead Partner and AUDA-NEPAD.

## The Lead Partner and AUDA-NEPAD also agree to be bound by the provisions contained in the following documents, which shall have precedence over one another in case of conflict in the following order:

### The Supplement to the General Terms and Conditions;

### Annexes 1 to 8 to this Implementation Agreement.

# Language

The language of this Contract is English. In the event of translation of the Contract into another language, such translation shall be considered for working purposes only. Thus, in the event of a conflict in the interpretation of the translated versions, the English version shall prevail as the language of interpretation of the Contract.

# Reimbursement

In the event of any reimbursement or similar claimable payments under this Contract, payment shall be effected as follows:

Reimbursement payments shall be made to KfW to the following bank account:

Account holder: Kreditanstalt für Wiederaufbau

Account number (IBAN): DE53 5002 0400 3800 0000 00

SWIFT/BIC: KFWIDEFF

# Conditionality of Acceptance of Counterpart Contributions

For claimed counterpart contributions to be accepted by AUDA-NEPAD and/or KfW, the costs claimed as counterpart contributions must be proven beyond reasonable doubt in terms of (i) being additional costs not already covered from other sources, (ii) having actually accrued and (iii) in financial terms having been paid and/or provided in kind not later than the end of the project. If the required minimum counterpart contribution as stipulated in Annex 2 is not reached at the end of the SIFA-funded project, the overpaid SIFA Contribution must be reimbursed (paid back) by the Lead Partner, following the instructions in Article 10 above.

# Declaration of Undertaking

Each Lead Partner and other partner must furnish, as part of this Contract, a duly signed Declaration of Undertaking; the submitted Declaration of Undertaking must be, without deviation, in the form and content as attached to this Contract in Annex 7. Failure of a Partner to submit a declaration of undertaking in accordance to this Article will render this Contract null and void. In the case of procurement Declarations of Undertaking are also a mandatory part of all procurement documents issued to potential bidders and resulting contracts.

# Submission Procedure

The term ‘sent to AUDA-NEPAD’ and all similar terms used throughout this contract, means submission of required documents and information, including but not limited to, reports, no objection requests and payment requests, unless otherwise advised:

SIFA Fund Management

Courier address:

SIFA/NIRAS IP Consult

Central Park – Block J - Unit 0073

400 16th Road, Cnr 16 & New Road

Midrand 1685

South Africa

Email address: carlton.aslett@skillsinitiative-for-africa.com **and** harald.habermann@ip-consult.de **with mandatory copy to** UnamiM@nepad.org

Phone calls and faxes will not be accepted.

# Miscellaneous Provisions

## The Lead Partner shall ensure that the persons charged by the same with the preparation and implementation of the Project, the award of any contract for the supplies and services to be financed and with requesting disbursements of financial contribution amounts do not demand, assume, render, grant, promise or obtain a promise of unlawful payments or other advantages in connection with these tasks.

## The Lead Partner shall promptly make available to AUDA-NEPAD on request all information and documents which AUDA-NEPAD requires to fulfil its obligations to prevent money laundering and terrorism financing as well as for the continuous monitoring of the business relationship with the Lead Partner, which is necessary for this purpose.

## In entering into this Contract, the Lead Partner acts in its own name and for its own account. The Lead Partner guarantees that its counterpart contribution to the project:

### Will not be of illicit origins and, in particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised crime activity or terrorism;

### The shareholder capital of the Lead Partner will not at any time be of illicit origins and, particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised crime activity or terrorism;

### The Lead Partner will not be engaged in the acquisition, possession or use of property that is of illicit origins and, in particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised crime activity or terrorism; and

### The Lead Partner will not be engaged in financing terrorism.

## The Lead Partner represents that it does not maintain any business relationship or has not engaged in any other activity:

### With or in favour of persons, organisations or entities which are listed on a sanction list issued by the United Nations Security Council, the European Union and the African Union (“Sanctions List”);

### Which should constitute a breach of embargoes regulating foreign trade or so-called financial sanctions issued by the aforementioned institutions.

## The Lead Partner shall not enter into or continue any business relationship with persons, organizations or entities listed on the Sanctions List and will not engage in any other activities that would constitute a breach of sanctions.

## The Lead Partner will inform AUDA-NEPAD, promptly and of its own accord, of the occurrence of any event which results in any of the Lead Partner, any member of its management bodies or other governing bodies or any of its shareholders, being on a Sanction List.

## The Lead Partner undertakes:

### To ensure that its equity and other funds it invests will not be of illicit origin. Illicit origin” means funds obtained through:

1. Any offense listed in the Designated Categories of Offenses as described in Article 23 of the General Terms and Conditions;
2. Any corrupt or Fraudulent practice; or
3. Money Laundering.

