



**NAMCOR PETROLEUM TRADING AND
DISTRIBUTION (PTY) LTD**

BIDDING DOCUMENTS

Issued on: 17 January 2024

**INVITATION TO DEALERSHIP APPLICATIONS FOR
NAMCOR'S OTJIWARONGO SERVICE STATION**

Procurement Reference No: NCS/ONB/NC-04/2023

Cost: 0.00

Name of Company: _____

**Bid Closing Date: Wednesday, 28 February 2024 @ 12:00 PM Namibian
Time**

National Petroleum Corporation of Namibia Pty Ltd (NAMCOR)
1 Aviation Road, Windhoek
Tel: 061 204 5000
Email: procurement@namcor.com.na

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Invitation for Bids (IFB)

(for national bidding, to be customized as appropriate)

Republic of Namibia

INVITATION TO DEALERSHIP APPLICATIONS FOR NAMCOR'S OTJIWARONGO SERVICE STATION

IFB Number: NCS/ONB/NC-04/2023

1. Bids are invited through Open National Bidding (ONB) procedures for **the appointment of a dealership for NAMCOR's Otjiwarongo service station.**
2. Interested eligible bidders may obtain further information from **NAMCOR, procurement@namcor.com.na** and inspect the Bidding Documents at the address given below ***Petroleum House, 1 Aviation Road.***
3. Qualifications requirements include: ***as outlined in the bidding documents.*** A margin of preference for certain goods manufactured domestically ***"shall not"*** be applied. Additional details are provided in the Bidding Documents.
4. A complete set of Bidding Documents in ***English*** may be purchased by interested bidders on the submission of a written application to the address below ***Petroleum House, 1 Aviation Road*** and upon payment of a non-refundable fee of zero dollars. The Bidding Documents to be collected at the NAMCOR Head Office.
5. Bids must be delivered to ***Petroleum House, 1 Aviation Road*** at or before ***28 February 2024, 11:00am.*** Electronic bidding ***will not*** be permitted. Late bids will be rejected. Bids will be opened in the presence of the bidders' representatives who choose to attend in person or on-line at ***Petroleum House, 1 Aviation Road*** at ***28 February 2024, 11:00am.*** All bids must be accompanied by a ***"Bid-Securing Declaration,"***.
6. The address(es) referred to above is(are):

NAMCOR

Head Office

Petroleum House, 1 Aviation Road

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Summary Description

These Standard Bidding Documents for Procurement of non-Consultancy services (time-based contracts) apply when a prequalification process has not taken place before bidding. A brief description of these documents is given below.

SBD for Procurement of Services

Summary

PART I – BIDDING PROCEDURES

Section I: Instructions to Bidders (ITB)

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

Section II. Bidding Data Sheet (BDS)

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

Section III: Bidding Forms

This Section contains the forms which are to be completed by the Bidder and submitted as part of its Bid.

PART II – ACTIVITY SCHEDULE

Section IV. Activity Schedule

This Section contains the activity schedule.

Section V. Scope of Services, Performance Specifications and Drawings

This section contains Specifications that are intended only as information for the Employer or the person drafting the bidding documents. **They should not be included in the final documents.**

PART III – *CONDITIONS OF CONTRACT AND CONTRACT FORMS*

Section VII. General Conditions of Contract (GCC)

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

Section VIII. Special Conditions of Contract

The contents of this Section supplement the General Conditions of Contract and shall be prepared by the Employer.

Section IX: Contract Forms

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This Section contains forms which, once completed, will form part of the Contract. The format of **Advance Payment Guarantee, Performance Security, Notification of award and Contract.**

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Part I – Bidding Procedures

Section I. Instructions to Bidders

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Instructions to Bidders

A. General

- 1. Scope of Bid**
- 1.1 The Public Entity referred to herein after as the Employer, as defined in the **Bidding Data Sheet (BDS)**, invites bids for the Services, as described in the **BDS**. The name and identification number of the Contract is **provided in the BDS**.
- 1.2 The successful Bidder will be expected to complete the performance of the Services during the period **provided in the BDS and the SCC Clause 2.3**.
- 1.3 Throughout these Bidding Documents:
- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax,) with proof of receipt;
 - (b) if the context so requires, “singular” means “plural” and vice versa; and
 - (c) “day” means calendar day unless otherwise stated.
- 2. Public Entities Related to Bidding Documents and to Application for Review**
- 2.1 The public entities related to these bidding documents are the Public Entity, acting as procuring entity (Purchaser), the Procurement Policy Unit, in charge of issuing standard bidding documents and responsible for any amendment these may require, the Central Procurement Board in charge of vetting Bidding document, receiving and evaluation of bids in respect of major contracts and the Review Panel, set up under the Public Procurement Act, 2015 (hereinafter referred to as the Act.)
- Application for Review shall be addressed to:
- The Chairperson
Review Panel
Ministry of Finance
Private Bag 13295
Windhoek, Namibia**
- 3. Corrupt or Fraudulent Practices**
- 3.1 The Government of the Republic of Namibia requires that bidders/suppliers/contractors, participating in procurement in Namibia, observe the highest standard of ethics during the procurement process and execution of contracts.
- 3.2 The Employer will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

For the purposes of this Sub-Clause:

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(i) “corrupt practice”¹ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice”² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(iii) “collusive practice”³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) “coercive practice”⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

3.3 In further pursuance of this policy, Bidders shall permit the Employer to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Employer.

3.4 Furthermore, bidders shall be aware of the provision in Clauses 3.1 of the General Conditions of Contract.

3.5 Bidders, suppliers and public officials shall also be aware of the provisions stated in section 65 – 68 (Part 10) of the Public Procurement Act, 2015 which can be consulted on the website of the Procurement Policy Unit (PPU) : www.mof.gov.na/procurement-policy-unit

4. Eligible Bidders

4.1 Subject to ITB 4.4, a Bidder, and all parties constituting the Bidder, may have the nationality of any country except in the case of open national bidding where the bidding documents may limit

¹ For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution.

² For the purpose of this Contract, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

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participation to citizens of Namibia or entities incorporated in Namibia. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or service providers for any part of the Contract.

- 4.2 All bidders shall provide in Section III, Bidding Forms, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract.
- 4.3 (a) A Bidder that is under a declaration of ineligibility by the Government of Namibia in accordance with applicable laws at the date of the deadline for bid submission or thereafter, shall be disqualified.

(b) Bids from service providers appearing on the ineligibility lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group shall be rejected.

Links for checking the ineligibility lists are available on the Procurement Policy Unit's website: www.mof.gov.na/ineligible-bidders

- 4.4 A firm shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Namibia prohibits any import of goods or contracting of works or services from a country where it is based or any payment to persons or entities in that country.
- 4.5 Government-owned enterprises in the Republic of Namibia shall be eligible only if they can establish that they:
- (i) are legally and financially autonomous;
 - (ii) operate under commercial law, and
 - (iii) are not a dependent agency of the Purchaser.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

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5. Qualification of the Bidder

- 5.1 All bidders shall provide in Section III, Bidding Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 (a) In the event that prequalification of potential bidders has been undertaken **as stated in the BDS**, only bids from prequalified bidders shall be considered for award of Contract, in which case the provisions of sub-clauses 5.3 to 5.6 hereafter shall not apply. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.
- (b) If, after opening of bids, where prequalification has not been undertaken, it is found that any of the document listed in 5.3 and 5.4 is missing the Employer may request the submission of that document subject to the bid being substantially responsive as per clause 27. The non-submission of the document by the Bidder within the prescribed period may lead to the rejection of its bid.
- 5.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise **stated in the BDS**:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business;
 - (b) written power of attorney of the signatory of the Bid or any other acceptable document to commit the Bidder and as otherwise **specified in the BDS**.
 - (c) total monetary value of Services performed for each of the last five years;
 - (d) experience in Services of a similar nature and size for each of the last five years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
 - (e) list of major items of equipment proposed to carry out the Contract;
 - (f) qualifications and experience of key site management and technical personnel proposed for the Contract;
 - (g) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;

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- (h) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (i) authority to the Employer to seek references from the Bidder's bankers;
- (j) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (k) proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract Price.

5.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the **BDS**:

- (a) the Bid shall include all the information listed in ITB Sub-Clause 5.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) the Bid shall include a copy of the agreement entered into by the joint venture partners defining the division of assignments to each partner and establishing that all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; alternatively, a Letter of Intent to execute a joint venture agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement;
- (d) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

5.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria unless otherwise stated in the **BDS**:

- (a) a minimum average annual financial amount of work over the period **specified in the BDS**.
- (b) experience as prime contractor in the provision of at least two service contracts of a nature and complexity equivalent to the Services over the last 5 years (to comply with this requirement, Services contracts cited should be at least 70 percent complete) **as specified in the BDS**.

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- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the BDS**.
- (d) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the **BDS**.
- (f) A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

5.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 5.5 (a), (b) and (e); however, for a joint venture to qualify the partner in charge must meet at least 40 percent of those minimum criteria for an individual Bidder and other partners at least 25% of the criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise **stated in the BDS**.

6. Conflict of Interest

- 6.1 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
- (a) they have a controlling partner in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid: or

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- (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid.
7. **Cost of Bidding** 7.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.
8. **Site Visit/Pre-bid Meeting** 8.1 (a) The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Services. The costs of visiting the Site shall be at the Bidder's own expense.
- (b) A pre-bid meeting shall be held if so, indicated **in the BDS** to allow bidders to obtain clarifications on the bidding documents. Any information given in the course of the meeting that may have an incidence in the preparation of the bids shall be issued by the Public Entity as addendum after the meeting, as per ITB 11.2, to form part of the Bidding Documents.
- (c) **No bidder shall be disqualified from the bidding process as a result of not attending the pre-bid meeting.**

B. Bidding Documents

9. **Content of Bidding Documents** 9.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 11:
- | | |
|--------------|---|
| Section I | Instructions to Bidders |
| Section II | Bidding Data Sheet |
| Section III | Evaluation Criteria |
| Section IV | Bidding Forms |
| Section V | Activity Schedule |
| Section VI | Scope of Service and Performance Specifications |
| Section VII | General Conditions of Contract |
| Section VIII | Special Conditions of Contract |
| Section IX | Contract Forms |
- 9.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections III and IV should be completed and returned with the Bid in the number of copies specified in the **BDS**.

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- 10. Clarification of Bidding Documents**
- 10.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by facsimile at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids and by the date indicated in **the BDS**. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.
- 11. Amendment of Bidding Documents**
- 11.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2 below.

C. Preparation of Bids

- 12. Language of Bid**
- 12.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Bidding Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.
- 13. Documents Comprising the Bid**
- 13.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Form of Bid (in the format indicated in Section III);
 - (b) Bid Security or Bid Securing declaration (where applicable).
 - (c) Priced Activity Schedule.
 - (d) Qualification Information Form and Documents.
 - (e) Alternative offers where invited;
 - (f) following documentary evidence (required from Namibian bidders):
 - 1. A valid certified copy of Company Registration Certificate certified by the Namibian Police.

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2. an original valid Good Standing Tax Certificate or certified copy certified by the Namibian Police.
 3. an original valid Good Standing Social Security Certificate or certified copy certified by the Namibian Police.
 4. a valid certified copy of Affirmative Action Compliance Certificate, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998.
 5. signed Bid-securing Declaration.
 6. An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, where applicable and that it will abide to sub-clause 6.8 of the General conditions of Contract if it is awarded the contract or part thereof; and;
- (g) any other materials required to be completed and submitted by bidders, as **specified in the BDS**.
- 13.2 Bidders bidding for this contract together with other contracts stated in the IFB to form a package will so indicate in the bid together with any discounts offered for the award of more than one contract
- 14. Bid Prices**
- 14.1 The Contract shall be for the Services, as described in Appendix A to the contract and in the Specifications, based on the priced Activity Schedule, Section V, submitted by the Bidder.
- 14.2 The Bidder shall fill in rates and prices for all items of the Services described in Section VI the Scope of Service and Performance Specifications and listed in Section V the Activity Schedule, Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 14.3 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the Bidder.
- 14.4 If **provided for in the BDS**, the rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract in accordance with the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 14.5 For the purpose of determining the remuneration due for additional Services, a breakdown of the Time-Based price shall be provided by the Bidder in the form of Appendices D and E to the Contract.

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- 15. Currencies of Bid and Payment** 15 The time-based price shall be quoted by the Bidder in Namibia Dollars Only.
- 16. Bid Validity** 16.1 Bids shall remain valid for the period **specified in the BDS**.
- 16.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by facsimile. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid but will be required to extend the validity of Bid Security/Bid Securing Declaration for the period of the extension, and in compliance with ITB Clause 17 in all respects.
- 16.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended by more than 60 days, the amounts payable in local currency to the Bidder selected for award, shall be increased by applying to the local currency component of the payments, respectively, the factors specified in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.
- 17. Bid Security** 17.1 The Bidder shall furnish, as part of the Bid, a Bid Security, or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 17.2 The Bid-Securing Declaration shall be in the form of a signed subscription in the Bid Submission Form.
- 17.3 The Bid Security shall be in the amount **specified in the BDS** and denominated in Namibia Dollars, and shall:
- (a) be issued by a reputable overseas bank, located in any eligible country, with a counter guarantee from a commercial bank having its place of business in Namibia or any commercial bank operating in Namibia selected by the Bidder.
 - (b) be substantially in accordance with the form of Bid Security included in Section III, Bidding Forms;
 - (c) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 17.5 are invoked.
 - (d) be submitted in its original form; copies will not be accepted.
 - (e) remain valid for a period of 30 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Sub-Clause 16.2.
- 17.4 If a Bid Security is required in accordance with ITB Sub-Clause 17.1, any bid not accompanied by a substantially responsive Bid

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Security in accordance with ITB Sub-Clause 17.1, shall be rejected by the Employer as non-responsive.

17.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 35.

17.6 The Bid Security shall be forfeited, or the Bid Securing Declaration executed:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 16.2; or
- (b) if a bidder refuses to accept a correction of an error appearing on the face of the Bid; or
- (c) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34; or
 - (ii) furnish a Performance Security in accordance with ITB Clause 35.

17.7 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent to constitute the JV.

17.8 If a bid security is **not required in the BDS**, and

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 16.2, or
- (b) if a bidder refuses to accept a correction of an error appearing on the face of the Bid; or
- (c) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 34; or
 - (ii) furnish a Performance Security in accordance with ITB Clause 35.

The Bidder may be disqualified to be awarded a public contract in the Republic of Namibia for a period of time to be determined by the Review Panel.

18. Alternative Proposals by Bidders

18.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.

