



**NDA**

National  
Development  
Agency

**TERMS OF REFERENCE  
FOR  
THE IDENTIFICATION OF PREMISES FOR OFFICE SPACE  
FOR THE NDA TO BE OCCUPIED OVER A PERIOD OF FIVE YEARS**

**IN THE FOLLOWING AREAS: NORTHERN CAPE (KIMBERLEY, UPINGTON & POSTMANSBURG), NORTH WEST (TAUNG & LITCHTENBURG), FREE STATE (TROMPSBURG & QWA-QWA), WESTERN CAPE (CAPE TOWN) AND GAUTENG (JOHANNESBURG, CBD)**

**BID REF: NDA39/FIN03/19**

<b>CLOSING DATE CLOSING TIME</b>	<b>01 NOVEMBER 2019 14H00</b>
<b>SUBMISSION OF DOCUMENTS</b>	All proposals must be delivered at the NDA Head Office on or before the closing date and time. The Head Office address is: 26 Wellington Road, Parktown, Johannesburg, 2193. Submissions must be strictly submitted inside the tender box, which is at the main entrance and accessible 24/7.  <i>Service providers outside of Gauteng are advised to send their documents by courier. NDA will not take responsibility for documents sent via postal services.</i>
<b>SUPPLIER ENVELOPES</b>	The supplier's envelope/s <b>MUST</b> clearly have the description of the RFQ "Identification of Premises for Offices Space for North West, Northern Cape, Free State, Western Cape & Gauteng"  <b>A TWO-ENVELOPE system will be used for the submission of quotations:</b>  <b>Commercial Envelope</b> This envelope must contain price quotations plus all the mandatory documents as listed in section 7 of this document.  <b>Technical Envelope</b> This envelope must contain all info listed in section 3.1 of this document.
<b>LATE BIDS</b>	Bids received after the closing date and time will not be accepted for consideration and where practicable, will be returned unopened to the Bidder(s).

Contact person for queries is: Ms Khanyi Mngomezulu on 011 018-5518 / 0791269278 between 08h30 to 17h00 on weekdays. Queries can also be sent in writing to [tenders@nda.org.za](mailto:tenders@nda.org.za).

Closing date for the submission of queries: 21 October 2019 @ 13h00

**Briefing Sessions have been scheduled as follows:**

<b>NORTH WEST (TAUNG AND / OR LITCHTENBURG)</b>	
<b>DATE:</b>	7 October 2019
<b>VENUE:</b>	4049 Jules Street, Mafikeng
<b>TIME:</b>	<b>09H00 TO 10H-00</b>
<b>NORTHERN CAPE (KIMBERLEY, UPINGTON AND POSTMANSBURG)</b>	
<b>DATE:</b>	8 October 2019
<b>VENUE 1 &amp; TIME</b>	Kimberley: 13 Dalham Road, Kimberley ( <i>for Provincial office space</i> ) <b>10h00 to 11h00</b>
<b>VENUE 2 &amp; TIME</b>	Upington: Cnr Scott & Upington 26 Street, Old Sanlam building, 3 <sup>rd</sup> Floor (Seda Offices) – ( <i>for the 150sqm District office</i> ) @ 10h00 to 11h00
<b>DATE:</b>	10 October 2019
<b>VENUE 3 &amp; TIME</b>	Postmansburg: 36 Main Street Department of Social Development Offices ( <i>for the satellite office</i> ) @ 14h00 to 15h00
<b>DATE:</b>	8 October 2019
<b>FREE STATE (TROMPSBURG OR QWA-QWA)</b>	
<b>DATE:</b>	14 October 2019
<b>VENUE 1 &amp; TIME:</b>	Trompsburg: 20 Louw Street, Trompsburg (XDM Municipal building) @ <b>09h00 to 10h00</b>
<b>VENUE 2 &amp; TIME:</b>	Qwa-Qwa: Motloug & Setai Street FDC Building, Phuthaditjhaba @ <b>12h00 to 13h00</b>
<b>DATE:</b>	15 October 2019
<b>WESTERN CAPE</b>	
<b>DATE:</b>	17 October 2019
<b>VENUE &amp; TIME</b>	50 Keerom Street, The Chambers Building, Cape Town @ <b>11h00 to 12h00</b>
<b>GAUTENG</b>	
<b>DATE:</b>	18 October 2019
<b>VENUE &amp; TIME</b>	26 Wellington Road, Parktown, Johannesburg @ <b>11h1200</b>

## **1. OVERVIEW OF NDA**

The National development Agency is a public entity listed under Schedule 3A of the Public Finance Management Act (PFMA). It was established in terms of the National Development Agency Act No 108 of 1998 as amended.

