



Republic of Namibia

Procurement Policy Unit

(Established under section 6 of the Public Procurement Act, 2015)

STANDARD CESSION AGREEMENT/THIRD PARTY AGREEMENT

**IN RE: CESSION OF THE CONTRACT PRICE TO THE CESSIONARY
PAYABLE IN TERMS OF THE PUBLIC PROCUREMENT CONTACT REF NO.
BETWEEN [THE PUBLIC ENTITY] AND THE CEDENT**

[Logo of the Parties]

CESSION AGREEMENT/THIRD PARTY AGREEMENT

**IN RE: CESSION OF THE CONTRACT PRICE TO THE CESSIONARY PAYABLE IN TERMS OF THE
PROCUREMENT CONTRACT WITH PROCUREMENT REF NO. [...] BETWEEN [THE PUBLIC ENTITY] AND
THE CEDENT**

for

Procurement of

[insert identification of the Goods/Works/Services] _____

ENTERED INTO BY AND BETWEEN

[Bidder] Reg. No. [..] (“Cedent”)

and

[Credit Facility Provider] Reg. No. [..] (“Cessionary”)

and

[Name of Public Entity] (“Third Party”)

Hereinafter, the Cedent, the Cessionary, and the Third Party (collectively referred to as “the Parties”)

PREAMBLE:

WHEREAS the Cedent was awarded a Procurement Contract for _____ with Procurement Reference No. _____ by _____ (“ Third Party”) dated, attached hereto as **Annexure “A”** (“the Procurement Contract), in terms of which the Cedent is entitled to receive payment of the rights, title, and interest in **[all or a portion of the Procurement Contract Price or the value equivalent to the Secured Obligation]**, payable in accordance of the payment modalities agreed to under the Procurement Contract;

WHEREAS subject to the satisfactory execution of the undertakings under the Procurement Contract and certification to this effect by the Acceptance and inspecting team of the Third Party, contemplated under Regulation 40 (e) of the Regulations under the Public Procurement Act, 2015 (Act No. 15 of 2015) and or any Quality Assurance modality(ies) agreed to in the Procurement Contract, **at such time(s), intervals, or progress phases, as agreed in the Procurement Contract**, the Cedent shall in consideration for the performance of its obligations under the Procurement Contract be entitled to *inter alia* rights, title, and interest: in the remuneration of **[all or portion of the Procurement Contract Price or the value equivalent to the Secured Obligation]** from the Third Party, as provided for in the Procurement Contract;

WHEREAS the Cedent has applied for a Credit/ Financial Facility(ies) from the Cessionary to enable due performance of its obligations in terms the Procurement Contract (**Collectively “the Facilities” or “Secured Obligation”**);

AND WHEREAS the Cessionary has agreed to grant the Cedent the Facilities, on condition that the Cedent cede to the Cessionary as security for its indebtedness towards the Cessionary for its rights, title, and interest in and to **(all or a portion of the Procurement Contract Price / the value equivalent to the Secured Obligation]**, payable by the Third Party to the Cedent in terms of the Procurement Contract;

FURTHER WHEREAS pursuant to the *Credit Agreement between the Cedent and the Cessionary*, the Cessionary became entitled to the accrued rights, title, and interest in and to **[all or a portion of the Contract Price under the Procurement Contract]**, on condition that the Cedent has to the satisfaction of the Acceptance and Inspection framework contemplated under Regulation 40 (e) of the Regulations under the Public Procurement Act, 2015 (Act No. 15 of 2015) and or any Quality Assurance modality(ies) agreed to in the Procurement Contract, satisfactorily performed its obligations, in terms the Procurement Contract, as well as relevant Laws,

NOW THEREFOR THE PARTIES AGREE AS FOLLOWS:

1 CONDITIONS FOR REALISATION OF THE CESSION

1.1. The Parties to this Cession Agreement/ Third Party Agreement (hereinafter “the Agreement”) agree that the Third party's performance under this Contract shall at all relevant times **be, subject to the condition that:**

1.1.1 the Cedent has to the satisfaction of the Acceptance and Inspection framework, contemplated under Regulation 40 (e) of the Regulations under the Public Procurement Act, 2015 (Act No, 15 of 2015) and or any Quality Assurance modality(ies) agreed to under the Procurement Contract, satisfactory executed its obligations undertaken in terms of the Procurement Contract, as well as complied with all relevant applicable Laws; and

- 1.1.2 payments will be made to the to the Cessionary, on behalf of and in favour of the Cedent, at such period(s), intervals, phases [all or a portion of the Procurement Contract Price or the value equivalent to the Secured Obligation] has become due and payable, upon complete performance or any stage(s) of progress, agreed upon in the Procurement Contract.

2. UNDERTAKING BY TRIRD PARTY

- 2.1. Subject to Clause 1 (**Conditions for realisation of the Cession**) the Third Party herewith irrevocably and unconditionally undertake to transmit on behalf and in favour of the Cedent [the Contract Price or any part thereof} that has accrued to and or became due and payable to the Cedant **at such time(s), intervals, or' phases, as agreed in the Procurement Contract**, into the following bank account ("nominated bank account"):

[Bank] Account
Holder: Account
Number: Branch
code: Reference:

- 2.2. Save as otherwise advised by the Cessionary in writing or as agreed to under this Contract, the Parties herewith agree that, the Third Party shall not at any point of time or in any circumstance transmit payment of **the [all or a portion of the Procurement Contract Price or the value equivalent to the Secured Obligation]** thereof into any other banking account other than the one stipulated herein above.