### To ensure that its business will not give cause to any sanctionable practice as listed in the Sanctions List, money laundering or financing of terrorism as defined within the body of this Contract; and

### Not to enter or continue any business relationship with specially designated nationals, blocked person or entities maintained on any of the sanctions listed in the Sanctions List and not to engage in any other activity that would constitute a breach of sanctions.

|  |  |
| --- | --- |
| **For AUDA-NEPAD** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Ms. Nardos Bekele-Thomas**Chief Executive OfficerDate: ………………………………….……Signed at: …………………………………. | **For the Lead Partner****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****Name** PositionDate: ………………………………….……Signed at: …………………………………. |

**Contract N°:**

**Project Processing N°:**

# GENERAL TERMS AND CONDITIONS

# Legal Status

## Nothing in this Contract will be construed to constitute or create a partnership, agency relationship, joint venture or equity or similar interest between the Parties.

## Neither the Lead Partner, nor anyone whom the Lead Partner employs to carry out the activities shall be considered as an agent or member of the staff of AUDA-NEPAD nor shall they be entitled to any privileges and immunities of AUDA-NEPAD, compensations, and reimbursements, nor are they authorized to commit AUDA-NEPAD to any expenditure or other obligations.

## Neither Party has the power or authority to act on behalf of the other Party, except as expressly authorized by the other Party in writing.

## The term Lead Partner includes throughout these General Terms and Conditions all other partners of the Lead Partner as defined in the SGTC.

# Source of Instructions

The Lead Partner shall neither seek nor accept instructions from any authority external to AUDA-NEPAD in connection with this Contract. The Lead Partner shall refrain from any action which may adversely affect AUDA-NEPAD and shall fulfil its commitments with the fullest regards to the interest of AUDA-NEPAD.

# Lead Partner’s Responsibility for Employees

The Lead Partner will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs and conform to a high standard of moral and ethical conduct.

# Obligations

## The Lead Partner shall perform and carry out the Project activities as defined in the Contract and shall observe sound financial, engineering and management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods.

## The Lead Partner attests that the performance of the activities/services does not prejudice the rights of third parties and is not in violation with any applicable laws.

## Unless otherwise agreed in writing, the Lead Partner shall bear all the expenses of carrying out its activities.

## The Lead Partner represents and warrants the accuracy of any information or data provided to AUDA-NEPAD for the purpose of entering into this Contract.

## The Lead Partner warrants the quality of the deliverables and reports foreseen under this Contract which will be of the highest quality and professional standards.

## The Lead Partner warrants that the AUDA-NEPAD and KFW or its representative shall have the right to inspect the services/activities undertaken by the Lead Partner to confirm their conformity to the Contract. Should any inspection of services undertaken fail to conform to the specifications/standard contained in the Contract, AUDA-NEPAD may refuse to accept/approve them and take the decision as of right (i) not to pay the value of the Contract as contemplated in SGTC Article 4 thereof; (ii) request the Lead Partner to make the modifications as necessary to meet the requirements stated in the Contract, free of any additional cost whatsoever or (iii) request the Lead Partner to reimburse the Contribution in whole or in part, no later than the end of the notice stated in the request for reimbursement. In addition, AUDA-NEPAD may request reimbursement of already made disbursements if it reasonably determines breach of contracts or misuse of funds by the Lead Partner or its partners or if KfW requests reimbursement from AUDA-NEPAD for the project described in this Contract.

# Indemnifications

## Each Party shall defend, indemnify and hold harmless the other Party, including Affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all claims of third parties to the extent arising out of a party’s gross negligence or wilful misconduct in performing any of its obligations under this Contract or a material breach by a party of any of its representations, warranties, covenants or agreements under this Contract.

## AUDA-NEPAD cannot under any circumstances or for any reason whatsoever being held liable for damage or injury sustained by the staff or property of the Lead Partner while the Project activities are carried out or as a consequence of the Project.

# Eligible and Non-Eligible Costs

## Eligible costs are costs actually incurred by the Lead Partner of this Contract which meet all the following criteria:

### They are incurred during the implementation of the Project with the exception of costs relating to final reports, expenditure verification and evaluation of the Project, whatever the time of actual disbursement by the Lead Partner and/or its partners. Procedures to award subcontracts for goods/services/works may have been initiated but contracts shall not be concluded by the Lead Partner or its partners before the start of the implementation period of the Project, provided the provisions of SGTC Article 5 of the Contract have been strictly respected;

### They must be indicated in the estimated overall budget of the Project;

### They must be necessary for the implementation of the Project which is the subject of the Contract;

### They are identifiable and verifiable, in particular being recorded in the accounting records of the Lead Partner and determined according to the applicable accounting standards of the country where the Lead Partner is established and according to the usual cost accounting practices of the Lead Partner; and

