

AGREEMENT

between

ABSA BANK LIMITED

and

NATIONAL DEPARTMENT OF PUBLIC WORKS

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1. PARTIES

The **PARTIES** to this Agreement are:

ABSA BANK LIMITED

and

NATIONAL DEPARTMENT OF PUBLIC WORKS

2. DEFINITIONS AND INTERPRETATION

2.1. The headings to the Clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any Clause hereof.

2.2. Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.3. Any reference in this Agreement to:

2.3.1. **“Absa”** means Absa Bank Limited, Registration Number: 1986/004794/06, a public company registered in accordance with the laws of the Republic of South Africa, and operating as a bank, with its registered address at 3rd floor, Absa Towers East, Johannesburg, 2001, herein represented by Sisi Dlamini and Venete Klein in their capacities as general managers, Public Sector and Agriculture and Medium Business respectively;

2.3.2. **“ATP”** means an Accredited Training Provider, being the individual responsible to provide indirect assistance to the Learners by means of formal classroom training sessions, and appointed pursuant to this agreement in terms of Clause 6.5;

- 2.3.3. **“Agreed Participation Programme”** means the agreed learnership programme, as entered into between the Authority and the Learner in terms of the Learnership Agreement, by which the Learner shall receive theoretical training under the control and direction of a Training Provider, as well as independent on-site training-project practical experience, under the control and direction of a Mentor, as duly assisted by the Authority / Representatives acting on behalf of the Authority;
- 2.3.4. **“Agreement”** shall mean the Agreement as recorded herein, including the annexures hereto;
- 2.3.5. **“Authority”** means a National or Provincial Department or a Municipality that has signed a Memorandum of Agreement with the NDPW and the CETA to implement the NDPW’s EPWP and that has made a budget available to provide workplace experience for Learner Contracting Companies under the EPWP. Employer/Implementing Authority shall for purposes of this agreement have similar meaning;
- 2.3.6. **“Business Day”** shall mean any day other than a Saturday, Sunday and/or South African public holiday in accordance with the Public Holidays Act of 1994. When any number of days is prescribed in this Agreement, same shall be a reference to Business Days and 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 case the last day shall be the next succeeding Business Day;

- 2.3.7. **“CETA”** shall mean the Construction and Education Training Authority, a sector education and training authority established in terms of section 9(1) of the Skills Development Act of 1998;
- 2.3.8. **“Learner Contracting Companies”** means the juristic entity formed by natural persons who have entered into Learnership Agreements as the team of one contractor and two supervisors, which individuals are to receive training and independent project experience in terms of the Learnership Agreement;
- 2.3.9. **“Expanded Public Works Programme”** means the national job creation programme of Government announced by President T. Mbeki and managed by the NDPW;
- 2.3.10. **“Learner”** means a person identified as a learner in terms of Part B2 of a Learnership Agreement inclusive of learner contractors and supervisors;
- 2.3.11. **“Learnership Agreement”** means an agreement entered into between an Authority, Learner Contracting Company, and a Learner in terms of Section 14 of the Skills Development Act 97 of 1998, in terms of which the Learner will be educated and trained in accordance with the Learnership Agreement;
- 2.3.12. **“Mentor”** means the individual appointed, in terms of a separate agreement, by the NDPW and tasked with the provision of assistance to the Learner Contracting Company in the planning, execution and management of the on-site training projects.

- 2.3.13. **“NDPW”** means the National Department of Public Works, address Corner Vermeulen and Bosman Streets, Pretoria herein represented by Sean Phillips in his capacity as Chief Operations Officer, duly authorised thereto;
- 2.3.14. **“Part B of a Learnership Agreement”** means that part of the Learnership Agreement wherein the Learner provides his personal particulars;
- 2.3.15. **“Parties”** shall mean Absa and NDPW and **“Party”** shall, as the context requires, be a reference to any one of them;
- 2.3.16. **“Representative”** means the person or organisation appointed by the Authority to administer and control the independent on-site training-projects on his behalf;
- 2.3.17. **“Signature Date”** shall mean the date of the last signature of this Agreement;
- 2.3.18. **“Stakeholders”** shall mean the collective of NDPW, Absa, CETA, the Authority, the Representative, the ATP, and the Mentor;
- 2.3.19. **“VAT”** shall mean value added tax payable in terms of the Value Added Tax Act, 1991, as amended.
- 2.4. Unless the context dictates otherwise, an expression which denotes any gender includes the other; reference to a natural person includes an artificial person and reference to the singular includes the plural and *vice versa* in each case.
- 2.5. The annexures to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such annexures.
- 2.6. Notwithstanding sub-clause 2.5, annexure “D”, which provides details of agreements entered into between stakeholders, other than this agreement entered into between NSPW and Absa, is provided for information purposes only.

3. APPOINTMENT

- 3.1. NDPW hereby appoints Absa to offer financial packages or services to Learner Contracting Companies in accordance with the provisions of this Agreement.
- 3.2. Absa hereby accepts its appointment as such, subject to the terms and conditions of this Agreement.
- 3.3. Notwithstanding the Signature Date, this Agreement shall commence on 1 June 2004 ("Commencement Date") and shall endure for a period of two (2) years (the initial period). Upon expiry of the initial period, the Agreement may be renewed for such term of duration and on such terms and conditions as may be negotiated and agreed between the Parties.
- 3.4. Should the participation by Learner Contracting Companies have a 20% downward deviation on the Agreed Participation Programme, Absa reserves the right to renegotiate the pricing of the facilities offered in terms of this agreement.
- 3.5. To give effect to sub-clause 3.4 above the Parties agree and undertake to meet monthly, or as determined by the Parties from time to time, to review the participation by Learner Contracting Companies against the Agreed Participation Programme and to resolve any problems that might arise. NDPW undertakes to procure the Mentor's attendance, on a provincial/municipal basis, of such meetings as shall have been occasioned by this sub-clause 3.5.
- 3.6. Unless as might be otherwise provided, the Parties agree and undertake to actively participate in the joint launching of the programme/s envisaged in this agreement.

