



**the dti**

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Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

## PROGRAMME GUIDELINES

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### Global Business Services Incentive

December 2018

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*Programme Manager: GBS Incentives*

*Incentive Development and*

*Administration Division*

*Department of Trade and Industry*

*Private Bag X86; Pretoria, 0001*

*Website: [www.thedti.gov.za](http://www.thedti.gov.za)*

*Call Centre: 0861 843 384*

**the dti** Campus; 77 Meintjies street,

Sunnyside; Pretoria, 0002

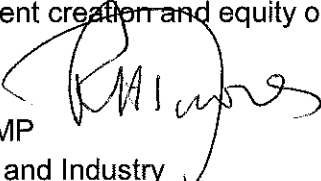
South Africa

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## 1. Overview by Minister of Trade and Industry

- 1.1 The South African government takes cognisance of the significant contribution that the Global Business Services sector potentially has in stimulating the country's economic growth, strengthening the country's profile in the global environment and facilitating employment creation.
- 1.2 The Business Process Services (BPS) incentive programme was revised and implemented from October 2014 with the objectives of attracting investment and creating employment opportunities primarily for youth, in South Africa, through offshoring activities. Since the programme inception, the incentive resulted in the creation of an additional 20,000 direct jobs in the sector with an average growth rate of twenty-two percent (22%) per annum during the period 2014-2018.
- 1.3 This is attested by the growing offshoring opportunities which resulted in the country receiving accolades from the Global Sourcing Association both in 2016 and 2018, as the Best Offshoring Destination. The country continues to provide an enabling environment for potential investors coupled with a deeper domain skills advantage, significant cost savings amongst other global locations and providing a world class experience for those who set up their operations in the country.
- 1.4 As part of government's commitment to strengthen the country's position as a preferred location for IT-enabled business services, a global benchmarking study was undertaken to determine the effectiveness of the current incentive programme in reducing the cost gap between South Africa and its key competitors. The recommendations suggested an increase quantum of incentives, with additional tiers of support for medium and highly skilled services, resulting in the revised Global Business Services Incentive.
- 1.5 I hereby extend an invitation to the qualifying Global IT-enabled services industry to make use of this facility and to support the South African government in realising its growth, employment creation and equity objectives.

  
Dr. Rob Davies, MP  
Minister of Trade and Industry

Date: 15, 12, 18

## **2. Preamble**

- 2.1 The purpose of this document is to provide guidelines for the Department of Trade and Industry's (**the dti's**) Global Business Services (GBS) Incentive.
- 2.2 The guidelines set out herein are intended to enable applicants to present their applications to **the dti**, and provide a framework for **the dti** to evaluate such applications.
- 2.3 These guidelines may be amended from time-to-time, as deemed necessary by **the dti**, and the amendments will be published on **the dti** website.
- 2.4 Where the guidelines lend themselves to varying interpretations or do not deal with specific subject matter, the interpretation of **the dti** must be requested. Such interpretation will be decisive and final, and will be published on **the dti** website.
- 2.5 Approval of applications will be **subject to the availability of funds**, compliance with the guidelines and relevant provisions of the Public Finance Management Act (PFMA).

## **3. Services delivered by the dti**

- 3.1 No fees or charges are levied by **the dti** for the processing or evaluation of any GBS applications or claims. Applicants are welcome to contact **the dti** directly for assistance and guidance on how to complete the application or claim forms.
- 3.2 It is the responsibility of the applicant to ensure that the application or claim form submitted to **the dti** is accurate and complete.

## **4. Description of the Global Business Services (GBS) Incentive**

- 4.1 The primary objective of the incentive is to create employment in South Africa through servicing offshore activities. The secondary objectives of the programme are to:
  - 4.1.1 Create employment opportunities for the youth (age 18-34 years); and
  - 4.1.2 Contribute to the country's export revenue from offshoring services.

- 4.2 The Global Business Services Incentive comprises of two components as follows:
- 4.2.1 A **base incentive**, a three-tier differential incentive for non-complex jobs, complex and highly-complex jobs, based on the fully loaded cost per job.
    - 4.2.1.1 The **base incentive** is a five-year operational expenditure (OPEX) grant that tapers down in line with the narrowing cost gap between South Africa and other offshoring destinations.
  - 4.2.2 A graduated **bonus incentive**, which is offered for greater job creation and sustainability, if the applicant exceeds certain annual offshore job creation targets as per paragraphs 9.6 to 9.7.
- 4.3 The Global Business Services Incentive is effective from 1 January 2019.

## 5. Eligibility Criteria

- 5.1 The applicant must:
- 5.1.1 Be a registered legal entity in South Africa in terms of the Companies Act, 1973 (as amended) or the Companies Act, 2008; the Close Corporations Act, 1984 (as amended) or the Co-operatives Act, 2005 (as amended);
  - 5.1.2 Be a taxpayer in good standing and must in this regard provide a valid tax clearance certificate;
  - 5.1.3 Be B-BBEE compliant in terms of the B-BBEE Codes of Good Practice, 2013 and submit a valid B-BBEE certificate of compliance or affidavit;
  - 5.1.4 Pay a minimum wage of five thousand rand (R 5000) per month; or
    - 5.1.4.1 In the case of inclusively hired resources, pay a minimum wage of four thousand rand (R 4000) per month for the first twelve months of employment;
  - 5.1.5 Be involved in starting a new operation or in expanding an existing operation, in order to perform Global Business Services activities, which may be operated from more than one physical location in South Africa;
  - 5.1.6 Submit an application for the incentive prior to the engagement of qualifying jobs;
  - 5.1.7 Have secured at least a three-year fixed-term contract for offshore activities;
  - 5.1.8 The project must be financially viable and a going concern.
- 5.2 **the dti** will determine whether a project is eligible taking the following into account:
- 5.2.1 For projects performing mostly ( $\geq 50\%$ ) non-complex jobs (Tier-1), the project must create a minimum of 50 new offshore jobs within three years from start of operation and employ at least 80% youth as part of the approved project;