### They must be reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

## Subject to the above and where relevant to the provisions of SGTC Articles 4 and 5 of the Contract being respected, the following direct costs of the Lead Partner and its partners shall be eligible:

### The cost of staff assigned to the Project, corresponding to actual gross salaries including social security charges and other remuneration-related costs; salaries and costs must not exceed those normally borne by the Lead Partner or its partners, as the case may be, unless it is justified by showing that it is essential to carry out the action;

### Travel and subsistence costs for project-related staff of the Lead Partner and its partners or suppliers/contractors/consultants taking part in the Project, provided they do not exceed those normally borne by the Lead Partner or its partners, as the case may be. Any flat-rate reimbursement of the subsistence costs must not exceed the rates published by the German Federal Ministry of Finances at the time of signing this Contract;

### Purchase (new only) or rental costs (new or used) for equipment and supplies specifically for the purposes of the Project, and costs of services, provided they correspond to market rates;

### Costs of consumables;

### Sub-contracting expenditure;

### Costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Project, audits, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees);

### Indirect costs are eligible provided that they do not include costs assigned to another heading of the budget of this Contract.

### Any contributions in kind, which must be listed separately at Annex 2, do not represent actual expenditure and are not eligible costs. Unless otherwise specified in Annex 2, the contributions in kind may not be treated as counterpart contribution by the Lead Partner and its partners. The cost of staff assigned to the Action is not a contribution in kind and maybe considered as counterpart contribution in the Budget of the Action when paid by the Lead Partner and its partners.

### Any other cost not listed above, subject those costs are listed in the Annexes to this Contract.

The above listed cost examples are only eligible subject to their listing in the Annexes to this Contract.

## The following costs shall not be considered eligible:

1. Debts and debt service charges;
2. Provisions for losses or potential future liabilities;
3. Interest owed;
4. Items already financed from any other source of funding;
5. Purchases of land or buildings, except where necessary for the direct implementation of the Project, in which case ownership must be transferred to the final beneficiaries and/or local partners, at the latest at the end of the Project;
6. Currency exchange losses;
7. Taxes, including VAT, levies, duties, are in principle not eligible for SIFA funding but can be considered counterpart contribution subject to conditions stated in SGTC Article 11; however, import duties and/or VAT/sales taxes may be considered eligible pursuant to GTC Article 16 and subject that the maximum SIFA contribution per project under each Funding Window is not exceeded, and if declared eligible will be funded as stated in Annex 2; the decision whether or not to fund duties and/or taxes, while following due process, shall be made prior to contract preparation; and
8. Credits to third parties.

# Visibility of Funding Sources and Disclaimer

## Unless otherwise agreed by AUDA-NEPAD in writing, the Lead Partner must ensure the visibility of AUDA-NEPAD’s, AU’s, Federal Republic of Germany through KfW’s, and any other financiers’, which may join the programme, contribution to the Project at the Project’s site and in all documents produced and/or published as a result of afore mentioned contributions’ within the framework of this Contract by displaying the respective logos and the phrase “A development project of AU and AUDA-NEPAD, co-financed by the Federal Republic of Germany through KfW, AU and AUDA-NEPAD” (with the potential adding of further financiers), including during works at the site of the Project and in all documents produced and/or published as a result of funds provided.

## The financiers’ co-contribution to the Project shall be displayed at the site of the Project by an adequately sized signboard that contains the Name of the Project and logos of all financiers including AU and AUDA-NEPAD and as described in 7.1 above.

## The financiers’ co-contribution to the Project shall be displayed in all documents produced and/or published as a result of KfW’s and AUDA-NEPAD’s co-contribution within the framework of this Contract by the following acknowledgement: “This Project/Publication was made possible through the support of a grant from the Federal Republic of Germany through KfW (and all additional financiers to be listed) and the AU and AUDA-NEPAD”. All the above mentioned documents shall be submitted for the approval of KfW and AUDA-NEPAD before publication/circulation. KfW and AUDA-NEPAD expect to be mentioned as a grant underwriter in all press releases, particular event(s), survey(s), conference(s), etc., that are related to the present Contract.

## When displayed in association with another logo, the KfW logo must have appropriate prominence.

## The obligation to display the KfW, AU and AUDA-NEPAD logo does not confer to the Lead Partner a right of exclusive use.

## Any communication or publication related to the action, made by the Lead Partner in any form and using any means, shall indicate that it reflects only the author's view and that AUDA-NEPAD and KfW are not responsible for any use that may be made of the information it contains.

# Rights of Property/Use of Assets

## All documents, objects and other material that belong to AUDA-NEPAD and are made available to the Lead Partner as specified in a written repertoire, remain AUDA-NEPAD’s property; the Lead Partner shall treat them with care and return them to AUDA-NEPAD at the expiration or termination of the Contract.