4. OBJECTIVE OF THE PROGRAMME

The objective of the EPWP is to increase capacity in the labour intensive construction sector to support the Expanded Public Works Programme, and further to ensure that on completion of the programme, the Learners / Learner Contracting Companies emerge with a recognised qualification, a proven project track record, a proven financial track record, and a successful relationship with a commercial banking institution.

5. PROGRAMME DESCRIPTION

- 5.1. The EPWP is one of the government's short-to-medium term programmes aimed at alleviating and reducing unemployment through the provision of work opportunities, coupled with training. The EPWP is a nation-wide programme which will draw a significant number of the unemployed into productive work, so that workers gain skills while they work, and increase their capacity to earn an income. Infrastructure projects at provincial and local government level will be identified, planned and implemented through this programme to give effect to the aims of the EPWP.
- 5.2. Projects will be identified at Provincial and Local Municipal level and submitted to a National Department of Public Works for approval.
- 5.3. Potential Learners will be identified in the various provinces and municipal areas. Once successful Learner applicants have been selected for the EPWP learnership programmes, they will enter into a learnership agreement with the Learner Contracting Company / the relevant province or municipal area, and thereafter commence with the training programme. The Learnership Agreement will provide that the Learners, acting as the Learner Contracting Company, will enter into further separate and independent on-site training-project agreements, which will ensure that the Learners, acting under the auspices of the Learner Contracting Company, commences with an on-site training-project after receiving some basic training. Two further separate and independent on-site training-project agreements will be concluded during the learnership period.
- 5.4. Learner Contracting Companies will have support in the form of mentors, and will further receive indirect support in the form of Accredited Training Providers.
- 5.5. Funding for individual projects will come from National Treasury or provincial / local municipality and be deposited into either a provincial or municipal account.
- 5.6. Once approved by the selection panel, Learner Contracting Companies will have access to funding from Absa and based on the contract award from the employer (provincial or municipality), the bank will consider the funding and magnitude of the lending, subject to the approved credit criteria as per Annexure A hereto.

6. ROLES AND RESPONSIBILITIES

6.1. Department of Public Works will:

- 6.1.1. be the co-ordinator of the total programme;
- 6.1.2. convene selection meetings;
- 6.1.3. convene progress / report back meeting;
- 6.1.4. be part of selection meetings;
- 6.1.5. appoint Mentor / and Accredited Training Providers to Learner Contracting Companies that are selected;
- 6.1.6. co-ordinate information from key departments within national government for a smooth and successful implementation of the programme;
- 6.1.7. ensure timeous communication to all stakeholders;
- 6.1.8. ensure CETA fulfils its mandate and obligations in terms of this programme;
- 6.1.9. ensure that the Implementing Authority province and/or municipalities has the necessary competence to carry out the relevant projects within its area of jurisdiction.

6.2. **Implementing Authority (Provincial and/or Municipality)**

Department of Public Works will ensure that the Implementing Authorities will:

- 6.2.1. be part of selection panels;
- 6.2.2. ensure that the ownership of the Learner Contracting Company remains unchanged for the entire duration of the Learnership Agreement;
- 6.2.3. be Custodian of those funds received from National Government;
- 6.2.4. be the responsible agent to manage projects or alternatively to appoint consulting engineers to manage projects;

- 6.2.5. inform all parties as to progress as determined by the selection panel;
- 6.2.6. award contract and will be the contracting party with the Learner Contracting Company;
- 6.2.7. ensure timeous payments are made to Learner Contracting Company;
- 6.2.8. advise the selection panel and Absa in particular if any contracts appear problematic or are to be cancelled;
- 6.2.9. ensure all stakeholders are informed of any changes and/or amendments to the contracts, being both learnership and independent on-site training projects, between itself and the Learner Contracting Company;
- 6.2.10. abide by any cession or other security agreement entered into between the Learner Contracting Company and Absa, in so far as such secures the repayment of monies advanced by Absa to the Learner Contracting Company inclusive of duly accrued interest.
- 6.2.11. Advise Absa of any cancellation of contract or delays in implementing any part of the contract between the Learner Contracting Company and itself.

6.3. **CETA**

NDPW will ensure that CETA will:

- 6.3.1. be part of the selection panel;
- 6.3.2. provide the required training per Learner Contractor and Learner Supervisors through appointing an ATP; and,
- 6.3.3. quality assure training and register learnerships.

6.4. **Mentor**

NDPW will ensure that a mentor will be appointed for each Learner and Learner Contracting Company. Such Mentor, after appointment, will:-

- 6.4.1. advise the selection panel and Absa in particular if any contracts become problematic or are to be cancelled;
- 6.4.2. put in place arrangements to assist the Learner Contracting Company's Financial and Cash Flow Management to ensure availability of funds for monthly payments to Absa; and,
- 6.4.3. assist in the provision of general contracting and management assistance to the Learners and Learner Contracting Company during the execution of the on-site training-projects.

6.5. **Accredited Training Providers**

NDPW will ensure that CETA appoints an ATP for each Learner. Such ATP, after appointment, will provide copies of reports to Absa on the progress of the Learners at the end of each theoretical portion of the learnership training programme, and from time to time as may be necessary, and will advise Absa of any cancellation of contracts or delays in implementing any part of the Learnership Agreement.