- 5.2.2 For projects performing mostly ( $\geq 50\%$ ) complex and highly-complex jobs (Tier-2&3) combined, the project must create a minimum of 30 new jobs within three years from start of operation and employ at least 60% youth as part of the approved project;
- 5.2.3 The project must commence with operations and employment not later than six months from the date of incentive grant approval. Failure to reach this target date will lead to the cancellation or disqualification of the application, thus requiring the applicant to submit a revised application to reapply;
- 5.2.4 In case of a joint venture arrangement at least one of the parties must be registered in South Africa as a legal entity;
- 5.2.5 A pilot project that will result in an investment and creation of jobs within the six-month trial period.

**5.3 Compliance with all other statutory regulations, where applicable**

- 5.3.1 All applicants should meet the minimum health and safety regulations;
  - 5.3.1.1 Where an applicant is in the process of acquiring the necessary permits, proof of considerations by the relevant authorities must be submitted;
- 5.3.2 Failure from an applicant to meet these standards will deem the project ineligible to receive support from this incentive and as such approvals will be cancelled.

## **6. Non-eligible Applicants**

**6.1 An applicant will not qualify if it is:**

- 6.1.1 Expected to displace existing jobs within South Africa, for example by way of relocating an existing facility, in full or part, within South Africa; and/or
- 6.1.2 Entitled to concurrent incentive benefits under the Business Process Services (BPS) Incentive, Black Business Supplier Development Programme (BBSDP) or the Jobs Fund.

## 7. Evaluation Criteria

7.1 To qualify for the incentive, a project must achieve at least sixty percent (60%) of the following evaluation criteria:

Evaluation dimension	Category weights	Parameters measured	Sub-category weight
Credibility of the company (applicant/parent)	30%	Applicant/Parent Revenues	25%
		Number of years since inception	50%
		Applicant's/Parent's Net Profit (PAT)	25%
BPS/Shared services credentials and scale of operations in SA	30%	Global shared services scale	70%
		<b>OR</b> Total number of BPS delivery FTEs globally	
		<b>OR</b> SA entity scale	
Soundness of the application under review	40%	Current scale of offshore BPS jobs in SA	30%
		Contract duration	25%
		Total contract value	25%
		Revenue of buyer	25%
		Strength of contract (Transition plan, processes, timelines, termination clause)	25%

- 7.2 The project must at least score a minimum of five percent (5%) category weight for each above-mentioned evaluation criteria.

## **8. Grant Approval**

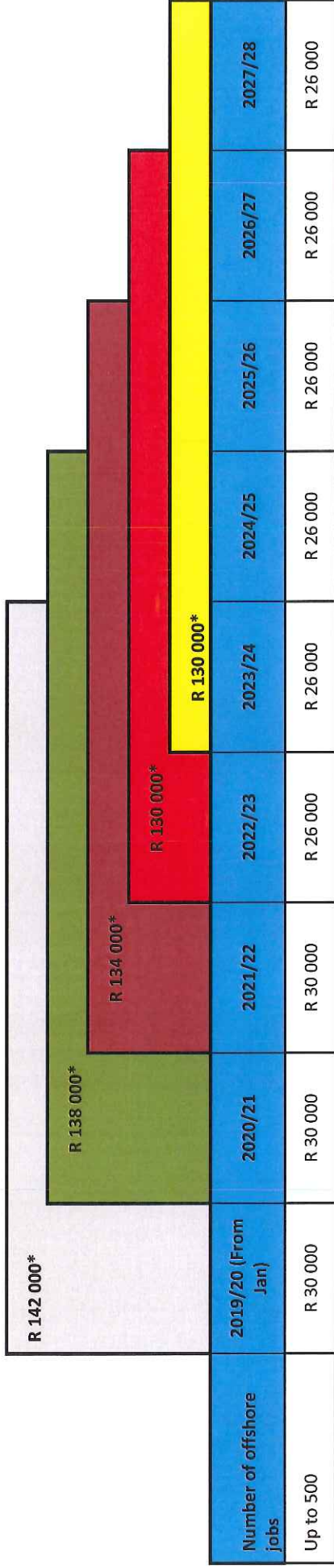
- 8.1 The approval of base incentive will be granted for the first year at application whereas the subsequent years' projections are accepted and reviewed annually in April, subject to performance in the preceding year(s).
- 8.2 The claim periods are predetermined and must be submitted on a quarterly basis, (April, July, October and January). The claims for jobs created in the preceding financial year, received post 30 June, will not be considered for payment.

