



REQUEST FOR PROPOSALS

YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA	
BID NUMBER:	RFP005/2017
CLOSING DATE:	06 FEBRUARY 2017
CLOSING TIME:	11H00 AM TELKOM TIME
PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:	120 days
DESCRIPTION OF BID:	APPOINTMENT OF TRANSACTION ADVISORS FOR THE DEVELOPMENT , IMPLEMENTATION AND MONITORING OF A PROCUREMENT PROCESS FOR INDEPENDENT POWER PRODUCER (IPP) PROJECTS INCLUDING BASELOAD, MID MERIT AND MEDIUM TERM RISK MITIGATION PROJECTS RELATED TECHNOLOGIES AND INTERVENTIONS AS MANDATED BY THE DEPARTMENT OF ENERGY.
BID DOCUMENTS DELIVERY ADDRESS:	Development Bank of Southern Africa Welcome Centre 1258 Lever Road Midrand For Attention: David Nyaku NB: Bidders must ensure that they sign the register at the DBSA when submitting the Bids.
NAME OF BIDDER:	
CONTACT PERSON:	
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	
BIDDER'S STAMP OR SIGNATURE	

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PART A: INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF DEVELOPMENT BANK OF SOUTHERN AFRICA (“DBSA”)

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DESCRIPTION: APPOINTMENT OF TRANSACTION ADVISORS FOR THE DEVELOPMENT , IMPLEMENTATION AND MONITORING OF A PROCUREMENT PROCESS FOR INDEPENDENT POWER PRODUCER (IPP) PROJECTS INCLUDING BASELOAD, MID MERIT AND MEDIUM TERM RISK MITIGATION PROJECTS RELATED TECHNOLOGIES AND INTERVENTIONS AS MANDATED BY THE DEPARTMENT OF ENERGY.

The successful Bidder will be required to conclude a service level agreement with the DBSA

Bidders should ensure that Bids are delivered timeously and to the correct address (reflected on the cover page of this document). If the Bid is late, it will not be considered for evaluation.

The Bid box is open during office hours (08:00 – 16:30) Monday to Friday.

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

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT, WHICH ARE SET OUT IN PART C OF THIS DOCUMENT.

NAME OF BIDDER AND EACH ENTITY IN CONSORTIUM:	
POSTAL ADDRESS:	
STREET ADDRESS:	
CONTACT PERSON (FULL NAME):	
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

BIDDER REGISTRATION NUMBER OR REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM				
BIDDER VAT REGISTRATION NUMBER OR VAT REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM				
TAX CLEARANCE CERTIFICATE SUBMITTED?	YES		NO	
BBBEE CERTIFICATE SUBMITTED?	YES		NO	
REGISTERED WITH CENTRAL SUPPLIER DATABASE (NATIONAL TREASURY)?	YES		NO	
FULL NAME OF AUTHORISED REPRESENTATIVE:				
CAPACITY IN WHICH AUTHORISED REPRESENTATIVE SIGNS:				
SIGNATURE OF AUTHORISED REPRESENTATIVE:				
DATE OF SIGNATURE				

PART B: CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS

Please adhere to the following instructions

- Tick in the relevant block below
- Ensure that the following documents are completed and signed where applicable:
- Use the prescribed sequence in attaching the annexes that complete the Bid Document

NB: Should all of these documents not be included, the Bidder may be disqualified on the basis of non-compliance

YES

NO

<input type="checkbox"/>	<input type="checkbox"/>	One original Bid document with four(4) copies (clearly marked as original and copy); separated into separate envelopes for Qualifying Criteria and Functional Evaluation on the one hand, and Price and Preferential Points, on the other hand.
<input type="checkbox"/>	<input type="checkbox"/>	Part A: Invitation to Bid
<input type="checkbox"/>	<input type="checkbox"/>	Part C: Specifications, Conditions of tender and Undertakings by Bidder
<input type="checkbox"/>	<input type="checkbox"/>	Annexure A: Price Proposal
<input type="checkbox"/>	<input type="checkbox"/>	Annexure B: Company Profile
<input type="checkbox"/>	<input type="checkbox"/>	Annexure C: SBD2 - Tax Clearance Certificate Requirement
<input type="checkbox"/>	<input type="checkbox"/>	Annexure D: Declaration of Interest
<input type="checkbox"/>	<input type="checkbox"/>	Annexure E: SBD6.1 and B-BBEE status level certificate
<input type="checkbox"/>	<input type="checkbox"/>	Annexure F: SBD8: Declaration of Bidder's Past Supply Chain Practices
<input type="checkbox"/>	<input type="checkbox"/>	Annexure G: SBD9: Certificate of Independent Bid Determination
<input type="checkbox"/>	<input type="checkbox"/>	Annexure H: Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation
<input type="checkbox"/>	<input type="checkbox"/>	Annexure I: Certified copies of latest share certificates, in case of a company.
<input type="checkbox"/>	<input type="checkbox"/>	Annexure J (if applicable): A breakdown of how fees and work will be spread between members of the bidding consortium.
<input type="checkbox"/>	<input type="checkbox"/>	Annexure K: Supporting documents to responses to Qualification Criteria and Evaluation Criteria.
<input type="checkbox"/>	<input type="checkbox"/>	Annexure L: General Conditions of Contract.

Annexure M: Supporting documents – Registration with Central Supplier Database.

Annexure N: Service Level Agreement

PART C: SPECIFICATIONS, CONDITIONS OF TENDER AND UNDERTAKINGS BY BIDDER

1. DEFINITIONS

In this Request for Proposals, unless a contrary intention is apparent:

- 1.1 **B-BBEE** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003;
- 1.2 **B-BBEE Act** means the Broad-Based Black Economic Empowerment Act, 2003;
- 1.3 **B-BBEE status level** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the CA Codes of Good Practice.
- 1.4 **Business Day** means a day which is not a Saturday, Sunday or public holiday.
- 1.5 **Bid** means a written offer in the prescribed or stipulated form lodged by a Bidder in response to an invitation in this Request for Proposal, containing an offer to provide goods, works or services in accordance with the Specification as provided in this RFP.
- 1.6 **Bidder** means a person or legal entity, or an unincorporated group of persons or legal entities that submit a Bid.
- 1.7 **Companies Act** means the Companies Act, 2008.
- 1.8 **Compulsory Documents** means the list of compulsory schedules and documents set out in Part B.
- 1.9 **Closing Time** means the time, specified as such under the in Part A, by which Tenders must be received.
- 1.10 **DBSA** means the Development Bank of Southern Africa.
- 1.11 **DFI** means development finance institution.
- 1.12 **Evaluation Criteria** means the criteria set out under the clause 26 (Evaluation Process) of this Part C, which includes the Qualifying Criteria, Functional Criteria and Price and Preferential Points Assessment.
- 1.13 **Functional Criteria** means the criteria set out in clause 26.2 of this Part C.
- 1.14 **Intellectual Property Rights** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets

- and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.15 **PFMA** means the Public Finance Management Act, 1999.
- 1.16 **PPPFA** means the Preferential Procurement Policy Framework Act, 2000.
- 1.17 **PPPFA Regulations** means the Preferential Procurement Regulations 2011, published in terms of the PPPFA.
- 1.18 **Price and Preferential Points Assessment** means the process described in clause 26.3 of this Part C, as prescribed by the PPPFA.
- 1.19 **Proposed Contract** means the agreement including any other terms and conditions contained in or referred to in this RFP that may be executed between the DBSA and the successful Bidder.
- 1.20 **Qualifying Criteria** means the criteria set out in clause 26.1 of this Part C.
- 1.21 **Request for Proposal** or **RFP** means this document (comprising each of the parts identified under Part A, Part B, Part C and Part D) including all annexures and any other documents so designated by the DBSA.
- 1.22 **SARS** means the South African Revenue Service.
- 1.23 **Services** means the services required by the DBSA, as specified in this RFP Part D.
- 1.24 **SLA** means service level agreement.
- 1.25 **SOE** means State Owned Enterprise, as defined by the Companies' Act.
- 1.26 **Specification** means the conditions of tender set and any specification or description of the DBSA's requirements contained in this RFP.
- 1.27 **State** means the Republic of South Africa.
- 1.28 **Statement of Compliance** means the statement forming part of a Tender indicating the Bidders compliance with the Specification.
- 1.29 **Tender Manager** means the person so designated under clause 3 (Tender Manager) of this RFP Part C.
- 1.30 **Tendering Process** means the process commenced by the issuing of this Request for Proposals and concluding upon formal announcement by the DBSA of the selection of a successful Bidder(s) or upon the earlier termination of the process.
- 1.31 **Website** means a website administered by DBSA under its name with web address www.dbsa.org

2. INTERPRETATIONS

In this RFP, unless expressly provided otherwise a reference to:

- 2.1 “includes” or “including” means includes or including without limitation; and
- 2.2 “R” or “Rand” is a reference to the lawful currency of the Republic of South Africa.

3. TENDER MANAGER

The Tender Manager is:

David Nyaku

DBSA Supply Chain Unit

Email: scmqueries@dbsa.org

No questions will be answered telephonically.

4. SUBMISSION OF TENDERS

- 4.1 Hardcopies of Tenders are to be submitted to:

Physical Address of Tender Box

Development Bank of Southern Africa
Welcome Centre
1258 Lever Road
Midrand

Hours of access to Tender Box

Monday to Friday: 08h00 to 16h30

Information to be marked on package
containing Tender

DBSA
SCM Unit
RFP Ref. No.005 /2017
Name of Bidder
For Attention: David Nyaku

Indicate whether envelope pertains to
“Qualifying Criteria and functional
assessment”; or “price and preference
points”

- 4.2 Bidders are to provide one (1) original and three (3) hard copies of the Bid. If the Bidders are submitting more than one (1) proposal with regard to the functions explained in the cover page and Part D of this RFP, then these should be submitted as separate submissions and indicated on the cover page of the Bid. Each Bid shall be submitted with one (1) original and three (3) hard copies as indicated above. **A pdf format on a memory disk/flash disk must be submitted**

- 4.3 **Note:** This Tendering Process will use a two envelope system i.e. Bidders must submit the Qualifying Criteria and functional proposal in one envelope (together with relevant copies) and pricing and preference points proposals in a separate envelope (together with the relevant copies). **BOTH ENVELOPES MUST BE CLEARLY MARKED.**

5. RULES GOVERNING THIS RFP AND THE TENDERING PROCESS

- 5.1 Participation in the tender process is subject to compliance with the rules contained in this RFP Part C.
- 5.2 All persons (whether or not a participant in this tender process) having obtained or received this RFP may only use it, and the information contained herein, in compliance with the rules contained in this RFP.
- 5.3 All Bidders are deemed to accept the rules contained in Part C of this RFP.
- 5.4 The rules contained in Part C of this RFP apply to:
- 5.4.1 The RFP and any other information given, received or made available in connection with this RFP, and any revisions or annexure;
 - 5.4.2 the Tendering Process; and
 - 5.4.3 any communications (including any briefings, presentations, meetings and negotiations) relating to the RFP or the Tendering Process.

6. STATUS OF REQUEST FOR PROPOSAL

- 6.1 This RFP is an invitation for person(s) to submit a proposal(s) for the provision of the services as set out in the Specification contained in this RFP. Accordingly, this RFP must not be construed, interpreted, or relied upon, whether expressly or implicitly, as an offer capable of acceptance by any person(s), or as creating any form of contractual, promissory or other rights. No binding contract or other understanding for the supply of services will exist between the DBSA and any Bidder unless and until the DBSA has executed a formal written contract with the successful Bidder.

7. ACCURACY OF REQUEST FOR PROPOSAL

- 7.1 Whilst all due care has been taken in connection with the preparation of this RFP, the DBSA makes no representations or warranties that the content in this RFP or any information communicated to or provided to Bidders during the Tendering Process is, or will be, accurate,

current or complete. The DBSA, and its officers, employees and advisors will not be liable with respect to any information communicated which is not accurate, current or complete.

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

8. ADDITIONS AND AMENDMENTS TO THE RFP

- 8.1 The DBSA reserves the right to change any information in, or to issue any addendum to this RFP before the Closing Time. The DBSA and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise this right.
- 8.2 If the DBSA exercises its right to change information in terms of clause 9.1, it may seek amended Tenders from all Bidders.

9. REPRESENTATIONS

No representations made by or on behalf of the DBSA in relation to this RFP will be binding on the DBSA unless that representation is expressly incorporated into the contract ultimately entered into between the DBSA and the successful Bidder.

10. CONFIDENTIALITY

- 10.1 All persons (including all Bidders) obtaining or receiving this RFP and any other information in connection with this RFP or the Tendering Process must keep the contents of the RFP and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this RFP.

11. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION

- 11.1 All communications relating to this RFP and the Tendering Process must be directed to the Tender Manager.

- 11.2 All questions or requests for further information or clarification of this RFP or any other document issued in connection with the Tendering Process must be submitted to the Tender Manager and to the Project Officer via email at query@ipp-coal.co.za
- 11.3 Queries will be attended to only from the 20th of January 2017 with the last day for receiving queries been the 30th of January 2017.
- 11.4 Any communication by a Bidder to the DBSA will be effective upon receipt by the Tender Manager (provided such communication is in the required format).
- 11.5 The DBSA has restricted the period during which it will accept questions or requests for further information or clarification and reserves the right not to respond to any enquiry or request, irrespective of when such enquiry or request is received.
- 11.6 Except where the DBSA is of the opinion that issues raised apply only to an individual Bidder, questions submitted and answers provided will be made available to all Bidders by e-mail, as well as on the DBSA's website without identifying the person or organisation which submitted the question.
- 11.7 In all other instances, the DBSA may directly provide any written notification or response to a Bidder by email to the address of the Bidder (as notified by the Bidder to the Tender Manager).
- 11.8 A Bidder may, by notifying the Tender Manager in writing, withdraw a question submitted in accordance with clause 12, in circumstances where the Bidder does not wish the DBSA to publish its response to the question to all Bidders.

12. UNAUTHORISED COMMUNICATIONS

- 12.1 Communications (including promotional or advertising activities) with staff of the DBSA or their advisors assisting with the Tendering Process are not permitted during the Tendering Process, or otherwise with the prior consent of the Tender Manager. Nothing in this clause 12 is intended to prevent communications with staff of, or advisors to, the DBSA to the extent that such communications do not relate to this RFP or the Tendering Process.
- 12.2 Bidders must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

13. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION

- 13.1 Bidders may not seek or obtain the assistance of employees of the DBSA in the preparation of their tender responses.
- 13.2 The DBSA may in its absolute discretion, immediately disqualify a Bidder that it believes has sought or obtained such improper assistance.

13.3 Bidders are to be familiar with the implications of contravening the Prevention and Combating of Corrupt Activities Act, 2004 and any other relevant legislation.

14. ANTI-COMPETITIVE CONDUCT

14.1 Bidders and their respective officers, employees, agents and advisors must not engage in any collusion, anti-competitive conduct or any other similar conduct in respect of this Tendering Process with any other Bidder or any other person(s) in relation to:

14.1.1 the preparation or lodgement of their Bid

14.1.2 the evaluation and clarification of their Bid; and

14.1.3 the conduct of negotiations with the DBSA.

14.2 For the purposes of this clause 14, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to the DBSA or any other Bidder or any other person or organisation.

14.3 In addition to any other remedies available to it under law or contract, the DBSA may, in its absolute discretion, immediately disqualify a Bidder that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct during or before the Tendering Process.

15. COMPLAINTS ABOUT THE TENDERING PROCESS

15.1 Any complaint about the RFP or the Tendering Process must be submitted to the Tender Manager in writing, by email, immediately upon the cause of the complaint arising or becoming known to the Bidder.

