



Annexure E

1. DEFINITIONS

The definitions contained in the incentive guidelines apply. In addition:

- 1.1. **"The Beneficiary"** means the legal or natural person that was approved by **the dti** for incentives, and where the payment is ceded to a service provider, it also refers to the service provider.
- 1.2. **"Discretion"** shall be executed by **the dti** as per the defined criteria set out in clause 2.4.
- 1.3. **"Incentive Guidelines"** includes all forms in which incentives may be published, e.g. regulations or statutes.
- 1.4. **"Project"** means the business operated by the Beneficiary and that was approved for the incentive.
- 1.5. **"the dti"** refers to the Department of Trade and Industry care of The Enterprise Organisation, Block A, 77 Meintjies Street, Sunnyside, Pretoria; Private bag X84, Pretoria, 0001.

2. NATURE OF THE INCENTIVES

- 2.1. **the dti** and the **Beneficiary** do not enter into a partnership, agency agreement, shareholding agreement or other representation because of the approval of an incentive application or a claim.
- 2.2. The **Beneficiary** has no authority to bind or attempt to bind **the dti** in any manner or to assume or to incur any obligation or responsibility, expressed or implied on behalf of or in the name of **the dti**.
- 2.3. **The Beneficiary** acknowledges that any agent, consultant or auditor ("agent") that assists **the Beneficiary** with its application or claim or ancillary matters, does so on the instruction of **the Beneficiary** only and **the Beneficiary** hereby accepts full responsibility for the content, accuracy and veracity of any documents or other information so prepared by said agent. In order to safeguard **the Beneficiary** a declaration form has been developed which indicates the involvement of said agent and of **the Beneficiary**. **the dti** reserves the right not to communicate with said agent, unless such declaration has been completed and signed by both the agent and **the Beneficiary**.
- 2.4. **The Beneficiary** has neither legal right nor any entitlement to any grant - irrespective of whether the **Beneficiary's Project** qualifies or not - as a grant is an act executed in the pursuit of the mandate of **the dti**, which pursuit of **the dti** is subject to the availability of funds, public scrutiny and principles of Administrative Justice. Guided by these principles and in promoting the execution of its mandate **the dti** has the sole discretion to offer and provide any financial assistance to **Beneficiaries** or not. Only Administrative Justice Principles will thus apply to the relationship between **the dti** and **the Beneficiary**.

3. INCENTIVE GUIDELINES AND ECONOMIC POLICIES OF the dti

The incentive guidelines and/or this schedule may be amended from time to time. Amendments to the guidelines and/or this schedule will be published on **the dti** website and will be effective immediately. **Beneficiaries**, whose applications have already been approved, will be affected by retrospective amendments only if it is not prejudicial to them or to **the dti**.

Where **the Beneficiary** is of the opinion that a word or sentence in the incentive guidelines or this schedule is vague and/or has to be interpreted, the **Beneficiary** must approach **the dti** for clarification. **the dti** has the right in its sole discretion, to provide interpretations on meaning and intention. Such decisions are binding on all **Beneficiaries**.

The **Beneficiary** is required to familiarise itself with the economic policies of **the dti** as well as other policies developed by Government that affects business operations, e.g. environmental policies. Any failure to conduct its business in line with such policies may result in the **Beneficiary** being regarded as having contravened the terms of this schedule. Specifically the **Beneficiary** is reminded of **the dti's** Competition and Consumer Laws, BEE policy, as well as **the dti's** efforts to phase out import parity pricing in favour of non discriminatory pricing and the efforts to promote downstream beneficiation. Should the **Beneficiary** not be in compliance with these policies, it shall be expected of the **Beneficiary** to submit with its claims an adopted business plan indicating how it is striving to so become compliant.

4. APPROVAL OF THE INCENTIVE APPLICATION AND SUBMISSION OF CLAIMS

- 4.1. Applications for **Projects** are mostly based on projected information. **The Beneficiary** is expected to have done research and market analyses in order to arrive at these projections. Projections that materially differ from the actual information claimed on, without a reasonable explanation, may result in **the dti** withdrawing its approval.
- 4.2. The approval set out in the letter of approval is only relevant to the specific **Project** that applied. A **Project**, activity or expenditure can only qualify once for an incentive (unless the incentive guidelines states different). A **Project** will be disqualified if it contravenes this clause.
- 4.3. No representation, communication (including official **dti** letters), or offer made prior to any approval shall be valid in so far as it does not agree with the guidelines, this schedule, the letter of approval or any supporting documents.
- 4.4. Information submitted with the claim may only relate to the **Project** that has been approved.
- 4.5. The calculation method of the maximum incentive approved, replaces any calculation method explained in the incentive Guidelines and shall be final. The approved maximum amount is fixed and shall not be adjusted due to changes in macroeconomic variables like inflation -; exchange -; or interest rate etc.
- 4.6. The **Beneficiary** is not automatically entitled to the full amount of the maximum incentive offered. **the dti** further reserves the right to correct any actual calculation error at any stage before or after approval/payment. A further calculation will be made based on the figures set out in the claim form. This calculation may result in an amount that is less than the maximum amount, but can never be more than the offered maximum amount.

5. AMENDMENTS TO THE INFORMATION SUBMITTED BY THE PROJECT

Any change (including amendment, addition or variation) in the information set out in the application which is relevant to the approved incentives, must immediately be communicated to **the dti** in writing. This includes, but is not limited to, changing an approved Network Facilitator or Service Provider, and changes to time frames.

The **Beneficiary** must request written approval from **the dti** that the planned changes do not affect the incentive in a manner that is unacceptable to **the dti**, before the planned changes take place. The decision to amend the information submitted for the incentive shall be solely in the discretion of **the dti** and is final.

the dti may accept the change; or may refuse to make the change applicable to the approval; or may accept the change as part of the approval, but make the approval subject to (additional/other) conditions; or may reject the whole application or claim based on the planned changes. The application or claim shall be rejected where, amongst others, the **Beneficiary** will no longer qualify for the incentive because of the planned changes.

An approval of an amendment may affect the approved incentive amount.

6. PAYMENT OF THE INCENTIVE

- 6.1. **the dti** or its representative (including independent engineers/other experts) may visit the premises where the **Project** is conducted/executed/produced/recorded/edited and inspect such **Project** before or after it approves an application or claim. **the dti** may do this with or without prior notice.
- 6.2. Such inspection will be among other things, to verify the information submitted with the application and/or claim and to inspect the premises, financial books, technology, documents, reports and any other information that may pertain to this incentive, or to another related or relevant entity or - **Project**.
- 6.3. The **Beneficiary**, or its successor in title (including the executor/trustee of a deceased/sequestered/liquidated estate), must keep records (electronic or paper) of all documents relevant to the incentive for five (5) years after it received the last payment. This includes, but is not limited to, a copy of its application and all its claims; originals of documents submitted with the application and claims or on which the application and claims were based; Copies of reports or other information provided to **the dti** and relating to the incentive; invoices, lease agreements and registration and licensing documents.
- 6.4. The **Beneficiary** must allow **the dti** reasonable access to the records mentioned in paragraph 6.3 above, during normal business hours and must also provide **the dti** with any information required for the inspection. Should the **Beneficiary** hinder **the dti** or its representative and/or refuse access to such records in any way so that the inspection cannot be effectively completed, **the dti** may summarily disqualify the application and/or claim.
- 6.5. **the dti** may verify the information contained in the application, claim and/or supporting documents by carrying out an independent investigation. To do such an investigation **the dti** may contact any person which **the dti** feels may be of assistance. If the **Beneficiary** hinders **the dti** or its representative in any way so that the investigation cannot be effectively completed, **the dti** may summarily disqualify the application and/or claim and recover any payments already made.
- 6.6. Should **the dti** find that a price claimed by the **Beneficiary** is not market related **the dti** may in its sole discretion, and despite the contents of the letter of approval, reduce the amount to a market related price, or may reject the full claim.
- 6.7. **the dti** shall only evaluate claim forms that are fully and correctly completed to the satisfaction of **the dti** (including that all required supporting documents are attached). Approval and/or payment of a claim are in **the dti**'s sole discretion.
- 6.8. **the dti** shall make payment within 30 calendar days after an approval by **the dti** of the relevant claim in accordance with the requirements and conditions of the incentive scheme's guidelines (which may include a physical inspection). **the dti** may delay payment for an indefinite period, provided that it shall inform the **Beneficiary** for the reasons for such delay so as to ensure that no delay is for unjust administrative reasons.
- 6.9. Payment shall be made directly into the bank account of the **Beneficiary** only. The **Beneficiary** must notify **the dti** of the correct account details in writing when submitting its claim form.
- 6.10. No interest shall be payable by **the dti** on any amounts due and payable. Payment is subject to availability of funds as approved by National Treasury and Parliament annually and allocated to **the dti** through a Division of Revenue Act.
- 6.11. Where a service provider is involved in terms of the incentive guidelines, **the dti** accepts no liability for non-performance, poor or failed execution of the activity/ies by a service provider or for damages or penalties incurred by the **Beneficiary** for using the services of a service provider.
- 6.12. It is the duty of the **Beneficiary** to inform **the dti** in writing should any of the instances below occur and **the dti** reserves its rights in the event of any of the instances occurring to reject a claim and/or refuse any further payment:
 - 6.12.1. the **Project** stops manufacturing/production/operations for any reason. This includes provisional/final liquidation (or sequestration of the sole proprietor/partner/firm); becoming dormant; being destroyed. It is irrelevant whether this cessation is permanent or temporary (seasonal **Projects** must at least be operational during the relevant seasons);
 - 6.12.2. the **Beneficiary** enters into a compromise offer/arrangement with creditors/is placed under judicial management;
 - 6.12.3. where investment is required, the **Project** reduces qualifying investment without replacing it with qualifying investment;
 - 6.12.4. the **Project** reduces jobs/permanent staff or reduces permanent staff in favour of casual, contract or temporary staff;
 - 6.12.5. the **Project** stops complying with the incentive guidelines and/or this schedule.
- 6.13. The **Beneficiary** is required to report to **the dti** in writing within 7 (seven) days any discrepancy (insufficient/excess) on payments made and must repay to **the dti** within 7 (seven) days from such report any excess received.
- 6.14. Any erroneous payment (including those resulting from a miscalculation, mistake, or irregularity) will immediately be recoverable and may be deducted from any future payments which are, or will become, payable. **the dti** reserves the right

to reverse, apportion or recall any payment or any part thereof at its sole discretion. **the dti** levies interest at the rate prescribed in terms of the Public Finance Management Act, 1999 Act No. 1 of 1999 on any outstanding amounts payable as from 30 days of date of demand.

7. MONITORING

- 7.1. The **Beneficiary** must use the incentive amounts received from **the dti** for the approved **Project** or activities that it described in its application form and any **dti** official, including an inspector, may require evidence at any time after an amount has been received, for verification of this requirement. Any failure to comply with this clause will be regarded as a material breach of this Schedule and will allow **the dti** to enforce any remedy in this schedule, including those in clause 10.
- 7.2. **the dti** may ask the **Beneficiary** to complete questionnaires and submit same within the requested period, or to report to **the dti** on its **Project**/activities, as well as on the incentive received in order for **the dti** to monitor and evaluate compliance as well as the contribution that the incentive is making or has made to the South African economy. If the **Beneficiary** does not comply with the request, **the dti** may, in addition to any other legal remedies that it may have, stop or reduce all further payments in its sole discretion and may refuse any other applications being evaluated at that stage, or that may be submitted in future, from the **Beneficiary** or any of its shareholders, directors or principal officers, whether presented directly, or indirectly through another legal person for this or any other scheme.
- 7.3. **the dti** may appoint an auditor to perform an audit on the **Beneficiary** to ascertain whether the **Beneficiary** has complied with the incentive guidelines and this schedule. **the dti** will notify the **Beneficiary** in writing of the audit and the **Beneficiary** must cooperate with the auditor.

8. NON COMPLIANCE WITH THE INCENTIVE GUIDELINES OR THIS SCHEDULE

- 8.1. Should the **Beneficiary** not comply with any requirement of the incentive guidelines or this schedule **the dti** shall be entitled without prejudice of any other rights that it may have, to reject the application and/or claim; to stop all further payments and/or benefits and to reclaim any or all of the moneys already paid in its sole discretion. In addition, should the **Beneficiary** be in breach of clause 3.3. *supra* regarding economic policies and commercial statutes, **the dti** reserves the right to implement any of the conditions under clause 10 *infra*.

9. DISPUTES AND APPLICABLE RELIEF

- 9.1. Any dispute relating to a decision (including the rejection of an application) taken by **the dti** must be resolved by way of one internal appeal only, lodged within such time as is set out in the letter of rejection, provided that no appeals on claims or inspections will be entertained. Should the **Beneficiary** still dispute the original or appeal decision, it must proceed by way of review in the High Court of South Africa.
- 9.2. If the **Beneficiary** wishes to place new facts before **the dti** for reconsideration, the **Beneficiary** must explain in writing why these facts could not be provided at the first hearing. If this explanation is, in the sole discretion of **the dti** unsatisfactory, it may reject the request.
- 9.3. Any other dispute between **the dti** and the **Beneficiary** may be submitted in writing, for mediation. If the matter can still not be resolved, it may be referred in writing for arbitration. The decision of the arbitrator shall be final and binding.
- 9.4. Arbitration shall be in accordance with the rules of AFSA (Arbitration Foundation of South Africa) and the arbitration costs shall be shared equally.
- 9.5. The Prescription Act, 1969 shall not apply to any claim of **the dti** against the **Beneficiary**.

10. CRIMINAL, MISLEADING, DISHONEST, UNLAWFUL ACTIVITIES

- 10.1. **the dti** shall, in the case of criminal/misleading/dishonest/false activities/information, or activities/information that contravenes any Act or Policy of the Republic of South Africa, specifically Acts that regulates commercial activities, be entitled to exercise any rights that it may have in terms of common law or statutory law. In addition, the following paragraphs will be applicable:
- 10.2. The **Beneficiary's** application/claim is approved conditional on the correctness and completeness of information provided by the **Beneficiary** in the application/claim/addenda/supporting documents/reports. Should the information be substantially incorrect and/or incomplete, **the dti** may immediately reject the application/claim and claim back all monies already paid.
- 10.3. Where **the dti** suspects criminal/misleading/dishonest/false activities/information in relation to the **Beneficiary's** incentive application, claim or commercial practices - or those of its consultant - **the dti** may immediately suspend any payments that may be due or may become due to the **Beneficiary**.
- 10.4. **the dti** may, where the final findings of a forensic investigation, or the findings of a competent authority indicates criminal/misleading/dishonest activities/information or the contravention of an Act or policy, without prejudice to any other rights that it has, reject an application or pending claim and reclaim any payments made, with *mora* interest, together with any legal or other costs, including costs of a forensic investigation and costs of an auditor appointed by **the dti**.
- 10.5. **the dti** may refer financial statements/supporting documents submitted by the **Beneficiary** to SARS for comment. If said comment indicates a difference in financials, **the dti** may without prejudice to any other rights that it may have, reject any pending claim; reclaim payments already made with *mora* interest, and refuse any further payment to the **Beneficiary**.
- 10.6. **the dti** shall not be liable for any damages, interest or other claims that may ensue should payments be delayed/suspended/terminated for whatsoever reason. In addition, the **Beneficiary's** risk of business failure is solely that of the **Beneficiary** and no delay/suspension/termination shall render **the dti** liable to the **Beneficiary**/any other related party.
- 10.7. Where **the dti** rejected an application or claim due to misrepresentation/discrepancy/abuse/fraud/contravention of an Act, **the dti** may reject any current or future application from the **Beneficiary**, its shareholders, directors or principal officers,

whether presented directly or indirectly through another legal person. **the dti** shall have the right to immediately refuse any other applications/claims or terminate any contract(s) that are in existence between **the dti** and the **Beneficiary**, its shareholders, directors or principal officers, whether represented directly or indirectly through another legal person. The period of this disqualification shall be in the sole discretion of **the dti** and the nature of the facts that resulted in the disqualification will have an influence on said period.

10.8. Where any of the actions as referred to above occurred, **the dti** reserves the right – in its sole discretion - to recover any payment(s) already made and hold the **Beneficiary**, its shareholders, directors or principal officers liable severally and jointly, the one absolving the other.

10.9. **the dti** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 12 of 2004 ('PRECCA'). Kindly contact **the dti** fraud hotline on 0800 701 701 to report any suspicious activities.

