

CONFORMED COPY

GEF TRUST FUND GRANT NUMBER TF090304

Global Environment Facility Trust Fund Grant Agreement

**(Western Indian Ocean Marine Highway Development and Coastal and Marine
Contamination Prevention Project)**

between

REPUBLIC OF SOUTH AFRICA

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

acting as an Implementing Agency of the Global Environment Facility

Dated September 21, 2007

GEF TRUST FUND GRANT NUMBER TF090304

GLOBAL ENVIRONMENT FACILITY TRUST FUND GRANT AGREEMENT

AGREEMENT, dated September 21, 2007, between THE REPUBLIC OF SOUTH AFRICA (the Recipient) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to the GEF Trust Fund by certain members of the Bank as participants of the GEF.

WHEREAS (A) the Bank, pursuant to Resolution No. 91-5 of March 14, 1991 of the Executive Directors of the Bank, established the GEF to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development;

(B) following the restructuring of the GEF, such arrangements continued in place on the basis set forth in Resolution No. 94-2 of May 24, 1994, of the Executive Directors of the Bank which, *inter alia*, established the GEF Trust Fund and appointed the Bank as trustee of the GEF Trust Fund (Resolution 94-2);

(C) a Memorandum of Understanding (as hereinafter defined) was signed among the Participating States (as hereinafter defined) to acknowledge the importance of increasing the safety and efficiency of navigation and protection of the marine and coastal environment in the West Indian Ocean;

(D) this operation is the first phase of a long term program designed to increase the safety and efficiency of navigation in the region while protecting the coastal and marine environment throughout the region (the Program) through a series of financing over a period of approximately ten (10) years on behalf of the Participating States for the implementation of the Program;

(E) other partners contributing with technical assistance to the Program are among others, the International Hydrographic Organization, the International Association of Lighthouses and Aids to Navigation, United Kingdom Hydrographic Office, *Service Hydrographique et Océanographique de la Marine*, and the International Maritime Organization;

(F) other donors including the European Union and France also intend to contribute into the Project and the Program, with future financing on the terms and conditions set forth in an agreement to be entered into between the Participating States and the donors;

(G) The Recipient was duly nominated by the Participating States to receive the GEF Trust Fund Grant and implement the Project through the Memorandum of Understanding (as hereinafter defined);

(H) the Participating States having satisfied themselves as to the regional feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), have requested assistance from the resources of the GEF Trust Fund for funding the Project, and said request having been approved in accordance with the provisions of the Instrument for the Establishment of the Restructured Global Environment Facility approved under Resolution 94-2;

(I) Parts A, D (1), and D (4) of the Project will be carried out by the South African Maritime Safety Authority (as hereinafter defined) with the Recipient's assistance and, as part of such assistance, the Recipient will make the proceeds of the GEF Trust Fund Grant provided for in Article II of this Agreement available to SAMSA, as set forth in this Agreement;

(J) Parts B, C, D (2), D (3), and D (4) of the Project will be carried out by Indian Ocean Commission (as hereinafter defined) with the Recipient's assistance and, as part of such assistance, the Recipient will make the proceeds of the GEF Trust Fund Grant provided for in Article II of this Agreement available to Indian Ocean Commission, as set forth in this Agreement;

WHEREAS the Bank has agreed, on the basis, *inter alia*, of the foregoing, to extend the GEF Trust Fund Grant to the Recipient upon the terms and conditions set forth in this Agreement and in the agreements of even date herewith between the Bank and SAMSA (the SAMSA Project Agreement), and the Bank and IOC (the IOC Project Agreement);

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01 (a) The following provisions of the "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through May 1, 2004), with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Sections 2.01 (2), (3), (4), (5), (6), (7), (8), (14), (15), (16), (18) and (21), 2.02 and 2.03;
- (iii) Section 3.01;
- (iv) Sections 4.01 and 4.06;
- (v) Article V;
- (vi) Sections 6.01, 6.02 (a), (c), (d), (e), (f), (i), (l), (m), (n), (o) and (p), 6.03, 6.04 and 6.06;
- (vii) Section 8.01 (b);
- (viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;
- (ix) Section 10.01 of the General Conditions should be modified as follows: delete first sentence of Section 10.01;
- (x) Section 10.03;

