



**the dti**

Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

## PROGRAMME GUIDELINES

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### Incubation Support Programme (ISP)

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## 1. Overview

- 1.1 The Department of Trade and Industry (**the dti**) has initiated the Incubation Support Programme (ISP), a sub-programme of Enterprise Investment Programme (EIP) designed to develop incubators, thus creating successful enterprises with a potential to revitalize communities and strengthen local and national economies.
- 1.2 As part of a process of continuing to strengthen economic development through broadening participation in the economy, a new robust programme is thus provided in pursuit of ensuring that small, micro and medium enterprises (SMMEs) eventually graduate into the mainstream economy through the support provided by the incubators.
- 1.3 The Incubation Support Programme is one of the support measures to encourage private sector partnerships between small and big businesses, with big business assisting SMMEs with skills transfer, enterprise development, supplier development and creating marketing opportunities.
- 1.4 Prospective partners are invited to apply for the Incubation Support Programme incentive on offer in the manner outlined in these guidelines.

Dr, Rob Davies, MP  
Minister of Trade and Industry

Date:    /    /

## 2. Preamble

- 2.1 The purpose of this document is to provide the policy and guidelines of the Incubation Support Programme (ISP) a sub-programme of Enterprise Investment Programme (EIP).
- 2.2 The guidelines set out in this document are intended to provide a framework for applicants to present their proposals to **the dti** and for **the dti** to evaluate such proposals.
- 2.3 The guidelines may be amended from time to time, as and when required. These amendments will be published on **the dti** website and will be effective immediately upon publication.
- 2.4 Where the guidelines lend themselves to varying interpretations or do not deal with a specific subject matter, the interpretation of **the dti** must be requested and such interpretation will be decisive and final.
- 2.5 Approval of applications will be subject to the compliance with the programme guidelines, the relevant provision of the Public Finance Management Act (PFMA) and more specially the availability of funds.

## 3. Services Delivered by the dti

- 3.1 No fees or charges are levied for the processing or evaluation of any Incubation Support Programme (ISP) applications or claims.
- 3.2 Applicants are welcome to contact **the dti** directly or its appointed business support agencies in the provinces that can assist them with the process of application.
- 3.3 Applicants may approach **the dti** for assistance to apply for the programme. Although an applicant may make use of the services of a consultant or representative, **the dti** does not accept liability for any loss or damage incurred due to an action or omission of an applicant's consultant or representative.

## 4. Programme Description

- 4.1 The objective of the Incubation Support Programme (ISP), a sub-programme of the Enterprise Investment Programme (EIP) is to encourage private sector partnerships with government to support incubators in order to develop SMME's and nurture them into sustainable enterprises that can provide employment and contribute to economic growth.
- 4.2 The intention of the programme is to provide funding for incubators that over time can generate revenue through the provision of its services and initiatives can be self-sustainable.
- 4.3 The incubation support will be available on a cost sharing basis between the government and private sector partner(s). It is available for infrastructure and business development services necessary to mentor and grow enterprises to ensure that within 2 to 3 years<sup>1</sup>, the enterprises will graduate to a level of self-sustainability by providing products and services to the market.
- 4.4 The Incubation Support Programme is effective from 01 September 2012 up to 31 March 2022.

## 5. Eligibility Criteria

- 5.1 The applicant must either be:
- A registered legal entity in South Africa in terms of the Companies Act, 1973 (as amended) or the Companies Act, 2008 (as amended); the Close Corporations Act, 1984 (as amended) or the Co-operatives Act, 2005 (as amended); or
  - Be a registered higher or further education institution; or
  - Be a licensed and/or registered science council.
- 5.2 The programme is available to applicants that want to establish new incubators as a separate registered legal entity or wish to grow and expand existing ones.
- 5.3 The supported incubator may either offer physical and/or virtual incubation support services.
- 5.4 The incubator to be supported may be a corporate incubator; a private investor's incubator; an academic or research institution incubator in partnership with a private enterprise, and must be focused on establishing and/or growing enterprises that will graduate to sustainable enterprises.

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<sup>1</sup> This period can be shorter or longer depending on the nature of the sector involved and/or incubation model applicable

## 6. Qualifying Costs

- 6.1 The following costs are eligible for support:
- Business development services (e.g. business advisory services, coaching and mentoring, training, facilitation of funding, production efficiency and improvement, quality and standards acquisition)
  - Market access
  - Machinery, equipment and tools
  - Infrastructure linked to incubator (buildings, furniture)
  - Product or service development
  - Information and Communication Technology (ICT)
  - Operational costs
- 6.2 Feasibility studies costs for establishing new incubators and expanding existing incubators may qualify for support to a maximum cost sharing grant of R1 million.
- 6.3 The ISP Adjudication Committee may consider for support, any other costs related to the activities of the incubator.