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- 18.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.
- 18.3 Except as provided under ITB Sub-Clause 18.4 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first submit a Bid that complies with the requirements of the bidding documents, including the scope, basic technical data, graphical documents and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. Alternatives to the specified performance levels shall not be accepted.
- 18.4 When bidders are **permitted in the BDS** to submit alternative technical solutions for specified parts of the Services, such parts shall be described in the Specifications (or Terms of Reference) and Drawings, Section V. In such case, the method for evaluating such alternatives will be as **indicated in the BDS**.
- 19. Format and Signing of Bid**
- 19.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB Clause 11 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS**, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 19.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 5.3(a) or 5.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.
- 19.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

D. Submission of Bids

- 20. Sealing and Marking of Bids**
- 20.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as "ORIGINAL" and "COPIES".
- 20.2 The inner and outer envelopes shall

Initial _____

- (a) be addressed to the Employer at the address **provided in the BDS**;
 - (b) bear the name and identification number of the Contract as **defined in the BDS** and Special Conditions of Contract; and
 - (c) provide a warning not to open before the specified time and date for Bid opening as **defined in the BDS**.
- 20.3 In addition to the identification required in ITB Sub-Clause 20.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.
- 20.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 21. Deadline for Submission of Bids**
- 21.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date **specified in the BDS**.
- 21.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.
- 22. Late Bids**
- 22.1 Any Bid received by the Employer after the deadline prescribed in ITB Clause 21 will be returned unopened to the Bidder.
- 23. Modification and Withdrawal of Bids**
- 23.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 21.
- 23.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 19 and 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 23.3 No Bid may be modified after the deadline for submission of Bids.
- 23.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 16.2 may result in the forfeiture of the Bid Security or execution of the Bid Securing Declaration pursuant to ITB Clause 17.
- 23.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause or included in the original Bid submission.

E. Bid Opening and Evaluation

- 24. Bid Opening**
- 24.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidders' Initial _____

representatives who choose to attend at the time and in the place **specified in the BDS.**

- 24.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.
- 24.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security/subscription to Bid Securing Declaration, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No bid shall be rejected at bid opening except for the late bids pursuant to ITB Clause 22; Bids, and modifications, sent pursuant to ITB Clause 23 that are not opened and read out at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.
- 24.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 24.3.

25. Process to Be Confidential

- 25.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.
- 25.2 If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Employer, who will provide written explanation. Any request for explanation from one bidder should relate only to its own bid; information about the bid of competitors will not be addressed.

26. Clarification of Bids

- 26.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing via e-mail or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 28.
- 26.2 Subject to ITB Sub-Clause 26.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.

Initial _____

- 26.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.
- 27. Examination of Bids and Determination of Responsiveness**
- 27.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 27.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 27.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 28. Correction of Errors**
- 28.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetical errors will be rectified by the Employer on the following basis: if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected; if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; if there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.
- 28.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security shall be forfeited, or the Bid Securing Declaration exercised and in accordance with ITB Sub-Clause 17.6(b).
- 29. Currency for Bid Evaluation**
- 29 The Employer will evaluate the Bid Price in terms of ITB 15 which is corrected pursuant to ITB Clause 28 and is payable excluding Provisional Sums but including Daywork where priced competitively.
- 30. Evaluation and Comparison of Bids**
- 30.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 27.
- 30.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

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- (a) making any correction for errors pursuant to ITB Clause 28;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, Section IV, but including Day work, when requested in the Specifications (or Terms of Reference) Section V;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 18; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 23.5.

30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

30.4 The estimated effect of any price adjustment conditions under Sub-Clause 6.6 of the General Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

31. Preference for Domestic Bidders

31.1 Margin of Preference shall not be applicable.

F. Award of Contract

- | | |
|---|--|
| 32. Award Criteria | <p>32.1 Subject to ITB Clause 33, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 4, and (b) qualified in accordance with the provisions of ITB Clause 5.</p> <p>32.2 If, pursuant to ITB Sub-Clause 13.2 this contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating this contract in conjunction with other contracts to be awarded concurrently. Taking into account any discounts offered by the bidders for the award of more than one contract.</p> |
| 33. Employer’s Right to Accept any Bid and to Reject any or all Bids | <p>33.1 Notwithstanding ITB Clause 32, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders.</p> |
| 34. Notification of Award and Signing of Agreement | <p>34.1 Prior to the expiration of the period of bid validity, the Employer shall, for contract amount above the prescribed threshold of N\$ 2 M, notify the selected bidder of the proposed award and accordingly notify unsuccessful bidders. Subject to any application for review to the Review Panel the Employer shall notify the selected Bidder, in writing, by issuing a notification of award for the contract. It will state the sum that the Employer will pay to the Service Provider in consideration of the execution of the services by the Service Provider as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”). Within seven days from the issue of the notification of award the Employer shall publish on the Public Procurement Portal and the Employer’s website, the results of the Bidding process.</p> <p>34.2 The issue of the notification of award will constitute the formation of the Contract subject to the provisions of Section 55 (5), (6) and (7) of the Procurement Act, 2015 (Act 15 of 2015) read with Regulation 38 of the Public Procurement Regulations, 2017.</p> <p>34.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the notification of award. Within 21 days of receipt of the Contract, the successful bidder shall sign the Contract and return it to the Employer, together with the required performance security pursuant to Clause 35.</p> |
| 35. Performance Security | <p>35.1 Within thirty (30) days after receipt of the Notification of award, the successful Bidder shall deliver to the Employer a Performance</p> |

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Security in the amount and in the form of a Bank Guarantee **stipulated in the BDS**, denominated in Namibia Dollars in accordance with the General Conditions of Contract.

- 35.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either at the Bidder's option, by a commercial bank located in the Republic of Namibia or a foreign bank through a correspondent commercial bank located in the Republic of Namibia.
- 35.3 Failure of the successful Bidder to comply with the requirements of ITB Sub-Clause 35.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.
- 36. Advance Payment and Security** 36.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the amount **stated in the BDS**.
- 37. Adjudicator** 37.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Notification of award, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.
- 38. Debriefing** 38.1 The Employer shall promptly attend to all requests for debriefing for the contract, made in writing, and within 30 days from the date of the publication of award or date the unsuccessful bidders are informed about the award.

Section II. Bidding Data Sheet

The following specific data for the services to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

A. General	
ITB 1.1	<p>The Employer is NAMCOR PETROLEUM TRADING AND DISTRIBUTION PTY LTD</p> <p>The name and identification number of the Procurement is “Invitation to Dealership Applications for NAMCOR’s Otjiwarongo Service Station NCS/ONB/NC-04/2023”</p>
ITB 1.2	The Intended Contract Period: 5-year contract with the option for an additional 5 year renewal subjected to successfully fulfilling the prescribed Key Performance Indicators (KPIs)
ITB 5.2(a)	Pre-qualifications have not been carried out.
ITB 5.3	<p>The Qualification Information and Bidding forms to be submitted are as follows:</p> <ul style="list-style-type: none"> • Letter from the bank confirming status of the bank account (i.e. bank code) • Business Plan and cash flow projections • Personal Balance Sheet • Latest audited financial statements
ITB 5.3(b)	<p><i>(b)This authorization shall consist of written confirmation and shall be attached to the bid. It may include a delegation of power by resolution of the Board of a company or from the CEO, himself holding power from the Board or from a Director being a shareholder of a company or through a Power of Attorney. The name and position held by each person signing the authorization must be typed or printed below the signature.</i></p> <p><i>(c)In the case of Bids submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 5.4, and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.”]</i></p> <p><i>Note: The power of Attorney or other written authorization to sign may be for a determined period or limited to a specific purpose.</i></p>
ITB 5.4	The information needed for Bids submitted by joint ventures is as follows: Joint Ventures are not acceptable.

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<p>ITB 5.5</p>	<p>The qualification criteria in Sub-Clause 5.5 are modified as follows:</p> <ul style="list-style-type: none"> • Sufficient start-up capital of +/- N\$2,000,000.00 (this must include wet stock, dry stock, rent and equipment rental). • Provide a bank guarantee equivalent to a full load of fuel. • Tertiary Education will be an added advantage. • A positive credit report from TransUnion which will be executed by NAMCOR. • Demonstrate a sound financial and management capability. • The candidate must demonstrate ability to think and manage strategically. • Be results driven. • Cash & Non-Cash Transaction Management capability. • Demonstrate SSHEQ awareness and control skills. • Sales & Operations Competencies. • Passionate about Retailing and Franchise management. • Ability to recruit and motivate people. • Ability to recognize and reward good performance in the team. • Constantly deliver operational excellence. • Knowledge of branding and technical aspects petroleum products. • Good housekeeping and passion about hygiene standards. • Has ability to deliver the Customer Value Proposition (CVP). • Follow defined procedures for transactional controls. 																								
<p>ITB 5.5(a)</p>	<p>Not Applicable.</p>																								
<p>ITB 5.5(b)</p>	<p>The experience required to be demonstrated by the Bidder should include as a minimum that he has executed during the last 5 years the following: <i>[insert a list of activities required to show the compliance with 5.5(b)]</i></p> <ul style="list-style-type: none"> • FMCG Experience of at least 5 years. • Business Experience (Preferably Retail). 																								
<p>ITB 5.5(c)</p>	<p>The essential equipment to be made available for the Contract by the successful Bidder shall be:</p> <p>The following equipment will be supplied by NAMCOR, the list below is not limited:</p> <table border="1" data-bbox="384 1592 1098 2058"> <thead> <tr> <th>DESCRIPTION OF ITEMS</th> <th>QUANTITY</th> </tr> </thead> <tbody> <tr> <td>CUTT BOARD 600X450 WHITE</td> <td>1.0</td> </tr> <tr> <td>CUTT BOARD 500X380 RED</td> <td>1.0</td> </tr> <tr> <td>CUTT BOARD 500X380 GRN</td> <td>1.0</td> </tr> <tr> <td>KNIFE BONING BRD 150MM BLACK</td> <td>1.0</td> </tr> <tr> <td>TRAM 8PCS KNIFE SET</td> <td>1.0</td> </tr> <tr> <td>TRAM SANDWICH SPREADER</td> <td>1.0</td> </tr> <tr> <td>TONG UTILITY 250mm S/STEEL</td> <td>2.0</td> </tr> <tr> <td>TONG UTILITY 300MM S/STEEL</td> <td>2.0</td> </tr> <tr> <td>TONG SALAD 150M BLACK</td> <td>4.0</td> </tr> <tr> <td>TONG SALAD 225MM BLACK</td> <td>4.0</td> </tr> <tr> <td>SKIMMER SPIDER 200CM BUS</td> <td>1.0</td> </tr> </tbody> </table>	DESCRIPTION OF ITEMS	QUANTITY	CUTT BOARD 600X450 WHITE	1.0	CUTT BOARD 500X380 RED	1.0	CUTT BOARD 500X380 GRN	1.0	KNIFE BONING BRD 150MM BLACK	1.0	TRAM 8PCS KNIFE SET	1.0	TRAM SANDWICH SPREADER	1.0	TONG UTILITY 250mm S/STEEL	2.0	TONG UTILITY 300MM S/STEEL	2.0	TONG SALAD 150M BLACK	4.0	TONG SALAD 225MM BLACK	4.0	SKIMMER SPIDER 200CM BUS	1.0
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OIL FILTER BAGS 50PCS	1.0
OIL FILTER ST. CONTROL B/C	1.0
CHIP BASKET SQ 280X170(NO SIDE HOOKS)	2.0
MEAT TRAY SMALL-WHITE	4.0
TURNER HAMBURG 200MM PVC HANDLE	1.0
EGG LIFTER 40CM B/C	1.0
BAST. SPOON SOLID 330MM	4.0
BASTING SPOON SOLID 400M	4.0
LADLE 8 OZ 225 ML B/C	1.0
EGG SLICER B/C	1.0
GRATER S/STEEL 6SIDED 200	1.0
SHAKER SALT S/S B/C	6.0
POT CASSEROLE AL H/D12L B/C	1.0
POT CASSEROLE AL H/D 30L B/C	1.0
PAN FRY AL 400MM B/C	1.0
PAN FRY ALM 240MM B/C	1.0
BASTING BRUSH H/HAIR 60MM	2.0
BOWL SCRAPER SILICON	1.0
WHISK PIANO S/S 350MM B/C	1.0
WHISK FRENCH S/S 450MM	1.0
BOWL ROUND 390MM	3.0
BOWL ROUND 5L 290MM	2.0
BOWL ROUND 1.5 L	2.0
SCOOP ALUM 250 MM B/C	1.0
SCOOP ALUM 310MM	1.0
SCOOP 430MM ALV B/C	1.0
DISPENSER CLEAR 500ML	4.0
BUBBLE TRAY ONLY 500X410 SQ	2.0
BUBBLE DOME ONLY 500X410 SQ	2.0
COLANDER S/S 380MM	1.0
KNIFE HOLDER MAGNETIC	2.0
CAN KING OPENER PRESTIGE	2.0
POTATO PEELER PV HANDLE 170MM	2.0
CAKE DOME & TRAY	1.0
SH500 HOLDER SACHET 12CM	4.0
SUGAR WHITE SACHETS 1000 TUBE	1.0
CREMORA STICKS 200X4gr	1.0
TEA FIVE ROSES BLACK TEA ENV 200	1.0
JUG MEASURING PLASTIC 1L	1.0
JUG MEASURING PLASTIC 5L	1.0
ROLLING PIN ALUM 380MM	1.0
PRESSURE COOKER 11LTR HOT CUK	1.0
TRAYS PERF ALU 860X800 TAS90480	4.0
BAKING SHEET PERF 600 X400MM TAS90190	8.0
BREAD PAN B03 3-LOAF	16.0
BREAD PAN LID B03	8.0

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	PERFORATED BAKING TRAY	1.0	
	BAKING TRAY LARGE MUFFIN 15CUP	1.0	
	DOUGH CUTTER WOODEN HANDLE15CM	2.0	
	SCRAPER PLASTIC 110X80MM	2.0	
	SCALE PORTION ELECTRONIC 15KG (5g's)	1.0	
	STRAINER DBL MESH 260 B/C	1.0	
	SALMON / HAM SLICER PLAIN	1.0	
	SHAKER SALT S/S B/C	4.0	
	SALT SHAKER S/STEEL LONG HANDLE	2.0	
	BREAD COOLING TROLLEY 4-TIER	1.0	
	INGREDIENT BIN WHITE 85LTR	2.0	
	TOASTER SANDWHICH 9 SLICE ANVIL	1.0	
ITB 5.5(e)	The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be: Sufficient start-up capital of N\$2,000,000.00 is required for wet stock, dry stock, rent and equipment rental		
ITB 5.6	Subcontractors' experience [<i>insert "will" or "will not"</i>] be taken into account. Not Applicable.		
B. Bidding Data			
ITB 8.1 (b)	A non-compulsory site meeting will be held. The address and date for the site visit will be: Friday, 02 February 2024 @ 10:00 AM at the Otjiwarongo Retail Site		
ITB 9.2 and 19.1	The number of copies of the Bid to be completed and returned shall be two (2) copies.		
C. Preparation of Bids			
ITB 10.1	The deadline to seek clarifications is fourteen days before the bid submission date.		
ITB 13.1(g)	The additional materials required to be completed and submitted are: Not applicable.		
ITB 14.1	Local inputs shall be quoted in Namibian Dollars Only		
ITB 14.4	The Contract is subject to price adjustment in accordance with Sub-Clause 6.6 of the Conditions of Contract.		
ITB 16.1	The period of Bid validity shall be 180 days after the deadline for Bid submission specified in the BDS.		
ITB 17.1	The Bidder shall subscribe to a Bid Securing Declaration by signing the Bid Submission Form containing the provision with regard thereto.		
ITB 17.3	The amount of Bid Security shall be: Not Applicable		
ITB 18.1	Alternative bids are not permitted.		

