

BENEFICIARY MEMORANDUM OF AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

THE COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH

A statutory body established and operating in terms of the Scientific Research Council Act, No 46 of 1988 as amended, through its Operating Unit known as the Smart Places Cluster and host of the National Cleaner Production Centre South Africa (NCPG-SA) herein represented by Mr Ndivhuho Raphulu in his capacity as Impact Area Manager (Hosted programmes), he being duly authorized thereto
(hereinafter referred to as “the CSIR”)

And

Coega Development Corporation (Pty) Ltd
Registration Number: 1982/003891/07

A private company with limited liability or CC duly registered and incorporated in accordance with the applicable laws of the Republic of South Africa, herein represented by Ms Telly Chauke in his/her capacity as Chief Sustainability Officer and he/her being duly authorised thereto.

(hereinafter referred to as “The INTERESTED PARTY”)

WHEREAS the Government of the Republic of South Africa, through its National Government Department of Trade Industry and Competition (the dtic), has made funds available through the CSIR through the National Cleaner Production Centre South Africa (NCPC-SA), for purposes of conducting NCPC-SA Industrial Energy Efficiency Project (IEE)

AND WHEREAS The National Cleaner Production Centre South Africa Industrial Energy Efficiency Project (IEE) comprising the subject matter of this Agreement forms part of the National Cleaner Production Centre's Sectoral programme for the Waste Sector

AND WHEREAS the CSIR through the National Cleaner Production Centre South Africa (NCPC-SA) has undertaken to fund the PROJECT titled: "Resource Efficiency and Cleaner Production - Industrial Energy Efficiency Project (IEE)

AND WHEREAS CSIR through the National Cleaner Production Centre South Africa (NCPC-SA) has agreed to perform certain PROJECT TASKS in the PROJECT as outlined in the attached PROJECT PROPOSAL - Annexure "A";

AND WHEREAS the CSIR has agreed to make FUNDING available, Interested Party will allow the CSIR through the NCPC-SA team full access to its facility in order to conduct for the execution of the PROJECT TASKS (NCPC-SA Industrial Energy Efficiency Project (IEE);

AND WHEREAS the PARTIES have agreed to enter into a written AGREEMENT to govern the relationship between them in respect of FUNDING of the PROJECT TASKS as set out in the PROJECT PROPOSAL;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PREAMBLE

The PARTIES hereby confirm the correctness of the Preamble to this AGREEMENT, which is regarded as an integral part of this AGREEMENT.

1.1. The CSIR, through the National Cleaner Production Centre South Africa (NCPC-SA), has obtained funding from the National Government Department of Trade, Industry, and Competition (the dtic) for purposes of conducting NCPC-SA Industrial Energy Efficiency Project;

1.2. The National Cleaner Production Centre South Africa Industrial Energy Efficiency Project comprising the subject matter of this Agreement forms part of the National Cleaner Production Centre's Sectoral programme for the Manufacturing Sector;

1.3. The Interested Party will allow the CSIR through the NCPC-SA team full access to its facility in order to conduct a proper NCPC-SA Industrial Energy Efficiency Project;

1.4. The CSIR will present to the Interested Party a formal report on completion of the NCPC-SA Symbiosis Report;

1.5. As part of the requirements for participation in the NCPC-SA, the CSIR and the Interested Party agree and commit in good faith to give effect to the aforesaid by means of this written Agreement.

1.6. The Parties confirm the correctness of the preamble to this Agreement which shall be regarded as an integral part hereof.

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 as used in this AGREEMENT shall have the following meanings:

2.2.1 “AGREEMENT” means this Agreement and all annexures attached and/or referred to herein;

2.2.2 “BACKGROUND INTELLECTUAL PROPERTY” means INTELLECTUAL PROPERTY relating to the PROJECT, owned by either of the PARTIES prior to the EFFECTIVE DATE or any other intellectual property which may subsequently be developed by any of the PARTIES unrelated to the PROJECT and which may be beneficially incorporated in the PROJECT, with the prior written consent of the other PARTY;

2.2.3 “Assessment” means the activities to be undertaken at the Interested Party’s facility, which is attached as Annexure A and which entails the following:

2.2.3.1 an assessment of the energy, materials, water and waste of the manufacturing/processing facility, with the aim of identifying possible solutions to reduce their use or generation;

2.2.3.2 an assessment focussing on the optimisation of a specific Energy System;

2.2.3.3 the implementation of an Energy Management System (EnMS) aligned to SANS/ISO 50001; or

2.2.3.4 any other service offered by the NCPC-SA;

2.2.4 “Assessment Report” means the end deliverable to be delivered to the CSIR and the Interested Party by the Specialist on the NCPC-SA Assessment of the Interested Party’s manufacturing or processing facilities;

2.2.5 “Energy Systems Optimization” includes Fans Systems, Motor

System, Compressed Air Systems, Pump Systems and Steam Systems, heating, ventilation, and air conditioning.

2.2.6 “Effective Date” - means the date of signature of this Agreement by the last Party to sign it;

2.2.7 “NCPC-SA” means the National Cleaner Production Centre South Africa, a national government programme that promotes the implementation of resource efficiency and cleaner production methodologies to assist industry to lower costs through reduced energy, water and materials usage, and waste management. It is hosted by the CSIR on behalf of **the dtic**.