15.2 The written complaint must set out:

15.2.1 the basis for the complaint, specifying the issues involved;

15.2.2 how the subject of the complaint affects the organisation or person making the complaint;

15.2.3 any relevant background information; and

15.2.4 the outcome desired by the person or organisation making the complaint.

15.3 If the matter relates to the conduct of an employee of the DBSA, the complaint should be addressed in writing marked for the attention of the Chief Executive Officer of the DBSA, and delivered to the physical address of the DBSA, as notified.

16. CONFLICT OF INTEREST

- 16.1 A Bidder must not, and must ensure that its officers, employees, agents and advisors do not place themselves in a position that may give rise to actual, potential or perceived conflict of interest between the interests of the DBSA and the Bidder's interests during the Tender Process.
- 16.2 The Bidder is required to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of the services under any contract that may result from this RFP. If the Bidder submits its Bid and a subsequent conflict of interest arises, or is likely to arise, which was not disclosed in the Bid, the Bidder must notify the DBSA immediately in writing of that conflict.
- 16.3 The DBSA may immediately disqualify a Bidder from the Tendering Process if the Bidder fails to notify the DBSA of the conflict as required.

17. LATE BIDS

- 17.1 Bids must be delivered by the Closing Time. The Closing Time may be extended by the DBSA in its absolute discretion by providing written notice to Bidders.
- 17.2 Bids delivered after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFP will be disqualified from the Tendering Process and will be ineligible for consideration. However, a late Bid may be accepted where the Bidder can clearly demonstrate (to the satisfaction of the DBSA, in its sole discretion) that late lodgement of the Bid was caused by the DBSA; that access was denied or hindered in relation to the physical tender box; or that a major/critical incident hindered the delivery of the Bid and, in all cases, that the integrity of the Tendering Process will not be compromised by accepting a Bid after the Closing Time.
- 17.3 The determination of the DBSA as to the actual time that a Bid is lodged is final. Subject to clause 17.2, all Bids lodged after the Closing Time will be recorded by the DBSA and will only be opened for the purposes of identifying a business name and address of the Bidder. The DBSA will inform a Bidder whose Bid was lodged after the Closing Time of its ineligibility for consideration. The general operating practice is for the late Bid to be returned within 5 (five) working days of receipt or within 5 (five) working days after determination not to accept a late Bid.

18. BIDDER'S RESPONSIBILITIES

18.1 Bidders are responsible for:

- 18.1.1 examining this RFP and any documents referenced or attached to this RFP and any other information made or to be made available by the DBSA to Bidders in connection with this RFP;
- 18.1.2 fully informing themselves in relation to all matters arising from this RFP, including all matters regarding the DBSA's requirements for the provision of the Services;
- 18.1.3 ensuring that their Bids are accurate and complete;
- 18.1.4 making their own enquiries and assessing all risks regarding this RFP, and fully considering and incorporating the impact of any known and unknown risks into their Bid;
- 18.1.5 ensuring that they comply with all applicable laws in regards to the Tendering Process particularly as specified by National Treasury Regulations, Guidelines, Instruction Notes and Practice Notes and other relevant legislation as published from time to time in the Government Gazette; and
- 18.1.6 submitting all Compulsory Documents.

18.2 Bidders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the B-BBEE Act, and must submit a certificate issued by a registered, independent auditor (who or which is not the Bidder or a part of the Bidder) or an accredited verification agency.

18.3 Bidders other than Exempted Micro-Enterprises (EMEs) must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE status. The submission of such certificates must comply with the requirements of instructions and guidelines issued by National Treasury and be in accordance with the applicable notices published by the Department of Trade and Industry in the Government Gazette.

18.4 The DBSA 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 DBSA.

18.5 Failure to provide the required information may result in disqualification of the Bidder.

19. PREPARATION OF BIDS

19.1 Bidders must ensure that:

- 19.1.1 their Bid is submitted in the required format as stipulated in this RFP; and

- 19.1.2 all the required information fields in the Bid are completed in full and contain the information requested by the DBSA.
- 19.2 The DBSA may in its absolute discretion reject a Bid that does not include the information requested or is not in the format required.
- 19.3 Unnecessarily elaborate responses or other representations beyond that which is sufficient to present a complete and effective tender proposal are not desired or required. Elaborate and expensive visual and other presentation aids are not necessary.
- 19.4 Where the Bidder is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appears only as part of an attachment to the Bid, or be included in a general statement of the Bidders usual operating conditions.
- 19.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the Bid.

20. ILLEGIBLE CONTENT, ALTERATION AND ERASURES

- 20.1 Incomplete Bids may be disqualified or evaluated solely on information contained in the Bid.
- 20.2 The DBSA may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Bidder.
- 20.3 The DBSA may permit a Bidder to correct an unintentional error in its Bid where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the DBSA reasonably considers that the correction would materially alter the substance of the Bid or effect the fairness of the Tendering Process.

21. OBLIGATION TO NOTIFY ERRORS

If, after a Bidder's Response has been submitted, the Bidder becomes aware of an error in the Bidders Response (including an error in pricing, but excluding clerical errors which would have no bearing on the evaluation of the Bid), the Bidder must promptly notify the DBSA of such error.

22. RESPONSIBILITY FOR BIDDING COSTS

- 22.1 The Bidders participation or involvement in any stage of the Tendering Process is at the Bidders sole risk, cost and expense. The DBSA will not be held responsible for, or pay for, any expense or loss that may be incurred by Bidders in relation to the preparation or lodgement of their Bid.

- 22.2 The DBSA is not liable to the Bidder for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Bidders participation in the Tendering Process, including without limitation, instances where:
- 22.2.1 the Bidder is not engaged to perform under any contract; or
 - 22.2.2 the DBSA exercises any right under this RFP or at law.

23. DISCLOSURE OF BID CONTENTS AND BID INFORMATION

- 23.1 All Bids received by the DBSA will be treated as confidential. The DBSA will not disclose contents of any Bid and Bid information, except:
- 23.1.1 as required by law;
 - 23.1.2 for the purpose of investigations by other government authorities having relevant jurisdiction;
 - 23.1.3 to external consultants and advisors of the DBSA engaged to assist with the Tendering Process; or for the general information of Bidders required to be disclosed as per National Treasury Regulations, Guidelines, Instruction Notes or Practice Notes.

24. USE OF BIDS

- 24.1 Upon submission in accordance with the requirements relating to the submission of Bids, all Bids submitted become the property of the DBSA. Bidders will retain all ownership rights in any intellectual property contained in the Bids.
- 24.2 Each Bidder, by submission of their Bid, is deemed to have licensed the DBSA to reproduce the whole, or any portion, of their Bid for the sole purposes of enabling the DBSA to evaluate the Bid.

25. BID ACCEPTANCE

All Bids received must remain open for acceptance for a minimum period of 90 (Ninety) days from the Closing Time. This period may be extended by written mutual agreement between the DBSA and the Bidder.

26. EVALUATION PROCESS

DBSA will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

Stage 1 :	Administrative Response
Stage 2 :	80% Minimum Threshold for Technical/Functionality
Stage 3 :	Weighted Scoring (Price and B-BBEE)
Stage 4 :	Post Tender Negotiations (if applicable) requesting Tenderers to provide best and final offer. Final evaluation will be in terms of the 90/10 preference point system and final award of contract.

26.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Responsiveness check
• Whether the Tender has been received on time
• Whether all Returnable Documents were completed and returned by the closing date and time
• Whether the Tender contains a priced offer (and separated)
• Original TAX Clearance certificate
• B-BBEE certificate
• Company Profile
• Reference Letters (Minimum of 3 trade references)
• Qualifications of proposed team
• CV's

The test for administrative responsiveness [Stage One] must be passed for a Tenderer's Proposal to progress to Stage Two for further pre-qualification

26.2 STAGE TWO: Minimum Threshold 80% for Technical Criteria

As prescribed in terms of the PPPFA and its Regulations, Tenderers are to note the following: Functionality is included as a threshold with a prescribed percentage threshold of 80%.

:

EVALUATION CRITERIA AND METHODOLOGY

The criteria to be used in the adjudication process will be in accordance with the DBSA procurement policy, which incorporates, amongst others, the provisions of the PPPFA.

Functional evaluation criteria

“Functionality” means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity. The need to invite and evaluate bids on the basis of functionality depends on the nature of the required commodity or service.

Responses will be evaluated for each professional service required (as listed in the table on pages 27 to 29) per programme (LNG, Piped Gas/Regional Gas, Domestic Gas and Gas Exploration) according to the extent to which they are able to fulfil the requirements of the DBSA, as stipulated in this Invitation to Bid.

Evaluation criteria will be weighted for each professional service with particular emphasis on the areas below. Weighting of evaluation criteria per professional services is provided in a later part of the document.

Functionality
Professional Competence
Understanding of the Scope of Work
<ul style="list-style-type: none"> Understanding of the Scope of Work as it applies to each professional service and category being bid for
<ul style="list-style-type: none"> Understanding of Government procurement requirements
Proposed approach to delivery on the Scope of Work relevant to each professional service and category being bid for
Skills and experience of the proposed individuals/ team
Appropriate skills and qualifications of individuals relevant to the Scope of Work of the particular professional service and category.
Professional experience in PPP, IPP and Gas Industry specific to the professional service and category in which the bidder is bidding
Synopsis of each project that each individual has worked on and the particular role that the individual played relevant to the Scope of Work for the professional service in which the bidder is bidding

A minimum threshold of 80 (eighty) points is required. Bids that do not meet this threshold will automatically be disqualified for further evaluation.

Thereafter, only the qualifying bids will be evaluated in terms of the 90/10 preference point system, where a maximum of 90 points are allocated for price and a maximum of 10 points are allocated in respect of the level of Broad-Based Black Economic Empowerment (B-BBEE) contributor of the bidder.

26.3 STAGE THREE: Evaluation and Final Weighted Scoring

a) Price Criteria

DBSA will utilise the following formula in its evaluation of Price:

$$PS = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where:

- Ps* = Score for the Tender under consideration
Pt = Price of Tender under consideration
Pmin = Price of lowest acceptable Tender

b) Broad-Based Black Economic Empowerment criteria

[Weighted score 10 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a Tenderer for attaining the B-BBEE status level of contribution in accordance with the table indicated in Annexure A

SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Percentage [%]
Technical / functionality	80

Evaluation Criteria	Final Weighted Scores
Price	90
B-BBEE - Scorecard	10
TOTAL SCORE:	100

26.4 STAGE FOUR: Post Tender Negotiations (if applicable)

DBSA reserves the right to conduct post tender negotiations with a shortlist of Tenderer(s).

The shortlist could comprise of one or more Tenderers. Should DBSA conduct post tender negotiations, Tenderers will be requested to provide their best and final offers to DBSA based on such negotiations.

A final evaluation will be conducted in terms of 90/10 and the contract will be negotiated and awarded to the successful Tenderer(s).

27. STATUS OF BID

- 27.1 Each Bid constitutes an irrevocable offer by the Bidder to the DBSA to provide the Services required and otherwise to satisfy the requirements of the Specification as set out in this RFP.
- 27.2 A Bid must not be conditional on:
- 27.2.1 the Board approval of the Bidder or any related governing body of the Bidder being obtained;
 - 27.2.2 the Bidder conducting due diligence or any other form of enquiry or investigation;
 - 27.2.3 the Bidder (or any other party) obtaining any regulatory approval or consent;
 - 27.2.4 the Bidder obtaining the consent or approval of any third party; or
 - 27.2.5 the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.
- 27.3 The DBSA may, in its absolute discretion, disregard any Bid that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other relevant conditions).
- 27.4 The DBSA reserves the right to accept a Bid in part or in whole or to negotiate with a Bidder in accordance with the provisions of this RFP and the applicable laws and regulations.

28. CLARIFICATION OF BIDS

- 28.1 The DBSA may seek clarification from and enter into discussions with any or all of the Bidders in relation to their Bid. The DBSA may use the information obtained when clarification is sought or discussions are had in interpreting the Bid and evaluating the cost and risk of accepting the Bid. Failure to supply clarification to the satisfaction of the DBSA may render the Bid liable to disqualification.
- 28.2 The DBSA is under no obligation to seek clarification of anything in a Bid and reserves the right to disregard any clarification that the DBSA considers to be unsolicited or otherwise impermissible or irrelevant in accordance with the rules set out in this RFP.

29. DISCUSSION WITH BIDDERS

- 29.1 The DBSA may elect to engage in detailed discussions with any one or more Bidder(s), with a view to maximising the benefits of this RFP as measured against the evaluation criteria and in fully understanding a Bidder's offer.

- 29.2 As part of the evaluation of this Bid, DBSA will invite Bidders to give a presentation to the DBSA in relation to their submissions.
- 29.3 The DBSA is under no obligation to undertake discussions with, and Bidders.
- 29.4 In addition to presentations and discussions, the DBSA may request some or all Bidders to:
- 29.4.1 conduct a site visit, if applicable;
 - 29.4.2 provide references or additional information; and/or
 - 29.4.3 make themselves available for panel interviews.

30. SUCCESSFUL BIDS

- 30.1 Selection as a successful Bidder does not give rise to a contract (express or implied) between the successful Bidder and the DBSA for the supply of the Services. No legal relationship will exist between the DBSA and a successful Bidder for the supply of the Services until such time as a binding contract is executed by them.
- 30.2 The DBSA may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.
- 30.3 A Bidder is bound by its Bid and all other documents forming part of the Bidder's Response and, if selected as a successful Bidder, must enter into a contract on the basis of the Bid with or without further negotiation.

31. NO OBLIGATION TO ENTER INTO CONTRACT

- 31.1 The DBSA is under no obligation to appoint a successful Bidder or Bidders (as the case may be), or to enter into a contract with a successful Bidder or any other person, if it is unable to identify a Bid that complies in all relevant respects with the requirements of the DBSA, or if due to changed circumstances, there is no longer a need for the Services requested, or if funds are no longer available to cover the total envisaged expenditure. For the avoidance of any doubt, in these circumstances the DBSA will be free to proceed via any alternative process.
- 31.2 The DBSA may conduct a debriefing session for all Bidders (successful and unsuccessful). Attendance at such debriefing session is optional.

32. BIDDER WARRANTIES

- 32.1 By submitting a Bid, a Bidder warrants that:
- 32.1.1 it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the DBSA, its officers,

employees, or advisers other than any statement, warranty or representation expressly contained in the RFP;

- 32.1.2 it did not use the improper assistance of DBSA's employees or information unlawfully obtained from them in compiling its Bid;
- 32.1.3 it is responsible for all costs and expenses related to the preparation and lodgement of its Bid, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- 32.1.4 it accepts and will comply with the terms set out in this RFP; and
- 32.1.5 it will provide additional information in a timely manner as requested by the DBSA to clarify any matters contained in the Bid.

33. DBSA'S RIGHTS

- 33.1 Notwithstanding anything else in this RFP, and without limiting its rights at law or otherwise, the DBSA reserves the right, in its absolute discretion at any time, to:
 - 33.1.1 cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;
 - 33.1.2 alter the structure and/or the timing of this RFP or the Tendering Process;
 - 33.1.3 vary or extend any time or date specified in this RFP
 - 33.1.4 terminate the participation of any Bidder or any other person in the Tendering Process;
 - 33.1.5 require additional information or clarification from any Bidder or any other person;
 - 33.1.6 provide additional information or clarification;
 - 33.1.7 negotiate with any one or more Bidder;
 - 33.1.8 call for new Bid;
 - 33.1.9 reject any Bid received after the Closing Time; or
 - 33.1.10 reject any Bid that does not comply with the requirements of this RFP.