### **1.1. Our mandate**

In terms of the National Development Agency (NDA) Act (Act No 108 of 1998 as amended), NDA was mandated to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations (CSOs) to:

- Implement development projects in poor communities, and
- Strengthen the institutional capacity of other CSOs that provide services to poor communities.

### **1.2. Our mission**

Facilitate sustainable development by strengthening civil society organisations involved in poverty eradication through enhanced grant funding and research.

### **1.3. Our vision**

A society free from poverty.

### **1.4. Our values**

Integrity

Dignity

Empowerment

Accountability & Responsibility

Transparency

Excellence

Partnering.

## 2. PURPOSE & OBJECTIVE OF THE REQUEST FOR BIDS

The NDA seeks to identify letting agents and property owners that can assist it in identifying premises that can best suit its needs. The NDA seeks premises in:

### 2.1 Table

Province	Municipality	Office Size	Parking Bays	Occupation Date
North West	Taung or Lichtenburg	250	10	ASAP
Northern Cape	Sol Plaatje (Kimberley)	350	10	December 2019
	ZF Mgcawu (Postmansburg)	150	5	December 2019
	Upington	50	2	December 2019
Free State	Trompsburg or Qwa-Qwa	250	10	December 2019
Gauteng	City of Johannesburg	350	10	February 2020
Western Cape	City of Cape Town	350	10	February 2020

This bid therefore invites letting agents and property owners to submit bids to the NDA.

## 3. SCOPE OF WORK/DELIVERABLES

The letting agent/ property owner is required to identify premises for the NDA that meet the requirements detailed below:

### 3.1 The premises should be:

- a) The square metres for all offices should be as per the table in section 2 of this document.
- b) Centrally located, in close proximity to public transport (5km radius from the office space).
- c) accessible / friendly to people with disabilities (the premises must have a lift or be on the ground floor with a ramp and rail)
- d) Parking Bays as per the table in section 2 of this document.
- e) Ablution facilities for men, women and for people with disabilities (*A separate ablution facility for people with disability*)
- f) Premises should allow for partitioning in accordance to NDA's office needs.
- g) be secure (security system or 24/7 physical security guard).
- h) have generator back-up, which can run for at least over 8 hours in case of power failure.

- i) Telecommunications services or any other technology available at the building for network connectivity (e.g. fibre, wireless, etc)
- j) submit photos of the interior and exterior of the building (printed or soft copy) plus a copy of the plan. – (5)

### 3.2 Other Technical Requirements

- a) The tenant installation (TI) amount should be clearly indicated on the bid document. (This is only applicable to the **Provincial offices**)
- b) Proposed properties must not be a warehouse, i.e. Warehouses will be disqualified.
- c) A copy of Property insurance /insurance Certificates must be attached with the submission.

## 4. PROPERTY SELECTION PROCESS

**Process to be followed for property selection will be as follows:**

### Phase 1

- ✓ NDA's Bid Evaluation Committee (BEC) will convene and evaluate all proposals received.
- ✓ The shortlisted properties will be visited for physical inspection by NDA's BEC team.
- ✓ This team will be verifying all information submitted by service providers with regards to the proposed properties.

### Phase 2

- ✓ The BEC will write final recommendations to NDA's Bid Adjudication Committee (BAC) for final adjudication and further recommendation for approval by the relevant authority.

## 5. TECHNICAL /FUNCTIONAL EVALUATION

CRITERIA	WEIGHT
<b>CAPACITY OF THE PREMISES</b> <ul style="list-style-type: none"> <li>• <b>North West</b> <ul style="list-style-type: none"> <li>○ Taung/Lichtenburg premises must not be less than 250sqm</li> </ul> </li> <li>• <b>Northern Cape</b> <ul style="list-style-type: none"> <li>○ Kimberley – premises must not be less than 350sqm</li> </ul> </li> </ul>	20

