



NSFAS

National Student Financial Aid Scheme

Request for Proposal

BID No: SCMN21/2020

SECTION A

Panel of legal services for a period of three (3) years

Full Name of Bidding Entity:	
Contact Person:	
Contact Number:	
Contact Email Address:	
Advertisement Date:	12 February 2021
Compulsory Briefing Session Date/Time:	N/A
Closing Date/Time:	18 March 2021 at 11h00
Issued by:	National Student Financial Aid Scheme (NSFAS)

INVITATION TO BID (SBD1)

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS)					
BID NUMBER:	SCMN21/2020	CLOSING DATE:	18 March 2021	CLOSING TIME:	11:00AM
DESCRIPTION	Panel of legal services for a period of three (3) years				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
NSFAS Office, 10 Brodie Road					
1 st Floor, House Vincent Building					
Wynberg, Cape Town					
7801					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	SCM		CONTACT PERSON	SCM	
TELEPHONE NUMBER	021 763 3200		TELEPHONE NUMBER	021 763 3200	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	SCM@NSFAS.ORG.ZA		E-MAIL ADDRESS	SCM@NSFAS.ORG.ZA	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.	

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”</p>

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

NSFAS overview

The National Student Financial Aid Scheme (NSFAS) is a statutory body providing financial aid to eligible students who wish to study at public universities and Technical Vocational Education and Training (TVET) colleges. NSFAS is mandated to manage and distribute funds in accordance with the provisions of the NSFAS Act (Act 56 of 1999).

Fraud and Corruption

All providers are to take note of the implications of contravening the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 and any other Act applicable.

The National Student Financial Aid Scheme is committed to conducting business ethically and is constantly introducing proactive measures to ensure that we identify and appropriately respond to any unlawful and unethical business practices. All NSFAS tenders are subject to certain audit processes and limited due diligence checks with the intent to identify any possible unlawful or unethical practices.

Reporting of any unlawful or unethical incidents to NSFAS

Should any bidder, potential or current supplier of NSFAS or any other third party:

- receive any irregular contact or correspondence from anyone presenting themselves as an employee or representative of NSFAS
- receive any contact or correspondence from anyone soliciting any bribe of any form
- become aware of any irregular or illegal conduct by any party who has a relationship with NSFAS or any NSFAS official

you are requested to immediately report it to NSFAS's Governance, Risk and Compliance (GRC) Department. All information provided to the NSFAS GRC department will be treated with utmost confidentiality and in terms of the Protected Disclosures Act, Act 26 of 2000.

Please forward any information or direct any queries to the following NSFAS GRC staff members:

- Ms Amanda Basson: amandab@nsfas.org.za
- Mr Corné Mellet : corneme@nsfas.org.za

Reporting of any unlawful or unethical incidents to the South African Police

Bidders, current or potential NSFAS suppliers or any other third party who become aware of any unlawful and unethical conduct are encouraged to report the matter to the South African Police. NSFAS request that details of such reports made to the SAP be shared with NSFAS official listed above so as to enable consolidation of possible related investigations.

Clarifications / Additional information / Rights

Clarification

Any clarification required by a bidder regarding the meaning or interpretation of the bid specifications, or any other aspect concerning the bid, are to be requested in writing by email from scm@nsfas.org.za. The bid number should be mentioned in all correspondence. Telephonic requests for clarification will not be accepted. Bidder are reminded that NSFAS SCM officials will never contact bidders telephonically or by other method other than through the official SCM email address listed above.

Additional Information

During the evaluation of the bids, additional information may be requested in writing from bidders, for clarity. Replies to such requests must be submitted, within 5 (five) working days from the date of request, or as otherwise indicated. Failure to comply, may lead to your bid being disregarded.

Rights

NSFAS reserves the right to appoint more than one (1) service provider. NSFAS further reserves the right to engage with the short-listed bidders for price negotiation and a site inspection where necessary. NSFAS in addition reserves the right to invite the shortlisted for a presentation as part of the bid process. NSFAS reserves the right to not select the lowest price. In addition, NSFAS reserves the right to not award the tender to the shortlisted bidder should any risk arise from any NSFAS due diligence assessment performed. NSFAS reserves the right to award the contract in whole or in parts.

Consent

By responding to this tender, both the entity and its directors provide consent to NSFAS to perform background checks which would include amongst others, the relevant Transunion checks, should it wish to do so.

Bid submission

One (1) physical bid proposal must be handed in/delivered to:

The deposit box situated at:
1st Floor, House Vincent
Brodie Road
Wynberg
7801

Tenders can be delivered and deposited into the tender box between 08:30 and 16:00, Mondays to Fridays prior to the closing date, and between 08:30 and 11:00 on the closing date.