6.6. **ABSA**

6.6.1. ABSA will:

- 6.6.1.1. be part of the selection process;
- 6.6.1.2. offer and provide financial services and assistance, as described in Annexure C, to Learner Contracting Companies, that have been selected and have also passed the banks approved credit criteria/ due diligence;
- 6.6.1.3. provide enrichment training to employees of Learner Contracting Companies as reflected in or as near as possible with Annexure "B";

- 6.6.1.4. provide quarterly status report to all stakeholders;
- 6.6.1.5. provide each Learner Contracting Company with a Cheque Account; and
- 6.6.1.6. ensure that the Learner Contracting Company cheque account and payment facilities will be implemented with dual signatures and that one signatory is the Mentor.

7. **LIABILITY**

Both Parties hereby agree that each Party shall be liable for the intentional and gross negligent acts or omissions of their own employees, agents, sub-contractors or the like, undertaken pursuant to this agreement.

8. **GENERAL TERMS AND CONDITIONS**

Absa shall provide facilities to Learner Contracting Companies as per the tender, hereto attached as Annexure "C".

9. **CONFIDENTIAL INFORMATION**

- 9.1. The Parties confirm that in the course of their negotiations it is anticipated that they will disclose or deliver to each other some of their proprietary information, which the Parties regard as confidential, all for the purpose of enabling each other to perform their duties in terms of this Agreement.
- 9.2. The Parties agree to exchange confidential information for the sole purpose of this Agreement and the receiving Party shall be permitted to use confidential information disclosed to it pursuant to this Agreement only for such sole purpose, unless otherwise expressly agreed to in writing by the Parties.
- 9.3. The receiving Party shall treat the confidential information with the same degree of care to avoid disclosure to any third Party as is used with respect to the receiving Party's own information of like importance which is to be kept confidential.

9.4. The foregoing shall not prevent either party from disclosing Proprietary and Confidential information which: -

- 9.4.1. is already known by the recipient party prior to the disclosure thereof with no obligation of confidentiality;
- 9.4.2. is or has been independently developed by the recipient party;
- 9.4.3. is publicly known or becomes publicly known not due to any unauthorised act of the recipient party;
- 9.4.4. is generally known or becomes generally known in the industry to which it pertains;
- 9.4.5. is lawfully received from third party;
- 9.4.6. is approved by the other party for disclosure, or
- 9.4.7. is required to be disclosed pursuant to a governmental or legal requirement provided that the disclosing party gives to the other party written notice of such requirement prior to any such disclosure, if legally permitted to do so.

10. **BREACH**

10.1. An event of breach shall be deemed to have occurred if:

- 10.1.1. any Party breaches any of its obligations in terms of this Agreement or any other Agreement concluded pursuant to this Agreement and fails to remedy such breach within 14 (fourteen) days after the receipt of written notice from the other Party requiring the remedying thereof if such breach is capable of being remedied; or
- 10.1.2. any Party ceases or is unable for any reason whatsoever to conduct its business in an ordinary or regular manner, and fails to take reasonable steps to remedy such situation within 21 (twenty-one) days after having been called upon in writing to do so by the other Party.

10.2. Upon the occurrence of any event of default then, without prejudice to such other rights and remedies which either of the Parties may have at law if a Party is in breach ("the defaulting Party"), then the Party who is not in breach ("the aggrieved Party"); shall be entitled: -

10.2.1. to call on the defaulting Party to perform its obligations in terms of the Agreement; or

10.2.2. to refer such matter to arbitration as per the provisions of Clause 14 below, or

10.2.3. to cancel this agreement and claim any and all damages that such aggrieved party may incur as a result of the defaulting party's breach.

11. VARIATION, MODIFICATION, WAIVER

No variation, modification or waiver of any provision or consensual cancellation of this agreement or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing and signed by the parties and then such variation, modification, waiver, cancellation or consent shall be effected only in the specific instance and for that purpose and to the extent for which it is made or given.

12. WAIVER OF RIGHTS

12.1. The waiver (whether expressed or implied) by any party of any breach of the terms or conditions of this agreement by any other party shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereto.

12.2. No failure, delay, relaxation or indulgence on the part of any party in terms of this agreement shall operate as a waiver of such power or right, nor preclude any other or further exercises thereof, or the exercise of any other power or right under this agreement, or any such securities or documents.

12.3. The expiry or termination of this agreement shall not prejudice the rights of any party in respect of any antecedent breach or non-performance by any party of any of the terms or conditions hereof.

13. FORCE MAJEURE

- 13.1. If the performance of a material part of this Agreement is suspended due to *force majeure* (any event which makes the performance due by any Party to this Agreement impossible which is beyond the reasonable control of that Party and could not have reasonably been foreseen by that Party, e.g. an act of God, lock out, strikes, government action, war or events of like or similar nature), that Party which is unable to perform shall give the other Party written notice of the condition of *force majeure*.
- 13.2. Such notice shall be given within three working days of the date on which the condition of *force majeure* takes effect.
- 13.3. The Party first affected by *force majeure* shall do its utmost to reinstate the performance due in terms of this Agreement in the shortest possible time.
- 13.4. Dates or times allowed for performance shall be adjusted by mutual Agreement between the Parties to allow for the effects of such *force majeure*, provided notice is given of such adjustment by the one Party to the other.
- 13.5. If such notice is not given by the Party first affected by such *force majeure*, the other Party may, in its sole discretion, refuse to allow such adjustment of the relevant dates or time allowed for performance, with regard to performance due in terms of this Agreement of the Party first affected by *force majeure*, unless the other Party agrees in writing to the rendering of such performance.
- 13.6. If a period of 90 (ninety) days has elapsed, and if the condition of *force majeure* persists, either Party shall be entitled to cancel this Agreement with immediate effect and without prejudice to either Party's rights obtained in terms of this Agreement.