- (xi) Section 10.04 of the General Conditions should be modified as follows:
“Any dispute arising out of or relating to this Agreement which is not settled by agreement of the parties shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force on the date of this Agreement. The place of arbitration shall be Washington, D.C. In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Agreement, the terms of this Agreement shall govern.” The third sentence of the clause is intended to resolve a possible conflict between Article 30 of the UNCITRAL Rules and Section 10.03 of the General Conditions, to the effect that, under the proposed language, a failure to exercise rights shall be deemed to be a waiver of such rights;
 - (xii) Article XI; and
 - (xiii) Sections 12.01, 12.02 (a) and (c), 12.03 and 12.04.
- (b) The General Conditions shall be modified as follows, the terms:
- (i) “Bank”, wherever used in the General Conditions, other than in Sections 2.01 (6), 5.01 (a), and 6.02 (f) thereof, means the Bank acting as an implementing agency of the GEF, except that in Section 6.02, the term “Bank” shall also include the Bank acting in its own capacity;
 - (ii) “Borrower”, wherever used in the General Conditions, means the Recipient;
 - (iii) “Loan Agreement”, wherever used in the General Conditions, means this Agreement;
 - (iv) “Loan” and “loan”, wherever used in the General Conditions, means the GEF Trust Fund Grant;
 - (v) “Loan Account”, wherever used in the General Conditions, means the GEF Trust Fund Grant Account;
 - (vi) a new subparagraph is added after subparagraph (o) in Section 6.02 of the General Conditions, as follows: “an extraordinary situation shall have arisen in which any further disbursement under the GEF Trust Fund Grant would exceed the resources available for disbursement from the GEF.”;
 - (vii) “corrupt or fraudulent” in paragraph (c) of Section 6.03 are replaced with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) “DEAT” means the Recipient’s Department of Environmental Affairs and Tourism;
- (b) “DOT” means the Recipient’s Department of Transport;
- (c) “Eligible Categories” means Categories (1), (2), 3 (a), 4 (a), and 5 (a) for the purpose of Special Account A (hereinafter defined) and Categories (3) (b), 4 (b), and (5) (b) for the purpose of Special Account B (hereinafter defined) as set forth in the table in Part A.1 of Schedule 1 to this Agreement;
- (d) “Eligible Expenditures” means the expenditures for goods, works and consultants’ services referred to in Section 2.02 of this Agreement;
- (e) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of the relevant Project Agreement;
- (f) “Financial Management Procedural Manual” means the procedural manual, dated March 30, 2004 and referred to in paragraph A.1 (c) of Schedule 4 to this Agreement;
- (g) “IOC” means the Indian Ocean Commission established under the treaty “*Accord Général de Coopération Entre les Etats Membres de la Commission de l’Océan Indien (dit Accord de Victoria)*” dated January 10, 1984;
- (h) “IOC Project Agreement” means the agreement of even date herewith between the Bank and Indian Ocean Commission, as such agreement may be amended from time to time; and such term includes all schedules and agreements supplemental to the IOC Project Agreement;
- (i) “Memorandum of Understanding” or “MOU” means the instrument entered into among the Governments of all Participating States establishing their commitment and implementation responsibilities;
- (j) “Participating States” or “Participating State” means Republic of Kenya, Republic of Madagascar, Republic of Mauritius, Republic of Mozambique, United Republic of Tanzania, Republic of Seychelles, the Republic of South Africa, and the Union of the Comoros;
- (k) “Procurement Plan” means the Project’s procurement plan, dated March 9, 2007, covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 18 month periods (or longer) of Project implementation;
- (l) “Project Agreements” means the SAMSA Project Agreement and IOC Project Agreement;
- (m) “Report-based Disbursements” means the Recipient’s option for withdrawal of funds from the GEF Trust Fund Grant Account referred to in Part A.6 of Schedule 1 to this Agreement;
- (n) “SAMSA” means the South African Maritime Safety Authority established by Parliamentary Act No. 5, 1998;