3. LIMITATION OF LIABILITY OF THE THIRD PARTY

- 3.1. Notwithstanding any provision of this Agreement, the Cedent and Cessionary **absolves** the Third Party, as well as all its lawful agents and associates, absolutely and forever, against any and all expenses, loss, damage, liability, legal claims and actions, cost and charges, that they may suffer owing to any error, miscalculations, non-payment or delayed payment, non- payment, the performance or non-performance of an undertaking under this Agreement.
- 3.1.1. Without impeding the generality of Clause 2.1 above, the Parties specifically agree that neither the Cessionary and/or Cedent shall have the right to institute any legal claim against the Third Party, if:
- 3.1.2. the conditions under Clause 1 (**Conditions for realisation of the Cession**) has not been met, and or

- 3.1.3. payment that is due and payable in terms of the Procurement Contract is withheld or retained by the Third Party in accordance with a stipulation to this effect in the Procurement Contract (if applicable) or any relevant Law and or Court order and or due to any other reasonable supervening impossibility.

4. CHANNEL OF COMMUNICATIONS AND NOTICES

- 4.1. This Agreement and all communication exchanged pursuant hereto shall be made in English, which shall be considered to be the governing language of the Agreement.
- 4.2. Any communication, notification, submission, notice, demand or request under the present Agreement shall be deemed to have been duly transmitted if it shall have been delivered by hand, or mailed, by either of the Parties to the other at the appropriate address indicated below, or at such other address as that other Party may have been subsequently nominated in writing:

1. FOR THE PUBLIC ENTITY (THIRD-PARTY)

Postal Address _____
Physical Address _____
Email _____

2. FOR THE CESSIONARY

Postal Address _____
Physical Address _____
Email _____

3. FOR THE CEDENT

Postal Address _____
Physical Address _____
Email _____

5. ASSIGNMENT AND SUB-CONTRACTING

- 5.1. Neither Party shall be entitled to cede its rights and/or delegate its obligations under this Agreement without the prior written consent of the other Parties.
- 5.2. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and permitted assigns or other legal representatives.

6. COMMENCEMENT AND DURATION

- 6.1. This Agreement shall enter into force upon signature of the **[Party signing last in time]**.
- 6.2. This Agreement shall remain in force for the duration of the Procurement Contract between the Cedent and the Third Party or until the Facility(ies) has been settled, or the Secured Obligations has been repaid in full, whichever happens first.
- 6.3. It is an express provision of this Agreement that, the Cessionary shall inform the Third Party in Writing within reasonable time after the Facilities has been settled, or the Secured Obligations has been repaid in full.
- 6.4. The Third Party similarly undertakes to notify the Cessionary if the contractual relationship between the Third-Party and Cedent comes to an end.

7. MODIFICATION OR AMENDMENT

Except by mutual agreement in writing between the Parties, no change, modification or amendment shall be made to the present Agreement unless reduced to writing, agreed to by all the Parties to this Agreement and executed as an Addendum to the text of this Agreement.

8. GOVERNING LAW AND JURISDICTION

- 8.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Namibia, and any dispute that may arise in respect of this Agreement and its implementation will be resolved in all respects in accordance with the laws of the Republic of Namibia.
- 8.2. If any Namibian law comes into operation subsequent to the Commencement date of this Agreement which law affects s any aspect or matter or' issue contained in this Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law. If either Party is prevented from performing any of its obligations in terms of this Agreement as a result of any existing or new law, it shall not be liable for any failure to perform its obligations under this Agreement while such event persists and shall have the right (unless such an event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this Agreement at any time after the intervention of or becoming aware of such event.
- 8.3. The Third Party agrees that any legal action or proceedings in connection with this Agreement against the Third Party may only be brought in the Namibian courts and submits to the jurisdiction of such courts.

9. TERMINATION OF THE THIS AGREEMENT

- 9.1. The Third-Party may at its option and without penalty, terminate this Agreement when it is in the public interest or for its convenience to do so, provided that it shall, in that event, afford the cessionary not less than thirty (30) days prior written notice of such intended termination.
- 9.2. The Parties hereto may by mutual agreement terminate this Contract without penalty.
- 9.3. If the present Agreement is terminated under this Clause, the Third-Party shall be liable only to transmit payment that is due and payable, in accordance with the payment provisions of the Procurement Contract, for the services actually rendered prior to the effective date of termination, together with such other amounts incidental to the termination, as may be reasonable in the circumstances.

IN WITNESS WHEREOF the Parties hereto have caused the present Agreement to be signed by their duly appointed representatives in **three (3) original counterparts in English** on the dates indicated below.

Name:

For and behalf of Cessionary and duly authorized here

Date:

Name:

For end behalf of the Cedent and duly authorized hereto

Date:

Name:

For and behalf of The Third Party and duly authorized hereto

Date: