

**Bid Identity Number**

**Request for Proposal**

**Transaction advisor services to the SADC Secretariat  
for the Procurement of a Suitable and Sustainable  
Serviced Working Environment (New Headquarters)  
in Gaborone, Botswana**

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## **1 INTRODUCTION**

The SADC vision is one of a common future, a future in a regional community that will ensure economic well being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa

The objectives of SADC are to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- Evolve common political values, systems and institutions;
- Promote and defend peace and security;
- Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- Achieve complementarity between national and regional strategies and programmes;
- Promote and maximise productive employment and utilisation of resources of the Region;
- Achieve sustainable utilisation of natural resources and effective protection of the environment;
- Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the Region

The SADC Summit in August 2004 tasked the Double Troika of Ministers of Finance to lead the project. The Double Troika in November 2004 reconstituted a Technical Committee to facilitate the procurement of New SADC Headquarters in Gaborone, Republic of Botswana (hereinafter referred to as the “Project”).

The SADC Secretariat has identified an urgent need for upgrading its current working environment (accommodation and related services) to support its operational effectiveness and efficiency to be more in line with its strategic vision, mission and institutional objectives. A brief description of the project is as follows:

- The site is located at the Central Business District Extension in Gaborone, Botswana. The Plot number is 54385 with an area of 11,343 sqm. The Government of Botswana has agreed to lease the above site to SADC for a period of 99 years for the construction of permanent office buildings. The site is flat land, fully serviced (with high tension lines nearby) and accessible at the south east corner on a sharp bend along a relatively limited frontage. It is a prominent site with a dual-carriageway on the west and fly-over to the north, which will render strategic visibility to the envisaged complex. Due to the site’s north-south orientation and its proximity to two major highways, consideration should be given to reduction of solar-gain and noise-pollution.

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- The proposed development will consist of an Office Building, Conference Center and a cafeteria.
- The office building should be large enough to cater for 400 staff and to contain ensuite office for the Executive Secretary and Deputy Executive Secretary, office of the Chief Director and offices for the different Directorates and Departments and a library. It would have a meeting room, toilets and kitchen on every floor and enough and smooth circulation for the directorates to interact. Care should be taken to provide ambient working conditions and access to the cafeteria.
- The cafeteria will be designed for 200 people and will cater mostly for office staff. Extended areas should be provided to support spill-over conference delegates attending conferences.
- It is proposed to construct a Conference Centre to seat some 350 people. The Conference Centre will be used for summit meetings as well as for Council meetings and other conferences. Apart from the Main Conference room, the Centre will also house a large entrance hall and lounge, which could also be used for exhibitions. Ancillary facilities like seminar rooms, offices for SADC officials, committee rooms, press conference room, Gallery for public and press, stores etc will also be provided. The Centre will be fully autonomous with separate access and exit, so as to be able to function independently of the office building.
- Adequate parking shall be provided for staff and visitors.

**The proposed development should reflect elegance, unity, performance, hope for prosperity, environmental sustainability and the cultural values of the SADC member states.**

Summit approved the establishment of a task team comprising Ministers of Finance of the SADC Troika and the Troika of the Organ to spearhead and to mobilize resources for this project.

The purpose of this Request for Proposal (RFP) is to invite proposals from a transaction advisor representing a team of suitably qualified and experienced financial, technical and legal advisors (hereafter the “Advisors”) to assist the Secretariat in the following:

- To undertake a comprehensive Feasibility Study for the construction and operation of the Project. The recommendation of the Feasibility Study will have to be approved by the Secretariat.
- The procurement of the Project, subsequent to such approval will lead to subsequent steps including procurement advisory work to be considered. The Secretariat reserves the sole right to terminate the services of the transaction adviser and to appoint any other consultant for the procurement part of the advisory work contained in the RFP.

The scope of work is presented in these two phases. Transaction advisors are therefore requested to submit a single bid, in the format described herein. Where reference is made to 'the transaction advisor', it includes the entire Advisory team, or relevant members thereof, under the management of a single lead Advisor.

## **2 Scope of Work**

The scope of work for the transaction advisor is:

### **2.1 Part 1: Feasibility Study**

The transaction advisor will be required to produce a comprehensive Feasibility Study for the Secretariat working environment project using public sector comparator (PSC) and PPP reference models. This must enable Secretariat to determine:

- full project cycle costs
- affordability limits
- risks and their costs
- optimal value-for-money methods of delivery.

### **2.2 Part 2: Procurement of the Project**

The preparation of all the procurement documentation detailed in this RFP, if required.

## **3 PHASE 1: Feasibility Study Deliverables**

The transaction advisor is required to produce, in close liaison with the Secretariat, a comprehensive Feasibility Study for the Project which clearly demonstrates affordability for the full life-cycle of the Project, and which proposes the optimal value-for-money solution by which the Secretariat can achieve its desired outcomes.

The Feasibility Study is to be conducted in line with best international practice. Guidance can be sought from the *National Treasury's PPP Manual*, available on [www.treasury.gov.za](http://www.treasury.gov.za) or from the PPP Unit.

### **3.1 Components of the Feasibility Study**

The Feasibility Study must include the following:

#### Introduction

- Executive summary
- Introduction
- Project background
- Approach and methodology to the Feasibility Study

#### Section 1

##### Needs analysis

- Institution's strategic objectives
- Budget
- Institutional analysis
- Output specifications
- Scope of the project

#### Section 2

##### Solution options analysis

- The option has already been agreed to, which is to build the new SADC Headquarters in Gaborone, Botswana, on a pre-determined site.

#### Section 3

##### Project due diligence

- Legal aspects
- Use rights
- Regulatory matters
- Site enablement
- Socio-economic

#### Section 4

##### Value assessment

###### PSC model

- Technical definition of project
- Discussion on costs (direct and indirect) and assumptions made on cost estimates
- Discussion on revenue (if relevant) and assumptions made on revenue estimates
- Discussion on all model assumptions made in the construction of the model, including inflation rate, discount rate, depreciation and budgets
- Summary of results from the base PSC model: NPV

- Review of all possible cost effective financing options that may be available for the PSC including, among others: International Funding Cooperation Partner Funding Sources, Internal Sources from member state contributions and Borrowing from Financial Institution or combination of the above.

#### PPP reference

- Technical definition of project
- Discussion on costs (direct and indirect) and assumptions made on cost estimates
- Discussion on revenue (if relevant) and assumptions made on revenue estimates
- Discussion on proposed PPP type
- Proposed PPP project structure and sources of funding
- Payment mechanism
- Discussion on all model assumptions made in the construction of the model, including inflation rate, discount rate, depreciation, tax and VAT
- Summary of results from the PPP-reference model: NPV

#### Risk assessment

- Comprehensive risk matrix for all project risks
- Summary of the Secretariat's retained and transferable risks
- The NPV of all risks (retained and transferable) to be added onto the base PSC model
- The NPV of all retained risks to be added onto the PPP reference model

#### Risk-adjusted PSC model

- Summary of results: NPV

#### Risk-adjusted PPP-reference

- Summary of results: NPV, key indicators
- Sensitivity analyses
- Statement of affordability
- Statement of value for money
- Recommended procurement choice

#### Information verification

- Summary of documents attached in Annexure 1 to verify information found in the Feasibility Study report

## Section 5

### Procurement plan

The procurement plan should demonstrate the Secretariat's capacity and availability of budget to undertake the procurement process for the project.

Annexures to the Feasibility Study should include the following:

Annexure 1: Statements for information verification and sign off from each advisor to the project

Annexure 2: PSC model

Annexure 3: PPP reference model

Annexure 4: Risk assessment and comprehensive risk matrix

Annexure 5: Document list (list of all documents related to the project, where they are kept, and who is responsible for ensuring that they are updated)

Annexure 6, 7, 8 etc: Attach as annexures all other documents that have informed the Feasibility Study and that are of decision-making relevance to the project.