2.2.8 “Parties” - means the CSIR (as host of NCPC-SA) and the Interested Party, and “Party” has a corresponding meaning;

2.2.9 “Specialist” means a third party to be appointed by the CSIR hereunder who specialises in resource efficiency and cleaner production processes, systems and assessments;

2.2.10 “CONFIDENTIAL INFORMATION” means: -

2.2.10.1 any information of whatever nature, which has been or may be obtained by a Receiving PARTY from a Disclosing PARTY, whether in writing or in electronic form or pursuant to discussions between the PARTIES, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, PROJECT reports, PROJECT details, PROJECT INTELLECTUAL PROPERTY, studies, and/or findings;

2.2.10.2 analysis, concepts, compilations, studies and other material prepared by or in possession or control of a Recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;

2.2.10.3 all information concerning the PROJECT,

excluding information agreed to between the PARTIES to be used for marketing and publicity purposes or for the CSIR to meet its reporting obligations to the DTIC;

2.2.10.4 the outcome of the audit conducted in terms of this AGREEMENT; the business and affairs of the PARTIES, including financial affairs and its relations with its stakeholders;

2.2.10.5 but shall exclude any information that:

2.2.10.5.1.1 is known to, or in the possession of the Receiving PARTY prior to the disclosure thereof by the Disclosing PARTY;

2.2.10.5.1.2 is or becomes publicly known, otherwise than as a result of a breach of this AGREEMENT by the Receiving PARTY;

2.2.10.5.1.3 is developed independently of the Disclosing PARTY by the Receiving PARTY in circumstances that do not amount to breach of the provisions of this AGREEMENT;

2.2.10.5.1.4 is disclosed by the Receiving PARTY to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Receiving PARTY shall advise the Disclosing PARTY to take whatever steps it deems necessary to protect its interest in this

regard and provided further that the Receiving PARTY will disclose only that portion of the information which it is legally required to disclose and the Receiving PARTY will use its reasonable endeavours to protect the confidentiality of such information to the greatest extent possible in the circumstances;

2.2.10.5.1.5 is disclosed to a third PARTY pursuant to the prior written authorization of the Disclosing PARTY;

2.2.10.5.1.6 is received from a third PARTY in circumstances that do not result in breach of the provisions of this AGREEMENT. (As used herein, the PARTY disclosing Confidential Information is referred to as 'the Disclosing PARTY' and the PARTY receiving the Confidential Information is referred to as 'the Recipient' or 'the Receiving PARTY');

2.2.11 "EXPLOITATION" means the utilisation of any ideas, concepts, activities or PROJECT INTELLECTUAL PROPERTY rights, by putting the same to commercial use or industrial implementation with the view to making a profit or earning income;

2.2.12 "FUNDING" means the amount allocated by the CSIR to Interested Party in terms of Clause 4 of this AGREEMENT for the execution of the PROJECT TASKS, as set out in the PROJECT PROPOSAL annexed hereto as Annexure "A";

2.2.13 “INTELLECTUAL PROPERTY” means intellectual capital in the form of any and all technical or commercial information, including, but not limited to the following: chemical structures; manufacturing techniques and designs; specifications and formulae; software, computer programmes, know-how; data; products; systems and processes; production methods; trade secrets; undisclosed inventions; marketing and financial information; as well as registered and unregistered intellectual property rights in the form of patents, trademarks, designs and plant breeder’s rights (whether granted/registered or applied for); and copyright in any works, including but not limited to, literary works and computer programmes;

2.2.14 “PARTICIPANTS” means institutions or persons, whether natural or juristic, who undertake to carry out tasks in the PROGRAM and the PROJECT as set out in the PROGRAM Proposal, and listed in Annexure A;

2.2.15 “Parties” - means the CSIR (as host of NCPC-SA) and the Interested Party, and “Party” has a corresponding meaning;

2.2.16 “PRODUCT” means any commercially viable product, process or technology that arises from the PROJECT and that is potentially suitable for EXPLOITATION;

2.2.17 “PROGRAM” means the “NCPC-SA” means the National Cleaner Production Centre South Africa,

2.2.18 “PROJECT” means:

2.2.18.1 RECP Project titled: “Resource Efficiency and Cleaner Production” as described in the PROJECT PROPOSAL;

2.2.19 “PROJECT BUDGET” means the budget as set out in Clause 4 and in Annexure “B” hereto;

2.2.20 “PROJECT INTELLECTUAL PROPERTY” means the INTELLECTUAL PROPERTY developed by INTERESTED PARTY or PARTICIPANTS during the course of the PROJECT or PROJECT TASKS, in pursuance of the objectives defined in the PROGRAM or PROJECT PROPOSAL;

