

PROGRAMME SUPPORT AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE
KINGDOM OF DENMARK**

AND

**THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

REGARDING

**DEVELOPMENT COOPERATION
CONCERNING**

THE ENERGY PARTNERSHIP PROGRAMME

2017

PREAMBLE

WHEREAS the Government of the Republic of South Africa (hereinafter referred to as "South Africa") has requested the support of the Government of the Kingdom of Denmark (hereinafter referred to as "Denmark") to contribute towards the funding and technical assistance of the Energy Partnership Programme;

AND WHEREAS Denmark has agreed to support the implementation of the Energy Partnership Programme as defined in the Programme Support Document (hereinafter referred to as the "Programme") with up to an amount of DDK 18.19 million on a grant basis (hereafter referred to as the "Grant"), as a financial and technical assistance to the Department of Energy and Eskom (hereafter referred to as the "Implementing Partners"), who will be implementing the Energy Partnership Programme;

AND WHEREAS the general provisions of this Agreement are also set forth in the Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of South Africa regarding the Danish Assistance Programme to South Africa, signed on 27 September 1996;

AND WHEREAS Denmark and South Africa (hereinafter also jointly referred to as the "Parties") have agreed to extend the Agreement between the Parties concerning the Financial and Technical Support for the Development of the Renewable Energy Sector, signed on 4 March 2013 to 31 December 2017 in order to complete outstanding activities;

AND WHEREAS the Parties have also concluded the Memorandum of Understanding on Renewable Energy and Energy Efficiency signed by the Parties on 24 October 2011;

AND WHEREAS South Africa and Denmark have agreed to sign separate subsidiary administrative agreements, which agreements will define common

procedures for consultation and decision-making, disbursement mechanisms, financial management, monitoring, reporting and audit, review, evaluation, and exchange of information and cooperation between the individual Implementing Partners and the Danish Ministry of Foreign Affairs;

AND WHEREAS commitment to international law and conflict prevention, respect for human rights, democratic principles, including free and fair elections, the rule of law, independence of the judiciary, free, transparent and democratic processes, accountability and the fight against corruption, sound macro-economic policies and the commitment to poverty reduction govern the policies of South Africa and Denmark;

AND WHEREAS South Africa and Denmark shall abide by the domestic law of their respective countries and by applicable international instruments, including the UN Convention on the Rights of the Child and the International Labour Organization Convention;

AND WHEREAS Denmark and South Africa are committed to the principles of harmonisation and to strive for the highest degree of alignment with the budgetary and accountability system of the Implementing Partners and the domestic law of South Africa so as to enhance effective implementation, to reduce the administrative burden, to minimise transaction costs and increase transparency and accountability of the support provided;

NOW THEREFORE Denmark and South Africa have agreed as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise indicates -

“LTA” means the Long-term Advisor to be stationed at the Department of Energy to provide technical assistance.

“Joint Decision-making Arrangement” refers to the Programme Steering Committee as described in Articles 2 and 3.

“the Documentation” means the document regarding the Energy Partnership Programme between South Africa and Denmark and the two development engagement documents, namely the document regarding Capacity Development for Energy Sector Planning - Department of Energy and the document regarding the Renewable Energy Integration into the National Power System of South Africa - Eskom Holdings SOC Ltd. The Energy Partnership Programme document and the development engagement documents are yet to be finalized by the Denmark and South African technical teams.

ARTICLE 2 OBJECTIVES OF THE PROGRAMME

- (1) The strategic objective of the Danish Programme Support is to assist South Africa in moving to a less carbon-intensive electricity production, including through expansion of renewable energy generation capacity.

- (2) The Development Engagements of the Danish Programme Support are:
 - (a) Development Engagement 1 - Capacity Development for Energy Sector Planning with the Department of Energy;
 - (b) Development Engagement 2 - Renewable Energy Integration into the Power System with Eskom, as stated in the Documentation.The above two documents will be finalized, together with energy partnership programme document, prior to programme implementation.