No faxed or e-mailed bid proposals will be accepted. The bidders are encouraged to index and paginate the bid proposal.

Respondents should ensure that tender documents are delivered to NSFAS in the tender box before the closing date and time of the tender. If the tender document is late, it will not be accepted and will be disregarded. Bid proposals submitted on time shall not be returned to the bidder.

Any tender submitted shall remain valid, irrevocable and open for written acceptance by NSFAS for a period of 120 (one hundred and twenty) days. A tender submitted shall further be deemed to remain valid after the expiry of the above mentioned 120-day period until formal acceptance by NSFAS, unless NSFAS is notified in writing by the tenderer of anything to the contrary (including any further conditions the tender may introduce). Any further conditions that the tenderer may introduce will be considered at the sole discretion of NSFAS.

Bidders should indicate on the cover of the bid proposal (in a sealed envelope/box), the following information:

- Bid number SCMN21/2020
- Closing date and time **18 March 2021 at 11:00**
- The name and address of the bidder

Late bids

Bids received late will not be considered for evaluation purposes. A bid will be considered late if it arrived even one second after 11:00 am or any time thereafter. The tender (bid) box shall be locked at exactly 11:00 am and bids arriving late will not be considered under any circumstances. Bidders are therefore strongly advised to ensure that bids be dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

Bids sent to NSFAS via courier shall be deemed to be received at the date and time of arrival at the NSFAS premises (tender box) Bids received in the tender box after the closing date and time of the bid, shall therefore be deemed to be received late. Bidders should allow time to access the premises due to security arrangements that need to be observed.

Response Structure:

The contents of the bid document must be as follows, and numbering below, with each schedule punched, placed in a file and separated from the next schedule with a file divider.

Please complete the checklist below to verify your submission of the relevant documents:

Schedules	Description	Submitted (tick box below):	
		Yes	No
Schedule 1	Entity registration documentation		
Schedule 2	Consent by the entity and its directors to perform the necessary background checks which includes amongst others, the TransUnion checks.		
Schedule 3	Original Valid Tax Clearance Certificate/tax pin		
Schedule 4	BBB-EE Certificate, or, BBBEE Sworn Affidavit for EME/QSE signed and stamped by Commissioner of Oaths.		
Schedule 5	National Treasury Central Supplier Database proof of registration -please provide the latest full report.		
Schedule 6	Letter from Bank confirming banking details (not older than 3 months from date of closing date of tender)		
Schedule 7	Completed and signed Tender Documents: including the following; SBD 1 SBD 4 SBD 6.1 SBD 8 SBD 9 General Conditions of Contracts (with every page initiated)		
Schedule 7	Detailed Bid proposal in response to bid specification requirements		
Schedule 8	Non-disclosure agreement to be signed		

Contract Negotiations

The successful bidder (s) will be required to enter into a written contract/SLA with NSFAS. The final terms and conditions will be negotiated between NSFAS and the successful bidders (s). Should the awarded bidder fail to sign the SLA within a reasonable timeframe deemed by NSFAS, NSFAS reserves the right to cancel the award/contract and award the tender to the 2nd placed bidder.

Payments

By responding to this bid document, the service provider agrees to the following

NSFAS will pay the successful bidder (s) the fees set out in the final contract according to the table of deliverables. No additional amounts will be payable by NSFAS to the successful bidder (s).

The successful bidder (s) shall invoice NSFAS for the services rendered in a reasonable timeframe. The invoices billed to NSFAS must be in relation to the original scope of work/terms of reference.

The invoice must be accompanied by supporting source document(s) containing detailed information, as NSFAS may reasonably require, for the purposes of establishing the specific nature, extent and quality of the services which were undertaken by the successful bidder (s).

No payment will be made to the successful bidder (s) unless an original tax invoice complying with section 20 of the VAT Act, 1991 (Act No 89 of 1991), as amended, has been submitted to NSFAS.

Payment shall be made by bank transfer into the successful bidder (s) bank account normally 30 days after receipt of an acceptable, original, valid tax invoice.

Payments will only be made to the bidder in accordance with the purchase order issued to the awarded bidder. Any services delivered by the bidder outside of the original bid specifications and over and above the purchase order value will not be paid for as NSFAS is not liable for these payments. Should the service provider perform any additional work outside of the tender award and its requirements, NSFAS will not be held liable for such payment to the service provider. Should you receive any instruction from NSFAS that does not come from the SCM unit to perform any work outside of the original bid specification, NSFAS will not be held liable for this payment.