2.2.21 “PROJECT INTELLECTUAL PROPERTY PORTFOLIO” means (i) the PROJECT INTELLECTUAL PROPERTY; (ii) the BACKGROUND INTELLECTUAL PROPERTY, where such BACKGROUND INTELLECTUAL PROPERTY forms an inseparable part of any material embodiment of a product, process or service that embodies the PROJECT INTELLECTUAL PROPERTY; (iii) any derivative of the PROJECT INTELLECTUAL PROPERTY; and (iv) any derivative of the BACKGROUND INTELLECTUAL PROPERTY, whether such derivative constitutes an embodiment, improvement, enhancement or development of the BACKGROUND INTELLECTUAL PROPERTY, where such derivative of the BACKGROUND INTELLECTUAL PROPERTY forms an inseparable part of any material embodiment of a product or service embodying the PROJECT INTELLECTUAL PROPERTY or derivative of the PROJECT INTELLECTUAL PROPERTY. Derivative means an embodiment, improvement or development of the PROJECT INTELLECTUAL PROPERTY;

2.2.22 “PROJECT PROPOSAL” means year 1 of the proposal titled:

2.2.22.1 The purpose of this project is to conduct system resource efficiency assessments (water, energy and waste), training on RECP and EnMS Implementation, a copy of which is attached hereto, marked Annexure “A”;

2.2.23 “PROJECT TASKS” means the activities/tasks to be undertaken by NCP-C-SA as part of the PROJECT as set out in the PROJECT PROPOSAL;

2.2.24 “STEERING COMMITTEE” means the NCP-C-SA steering committee, appointed by the DTIC.

2.2.25 “MANAGEMENT COMMITTEE” means the management committee of the PROGRAM, consisting of the four platform leaders;

2.2.26 “ADVISORY PANEL” means a panel of persons with technical knowledge and experience in the field of the PROJECT, appointed by the CSIR to assess progress made towards achievement of the Objectives;

2.3 When any number of days is prescribed in this AGREEMENT, same shall be reckoned as calendar days exclusively of the first and inclusively of the last day unless that day falls on a Saturday, Sunday or public holiday, in which case the day shall be the next succeeding working day which is not a Saturday, Sunday or public holiday;

2.4 The expiration or termination of this AGREEMENT shall not affect those provisions of this AGREEMENT that expressly provide that they shall operate after any such expiration or termination, or which necessarily must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any PARTY, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the AGREEMENT;

2.6 Where figures are referred to in numerals and in words, if there is any conflict

between the two, the words shall prevail;

2.7 Expressions defined in this AGREEMENT shall bear the same meanings in annexures to this AGREEMENT which do not themselves contain their own conflicting definitions;

2.8 Where any term is defined within the context of any particular clause in this AGREEMENT, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this AGREEMENT, notwithstanding that that term has not been defined in this interpretation clause.

3 EFFECTIVE DATE AND DURATION

3.1 This AGREEMENT shall come into operation on the date upon which it is signed by the PARTY last signing it (“the Effective Date”) and remain binding for a period of 36 (thirty-six) months,

3.2 Unless terminated earlier in terms of Clause 16 or 17 hereunder, this AGREEMENT shall terminate upon mutual written consent between the Parties.

4 FUNDING

4.1 The funds has been made available, to be utilized by the NCPC-SA solely for the execution of the PROJECT TASKS, in accordance with the PROJECT BUDGET.

4.2 NCPC-SA shall deposit all funds received from the CSIR into a bank account held by NCPC-SA for the purposes of the PROJECT TASKS, which payments shall be credited to a nominated cost centre of NCPC-SA in the name of the PROJECT.

5 FINANCIAL ARRANGEMENTS

5.1 NCPC-SA shall be responsible for ensuring that the FUNDING is utilised to achieve the PROJECT TASKS as set out in the PROJECT PROPOSAL and the PROJECT BUDGET.

5.2 NCPC-SA shall be responsible for procuring and submitting the technical and financial reports as envisaged in Clause 7.3 below, as well as for the facilitation of evaluations as contemplated in Clause 9 below.

5.3 The CSIR shall be entitled at any time during, and also within a period of 3 (three) years after completion or termination of the PROJECT TASKS, to appoint an independent auditor or team of auditors (which appointment shall be at the risk and expense of the CSIR) to inspect and report on the books of account pertaining to the PROJECT TASKS expenditure of NCPC-SA shall for this purpose, provide said auditor(s), upon reasonable prior notice, with access to the books of account, technical reports and all records relating to the management of the PROJECT TASKS and to facilitate such inspection, by providing all such information as may be required by the auditor(s).

5.4 NCPC-SA shall keep separate financial records of all expenses incurred by NCPC-SA in regard to the PROJECT TASKS, which financial records shall be made available to the CSIR for inspection if requested thereto.

5.5 The PARTIES agree that the provisions shall survive the AGREEMENT's termination as specifically provided for in the aforesaid clauses.