- (3) Denmark shall base its actual financial support to South Africa on progress attained compared to planned progress described in the Documentation. Progress will be measured through the commonly agreed indicators and monitoring systems described in the Documentation.

- (4) Once finalized, the Development Engagements can only be adjusted to changes in the programme support context by recommendation of the Programme Steering Committee which is the Joint Decision-making Arrangement, followed by mutual written agreement between the Implementing Partners and the Danish Embassy. The Documentation will be reviewed in connection with joint programme reviews. Strategic and thematic objectives described in the Documentation and the total amount of the Danish contribution cannot be changed. Such written agreements shall become addendums to this Agreement once finalized.

ARTICLE 3 MANAGEMENT AND EXECUTION

- (1) The overall management responsibilities of the programme support shall rest in the Programme Steering Committee.
- (2) The Programme Steering Committee shall be composed of the Deputy Director- General of the Branch for Energy Policy and Planning of the Department of Energy (hereinafter referred to as the "DoE") as Chairperson, the Ambassador of Denmark in South Africa as Chairperson, a senior representative from the Danish Energy Agency (hereinafter referred to as the "DEA"), one representative each from ESKOM, the Department of Public Enterprises and National Treasury.
- (3) The functions of the Programme Steering Committee shall be to approve annual work plans, budgets and reports, and to review annual progress. The Programme Steering Committee shall provide strategic guidance to the partnership programme, discuss and resolve issues related to programme progress and decide on any resource reallocations between the Development Engagements. Decisions of the Programme Steering Committee shall be made by consensus.

- (4) Apart from the Programme Steering Committee, there will be a Management Group consisting of representatives from the partners' institutions at senior operational level, and representatives from the LTA, DEA and Danish Embassy. The Management Group shall follow progress, recommend work plans with associated technical assistant procurement plans to be reported to the Steering Committee.
- (5) Each Development Engagement shall establish an Implementation Group to undertake daily management of the engagement implementation. It will be composed of representatives from the development engagement partner, the Danish Embassy, the LTA, the DEA country coordinator and, when relevant, the DEA technical assistance specialist.

ARTICLE 4 OBLIGATIONS OF SOUTH AFRICA

South Africa shall-

- (a) promptly inform Denmark of any condition which interferes or threatens to interfere with the successful implementation of the programme support;
- (b) within a reasonable time advise on all reports, recommendations and other matters properly referred for advice by Denmark, in order not to delay or disrupt the execution of the services or the works of the programme support;
- (c) ensure that all relevant provisions in the Programme regarding Denmark's execution of activities are honoured;
- (d) through the appropriate authorities investigate matters, if misuse of funds, fraud or corruption within the Programme is discovered. Where programme or project funds have been lost through misuse of

funds, fraud or corruption within the Programme, the Parties shall cooperate in order to have the implementing partner repay such funds to the project, in order to ensure that planned activities will not be disrupted.

**ARTICLE 5
OBLIGATIONS OF DENMARK**

- (1) Denmark shall provide the following financial means for the implementation of the Programme. All means (technical assistance and other activities) shall be contracted by Danish parties. No funds will be transferred or disbursed directly to South Africa:

Thematic Programme 1:	Implementing Partner	Budget
Development Engagement 1	Department of Energy	10.29
Development Engagement 2	Eskom	5.16
Unallocated budget (contingencies, reviews, strategic interventions)		2.73
Total		18.19

- (2) All commitments of Denmark are made in Danish Kroner.
- (3) Denmark shall cooperate and communicate fully and in a timely manner with South Africa on all matters relevant to the implementation of the project as defined in the Documentation and this Agreement.
- (4) Denmark shall not bear any responsibility or liability to any third party with regard to implementation of the project.

ARTICLE 6
OBLIGATIONS OF BOTH PARTIES

Both Parties shall-

- (a) strengthen aid effectiveness by endeavouring to co-ordinate their efforts under this Agreement with other development partners, be they states, international organisations or non-governmental organisations.
- (b) use best endeavours to optimise the use of programme resources.