<ul style="list-style-type: none"> <li>○ Postmansburg – premises must not be less than 150sqm</li> <li>○ Upington – premises must not be less than 50sqm</li> <li>● <b>Free State</b> <ul style="list-style-type: none"> <li>○ Trompsburg / Qwa-Qwa – premises must not be less than 250sqm</li> </ul> </li> <li>● <b>Western Cape</b> <ul style="list-style-type: none"> <li>○ Cape Town – premises must not be less than 350sqm</li> </ul> </li> <li>● <b>Gauteng</b> <ul style="list-style-type: none"> <li>○ Johannesburg CBD -premises must not be less than 350sqm</li> </ul> </li> </ul>	
<b>REQUIREMENTS FOR THE PREMISES (SECTION 3)</b>	<b>80</b>
<ul style="list-style-type: none"> <li>● All requirements listed in section 3 of this document</li> </ul>	
<b>Total</b>	<b>100</b>

**Note:** Bidders who score less than 70 on technical evaluation will not be evaluated further.

## 5.1 Clarification of scoring system for Technical Evaluation

### 5.1.1 Capacity of the Premises (Total points = 20)

- Premises below the requirements listed in section 2 (**table 2.1**) of this document will be disqualified from the bidding process.
- Premises above the required capacity as per **table 2.1**, will be evaluated however, the NDA will only rent space that is deemed necessary for the NDA needs. No extra points will be earned for additional space.

### 5.1.2 Requirements for Premises (Total points = 80)

- a) centrally located, in close proximity to public transport (5km radius from the office space). -- (15). **[Note: Full points will be allocated for Radius between 2 and 5km; 10 points for radius between 6 and 7km and zero points for any radius above 7km proximity]**
- b) accessible / friendly to people with disabilities (the premises must have a lift or be on the ground floor with a ramp and rail) -- (10) **[Note: Failure to provide accessibility for people with disabilities will result to a score of zero]**
- c) Shaded or undercover Parking Bays as per the table in section 2 of this document. – (5) **[Note: Failure to provide the required parking bays will result to a score of zero]**

- d) Ablution facilities for men, women and for people with disabilities (A separate ablution facility for people with disability; Zero points will be given if the facility does not have a separate ablution system for people with disability) – (10)
- e) Premises should allow for partitioning in accordance to NDA's office needs. -- (10) -- **(Note: Failure to give consent for partitioning will result to a score of zero)**
- f) be secure (security system or 24/7 physical security guard). – (5) **(Note: Failure to provide one of the required security facilities will result to a score of zero)**
- g) have generator back-up, which can run for at least over 8 hours in case of power failure. -- (10) **(Zero points will be given in the absence of a generator)**
- h) Telecommunications services or any other technology available at the building for network connectivity (e.g. fibre, wireless, etc) -- (10) **(Zero points will be given in the absence of indication of existing technology in the proposed office)**
- i) Submit photos of the interior and exterior of the building (printed or soft copy) plus a copy of the building plan approved by the relevant Municipality -- (5) **(Zero points will be given should the pictures not be provided)**

## 6. COMMERCIAL EVALUATION

6.1 Bids will be evaluated in accordance with the Preferential Procurement Regulations, 2017, using the 80/20 preference points system as prescribed in the Preferential Procurement Policy Framework Act (PPPFA, Act 5 of 2000). The lowest acceptable bid will score 80 points for price and maximum of 20 points will be awarded for attaining the Broad-Based Black Economic Empowerment (B-BBEE) status level of contribution as per table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

6.2 In order to claim the B-BBEE Status Level of Contributor, bidders must submit Sworn Affidavits or original and valid B-BBEE Status Level Verification Certificates

or certified copies thereof, issued by accredited Verification Agencies such as SANAS or Registered Auditor approved by the IRBA together with their bids, to substantiate their B-BBEE claims. Exempted Micro Enterprises must submit a letter from the Accounting Officer who is appointed in terms of the Close Corporation Act.

- 6.3 Bidders who do not submit B-BBEE Status Level Verification Certificate or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE, but will not be disqualified from the bidding process. They will score points out of 80 for price only and zero (0) points out of 20 for B-BBEE.
- 6.4 Bidders are requested to complete the preference claim form (SBD 6.1 and 6.2) in order to claim preference points.
- 6.5 The highest ranked bidder will be awarded the bid. It should be noted also that the NDA reserves the right not to appoint any service provider and no service provider will be reimbursed for any costs incurred whilst participating in this bid.