34. GOVERNING LAWS

- 34.1 This RFP and the Tendering Process are governed by the laws of the Republic of South Africa.
- 34.2 Each Bidder must comply with all relevant laws in preparing and lodging its Bid and in taking part in the Tendering Process.
- 34.3 All Bids must be completed using the English language and all costing must be in South African Rand.

35. MANDATORY QUESTIONS

35.1 Bidders shall provide full and accurate answers to all (including mandatory) questions posed in this document, and, are required to explicitly state "Comply/Accept" or "Do not comply/Do not accept" (with a √ or an X) regarding compliance with the requirements. Where necessary, the Bidders shall substantiate their response to a specific question.

NOTE: It is mandatory for Bidders to complete or answer this part fully; failure to do so result the Bid being treated as incomplete the Bid may be disqualified.

35.1.1

This Bid is subject to the General Conditions of Contract stipulated in this RFP document.	Accept	Do not accept

35.1.2

The laws of the Republic of South Africa shall govern this RFP and the Bidders hereby accept that the courts of the Republic of South Africa shall have the jurisdiction.	Accept	Do not accept

35.1.3

The DBSA shall not be liable for any costs incurred by the Bidder in the preparation of response to this RFP. The preparation of response shall be made without obligation to acquire any of the items included in any Bidder's proposal or to select any proposal, or to discuss the reasons why such vendor's or any other proposal was accepted or rejected.	Accept	Do not accept

35.1.4

The DBSA may request written clarification or further information regarding any aspect of this proposal. The Bidders must supply the requested information in writing within two working days after the request has been made, otherwise the proposal may be disqualified.	Accept	Do not accept

35.1.5

In the case of Consortium, Joint Venture or subcontractors, Bidders are required to provide copies of signed agreements stipulating the work split and Rand value.	Accept	Do not accept

35.1.6

In the case of Consortium, Joint Venture or subcontractors, all Bidders are required to provide mandatory documents as stipulated in schedule 1 of the Response format.	Accept	Do not accept

35.1.7

The DBSA reserves the right to; cancel or reject any proposal and not to award the tender to the lowest Bidder or award parts of the tender to different Bidders, or not to award the tender at all.	Accept	Do not accept

35.1.8

Where applicable, Bidders who are distributors, resellers and installers of network equipment are required to submit back-to-back agreements and service level agreements with their principals.	Accept	Do not accept

35.1.9

By submitting a proposal in response to this RFP, the Bidders accept the evaluation criteria as it stands.	Accept	Do not accept

35.1.10

Where applicable, the DBSA reserves the right to run benchmarks on the requirements equipment during the evaluation and after the evaluation.	Accept	Do not accept

35.1.11

The DBSA reserves the right to conduct a pre-award survey during the source selection process to evaluate contractors' capabilities to meet the requirements specified in the RFP and supporting documents.	Accept	Do not accept

35.1.12

Only the solution commercially available at the proposal closing date shall be considered. No Bids for future solutions shall be accepted.	Accept	Do not accept

35.1.13

<p>The Bidder should not qualify the proposal with own conditions.</p> <p>Caution: If the Bidder does not specifically withdraw its own conditions of proposal when called upon to do so, the proposal response shall be declared invalid.</p>	Accept	Do not accept

35.1.14

Should the Bidder withdraw the proposal before the proposal validity period expires, the DBSA reserves the right to recover any additional expense incurred by the DBSA having to accept any less favourable proposal or the additional expenditure incurred by the DBSA in the preparation of a new RFP and by the subsequent acceptance of any less favourable proposal.	Accept	Do not accept

35.1.15

Delivery of and acceptance of correspondence between the DBSA and the Bidder sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to either party's postal address or address for service of legal documents shall be deemed to have been received and accepted after (2) two days from the date of postage to the South African Post Office Ltd.	Accept	Do not accept

35.1.16

Should the parties at any time before and/or after the award of the proposal and prior to, and-or after conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in services, etc. The DBSA shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award and cancel the proposal by giving the Bidder not less than 90 (ninety) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the negotiations. Such cancellation shall mean that The DBSA reserves the right to award the same proposal to next best Bidders as it deems fit.	Accept	Do not accept

35.1.17

In the case of a consortium or JV, each of the authorised enterprise's members and/or partners of the different enterprises must co-sign this document.	Accept	Do not accept

35.1.18

Any amendment or change of any nature made to this RFP shall only be of force and effect if it is in writing, signed by THE DBSA signatory and added to this RFP as an addendum.	Accept	Do not accept

35.1.19

Failure or neglect by either party to (at any time) enforce any of the provisions of this proposal shall not, in any manner, be construed to be a waiver of any of that party's right in that regard and in terms of this proposal. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this proposal, or prejudice the right of that party to institute subsequent action.	Accept	Do not accept

35.1.20

Bidders who make use of subcontractors. The proposal shall however be awarded to the Bidder as a primary contractor who shall be responsible for the management of the awarded proposal. A Bidder which was awarded the contract after scoring HDI / RDP goals is not allowed to subcontract more than 25% of the contract to a non-HDI entity. No separate contract shall be entered into between the DBSA and any such subcontractors. Copies of the signed agreements between the relevant parties must be attached to the proposal responses.	Accept	Do not accept

35.1.21

All services supplied in accordance with this proposal must be certified to all legal requirements as per the South African law.	Accept	Do not accept

35.1.22

No interest shall be payable on accounts due to the successful Bidder in an event of a dispute arising on any stipulation in the contract.	Accept	Do not accept

35.1.23

<p>Evaluation of Bids shall be performed by an evaluation panel established by The DBSA.</p> <p>Bids shall be evaluated on the basis of conformance to the required specifications as outlined in the RFP. Points shall be allocated to each Bidder, on the basis that the maximum number of points that may be scored for price is 90, and the maximum number of preference points that may be claimed for HDI (according to the PPPFA) is 10.</p>	Accept	Do not accept

35.1.24

<p>If the successful Bidder disregards contractual specifications, this action may result in the termination of the contract.</p>	Accept	Do not accept

35.1.25

<p>The Bidders' response to this Bid, or parts of the response, shall be included as a whole or by reference in the final contract.</p>	Accept	Do not accept

35.1.26

<p>Should the evaluation of this Bid not be completed within the validity period of the Bid, the DBSA has discretion to extend the validity period.</p>	Accept	Do not accept

35.1.27

<p>Upon receipt of the request to extend the validity period of the Bid, the Bidder must respond within the required time frames and in writing on whether or not he agrees to hold his original Bid response valid under the same terms and conditions for a further period.</p>	Accept	Do not accept

Should the Bidder change any wording or phrase in this document, the Bid shall be evaluated as though no change has been effected and the original wording or phrasing shall be used.	Accept	Do not accept
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<p>The following will be grounds for disqualification:</p> <ul style="list-style-type: none"> • Unsatisfactory performance under a previous public contract in the past 5 years, provided that notice of such unsatisfactory performance has been given to the bidder; and/or • The bidder or any of its directors have committed a corrupt or fraudulent act in competing for the appointment; and/or • The bidder or any of its directors have been convicted of fraud or corruption in the last 5 years; and/or • The bidder or any of its directors have been listed in the Register for Tender Defaulters under section 9 of the Prevention and Combating of Corrupt Activities Act; and/or • Bids received after the stipulated closure time will be immediately disqualified • Bidders whom have recently completed, currently performing, or to commence work on specific categories of services may be excluded to enable the Bank manage its concentration risk. This threshold is currently set at R10million for consultancy services. 	Accept	Do not accept
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Signature(s) of Bidder or assignee(s)

Date

Name of signing person (in block letters)

Capacity

Are you duly authorized to sign this Bid?

Name of Bidder (in block letters)

Postal address (in block letters)

Domicilium citandi et executandi in the RSA (full street address of this place) (in block letters)

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

Telephone Number

Facsimile Number

Cell Number

Email Address

Part D – Terms of Reference

1. PURPOSE AND SCOPE OF THE BID

1.1 Introduction and Background

Significant expansion of the South African economy during the past few decades resulted in consequent and substantial increased growth in electricity demand without the necessary growth in the supply side. The Government of South Africa through the Department of Energy (“the Department”) took a decision to encourage private sector investment in the generation of electricity and to ensure renewable energy, coal, gas, co-generation and hydro become part of the energy mix. Currently, the majority of electricity is generated by the South African utility, Eskom, from burning fossil fuel i.e. coal with only one nuclear power plant in the Eskom fleet.

The Department commenced with a process in 2010 to create an enabling environment for Independent Power Producers (“IPPs”) to participate in the electricity sector. To this end the Department has undertaken the following:

- a. a revision and promulgation of the Electricity Regulations on New Generation Capacity (“NewGen Regulations”) issued in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006);
- b. revision of the Electricity Regulation Act;
- c. revision of the National Energy Regulator Act.

The Department is in the process of developing the Integrated Energy Plan (“IEP”) for South Africa, in order to determine the most appropriate approach to meeting our energy needs over the next 50 years. Over and above the energy security, the objectives of the IEP include the following:

- i. Minimise the cost of energy,
- ii. Increase access to energy,
- iii. Diversify supply sources and primary sources of energy,
- iv. Minimise emissions from the energy sector,
- v. Promote energy efficiency in the economy,
- vi. Promote localisation, technology transfer and the creation of jobs, and
- vii. Promote the conservation of water.

The IEP will accordingly comprise of sector plans, which include various primary energy carriers and how they could be applied in meeting the Country objectives in an integrated manner. The sector plans that need to be integrated are for electricity (Integrated Resource Plan), liquid fuels (Liquid Fuels Road Map), gas (Gas Utilisation Master Plan), energy efficiency (National Energy Efficiency Strategy), transport (National Transport Roadmap), the Universal Access to Energy Roadmap, etc.

The National Development Plan envisages that, by 2030, South Africa will have an energy sector that promotes:

- a. Economic growth and development through adequate investment in energy infrastructure. The sector should provide a reliable and efficient electricity service at competitive rates, while supporting economic growth through job creation.
- b. Social equity through expanded access to electricity at affordable tariffs and through targeted, sustainable subsidies for needy households.
- c. Environmental sustainability through efforts to reduce pollution and mitigate the effects of climate change.

1.2 Determinations

In 2012, the Minister of Energy has determined that new generation capacity should be procured from hydro, coal and gas sources to support the Country's base load energy mix and generation from gas and cogeneration as part of the medium-term risk mitigation project/programme. This has to be procured through one or more of the Independent Power Producer (IPP) programmes and to contribute towards national energy security. This determination was made as per the policy adjusted scenario of the Integrated Resource Plan for Electricity 2010 – 2030, published by the Department on 06 May 2011 in the Government Gazette, page 14.

Furthermore, electricity produced from Coal, Natural Gas, Hydro and co-generation energy sources, described below, shall be procured as contemplated in the NewGen Regulations (as published by the Department as procurer of the energy in August 2011) which may include where appropriate and having regard to all relevant circumstances, tendering processes; direct negotiation and other procurement processes.

1.2.1 Baseload IPP Programme:

In terms of the Determination on Baseload IPP Procurement Programme promulgated on 19 December 2012, the Minister determined as follows:-

- a. 2500 megawatts to be generated from Coal under the New Build for 2014 to 2024 in Table 3 of the Integrated Resource Plan(IRP) 2010-2030;
- b. 2609 megawatts to be generated from Hydro energy sources as capacity allocated to “Imported Hydro” under the New Build for the year 2022 to 2024 in Table 3 of the IRP; and
- c. 2652 megawatts to be generated from Natural Gas (which include Liquefied Natural Gas or Natural Gas delivered by pipeline) which represents the capacity allocated under the New Build to Gas CCGT (natural gas) and OCGT(diesel) for the years 2012 to 2025 in Table 3 of the IRP. 474 megawatts to be generated from Natural Gas was also determined in the Medium Term Risk Mitigation Project IPP Procurement Programme.

On 18 August 2015, the Gas IPP Procurement Programme and Amendment to the Baseload IPP Procurement Programme and Medium Term Risk Mitigation Project IPP Procurement Programme Determination was promulgated, in terms of which gas has its own determination and 3126 megawatts will be generated therefrom. The megawatts in paragraph (a) and (b) remain part of the Baseload Determination.

1.2.2 Medium Term Risk Mitigation Project:

In terms of the Determination on Medium Term Risk Mitigation Project IPP Procurement Programme promulgated on 19 December 2012, the Minister determined as follows:-

- a. 800 MW to be generated from Industrial Cogeneration energy (which may include one or more of the following: biomass; industrial wastes and combined Heat and Power) which represents capacity allocated in Table 1 of the IRP; and
- b. 474 MW of base load energy to be generated from Natural Gas which represents the capacity allocated to Gas CCGT (natural gas) under New Build programme for the years 2019 to 2020 in Table 3 of the IRP. This

has been amended as discussed above.

The medium term risk mitigation project is intended to address a potential shortfall of generation in the medium term, next 6 to 7 years.

On 18 September 2015, the Cogeneration IPP Procurement Programme and Amendment to the Medium Term Risk Mitigation Project IPP Procurement Programme Determination was promulgated in terms of which an additional 1000 megawatts from cogeneration was determined.

1.3. Role of DBSA, the Department and the National Treasury

During November 2010 the Department, National Treasury and Development Bank of Southern Africa (“DBSA”) signed a Memorandum of Agreement (“MoA”) intended to allow each of the parties to contribute towards “creating conditions advantageous to the market development of IPP Projects and subsequent development and procurement of IPP Projects”. On the basis of such arrangements, DBSA procure and appoint transaction advisors to support the Department and the IPP Office in the formulation and undertaking of the procurement process of IPP projects and program/s.

The Department, with this Request for Proposals, is inviting local and/or international available, skilled and committed, experienced and suitably-qualified specialists, project officers/managers and sector experts to provide the relevant services to it for a period of three (3) years for the procurement of IPPs to give effect to the Minister of Energy’s determination as set out above.

Prospective bidders, local and international, for all the above, may bid as individuals and/or as companies and/or as a consortium formed as a joint venture or by contract. The appointers (being the DBSA on behalf of the Department and the IPP Office) retain the discretion to select the advisors as a company or consortium or as individuals within a consortium and appoint them as such. The recommendation to prospective bidders is that agreements between members of a joint venture or consortium should allow for such appointments.

1.4 Award of Bids

The Department has developed considerable experience in the last rounds of the REIPPPP and has done sufficient planning and development to proceed rapidly through the various stages of procurement for the base load and medium term risk mitigation projects.

There are various categories of professional services required so that resources can be deployed across the range of specialist activities, namely:

- a. Project and program management expertise and skills in the procurement of IPPs, (and/or public private partnerships (PPPs)) in South Africa and in the Region and cross border areas.
- b. Transaction advisory and evaluators services (legal, financial, technical and economic development including localization) related to the procurement of these projects from the private sector under the procurement legislation of South Africa.
- c. Governance and compliance specialists to monitor and assess compliance during the evaluation processes.

The resource requirements and time needed from specialists and advisors for the various professional services indicated above cannot be determined with accuracy at this stage and will be determined by the management of the IPP Office in the execution of its mandate. It is therefore the intention of the DBSA on behalf of the Department to appoint multiple individuals/firms per professional service, category and technology to address the variable nature, role and role combination requirements of the IPP Office to manage the allocation of work based on responses to specific works orders and issue of purchase orders.

Where necessary (in the sole discretion of the Department) and as negotiated with the DBSA, the Department may appoint some of the required professionals/professional firms on a monthly retainer basis with hourly rates for services provided in excess of the specified time parameters.

In the event that a specific programme do not materialize or is suspended the Department retain the right to cancel the contract with the service provider or to

reallocate the resources to another programme or category based on functional compliance.

1.5 Professional Service Required

1.5.1 Project officers and program managers to support the Department in the implementation and management of the procurement for each category type. The professionals or firms appointed should also have contract management, monitoring and reporting specialists for establishing appropriate monitoring and reporting systems for the implementation and management of these and other existing IPPs.