1. Purpose

The National Student Financial Aid Scheme (NSFAS) is inviting Firms of Attorneys to respond to this RFP to participate in a Panel: Provision of Professional Legal Services to service NSFAS in a wide range of legal matters including, but not limited to, CCMA Hearings and labour related issues, litigation proceedings whether civil or criminal, legal opinions / advise, engagements with government entities and parliament, forensic investigations and compliance matters, to name but a few.

Bidders are advised that NSFAS will reserve its right to only appoint 6 (six) bidders to the panel who will be appointed for the contract period of 36 (thirty-six) months and consideration will be given to firms who specialise in the field of Public Finance Management Act and National Treasury Regulations and Guidelines / Practice Notes, Administrative Law and Law of Civil Procedure, Constitutional Law, Commercial Law, drafting and vetting of complex agreements, legal risk management, matters related to governance (policy development and legislative drafting) and any other matter which may require the services offered by the external legal service provider on a case-by-case basis, at NSFAS' discretion.

The envisaged services, as alluded to above, shall be provided to NSFAS on an "as and when required" basis, and successful bidders must be willing to enter into a Service Level Agreement with NSFAS and NSFAS reserves the right to, at its absolute discretion, terminate the services of the appointed firm should that firm fail to meet the performance standards expected by NSFAS.

2. Background

The National Student Financial Aid Scheme (NSFAS) provides financial assistance and administers bursary schemes to eligible students at all public Universities and Technical and Vocational Education and Training (TVET) Colleges throughout South Africa on behalf of the Department of Higher Education & Training. It must be disclosed, that although NSFAS is a National entity, its primary place of business / premises is located in Wynberg, Cape Town.

3. Mandatory Requirements

All bids must comply with the mandatory requirements and failure to comply with any of these requirements will disqualify the bid.

No.	Mandatory requirements	Page reference per bidder proposal
3.1	A valid Fidelity Fund Certificate in the name of the legal firm or partner in accordance with section 41 of the	

No.	Mandatory requirements	Page reference per bidder proposal
	Attorneys Act 53 of 1979, as amended, which must be valid at the date of submission.	
3.2	A valid letter of good standing in the name of the legal firm or partner, issued by the Legal Practice Counsel.	
3.3	<p>At a minimum, the firm of attorneys must have 10 years' experience in providing similar advice and legal professional services to government institutions evidenced by the firm's company profile (and/ or the Directors and Senior Partners CVs) in the following areas of law:</p> <ul style="list-style-type: none"> ▪ Administrative ▪ Constitutional ▪ Labour ▪ Technology ▪ Commercial and Finance ▪ Governance and compliance <p><i>NSFAS seeks to appoint 6 legal firms to the panel as follows:</i></p> <p><i>2 firms that have a minimum of 10 years of experience in ALL six areas of law as specified above.</i></p> <p><i>2 firms (or lead directors) that have a minimum of 10 years of experience in 3 to 5 areas of law as specified above</i></p> <p><i>2 firms (or lead directors) that have a minimum of 10 years of experience in one or two areas of law as specified above.</i></p>	
3.4	The non-disclosure agreement must be signed and submitted together with the RFQ proposal.	

4. Functional Specification

- 4.1. During the contract period, the core legal services that may be required by NSFAS from the successful bidder shall include litigation, advisory services, legal opinions, court appearance, drafting and vetting of complex agreements, labour disputes, legal risk management, matters related to governance and any other matter which may require the services offered by the external legal service provider(s).

The different areas of law and details of the services to be provided by panellist, which list of services is not exhaustive, are detailed below:

4.1.1. Administrative Law

- 4.1.1.1. Advise on all legislation and regulations pertinent to NSFAS, the NSFAS Act and its business processes, which shall include drafting legislation, regulations and policy guidelines and related matters;
- 4.1.1.2. Provide advice and guidance on matters related to the higher education sector and in particular matters related to NSFAS' relationship with and obligations to the Department of Higher Education and Training;
- 4.1.1.3. Provide advice and guidance on legislation applicable to NSFAS. The legislation referred to in this sub-paragraph shall include but shall not be limited to:
- i. National Student Financial Aid Scheme Act 56 of 1999, as amended;
 - ii. Public Finance Management Act 1 of 1999, as amended;
 - iii. Treasury Regulations, as amended;
 - iv. National Credit Act 34 of 2005, as amended
 - v. Financial Intelligence Centre Act 38 of 2001, as amended;
 - vi. Protection of Personal Information Act 4 of 2013, as amended;
 - vii. Promotion of Access to Information Act 2 of 2000, as amended; and
 - viii. Promotion of Administrative Justice Act 3 of 2000, as amended.
 - ix. Any other legislation that is applicable to NSFAS.
- 4.1.1.4. Draft and comment on agreements between organs of state;
- 4.1.1.5. Provide litigation services in all areas of administrative law; and
- 4.1.1.6. Advise on matters relating to the public sector.
- 4.1.1.7. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise.