14. DISPUTES AND ARBITRATION

- 14.1. In the event of a dispute arising out of or in connection with this Agreement, the Parties shall appoint an independent mediator who shall on a date and time as shall be mutually agreed upon and in any event not later than 14 days after the dispute has arisen, attempt to mediate on the dispute with view of settling same.

- 14.2. Either Party shall be entitled to call for the meeting referred to in clause 14.1 by a written notice to the other Party.
- 14.3. Should the Parties fail to resolve the dispute at the meeting, the matter shall be referred to the Arbitration Foundation of South Africa ("AFSA") for arbitration in accordance with rules of AFSA, by an arbitrator appointed by AFSA.
- 14.4. The arbitration shall be pursued as expeditiously as possible so that it is resolved within 30 days after it has been initiated.
- 14.5. The Parties hereby agree that the decision of the Arbitrator appointed in terms of the above clauses shall be final and binding on each of them, and shall be capable of enforcement by a court of competent jurisdiction. Either Party may approach such competent court for an order that the decision of the arbitrator be made an order of court.
- 14.6. This clause 14 shall survive any and all cancellations consensual or otherwise, to this agreement, for a period of one year.

15. **GENERAL**

- 15.1. This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 15.2. No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 15.3. No indulgence by a Party to another, or failure to strictly enforce the terms hereof, shall be construed as a waiver or be capable of founding an estoppel.
- 15.4. Save as is specifically provided in this Agreement, no Party shall be entitled to cede or delegate any of its rights or obligations under this Agreement without the prior written consent of the other Party.

16. SEVERABILITY

All the provisions of this Agreement shall be severable and no provision shall be affected by the invalidity of any other provision of this Agreement.

17. INDEMNITY

The Parties hereby indemnify each other against any loss/damage/legal liability/legal costs (including costs on attorney and own client scale) or expenses of whatever nature they may suffer or become liable for as a result of any negligent or intentional act or omission of the other Party, its employees, agents or sub-contractors pursuant to this agreement.

18. TERMINATION

This Agreement shall commence on the commencement date and continue indefinitely until terminated in accordance with its terms.

19. APPLICABLE LAW

This Agreement shall be interpreted according to the laws of South Africa.

20. DOMICILIA CITANDI ET EXECUTANDI

20.1. The Parties hereby choose *domicilla citandi et executandi* for all purposes of and in connection with this Agreement the addresses stated in the definition section above.

20.2. Any Party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall include an address other than a box number, and any such change shall only be effected upon receipt of notice in writing by the other Party of such change.

20.3. All notices, demands or communications intended for any Party shall be made or given at such Party's *domicilium* for the time being.

20.4. A notice sent by one Party to another Party shall be deemed to be received:

20.4.1. on the same day, if delivered by hand;

20.4.2. on the same day, if sent by telex (subject to answer back) or telefax (provided the original is then immediately posted by prepaid registered mail);

20.4.3. on the seventh day after posting, if sent by pre-paid registered mail;

20.4.4. on the same day, if sent by fax.

20.5. Notwithstanding anything to the contrary herein, a written notice or communication actually received by a Party shall be adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED at _____ on this _____ of _____ 20____

WITNESSES:

1. _____

 On behalf of **ABSA BANK LIMITED**
 duly authorised thereto

2. _____

SIGNED at _____ on this _____ of _____ 20____

WITNESSES:

1. _____

 On behalf of **NATIONAL DEPARTMENT OF
 PUBLIC WORKS**
 duly authorised thereto

2. _____

ANNEXURE “A” to ABSA Agreement
APPROVED CREDIT CRITERIA

CREDIT CRITERIA: EXPANDED PUBLIC WORKS PROGRAMME (EPWP)

Assessment Matrices

The matrices are based on an Experian analysis (2001/2002) on the predictiveness of credit bureau information, coupled with enhancements designed to fit the profile of the EPWP.

Abbreviation used in Matrices: **D** = Decline
 I = Ignore (You may continue with the application)
 R = Refer to Credit

1. JUDGEMENTS

- a) LEARNERS WITH JUDGEMENTS: RETAIL MARKET, INCLUDING MICRO LENDING, EXCLUDING COMMERCIAL BANKS

TOTAL VALUE	YEARS SINCE MOST RECENT JUDGEMENT						
	0	1	2	3	4	5	5+
R100,000+	D	D	D	D	D	D	I
R30,001 – R100,000	D	D	D	D	D	D	I
R10,001 – R30,000	D	D	D	R	R	R	I
R7,501 – R10,000	R	R	R	R	I	I	I
R5,001 – R7,500	R	R	R	I	I	I	I
R3,001 – R5,000	R	R	I	I	I	I	I
R1,001 – R3,000	I	I	I	I	I	I	I
R501 – R1,000	I	I	I	I	I	I	I
R1 – R500	I	I	I	I	I	I	I

- b) JUDGEMENTS: BANKS, EXCLUDING BONDS

TOTAL VALUE	YEARS SINCE MOST RECENT JUDGEMENT					
	0	1	2	3	4	5
R50 001 +	D	D	D	D	D	D
R30 001 – R50 000	D	D	D	D	R	R
R20 001 – R30 000	D	R	R	R	R	R
R10 001 – R20 000	D	R	R	R	R	R
R0 – R10 000	R	R	R	R	R	R

c) JUDGEMENTS : MORTGAGE BONDS

TOTAL VALUE	YEARS SINCE MOST RECENT JUDGEMENT					
	0	1	2	3	4	5
R120 001+	D	D	D	D	D	D
R100 001 – R120 000	D	D	D	R	R	R
R50 001 – R100 000	D	R	R	R	R	R
R0 – R50 000	R	R	R	R	R	R