### **3.2 Presentation of the Feasibility Study**

The Feasibility Study, comprising all the above deliverables, must be compiled in a single report in Word format (with relevant annexures), and delivered as both electronic and three hard copy documents. All financial models must be in Excel format, and clearly set out all assumptions made, sensitivity analyses carried out, and model outputs. The financial models must be sufficiently adaptable for use by others at later stages. The Feasibility Study must be presented with a thorough executive summary and must be accompanied by a PowerPoint presentation that encapsulates all the key features of the study. The executive summary and PowerPoint presentation must be compiled in such a manner that they can be used by the SADC Heads of State and the Finance Ministers for decision-making purposes.

### **3.3 Contract Period for the Feasibility Study**

The Feasibility Study shall be completed within a period of three months from the commencement date. The commencement date shall be one week from the award of the contract.

## **4 PHASE 2: PPP Procurement Deliverables (if applicable)**

In the event that a PPP solution is decided by the Secretariat and the Secretariat takes a decision to continue with the transaction advisor, the transaction advisor will be required to work with the Secretariat to manage the procurement process for securing a concession contract with a private service provider.

This will entail the transaction advisor in the delivery of the following:

#### **4.1 Administration of the bidding process**

The transaction advisor must prepare a complete set of procurement documents, complying with public sector procurement law, policies and guidelines, and in accordance with the bidding systems of the Secretariat. The documentation must be consistent with the results of the Feasibility Study.

The transaction advisor must also provide to the Secretariat all the drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with applicable law and policy, *and to the highest standards of efficiency, quality and integrity.*

##### **4.1.1 Pre-qualification**

The transaction advisor must design and administer a pre-qualification process, issuing the Request for Pre-Qualification Documentation (“RFQ”) with the intention of:

- Ensuring that the Secretariat’s exact interest regarding the Project is communicated clearly to the prospective market participants;
- Determining the extent and nature of interest in the private sector;
- Request the prospective bidders to indicate their interest based on the information in the RFQ;
- Pre-qualifying a competitive number of competent consortia in a manner that is equitable, open and transparent and the result of which is that each pre-qualified bidder is capable of providing the facilities and services required by the Secretariat.

The transaction advisor must prepare all the necessary RFQ documentation, including advertising material, assist the Secretariat to set up and administer the pre-qualification process by which the Secretariat can pre-qualify the parties. Assist the Secretariat to evaluate and pre-qualify bidders and provide the Secretariat with a clear and concise pre-qualification process and compliance report.

##### **4.1.2 Payment mechanism**

The transaction advisor must develop a rigorous payment mechanism that captures the elements of risk transfer and expected performance of the service provider. The payment mechanism must be simple but fair and based on the expected service delivery level of standards and a penalty point deduction system - all based on the output specifications and risk matrix established in the Feasibility Study.

##### **4.1.3 Bid evaluation criteria, bid process design**

The transaction advisor must set up a bid evaluation system and criteria, design a suitable bid process that will ensure comparable bids, suitable bidder communication (i.e. interaction with prospective bidders not compromising the Secretariat’s position), a data room with comprehensive project and project site information, and assist the Secretariat in such a manner that the process will inspire market confidence.

#### 4.1.4 Request for Proposals (RFP)

The transaction advisor must prepare a RFP document in accordance with best industry practice in the region (SADC), approved by the Secretariat and consistent with the results of the Feasibility Study. The RFP must concisely set out:

- the output specifications of the project
- requirements for compliant bids
- a risk profile as established in the Feasibility Study
- the payment mechanism
- the Bid process
- evaluation criteria
- bidder communication systems

#### 4.1.5 A Draft PPP Agreement

The transaction advisor must prepare a draft PPP Agreement, based on best industry practice in the region (SADC) and the risk matrix developed in the Feasibility Study. Close liaison with the Secretariat's management and the PPP Unit are required during drafting. The PPP Agreement must include mechanisms in terms of which the Secretariat is able to measure performance and operate a penalty system.

#### 4.1.6 Administration of the bidding process

The transaction advisor is to provide all necessary administrative support to the Secretariat for the efficient and professional management of the bidding process, including the management of a data room, conducting structured engagement between the Secretariat and bidders, and assisting the Secretariat with proper bidder communication and receipt of bids

All bidding documents prepared by the transaction advisor will have to obtain the Secretariat's written approval.

## **4.2 Evaluation of bids, demonstrating value-for-money**

### 4.2.1 Evaluation of bids

An Evaluation Committee, assisted by the transaction advisor, will evaluate bids in line with the bid evaluation criteria stipulated in the RFP.

A best and final offer (BAFO) process may be required. When costing this phase of work the transaction advisor must allow for the possibility of administering BAFO processes. If there is no BAFO process, the transaction advisor's remuneration will be adjusted accordingly.

### 4.2.2 The value-for-money report

Value-for-money must be demonstrated by comparing the Net Present Value (NPV) of the bids received to the NPV of the revised Risk-Adjusted PSC for the Project, (the PSC with a suitable adjustment for similar risks assumed as the private sector bid/s).

The results of the bidding and evaluation of bids must be presented in a single 'Value-for-Money Report' (with relevant annexures) that demonstrates clearly how value-for-money and risk transfer will be achieved with the preferred bidder within the affordability limits. The reports must clearly motivate and indicate the preferred and second-ranked bidders and confirm compliance with the applicable legal requirements.

The value-for-money report must be in a suitable format and of a suitable standard for the Secretariat's approval.

## **4.3 Contract Negotiations and Contract Management Plans**

The transaction advisor must assist the Secretariat in final negotiations with the preferred bidder. This will entail the preparation of suitable negotiation teams, strategies encompassing suitable categorisation of issues, time-lines for completion, negotiations tactics and processes for reaching agreement. The transaction advisor must ensure incorporation of all agreements reached into financial, commercial and legal documentation, and must assist with drafting of all attendant correspondence. The transaction advisor must ensure that the all Project Documents are drafted back-to-back with the PPP Agreement and that the risk profile as agreed in the PPP Agreement is respected and followed through in the supporting legal documentation.

The transaction advisor must, in close liaison with the Secretariat, draft a comprehensive Contract Management Plan for the Secretariat in accordance with the provisions of the PPP Agreement and with due adherence to guidelines issued by the best regional industry practice in this regard.

The final terms of all the Project Documents, each as negotiated with the preferred bidder and its funders, must be submitted, along with the Contract Management Plan for the Project, to the Secretariat.

The bidder will have to provide the Secretariat with a clear and concise bidding process and compliance.

#### **4.4 PPP agreement signature, close-out report and case study, and financial closure**

The transaction advisor must assist the Secretariat with all matters pertaining to the signing of the final PPP Agreement.

The transaction advisor must also compile a comprehensive close-out report and case study. These must follow the formats prescribed by the Secretariat, and must incorporate any additional factors that may be required by the Secretariat.

The close-out report will be a confidential document of the Secretariat. The case study will become a public document, made available on the SADC website.

Financial closure signifies that all the procurement deliverables have been successfully completed, and that the transaction advisor's work is finished, if applicable, on receipt of written acknowledgement thereof from the Secretariat.

## **5 Transaction advisor Skill, Experience, Remuneration and Management by the Secretariat**

### **5.1 Skills and experience required in transaction advisor**

The transaction advisor will comprise a team, managed by a single Lead Advisor, the members of which have both the skill and experience necessary to undertake the range of tasks set out in this Terms of Reference. Each individual on the team must be personally available to do the work as and when required to do so. The Lead Advisor will be held accountable, in terms of the Contract, for ensuring project deliverables, and the professional conduct and integrity of the team. The *Draft transaction advisor Contract* is attached at *Annexure B*.