(o) “SAMSA Project Agreement” means the agreement of even date herewith between the Bank and SAMSA, as such agreement may be amended from time to time; and such term includes all schedules and agreements supplemental to the SAMSA Project Agreement;

(p) “Special Accounts” means, collectively, Special Account A and Special Account B;

(q) “Special Account A” means the account referred to in Paragraph B.1 (a) of Schedule 1 to this Agreement;

(r) “Special Account B” means the account referred to in Paragraph B.1 (b) of Schedule 1 to this Agreement;

(s) “Steering Committee” means the committee with the functions and responsibilities described in paragraph B.1 of Schedule 4 to this Agreement; and

(t) “Tripartite Arrangement” means the agreement to be entered into among the Recipient, SAMSA and IOC pursuant to Section 3.01 (c) and 6.01 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Tripartite Arrangement.

ARTICLE II

The GEF Trust Fund Grant

Section 2.01. The Bank agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the GEF Trust Fund Grant in an amount equal to eleven million US Dollars (\$ 11,000,000).

Section 2.02. The amount of the GEF Trust Fund Grant may be withdrawn from the GEF Trust Fund Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant.

Section 2.03. The Closing Date shall be June 30, 2011 or such later date as the Bank shall establish. The Bank shall promptly notify the Recipient of such later date.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Recipient, through DEAT and DOT, declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, the Recipient, through DEAT and DOT, shall, as provided, *inter alia*, in the Tripartite Agreement referred to in paragraph (c) of this Section, cause SAMSA, in respect of Parts A, D (1), and D (4) of the Project, and IOC, in respect of Parts B, C, D (2), D (3), and D (4) of the Project, to perform in accordance with the provisions of the Project Agreement all its obligations therein set forth take

and cause to be taken all action including the provision of funds, facilities, services and other resources necessary or appropriate to enable SAMSA and IOC, respectively, to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Bank shall otherwise agree, the Recipient shall, through DEAT and DOT, cause the Project to be carried out in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Recipient shall, through DOT, enter into an agreement under terms and conditions consistent with the provisions of this Agreement and acceptable to the Bank (the Tripartite Arrangement) with SAMSA and IOC.

(d) The Recipient shall, through DOT, exercise its rights under the Tripartite Arrangement in such manner as to protect the interests of the Recipient and the Bank and to accomplish the purposes of the Grant, and, except as the Bank shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Tripartite Arrangement or any provision thereof.

Section 3.02. (a) Except as the Bank shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Recipient, through DEAT and DOT, shall have the Procurement Plan updated in accordance with guidelines acceptable to the Bank, and furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank's approval.

Section 3.03. For the purposes of Section 9.08 of the General Conditions and without limitation thereto, the Recipient shall, through DEAT and DOT:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Bank, a plan designed to ensure the sustainability of the Project; and

(b) provide the Bank a reasonable opportunity to exchange views with the Recipient on said plan.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Recipient shall, through DEAT and DOT, and as provided in the Tripartite Agreement, cause SAMSA and IOC to establish and maintain a financial management system, including records and accounts, and prepare financial statements in accordance with

consistently applied accounting standards acceptable to the Bank, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Recipient shall, through DEAT and DOT, and as provided in the Tripartite Agreement, cause SAMSA and IOC to:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Bank), audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Bank): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Bank), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and
- (iii) furnish to the Bank such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the GEF Trust Fund Grant Account were made on the basis of reports referred to in Part A.6 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Recipient shall, through DEAT and DOT, and as provided in the Tripartite Agreement, cause SAMSA and IOC to:

- (i) retain, until at least one year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the GEF Trust Fund Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enable the Bank's representatives to examine such records; and
- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Bank), referred to in paragraph (b) of this Section.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

- (a) the Memorandum of Understanding shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Participating States to carry out the Project;
- (b) SAMSA shall have failed to perform any of its obligations under the Tripartite Arrangement; and
- (c) IOC shall have failed to perform any of its obligations under the Tripartite Arrangement.

ARTICLE VI

Effectiveness, Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the GEF Trust Fund Grant within the meaning of Section 12.01 (b) of the General Conditions:

- (a) That the Tripartite Arrangement referred to in Section 3.01 (c) of this Agreement has become effective;
- (b) That the regional coordinator and subregional coordinator for the units referred to in Schedule 4 of this Agreement have been recruited.

Section 6.02. Consistent with the meaning of Section 12.02 (a) of the General Conditions, the Recipient shall include in the opinion to be furnished to the Bank that this Agreement has been duly executed and authorized or ratified by the Recipient, and is legally binding upon the Recipient in accordance with its terms.

Section 6.03. Without limitations upon the provisions of Section 6.02 of this Agreement, the following are specified as additional matters, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished by SAMSA and IOC, respectively, to the Bank:

- (a) that the SAMSA Project Agreement has been duly executed and authorized or ratified by SAMSA, and is legally binding upon SAMSA in accordance with its terms; and
- (b) that the IOC Project Agreement has been duly executed and authorized or ratified by IOC, and is legally binding upon IOC in accordance with its terms;

Section 6.04. The date one hundred twenty (120) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.05. This Agreement shall continue in effect until the GEF Trust Fund Grant has been fully disbursed and the parties to this Agreement have fulfilled their obligations hereunder.

ARTICLE VII

Representative of the Recipient; Addresses

Section 7.01. The Minister of Environmental Affairs and Tourism of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 7.02 The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

315 Pretorius Street, Fedsure Building, 2nd Floor
Pretoria, South Africa

Facsimile:

27-12-322-2682

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (MCI)
64145 (MCI)

Facsimile:

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Pretoria, Republic of South Africa, as of the day and year first above written.

REPUBLIC OF SOUTH AFRICA

By /s/ Marthinus Christoffel Johannes van Schalkwyk

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
as an Implementing Agency of the Global Environment Facility

By /s/ Ritva S. Reinikka

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the GEF Trust Fund Grant

A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the GEF Trust Fund Grant, the allocation of the amounts of the GEF Trust Fund Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the GEF Trust Fund Grant Allocated (Expressed in Dollars)</u>	<u>% of Expenditures to be Financed</u>
(1) Works (SAMSA)	2,200,000	100%
(2) Goods (SAMSA)	1,500,000	100%
(3) Consultants' Services and Audits		100%
(a) SAMSA	2,200,000	
(b) IOC	1,600,000	
(4) Training and Workshops		100%
(a) SAMSA	1,200,000	
(b) IOC	1,100,000	
(5) Operating Costs		100%
(a) SAMSA	600,000	
(b) IOC	100,000	
(6) Unallocated	500,000	
 TOTAL	 <u>11,000,000</u>	

2. For the purposes of this Schedule, the terms:

(a) "Training and Workshops" includes the costs of conference, seminars, study-tours and workshops, purchase of training materials, rental of training facilities, health insurance for travel abroad, per diem and travel costs and other activities included in the training programs to be financed under the Project, and directly related to Project objectives; and

(b) “Operating Costs” means the incremental expenses incurred on account of Project implementation, including office supplies, vehicle operation, fuel, and maintenance, communication and insurance costs, Special Account banking charges, office equipment maintenance, utilities, documents duplication/printing, consumables, travel cost and per diem for Project staff for travel linked to the implementation of the Project and salaries of contractual staff for the Project, but excluding salaries of officials of the Recipient and Participating States.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments: (i) made for expenditures prior to the date of this Agreement, except that withdrawals up to an aggregate amount not to exceed \$200,000 equivalent may be made for payments made prior to this date but on or after March 1, 2007, for Eligible Expenditures under Category 3 (a) and 5 (a); or (ii) on account of payments for any identifiable taxes or customs duties levied by, or in the parts of, the territory of the Recipient or any Participating State on or in respect of Eligible Expenditures.

4. It is understood that the percentages in the table in Part A.1 of this Schedule have been calculated on the basis of the provisions in Section 9 (e) of the MOU to finance Eligible Expenditures. If any change is made to said provisions, which has the effect of levying taxes or customs duties on such goods, services or works, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

5. The Bank may require withdrawals from the GEF Trust Fund Grant Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods costing less than \$150,000 equivalent per contract; (b) works costing less than \$250,000 equivalent per contract; (c) services of individual consultants costing less than \$50,000 equivalent per contract; (d) services of consulting firms costing less than \$100,000 equivalent per contract; and (e) Operating Costs and Training and Workshops, all under such terms and conditions as the Bank shall specify by notice to the Recipient.

6. The Recipient through SAMSA and IOC, may request withdrawals from the GEF Trust Fund Grant Account to be made on the basis of reports to be submitted to the Bank in form and substance satisfactory to the Bank, such reports to include the FMR and any other information as the Bank shall specify by notice to the Recipient (Report-based Disbursements). In the case of the first such request submitted to the Bank before any withdrawal has been made from the GEF Trust Fund Grant Account, the Recipient shall submit to the Bank only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

B. Special Accounts

1. The Recipient may: (a) for the purpose of Parts A, D (1), and D (4) of the Project open and maintain in Dollars a special deposit account (Special Account A) to be managed by SAMSA; and (b) for the purpose of Parts B, C, D (2), D (3), and D (4) of the Project open and maintain in Dollars a special deposit account (Special Account B) to be managed by IOC, all in commercial banks acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment.

2. After the Bank has received evidence satisfactory to it that the Special Accounts have been opened, withdrawals from the GEF Trust Fund Grant Account of amounts to be deposited into the Special Accounts shall be made as follows:

(a) if the Recipient is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

(b) if the Recipient is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of each Special Account shall be made exclusively for respective Eligible Expenditures. For each payment made by the Recipient through SAMSA or IOC out of the respective Special Account, the Recipient through SAMSA or IOC shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for respective Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Bank shall not be required to make further deposits into the respective Special Account:

(a) if the Bank, at any time, is not satisfied that the reports referred to in Part A.6 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Bank determines at any time that all further withdrawals for payment of respective Eligible Expenditures should be made by the Recipient directly from the GEF Trust Fund Grant Account; or

(c) if the Recipient through SAMSA or IOC shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of: (A) the records and accounts for the respective Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Bank shall not be required to make further deposits into the respective Special Account in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Bank shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the GEF Trust Fund Grant Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank shall determine, in its sole discretion, whether further deposits into the respective Special Accounts may be made and what procedures should be followed for making such deposits, and shall notify the Recipient of its determination.

6. (a) If the Bank determines at any time that any payment out of the respective Special Accounts was made for an expenditure which is not an respective Eligible Expenditure, or was not justified by the evidence furnished to the Bank, the Recipient shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the respective Special Accounts (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment. Unless the Bank shall otherwise agree, no further deposit by the

Bank into the respective Special Accounts shall be made until the Recipient has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank determines at any time that any amount outstanding in the respective Special Accounts will not be required to cover payments for respective Eligible Expenditures during the six-month period following such determination, the Recipient shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Recipient through SAMSA or IOC may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the respective Special Accounts.

(d) Refunds to the Bank made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the provisions of the GEF Trust Fund Grant Agreement.