## AUDA-NEPAD and reserves all rights of property for all documents, reports, relevant data and information such as maps, diagrams, plans, databases, any multimedia information (sounds, images, software, etc.), any supporting records and materials compiled or prepared by the Lead Partner in the course of this Contract including partial and incomplete works. Therefore, AUDA-NEPAD will be the absolute and exclusive owner of all the deliverables produced by the Lead Partner within the framework of the Contract.

## No document produced on behalf of AUDA-NEPAD may be published, duplicated, utilized or referred to without AUDA-NEPAD’s prior written consent.

## It is a matter for the Lead Partner to carry out contractual obligations in full respect of any property right of third parties.

## Where the Lead Partner does not have its headquarters in the country where the Project is implemented and unless otherwise specified in writing, the equipment, vehicles and supplies paid for by the SIFA Contribution for the Project must be transferred to any local partners of the Lead Partner and/or the final beneficiaries of the Project, at the latest by the end of the implementation of the Project. Copies of the proofs of transfers of equipment and vehicles, the purchase cost of which was more than 5,000 USD per item, must be attached to the final financial report. Such proofs must be kept for control in all other cases.

# Insurances

## The Lead Partner undertakes full responsibility for the purchase of any health and medical, accident, repatriation, death, invalidity or other insurance which may be necessary in respect to any loss, injury, damage or illness that may occur during the execution of this Contract as well as employer’s liability and workers’ compensation insurance in respect of the Personnel of the Lead Partner and of any of its Partners, in accordance with the relevant provisions of the Applicable Law.

## The Lead Partner shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their own cost, insurance for the full coverage of: (1) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Country specified for performance Project by the Lead Partner or its Personnel or any Partner or their Personnel; (2) third party liability insurance; (3) professional liability insurance; and, if applicable; (4) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Lead Partner’s property used in the performance of the Contract, and (iii) any documents prepared by the Lead Partner in the performance of the Contract.

## Upon AUDA-NEPAD first demand, the Lead Partner shall provide AUDA-NEPAD with a copy of any such insurances.

# Use of Name, Emblem or Official Seal of AUDA-NEPAD or of the African Union

## Neither Party shall use the name, official stamp, trade mark or emblem or official seal of the other Party, its subsidiaries, affiliates, or any abbreviation thereof, in connection with its activities or otherwise without the prior written consent of the other Party in each case.

## The Lead Partner acknowledges that it is familiar with AU ideals and objectives and recognizes that the AU or AUDA-NEPAD name shall not be used in a manner inconsistent with the status and reputation of the Programme.

## The Lead Partner further recognizes that the use of the AU or AUDA-NEPAD corporate brand and identity rests exclusively with AUDA-NEPAD and the AU.

# Force Majeure, Other Changes in Conditions

## For the purpose of this Contract, “Force Majeure” means any circumstances or events beyond the reasonable control of a Party which makes the performance of its obligations under this Contract impossible or impractical. Force Majeure includes, but is not limited to, acts of God, war (whether declared or not), riots, civil disorders, revolution, insurrection, or other acts of similar nature or force, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strike, lockouts or other industrial actions (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies as well as the unavailability of the funds allocated under this Contract.

## Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Partners or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (a) take into account at the time of the conclusion of this Contract and (b) avoid or overcome in the carrying out of its obligations under this Contract.

## The failure of a Party to fulfil any of its obligations shall not be considered to be a breach of, or a default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, with the objective of carrying out the terms and conditions of this Contract.

## The measures to be taken by the Party affected by an event of Force Majeure are the following:

### The Party affected by an event of Force Majeure shall take all reasonable measures to remove the inability to fulfil its obligations under this Contract;

### The Party affected by an event of Force Majeure shall notify the other Party as soon as possible, not later than fourteen (14) days following the occurrence, providing evidence of the nature and the cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible;

### The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

## Not later than thirty (30) days after the appearance of an event of Force Majeure, if a Party has become unable to perform a material portion of the Services, the Parties shall consult with each other to agree on the appropriate measures to be taken.

# Suspension

## Either Party may suspend the implementation of the Contract, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous, stating the nature, probable duration and foreseeable effects of the suspension.

## Either Party may then terminate this Contract in accordance with Article 13.3. If the Contract is not terminated, the Parties shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow, informing the other Party accordingly.

## The AUDA-NEPAD may also suspend this Contract if it has evidence that, or if, for objective and well justified reasons, deems necessary to verify whether presumably:

### The grant award procedure or the implementation of the Project have been subject to substantial errors, irregularities or fraud;

### The Lead Partner is not able to furnish evidence proving the use of the funds for the purpose stipulated in this Contract;

### The Lead Partner does not start the implementation of the Project within a period of thirty (30) days of receipt of the first disbursement;

### The Project cannot continue after the start of the implementation due to reason of force majeure or non-effective implementation of the Project by the Lead Partner;

### The Lead Partner has violated any substantial obligation under this Contract;

### The Lead Partner fails to comply, within the strict deadlines, with its reporting obligations as detailed in the Contract and its annexures.

