



**REQUEST FOR PROPOSAL FOR ENGAGEMENT OF A CONSULTING FIRM TO  
UNDERTAKE A PRE-FEASIBILITY STUDY ON ESTABLISHMENT OF  
MANUFACTURING PLANTS OF ESSENTIAL MEDICINES AND HEALTH  
COMMODITIES IN SADC UNDER THE PHARMACEUTICAL VALUE CHAIN**

**REQUEST FOR PROPOSALS**

**CONTRACT NUMBER:**

SADC/IDT/CONSULTANCY/11/2018

**PROCURING ENTITY: SADC**

**Issued on: 12 DECEMBER 2018**

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**Section 1.**  
**Letter of Invitation**

SADC Secretariat,  
Western Commercial Road (near Lobatse and Siboni Roads)  
CBD Plot 54385  
Gaborone  
Botswana

12 December 2018

Dear Sir/Madam,

1. The **Southern African Development Community (SADC) Secretariat** invites proposals from qualified firms to provide the following consulting services:

**ENGAGEMENT OF A CONSULTING FIRM TO UNDERTAKE A PRE-FEASIBILITY STUDY ON ESTABLISHMENT OF MANUFACTURING PLANTS OF ESSENTIAL MEDICINES AND HEALTH COMMODITIES IN SADC UNDER THE PHARMACEUTICAL VALUE CHAIN**

More details on the services are provided in the attached Terms of Reference.

3. A FIRM will be selected under the Open Bidding method and procedures described in this Request for Proposal.
4. The Request for Proposal includes the following documents:

Section 1 - Letter of Invitation

Section 2 - Information to Bidders

Section 3 - Technical Proposal - Standard Forms

Section 4 - Financial Proposal - Standard Forms

Section 5 - Terms of Reference

Section 6 - Standard Forms of Contract.

5. Please inform us, upon receipt, within maximum three (3) days from the date of this letter:
- (a) that you received the bidding documents; and
  - (b) whether you will submit a proposal (if not please state the reasons).

Yours sincerely,

A handwritten signature in black ink, appearing to read "G. Gwaza", with a long horizontal line extending to the right.

**Gift Mike Gwaza MCIPS,  
Head – Procurement Unit**

## Section 2. Information to Bidders

### Definitions

- (a) “BD” means the Bidding Documents to be prepared by the Procuring Entity for the selection of Contractor, based on the SADC Secretariat Standard Template.
- (b) “Contractor” means any entity or person that may provide or provides the Services to the Client under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents that are the General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (d) “Data Sheet” means such part of the Instructions to Bidders used to reflect specific country and assignment conditions.
- (e) “Day” means calendar day.
- (f) “Evaluation Committee” is a panel of experts appointed by the Procuring Entity and assigned to evaluate the bids. The Evaluation Committee consists of a Chairperson and a Secretary, with no voting rights and an odd number of voting members.
- (g) “Instructions to Bidders” (Section 2 of the BD) means the document which provides shortlisted Bidders with all information needed to prepare their Proposals.
- (h) “LOI” (Section 1 of the BD) means the Letter of Invitation being sent by the Procuring Entity to the shortlisted Bidders.
- (i) “Personnel” means professionals and support staff provided by the Bidders or by any Sub-Contractors assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the Procuring Entity’s country; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside the Procuring Entity’s country.
- (j) “Procuring Entity” means the procurement entity with which the selected Consultant signs the Contract for the Services.
- (k) “Proposal” means the Technical Proposal and the Financial Proposal.
- (l) “Services” means the consulting services or the work to be performed by the Contractor pursuant to the Contract.
- (m) “Subcontractor” means any person or entity with whom the Bidder or Contractors intends to subcontract any part of the Services.
- (n) “Terms of Reference” (TOR) means the document included in the BD as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective

responsibilities of the Procuring Entity and the Contractor, and expected results and deliverables of the assignment.

## 1. Introduction

- 1.1 The Procuring Entity named in **the Data Sheet** will select a firm among those listed in the Letter of Invitation, in accordance with the procurement method indicated in **the Data Sheet**, and the edition of the Guidelines indicated in **the Data Sheet**.
- 1.2 The shortlisted Bidders are invited to submit a Technical Proposal and a Financial Proposal for consulting services required for the assignment named in **the Data Sheet** and presented in details in the Terms of Reference attached as Section 5 of this Request for Proposal. The proposal and the Terms of Reference will be the basis for a signed contract with the successful firm.
- 1.3 The assignment shall be implemented in accordance with the phasing indicated in **the Data Sheet**. When the assignment includes several phases, the performance of the Bidder under each phase must be to the Procuring Entity's satisfaction before work begins on the next phase.
- 1.4 The Bidders must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Bidders are encouraged to request the Procuring Entity to provide further information before submitting a proposal and to attend a pre-bid conference if one is specified in **the Data Sheet**. Attending the pre-proposal conference is optional. The Bidders' representative should contact the Procuring Entity at the address stated in **the Data Sheet** or to obtain additional information on the pre-bid conference.
- 1.5 The Procuring Entity will provide the inputs specified in **the Data Sheet**, assist the firm in obtaining licenses and permits needed to carry out the services, and make available relevant project data and reports.
- 1.6 Please note that (i) the costs of preparing the proposal, including a visit to the Procuring Entity, are not reimbursable as a direct cost of the assignment; and (ii) the Procuring Entity is not bound to accept any of the proposals submitted.

- 1.7 SADC Secretariat policy requires that Bidders provide professional, objective, and impartial advice and at all times hold the Procuring Entity's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Bidders shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Procuring Entity.
- 1.7.1 Bidders will be excluded from the bidding process if it will be in a conflict of interest situation as described below:
  - (a) Conflict between consulting activities and procurement of goods, works or services (consulting or general). A bidder or a contractor that has been engaged by the SADC Secretariat or the Procuring Entity to provide goods, works, or services for the organization, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a bidder or a contractor hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or general services resulting from or directly related to the contractor's consulting services for such preparation or implementation.
  - (b) Conflict among consulting assignments: Neither, bidders or contractors (including their personnel and sub-Bidders) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the bidder or contractor. For instance, a contractor assisting SADC Secretariat or the Procuring Entity to implement a project shall not be engaged to prepare an independent assessment for the implementation of the same project, or contractors hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
  - (c) Relationship with SADC Secretariat's or the Procuring Entity's staff: bidders or contractors (including their personnel and sub-contractors) having business or family relationship with a member of the SADC

Secretariat's or the Procuring Entity's staff directly or indirectly involved in any part of: (i) the preparation of the TOR or Technical Specification of a contract, (ii) the selection process for such contract, or (iii) the supervision of the contract, may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the SADC Secretariat throughout the selection process and the execution of the contract.

- 1.7.2 Since previous or ongoing participation in relation to the assignment by the Bidder, its professional staff, or its affiliates or associates under a contract with the SADC Secretariat and Procuring Entity may result in rejection of the proposal, the bidders should clarify their situation in that respect with the Procuring Entity before preparing the proposal.
- 1.7.3 Bidders may be hired for downstream work, when continuity is essential, in which case this possibility shall be indicated in **the Data Sheet** and the factors used for the selection of the Bidder should take the likelihood of continuation into account. It will be the exclusive decision of the Procuring Entity whether or not to have the downstream assignment carried out, and if it is carried out, which Bidder will be hired for the purpose.
- 1.8 It is the SADC Secretariat's policy to require that Procuring Entity's staff as well as Bidders under SADC Secretariat-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the SADC Secretariat:
  - (a) defines for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefits or to avoid an obligation;
    - (iii) "collusive practices" is an arrangement between

- two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (v) “obstructive practice”
    - (aa) deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede a SADC Secretariat, or a governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (bb) acts intended to materially impede the exercise of the SADC Secretariat or governmental or inspection and audit rights.
- (b) It will take the following measures against the bidder recommended for award who has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (i) will reject the bid for award;
  - (ii) will declare the bidder/the contractor, including its affiliates, ineligible, either indefinitely or for a stated period of time, to become a SADC Secretariat contractor;
  - (iii) will cancel or terminate any on-going contract with the bidder /the contractor;
  - (iv) will request the relevant national authorities to conduct a joint investigation with SADC Secretariat to inspect or carry out audits of the bidder /the contractor’ accounting records and financial statements in connection with the contract in question for which it was found guilty of engaging in corrupt, fraudulent, collusive, coercive, or

obstructive practices;

- (v) will forfeit the bid or performance securities of the bidder /the contractor;
- (vi) will suspend any payments due to the bidder/contractor, under the contract in question or any other contract the bidder/contractor might have with the organization, until the extent of damage caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the SADC Secretariat's contract are determined and recovered, and
- (vii) will sue the bidder /contractor to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the bidder/contractor.

- 1.9 Neither the shortlisted Bidders nor their personnel or subcontractor shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the SADC Secretariat in accordance with the above sub para. 1.8 (d).
- 1.10 Bidders shall furnish information as described in the Financial Proposal submission form (Section 4A) on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal, and to execute the work if the firm is awarded the contract.
- 1.11 Without limitation on the generality of this rule, Bidders, and their subcontractors and personnel shall not be hired under the circumstances set forth below:
  - (a) They are bankrupt;
  - (b) Payments to them have been suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting, in accordance with their national laws in the total or partial loss of the right to administer and dispose of their property;
  - (c) Legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a

declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;

(d) They have been convicted, by a final judgment, of any crime or offence concerning their professional conduct;

(e) They are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;

(f) They have been sanctioned by SADC Secretariat pursuant to the Article 48 paragraph (3) letter (b) of the SADC Secretariat Procurement Policy.

- 1.11 Only shortlisted Bidders are allowed to participate in this bidding process. If a Bidder is shortlisted as Joint Venture or Consortium, the composition of Joint Venture or Consortium can be changed with prior approval of the Procuring Entity and only if : (i) is supported by solid and objective arguments, (ii) does not alter the competition, (iii) is not generating a conflict of interest, and (iv) is not invalidating the criteria and conditions in place when the joint venture or consortium was prequalified.

## 2. Clarification and Amendment of Request for Proposal

- 2.1 Bidders may request a clarification of any of the Request for Proposal Documents up to the number of days indicated in **the Data Sheet** before the proposal submission date. Any request for clarification must be sent in writing by papermail, cable, telex, facsimile, or electronic mail to the Procuring Entity's address indicated in **the Data Sheet**. The Procuring Entity will respond by cable, telex, facsimile, or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited Bidders who intend to submit proposals.

- 2.2 At any time before the submission of proposals, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, amend the BD. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex, facsimile, or electronic mail to all invited Bidders and will be binding on them. The Procuring Entity may at its discretion extend the deadline for the submission of proposals.

## 3. Preparation of

- 3.1 Bidders are requested to submit a proposal written in the

- Proposal** language indicated in the **Bid Data Sheet**. All correspondence between the Bidder and Contracting Authority shall be in this language.
- Technical Proposal**
- 3.2 In preparing the Technical Proposal, Bidders are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 3.3 While preparing the Technical Proposal, Bidders must give particular attention to the following:
- (i) If a Bidder considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual Bidder(s) and/or subcontract part of the services to other consulting firms, as appropriate. In case of subcontracting this shall be in the limit stated in **the Data Sheet** but under no circumstances shall exceed forty percent (40%) of the total staff-days input. The Bidders are encouraged to seek the participation of regional Bidders when subcontracting part of the assignment. Under no circumstances, the Bidders shall associate with the other short listed Bidders, or their affiliates, invited for this assignment. Affiliates are the group of companies, firms, associations, etc. where the Bidder or any of the major shareholders owns a minimum of twenty percent (20%) of shares of the share capital. For the same purpose, major shareholder is any legal or physical person who owns no less than twenty percent (20%) of the shares of the Bidder.
  - (ii) For assignments on a staff-time basis, the estimated number of professional staff-days is given in **the Data Sheet**. The proposal shall, however, be based on the number of professional staff-days estimated by the Bidders.
  - (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
  - (iv) Proposed professional staff must, at a minimum,

have the experience indicated in the Terms of Reference, preferably working under conditions similar to those prevailing in the country(ies) of the assignment.