## **7. MANDATORY COMMERCIAL DOCUMENTS**

- 7.1 Price offer/Price Schedule.
- 7.2 A letter/resolution authorising the person signing the bid documents and contracts.
- 7.3 A copy of CSD registration confirmation or a valid Tax Clearance certificate issued by SARS. - Where consortium/joint ventures/sub-contractor are involved each party to the association must submit a separate valid original Tax Clearance Certificate.
- 7.4 Company registration documents (CIPC).
- 7.5 Completed and signed SBD documents.
- 7.6 A copy of the electrical certificate of compliance for the proposed premises
- 7.7 A copy of municipal issued licence/permission to use the premises for business purposes
- 7.8 Evidence of compliance to National Building Regulation and Occupation Health & Safety Act.
- 7.9 Allow branding inside and outside the building (attach written confirmation)
- 7.10 Participating bidders **MUST** be agreeable to the NDA lease agreement attached to this bid. This must be indicated by signing the proforma lease.

Failure to submit any of the above requirements will lead to immediate disqualification.



## **Central Supplier Database**

The NDA will not appoint any supplier that is not registered as a prospective supplier on the central supplier database as required by the National Treasury in terms of Circular No. 3 of 2015/16 and National Treasury Instruction Note 4 of 2016/17.

## **8. OTHER CONDITIONS**

- 8.1 The Agency reserves the right not to accept the lowest quotation during quotation process.
- 8.2 The Agency reserves the right to return late quotation submissions unopened.
- 8.3 The Agency reserves the right to cancel or not to award the quotation to any supplier and participating service providers will not be reimbursed for expenses incurred while participating.

## **9. CONTRACTING**

- 9.1 Upon the finalization of the property selection process. NDA's legal department shall sign the lease agreement herein referred to as Annexure "A".
- 9.2 All discussions and negotiations regarding the contents of the lease agreement shall be done with NDA's legal department through the SCM premises.

## **10. TENDER VALIDITY**

All submitted bids must be valid for a period of 120-days from the date of submission.

## **11. DISCLAIMER**

- 11.1 If a bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the NDA (other than minor clerical matters), the bidder must promptly notify NDA in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the NDA an opportunity to consider what corrective action is necessary (if any).
- 11.2 Any actual discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the NDA will, if possible, be corrected and provided to all bidders without attribution to the bidder who provided the written notice.

- 11.3 No representations made by or on behalf of NDA in relation to this bid will be binding on the NDA unless that representation is expressly incorporated into the contract ultimately entered into between NDA and the successful bidder.

## **12. ADDITIONS AND AMENDMENTS TO THE BID**

- 12.1 The NDA reserves the right to change any information in, or to issue any addendum to this bid before the closing date and time. The NDA and its premises, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise this right.
- 12.2 If the NDA exercises its right to change information in terms of clause 12.1 all amendments will be posted on the NDA website and participating bidders will have the responsibility to regularly monitor the NDA website to ensure access to such changes.
- 12.3 The NDA will immediately disqualify a bidder from the bidding process if the bidder fails to notify the NDA of the conflict as required.

## **13. CONTENT PAGE**

Participating bidders are required to submit a detailed content page that clearly state (**cross-reference**) where each technical requirement as per section 3.1 of this document is placed in their bid documents. Any additional information that we might have missed must be clearly referenced in the content page.



SBD 1 – Invitation to Bid

### INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NATIONAL DEVELOPMENT AGENCY)

BID NUMBER: NDA39/FIN03/19

CLOSING DATE: 01 NOVEMBER 2019

CLOSING TIME: 14:00

DESCRIPTION: THE IDENTIFICATION OF PREMISES FOR OFFICE SPACE (PROVINCIAL & DISTRICT) FOR THE NDA TO BE OCCUPIED OVER A PERIOD OF FIVE YEARS

The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

BID DOCUMENTS MUST BE HAND DELIVERED INSIDE THE NDA TENDER BOX AT: 26 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG.

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER .....

FACSIMILE NUMBER CODE ..... NUMBER.....

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

SBD 1 – Invitation to Bid

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....  
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR.....  
A REGISTERED AUDITOR .....  
[TICK APPLICABLE BOX]

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?

YES or NO

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED .....

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED .....

---

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

Department: .....

Contact Person: .....

Tel: .....

Fax: .....

E-mail address:.....

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

Contact Person: .....

Tel: .....

Fax: .....

E-mail address:.....

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).