6 PROJECT DELIVERABLES

6.1 The deliverables of the PROJECT are as indicated below Annexure A

7 OBLIGATIONS OF NCPC-SA

7.1 NCPC-SA shall at all times acknowledge in publications published in connection with the PROJECT, the fact that the PROJECT is funded by the DTIC through the CSIR as part of the South African Government’s commitment to Industrial Energy Efficiency Project (IEE) that can be used to develop South African knowledge on Industrial Energy Efficiency Project interventions and help build national capacity and understanding the benefits of waste management to South African industry both from the environmental perspective and financial benefits

7.2 **Records: NCPC-SA** shall ensure that proper records of the PROJECT TASKS are kept and shall use its best endeavours to ensure that all experimental procedures, records, results and interpretations thereof, are adequately recorded in such a way as to facilitate the evaluation of the progress of the PROJECT TASKS relative to its objectives, and timeline set out in the PROJECT PROPOSAL and to enable the CSIR to evaluate whether Interested Party has taken the requisite steps to secure its rights in terms of the PROJECT INTELLECTUAL PROPERTY.

7.3 **Reporting:** The NCPC-SA shall submit reports to the CSIR in the following manner:

Reporting requirements	Reporting date
<p>1. Quarterly output performance reports Metrics that report against the following: a) A financial report detailing the expenditure for that particular quarter. The financial report must be signed by the Recipient’s Finance Officer.</p>	<p>Two weeks before the end of each financial quarter.</p>

<p>2. Detailed Annual progress reports:</p> <ul style="list-style-type: none"> a) The current state of affairs of the project; b) The project’s performance against pre-determined objectives and Key Performance Indicators; c) An audited expenditure report (signed off by the Financial Officer) for the period concerned; 	
<p>3. Final Report</p> <p>In the Annual Report format detailing the activities of the project from start to end that accurately reflects:</p> <ul style="list-style-type: none"> a) The overall state of affairs, developments and achievements of the projects over the funding period; and b) The overall project financial status, accompanied by an audited expenditure report. 	

7.4 NCPC-SA shall within 30 (thirty) days of any changes in the project (such as on the resignation from the project of a staff member that had contributed significantly, or was anticipated to contribute significantly, to the achievement of the objectives or on withdrawal of resources from the PROJECT), notify the CSIR, in writing, of such changes. Such notice shall include reasons for the changes and propose measures to remedy the changes’ effects to ensure that the objectives are achieved.

7.5 In response to a request for specific information, shall be obliged to disclose to the CSIR in writing all relevant information, whether confidential or not but subject to clause 13, relating to the PROJECT TASKS, including but not limited to the PROJECT INTELLECTUAL PROPERTY PORTFOLIO and commercial EXPLOITATION thereof.

8 STEERING COMMITTEE

- 8.1 The CSIR will establish a MANAGEMENT COMMITTEE consisting of the Project leader of the project within the PROGRAM, one representative from DTIC, and a representative from the CSIR as PROGRAM coordinator. The MANAGEMENT COMMITTEE will be chaired by the CSIR representative responsible for the PROGRAM.
- 8.2 The functions of the MANAGEMENT COMMITTEE with respect to this PROJECT shall be as follows:
- 8.2.1 Oversee the implementation and coordinated execution of the projects identified for support in the Collaborative program;
 - 8.2.2 To review progress on the PROJECT;
 - 8.2.3 To approve the expenditure with respect to capital investment as set out in the PROJECT PROPOSAL;
 - 8.2.4 To certify completion of a milestone as set out in the PROPOSALS contained in this AGREEMENT annexures and to recommend to CSIR payment to NCPC-SA for the concomitant services rendered in terms of such milestones;
 - 8.2.5 To monitor the adequate protection and management of all PROJECT INTELLECTUAL PROPERTY arising from the PROJECT;
 - 8.2.6 To make recommendations to DTIC regarding the future of the PROJECT;
 - 8.2.7 To do whatever else may be reasonably necessary to give full and proper effect to and achieve the AGREEMENT's objectives.

9 EVALUATION BY ADVISORY PANEL

- 9.1 The CSIR shall be entitled from time to time to request that an ADVISORY PANEL in the PROJECT field undertake a review and evaluation of the PROJECT and report thereon to the CSIR.
- 9.2 Subject to clause 13, NCPC-SA shall be obliged to provide such ADVISORY PANEL with all information regarding the PROJECT TASKS to enable the

ADVISORY PANEL to assess the progress achieved the objectives of the PROJECT.

9.3 A copy of any report by an ADVISORY PANEL received by the CSIR shall be made available to the Interested Party within 14 (FOURTEEN) days from the date of receipt thereof by the CSIR.

9.4 The provisions of Clause 13 below shall apply *mutatis mutandis* to all information provided by the Interested Party to the ADVISORY PANEL.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 The PARTIES agree that the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 (Act no. 51 of 2008), shall apply and they shall be bound by the same.

10.2 All BACKGROUND INTELLECTUAL PROPERTY shall be and remain the sole property and right of the PARTY who created the same.

10.3 Unless agreed otherwise between the PARTIES, all INTELLECTUAL PROPERTY resulting from, or developed during the PROGRAM shall belong to the PARTY who created same or will be shared between the PARTICIPANTS according to the contributions by the respective PARTICIPANTS in any such development, and any share as allocated to a specific PARTICIPANT shall be directly proportional to that PARTICIPANT'S contribution. Relevant contributions to take into account include, but are not limited to, intellectual and financial contributions and contributions in kind (e.g. use of land, equipment or facilities). A record shall be established under the guidance of the MANAGEMENT COMMITTEE of all PROJECT INTELLECTUAL PROPERTY created during the execution of the PROJECT for the purposes of this clause. In the event of a dispute relating to the extent of contributions, the dispute shall be referred to the MANAGEMENT COMMITTEE. Should the dispute not be resolved, it shall be dealt with in terms of Clause 18 below.