2. WRITE OFF'S, INCLUDING BANKS

TOTAL VALUE	YEARS SINCE MOST RECENT WRITE OFF					
	0	1	2	3	4	5
R10 001 +	D	D	D	D	D	R
R5 001 – R10 000	D	D	R	R	R	R
R0 – R5 000	I	I	I	I	I	I

3. LEARNERS WITH ONE OR MORE ADVERSE CREDIT RECORD

TOTAL VALUE	YEARS SINCE MOST RECENT ADVERSE RECORD						
	0	1	2	3	4	5	5+
R100,000+	R	R	R	R	R	I	I
R50,001 – R100,000	R	R	R	R	R	I	I
R10,001 – R50,000	R	R	R	R	R	I	I
R7,501 – R10,000	R	R	R	R	I	I	I
R5,001 – R7,500	R	R	R	R	I	I	I
R3,001 – R5,000	R	R	R	I	I	I	I
R1,001 – R3,000	R	R	R	I	I	I	I
R501 – R1,000	I	I	I	I	I	I	I
R251 – R500	I	I	I	I	I	I	I
R1 – R250	I	I	I	I	I	I	I

QUALIFICATIONS IN RESPECT OF “REFER”**A) ARRANGEMENTS IN PLACE**

- Letter from creditor confirming that suitable arrangements in respect of the judgment / debt have been concluded.
- That such arrangement is older than 6 months.
- That the debtor has been complying with the payment arrangement in place for the last 6 months.

IF THE ABOVE QUALIFICATIONS ARE MET, THEN THE "REFER" MAY BE AMENDED TO "IGNORE". IF ALL QUALIFICATIONS ARE NOT MET, THEN DISCRETION REVERTS TO THE MANDATE HOLDER (the ABSA CREDIT REPRESENTATIVE). IF THE DEBTOR IS EMPLOYED, AND NO ARRANGEMENTS HAVE BEEN CONCLUDED, THEN "REFER" WILL BE AMENDED TO "DECLINE".

B) RETRENCHED/UNEMPLOYED

1. Copy of retrenchment letter.
2. Letter from creditor/s providing details of when the debtor advised creditors of his/her retrenchment, alternatively unemployed status. (Notice period should be approximately two months after retrenchment / unemployment).
3. Copies of accounts, alternatively stats for the debtor for a period of 3 months prior to retrenchment.

C) Any debtor falling into the "REFER" or "IGNORE" category will be disqualified if the following is evident:

1. Four or more judgements/write offs and adverse reports or any combination thereof against him/her over a period of 24 months.

Further requirements include the following criteria:

1. All legal and constitutive documents pertaining to the new legal entity and the individual concerned, in full compliance with all relevant legislation.
2. All contracts are to be ring fenced under the new, previously non-trading entity.

The security in respect of the Learner Contracting Companies will be:

1. Personal suretyship.
2. Cession of proceeds of contract entered into between the Learner Contracting Company and the Authority, to the value of the debt.

It must further be noted:

1. That the credit official of the Bank present at the interview, must have the right to inform the selection committee that Absa shall decline to grant financial services, in terms of this agreement, in respect of every Learner Contracting Company, based on credit principles and/or criteria.

2. That the Bank requires 14 days notice of every meeting with, or relating to, the Learner Contracting Companies and Learners, together with names and identity numbers of the candidates to be interviewed on the specific day.
3. All supporting documents, as detailed in the Qualifications in respect of the "REFER", must be received by the Bank within 7 days after the interview, failing which the applicant may, at the Bank's discretion, disqualify from consideration for financial services.

Automatic Disqualification

Notwithstanding any of the aforementioned criteria, the following will automatically disqualify the Learner Contracting Company and the Learners from any further consideration:

- Any fraudulent activity, reasonably suspected / confirmed, that comes to Absa's attention
- More than 5 "Refer to Drawer" on the applicants existing cheque account in the last 12 months.
- If any one of the learners is an un-rehabilitated insolvent and/or the business has been liquidated or is in the process of being liquidated

Consideration for facilities of approved Learner Contracting Companies

The following will be required from the approved Learner Contracting Company :

Cash flow projection

Copy of each Project contract between the Learner Contracting Company and the Authority

Breakdown of facilities required.

Monthly financial management report.

All facilities considered will be in line with the contract requirements.

These criteria serve only as guidelines in respect of the Learner Contracting Companies and ultimate discretion in this regard vests with the mandate holder present at the interview of, or other assessment forum of, the Learner Contracting Companies.

ANNEXURE “B” to ABSA Agreement
ENRICHMENT TRAINING

Enrichment Training for Learner Contracting Companies

Based on the target population of the EPWP, we believe it is important to assist the Learner Contracting Companies in understanding the operations of cheque account and minimum expectations from a bank for their customers.

In order to assist the Learner Contracting Companies to understand the above, enrichment training sessions will be conducted with the contractors / supervisors of all new Learner Contracting Companies within 4 weeks of the account being activated.

ABSA will ensure signoff in terms of the proposed training schedule is obtained and forwarded to all stakeholders quarterly.

The scope of intervention should encompass the following areas:
(Refer template on next page.)

- Business Cheque Account
- Savings Account
- Electronic Banking
- Investments
- Security
- Facilities

Proposed Training Schedule

Date	Branch
Bank Representative.....	
Number of contractors
Business Cheque Account	COVERED
Daily Operation	
Debt balance	
Credit balance.	
Overdraft Facilities	
Temporary Facilities.	
Interest on Overdraft Utilisation	
Signing Arrangements	
Debit Order	
Stop Order	
Stop Payment	
Reconciliation of statement.	
Electronic Banking.	
Internet Banking	

Call Account	
Fixed Deposits	
Savings Accounts	
Security	
Suretyship	
Tangible Cover	
Facilities	
New (Requirements)	
Review (Requirements)	

We Hereby confirm that the above has been covered.
 Signed at on
 Contractor Mentor

TENDER ANNEXURE

Proposal

Expanded Public Works Programme

This proposal is submitted in response to your RFP dated 23 January 2004, your letter of 20 February 2004 and our subsequent meeting held on 9 March 2004 for the provision of financial services to Learner Contracting Companies for the Expanded Public Works Programme.