## **9. Grant Calculation**

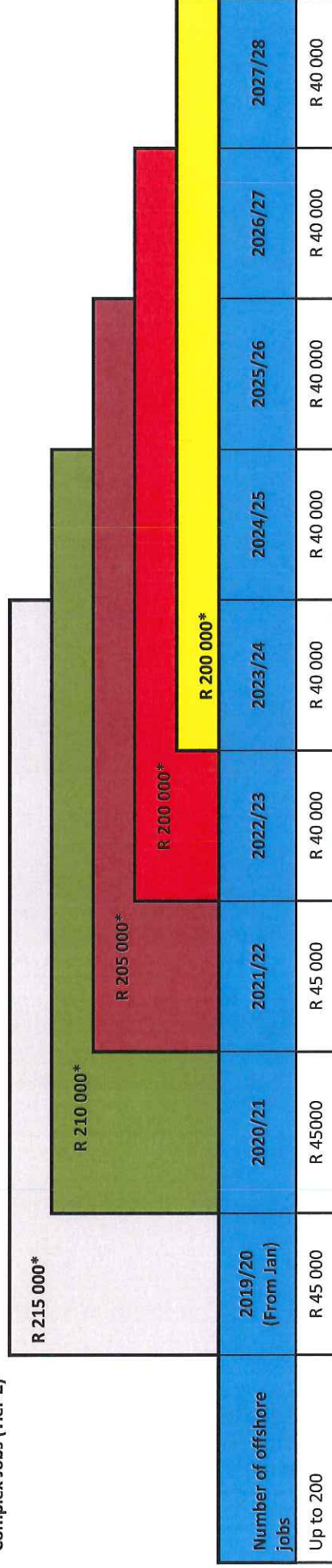
- 9.1 The **base incentive** is calculated on projected offshore jobs to be created based on a tapering scale and is awarded on actual offshore jobs created as per the definition of full-time equivalence.
- 9.2 The **base incentive** offers a differential (three-tier structure) incentive for non-complex jobs, complex and highly-complex jobs based on a fully loaded operating cost per job.
- 9.3 The **base incentive** is paid over a period of five years (60 months) from the date which offshore job is created.
- 9.4 The **base incentive** will be determined at application stage depending on the fully loaded operating costs
- 9.5 The **base incentive** for non-complex jobs, complex and highly-complex jobs are as follows:



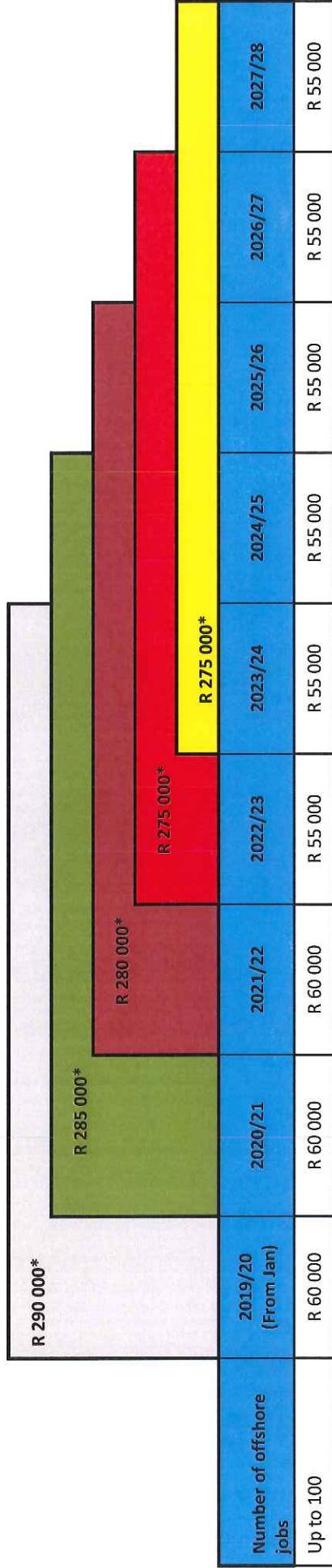
**Non-complex Jobs (Tier-1)**



**Complex Jobs (Tier-2)**



**Highly-Complex Jobs (Tier 3)**



\* Total grant per job created and maintained over 5 years

9.6 The **bonus incentive** is to be paid only at the end of year five (5) where the applicant becomes eligible for it.

9.7 The bonus incentive for non-complex jobs is only available to applicants that create and maintain more than 500 offshore jobs over a five (5) year period and it is structured into two components as follows:

Number of offshore jobs	Bonus Incentive	Illustration
Greater than 500 but less than or equal to 1000	20% once-off bonus	<p>Bonus calculated for each job created and maintained between 501 and 1000</p> <p><b>Illustration:</b> If an investor creates 520 actual offshore jobs in 2019/20, 530 jobs in 2020/21, 540 jobs in 2021/22, 550 jobs in 2022/23 and 560 jobs in 2023/24. Given that an investor created and maintained more than 500 jobs over a five-year period, the bonus incentive amount at the end of the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 30,000 * 20\% * 20 = R\ 120,000</math></li> </ul>
Greater than 1000	30% once-off bonus	<p>Bonus calculated for each job created and maintained in excess of 1000</p> <p><b>Illustration:</b> If an investor creates 1050 actual offshore jobs in 2019/20, 1065 jobs in 2020/21, 1075 jobs in 2021/22, 1080 jobs in 2022/23 and 1100 jobs in 2023/24. Given that an investor created and maintained more than 1000 jobs over a five-year period, the bonus incentive amount at the end of the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 30,000 * 30\% * 50 = R\ 450,000</math></li> </ul>

9.8 The **bonus incentive** for complex jobs is only available to applicants that create and maintain more than **200 offshore jobs** and it is structured into two components as follows:

Number of offshore jobs	Bonus Incentive	Illustration
Greater than 200 but less than or equal to 400	20% once-off bonus	<p>Bonus calculated for each job created and maintained between 201 and 400</p> <p><b>Illustration:</b> If an investor creates 220 actual offshore jobs in 2019/20, 230 jobs in 2020/21, 240 jobs in 2021/22, 250 jobs in 2022/23 and 260 jobs in 2023/24. Given that an investor created and maintained more than 200 jobs over a five year period, the bonus incentive amount at the end of the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 45,000 * 20\% * 20 = R180,000</math></li> </ul>
Greater than 400	30% once-off	<p>Bonus calculated for each job created and maintained in excess of 400</p> <p><b>Illustration:</b> If an investor creates 450 actual offshore jobs in 2019/20, 465 jobs in 2020/21, 475 jobs in 2021/22, 480 jobs in 2022/23 and 500 jobs in 2023/24. Given that an investor created and maintained more than 400 jobs over a five-year period, the bonus incentive amount for the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 45,000 * 30\% * 50 = R\ 675,000</math></li> </ul>

9.9 The **bonus incentive** for highly-complex jobs is only available to applicants that create and maintain more than **100 offshore jobs** and it is structured into two components as follows:

Number of offshore jobs	Bonus Incentive	Illustration
Greater than 100 but less than or equal to 200	20% once-off bonus	<p>Bonus calculated for each job created and maintained between 101 and 200</p> <p><b>Illustration:</b> If an investor creates 120 actual offshore jobs in 2019/20, 130 jobs in 2020/21, 140 jobs in 2021/22 150 jobs in 2022/23 and 160 jobs in 2023/24. Given that an investor created and maintained more than 500 jobs over a five-year period, the bonus incentive amount at the end of the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 60,000 * 20\% * 20 = R\ 240,000</math></li> </ul>

Greater than 200	30% once-off bonus	<p>Bonus calculated for each job created and maintained in excess of 200</p> <p>Illustration: If an investor creates 250 actual offshore jobs in 2019/20, 265 jobs in 2020/21, 275 jobs in 2021/22, 280 jobs in 2022/23 and 300 jobs in 2023/24. Given that an investor created and maintained more than 200 jobs over a five-year period, the bonus incentive amount at the end of the fifth year (2023/24) is calculated as follows:</p> <ul style="list-style-type: none"> <li>• Bonus: <math>R\ 60,000 * 30\% * 50 = R\ 900,000</math></li> </ul>
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- 9.10 The grant calculation is done at the approval stage in line with government's financial year which ends in March, and funds will be committed accordingly.
- 9.11 The grant will be paid out based on actual jobs created and maintained for the specified claim period, as per paragraph 9.1.  
The amount will be proportioned according to the period of the financial year for which the jobs actually exists.

## **10. Grant Disbursement**

- 10.1 The base incentive will be disbursed quarterly based on actual offshore jobs created; however, a minimum of ten (10) new offshore jobs have to be created in order to qualify for the first disbursement.
- 10.2 The bonus incentive will be payable once, at the end of the fifth (5<sup>th</sup>) year.
- 10.3 The grant disbursement is subject to satisfactory verification of actual offshore jobs created and the physical inspection on-site by **the dti**.
- 10.4 Where the applicant is unable to achieve their minimum projections in year one (1), the grant will be disbursed based on the actual jobs created and maintained, provided that a minimum of 10 jobs is maintained.
- 10.5 The total grant will be limited to the actual number of new offshore jobs created for the claim period and/or duration of the incentive.
- 10.6 All approvals granted for the preceding financial year that remain unclaimed by 30 June of the following financial year will be cancelled.
- 10.7 **the dti** reserves the right to withdraw the approval should it establish that the applicant is not achieving the minimum performance requirements.

## **11. Monitoring and Evaluation**

- 11.1 Approved applicants may be required to submit performance reports during the period of the incentive as well as post the incentive period as and when required by the department.

11.2 **the dti** may conduct site visits as and when required. A monitoring report will be completed as part of this process.

11.3 Approved applicants are also required to submit performance reports at the end of the incentive period, annually for a period of five (5) years to the Monitoring and Evaluation Unit.

## **12. Application Procedure**

12.1 **The following information is required with the application form:**

- A fully completed and signed application form;
- A signed schedule;
- A valid B-BBEE Certificate or
  - A signed affidavit;
- Business plan;
- Lease agreements;
- Tax clearance certificate;
- Incorporation certificate;
- Latest audited annual financial statements;
- A copy of the signed Off-shore contract;
- Health and Safety regulations documents or Letter of good standing
- Monthly financials and projections for sixty (60) months.

12.2 **The applications must be submitted to the following address:**

Programme Manager: GBS Incentives	Physical Address:
Postal address:	<b>the dti</b> Campus
Incentive Development and	Building A
Administration Division	77 Meintjies street
Private Bag X86	Sunnyside 0002
Pretoria, 0001	

## **13 Legal Conditions**

- 13.1 The applicant is subject to the schedule, a copy of which can be obtained from **the dti's** website, or from the Manager: GBS Incentives. The Applicant is required to sign a copy of this schedule in order to confirm that it has read and understood same.
- 13.2 A duty rests with the Applicant and / any other person that may benefit from the scheme to disclose everything that may have an influence of the adjudication of the application and / or claim. Failure thereof will lead to termination/ cancellation / suspension of the application / claim.



