



REQUEST FOR EXPRESSION OF INTEREST

Reference Number: SADC/SHD&SP/1/2013

Request for Services Title: Consultancy assignment to undertake finalisation of the report on assessment of cost barriers to access to higher education and student mobility in the SADC Region.

ANNEX 3: STANDARD CONTRACT FOR INDIVIDUAL CONSULTANT

STANDARD TERMS OF CONTRACT (Individual Consultant)

Contract Name *[insert the name]*
Contract Number *[insert the number]*

THIS Contract (“Contract”) is made on *[day]* day of the month of *[month]*, *[year]*, between, **on the one hand,**

[name of Procuring Entity] (hereinafter called the “Procuring Entity”) with the registered business in *[insert the name address, phone, fax and email of the procurement entity]*

and, on the other hand,

[insert the full name of the individual] (hereinafter called the “Individual Consultant”), with the residence in *[insert the Individual Consultant’ address, phone, fax, email]*, citizen of *[insert the Individual Consultant’s citizenship]* owner of the ID/Passport Number *[insert the number]* issued on *[insert the date]* by *[insert the name of the issuance authority]*,

WHEREAS, the Procuring Entity wishes to have the Individual Consultant perform the services hereinafter referred to, and WHEREAS, the Individual Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Definitions

For the purpose of this contract the following definitions shall be used:

- 1.1 **Procuring Entity** means the legally entity, namely *[insert the name]* who purchase the Services described in Annex 1 to this contract.
- 1.2 **Contract** means the agreement covered by these Terms including the Annexes and documents incorporated and/or referred to therein, and attachments thereto.
- 1.3 **Contract value** means the total price of the Financial Proposal included in the Individual Consultant’s Expression of Interests dated *[insert the date]* for the project *[insert the name]* and reflected as such in the Annex 2 of this contract.

- 1.4 **Individual Consultant** means the individual to whom the Procuring Entity has awarded this contract following the Request for Expression of Interest [*insert the number*] for the project [*insert the name*].
- 1.5 **Services** means the Services to be performed by the Individual Consultant as more particularly described in Annex 1; for the avoidance of doubt the Services to be performed include all obligations referred to in this Contract (as defined above).

2. The Services

The Individual Consultant will undertake the performance of the Services in accordance with the provisions of the Annex 1 of this Contract and shall in the performance of the Services exercise all the reasonable skill, care and diligence to be expected of an Individual Consultant carrying out such services.

3. Payment

- 3.1 The Individual Consultant shall be paid for the Services at the rates and upon the terms set out in Annex 2.
- 3.2 Payment shall be made to the Individual Consultant in US \$ unless otherwise provided by this contract and where applicable VAT shall be payable on such sums at the applicable rate. The Individual Consultant must, in all cases, provide their VAT registration number on all invoices.
- 3.3 Unless otherwise provided in this Contract, invoices shall be delivered to and made out to Procuring Entity and shall be paid within 30 days of receipt by Project Director, subject to the Individual Consultant having complied with its obligations hereunder in full as stated in the Annex II to this Contract. Procuring Entity reserves the right to delay and/or withhold, fully or partially, payments that have not been supported by full and appropriate supporting evidence that the services provided were delivered and accepted by the Procuring Entity.

4. Status of the Individual Consultant

- 4.1 For the duration of the Contract the Individual Consultant will have a status similar to the Procuring Entity's employees with regards to their legal obligations, privileges and indemnities in the Procuring Entity's country.
- 4.2 The Procuring Entity will be responsible for ensuring all visas, work permits and other legal requirements to enable The Individual Consultant and live and work in the countries of the assignment as per the duties under the contract.
- 4.3 The Individual Consultant shall be responsible for paying any tax and social security contributions in its country of residence, for any activity deriving from this contract. Such costs shall be assumed included in the Individual Consultant's fees.
- 4.4 The Procuring Entity shall be responsible for paying any taxes resulting from the activities performed under this contract imposed to the Individual in the country(ies) of the assignment with the exception of the ones set out in paragraph 5.3 above.