ARTICLE 7
INFORMATION, MONITORING AND EVALUATION

- (1) The Parties shall collaborate fully to ensure that the objectives of this Agreement are accomplished. To this end, the Parties shall exchange views with regard to matters relating to the Programme and provide each other with all available data, documentation and information. The Parties shall provide appropriate mutual assistance required in the discharging of the Parties' duties and provide all necessary support to facilitate the due implementation of the Programme.
- (2) Joint Danish - South African programme reviews shall be carried out in accordance with the Documentation and at the request of either Party.
- (3) Denmark shall have the right to carry out any technical or financial mission that is considered necessary to monitor the implementation of the Programme, which may include a mid-term review. In order to facilitate the work of the person or persons instructed to carry out such monitoring missions, South Africa shall provide these persons with all relevant assistance, information and documentation.

- (4) Evaluation of the programme support, preferably undertaken jointly by Denmark and South Africa, may be carried out at the request of either Party.
- (5) After the termination of the programme support Denmark reserves the right to carry out an evaluation in accordance with this Article.

ARTICLE 8

TRANSFER OF OWNERSHIP

- (1) The Implementing Partners responsible for the implementation of development engagements shall maintain updated inventories of all equipment financed by earmarked support from Denmark, (e.g. vehicles, computers, furniture and tools).
- (2) Equipment, material, supplies and facilities purchased by Denmark, which are used during the implementation of the Programme, (e.g. vehicles, computers, furniture and tools), remain the property of Denmark, until such time as the Parties may agree otherwise.
- (3) Transfer of ownership of the above-mentioned assets to the Implementing Partners may take place during the Programme period. Before Programme termination, the Parties shall assess and agree on final transfer of such assets, which can be justified on the basis of a final request from the Implementing Partners. Any remaining assets will be disposed of by Denmark.

ARTICLE 9

CORRUPTION

No offer, payment, consideration or benefit of any kind, which could be regarded as an illegal or corrupt practice, shall be made, promised, sought or accepted, neither directly nor indirectly, as an inducement or reward in relation to activities

funded under this Agreement, including tendering, award, or execution of contracts. Any such practise shall be grounds for the immediate cancellation of this Agreement or parts of it, and for such additional action, civil or criminal, as may be appropriate. At the discretion of Denmark, a further consequence of any such practise can be the definite exclusion from any projects funded by Denmark.

ARTICLE 10 SUSPENSION

- (1) In case of non-compliance with the provisions of this Agreement or violation of the essential elements mentioned in this Agreement Denmark and/or South Africa reserves the right to suspend with immediate effect this Agreement and/or further disbursements to the Implementing Partners under this Agreement.

- (2) Non-compliance shall include the following:
 - (a) The unfavourable development of Development Engagements in relation to the strategic objectives mentioned in Article 2;
 - (b) substantial deviations from agreed plans or budget;
 - (c) resources to be allocated by South Africa and/or by Denmark are not provided as agreed.

- (3) If serious irregularity in the Programme or suspicion thereof has been ascertained, either Party may suspend programme implementation, wholly or in part, until the suspending Party decides to resume the implementation.

ARTICLE 11 SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Agreement shall be settled amicably through consultations or negotiations between the Parties.

ARTICLE 12
AMENDMENTS


This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 13
ENTRY INTO FORCE, DURATION AND TERMINATION

- (1) This Agreement shall enter into force when both Parties have notified each other in writing through the diplomatic channel that their respective constitutional requirements for entry into force of this Agreement have been met.
- (2) This Agreement shall remain in force for a period of three (3) years and shall thereafter be automatically renewed, unless terminated in accordance with sub-Article (3).
- (3) This Agreement may be terminated by either Party by giving six (6) months' written notice in advance through the diplomatic channel to the other Party of its intention to terminate this Agreement.
- (4) The termination of this Agreement shall not affect the completion of any project undertaken by the Parties prior to the termination thereof.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language.

DONE at Pretoria on this 29th day of June 2018.



**FOR THE GOVERNMENT OF THE
KINGDOM OF DENMARK**



**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**