## 7. General Conditions

- 7.1 Applicants that are already receiving or are eligible to receive funding from other government departments or agencies such as SEDA are excluded from participation unless they establish a new incubator as a separate registered legal entity.
- 7.2 The following costs are excluded:
- Basic and applied research
  - Costs incurred or assets acquired prior to approval of the proposal
  - Any cost, which the Adjudication Panel in its sole discretion deems as non-qualifying
- 7.3 **the dti** may appoint a representative to the Advisory Council of an approved incubator.
- 7.4 Applicants should complete and submit an application for incubator atleast two (2) months before the start of the actual projects and not early than 9 months.

## 8. Framework for the proposal

8.1 The proposal should be submitted in the form of an application form obtainable from **the dti** website and will cover the following key aspects:

- Executive summary outlining the objectives of the project
- An incubator characterisation outlining the incubator organisation, strategy and unique aspects.
- The business model of the incubator, detailing the type of incubator proposed, target market and services.
- Marketing plan outlining how the target market will be defined and reached.
- Operational plan should include tasks that are necessary to ensure that the incubator reaches its objectives, including intake and exit strategies for incubates.
- Details of resources required to deliver on the services and control systems in place
- Financial information outlining the funding structure, sources of funding and financial forecasts for the project (three (3) years income statement and asset register projections).
- Processes for monitoring and evaluating performance of the incubatees.

8.2 The proposal must demonstrate how the incubator would function and be sustainable over time.

8.3 The incubator management should have business experience, and skills and experience in nurturing and growing businesses.

8.4 The incubator must demonstrate capacity to create business networks and market access opportunities for incubatees.

8.5 The framework for the proposal is attached as annexure A.

## 9. Evaluation Criteria

9.1 The applicant will also be evaluated based on the following evaluation criteria:

- Management competency with business background and entrepreneurial and leadership skills. Track record in successfully mentoring and coaching SMMEs;
- Advisory Council experience in business leadership and/or development;
- Comprehensive project proposal;
- Availability of funding and commitment from partners to fund the project;
- Sustainability of revenue model proposed;
- Stakeholder support and capacity to develop networks;

- Extent to which partners are committed to and have demonstrated capacity to create market access opportunities for the project arising out of the incubator;
- Alignment of recruitment and selection criteria of the incubator with services offered, resources and objectives of the incubator;
- Realistic exit strategy and post incubation plan.

## 10. Grant Support

- 10.1 The grant approval will be based on projections for the first year at application stage whereas the approval for subsequent year(s) be accepted in principle and be reviewed annually subject to actual performance in the preceding year(s) against agreed milestones.
- 10.2 All payments will be made directly to the incubator's primary bank account.
- 10.3 The grant approval is capped at a maximum of R10 million (VAT inclusive) per financial year<sup>2</sup> over a three (3) year period and is subject to the availability of funds as indicated in paragraph 2.5.
- 10.4 The ISP offers a cost-sharing support of 50:50 for large businesses<sup>3</sup> and a cost-sharing of 40:60 for SMMEs<sup>4</sup>. (Private sector: Government)
- After the three year period, applicants may apply for assistance for an additional three years and must comply with these guidelines.
- 10.5 The contribution to the incubator can be in the following forms:
- Cash transferred to the primary bank account of the incubator
  - Immoveable assets provided on a long-term lease or free rental (valued, transferred or registered in the name of incubator)
  - Machinery and equipment (valued and an agreement in place for the transfer)

## 11. Grant Disbursement

- 11.1 The grant will be disbursed quarterly based on the submitted cash flow projections upon submission of a quarterly report(s) and a complete claim form.
- 11.2 The first payment is subject to confirmation that the incubator has an Advisory Council in place and that the private sector partner has made a contribution to the financial requirements of the incubator in line with its business plan.

