

AFFIDAVIT

I, the undersigned,

CHRISTIAAN WILHELM FREDERICH NEETHLING

do hereby make oath and state:

1. I am an adult male and Head of Investigations of the Organisation Undoing Tax Abuse (“OUTA”) with its business address situated at 10th Floor, O’Keeffe & Swartz Building, Oak Avenue, Ferndale, Randburg.
 - 1.1. I am fully authorised to depose to this affidavit.
 - 1.2. The contents of this affidavit fall within my personal knowledge, unless stated otherwise, and are in all aspects true and correct.

A MANDATE

2. The complainant, OUTA, is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers’ money in South Africa.

B INTRODUCTION

3. During the course of 2019, OUTA conducted an investigation into a series of irregularities pertaining to the Pro-Active Funding Model (“PAF”) implemented by the National Lotteries Commission (“NLC”). In our preliminary findings, we

have established a reasonable suspicion that the so-called PAF is being utilised in an illegal manner without the proper executive oversight.

4. As part of its investigation, OUTA has identified an array of private entities and individuals who had participated in the NLC's PAF programme, and subsequently benefited from funding originating directly from the NLC.
5. It should be noted that the purpose of this affidavit is not to address the legitimacy of PAF as national policy *per se*, but rather to illustrate the criminal activity that had transpired from the utilisation of such policy by both public servants and private individuals alike.

C PRO-ACTIVE FUNDING MODEL EXPLAINED

6. The concept of PAF has its origins in the National Lotteries Amendment Act 32 of 2013. The enabling provision, essentially breathing life into this concept, reads as follows:

*"The Commission may, upon request by the Minister, board or on its own initiative in consultation with the board, conduct research on worthy good causes that may be funded without lodging an application prescribed in terms of this Act."*¹

7. For contextual clarity, I attach hereto a copy of the NLC's PAF, marked **ANNEXURE "NLC1"**.
8. As opposed to conventional procurement practices which require documentation such as requests for proposals as set out in industry-specific procurement policies, the PAF has no such prerequisites. The PAF circumvents cumbersome procedures as prescribed by legislation such as the Preferential Procurement Policy Framework Act 5 of 2000 ("PPFA").

¹ See section 2A (3) of the Lotteries Act 57 of 1997 ("LA").

9. The Lotteries Act 57 of 1997, as amended (“LA”) is clear in stating that research on PAF may only be conducted if good cause is shown by the National Lotteries Commission (“NLC”) in consultation with the Board. It is then the Commission that may invite applications for grants to be submitted.
10. A flow chart of the process, considering a strict reading of section 2A of the LA, can be seen on the “*High Level Overview of Pro-Active Funding Process*”, attached hereto and marked **ANNEXURE “NLC2”**. The NLC differentiates between planned and unplanned situations. In turn, differentiation is also made between application based funding, and proactive funding – it goes without saying that PAF falls within the second criteria.
11. As per section 2A of the LA, research is to be conducted by the NLC. On ground level, such research is conducted by the NLC’s Business Development Department (“BDD”). The methodologies used by the NLC may vary, depending on the nature of the need identified.
12. *In lieu* of the research by the BDD, it is the responsibility of the Grant Funding Department (“GFD”) to consult key stakeholders in selecting most appropriate organisations to implement the project.
13. Thereafter, the GFD will assess, evaluate, recommend and approve the funding to such organisations in line with the relevant Delegation of Authority (“DOA”). It is the responsibility of the NLC Assurance Committee (“AC”) to conduct quality assurance that the process explained above have been followed. The AC is comprised of 3 members from the relevant Distributing Agency (“DA”) within the area of distribution of the funding.
14. Upon conclusion of the above-mentioned process, the NLC must then consult its board on the approved projects for funding. At this stage the funding has been approved in line with the relevant DOA.
15. An organisation will only be selected for implementation, if such organisation operates within a specific industry/area. The NLC uses the example of a

charity organisation in instances where the proposed project entails charity work. On the other hand, it would be irregular if an organisation which distributes food parcels to the needy be awarded a grant for the management of a community reading centre.

16. All organisations to be considered for PAF must also comply with the following prerequisites:
 - 16.1. The organisation implementing the project must reside within the area and/or province in which such project is to be implemented, unless otherwise indicated;
 - 16.2. The organisation must have the capacity and ability to implement the project;
 - 16.3. The organisation implementing the project must have been in existence/registered for at least 2 years prior to the awarding of the grant; and
 - 16.4. In instances where a particular organisation has been awarded 1 or more grants in the past, a cooling off period for such award is applicable as to prevent the same organisations from repeatedly being used as implementing agents.²

17. All monitoring and evaluation of an approved project will be conducted to ensure compliance with the Grant Agreement (“GA”) entered into by the NLC and the identified organisation. In terms of the GA, such organisations are also required to submit an interim and final report upon completion of the project.

² It is unclear whether the NLC applies a standard cooling off period applicable to all implementing organisations. This can be confirmed by means of correspondence addressed to the NLC.

18. In this regard, it should be noted that submission of progress reports will differ on a case-by-case basis as such provisions are specifically set out in the GA of a particular project.
19. The NLC specifically states that the PAF policy be reviewed on an annual basis. It is also important to take cognisance of the fact that deviations from the procedures and prescripts as set out above will only be warranted upon approval by the Commissioner of the NLC.

