

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

### **1. DEFINITIONS**

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

- 1.1. **“The Beneficiary”** means the legal or natural person that was approved by **the dti** for incentives, and where the payment is ceded to a service provider, it also refers to the service provider.
- 1.2. **“Business Project”** or **“Project”** means the business operated by the Beneficiary and that was approved for the incentive.
- 1.3. **“the dti”** refers to the Department of Trade and Industry care of Incentive Development and Administration Division (IDAD), 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, BBBEE 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 / sequestrated / liquidated estate), must keep records (electronic or paper) of all documents relevant to the incentive for five (5) years after it received the last payment. This includes a copy of its application and all its claims; Originals of documents submitted with the application and claims; Copies of reports or other information provided to **the dti** and relating to the incentive.
- 6.4. The **Beneficiary** must allow **the dti** reasonable access to the records mentioned in paragraph 6.3 above, during normal business hours and must also provide **the dti** with any information required for the inspection. Should the **Beneficiary** hinder **the dti** or its representative and/or refuse access to such records in any way so that the inspection cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.5. **the dti** may verify the information contained in the application, claim and/or supporting documents by carrying out an independent investigation. To do such an investigation **the dti** may contact any person which **the dti** feels may be of assistance. If the **Beneficiary** hinders **the dti** or its representative in any way so that the investigation cannot be effectively completed, **the dti** may summarily reject the application and/or claim and recover any payments already made.
- 6.6. Should **the dti** find that a price claimed by the **Beneficiary** is not market related, **the dti** may, in its sole discretion, and despite the contents of the letter of approval, reduce the approved claim amount to reflect such market related price, or may reject the full claim.
- 6.7. **the dti** shall only evaluate claim forms that are fully and correctly completed to the satisfaction of **the dti** (including that all the supporting documents required by the incentive guidelines be attached). Approval of a claim is in **the dti's** sole discretion.
- 6.8. **the dti** shall make payment within 30 calendar days after an approval by **the dti** of the relevant claim in accordance with the requirements and conditions of the incentive scheme's guidelines (which may include a physical inspection). **the dti** may delay payment for an indefinite period, provided that it shall inform the **Beneficiary** for the reasons for such delay so as to ensure that no delay is for unjust administrative reasons.
- 6.9. Payment shall be made directly into the bank account of the **Beneficiary** only. The **Beneficiary** must notify **the dti** of the correct account details in writing when submitting its claim form.
- 6.10. No interest shall be payable by **the dti** on any amounts due and payable. Payment is subject to availability of funds as approved by National Treasury and Parliament on a yearly basis, and allocated to **the dti** in terms of the annual Division of Revenue Act.

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

## 7. MONITORING

- 7.1. The **Beneficiary** must use the incentive amounts received from **the dti** for the approved business project or activities that it described in its application form and an inspector may require evidence at any time after an amount has been received for verification of this requirement. In contravention of this rule the amount will be recoverable 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**.