- (v) Alternative professional staff shall not be proposed, and **only one curriculum vitae (CV)** must be submitted for each position.
- (vi) Reports to be issued by the Bidders as part of this assignment must be in the language(s) specified in **the Data Sheet**. It is desirable that the firm's personnel have a working knowledge of the official languages of the country (ies) of the assignment.

3.4 The Technical Proposal shall provide the following information using the attached Standard Forms (Section 3):

- (i) Any comments or suggestions on the Terms of Reference on facilities to be provided by the Procuring Entity and on Standard Form of Contract (Form Tech 2).
- (ii) A description of the methodology and work plan for performing the assignment (Form Tech 3).
- (iii) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member, and their timing (Form Tech 4).
- (iv) CVs recently signed by the proposed professional staff (Form Tech 5). Key information should include number of years working and positions and responsibilities held in various assignments during the last ten (10) years. To be considered during the evaluation, **the CV shall be accompanied by proof of all stated qualifications and working experience**. The proof qualifications shall be in the form of the copies of the degrees and diploma obtained, while for the professional experience the proof shall be either acknowledgement letters from the previous employers or copies of the contracts signed with them. If the language of these documents is not the English language, they shall be accompanied by a certified translation into English.

- (v) Estimates of the total staff input (professional and support staff; staff time) needed to carry out the assignment, supported by bar chart diagrams showing the time proposed for each professional staff team member (Form Tech 6 and 7).
- (vi) A detailed description of the proposed methodology, staffing, and monitoring of training, if **the Data Sheet** specifies training as a major component of the assignment.
- (vii) Any additional information requested in **the Data Sheet**.

3.5 The Technical Proposal shall not include any financial information. If financial information is included in the technical proposal this will be automatically disqualified.

**Financial Proposal**

3.6 In preparing the Financial Proposal, Bidders are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section 4). It lists all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at headquarters), and (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. The Reimbursable expense shall cover **only** the cost indicated in **the Data Sheet**. All other cost estimated by the bidders for the execution of the assignment shall be included in the daily fees of the experts.

3.7 The Financial Proposal **shall not** include the local taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law in the Procuring Entity's country or in the countries of assignment, on the Bidders, the subcontractors, and their personnel (other than nationals or permanent residents of the Procuring Entity's country), unless **the Data Sheet** specifies otherwise. For this purpose, the bidders', the subcontractors' and their personnel' home countries shall not be considered as countries of assignment.

- 3.8 If so specified in **the Data Sheet**, the Financial Proposal **must** include, without any modification, the amount indicated as fixed reimbursable expenses, to cover for the expenditures already priced by the Procuring Entity (ie, cost of trainings, cost of study tours, cost of financial audits, cost of equipments, etc).
- 3.9 The total budget available for this assignment, including the taxes indicated at para. 3.7 and the reimbursable expenses indicated at para 3.8, is indicated in **the Data Sheet**. **Financial Proposal exceeding the available budget will be rejected as non responsive.**
- 3.10 Bidders **must** express the price of their services in **USD** . The payment will be made in **USDs**, and the Bidder shall bear all the cost and risks implied by the currency exchange. **Financial Proposals expressed in other currencies than USDs will be automatically disqualified.**
- 3.11 Commissions and gratuities, if any, paid or to be paid by Bidders and related to the assignment will be listed in the Financial Proposal submission form (Section 4A).
- 3.12 **The Data Sheet** indicates how long the proposals must remain valid after the submission date. During this period, the Bidder is expected to keep available the professional staff proposed for the assignment. The Procuring Entity will make its best effort to complete evaluation within this period. If the Procuring Entity wishes to extend the validity period of the proposals, the Bidders who do not agree have the right not to extend the validity of their proposals.
- 4. Submission, Receipt, and Opening of Proposals**
- 4.1 The original proposal (Technical and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person who sign(s) the proposals.
- 4.2 ***An authorized representative of the firm initials all pages of the proposal. The representative's authorization is confirmed by a written power of attorney accompanying the proposal.***

- 4.3 For each proposal, the Bidders shall prepare the number of copies indicated in the **Data Sheet**. Each Technical Proposal and Financial Proposal shall be marked "ORIGINAL" or "COPY" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original governs.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "Technical Proposal," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL." Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Data Sheet and be clearly marked, "DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE." **Information on the outer and inner envelopes should also include the name of the Bidder and the contract name and reference number.**
- 4.5 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in **the Data Sheet**. Any proposal received after the closing time for submission of proposals shall automatically be rejected and shall be returned unopened to the Bidder.

## 5. Proposal Evaluation

### General

- 5.1 From the time the bids are opened to the time the contract is awarded, if any Bidder wishes to contact the Procuring Entity on any matter related to its proposal, it should do so in writing at the address indicated in **the Data Sheet**. Any effort by the firm to influence the Procuring Entity in the Procuring Entity's proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the Bidder's proposal.
- 5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation, including any SADC Secretariat reviews, is concluded.

### Public Opening

- 5.3 The Procuring Entity shall conduct the bid opening in public at the address, date and time specified in **the Data Sheet**.

**and  
Evaluation  
of  
Technical  
Proposals:  
Scoring**

Only the representatives of the bidders and the Evaluation Committee members are allowed to participate in public opening sessions. Any other interested person shall request, in writing, the SADC Secretariat's permission to participate in a specific bid opening session.

- 5.4 The bid opening shall commence with the Chairperson of the Tender Committee reading out the Bidders' names and the time of arrival of the proposal. A registration number will be given to each proposal. All envelopes shall be opened one at a time, by the Chairperson of the Evaluation Committee, in order of their arrival.
- 5.5 At the opening, only the Technical Proposal envelope shall be opened immediately and checked for compliance with formal submission requirements by the evaluation committee. The Financial Proposal shall remain sealed and deposited in a safe place until all submitted proposals, of technically responsive bids, are opened publicly.
- 5.6 No Bid shall be rejected at Bid opening except for late bids, in accordance with ITB Sub-Clause 4.5. Only envelopes that are opened and read out at Bid opening shall be considered further.
- 5.7 The Procuring Entity shall prepare the minutes of the Bid opening that shall include a brief description of the bid opening procedures and its findings. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the minute shall be distributed to all Bidders who submitted bids in time.
- 5.8 Once the Proposal opening is concluded, the Evaluation Committee, as a whole, and each of its voting members individually, evaluates the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, subcriteria (typically not more than three per criteria), and point system specified in **the Data Sheet**. Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in **the Data Sheet**.

**Public  
Opening  
and  
Evaluation**

- 5.9 After the evaluation of quality is completed, the Procuring Entity shall notify those Bidders whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and Terms of Reference,

**of Financial Proposals: Ranking**

indicating that their Financial Proposals will be returned unopened after completing the selection process. The Procuring Entity shall simultaneously notify the Bidders that have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals. The opening date shall not be sooner than 5 days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile, or electronic mail.

- 5.10 The Financial Proposals shall be opened publicly in the presence of the Bidders' representatives who choose to attend. The name of the Bidder, the technical scores, and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Procuring Entity shall prepare minutes of the public opening.
- 5.11 The evaluation committee will determine whether the Financial Proposals are complete (i.e., whether they have costed all items of the corresponding Technical Proposals; if not, the Procuring Entity will cost them and add their cost to the initial price), correct any computational errors, and determine if the total price is within the maximum budget available. The evaluation shall exclude those taxes, duties, fees, levies, and other charges imposed under the applicable law; and to be applied to foreign and non-permanent resident Bidders (and to be paid under the contract, unless the Bidder is exempted), and estimated as per para. 3.7. Should the Financial Proposal, after applying any correction or adjustments, exceeds the available budget for the assignment indicated at paragraph 3.9, this shall be automatically disqualified.
- 5.12 Once corrections or adjustments have been applied, the Financial Proposal shall be adjusted with the Regional Preference. This implies that a bid offering fifty percent (50) % or more expertise (experts) from the SADC Region will be discounted, for the purpose of evaluation only, with fifteen percent (15%).

For the purpose of calculation of the of the percentage of regional expertise, the basis shall be the total number of key staff days allocated to regional experts in the overall allocation of key staff resources proposed by the bidder.

- 5.13 The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in

the Data Sheet. Proposals will be ranked according to their combined technical ( $S_t$ ) and financial ( $S_f$ ) scores using the weights ( $T$  = the weight given to the Technical Proposal;  $P$  = the weight given to the Financial Proposal;  $T + P = 1$ ) indicated in **the Data Sheet**:  $S = S_t \times T\% + S_f \times P\%$ . The firm achieving the highest combined technical and financial score will be awarded the contract.

## 6. Negotiations of Contract

- 6.1 The Client, prior to award the contract, may enter into negotiation with the successful bidder in order to confirm the availability of proposed Professional staff, incorporation in the methodology of the aspects for which clarifications were requested during the evaluation and the modification of the schedule of mobilization of the team and submission of deliverables under the contract.
- 6.2 No negotiation on the: (i) composition of the proposed professional staff team, (ii) individual or overall professional staff inputs, (iii) unit or total price, and/or (iv) proposed methodology is allowed.
- 6.3 As far as possible, the negotiation shall be conducted in writing. Only on exceptional circumstances, the Client and the successful shall meet for negotiations. In such case the meeting shall take place at the address indicated in the **Bid Data Sheet**.
- 6.4 Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, Client will require assurances that the Professional staff will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the Consultant may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate.
- 6.5 The negotiations shall be recorded in a minute of the negotiations and be attached as annex to the contract.

- 7. Award of Contract**
- 7.1 The Bidder who submitted a technical and financial responsive proposal and received the highest combined score, calculated as per formula given in para 5.13 and the Data Sheet, will be awarded the contract.
- 7.2 After the approval of the Evaluation Report, the Procuring Entity will promptly notify both the successful and the unsuccessful bidders about the outcome of the evaluation of the bids.
- 7.3 In case of the successful bidder, following the notification of award the validity of its offer shall be automatically extended with sixty (60) days.
- 7.4 No later than thirty (30) days from that date of notification of the recommendation for the award of the contract, the Procuring Entity shall submit to the applicant the contract for the consulting services. The successful bidder shall be given fifteen (15) days to sign the contract to the Procuring Entity. If it fails to do so, the Procuring Entity may consider cancelling the award of the contract.
- 7.5 The Contractor is expected to commence the assignment on the date and at the location specified in **the Data Sheet**.
- 8. Confidentiality**
- 8.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidders who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.
- 9. Appeals**
- 9.1 Short listed Bidders may appeal any of the Procuring Entity's decision taken during the evaluation process by following the procedures described in the SADC Secretariat Guidelines at the article specified in **the Data Sheet**.