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ITB 18.2	Alternative times for completion [are/are not] permitted. If permitted, the range of acceptable completion time is: Not applicable. If alternative times for completion are permitted, the evaluation method will be as follows: Not applicable.
ITB 18.4	Alternative technical solutions shall be permitted for the following parts of the Services: Not Applicable.
D. Submission of Bids	
ITB 20.2	The Employer's address for the purpose of Bid submission is: The Tender Box Petroleum House 1 Aviation Road Windhoek For identification of the bid the envelopes should indicate: Contract: INVITATION TO DEALERSHIP APPLICATIONS NAMCOR OTJIWARONGO SERVICE STATION Reference Number: NCS/ONB/NC-04/2023 <i>Markings on envelope: "DO NOT OPEN BEFORE CLOSING DATE AND TIME"</i>
ITB 21.1	The deadline for submission of bids shall be Wednesday, 28 February 2024 @ 11:00am.
E. Bid Opening and Evaluation	
ITB 24.1	Bids will be opened at 11:15 PM of the day Wednesday, 28 February 2024 at the following address Auditorium, Petroleum House, 1 Aviation Road, Windhoek.
F. Award of Contract	
ITB 35.1	The Performance Security acceptable to the Employer shall be the in the Standard Form of an unconditional Bank Guarantee and for an amount of:
ITB 36.1	The Advance Payment, where applicable, shall be of percent of the Contract Price, where applicable: Not applicable.
ITB 37.1	This Agreement shall be governed by and construed in accordance with the laws of Namibia. The Parties agree to endeavour to resolve any matter, dispute, controversy or claim (collectively referred to as "dispute") arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, first through negotiation between the Executive Chairman and/or Managing Director

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of the respective Parties. If such dispute is not resolved within fourteen (14) Days after notice thereof has been given in writing either Party may refer such dispute to be finally resolved by arbitration.

There shall be one (1) arbitrator who shall be, if the issue is:

- (a) primarily an accounting matter, an independent Chartered Accountant.
- (b) primarily a legal matter, a practicing Senior Counsel; or
- (c) primarily a technical matter, a person with suitable technical knowledge.

The appointment of the arbitrator shall be agreed between the Parties, but failing agreement between them, within a period of 14 days after the arbitration has been demanded, either of the Parties shall be entitled to request the President of the (Professional Arbitration and Mediation Association of Namibia) (PAMAN), to make the appointment and, in making his/her appointment, to have regard to the nature of the dispute.

Each arbitration shall be in Windhoek in accordance with the provisions of Namibian arbitration laws.

The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, account of profits, a penalty or otherwise as he/she in his/her sole discretion may deem fit and appropriate and to deal as he/she deems fit with the question of costs, including if applicable, costs on the attorney and Client scale, or own Client scale and his/her own fees.

The decision of the arbitrator shall be final and binding on the Parties and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the laws of Namibia should the other Party wish to make the arbitrator's decision an order of that court.

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Section III.- Evaluation Criteria

This section contains supplementary criteria that the Employer shall use to evaluate bids.

1. EVALUATION

The evaluation process will be conducted in three (3) phases as indicated below:

Phase 1: Mandatory/Eligibility Requirements (Pass/Fail)

MANDATORY/ELIGIBILITY REQUIREMENTS:

Company Application Requirements:

- The Form of Bid (in the format indicated in Section III);
- Signed bid securing declaration;
- submit a **valid certified** copy of Company Registration Certificate certified by the **Namibian Police**;
- submit an **original valid** Good Standing Tax Certificate or **certified copy** certified by the **Namibian Police**;
- submit an **original valid** Good Standing Social Security Certificate or **certified copy** certified by the **Namibian Police**;
- submit a **valid certified copy** by the **Namibian Police** of Affirmative Action Compliance Certificate, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998;
- An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, where applicable and that it will abide to sub-clause 6.8 of the General conditions of Contract if it is awarded the contract or part thereof; and;

Individual Application Requirements:

- Certified Identity Document (ID) or Namibian Passport, certified by the Namibian Police
- Proof of residence (municipal bill)
- Tax clearance certificate

Phase 2: Financial Capability (Pass/Fail)

FINANCIAL CAPABILITY

- Financial Status/Financial Statements (3 Years Audited Financial Statements)
- Must have a good bank rating from a commercial bank (Bank Rating Letter)
- A non-refundable key deposit to the value of N\$2000,000.00 (letter of undertaking from a credible financial institution)
- Working capital amounting to N\$2,000,000.00 (letter of undertaking from a credible financial institution)

Initial _____

NB: Once a credit verification has been conducted and the requirements above are met will applicants be considered for presentations.

Phase 3: INTERVIEW PRESENTATION (SCORING METHODOLOGY TOTAL SCORE OF 100 POINTS)

Presentations will be evaluated on the criteria's listed below, applicants should be prepare their interview presentations accordingly:

CRITERIA 1: MANAGEMENT CAPABILTIY (40 Points)

- Relevant Experience/Retail Industry Experience (resumes and minimum of two letters of reference for each staff member listed). You may provide professional accreditations and affiliations for the individuals)
- Track Record (Reference Letters/Contracts)
- Proposed Organizational Structure
- Proposed staff Experience in Fast Food/Staff skills (resumes and two letters of reference for each staff member listed)
- Cash Flow Projections
- Personal Attributes:
 - High Degree of safety and environment awareness.
 - Dynamic and self-motivated person.
 - Business Experience (Preferably Retail).
 - FMCG Experience of at least 5 years.
 - Energy to work long hours – must be available immediately.
 - Ability to deal with a large staff compliment and demanding customers.
 - Professionals able to develop marketing plans and manage significant cash turnovers.
 - Entrepreneurs with a discipline to run a business within a detailed franchise / dealership operation.
 - Committed to customer service excellence.
 - Conversant with the Win Branch point of sale system.
 - Good standing with the business community will be an advantage.

CRITERIA 2: FMCG EXPERIENCE (40 Points)

- Convenience store management
 - Any previous experience running a retail shop
 - Submit references
 - Proof with references & or training
- Understanding of Fast Moving Consumer Goods in the c-store
 - What do you understand of FMCG
 - What is the brands that you would consider for the convenience
 - On Shop layout of goods how will determine the volume and number units required in the shop
 - What will be the principles that you will apply in determining you product range.
 - Please explain the importance of branding and how you will go about to utilize the this to ensure sales and growth

Initial _____

- Retail Experience
 - Have you ever previously run a retail outlet- Please provide details and if any reference.
 - Current business activities if any
 - Formal qualifications and current Job role or type of retail business
- Consumer Behavior
 - Please explain consumer behavior
 - How will you be able to establish your specific site consumer behavior?
 - How will you effectively use this to your business environment.
- Pricing Strategy and Promotions
 - Please explain what pricing model/ strategy you would follow
 - What would recommend the margin would be for your site.
 - How would determine the margins for the following segments:
 - Fast foods
 - Household goods
 - Snacks & confectionary
 - Daily essentials
 - Cigarettes

CRITERIA 3: SHEQ CAPABILITY (10 Points)

- Product Knowledge, Fuels and Lubricants
 - Please provide brief explanation of difference in fuel grades
- Safety at Forecourt, Arm Robbery Procedures, Cash Handling
- Food Hygiene at Take Away Area
 - Please elaborate on the hygiene requirements and preventative measures inclusive of staff
- Insurances, Public Liability, 3rd Party Liability Cover
 - Please provide details of insurance with letter of confirmation and value of cover
- General SHEQ Knowledge
 - Please explain the risk associated with running a service station
 - Fire
 - Incorrect fueling

CRITERIA 4: TECHNICAL APPROACH AND METHODOLOGY (10 Points)

- Presentation of Business Plan(should cover all the above)
 - PowerPoint presentation
- Marketing Strategies
 - Please provide detailed action
 - Business growth plans
 - Promotions
 - Forecourt activities
- General Business Acumen
 - Reference to be provided.
 - Current business activities

The bidder scoring the highest in the presentation assessment shall be considered for the assignment. Negotiations will start with the bidder scoring the highest marks and if negotiation is not successful, negotiation will start with the next best ranked bidder and so on until an agreement is reached.

Initial _____

Section IV.- Bidding Forms

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Bid Submission Form

The Bidder must prepare the Service Provider’s Bid on stationery with its letterhead clearly showing the Bidder’s complete name and address.

Note: All italicized text is for use in preparing these forms and shall be deleted from the final document.

Date: _____
 Bidder’s Reference No.: _____
 Procurement Reference No.....

To:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 11;
- (b) We offer to execute the *[name and identification number of Contract]* in accordance with the Conditions of Contract, Scope of Service and Performance Specifications, and Activity Schedule accompanying this Bid.
- (c) The total price of our Bid in Namibia Dollars, after discounts offered in item (d) below is:

Amount payable in Namibia Dollars
(i)
(ii)

- (d) The discounts offered and the methodology for their application are: _____;
- (e) Our bid shall be valid for a period of _____ *[insert validity period as specified in ITB 16.1.]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Document;
- (g) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 6;
- (h) We are not participating, as a Bidder in more than one bid in this bidding process.
- (i) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible under the laws of Namibia;
- (j) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;⁵
- (k) We hereby confirm that we have read and understood the content of the Bid Securing Declaration

⁵ Use one of the two options as appropriate.

Initial _____

attached herewith and subscribe fully to the terms and conditions contained therein, if required. We understand that non-compliance to the conditions mentioned may lead to disqualification.

- (l) We understand that this bid, together with your written acceptance thereof included in your Notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (m) Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount in Namibia Dollars	Purpose of Commission or gratuity

(if none, state "none")

- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (o) If awarded the contract, the person named below shall act as Contractor's Representative:

Name:

In the capacity of:

Signed:

Duly authorized to sign the Bid for and on behalf of:

Date:

Seal of Company

Initial _____

Appendix to Bid Submission Form

BID SECURING DECLARATION

(Section 45 of Act)

(Regulation 37(1)(b) and 37(5))

Date:[Day/month/year].....

Procurement Ref No.:

To:[insert complete name of Public Entity and address].....

I/We* understand that in terms of section 45 of the Act a public entity must include in the bidding document the requirement for a declaration as an alternative form of bid security.

I/We* accept that under section 45 of the Act, I/we* may be suspended or disqualified in the event of

- (a) a modification or withdrawal of a bid after the deadline for submission of bids during the period of validity;
- (b) refusal by a bidder to accept a correction of an error appearing on the face of a bid;
- (c) failure to sign a procurement contract in accordance with the terms and conditions set forth in the bidding document, should I/We* be successful bidder; or
- (d) failure to provide security for the performance of the procurement contract if required to do so by the bidding document.

I/We* understand this bid securing declaration ceases to be valid if I am/We are* not the successful Bidder

Signed:
[insert signature of person whose name and capacity are shown]

Capacity of:
[indicate legal capacity of person(s) signing the Bid Securing Declaration]

Name:
[insert complete name of person signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____
[insert date of signing]

Corporate Seal (where appropriate)

[Note*: In case of a joint venture, the bid securing declaration must be in the name of all partners to the joint venture that submits the bid.]

**delete if not applicable / appropriate*

Initial _____



Republic Of Namibia

Ministry of Labour, Industrial Relations and Employment Creation

Witten undertaking in terms of section 138 of the Labour Act, 2015 and section 50(2)(D) of the public procurement act, 2015

1. EMPLOYERS DETAILS

Company Trade Name:.....

Registration Number :.....

Vat Number:

Industry/Sector:

Place of Business:.....

Physical Address:.....

Tell No.:.....

Fax No.:.....

Email Address:.....

Postal Address:.....

Full name of Owner/Accounting Officer:.....

.....

Email Address:.....

Initial _____

2. PROCUREMENT DETAILS

Procurement Reference No.:.....

Procurement Description:

.....

.....

Anticipated Contract Duration:

Location where work will be done, good/services will be delivered:

.....

3. UNDERTAKING

I *[insert full name]*, owner/representative

of *[insert full name of company]*

hereby undertake in writing that my company will at all relevant times comply fully with the relevant provisions of the Labour Act and the Terms and Conditions of Collective Agreements as applicable.

I am fully aware that failure to abide to such shall lead to the action as stipulated in section 138 of the labour Act, 2007, which include but not limited to the cancellation of the contract/licence/grant/permit or concession.

Signature:

Date:

Seal:.....

Please take note:

1. *A labour inspector may conduct unannounced inspections to assess the level of compliance*
2. *This undertaking must be displayed at the workplace where it will be readily accessible and visible by the employees rendering service(s) in relations to the goods and services being procured under this contract.*

Initial _____

Qualification Information

1. Individual Bidders or Individual Members of Joint Ventures

- 1.1 Constitution or legal status of Bidder: *[attach copy]*
 Place of registration: *[insert]*
 Principal place of business: *[insert]*
 Power of attorney or other acceptable document of signatory of Bid: *[attach]*
- 1.2 Total annual volume of Services performed in five years, in the internationally traded currency specified in the BDS: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Service Provider's Equipment proposed for carrying out the Services. List all information requested below. Refer also to ITB Sub-Clause 5.5(c).

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 5.5(e) and GCC Clause 4.1.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

Initial _____

1.6 Proposed subcontracts and firms involved. Refer to GCC Clause 4.1.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

- 1.7 Financial reports for the last three years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITB Clause 4.
- 1.9 Name, address, and telephone and facsimile numbers of banks that may provide references if contacted by the Employer.
- 1.10 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

- 1.11 Statement of compliance with the requirements of ITB Sub-Clause 4.2.
- 1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

2. Joint Ventures

- 2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.
- 2.2 The information in 1.12 above shall be provided for the joint venture.
- 2.3 Attach the power of attorney or other acceptable document of the signatory (ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.
- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

Initial _____

- (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

3. Additional Requirements

- 3.1 Bidders should provide any additional information required in the BDS and to fulfill the requirements of ITB Sub-Clause 5.1, if applicable.

Part II – Activity Schedule

Initial _____

Section V. Activity Schedule

Objectives

The objectives of the Activity Schedule are

- (a) to provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
- (b) when a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

In order to attain these objectives, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible.

Dayworks Schedule

A Daywork Schedule should be included only if the probability of unforeseen work, outside the items included in the Activity Schedule, is high. To facilitate checking by the Employer of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise the following:

- (a) A list of the various classes of Services, labor, materials, and Plant for which basic day work rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Service Provider will be paid for work executed on a day work basis.
- (b) Nominal quantities for each item of Dayworks, to be priced by each Bidder at Dayworks rates as Bid. The rate to be entered by the Bidder against each basic Dayworks item should include the Service Provider's profit, overheads, supervision, and other charges.