The skills and experience required in the transaction advisor team are as follows:

- Financial analysis, with relevant PPP and project finance experience;
- PPP procurement and structuring;
- Legal, with relevant experience in the drafting and negotiating of PPP or Corporate Finance or similar agreements, or relevant limited recourse Project Finance experience;
- Serviced working environment planning management;
- Serviced working environment facilities management;
- Relevant expertise in building design, construction, engineering, quantity surveying, and property development and planning applicable to the proposed facilities;
- Environmental expertise
- Negotiations;
- Contract management;
- Project management;

### **5.2 Remuneration schedule and disbursement arrangements**

Remuneration of the transaction advisor will be payable in US Dollars, on a fixed price for each of phase 1 and phase 2 of the Terms of Reference. The procurement portion of the work may or may not transpire at the end of the Feasibility Study, and should be costed accordingly.

#### **5.2.1 Remuneration schedule**

The following remuneration schedule is set for each phase and deliverables detailed there in of the contract. Bidders should adhere to these in their proposals.

**PHASE 1: Feasibility Study**

<b>Deliverable</b>	<b>Percentage of remuneration paid at each stage of completion</b>
Signing of transaction advisor Contract as a mobilisation allowance	10*
Completion of sections 1 – 3	30
Completion of section 4	20
Completion of section 5	10
Completion of Feasibility Study report (4.2) to the satisfaction of the Secretariat	30
<b>TOTAL</b>	<b>100</b>

\* Mobilization payment will be effected against a bank guarantee on request.

**Phase 2: PPP Procurement and Contracting**

<b>Deliverable</b>	<b>Percentage of remuneration paid at each stage of completion</b>
Pre- qualification process and compliance report	10
Development of the Payment Mechanism	10
Bid evaluation criteria and bid process design	10
Request for Proposal	10
A Draft PPP Agreement	10
A report on the Administration of the bidding process	20*
Completion fee #	30
<b>TOTAL</b>	<b>100</b>
<b><i>BAFO allowance (if applicable)</i></b>	<b>15% of *</b>

# Completion fee to be paid on signing of the PPP Agreement

Deliverables completed per the remuneration schedule will be approved by the Project Officer, after which invoices may be submitted for payment as per the remuneration schedule. The Secretariat will pay within 30 days of receiving the approved invoice.

**5.3 The Secretariat management of transaction advisor**

The transaction advisor will be appointed by the Executive Secretary of the SADC Secretariat. The transaction advisor will report directly to the Executive Secretary

through the Deputy Executive Secretary. The Executive Secretary of the SADC Secretariat will appoint a Project Officer who will be responsible for the day-to-day management of the transaction advisor's work.

The Project Officer will establish various Working Groups, consisting of key stakeholders within the Secretariat who will be affected by this project, for the purposes of day-to-day engagement and internal capacity building with the transaction advisor for the efficient completion of the various delivery items and the successful implementation of the Project after financial closure.

As instructed by the Project Officer, the transaction advisor will report progress to each meeting. Satisfactory completion of each deliverable will be confirmed by the Project Officer and his/her task team, before invoices can be submitted to the Secretariat for payment.

## **6 Rules of bidding, bid submission requirements and bid evaluation**

### **6.1 Rules of bidding**

- 6.1.1 The transaction advisor must be a single legal entity with all other necessary expertise secured via subcontract, or under a joint venture arrangement. The Secretariat will enter into a single contract with a single firm for the delivery of the work set out in these terms of reference. Bidders must note that the Secretariat will not enter into separate agreements with individual companies forming a transaction advisor consortium, the lead advisor is thus cautioned to ensure that adequate professional indemnity cover is obtained to allow for this arrangement. Any proposal submitted by a consortium or joint venture of two or more firms must be accompanied by the consortium formation document or joint venture agreement, as applicable, authenticated by a Notary Public, which sets forth the precise responsibilities of each of the parties thereto. Consortia and joint venture members should be advised that each member would be held jointly and severally liable for the performance of the consortium or joint venture. The Secretariat will not deviate, under any circumstances, from this principle of joint and several liability of the transaction advisor consortium members. Members of a consortia or a joint-venture are not allowed to participate in more than one proposal.
- 6.1.2 Tax clearance certificates or any compliance proof thereof dated within six months of the closing date of this bid must be submitted by all firms submitting bids as part of a consortium or joint venture.
- 6.1.3 Foreign firms providing proposals must become familiar with Botswana conditions and laws, and take them into account in preparing their proposals.

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- 6.1.4 Bids must be submitted US Dollars, on a fixed price basis. This fee shall include all associated costs (out of pocket expenses, travel etc)
- 6.1.5 The costs of preparing bids, attending the briefing session and of negotiating the contract will not be reimbursed.
- 6.1.6 The Secretariat is not bound to accept any of the bids submitted, and reserves the right to call for best and final offers from short-listed bidders before final selection. The Secretariat reserves the right to accept or reject any bid and to annul the bidding process and reject all bids any time prior to award of the contract, without thereby incurring any liability to any Bidder or any obligation to inform the bidder of the grounds for its action.
- 6.1.7 The Secretariat reserves the right to call interviews with short-listed bidders before final selection.
- 6.1.8 The Secretariat reserves the right to negotiate price with the preferred bidder.
- 6.1.9 The Secretariat will return late bid submissions unopened.
- 6.1.10 Transaction Advisors shall not contact the Secretariat or any member of the Technical Committee on any matter pertaining to their bid from the time when bids are submitted to the time the transaction advisor contract is awarded. Any effort by a bidder to influence bid evaluation, bid comparisons or bid award decisions in any manner, shall result in rejection of the bid concerned.
- 6.1.11 The bid may be awarded in the second fortnight of April 2005. The transaction advisor will commence work within one week from award of the contract. Failure to agree on the terms of the contract by the Transaction Advisor and the Secretariat and the commencement of work will lead to the Secretariat negotiating with the second placed bidder.
- 6.1.12 The Secretariat reserves the right to terminate this appointment or temporarily defer the work, or any part thereof, at any stage of completion should the Secretariat decide not to proceed with the project. Should the contract between the Secretariat and the transaction advisor be terminated by either party due to reasons not attributable to the transaction advisor, the transaction advisor will be remunerated for the appropriate portion of work completed up to a maximum amount of not more than the total fee bid by the transaction advisor for the appropriate phase of the project during which the appointment was terminated.
- 6.1.13 The persons proposed for professional work on the project shall remain on the Project, and have the necessary capacity and time to deliver the required services in a professional and efficient manner to the Secretariat, unless permission is granted by the Secretariat to change the proposal. Such permission will only be granted in exceptional circumstances.

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- 6.1.14 No material or information derived from the provision of the services under the contract may be used for any purposes other than those of the Secretariat, except where authorised in writing to do so.
- 6.1.15 Copyright of all documents and electronic aids, software programmes prepared or developed in terms of this appointment shall vest in the SADC Secretariat.
- 6.1.16 The transaction advisor and its affiliates are disqualified from providing goods, works and services to any private party to the PPP agreement and/or parties to the sub-contracts, or to any eventual project that may result, directly or indirectly from these services.
- 6.1.17 Firms may request clarification on this Terms of Reference or any of its Annexures up to close of business 14 (fourteen) calendar days before deadline for the submission of proposals. Any request for clarification must be submitted in writing to SADC Executive Secretary, e-mail: [registry@sadc.int](mailto:registry@sadc.int), facsimile +267 297 2848 or + 267 318 1070 with copy to Chairman Technical Committee (Mr D.A. Balloo) on Fax No. (230)6864917.
- 6.1.18 The bids submitted should clearly state a validity period of ninety days (90) from closing date.
- 6.1.19 All proposals shall be submitted in English
- 6.1.20 All prospective bidders shall confirm their participation as per the enclosed Acknowledgement Form at *Annexure A* at latest 14 days prior to closing date for Bids.

## **6.2 Bid submission requirements**

Proposals must be submitted in one original and three copies.