NOTE: The date and time when the criminal/misleading/dishonest activities/information or contravention of an Act took place shall be irrelevant. **the dti** will only contribute to businesses that at all time and in all aspects conduct its business in a way that is exemplary and in accordance with the laws of the Republic. Failure to notify **the dti** of any record that may indicate the contrary will be seen as aggravating circumstances when **the dti** exercises its discretion in this regard.

11. CONFIDENTIALITY

11.1. Both **the dti** and the **Beneficiary**, its employees, members and directors, and agents shall treat all information that they gain access to as a result of communications between **the dti** and the **Beneficiary** relating to the incentive (e.g. application /claim/reports), whether paper/electronic, and which information is not otherwise public knowledge as confidential.

11.2. Confidential information may only be disclosed to any person outside the immediate working environment of **the dti** or the **Beneficiary** with the prior written permission of the other. Any information required by the public sector - including public officials - or government agencies or organs, e.g. SARS or CIPRO, in terms of the reporting duties of **the dti** may be reported by **the dti** without such consent.

11.3. **the dti** may publish information on approvals or rejections, which information may include *i.a.* the name of the **Beneficiary**, the name and location of the **Project**, the incentive scheme and the amount and period approved.

11.4. Where either **the dti** or the **Beneficiary** receives a court order or a subpoena requiring disclosure of confidential information, it must notify the other in writing within seven (7) days. Where the court order or subpoena gives shorter notice than twenty (20) days, written notice must be given as soon as is reasonably possible. The reason for the written notification is so that **the dti** or the **Beneficiary** may seek a protective order or waive the provision of this clause in writing.

11.5. **the dti/Beneficiary** must take reasonable care to ensure that only the exact information required by the court order or subpoena, or as is limited by a protective/other order, is disclosed.

11.6. This paragraph shall apply even after the relationship between **the dti** and the **Beneficiary** has ceased.

11.7. This paragraph does not apply to litigation and/or arbitration proceedings between **the dti** and the **Beneficiary**.

12. CESSION

12.1. The approval of an incentive application does not give the **Beneficiary** any right to payment. An approval merely allows the **Beneficiary** to submit a claim form in accordance with the incentive guidelines and this schedule.

12.2. Cession of the right to submit a claim is not allowed. The possible right (*spes*) that the claim will be successful and that payment will accordingly follow may only be ceded with the prior written agreement of **the dti** and shall be subject to such strict conditions as **the dti** in its sole discretion will determine.

12.3. **the dti** may refuse cession, in its sole discretion, to certain institutions.

12.4. Assignment of any of the **Beneficiary's** obligations is not allowed.

12.5. No right that the **Beneficiary** might obtain by way of the approval of an incentive may be otherwise encumbered or subjected to any form of pledge or used as the basis for any form of security or guarantee to bind the state, whatsoever.

12.6. **the dti** may cede or assign any of its rights or obligations in accordance with a decision from National Treasury, Parliament or Cabinet. This decision will include any decision that causes a policy shift within **the dti** so that in order to align itself with the shift in policy, **the dti** has to so cede or assign. **the dti** will take reasonable steps to ensure that the **Beneficiary** is not unreasonably prejudiced by such assignment or cession.

13. GENERAL

13.1. No waiver/indulgence/relaxation of whatever nature of any of the provisions of the guidelines/this schedule by **the dti** shall be valid or enforceable against **the dti**, unless such waiver, indulgence or relaxation is in writing and is signed by **the dti**.

13.2. The Guidelines, the completed application form (with attachments), this schedule and the claim form(s) (with attachments) are the only documents that set out the requirements and conditions applicable to the relationship between **the dti** and the **Beneficiary** as well as the information on which the relationship is based. Amendments to the Guidelines and this schedule may be made by **the dti** in accordance with this Schedule.

13.4. The **Beneficiary** agrees that the Laws of South Africa, excluding the law of conflicts (which determines the legal system applicable to a dispute), shall govern the relationship between **the dti** and the **Beneficiary**.

13.5. The **Beneficiary** is required to sign this schedule where it appears in the application form and claim form in order to confirm that the **Beneficiary** has read the content hereof and knows that it forms part of the requirements of the incentive scheme; that the beneficiary are in compliance with same and that it is binding on the **Beneficiary**. Any failure in this regard shall not absolve **the Beneficiary** of its obligations, nor nullify any of the rights of **the dti**, herein.