Provisional Sums

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other Service Providers (refer to Clause 8 of the Conditions of Contract) should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Employer to select such specialized Service Providers. To provide an element of competition among the bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Service Provider for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Activity Schedule inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing an Activity Schedule are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

PRICED ACTIVITY SCHEDULE

Procurement Reference Number: **NCS/ONB/NC-04/2023**

Currency of Bid: Namibia Dollars

Item No	Brief Description of Services	Quantity	Unit Measure	of	Unit Price	Total Price
A*	B*	C*	D*		E	F
1	Building and equipment rental will be N\$ 25,000.00 excluding vat per month.	N/A	N/A		N/A	N/A
2	Forecourt rental will be 6 cpl on all product based on throughput.	N/A	N/A		N/A	N/A
3	NAMCOR will take 5% of shop merchandise turnover.	N/A	N/A		N/A	N/A
4						
5						
6						
					Other additional costs	
					Subtotal	
					VAT @ %	
					Total	

Enter 0% VAT rate if VAT exempt.

Priced Activity Schedule Authorised By:

Name:		Signature:	
Position:		Date:	
Authorised for and on behalf of:		Company	

Initial _____

Section VI. Scope of Service and Performance Specifications

(Describe Outputs and Performances, rather than Inputs, wherever possible)

Part 1. Background

NAMCOR is a legally enacted entity under the Namibian Companies Act of 1973 with the Government of the Republic of Namibia as the sole shareholder. Under the Petroleum (Exploration and Production) Act of 1991 NAMCOR has the mandate to carry out reconnaissance, exploration and production operations either on its own or in partnership with other organizations in the industry.

The organizations' upstream activities include exploration and production, promotion and maintaining an advisory and regulatory role. NAMCOR plays a major role in the active marketing and promotion of the hydrocarbon potential of the Namibian acreage to local and international oil exploration and production companies.

NAMCOR's main objectives are to secure alternative sources of supply and to establish reliable networks with various suppliers from which products can be sourced. We are also dedicated to the establishment of export markets to contribute revenue through cross-border trade of products through the port of Walvis Bay. NAMCOR is still an active participant in the country's downstream industry, holding a Wholesale License to import 100% of its petroleum product requirements.

Part 2. The Services

The goal of this Project is to appoint a Dealer Operator for the NAMCOR'S OTJIWARONGO Service Station.

NAMCOR therefore seeks a reputable, qualified dealer operator to enter into a Retail Dealer Agreement for the management of a NAMCOR branded multi-fuel service station and convenience store in Otjiwarongo.

Part 3. Submission Requirements

Applicants with the following attributes can apply for the dealership:

- Sufficient start-up capital of N\$2,000,000.00 (this must include wet stock, dry stock, rent and equipment rental).
- Key Deposit of N\$2,000,000.00
- Good standing with the business community will be an advantage.
- Provide a bank guarantee equivalent to a full load of fuel.
- Tertiary Education will be an added advantage.
- A positive credit report from TransUnion which will be executed by NAMCOR.
- Demonstrate a sound financial and management capability.
- The candidate must demonstrate ability to think and manage strategically.
- Be results driven.
- Cash & Non-Cash Transaction Management capability.
- Demonstrate SSHEQ awareness and control skills.
- Sales & Operations Competencies.
- Passionate about Retailing and Franchise management.
- Ability to recruit and motivate people.
- Ability to recognize and reward good performance in the team.
- Constantly deliver operational excellence.
- Knowledge of branding and technical aspects petroleum products.
- Good housekeeping and passion about hygiene standards.
- Has ability to deliver the Customer Value Proposition (CVP).
- Follow defined procedures for transactional controls.

Successful applicants will be shortlisted for interviews.

Part 4. Credit Requirements

The selection of the proposer will be based on a thorough investigation of the proposals submitted in response to this request. A credit check with TransUnion will be performed on the proposer.

Part 5. Mandatory Requirements

1. have a **valid certified copy** of the company Registration Certificate;
2. have an **original valid** good Standing Tax Certificate;
3. have an **original valid** good Standing Social Security Certificate;
4. have a **valid certified copy** of Affirmative Action Compliance Certificate, proof from Employment Equity Commissioner that bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998;
5. An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, where applicable and that it

will abide to sub-clause 6.8 of the General conditions of Contract if it is awarded the contract or part thereof; and;

6. Letter from the bank confirming status of the bank account (i.e. bank code)
7. Business Plan and cash flow projections
8. Personal Balance Sheet
9. Latest audited financial statements

Part 6. Operation Manual

The operation manual will be based on the list below, but is also not limited to the list below:

- 1. Pump attendance**
 - a. Dress code
 - b. Code of conduct
 - c. Fueling operations
 - d. Firefighting training
 - e. Lubricant knowledge
 - f. Safety & health
 - g. Hygiene
- 2. Stock Management**
 - a. Stock ordering process
 - b. Stock replenishments
 - c. Stock reconciliation.
 - d. Claim procedures
 - e. Meter calibrations.
- 3. Housekeeping**
 - a. Waste management
 - b. Effluent control
 - c. Spills
- 4. Branding**
 - a. Advertising process
 - b. Promotional

- c. Do's and don'ts

5. Merchandising

- a. 80/20 principle
- b. Shop layout
- c. Compulsory goods
- d. Housekeeping
- e. Stock rotation
- f. Perishable goods
- g. Cold storage
- h. Etc.

6. Cash flow Management

- a. Banking
- b. Safety
- c. Cash handling

7. Staff Recruitment

- a. Labour act
- b. Wages
- c. Shifts
- d. Working hours
- e. Organogram
- f. Union representation

8. Security

- a. Guard services
- b. Cameras & CCTV
- c. Roles & Responsibilities.
- d. Cash handling and Banking

9. IT system

- a. Win branch system
- b. Monthly reports

- c. Pricing

10. Equipment

- a. Compressor
- b. Generator
- c. Fridges
- d. LPG
- e. Burners
- f. All kitchen appliances.
- g. Air Cons

11. HSEQ

- a. Fist aiders
- b. First aid box
- c. Fire fighting
- d. Emergency response plan
- e. Training
- f. Contaminations

12. Truck deliveries(fuel)

- a. Offloading procedures
- b. Training

13. General

- a. Petroleum Act
- b. Retail license
- c. Principles of the pricing
- d. Legal obligations.

Part 7. Inventory list

Inventory of the equipment installed by NAMCOR at the Premises (Equipment):

1	Description of Items	
1	Computer/Printer & Branch System	Hardware & Branch Software

Initial _____

2	Point of Sale Equipment	Electronic Cash Register
		Front and Back Office Equipment
		Computer Equipment
3	Pump and Dispensing Equipment	Dispenser
		Metering and Submerged Pumps
		Pump Controllers
4	Forecourt Surface and Below	All Surface and Road Works (potholes, tarmac)
		Lane line markings
		Pump Islands
		Pump Bollards
		Electrical Supply
		External Lights
5	Tanks	Tank
		Dip Sticks
		Tank gauges
6	Pumps	Pump Motor
		Meter/Register
		Pump Installations
7	Canopy	Full canopy over pumps
8	Compressor with air gauges on the forecourt	Full system
9	Oil display unit	Namcor Units
10	Wood dispenser	Namcor units
11	Generator	Shop and Forecourt with automatic switch over
12	Bakery Equipment	Full bakery equipment
13	Take away equipment	Full take away equipment
14	Cool Room and Refrigeration Room	Walk in Cool Room and Fridge Room
15	All appropriate counters, display shelves, shop fittings and fridges	
16	Built in Drop Safe	Category 3 Build in drop safe
17	Signage	Flag sign
		Pump crowners
		Welcome sign
		Neo tubing

Part III –Contract

Section VII. General Conditions of Contract

1. This sample contract for the Provision of Services has been prepared for use when hiring firms to provide Services paid on the basis of Time-Based remuneration.

2. Time-Based contracts are used when definition of the quantities to be performed is not certain and may be increased at any time depending on the need, when the commercial risk taken by the Service Provider is minimal, and when therefore such Service Provider/s are prepared to perform the assignment for an agreed predetermined rate. Such price is arrived at on the basis of inputs—including rates—provided by the Service Provider. The Employer agrees to pay the Service Provider according to a schedule of payments linked to the delivery of certain outputs. A major advantage of the time-based contract is the simplicity of its administration, the Employer having the flexibility of increasing the quantities and only to be satisfied with the outputs without monitoring the staff inputs.

3. The Contract includes four parts: the Form of Contract, the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The Employer using this sample contract should not alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.

These notes are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

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Section VII. General Conditions of Contract

A. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder **as specified in SCC**.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “Contract Period” means the period which the Services are required to be provided by the Service Provider as certified by the Employer **as indicated in the SCC**;
- (d) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract **as indicated in the SCC**;
- (e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6.2;
- (f) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (g) “Employer” means the party who employs the Service Provider **as specified in the SCC**
- (h) “GCC” means these General Conditions of Contract;
- (i) “Government” means the Government of the Republic of Namibia;
- (j) “Local Currency” means Namibia Dollars;
- (k) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity **specified in the SCC** to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;
- (l) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;
- (m) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;

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- (n) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (o) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer
- (p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (q) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (r) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (s) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

- 1.2 Applicable Law** The Contract shall be interpreted in accordance with the laws of Namibia.
- 1.3 Language** This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.4 Notices** 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, or facsimile to such Party at the address **specified in the SCC.**
- 1.5 Location** The Services shall be performed at such locations as are specified in **Appendix A**, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Republic of Namibia or elsewhere, as the Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the officials **specified in the SCC.**
- 1.7 Inspection and Audit by the Public Entity** The Service Provider shall permit the Employer to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Employer, if so required by the Latter.
- 1.8 Taxes and Duties** The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

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2. Commencement, Completion, Modification, and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**, no later than 30 days after the notification of award was issued.
- 2.2 Commencement of Services**
- 2.2.1 Program** Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 2.2.2 Starting Date** The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.
- 2.3 Intended Completion Date** Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.10. In this case, the Completion Date will be the date of completion of all activities.
- 2.4 Modification** Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** 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.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfil 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) 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.
- 2.5.3 Extension of Time** 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.
- 2.6 Termination**

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2.6.1 By the Employer The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) "corrupt practice"⁶ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"⁷ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"⁸ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice"⁹ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order

⁶ For the purpose of this Contract, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁷ For the purpose of this Contract, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

⁸ For the purpose of this Contract, "parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁹ For the purpose of this Contract, "party" refers to a participant in the procurement process or contract execution.

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to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

(e) In case the liquidated damage reaches the maximum as per sub-clause 3.10.1.

(f) Notwithstanding the above the Employer may terminate the contract for its convenience after giving a prior notice of 30 days.

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 8 within Sixty (60) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

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- 3.2 Conflict of Interests**
- 3.2.1 Service Provider Not to Benefit from Commissions and Discounts.** The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.
- 3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project** The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
- 3.2.3 Prohibition of Conflicting Activities** Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:
- (a) during the term of this Contract, any business or professional activities in the Republic of Namibia which would conflict with the activities assigned to them under this Contract;
 - (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
 - (c) after the termination of this Contract, such other activities as may be **specified in the SCC**.
- 3.3 Confidentiality** The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.
- 3.4 Assignment** The Service Provider shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the Employer.
- 3.5 Indemnification** The Service Provider shall indemnify, hold and save harmless, and defend, at its own expense, the Employer, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Service Provider, or the Service Provider's employees, officers, agents or sub-contractors, in the

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performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of Employer's liability and Workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this clause do not lapse upon termination of this Contract.

3.6 Insurance to be Taken Out by the Service Provider

- (a) The Service Provider shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (b) The Service Provider shall provide and thereafter maintain all appropriate Employer's Liability and Workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- (c) The Service Provider shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, or other equipment owned or leased by the Service Provider or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- (d) Except for the Employer's Liability and Workmen's compensation insurance, the insurance policies under this clause shall:
 - (i) Name the Employer as additional insured;
 - (ii) Include a waiver of subrogation of the Service Provider's rights to the insurance carrier against the Employer;
 - (iii) Provide that the Employer shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

3.7 Service Provider's Actions Requiring Employer's Prior Approval

The Service Provider shall obtain the Employer's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be **specified in the SCC**.

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- 3.8 Reporting Obligations** The Service Provider shall submit to the Employer the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.9 Documents Prepared by the Service Provider to Be the Property of the Employer** All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.8 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.
- 3.10 Liquidated Damages**
- 3.10.1 Payments of Liquidated Damages** The Service Provider shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.
- 3.10.2 Correction for Over-payment** If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.
- 3.10.3 Lack of performance penalty** If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.
- 3.11 Performance Security** The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Notification of award. The Performance Security shall be issued in an amount and form and by a bank acceptable to the Employer, and denominated in Namibia Dollars. The performance Security shall be valid until a date 30 days from the Completion Date of the Contract.

4. Service Provider's Personnel

- 4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer.

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- 4.2 Removal and/or Replacement of Personnel**
- (a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Employer finds that any of the Personnel have:
- (i) committed serious misconduct or have been charged with having committed a criminal action, or
- (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel,
- then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.
- (c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Employer

- 5.1 Assistance and Exemptions** The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as specified in the SCC.
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix E.

6. Payments to the Service Provider

- 6.1 Time-Based Remuneration** The Service Provider's remuneration shall not exceed the Contract Price rates and shall be subject to the quantities performed as agreed with the purchaser including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

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- 6.2 Contract Price** The price payable in Namibia Dollars is the corrected bid price accepted in terms of the award or the total amount in terms of the Contract Agreement signed by the Parties, whichever is applicable.
- 6.3 Payment for Additional Services, and Performance Incentive Compensation** 6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, an increase in the remuneration may be done by increasing the quantities multiplied by the unit price thereto provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** 6.4 Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee from a bank operating in Namibia for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.
- 6.5 Interest on Delayed Payments** 6.5 If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the SCC.
- 6.6 Price Adjustment** 6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$$
- Where:
- P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.
- A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and
- L_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and L_{oc} is the index prevailing 30 days before Bid opening for labor; both in the specific currency “c”.
- I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 30 days

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before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider’s Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

6.8 Labour Clause

6.8.1 (a) The remuneration and other conditions of work of the employees of the Service Provider shall not be less favourable than those established for work of the same character in the trade concerned-

- (i) by collective agreement applying to a substantial proportion of the employees and employers in the trade concerned;
- (ii) by arbitration awards; or

(b) Where remuneration and conditions of work are not regulated in a manner referred to at (a) above, the rates of the remuneration and other conditions of work shall be not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

6.8.2 No Service Provider shall be entitled to any payment in respect of work performed in the execution of the contract unless he has, together with his claim for payment filed a certificate:

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- (a) showing the rates of remuneration and hours of work of the various categories of employees employed in the execution of the contracts;
- (b) stating whether any remuneration payable in respect of work done is due;
- (c) containing such other information as the Accounting Officer of the Public Entity administering the contract may require to satisfy himself that the provisions under this clause have been complied with.

6.8.3 Where the Accounting Officer of the Public Entity administering the contract is satisfied that remuneration is still due to an employee employed under this contract at the time the claim for payment is filed under subsection 1, he may, unless the remuneration is sooner paid by the Service Provider, arrange for the payment of the remuneration out of the money payable under this contract.

6.8.4 Every Service Provider shall display a copy of this clause of the contract at the place at which the work required by the contract is performed.