4.1.2. Constitutional Law

- 4.1.2.1. Advise on the constitutionality of legislation, policies, etc;

- 4.1.2.2. Provide litigation services in all areas of constitutional law; and
- 4.1.2.3. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise.

4.1.3. Labour Law

- 4.1.3.1. General advice on all aspects of labour law, including but not limited to, breach of contract, mediation with Trade Unions and other related disputes that arise out of the employment relationship;
- 4.1.3.2. Draft and vet contracts of employment, policies and procedures;
- 4.1.3.3. Appear on behalf of NSFAS in employment related forums, such as the CCMA, Labour Court, etc;
- 4.1.3.4. General advice on all aspects of labour law;
- 4.1.3.5. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise; and
- 4.1.3.6. Chair and or support disciplinary processes.

4.1.4. Technology Law

- 4.1.4.1. Advise on all legislation and regulation pertinent to the area of technology;
- 4.1.4.2. Advise on all legal issues arising from the development, procurement and use of technology by NSFAS;
- 4.1.4.3. Provide advice in the development of standard operating procedures in terms of the ISO 9000 standards
- 4.1.4.4. Advise on matters relating to the Electronic Communications Act 25 of 2002;
- 4.1.4.5. Advise on matters relating to NSFAS disbursement model and other related platforms;
- 4.1.4.6. Draft and negotiate information technology agreements and assist in resolving or mediating disputes between NSFAS and the Service Provider(s)
- 4.1.4.7. Advising on co-source and outsource arrangements, and drafting any related agreements to enable these arrangements, including penalty clauses and the enforcement thereof.
- 4.1.4.8. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise.

4.1.5. Commercial

- 4.1.5.1. Provide litigation services and representation in all areas of commercial law, including litigation in civil and criminal proceedings, as they may arise;
- 4.1.5.2. Providing general commercial advice, furnish opinions and commercial legal drafting services;
- 4.1.5.3. Provide advice on the procurement of services by NSFAS as it pertains to the NSFAS Operations Unit, Supply Chain Management and other NSFAS business units;

- 4.1.5.4. Provide advice and guidance in relation to NSFAS' obligations to the South African Revenue Service, National Credit Regulator, National Treasury, PFMA and other legislative and oversight bodies applicable to the NSFAS Act and mandate;
- 4.1.5.5. Advise on matters relating to sBux, the NSFAS e-money platform;
- 4.1.5.6. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise.
- 4.1.5.7. Provide advice and guidance on legislation applicable to NSFAS. The legislation referred to in this sub-paragraph shall include but shall not be limited to:
 - i. National Student Financial Aid Scheme Act 56 of 1999, as amended;
 - ii. Public Finance Management Act 1 of 1999, as amended;
 - iii. Treasury Regulations, as amended;
 - iv. National Credit Act 34 of 2005, as amended
 - v. Financial Intelligence Centre Act 38 of 2001, as amended; and
 - vi. Consumer Protection Act 68 of 2008, as amended.

4.1.6. Governance and compliance

- 4.1.6.1. Advise on all aspects of governance and compliance matters, including but not limited to the King IV Code;
- 4.1.6.2. Advise and assist with the implementation of compliance management processes and systems and assist with compliance assessments;
- 4.1.6.3. Provide advice and guidance in relation to NSFAS' obligations to the South African Revenue Service, National Credit Regulator, National Treasury, PFMA, Auditor General of South Africa (AGSA) and other legislative and oversight bodies applicable to the NSFAS Act and mandate;
- 4.1.6.4. Provide general ongoing legal advice with respect to the matters and provide legal assistance in any other similar matters that may arise; and
- 4.1.6.5. Provide advice and guidance the implementation of compliance measures e.g. POPI and applicable legislation as it relates to NSFAS and the NSFAS Act. The legislation referred to in this sub-paragraph shall include but shall not be limited to:
 - i. National Student Financial Aid Scheme Act 56 of 1999, as amended;
 - ii. Public Finance Management Act 1 of 1999, as amended;
 - iii. Treasury Regulations, as amended;
 - iv. National Credit Act 34 of 2005, as amended
 - v. Financial Intelligence Centre Act 38 of 2001, as amended;
 - vi. Protection of Personal Information Act 4 of 2013, as amended;
 - vii. Promotion of Access to Information Act 2 of 2000, as amended; and
 - viii. Promotion of Administrative Justice Act 3 of 2000, as amended;

5. Technical Specification

5.1. Experience

Bidders must provide details of at least 10 (ten) years' experience in the areas of law specified in mandatory requirement 3.3 and the functional specification.

5.2. Skills and Resources

- 5.2.1.1. A bidder's legal team must possess specialist expertise and capacity (resources) in the areas of law as specified in mandatory requirement 3.3 and the functional specification.
- 5.2.1.2. The bidder must provide CV's of the team that will be used when providing legal services to NSFAS and details of each team member's relevant qualifications and experience.
- 5.2.1.3. In the event that the specialist expert terminates his/her employment with a successful bidder, the CV of the replacement expert should be submitted to NSFAS for consideration. In addition, for the individual services actually requested from the successful bidder (s) the CV of the relevant expert should be submitted to NSFAS.

6. Contract Period

The contract will be on an "as-and-when required basis", for a period of **36 (thirty-six) months**.

7. Pricing Schedule

The pricing schedule should be completed below for the hourly rate per individual as at the closing date of the bid advertisement.

ITEM NO.	DESCRIPTION	Areas of Law	Rate per hour, inclusive of VAT and disbursements
1.	Lead director	NSFAS point of contact	
2.	Senior Director	Administrative	
3.		Constitutional	
4.		Labour	
5.		Technology	

ITEM NO.	DESCRIPTION	Areas of Law	Rate per hour, inclusive of VAT and disbursements
6.		Commercial	
7.		Governance and compliance	
8.	Junior Director	Administrative	
9.		Constitutional	
10.		Labour	
11.		Technology	
12.		Commercial	
13.		Governance and compliance	
14.	Senior Associate	Administrative	
15.		Constitutional	
16.		Labour	
17.		Technology	
18.		Commercial	
19.		Governance and compliance	
20.	Associate	Administrative	
21.		Constitutional	
22.		Labour	
23.		Technology	
24.		Commercial	
25.		Governance and compliance	
26.	Other skill		

The bidder must also complete the below table:

Average rate per hour for the full team (which includes VAT and disbursements) that will be allocated to this project (NSFAS reserves the right to perform the evaluation on an average rate basis)	
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8. Evaluation Criteria

8.1. Technical evaluation criteria element:

Element	Weight
Law Firm Experience/ company profile	20%
References and Past Performance	15%
Skills and Resources	50%
Transformation	15%
TOTAL	100%

*The top 2 scoring bidders in each category (therefore 6 in total) (Price and BBBEE) will be appointed to the panel only. It must be stated that once the panel has been appointed, the award of legal work will be done on a **rotational basis with the highest scoring bidder allocated the first assignment per category**. NSFAS reserves the right to award matters based on complexity, impact, profile and experience of the service provider and its team as well as award related cases to the same legal firm in order to avoid duplicated costs incurred and to leverage efficiency. The award of any legal work is not guaranteed as work is assigned on a “as and when required” basis. It should be noted that NSFAS has its own internal legal team.*

Should a panel member perform poorly on a legal matter, NSFAS reserves the right to cease any further allocation of work to that service provider.

8.2. Criteria and Weighting:

Bidders need to score a minimum of 75% for functionality. Bidders who score less than 75% minimum for functionality will not be considered further for price and BBBEE. Bids will be evaluated in each of the categories above in accordance with the following technical criteria:

Element	Description	Criteria	Points	Actual score
Law Firm Experience/ company profile	Law Firm must have a minimum of 10 years' experience in the provision of legal services in the mandatory areas: <ul style="list-style-type: none"> ▪ Administrative ▪ Constitutional ▪ Labour ▪ Technology ▪ Commercial and finance ▪ Governance and compliance Submission of the Law Firm's Company Profile	15 or more years' experience in the selected mandatory areas	20	
		10 to 14 years' experience in the selected mandatory areas	15	
		Less than 10 years' experience in the mandatory areas	0	

Element	Description	Criteria	Points	Actual score
	or similar document confirming that the firm is practicing in each area of law.			
Maximum Points Allocated			20	
References related to Past Performance	Proof from a minimum of three contactable referees on the referees' letterhead, indicating the services of a similar nature rendered.	Four or more references submitted	15	
		Three references submitted	10	
		No reference submitted	0	
Maximum Points Allocated			15	
Skills and resources CVs of individual team members to be provided in order to gauge the combined experience of the team.	The CVs of individual team members submitted for the lead director, senior director, junior director, senior associate displaying their experience in the specific area.	The overall lead director must have a minimum of 15 years of post-articles experience	15	
		Every senior director must have a minimum of 10 years' experience in their field of law	15	
		Every junior director must have a minimum of 8 years of experience (post articles) in the field of law	10	
		Every senior associate must have a minimum of 6 years of experience (post articles) in the field of law	10	