5. Supervision of the Services

The Individual Consultant undertakes to deliver the Services in compliance with a system of quality assurance acceptable to Procuring Entity which shall include any steps to comply with the standards operated by Procuring Entity. The Individual Consultant shall be informed of the specific requirements in relation to this, and at the request of Procuring Entity shall afford such access to its information, records

and other materials during normal office working hours as Procuring Entity may require in order to confirm that the work in progress is in accordance with these quality procedures.

6. Compliance with this contract

Procuring Entity will be entitled to seek confirmation from the Individual Consultant, at any time during the delivery of this contract, and for a period of 1 year after its completion, that the Individual Consultant has complied with the terms of this contract. Procuring Entity may also request the provision of reasonable documentary evidence to support this. As stated in article 2.3 of this Contract, Procuring Entity may delay or withhold payments in the event of non-compliance.

7. Assignment and Subcontracting

7.1 The Individual Consultant shall under no circumstances sub-contract, sublet, assign or transfer the Contract or any part share or interest in it. Where the Individual Consultant considers it necessary to use the services of a third party the Individual Consultant shall inform the Procuring Entity the Project Director in writing, and only once written approval is provided can the Individual Consultant proceed to use a third party.

7.2 When the Project Director agrees that the activities under the contract can be performed by third party, the third party involved in the delivery of services in this contract, will be under the direct control of Individual Consultant. Procuring Entity will not be responsible for the third party performance of duties or Services assigned to third party, and neither for ensuring conditions of employment are met nor for any other employment obligations relating to that person including, but not restricted to, taxation and insurance including professional indemnity insurance, employer's liability insurance and public liability insurance.

8. Breach of the Terms

In the event of a breach of any Terms of the Contract the party not in breach may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice, not normally being longer than 30 days. If the breach has not been remedied before the expiry of the specified period, the party not in breach may then terminate the Contract in writing and may take appropriate steps to remedy the breach.

9. Liability of the Individual Consultant

9.1 Procuring Entity will be relying on the Individual Consultant's skills, expertise and experience in relation to the performance of the Services in accordance with this contract and also upon the accuracy of all representations and statements made and the advice given by the Individual Consultant in connection with the provision of the Services.

9.2 In view of the reliance by Procuring Entity set out in 10.1 above the Individual Consultant agrees at its own expense to indemnify, protect and defend Procuring Entity, its agents and employees, from and against all actions, claims, losses or damages arising out of the Individual Consultant's performance of this contract provided that:

- a) the Individual Consultant is notified of such actions, claims, losses or damages not later than 30 days after Procuring Entity becomes aware of them;

- b) the ceiling on the Individual Consultant's liability to Procuring Entity shall be limited to an amount equal to the contract value, and such ceiling shall not apply to any losses or damages caused to third parties by the Individual Consultant or by the Individual Consultant's willful misconduct; and
- c) the Individual Consultant's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.

9.3 At its own expense, the Individual Consultant shall, upon request of Procuring Entity, remedy any defect in the performance of the services in the event of the Individual Consultant's failure to perform its obligations under the contract.

9.4 The Individual Consultant shall have no liability whatsoever for actions, claims, losses or damages occasioned by Procuring Entity omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Individual Consultant, or requiring the Individual Consultant to implement a decision or recommendation with which the Individual Consultant disagrees or on which it expresses a serious reservation.

10. Insurance

10.1 The Individual Consultant must ensure that full and appropriate professional indemnity insurance, third party liability insurance, life/travel and health insurance is in place for all Services provided. The Individual Consultant is obliged to provide full copies of such insurance within 45 days from the signature of this Contract.

10.2 The cost of such insurances will be covered from reimbursable expenses of the contract.

10.3 Where national requirements or practices provide for different regulations/practices concerning insurance, the Individual Consultant may provide written confirmation of all insurances held and a signed declaration that these are in line with regulations/practices in their country of operation. Only if such confirmation has been provided, and written confirmation of its acceptance provided to the Individual Consultant by Procuring Entity, will this remove the obligation to meet the requirements of clause 11.1 of this Contract in full.