## **Appendix A: Glossary of terms and definitions**

<b>Global Business Services activities</b>	<p>The Global Business Service Incentive activities include but are not limited to the following categories:</p> <ul style="list-style-type: none"><li>• <b>Finance and Accounting Services</b> (E.g.: Accounting Services, Accounting Preparation and reconciliation, Asset management, Corporate Claims Processing, Loan Application processing, Portfolio analysis &amp; management, Financial reporting, Treasury &amp; financial management, Tax Consulting &amp; Compiling, Tax management, Auditing),</li><li>• <b>Human Resource Functions</b> (E.g.: Compensation &amp; payroll administration, Recruiting and termination, Education, Training &amp; Development),</li><li>• <b>Contact centres</b> (E.g.: Inbound customer service, Inbound helpdesk, Inbound sales, Inbound Technical support, Outbound Data cleaning &amp; Data Capturing, Outbound debt collections, outbound customer interview, research &amp; surveys, Outbound telemarketing/sales, Web sales &amp; marketing, Advertising-Creative processes, Marketing Research Services),</li><li>• <b>Back Office Processes</b> (E.g.: Administration, data entry/preparation, Data entry – scanning &amp; archiving, Document management, Translation &amp; Transcription service, Forms and report generation),</li><li>• <b>IT and Technical Services</b> (E.g.: Network management &amp; maintenance, Software development &amp; maintenance, Web site design &amp; development, Network maintenance, Data Conversion, -Entry, -Scanning, -Administration and -Maintenance),</li><li>• <b>Other Specialist Services</b> (E.g.: Knowledge process outsourcing, Analytics, Engineering &amp; Design, Asset Management, Infrastructure management, Logistics and fulfilment, procurement, transportation services, travel &amp; Tourism booking &amp; reservations, Translation and Transcription Services, Insurance Industry Functions).</li></ul>
<b>Full-loaded operation costs</b>	<p>This includes salaries and benefits, facilities, telecommunication and equipment costs, management costs and other miscellaneous costs/ overheads associated with offshore delivery operations.</p> <p>This excludes capital costs, global corporate overheads and chargebacks such as software/ ERP licenses, interest income and other contingent liability items (e.g. lawsuits, penalties)</p>
<b>Inclusive hiring</b>	<p>The Beneficiary must be:</p> <ol style="list-style-type: none"><li>1.1 Aged between 18 and 34 years of age (<u>Validation</u>: copy of ID document must be provided);</li><li>1.2 A South African citizen (<u>Validation</u>: copy of ID document must be provided); and</li></ol>

	<p>1.3 Living in a poor household and community with low or no levels of employment – therefore excluded from participation in the formal economy (Validation: confirmation that applicant attended a Quintile 1, 2 or 3 school)</p> <p>Note the Quintiles of all government schools are recorded and can be easily accessed (by province) in the following link: <a href="https://www.education.gov.za/Programmes/EMIS/EMISDownloads.aspx">https://www.education.gov.za/Programmes/EMIS/EMISDownloads.aspx</a></p>
<b>Non-Complex</b>	This category refers to full loaded operating cost less or equal to R300 000 per annum per job
<b>Complex jobs</b>	This category refers to full loaded operating cost greater than R300 001 per annum per job and wages contributing at least 65% of operating cost base for a steady state of operation.
<b>Highly-Complex jobs</b>	This category refers to full loaded operating cost greater than R600 000 per annum per job and wages contributing at least 65% of operating cost base for a steady state of operation.
<b>Outsourcing and Offshoring</b>	<p>When a company relocates business processes that it used to perform in-house:</p> <ul style="list-style-type: none"> <li>• <b>Outsourcing</b> occurs when it uses the third party providers to perform these activities/ services, and/or</li> <li>• <b>Off-shoring</b> occurs when these activities/services are performed in a foreign location.</li> </ul>
<b>Applicant</b>	A South African legal entity submitting an application for GBS Incentive
<b>Displaced jobs</b>	When an existing job in South Africa is transferred or relocated from one GBS facility or entity to another in full or partly within South Africa.
<b>Offshore client</b>	A client located outside South Africa, contracted to have its activities/services performed/rendered by a GBS operation located within SA.
<b>New offshore jobs</b>	The full-time jobs created in South Africa that serves markets/clients outside South Africa. These will include Agents and Senior Agents, Team Leaders and Quality Assurers, Service Integrators, Project Specific Trainers, Call Centre Managers and Workforce Managers which are 'billable' to the client excluding management and support staff
<b>Date of commencing operations</b>	Date on which the entity starts performing or rendering the offshored service(s), e.g. handling calls. The entity must have the facility and agents on site, to be able to perform transactable service.
<b>Government financial year</b>	1 <sup>st</sup> of April to the 31 <sup>st</sup> of March the following year
<b>Going concern</b>	The applicant must continue to operate indefinitely in the foreseeable future and will not go out of business or become insolvent and liquidate its assets. The applicant must be able to generate and/or raise enough resources to remain operational.
<b>Incentive period</b>	The entity may qualify for incentives for a maximum period of five (5) years per job.

<b>Claim period</b>	The claim period commences when the minimum performance criteria has been met and continues for the period of five (5) years where applicable.
<b>Employees</b>	Refers to the total offshore staff complement employed by an applicant and engaged in offshore activities.
<b>Full-time equivalents (FTE)</b>	Refers to offshore jobs occupying the seats/ operating facility, handling calls or rendering services regarding the outsourced/offshored service. Full-Time Equivalents refers to agents working an equivalent 45 hours per week (including lunch breaks) and <b>40hrs per week where lunch breaks are excluded from the payroll</b> ), considering the provisions for 'compressed working week' and 'averaging of working hours' detailed in the Basic Conditions of Employment Act (BCEA) 1997 as amended, (i.e. Hours worked by part time work or contract work 'Agents' will be calculated to constitute full time equivalents applicable for the claims period. <ul style="list-style-type: none"> <li>For purposes of this programme, number of offshore jobs will be calculated as average number applicable for a claim period and will excludes agents employed through a labour broker.</li> </ul>
<b>Commercial operations</b>	The geographical place or offices where the commercial activities are exercised or executed.
<b>Export Revenue</b>	Refers to the value of the offshore contract(s) calculated as an estimate of revenue generated per job multiply by the total number of actual offshore jobs created