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and lack of Performance Penalty

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice of a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.10.3

8. Settlement of Disputes

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- 8.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 8.2 Dispute Settlement**
- 8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 15 days of the notification of disagreement of one party to the other.
- 8.2.2 The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- 8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 30 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 30 days, the Adjudicator's decision will be final and binding.
- 8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.
- 8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 15 days of receipt of such request.

Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is to be agreed upon
1.1(c)	The Contract Period is: a period of 5 years
1.1(d)	The contract name is: Retail Dealer Agreement
1.1(g)	The Employer is: The National Petroleum Corporation of Namibia Pty Ltd (NAMCOR)
1.1(k)	The Member in Charge is: to be agreed upon
1.4	<p>The addresses for delivery of notices are:</p> <p>Employer: The National Petroleum Corporation of Namibia Pty Ltd</p> <p>Attention: The Procurement Management Unit</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Employer: Mr. Immanuel Mulunga (Managing Director)</p> <p>For the Service Provider: _____</p>
2.1	The date on which this Contract shall come into effect is: to be agreed upon
2.2.2	The Intended Starting Date for the commencement of Services is: to be agreed upon
2.3	The Intended Completion Date is 5 years from the intended commencement date of the contract.
2.5.1.	Public Entity to define is considered as extreme conditions: Not applicable
3.2.3	Activities prohibited after termination of this Contract are: Not applicable
3.7(d)	
3.9	Restrictions on the use of documents prepared by the Service Provider are: Not applicable

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<p>3.10.1</p>	<p>The liquidated damages rate is 1% per week</p> <p>The maximum amount of liquidated damages for the whole contract is 5 percentage of Contract price.</p>
<p>3.10.3</p>	<p>The percentage <i>[of the cost of having a Defect corrected]</i> to be used for the calculation of Lack of performance Penalty/(ies) is <i>[insert percentage]</i></p> <p>The Defects Liability Period is: not applicable</p>
<p>5.1</p>	<p>The assistance and exemptions provided to the Service Provider are: Not applicable</p>
<p>6.4</p>	<p>Payments shall be made according to the following schedule:</p> <p><i>[Note: (a) the following instalments are indicative only; (b) “commencement date” may be replaced with “date of effectiveness;” and (e) if applicable, detail further the nature of the report evidencing performance, as may be required] .</i></p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee from a bank operating in Namibia for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the Employer, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <ul style="list-style-type: none"> ➤ _____ (indicate milestone and/or percentage) _____ ➤ _____ (indicate milestone and/or percentage) _____ and ➤ _____ (indicate milestone and/or percentage) _____ <p>Should the certification not be provided, or refused in writing by the employer within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.
<p>6.5</p>	<p>Payment shall be made within <i>[number]</i> days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within <i>[number]</i> days in the case of the final payment.</p> <p><i>[Note: specify, e.g., “thirty (30) days,” and, in the case of the last payment, “sixty (60) days.”]</i></p> <p>The interest rate is market related rate from commercial banks.</p>
<p>6.6.1</p>	<p>Price adjustment is <i>[(to be applied) or {not to be applied}]</i> in accordance with Sub-Clause 6.6.</p>

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	<p>The coefficients for adjustment of prices are <i>[The sum of the two coefficients A_c, B_c and C_c should be 1 (one) in the following formula].:</i></p> <p>A_L is <i>[insert value]</i></p> <p>B_L is <i>[insert value]</i></p> <p>C_L is <i>[insert value]</i></p> <p>L_{mc} and L_{oc} are the index for Labor from <i>[insert source of Labuor index]</i></p> <p>I_{mc} and I_{oc} are the index for <i>[insert input]</i> from <i>[insert source]</i></p>
7.1	<p>The procedures for inspection of the Services by the Employer are as follows: <i>[insert]</i></p> <p>The Defects Liability Period is <i>[insert definition of /end date]</i>.</p>
8.2.3	<p>The Adjudicator is <i>[insert name]</i> who will be paid a rate of <i>[insert amount and currency]</i> per hour of work. The following reimbursable expenses are recognized: <i>[list expenses]</i>.</p> <p>Not Applicable</p> <p>Notes:</p> <p><i>(1) If the Service Provider is a citizen of or a firm incorporated in Namibia and for small contracts insert [“Delete Clause 8.2. If the matter is not settled amicably by the parties the diligent party may submit the dispute for adjudication before the competent court of Namibia.”]</i></p> <p><i>(2) For larger contracts and contracts that are likely to be awarded to international contractors, insert [“Delete Clause 8.2. If the matter is not settled amicably the dispute shall be referred to:(choose as appropriate)</i></p> <p><i>either (a) Arbitration as per the Laws of Namibia, or</i></p>
8.2.4	<p>The arbitration procedures of the following institutions will be used:</p> <p><i>Following notice of intention to commence arbitration issued by either party an Arbitrator shall be appointed by both parties to the dispute or in any case of disagreement, by an Arbitrator to be appointed by a judge in Chambers of Namibia. The Arbitrator fees will be borne by the losing party. Any decision of the Arbitrator shall be final and binding to both parties”.</i></p>
8.2.5	<p>The designated Appointing Authority for a new Adjudicator is: to be agreed upon</p>

Section IX. Contract Forms

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Bank Guarantee for Advance Payment

To: _____

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 6.4 (“Terms and Conditions of Payment”) of the above-mentioned Contract, _____ (hereinafter called “the Service Provider”) shall deposit with _____ a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of _____

We, the _____, as instructed by the Service Provider, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ on his first demand without whatsoever right of objection on our part and without his first claim to the Service Provider, in the amount not exceeding _____

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed there under or of any of the Contract documents which may be made between _____ and the Service Provider, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ receives full repayment of the same amount from the Service Provider.

Yours truly,

Signature and seal: _____

Name of Bank: _____

Address: _____

Date: _____

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APPENDIX TO CONTRACT

PERFORMANCE SECURITY (BANK GUARANTEE)

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year) of Bid Submission]*

Procurement Reference No. and title: *[insert no. and title of bidding process]*

Bank’s Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of goods and related services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)¹⁰ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,¹¹ and any demand for payment under it must be received by us at this office on or before that date.

.....**Bank’s seal and authorized signature(s)**

¹⁰ The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, in the currency of the Contract.

¹¹ Dates established in accordance with Clause 18.4 of the General Conditions of Contract (“GCC”), taking into account any warranty obligations of the Supplier under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: “We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Purchaser’s written request for such extension, such request to be presented to us before the expiry of the Guarantee.”

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Form of Contract

TIME-BASE REMUNERATION

This CONTRACT (hereinafter called the “Contract”) is made the [day] day of the month of [month], [year], between, on the one hand, [name of Employer] (hereinafter called the “Employer”) and, on the other hand, [name of Service Provider] (hereinafter called the “Service Provider”).

[*Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Employer”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Employer for all the Service Provider’s obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (hereinafter called the “Service Provider”).*]

WHEREAS

- (a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Service Provider, having represented to the Employer that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of..... at a rate of N\$ per unit;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

- (a) the Notification of award;
- (b) the Service Provider’s Bid
- (c) the Special Conditions of Contract;
- (d) the General Conditions of Contract;
- (e) the Scope of Service and Performance Specifications;
- (f) the Priced Activity Schedule; and
- (g) The following Appendices:

[*Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Local Currency

Appendix E: Services and Facilities Provided by the Employer

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- 2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:
 - (a) the Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Employer]*

[Authorized Representative]

For and on behalf of *[name of Service Provider]*

[Authorized Representative]

[Note: *If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

[name of member]

[Authorized Representative]

[name of member]

[Authorized Representative]

Part III –Contract

Section VII. General Conditions of Contract



RETAIL DEALER AGREEMENT

This Agreement is made and entered into by and between:

NAMCOR PETROLEUM TRADING AND DISTRIBUTION (PTY) LTD a Company incorporated under the laws of the Republic of Namibia with registration number 2000/421, herein represented by Immanuel Mulunga in his capacity as Managing Director duly authorised thereto,

having its registered office at **Petroleum House,
1 Aviation Road,
Windhoek**
(hereinafter referred to as ‘**NAMCOR**‘ which expression shall include its successors and assigns)

and

(**Insert Name**.....incorporated under the laws of the Republic of Namibia with registration number Reg. No. Insert....., herein represented by in his capacity as Managing Member duly authorised thereto,

having its registered office at No.

(hereinafter called ‘the Retailer / **Dealer**‘)

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2. Scope of the Agreement
3. Suspensive Conditions
4. Commencement and Duration
5. Equipment, RVI and Advertising Material
6. Minimum Monthly Quantities
7. Products and Selling Price
8. Dealers Margin
9. Rebates, Royalties, Franchise Fees and Equipment Rental
10. Operation and Conduct of Business
11. Retailer Dealer
12. Maintenance
13. Rates and Taxes
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16. Additional Obligations of the Dealer
17. Insurances and Indemnity
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21. Termination
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28. Integration, Variation and Waiver

Schedules:

1. Schedule 1: Description and Situation of **Business and Premises**
2. Schedule 2: Description of **Dealer Items and Equipment;**
3. Schedule 3: Description of Nature and Quantity of **Products** Supplied to Dealer;
4. Schedule 4: **Prices** for Purchase of Products and **Payment Terms;**
5. Schedule 5: **Operating Procedures Manual.**

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Whereas :

- A. NAMCOR imports, purchases, blends, stores, distributes and markets petroleum products;
- B. NAMCOR is the Lessor of the **Premises**;
- C. The Dealer wishes to conduct the **Business** on the **Premises**;
- D. NAMCOR has agreed to appoint the Dealer and the Dealer has agreed to accept the appointment to conduct the **Business** on the **Premises** on the terms and conditions specified hereinafter.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. DEFINITIONS

- 1.1 In this agreement, except to the extent to which the context may indicate a contrary intention, each of the following words and phrases shall have the meaning ascribed thereto below in this clause:
 - 1.1.1 “**Agreement**” means this Retail Dealer Agreement together with any Schedules and Annexures referred to herein as amended or substituted from time to time;
 - 1.1.2 “**Business**” shall mean the business of selling and marketing NAMCOR’s **Products** at the **Premises** as NAMCOR may from time to time nominate and also rendering such other activities and services as are commonly rendered at service stations, including but not limited to a Convenience Store, Fast Food facility, carwash and/or lube bay facilities and as NAMCOR may decide upon from time to time, and described in **Schedule 1** hereof.
 - 1.1.3 “**Business Day**” shall mean any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of Namibia.
 - 1.1.4 “**Commencement Date**” shall, notwithstanding the Signature Date, mean the first date of the month immediately succeeding the Development Completion Date;
 - 1.1.5 “**Convenience store**” shall mean, if any, the shop at the **Premises** (by whatever name it may be called, including by way of example, but not limited to and whether similar or not to, an industry convenience store), showroom, kiosk or similar facility (but not a **Fast Food Facility**), retailing, *inter alia*, general goods and merchandise.

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- 1.1.6 “**Dealer**” shall mean ‘..... in respect of which is the Managing Member and holds 100% interest;
- 1.1.7 “**Dealer Items**” shall mean those items of equipment belonging to the Dealer and as listed in **Schedule 2** hereof.
- 1.1.8 “**Depot**” shall mean the petroleum storage facility referred to in **Schedule 1** hereof.
- 1.1.9 “**Development**” shall mean the service station facility comprising the buildings and other improvements erected or to be erected or constructed on the **Premises** for purposes of the **Business** including the **Dealer Items** and the **Equipment**.
- 1.1.10 “**Development Completion Date**” shall mean the completion date of the construction of the Development defined above in Clause 1.1.9;
- 1.1.11 “**Diesel**” shall mean a distillate oil which can be used as fuel for the operation of a compression ignition engine and as defined in terms of the Petroleum Regulations;
- 1.1.12 “**Environmental Law**” shall mean all applicable laws (including, for the avoidance of doubt, common law), statutes, regulations, statutory guidance notes, duties of care and final and binding court and other tribunal decisions of any relevant jurisdiction in force and binding on NAMCOR and/or the Dealer and/or relating to the Business whose purpose is to protect, or prevent pollution or degradation of the environment, promote sustainable development practices, protect human health or to regulate emissions, discharges, or releases of Hazardous Substances into the Environment, or to regulate the use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances, prevention of air pollution by noxious or offensive gases, smoke or dust, and all by-laws, codes, regulations, permit conditions, notices, directives or orders issued or promulgated or approved thereunder to the extent that the same have force of law and are binding on NAMCOR and/or the Dealer and/or the Business.
- 1.1.13 “**Equipment**” shall mean the equipment belonging to NAMCOR as per as per NAMCOR’s asset register and internal records which shall be deemed as sufficient proof of the loan or installation of the **Equipment** by NAMCOR in terms of this Agreement. “**Equipment**” shall mean any receiving, storage and dispensing **Equipment** for bulk and packaged **Products**, which may include, but not necessarily restricted to storage tanks and containers, pumps, meters, dispensers, ancillary piping, signage, etc., provided free on loan by NAMCOR to the Dealer, and which is described in **Schedule 2** hereof;

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- 1.1.14 “**Fast Food Facility**” shall mean, if any, the fast food facility on the **Premises**, retailing *inter alia*, meals, beverages, take-away meals, bakery items, confectionery items and the like.
- 1.1.15 “**Fuel**” shall mean Petrol and Diesel in accordance with the gazetted specifications by the Ministry of Mines and Energy;
- 1.1.16 “**Hazardous Substances**” shall mean a natural or artificial substance, organism, preparation or article which (alone or combined with another substance, organism, preparation or article) is or may be harmful to the environment or a living organism, or which is prohibited or restricted under Environmental Law (including, without limitation, asbestos, lead and waste);
- 1.1.17 “**Operating Procedures Manual**” means the manuals and other documents containing the procedures and standards applicable to the business conducted by the Dealer on the Premises.
- 1.1.18 “**Parties**” shall mean NAMCOR and the Dealer and “**Party**” shall mean any one of them, as the context may indicate.
- 1.1.19 “**Petrol**” shall mean a light distillate fuel which can be used as fuel for the operation of a spark ignition and as defined in terms of the Petroleum Regulations;
- 1.1.20 “**Petroleum Products Act**” shall mean the Petroleum Products and Energy Act, No. 13 of 1990;
- 1.1.21 “**Petroleum Regulations**” shall mean the regulations that are issued in terms of the Petroleum Products Act;
- 1.1.22 “**Premises**” shall mean the service station premises that is described in **Schedule 1** hereof, together with all buildings and improvements erected or to be erected thereon, the **Dealer Items** and the **Equipment**;
- 1.1.23 “**Products**” shall mean any Fuel and any petroleum products other than Fuel, including liquid petroleum gas, automotive diesel oil, oils, greases or other lubricants manufactured or marketed by NAMCOR to be used for automotive purposes including any such other products manufactured or marketed by NAMCOR for automotive use;
- 1.1.24 “**Property**” Portion of land as depicted, Otjiwarongo Retail service station.
- 1.1.25 “**Retailer/Dealer**” shall mean registered in Namibia and incorporated in terms of the applicable laws in Namibia with registration number, and situated at No. herein represented by

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- 1.1.26 “**RVI**” means: NAMCOR’s Retail Visual Imagery; and
- 1.1.27 “**Trade Mark**” shall mean any trade name or trade or service mark, corporate image, brand or other intangible right of NAMCOR used or owned by NAMCOR whether or not registered.
- 1.2 In this Agreement:
 - 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
 - 1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
 - 1.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
 - 1.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
 - 1.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
 - 1.2.6 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Schedule, Annexure, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
 - 1.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
 - 1.2.8 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
 - 1.2.9 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which

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of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

- 1.2.10 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (ie the *contra proferentem* rule), shall not apply.