10.4 All insurances effected by the Individual Consultant shall be effected with an insurer of good repute and the Individual Consultant agrees to maintain such insurances for a period of 1 year from the completion of the Services under this Contract so long as such insurance continues to be available upon reasonable terms at reasonable commercial rates failing which Procuring Entity shall be entitled to take out insurance itself to cover any potential liability to its own Procuring Entity in relation to the performance of the Services under this contract. The cost of such insurance shall be a debt immediately due from the Individual Consultant.

10.5 The provisions of this clause shall remain in full force and effect notwithstanding the completion of the performance of the Services hereunder and the satisfaction of all other provisions of this contract.

11. Copyright

11.1 Unless otherwise specified in the Contract, the title of the copyright and any other intellectual property rights arising out of the performance of this Contract shall be

vested in Procuring Entity which shall have the unfettered right to assign and grant sub-licences in respect of the same. Except as permitted by the Terms of this Contract, the said materials shall not be reproduced or disseminated without proper consultation with, and written permission from, the Procuring Entity. This provision shall apply to the title to rights arising from the performance under this contract but shall not apply to the internal systems or rights in relation to the Individual Consultant's own systems not created specifically for this purpose and where the same are an important part of the Services the Individual Consultant shall grant a free and irrevocable licence to Procuring Entity and its assigns for the use of the same in that connection.

- 11.2 The Individual Consultant warrants that it is free of any duties or obligations to third parties which may conflict with this contract and, without prejudice to the generality of Term 9 above, agrees to indemnify Procuring Entity against any and all actions, costs damages, direct, indirect or consequential, and other expenses of any nature whatsoever which Procuring Entity may incur or suffer as a result of the breach by the Individual Consultant of this warranty.

12. Non Disclosure & Confidentiality

- 12.1 The Individual Consultant will treat as confidential all information and results obtained in discharging the Services under this Contract and will not disclose by any means whatsoever such results or material to any third party without the prior written consent of the Procuring Entity and will only use such information for the purposes of this Contract. In addition the Individual Consultant shall not make any communication to the press or any broadcast (including, but not limited to, inclusion of information on a website) about the Services without the prior agreement in writing of the Project Director.
- 12.2 If the Individual Consultant violates clause 13.1, then it will automatically and legally be held to pay the amount estimated as the minimum reasonable damages resulting from a breach of confidentiality. This is without prejudice to the right of Procuring Entity to demonstrate that a higher amount of loss has or may be incurred as a result of liabilities held by Procuring Entity in relation to the Procuring Entity.

13. Suspension or Termination

- 13.1 In response to any factors outwith the control of Procuring Entity and/or to breaches of contract, Procuring Entity may at any time, by giving 30 days notice in writing, terminate in whole or in part the Individual Consultant's appointment hereunder but in the event of Procuring Entity doing so then the Individual Consultant shall be entitled to payment as set out in sub-clause 14.4 below.
- 13.2 In response to any factors outwith the control of Procuring Entity and/or to breaches of contract, Procuring Entity may at any time, by giving 30 days notice in writing, forthwith require the Individual Consultant to suspend the performance of the Services and in such event the Individual Consultant shall be entitled to payment pursuant to sub-clause 13.4 below and provided that if such suspension continues for a period in excess of twelve months then either party may terminate this appointment forthwith by written notice to the other.
- 13.3 The Individual Consultant may also terminate the contract unilaterally, without providing any reasons for such decision, if she/he gives a 30 days prior written notice to the Project Director.

13.4 In the event of early termination of the Contract under sub-clauses 14.1, 14.2 and 14.3 of this clause then the Individual Consultant shall be entitled to a fair and reasonable proportion of the fees payable for that part of the Services carried out up to the date of such termination or suspension but this shall not include any loss of profit or contracts or any other expenses, losses or claims arising out of such termination or suspension or consequential thereupon.

14. No Waiver

No forbearance shown or granted to the Individual Consultant unless in writing by an authorised officer of Procuring Entity shall in any way affect or prejudice the rights of Procuring Entity or be taken as a waiver of any of these Terms.