1.5.2 Transaction advisory services including evaluators as per below:

- a. Financial transaction advisory services for each category and for each technology type;
- b. Technical transaction advisory for category and each technology type;
- c. Legal transaction advisory services for each category of the determination and for each technology type so as to develop a standard, bankable PPA suited for the South African market and
- d. Economic development transaction advisory services for each category and technology type to design and set ED criteria and Localization standards for each technology type that takes into account likely geographical and socio-economic criteria.
- e. Governance and compliance specialists to monitor and assess compliance during the evaluation processes.
- f. Review teams of specialists to review the work of transaction advisors for international best practice and quality control

The table below sets out a summary of different specialist and transaction advisory services required.

Professional Service	Category	Technology	International Experience Required (Yes/No)	Department's Preference Individual/Firm	Duration of contract (months)
Project / Program Officers	1. Baseload (Coal)	PF, FBC, Imports, Ultra Super Critical	Yes	Individual or Firm	24 to 36
	2. Baseload (Hydro)	Imported Hydro	Yes	Individual or Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	Yes	Individual or Firm	24 to 36
Financial Transaction Advisor Services	1. Baseload (Coal)	PF, FBC, Imports, Ultra Super Critical	Yes	Individual or Firm	24 to 36
	2. Baseload (Hydro)	Imported Hydro	Yes	Individual or Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	Yes	Individual or Firm	24 to 36
Technical Transaction Advisor Services	1. Baseload (Coal)	PF, FBC, Imports. Ultra Super Critical	Yes	Individual or Firm	24 to36
	2. Baseload (Hydro)	Imported Hydro	Yes	Individual or Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	Yes	Individual or Firm	24 to 36
Legal Transaction	1. Baseload (Coal)	PF, FBC, Imports, Ultra Super Critical	Yes	Individual or Firm	24 to36

Professional Service	Category	Technology	International Experience Required (Yes/No)	Department's Preference Individual/Firm	Duration of contract (months)
Advisory	2. Baseload (Hydro)	Imported Hydro	Yes	Individual or Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	Yes	Individual or Firm	24 to 36
Economic Development Transaction Advisory	1. Baseload (Coal)	PF, FBC, Imports, Ultra Super Critical	Yes	Individual or Firm	24 to36
	2. Baseload (Hydro)	Imported Hydro	Yes	Individual or Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	Yes	Individual or Firm	24 to 36
Programme Governance specialist	1. Baseload (Coal)	PF, FBC, Imports, Ultra Super Critical	No	Firm	24 to36
	2. Baseload (Hydro)	Imported Hydro	No	Firm	24 to 36
	3. CoGeneration	Industrial Biomass, Waste to Energy and Combined Heat and Power	No	Firm	24 to 36

The following must be taken into account in preparing proposals for the services from local and international service providers:

A. International expertise

Where indicated in the table above, the Department of Energy wishes to have access to advisors that can provide international best practice in terms of appropriate market practice and experience. Where indicated above, the Department wishes to appoint advisors with international expertise, however if local advisors wish to enter into consortia and/or joint venture arrangements with firms with international experience they may do so. Local advisors are required to indicate how they will source this international experience in support of their teams. The information provided for the international team members must be submitted with the bids in enough detail for the Department to make an informed decision. Pricing proposals for international teams must be submitted separately.

B. Appointment of Individuals

The table above indicates where the Department wishes to appoint individuals to various positions. Such individuals will be offered a two or three year contract. These contracts will be negotiated with the individuals after the notification of their appointment by the DBSA.

C. Transaction advisory services

The Firms/Teams appointed will be required to play the more conventional role of advisors and transaction advisors to the Department in doing the due diligence, preparing the regulatory environment for the projects and programs, preparing the procurement documentation, support the bidding and evaluation processes and support the Department to ensure preferred bidders reach contractual close. The scope of work and expertise required is more than an individual may provide.

D. Pricing Proposals

In order to allow the DBSA to evaluate time-based price proposals in a comparable manner, all potential bidders must provide their pricing proposals in accordance with the guidelines set out in the Instruction to Bidders, section 8.4.

E. Governance Arrangements

Because of the limited number of professional advisors that are available to carry out the scope of work proposed in this RFP, bidders may make proposals for different professional services per category and technology , provided that they ensure the establishment of appropriate governance arrangements within their firms, so that:

- Project officers and program managers as well as any specialists/ co-ordinators are separate from advisory services managed by them;
- Proposals submitted for transaction advisory services may not be in a category of technology in which such individual within a firm is providing professional services, in any capacity whatsoever, without appropriate governance arrangements being implemented and being effective. However, firms may use “Chinese walls” in order to ring-fence the services of any such conflicted individuals and so as to allow the firms, but not the individuals, to do offer advisory services to both the Department and to potential IPP, lenders, and contractors etc.
- Bidders must declare their conflicts in their bid proposals for the Department to note and to be aware of in the allocation of the work.
- Failure to disclose any conflict of interest and or failure to show in detail how the required separation of functions will take place may result in a bid being rejected.

1.6 Scope of Work

The professional service providers will be required to work closely with the Department, the Development Bank of Southern Africa (DBSA) and any other consultants engaged by the Department and their partners in this and related assignments.

A. Project Officers and Program Managers

a) Objectives

To deliver the projects, procurement programs, the procurement documentation, and signed agreements for the relevant technology type, within the time constraints set by the Department, including all administrative support to the Department to manage the implementation of these projects and programs.

b) Scope of Work

As directed by the management of the IPP Office, these project officers and program managers must:

- Manage the transaction advisors and ensure the timely delivery of outputs
- Coordinate all outputs so that the overall design of the program is applied to the work streams for which they are responsible
- Ensure consistency between technology type work streams by working seamlessly with other project officers and program managers

- Co-ordinate stakeholders
- Ensure delivery of projects and program based on international best practice
- Report to the Department changes necessary to enhance participation of private sector in the energy sector
- Resolve any blockages and manage risk
- Be proactive in identifying risks and finding solutions
- Ensure quality and standardisation of deliverables with other projects and programs
- Manage projects and programs during implementation, identifying areas of improvement and lessons learned
- Manage the budget for the work streams and monitor and approve all invoices of professional service providers for that work streams
- Implement recommendations from international review team for international best practice and quality control, if applicable

c) **Deliverables**

- Workstream plans
- Specific work allocations for transaction advisors on the work streams
- Weekly, monthly and ad hoc reporting to the Department
- Procurement documentation for additional advisory services for that work streams
- Procurement plans
- Manage evaluation processes, including the preparation of evaluation plans and reports
- Negotiation plan, if applicable
- Manage the settlement and signing of IPP-related agreements within the relevant work stream

d) Management plans for projects and programs in implementation and lessons learned

- If required, close-out reports

e) **Skills and Experience Required**

- 8 years' experience in the feasibility study, procurement and negotiation of PPP agreements concluded in accordance with Treasury Regulation 16
- At least 5 years project management experience acquired on very large and complex projects
- Tertiary Qualification in technical; legal or financial field

- Additional project management qualifications will be an advantage.

f) **Time Requirements**

- 24 to 36 months with full time availability.

B. Financial transaction advisory services for each category;

a) Objectives

To design the financial parameters for the IPP procurement based on an analysis the results of the RFRI and thereby advise Department on the most effective means of procurement so as to ensure that the IPP projects are optimally priced and bankable

b) Scope of Work

- summarise and assess the information under the RFRI for purposes of advising Department on readiness of the projects submitted in response to the RFRI and procurement process to be followed for procurement of ready projects;
- advise the Department on the financing options and bankability in respect of the technologies and projects and design a mechanism to optimally allocate foreign exchange risk between the public and private sector stakeholders;
- advise the Department to the extent relevant of the foreign exchange exposure of the technologies and the resource to Government of each of the Projects;
- prepare these in the form of a feasibility study that shows risk allocation and bankability
- finalise and deliver the procurement documentation i.e. RFQ (where applicable) and RFP;
- carry out financial evaluation of proposals in accordance with the procurement plan
- support the Department to conduct negotiations with the preferred bidders taking due cognisance of the immediate need for power within the country, the objectives of Department, the impact on the financial and capital markets and the specific South African market circumstances and requirements;
- draft a contingent liability report to determine the impact of each of the projects on the balance sheet of the Country;
- provision of a close out report to the Department;

c) Deliverables

- Financial feasibility study
- Financial parameter design
- RFQ
- RFP
- Evaluation Reports
- Contingent Liability report
- Close Out Report

d) Skills Required

- A team made up of individuals or a firm with at least 10 years' experience in the project finance and financial transaction advisory work, specific technology would be an advantage
- Experience in the procurement of IPPs or PPPs in South Africa
- Appropriate financial qualifications

e) Time Requirements

- 24 months indicative

C. Technical transaction advisory for each category and technology type;

a) Objectives

- To provide the Department with international best practice in the selection and use of technology for each technology type and to provide accurate costing estimates for the financial feasibility study
- To provide technical expertise in the preparation of bidding documents and in the evaluation of proposals

b) Scope of Work

- To provide input into the procurement documentation and processes as collected and assessed from the RFRI process
- To advise on the technical aspects of each of the technologies, grid connection and network related issues.
- To advise the Department on the connection and grid issues in respect of each of the projects;
- To provide input into the feasibility studies produced by the financial advisors on technology and costing as well as risk issues so that the technology risks are managed to ensure project bankability

- To finalise and deliver the procurement documentation i.e. RFQ (where applicable) and RFP
- To evaluate all proposals against the set technical evaluation criteria and in compliance with the procurement plan
- To input into the Finance streams contingent liability report
- To provide a technical close out report

c) Deliverables

- Feasibility study
- RFQ
- RFP
- Evaluation Report
- Close Out Report

d) Skills Required

- A team made up of individuals with at least 10 years' experience in the specific technology
- Experience in the procurement of IPPs in South Africa
- International experience in the procurement of IPPs in that technology
- Appropriate qualifications

e) Time Requirements

- 24 months indicative

D. Legal transaction advisory services for each category so as to develop a standard, bankable PPA suited for the South African market

a) Objectives

- To apply the overall programme procurement plan and to apply it to the technology type so as to develop a standard, bankable Power Purchase Agreement suited for the South African market.
- To ensure that the procurement is in compliance with the procurement plan
- To contribute to the RFQ and RFP
- To contribute to the contingent liability and close out reports for each Project

b) Scope of Work

- develop and finalise the relevant project agreements which will, include amongst others,
 - the power purchase agreement;

- implementation agreement;
 - finance direct agreements; and
 - Transmission and connection agreements.
 - develop and finalise the evaluation and relevant documentation for the procurement including the evaluation criteria in the procurement documentation
 - prepare and submit evaluation reports for purposes of adjudication and selection of preferred bidders;
 - prepare the necessary agreements, governance, institutional arrangements in respect of the cross-border transactions;
- c) **Deliverables**
- Legal due diligence report per technology type and per project if cross border
 - All IPP related agreements
 - Procurement documents
 - Evaluation Report
 - Overall procurement compliance report
- d) **Skills Required**
- Team with at least 5 years' experience in drafting agreements for IPP, PPP an or complex commercial transactions.
 - International experience in the IPP agreements for that technology type
 - Experience in the drafting of cross border PPAs, treaties and complex projects
 - Appropriate qualifications
- e) **Time Requirements**
- 24 months indicative

E. Economic development transaction advisors for each category to design and set ED and localization criteria for each technology type that takes into account likely geographical and socio-economic criteria.

a) **Objectives**

- To apply the general ED plan for the IPP program to the specific technology type and to maximise the specific ED potential for that IPP

b) **Scope of Work**

- Develop a technology specific ED plan with components such as Local Content, skills develop, BBBEE etc. based on the characteristics of this

technology type that is compliant with legislative requirements and current best practice

- Set ED criteria and input the costs and impacts of these into the financial feasibility study
- Develop the ED procurement details for the procurement documentation and ensure that it is contained in the RFP and the various agreements and signed off by the legal transaction advisors
- Develop the ED evaluation criteria and carry out the ED evaluation on proposals received
- Design and implement a ED contract management, monitoring and reporting system using the concept of an Independent ED Monitor

c) **Deliverables**

- ED Design report
- ED Evaluation Criteria Report
- Input into feasibility study
- Procurement documentation inputs
- Evaluation report
- Contract management Plan and system Report

d) **Skills Required**

- Team with at least 5 years' experience in the application of ED in large and complex projects
- Experience in the application of the BBBEE Codes in at least 2 large infrastructure projects
- Proven Understanding of the socio-economic aspects in South Africa

e) **Time Requirements**

- 24 months indicative

F. Governance and compliance to monitor and assess compliance during the evaluation processes.

a) **Objectives**

- To assist with the compliance and monitoring of the tender and evaluation process to maintain transparency during the programme evaluation phases.

b) **Scope of Work**

The scope of work will be determined by IPP Office programme and project requirements, as well as ad-hoc requests and engagements, and will comprise

- Assess compliance pre- bid submission.
- Assess compliance during bid evaluation.
- Assess compliance post bid evaluation up to evaluation report writing phase.

c) **Deliverables**

- Governance compliance evaluation report
- Recommendations for improvements in the process for future phases to reduce instances of potential for non-compliance.
- Providing a review of the effectiveness of the compliance and adherence to the recommendations made during the previous phases,

d) **Skills Required**

- Team with at least 5 years' experience in the application of governance review and compliance in large and complex projects.

e) **Time Requirements**

- 24 months indicative

2. FUNCTIONAL EVALUATION CRITERIA

Functionality	Weighting per Professional Service	Weighting per Professional Service	Weighting per Professional Service
Professional Service	Project and Programme Management	Financial Transaction Advisory	Legal and Regulatory Transaction Advisory
Understanding of the Scope of Work	15	10	15
<ul style="list-style-type: none"> • Understanding of the Scope of Work as it applies to each professional service and category being bid for 	5	5	5
<ul style="list-style-type: none"> • Understanding of Government procurement requirements 	10	5	10
Proposed approach to delivery on the Scope of Work relevant to each professional service and category being bid for	5	10	5

Skills and experience of the proposed individuals/ team	80	80	80
Appropriate skills and qualifications of individuals relevant to the Scope of Work of the particular professional service and category.	20	20	20
Professional experience in PPP procurement specific to the professional service and category in which the bidder is bidding	10	10	10
Professional experience in IPP procurement specific to the professional service and category in which the bidder is bidding	15	15	10
Professional experience in BASELOAD AND COGENERATION energy technologies and procurement specific to the professional service and category in which the bidder is bidding	15	15	20
Synopsis of each project that each individual has worked on and the particular role that the individual played relevant to the Scope of Work for the professional service in which the bidder is bidding	20	20	20
Total	100	100	100

Functionality	Weighting per Professional Service	Weighting per Professional Service	Weighting per Professional Service	Weighting per Professional Service
Professional Service	Economic Development and Economic Transaction Advisory	Technical Transaction Advisory	Monitoring and Implementation Specialists	Programme Governance Specialists
Understanding of the Scope of Work	10	10	15	15
<ul style="list-style-type: none"> Understanding of the Scope of Work as it applies to each professional service and category being bid for 	5	5	5	5
<ul style="list-style-type: none"> Understanding of Government procurement requirements 	5	5	10	10
Proposed approach to delivery on the Scope of Work relevant to each professional service and category being bid for	10	10	5	5
Skills and experience of the proposed individuals/ team	80	80	80	80
Appropriate skills and qualifications of individuals relevant to the Scope of Work of the particular professional service and category.	20	25	20	20

Professional experience in PPP procurement specific to the professional service and category in which the bidder is bidding	10	10	10	15
Professional experience in IPP procurement specific to the professional service and category in which the bidder is bidding	15	10	10	15
Professional experience in RENEWABLE Industry and procurement specific to the professional service and category in which the bidder is bidding	15	20	20	10
Synopsis of each project that each individual has worked on and the particular role that the individual played relevant to the Scope of Work for the professional service in which the bidder is bidding	20	15	20	20
Total	100	100	100	100

3. RFP RESPONSE FORMAT

To facilitate the analysis of responses to this RFP, all interested parties are required to prepare their response in accordance with the instructions outlined in this section. All proposals should be electronically generated and the printed original signed in ink by individual(s) legally authorised to bind the respondents. Legibility, clarity and completeness are important and essential. A separate proposal must be submitted for local and international teams per professional service.