2. SCOPE OF THE AGREEMENT

- 2.1. NAMCOR hereby appoints the Dealer who hereby accepts the appointment to market and sell the **Products** of NAMCOR at the **Premises** subject to the terms and conditions herein contained.

- 2.2. NAMCOR, at its own cost, has constructed or shall construct the **Development**.

3. SUSPENSIVE CONDITIONS

- 3.1. This Agreement is subject to the fulfilment of the following conditions to NAMCOR's satisfaction within 120 days of signature hereof or within such extended period approved by NAMCOR in writing, as may be reasonable in the circumstances to procure fulfilment of such conditions:

- 3.1.1 NAMCOR is in possession of a valid lease in respect of the Property;
- 3.1.2 a product servitude in favour of NAMCOR to be registered over the service station property lasting for a period which equals or exceeds the duration of the proposed agreement;
- 3.1.3 a general right of way servitude over the entire service station property to enable free access to the service station;
- 3.1.4 that no onerous conditions of title restrict the development of the improvements, and/or the operation of the business/es on the Premises;
- 3.1.5 that the required site and retail licenses required in terms of the Petroleum Products and Energy Act 1990 and Petroleum Products Regulations (2000) by the Ministry of Mines and Energy have been obtained;
- 3.1.6 that the relevant authorities approve suitable entrances to and exits from the premises, in accordance with NAMCOR requirements;
- 3.1.7 that all necessary zoning and trading licenses required in order to conduct the business of a service station, a convenience store on the premises, are approved by the relevant authorities;
- 3.1.8 that the necessary building plan approvals of improvements are obtained from the relevant authority;

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- 3.1.9 that the bulk and coverage requirements, as permitted by the relevant authority, are sufficient to make the development of the improvements on the premises viable;
- 3.1.10 that an environmental scoping report and/or environmental impact assessment are commissioned and the relevant and appropriate official approvals, authorizations or the like under and in terms of the Environmental Management Act, 2007 (Act 7 of 2007), and the Environmental Impact Assessment Regulations as per Government Notice 30 of 2011 (Government Gazette 4878) which came into force on date of publication: 6 February 2012 are obtained;
- 3.1.11 that bulk and other services including roads, drainage, electricity and sewerage, re installed or secured to NAMCOR's satisfaction up to the boundary of the Premises and are of a quality adequate to support the operation of the improvements ;

3.2 NAMCOR, as the wholesaler, and the Dealer, as the operator, undertake to co-operate with each other to do all things, which may be reasonably necessary in order to procure fulfilments of the conditions referred to in paragraph 3.1.1 to 3.1.11.

4. COMMENCEMENT AND DURATION

- 4.1 This Agreement shall commence on the **Commencement Date** and shall continue thereafter for a period of 9 (**Nine**) years unless terminated earlier due to non-fulfilment of the conditions contained in **clause 3** hereof.
- 4.2 NAMCOR shall be entitled to extend this Agreement for a further period of 5 (five) years , upon having given the Dealer notice of its intention so to renew this Agreement at least 3 (three) months prior to termination of this Agreement and any subsequent renewal period.
- 4.3 The terms and conditions of such extended Agreement shall be the same as those contained in this document, including any escalation of amounts as stipulated herein.

5. EQUIPMENT, RVI AND ADVERTISING MATERIAL

- 5.1 NAMCOR shall supply to the Dealer the **Equipment** for the stocking and sale of **Products** and Dealer will permit NAMCOR to have access to the **Equipment** at all reasonable times and for any purpose.
- 5.2. NAMCOR shall install the **Equipment** free of charge and it is understood that the **Equipment** is loaned to the Dealer during the duration of this Agreement until its termination for whatever reasons. Upon termination of this Agreement NAMCOR shall be entitled to enter upon the **Premises** and to remove the

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Equipment, subject to and in compliance with all applicable statutory and rehabilitation requirements without being liable in damages.

- 5.3 NAMCOR shall have the sole right to determine the quantity and situation of the necessary **Equipment** and only NAMCOR shall be allowed at its sole discretion to install, replace, re-locate, renovate, repair and remove the **Equipment**. Namcor shall bear all the costs and accepts full liability in relation to the installation, replacement, re-location, renovation, reparation and removal of the **Equipment**.
- 5.4. The **Equipment** shall be used solely for the storage, display and dispensing of the **Products** and the Dealer shall procure at the commencement of this Agreement the immediate removal of all similar equipment installed at the **Premises** which is not NAMCOR's property.
- 5.5. The Dealer undertakes that in the event of any **Equipment** being damaged by any third party, to obtain the name and address of the said third party and the number of his vehicle if applicable and report the incident to the local police. In default of such action the Dealer shall bear the cost to repair any damage to the **Equipment**.
- 5.6. The **Equipment** including any replacements shall remain the property of NAMCOR and the Dealer shall not allow any item thereof to be subject to seizure or lien by operation of law contrary to the interest of NAMCOR. In the event of any such seizure, lien deterioration or destruction the Dealer shall immediately give written notice to NAMCOR. The Dealer undertakes not to charge or mortgage the said **Equipment** or the **Products** to any Bank, financial institution, body or person under any circumstances.
- 5.7. NAMCOR shall debit the Dealer with the cost of repairs thereto in the event of such repairs being caused by reasons of the Dealer's or his staff's wilful neglect or negligent handling of the **Equipment**.
- 5.8. The Dealer undertakes not to make any claim either financially or for replacement of **Products** in the event of him suffering any loss as result of any **Equipment** supplied by NAMCOR becoming defective unless due notice in writing of such defect has been delivered to NAMCOR and NAMCOR has failed within a reasonable time to remedy such defect.
- 5.9. The Dealer undertakes that in the event of him making any unfounded complaint regarding the **Equipment** supplied by NAMCOR and such complaint is found to be unsubstantiated after investigation by NAMCOR then he shall pay to NAMCOR forthwith the full cost of carrying out the necessary investigation of such complaint.

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- 5.10. NAMCOR shall be entitled and the Dealer shall permit NAMCOR free of charge at all times to display and exhibit upon and about the **Premises** such advertisements, advertising material and advertising signs relating to NAMCOR petroleum **Products**, and such emblems and tokens relating to NAMCOR name and **Trade Mark**, as NAMCOR may in its sole discretion decide upon.
- 5.11. The Dealer shall not permit or allow to be exhibited any other advertisements or signs on the **Premises** without the prior written approval of NAMCOR being obtained for each and every such other advertisement or sign.
- 5.12. The Dealer shall have no claim against NAMCOR arising from or as a result of any business being conducted on the **Premises** being disrupted as a result of the maintenance of the **Equipment** or advertising signs being undertaken.
- 5.13. The Dealer shall at its own cost install the **Dealer Items** on the **Premises** and shall ensure that it remains in a good working order and condition and shall maintain, re-locate, repair and replace the **Dealer Items** when necessary or when requested by NAMCOR in writing.
- 5.14 NAMCOR will continue to own, maintain, adapt, upgrade and renew the equipment and RVI as may be required.
- 5.15 At the commencement of this Agreement NAMCOR will install the following equipment and related works at the premises, which shall include but not limited to:
- installation and supply of latest technology pumps and underground tanks;
 - installation of a compressor with air gauges on the forecourt;
 - installation of a generator with automatic switch over;
 - installation and supply of all bakery equipment;
 - installation and supply of all take away equipment;
 - all appropriate counters, display shelves, shop fittings and fridges;
 - One cool room and one refrigerating room;
 - Supply and installation of water tanks with a minimum capacity of 10 000 liters;
 - Computer and Printer with Winbranck System;
 - Build-in dropsafe;
 - cast concrete under the canopy, over the tank farm and filler points;
 - create spill containment;
 - the supply and installation of NAMCOR's trademark signs and imaging to the Deli Express Store trademark signs and imaging to the building;

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- supply and installation of CCTV and Point of Sale solution;
- construction of the Deli Express convenience store, inclusive of air-conditioning, stipulated floor tiles, ceiling, lighting, rear loading fridges, shop fitting, carpentry, glazing, safes, demarcated power points, shop fitting, points of sale systems, computers and related equipment;
- canopy installation;
- ingress and egress roads construction to the service station property;
- all necessary road works to be completed before the opening of the service station;
- landscaping

5.16 NAMCOR will ensure that the RVI remains current and will be responsible for any large RVI upgrade and or modernization;

6. MINIMUM MONTHLY QUANTITIES

6.1. During the continuance of this Agreement the Dealer undertakes to purchase from NAMCOR and to sell at the **Premises** minimum monthly quantities (“**MMQ**”) of the **Products** as stipulated from time to time in **Schedule 3** hereof which shall be determined by NAMCOR by reference to the potential and classification of the **Premises**;

6.2. Provided that such MMQ may be varied at periodically by NAMCOR giving 2 (two) months prior written notice to the Dealer of its intention to so vary the minimum monthly quantities and the motivation why such variation is required.

6.3 The Dealer will be afforded the opportunity to make representations within the two months’ notice period and NAMCOR may then, having due regard to any representations by the Dealer, forthwith increase or decrease the MMQ.

7. PRODUCTS AND SELLING PRICE

7.1. The Dealer shall purchase the **Products** exclusively from NAMCOR and NAMCOR shall sell to the Dealer at the relevant prices contained in the published gazette price in force at the date of delivery by NAMCOR in terms of clause 7.11 at the Premises.

7.2 In instances where NAMCOR is unable to supply Products to the Dealer within the agreed time frame due to inability to source Products, the Dealer shall be permitted to purchase such Products from other sources, provided the prior consent of NAMCOR has been obtained, which consent shall not be unreasonably be withheld.

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- 7.3. The Dealer shall sell the **Products** in the same state in which they are delivered to him by NAMCOR at the **Depot** or at the **Premises** and shall not adulterate, mix or dilute them with any other product or matter nor misrepresent one product as being another and furthermore the Dealer shall not alter, remove or interfere with any distinguishing marks or numbers on any containers supplied by NAMCOR. NAMCOR may terminate this Agreement forthwith upon discovery of any such an event and any such adulterated, mixed or diluted products shall be liable to confiscation by NAMCOR without any compensation to the Dealer.
- 7.4. NAMCOR shall not be liable to pay any compensation, once the **Products** have been delivered by NAMCOR into the underground tanks at the **Premises**, with respect but not limited to any loss of product due to contamination, evaporation, inappropriate handling or storage of the dispensing or storage **Equipment**.
- 7.5. The risk in the **Products** sold by NAMCOR to the Dealer shall pass to the Dealer upon delivery by NAMCOR as contemplated in clause 7.11 into the tanks at the **Premises**, and from which moment the Dealer shall assume all liability, irrespective of when payment for such **Products** is made.
- 7.6. The Dealer shall maintain adequate stock of **Products** at the **Premises** at all times in order to ensure sufficient availability of the **Products** to the buying public, and NAMCOR shall be at liberty to stipulate minimum quantities per product for delivery at any one time.
- 7.7. The Dealer may sell such goods, products and merchandise as may be approved in writing by NAMCOR from time to time, which approval NAMCOR may make conditional, or withdraw on written notice to the Dealer of 7 (seven) Business Days at any time should the sale of said items interfere with the **Business**, or does not comply with NAMCOR's instructions, policies, procedures and standards, which may be amended from time to time at NAMCOR's sole discretion.
- 7.8. The Dealer shall sell the said goods, products and merchandise except those in the convenience store as may be approved in writing by NAMCOR from time to time, at the non-binding recommended markup, and NAMCOR is entitled to set maximum markups, at which the Dealer is required to sell the goods, products and merchandise, as are set out by NAMCOR in writing (the "**Selling Price**") in **Schedule 4** hereof, provided that NAMCOR may change the recommended markup from time to time, by giving 30 calendar days' written notice to this effect and further provided that the Dealer will adhere to any prices as specified by the law applicable to such product(s). If any product, or any document or thing relating to any product, bears a **Selling Price**, the Dealer is obliged to have the words "recommended price" appear next to the price so affixed or applied.

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- 7.9 In a regulated market the Product prices are susceptible to variations and it shall be adjusted at the time and date and to the prices as set by the Ministry of Mines and Energy.
- 7.10 In a deregulated market, when determining the selling price to the public, the overall interest of both NAMCOR and the Dealer as well as the competitiveness of the **Business** shall be taken into consideration.
- 7.11 Notwithstanding any other provision of this Agreement, NAMCOR shall deliver the **Products** purchased by the Dealer to the **Premises**.

8. DEALERS MARGIN

In consideration of the Dealer marketing the **Products** in accordance with this Agreement, the Dealer shall be entitled to a retail margin ("**The Dealer Margin**"), which shall be the difference between the relevant prices set out in NAMCOR's Wholesale Price Schedule in force at the date of delivery and the Selling Price to the public as determined by the Minister of Mines and Energy in terms of section 2(1)(c) of the Petroleum Products and Energy Act.

9. REBATES, ROYALTIES, FRANCHISE FEES AND EQUIPMENT RENTAL

- 9.1. The rebates granted to the Dealer as set out above are being granted in a regulated fuel industry environment and market. NAMCOR and the Dealer are mindful and cognisant of the fact that such environment may undergo substantial changes at any given time, including but not limited to deregulation, which changes could impact on the financial viability of both parties. In this regard, the Parties reserve the right to negotiate the adjustment of the rebates reflected above from time to time in a fair and reasonable consultation process with each other, in order to reflect any market developments and/or to adjust the price to any changes in taxes, levies, duties, fees and charges.
- 9.2 Any rebates shall only become due and payable once all the formal agreements have been signed by all the parties;
- 9.3 The Dealer shall pay a Forecourt rental of 4cpl of the dealer margin on the monthly sales volumes of ULP'95 Ado 50ppm and other fuel Grade introduced by Namibian Petroleum act;
- 9.4 The Dealer shall pay the building rental of N\$ 30,000.00 office, storeroom, pump attendance room equipment etc;

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9.5 The said rental stipulated in Clause 9.4 shall escalate with 8% after every 12 calendar months of operation;

10. OPERATION AND CONDUCT OF THE BUSINESS

The Dealer shall during the currency of this Agreement conduct the Business on the Premises in accordance with the requirements of the Operating Procedures Manual, and in any event be obliged to:

- 10.1 Only store, handle, sell or use such petroleum **Products** as supplied by NAMCOR.
- 10.2 Keep the **Premises** open and conduct the **Business** therefrom for such hours during the day and night (Sundays and Public Holidays included) as the Parties may determine by agreement from time to time.
- 10.3 Ensure that access to the pumps is unrestricted and that the pumps are clearly visible from the adjoining streets, and not permit any vehicle, other than those in the course of receiving or awaiting service from the pumps, to park in such a manner as to restrict access to the pumps or the area defined as the forecourt, ingress and egress areas.
- 10.4 Ensure that only NAMCOR grades of lubricants are available and displayed on the forecourt area at all times using the forecourt display units provided by NAMCOR.
- 10.5 Display in accordance with the instructions of NAMCOR such publicity and advertising material supplied by NAMCOR as NAMCOR shall from time to time decide and ensure that during the hours of darkness the driveway and advertising signs are fully illuminated.
- 10.6 Accept and carry out all proper instructions given by NAMCOR for the improvement of the services offered by the Dealer to its customers, when in the opinion of NAMCOR, such instructions should result in the increased sale of NAMCOR's **Products** or enhancement of its image and reputation.
- 10.7 Conduct the **Business** in a proper and business-like manner and adopt such sales strategies and procedures as may be determined by NAMCOR from time-to-time.
- 10.8 Ensure that the driveway is at all times adequately staffed with driveway attendants properly trained and efficient in executing driveway functions and duties.