15. Variations

Any variation to these terms or the provisions of the Annexes shall be subject to written Addendum and be signed by duly authorised signatories on behalf of the Individual Consultant and Procuring Entity respectively.

16. Jurisdiction

This contract shall be governed by and shall be construed in accordance with Botswana law and each party agrees to submit to the exclusive jurisdiction of the Botswana courts as regards any claim or matter arising under this contract.

The following Annexes are integral part of this Contract:

Annex 1: Terms of Reference

Annex 2: Payment Schedule and Requirements

Signed today *[insert the date]* in four (4) originals in English language by:

For the Procuring Entity	Signature		For the Individual Consultant	Signature
Name: <i>[insert full name]</i>			Name: <i>[insert full name]</i>	
Title: <i>[insert the title]</i>			Title: <i>[insert the title]</i>	
Palace: <i>[insert the city and country]</i>			Palace: <i>[insert the city and country]</i>	
Date: <i>[insert the date]</i>			Date: <i>[insert the date]</i>	

Annex 2: Payment Schedule and Requirements

1. For Services rendered pursuant to Annex 1, the Procuring Entity shall pay the Individual Consultant an amount not to exceed a ceiling of US Dollars *[insert ceiling amount]*, which shall be considered the contract value. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Individual Consultant in its country of residence.
2. The breakdown of prices is: *[fill in the table as per the Individual Consultant's Financial Proposal presented in the Expression of Interest]*

N°	Description ¹	Unit	No. of Units	Unit Cost ² (in US\$)	Total (in US\$)
Fees		Day			
Reimbursable expenses, out of which		<i>Total</i>			
1	Per diem allowances	Day			
2	Flights ³	Trip			
3	Miscellaneous travel expenses ⁴	Trip			
4	Insurances cost, out of which:	Lump sum			
	i) Life insurance (including repatriation)	Lump sum			
	ii) Health insurance	Lump sum			
	iii) Third party liability insurance	Lump sum			
	iv) Professional liability insurance	Lump sum			
5	Drafting, reproduction of reports	Lump sum			
6	Office rent	Per month			
7	Others ⁴	TBD			

¹ Delete items that are not applicable or add other items as the case may be.

² Indicate route of each flight, and if the trip is one- or two-ways.

³ Indicate unit cost.

⁴ Provide clear description of what is their exact nature

TOTAL FINANCIAL OFFER (Fees + Reimbursable expenses)	
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3. The payment shall be made in accordance with the following schedule:

lump sum contracts

[insert amount (which shall be maximum 20% of the contract value) and currency] upon the Procuring Entity's receipt of a copy of this Contract signed by the Individual Consultant ;

[insert amount and currency] upon the Procuring Entity's receipt of the *[insert the name and the description of the deliverable]*, acceptable to the Procuring Entity;

[insert amount and currency] upon the Procuring Entity's receipt of the *[insert the name and the description of the deliverable]*, acceptable to the Procuring Entity; and

[insert amount (minimum 10% and maximum 30% of the contract value) and currency] upon the Purchaser's receipt of the final report, acceptable to the Procuring Entity.

[insert amount and currency] Total

a) Remuneration

The Procuring Entity shall pay the Individual Consultant for Services rendered at the rate(s) per day spent, subject to a maximum of eight hours per day in accordance with the rates agreed and specified in paragraph 2 above.

The proof of Individual Consultant's performance of services shall be the monthly timesheet signed by expert and approved by the Procuring Entity.

b) Reimbursables

The Procuring Entity shall pay the Individual Consultant for reimbursable expenses specified in the paragraph 2 above against the submission of the original documents to prove the incurrence of such expense.

Per diem shall be paid for every night spent by the Individual Consultant, for the purpose of the implementation of this contract, in a location outside the Country of her/his residence. The proof of incurrence of such expense shall be the timesheet approved by the Procuring Entity."

4. Payment Conditions: Payment shall be made in US Dollars not later than 30 days following submission by the Individual Consultant of original invoice, in duplicate, accompanied by the requested supporting documents, to the Procuring Entity. All payments under the contract shall be made by bank transfer into the bank account indicated by the Individual Consultant in her/his invoices.