SBD 3.2 – Non-Firm Prices

**PRICING SCHEDULE – NON-FIRM PRICES  
(PURCHASES)**

**NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.**

**IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT**

Name of Bidder.....	Bid number: <b>NDA39/FIN03/19</b>
Closing Time <b>14:00</b> .....	Closing date: <b>01 NOVEMBER 2019</b>

OFFER TO BE VALID FOR **150-DAYS** FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
		<b>Provision of Office Space</b>	
-	Required by:	.....	
-	At:	.....	
-	Brand and model	.....	
-	Country of origin	.....	
-	Does the offer comply with the specification(s)?		<b>*YES/NO</b>
-	If not to specification, indicate deviation(s)	.....	
-	Period required for delivery	.....	
-	Delivery:		<b>*Firm/not firm</b>

\*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

\*Delete if not applicable



**B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS**

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE





SBD 4

### DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
  - the bidder is employed by the state; and/or
  - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 2.1 Full Name of bidder or his or her representative:  
.....
  - 2.2 Identity Number:  
.....
  - 2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>):  
.....
  - 2.4 Company Registration Number:  
.....
  - 2.5 Tax Reference Number:  
.....
  - 2.6 VAT Registration Number:  
.....
  - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....

Name of state institution at which you or the person connected to the bidder is employed : .....

Position occupied in the state institution: .....

Any other particulars: .....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
 .....  
 .....

2.8 Did you or your spouse, or any of the company’s directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....  
 .....  
 .....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

.....  
 .....  
 .....

2.10 Are you, or any person connected with the bidder, **YES/NO**  
 aware of any relationship (family, friend, other) between  
 any other bidder and any person employed by the state  
 who may be involved with the evaluation and or adjudication  
 of this bid?

2.10.1 If so, furnish particulars.

.....  
 .....  
 .....

2.11 Do you or any of the directors / trustees / shareholders / members **YES/NO**  
 of the company have any interest in any other related companies  
 whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

.....  
 .....  
 .....

**3 Full details of directors / trustees / members / shareholders.**

Full Name	Identity Number	Personal Reference Number	Tax Number	State Number / Number	Employee Peral Number

**4 DECLARATION**

I, THE UNDERSIGNED  
 (NAME).....  
 CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS  
 CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN  
 TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD  
 THIS DECLARATION PROVE TO BE FALSE.

.....  
 Signature

.....  
 Date

.....  
 Position

.....  
 Name of bidder



**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the ..... preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **"EME"** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **"prices"** includes all applicable taxes less all unconditional discounts;
- (h) **"proof of B-BBEE status level of contributor"** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **"QSE"** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

## 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

**80/20**
**or**
**90/10**

Where

$P_s$  = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

#### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

#### 5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

#### 6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

- 6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)  
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

#### 7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE  
*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of  
 company/firm:.....

8.2 VAT registration  
 number:.....

8.3 Company registration  
 number:.....

**8.4 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

**8.6 COMPANY CLASSIFICATION**

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....





SBD 8

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>
4.1.1	If so, furnish particulars:		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website ( <a href="http://www.treasury.gov.za">www.treasury.gov.za</a> ) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

### CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

Js365bW



**SBD 9**

### **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

**<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.**

**<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_ (Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_ (Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:  
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices;
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

**<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

Js914w 2

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

**2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**4. Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

**5. Use of contract documents and information; inspection.**

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

**11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

**12. Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### **14. Spare parts**

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## **23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any



person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)



## **LEASE AGREEMENT**

made and entered into by and between

### **THE NATIONAL DEVELOPMENT AGENCY**

A schedule 3 Public Entity Established in terms of the National development Agency Act,  
1998 (Act No. 108 of 1998)

(Hereinafter referred to as the “NDA”)

Herein represented by **Mrs Thamo Mzobe** in his capacity as the Chief Executive Officer,  
duly authorised thereto

and

**XXXXXX**

A Company registered in terms of the Companies Act,  
Duly represented by ...In his capacity as ...

(Hereinafter collectively referred to as the “Parties”)

**NOW THEREFORE THE PARTIES WISH TO RECORD THE TERMS OF THEIR AGREEMENT AS FOLLOWS:**

## **12. DEFINITIONS AND INTERPRETATIONS**

### **12.1 Definitions**

Unless the context indicates otherwise, the following expressions shall bear the meanings assigned to them and cognate expressions shall bear corresponding meanings:

### **12.2 Interpretation**

- .2.1 This document including the Introduction constitutes the sole record of this Agreement between the Parties relating to its subject matter and cancels and novates any prior verbal or written communication relating to such subject matter, whether express or implied, including any letters, drafts agreements, memoranda or minutes.
- .2.2 Words in persons shall include bodies corporate and vice versa.
- .2.3 The singular shall include the plural and vice versa and reference to any gender shall include the other gender.
- .2.4 Any reference to a statutory provision shall include a reference to that provision as amended from time to time.
- 1.2.6 In the event of any conflict between this Agreement and the Annexures attached hereto, the provisions of this Agreement shall prevail.