10.4 PARTICIPANTS shall promptly make written disclosure to the MANAGEMENT COMMITTEE and PARTICIPANTS' Technology Transfer Office (if applicable) of each invention or other potentially useful or exploitable PROJECT INTELLECTUAL PROPERTY in terms of Clause 10.3. This information shall be treated as confidential by the receiving parties. Interested Party undertakes to treat as confidential such written disclosures and related information received from other PARTICIPANTS. If a PARTICIPANT decides not to exploit the PROJECT INTELLECTUAL PROPERTY, the other PARTICIPANTS may do so with the written permission of the MANAGEMENT COMMITTEE and subject to an exploitation agreement as envisaged in clause 12.1 below. PARTICIPANTS shall provide, when so requested by the MANAGEMENT COMMITTEE, all information in its possession pertaining to an invention or any exploitable INTELLECTUAL PROPERTY relating to the PROJECT, which may be necessary in the preparation, filing and prosecution of a registerable right. The receiving parties shall treat such information as confidential. Interested Party undertakes to treat as confidential all such information received from other PARTICIPANTS.

10.5 The PARTIES hereby undertake to safeguard, prior to any commercial use, the rights of the holder in the country or countries where this commercial use is to take place by complying with the appropriate formalities. Costs associated with procuring protection for INTELLECTUAL PROPERTY rights will be shared by the PARTICIPANTS in accordance with the proportions agreed by the MANAGEMENT COMMITTEE unless agreed otherwise in writing in a subsequent agreement between the PARTICIPANTS.

10.6 The provisions of this Clause 10 shall survive termination of this AGREEMENT in perpetuity.

11 EXPLOITATION

11.1 It is expressly recorded between the PARTIES that no EXPLOITATION, commercial or otherwise of any PRODUCT or any part of a PRODUCT shall

take place prior to the conclusion of a separate written agreement between the PARTICIPANTS governing such EXPLOITATION. Such Agreement shall be subject to the provisions of this AGREEMENT as well as such further terms and conditions as the PARTICIPANTS may then agree upon.

11.2 Should the PARTICIPANTS fail to make progress with EXPLOITATION of any INTELLECTUAL PROPERTY rights within 5 (five) years of the completion of the PROJECT, such INTELLECTUAL PROPERTY rights may be forfeited by the PARTICIPANTS in favour of the DTIC, at the sole discretion of the DTIC. The PARTICIPANTS undertake to sign all documents and perform all acts necessary to assign such intellectual property rights to the DTIC, provided that the DTIC will bear all costs relating to such assignment.

12 CONFIDENTIALITY

13. The Receiving Party undertakes and agrees.

12.1 to use the Disclosing Party's Confidential Information only to give effect to the Disclosing Purpose;

12.2 to hold in strict confidence and not to publish or disclose to any unauthorised third parties any of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party;

12.3 to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own information of like kind;

12.4 to limit any disclosure of such Confidential Information only to those of its employees and professional advisors who have a specific need-to-know to access such Confidential Information and either entered into a written agreement which impose, or are otherwise bound by the same restrictions as those imposed upon it by virtue of this Agreement;

- 12.5 not to disclose or reveal to any third party, whomsoever, either the fact that discussions or negotiations are taking, or have taken, place between the Parties; the content of any such discussions, or other facts relating to the Disclosing Purpose;
- 12.6 The Party receiving the Confidential Information (“**Recipient Party**”) shall not be liable to the Party disclosing the Confidential Information (“**Disclosing Party**”) for disclosure of Confidential Information received under this Agreement where:
- 12.6.1 such Confidential Information is part of the public domain;
 - 12.6.2 such Confidential Information is subsequently lawfully obtained by the Recipient Party from a third party who is established as a lawful source of information, without breach of this Agreement by the Recipient Party;
 - 12.6.3 such Confidential Information was known by the Recipient Party prior to its disclosure by the Disclosing Party, and such prior knowledge can be proven by the Recipient Party;
 - 12.6.4 the Disclosing Party has provided its prior written consent to the disclosure of such Confidential Information;
 - 12.6.5 Confidential information which the Recipient Party is obliged to disclose in terms of a court order, subpoena, other legal process and/or regulation. (In the event, however, that the Recipient Party is required by legal process to disclose any of the Confidential Information, covered by this clause 13 (*Confidentiality*), it shall provide the Disclosing Party with prompt notice of such requirement so as to enable the Disclosing Party to seek a protective order or waive compliance with the provisions of this clause. In the event that a protective order or other remedy is obtained, the Recipient Party shall use all reasonable efforts to ensure that only the Confidential Information covered by such order or other remedy is disclosed. Whether or not a protective order or other remedy is obtained or the Disclosing Party has waived compliance with the provisions of this Agreement, the Recipient Party shall take all

reasonable steps to ensure that only that portion of the Confidential Information that it is legally required to disclose is so disclosed.)

12.6.6 on termination of this Agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.