## Information to Bidders

### DATA SHEET

Clause Reference	Clarifications and/or Amendment to Reference Clause
1.1	<p>The name of the Procuring Entity is: <b>Southern African Development Community (SADC) Secretariat.</b></p> <p>The procurement method is: <b>Open Bidding</b></p> <p>The Edition of the Guidelines is: <b>August 2016</b></p>
1.2	<p>The name, objectives, and description of the assignment are:</p> <p>Contract Name: <b>ENGAGEMENT OF A CONSULTING FIRM TO UNDERTAKE A PRE-FEASIBILITY STUDY ON ESTABLISHMENT OF MANUFACTURING PLANTS OF ESSENTIAL MEDICINES AND HEALTH COMMODITIES IN SADC UNDER THE PHARMACEUTICAL VALUE CHAIN</b></p> <p>Contract Reference: <b>SADC/IDT/CONSULTANCY/11/2018.</b></p> <p><b>Brief description of the specific objectives of the contract:</b> The main objective of the consultancy is to conduct a pre-feasibility study on the establishment of manufacturing plants of essential medicines and associated health commodities for Malaria, Tuberculosis and HIV-AIDS in SADC region. Specific objectives include;</p> <ul style="list-style-type: none"><li>• To carry out a pre-feasibility study for additional capacity for the manufacturing of<ul style="list-style-type: none"><li>✓ Bed-nets;</li><li>✓ malaria medicines; and,</li><li>✓ Anti-retro viral drugs.</li></ul></li><li>• To carry out a pre-feasibility study for the manufacturing of<ul style="list-style-type: none"><li>✓ rapid diagnostic test kit for malaria; and,</li><li>✓ atex medical products (gloves, condoms and others).</li></ul></li><li>• To produce cost estimates for the proposed manufacturing plants</li><li>• To prepare potential project profiles</li></ul> <p><b>SCOPE OF THE WORK</b> The Consultant shall provide or arrange for complete services which will include the following activities:</p> <ul style="list-style-type: none"><li>• Review relevant existing documents, reports and literature on status of</li></ul>

the manufacturing of bed-nets, malaria medicine, ARVs, rapid diagnostic test kit, and latex products in the SADC region;

- Conduct a thorough demand analysis and projections of the sub-clusters listed in 4.1 in the SADC region for at least a 20-year horizon;
- Carry out a detailed analysis of the entire manufacturing system and processes in terms of capacity, adequacy, performance and conditions of the existing production infrastructure of sub-clusters above;
- Carry out raw materials analysis to determine the adequacy of supply to produce products of the sub-clusters in the SADC region;
- Assess existing incentives in the targeted sub-sectors that could be used to promote proposed manufacturing plants in the SADC region;
- Refer to the list of imports into SADC region to determine possible import-substituting projects in the sub-clusters and viable locations in the SADC region;
- Investigate possible alternative new manufacturing plants within the SADC region to augment the existing supply originating from within the SADC region;
- Carry out an economic and financial analysis of the proposed manufacturing plants in the SADC region;
- Propose appropriate financing mechanisms of the proposed manufacturing plants in the SADC region; and,
- Prepare a targeted promotion strategy for the proposed manufacturing plants in the SADC region.

### **EXPECTED OUTPUTS**

The Consultant will be required to deliver the following:

- **An inception Report** containing the experts' methodology, approach and schedule of activities;
- A **Draft Report** to be presented to a wider stakeholder group during a validation workshop, to be organized with Regional Pharmaceutical Value Chain(s) stakeholders;
- A **Final Report**, including validation workshop report briefly summarising proceedings of the workshop, including the list of participants, the agenda of the meeting and so forth. The Final Report will include the following:
  - ✓ A comprehensive **SADC Pharmaceutical Manufacturing Report** profiling the respective sub-clusters (***Bed-nets, Malarial medicines, ARVs, Rapid Diagnostic Test Kit, and Latex Medical Products***), including but not limited to, a competitive analysis of regional present

	<p>players, constraints, markets, source of raw materials, respective opportunities in the sub-clusters; and incorporating outputs of the tasks outlined above; and,</p> <p>✓ Specific <b>Manufacturing Profiles of the targeted sub-clusters</b> (not exceeding three pages each), summarizing each specific investment opportunity as identified in the Mapping Report, which the SADC Secretariat and SADC Members States will use for marketing and promotion purposes</p>
<b>1.3</b>	The assignment is not phased:
<b>1.4</b>	A pre-bid conference will be held: <b>No</b>
<b>1.5</b>	The Procuring Entity will provide the relevant documents, reports and any policies which might facilitate the assignment.
<b>1.7.3</b>	The Procuring Entity envisages the need for continuity for downstream work: <b>Not at this stage</b>
<b>1.10</b>	This information is not required under this tender.
<b>2.1</b>	Requests for clarifications should be made 14 calendar days before closure of submission period
<b>3.1</b>	The language of the bidding process is: <b>English</b>
<b>3.3</b>	<p>(i)The Bidder <b>shall not</b> subcontract any portion of the assignment.</p> <p>(ii)Reports that are part of the assignment must be written in the following language(s): <b>English</b></p> <p>Personnel proposed for this assignment <b>MUST</b> be fluent in English</p>
<b>3.6</b>	<p>The following expenses shall be considered reimbursable expenses:</p> <ul style="list-style-type: none"> <li>• Per diems and flights for experts when undertaking approved assignments related to this contract outside Gaborone.</li> <li>• Translation of project related documents as approved by the Procuring Entity</li> <li>• The per-diems paid under the reimbursable expenses shall not exceed the SADC Secretariat's standard per-diems.</li> <li>• Mobilization and demobilization flights are not covered by reimbursable expenses and should be included in the fee rate.</li> <li>• Publication costs.</li> </ul>
<b>3.7</b>	<b>Taxes:</b> It is the responsibility of the bidders to ensure that they familiarize themselves with the relevant tax regulations in their home country and in Botswana. Any liability for taxes must be factored into the fee rate and should not be a separate component of the financial proposal.
<b>3.9</b>	The maximum budget is <b>USD 240,000</b> including reimbursable
<b>3.11</b>	This information is not required under this tender.
<b>3.12</b>	Proposals must remain valid for <b>120 days</b> after the submission date.

4.3	Bidders must submit an <b>Original and THREE</b> additional copies of each proposal, in hard copy and One electronic version on Memory stick (written in a Microsoft Office application).
4.4	<p>The proposal submission address is:</p> <p><b>The Chairperson</b>  <b>The SADC Internal Tender Committee</b>  <b>SADC Secretariat,</b>  <b>Western Commercial Road (near Lobatse and Siboni Roads)</b>  <b>CBD Plot 54385</b>  City: <b>Gaborone</b>  Country: <b>Botswana</b></p>
4.5	Proposals must be submitted no later than <b>16:00hrs local time on Friday, 18<sup>th</sup> January 2019.</b>
5.1	<p>The address to send information to the Procuring Entity is:</p> <p><b>Head of Procurement</b>  <b>Southern African Development Community (SADC) Secretariat</b>  <b>CBD Plot 54385</b>  Room DGP11 on Ground Floor  City: <b>Gaborone</b>  Country: <b>Botswana</b>  <b>Phone: +2673951863</b>  <b>Fax: +2673972848/3181070</b>  <b>Attention: Mr. Gift Mike Gwaza</b>  <b>Email: <a href="mailto:gqwaza@sadc.int">gqwaza@sadc.int</a></b></p> <p><b>With copy to: <a href="mailto:ctutalife@sadc.int">ctutalife@sadc.int</a></b>  <b>Attention: Mr. Calicious Tatalife</b></p>
5.3	<p>The Bid public opening will be held on <b>16:00hrs local time on Friday, 18<sup>th</sup> January 2019</b> at:</p> <p><b>The SADC Secretariat,</b>  <b>Room DGP 48</b>  <b>Western Commercial Road (near Lobatse and Siboni Roads)</b>  <b>CBD Plot 54385</b>  City: <b>Gaborone</b></p>

	<p>Country: <b>Botswana</b></p> <p>The bidder's must notify the Procuring Entity, in writing, with at least three days prior to the bid opening, the names of their representatives attending the bid opening.</p>
5.8	<p><b>TECHNICAL SCORE (100 points)</b></p> <p>The number of points to be given under each of the evaluation criteria are:</p> <p><b>ORGANISATION AND METHODOLOGY: (40 points)</b></p> <ul style="list-style-type: none"> <li>• Understanding of the TOR – 5 points</li> <li>• Proposed methodology for the assignment – 20points</li> <li>• Workplan – 5 points</li> <li>• Similar experience (similar contracts in the last three years of the same nature complexity and amount) – <b>20 points</b></li> </ul> <p><b>Qualifications and competence of the key staff for the assignment – 50 points.</b></p> <ul style="list-style-type: none"> <li>• <b>Team Leader - 30 points</b></li> <li>• <b>Senior Expert – 20 points</b></li> </ul> <p>The number of points to be given under each evaluation sub criteria for qualification of key staff, expressed in percentage from the number of points allocated to each key staff are:</p> <p><i>-Education and training - 25</i>  <i>-Specific skills for the project – 50</i>  <i>-General experience in the region - 25</i></p> <p>The minimum technical score required to pass: <b>70%</b> of available points</p>
5.10	The Bidders will be invited to negotiate the bids presented with the Procuring Entity.
5.12	Regional Preference not applicable
5.13	<p>The formula for determining the financial scores is the following:  <b><i>Either <math>Sf = 100 \times Fm/F</math>, in which <math>Sf</math> is the financial score, <math>Fm</math> is the lowest price and <math>F</math> the price of the proposal under consideration, or another proportional linear formula]</i></b></p> <p>The weights given to the technical and Financial Proposals are:  T= 0.7, and  P= 0.3</p> <p>The formula for the final (combined technical and financial) score is:  <math>S = St \times T\% + Sf \times P\%</math></p>
6.3	The address where the negotiations of the contract ( <b><i>if required</i></b> ) will be held is:

	<p><b>The SADC Secretariat, Room DGP 48 Western Commercial Road (near Lobatse and Siboni Roads) CBD Plot 54385 City: Gaborone Country: Botswana</b></p>
<b>7.5</b>	<p>The expected date to commence the assignment is <b>01/02/2019</b> but under no circumstances shall be later than one (1) month after the contract signature by the both parties.</p>
<b>9.1</b>	<p>The procedures to be followed to appeal a Procuring Entity decision in the procurement process are described in the <b>Article 36</b> of the SADC Secretariat Procurement Guidelines, <b>August 2016 edition</b>.</p>

**Section 3.**

Technical Proposal Submission Form

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**FORM TECH-1 TECHNICAL PROPOSAL SUBMISSION FORM**

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***[Location, Date]***

To: *[Name and address of Procuring Entity]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for ***[insert the title and reference number of consulting services]*** in accordance with your Bidding Documents dated ***[insert the date]*** and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

Our Proposal is binding upon us and subject to the modifications resulting from correction and clarification made during the evaluation process, for a period of 120 days from the deadline for submission of the bid, as indicated in the Data Sheet reference to clauses 3.12 and 4.5.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Name and Title of Signatory:

Name of Firm:

Address:

Phone:

Facsimile:

e-mail:

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**FORM TECH- 2 COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE ,  
APPROACH AND METHODOLOGY FOR APPROACHING THE ASSIGNMENT**

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**A -** Understanding of the TOR and the tasks to be accomplished, including any specific comments on the TOR (6 pages maximum)

*[Present here your understanding of the TORs and the tasks to be accomplished as well as any specific comments you may have on the TOR]*

**B –** Proposed methodology to the assignments (10 pages maximum)

*[Present here a brief outline of the methodology you will use to undertake the assignment]*



**FORM TECH - 5 CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF<sup>1</sup>**

**Proposed role in the project:** *[insert the name of the position and indicate the key position]*

1. **Family name:** *[insert the name]*
2. **First names:** *[insert the names in full]*
3. **Date of birth:** *[insert the date]*
4. **Nationality:** *[insert the country or countries of citizenship]*
5. **Civil status:** *[insert: married/ divorced/single/ widower]*