**12. PARTIES**

The parties to this lease are:

12.1 The National Development Agency a schedule 3 Public Entity Established in terms of the National development Agency Act, 1998 (Act No. 108 of 1998); and

12.2 ...XXXX

**3. PREMISES**

The Landlord lets to the tenant the whole of the property situated at ....., described as (deeds office description including extent and square meters.

**4. PERIOD**

This lease will commence on .....and remain in force for a period of ..... years until ..... subject to clauses 5 below, unless extended by the parties, in writing.

**5. TERMINATION**

In instances of breach of the Agreement where less notice is required, either party may terminate this agreement by giving six **(6) months** written notice to other.

**6. Renewal**

6.1 The Parties have the right to renew the lease for a further period commencing on the first day after the termination date and on same terms and conditions of this Lease.

6.2 The party intending to have the lease agreement renewed shall give the other party written notice thereof as provided in 6.3 hereunder.

6.3 At least six months prior to the expiry of the lease period the Party intending to have the lease agreement renewed shall notify the other Party in writing of its intention to exercise the right to renew the lease.

## **7. RENTAL**

7.1 The rent will be R ..... **(including VAT)** per month for the first year and is subject to a .....% annual escalation for the subsequent years.

7.2 The tenant shall pay the rent in advance on the first day of each month commencing on.....

7.3 The payment of rates and electricity shall be .....

## **8. Deposit**

8.1 A deposit equal to one month's rental shall be payable upon signing the lease agreement in order for the municipality to cover for any damages that may be incurred on the property and it will escalate as and when the rental escalates.

## **12. THE USE OF PREMISES**

12.1 The tenant is entitled to use the premises for the purpose of office accommodation only and for no other purposes, except with the written consent of the landlord, which consent shall not be withheld unreasonably.

12.2 While the lease is in force, the tenant shall:



- 3.2.1 comply with all the laws affecting its business or its business or its occupation of the premises;
- 3.2.2 not contravene, or permit the contravention of; any condition of title under which the landlord owns the premises;
- 3.3.3 not create any nuisance from the premises;
- 3.3.4 not do or keep on the premises anything which may not be done or kept in terms of any policy of insurance in respect of the premises.

## **10. SUITABILITY OF THE PREMISES**

The landlord warrants that the premises are suitable for the use and purpose for which they are let to enable the use and enjoyment thereof by the tenant.

## **11. MAINTENANCE**

11.1 Throughout the period of this lease the tenant shall maintain the whole of the premises in good order and condition, and carry out, at its own cost, any repairs or make any changes to the premises to make them suitable for this use except:

- 11.1.1 the maintenance of lifts, which shall be the responsibility of the landlord;
- 11.1.2 the maintenance of air conditioners, which shall be the responsibility of the landlord;
- 11.1.3 the cleaning of common areas, which shall be the responsibility of the landlord

## **12. OCCUPATION OF PREMISES**

12.1 The landlord warrants that the tenant's right to free and undisturbed possession of the premises from the commencement date until termination of the contract: subject thereto that any delay in taking

possession due to actions of the tenant, shall not be regarded as a delay on the part of the Landlord; and

12.2 The landlord warrants further that the premises are fit for the purposes in which occupation has been taken by the tenant.

### **13. NOTIFICATION OF DEFECTS**

The tenant shall give the landlord written notice within fourteen (14) days after the Commencement Date of this Lease of any defects in the Premises or any installations of whatsoever nature, or appliances therein which are defective or missing, failing such notice (or after the remedying of any matters stated in any such notice, as the case may be), the Tenant shall be deemed to have accepted the Premises, installations, appliances as being complete and without any defect therein and to have hired the Premises in the condition in which they are as at the Commencement Date (or after the remedying of any matters stated in any such notice, as the case may be).

### **14. IMPROVEMENTS**

14.1 The tenant shall not make any structural alterations or additions to the premises without the landlord's prior written consent, which shall not be reasonably withheld.

14.2 any alterations or additions made with the landlord's consent must be carried out by the tenant:

14.2.1 at its own cost;

14.2.2 in accordance with any other reasonable conditions and requirements stipulated by the landlord.