Tender Conditions and Proposal

1. Provide Asset Finance for Learner Contracting Companies to buy small plant, equipment and vehicles

1.1. Cost of Capital (interest and loans) that will be provided to learner- contractors

Absa Vehicle and Asset Finance will be available to the Learner Contracting Companies at Absa's Prime Interest Lending Rate +0,75% subject to DBSA issuing a guarantee with terms and conditions agreed to by all stakeholders. Should the guarantee not be secured with DBSA, pricing will be set at Absa's Prime Interest Lending Rate +1%. (Refer to point 6.)

1.2. Innovative means of providing services and addressing risks

Financing will be done on a Lease Agreement.

Maintenance plans at negotiated prices on the vehicles and moving assets are recommended to ensure continuity and execution of contracts. The maintenance plans will ensure good condition of the vehicles and movable assets to retain market value thereby improving the contractor's equity position.

2. Pricing and Profiling the Credit Risk of Learner Contracting Companies

2.1. Cost of Capital (interest and loans) that will be provided to Learner Contracting Companies

Working capital finance will be available to the Learner Contracting Companies at Absa's Prime Interest Lending Rate +0,75% subject to DBSA issuing a guarantee with terms and conditions agreed to by all stakeholders. Should the guarantee not be secured with DBSA, pricing will be set at Absa's Prime Interest Lending Rate +1%.

2.2. Approval of Facilities

As a provider of financial services to a broad spectrum of our country, Absa Bank is fully aware of the lack of access to financial resources of Learner Contracting Companies to perform in terms of the EPWP.

It is against this background that Absa provides financial solutions that are competitively priced and acceptable to all stakeholders as well as attainable for the Learner Contracting Companies.

Absa would further ensure that providing financial facilities would not in anyway over expose the Learner Contracting Company to an unacceptable level, which would affect the learner negatively in terms of his future credit record.

In order to achieve the above outcomes, Absa will use the following approach:

Provision of facilities to Learner Contracting Companies

All Learner Contracting Companies identified and approved in terms of the criteria set by the panel will automatically qualify for financial facilities based on the individual contract requirements. To fulfil our obligation in providing finance, Absa will set criteria, which is acceptable to all stakeholders for the EPWP.

In terms of the criteria to be developed, Absa will not expect the Learner Contracting Company to provide Tangible Security and will place reliance on the cash flow of the contract to ensure repayment of the facilities.

Suretyship

Absa will however, require a personal suretyship from the members/ shareholders in favour of the Company or Close Corporation. This is merely a formality to ensure liability can be transferred to a natural person/s. It will further protect all stakeholders against abuse of facilities by the owners/ managers of the Learner Contracting Companies.

3. Short Term Insurance for Learner Contracting Companies (EPWP)

3.1. "Open" vs. Individual Policies

"Open" or General Types of policies vs. Individual Policies can be considered. For contracts below R10 000 000 in value, Absa suggest an "Open" type Contractors' All Risks policy, as benefits far outweigh those of individual policies, e.g.

- ▶ **Administration** – A single policy is issued and renewed.
- ▶ **Payment of Premium** – A single annual premium is payable, based on the projected total value of contracts for the insurance year (not calendar year).
- ▶ **Reconciliation** – At the end of the insurance year, a single premium reconciliation is done resulting either in an additional premium being paid to the insurance company or a return premium being paid to the client.
- ▶ **Claims** – All claims are instituted against one policy and payment of claims is therefore expedited.
- ▶ **Costing** – As only one policy is issued, there is an obvious saving in costs that is escalated down to the consumer.

3.2. Quality and Experience of Learner Contracting Companies

The fact that the Learner Contracting Companies are all inexperienced would as a rule be regarded as onerous, but this has been negated due to Learners and Learner Contracting Companies being strictly supervised initially and will operate in terms of a well-structured training programme.

3.3. Geographical spread of contracts

The large geographical spread of the different contracts creates a favourable risk profile, resulting in cost savings being filtered down to the insured.

3.4. **Contractors All Risks**

A "master" CAR policy will be issued, listing Absa Bank as the Principal and protecting the interests of Absa (all relevant divisions, i.e. AVAF) and the Department of Public Works as well as Provincial or Local Authorities.

Certificates of insurance will be issued against the master policy, listing the relevant Provincial or Local Government that issues the tender and the particular contractor and his sub-contractors (if any) as insureds for the relevant contract.

Generic terms, conditions and excesses will be negotiated (Refer to Annexure A of the tender document).

Pricing to the individual Learner Contracting Company will be determined by the type and value of each contract.

It is envisaged that the above policy will be limited to contracts below R10 000 000 in value and will further be restricted to contracts for the building of infrastructure (i.e. pipes, sewerage, etc.) roads and buildings.

Contracts falling outside the scope of the master policy or contracts for more than R10 000 000 will be insured individually.

Claims will be reported to Absa Brokers who will finalise the claims with the selected insurance company.

3.5. **Plant All Risks**

The same principles as for Contractors All Risks will apply.

3.6. **Motor Insurance**

The same principles as for Contractors All Risks will apply.

Costing

For clarification purposes, we list the basic suggested rates that have been used to calculate the costs as outlined in Annexure "B" of the Tender document.

Contractors All Risks

Rate on total annual turnover:

Buildings	0,350%
Other	0,6%
SASRIA	0,006%

The above includes R2 000 000 contractors' liability cover.