**6. Education:**

<b>Institution:</b> <b>[Date from – Date to]</b>	<b>Degree(s) or Diploma(s) obtained:</b>
<i>[indicate the month and the year]</i>	<i>[insert the name of the diploma and the specialty/major]</i>
<i>[indicate the month and the year]</i>	<i>[insert the name of the diploma and the specialty/major]</i>

**7. Language skills:** (Indicate competence on a scale of 1 to 5) (1 – excellent; 5 – basic)

<b>Language</b>	<b>Reading</b>	<b>Speaking</b>	<b>Writing</b>
<i>[insert the language]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>
<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>
<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>

**8. Membership of professional bodies:** *[indicate the name of the professional body]*

**9. Other skills:** *[insert the skills]*

**10. Present position:** *[insert the name]*

**11. Years of experience:** *[insert the no.]*

**12. Key qualifications:** (Relevant to the assignment)

*[insert the key qualifications]*

**13. Specific experience in the region:**

<b>Country</b>	<b>Date from - Date to</b>
<i>[insert the country]</i>	<i>[indicate the month and the year]</i>

<sup>1</sup> The CV must not exceed eight (8) pages

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<i>[insert the country]</i>	<i>[indicate the month and the year]</i>
<i>[insert the country]</i>	<i>[indicate the month and the year]</i>

**14. Professional experience<sup>12</sup>:**

Date from – Date to	Location of the assignment	Company & reference person (name & contact details)	Position	Description
<i>[indicate the month and the year]</i>	<i>[indicate the country and the city]</i>	<b>Name of the Company:</b> <b>Address of the company:</b> <b>Phone:</b> <b>Fax:</b> <b>Email:</b> <b>Name and title of the reference person from the company:</b>	<i>[indicate the exact name and title and if it was a short term or a long term position]</i>	<b>Name of the contract:</b> <b>Beneficiary of the contract:</b> <b>Brief description of the contract:</b> <b>Responsibilities:</b>
<i>[indicate the month and the year]</i>	<i>[indicate the country and the city]</i>	<b>Name of the Company:</b> <b>Address of the company:</b> <b>Phone:</b> <b>Fax:</b> <b>Email:</b> <b>Name and title of the reference person from the company:</b>	<i>[indicate the exact name and title and if it was a short term or a long term position]</i>	<b>Name of the contract:</b> <b>Beneficiary of the contract:</b> <b>Brief description of the contract:</b> <b>Responsibilities:</b>

<sup>2</sup> Only key information about the positions and the responsibilities held in various assignments during the last fifteen (15) years should be included. Experience older than 15 years will be rendered irrelevant.

Date from – Date to	Location of the assignment	Company & reference person (name & contact details)	Position	Description
<i>[indicate the month and the year]</i>	<i>[indicate the country and the city]</i>	<b>Name of the Company:</b> <b>Address of the company:</b> <b>Phone:</b> <b>Fax:</b> <b>Email:</b> <b>Name and title of the reference person from the company:</b>	<i>[indicate the exact name and title and if it was a short term or a long term position]</i>	<b>Name of the contract:</b> <b>Beneficiary of the contract:</b> <b>Brief description of the contract:</b> <b>Responsibilities:</b>

**15. Other relevant information:** (e.g. Publications)  
***[insert the details]***

**16. Statement:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I hereby declare that at any point in time, at the SADC Secretariat request, I will provide certified copies of all documents to prove that I have the qualifications and the professional experience and indicated at points 8 and 14 above<sup>34</sup>, documents which are attached to this CV as photocopies.

By signing this statement, I also authorize the SADC Secretariat to contact my previous or current employers indicated at point 14 above, to obtain directly reference about my professional conduct and achievements.

I also declare that I agree to participate exclusively with the tenderer < tenderer name > in this service tender procedure. I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this tender is successful, namely:

<b>From</b>	<b>To</b>	<b>Availability</b>
< start of period 1 >	< end of period 1 >	< full time/part time >
< start of period 2 >	< end of period 2 >	< full time/part time >
< etc >		

I confirm that I do not have a confirmed engagement as key expert in another SADC/EU-funded project, or any other professional activity incompatible in terms of capacity and timing with the above engagements.

By making this declaration, I understand that I am not allowed to present myself as an expert to any other tenderer submitting a tender to this tender procedure. I am fully aware that if I do so, I will be excluded from this tender procedure, the tenders will be rejected, and I may also be subject to exclusion from other tender procedures and contracts funded by the SADC.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>3</sup> *The proof of stated qualifications shall be in the form of the copies of the degrees and diploma obtained, while for the professional experience the proof shall be either acknowledgement letters from the previous employers or copies of the contract signed with them.*

**ATTACHMENTS:**    *1) Proof of qualifications indicated at point 8*  
*2) Proof of working experience indicated at point 14*

**FORM TECH-6 STAFFING SCHEDULE (NOT APPLICABLE)**

N o	Name of Staff/Positi on1	Staff input (in the form of a bar chart in days)2													TOTAL DAYS
		1(July 2013)	2	3	4	5	6	7	8	9	10	11	12	n	
<b>Key Experts</b>															
1															
2															
..															
n															
											<b>Subtotal</b>				

<sup>1</sup> Position held in the Contract must be indicated as well.

<sup>2</sup> Months/ weeks are counted from the start of the assignment. .

**FORM TECH-7 WORK SCHEDULE**

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## Section 4. Financial Proposal Submission Forms

*[Comments in brackets [ ] provide guidance to the Service Providers for the preparation of their Financial Proposals; they should not appear on the Financial Proposals to be submitted.]*

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FORM FIN-2 SUMMARY OF COSTS.....	46

**FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM**

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**[Location, Date]**To: **[Name and address of Procuring Entity]**

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for **[insert the title and the reference number of consulting services]** in accordance with your Bidding Documents dated **[insert the date]** and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of **United States Dollars [insert the amount in words and figures]**. The Financial Proposal includes the reimbursable expenses indicated in the Data Sheet reference to the clause 3.8, amounting United **States Dollars [insert the amount(s) in words and figures]**,

Our Financial Proposal shall be binding upon us subject to the modifications resulting from correction and clarification made during the evaluation process, up to expiration of the validity period of the Proposal.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Name and Title of Signatory:

Name of Firm:

Address:

Phone:

Facsimile:

E-mail:

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**FORM FIN-2 SUMMARY OF COSTS**

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<b>Cost component</b>	<b>Costs</b>
	<b>(USD)</b>
<b>Professional fees</b>	
<b>Reimbursable Expenses<sup>1</sup></b>	
<b>Total</b>	

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<sup>1</sup> as per the Data Sheet reference to clause 3.8

**section 5.**

**Terms of Reference**



**PRE-FEASIBILITY STUDY ON ESTABLISHMENT OF MANUFACTURING  
PLANTS OF ESSENTIAL MEDICINES AND HEALTH COMMODITIES IN SADC  
UNDER THE PHARMACEUTICAL VALUE CHAIN**

**Gaborone, Botswana**



## 1. INTRODUCTION

The **SADC Treaty** provides the overall structure and mandate for working towards regional integration of the region, whereas the revised Regional Indicative Strategic Development Plan (RISDP) 2015-2020 and the 2015 SADC Industrialisation Strategy and Roadmap 2015-2063 provide the framework for the trade and industrialization aspects.

The RISDP prioritises Industrial Development and Market Integration and places industrialisation at the centre of the regional integration agenda and seeks to front-load and accelerate industrialisation in the SADC region. The SADC Industrialisation Strategy and Roadmap 2015-2063 and the detailed and costed Action Plan for the Strategy seek to engender a major economic and technological transformation at the national and regional levels. It seeks to do so through the beneficiation and value addition of the region's diverse resources, within the context of deeper regional integration. It further seeks to address the development challenges of the region by progressively moving from a factor-driven to an investment and efficiency-driven approach and ultimately to a high growth trajectory driven by knowledge, innovation and business sophistication. Furthermore, the Action Plan provides a breakdown of the key outputs and activities to be undertaken at both regional and national levels in line with the three overarching pillars of **Industrialisation, Regional Integration and Competitiveness**.

The SADC Protocol on Health as approved in 1999 provide for a legally enforceable framework for cooperation among Member States and for the overall development of the Pharmaceutical Industry in the region. The Protocol highlights as some of its key objectives, the need for coordination of regional efforts on epidemic preparedness and control, with the ultimate ambition to eradicate communicable and non-communicable diseases in the region. This is to be achieved through, among others, education and training, efficient laboratory services and common strategies to address the health needs of vulnerable groups. Furthermore, the Protocol advances the establishment of institutional mechanisms within the regional health sector to oversee implementation thereof.

On the other hand, the pharmaceutical policy framework is defined in the 'SADC Pharmaceutical Business Plan (2007-2013)', which was updated into the Pharmaceutical Business Plan 2015-2019. Both have a specific chapter on stimulating regional production, where the specific strategy is: *"Rationalizing and maximizing the research and production capacity of local and regional*

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*pharmaceutical industry of generic essential medicines and African Traditional Medicines”.*

The SADC **HIV and AIDS** Strategic Framework 2010-2015’ includes several strategies that require medicines and/or commodities: condom distribution, HIV Testing, Prevention of Mother to Child Transmission (PMTCT), treatment with antiretroviral and home-based care. Together with the ‘Maseru Declaration on the Combating of HIV and AIDS in the SADC Region’ these documents provide a clear policy direction and political commitment in combating the AIDS pandemic in the region.

The ‘Strategic Framework for Control of **Tuberculosis** in the SADC Region (2007-2015)’ provides the framework for TB control in SADC. SADC Member States harmonised their treatment guidelines in 2010. SADC’s TB policy aims to diagnose, treat and cure the estimated yearly 1.3 million new TB patients in SADC.

SADC **malaria** strategies are well documented in the ‘SADC Malaria Strategic Framework (2007-2015)’, the ‘SADC Malaria Elimination Framework’, and the ‘SADC minimum standards for malaria control (2010)’. Collaboration among stakeholders is coordinated in SADC by the Southern Africa Roll Back Malaria Network (SARN).

The recently concluded SADC Summit of Heads of State and Government in August 2018 once again placed the pharmaceutical sector as a key priority through the declaration for the elimination of Malaria in the region.

Altogether, the **SADC regional policies and frameworks** are in line with the African Union (AU) ‘Pharmaceutical Manufacturing Plan for Africa’ (PMPA), its 2012 business plan, the 2015 update report, the AU ‘Accelerated Industrial Development of Africa’, and the ‘Agenda 2063’. These all provide evidence for a broad continental level consensus on prioritising industrialization and pharmaceutical manufacturing. The PMPA also provides for regional and national strategies.

## **2. BACKGROUND INFORMATION**

According to the 2016 SADC feasibility study on the manufacturing of essential medicines and health commodities, local manufacturers only account for between 15% (for ARVs) and up to 24% of the regional market for the three main diseases. The total SADC pharmaceutical market for all medicines and medical supplies on the other hand is estimated at USD 4.7 billion. Further estimates indicate that this could

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reach USD 6.5 billion in 2020, assuming that SADC expenditure on medicines and medical supplies grow at the same pace as in the whole of Africa.

In 2016, there were 18 manufacturers based in 7 countries producing 65 products for the 3 diseases, namely; HIV, TB and Malaria. While all had national registration, only one manufacturer (Aspen Pharmacare, South Africa) manufactured World Health Organisation (WHO) prequalified medicines and one manufacturer of the approved WHO Pesticide Evaluation Scheme (WHOPES) due to lower uptake in the region.