Approved by  
 Dr. Rob Davies, MP  
 Date: 15/12/18

## **Appendix B: Schedule for incentive programmes**

### **1. DEFINITIONS**

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

- 1.1. “**The Beneficiary**” means the legal or natural person that was approved by **the dti** for incentives, and where the payment is ceded to a service provider, it also refers to the service provider.
- 1.2. “**Business Project**” or “**Project**” means the business operated by the Beneficiary and that was approved for the incentive.
- 1.3. “**the dti**” refers to the Department of Trade and Industry care of The Enterprise Organisation, Block A, 77 Meintjies Street, Sunnyside, Pretoria; Private bag X84, Pretoria, 0001.

### **2. NATURE OF THE INCENTIVES**

- 2.1. **the dti** and the **Beneficiary** do not enter into a partnership, agency agreement, shareholding agreement or other representation because of the approval of an incentive application or a claim.
- 2.2. The **Beneficiary** has no authority to bind or attempt to bind **the dti** in any manner or to assume or to incur any obligation or responsibility, expressed or implied on behalf of or in the name of **the dti**.

### **3. INCENTIVE GUIDELINES AND ECONOMIC POLICIES OF the dti**

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

Where **the Beneficiary** is of the opinion that a word or sentence in the incentive guidelines or this schedule is vague and /or has to be interpreted, the **Beneficiary** must not make its own interpretation. **the dti** has the right in its sole discretion, to provide interpretations on the meaning and intention of such words or sentences. Such decisions are binding on all **Beneficiaries**.

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

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

- 4.1. The approval set out in the letter of approval is only relevant to the specific business project that applied. A business project, activity or expenditure can only qualify once for an incentive (unless the incentive guidelines states different). A Business Project will be disqualified if it contravenes this clause.
- 4.2. No representation, communication (including official dti letters), or offer made prior to the approval of the application/claim shall be valid in so far as it does not agree with the letter of approval, or the requirements of the claim.
- 4.3. No information may be submitted with the claim on any, or part of any, project other than the business project that has been approved.
- 4.4. The calculation method of the maximum incentive approved, replaces any calculation method explained in the incentive Guidelines and shall be final. The approved maximum amount is fixed and shall not be adjusted due to changes in macroeconomic variables like inflation -; exchange -; or interest rate etc.
- 4.5. The **Beneficiary** is not automatically entitled to the full amount of the maximum incentive offered. **the dti** further reserves the right to correct any calculation error at any stage before or after approval / payment. A further calculation will be made based on the figures set out in the claim form. This calculation may result in an amount that is less than the maximum amount, but can never be more than the offered maximum amount.

### **5. AMENDMENTS TO THE INFORMATION SUBMITTED BY THE BUSINESS PROJECT**

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

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

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

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

## 6. PAYMENT OF THE INCENTIVE

- 6.1. **the dti**, or its representative (including independent engineers or other experts) may visit the premises where the business project is conducted/executed/produced/recorded/edited and inspect such business project before or after it approves an application or claim. **the dti** may do this with or without prior notice.
- 6.2. Such inspection will be among other things, to verify the information submitted with the application and/or claim and to inspect the premises, financial books, technology, documents, reports and any other information that may pertain to this incentive and to any other related entity or project.
- 6.3. The **Beneficiary**, or its successor in title (including the executor / trustee of a deceased / sequestered / liquidated estate), must keep records (electronic or paper) of all documents relevant to the incentive for five (5) years after it received the last payment. This includes a copy of its application and all its claims; Originals of documents submitted with the application and claims; Copies of reports or other information provided to **the dti** and relating to the incentive.
- 6.4. The **Beneficiary** must allow **the dti** reasonable access to the records mentioned in paragraph 6.3 above, during normal business hours and must also provide **the dti** with any information required for the inspection. Should the **Beneficiary** hinder **the dti** or its representative and/or refuse access to such records in any way so that the inspection cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.5. **the dti** may verify the information contained in the application, claim and/or supporting documents by carrying out an independent investigation. To do such an investigation **the dti** may contact any person which **the dti** feels may be of assistance. If the **Beneficiary** hinders **the dti** or its representative in any way so that the investigation cannot be effectively completed, **the dti** may summarily reject the application and/or claim and recover any payments already made.
- 6.6. Should **the dti** find that a price claimed by the **Beneficiary** is not market related, **the dti** may, in its sole discretion, and despite the contents of the letter of approval, reduce the approved claim amount to reflect such market related price, or may reject the full claim.
- 6.7. **the dti** shall only evaluate claim forms that are fully and correctly completed to the satisfaction of **the dti** (including that all the supporting documents required by the incentive guidelines be attached). Approval of a claim is in **the dti's** sole discretion.
- 6.8. **the dti** shall make payment within 30 calendar days after an approval by **the dti** of the relevant claim in accordance with the requirements and conditions of the incentive scheme's guidelines (which may include a physical inspection). **the dti** may delay payment for an indefinite period, provided that it shall inform the **Beneficiary** for the reasons for such delay so as to ensure that no delay is for unjust administrative reasons.
- 6.9. Payment shall be made directly into the bank account of the **Beneficiary** only. The **Beneficiary** must notify **the dti** of the correct account details in writing when submitting its claim form.
- 6.10. No interest shall be payable by **the dti** on any amounts due and payable. Payment is subject to availability of funds as approved by National Treasury and Parliament on a yearly basis, and allocated to **the dti** in terms of the annual Division of Revenue Act.
- 6.11. Where a service provider is involved in terms of the incentive guidelines, **the dti** accepts no liability for non-performance, poor or failed execution of the activity/ies by a service provider or for damages or penalties incurred by the **Beneficiary** for using the services of a service provider.
- 6.12. It is the duty of the **Beneficiary** to inform **the dti** in writing should any of the instances below occur and **the dti** reserves its rights in the event of any of the instances occurring to reject a claim and /or refuse any further payment:

- 6.12.1. the business project stops manufacturing/production/operations for any reason. This includes provisional/final liquidation (or sequestration of the sole proprietor/partner/firm); becoming dormant; being destroyed. It is irrelevant whether this cessation is permanent or temporary (seasonal business projects must at least be operational during the relevant seasons);
- 6.12.2. the **Beneficiary** enters into a compromise offer or arrangement with creditors, or where the **Beneficiary** is placed under judicial management;
- 6.12.3. and where investment is a requirement, the business project reduces the qualifying investment without replacing it again with qualifying investment;
- 6.12.4. the business project reduces jobs and/ or reduces permanent staff or reduces permanent staff in favour of casual, contract or temporary staff;
- 6.12.5. the business project stops complying with the incentive guidelines and/or this schedule.
- 6.13. The **Beneficiary** is required to report to **the dti** in writing within 7 (seven) days any discrepancy (insufficient / excess) on payments made and must repay to **the dti** within 7 (seven) days from such report any excess received.
- 6.14. Any erroneous payment (including those resulting from a miscalculation, mistake, or irregularity) will immediately be recoverable and may be deducted from any future payments which are, or will become, payable. **the dti** reserves the right to reverse, apportion or recall any payment or any part thereof at its sole discretion. **the dti** levies interest at the rate prescribed in terms of the Public Finance Management Act, 1999 Act No. 1 of 1999 on any outstanding amounts payable as from 30 days of date of demand.

## 7. MONITORING

- 7.1. The **Beneficiary** must use the incentive amounts received from **the dti** for the approved business project or activities that it described in its application form and an inspector may require evidence at any time after an amount has been received for verification of this requirement. In contravention of this rule the amount will be recover from the beneficiary and prescription cannot be pleaded.
- 7.2. **the dti** may ask the **Beneficiary** to complete questionnaires and submit same within the requested period or to report to **the dti** on its business project /activities, as well as on the incentive received in order for **the dti** to monitor and evaluate compliance as well as the contribution that the incentive is making or has made to the South African economy. If the **Beneficiary** does not comply with the request, **the dti** may, in addition to any other legal remedies that it may have, stop or reduce all further payments in its sole discretion and may refuse any other applications being evaluated at that stage, or that may be submitted in future, from the **Beneficiary** or any of its shareholders, directors or principal officers, whether presented directly, or indirectly through another legal person for this or any other scheme.

**the dti** may appoint an auditor to perform an audit on the **Beneficiary** to ascertain whether the **Beneficiary** has complied with the incentive guidelines and this schedule. **the dti** will notify the **Beneficiary** in writing of the audit and the **Beneficiary** must cooperate with the auditor.

## 8. NON COMPLIANCE WITH THE INCENTIVE GUIDELINES OR THIS SCHEDULE

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

## 9. DISPUTES

- 9.1. Any dispute relating to a decision (including the rejection of an application) taken by **the dti** must be resolved by way of one internal appeal only, lodged within such time as is set out in the letter of rejection. No appeals on inspections are allowed. Should the **Beneficiary** dispute the appeal decision, it must proceed by way of review in the High Court of SA.
- 9.2. If the **Beneficiary** wishes to place new facts before **the dti** for reconsideration, the **Beneficiary** must explain in writing why these facts could not be provided at the first hearing. If this explanation is, in the sole discretion of **the dti**, unsatisfactory, it may reject the request.
- 9.3. Any other dispute or disagreement between **the dti** and the **Beneficiary** may be submitted in writing, for mediation. If the matter can still not be resolved, it may be referred in writing for arbitration. The decision of the arbitrator shall be final and binding.

9.4. Arbitration shall be in accordance with the rules of AFSA (Arbitration Foundation of South Africa) and the arbitration costs shall be shared equally.

9.5. A beneficiary has no legal right or any entitlement to any grant irrespective whether a letter of approval has been issued or not as a grant is an act of grace and should a beneficiary or its consultant wish to litigate against **the dti** the law of contract will not apply

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

10.1. **the dti** shall, in the case of criminal/misleading/dishonest activities/information, or activities/information that contravenes any Act of the Republic of South Africa, specifically Acts that regulates commercial activities, be entitled to exercise any rights that it may have in terms of common law or statutory law. In addition, the following paragraphs will be applicable:

10.2. The **Beneficiary's** application/claim is approved conditional on the correctness and completeness of information provided by the **Beneficiary** in the application/claim/addenda/supporting documents /reports. Should the information be substantially incorrect and/or incomplete, **the dti** may immediately reject the application/claim and claim back all monies already paid.

10.3. Where **the dti** suspects criminal/misleading/dishonest activities/information in relation to the **Beneficiary's** incentive application or claim or commercial practices of **the dti** or its consultant **the dti** may immediately suspend any payments that may be due or may become due to the **Beneficiary**

10.4. **the dti** may, where the final findings of a forensic investigation, or the findings of a competent authority indicates criminal/misleading/dishonest activities/information or the contravention of an Act, without prejudice to any other rights that it may have, reject an application or any pending claim and reclaim any payments already made, with *mora* interest, together with the costs of any legal or other costs, which may also include costs of forensic investigators and/or costs of an auditor.