Responses shall be prepared as simply as possible (prepared in a MS Word or Readable PDF) answering each question as labelled, providing a straightforward, concise description of the interested parties' capabilities and recommendations to satisfy the requirements of the RFP. Emphasis should be concentrated on accuracy, completeness and clarity of content. All parts, pages, figures and tables should be numbered and labelled clearly. The response should be organised as follows in clearly marked separate sections

Ref	Title	Content	Reference (section in this document)
A	Executive Summary	The Executive Summary should be a brief overview of the engagement, and should identify the main features and benefits of the proposed work.	None
B	Company Background	Responses should include, at a minimum, the following information: Brief company profile detailing your business Any previous/current relationship, if any, with the DBSA or its affiliates, Government Departments or SOC's. Signed Annual Financial Statements for the past three years. Registered office address and the name(s) of the director(s) or other responsible officer(s) who will have ultimate responsibility for the management of the contract if awarded. Any conflicts	
C	Understanding of Scope of	Your understanding of the Scope of Work	

	Work		
D	Proposed Approach to the delivery of the Services	Your proposed approach to the project highlighting: Your proposed solution to delivering on the Scope of Work being bid for Any assumptions made in developing your proposed approach	
E	Proposed team/ individuals	For the proposed individual or each team member, you are required to provide the following information: Provide details of the skills and qualifications for each individual and/or team member and Professional Body Registration No; Provide details of the professional experience pertinent to the Scope of Work; Provide a synopsis of relevant projects that the individual and/or each team member has worked on and, specifically, the procurement of large scale and complex transactions	
F	Tender Documents	Completed tender and returnable documents as outlined in Annexure B through K of this RFP. (excluding price and BEE)	All Tender Documents

Layout and content of the Financial and BEE Proposal

G	BBBEE proposal	Your proposed approach to BBBEE and verified proof of contributor status level.	
H	Price Proposal	Your fee proposal as per Instruction to Bidders, under the relevant section.	

Failure by the bidder to furnish information as requested in this document may lead to that bidder being disqualified from this process, at the DBSA's sole discretion.

4. TERMS OF AGREEMENT, CANCELLATIONS AND INDEMNITY

The terms of agreement as attached to this RFP will not be negotiable. The procurement process will remain valid for a period of 12 months from date of signing of an agreement with the successful bidder. Should any agreement arising from this proposal be cancelled during this 12-month period, the DBSA reserves the right to contract with the runner-up without repeating the procurement process.

In the unlikely event of not being able to reach a mutually satisfactory agreement with the successful bidder, the DBSA reserves the right to revert to the runner-up. It is envisaged that a service contract will be entered into with the successful bidder. The DBSA reserves the right to extend the contract for such further period(s) as it sees fit, after consultation with the bidder.

Annexure A

Pricing Proposal

COST BREAKDOWN SCHEDULE

This schedule must be separated from the technical proposal and should be part of the pricing proposal

In order to allow the DBSA to evaluate price proposals based upon an hourly rate proposal and such pricing proposal must be prepared in accordance with the following guidelines:

- I. Submit detailed CVs of all proposed team members with a clear indication as to the technology and category of service the bidder is bidding for and the proposed role for team member; Information for Local and international teams must be submitted separately.
- II. Must provide a clear indication of the time availability of each proposed team member to undertake the proposed role for such team member;
- III. Submit the standard hourly rate (the "Standard Rate") of each team member;
- IV. Provide the number of hours per month estimated by the bidder to be spent in executing all of the functions being bid for; and
- V. Bidders are required to complete the table below for all proposed members:

Name of proposed member	Local / International	Resource level i.e. partner; senior; junior	Standard Rate – hourly (excl Vat) in ZAR	Proposed hours per month	Sub Total (excl Vat) in ZAR	Sub Total (incl Vat) in ZAR
Total						
Blended Hourly Rate (excl Vat)						

- VI. Provide a blended rate based for evaluation purposes on the assumption that there are a maximum of three proposed members (individuals who submit a bid will be evaluated separately) providing services for each month. This is for evaluation purposes only and must be broken down as follows:
- a partner or director which will spend 40 hours per month;
 - a senior resource which will spend 80 hours per month; and
 - a junior resource which will spend 120 hours per month
- VII. In the event that there is less than three proposed members the blended hourly rate will be the average hourly rate between the proposed members.
- VIII. The table below should be used to calculate the blended rate:

Name of proposed member	Resource level i.e. partner; senior; junior	Standard Rate – hourly (excl Vat) in ZAR	Proposed hours per month	Total (excl Vat) in ZAR
	Partner		40	
	Senior		80	
	Junior		120	
Total			240	
Blended hourly rate			Blended rate is the Total in ZAR (excl Vat) divided by 240 hours	

- IX. Indicate hourly rate applicable to travelling time and any other cost the bidders wants to bring to the attention of the DBSA;
- X. In the event of a bidder wanting to negotiate a fixed fee (160 hours per individual for evaluation purpose), the bidder is required to submit such a proposal, as a variant (alternate) proposal (that is, in addition to the costing proposal submitted per point v above). This proposal must include:
- the detailed breakdown of the costs to be covered under the proposed fixed fee i.e. expected hours for each individual covered by the retainer available on offer to the Department, the basis for calculating the fixed fee, the Standard Rate and a discounted rate per hour for each individual and any other costs included in the fixed fee;
 - Should the number of hours per month (160 hours per individual) for each team member covered within the fixed fee be exceeded, each individual within the team will be paid at the discounted rate for hours exceeding the hours covered by the fixed fee, but only if prior approval was obtained. Should the number of hours actually worked be below the number of hours per month per team member making up the fixed fee, then the hours not used shall be rolled over for not more than two months at which point the reconciliation will be done and squared-off. Should

Annexure B

Company Profile

This document(s) is to be prepared and submitted by the bidders as Annexure B to their Bid.

Annexure C

SBD 2

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.
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.

Note: Valid Original Tax Clearance Certificate is mandatory

Annexure D

DECLARATION OF INTEREST

1. Is the Bidder, or any person connected with or employed by the Bidder or an entity which forms part of the Bidder, aware of any fact which may give rise to an actual or perceived conflict of interest on the part of the Bidder, the DBSA or any person involved in the evaluation or adjudication of this Bid?

YES NO

2. If the answer to 0 above is “Yes”, Bidders are required to set out, in detail immediately below, the facts which may give rise to an actual or perceived conflict of interest and identify the individuals to which those facts relate.

3. In addition, Bidders are required to complete the following:

3.1. Full Name of Bidder or his or her representative:

3.2. Identity Number:

3.3. Position occupied in the Company (director, trustee, shareholder¹):

3.4. Company Registration Number:

3.5. Tax Reference Number:

3.6. VAT Registration Number:

3.7. The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / personnel numbers must be indicated in paragraph 4 below.

YES NO

¹ "Shareholder" means a person who owns shares in the company.

3.8. Are you or any person connected with the bidder presently employed by the state²?

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:
.....
.....
.....

3.8.1. 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**

If yes, did you attach proof of such authority to the bid document? (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.)

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

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

3.9. 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 "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; national Assembly or the national Council of provinces;
- (d) or Parliament

If so, furnish particulars:

.....

3.10. 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

If so, furnish particulars:

.....

3.11. Are you, or any person connected with the bidder 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?

YES NO

If so, furnish particulars.

.....

3.12. Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES NO

If so, furnish particulars:

.....

4. Full details of directors / trustees / members / shareholders.

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

DECLARATION

I, THE UNDERSIGNED (NAME)

CERTIFY ON BEHALF OF THE BIDDER THAT THE INFORMATION FURNISHED IN THIS DEDCLARATION 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

Annexure E

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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, 2011.

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 R1 000 000 (all applicable taxes included); and**
 - **the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).**
- 1.2 The value of this bid is estimated to **exceed/not exceed** R1 000 000 (all applicable taxes included) and therefore the..... preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	90
B-BBEE STATUS LEVEL OF CONTRIBUTION	10
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn

affidavit confirming annual turnover and level of black ownership in case of an EME and QSE 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) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** 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;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defined by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \text{or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

- P_s = Points scored for comparative price of bid under consideration
- P_t = Comparative price of bid under consideration
- P_{min} = Comparative price of lowest acceptable bid

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 5.1 In terms of Regulation 5 (2) and 6 (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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 A bidder who qualifies as a EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

7.1 B-BBEE Status Level of Contribution: =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

8. SUB-CONTRACTING

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

(Tick applicable box)

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

8.1.1 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.

(Tick applicable box)

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

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company / firm:

9.2 VAT registration number:

9.3 Company registration number:

9.4 Type of Company/ Firm

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

[TICK APPLICABLE BOX]

9.5 Describe principal business activities:

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

9.6 Company Classification

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

[TICK APPLICABLE BOX]

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

9.8 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>

Annexure F

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? (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). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>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 (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	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:		

SBD 8

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

Annexure G

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ 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).² 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:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² 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.

SBD 9

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 consortium³ 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.
- 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.

³ **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.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Annexure H

Bidders are required to include, as annexure H to their Bids, certified copies of all relevant CIPC registration documents listing all members with percentages, in the case of a close corporation

Annexure I

Bidders are required, as annexure I to their Bids, to submit certified copies of the latest share certificates of all relevant companies

Annexure J

Bidders which submit Bids as an unincorporated joint venture, consortium or other association of persons are required to submit, as Annexure J, a breakdown of how the fees and work will be split between the various people or entities which constitute the Bidder.

Annexure K

Bidders are required to include, as Annexure K to their Bids, supporting documents to their responses to the Qualifying Criteria and Evaluation Criteria.

Where the supporting document is the profile of a member of the Bidder's proposed team, this should be indicated.

Annexure L

General Conditions of Contract

BIDDERS ARE REQUIRED TO READ THROUGH AND ACQUINT THEMSELVES WITH THE GENERAL CONDITIONS OF CONTRACT (RIGHTS AND OBLIGATIONS) AS PRESCRIBED BY THE NATIONAL TREASURY.

A COPY OF THE GCC IS AVAILABLE AND CAN BE ACCESSED VIA THE LINK BELOW:

<http://www.treasury.gov.za/divisions/ocpo/sc/GeneralConditions/General%20Conditions%20of%20Contract-%20Inclusion%20of%20par%2034%20CIBD.pdf>

NOTE: All Bidders are required to confirm (Tick applicable box) below:

Item	YES	NO
Is the bidder familiar with the General Conditions of Contract prescribed by National Treasury		

Annexure M

REGISTRATION ON THE CENTRAL SUPPLIER DATABASE (CSD) SITE OF THE NATIONAL TREASURY IS A COMPULSORY REQUIREMENT FOR A BIDDER TO CONDUCT BUSINESS WITH THE DBSA. THE ONUS IS ON EACH BIDDER TO REGISTER ON THE CSD SITE AND PROVIDE PROOF OF REGISTRATION ON THE CSD SITE IN THE FORM OF A REPORT AS PRESCRIBED IN THIS ANNEXURE

Annexure N

SERVICE LEVEL AGREEMENT

between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

[insert]



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1. PARTIES

1.1 The Parties to this Agreement are:

1.1.1 **The Development Bank of Southern Africa Limited**, reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997 (“**DBSA**”); and

1.1.2 **[insert]**, details of the service provider (“**Service Provider**”).

The Parties agree as follows:

2. INTERPRETATION

2.1 The headings to the clauses, schedules and annexures of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause, schedule or annexure hereof.

2.2 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1 “**Agreement**” means this Service Level Agreement and any Schedules attached hereto;

2.2.2 “**Business Day**” means any day other than a Saturday, Sunday or official public holiday;

2.2.3 “**Deliverables**” means the specific deliverables to be delivered by the Service Provider as part of the Services, fully described in Annexure B;

2.2.4 “**End Date**” means **[insert]**;

2.2.5 “**Effective Date**” means **[insert]**;

2.2.6 “**Fees**” means the amounts payable by the DBSA to Service Provider for the Services rendered, calculated in accordance with the fee structure as provided in Annexure A;

2.2.7 “**IPP**” means Independent Power Producers;

- 2.2.8 “**IPP Office**” means the Independent Power Producers Office which was established under the Memorandum of Agreement between the Department of Energy, National Treasury and the Development Bank of Southern Africa, or any successor in title.
- 2.2.9 “**IPP Office Premises**” means Building 9, Byls Bridge, Corner Jean and Olievenhoutbosch, Erf 3082, Highveld Ext 73, Centurion, 0157
- 2.2.10 “**IPP Project**” means Independent Power Producers Projects;
- 2.2.11 “**Parties**” means the DBSA for the ultimate benefit of the IPP-Office and Service Provider and Party means, as the context requires, any one of them;
- 2.2.12 “**Services**” means the Services to be rendered by Service Provider to the DBSA, as more fully described in Annexure B;
- 2.2.13 “**Signature Date**” means the date of the last signature to this Agreement;
- 2.2.14 “**Term**” has the meaning ascribed to it in clause 4; and
- 2.2.15 “**VAT**” means the Value Added Tax payable in terms of the Value Added Tax Act 89 of 1991 as amended.
- 2.3 Any reference in this Agreement to:
- 2.3.1 “**clause**” is, subject to any contrary indication, construed as a reference to a clause of this Agreement;
- 2.3.2 “**law**” is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
- 2.3.3 “**person**” is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 2.4 Unless inconsistent with the context or save where the contrary is expressly indicated:
- 2.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in this interpretation

- clause, effect shall be given to it as if it were a substantive provision of this Agreement;
- 2.4.2 any number of days prescribed in this Agreement excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.4.3 if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day;
- 2.4.4 any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time;
- 2.4.5 any reference in this Agreement to this Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement, instrument or document as same may have been, or may from time to time be, amended, varied, novated, ceded, delegated, supplemented or replaced;
- 2.4.6 no provision of this Agreement constitutes a stipulation for the benefit of any person who is not a Party to this Agreement save for the purposes of the IPP-Office;
- 2.4.7 a reference to a Party includes that Party's successors-in-title and permitted assigns;
- 2.4.8 the words "including" and "in particular" are without limitation;
- 2.4.9 any one gender includes the other genders;
- 2.4.10 the singular includes the plural and *vice versa*.
- 2.5 The schedules to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedules. To the extent that there is any conflict between the schedules to this Agreement and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 2.6 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.

