



AGREEMENT

BETWEEN

THE NEW DEVELOPMENT BANK

AND

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

**ON THE HOSTING OF
THE NEW DEVELOPMENT BANK AFRICA
REGIONAL CENTRE
IN THE REPUBLIC OF SOUTH AFRICA**

Preamble

The New Development Bank and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

TAKING INTO ACCOUNT the Agreement on the New Development Bank and its Annex on the Articles of Agreement of the New Development Bank between the Governments of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, signed on 15 July 2014;

RECALLING the Fortaleza Declaration adopted at the Sixth BRICS Summit held in Fortaleza, Brazil, on 15 July 2014, that provided that the New Development Bank, Africa Regional Centre shall be established in the Republic of South Africa;

FURTHER RECALLING Article 4 of the Articles of Agreement of the New Development Bank contained in the Annex to the Agreement on the New Development Bank, stipulates that the first regional office of the New Development Bank shall be in Johannesburg;

DESIROUS THEREFORE to conclude an agreement regarding the hosting of the New Development Bank, Africa Regional Centre in Johannesburg in the Republic of South Africa;

HAVE AGREED as follows:

ARTICLE 1
DEFINITIONS

For the purpose of this Agreement, including all annexures, appendices and all amendments made from time to time, the following terms shall have, unless the context otherwise requires, the meanings ascribed to them as below:

- (a) **“Africa Regional Centre”** means the regional office of the New Development Bank in Johannesburg in the Republic of South Africa;
- (b) **“Agreement on the New Development Bank”** means the Agreement on the New Development Bank including its Annex between the Governments of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People’s Republic of China and the Republic of South Africa, signed on 15 July 2014 at the city of Fortaleza, Brazil and any amendments thereto;
- (c) **“Archives of the Bank”** means the records, correspondence, documents, manuscripts, still and moving pictures, films, sound recordings, electronic records including email, computer programs, written materials, video tapes or discs, discs or tapes containing data, and, any information contained therein stored in electronic form or any other form whatsoever, belonging to, or held by the Bank;
- (d) **“Bank”** means the New Development Bank, including the Africa Regional Centre, unless specifically referred to separately;
- (e) **“Director-General: Africa Regional Centre”** means the principal executive officer of the Africa Regional Centre, appointed by the Bank, and, during her or his absence or incapacity, the person authorised to act as Director-General: Africa Regional Centre;
- (f) **“Experts and Consultants”** means persons who, not being Staff of the Bank, have been contracted by the Bank for the purpose of providing expertise and performing certain tasks for or on behalf of the Bank;
- (g) **“Government”** means the Government of the Republic of South Africa;
- (h) **“Laws of South Africa”** includes the Constitution of South Africa, 1996 and legislative acts, decrees, regulations and orders issued by, or under authority of, the Government or any appropriate authority in South Africa;

- (i) **“Local terms”** means recruitment made by the Bank or the Africa Regional Centre for the employment of personnel in terms of South African Law;
- (j) **“Member”** means a member of the Bank as defined in the Agreement on the New Development Bank;
- (k) **“Member of a family”** means the spouse and dependent children under the age of 18 years, any other dependent family member officially recognised as such by the Bank, and the spouse or life partner officially recognised as such by the Bank of a Staff member.
- (l) **“Premises”** means the land, building, parts of building and includes access facilities for the official purposes of the Africa Regional Centre;
- (m) **“President”** means the President of the Bank and, during her or his absence or incapacity, the person authorised to act as President;
- (n) **“South Africa”** means the Republic of South Africa and its territory; and
- (o) **“Staff of the Bank”** or **“Staff”** means persons employed by the Bank, to work at the Africa Regional Centre, in accordance with the provisions of the Human Resources policies of the Bank and other relevant internal regulations in force, and excluding all other persons recruited on local terms and assigned to hourly rates.

ARTICLE 2

SEAT OF THE AFRICA REGIONAL CENTRE

The seat of the Africa Regional Centre shall be in Johannesburg, South Africa.

ARTICLE 3

FUNCTIONS AND ACTIVITIES OF THE AFRICA REGIONAL CENTRE

The Africa Regional Centre shall undertake such functions and activities pursuant to provisions of the Agreement on the New Development Bank and as determined by the Bank.

ARTICLE 4
LEGAL PERSONALITY

- (1) The Government recognises the international legal personality and capacity of the Bank for the purposes of exercising its functions in South Africa including to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.
- (2) The Africa Regional Centre shall have the independence and freedom of action similar to those available to other international organisations operating in South Africa.
- (3) The Africa Regional Centre shall have the right to display the Bank's flag and its emblem on the Premises and the motor vehicles belonging to or in use by the Bank for the President and Director-General: Africa Regional Centre.

ARTICLE 5
PREMISES AND FACILITIES

- (1) The Government shall, free of charge, provide and furnish suitable office accommodation to serve as the Premises in Johannesburg, and shall provide such other facilities as required for the operations of the Africa Regional Centre, and be responsible, at its own cost, for maintenance and repairs of a non-recurring nature for a period of one (1) year, whereafter the Bank shall be responsible for the office accommodation, furniture, equipment and other facilities required for the operation of the Africa Regional Centre in South Africa.
- (2) The office accommodation, its furniture and equipment and the other facilities referred to in sub-Article (1) above shall be determined in consultation with the Bank and as detailed in Annexure A hereto, which shall form an integral part of this Agreement.

- (3) Any requirement by the Bank for the operation of its Africa Regional Centre that falls outside the specifications of Annexure A or that would have additional financial implications beyond that amount, shall be for the account of the Bank.
- (4) The Bank shall be responsible for the day to day maintenance of the Premises, furniture and equipment other than on account of normal wear and tear, and making arrangements for any other services as may be required by it.
- (5) As the operations of the Africa Regional Centre evolve, the Government may consider providing suitable office accommodation to serve as the permanent seat of the Africa Regional Centre.

ARTICLE 6

IMMUNITY OF PROPERTY, FUNDS AND ASSETS

- (1) The Bank and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except as provided for under the Agreement on the New Development Bank:
 - (a) to the extent that the Bank shall have expressly waived such immunity in any particular case in accordance with the provisions of Article 36 of the Articles of Agreement of the New Development Bank;
 - (b) in respect of a civil action in South Africa arising out of or in connection with its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities;
 - (c) in respect of a civil action brought by a third party for damages arising from an accident caused by a vehicle belonging to the Bank or operated on its behalf;
 - (d) in respect of the enforcement of an arbitration award made against the Bank as a result of an express submission to arbitration by or on behalf of the Bank; or
 - (e) in respect of any counter-claim directly connected with court proceedings initiated by the Bank.

- (2) Notwithstanding anything contained herein above, the property of the Bank shall be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.
- (3) The property, funds and assets of the Bank wherever situated in South Africa and by whomsoever held, shall be immune from seizure, search, requisition, foreclosure, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action. To the extent necessary for the operation of the Africa Regional Centre in South Africa and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.
- (4) Notwithstanding the provisions of sub-Articles (1) and (2), no action shall be brought against the Bank by the Government, or by any of its agencies or instrumentalities or by any entity or person directly or indirectly acting for or deriving claims from the Government or from any of its agencies or instrumentalities.

ARTICLE 7

INVIOLABILITY OF THE PREMISES AND ARCHIVES AND IMMUNITY OF PROPERTY AND ASSETS

- (1) The Premises shall be inviolable and under the exclusive control and authority of the Africa Regional Centre. The property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- (2) The Archives of the Bank shall be inviolable, wherever located and by whomsoever held within South Africa.

- (3) The authorities of South Africa shall not enter the Premises for any reason, including the performance of any official duties therein or execution of any legal process or perform any ancillary act such as the seizure of private property. All entries shall be subject to the consent and conditions agreed to by the Director-General: Africa Regional Centre.
- (4) The Director-General: Africa Regional Centre and the Government shall agree on the circumstances under and the manner in which the authorities of South Africa may enter the Premises. In the event of natural disaster, fire or any other emergency, constituting an immediate threat to human life, the consent of the Bank to enter the Premises is presumed, if the Director-General: Africa Regional Centre cannot be reached in time and in the manner agreed upon.
- (5) The Bank shall have the power to make rules and regulations operative within the Premises for the full independent exercise of its operations, administration and performance of its activities and functions. Except as otherwise provided in this Agreement, or in the Agreement on the New Development Bank, the laws applicable in South Africa shall apply within the Premises. The Bank, its Staff, Experts and Consultants shall respect the laws of South Africa.
- (6) Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises from becoming a refuge for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or judicial proceedings under the laws of South Africa.

ARTICLE 8
PROTECTION OF THE PREMISES

The Government shall exercise due diligence to ensure the safety and tranquility of the Premises. The Government shall accord to it the same protection and provide security to it on the same basis as is provided to other international organisations and diplomatic missions operating in South Africa in accordance with the Vienna Convention on Diplomatic Relations, 1961.

ARTICLE 9
PUBLIC UTILITY SERVICES

- (1) The Government undertakes to assist the Bank for the purposes of the operation of the Africa Regional Centre, as far as possible, in obtaining and making available, necessary public services, including but not limited to water, electricity, telephone, fax, internet and other facilities at rates or charges not less favorable than those charged to other comparable international organisations, and in the case of interruption or threatened interruption of service, to give, as far as within its powers, the same priority to the needs of the Bank as to other comparable international organisations and shall take appropriate measures to ensure that the operations of the Africa Regional Centre are not prejudiced.

- (2) The Africa Regional Centre shall allow duly authorised representatives of public utilities to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises in accordance with the procedures established in consultation with the Bank.

ARTICLE 10

FACILITIES IN RESPECT OF COMMUNICATIONS

- (1) The Bank shall enjoy, in respect of their official communications and the transfer of documents, treatment no less favorable than that accorded by the Government to other international organisations or any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mail, cablegrams, telephotos, telephone, telegraph, telex, telefax, internet and other modes of communication.
- (2) The official communications and correspondence to, from and between the Africa Regional Centre, in whatever form transmitted, shall be inviolable and shall not be subject to any censorship or any form of interference. For purposes of this Article, communications shall include, but not be limited to, publications, documents, still and moving pictures, films and sound recordings, and electronic and other modes of communication.
- (3) The Bank shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

ARTICLE 11

EXEMPTION FROM TAXATION, CUSTOMS DUTIES, PROHIBITIONS OR RESTRICTIONS ON IMPORTS AND EXPORTS

- (1) With respect to all official activities, operations and transactions, the Bank, its assets, income and property in South Africa shall be:
 - (a) exempt from all forms of taxation and from any obligation with respect to the payment, withholding or collection of any tax or duty; it being understood, however, that it will not claim exemption from taxes which are, in fact, no more than charges for public utility services paid by other international organisations in

South Africa;

- (b) exempt from all customs duties, prohibitions and restrictions on goods and articles, including motor vehicles and spare parts, publications, films, still and moving pictures, imported or exported for its official purposes. It is understood, however, that articles imported under such exemption will not be sold in South Africa except under conditions agreed to with the Government.
- (2) While the Bank will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, when the Africa Regional Centre makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will make appropriate administrative arrangements for the remission or return of the amount of duty or tax.
- (3) Documentation signed by or on behalf of the President of the Bank or the Director-General: Africa Regional Centre shall be conclusive evidence as to the necessity of any such imports or exports for the official activities of the Africa Regional Centre.

ARTICLE 12

FINANCIAL TRANSACTIONS

The Bank may hold and use funds or negotiable instruments of any kind. The Government recognises the right of the Bank to maintain and operate accounts in any currency and convert any currency held by it into any other currency. The Bank may freely transfer its funds into South Africa and may also at any time freely transfer all or part of the balance thereof out of South Africa through a non-resident bank account which for that purpose may be switched into any foreign currency.