## Upon request from the AUDA-NEPAD the Lead Partner shall provide any requested information, clarification or document within thirty (30) days of receipt of the request. If, notwithstanding the information, clarification or document provided by the Lead Partner, the award procedure or the implementation of the AUDA-NEPAD’s contribution prove to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the AUDA-NEPAD may terminate this Contract according to Article 13.2.8.

## In case of suspension according to Articles 12.1, 12.2 and 12.3, the implementation period of the Project shall be extended by a period equivalent to the length of suspension, without prejudice to any amendment to the Contract that may be necessary to adapt the Project to the new implementing conditions.

# Termination

## This Contract may be terminated by either of Party subject to the conditions of this article.

## The AUDA-NEPAD may, after having duly notified the Lead Partner of their intention to terminate the Contract, terminate this Contract without any indemnity on its part if any of the following circumstances is fulfilled:

### The Lead Partner fails, without justification, to fulfil any substantial obligation incumbent on it by this Contract and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within thirty (30) days of receipt of the letter;

### The Lead Partner or any person that assumes unlimited liability for the debts of the Lead Partner is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to the Lead Partner;

### The Lead Partner, or any related entity or person, have been found guilty of an offence concerning their professional conduct proven by any means;

### It has been established by a final judgment or a final administrative decision or by proof in possession of the AUDA-NEPAD that the Lead Partner has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labor or other forms of trafficking in human beings or has committed an irregularity;

### A change to the Lead Partners legal, financial, technical, organisational or ownership situation substantially affects the implementation of this Contract or calls into question the decision awarding the grant;

### The Lead Partner or any related person, are guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Project or fail to supply – or fail to supply within the deadlines set under this Contract - any information related to the Project required by the AUDA-NEPAD;

### The AUDA-NEPAD has evidence that the Lead Partner, or any related entity or person, have committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Project;

### The Lead Partner, subject to the discretional judgment of the AUDA-NEPAD, have engaged in corrupt, fraudulent, collusive, coercive or obstructive practices or is subject to or have not duly disclosed a situation of conflict of interest within the meaning of Article 20;

### The Lead Partner, or any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Right of Child, including Article 32 thereof, which, inter-alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

### The cases of termination under Articles 13.2.2, 13.2.3, 13.2.4, 13.2.7, 13.2.8 and 13.2.9 may refer also to persons who are members of the administrative, management or supervisory body of the Lead Partner and/or to persons having powers of representation, decision or control with regard to the Lead Partner.

## Without prejudice to Articles 13.2 the Contract may be cancelled by either Party in case of force majeure if either Party believes that this Contract can no longer be executed effectively or appropriately. In this case the Party invoking Force Majeure shall duly consult the other party and may, failing agreement on a solution, terminate the Contract by serving two months written notice, without being required to pay indemnity.

## Upon termination of this Contract the Lead Partner shall take all immediate steps to bring the Project to a close in a prompt and orderly manner and to reduce further expenditure to a minimum. The Lead Partner may be entitled, subject to AUDA-NEPAD and KfW’s no-objection, to payment only for the part of the Project carried out, excluding costs relating to current commitments that are due to be executed after termination. To this purpose, the Lead Partner shall introduce a payment request to AUDA-NEPAD in line with SGTC Article 13 and Annex 4 of the Contract starting from the date of termination.

## In the event of termination as consequence of Force Majeure according to Article 11 the AUDA-NEPAD may, subject to AUDA-NEPAD and KFW no objection, agree to reimburse the unavoidable residual expenditures incurred during the notice period, provided, the first paragraph of this Article 13.4 has been properly executed.

## In the cases of termination foreseen in Article 13.2.1, 13.2.3, 13.2.4, 13.2.6, 13.2.7, 13.2.8 and 13.2.9 the AUDA-NEPAD may, depending on the gravity of the failings, request full or partial repayment of amounts unduly paid for the Project.

## This Contract will be terminated automatically if it has not given rise to any payment by the AUDA-NEPAD within one year of its signature, unless otherwise agreed by the parties.

# Officials Not to Benefit

The Lead Partner warrants that no official of AUDA-NEPAD has received or will be offered by the Lead Partner any direct or indirect benefit arising from this Contract or the award thereof. The Lead Partner agrees that breach of this provision is a breach of an essential term of this Contract.