**Annex A
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are Not
Report-based Disbursements**

1. For the purposes of this Annex, the term “Authorized Allocation” means:
 - (a) in respect to Special Account A the amount of \$600,000 to be withdrawn from the GEF Trust Fund Grant Account and deposited into the Special Account A pursuant to paragraph 2 of this Annex for the purpose of Parts A, D (1), and D (4) of the Project; and
 - (b) in respect to Special Account B the amount of \$200,000 to be withdrawn from the GEF Trust Fund Grant Account and deposited into the Special Account B pursuant to paragraph 2 of this Annex for the purpose of Part B, C, D (2), D (3), and D (4) of the Project.
2. Withdrawals of the respective Authorized Allocation and subsequent withdrawals to replenish the respective Special Accounts shall be made as follows:
 - (a) For withdrawals of the respective Authorized Allocation, the Recipient through SAMSA or IOC shall furnish to the Bank a request or requests for deposit into the respective Special Accounts of an amount or amounts which in the aggregate do not exceed the respective Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the respective Special Accounts such amount as the Recipient shall have requested.
 - (b) For replenishment of the respective Special Account, the Recipient through SAMSA or IOC shall furnish to the Bank requests for deposit into the respective Special Account at such intervals as the Bank shall specify. Prior to or at the time of each such request, the Recipient through SAMSA or IOC, shall furnish to the Bank the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the respective Special Account such amount as the Recipient through SAMSA or IOC shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Bank from the GEF Trust Fund Grant Account under one or more of the respective Eligible Categories.
3. The Bank shall not be required to make further deposits into the respective Special Account, once the total unwithdrawn amount of the GEF Trust Fund Grant minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the respective Authorized Allocation. Thereafter, withdrawal from the GEF Trust Fund Grant Account of the remaining unwithdrawn amount of the GEF Trust Fund Grant shall follow such procedures as the Bank shall specify by notice to the Recipient. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on

deposit in the respective Special Account as of the date of such notice will be utilized in making payments for respective Eligible Expenditures.

**Annex B
to
SCHEDULE 1**

**Operation of Special Account
When Withdrawals Are
Report-based Disbursements**

1. Withdrawals from the GEF Trust Fund Grant Account shall be deposited by the Bank into the respective Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the respective Special Account shall be withdrawn by the Bank from the GEF Trust Fund Grant Account under one or more of the respective Eligible Categories.
2. Upon receipt of each application for withdrawal of an amount of the GEF Trust Fund Grant, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the respective Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Bank has determined, based on the reports referred to in Part A.6 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance respective Eligible Expenditures during the six-month period following the date of such reports.

SCHEDULE 2

Description of the Project

The objective of the Project is to assist the Participating States to increase the safety and efficiency of navigation of the Western Indian Ocean.

The Project consists of the following parts, subject to such modifications thereof as the Recipient and the Bank may agree upon from time to time to achieve such objectives.

Part A: Development of a Regional Marine Highway and Institutions

Carry out activities aiming at enhancing technology to improve navigation within the region including:

1. Production of nautical charts and publications incorporating information on environmental assets;
2. Maintenance of nautical charts and publications;
3. Survey and rehabilitation of the main aids to navigation on the route of the marine highway;
4. Establishment of an automatic information service through the installation of six shore-based automatic information systems;
5. Support to search and rescue activities through the installation of telecommunication links between the existing marine rescue coordination centers in South Africa and Reunion; and
6. Evaluation of the demonstration phase and preparation of the second phase through preparation of a detailed assessment and provision of other technical advisory services.

Part B: Capacity Building for Prevention of Coastal and Marine Contamination

Carry out activities to enhance knowledge in the prevention of coastal and marine contamination within the region, including:

1. Conducting comprehensive capacity building program to include seminars, workshops and training of trainers on, *inter alia*, promote safe marine navigation, development and implementation of national contingency plan, prevention of marine and coastal pollution, risk assessment and development of appropriate response strategies, enforcing of fisheries regulations, and related matters;
2. Supporting the development of site-specific pollution prevention and contingency management plans for coastal and marine biodiversity hotspots with high risk profiles;
3. Supporting the development of a methodology to carry out baseline studies to identify key environmental resources; and

4. Supporting the development of a regional database and geographic information system on marine and coastal resources.

Part C: Building Capacity For Regional Oil Spill response

1. Provision of technical advisory services to Participating States for the adoption and implementation of International Maritime Organization conventions;
2. Carrying out activities to assist Participating States to develop or update national oil spill contingency plans and support the development of marine ecosystem sensitivity map;
3. Assessing the needs and preparing specifications for oil spill response equipment; and
4. Carrying out activities to facilitate the regional integration for monitoring environmental conditions and causes of environmental degradation and damage.