ARTICLE 13
IMMUNITIES AND PRIVILEGES OF THE DIRECTOR-GENERAL: AFRICA
REGIONAL CENTRE AND STAFF

- (1) The Government shall accord to the Director-General: Africa Regional Centre and members of his or her family, the same privileges and immunities, exceptions and facilities as accorded to officials of comparable ranks forming part of diplomatic missions.

- (2) The Government shall accord to the Staff as applicable:
 - (a) immunity from jurisdiction and all forms of legal process in respect of words spoken or written and all acts performed by them in their official capacity, which shall continue after their termination of service;
 - (b) immunity from personal arrest or detention for all acts performed by them in their official capacity, which shall continue after their termination of service;
 - (c) exemption from taxation in respect of salaries and emoluments paid by the Bank;
 - (d) immunity, together with members of their family from immigration restrictions and alien registration and from formalities for the purposes of immigration control;
 - (e) privileges in respect of exchange facilities as well as VAT (value added tax) refunds on the purchase of goods and services procured or chargeable in South Africa will be governed by the Laws of South Africa;
 - (f) together with members of their family, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;
 - (g) freedom of movement, within or from South Africa to the extent necessary for carrying out their activities and functions for and on behalf of the Bank and for the purpose of their official communications, to use codes and receive papers and correspondence by courier or sealed in bags;
 - (h) the same immunities and facilities, including immunity from inspection and seizure of their official baggage, as are accorded to officials in diplomatic

missions;

- (i) the right for personal use, free of duty or other levies, prohibitions and restrictions (i) to import at the time of first taking up their post and within a period of six (6) months and (ii) to export, upon termination of their services with the Bank, within a period of 1 year:
 - a. their furniture and personal effects; and
 - b. one (1) motor vehicle, and in the case of officials accompanied by members of their family, two (2) motor vehicles.
- (3) Articles imported under such exemptions will not be sold in South Africa except under conditions agreed upon with the Government and in any case not being less favorable than those extended to officials of comparable ranks of other international organisations in South Africa.
- (4) Nationals or permanent residents of South Africa who are appointed as the Director-General: Africa Regional Centre or employed as Staff shall be entitled only to the immunities set out in sub-Article 2 (a), (b), (g) and (h) of this Article and provided that, in implementing the taxation of income of nationals and permanent residents of South Africa appointed or employed by the Bank, the Bank shall not be required to withhold, collect or pay such taxes.
- (5) The Bank shall communicate to the Government the names of Staff and members of their family to whom the provisions of the present Article are applicable.
- (6) The Government shall provide the Director-General: Africa Regional Centre, Staff and members of the family older than eighteen (18) years of age with a special identity card which shall serve to identify the holder to the authorities of South Africa and to certify that the holder enjoys the privileges and immunities specified in this Agreement. Upon the termination of employment or reassignment from South Africa, the special identity card shall be returned promptly to the Government for cancellation.

- (7) The Government shall authorise and facilitate the registration of vehicles utilised by the Director-General: Africa Regional Centre and Staff as vehicles of similar status of comparable international organisations accredited in South Africa, and issue them with license plates.

ARTICLE 14

IMMUNITIES AND PRIVILEGES OF GOVERNORS, DIRECTORS AND REPRESENTATIVES OF MEMBERS OF THE BANK

All Governors, Directors and representatives of Members of the Bank shall have the following privileges and immunities:

- (1) immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity;
- (2) when not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;
- (3) the same privileges in respect of traveling facilities as are accorded by members to representatives, officials and employees of comparable rank or other members.

ARTICLE 15

IMMUNITIES AND PRIVILEGES OF EXPERTS AND CONSULTANTS

- (1) Experts and Consultants performing functions for the Bank who are not nationals or permanent residents of the Republic of South Africa, shall be accorded the following immunities and privileges as are necessary for the independent exercise of their functions during the period of their mission or contract, including time spent on journeys in connection with their functions:

- (a) immunity from personal arrest or detention for acts in their official capacity;
 - (b) immunity from seizure of their official baggage;
 - (c) in respect of words spoken or written and acts done by them in the course of the performance of their function, immunity from legal process of every kind;
 - (d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - (e) the same protection and repatriation facilities with respect to themselves, and members of their families, as are accorded in time of international crisis to persons of comparable rank of diplomatic missions;
 - (f) for the purpose of their communication with the Bank, have the right to use codes and to receive papers or correspondence by courier or in sealed bags; and
 - (g) exemption from taxation in respect of salaries and emoluments paid by the Bank.
- (2) Experts and Consultants who are nationals or permanent residents of South Africa, shall be afforded the immunities referred to in sub-Article 1(a), (b) and (c).