12.7 on termination of this Agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.

13 PROTECTION OF PERSONAL INFORMATION

13.1 The Party(ies) undertake(s) to:-

13.1.1 comply with the provisions of POPIA as well as all applicable legislation as amended or substituted from time to time;

13.1.2 treat all Personal Information strictly as defined within the parameters of POPIA;

13.1.3 process Personal Information only in accordance with the consent it was obtained for, for the purpose agreed, any lawful and reasonable written instructions received from the applicable Responsible Party and as permitted by law;

13.1.4 process Personal Information in compliance with the requirements of all applicable laws;

13.2 secure the integrity and confidentiality of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction, access, use, disclosure or any other unlawful processing of Personal Information;

- 13.2.1 not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of POPIA regarding transborder information flows; and
 - 13.2.2 not retain any Personal Information for longer than is necessary to achieve the purpose in terms of this Agreement or fulfil any other lawful requirement.
- 13.3 The Party(ies) undertake(s) to ensure that all reasonable measures are taken to:
- 13.3.1 identify reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;
 - 13.3.2 establish and maintain appropriate security safeguards against the identified risks;
 - 13.3.3 regularly verify that the security safeguards are effectively implemented;
 - 13.3.4 ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - 13.3.5 provide immediate notification to the Responsible Party if a breach in information security or any other applicable security safeguard occurs; provide immediate notification to the Responsible Party where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person;
 - 13.3.6 remedy any breach of a security safeguard in the shortest reasonable time and provide the Responsible Party with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach;
 - 13.3.7 provide immediate notification to the Responsible Party where either Party has, or reasonably suspects that, Personal Information

has been processed outside of the purpose agreed to or consented to;

13.3.8 provide the Responsible Party, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose in terms of this Agreement and any applicable law; and

13.3.9 notify the CSIR, if lawful, of receipt of any request for access to Personal Information, in its possession and relating to the CSIR.

13.4 The CSIR reserves the right to inspect the Personal Information processing operations, as well as the technical and organisational information security measures employed by the contracting Party to ensure compliance with the provisions of clause 14.

13.5 The provisions of clause 14 shall survive the termination of this Agreement, regardless of cause, in perpetuity.

14 INDEMNITY

14.1 Each PARTY assumes the risk of loss of or damage to its property and the property of its employees, contractors and suppliers and/or bodily injury or death of its employees, contractors or suppliers, arising out of the performance of this AGREEMENT. Each PARTY agrees to defend, indemnify and hold the other PARTY harmless from any claim, liability, cost or expense arising from the indemnifying PARTY's negligence or intentional misconduct while performing under this AGREEMENT.

14.2 If either PARTY becomes aware of any claim made or asserted against it arising out of the performance of this AGREEMENT, it shall forthwith give written notice thereof to the MANAGEMENT COMMITTEE.

14.3 Any claim for damages, including, but not limited to, loss of income, consequential or incidental damages, whether in delict or based on this AGREEMENT, shall be limited to an amount equal to the AGREEMENT

value or the amount actually paid by the CSIR to Interested Party in terms of this AGREEMENT, whichever is the lesser.

15 BREACH AND TERMINATION

15.1 Should any of the PARTIES fail to fulfil any of their material obligations in terms of this AGREEMENT and fail to remedy the breach within a period of 30 (thirty) days from the date of receipt of a written notice calling upon the breaching PARTY to remedy such breach, the other PARTY shall be entitled, without further notice, to terminate this AGREEMENT, without prejudice to any other rights it may have to claim damages as a result of the breach of the AGREEMENT or otherwise.

15.2 The PARTIES may terminate this AGREEMENT at any time by giving the other PARTY written notice of such termination if:

15.2.1 Any one of the PARTIES is, other than for purposes of a merger or reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under receivership;

15.2.2 A final and unappealable judgement against any of the PARTIES remains unsatisfied for a period of 30 (thirty) days or more after it comes to its notice;

15.2.3 Any one of the PARTIES commits an act of insolvency or makes any arrangement or compromises with its creditors generally, or ceases, or threatens to cease, to carry on business; or

15.2.4 Any one of the PARTIES terminates that part of its business within South Africa, which is relevant to the PROJECT or the commercialisation of the PROJECT INTELLECTUAL PROPERTY PORTFOLIO.

15.3 Either PARTY may terminate this AGREEMENT for whatever reason after the PARTIES' consulted each other to find an amicable solution and/or alternative to such reason, failing which 60 (sixty) days are written notice of termination must be given.

15.4 If this AGREEMENT is terminated in terms of *clause 16.3 above*, the CSIR's obligation on termination shall be (i) the *pro-rata* payment to PARTICIPANTS for earned compensation; (ii) approved expenses incurred as a result of work actually performed prior to the date of the termination; and (iii) any expenses to which Interested Party has committed which cannot be cancelled. Any funds paid by the CSIR that have not been expended or committed upon the AGREEMENT's termination shall be refunded to the CSIR within thirty (30) days of termination. All work or work up to the date of termination will also be *pro-rata* delivered to the CSIR.