- 2.7 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.8 The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.
- 2.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

3. INTRODUCTION

- 3.1 During November 2010 the Department, National Treasury and Development Bank of Southern Africa ("DBSA") signed a Memorandum of Agreement ("MoA") intended to allow each of the parties to contribute towards "creating conditions advantageous to the market development of IPP Projects and subsequent development and procurement of IPP Projects". On the basis of such arrangements, DBSA procure and appoint transaction advisors to support the Department in the formulation and undertaking of the procurement process of IPP projects and program/s.
- 3.2 In 2012, the Minister of Energy has determined that new generation capacity should be procured from hydro, coal and gas sources to support the Country's base load energy mix and generation from gas and cogeneration as part of the medium-term risk mitigation project/programme. This has to be procured through one or more of the Independent Power Producer (IPP) programmes and to contribute towards national energy security. This determination was made as per the policy adjusted scenario of the Integrated Resource Plan for Electricity 2010 – 2030, published by the Department on 06 May 2011 in the Government Gazette, page 14.
- 3.3 Furthermore, electricity produced from Coal, Natural Gas, Hydro and co-generation energy sources, described below, shall be procured as contemplated in the NewGen Regulations (as published by the Department as procurer of the energy in August 2011) which may include where appropriate and having regard to all relevant circumstances, tendering processes; direct negotiation and other procurement processes.
- 3.4 In terms of the Determination on Baseload IPP Procurement Programme promulgated on 19 December 2012, the Minister determined as follows:-
- 3.4.1 2500 megawatts to be generated from Coal under the New Build for 2014 to 2024 in Table 3 of the Integrated Resource Plan(IRP) 2010-2030;

- 3.4.2 2609 megawatts to be generated from Hydro energy sources as capacity allocated to “Imported Hydro” under the New Build for the year 2022 to 2024 in Table 3 of the IRP; and
- 3.4.3 2652 megawatts to be generated from Natural Gas (which include Liquefied Natural Gas or Natural Gas delivered by pipeline) which represents the capacity allocated under the New Build to Gas CCGT (natural gas) and OCGT(diesel) for the years 2012 to 2025 in Table 3 of the IRP. 474 megawatts to be generated from Natural Gas was also determined in the Medium Term Risk Mitigation Project IPP Procurement Programme
- 3.5 On 18 August 2015, the Gas IPP Procurement Programme and Amendment to the Baseload IPP Procurement Programme and Medium Term Risk Mitigation Project IPP Procurement Programme Determination was promulgated, in terms of which gas has its own determination and 3126 megawatts will be generated therefrom. The megawatts in paragraph (a) and (b) remain part of the Baseload Determination.
- 3.6 In terms of the Determination on Medium Term Risk Mitigation Project IPP Procurement Programme promulgated on 19 December 2012, the Minister determined as follows:-
 - 3.6.1 800 MW to be generated from Industrial Cogeneration energy (which may include one or more of the following: biomass; industrial wastes and combined Heat and Power) which represents capacity allocated in Table 1 of the IRP; and
 - 3.6.2 474 MW of base load energy to be generated from Natural Gas which represents the capacity allocated to Gas CCGT (natural gas) under New Build programme for the years 2019 to 2020 in Table 3 of the IRP. This has been amended as discussed above.
- 3.7 The medium term risk mitigation project is intended to address a potential shortfall of generation in the medium term, next 6 to 7 years.
- 3.8 On 18 September 2015, the Cogeneration IPP Procurement Programme and Amendment to the Medium Term Risk Mitigation Project IPP Procurement Programme Determination was promulgated in terms of which an additional 1000 megawatts from cogeneration was determined.
- 3.9 The Department has also mandated the IPP Office to procure cross border projects and to provide support in the region and continent (outside of South African borders) for the development and procurement of baseload energy projects.

4 DURATION

Notwithstanding the Signature Date, this Agreement shall commence on the Effective Date and shall, subject to termination in terms of clause 0, terminate on the End Date, unless the Parties agree in writing to an extension of this Agreement (“**Term**”).

5 APPOINTMENT OF THE SERVICE PROVIDER

5.1 The DBSA hereby appoints the Service Provider to perform the Services.

5.2 The Service Provider hereby accepts the appointment.

6 SERVICE LEVELS AND STANDARDS

6.1 Service Provider shall execute the Services in accordance with Annexure B.

6.2 In executing the Services, the Service Provider shall:

6.2.1 carry out all its obligations in terms of this Agreement in a professional manner with due care, skill and diligence, in accordance with generally accepted professional techniques and practices, and, in doing so, employ appropriate technology;

6.2.2 always act to support and safeguard the legitimate interests of the DBSA and the IPP-Office in any dealings with third parties;

6.2.3 keep and maintain accurate, adequate and systematic accounts and records in respect of the activities, in such form and detail as the DBSA and IPP-Office may reasonably request, provided that Service Provider shall retain such accounts and records for a minimum period of twenty (20) years after the Completion Date;

6.2.4 be solely responsible for the administration of its own business affairs;

6.2.5 conduct itself in a professional manner;

6.2.6 perform all Services promptly and without delay;

6.2.7 not engage in any conduct which is calculated to bring the DBSA, or any third parties with which the DBSA has dealings, into disrepute; and

- 6.2.8 ensure that any employees, agents or subcontractors of the Service Provider who enter the premises of the DBSA and the IPP-Office adhere to the safety standards, policies and procedures of the DBSA;
- 6.2.9 be required to be registered with the relevant regulatory body specific to the professional service being procured;
- 6.2.10 to be able to work closely with the Department, National Treasury and DBSA.

7 FEES AND PAYMENTS

7.1 Fees and expenses

- 7.1.1 Service Provider shall be paid such Fees as stated in Annexure A for the Services rendered.
- 7.1.2 The Fees payable to Service Provider for the Services shall be the maximum amount payable to Service Provider, except as provided in clause 0 or where expressly agreed to in writing by the DBSA.
- 7.1.3 Service Provider shall, in addition to the Fees payable, and subject to the DBSA's prior written approval, be reimbursed for such expenses properly incurred in rendering the Services as published on the www.ipp-projects.co.za website.

7.1.4 Payment of Fees based on Performance

- 7.1.5 Service Provider shall invoice the IPP Office c/o the DBSA monthly in arrears for the Services rendered.
- 7.1.6 The invoice submitted must contain, if applicable, the following information:
 - 7.1.6.1 the date and number of the invoice;
 - 7.1.6.2 the period of the service invoiced;
 - 7.1.6.3 the name of the creditor (Service Provider);
 - 7.1.6.4 the name of the debtor (The IPP Office care of the DBSA).;

- 7.1.6.5 the VAT number of Service Provider;
 - 7.1.6.6 purchase order number of the IPP-Office
 - 7.1.6.7 the deliverables according to the purchase Order
 - 7.1.6.8 an updated Deliverables and Invoice Acceptance Form
- 7.1.7 Service Provider shall invoice the IPP Office care of the DBSA on a milestone an or monthly basis as prescribed by the purchase order, which invoice shall be submitted to the IPP Office, within 3 (three) business days after month end either via electronic mail or hand delivery.
- 7.1.8 The DBSA shall, process and settle the invoice received within 26 (twenty six) calendar days from approval of the invoice against deliverables. Invoices for services delivered which are older than six months will not be paid.
- 7.1.9 Payment of the Fees shall be subject to satisfactory performance by Service Provider, as assessed by the IPP Office care of the DBSA.
- 7.1.10 The Service Provider acknowledges that the DBSA will not be in a position to make any payments to the Service Provider until such time as the Service Provider has provided the DBSA with all such valid documents as are reasonably required by the DBSA in order to facilitate payment, and undertakes to supply all such documents timeously, including but not limited to:
- 7.1.10.1 proof of the Service Provider's banking details;
 - 7.1.10.2 the Service Provider's broad based black economic empowerment certificate;
 - 7.1.10.3 tax clearance certificates; and
 - 7.1.10.4 duly completed supplier information forms.

8 RELATIONSHIP BETWEEN THE PARTIES

- 8.1 It is recorded that this Agreement shall not create an employment contract or employer-employee relationship between the Parties.

- 8.2 The relationship between the Parties is that of independent contracting parties and in the circumstances shall not imply any partnership, nor shall it constitute any Party to be the agent or authorised representative of another Party.
- 8.3 Service Provider shall not be entitled to bind or attempt to bind the DBSA or IPP Office to represent or attempt to represent the DBSA or IPP Office nor to portray to any other third party that it has the authority to bind and/or represent the DBSA or IPP Office or to confer any obligation on the DBSA or IPP Office.

9 CO-OPERATION, SUPPORT AND REPORTING

- 9.1 The Parties and the IPP-Office shall periodically exchange views and furnish all such information as may be reasonably requested by the other Party, regarding the performance of the Parties respective obligations and other related matters to the purposes and objectives of the Services.
- 9.2 Notwithstanding the foregoing Service Provider shall comply from time to time with any reporting requests by the DBSA.
- 9.3 Service Provider shall:
- 9.3.1 co-operate in absolute good faith, comply with and accurately and timeously adhere to all reasonable requests of the DBSA.
 - 9.3.2 permit the DBSA to inspect and/or audit accounts and records and other documents relating to the this Agreement and the performance and management of the Services;
 - 9.3.3 participate and co-operate fully in the confidential surveys that may be conducted from time to time either by the DBSA, or a third party appointed by the DBSA, provided that Service Provider's information made available for such purposes shall remain confidential, and the DBSA shall seek Service Provider's prior written consent before using any such information for promotional purposes.
- 9.4 The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

10 SUBCONTRACTING

- 10.1 Service Provider may employ subcontractors for the execution of any portion of its obligations under this Agreement, but such subcontracting shall not relieve the Service Provider of its obligations under this Agreement and the Service Provider shall remain liable for any acts or omissions of such subcontractors. Service Provider shall further ensure that all subcontractors perform in terms of all applicable provisions of this Agreement.
- 10.2 DBSA shall have the right during the continued duration of this Agreement to direct Service Provider to replace such sub-contractor upon 14 (fourteen) days written notice if the sub-contractor's performance is materially deficient, or good faith doubts exist concerning the sub-contractor's ability to render future performance because of inter alia changes in the ownership, management, or the financial condition of the sub-contractor, Any substitution will be subject to the approval of the DBSA.
- 10.3 Any substitution of resources and or sub- contractors will be subject to the approval of the DBSA and the IPP Office.

11 CONFLICT OF INTERESTS

- 11.1 Service Provider shall maintain, at all times, the highest degree of good faith towards the DBSA and shall not engage, either directly or indirectly, during this Agreement, in any business or activities, which would be in conflict with the activities assigned to it in terms of this Agreement.
- 11.2 In the event of a conflict of interest arising, the Service Provider undertakes to immediately advise the DBSA of same, upon which advice the DBSA shall, in its sole and absolute discretion, decide whether to proceed with the Agreement or to terminate it forthwith. Failure by the Service Provider to immediately advise the DBSA of any conflict of interest shall amount to a material breach of the Agreement and shall entitle the DBSA to terminate the Agreement forthwith.
- 11.3 The Service Provider is a consulting firm with professionals and other Personnel who consult locally and or in multiple jurisdictions, most of whom will not be participating in the engagement contemplated in this Agreement. Because of the types of clients the Service Provider, as global firm, advises and the types of engagements in which it is involved, it may be requested to act for other persons on other matters where the interests of the other persons may differ from those of the IPP Office, DBSA, the Government of South Africa in this or other matters. The Service Provider is undertaking this engagement for the IPP Office based upon the agreement that, to the extent permitted by law and subject to Clause 11.5, this engagement, and any other engagements the Service Provider may accept from the IPP Office or DBSA, will not preclude the Service Provider from acting for others on matters

(including mergers and acquisitions matters, negotiations, project developments and financings) that are not substantially related to the representation of the IPP Office as contemplated under this or such other engagements, even though the interests of such persons may differ from those of the IPP Office, DBSA, the Government of South Africa in this matter or in other matters.

- 11.4 Notwithstanding clause 11.3, the parties agree that IPP Programmes initiated by the IPP Office during the term of this engagement, or that are substantially similar to those in respect of which the Service Provider advised the IPP Office during the term of this engagement, are deemed to be substantially related to the Service Provider's representation of the IPP Office as contemplated under this engagement and shall therefore not be covered by the terms of Clause 11.3. However, Personnel of the Service Provider may represent other Persons whose interests differ from those of the IPP Office in respect of such matters subject to compliance with Clause 11.5 and, if any such matters involve the Service Provider acting as adviser to a bidder, potential bidder or other financier to a development under any such IPP Programme, subject to receipt of consent of the IPP Office (not to be unreasonably withheld or delayed).
- 11.5 During the term of this agreement the Service Provider shall implement and ensure that measures are put in place so that appropriate "Chinese walls" are established between the Service Provider's professionals involved in the matters contemplated under this Agreement and those engaged in the other matters described in Clause 11.3 or Clause 11.4. In particular, the Service Provider shall put in place such measures if any of its professionals are acting for bidders, potential bidders, or other financiers in connection with the various IPP Programmes initiated now and in the future during the term of this engagement, or that are substantially similar to those in respect of which the Service Provider advised the IPP Office during the term of this engagement. Such "Chinese-wall" procedures shall include (a) procuring that the Service Provider's professionals who render any of the Services under this Agreement are "ring-fenced" and do not do any work for or in connection with such bidders, potential bidders, or other financiers in respect of any of the IPP Programmes being contemplated; and (b) that access to and storage of Confidential Information (whether electronically or otherwise) is fully "ring-fenced", and only accessible by, the Service Provider's professionals who are to render the Services.
- 11.6 Service Providers may approach the IPP Office via the DBSA with a request for relieve of a particular "ring-fencing", which the IPP Office will consider at its sole discretion.
- 11.7 Provided that the Service Provider adheres to the terms of Section 11.5, the possession by some Service Provider Personnel of Confidential Information under this engagement will not prevent the Service Provider from representing another of its clients. By the same token, the parties hereto acknowledge that, to the extent permitted by applicable law and rules, Service Provider Personnel may, from time to time, possess information derived from other client

engagements that may be relevant or material to this engagement but that the Service Provider and its Personnel will be prohibited by the rules of the applicable jurisdiction from disclosing to the IPP Office and the DBSA and from using for their benefit or to inform their advice to the IPP Office and the DBSA.”

12 INSURANCE

- 12.1. Service Provider shall, for the continued duration of this Agreement, have and maintain sufficient professional indemnity insurance to cover its obligations and liabilities under this Agreement. The Service Provider shall provide the DBSA with a certificate of existence of such insurance.
- 12.2. The terms of any insurance or the amount of cover shall not relieve Service Provider of any liabilities under this Agreement.
- 12.3. If Service Provider or its subcontractors are involved in any occurrence which to their knowledge may give rise to a claim under any insurance policy effected by the DBSA, Service Provider shall without delay:
 - 12.3.1. notify the DBSA of the circumstances giving rise to such occurrence, the nature of the occurrence and the estimate of any loss or damage which may be suffered as a result of such occurrence; and
 - 12.3.2. provide the DBSA and its insurance brokers with any assistance reasonably required to formulate its claim.

13 INTELLECTUAL PROPERTY

- 13.1 For the purpose of this clause 0, **“Intellectual Property”** means any trademarks, all patents and generally all other registered and unregistered trademarks, service marks, copyright, designs, and applications for any of the foregoing in any part of the world, any know-how and trade secrets, and all data, information and knowledge of whatever nature relating to the Services, owned or controlled by the DoE and the IPP-Office, including technical information, production data, drawings, specifications, engineering and scientific information, manufacturing and tooling information, testing and quality control procedures, secret processes, marketing and application information, and all other proprietary or confidential information relating to the Services.
- 13.2 The DoE and IPP-Office grants Service Provider a non-exclusive, royalty-free right to use the Intellectual Property solely for the purposes of fulfilling its obligations to provide the Services to the IPP Office.