Transaction advisors are required to submit their proposals in **TWO envelopes**, in the following format:

### 6.2.1 Envelope 1: Technical proposals

**Envelope 1** marked with the name of the transaction advisor and titled: **TECHNICAL PROPOSAL: TRANSACTION ADVISOR SERVICES TO SADC SECRETARIAT FOR FEASIBILITY STUDY AND POSSIBLE PPP PROCUREMENT OF A SUITABLE AND SUSTAINABLE SERVICED WORKING ENVIRONMENT**

This envelope must contain at least the following:

- 6.2.1.1 Covering letter signed by the lead transaction advisor, *inter alia*:
- Accepting the rules of bidding, evaluation of bids, and bid evaluation criteria set out in the Terms of Reference;
  - Attaching a Tax Clearance Certificate from relevant Revenue Services in respect of the lead transaction advisor and all firms to be sub-contracted to it for this assignment;
  - Providing full contact details for the lead transaction advisor.
- 6.2.1.2 Information on and motivation for the lead transaction advisor, attaching his/her curriculum vitae, and setting out his/her personal, and his/her firm's:
- Suitability for this assignment;
  - Relevant skills and experience. For each relevant experience cited, outline the precise role the lead Advisor played, the role of the firm, contract duration, contract outcomes, and contract value;
  - Availability to perform the work. This must be substantiated by listing the lead Advisor's other known professional commitments for the forthcoming two years.
- 6.2.1.3 Project comprehension and project management plan, setting out:
- The transaction advisor's understanding of the Terms of Reference, and any proposals for amendments to the Terms of Reference that would **enhance** desired outcomes;
  - How the transaction advisor proposes to manage the set of deliverables outlined in the Terms of Reference;
  - A proposed outline Work Plan with time-table for delivery;
  - How the Advisory team members will be supervised;
  - How reporting to the Project Officer will take place;
  - Any innovative ideas for how the whole assignment can best achieve its objectives.

The Technical Envelope must not include any financial proposal.

6.2.2 Envelope 2: Price proposal

**Envelope 2** marked with the name of the transaction advisor and titled: **FINANCIAL PROPOSAL: TRANSACTION ADVISOR SERVICES TO SADC SECRETARIAT FOR FEASIBILITY STUDY AND POSSIBLE PPP PROCUREMENT OF A SUITABLE AND SUSTAINABLE SERVICED WORKING ENVIRONMENT**

This envelope must contain:

- 6.2.2.1 Proposed remuneration for professional fees:
- A remuneration proposal, in the remuneration format outlined at above, giving professional cost per deliverable item and total for each Part as indicated;
  - VAT, if applicable, must be specified separately as a total for each of Phase 1: Feasibility and Phase 2: Procurement. While VAT will be paid pro-rata for each delivery item in each Phase of the assignment, it should be indicated as a total sum per Phase for purposes of this submission;

6.2.2.2 An estimation of anticipated disbursement costs per Phase of work. This information will not be used as a criterion for the evaluation of bids.

### **6.3 Bid evaluation criteria**

A two-stage evaluation process will be adopted for evaluation of the proposals. Only those bids that meet the threshold score for the Technical Evaluation will be considered for the Financial Proposals. Failure to meet the Technical Proposals threshold score will result in the Financial Proposals returned unopened.

The threshold score for the Technical Evaluation will be 75 of the available 100 points.

The weightage given to the Technical and Financial proposals will 80 and 20 points respectively.

The lowest financial proposal will be awarded the maximum marks of 20. Higher bids will be allocated marks on a relative proportion.

<b>Technical Proposal</b>			
	<b>Criteria</b>	<b>Scoring (for whole or each sub- element where applicable)</b>	<b>Maximum points</b>
1	Financial analysis, project management skills and project finance	<i>Excellent =8 Acceptable =4 Poor =0</i>	
	- Skills		8
	- Relevant experience or other demonstrable experience.		8
			<b>16</b>
2	Legal	<i>Excellent =8 Acceptable =4 Poor =0</i>	
	- Skills		8
	- Relevant experience		8
			<b>16</b>
3	Working environment planning and facilities management	<i>Excellent =8 Acceptable =4 Poor =0</i>	
	- Skills		8
	- Relevant experience		8
			<b>16</b>
4	PPP procurement and structuring – relevant experience and track record or other demonstrable experience.	<i>Excellent =8 Acceptable =4 Poor =0</i>	<b>8</b>
5	Negotiations – relevant experience and track record	<i>Excellent =8 Acceptable =4 Poor =0</i>	<b>8</b>
6	Design, construction, engineering, quantity surveying, property planning – skills, contract management and relevant experience	<i>Excellent =8 Acceptable=4 Poor =0</i>	<b>8</b>
7	Quality of project comprehension demonstrated in proposals for design and development of environmentally appropriate buildings	<i>Excellent =8 Acceptable =4 Poor =0</i>	<b>8</b>
8	Quality of proposed Work Plan, project management approach and time-table for the Project	<i>Excellent =10 Acceptable =5 Poor =0</i>	<b>10</b>
9	Nominated advisors’ capacity and availability for the duration of the Project	<i>Excellent =10 Acceptable =5 Poor =0</i>	<b>10</b>
	<b>TOTAL Technical points</b>		<b>100</b>
	<b>Minimum threshold for technical</b>		<b>75</b>

#### **6.4 Bid Evaluation**

- 6.4.1 A bid Evaluation Committee will be established by the Secretariat comprising representatives nominated by the Secretariat. Which will evaluate all transaction advisor bids received by the deadline, according to the criteria indicated herein
- 6.4.2 The Evaluation Committee reserves the right to call for presentations and/or Best and Final Offers from prospective transaction advisors if required.
- 6.4.3 The Financial Envelopes of each bid received will be locked away by the office of the SADC Executive Secretary until the Technical Envelopes have been evaluated by the Evaluation Committee. Only those bids whose Technical Proposals meet or better the Technical Threshold Score set out in the Bid Evaluation Criteria, will be considered in respect of their Financial Proposals. Those bids that do not meet the Technical Threshold Score will have their Financial Envelopes returned unopened and will not be further considered for selection.
- 6.4.4 Any bid which fails to submit any element of the Bid Submission Requirements set out in 6.2 above may, at the discretion of the Evaluation Committee, be rejected as unsuitable for evaluation and will therefore not be further considered.

#### **6.5 Draft contract agreement**

A marked up version of the *Draft transaction advisor Contract*, attached at **Annexure B**, including the proposed remuneration, must be submitted as part of the Financial Proposal of the bid.

#### **6.6 Briefing session**

The Secretariat will hold a briefing session on the Request for Proposal. All potential Transaction Advisors are required to attend and to register their interest in submitting bids. The list of attendees will be circulated to all present to encourage the formation of appropriate consortia. No party registering interest is, however, bound to submit a bid.

A Briefing Session for bidders will be held at the SADC Secretariat, SADC House Government Enclave, Gaborone, Botswana, on the Thursday 17 March 2005 at 09.00 a.m.

The Transaction Advisors will have to finance their own costs of travel.

Please confirm attendance by email to Executive Secretary at: [registry@sadc.int](mailto:registry@sadc.int) or fax + 267 397 2848.

**6.7 Address and Deadline for submission of bids**

Proposals by Transaction Advisors should be submitted in one original and three copies.

Proposals by transaction advisors must be submitted in a single sealed envelope, containing the two separately sealed envelopes required, marked:

TRANSACTION ADVISOR SERVICES TO SADC SECRETARIAT FOR  
FEASIBILITY STUDY AND POSSIBLE PPP PROCUREMENT OF A SUITABLE  
AND SUSTAINABLE SERVICED WORKING ENVIRONMENT

The single sealed envelope with the name and address of the bidder marked at the back of the envelope must be addressed to:

**SADC Executive Secretary**

**and hand delivered to:**

**SADC Secretariat  
SADC House  
Government Enclave  
Private Bag 0095  
Gaborone  
Botswana**

***By not later than 15.00 hours on the 01 April 2005.***

The Secretariat will record all bids received by the deadline. Late submissions will be returned unopened.