# Privileges and Immunities

## Nothing in this Contract shall be interpreted or construed as a waiver or a modification of the privileges, immunities and facilities, which the African Union and its Organs/Agency enjoy by virtue of the international agreements and laws.

## No delay or forbearance by either Party in exercising its right, power, privilege or remedy under this Contract shall be interpreted to impair or be construed as a waiver of such right, power, privilege or remedy.

# Tax Exemption

## As a condition of precedent to the signing of the Contract, the Lead Partner/Other partners on SIFA funded equipment, work or services shall provide to AUDA-NEPAD, a tax exemption certificate issued by a valid local authority from the country where the services shall be provided.

## In case no tax exemption is provided as per Article 16.1 above, taxes (limited to VAT or sales tax) and import duties may be eligible for financing through SIFA, only if the Lead Partner provides verifiable evidence that they cannot be recovered/deducted, and/or exemptions cannot be obtained; since most countries make provision for exemption of taxes and/or import duties e.g. for educational projects, the Lead Partner must use all serious efforts to secure exemptions. Proof of such non-deductibility/recoverability must be provided by the Lead Partner for all:

## VAT to be paid by the Lead Partner/other partners on SIFA funded equipment, works or services;

## import duties for SIFA funded equipment to be paid by the Lead Partner/other partners.

## For this purpose, taxes (limited to VAT or sales tax) and import duties according to a) and b) above must be stated separately in the purchase contracts and invoices for local purchases or claims sent to SIFA for imports. All other taxes and levies whether or not shown separately in the invoices are assumed for the purpose of this Contract to be included in the prices for goods, works and/or services and cannot be separately reimbursed with SIFA funding.

## As a proof of an exemption of import duties and/or taxes according to a) and b) above not being granted, AUDA-NEPAD will require and accept the following documentation from the Lead Partner/other partners:

## A formal application for the exemption from the payment of import duties and VAT or sales tax, submitted to the relevant authorities, with received stamp from that authority, and

## In reply to the aforementioned formal application, a specific declaration/reply from the relevant authorities stating that the Lead Partner/other partners are not entitled to be import duty and/or VAT/sales tax exempt or to reclaim taxes incurred for the activities in question, or

## In the absence of a reply from the relevant authorities after 2 months from the date of application it will be accepted in lieu of Article 16.2 b) above ; however should an exemption or a refund materialise at any time thereafter resulting in a repayment of duties and/or VAT/sales tax already paid with SIFA funds, those funds returned by the tax authorities must immediately be reimbursed pursuant to SGTC Article 10.

## If import duties and/or taxes are financed by SIFA, a stamp/note must be placed on the original invoice clearly stating that the import duties and or VAT/sales tax have been financed with donor funds.

## All above statements made and documents provided by the Lead Partner, in case taxes and/or import duties were funded by SIFA, will be subject to audits; audit results may result in requests for reimbursement pursuant to SGTC Article 10.

## All the above must be clarified before completion and signing of the Contract and in the case of being included in the Contract, will be verified before any payments of duties and taxes from the SIFA Contribution are made. Costs for taxes shall be reflected in Annex 2.

# Mines

## The Lead Partner represents and warrants that neither it nor any of its supplier is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines utilized in mines or in such activities in respect of components primarily utilized in the Manufacture of mines. The term “mines” means those devices defined in Article 2 Paragraphs 1, 4, and 5 of the Protocol II annexed to the Convention on Prohibition and Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 1980.

## This provision shall be included in all-subcontracts or sub-agreements entered into by the Lead Partner under this Contract.

## Any breach of this representation and warranty shall entitle AUDA-NEPAD to terminate this Contract immediately upon notice to the Lead Partner, without any liability or termination charges or any other liability of any kind of AUDA-NEPAD.

# Anti-Terrorism

## The Lead Partner agrees to undertake all reasonable efforts to ensure that none of the AUDA-NEPAD funds received under this Contract are used to provide supports to individuals or entities associated with terrorism and that the Lead Partners of any amounts provided by AUDA-NEPAD hereunder do not appear on the list maintained by the United Nations Security Council Committee establish pursuant to resolution 1267 (1999). The list can be accessed via http://www.un.org/Docs/sc/Committees/1267/1267ListEng.htm. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.

## This provision shall be included in all-subcontracts or sub-agreements entered into by the Lead Partner under this Contract.

# Child Labor

## The Lead Partner represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Right of Child, including Article 32 thereof, which, inter-alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, hence child labour is strictly prohibited

## This provision shall be included in all-subcontracts or sub-agreements entered into by the Lead Partner under this Contract.

## Any breach of this representation and warranty shall entitle AUDA-NEPAD to terminate this Contract automatically upon notice to the Lead Partner, at no cost, whatsoever, to AUDA-NEPAD.