Excesses

Own damage	10% of claim with a minimum of R5 000-00
Third Party	R5 000-00

Plant All Risks

Rate per Item	4% (minimum premium R250 per annum)
SASRIA	0,03%

The above includes R2 000 000 Third Party cover

Motor

Average rate per unit	12%
SASRIA	R35 per unit
Credit shortfall	1% on value

The above includes R2 000 000 Third Party liability cover.

Note: Sourcing of premiums upfront needs to be resolved, and as agreed, the Department of Public Works will respond in this regard as soon as possible.

4. **Effective Communication Channels for all Stakeholders**

In order to achieve effective communication channels, Absa will ensure that the following points of entry for all stakeholders are in place: (**Refer Page 6 and 7, Communication Flow Chart and Quarterly Report**)

4.1. **DPW and CETA – National Co-ordinator for the project**
Functions of the National Co-ordinator:

Provide reporting on a quarterly basis in terms of identified highlighted areas to all stakeholders.

Provide the respective contractors with letters of introduction and contact details of the identified Relationship Managers.

Intervene and ensure that service levels agreed to by all stakeholders are adhered to.

4.2. **Provincial Government and Municipalities – Provincial Co-ordinator**
Functions of the Provincial co-ordinator:

- ▶ Provide a single point of entry for Provincial Government and Municipalities.
- ▶ Collate all data required by National co-ordinator on a monthly basis.
- ▶ Ensure that Relationship Managers reports and complies with set standards agreed to in the proposal.
- ▶ Ensure that concerns are escalated to the National Co-ordinator.

4.3. **Learner Contracting Companies and Municipalities-Relationship manager**
Functions of Relationship Manager:

Provide one point of entry for Contractors and Mentors.

Supply Provincial Co-ordinator with required reporting.

Ensure that enrichment training takes place in terms of Absa's commitment.

Report anomalies to Provincial Co-ordinator

All external stakeholders have the option to address concerns via the following channels if the Absa Stakeholder involved in the programme is not in a position to resolve the identified disputes.

Action Line: Service provided by Absa to all customers which gives them direct access to Top Management.

Communication Flow Chart

Learner Contracting Company identified by panel –DPW/CETA/BANK

Centralised control of records

Name of the contractor supplied to national co-ordinator for programme.
Letter of introduction given to client to contact nearest branch and name of contact person in the Branch.

Documents required for the Learner Contracting Company to open account

- Company documents.
- Copy of id document/s of members /shareholder.
- Proof of residential address **(in terms of FIC –REGULATORY REQUIREMENT)**
- Copy of contract **(Learnership Agreement)**
- Mentor to be present to sign mandate documents.
- **Absa Relationship Bankers can open account on site**

Approval of facilities

As per agreed criteria

- Cession of payments due in terms of contract from Authority.
- Copy of independent on-site training-project contracts.

Centralised control

- Account number provided to centralised point in the region within 3 days of opening.
- Facilities granted to individual contractors to be also noted.
- Account numbers provided monthly to centralised point nationally.

Bank training intervention

- To be provided within four weeks of opening of account.
- Sign off to be confirmed within five days of training by regional co-ordinator to national co-ordinator.

EPWP QUATERLY REPORT ON CONTRACTORS						
NAME OF CONTRACTOR	ACCOUNT NUMBER	EXPOSURE CHEQ ACC	AVAF EXPOSURE	INSURANCE COVER AMOUNT	UNAUTHORISED EXCESSES	NUMBER OF LATE PAYMENT BY MUNICIPALITY

5. Enrichment Training for Learner Contracting Companies

Based on the target population of the EPWP, we believe it is important to assist the contractors / supervisors of the Learner Contracting Companies in understanding the operations of cheque account and minimum expectations from a bank for their customers.

In order to assist the contractors / supervisors of the Learner Contracting Companies to understand the above, enrichment training sessions will be conducted with all new Learner Contracting Companies within 4 weeks of the account is being activated.

Absa will ensure signoff in terms of the proposed training schedule is obtained and forwarded to all stakeholders quarterly.

The scope of intervention should encompass the following areas:
(Refer template on page 8)

- Business Cheque Account
- Electronic Banking
- Investments
- Security
- Facilities

Proposed Training Schedule

Date	Branch
Bank Representative.....	
Number of contractors
Business Cheque Account	COVERED
Daily Operation	
Debt balance	
Credit balance.	
Overdraft Facilities	
Temporary Facilities.	
Interest on Overdraft Utilisation	
Signing Arrangements	
Debit Order	
Stop Order	
Stop Payment	
Reconciliation of statement.	
Electronic Banking.	
Internet Banking	

Call Account	
Fixed Deposits	
Savings Accounts	
Security	
Suretyship	
Tangible Cover	
Facilities	
New (Requirements)	
Review (Requirements)	

We Hereby confirm that the above has been covered.
 Signed at on
 Contractor Mentor

6. Pricing

To ensure we meet our commitment to the EPWP, Absa offers the following reduced service fee charges at a 20% average reduction for similar size entities.