Element	Description	Criteria	Points	Actual score
Maximum Points Allocated			50	
Transformation	The firm must meet the following transformation criteria: <ul style="list-style-type: none"> • 20% or more women partners • 20% or more staff are women from previously disadvantaged communities • 50% or more staff are women from previously disadvantaged communities 	All criteria met	15	
		2 criteria met	10	
		1 criteria met	5	
Maximum Points Allocated			15	
TOTAL POINTS AWARDED			100	

9. Preference Point System

All proposals that will achieve the minimum qualifying score (acceptable tenders) will be evaluated further in terms of the preference point system as follows: A maximum of 80 points is allocated for price on the following basis:

80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for comparative price of proposal under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable proposal

1. Declaration of Interest

This declaration will be used by institutions to ensure that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

The bid of any bidder may be disregarded if that bidder, or any of its directors have:

- A. abused the NSFAS’s supply chain management system;
- B. committed fraud or any other improper conduct in relation to such system; or
- C. failed to perform on any previous contract.

In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

The following particulars must be furnished:

2.1	Full Name of bidder or his or her representative:
2.2	Identity Number:
2.3	Position occupied in the Company (director, trustee, shareholder ² , member):
2.4	Registration number of the company, enterprise, close corporation, partnership agreement or trust:

2.5	Tax Reference Number:		
2.6	VAT Registration Number:		
2.6.1	The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PESAL numbers must be indicated in paragraph 3 below.		
2.7	Are you or any person connected with the bidder presently employed by the state?		
	Yes	No	
2.7.2. 1	If yes, furnish the following particulars:		
	Name of person / director / trustee / shareholder/ member:		
	Name of state institution at which you or the person connected to the bidder is employed:		
	Position occupied in the state institution:		

“State” means

- (a) Any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No 1 of 1999);
- (b) Any municipality or municipal entity;
- (c) Provincial legislature;
- (d) National Assembly or the National Council of Provinces;
- (e) Parliament.

“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise

	Any other particulars:	
2.7.2	If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?	
	Yes	No
2.7.2.1	If yes, did you attach proof of such authority to the bid document?	
	Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.	
	Yes	No
2.7.2.2	If no, furnish reasons for non-submission of such proof:	
2.8	Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?	
	Yes	No
2.8.1	If so, furnish particulars:	
2.9	Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?	
	Yes	No
2.9.1	If so, furnish particulars:	
2.10	Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?	
	Yes	No
2.10.1	If so, furnish particulars:	

2.11	Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?		
	Yes	No	
2.11.1	If so, furnish particulars:		

Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Income Tax Reference Number	State Employee Number / PERSEL Number



Declaration

I, the undersigned (NAME).....

Certify that the information furnished in paragraphs 2 and 3 above is correct.

I accept that the state may reject the bid or act against me should this declaration prove to be false.

Signature

Date

.....

.....

Position

Name of bidder

.....

.....

Declaration of bidder's past Supply Chain Management practices

SBD 8

This declaration will be used by institutions to ensure that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

The bid of any bidder may be disregarded if that bidder, or any of its directors have -

- (a) abused the institution's supply chain management system.
- (b) committed fraud or any other improper conduct in relation to such system; or
- (c) failed to perform on any previous contract.

In order to give effect to the above, **the following questionnaire must be completed and submitted with the bid.**

The following particulars must be furnished:

1.1.	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the audi alteram partem rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website (http://www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	
	Yes	No
1.2.	If so, furnish particulars:	
1.3.	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (http://www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	
	Yes	No
1.4.	If so, furnish particulars:	

1.5.	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?		
	Yes	No	
1.6.	If so, furnish particulars:		
1.7.	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?		
	Yes	No	
1.8.	If so, furnish particulars:		

Declaration

I, the undersigned (NAME).....

Certify that the information furnished on the declaration from is true and correct.

I accept that, in addition to cancellation of a contract, action may be taken against me should this declaration provide to be false.

Signature

Date

.....

.....

Position

Name of bidder

.....

.....

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid in response to the invitation for the bid made by:
NSFAS

(Name of Institution)

Do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read, and I understand the contents of this Certificate.

6.1. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect.

6.2. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder.

6.3. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder.

6.4. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

6.4.1.1.1. has been requested to submit a bid in response to this bid invitation.

6.4.1.1.2. could potentially submit a bid in response to this bid invitation, based on their qualifications,

6.4.1.1.3. Abilities or experience.

6.10. Provides the same goods and services as the bidder and/or is in the same line of business as the bidder.

6.11. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

6.12. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

6.13. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

6.14. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

6.15. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

Signature

.....

Date

.....

Position

.....

Name of bidder

.....

1. PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bid:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and

1.2

- a) The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 Preference point system shall be applicable.

Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.3 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

- 1.4 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals.
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act.
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;

- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act.
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

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

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: = (maximum of 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

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

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME	QSE
	√	√
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm.....

8.2 VAT registration number.....

8.3 Company registration number.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificates, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct.
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process.

- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct.
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation.
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

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

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

GENERAL CONDITIONS OF CONTRACT July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders;
and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties

33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 " Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 “GCC” means the General Conditions of Contract.
- 1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21 “Purchaser” means the organization purchasing the goods.
- 1.22 “Republic” means the Republic of South Africa.
- 1.23 “SCC” means the Special Conditions of Contract.
- 1.24 “Services” means those functional services ancillaries to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3 General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so, required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so, required by the purchaser.

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor

shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the supplier's cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to

complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated

fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti- dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which

may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable Law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34. Prohibition of Restrictive Practices

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
(“NDA”)

Entered into between

(Name and Description of Institution and / or Person) _____

Company Registration Number: _____

Physical address: _____

Contact number: _____

Email address: _____

(“Company and or Person”)

And

THE NATIONAL STUDENT FINANCIAL AID SCHEME

Established in accordance with **Section 3 (1) of the National Student Financial Aid Scheme Act 56 of 1999** and duly represented herein by Mr. Andile Nongogo in his capacity as the Chief Executive Officer

(“NSFAS”)

(Collectively referred to as “the Parties”)



1. INTERPRETATION AND DEFINITIONS

1.1. In this Undertaking, unless inconsistent with, or otherwise indicated by the context:

- 1.1.1. “**Company and or Person**” is (_____);
- 1.1.2. the “**NSFAS**” is (the National Student Financial Aid Scheme Established in accordance with Section 3 (1) of the National Student Financial Aid Scheme Act 56 of 1999);
- 1.1.3. “**Confidential Information**” will include, but is not limited to:
- i. Personal details of applicant, student(s) and their parent(s) and / or guardians in so far as the information relates to current NSFAS Forensic Investigations;
 - ii. all secret knowledge;
 - iii. technical information and specifications;
 - iv. manufacturing techniques;
 - v. designs;
 - vi. circuit diagrams;
 - vii. instruction manuals;
 - viii. blueprints;
 - ix. electronic artwork;
 - x. samples;
 - xi. devices;
 - xii. demonstrations;
 - xiii. formulae;
 - xiv. Know-How;
 - xv. information concerning materials;
 - xvi. marketing and business information generally; and
 - xvii. other materials of whatever description in which the NSFAS has an interest in being kept confidential;
- 1.1.4. “**Commencement Date**” means the last date of signature of this Undertaking by the Company and or Person;
- 1.1.5. words in the singular include the plural and the other way around;
- 1.1.6. words importing any one gender include each of the other two genders; and
- 1.1.7. a reference to a natural person includes a legal *persona*.

1.1.8. The headings of clauses are intended for convenience only and will not affect the interpretation of this Undertaking.

2. PREAMBLE

- 2.1. The NSFAS possesses certain Confidential Information relating to current NSFAS Forensic Investigations (the "Project"). The Company and or Person has agreed to assist NSFAS in this regard.
- 2.2. The NSFAS has agreed to disclose certain of this Confidential Information relating to its Forensic Investigations and related Projects to the Company and or Person, subject to the Company and or Person agreeing to the terms of confidentiality set out in this Undertaking.

3. TITLE TO THE CONFIDENTIAL INFORMATION

The Company and or Person agrees that all rights, title and interest in and to the Confidential Information vests (is the property of) in the NSFAS and that it has no claim of any nature in and to the Confidential Information.

4. PERIOD OF CONFIDENTIALITY

The provisions of this Undertaking will remain in force indefinitely (without end).

5. NON-DISCLOSURE

- 5.1. The Company and or Person agrees keep any Confidential Information which the NSFAS gives it access to, confidential, whether it got access to it before or after the Commencement Date of this Undertaking. The Company and or Person will not reveal or make known or allow revealing or making known of the Confidential Information otherwise than is allowed in terms of this Undertaking.
- 5.2. The Company and or Person must take all steps that may be reasonably necessary to prevent the Confidential Information falling into the hands of an unauthorized third party.
- 5.3. The Company and or Person must not use any of the Confidential Information in the:
 - 5.3.1. development;
 - 5.3.2. manufacture;
 - 5.3.3. marketing; or
 - 5.3.4. sale of any goods without the prior written consent of the NSFAS.
- 5.4. The Company and or Person must not use or disclose or attempt to use or disclose the Confidential Information for any purpose other than performing its contractual obligations to the NSFAS.
- 5.5. The Company and or Person must not use or attempt to use the Confidential Information in any way which will cause or be likely to cause injury or loss to the NSFAS.