# Anti-Corruption and Conflict of Interests

## **Anti-corruption**

Notwithstanding the provisions of Article 13 above, AUDA-NEPAD may with no less than seven (7) days’ written notice of termination to the Lead Partner terminate this Contract, should the Lead Partner (including all other partners, applicable throughout this entire Clause 20), at AUDA-NEPAD’s discretional judgment, and with due legal procedure, have engaged in corrupt, fraudulent, collusive, coercive or obstructive practices (including, but in no way limited to such procurement practices and/or mis-procurement) in competing for or in executing the Contract or should the Lead Partner’s actions be considered within the scope of a conflict of interest. For purposes of this clause:

### “Corrupt Practice” means the promising, offering, giving, making, receiving or soliciting, accepting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

### “Fraudulent Practice” means any act or omission, including but not limited to misrepresentation of facts, fraud, corporate fraud, to suppressing the evidence of illegal activities, to hide or deny claims, actions, disputes and grievances of any kind or nature whatsoever, etc. that knowingly or recklessly misleading, attempts to mislead all to the detriment of AUDA-NEPAD, and includes collusive practice among partners (prior to, or after, submission of proposals), designed to establish prices at artificial non-competitive levels and to deprive AUDA-NEPAD of the benefits of free and open competition. The fraudulent practice means, in addition, any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain benefit or to avoid an obligation.

### “Collusive Practice” is an arrangement between two (2) or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.

### “Coercive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to any investigation or making false statements to investigators in order to materially impede any investigation into allegations of corrupt, fraudulent, coercive or collusive practice; hiding any legal actions, and/or threatening, harassing or intimidating a party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation. It also means, the impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property of the person with the view to influencing improperly the actions of a person.

### “Obstructive Practice” means (i) deliberately destroying, falsifications, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt, Fraudulent, Coercive or Collusive practices, or threatening, harassing or intimidating any person to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (ii) any act intended to materially impede the exercise of AUDA-NEPAD’s and KfW’s access to contractually required information in connection with an official investigation into allegations of Corrupt, Fraudulent, Coercive or Collusive practices.

## **Conflict of Interests**

### “Conflict of interests” means that the Lead Partner warrants that it is in no case or has never been engaged in a conflict of interest whereby it had sought or obtained from an officer/Staff member of the AU/AUDA-NEPAD any benefit, advantage, legal or financial agreement or anything of more than nominal value that would otherwise not be available without the aid and support of this officer/Staff member of the AU/AUDA-NEPAD, or not disclosing the fact that the Lead Partner has previous personnel or professional relationships with such officer/Staff member of the AU/AUDA-NEPAD which would therefore have excluded the Lead Partner from a selection process. In this context, “officer of the AU/AUDA-NEPAD” includes staff and employees taking or reviewing procurement decisions or refers to any participants in the procurement process (including officers of the AU/AUDA-NEPAD) attempting to establish bid prices at artificial, non-competitive levels or any staff or employees in relation to the execution of the Contract. “Conflict of interest” also encompasses cases where the impartial and objective exercise of the functions of any person under this Contract is compromised for reason involving family, emotional life, political and national affinity, economic interest or any other shared interest with another person.

### The Lead Partner undertakes to take all necessary precautions to avoid conflict of interest and shall inform the AUDA-NEPAD without delay of any situation constituting or likely to lead to any such conflict. The Lead Partner has an obligation and shall ensure that its experts and sub-contractors shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of AUDA-NEPAD, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Lead Partner or the termination of this Contract.

# Money Laundering

The Lead Partner undertakes to comply at all times with KfW’s standards for Prevention of Money Laundering that can be accessed via https://www.kfw.de/KfW-Group/About-KfW/Verantwortung-und-Corporate-Governance/Integrität-Compliance/Geldwäscheprävention/ and shall ensure that all its sub-contractors and partners will also comply with KfW’s standards for Prevention of Money Laundering that can be accessed via the afore mentioned web link.

# Environmental, Social, Health and Safety Standards (ESHS)

The ESHS Standards of the International Finance Cooperation shall be applied, unless otherwise stated in Annex 8 to this Contract.

# Designated Categories of Offences

The following categories are defined as Designated Categories of Offenses by the Financial Action Task Force (FATF): participation in and organized criminal group and racketeering; terrorism including financing of terrorists; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency: counterfeiting and piracy of products; environmental crime; murder; grievous bodily injury; kidnapping; illegal restraint and hostage-taking; robbery or theft; smuggling (including in relation to customs and excise of duties and taxes); tax crimes (related to direct or indirect taxes); extortion; forgery; piracy; insider trading and market manipulation.

# Observance of Laws

The Lead Partner shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

# Principles Guiding the Contract

The operation of this Contract will be guided by the core principles and value of the AU, the AUDA-NEPAD, and KfW.