ARTICLE 16

EMPLOYMENT OF SPOUSES

Employment of spouses of Staff shall be regulated in separate agreements.

ARTICLE 17

WAIVER OF IMMUNITY

- (1) Privileges and immunities are conferred under this Agreement in the interest of the Bank and not for the personal benefit of the individuals themselves.
- (2) The Bank may waive to such extent and upon such conditions as it may determine, any of the privileges, immunities and exemptions conferred under this Agreement in cases where such action would, in its opinion, be appropriate and in the best interests of the

Bank. The President shall have the right and duty to waive any privilege, immunity or exemption in respect of any Staff of the Bank or any Expert or Consultant performing services for the Bank, other than the President or a Vice-President, where, in her or his opinion, the privilege, immunity or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive any privilege, immunity or exemption in respect of the President and a Vice-President.

- (3) The Bank shall co-operate at all times with the Government to facilitate the proper administration of justice, secure the observance of the Laws of South Africa and prevent the occurrence of any abuse in connection with the immunities and privileges granted in this Agreement.

ARTICLE 18

SETTLEMENT OF DISPUTES

- (1) Any dispute between the Bank and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other mode of settlement as may be agreed, failing which such dispute shall be submitted to arbitration at the request of either Party.
- (2) Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the Chairperson. If within two (2) months of the request for arbitration either Party has not appointed an arbitrator, or if within two (2) months of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to make the necessary appointments. All decisions of the arbitrators shall require a vote of two of them and shall be binding on the Parties.

- (3) The arbitrators shall determine the procedure of the arbitration, and expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

ARTICLE 19

INTERPRETATION

This Agreement shall be interpreted in accordance with the rules of interpretation provided for in the 1969 Vienna Convention on the Law of Treaties. This Agreement shall not modify or derogate from the provisions of the Agreement on the New Development Bank.

ARTICLE 20

ENTRY INTO FORCE, AMENDMENT AND TERMINATION

- (1) This Agreement may be amended by mutual consent of the Parties. Amendments shall take the form of a written agreement which shall enter into force in the same manner as this Agreement.
- (2) The Parties may enter into such supplementary agreements as may be necessary within the scope of this Agreement.
- (3) Each Party shall notify the other of the completion of the constitutional formalities required by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last written notification.
- (4) In case of conflict between this Agreement and the Agreement on the New Development Bank, the Agreement on the New Development Bank shall prevail.
- (5) The Agreement may be terminated by either Party subject to providing at least one (1) year's prior notice or such extended period as may be agreed to by the Parties.

(6) In the event of the termination of this Agreement all relevant provisions shall continue to be applicable for a reasonable period, as agreed to by the Parties, required for settlement of the affairs of the Bank and disposal of its property in South Africa.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have on behalf of the Parties signed and sealed this Agreement in duplicate in the English language.

DONE AT Pretoria on this 17 day of August 2017.

2 van der Merwe
FOR THE NEW
DEVELOPMENT BANK

Ke S. Mabane
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA

ANNEXURE A

ITEM DESCRIPTION

ASSETS<R5000

Crockery & Cutlery

ASSETS>R5000

Furniture

CONSUMABLES SUPPLIES

IT Consumables

STATIONERY & PRINTING

Books, Journals Etc.

Stationery

OPERATING LEASES

Operating Leases: Infrastructure

Operating Leases: Non-Infrastructure

PROPERTY PAYMENTS

Water

Electricity

Waste/Refuse Removal

CAPITAL ASSETS**MACHINERY & EQUIPMENT**

Computer Hardware & Systems

Share Network Printing Equipment

Network Switch