10.5. **the dti** may refer financial statements or supporting documents submitted by the **Beneficiary** to SARS for comment and comparison. If SARS informs **dti** of a difference in financials, **the dti** may without prejudice to any other rights that it may have, reject any pending claim and reclaim any payments already made, with *mora* interest, and refuse any further payment to the **Beneficiary**.

10.6. **the dti** shall not be liable for any damages, interest or other claims that may ensue, should incentive payments be delayed, suspended or terminated for whatsoever reason. In addition, the **Beneficiary's** risk of business failure is solely for the **Beneficiary** and no delay, suspension or termination shall render **the dti** liable to the **Beneficiary** or any other related party whatsoever.

10.7. Where **the dti** rejected an application or claim due to misrepresentation/discrepancy/abuse/fraud/contravention of an Act by the beneficiary and/or the consultant, **the dti** may reject any current or future application from the **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person. **the dti** shall have the right to immediately refuse any other applications/claims or terminate any contract(s) that are in existence between **the dti** and the **Beneficiary**, its shareholders, directors or principal officers, whether represented directly or indirectly through another legal person. If it comes to light that any **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person were involved in any misrepresentation/discrepancy/abuse/fraud/contravention of an Act and when a payment has already been received, the dti reserves the right to recover the payment(s) and hold the **Beneficiary**, its shareholders, directors or principal officers or application from the appointed consultant all the parties will be held liable serially and jointly the one absolving the other

10.8. **the dti** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 12 of 2004 ('PRECCA'). **Beneficiaries** are requested to contact **the dti** fraud hotline on 0800 701 701 should they wish to report any suspicious activities.

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

#### 11. CONFIDENTIALITY

11.1. Both **the dti** and the **Beneficiary**, its employees, members and directors, and agents shall treat all information that they gain access to as a result of communications between **the dti** and the **Beneficiary**

relating to the incentive (e.g. application/claim/reports), whether on paper or electronic, and which information is not otherwise public knowledge, as confidential.

- 11.2. Confidential information may only be disclosed to any person outside the immediate working environment of **the dti** or the **Beneficiary** with the prior written permission of the other. Any information required by the public sector or its appointees in terms of the reporting duties of **the dti** may be reported by **the dti** without such consent.
- 11.3. Where either **the dti** or the **Beneficiary** receives a court order or a subpoena requiring disclosure of confidential information, it must notify the other in writing within seven (7) days. Where the court order or subpoena gives shorter notice than twenty (20) days, written notice must be given as soon as is reasonably possible. The reason for the written notification is so that **the dti** or the **Beneficiary** may seek a protective order or waive the provision of this clause in writing.
- 11.4. **the dti / Beneficiary** must take reasonable care to ensure that only the exact information required by the court order or subpoena, or as is limited by a protective/other order, is disclosed.
- 11.5. This paragraph shall apply even after the relationship between **the dti** and the **Beneficiary** has ceased.
- 11.6. This paragraph does not apply to litigation and/or arbitration proceedings between **the dti** and the **Beneficiary**.

## 12. CESSION

- 12.1. The approval of an incentive application does not give the **Beneficiary** any right to payment. An approval merely allows the **Beneficiary** to submit a claim form in accordance with the requirements and conditions of the incentive guidelines and this schedule.
- 12.2. Cession of the right to submit a claim is not allowed. The possible right (*spes*) that the claim will be successful and that payment will accordingly follow may only be ceded with the prior written agreement of **the dti** and shall be subject to such strict conditions as **the dti** in its sole discretion will determine.
- 12.3. **the dti** may refuse cession, in its sole discretion, to certain institutions.
- 12.4. Assignment of any of the **Beneficiary's** obligations is not allowed.
- 12.5. No right that the **Beneficiary** might obtain by way of the approval of an incentive may be otherwise encumbered or subjected to any form of pledge or used as the basis for any form of security or guarantee to bind the state whatsoever.
- 12.6. **the dti** may cede or assign any of its rights or obligations in accordance with a decision from National Treasury, Parliament or Cabinet. This decision will include any decision that causes a policy shift within **the dti** so that in order to align itself with the shift in policy, **the dti** has to so cede or assign. **the dti** will take reasonable steps to ensure that the **Beneficiary** is not unreasonably prejudiced by such assignment or cession.

## 13. GENERAL

- 13.1. No waiver, indulgence and/or relaxation of whatever nature of any of the provisions of the guidelines or this schedule by **the dti** shall be valid or enforceable against **the dti**, unless such waiver, indulgence or relaxation is in writing and is signed by **the dti**.
- 13.2. The Guidelines, the completed application form (with attachments), this schedule and the claim form(s) (with attachments) are the only documents that set out the requirements and conditions applicable to the relationship between **the dti** and the **Beneficiary** as well as the information on which the relationship is based. Amendments to the Guidelines and this schedule may be made by **the dti** in accordance with this Schedule.
- 13.4. The **Beneficiary** agrees that the Laws of South Africa, excluding the law of conflicts (which determines the legal system applicable to a dispute), shall govern the relationship between **the dti** and the **Beneficiary**.
- 13.5. The **Beneficiary, consultant and auditor** are required to sign this schedule where it appears in the application form and claim form in order to confirm that the **Beneficiary** has read the content hereof and knows that it forms part of the requirements of the incentive scheme and that the beneficiary are in compliance with same and that it is binding the **Beneficiary**.