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<sup>2</sup> Refers to government financial year which runs from the 1<sup>st</sup> April each year to 31<sup>st</sup> March of the following year

<sup>3</sup> Refers to an enterprise with a turnover above R35 million

<sup>4</sup> Refers to an enterprise with a turnover of R35 million and below



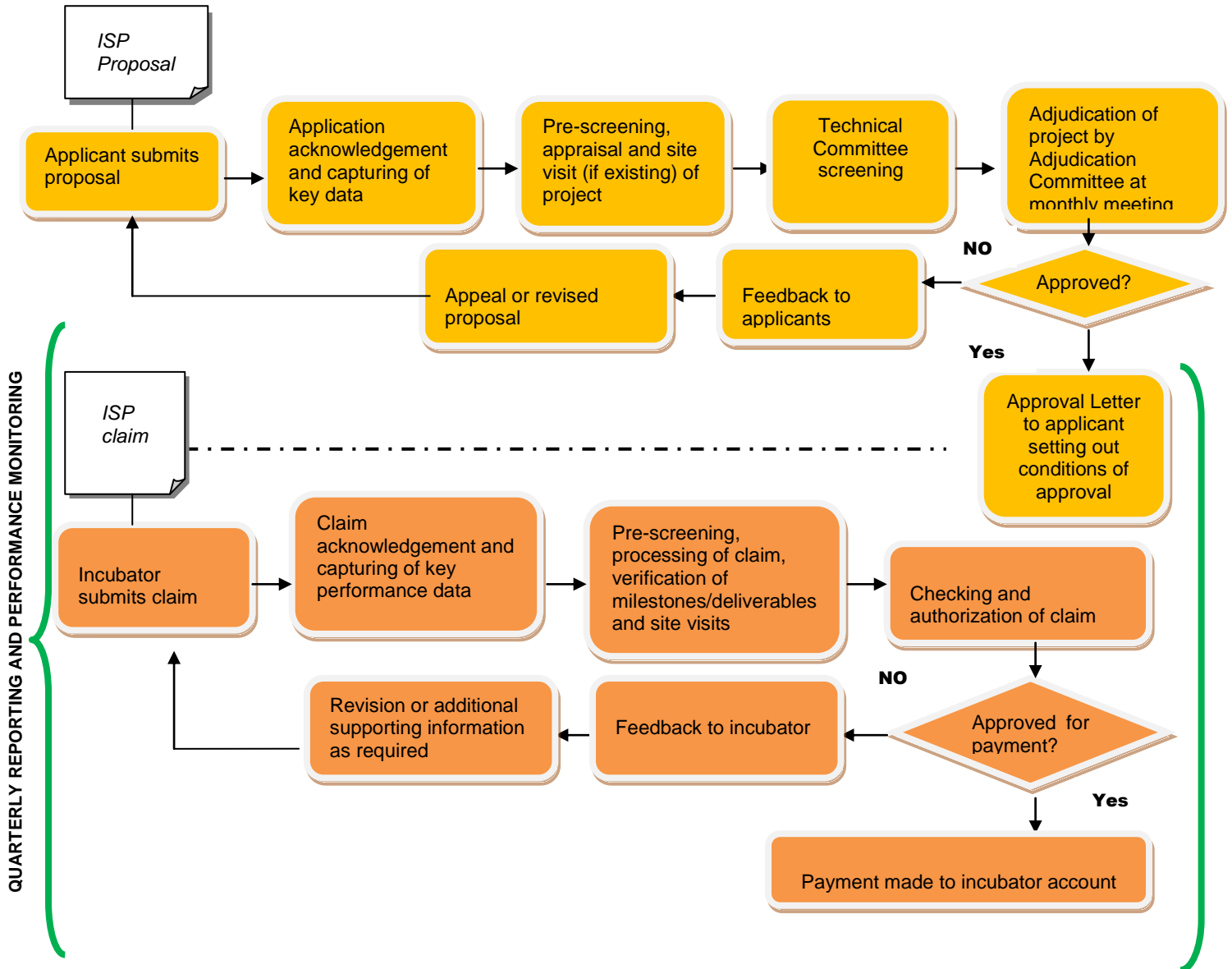
- 11.3 The first payment is limited to twenty-five percent (25%) of the total incentive amount approved and subsequent payments will be subject to proof of costs/expenditure incurred.
- 11.4 Subsequent grant disbursements are subject to satisfactory verification of expenditure incurred by the incubator and this may include audit confirmation and a physical on-site visit by **the dti**.
- 11.5 The claim form should be accompanied by relevant documentation as requested by **the dti** on the approval letter.
- 11.6 The applicant shall claim for payment during each financial year and as per agreed milestones failing which **the dti** shall allow a grace period of three (3) months for the submission of claim/s and thereafter the application approval shall automatically terminate and no further claim/s will be processed.

## 12. Monitoring and Evaluation

- 12.1 All approved applicants will be monitored to assess how the ISP is contributing towards the strategic objectives of the incentive and its intended outcomes.
- 12.2 Monitoring information required from applicants will form part of the claim forms. Upon receiving the claim forms, **the dti** will conduct site visits with all the approved applicants to verify the requested information.
- 12.3 In addition to the site visits at each claim stage, applicants may be required to comply with periodic performance monitoring visit.
- 12.4 Approved applicants are also required to submit quarterly and annual performance reports, up to a period of three years after the final claim has been paid.