- 5.6. By giving the Company and or Person written notice, the NSFAS may specify which of the Company and or Person's employees, officers or agents must sign a secrecy undertaking in a form specified by the NSFAS and no such person may be employed in the conduct of the business of the Company and or Person until the secrecy undertaking has been signed.
- 5.7. All documentation the NSFAS gives to the Company and or Person in terms of this Undertaking will remain the property of the NSFAS. The documentation must be returned to the NSFAS when it requests it. The Company and or Person may not make copies of any such documentation without the prior written consent of the NSFAS.
- 5.8. Any confidential material which comes into the possession of the Company and or Person or one of its agents or employees, or which is generated by the Company and or Person, or one of its agents or employees, after the Commencement Date:
- 5.8.1. will be regarded as forming part of the Confidential Information of the NSFAS;
 - 5.8.2. will be regarded as the property of the NSFAS;
 - 5.8.3. may not be copied, reproduced, published or circulated by the Company and or Person; and
 - 5.8.4. must be surrendered to the NSFAS on demand,
- unless the NSFAS gives its prior written consent.

6. EXCEPTIONS

- 6.1. The above undertakings by the Company and or Person will not apply to information which:
- 6.1.1. is lawfully in the public domain at the Commencement Date; or
 - 6.1.2. lawfully comes into the public domain after the Commencement Date otherwise than as a result of the conduct of the Company and or Person or one of its employees or agents; or
 - 6.1.3. the Company and or Person is compelled to disclose in terms of a court order;
 - 6.1.4. is developed independently by the Company and or Person after signing this Undertaking, without referring or using the Confidential Information disclosed by the NSFAS;
 - 6.1.5. is approved for release upon the written confirmation of the NSFAS; and
 - 6.1.6. is required by law to be disclosed by the Company and or Person.
- 6.2. The onus (burden of proof) of proving the facts necessary to sustain any one of the exceptions listed in sub-paragraphs 6.1.1 to 6.1.6 rests with the Company and or Person.

7. JURISDICTION AND GOVERNING LAW

This Undertaking must be governed by South African law and the Company and or Person hereby consent and submit to the non-exclusive jurisdiction of the Cape of Good Hope Provincial Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-client scale for dispute flowing from this Undertaking.

8. WHOLE AGREEMENT AND VARIATION

- 8.1. This document constitutes the whole of this Undertaking.
- 8.2. No amendment, alteration, addition, variation or consensual cancellation of this Undertaking will be valid unless in writing and signed by the Company and or Person and the NSFAS.

9. WAIVER

- 9.1. No waiver of any of the terms or conditions of this Undertaking will be binding unless expressed in writing and signed by the NSFAS and any waiver will only be effective only in the specific instance and for the purpose given.
- 9.2. No failure or delay on the part of the NSFAS in exercising any right, power or privilege will be regarded as a waiver and no single or partial exercise of this by the NSFAS will prevent other or further exercise of it or the exercise of any other right, power or privilege.

10. SEVERABILITY

If any of the provisions of this Undertaking are found to be invalid, unlawful, or unenforceable these terms will be severable from the remaining terms, which will continue to be valid and enforceable.

11. RETURN OF MATERIALS CONTAINING OR PERTAINING TO THE CONFIDENTIAL INFORMATION

- 11.1. NSFAS may, at any time or upon expiration of this agreement, request the Company and or Person to, within 14 (fourteen) calendar days of receipt of such a request, to return or destroy any material pertaining to Confidential Information and furnish NSFAS with a written statement confirming that the Company and or Person has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 11.2. Nothing contained in this agreement or in any disclosures hereunder made by NSFAS, shall be construed to grant to the Company and or Person any licence or other rights in or to the material so disclosed.

12. DISPUTES

- 12.1. In the event of any dispute or difference arising between the Parties relating to or arising out of this Agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the chief executive officers of the Parties or any of their designated officials shall upon request by any Party meet to attempt to settle such dispute or difference, and failing settlement within a period of 7 (seven) business days from such a request,

the said dispute or difference shall on demand by any Party be submitted to arbitration in Cape Town in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

Signed at _____ on this the _____ day of _____ 2021

For: **THE COMPANY AND OR PERSON**

Signature: _____

Full Name & Surname: _____

Designation: _____

Witness

Witness

Signed at WYNBERG on this the _____ day of _____ 2021

For: **NATIONAL STUDENT FINANCIAL AID SCHEME**

who warrants that he / she
is duly authorised hereto

Witness

Witness