**ANNEXURE A**

**Transaction advisor services to the SADC Secretariat  
for the Procurement of a Suitable and Sustainable  
Serviced Working Environment (New Headquarters)  
in Gaborone, Botswana**

**ACKNOWLEDGEMENT FORM**

**The Executive Secretary  
SADC Secretariat  
SADC House  
Private Bag 0095  
Gaborone  
Botswana**

We hereby acknowledge having received a copy of the bid documents, Request for Proposal and draft Contract for Transaction Advisory Services, and confirm that we will submit/not submit a proposal.

Firm/consortium: .....

Name of authorised representative:  
.....

Postal address:  
.....

e-mail address:  
.....

Tel No. ....

Fax No.....

Signature: .....

Date: .....

**ANNEXTURE “B”**

**DRAFT CONTRACT**

**FOR TRANSACTION ADVISORY SERVICES  
TO THE SADC SECRETARIAT FOR THE  
PROCUREMENT OF A SUITABLE AND  
SUSTAINABLE SERVICED WORKING  
ENVIRONMENT (NEW HEADQUARTERS) IN  
GABORONE, BOTSWANA**

**BETWEEN**

**THE SOUTHERN AFRICAN DEVELOPMENT  
COMMUNITY (SADC)**

**(hereinafter referred to as “the Client”, on the one part),**

**AND**

---

**[NAME OF CONSULTANT]**

**(hereinafter referred to as “the Transaction Advisor”, on the other part)**

**a (type of entity) organized under the laws of (name of country)**

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This Contract is signed and executed as of the ..... / ..... / 2005, between the Client and ..... [Name of Transaction Advisor].

### **PREAMBLE**

**WHEREAS**, the Client interviewed, considered and discussed the experience, capabilities and available staff of potential firms to provide professional services on the “Feasibility Study for the Design, Financing and Construction of the SADC Headquarters Building in Gaborone” (hereinafter referred to as “the Project”), the relevant SADC Tender Committee (hereinafter referred to as “the Tender Committee”), has selected [name of Transaction Advisor] to provide services for the Project;

**WHEREAS**, the Client wishes to provide the public with a cost-effective, efficient service and related activities, and requires the services of an experienced Transaction Advisor in bringing the Project from the concept stage through feasibility approval, competitive bidding and award, to actual execution;

**WHEREAS**, the Client has entered into negotiations with the Transaction Advisor for the provision of services based on the Transaction Advisor’s proposal in response to the terms of reference.

**WHEREAS**, the Transaction Advisor did propose and provide technical and cost proposals to the Tender Committee which were accepted by SADC resulting in the above referenced Contract;

**WHEREAS**, the Transaction Advisor has agreed to provide the services on the terms and conditions set out herein; and

**WHEREAS**, the Client and the Transaction Advisor desire to enter into a contract specifying services to be provided by the Transaction Advisor relative to the Request for Proposal and Scope of Work provided herein,

**NOW THEREFORE**, the parties hereto agree as follows:

### **CLAUSE 1** **DEFINITIONS**

In this Contract, unless the context indicates otherwise, the following words and expressions shall have the following meanings unless inconsistent with the context:

‘applicable laws’	means all applicable laws, ordinances, regulations, judgments and orders of any competent court, central bank or governmental agency, authority in any relevant jurisdiction within the Republic of Botswana, and such other laws as may be applicable;
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‘business day’	means any day other than a Saturday, Sunday or public holiday in the Republic of Botswana;
‘client’	means the Southern African Development Community (SADC), an international organization organized under the 1992 Treaty establishing the Southern African Development Community and the Protocols thereof, represented by the SADC Secretariat;
‘client default’	means an act or omission by the Client which results in a breach of any of its material obligations under the Contract;
‘commencement date’	means the ...../ ...../ ..... <b>[insert date as agreed by parties]</b> ;
‘completion date’	means the date on which the services by the transaction advisor are completed;
‘confidential information’	means any information: (a) determined by the institution to be privileged or confidential; (b) discussed in closed session by the bid evaluation panel; (c) which if disclosed would violate a person’s right to privacy; (d) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in the relevant Information Act of the Republic of Botswana;
‘contract’	means this agreement and the schedules thereto;
‘deliverables’	means those deliverables as set out in the agreement documents;
‘international best industry practice’	means using standards, practices, methods and procedures conforming to international law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled, and experienced person engaged in a similar type of undertaking under similar circumstances;
‘key personnel’	means persons named under 6.3 of the contract, subject to changes arising from the negotiations;
‘parties’	means the Client and the Transaction Advisor;

**SADC Secretariat**  
Request for proposal for Transaction Advisors

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‘private party’	means the private party in relation to this Contract;
‘project’	means the “Feasibility Study and Procurement for the Design, Financing and Construction of the New SADC Headquarters Building in Gaborone, Republic of Botswana”;
‘project officer’	means that person designated by the accounting officer/authority of the Client as project officer for the Project;
‘proposal’	means the Transaction Advisor’s response to the Client’s Request for Proposal in respect of the carrying out of the services;
‘services’	means those services to be provided by the Transaction Advisor, pursuant to this contract;
‘signature date’	means the date of signature of this Contract by the last signing party;
‘success fee’	means the portion of the Transaction Advisor’s compensation which is contingent upon the financial closure as more fully set out in the Contract;
‘termination date’	means any date of termination of the agreement in accordance with the relevant clause of the Contract;
‘transaction advisor’	means ..... ..... ..... ..... <b>[insert name of transaction advisor company];</b>
‘variation’	means any variation to the scope of services in terms of the Contract; and
‘VAT’	means any value-added tax, or any similar tax which is imposed in place of or in addition to such tax.

**CLAUSE 2**  
**INTERPRETATION**

- 2.1 The Contract shall be interpreted according to the following provisions, unless the context requires otherwise:
- 2.1.1 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under the Contract;
- 2.1.2 References to clauses, sub-clauses, annexures and attachments are references to the clauses, sub-clauses, annexures and attachments of the Contract;
- 2.1.3 The headings of clauses, sub-clauses, annexures and attachments are included for convenience only and shall not affect the interpretation of the Contract;
- 2.1.4 Reference to ‘the Contract’ shall include the Contract and its annexures, attachments as amended, varied, novated or substituted in writing from time to time;
- 2.1.5 The parties acknowledge that each of them has had the opportunity to take legal advice concerning the Contract, and agree that no provision or word used in the Contract shall be interpreted to the disadvantage of either party, because that party was responsible for or participated in the preparation or drafting of the Contract or any part of it;
- 2.1.6 Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter, and ‘person’ shall include both corporeal and incorporeal entities.

**CLAUSE 3**  
**ENTRY INTO FORCE, EFFECTIVENESS AND TERMINATION OF THE CONTRACT**

- 3.1 The Contract shall enter into force on the signature date or such other later date as may be agreed upon by the parties hereto.
- 3.2 The Consultants shall begin carrying out the Services not more than fourteen (14) days after the date on which the Contract enters into force, or at such other date as may be agreed upon by the parties.
- 3.3 Unless terminated earlier, this Contract shall terminate on the Termination Date or at the end of such time after the Effective Date as agreed upon by the parties hereto.

**CLAUSE 4**  
**AGREEMENT TO PROVIDE SERVICES**

- 4.1 With effect from the Commencement Date, the Client hereby appoints the Transaction Advisor to provide the services and the Transaction Advisor agrees to provide the services to the Client on the terms and conditions recorded in the Contract.
- 4.2 This Contract and the attachments thereto constitute the entire agreement between the parties, and no other undertaking, representation, warranty, promise or the like not recorded herein, whether express or implied, shall bind the parties hereto.

**CLAUSE 5**  
**SCOPE OF SERVICES**

- 5.1 The scope of services to be provided by the Transaction Advisor in terms of the Contract is set out in the Request for Proposal Document.

**CLAUSE 6**  
**PROJECT ADMINISTRATION**

- 6.1 The Transaction Advisor shall work under the direction of an [**Officer at SADC Secretariat, Head of Institution, Reference Group**] which will be assigned [**relevant implementing institution**]. The assigned [**Officer at SADC Secretariat, Head of Institution, Reference Group**] shall meet regularly with the Transaction Advisor during the course of the Project and will provide guidance and input to the Transaction Advisor and will review the progress of work. All drafts and final work products will be reviewed and accepted by the Client or [**relevant implementing institution**]. All Transaction Advisor's concerns, disputes, and/or proposed changes shall be addressed through the SADC Secretariat; coordinator at Client.
- 6.2 The Transaction Advisor shall comply with all the terms, regulations, rules, and requirements of SADC, as of the date of the Contract.
- 6.3 Except as the Client may otherwise agree, no changes shall be made in the Key Personnel or Sub-consultants. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Key Personnel, the Consultants shall provide as a replacement a person of equivalent or better qualifications, subject to the approval of the Client.
- 6.4 The Client may require the Transaction Advisor to remove and replace any staff member, stating reasons for such action. Key personnel under this Contract are: [**name(s) of key personnel**].
- 6.5 Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent

by registered mail, telex, telegram, or facsimile to such Party at the address specified in the contract.

6.6 The Client shall provide prompt written notice to the Transaction Advisor whenever the Client observes or otherwise becomes aware of any matter which may substantially affect the Transaction Advisor's performance of services under this Contract.

6.7 The Parties agree that the Transaction Advisor shall maintain its records in a satisfactory manner sufficient to document and support all charges for work under this Contract, and that the Client, the Client's implementing institutions, or their authorized representatives will be permitted to audit the records of the Transaction Advisor at any time during the Project, with reasonable notice and for a period of three (3) years following receipt of final payment.

6.8 All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Transaction Advisor shall become and remain the property of the Client, and the Transaction Advisor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client, together with a detailed inventory thereof.

**CLAUSE 7**  
**ESTIMATED COST, LIMITATION OF FUNDS**

7.1 All costs shall be quoted in United States (US) Dollars.

7.2 The Contract cost for services described in this Contract is a fixed element of **[specify amount]**, for all professional labour/services and disbursements.

**CLAUSE 8**  
**PAYMENT TO TRANSACTION ADVISOR**

8.1 The Transaction Advisor shall be responsible for financing its activities until such time as payment is effected by the Client.

8.2 The Client shall compensate the Transaction Advisor for services rendered under the Contract in accordance with the Transaction Advisor's Work Plan provided in Attachment B.

8.3 Payments shall be made to the account of the Transaction Advisor on the **[indicate time]** based upon the fixed price cost.

8.4 The Transaction Advisor shall submit its detailed invoices to the Client in a format acceptable by the Project Officer (hereinafter referred to as "the Project Officer"). **[if necessary, the relevant implementing institution may also authorize payment of the invoice].**

8.5 Subject to the other terms and conditions of this Contract, all payments due by the Client to the Transaction Advisor shall be paid within thirty (30) days from the date of approval of the relevant reports by the Client, save for payment in respect of the final report which shall be made sixty (60) days from approval of such report. The Client shall be obliged to approve or reject reports within thirty (30) days from the date of submission by the Transaction Advisor. In the event that a report is rejected or approval is delayed, the Client shall be obliged to give the reasons.

## **CLAUSE 9 PROJECT TEAM**

9.1 The parties shall, immediately after the signature date, form a Project Team, which will be responsible for the management of the Contract so as to ensure the smooth and satisfactory delivery of the services by the Transaction Advisor to the Client.

9.2 The Project Team shall be composed of the following:

- 9.2.1 the project officer appointed by the Client, who shall act as manager on behalf of the Client;
- 9.2.2 such other additional members as appointed by the Client;
- 9.2.3 a representative appointed by the Transaction Advisor, who shall have authority to bind the Transaction Advisor; and
- 9.2.4 such other members of the Transaction Advisor as appointed by the Transaction Advisor.

9.3 The functions of the Project Team shall be as follows:

- 9.3.1 to facilitate communication between the parties;
- 9.3.2 to review the progress on the implementation of the Contract;
- 9.3.3 to manage and resolve potential disputes;
- 9.3.4 to monitor and maintain alignment with institutional policy and strategy;
- 9.3.5 to achieve agreement objectives within agreed scope, time, cost and quality;
- 9.3.6 to provide advice and consent on scope variation;
- 9.3.7 to facilitate all necessary institutional and treasury approvals; and
- 9.3.8 to provide feedback to relevant stakeholders.

9.4 The Project Team shall determine an appropriate set of meetings to be held and the frequency thereof.

## **CLAUSE 10 OBLIGATIONS OF THE PARTIES**

### **10.1 The Client undertakes:**

- 10.1.1 to remunerate the Transaction Advisor for its services as set out in the payments clause herein;
- 10.1.2 to provide all necessary logistical support to the Transaction Advisor so as to enable it effectively to render the services;

- 10.1.3 to use its reasonable endeavours to ensure that the Transaction Advisor has timely and adequate access to all information, personnel and documentation available to the institution that will be required by the Transaction Advisor to render the services;
- 10.1.4 to inform the Transaction Advisor of any information or developments which may come to their attention during the duration of the contract, which might have a bearing on or be relevant to the services to be provided by the Transaction Advisor; and
- 10.1.5 to co-operate with the Transaction Advisor at all times for purposes of facilitating a timeous and efficient delivery of the services.

**10.2. The Transaction Advisor undertakes:**

- 10.2.1 to perform the services according to international best industry practice;
- 10.2.2 to devote the necessary time and attention to providing the deliverables, as set out in the deliverables schedule, and not engage in any business or activity that will prevent the transaction advisor from providing the services;
- 10.2.3 to maintain, at all times, the highest degree of good faith towards the Client and to ensure that no conflict of interest materializes, and in the event of a conflict of interest arising, to immediately advise the Client of same, upon which advice the Client shall, in its sole and absolute discretion, decide whether to proceed with the Contract or to terminate it forthwith. Failure by the Transaction Advisor to advise the Client of any conflict of interest shall amount to a material breach of the Contract and shall entitle the Client to terminate the Contract forthwith;
- 10.2.4 to render the services in accordance with the deliverables, timeframes and specifications, as set out in the deliverables schedule, annexed hereto as Attachment A, as amended by written agreement of the parties;
- 10.2.5 that all actions and commitments agreed upon or pursuant to the project management committee meetings or agreed to with the project officer, will be strictly adhered to;
- 10.2.6 to maintain independence from other individuals, organisations or SADC Member States;
- 10.2.7 to take out and maintain, at its own cost but on terms and conditions approved by the Client, appropriate insurance coverage against risks and loss arising out of negligence, malpractice or unprofessional conduct of the Transaction Advisor; and shall at the Clients request, provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

- 10.2.8 to observe neutrality and objectivity in its views and opinions;
- 10.2.9 to respect and observe all applicable laws;
- 10.2.10 to provide the Client with any information and reports reasonably requested by the Client in connection with the services, and which information the Transaction Advisor warrants to be accurate and complete;
- 10.2.11 to maintain the professional personnel as promised and committed to by the Transaction Advisor in its proposal, and as recorded in the deliverables schedule, and that in the event of any dedicated member of the Transaction Advisor becoming incapacitated and unable to carry out his or her duties or whose performance the Client reasonably considers to be unsatisfactory in its discretion, to replace, at the Transaction Advisor's cost, such member, subject to the written approval of the Client.

**CLAUSE 11**  
**PERFORMANCE GUARANTEE**

- 11.1 Save for reasonable cause for default, which shall be communicated to the Client in writing before due date, if the Transaction Advisor fails to comply with the time for submission of the reports in accordance with the Request for Proposal Document and any of the appendices of this Contract, the Transaction Advisor shall pay to the Client a sum to be negotiated and agreed upon by the Parties hereto as liquidated damages for such default which shall elapse between the agreed time of submission or such other period that the Client may extend to the Transaction Advisor in terms of this Contract. The Client may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Transaction Advisor. The payment or deduction of such damages shall not relieve the Transaction Advisor from their obligation to complete the services, or from any other of their obligations and liabilities under the Contract.
- 11.2 If at any time the Client is not satisfied with the Transaction Advisor's performance, the Transaction Advisor will be immediately notified and all fees paid to the areas of dissatisfaction shall be refunded to the Client, or the areas of dissatisfactions remedied to the Client's satisfaction, at the Client's option.

**CLAUSE 12**  
**CONFIDENTIALITY**

- 12.1 The Transaction Advisor shall not, during the term of the Contract and thereafter, without the prior written consent of the Client, disclose any proprietary or confidential information relating to the assignment, this Contract or the Client's business Client or operations to anyone other than those persons who are connected to the Client and/or Transaction Advisor and who are required or authorized to have access to such information.

- 12.2 The obligation to maintain the confidentiality of information shall survive the termination of the Contract, but will not apply to confidential information which was in the public domain prior to being disclosed by the transaction advisor and has come into the public domain other than as a result of being divulged by the Transaction Advisor.

**CLAUSE 13**

**OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY**

- 13.1 Any information provided by the Client to the Transaction Advisor and any studies, reports and documentation produced by the Transaction Advisor in performance of the services (hereinafter referred to as “the materials”) shall belong to and remain the property of the Southern African Development Community (SADC) as represented by the SADC Secretariat, and will not be used by the Transaction Advisor for any purpose other than in accordance with the Contract, or by written permission of the Client.
- 13.2 Upon termination of the Contract for any reason whatsoever, the Transaction Advisor must return to the Client all materials in its possession which belong to the Client, regardless of whether or not such materials were originally supplied by the Client to the Transaction Advisor.

**CLAUSE 14**

**WARANTEES AND INDEMNITIES**

- 14.1 The Transaction Advisor warrants that:
- 14.1.1 All corporate approvals and consents required for the incorporation of the Transaction Advisor and all resolutions of the board of directors of the Transaction Advisor authorising the execution and performance of the Contract have been obtained prior to the signature date of the Contract; and
- 14.1.2 It will use international best industry practice and skill in performing the services.
- 14.2 The Transaction Advisor indemnifies and holds the Client harmless against any claim by any third party howsoever arising in connection with any wrongful act or omission of the Transaction Advisor.
- 14.3 The Client indemnifies and holds the Transaction Advisor harmless against any claim by any third party arising in connection with any wrongful act or omission of the Client.

**CLAUSE 15**

**CONTRACT CONSIDERATION**

- 15.1 The overriding concern is that the Transaction Advisor demonstrates the ability to perform programmed tasks consistently and in a manner which assures the expeditious advance of the work on all fronts. Contract performance will be

determined by the degree of adherence to schedules established and in subsequent work plans or other agreements, the timelines and effectiveness of actions and responsiveness in delivering reports and other deliverables on schedule.

15.2 The Transaction Advisor should demonstrate a cost-approach to all activities. The Transaction Advisor should achieve all possible cost savings.

15.3 The Transaction Advisor should demonstrate the professional requisite to their tasks. They should further demonstrate the initiative and the ability to innovate, which is required to overcome unforeseen obstacles in situations which may not respond to technical competence alone. The quality of submitted reports and other documents will be judged on substantive content, accurate information, and clarity of all presentations.

#### **CLAUSE 16 ASSIGNMENTS**

16.1 Save as expressly provided in the Contract, the Transaction Advisor shall not cede any of its rights nor delegate any of its obligations in terms of the Contract without the prior written consent of the Client.

#### **CLAUSE 17 LIABILITY LIMITATION**

17.1 The Transaction Advisor will pay damages for losses suffered by the Client arising as a direct result of breach of contract or negligence on its part in respect of the services. The maximum liability of the Transaction Advisor for all claims arising out of the services provided in connection with this Contract shall be limited to an amount equal to twice the fees charged for the services.

#### **CLAUSE 18 WAIVER**

18.1 No waiver by a party of any right under the Contract shall be effective unless reduced to writing and signed by or on behalf of all the parties.

#### **CLAUSE 19 INDULGENCIES**

19.1 No indulgence granted by a party shall constitute a waiver or abandonment of any of that party's rights under the Contract. Accordingly, that party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.

**CLAUSE 20**  
**NO REPRESENTATIONS**

- 20.1 No party may rely on any express, tacit or implied term, representation, promise, warranty or the like which allegedly induced that party to enter into the Contract, unless the term, representation, promise, warranty is recorded in the Contract.

**CLAUSE 21**  
**COSTS**

- 21.1 Each party shall bear its own legal costs of, and incidental to, the negotiation, drafting and preparation of the Contract.
- 21.2 Any costs, including attorney and own client costs, incurred by a party, arising out of the breach by either party of any of the provisions of the Contract, shall be borne by the party in breach.

**CLAUSE 22**  
**SUBCONTRACTING**

- 22.1 The Transaction Advisor shall not, without the prior written consent of the Client (which shall not be unreasonably withheld), subcontract or delegate any of the services to any parties other than those listed as members of the Transaction Advisor as contained in the proposal and recorded in the deliverables schedule.
- 22.2 The Transaction Advisor shall not be relieved of any obligations, responsibility or liability under the Contract by the appointment of any subcontract to carry out any part of the services. As between the Transaction Advisor and the Client, the Transaction Advisor shall be responsible for the payment, performance, act, defaults, omissions, breaches and negligence of all subcontractors. All reference in the Contract to any performance payment, act, default, omission, breach or negligence of the Transaction Advisor shall be deemed to include any or the same by a subcontractor.

**CLAUSE 23**  
**ENTIRE CONTRACT**

- 23.1 The Contract contains all the express provisions agreed on by the parties with regard to the subject matter of the Contract, and the parties waive the right to rely on any alleged express provision not contained in the Contract.

**CLAUSE 24**  
**FORCE MAJEURE**

- 24.1 For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance

of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

24.2 The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) is not negligent, has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

24.3 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **CLAUSE 25** **NOTICES**

25.1 The parties choose as their respective *domicilium citandi et executandi* for all purposes of the giving of notices and the serving of any process, and for any other purpose arising from the Contract as follows:

**For the Client:**

Southern African Development  
Community (SADC)  
SADC Secretariat, SADC House  
Government Enclave  
Khama Crescent  
Private Bag 0095  
GABORONE  
BOTSWANA

Tel: +267 395 1863  
Fax: +267 397 2848

**For the Transaction Advisor:**

[insert necessary details]

25.2 A notice shall be deemed to have been duly given:

25.2.1 On delivery, if delivered to any party's physical address in terms of this clause 25.1;

25.2.2 On despatch, if sent to any party's then telefax number in terms of clause 25.1 as confirmed by telefax confirmation printout.

25.3 Either party may change its address to any physical address and telefax number for this purpose, by notice in writing to the other party.

**CLAUSE 26**  
**COUNTERPART**

- 26.1 The Contract shall be capable of execution in counter parts, all of which when read together shall constitute one and the same document.

**CLAUSE 27**  
**VARIATION, CANCELLATION AND SUSPENSION**

- 27.1 No additions or contract varying, deleting from or canceling the Contract, and no suspension of any right under the Contract shall be effective unless reduced to writing and signed by or on behalf of the parties.

**CLAUSE 28**  
**TERMINATION**

- 28.1 The Client reserves the right to terminate the Contract or temporarily defer the provisioning of the services, or any part thereof, at any phase with immediate effect on written notice to the Transaction Advisor, should the Client in its sole and absolute discretion, decide not to proceed with the services.

- 28.2 In the event of termination of the services in accordance with clause 28.1 above, the Transaction Advisor will be remunerated for such services as have already been rendered.

**28.3 Termination on Client Default**

- 28.3.1 On the occurrence of a Client default, or within a reasonable time after the Transaction Advisor becomes aware of the same, the Transaction Advisor may serve notice on the Client of the occurrence (and specifying details) of such institutional default. If the relevant default has not been remedied or rectified within 14 (fourteen) business days of such notice, the Transaction Advisor may serve a further notice on the Client terminating the Contract with immediate effect.

**28.4 Termination on Transaction Advisor Default**

- 28.4.1 Transaction Advisor default means any of the following events or circumstances:
- 28.4.1.1 The Transaction Advisor ceasing to carry on business;
  - 28.4.1.2 A resolution being passed or an order of a court being made for the administration or the judicial management, winding-up, liquidation or dissolution of the Transaction Advisor;
  - 28.4.1.3 The Transaction Advisor failing to maintain any required insurance in terms of the relevant clauses herein;
  - 28.4.1.4 The Transaction Advisor committing a breach of any of its material obligations under the Contract;
  - 28.4.1.5 The Transaction Advisor ceasing to provide all or a substantial part of the services in accordance with the Contract;

28.4.1.6 The Transaction Advisor providing services that are not international best industry practice.

**28.4.2 Institutional Options**

28.4.2.1 On the occurrence of a Transaction Advisor default, or within a reasonable time after the Client becomes aware of the same, and while the same is subsisting, the Client may:

28.4.2.1.1 In the case of the Transaction Advisor default referred to in clauses 28.4.1.1 to 28.4.1.3, terminate the Contract in its entirety by notice in writing having immediate effect;

28.4.2.1.2 In the case of the Transaction Advisor default referred to in clauses 28.4.1.4 to 28.4.1.6, serve notice of default on the Transaction Advisor, requiring the Transaction Advisor to remedy the Transaction Advisor default within 10 (ten) business days.

28.4.2.2 Failure by the transaction advisor to remedy the Transaction Advisor default within the specified time, as stipulated in clause 28.4.2.1.2, shall entitle the Client to terminate the Contract.

**28.4.3 Costs**

28.4.3.1 Each party shall reimburse the other party with all costs incurred by that party in exercising any of its rights (including, without limitation, any relevant administrative expenses), on an own attorney and client basis incurred by that party in enforcing its rights under the Contract arising out of any breach, together with all supporting documents of such amount, which amount shall not exceed twice the amount of fees payable in terms of this Contract.

**CLAUSE 29  
SETTLEMENT OF DISPUTES**

29.1 Should any dispute arise between the parties to this Contract with regard to the interpretation, the carrying into effect and implementation of any one or more of the provisions of this Contract, any of the rights and obligations of either party arising from the Contract, the termination or purported termination of, or arising from the termination of, or the rectification or proposed rectification of the Contract, or out of pursuant to this Contract, or any other matter which in terms of this Contract requires agreement by the parties, the Client and the Transaction Advisor shall, in the first instance, attempt to come to an agreement in relation to any such dispute in an amicable manner by consultation and negotiation in good faith.

29.2 In the event that the parties, after consultation and negotiation, are unable to come to an agreement, and such dispute cannot be resolved by negotiation, any claim, controversy, or dispute concerning questions of fact or law arising from or relating to this Contract, its performance, or alleged breach, which is not disposed of by agreement, shall be decided by the authorized representative of the Client, who shall render a good faith decision on the issues in dispute and reduce to writing and mail or otherwise furnish a copy thereof to the Transaction Advisor.

The decision of the Client shall be final and conclusive unless within 30 days of receipt of such copy the Transaction Advisor initiates a written demand for arbitration to the SADC Tribunal. The decisions of the SADC Tribunal shall be final, binding, and conclusive upon the parties.

- 29.3 Should arbitration occur between the parties relating to the provisions of this Contract, each party shall bear its arbitration expenses, witness fees, and representation fees.

**CLAUSE 30**  
**GOVERNING LAW AND LANGUAGE**

- 30.1 The Contract shall be governed by the laws of the Republic of Botswana, and its language shall be English.

**CLAUSE 31**  
**GENERAL PROVISIONS**

- 31.1 The terms of this Contract and any attachments or addenda hereto form an integral part of this Contract. Said attachments are:
- 31.2 The Parties agree that the Client is the beneficiary, and that all supplemental agreements, disputes and other financial, legal and technical documents pertaining to the performance of this Contract shall be processed through the Client.
- 31.3 The Parties agree that credit on all reports, progress reports, interim reports, and other documents produced under this Contract shall indicate that the work was conducted under funding provided by the Client.
- 31.4 The Parties shall cooperate and collaborate in the performance of their respective services in accordance with the Request for Proposal Document, and in accordance with the Scope of Work. The Transaction Advisor shall perform its undertakings in full conformity with the provisions of SADC Procurement Policies and Regulations, and shall, at all time, to the extent possible for each Party, prevent any breach in respect thereof.
- 31.5 The Transaction Advisor agrees to provide the professional and support services and/or products specified in this Contract. The Transaction Advisor recognizes its obligations to perform its services to the satisfaction of the Client and the Technical Committee, and to assist in assuring the satisfactory and timely completion of the services and work programme set forth.
- 31.6 The Transaction Advisor shall not assign, transfer, pledge, or make other disposition of this Contract without first obtaining the written consent of the Client, and any attempt at an assignment, transfer, pledge, or other disposition without such consent shall be void.

- 31.7 The Transaction Advisor agrees that it shall carefully, strictly, and specifically comply with each and every provision of this Contract that relates to the confidential or proprietary information. Further, the work products, including but not limited to, findings, observations, recommendations, system designs, source and object code(s), and procedures shall be deemed important, confidential and material. The Transaction Advisor or any of its employees shall not, at any time, either directly or indirectly, communicate to any other person, firm, corporation, or public entity in any manner whatsoever, any such confidential or proprietary information, data, or documents gathered, prepared, seen, or generated during the Project, except as expressly permitted in writing by the Client. This understanding is without regard to whether or not any or all of the data and information arising from the performance of this Contract are important and material.
- 31.8 To the extent that, in connection with the performance of the Project, the Transaction Advisor comes into the possession of any proprietary or confidential information of the Client, the Transaction Advisor shall (i) protect the confidentiality of any such information, trade secrets, and work papers; and (ii) not permit, except as otherwise required by a final judicial order, any third party to obtain access to such information, trade secrets, and work papers for purpose of the performance of the Project or otherwise only as expressly permitted in writing by the Client.
- 31.9 Each employee of the Transaction Advisor shall execute a written statement, as shown in exhibit 1 hereto annexed, prior to commencing work on the Project, agreeing to abide by this Contract as it pertains to confidential and proprietary material.
- 31.10 If the 1992 SADC Treaty is terminated, for any reason whatsoever, prior to completion of the project, this Contract shall automatically terminate, and the Client shall have no legal obligation whatsoever to the Transaction Advisor, except to compensate the Transaction Advisor in accordance with the terms of this Contract, for all approved invoices submitted by the Transaction Advisor, in accordance with this Contract, for work performed up to the date of notice of termination and accepted by the Client or the actual date of termination of services, as designated in the notice of termination.

**THUS SIGNED AND WITNESSED BY THE PARTIES ON THE FOLLOWING DATES AND AT THE FOLLOWING PLACES RESPECTIVELY:**

**FOR THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC):**

**Date:**  
..... / ..... / 2005

**Place:**  
Gaborone, Botswana

**Witness:**

.....  
[Signature]

.....  
[Signature]

.....  
[Full name]

**Dr. PREGA RAMSAMY**

**SADC EXECUTIVE SECRETARY**

**FOR THE TRANSACTION ADVISOR:**

**Date:**  
..... / ..... / 2005

**Place:**  
Gaborone, Botswana

**Witness:**

.....  
[Signature]

.....  
[Signature:]

.....  
[Full name]

**Position:**

.....