### 13. Application and Claim Procedure

13.1 The following diagram presents the application and claims process:



13.2 The following information is required with the application form:

A signed proposal in the prescribed format.

13.3 The proposals must be submitted to the following address:

The Incubation Support Programme Secretariat

Postal address:

Private Bag X84

Pretoria, 0001

Physical Address:

**the dti** Campus, Building A

77 Meintjies Street

Sunnyside

Pretoria, 0002

## **Appendix A: Detailed Guidance for the Incubator Proposal**

Applicants for the ISP should ensure that their proposals cover aspects as outlined below:

### **1. EXECUTIVE SUMMARY**

- Objectives and description of the (Incubator)
- Brief history (if existing) and background to the incubator
- Products and services
- Financing required

### **2. THE INCUBATOR CHARACTERISATION / CONCEPT**

- Overview of incubator organisation and strategy
- Track record if the incubator has been in existence
- Current status
- Unique characteristics and advantages of incubator
- Key stakeholders

### **3. BUSINESS MODEL**

- Type of incubator (what the incubator intends to do)
- Services to be offered
- Who/what market or segment is the incubator targeted at
- What competences/experiences/technologies is the incubator based on
- What market trends inform the incubator

### **4. MARKETING PLAN**

- How will the target market be defined and reached
- Analysis of the market and its potential (trends, competition, comparative advantages)

### **5. OPERATIONAL PLAN**

- Procedures for reaching objectives including;
  - incubate recruitment, pre-incubation and assessment;
  - incubation period,
  - SMME graduation/exit strategy and post incubation strategy
- Business location (size & capacity, advantages & disadvantages, lease or ownership details)
- Details of equipment, furniture & fixtures

- Future expenditures and technology requirements
- Development of partnerships and networks

## **6. ADMINISTRATION / ORGANISATIONAL PLAN**

- Resources required by the incubator (machinery, furniture & equipment)
- Organisational structure (staff structure, roles & responsibilities, qualifications & experience)
  - Experience in mentoring and/or offering business development support
- Details of Advisory Council

## **7. FINANCIAL PLAN**

- Initial investment required
- Details to financial model
- Three (3) year income statement and asset register projections where possible

## **8. MONITORING AND EVALUATION**

- How will performance be measured and monitored

## Appendix B: Glossary of terms and definitions

<b>Incubatee</b>	Refers to the enterprise whose application for funding and participation in the incubator is approved in accordance with the agreed criteria guidelines.
<b>Incubation</b>	Refers to business incubation which provides a nurturing, instructive and supportive environment for entrepreneurs during the critical stages of starting up a new business including pre-incubation and post incubation programmes.
<b>Incubator</b>	Refers to a physical and/or virtual facility designed to accelerate the successful development of new entrepreneurs through an array of business support resources and services. The facility may either be a technology, cultural or social incubator.
<b>Investor</b>	Refers to an institution that invests in the Incubator - <b>the dti</b> and other potential investors.
<b>Expansion</b>	Refers to a new entity, new incubator or new facility with its own banking account
<b>Qualifying Criteria</b>	Refers to those criteria listed in <b>Section 5</b> of the guidelines, referring to the incubator, which must all be satisfied by the incubator applying for finance.
<b>SMME</b>	Refers to enterprises with a turnover of R35 million and below.
<b>Large business</b>	Refers to enterprises with a turnover above R35 million.
<b>Secretariat</b>	Refers to the Directorate: Incubation Support Programme within IDAD. The members of the Secretariat will be <b>the dti's</b> employees specially tasked with the Programme management roles and responsibilities.

Approved by  
Dr. Rob Davies

## Appendix C: Schedule for Incentive Programmes

### 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. **“Business Project”** or **“Project”** means the business operated by the Beneficiary and that was approved for the incentive.
- 1.3. **“the dti”** refers to the Department of Trade and Industry care of Incentive Development and Administration Division, 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**.

### 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 only, be affected by retrospective amendments 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 not make its own interpretation. **the dti** has the right in its sole discretion, to provide interpretations on the meaning and intention of such words or sentences. Such decisions are binding on all **Beneficiaries**.

The **Beneficiary** is required to familiarise itself with the economic policies of **the dti**. 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 become compliant.