Part D: Port State Control, Fisheries Monitoring, and Project Coordination and Management

1. Carry out activities to promote port state control including: (a) supporting increased involvement of all neighboring countries in the regional agreement on port state control, the widening of the agreement to include Madagascar and Comoros, and the promotion of the implementation of the regional agreement on port state control in Participating States; (b) supporting capacity building, including training of inspectors to international standards in port state control; and (c) supporting workshops aimed at developing consensus to promote regional marine environmental management;
2. Carrying out activities to support the development and implementation of an action plan for fisheries monitoring;
3. Carrying out activities to facilitate coordination with other GEF-supported projects; and
4. Providing assistance to help manage the Project and coordinate the various activities at the regional, subregional, and national levels.

* * *

The Project is expected to be completed by December 31, 2010.

SCHEDULE 3

Procurement

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Recipient/Guarantor and works to be carried out by domestic contractors.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than \$250,000 equivalent per contract and works estimated to cost less than \$500,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions

2. Shopping. Goods estimated to cost less than \$30,000 equivalent per contract and works estimated to cost less than \$50,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. Goods and works which the Bank agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short

list of consultants for services estimated to cost less than \$100,000 equivalent per contract may comprise entirely national consultants.

B. Other Procedures

1. Selection Under a Fixed Budget. Services for assignments which the Bank agrees meet the requirements of paragraph 3.5 of the Consultant Guidelines may be procured under contracts awarded on the basis of a Fixed Budget in accordance with the provisions of paragraphs 3.1 and 3.5 of the Consultant Guidelines.

2. Least-cost Selection. Services for assignments which the Bank agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Selection Based on Consultants' Qualifications. Services estimated to cost less than \$200,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

4. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

5. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis subject to prior review by the Bank.

Section IV. Review by the Bank of Procurement Decisions

Except as the Bank shall otherwise determine by notice to the Recipient, the following contracts shall be subject to Prior Review by the Bank: (a) each contract for goods estimated to cost the equivalent of \$250,000 or more, procured on the basis of International Competitive Bidding and each contract estimated to cost the equivalent of \$150,000 or more, procured on the basis of National Competitive Bidding; (b) each contract for works and services (other than consultants' services) estimated to cost the equivalent of \$500,000 or more procured on the basis of International Competitive Bidding or Limited International Bidding, and each contract estimated to cost the equivalent of \$250,000 or more, procured on the basis of National Competitive Bidding, or Direct Contracting; (c) each contract for consultants' services provided by a firm estimated to cost the equivalent of \$100,000 or more; and (d) each contract for consultants' services provided by an individual estimated to cost the equivalent of \$50,000 or more. All other contracts shall be subject to Post Review by the Bank.

SCHEDULE 4

Implementation Program

A. General

1. The Recipient shall, through DEAT and DOT, and as provided in the Tripartite Agreement:

(a) maintain, or cause to be maintained, policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the performance indicators satisfactory to the Bank the indicators set forth in Schedule 5 to this Agreement, the carrying out of the Project and the achievement of the objectives thereof;

(b) no later than 90 days after the effective date, recruit the external auditors for the Project in accordance with the provisions of Section I (B) of Schedule 3 to this Agreement and in form and substance satisfactory to the Bank; and

(c) carry out the financial management aspect of the Project in accordance with the Financial Management Procedural Manual, which sets forth, *inter alai*, financial policies and procedures, accounting and internal control system and financial reporting, flow of funds, auditing arrangements and financial management assessments at central, provincial and municipal levels, as may be amended from time to time with the prior written consent of the Bank.