15.5 Any termination of this AGREEMENT, whether by breach or cancellation, shall not absolve the PARTIES from their obligations to observe the confidentiality provisions and restraints as set out in Clause 13 above, which by its nature shall survive termination of this AGREEMENT, for a period of 5 (five) years.

15.6 On termination of this AGREEMENT by either PARTY, as provided for in clauses 16.3 and 16.4 above, the NCPC-SA shall be obliged to deliver all reports as provided for in clause 9 above. In the event of that any PROJECT INTELLECTUAL PROPERTY is created, such PROJECT INTELLECTUAL PROPERTY shall be addressed subject to the provisions of clause 10 above.

15.7 For the avoidance of doubt, it is recorded that in the event of NCPC-SA failing to meet the PROJECT objectives, despite its reasonable efforts to meet the same, such failure shall not be regarded as a material breach for purposes of this clause.

16 CONSEQUENCES OF TERMINATION

17.1. In the event of either of the Parties committing a material breach of any of the terms and conditions of this Agreement and remaining in default for a period of 14 (fourteen) days after receipt by it of written notice from the other Party calling for such breach to be remedied, the Party delivering such notice is entitled, without prejudice to any other rights it may have in terms of this Agreement or in law, to terminate this Agreement by written notice to that effect given to the other Party.

17.2. INTERESTED PARTY shall, within 30 (thirty) days from the date of receipt of a written demand, repay the amounts as envisaged in Clause 16.4 above.

17 DOMICILIA AND NOTICES

17.1 The PARTIES choose as their domicilia citandi et executandi for all purposes under this AGREEMENT, whether in respect of court process, notices or other documents or communications of whatever nature, the following physical addresses, and choose for purposes of notices or communications the following postal addresses and telefax numbers:

17.1.1 CSIR:

Physical Address: National Cleaner Production Centre (NCPC-SA)

17.1.1.1 Meiring Naude Road, Brummeria, Pretoria
ATTENTION: Lindelani Mkhize, Project Manager

17.1.1.2 Postal Address:
P.O Box 395, Pretoria, 0001
e-mail: LMkhize@csir.co.za

17.1.2 INTERESTED PARTY

17.1.2.1.1 Physical Address:
Zone 1, Coega SEZ, Coega Business Centre,
Cnr Alcyon Road, Zibuko St,
Gqeberha,
6100

ATTENTION: Clayton Jacobs, Project Development
Office, Coega Development Corporation, Private Bag
X6009 Gqeberha, 6001
Email: Clayton.Jacobs@coega.co.za
Tel: 071 928 4707

17.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if it is in writing.

17.3 Any PARTY may by notice to the other PARTY, change its postal address, telefax number or e-mail address, or change its domicilium citandi et executandi to another physical address in the Republic of South Africa, provided that the change shall become effective on the seventh day after the latest receipt of the notice.

17.4 Any notice to a PARTY contained in a correctly addressed envelope and:

17.4.1 sent by prepaid registered post to it at its postal address shall be deemed to have been received on the seventh business day after posting (unless the contrary is proved); or

17.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received at the time of delivery (unless the contrary is proved).

17.5 Any notice given by telefax shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice, or upon receipt by the transmitting telefax machine, at the end of the notice being transmitted, or the automatic answer-back of the receiving telefax machine.

17.6 No data message (as defined in the Electronic Communications and Transactions Act, 25 of 2002), including an e-mail, SMS, and recorded voice message, sent by the INTERESTED PARTY to CSIR or sent by CSIR

to INTERESTED PARTY, shall amend this Agreement, or the rights and duties of the parties in any manner unless such data message is reduced to paper and signed by both parties or their duly authorized signatories.

17.7 Data messages (as defined above) sent by INTERESTED PARTY to CSIR shall be deemed to be received by CSIR on receipt of delivery report or read receipt.

17.8 Legal notices and/or disclaimers linked to, accessible from or attached to a data message (as defined above) sent by CSIR to the INTERESTED PARTY shall be deemed part of this Contract and shall override and replace any such notices or disclaimers linked to, accessible from or attached to any data message sent by the INTERESTED PARTY in a return message.

17.9 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a PARTY shall be an adequate written notice or communication to it, notwithstanding that it was not sent or delivered at its chosen domicilium citandi et executandi.

18 GOVERNING LAW AND DISPUTE RESOLUTION

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

18.2 In the event of any dispute arising from or out of the Agreement, the Parties shall use every reasonable efforts to settle such dispute amicably;

18.3 The Parties shall resolve and settle any dispute between them amicably within twenty (20) business days at the project level;

18.4 If the Parties fail to resolve any dispute at the project level, such dispute must be elevated to the Parties respective senior management, i.e. Chief executive officers, Managing Director or their duly designated representatives, for mediation purposes.

18.5 To the extent that no settlement is reached in terms of this clause 1 within

twenty (20) Business Days of referral, the Dispute shall be referred to a competent court with jurisdiction over such matter.

18.5.1 dispute arising out of this AGREEMENT.

19 GENERAL

19.1 This AGREEMENT contains the entire AGREEMENT between the PARTIES, and no PARTY shall be bound by any undertaking, representation or warranty not recorded or added hereto as provided herein.