# Notices

## Any notice or other communication, except for reports, no objection requests, payment requests, or any other communication advised pursuant to SGTC Article 13, given under this Contract shall be made in writing for the attention of the person and at the address specified in SGTC Article 7.

## Any notice or communication shall be: (a) delivered personally; (b) sent by documented courier delivery service; (c) sent by facsimile transmission, provided that a confirmation sheet is emitted from the machine making the transmission; or (d) Email.

## Any notice or other communication shall be deemed to have been duly delivered to the other Party:

### On the date of delivery, if delivered personally;

### On the date of delivery, if tracking is enabled by the courier company;

### On the date on which the email is sent.

# Confidentiality

## The Lead Partner undertakes to preserve the confidentiality of any document, information or other materials communicated until at least seven (7) years after the expiration of the Contract; except with the prior written consent of AUDA-NEPAD and KfW, the Lead Partner, its experts, employees shall not at any time communicate to any person or entity any confidential information acquired in the course of the contract, nor shall they make public the recommendations formulated in the course, or as a result of, the Project activities; the aforementioned applies unless otherwise authorised by AUDA-NEPAD, however, KfW shall at all times have full access to all information without limitations.

## AUDA-NEPAD and KfW reserve the right to transfer (including for the purposes of publication) information about the Project and how it is financed during the entire period to other third parties so as to safeguard legitimate interests. The information is not transferred by AUDA-NEPAD and KfW to other third parties if the legitimate interests of the Lead Partner in the information not being transferred outweigh AUDA-NEPAD’s and KfW’s interests in it being transferred. The legitimate interests of the Lead Partner particularly include the confidentiality of sensitive information, which is excluded from publication. Sensitive information include:

### information about internal financial data;

### business strategies;

### internal corporate guidelines and reports

### personal data of natural persons

### AUDA-NEPAD’s and KfW’s internal rating of the parties financial position

## AUDA-NEPAD and KfW are entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

# Assignment

The Lead Partner shall not assign, transfer, pledge or make other dispositions of this Contract or any part thereof, or any of the Lead Partner’s rights, claims or obligations under this Contract, except with the prior written consent of AUDA-NEPAD.

# Amendments

## This Contract may be amended through a formal addendum to the Contract specifying all modifications and signed by both AUDA-NEPAD and the Lead Partner.

## If the Lead Partner wishes to propose an amendment, the proposal should be communicated to AUDA-NEPAD at least one (1) month prior to when it is expected to enter into force.

## AUDA-NEPAD will, if deemed necessary, prepare the addendum for mutual agreement and signature. All signed addendum shall become a part of the original Contract.

# Applicable law

This Contract shall be governed by and interpreted in accordance with the General Principles of International Law (including the UNIDROIT Principles of International Commercial contracts of 2004), to the exclusion of any single national system.

# Settlement of Dispute

## **Amicable Settlement and mediation**

### The Parties shall use their best efforts to settle amicably by mutual agreement any dispute, controversy or claim arising out of or in connection with this Contract. To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. A Party must reply to a request for an amicable settlement within ten (10) working days. Once this period has expired, or if the attempt to reach amicable settlement has not produced agreement within thirty (30) working days of the first request, each Party may notify the other that it considers the procedure to have failed.

### In the event of failure to reach an amicable agreement, the Parties may agree to enter into mediation. The mediator shall be agreed upon by each Party. Each Party shall bear its own expenses. The expenses related to the mediator shall be borne equally by both Parties. If no settlement is reached within one hundred and twenty (120) Days of the opening of the mediation procedure, each Party may notify the other that it considers the procedure to have failed.

## **Arbitration**

### Unless any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this article within sixty (60) days after receipt by one Party of the other Party’s request for such amicable settlement, such dispute, controversy or claim shall be referred for final arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

### The number of arbitrators shall be three. Each party shall appoint one arbitrator. The two arbitrators so appointed shall choose the third arbitrator, who shall act as the presiding arbitrator of the arbitral tribunal. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Arbitration Center of the Addis Ababa Chamber of Commerce and Sectorial Association.

### The place of arbitration shall be Addis Ababa, Ethiopia.

### The working language of the arbitral proceedings shall be that of the AU (English, French, Arabic, and Portuguese).

### The law governing the proceedings shall be UNIDROIT.

### Each party shall, before an arbitral award is rendered, bear its own expenses, including expenses related to the arbitrator appointed by it. The expenses related to the third arbitrator as well as any other expenses to be incurred, shall be borne in equal parts by the parties.

### An arbitration finding shall be binding on the Parties. The final allocation of expenses as referred to in the sub-paragraph 31.2.6 shall be decided upon in the arbitral award. The Party against whom a finding has been made shall bear all the expenses relating to the arbitration procedure and any other costs that may be decided upon by the arbitration.