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- 10.9 Provide his driveway attendants with uniforms, shoes and caps approved by NAMCOR and at the Dealer's cost and shall ensure that such uniforms, shoes and caps are maintained in clean and tidy condition, and worn continuously by such attendants when on duty, and replaced when necessary.

- 10.10 Maintain a high standard of driveway service of which NAMCOR shall be the sole judge.

- 10.11 Be responsible for the day-to-day appearance of the **Premises** which shall be maintained to the standards and satisfaction of NAMCOR and at the Dealer's cost. In particular without prejudice to the foregoing he will ensure:
 - 10.11.1 the general cleanliness of the **Premises**, and at his own cost keeps the drains, sewerage and plumbing installation clean and free from obstruction;
 - 10.11.2 all bulbs, neon lights, are kept in good working order or replaced;
 - 10.11.3 all toilets and washing facilities are kept in good working order and in sanitary condition, which shall include the provision of clean towels, soap and toilet rolls at the Dealer's cost;
 - 10.11.4 that the driveway and pump area of the **Premises** are kept clear of all parked vehicles and also that all rubbish and unsightly scrap are removed from the **Premises** at the Dealer's cost.

- 10.12 Solely be responsible for ensuring that each product is delivered into the correct tank or compartment and that the procedures and standards as stipulated from time to time by NAMCOR for the receipt, calculation and determination of the quantity and quality of product received, are complied with. NAMCOR shall not be liable should any of the foregoing obligations not be adhered to at any time, and for any wrong quantity or kind of Product delivered to the Dealer.

- 10.13 Be solely responsible for all running, cleaning, administrative and other expenses of the **Business** of whatsoever nature or kind the same may be and undertakes to pay the same promptly.

- 10.14 Be responsible for the safe keeping of all NAMCOR's **Equipment** on the **Premises** and shall not either by himself, his agents or persons authorised by him, tamper with pump meters, or any of the **Equipment** at the **Premises**.

- 10.15 Cause the underground fuel tanks to be dipped daily to determine stock levels and the presence of water in the tanks.

- 10.16 At the Dealers's discretion provide facilities for the use of all credit and debit cards (where such cards are used in general commerce), on the **Premises** and shall supply to the holder of such cards petroleum products as they may require, provided that the transactions will be done at no additional costs to the Dealer and in

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accordance with the regulations for the sale of fuel. The Dealer will adhere to all regulations and procedures determined by the credit card companies, banks and NAMCOR to prevent fraud and losses.

- 10.17 Ensure that a responsible member of his staff is appointed to act on his behalf during his absence from the **Premises** and such responsible member shall be fully trained and shall have full authority to sign any delivery note relating to delivery of **Products** by NAMCOR to the **Premises**.
- 10.18 Comply with the operating manuals, procedures, standards and directives of NAMCOR as amended from time to time with regard to the **Business** undertaken by the Dealer at the **Premises**.
- 10.19 Comply with and ensure that his employees at all times comply with and adhere to NAMCOR's policy on Health, Safety and Environment and observe all statutory provisions and safety and other regulations regarding the sale of petroleum fuels, goods and services at the **Premises**.
- 10.20 Maintain proper fire-fighting equipment on the **Premises** and in a good working condition, which type and make of **Equipment** and materials shall comply with NAMCOR's standards.

11. RETAILER/DEALER

- 11.1 NAMCOR appoints the Retailer/Dealer subject to but not limited to the following conditions:
 - Demonstrate a sound financial and management capability
 - HSSE awareness and control skills
 - Sale and Operation competencies
 - The Retailer adheres to the terms and conditions outlined in the credit agreement, if credit facilities are required.

12. MAINTENANCE

NAMCOR shall maintain the entire internal and external structure, external works, electrical wiring, sanitary and other waterworks of the Property and the Dealer the landscaping. NAMCOR will maintain, upgrade and replace, when necessary, the fuel storage and dispensing equipment and the related convenience store equipment.

13. RATES AND TAXES

The Dealer shall be responsible for all the rates and taxes in respect of the property.

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14. IMPROVEMENTS

- 14.1 NAMCOR shall construct the convenience store in accordance with plans and specifications approved by all relevant local and other authorities;
- 14.2 NAMCOR shall bear the cost of construction of all improvements;
- 14.3 NAMCOR shall appoint all consultants, including the architect, the building contractor and other professional necessary to effect the construction of the improvements and shall bear all costs in relation thereto.
- 14.4 NAMCOR shall install on the premises, at its cost, any new equipment, which equipment shall at all times remain the property of NAMCOR. NAMCOR shall have the right to replace, modernise, adapt, re-site or otherwise deal with the equipment at all times during the period of the Agreement;
- 14.5 NAMCOR at its own cost and discretion shall install and maintain RVI in accordance with NAMCOR RVI specifications;

15. RECORDS, ACCOUNTS AND PAYMENT

- 15.1 The Dealer shall maintain at the **Premises** proper and up-to-date records of his supplies, sales, stocks and customers on forms approved by NAMCOR for this purpose and the forms shall be completed by the Dealer in accordance with NAMCOR’s instructions and shall constitute the **Premises’** records and accounts.
- 15.2 Such records and accounts shall be made available at all times to duly authorised representatives of NAMCOR who shall be entitled to take extracts therefrom and make copies thereof and call upon the Dealer to supply such additional information as NAMCOR may require.
- 15.3 The Dealer shall purchase from NAMCOR in cash, or such other method as NAMCOR may agree in writing, on every order and NAMCOR shall sell to the Dealer such of NAMCOR’s **Products** as shall be required from time to time for sale at the **Premises**.
- 15.4 Failure by the Dealer to pay for in cash, or such other method as agreed by NAMCOR, , for every such delivery shall entitle NAMCOR to cease making deliveries to the Dealer until such outstanding amounts due to NAMCOR have been paid or arrangements for deferred payments have been entered into between

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NAMCOR and the Dealer, without prejudice to, limiting or waiving any other rights or remedies, that NAMCOR may have in terms of this Agreement as a result of such aforesaid failure.

- 15.5 Any credit facilities that may be granted by NAMCOR in its discretion shall be in writing on such terms and subject to such conditions as NAMCOR may in its sole discretion from time to time determine and all or any of the same may be withdrawn or varied by NAMCOR giving one month's prior written notice of its intention to reduce or withdraw the credit facilities. The Dealer will be afforded the opportunity to make representations within the 30 days' notice period and NAMCOR may then, having due regard to any representations by the Dealer, forthwith vary or withdraw the credit facilities and provide its reasons for doing so.
- 15.6 Neither the granting of credit facilities nor failure to enforce the terms thereof rigidly and strictly according to the terms and conditions of this Agreement, shall prejudice NAMCOR's rights to cancel this Agreement for failure by the Dealer to pay for NAMCOR **Products** supplied.
- 15.7 Ownership of any **Products** sold by NAMCOR to the Dealer shall not pass to the Dealer until such **Products** have been delivered to the Dealer, and payment for such **Products** have been made in full.
- 15.8 A certificate on the stationery of NAMCOR signed by any director or senior manager of NAMCOR and stating the amount due and payable by the Dealer, shall constitute prima facie proof of the existence of such a debt and of the amount of the Dealer's indebtedness to NAMCOR at any time.
- 15.9 All payments to be made in terms of this Agreement by the Dealer to NAMCOR shall be made free of bank costs or charges at NAMCOR's address set out in clause 19 of this Agreement or to such other person and at such other address as NAMCOR may notify to the Dealer in writing from time to time.
- 15.10 Without prejudice to and in addition to any other rights and remedies of either Party, the Parties shall pay interest on any moneys due but unpaid by either Party in terms of this Agreement, such interest to be calculated at the rate of 2 (two) percentage points above the prime rate from time to time published by the Bank of Namibia. A certificate signed by any manager of the said bank (whose authority or appointment it shall not be necessary to prove) shall be *prima facie* proof of the rate of interest so payable, and such interest shall be compounded monthly from the due date for payment of the moneys in respect of which interest is chargeable until the payment of such moneys in full.
- 15.12 Any payments made to NAMCOR shall notwithstanding posting thereof be deemed to have been validly made only when such payments are actually received by NAMCOR. All risk of any theft, loss, destruction or delay thereof, prior to receipt by NAMCOR, shall remain with the Dealer.

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16. ADDITIONAL OBLIGATIONS OF THE DEALER

The Dealer shall:

- 16.1 Comply with any and all laws, by-laws and official regulations for the time being in force in his area of operation and shall at his own cost obtain and renew from time to time as they fall due, all licences and approvals required by any competent authority to operate the **Business**.
- 16.2 Pay promptly to the competent authority concerned:
 - 16.2.1 all electricity, water and gas used in or on the **Premises**;
 - 16.2.2 all sanitary and refuse removal fees and other utility charges as well as sewerage rates levied in respect of the **Premises**;
 - 16.2.3 all municipal rates and taxes levied on the **Premises**.
- 16.3 Employ adequate and suitable staff for the proper operation and management of the **Business**, pay their wages and comply with any statutory provisions or regulations in respect of such employment. The staff are in all respects the Dealer's employees and nothing herein contained shall be understood as creating any liabilities on the part of NAMCOR towards or in respect of them.
- 16.4 Be solely responsible for the performance of his staff and for ensuring that NAMCOR's methods of working as indicated are duly practised and to observe such directives as discussed and agreed with NAMCOR.
- 16.5 Use only that stationery as prescribed by NAMCOR and purchase the said stationery from NAMCOR or its nominated suppliers at its own cost.
- 16.6 Allow NAMCOR, its employees and/or their duly authorised representatives to enter upon the **Premises** at all times during business hours for the purpose of inspection, supervision, maintenance and for any other purposes NAMCOR deems necessary.
- 16.7 Not commit any nuisance or annoyance to the owner or occupier of any adjoining or neighbouring properties.

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16.8 The Dealer hereby, for the duration of this Agreement, warrants, represents and undertakes in favour of NAMCOR that the Business shall be conducted in accordance with the requirements of this Agreement any and, that all authorisations and approvals, which are required to be obtained in terms of Environmental Law and the Petroleum Products and Act, including the regulations issued in terms thereof and the specifications and standards applied by the Minister of Mines and Energy in terms of Regulation 44 of the Regulations, are in place and shall remain in place for the duration of this Agreement.

17. INSURANCES AND INDEMNITY

17.1 The Dealer shall be obliged to take out and maintain Public Liability insurance in an amount of not less than **N\$8,000,000.00** (eight million Namibia Dollars), and indemnifies NAMCOR, any of its agents, directors, officers or employees and holds it harmless against any and all claims in respect of bodily injury or death, losses or damage to property, costs and expenses of any third party and environmental liabilities arising out of or in connection with the performance of this Agreement or on the Premises. NAMCOR shall be entitled to require a copy of the Public Liability insurance policy, and to require the Dealer at any time to provide NAMCOR with a certificate from the insurer certifying that the policy is in existence and in good standing. NAMCOR shall further be entitled to require the amount of such insurance to be increased from time to time, by such amount as may be reasonably in accordance with the increase over time of the Consumer Price Index, as published from time to time.

17.2 The Dealer shall at its own expense effect and maintain the following policies with a reputable insurance company and shall furnish written proof thereof to NAMCOR:

17.2.1 a policy to cover the **Products** stored at the **Premises** against such risks as theft, fire etc and to cover the Dealer's cash at the **Premises** and whilst in transit to the bank;

17.2.2 a policy for Employees Compensation for all persons employed by the Dealer.

17.3 NAMCOR shall insure the **Equipment** against such risks as NAMCOR may deem necessary.

17.4 The Dealer accepts full responsibility for all claims by third parties of whatsoever nature or kind the same may be and which shall arise directly or indirectly out of the sale of the **Products** or operation or maintenance of the **Premises** nor shall the Dealer or his employees or agents have any claim against NAMCOR and the Dealer shall save harmless and hereby indemnifies NAMCOR against all claims and demands and expenses in respect of any such claim.

17.5 The Dealer shall not do or permit anything to be done at the **Premises** which renders or may render void or voidable any insurance policy held by NAMCOR in respect of the **Equipment** or which will or may increase the rate of premium payable in respect of such insurance policy.

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17.6 Where a customer lodges a claim against the Dealer in respect of the supply of faulty, contaminated or otherwise off-spec **Products**, the Dealer shall immediately inform NAMCOR thereof in writing. The Dealer (or its insurer) shall be obliged to settle such claim without unnecessary delay.

18. ENVIRONMENTAL PROTECTION

The Dealer acknowledges that he is aware of the necessity for the keeping of full and proper stock records, in order to ensure that any loss of the **Products** into the environment is detected as early as possible and kept to a minimum. The Dealer is furthermore aware that should such environmental contamination occur or be aggravated as a result of his failure to keep adequate stock records, this may result in his prosecution in terms of environmental legislation; and in addition, NAMCOR shall be entitled to recover from the Dealer any costs incurred by itself in the rectification of such contamination.

19. SECURITY

19.1 The Dealer shall, when so required by NAMCOR, deliver to NAMCOR a Bank guarantee, or other suitable security, in either case in substance and form to the satisfaction of NAMCOR, securing all the purchase of products from Namcor and or other credit facilities granted to the Dealer.

19.2. the Dealer shall not unreasonably refuse to allow the amount of the bank guarantee or other security mentioned or contemplated herein, to be increased from time to time on NAMCOR's written request therefore, for so long as NAMCOR may have any reason for concern that the guaranteed amount of security concerned at that point in time would constitute inadequate security for the Dealer's future and existing obligations (actual or contingent) to NAMCOR in terms of this Agreement.

20. FORCE MAJEURE

20.1 Neither party to this Agreement shall be held responsible for any failure to fulfil any of its obligations hereunder if such failure is caused by strikes, lockouts, Acts of God, acts of piracy, rebellion, civil commotion, riot, military action, government order or decree, or other circumstances comprehended within the term " force majeure " beyond the control of the parties or party concerned. In any such event, this Agreement shall be suspended until the cause of *force majeure* has ceased, provided that either party may elect to terminate this Agreement in the event of *force majeure* lasting longer, or reasonably expected to last longer than two months, by giving 30 (thirty) calendar days written notice of termination to the other party.