### 4. APPROVAL OF THE INCENTIVE APPLICATION AND SUBMISSION OF CLAIMS

- 4.1. The approval set out in the letter of approval is only relevant to the specific business project that applied. A business project, activity or expenditure can only qualify once for an incentive (unless the incentive guidelines states different). A Business Project will be disqualified if it contravenes this clause.
- 4.2. No representation, communication (including official **dti** letters), or offer made prior to the approval of the application/claim shall be valid in so far as it does not agree with the letter of approval, or the requirements of the claim.
- 4.3. No information may be submitted with the claim on any, or part of any, project other than the business project that has been approved.
- 4.4. 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.
- 4.5. The **Beneficiary** is not automatically entitled to the full amount of the maximum incentive offered. **the dti** further reserves the right to correct any 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 BUSINESS 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 or other experts) may visit the premises where the business project is conducted/executed/produced/recorded/edited and inspect such business 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 and to any other related entity or project.
- 6.3. The **Beneficiary**, or its successor in title (including the executor / trustee of a deceased / sequestrated / 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 a copy of its application and all its claims; Originals of documents submitted with the application and claims; Copies of reports or other information provided to **the dti** and relating to the incentive.

- 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 reject 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 reject 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 approved claim amount to reflect such 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 the supporting documents required by the incentive guidelines be attached). Approval of a claim is 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 on a yearly basis, and allocated to **the dti** in terms of the annual 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 business 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 business projects must at least be operational during the relevant seasons);
  - 6.12.2. the **Beneficiary** enters into a compromise offer or arrangement with creditors, or where the **Beneficiary** is placed under judicial management;
  - 6.12.3. and where investment is a requirement, the business project reduces the qualifying investment without replacing it again with qualifying investment;
  - 6.12.4. the business project reduces jobs and/ or reduces permanent staff or reduces permanent staff in favour of casual, contract or temporary staff;
  - 6.12.5. the business 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 business project or activities that it described in its application form and an inspector may require evidence at any time after an amount has been received for verification of this requirement. In contravention of this rule the amount will be recover from the **beneficiary** and prescription cannot be pleaded.
- 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 business 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 co-operate 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

- 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. No appeals on inspections are allowed. Should the **Beneficiary** dispute the appeal decision, it must proceed by way of review in the High Court of SA.
- 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 or disagreement 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. A beneficiary has no legal right or any entitlement to any grant irrespective whether a letter of approval has been issued or not as a grant is an act of grace and should a beneficiary or its consultant wish to litigate against **the dti** the law of contract will not apply.

#### 10. CRIMINAL, MISLEADING, DISHONEST and UNLAWFUL ACTIVITIES

- 10.1. **the dti** shall, in the case of criminal/misleading/dishonest activities/information, or activities/information that contravenes any Act 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 activities/information in relation to the **Beneficiary's** incentive application or claim or commercial practices of **the dti** or 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, without prejudice to any other rights that it may have, reject an application or any pending claim and reclaim any payments already made, with *mora* interest, together with the costs of any legal or other costs, which may also include costs of forensic investigators and/or costs of an auditor.
- 10.5. **the dti** may refer financial statements or supporting documents submitted by the **Beneficiary** to SARS for comment and comparison. If SARS informs **dti** of a difference in financials, **the dti** may without prejudice to any other rights that it may have, reject any pending claim and reclaim any 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 incentive payments be delayed, suspended or terminated for whatsoever reason. In addition, the **Beneficiary's** risk of business failure is solely for the **Beneficiary** and no delay, suspension or termination shall render **the dti** liable to the **Beneficiary** or any other related party whatsoever.
- 10.7. Where **the dti** rejected an application or claim due to misrepresentation/discrepancy/abuse/fraud/contravention of an Act by the **beneficiary** and/or the consultant, **the dti** may reject any current or future application from the **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant 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. If it comes to light that any **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person were involved in any misrepresentation/discrepancy/abuse/fraud/contravention of an Act and when a payment has already been received, **the dti** reserves the right to recover the payment(s) and hold the **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant all the parties will be held liable serially and jointly the one absolving the other.
- 10.8. **the dti** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 12 of 2004 ('PRECCA'). **Beneficiaries** are requested to contact **the dti** fraud hotline on 0800 701 701 should they wish 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 times 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, 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 on paper or 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 or its appointees in terms of the reporting duties of **the dti** may be reported by **the dti** without such consent.
- 11.3. 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.
- 11.4. **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.
- 11.5. This paragraph shall apply even after the relationship between **the dti** and the **Beneficiary** has ceased.
- 11.6. 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 requirements and conditions of 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 and/or relaxation of whatever nature of any of the provisions of the guidelines or 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.
- 13.3. 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, consultant and auditor are** 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 and that the **beneficiary** are in compliance with same and that it is binding the **Beneficiary**.