Charges which will mainly affect the contractors:

Learner Contracting Company Cheque Account	
<p>Service Fees</p> <p>Service fee charges relate to the issue of cheques and the fees levied thereon. It should mainly be considered as administration fee to process statements, cheques and to maintain an account on the Absa Bank database.</p> <p>Service Fee Charges relative to the contractors are as follows:- Fixed Service Fee <i>NB:</i> R1-63 for the first hundred Rand and R1-45 for each hundred Rand thereafter or part thereof, with a maximum charge of R19-50 per cheque issued.</p> <p>Minimum Monthly Service Fee <i>NB:</i> The minimum monthly fee is only levied if all service charges are below R43-75 within a certain month.</p>	<p>R1-63;R1-45;R19-50</p> <p>R43-75</p>
<p>Credit Interest Rate <i>NB:</i> The Interest Rate paid on daily credit balances of the cheque accounts</p>	0,10%
<p>Overdraft Facility Rate <i>NB:</i> The overdraft facility rates as well as the rates levied for all asset base finance will be at the bank prime lending rate plus one percent. Interest in excess of arranged facility will be levied at a rate of Prime plus 8%.</p>	<p>Prime +0,75%</p> <p>Should the guarantee not be secured with DBSA, pricing will be set at Absa's Prime Interest Lending Rate +1%. (Refer to point 6.)</p>
<p>Penalty Interest Rate</p>	Prime + 8%
<p>Monthly Statements</p>	R4-50
<p>Cash Deposit Fee <i>NB:</i> Cash handling fee for deposits from R0.00 to R100 000 is charged at a rate of R0-92 per R100-00 and deposits of more than R100 000 is charged at a rate of R0-67 per R100-00.</p>	<p>>R10k to <R100k = R0-92/R100</p> <p>>R100k = R0-67/R100</p>
<p>Limited Performance Guarantee (Lending Guarantees)</p>	
<p>Full Cash Cover Guarantee Against full cash cover or cession of investment that covers full amount of guarantee. <i>NB:</i> Lending Guarantee where the bank is provided will full cash for the amount of the Guarantee. Once-Off Fee</p>	R157-19
<p>Partly Cash Cover Guarantees Against part cash cover or cession of investment that covers part of guarantee amount <i>NB:</i> Lending Guarantee where the Guarantee is partly covered by cash and portion unsecured.</p> <p>% of unsecured part (1st six months or part thereof) Minimum <i>NB:</i> Charge at a rate of 2,86% of the value of the Guarantee with a minimum charge of R157-19</p>	<p>2,86%</p> <p>R157-19</p>

% on unsecured part (subsequent six months or part thereof) Minimum <i>NB:</i> The unsecured portion is levied with a charge of 1,43% of the value of the Unsecured portion with minimum charge of R78-33	1,43% R78-33
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Note: All charges quoted will be reviewed on annual basis.

7. Mandates (Dual Signatories)

Absa's state of the art infrastructure provides the dual signatures requirement for all transactions both electronically and manually.

In order to enhance the requirement further, any approach to the bank for facilities or assistance of any nature must be signed off by the identified Mentor as well.

Absa will ensure that any signatories added or deleted outside the scope of the agreement between the Bank and the relevant stakeholders is immediately reported prior to implementation of such an amendment.

8. Customised solutions

Based on the scope of the EPWP Absa takes cognisance of the fact that the programme will be rolled out countrywide and the provision of banking services will be identical to all contractors and their employees.

We realise that the payment of wages is as important to the Learner Contracting Companies as all other services offered. We are confident that our footprint covers most parts of the country. Areas not covered by physical representation are covered by our extensive network of ATMs. (Refer Annexure C)

In order to ensure timeous payment of wages the following facilities are available for utilisation: -

» Internet transfers

The contractor is in a position to transfer salaries or wages from any Internet linked computer or Absa Internet Kiosks, where available.

» Manual payments

The contractor can also provide manual payments to his employees by providing a wage breakdown to his identified relationship manager at a branch most convenient to his employees.

9. Value added services

Value added services to Learner Contracting Companies and their employees include:

Relationship Banking

In providing end-to-end financial solutions to Learner Contracting Companies, Absa will utilise a single point of entry approach through relationship banking. This will ensure that Learner Contracting Companies are provided with the best and most convenient banking services available.

Features of Relationship Banking

A dedicated Relationship Manager for the customer will be allocated per Province. The

contractor will be aware who is managing his/her banking relationship at all times.

One point of entry for all banking requirements

The Learner Contracting Company will not be required to source assistance in Absa, his/her Relationship Manager will be able to facilitate any banking requirements on behalf of the contractor.

Site visits by Relationship Manager

The Relationship Manager will conduct site visits which will enable him/her to take active interest in the customer's business.

Additional Services to Learner Contracting Companies and their employees

Absa's FlexiSave will be available to the Learner Contracting Companies labour force. This will enable employees of Learner Contracting Companies to make payments electronically at reduced service fees. All FlexiSave accounts opened will include free funeral cover of R2 000. Learner Contracting Companies will have access to a range of business and personal products relative to their needs, e.g.

Encashment Facilities

Internet Banking

Investment Products

Financial Advisory Services

Personal Finance

Personal Cheque Accounts

Home Loans

Personal Vehicle Finance

subject to the normal credit and other criteria of Absa Bank

10. Advantages of a partnership with Absa

10.1 Intellectual Capital

Absa has successfully implemented and administered a similar programme in the Limpopo Province – Gundu Lashu and Sakhasonke programmes. We have no doubt that this programme can be rolled out to the rest of South Africa in partnership with the Department of Public Works.

Limited guarantees in the Limpopo Province – Sakhasonke and Gundu Lashu

In the Limpopo Province, due to growth in business allocated to emerging contractors by the Department of Public Works, Absa Bank has successfully implemented the limited guarantee scheme for amounts ranging from R380,000 to R1,1 million, totalling in excess of R10 million. To date, the Bank has not experienced any disputes or losses. Absa is also implementing similar programmes in the Northern and Eastern Cape regions.

10.2 Absa Incubator Fund

Absa Bank is the only Commercial Bank that has created an Equity Fund to assist previously disadvantaged small entrepreneurs. Aimed at new and existing black businesses, this fund has been created with an initial R25 million allocated to it as a pilot fund amount. It is envisaged that the fund amount will eventually grow to R250 million.

Conclusion

As a responsible corporate citizen, Absa is committed to Public - Private Partnerships that will ensure employment opportunities, skills transfer and economic growth on equitable basis.