19.2 No alteration, variation, addition, novation or agreed cancellation of this AGREEMENT shall be of any force or effect unless reduced to writing as an addendum to this AGREEMENT and signed by the PARTIES or their duly authorized signatories.

19.3 No failure or delay on the part of any PARTY in exercising any right, power or privilege hereunder shall operate as a waiver thereof, or serve as an estoppel against such PARTY, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies, which the PARTIES would otherwise have.

19.4 No indulgence, leniency or extension of time which any PARTY ('the grantor') may grant or show to the other/s shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future, nor shall it serve as an estoppel against such grantor.

19.5 If any clause or term of this AGREEMENT should be invalid, unenforceable or illegal, then the remaining terms and provisions of this AGREEMENT shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this AGREEMENT.

19.6 Each PARTY shall be responsible for its own costs associated with the

preparation and settlement of this AGREEMENT.

19.7 In the event of any legal action arising out of or in connection with this AGREEMENT, including its breach, the successful PARTY shall be entitled to recover from the unsuccessful PARTY all its legal costs on the scale as between Party and Party.

19.8 This AGREEMENT shall be for the personal benefit of each of the PARTIES and may not be assigned in whole or in part by any PARTY without the prior consent of the other PARTY.

19.9 Any delays in or failure of performance by a PARTY under this AGREEMENT shall not be considered a breach of this AGREEMENT if and to the extent that such delay or failure is caused by occurrences beyond the reasonable control of that PARTY, including, but not limited to acts of God; Acts, Regulations and laws of government; strikes or other concerted acts of workers; fire; floods; explosions; riots; wars; rebellion; and sabotage; and any time for performance hereunder will be extended by the actual time of delay caused by any such occurrence.

19.10 The PARTIES undertake to act reasonably and according to the dictates of good faith in the implementation of this AGREEMENT and in all their dealings with each other. Without derogating from the generality of the foregoing, the CSIR shall afford the opportunity to make representations prior to taking any decision or exercising any discretion in terms of this AGREEMENT and shall act reasonably and bona fide when it makes such decision or exercises such discretion, particularly in terms of Clauses 14, 15, 16 and 17.

20 ANTI-CORRUPTION

20.1 The Interested Party acknowledges that the CSIR is subject to the Anti-Corruption Laws and understands its and the CSIR's obligations under the applicable Anti-Corruption Laws.

20.2 The Interested Party warrants that to its best knowledge and belief that neither the Interested Party nor any of its personnel or principals is or has been subject to the following:

20.2.1 convicted or charged with any crime involving corruption;

20.2.2 the target or subject of any criminal investigation involving corruption or other criminal wrongdoing.

20.2.3 the target or subject of any criminal investigation involving corruption or other criminal wrongdoing.

20.3 As an on-going warranty throughout the duration of this Agreement, the Interested Party warrants that it shall not make, or authorise or tolerate to be made, in the performance of this Agreement, any payments, loans or gifts, or promises or offers of payments, loans or gifts, of any money or anything of value, directly or indirectly, to or for the use or benefit of any person the making of which would violate the Anti-Corruption Laws.

20.4 Without any prejudice to any other rights which the Interested Party may have under this Agreement or by law, if the Interested Party's breaches any of the warranties set forth in this clause 12 (Anti-Corruption):

20.4.1 the CSIR shall have a right of action against the Interested Party for the amount of any monetary payment or thing of value made or given by the Interested Party in breach of any of the above-mentioned warranties;

20.4.2 all obligations by the CSIR to pay any amounts of monies to the Interested Party shall cease immediately and without notice; and

20.4.3 the CSIR may, in its sole discretion rescind this Agreement with immediate effect, and the Interested Party shall hold harmless and indemnify the CSIR from any damage or loss, of whatever kind or nature, arising from any transaction in violation of this clause 5 (Anti-Corruption).

Signed at CSIR 08/12/2023 08 December 23
this Day of 2023.

AS WITNESSES

1. Lindelani Mkhize
Lindelani Mkhize (Dec 4, 2023 14:59 GMT+2)

2. Rudzani Muthabine
Rudzani Muthabine (Dec 11, 2023 09:48 GMT+2)




For: **The CSIR**
(duly authorised thereto)

Signed at **Coega Development Corporation** this **2nd** day of **April** **2024**
2023.

AS WITNESSES

1.

Digitally Signed by: Clayton Jacobs Project Development Officer: Energy 2afcf238-3802-4e2a-9ced-5684327f7f0d IP Address: 10.0.57.220 Date: 2024/04/02 3:30:01 PM
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2. 
Ursula Dube | 1bcc8197-e388-4449-a33d-61641faaf1f5 | 2024/04/04 10:48:05 AM

Digitally Signed by: Telly Chauke Chief Sustainability Officer dacb2e59-bd4a-4d03-972f-fc1907ae7d2d IP Address: 41.13.4.115 Date: 2024/04/02 3:28:12 PM

For: **(Beneficiary)**
(duly authorised thereto)

ANNEXURE A

The NCPC-SA service offerings included in this Agreement are:

- Implementation of the Sustainable Energy System for Industrial Development
SESID
 - Financial year 2023/24 – 2026/27