In the same period, only five companies in 3 countries manufactured **antiretrovirals**, which altogether covered only 15% of the SADC generic ARV market. The three South Africa based manufacturers were mainly focusing on the national ARV tender but prices were considered to be very competitive and with limited profitability and the only company with WHO prequalified products (8 HIV products) was considering shifting towards other disease areas. Zimbabwe had 2 WHO prequalified products for several years, but these products had largely been replaced by newer (tenofovir based) regimens. Companies in Zambia, Mozambique and Botswana were planning ARV production, but had not yet started production. Overall most manufacturers state that the strong competition from India, the need to purchase APIs from Indian suppliers, and the lack of an enabling environment make the current ARV market unattractive.

In terms of the condom production there were four SADC **condom manufacturers**, accounting for only supply 10% of the estimated 4 billion SADC demand for condoms. However, this could have reduced somewhat as the Botswana based manufacturers had all ceased operations. Recently, there have been some developments in South Africa, with the opening of new plants. Nevertheless, it is expected that these plants will mainly serve the domestic market as is currently the case with the existing plants.

In terms of **TB medicines**, there were only 4 manufacturers in the region (3 of them in South Africa), making mostly the first-line TB drugs. While the three Multi-Drug Resistant Tuberculosis (MDR-TB) drugs were made in South Africa, these could be in future be partially replaced by newer TB drugs that could potential treat MDR-TB in only 6 instead of 20 months. These new TB medicines are all patent protected, costly and from different companies.

There were 7 manufacturers of **Malaria** medicines and commodities in the region with only one manufacturer of the approved WHO Pesticide Evaluation Scheme (WHOPES) located in Tanzania. Overall, there were no WHO prequalified anti-

malaria products made in SADC. Africa does not (yet) have WHO pre-qualified factories for malaria Rapid Diagnostic Tests (RDT) though some research is ongoing in South Africa.

## 2.1 Challenges To Regional Manufacturing

SADC remains a global epicenter for the three pandemic diseases. For instance, there was an estimated 14.7 million people living with HIV: 11.7 million of them currently need Anti-Retroviral Therapy (ART), but only 6 million (52%) were actually on ART in 2013. The WHO-recommended policy shift of treating at CD4<350 via CD4<500 to “Test & Treat” and the UNAIDS “90-90-90” strategy will increase the number of HIV+ people to be treated with ART from the existing 6 million to 15 million people by 2020.

Given such, SADC would like to increase the local content percentage of medicines produced in the region. This will help both the health agenda (universal health coverage), the industrialization agenda (building a sustainable pharmaceutical manufacturing capacity) and balance of payments. Benefits of regional production will also include less dependence on far-away suppliers; more supply security; savings on foreign exchange; more industrialization; more knowledge among companies; and more employment. Furthermore, the possibility also exists for the export to the rest of the African market, especially in view of emerging trade arrangements.

However, it is generally acknowledged that SADC Member States face challenges in ensuring the availability of quality and affordable essential medicines. SADC Member States are at various levels of pharmaceutical sector development and pharmaceutical services delivery, as well as in the application of regulations and procedures, such as for quality assurance and public procurement.

The 2016 SADC feasibility study provided an extensive overview of some of the specific challenges facing the pharmaceutical sector in the region. Among the key challenges worthy noting are:

1. **Donations and limited regional procurement:** While most of the Member States reported that there were no barriers for importing generic essential medicines and/or health commodities from the region, the fact that most of Member States were being sponsored by donors limited possible suppliers to those with WHO prequalification and/or Stringent Regulatory Authority (SRA) approval. This excluded most regionally based suppliers as only a few were WHO pre-qualified.

2. Current domestic preference schemes applied during financial evaluation of public tenders benefit domestically produced products over regionally produced products as Member States **do not yet have a regional preference system**. Undoubtedly, this affected the ability of regionally based manufacturers from accessing markets beyond their borders in the region.
3. There was lack of coherence between Trade, Industry, Finance and Health sectors at national and regional levels due to different interests in policies on regional production and procurement. In some Member States imported finished dosage forms are exempted from taxes/duties, whereas Active Pharmaceutical Ingredients (API), excipients and packaging materials are taxed. Regional production of new generics can only be achieved by working together using one balanced regional strategy.
4. Low appetite for a **WHO Prequalification** or SRA approval due to expected lower returns as market access is not guaranteed.
5. The generally high cost of production in the region.
6. Low market volumes, which is why pooled procurement or regional market access is so important.

In light of the above, there is an urgent need to conduct a pre-feasibility study in the SADC region for the establishment of manufacturing plants in the targeted sub-clusters in each of the pharmaceutical value chains. The project profiles will enable SADC Secretariat to promote these investment projects to prospective investors by inter alia de-risking any supply-side constraints and regulatory bottlenecks that could frustrate the realisation of these opportunities. The exercise will provide sectoral and project-specific information on the business opportunities under the sub-clusters of each of the Pharmaceutical Value Chains.

### **3. PRE-FEASIBILITY STUDY OBJECTIVES**

The main objective of the consultancy is to conduct a pre-feasibility study on the establishment of manufacturing plants of essential medicines and associated health commodities for Malaria, Tuberculosis and HIV-AIDS in SADC region. Specific objectives include;

3.1 To carry out a pre-feasibility study for additional capacity for the manufacturing of

- (i) Bed-nets;
- (ii) malaria medicines; and,
- (iii) Anti-retro viral drugs.

3.2 To carry out a pre-feasibility study for the manufacturing of

- (i) rapid diagnostic test kit for malaria; and,
- (ii) latex medical products (gloves, condoms and others).

3.3 To produce cost estimates for the proposed manufacturing plants proposed in **3.1** and **3.2** above.

3.4 To prepare potential project profiles

#### **4 SCOPE OF THE WORK**

The Consultant shall provide or arrange for complete services which will include the following activities:

- 4.1. Review relevant existing documents, reports and literature on status of the manufacturing of bed-nets, malaria medicine, ARVs, rapid diagnostic test kit, and latex products in the SADC region;
- 4.2. Conduct a thorough demand analysis and projections of the sub-clusters listed in 4.1 in the SADC region for at least a 20-year horizon;
- 4.3. Carry out a detailed analysis of the entire manufacturing system and processes in terms of capacity, adequacy, performance and conditions of the existing production infrastructure of sub-clusters above;
- 4.4. Carry out raw materials analysis to determine the adequacy of supply to produce products of the sub-clusters in the SADC region;
- 4.5. Assess existing incentives in the targeted sub-sectors that could be used to promote proposed manufacturing plants in the SADC region;
- 4.6. Refer to the list of imports into SADC region to determine possible import-substituting projects in the sub-clusters and viable locations in the SADC region;

- 4.7. Investigate possible alternative new manufacturing plants within the SADC region to augment the existing supply originating from within the SADC region;
- 4.8. Carry out an economic and financial analysis of the proposed manufacturing plants in the SADC region;
- 4.9. Propose appropriate financing mechanisms of the proposed manufacturing plants in the SADC region; and,
- 4.10. Prepare a targeted promotion strategy for the proposed manufacturing plants in the SADC region.

## 5 EXPECTED OUTPUTS

The Consultant will be required to deliver the following:

- 5.1 **An inception Report** containing the experts' methodology, approach and schedule of activities;
- 5.2 A **Draft Report** to be presented to a wider stakeholder group during a validation workshop, to be organized with Regional Pharmaceutical Value Chain(s) stakeholders;
- 5.3 A **Final Report**, including validation workshop report briefly summarising proceedings of the workshop, including the list of participants, the agenda of the meeting and so forth. The Final Report will include the following:
  - 5.3.1 A comprehensive **SADC Pharmaceutical Manufacturing Report** profiling the respective sub-clusters (***Bed-nets, Malarial medicines, ARVs, Rapid Diagnostic Test Kit, and Latex Medical Products***), including but not limited to, a competitive analysis of regional present players, constraints, markets, source of raw materials, respective opportunities in the sub-clusters; and incorporating outputs of the tasks outlined above; and,
  - 5.3.2 Specific **Manufacturing Profiles of the targeted sub-clusters** (not exceeding three pages each), summarizing each specific investment opportunity as identified in the Mapping Report, which the SADC Secretariat and SADC Members States will use for marketing and promotion purposes.

## **6 IMPLEMENTATION ARRANGEMENTS**

- 6.1 The study will take advantage of the SADC Secretariat coordination arrangements forged by the Directorate of Industrial Development and Trade;
- 6.2 The SADC Secretariat will be the implementing agency; and
- 6.3 The Consultant shall be responsible to the Executive Secretary of SADC through the Director, Industrial Development and Trade who shall be responsible for the day to day supervision of the project.

## **7 METHODOLOGY**

### *7.1 Assignment Framework:*

- a) Develop a framework for the assignment to be agreed upon with the Client prior to undertaking the specific tasks required by the assignment and which will form the basis for an Inception Report.

### *7.2 Desk Review:*

- a) Utilize SADC Industrialisation Strategy and Roadmap 2015-2063, and in particular, the 2016 SADC Feasibility study on Regional Manufacturing of Medicines and Health Commodities as basis for this assignment and extract all relevant issues pertaining to the sub-clusters;
- b) Use National Industrial Policies of SADC Member States as a guide in the policy orientation of national industrialization programmes and strategies; and,
- c) Consult all relevant documents that provide insights on the legislation, regulations and/or strategy pertaining to the targeted sub-clusters among SADC Member States.

### *7.3 Consultations:*

- a) Conduct individual and group consultations that will involve one-on-one interviews and group discussions with relevant SADC Government Ministries and departments, technical agencies, Technical Working Groups under Trade, Industry, Health (pharmaceuticals) and Private Sector Development Sector,

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Development Partners and the Private Sector that involved with industrialization in the SADC region.

## **8 PROJECT TIME FRAMES**

The consulting services are expected to be done within four (4) months from commencement to submission of the Draft Final Report.

## **9 OBLIGATION OF THE CLIENT**

The Client (SADC) shall assist the Consultant in providing available study reports and other documents that may be relevant to the assignment. Where necessary, the Client will assist in making arrangements for the Consultant to meet relevant agencies, institutions and other key stakeholders in the SADC region. The Client may attach counterpart staff to work with the consultant for the duration of the assignment.

## **10 OBLIGATIONS OF THE CONSULTANT**

The Consultant is expected to be fully self-sufficient in terms of accommodation, office space, office supplies, office equipment and transport. The data, documentation and assets from the consultancy will remain in the custody of the Client at the end of the assignment. The Consultant will make arrangements to ensure a participatory/consultative approach with a high degree of public involvement and participation. This includes arrangements of the envisaged stakeholder workshops.

If necessary, the Consultant shall be responsible for coming up with a training and knowledge transfer plan to counterpart staff to be approved by the Client.

## **11 REQUIRED KEY PERSONNEL**

This assignment is expected to be carried out a Consulting Firm that will have two Key Experts, a Team Leader and Senior Specialist, to undertake various tasks of the assignment. Each expert should hold the following qualifications:

### **11.1 Team Leader**

- a) A minimum of Master's Degree in Pharmacy/Medicine, Development Economics, Business Administration or Development Studies with specialization on issues of industrialization, ideally with specific expertise in the relevant pharmaceuticals sub-sectors. A candidate with a PhD in any of the above areas will have an added advantage;
- b) Have a minimum of 10 years professional experience in the field of business research surveys with a proven track record of conducting similar regional assignments in the developing countries or elsewhere, preferably relating to industrialization and business profiling;
- c) Have thorough knowledge of industrialisation and regional integration relating to trade, private sector-led growth, with particular emphasis on development of manufacturing industries;
- d) Have the knowledge and understanding of theories, concepts and approaches relevant to development
- e) Have the ability to conduct structured field surveys, with analytical and evaluative skills to analyse and interpret data, including familiarity with and experience of the use of various research sources, including desk review, interviews, electronic research and so forth;
- f) Have the ability to apply judgment in the context of assignments given, plan own work, manage conflicting priorities and show pride in their work and achievements. S/he must demonstrate professional competency and mastery of the subject matter; must be conscientious and efficient in meeting commitments; should observe deadlines and achieve stipulated results.