- 13.3 The right to use as envisaged in clause 0 does not place any limitation on the rights of the DoE and IPP-Office and does not limit the DoE's and IPP-Office's right of use of the Intellectual Property or future right of use of the Intellectual Property.
- 13.4 Service Provider shall, not later than upon termination or expiration of this Agreement, immediately cease to use and promptly return to the DoE and IPP-Office any and all documentation, materials and Intellectual Property owned by the DoE and IPP-Office.
- 13.5 Service Provider acknowledges that the DoE and IPP-Office is the sole proprietor of the Intellectual Property and acknowledges that the use thereof is for the benefit of the DoE and IPP-Office.
- 13.6 Any and all intellectual property owned, developed or acquired by a Party prior to the Effective Date shall remain the sole and exclusive property of the Party who is the lawful proprietor thereof, and any and all rights of the Parties in terms of this Agreement shall be subject to the other Party's intellectual property rights.
- 13.7 Any intellectual property generated by the Service Provider for the use of the DoE and IPP-Office in terms of this Agreement shall become the Intellectual Property of the DoE and IPP-Office upon payment by the DBSA of the Fees.

14 CONFIDENTIALITY

- 14.1 Subject to clause 0 below, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law (including by the rules of any securities exchange on which the shares of either of the Parties may be listed, where applicable) or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by a Party to the other Party pursuant to this Agreement.
- 14.2 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law, in which event the Party obliged to make such statement will first consult with the other Party to enable them in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause 0.
- 14.3 This clause 0 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any

judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

- 14.4 Service Provider shall ensure that all its agents, including but not limited to subcontractors or third parties, are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the DBSA as contained in this Agreement. In addition, Service Provider shall ensure that each agent that is not an employee of the Service Provider with access to Confidential Information shall sign an agreement acknowledging the duty of confidence (“Confidentiality and Non-disclosure Agreement”) in the form prescribed in Annexure C to the Agreement. Service Provider shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement.
- 14.5 The Parties hereby agree that Service Provider’s Representatives are required and expected to keep all information disclosed to both the Service Provider and the Service Provider’s Representatives in whatever form (including during discussions relating to the IPP Procurement Programmes) in the strictest confidence. For this purpose, Service Provider’s Representatives are required to sign a declaration of interest (the “Declaration of Interest”) substantially in the form of Annexure “D” hereto. Service Provider undertakes to ensure that the Service Provider’s Representatives do not, without prior written consents of DBSA and that of the IPP Office, respectively, use any Confidential Information except for the purposes of conducting the Services, or disclose said Confidential Information to any person, firm, or corporation and the Service Provider further undertakes to make all reasonable efforts to ensure that the Service Provider’s Representatives and any other party who (at the instance of the Service Provider), shall be given access to, or receive disclosure of, any of the said Confidential Information and shall maintain same in strictest confidence;
- 14.6 It is the intention of the Parties that the Declaration of Interest document be incorporated into this Agreement by reference and that in the event of conflict between the Declaration of Interest document and this Agreement, the provisions of this Agreement shall prevail;

15 REPRESENTATIONS AND WARRANTIES

- 15.1 Each Party represents and warrants to the other Party that:
- 15.1.1 it has the legal capacity and, if applicable, has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
- 15.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

- 15.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
- 15.1.3.1 contravene any law or regulation to which it is subject;
 - 15.1.3.2 contravene any provision of its constitutional documents, if applicable; or
 - 15.1.3.3 conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
 - 15.1.3.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
 - 15.1.3.5 it is entering into this Agreement as principal (and not as agent or in any other capacity);
 - 15.1.3.6 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
 - 15.1.3.7 no other party is acting as a fiduciary for it; and
 - 15.1.3.8 it is not relying upon any statement or representation by or on behalf of the other Party, except those expressly set forth in this Agreement.
- 15.1.4 The Service Provider warrants that all information and representations regarding itself made or disclosed in any procurement documents which preceded and/or gave rise to this Agreement, are and shall for the duration of this Agreement remain both true and correct.
- 15.1.5 Each of the representations and warranties given by the Parties in terms of clause 0 shall:
- 15.1.5.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
 - 15.1.5.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

15.1.5.3 *prima facie* be deemed to be material and to be a material representation inducing the DBSA to enter into this Agreement.

16 BREACH

16.1 In the event of either Party (the “**Defaulting Party**”) failing to comply with its obligations in terms of this Agreement, for which no specific remedy has been provided, the other Party (the “**Aggrieved Party**”) may, by written notice addressed to the Defaulting Party, require the Defaulting Party to remedy its breach within 15 (fifteen) business days of the date of such notice. If the Defaulting Party fails to remedy its breach within the aforesaid period, the Aggrieved Party may, without prejudice to any rights it may otherwise have against the defaulting Party, either:

16.1.1 claim specific performance of the obligations of the Defaulting Party, in terms of this Agreement; or

16.1.2 where such breach is material, cancel this Agreement and recover damages for breach of contract, from the defaulting Party.

17 DISPUTE RESOLUTION

17.1 Any dispute arising out of or relating to this Agreement concerning the interpretation of the terms and conditions of this Agreement or of compliance by any Party with the terms/conditions of this Agreement which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this Agreement, be settled by arbitration in terms of the arbitration laws for the time being in force in the Republic of South Africa; provided that a claim by the DBSA for the repayment of any monies due under this Agreement shall not be regarded as a dispute for the purpose of this clause and neither Party shall therefore be obliged to refer such a claim to arbitration.

17.2 In case of arbitration, a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement within 5 (five) Business Days after the date on which the arbitration is requested by a Party, by the Arbitration Society of South Africa, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he/she has to adjudicate. In case the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his/her predecessor.

17.3 Unless otherwise expressly agreed to in writing by the Parties:

- 17.3.1 the arbitration proceedings shall be held at Midrand;
 - 17.3.2 the arbitration shall be conducted in accordance with the Uniform Rules of the High Court of South Africa promulgated under the Supreme Court Act, 1950, and/or such other rules as may be agreed upon by the Parties;
 - 17.3.3 the arbitrator, may, if he/she deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the Parties otherwise agree in writing; and
 - 17.3.4 the costs of arbitration shall be costs in the cause.
- 17.4 After the institution of arbitration proceedings the tribunal may proceed with the arbitration notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including an award for specific performance, an interdict, damages or a penalty or otherwise as he or she in his or her sole discretion may deem fit and appropriate and to deal as he or she deems fit with the question of costs, including, if applicable, costs on the attorney and client scale, or own client scale, and his or her own fees and furnish the Parties with written reasons for his/her judgment. Any award made by the arbitrator may be made an order of any court to whose jurisdiction the Parties are subject on application to such court by any Party to the dispute, after due notice to the other Party.
- 17.5 The Provisions of this clause:
- 17.5.1 constitute an irrevocable consent by each Party to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim any such proceedings that it is not bound by such provisions; and
 - 17.5.2 are severable from the rest of the Agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.
- 17.6 Nothing in this clause 0 will preclude either Party from obtaining immediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.

18 TERMINATION

- 18.1 The DBSA may, in its sole discretion, on not less than 30 (thirty) days written notice of termination to Service Provider, terminate the provision of any Services, should:
- 18.1.1 Service Provider fail to remedy a failure in the performance of the Services, within 15 (fifteen) business days of receipt of such notice, or within such further period as the DBSA may approve, in writing;
 - 18.1.2 Service Provider breach of their duty of care to the IPP Office.
 - 18.1.3 Service Provider fail, in the absence of any review or appeal proceedings, to comply with any final decision reached as a result of any legal or arbitration proceedings;
 - 18.1.4 Service Provider commits an act of insolvency or is placed under a provisional or final winding-up or judicial management order, business rescue, makes an assignment for the benefit of creditors, or fails to satisfy or take steps to have set aside any judgment taken against it within 7 (seven) business days after such judgment has come to its notice;
 - 18.1.5 as a result of Force Majeure, Service Provider be unable to perform a material portion of the Services for a continuous period of not less than 60 (sixty) business days; and
 - 18.1.6 Service Provider, in the judgment of the DBSA has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement.
 - 18.1.7 Service Provider or its representatives are in breach of the Confidentiality and Non-Disclosure Agreement (Annexure C) or the Declaration of Interest (Annexure D).
- 18.2 Should the DBSA terminate this Agreement pursuant to clause 0, the DBSA shall be liable for the payment of all outstanding fees and disbursements payable to Service Provider, as at the date of such termination.
- 18.3 In addition to the right to terminate set out in clause 0, DBSA reserves the right to terminate this agreement for any reason whatsoever by giving the Service Provider 30 (thirty) days written notice to that effect.

19 INDEMNIFICATION

- 19.1 Service Provider shall keep the DBSA, both during and after this Agreement, indemnified against all indirect, consequential, special or direct losses, damages, expenses, costs and

claims (“**Losses**”), including, but not limited to, legal fees and expenses, suffered by the DBSA, or any third party, where such loss, damage, expense or cost is the result of any wrongful action or omission, negligence or breach of any contract by Service Provider.

19.2 The DBSA shall not be liable for any Losses incurred by Service Provider as a result of any unnecessary or irrelevant work done by Service Provider, including work done after an extension.

19.3 The DBSA shall not be liable for any Losses incurred by Service Provider as a result of any conduct whatsoever.

20 MISCELLANEOUS

20.1 This Agreement is the whole agreement between the Parties in regard to its subject matter.

20.2 No addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties.

20.3 No indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.

20.4 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.

20.5 Save as is specifically provided in this Agreement, Service Provider is not entitled to cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the DBSA.

20.6 Any illegal or unenforceable provision of this Agreement may be severed and the remaining provisions of this Agreement continue in force.

20.7 Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

21 NOTICES AND DOMICILIA

21.1 Notices and addresses

21.1.1 Notices

Any notice, consent, approval or other communication in connection with this Agreement (“**Notice**”) will be in writing in English.

21.1.2 Addresses

Each Party chooses the physical address, fax number and/or email address corresponding to its name below as the address to which any Notice must be sent.

21.1.2.1 **DBSA:**

Physical address: 1258 Lever Road
 Headway Hill
 Midrand
 1685
 South Africa

Tel number: +27 11 313 3911

Fax number: +27 11 313 3086

Email address: claimadmin@dbsa.org

Attention: Group Executive: Financing Operations and
 General Manager: Legal; and

21.1.2.2 **Service Provider:**

Physical address: [insert]
 [insert]
 [insert]

Tel number: [insert]

Fax number: [insert]

Email address: [insert]

Attention: [insert]

21.1.3 Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked in clause 0.

21.2 Effective on receipt

21.2.1 Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:

21.2.1.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in clause 0. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;

21.2.1.2 on the first Business Day after the date of transmission, if sent by fax to the recipient's fax number in clause 0; and

21.2.1.3 on the Business Day on which an acknowledgement of receipt is issued by the recipient, if sent by email to the recipient's email address in clause 0.

21.2.2 Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in clause 0, unless otherwise provided in this Agreement.

21.3 Service of legal process

21.3.1 Each Party chooses its physical address referred to in clause 0 as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (*domicilium citandi et executandi*).

21.3.2 Any Party may by Notice to the other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

22 APPLICABLE LAW

This Agreement is governed by South African law.

23 JURISDICTION

The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa (South Gauteng High Court, Johannesburg) in regard to all matters arising from this Agreement.

Signed at _____ on the _____ day of _____ 2016

For and on behalf of

Development Bank of Southern Africa Limited

Name:

Capacity:

Who warrants authority

Signed at _____ on the _____ day of _____ 2016

For and on behalf of

[insert]

Name:

Capacity:

Who warrants authority

Annexure A - Fees and Expenses

1. FEES

- 1.1 The Fees and expenses payable to the Service Provider by the DBSA for Services rendered under this Agreement will be charged inclusive of VAT as set out in Table A.
- 1.2 The Fees and expenses are made up as follows: [INSERT TABLE A, detailed hourly rate per resource as contained in the bid submission] and only these rates may be used for invoicing and quotations/ scope of work.
- 1.3 Annual escalation in fees will take place in April each year with the first escalation in April 2018.
- 1.4 Annual escalation will be based on the Consumer Price Index as published by Statistics SA for South African Companies and the Consumer Price Index as published by the country of origin of services for foreign companies.
- 1.5 Fees for foreign based companies will be payable in ZAR at an exchange rate fixed at the time of The IPP Office issuing the Purchase Order as confirmation of the instruction of work. The IPP Office will use the daily rate as published by Standard Bank South Africa: <http://ws15.standardbank.co.za/finSnapshot/GetforexServlet>(selling rate T/T).

2. DETAILS OF SERVICE PROVIDER

- 2.1 Service Provider Bank nominates the following bank account for payment of all Fees and Expenses:
Bank: [insert]
Branch Name: [insert]
Branch Code: [insert]
Account Number: [insert]
Account Name: [insert]
SWIFT No: [insert]
- 2.2 Service Provider represents and warrants to the DBSA that the details of the bank accounts contained in this Schedule are correct, and hereby indemnifies the DBSA against any loss, damage or cost which Service Provider may incur or suffer as a result of such bank account details being incorrect.

Annexure B - Scope of Services

1. Services and Deliverables

All services delivered will be according to agreed Statement of Works (SOW) and confirmed by a purchase order issued by the IPP Office.

2. Change Management

- 1.6 During the period of this Agreement, the DBSA or the Service Provider (“**Requestor**”) can make written suggestions for amendments or additions to the Services or Deliverables.
- 1.7 Either Party will advise the Requestor within 14 (fourteen) days or such other period as mutually agreed within the said 14 (fourteen) days whether the amendment is possible and what effect it will have on this Agreement. Requests for changes must be sufficiently detailed to enable the other Party to assess, ascertain and evaluate the impact of the requested change on the charges, timetable or any other aspect of the Agreement and the Parties agree to work together to consider, and if appropriate, seek to agree on any changes.
- 1.8 Unless otherwise agreed, until a change is agreed in writing all Parties will continue to act in accordance with the latest signed version of the Agreement, as the case may be.
- 1.9 Once agreement has been reached regarding the required amendments, the Parties shall amend the Agreement. No change will be affected before agreement has been reached in writing and signed by both Parties.

Annexure C - Confidentiality Agreement

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

between

Development Bank of Southern Africa Limited

and

[insert]

1. PARTIES

1.1 The Parties to this Agreement are:

1.1.1 **The Development Bank of Southern Africa Limited**, reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997 (“**DBSA**”); and

1.1.2 **[insert]**, details of the service provider **[insert]**

The Parties agree as follows:

2. INTERPRETATION

2.1 The headings to the clauses, schedules and annexures of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause, schedule or annexure hereof.

2.2 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1 “**Agreement**” means this confidentiality and non-disclosure agreement;

2.2.2 “**Confidential Information**” means all and any information or data in whatever form (including in oral, written, electronic and visual form) relating to the Disclosing Party and the Proposed Transaction which by its nature or content is identifiable as, or could reasonably be expected to be, confidential and/or proprietary to the Disclosing Party;

2.2.3 “**Disclosing Party**” means the Party who disclosed the Confidential Information;

2.2.4 “**Exclusions**” means the circumstances in which the undertakings given by the Receiving Party in this Agreement are not applicable, as described in clauses 7.4.1 to 7.4.4 below;

2.2.5 “**Parties**” means the parties to this Agreement being EY and the DBSA and “**Party**” shall refer to either one as the context may require;

2.2.6 “**Permitted Disclosees**” means:

2.2.6.1 any Representatives of the Parties who are directly concerned with any investigation in relation to the Proposed Transaction; and

2.2.6.2 any other person to whom the Parties disclose Confidential Information with the prior written consent of the other Party;

- 2.2.7 “**Permitted Purpose**” means the consideration, evaluation and negotiation of the Proposed Transaction;
- 2.2.8 “**Proposed Transaction**” means the evaluation of the Economic Development Independent Monitors (“**EDIM**”);
- 2.2.9 “**Receiving Party**” means the Party to whom the Confidential Information is disclosed;
- 2.2.10 “**Representatives**” means, in relation to any person, its directors, officers, employees and professional advisers;
- 2.2.11 “**Signature Date**” means the date of signature of this Agreement by the Party last signing; and
- 2.2.12 “**South Africa**” means the Republic of South Africa.
- 2.3 In this Agreement:
- 2.3.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.3.2 an expression which denotes:
- 2.3.2.1 any gender includes the other genders;
- 2.3.2.2 a natural person includes a juristic person and *vice versa*;
- 2.3.2.3 the singular includes the plural and *vice versa*;
- 2.3.2.4 a Party includes a reference to that Party’s successors in title and assigns allowed at law; and
- 2.3.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 2.4 Any reference in this Agreement to:
- 2.4.1 “**business hours**” shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.4.2 “**days**” shall be construed as calendar days unless qualified by the word “**business**”, in which instance a “**business day**” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;

- 2.4.3 “**laws**” means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and “**law**” shall have a similar meaning and
- 2.4.4 “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.5 The words “**include**” and “**including**” mean “**include without limitation**” and “**including without limitation**”. The use of the words “**include**” and “**including**” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.6 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 0 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.7 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.8 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.9 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.10 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 2.12 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.13 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

- 2.14 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.15 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.16 Any reference in this Agreement to “**this Agreement**” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.17 In this Agreement the words “**clause**” or “**clauses**” and “**annexure**” or “**annexures**” refer to clauses of and annexures to this Agreement.