14.3 The tenant shall not be entitled to remove any alterations or additions which it has made and, on termination of the lease, they will remain the property of the landlord without compensation.

14.4 The tenant may install in the premises any fixtures and fittings necessary for the conduct of its business. Any fixtures and fittings not removed on termination of the lease will become the property of the landlord without compensation.

## **15. POST LEASE INSPECTION**

15.1 The Landlord shall furnish the dates and times at least sixty working (60) days prior to the expiry of the lease for the inspection of the premises after termination of the lease. Within sixty (60) days after the expiry of the lease, the Landlord shall ensure the following list are compiled;

15.1.1 A list of all the items where both parties agree that such items are damaged or defective and that the tenant is liable; and

15.1.2 A list of the items, which are damaged or defective and which in the opinion of the Landlord the tenant is liable for, whereas the tenant denies liability.

15.2 The items recorded in the list contemplated in clause 15.1.1 shall be rectified or replaced by the tenant.

15.3 The items recorded in the list contemplated in clause 15.1.2 shall be rectified or replaced as per agreement between the parties. Should the parties fail to reach such an agreement, the dispute may by agreement between the parties be referred to an independent professional who shall act as a mediator.

15.4 The tenant shall not be responsible for the payment of rent or damages during the month when the damages caused to the premises are being repaired.

**16. INSURANCE**

16.1 The Landlord shall insure the building and shall maintain such insurance throughout the currency of the lease and any extension thereof. The Tenant may not after commencement of the lease do, or allow anything that is contrary to the provisions, which will cause an increase in the premiums of any insurance policy held by the Landlord over the property.

16.2 Should the Tenant do or cause to be done anything that causes an increase in the premiums of such policy, the Tenant will be liable for the increase in the premiums occasioned by the actions of the Tenant. The Landlord shall furnish to the Tenant proof from the insurer.

**17. FIRE FIGHTING EQUIPMENT AND LIFTS**

17.1 The Landlord shall be obliged to install, maintain and operate on the premises fire extinguishing and fire detection equipment complying with the national building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) as amended, and or other applicable legislation.

17.2 The Landlord shall be obliged to maintain the lifts and ensure that regular checks are done in accordance with the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) as amended and/ or other applicable legislation.

**18. DAMAGES OR DESTRUCTION OF THE PREMISES**

18.1 In the event of the premises being destroyed and therefore rendered totally unfit for occupation, this lease shall be terminated automatically.

18.2 In the event of the premises being damaged and remaining partially suitable for the purposes of the tenant, the parties shall have the right to terminate the agreement forthwith. Should the parties continue with the

agreement, the tenant shall be entitled to a reduction in rental to the extent to which the tenant is deprived of the full use of the premises.

## **19. BREACH**

19.1 If a Party ("Defaulting Party") commits any breach of this Agreement and fails to remedy such breach within 14 (Fourteen) business days ("Notice Period") of written notice requiring the breach to be remedied, then the Party giving the notice ("Aggrieved Party") will be entitled, at its option –

19.1.1 to claim immediate specific performance of any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance and to require the Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or

19.1.2 to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice. Neither Party shall be entitled to cancel this Agreement unless the breach is a material breach. A breach will be deemed to be a material breach if –

19.1.2.1 it is capable of being remedied, but is not so remedied within the Notice Period; or

19.1.2.2 it is incapable of being remedied or is not remedied within the Notice Period, and payment in money will compensate for such breach but such payment is not made within the Notice Period.

**20. GOVERNING LAW AND DISPUTE RESOLUTION**

20.1 This **Lease Agreement** shall be governed by and construed in accordance with the laws of the Republic of South Africa.

20.2 In the event of any dispute arising from this **Lease Agreement**, the Parties shall make every effort to settle such dispute amicably.

20.3 If the dispute is not capable of being settled between the Parties amicably, such dispute shall be elevated to the Legal Departments of both parties.

**21. MANAGEMENT RULES**

The Landlord will furnish the tenant with all agreed to management Rules, if any, prior to entering into this agreement.

**22. REASONABLE ACCESS**

The landlord is, after reasonable prior written notification to the tenant, entitled to reasonable admission to the leased premises in order to carry out inspections, maintenance and repairs and to show the premises to prospective new tenants.