### **11.2 Senior Expert**

- a) A minimum of Master's Degree in Industrial Economics, Agricultural Economics, Business Administration with specialization on Manufacturing,

Agro-processing, Pharmaceuticals and Industrialization. A candidate with a PhD in any of the above areas will have an added advantage;

- b) Have a minimum of 7 years professional experience in the field of business research surveys with a proven track record of conducting similar assignments in the Southern Africa region, preferably relating to value chains and industrialization;
- c) Have the practical experience in industrial clustering and thorough knowledge of industrial policy/strategy relating to trade, private sector-led growth, with particular emphasis on development of value chains in manufacturing industries;
- d) Have the knowledge and understanding of theories, concepts and approaches relevant to development, with a focus on value chains;
- e) Have the ability to conduct structured field surveys, with analytical and evaluative skills to analyse and interpret data, including familiarity with and experience of the use of various research sources, including desk review, interviews, electronic research and so forth; and,
- f) Have ability to apply judgment in the context of assignments given, plan own work, manage conflicting priorities and show pride in their work and in achievements. They must demonstrate professional competency and mastery of the subject matter; must be conscientious and efficient in meeting commitments; should observe deadlines and achieve stipulated results.

STANDARD CONTRACT FOR CONSULTING SERVICES

**DRAFT CONTRACT FOR ENGAGEMENT OF A CONSULTING FIRM TO  
UNDERTAKE A PRE-FEASIBILITY STUDY ON ESTABLISHMENT OF  
MANUFACTURING PLANTS OF ESSENTIAL MEDICINES AND HEALTH  
COMMODITIES IN SADC UNDER THE PHARMACEUTICAL VALUE CHAIN**

**CONTRACT NUMBER: SADC/IDT/CONSULTANCY/11/2018**

**BETWEEN SADC Secretariat (“the Contracting Authority”)**

**AND**

**CONTRACTOR *[insert the name]* (“the Contractor”)**

**DATE: *[insert the month and the year]***

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## I. Form of Contract

(Text in brackets [ ] is optional; all notes should be deleted in final text)

This CONTRACT (hereinafter called the "Contract") is made this the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Contracting Authority]* (hereinafter called the "Contracting Authority") and, on the other hand, *[name of Contractor]* (hereinafter called the "Contractor").

**[Note:** *If the Contractor consist of more than one entity, the above should be partially amended to read as follows: "...(hereinafter called the "Contracting Authority") and, on the other hand, a joint venture/consortium/association consisting of the following entities, each of which will be jointly and severally liable to the Contracting Authority for all the Contractor's obligations under this Contract, namely, [name of Contractor] and [name of Contractor] (hereinafter called the "Contractor").]*

### WHEREAS

- (a) the Contracting Authority has requested the Contractor to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Contractor, having represented to the Contracting Authority that he has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The following Appendices:

- Appendix A: Terms of Reference
- Appendix B: Technical Proposal
- Appendix C: Financial Proposal
- Appendix D: Form of Advance Payments Guarantee

2. The mutual rights and obligations of the Contracting Authority and the Contractor shall be as set forth in the Contract, in particular:
- (a) the Contractor shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Contracting Authority shall make payments to the Contractor in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Contracting Authority]*

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*[Authorized Representative]*

For and on behalf of *[name of Contractor]*

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*[Authorized Representative]*

**[Note:** *If the Contractor consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner.]*

For and on behalf of each of the Members of the Contractor

*[name of member]*

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*[Authorized Representative]*

*[name of member]*

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*[Authorized Representative]*

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## II. General Conditions of Contract

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Applicable Law" means the laws and any other instruments having the force of law in the Contracting Authority's country, or in such other country as may be specified in the Special Conditions of Contract (SC), as they may be issued and in force from time to time.
- (b) "Contracting Authority" means legal entity named in the SC who procures the Services described in Appendix A hereto from the Contractor.
- (c) "Contractor" means any private or public entity named in the SC that will provide the Services to the Contracting Authority under the Contract.
- (d) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (e) "Day" means calendar day.
- (f) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (h) "GC" means these General Conditions of Contract.
- (k) "Member" means any of the entities that make up the joint venture/consortium/association; and "Members" means all these entities.
- (l) "Party" means the Contracting Authority or the Contractor, as the case may be, and "Parties" means both of them.
- (m) "Personnel" means professionals and support staff provided by the Contractor or by any Sub-Contractor and assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had

their domicile outside the Contracting Authority's country; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile inside the Contracting Authority's country; and "Key Personnel" means the Personnel referred to in Clause GC 4.2(a).

- (n) "Reimbursable expenses" means all assignment-related costs other than Contractor's remuneration.
- (o) "Special Conditions of Contract" or "SC" means the Conditions of the Contract that are peculiar to the Contract between the Contracting Authority by which the GC may be amended or supplemented.
- (p) "Services" means the work to be performed by the Contractor pursuant to this Contract, as described in Appendix A hereto.
- (q) "Sub-Contractors" means any person or entity to whom/which the Contractor subcontracts any part of the Services.
- (r) "Third Party" means any person or entity other than the Contracting Authority, the Contractor or a Sub-Contractor.
- (s) "In writing" means communicated in written form with proof of receipt.

**1.2 Relationship Between the Parties**

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Contracting Authority and the Contractor. The Contractor, subject to this Contract, has complete charge of his/her Personnel and Sub-Contractors, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

**1.3 Law Governing Contract**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

**1.4 Language**

This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

**1.5 Headings**

The headings shall not limit, alter or affect the meaning of this Contract.

- 1.6 Notices**
- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address **specified in the SC**.
- 1.6.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address **specified in the SC**.
- 1.7 Location**
- The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in the Contracting Authority's country or elsewhere, as the Contracting Authority may approve.
- 1.8 Authority of Member in Charge**
- In case the Contractor consists of a joint venture/consortium/association of more than one entity, the Members hereby authorize the entity **specified in the SC** to act on their behalf in exercising all the Contractor's rights and obligations towards the Contracting Authority under this Contract, including without limitation the receiving of instructions and payments from the Contracting Authority.
- 1.9 Authorized Representatives**
- 1.9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Contracting Authority or the Contractor may be taken or executed by the officials **specified in the SC**.
- 1.9.2. The Contracting Authority's authorized representative shall be called Task Manager. The Task Manager may exercise the authority attributable to him/her **as specified in the SC**.
- 1.9.3. The Task Manager shall have no authority to amend the Contract.
- 1.9.4. The Contractor's authorized representative shall be called Project Director and he/she may exercise the authority attributable to him/her **as specified in the SC**.
- 1.9.5. Either Party shall promptly inform the other of any change of their authorized representative or of any change to the authority attributed to their authorized

representative.

### 1.10 Taxes and Duties

The Contractor, its Sub-Contractors and Personnel shall pay such indirect taxes, duties, fees and other impositions levied under the Applicable Law **as specified in the SC**.

### 1.11 Fraud and Corruption

If the Contracting Authority determines that the Contractor and/or its Sub-Contractors have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Contracting Authority may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.9.1(d).

Should any personnel of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that personnel shall be removed in accordance with Sub-Clause 4.5

#### 1.11.1 Definitions

For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:

- (i) "corrupt practice"<sup>8</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"<sup>9</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"<sup>10</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

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<sup>8</sup> "Another party" refers to a public official acting in relation to the selection process or contract execution. In this context, "public official" includes SADC Secretariat staff and employees of other organizations taking or reviewing procurement decisions.

<sup>9</sup> A "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

<sup>10</sup> "Parties" refers to participants in the selection process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

- (iv) “coercive practice”<sup>11</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of that party;
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a SADC Secretariat investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (bb) acts intended to materially impede the exercise of the SADC Secretariat’s inspection and audit rights provided for under Clause 3.6.

#### **1.11.2 Commissions and Fees**

The Contracting Authority will require the successful Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

## **2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

- 2.1 Effectiveness of Contract** This Contract shall come into force and effect on the date (the “Effective Date”) of the Contracting Authority’s notice to the Contractor instructing the Contractor to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, **listed in the SC** have been met.
- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SC, either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim

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<sup>11</sup> A “party” refers to a participant in the selection process or contract execution.

against the other Party with respect hereto.

- 2.3 Commencement of Services** The Contractor shall begin carrying out the Services not later than the number of days after the Effective Date **specified in the SC**.
- 2.4 Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date as **specified in the SC**.
- 2.5 Entire Agreement** This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 2.6 Modifications, or Variations**
- 2.6.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GC 7.2 here of, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 2.6.2. Substantial modifications to the contract, including modifications of the General or Special Conditions of the contract, changes in the scope or the duration of the contract, to the total contract amount and replacement of Key Experts, must be made by means of an addendum. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least 30 days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority.
- 2.6.3. However, where the amendment does not affect the basic purpose of the contract and, for a time based contract, the financial impact is limited to a transfer within the remuneration or between the remuneration and the provision for reimbursable expenses involving a variation of less than 15% of the original amount (or as modified by addendum) for the categories of expense where the money was taken from, the Task Manager shall have the power to order any variation to any part of the services necessary for the proper implementation of the tasks, without changing the object or scope of the

contract. Such variations may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services, changes in contract details and reporting requirements.

2.6.4. Prior to any administrative order for variation, the Task Manager shall notify the Contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Task Manager a written proposal containing:

- (a) a description of the service to be performed or the measures to be taken and a programme for implementation of the tasks; and
- (b) any necessary modifications to the programme of implementation of the tasks or to any of the Contractor's obligations under the contract; and
- (c) for a time based contract, any adjustment to the contract value in accordance with the following principles:
  - (i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown, the equivalent numbers of working days shall be valued at the fee rates contained therein;
  - (ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Task Manager;
  - (3) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

2.6.5. Following the receipt of the Contractor's proposal, the Task Manager shall decide as soon as possible whether or not the variation shall be carried out. If the Task Manager decides that the variation shall be carried out he/she shall issue the administrative order

stating that the variation shall be carried out under the conditions given in the Contractor's proposal or as modified by the Task Manager in accordance with or pursuant to Clause GC 2.6.4.

- 2.6.6. On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the contract.
- 2.6.7. No amendment shall be made retroactively except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority.
- 2.6.8. Any change to the contract which has not been made in the form of an administrative order or an addendum or in accordance with this Clause shall be considered null and void.

## **2.7 Force Majeure**

### **2.7.1 Definition**

- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Contracting Authority agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Contractors or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

- 2.7.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or a default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.
- 2.7.3 Measures to be Taken**
- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
  - (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
  - (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
  - (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Contractor, upon instructions by the Contracting Authority, shall either:
    - (i) demobilize, in which case the Contractor shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Contracting Authority, in reactivating the Services; or
    - (ii) continue with the Services to the extent possible, in which case the Contractor shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
  - (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall

be settled in accordance with Clause GC 8.

## **2.8 Suspension**

The Contracting Authority may, by written notice of suspension to the Contractor, suspend all payments to the Contractor hereunder if the Contractor fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Contractor to remedy such failure within a period not exceeding thirty (30) days after receipt by the Contractor of such notice of suspension.