3 INTRODUCTION

- 3.2 It is the intention of the Parties to enter into discussions relating to the Proposed Transaction.
- 3.3 In the course of such discussions, the subsequent implementation of any agreement or arrangement which may arise out of such discussions and in any future interactions between the Parties, the Parties will disclose certain Confidential Information to each other.
- 3.4 The Parties are willing to provide each other with an undertaking to maintain the confidentiality of the Confidential Information, on the terms and conditions set out in this Agreement.
- 3.5 The Parties wish to record their agreement in writing.

4 DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

- 4.2 Pursuant to the discussions contemplated in clause 3.2 above, the Disclosing Party will disclose to the Receiving Party such Confidential Information as may be in their possession and as will, in their sole and absolute discretion be necessary for the Parties to conduct such discussions.
- 4.3 The Receiving Party acknowledges that:
- 4.3.1 the Confidential Information is a valuable, special and unique asset of the Disclosing Party; and
- 4.3.2 the Disclosing Party may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or

- 4.3.3 used otherwise than in accordance with this Agreement.
- 4.4 All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:
 - 4.4.1 to be proprietary to the Disclosing Party; and
 - 4.4.2 not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.
- 4.5 The Receiving Party irrevocably and unconditionally agrees and undertakes:
 - 4.5.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
 - 4.5.2 not to use or permit the use of the Confidential Information for any purpose other than the Permitted Purpose and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Disclosing Party or otherwise use it to the detriment of the Disclosing Party;
 - 4.5.3 except as permitted by this Agreement, not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the sole and absolute discretion of the Disclosing Party; and
 - 4.5.4 to keep all Confidential Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.

5 PERMITTED DISCLOSEES

- 5.2 The Receiving Party shall be entitled to disclose the Confidential Information only to Permitted Disclosees, and then only to the extent that such disclosure is necessary for the Permitted Purpose and on a “*need to know*” basis.
- 5.3 The Receiving Party shall, both before and after the disclosure of any Confidential Information to a Permitted Disclosee, inform such Permitted Disclosee of, and take all practical steps to impress upon the Permitted Disclosee, the secret and confidential nature of the Confidential Information and the Receiving Party’s obligations under this Agreement.

- 5.4 The Receiving Party shall be responsible for procuring that the Permitted Disclosees abide by the provisions of this Agreement and agrees to be bound by the confidentiality undertakings given to the Disclosing Party by the Receiving Party in this Agreement. The Receiving Party shall be responsible for any breach of the terms and conditions of this Agreement by any Permitted Disclosee.
- 5.5 The Receiving Party shall (if requested to do so by the Disclosing Party) procure that the Permitted Disclosees (other than directors, officers and employees of the Receiving Party) give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained in this Agreement.
- 5.6 A Party's failure to obtain receipt of the written undertaking referred to in clause 5.5 above shall in no way detract from the Receiving Party's obligations in terms of this Agreement and particularly in terms of the provisions of this clause 5.

6 RETURN OF CONFIDENTIAL INFORMATION

- 6.2 The Receiving Party shall, at its own expense, within 5 (five) business days of termination of the discussions concerning the Proposed Transaction, and in any event within 5 (five) business days of written demand from the Disclosing Party:
- 6.2.1 return or destroy (as stipulated by the Disclosing Party), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the Receiving Party or by a Permitted Disclosee without keeping any copies or partial copies thereof;
- 6.2.2 destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents ("**Working Papers**") prepared by the Receiving Party or by any Permitted Disclosee which contain or otherwise reflect or are generated from the Confidential Information;
- 6.2.3 delete or procure the deletion of all Confidential Information from any computer, word processor or other device in the possession or control of the Receiving Party or any Permitted Disclosee; and
- 6.2.4 confirm in writing to the Disclosing Party that the Receiving Party, to the best of its knowledge, information and belief having made all reasonable enquiries, that all Permitted Disclosees have complied with the provisions of clauses 6.2.1 to 6.2.3.
- 6.3 The Receiving Party and its Representatives shall be permitted to retain such copies of the Confidential Information and Working Papers for so long as required by law, court or regulatory agency or authority or its internal audit or internal compliance procedures, and such

copies of any computer records and files containing any Confidential Information which have been created pursuant to its automatic back-up procedures for the period that the Receiving Party or its Representatives, as the case may be, normally archives back-up computer records. Any Confidential Information that is not returned or destroyed, including, without limitation, oral Confidential Information, shall remain subject to the confidentiality obligations set forth in this Agreement.

7 EXCLUSIONS

- 7.2 The determination of whether information constitutes Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade marks or otherwise.
- 7.3 If the Receiving Party is uncertain as to whether any information is Confidential Information, the Receiving Party shall treat such information as confidential until the contrary is agreed by the Disclosing Party in writing.
- 7.4 The undertakings given by the Receiving Party in this Agreement and in particular in clause 4 above shall not apply to any information which:
- 7.4.1 is or becomes generally available to the public other than by the negligence or default of the Receiving Party and/or any Permitted Disclosee, or by the breach of this Agreement by any of them;
 - 7.4.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis; or
 - 7.4.3 has lawfully become known by or come into the possession of the Receiving Party on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party existing at the Signature Date;
 - 7.4.4 is or was independently developed by the Receiving Party or its Representatives without the use of, or reliance in any way upon, the Confidential Information, provided that:
 - 7.3.4.1 the onus shall at all times rest on the Receiving Party to establish that such information falls within the Exclusions;
 - 7.3.4.2 information will not be deemed to be within the Exclusions merely because such information is embraced by more general information in the public domain or in the Receiving Party's possession; and

- 7.3.4.3 any combination of features will not be deemed to be within the Exclusions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principle of operation are in the public domain or in the Receiving Party's possession.

8 FORCED DISCLOSURE

8.2 In the event that the Receiving Party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation, court order or rules of a stock exchange upon which the securities of a Party are listed, it will:

- 8.2.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible and if permitted by law;
- 8.2.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 8.2.3 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
- 8.2.4 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
- 8.2.5 notify the Disclosing Party of the Receiving Party of, and the form and extent of, any such disclosure or announcement immediately after it is made.

9 DURATION

The obligations of the Receiving Party with respect to each item of Confidential Information shall commence on the Signature Date and shall terminate on the second anniversary of the Signature Date.

10 BREACH

10.2 Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information which is or is likely to constitute a breach of any provision of this Agreement, the Receiving Party shall, at the sole cost of the Receiving Party:

- 10.2.1 immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may require in order to remedy or mitigate the effects of such actual or threatened breach; and

10.2.2 use its best commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

10.3 The Parties acknowledge and agree that:

10.3.1 cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties; and

10.3.2 damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement and that the remedies of interdict, specific performance and any other equitable relief may be appropriate for any threatened or actual breach of this Agreement. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

11 NO WARRANTY OR OFFER

11.2 Unless otherwise specifically stated in writing, the Disclosing Party:

11.2.1 does not give or make any warranty, representation or undertaking, express or implied, as to the accuracy or completeness of any of the Confidential Information or other information received by the Receiving Party or its Permitted Disclosees or as to the reasonableness of any assumptions on which any of the same is based;

11.2.2 does not accept any responsibility or liability for the use of the Confidential Information by the Receiving Party or its Permitted Disclosees; and

11.2.3 is under no obligation to update or correct any inaccuracies which may become apparent in any of the Confidential Information.

11.3 No Confidential Information or other information, communication or document made available to or supplied to the Receiving Party by the Disclosing Party shall constitute an offer or invitation to the Receiving Party, nor will any such information, communication or document form the basis of any contract.

12 PUBLICITY

12.2 Subject to clause 0 below, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law (including by the rules of any securities exchange on which the shares of either of the Parties may be listed, where applicable) or

permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by a Party to the other Party pursuant to this Agreement.

- 12.3 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law, in which event the Party obliged to make such statement will first consult with the other Party to enable them in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause 0.
- 12.4 This clause 12 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

13 BENEFIT

- 13.2 The undertakings given by the Receiving Party in this Agreement shall be for the benefit of and may be enforced by the Disclosing Party, and any *successors-in-title*. The undertakings shall be deemed to have been imposed as a *stipulation alteri* for the benefit of any *successor-in-title* and such benefit may be accepted by such person at any time. The fact that any undertaking may not be enforceable by one of them will not affect its enforceability by any other party.
- 13.3 For the purposes of clause 13.2, the term "*successors-in-title*" shall include any third party which acquires:
- 13.3.1 the business of the Disclosing Party or any part thereof; or
- 13.3.2 pursuant to any cession, the right to enforce the undertakings embodied in this Agreement.

14 NOTICES AND DOMICILIA

14.2 Notices and addresses

14.2.1 Notices

Any notice, consent, approval or other communication in connection with this Agreement ("**Notice**") will be in writing in English.

14.2.2 Addresses

Each Party chooses the physical address, fax number and/or email address corresponding to its name below as the address to which any Notice must be sent.

14.2.2.1 DBSA:

Physical address: 1258 Lever Road
 Headway Hill
 Midrand
 1685
 South Africa

Tel number: +27 11 313 3911

Fax number: +27 11 313 3086

Email address: claimadmin@dbsa.org

Attention: Group Executive: **[relevant division]** and
 General Manager: Legal

14.2.2.2 **[insert]:**

Physical address: **[insert]**
[insert]
[insert]

Tel number: **[insert]**

Fax number: **[insert]**

Email address: **[insert]**

Attention: **[insert]**

14.2.3 Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked in clause 0.

14.3 Effective on receipt

14.3.1 Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:

14.3.1.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in clause 0. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;

14.3.1.2 on the first Business Day after the date of transmission, if sent by fax to the recipient's fax number in clause 0; and

14.3.1.3 on the Business Day on which an acknowledgement of receipt is issued by the recipient, if sent by email to the recipient's email address in clause 0.

14.3.2 Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in clause 0, unless otherwise provided in this Agreement.

14.4 Service of legal process

14.4.1 Each Party chooses its physical address referred to in clause 14.1.2 as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (*domicilium citandi et executandi*).

14.4.2 Any Party may by Notice to the other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

15 APPLICABLE LAW AND JURISDICTION

15.1 This Agreement will in all respects be governed by and construed under the laws of South Africa.

15.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa (South Gauteng High Court, Johannesburg) in any dispute arising from or in connection with this Agreement.

16 GENERAL

16.2 Whole Agreement

16.2.1 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.

16.2.2 This Agreement supersedes and replaces any and all agreements 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.

16.3 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.

16.4 No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

16.5 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 scripto* 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.

16.6 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.

16.7 No Assignment

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, save as otherwise provided herein.

17 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the discussions, drafting, preparation and implementation of this Agreement.

18 SIGNATURE

18.2 This Agreement is signed by the Parties on the dates and at the places indicated below.

18.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

18.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

18.5 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

Signed at _____ on the _____ day of _____ 2016

For and on behalf of

Development Bank of Southern Africa Limited

Name:

Capacity:

Who warrants authority

Signed at _____ on the _____ day of _____ 2016

For and on behalf of

[insert]

Name:

Capacity:

Who warrants authority

Annexure D - Declaration of Interest

Declaration of Interest statement in respect of the IPP Procurement Programme

1. In this Declaration of Interest, the following terms shall have the following meanings:
 - 1.1. **“Advisor”** means the firm or firms advising a Bidder on the raising of debt and equity finance in respect of its Bid Response and the project;
 - 1.2. **“Bidder”** means any entity or consortium that submits a Bid Response, which was or must be either a project company or a consortium of legal entities, all of whom became or shall become shareholders in a project company;
 - 1.3. **“Bid Response”** means any bid submitted or to be submitted by a Bidder in response to the invitation contained in the request for qualifications and proposal in respect of the IPP Procurement Programme;
 - 1.4. **“Lender”** means any financial institution that is party to a term sheet that was or is submitted by a Bidder as part of its Bid Response for the provision of external debt finance to a project;
 - 1.5. **“Member”** in relation to any Bidder, any legal entity and / or natural person which became or will become a shareholder (either itself or through an intermediary entity) once the project company is incorporated, and if the project company has already been incorporated, then any shareholder.

2. For purposes of this Declaration of Interest:
 - 2.1. a "family member" means a parent, child or spouse of the person executing the Declaration of Interest, and includes a partner living with that person as if they were married to each other;
 - 2.2. an "associate" means a business enterprise of whatever form or a trust, in which you have an employment, financial or ownership interest, or are a director or trustee, including in the case of advisors, the firm which you represent;
 - 2.3. an "interest" means:
 - 2.3.1. any shareholding held in a participant, except where the participant is a company listed on a stock exchange;
 - 2.3.2. being employed by, a director, partner, trustee or representative of, or being otherwise engaged in any capacity relating to the IPP Procurement Programme, by any participant;
 - 2.3.3. rendering professional services to any participant in relation to the IPP Procurement Programme;
 - 2.3.4. receiving, or having concluded any agreement to receive, any gifts, favours, payments (other than payments arising from interests already disclosed including payment for professional services), sponsorships, subsidies, or any other benefits from any participant in its capacity as such, within the last 12 months preceding the date of signature of this Declaration of Interest;

DECLARATION:

I, the undersigned,

_____ **(Full Name)**

_____ **(Identity No.)**

hereby declare that:

- 1. The interests that I or any of my family members or associates may have, as far as I am aware, in any of the participants or other entity associated with a bidder are described in full below:

[If none, state "None". If there are relevant interests, state the particulars]

.....

.....

.....

.....

.....

.....

- 2. The advisory mandates held by my associates, for or on behalf of any participant or other entity associated with a Bidder, as far as I am aware, are listed in full, in the table provided at **Annexure A** hereto;

- 3. I confirm that in both my personal and professional capacities, I have not advised any participant, or participated in any other manner with the preparation of any bid response submitted or to be submitted in respect of the IPP Procurement Programme, other than to the extent disclosed below:

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.....

- 4. I acknowledge and accept that, after participating in the auditing of the IPP Procurement Programme as a member of the IDC auditing team, I will not be permitted to advise any Bidder, their members, lenders, contractors or any other participant involved in any bid response, nor to participate in the IPP Procurement Programme in any other capacity including as a member of any Bidder, their Members, Lenders, Contractors or Advisors, without the written consent of the IPP Office; and

- 5. The information provided in this Declaration and in **Annexure A** hereto is true and correct to the best of my knowledge. I declare further that in the event of any interests of the nature described in this Declaration arising during my engagement hereof, or of my becoming aware of any such interests which may not have been previously declared, these shall promptly and accurately be declared in writing by me to the IPP Office.

Signed _____

Full name _____

Date _____

Witness _____