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20.2 If NAMCOR shall at anytime during the currency of this Agreement be unable to supply the Dealer with the **Products** required by him for resale at the **Premises** and such inability is caused by any of the circumstances set out in **clause 20.1** above or by restrictions or prohibitions of export or import or other circumstances beyond the immediate control of NAMCOR, the Dealer shall not thereby be entitled to claim compensation from NAMCOR in respect of any reduction, delay or cessation of supplies.

21. TERMINATION

21.1 Notwithstanding anything herein above provided and without prejudice to any other rights NAMCOR may have, NAMCOR shall be entitled by notice in writing to forthwith terminate this Agreement in any of the following events:

21.1.1 If any licence or consent necessary for carrying on the **Business** at the **Premises** shall not be issued or after having been issued be removed, cancelled or not renewed due to any act or default of the Dealer or due by operation of law.

21.1.2 If the Dealer fails to pay any amount due by him in terms of this Agreement on due date, which is not in dispute;

21.1.3 If the Dealer commits any breach of any term of this agreement.

21.1.4 If the Dealer becomes insolvent, is declared bankrupt, goes into liquidation either compulsory or voluntary (save for the purposes of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or part of the Dealer’s assets or makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or if any judgement is made against the Dealer or any similar occurrence under any jurisdiction affects the Dealer.

21.1.5 If the total sales of petroleum Products in any continuous period of three months fail to reach three times the minimum monthly litres stipulated in clause 6 of this Agreement, as adjusted from time to time, unless the Dealer provides acceptable reasons that the failure to meet the minimum monthly sales was as a result of reasons beyond its control..

21.1.6 If, except under the circumstances contemplated by clause 7.2, the Dealer is found to have, acquired, purchased, sold, offered to sell or delivered any products through the **Premises** or elsewhere other than those **Products** of NAMCOR.

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- 21.1.7 If for any reason it is established by NAMCOR that the Dealer or the Dealer's employees has wilfully or negligently sold different or adulterated lubricants to those stated on the pack, pail, drum or bulk tank or allowed petroleum products to become mixed in NAMCOR's tanks and **Equipment**. In addition NAMCOR shall be at liberty to confiscate the different or adulterated lubricants and mixed products as aforesaid and dispose of the same and the Dealer shall not be entitled to any compensation or refund for the said confiscated lubricants or mixed products.
- 21.1.8 If the **Premises** are held by the NAMCOR under the terms of a lease, and such lease expires or is cancelled.
- 21.2 Should the Dealer breach any of its other obligations, not being an event mentioned in clause 21.1 above, in terms of this agreement reasonably capable of being remedied, and fails to remedy such breach within fourteen days after receipt of written notice by NAMCOR requiring the Dealer to remedy that breach, then NAMCOR shall be entitled, notwithstanding any previous waiver to cancel this agreement forthwith: Provided that if such breach is not reasonably capable of being remedied within the said period of fourteen days or should circumstances have arisen or arise during the period of the said notice and which, being partly or entirely beyond the control of the Dealer prevent it from so remedying such breach within the said period of fourteen days, then the Dealer shall be allowed such additional period as may reasonably be required therefor.
- 21.3 Nothing contained in these **clauses 21.1 and 21.2** shall preclude, limit, derogate from or otherwise prejudice the enforcement by NAMCOR of any right of cancellation which it may have at common law, the provisions this **clauses 21.1 and 21.2** being intended to supplement, and not to replace, any such right.
- 21.4 Termination within the meaning of this clause shall mean that this Agreement shall terminate forthwith upon delivery to the Dealer of a written notice stating the grounds for termination.

22. EFFECT OF TERMINATION

- 22.1 The Dealer shall upon termination of this Agreement for whatever reason:
 - 22.1.1 hand over the **Equipment** to NAMCOR in as good a state as same were at the commencement of this Agreement, fair wear and tear only excepted.
 - 22.2.2 The Dealer shall be liable forthwith to pay to NAMCOR all damages which shall have been caused to the **Equipment** other than due to fair wear and tear as well as costs for the removal of the Equipment and the same maybe deducted by NAMCOR from the deposit referred to in clause 15.7.

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23. GENERAL

- 23.1 NAMCOR using its expertise in the marketing of petroleum **Products** and management and operation of its petrol stations shall give such technical, marketing and operational advice to the Dealer as may from time to time at its discretion be necessary to maximise sales at the **Premises**.
- 23.2 NAMCOR agrees to do the initial training of the Dealer and his staff at its own expense in the manner and to the extent, which NAMCOR considers necessary to impart to such staff basic knowledge of the work expected from them. Thereafter, any additional training required by NAMCOR will be at the Dealer's expense.
- 23.3 The quality of the **Products** supplied hereunder shall at all times be within any national product quality specifications that may apply and which are promulgated via the Government Gazette and have come into force and effect.
- 23.4 NAMCOR shall at all times be entitled to amend, delete or add to the terms of this Agreement at any time during the continuance thereof provided always that in the event of the Dealer not accepting such amendments, deletions or additions then this Agreement may be terminated by the Dealer upon giving thirty (30) days' notice in writing to NAMCOR.
- 23.5 The Dealer acknowledges not to have, and shall not acquire, any right to any **Trade Mark** of NAMCOR or any right to require NAMCOR to afford the **Premises** the same image, signage or other attribute as any other service station at which any of NAMCOR's petroleum **Products** may be sold.
- 23.6 No waiver, latitude or indulgence allowed or granted to the Dealer by NAMCOR shall be construed as a waiver of any default or as a variation or novation of this Agreement.
- 23.7 Should the Dealer be desirous of disposing of or letting the **Premises** and/or the **Business** or any portion of either, he hereby undertakes to make a written offer thereof to NAMCOR exclusively and if the Dealer receives a bona fide offer from any third party for the purchase or hire of the **Premises** and/or **Business** or any portion of either, which he is desirous of accepting, the Dealer hereby undertakes to make a written report thereof to NAMCOR and upon receipt of such report, NAMCOR shall for a period of 60 (sixty) days have the sole option of accepting such offer or matching the offer by the third party, as the case may be, provided that if NAMCOR does not exercise its said option it shall lapse, but NAMCOR's rights under this Agreement shall in no way be affected thereby.
- 23.8 This Agreement shall be binding upon the heirs, executors, assigns and successors in title of the Parties.

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23.9 The Dealer shall not be entitled to cede its rights or delegate its obligations in terms of this Agreement without the prior written approval of NAMCOR, which approval NAMCOR shall not unreasonably withhold.

23.10 If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or in part this Agreement shall continue to be valid and enforceable as to its other provisions.

24. NOTICES

Any notice required to be served on any party by the other shall be in writing and shall be deemed as served if in the case of NAMCOR such notice is hand delivered during normal business hours to the Retail Manager, or in his absence, the Managing Director at the offices of NAMCOR and in the case of the Dealer if the notice is hand delivered at the **Premises** addressed to the Dealer by name.

25. APPLICABLE LAW

25.1 This Agreement shall be construed in accordance with the laws of **Namibia**.

25.2 If NAMCOR institutes any proceedings against the Dealer arising from or in connection with this Agreement (including the cancellation thereof), then NAMCOR may at its election institute such proceedings in any Magistrate's Court which would otherwise have jurisdiction in respect hereof notwithstanding that the amount claimed exceeds the jurisdiction of such court and the Dealer hereby consents to such Magistrate's Court having jurisdiction in respect hereof. If NAMCOR elects to institute such proceedings in any High Court having jurisdiction in respect of such matter, then the Dealer shall not be entitled to require costs to be awarded on the scale in the Magistrate's Court by virtue of the provisions of this clause.

26. SETTLEMENT OF DISPUTES

26.1 Disputes

26.1.1 Any dispute arising out of or in connection with this Agreement (**Dispute**), including without limitation, any dispute concerning:

26.1.1.1 the interpretation and effect of this Agreement;

26.1.1.2 the Parties' respective rights or obligations under this Agreement;

26.1.1.3 the breach, or purported termination or cancellation of this Agreement or any matter arising out of the breach, or purported termination or cancellation; or

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26.1.1.4 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this Article is valid and enforceable,

shall be dealt with as provided for under this **clause 26** and first be referred to the informal resolution measures set out in **clause 26.2**. Should the Dispute not be resolved by informal resolution, the Dispute must be referred to Arbitration as set out in **26.5**.

26.1.2 The Party raising a Dispute is to notify the other Party in writing (“**Dispute Notice**”) indicating the nature of the dispute by delivering such notice to the other Party.

26.2 Informal resolution

26.2.1 Within fourteen (14) calendar days of the delivery of a Dispute Notice being given by one Party to the other, the person that is to be appointed by NAMCOR as the person responsible to deal with the dispute resolution proceedings in terms of this clause (which nomination shall be conveyed to the Dealer prior to the delivery of a Dispute Notice), failing such appointment, the managing director of NAMCOR and a person that is to be appointed by the Dealer (which appointment shall be conveyed to NAMCOR prior to the delivery of a Dispute Notice), failing which the managing director (if a Company), or a member (if a Close Corporation), or a partner (if a partnership) or owner (if a sole proprietorship), or a trustee (if a Trust) of the Dealer, shall meet and seek to informally resolve the Dispute in good faith, having regard to (in addition to the substance of the Dispute itself) the following matters:

26.2.1.1 the benefits to both Parties of taking a reasonable and pragmatic approach to issue resolution, and resolving issues as quickly, informally, and cheaply as is reasonably possible;

26.2.1.2 the ongoing nature of the relationship between the Parties and the need for them to continue to work together in a co-operative and non-adversarial manner; and 26.2.1.3 the nature of the relationship between the Parties.

26.3 Escalation

Where a Dispute has not been resolved under **clause 26.2** within twenty one (21) calendar days of the delivery of a Dispute Notice, the Dispute will be escalated to the chairperson of NAMCOR and the most senior executive director (if a Company), or the member with the largest percentage of membership interest (if a Close Corporation), or the partner with the largest interest (if a partnership) of/in the Dealer, who shall meet, within fifteen (15) Business Days after the delivery of the Dispute Notice and seek to resolve the Dispute.

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In the event of the chairperson of NAMCOR refusing to meet as envisaged in terms of this Article, then the Dispute shall be referred to the most senior executive director of NAMCOR. In the event of the Dealer being either a sole proprietorship or a Trust, clause 26.3 shall not apply, and where a Dispute is not resolved under **clause 26.2**, within ten (10) Business Days of the delivery of a Dispute Notice, the Dispute will be escalated to Arbitration.

26.4 Escalation of Dispute to Arbitration

Where a Dispute is not resolved under **clause 26.3**, within twenty one (21) calendar days of the delivery of a Dispute Notice, the Dispute will be escalated to Arbitration.

26.5 Arbitration

25.5.1 When a Dispute is escalated to arbitration, the Dispute shall be determined in terms of the provisions of the Arbitration Act, Act No 42 of 1965 and the rules of the Professional Arbitration and Mediation Association of Namibia (“**PAMAN**”), and this **clause 26.5**. The arbitration shall be conducted in accordance with the following provisions. In the event of a conflict between the rules of PAMAN and the provisions of **clause 26.5**, the provisions of this **clause 26.5** shall prevail:

26.5.1.1 the arbitration shall be held in Windhoek;

26.5.1.2 there shall be one arbitrator, who shall:

26.5.1.3 if the matter is primarily a legal matter, be a commercial legal practitioner, which shall be a legal practitioner who practices and has experience in the fields of business transactions, corporate matters, matters involving the interpretation and all ancillary matters relating to company law and procedures, whether practicing or non-practicing, of not less than 10 (ten) years standing;

26.5.1.4 if the matter is primarily an accounting or financial matter, be an impartial auditor of not less than 10 (ten) years standing;

26.5.1.5 in the case of any other matter, any suitably qualified independent person; and

26.5.6 be agreed upon between the Parties, failing agreement within thirty five (35) Business Days of delivery of a Dispute Notice, either Party shall, depending on the nature of the dispute, be entitled to require the appointment of an arbitrator by the President of the Law Society of Namibia or the President of the Institute of

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Chartered Accountants of Namibia (ICAN) (in the event of a matter referred to in **clause 26.5.1.2** above).

26.5.7 The decision / award of the arbitrator, given in writing and fully supported by reasons, shall be final and binding on the Parties and shall be carried into effect. The Parties furthermore irrevocably consent to the arbitrator's award being made an order of any Court of competent jurisdiction at the instance of the Party seeking the same on application. The arbitrator shall furthermore have the power to give default judgement if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

26.5.8 The Parties shall keep the evidence in the arbitration proceedings and any decision / award made by the arbitrator confidential unless otherwise mutually agreed to between them.

26.5.9 This arbitration provision shall:

26.5.9.1 constitute an irrevocable consent by the Parties to the arbitration proceedings in terms of this Article and no Party hereto shall be entitled to withdraw here from or bring any claim at any arbitration proceeding that it is not bound by these provisions or by any ruling or procedure laid down by the arbitrator so appointed in terms hereof; and

26.5.9.2 be severable from the rest of this Agreement and remain effective even if this Agreement is cancelled or terminated.

26.5.9.3 A Party to the proceedings who is aggrieved by the decision of the arbitrator shall be entitled to approach any court with competent jurisdiction to determine any legal issue that gave rise to the arbitration proceedings, an award, being subject to appeal to the High Court of Namibia.

26.5.10 The provisions of this **clause 26.5** (Arbitration) shall not preclude any Party from access to any appropriate court of law for:

26.5.10.1 interim relief in the form of an interdict, *mandamus* or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration; or

26.5.10.2 any other form of relief on the basis of facts which are not disputed provided that if a *bona fide* dispute arises in the course of the proceedings it shall be stayed pending an arbitration on the dispute in terms thereof; or

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26.5.10.3 an order for the payment of a liquidated amount in money on the basis of facts which are not *bona fide* in dispute at the commencement of such proceedings.

26.5.11 The Parties shall be entitled to legal representation during arbitration.

27. LEGAL COST

Each party shall pay its own cost in connection with the preparation and completion of this Agreement and the Dealer shall pay all cost relating to the registration of this Agreement if applicable.

28. INTEGRATION, VARIATION AND WAIVER

28.1 This document constitutes the sole record of the Agreement between the parties and neither party shall be bound by any representation, warranty, promise or the like not recorded herein.

28.2 No variation or amendment, addition to, rectification of, deletion from or mutual cancellation of this Agreement or any of its terms or conditions shall be of any force unless reduced to writing and signed by both parties.

28.3 No waiver asserted against either party shall be effective against that party unless in writing and signed by or on behalf of that party.

28.4 No relaxation, indulgence or other failure or delay by a party in enforcing that party’s rights strictly shall either constitute a novation of the provisions of this Agreement relating thereto or preclude that party from any enforcement of the rights of that party (including but not limited to subsequent enforcement of the same or similar rights).

SIGNED BY NAMCOR AT WINDHOEK ON THIS DAY OF 2024

AS WITNESSES

1.

.....
FOR AND ON BEHALF OF NAMCOR

2.

SIGNED BY THE DEALER AT WINDHOEK ON THIS DAY OF 2024

AS WITNESSES

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1.

.....
DEALER / DULY AUTHORISED REPRESENTATIVE

2.

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