## **2.9 Termination**

### **2.9.1 By the Contracting Authority**

The Contracting Authority may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause GC 2.9.1. In such an occurrence the Contracting Authority shall give a not less than thirty (30) days' written notice of termination to the Contractor, and sixty (60) days' in case of the event referred to in (g).

- (a) If the Contractor fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 above herein, within thirty (30) days of receipt of such notice of suspension or within such further period as the Contracting Authority may have subsequently approved in writing.
- (b) If the Contractor becomes (or, if the Contractor consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- (c) If the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.
- (d) If the Contractor, in the judgment of the Contracting Authority, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- (e) If the Contractor submits to the Contracting Authority a false statement which has a material effect on the rights, obligations or interests of the Contracting Authority.

- (f) If, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (g) If the Contracting Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

**2.9.2 By the Contractor**

The Contractor may terminate this Contract, by not less than thirty (30) days' written notice to the Contracting Authority, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2.

- (a) If the Contracting Authority fails to pay any money due to the Contractor pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the Contractor that such payment is overdue.
- (b) If, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Contracting Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.
- (d) If the Contracting Authority is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Contractor may have subsequently approved in writing) following the receipt by the Contracting Authority of the Contractor's notice specifying such breach.

**2.9.3 Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GC 3.3 hereof, (iii) the Contractor's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Applicable Law.

**2.9.4 Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof,

the Contractor shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Contractor and equipment and materials furnished by the Contracting Authority, the Contractor shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

**2.9.5 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Contracting Authority shall make the following payments to the Contractor:

- (a) remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- (b) except in the case of termination pursuant to paragraphs (a) through (e) of Clause GC 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract including the cost of travel of the Personnel.

**2.9.6 Disputes about Events of Termination**

If either Party disputes whether an event specified in paragraphs (a) through (f) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

**3. OBLIGATIONS OF THE CONTRACTOR**

**3.1 General**

**3.1.1 Standard of Performance**

The Contractor shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Contractor shall always act, in respect of any matter relating to this Contract or to the Services, as faithful

adviser to the Contracting Authority, and shall at all times support and safeguard the Contracting Authority's legitimate interests in any dealings with Sub-Contractors or Third Parties.

**3.1.2 Law Governing Services**

The Contractor shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Contractor, as well as the Personnel of the Contractor and Sub-Contractor, comply with the Applicable Law. The Contracting Authority shall notify the Contractor in writing of relevant local customs, and the Contractor shall, after such notification, respect such customs.

**3.2 Conflict of Interests**

The Contractor shall hold the Contracting Authority's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

**3.2.1 Contractor Not to Benefit from Commissions, Discounts, etc.**

- (a) The payment of the Contractor pursuant to Clause GC 6 hereof shall constitute the Contractor's only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Contractor shall use its best efforts to ensure that any Sub-Contractors, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Contractor, as part of the Services, has the responsibility of advising the Contracting Authority on the procurement of goods, works or services, the Contractor shall comply with the SADC Secretariat's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the Contracting Authority. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility shall be for the account of the Contracting Authority.

- 3.2.2 Contractor and Affiliates Not to Engage in Certain Activities** The Contractor agrees that, during the term of this Contract and after its termination, the Contractor and any entity affiliated with the Contractor, as well as any Sub-Contractor and any entity affiliated with such Sub-Contractors, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Contractor's Services for the preparation or implementation of the project.
- 3.2.3 Prohibition of Conflicting Activities** The Contractor shall not engage, and shall cause their Personnel as well as their Sub-Contractors and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Contracting Authority, the Contractor and their Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of providing the Services, nor shall the Contractor and their Personnel make public the recommendations formulated in the course of, or as a result of, the provision of the Services.
- 3.4 Liability of the Contractor** Subject to additional provisions, if any, set forth in the SC, the Contractors' liability under this Contract shall be provided by the Applicable Law.
- 3.5 Insurance to be Taken out by the Contractor** The Contractor (i) shall take out and maintain, and shall cause any Sub-Contractor to take out and maintain, at their (or the Sub-Contractors', as the case may be) own cost but on terms and conditions approved by the Contracting Authority, insurance against the risks, and for the coverages specified in the SC, and (ii) at the Contracting Authority's request, shall provide evidence to the Contracting Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
- 3.6 Accounting, Inspection and Auditing** The Contractor shall permit the SADC Secretariat and/or persons appointed by the SADC Secretariat to inspect its accounts and records as well as those of its Sub-Contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the SADC Secretariat if required by the SADC Secretariat. The Contractor's attention is drawn to Clause 1.11.1 which provides, inter alia, that acts intended to materially impede the exercise of the SADC Secretariat's inspection and audit rights provided for under Clause 3.6 constitute a prohibited practice

subject to contract termination (as well as to a determination of ineligibility under the Contractor Guidelines).

**3.7 Contractor's Actions Requiring Contracting Authority's Prior Approval**

The Contractor shall obtain the Contracting Authority's prior approval in writing before taking any of the following actions:

- (a) Any change or addition to the Personnel listed in Appendix B.
- (b) Subcontracts: the Contractor may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the Contracting Authority. Notwithstanding such approval, the Contractor shall retain full responsibility for the Services. In the event that any Sub-Contractors are found by the Contracting Authority to be incompetent or incapable in discharging assigned duties, the Contracting Authority may request the Contractor to provide a replacement, with qualifications and experience acceptable to the Contracting Authority, or to resume the performance of the Services itself.
- (c) Any other action that may be specified **in the SC**.

**3.8 Reporting Obligations**

The Contractor shall submit to the Contracting Authority the reports and documents specified in Appendix A hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

**3.9 Documents Prepared by the Contractor to be the Property of the Contracting Authority**

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Contractor for the Contracting Authority under this Contract shall become and remain the property of the Contracting Authority, and the Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Contracting Authority, together with a detailed inventory thereof. The Contractor may retain a copy of such documents and software, and use such software for their own use with prior written approval of the Contracting Authority. If license agreements are necessary or appropriate between the Contractor and third parties for purposes of development of any such computer programs, the Contractor shall obtain the Contracting Authority's prior written approval to such agreements, and the Contracting Authority shall be entitled, at its discretion, to require recovery of its expenses related to the development of the program(s) concerned. Other restrictions

about the future use of these documents and software, if any, **shall be specified in the SC.**

**3.10 Equipment, Vehicles and Materials Furnished by the Contracting Authority**

Equipment, vehicles and materials made available to the Contractor by the Contracting Authority, or purchased by the Contractor wholly or partly with funds provided by the Contracting Authority, shall be the property of the Contracting Authority and shall be marked accordingly. Upon termination or expiration of this Contract, the Contractor shall make available to the Contracting Authority an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the Contracting Authority's instructions. While in possession of such equipment, vehicles and materials, the Contractor, unless otherwise instructed by the Contracting Authority in writing, shall insure them at the expense of the Contracting Authority in an amount equal to their full replacement value.

**3.11 Equipment and Materials Provided by the Contractors**

Equipment or materials brought into the Contracting Authority's country by the Contractor and the Personnel and used either for the Project or personal use shall remain the property of the Contractor or the Personnel concerned, as applicable.

**4. CONTRACTORS' PERSONNEL AND SUB-CONTRACTORS**

**4.1 General**

The Contractor shall employ and provide such qualified and experienced Personnel and Sub-Contractors as are required to carry out the Services.

**4.2 Description of Personnel**

(a) The title, agreed job description, minimum qualification and estimated period of engagement for carrying out the Services by each of the Contractor's Key Personnel are described in Appendix B. If any of the Key Personnel has already been approved by the Contracting Authority, his/her name is listed as well.

(b) If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix B may be made by the Contractor by written notice to the Contracting Authority, provided: (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set

forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the Contracting Authority's written approval.

- (c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix B may be increased by agreement in writing between the Contracting Authority and the Contractor. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

#### **4.3 Approval of Personnel**

The Key Personnel and Sub-Contractors listed by title as well as by name in Appendix B are hereby approved by the Contracting Authority. In respect of other Personnel which the Contractor proposes to use in the carrying out of the Services, the Contractor shall submit to the Contracting Authority for review and approval copies of their Curricula Vitae (CVs). If the Contracting Authority does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the Contracting Authority.

#### **4.4 Working Hours, Overtime, Leave, etc.**

- (a) Working hours and holidays for Key Personnel are set forth in Appendix B hereto. To account for travel time, Foreign Personnel carrying out Services inside the Contracting Authority's country shall be deemed to have commenced, or finished work in respect of the Services such number of days before their arrival in, or after their departure from the Contracting Authority's country as is specified in Appendix B hereto.

- (b) The Key Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix B hereto, and except as specified in such Appendix, the Contractor's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix B. Any taking of leave by Personnel shall be subject to the prior approval by the Contractor who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

#### **4.5 Removal and/or**

- (a) Except as the Contracting Authority may otherwise

**Replacement of Personnel**

agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Contractor, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Contractor shall forthwith provide as a replacement a person of equivalent or better qualifications.

- (b) If the Contracting Authority: (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Contractor shall, at the Contracting Authority's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Contracting Authority.
- (c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditure the Contractors may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Contracting Authority. The rate of remuneration applicable to a replacement person will be obtained by multiplying the rate of remuneration applicable to the replaced person by the ratio between the monthly salary to be effectively paid to the replacement person and the average salary effectively paid to the replaced person in the period of six months prior to the date of replacement. Except as the Contracting Authority may otherwise agree:, (i) the Contractor shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

**4.6 Resident Project Director**

**If required by the SC**, the Contractor shall ensure that at all times during the Contractor's performance of the Services in the Contracting Authority's country a resident Project Director, acceptable to the Contracting Authority, shall take charge of the performance of such Services.

## 5. OBLIGATIONS OF THE CONTRACTING AUTHORITY

- 5.1 Assistance and Exemptions** Unless otherwise specified in the **SC**, the Contracting Authority shall use its best efforts to ensure that the Contracting Authority shall:
- (a) provide the Contractor, Sub-Contractors and Personnel with work permits and such other documents as shall be necessary to enable the Contractor, Sub-Contractors or Personnel to perform the Services.
  - (b) arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Contracting Authority's country.
  - (c) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.
  - (d) issue to officials, agents and representatives of the Contracting Authority all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.
  - (e) exempt the Contractor and the Personnel and any Sub-Contractors employed by the Contractor for the Services from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Applicable Law.
  - (f) grant to the Contractor, any Sub-Contractors and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into the Contracting Authority's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.
  - (g) provide to the Contractor, Sub-Contractors and Personnel any such other assistance as may be **specified in the SC**.
- 5.2 Access to Land** The Contracting Authority warrants that the Contractor shall

have, free of charge, unimpeded access to all land in the Contracting Authority's country in respect of which access is required for the performance of the Services. The Contracting Authority will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Contractor and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Contractor or any Sub-Contractors or the Personnel of either of them.

**5.3 Change in the Applicable Law Related to Taxes and Duties**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Contractor in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Contractor under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1(b).

**5.4 Services, Facilities and Property of the Contracting Authority**

(a) The Contracting Authority shall make available to the Contractor and its Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix A at the times and in the manner specified in said Appendix A.

(b) In case that such services, facilities and property shall not be made available to the Contractor as and when specified in Appendix A, the Parties shall agree on: (i) any time extension that it may be appropriate to grant to the Contractor for the performance of the Services, (ii) the manner in which the Contractor shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Contractor as a result thereof pursuant to Clause GC 6.1(c) hereinafter.