B. Project Implementation Framework

1. Project Steering Committee

The Project Steering Committee, established pursuant to Paragraph 8 (e) of the MOU and comprised of senior officials responsible for transport, environment, or both, of each of the Participating State, the Chief Executive Officer of SAMSA and the Secretary General of IOC assigned for the overall monitoring of the Project and to ensure the Project objectives are reached.

2. Project Implementation Units

(a) The Recipient shall cause SAMSA as per the Tripartite Agreement, to maintain until the completion of the Project, the regional project management unit which will be hosted by SAMSA, with terms of reference, qualifications and expertise satisfactory to the Bank.

(b) The regional project management unit shall be responsible for the day-to-day implementation of the Parts A, D (1), and D (4) of the Project, including, *inter alia*: (i) carrying out procurement; (ii) providing technical support; (iii) managing Project finances (including preparation of consolidated financial monitoring reports and audits); (iv) carrying out studies as per the implementation plan; and (v) monitoring and evaluation of Project activities.

(c) The Recipient shall cause IOC as per the Tripartite Agreement, to maintain until the completion of the Project, the subregional project management unit, with terms of reference, qualifications and expertise satisfactory to the Bank.

(d) The subregional project management unit shall be responsible for the day-to-day implementation of the Parts B, C, D (2), D (3), and D (4) of the Project, including, *inter alia*: (i) carrying out procurement; (ii) providing technical support; (iii) managing Project finances; (iv) carrying out studies as per the Implementation Plan; and (v) monitoring and evaluation of Project activities.

C. Progress Reports, Semi-Annual Report and Midterm Reviews

(1) The Recipient shall cause SAMSA and IOC, as per the Tripartite Agreement, each to:

(a) prepare and furnish to the Bank monthly progress reports, during the period preceding effectiveness, and thereafter, on a semiannual basis, integrating the results of the monitoring and evaluation activities performed pursuant to Schedule 2 of this Agreement, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date;

(b) not later than one month prior to the date of the joint semi-annual review, furnish to the Bank, for its comments, each respective report in such detail as the Bank shall reasonably request, on the progress of the Project; and

(c) following each semi-annual review, act promptly and diligently in order to take any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project, as agreed upon by the parties in furtherance of the objectives of the Project.

(2) Midterm Review

The Recipient, SAMSA and IOC shall:

(a) not later than June, 2009, carry out jointly with the Bank a mid-term review, which will cover: (i) overall progress in the implementation of the Project and in meeting the objectives thereof; (ii) the results of the monitoring and evaluation activities, as measured against the performance indicators; and (iii) assess the institutional and financial sustainability action plans of each Participating State;

(b) not later than one month before the review referred to in subparagraph (a) above, jointly prepare and furnish to the Bank a report in such scope and detail as the Bank shall reasonably request, on the implementation of the Project and achievement of the objectives thereof, including a program of action to deal with potential deficiencies in Project implementation as may have been identified prior to carrying out such review; and

(c) thereafter, act promptly and diligently in order to take, all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.

SCHEDULE 5

Performance Indicators

For the purposes of this Agreement, the Recipient agrees that unless otherwise agreed by the Bank, Project performance will be measured by the indicators below as of the Closing Date of the Project:

1. Number of ships traveling through the region using the marine highway and its electronic charts for navigation.
2. Number of ship inspections carried out at major ports in the region.
3. Modern aids to navigation systems installed (forming the pilot marine highway) and its feasibility for the region assessed with the full involvement of industry groups. Should the concept prove feasible, a plan for further development is expected to be in place.
4. Action plan for monitoring of fisheries activities developed by midterm review, and some of its main recommendations implemented thereafter.
5. Agreement reached with Madagascar and Comoros to join the regional agreement on port state control, signed on June 5, 1998.
6. Agreement reached by all eight states participating in the project on the arrangements for cooperation in cases of major pollution incidents.