**23. CESSION, ASSIGNMENT AND SUB-LETTING**

23.1 The tenant shall not, except with the prior written consent of the Landlord, which shall not be unreasonably withheld;

23.1.1 cede or assign all or any of the rights and obligations of the Tenant under this lease; or

23.1.2 sublet the premises in whole or in part; or

23.1.3 give up possession of the premises or any portion thereof to any third party.

**34. SALE OF PREMISES**

24.1 Transfer of the premises from the Landlord pursuant to a sale thereof shall not in any way affect the validity of this lease. It shall accordingly, upon registration of transfer of the premises into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as landlord and acquire all rights and be liable to fulfill all the obligations which the landlord, as landlord, enjoyed against or was liable to fulfill in favour of the tenant in terms of the lease.

24.2 Nothing shall prevent the landlord from advertising the premises as for sale" or as "to let " long as it does not disturb the Tenant in its use and enjoyment of the premises.

**25. FORCE MAJEURE**

25.1 Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.

25.2 Should either Party be prevented from carrying out its contractual obligations by force majeure lasting continuously for a period of 60 (sixty) days, the Parties will consult with each other regarding the future implementation of the contract. If no mutually acceptable arrangement is arrived at within a period of 10 (ten) days thereafter, either Party will be entitled to terminate the Agreement forthwith on written notice.

## **26 GOOD FAITH AND CO-OPERATION**

26.1 The Parties shall co-operate and assist each other in all dealings with any other Party that is necessary to cause this Contract and all other Contracts contemplated herein to be achieved including but not limited to Contracts with the national, provincial and local government, government agencies and the private sector.

26.2 The Parties undertake to do all such things and to sign all documents reasonably necessary to give effect to the implementation of this Contract.

## **27. LEGAL COSTS**

Each Party will pay its own costs and expenses incurred by it in connection with the negotiation and execution of this Contract.

## **28 GENERAL**

### **28.1 Entire Agreement**

28.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

28.1.2 This Agreement supersedes and replaces any all previous communications, representations, understandings and agreements, either oral or written, between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.



## **28.2 Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

## **28.3 No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or stop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## **28.4 No Waiver or Suspension of Rights**

No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

**28.5 Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scrip to* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**28.6 Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**29. DOMICILIUM AND NOTICES**

29.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers –

<b>TENANT :</b>	<b>Physical Address</b>
	26 Wellington Road
	Parktown North
	2193

**Postal Address**  
Private Bag X 31959  
Braamfontein2017

Fax: 011 018 5587

**LANDLORD:**

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

29.2 All notices to be given in terms of this Agreement will be given in writing and will –

29.1.1 be delivered by hand or sent by telefax, and by way of email;

29.1.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

29.1.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

29.1.4 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 19.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
2017 in the presence of the undersigned witnesses.

\_\_\_\_\_

**FOR THE TENANT**  
**Mrs Thamo Mzobe**  
WHO BY HER SIGNATURE HERETO WARRANTS  
THAT SHE IS AUTHORISED TO SIGN ON BEHALF  
OF THE TENANT

**AS WITNESSES:**

1. \_\_\_\_\_ 2. \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
2017 in the presence of the undersigned witnesses.

\_\_\_\_\_

**FOR LANDLORD**  
**XXX, WHO BY HIS SIGNATURE HERETO**  
**WARRANTS THAT HE IS AUTHORISED TO SIGN ON**  
**BEHALF OF THE LANDLORD**

**AS WITNESSES:**

1. \_\_\_\_\_ 2. \_\_\_\_\_

For: Legal Services

**SCHEDULE 1**

**1. Addresses:**

LANDLORD:                   XXXXXXXXXXXXXXXXXXXX

P O Box XXXX  
George  
XXXX

XXX XXXXX  
George  
XXXX

**TENANT**

duly presented by ..... in capacity as  
.....duly authorised thereto by virtue of a  
resolution.

- 2. Premises Leased                   :       Portion –in the Planning and Social  
   Development building
- 3. Floor Area Leased (m2)        :
- 4. Adjustment Date                :       last day of annual period
- 5. Commencement date            :       .....
- 6. Commencement rental          :       **1 September 2017**
- 7. Escalation rate                 :       Subject to annual review by Council  
  and/or Management
- 8. Lease Period                    :       **3 Years**
- 9. VAT Registration No            :       0000 0000 00
- 10. Pro-rata share                 :       N/A
- 11. Renewal Period                :       **1 September 2017 (three months prior  
      expiry)**
- 12. Termination date             :       **30 August 2020**
- 13. Use of premises                :       Offices for National Development Agency