**5.5 Payment**

In consideration of the Services performed by the Contractor under this Contract, the Contracting Authority shall make to the Contractor such payments and in such manner as is provided by Clause GC 6 of this Contract.

**5.6 Counterpart Personnel**

(a) The Contracting Authority shall make available to the Contractor free of charge such professional and support counterpart personnel, to be nominated by the Contracting Authority with the Contractor's advice, if

specified in Appendix A.

- (b) If counterpart personnel are not provided by the Contracting Authority to the Contractor as and when specified in Appendix A, the Contracting Authority and the Contractor shall agree on: (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Contracting Authority to the Contractor as a result thereof pursuant to Clause GC 6.1(c) hereof.
- (c) Professional and support counterpart personnel, excluding Contracting Authority's liaison personnel, shall work under the exclusive direction of the Contractor. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Contractor that is consistent with the position occupied by such member, the Contractor may request the replacement of such member, and the Contracting Authority shall not unreasonably refuse to act upon such request.

## **6. PAYMENTS TO THE CONTRACTOR**

### **6.1 Cost Estimates; Ceiling Amount**

- (a) An estimate of the cost of the Services payable in **USD** is set forth in Appendix C.
- (b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the ceiling **specified in the SC**.
- (c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to any of the Clauses GC 5.3, 5.4 or 5.6 hereof, the Parties shall agree that additional payments shall be made to the Contractor in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

### **6.2 Remuneration and Reimbursable Expenses**

#### **Time Based Contracts**

- (a) Subject to the ceilings specified in Clause GC 6.1(b) hereof, the Contracting Authority shall pay to the Contractor (i) remuneration as set forth in Clause GC

6.2(b) hereunder, and (ii) reimbursable expenses as set forth in Clause GC 6.2(c) hereunder. Unless otherwise specified in the SC, said remuneration shall be fixed for the duration of the Contract.

- (b) Payment for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with Clause GC 2.3 and Clause SC 2.3 (or such other date as the Parties shall agree in writing), at the rates referred to in Appendix C to this Contract, and subject to price adjustment, if any, specified in SC.
- (c) Reimbursable expenses actually and reasonably incurred by the Contractor in the performance of the Services and identified in Appendix C of this Contract, shall not exceed the ceiling specified in SC.
- (d) The remuneration rates referred to under paragraph (b) here above shall cover: (i) such salaries and allowances as the Contractor shall have agreed to pay to the Personnel as well as factors for social charges and overhead (bonuses or other means of profit-sharing shall not be allowed as an element of overhead), (ii) the cost of backstopping by home office staff not included in the Personnel listed in Appendix B, and (iii) the Contractor's fee.
- (e) Any rates specified for Personnel not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Contracting Authority, once the applicable salaries and allowances are known.
- (f) Payments for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Contractor's home office and directly attributable to the Services (one hour being equivalent to 1/176<sup>th</sup> of a month) and on a calendar-day basis for time spent away from home office (one day being equivalent to 1/30<sup>th</sup> of a month).

**6.3 Currency of Payment**

All payments shall be made in **USDs**

**6.4 Mode of Billing**

Billings and payments in respect of the Services shall be

**and Payment** made as follows:

***Option 1: Lump Sum Contracts (delete as appropriate)***

- (a) Subject to the ceilings specified in Clause GC 6.1(b) hereof, the Contracting Authority shall pay to the Contractor, in fix instalments, (i) the remuneration as set forth in SC hereunder, and (ii) the reimbursable expenses as set forth in Clause SC hereunder, based on the following Schedule stated in SC.
- (b) **Unless otherwise specified in the SC, the remuneration shall be fixed for the duration of the Contract.**

**7. FAIRNESS AND GOOD FAITH**

**7.1 Good Faith** The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

**7.2 Operation of the Contract** The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

**8. SETTLEMENT OF DISPUTES**

**8.1 Amicable Settlement** If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GC 8.2 shall apply.

**8.2 Dispute  
Resolution**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause GC 8.1 may be submitted by either Party for settlement in accordance with the provisions **specified in the SC.**

**III. Special Conditions of Contract**

<b>Number of GC Clause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
1.1(a)	The Contracting Authority's country is <b>Botswana</b> .
1.1 (b)	The Contracting Authority is: <b>The SADC Secretariat</b>
1.1 (c)	The Contractor is:
1.6	<p><b>The addresses are:</b></p> <p>Contracting Authority            The SADC Secretariat,            Western Commercial Road (near Lobatse and Siboni Roads)            CBD Plot 54385            City: Gaborone            Country: Botswana</p> <p>Attention : Dr. Thembinkosi Mhlongo            Facsimile : +2673972848/3181070</p> <p>Contractor            Attention :            Facsimile :</p>
1.8	<b>Member-in-charge:</b>
1.9.1	<p>The Authorized Representatives:</p> <p>For the Contracting Authority:            The Task Manager is:            Mr. Tapiwa Simanga            Director, IDT</p> <p>For the Contractor:</p> <p>The Project Director is [insert the name, title, department organization]</p>
1.9.2	The Contracting Authority delegates to the Task Manager the following authority under this Contract: <i>The Task manager shall be the first point of contact for operational implementation.</i>

### III Special Conditions of Contract

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<b>1.9.4</b>	<p>The Contractor delegates the Project Director the following authority under this Contract: <i>[list the authority of the Project Director]</i></p> <p>The Contractor delegates the <b>resident</b> Project Director the following authority under this Contract: <i>[list the authority of the <b>resident</b> Project Director]</i></p>
<b>1.10</b>	<b>Taxes and Duties:</b> It is the responsibility of the bidders to ensure that they familiarize themselves with the relevant tax regulations in their home country and in Botswana. Firms and their personnel will be liable for all applicable taxes.
<b>2.1</b>	The effectiveness conditions are the following: i) signature of contract by both parties ii) Receipt of performance bond by the Contracting Authority
<b>2.2</b>	The time period shall be <i>90 days</i>
<b>2.3</b>	The time period shall be <i>30 days</i>
<b>2.4</b>	The contract will expire within six (6) months from the commencement date
<b>3.1.2</b>	The applicable laws shall be the Laws of the Republic of Botswana
<b>3.5</b>	The risks and the coverage shall be as follows:  (a) Comprehensive motor vehicle liability insurance in respect of motor vehicles operated in the Contracting Authority's country by the Contractor or its Personnel or any Sub-Contractors or their Personnel. (b) Third Party liability insurance.  (c) professional liability insurance.  (d) employer's liability and workers' compensation insurance in respect of the Personnel of the Contractor and of any Sub-Contractors, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and  (e) insurance against loss of or damage to (i) equipment

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	<p>purchased in whole or in part with funds provided under this Contract, (ii) the Contractor's property used in the performance of the Services, and (iii) any documents prepared by the Contractor in the performance of the Services.</p>
<b>3.9</b>	<p>The Contractor shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the SADC Secretariat.</p>
<b>4.4 (a)</b>	<p>Working hours shall be the SADC Secretariat standard working hours (0730-1630). Weekends, public holidays and periods when the SADC Secretariat offices are officially closed cannot be counted as working days unless prior written approval is obtained from the contracting authority/task manager.</p>
<b>4.6</b>	<p>The contractor shall appoint and communicate to the Contracting Authority the Project Director for the Assignment</p>
<b>5.1(g)</b>	<p>The SADC Secretariat will provide relevant project data and reports, human resources and furnished office space within the premises of the SADC Secretariat with access to communications facilities for the performance of the duties under this assignment.</p>
<b>6.2</b>	<p><b>This is a lump sum contract</b> (see 6.4 below)</p>
<b>6.3</b>	<p>All payments shall be made in USD. Non USD expenses shall be invoiced in the currency of expenditure. The exchange rate applicable will be that at the time the payment is made to the Contractor</p>
<b>6.4</b>	<p>Mode of billing shall be for <i>Option 1: Lump Sum</i> contracts as detailed below and in the General Conditions..</p>
<b>6.4(a)</b>	<p>Payment shall be made to the account of the Contractor as specified in its financial proposal at Appendix C.</p>
<b>6.4(b)</b>	<p>Payment shall be made in accordance with the agreed payment schedules between the contracting Authority and the successful contractor for each Lot.</p>
<b>6.4(e)</b>	<p>The account is: <b>To be inserted at contract signing</b></p>
<b>6.4(f)</b>	<p>There is no contingency provision in the contract</p>

<b>8.2</b>	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <ol style="list-style-type: none"><li data-bbox="459 296 1375 438">1. <u>Selection of Arbitrators</u>. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:<ol style="list-style-type: none"><li data-bbox="537 478 1375 1094">(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to, <i>International Court of Arbitration</i> for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>the International Court of Arbitration</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</li><li data-bbox="537 1136 1375 1535">(b) Where the Parties do not agree that the dispute concerns a technical matter, the Contracting Authority and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>the International Chamber of Commerce, Paris</i>.</li><li data-bbox="537 1535 1375 1829">(c) If, in a dispute subject to Clause SC 8.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to <i>the International Chamber of Commerce, Paris</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</li></ol></li></ol>
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	<p>2. <u>Rules of Procedure.</u> Except as stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SC 8.2 1 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Contractor's home country [<b>Note:</b> <i>If the Contractor consists of more than one entity, add:</i> or of the home country of any of their Members or Parties] or of the Contracting Authority's country. For the purposes of this Clause, "home country" means any of:</p> <ul style="list-style-type: none"><li>(a) the country of incorporation of the Contractor [<b>Note:</b> <i>If the Contractor consists of more than one entity, add:</i> or of any of their Members or Parties]; or</li><li>(b) the country in which the Contractor's [or any of their Members' or Parties'] principal place of business is located; or</li><li>(c) the country of nationality of a majority of the Contractor's [or of any Members' or Parties'] shareholders; or</li><li>(d) the country of nationality of the Sub-Contractors concerned, where the dispute involves a subcontract.</li></ul> <p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"><li>(a) proceedings shall, unless otherwise agreed by the Parties, be held in a country which is neither the Contracting Authority's country nor the Contractor's country;</li><li>(b) the English language shall be the official language for all purposes; and</li></ul>
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	<p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>
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## IV. Appendices

### APPENDIX A – TERMS OF REFERENCE

**Note:** *This Appendix will include the final Terms of Reference worked out by the Contracting Authority and the Contractors during technical negotiations, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Contracting Authority, etc.*

### APPENDIX B – TECHNICAL PROPOSAL

**Note:** *List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

### APPENDIX C – FINANCIAL PROPOSAL

**APPENDIX D - FORM OF ADVANCE PAYMENTS GUARANTEE**

**Note:** See Clause GC 6.4(a) and Clause SC 6.4(a).

**Bank Guarantee for Advance Payment**

\_\_\_\_\_ [Bank's Name, and Address of Issuing Branch or Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of Contracting Authority]

**Date:** \_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ [name of Contractor] (hereinafter called "the Contractors") has entered into Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ with you, for the provision of \_\_\_\_\_ [brief description of Services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of \_\_\_\_\_ [amount in figures] (\_\_\_\_\_) [amount in words] is to be made against an advance payment guarantee.

At the request of the Contractors, we \_\_\_\_\_ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] (\_\_\_\_\_) [amount in words]<sup>1</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractors are in breach of their obligation under the Contract because the Contractors have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractors on

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Contracting Authority.

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their account number \_\_\_\_\_ at \_\_\_\_\_ *[name and address of Bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractors as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Contractors have made full repayment of the amount of the advance payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

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*[signature(s)]*

*Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.*

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<sup>2</sup> Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Contracting Authority would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Contracting Authority might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Contracting Authority's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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