D AWARDING OF GRANT AGREEMENT: ZIBSIFUSION NPC

20. On 6 November 2018, the NLC approved an application made by Zibsifusion NPC (“Zibsifusion”) for a grant allocation of R10,000,000.00 (TEN MILLION RAND), under project number 113081, purportedly for a charitable cause in line with the PAF model. A copy of the correspondence to this effect, dated 6 November 2018, is attached hereto and marked **ANNEXURE “NLC3”**.
21. Zibsifusion is a non-profit Company (NPC) registered on 2015-12-21 with Registration number 2015/450569/08. Shortly after Zibsifusion was purchased (it being a shelf company prior), Liesl Joy Moses (“Moses”), Tsietsi Joseph Tshabalala (“Tshabalala”) and Lesley Ramulifho (“Ramulifho”) was registered as Zibsifusion’s directors.
22. Subsequently, and on the same day on which the letter of award had been transmitted by the NLC, a grant agreement was entered into between the NLC as Zibsifusion of which the latter is cited as the grantee. A copy of the grant agreement is attached hereto and marked **ANNEXURE “NLC4”**. In terms of the grant agreement, Zibsifusion was to utilise the funds for charitable purposes.
23. The grant agreement was duly signed by Louisa Mangwagape (“Mangwagape”), representative and chairperson of Zibsifusion and Philemon Letwaba (“Letwaba”), representative and chief operating officer of the NLC.

24. Letwaba has served in the capacity of both the NLC's COO and CFO from May 2014 until present. However, Letwaba has allegedly taken voluntary leave until 1 March 2020, amid various calls by political parties for an independent investigation into irregularities surrounding the NLC's grant funding processes.

25. Moreover, Letwaba also holds directorships in the following entities, as apparent through data printouts attached hereto and marked **ANNEXURE "NLC5"**:
 - 25.1. AI IT Consultant;
 - 25.2. Andzani Investments;
 - 25.3. Bridgeark Agri;
 - 25.4. Bridgeark Construction;
 - 25.5. Bridgeark Consulting and Engineering;
 - 25.6. Bridgeark Energy;
 - 25.7. Bridgeark Foundation;
 - 25.8. Bridgeark Investments;
 - 25.9. Bridgeark Logistics;
 - 25.10. Bridgeark Properties;
 - 25.11. Bridgeark Resources;
 - 25.12. Bridgeark SHE;
 - 25.13. Bridgeark trading;
 - 25.14. EagleQuest Food Security (Resigned);
 - 25.15. Letwaba Chartered Accountants;
 - 25.16. Letwaba Energy and Petroleums (Resigned);
 - 25.17. Letwaba Holdings (Resigned);
 - 25.18. Mentolite;

- 25.19. MentoMart;
- 25.20. Mosokodi Farming Projects (Resigned);
- 25.21. Mosokodi Water Solutions and Drilling (Resigned);
- 25.22. Ndzhuku Engineering and Manufacturing (Resigned);
- 25.23. PKT Consulting Engineers (Resigned); and
- 25.24. Torrex Mining Services (Resigned)

E RECEIPT OF GRANT FUNDING: ZIBSIFUSION

- 26. Following the conclusion of the grant agreement on 6 November 2018, an amount of R7,000,000.00 was deposited into a First National Bank (“FNB”) account, account number 62761401315 on 21 November 2019. As apparent from the FNB bank statement(s) attached hereto and marked **ANNEXURE “NLC6”**, it is reasonable to conclude that the holder of the gold business account with account number 62761401315 is in fact Zibsifusion.
- 27. The balance of R3,000,000.00 was deposited into the above-mentioned account on 4 April 2019. The payment sequence is stipulated as to be paid in tranches, namely “*Tranche 1*” and “*Tranche 2*” respectively as reflected in paragraph 4 of **ANNEXURE “NLC4”**.
- 28. The account from which the deposits had been made is conclusively that of the NLC’s. Of particular interest is the fact that the payments had been divided into the so-called tranches, effectively breaking two distinct payments into payment less than R10,000,000.00 respectively.
- 29. In this regard, it should also be noted that tranche-based payments cannot reasonably be justified in terms of the grant agreement as the description thereof is fictional.³ In the ordinary course of business, tranche payments are utilised to guarantee delivery by a contracting party. In this instance,

³ See paragraph 4 of the grant agreement.

Zibsifusion did not deliver a “satisfactory progress report” prior to the receipt of the second tranche payment. It is thus reasonable to conclude that this practice amounts to smurfing.⁴

30. In short, smurfing amounts to the division of large sums of money into much smaller transactions and is carried out by using multiple bank accounts. Such bank accounts may seem legitimate (at face value) as smurfing is conducted using a legitimate banking system. Consequently, unlawful proceeds can be laundered with little suspicion.
31. In this regard, we attach hereto our report on the construction of sanitation facilities at various Limpopo schools, marked **ANNEXURE “NL7”**.

F CHRONOLOGICAL ANALYSIS OF FNB ACCOUNT: 62761401315

32. Upon conclusion of comparative analysis of **ANNEXURE “NLC6”**, OUTA is confident to conclude that the grant funding so deposited into the business account of Zibsifusion (62761401315) had not been utilised for the purpose(s) as stipulated in the grant agreement. The tables below illustrate the distribution of funds after Zibsifusion had received both Tranche 1 and Tranche 2 from the NLC. In this regard, we also attach hereto our report on the construction of sanitation facilities at various Limpopo schools, marked **ANNEXURE “NL5”**.

Table 1: Payments made in relation to: Lesley Ramulifho

DATE	LINE ITEM DESCRIPTION	AMOUNT
22/11/2018	Rtc Express Pmt to Lesley Ramulifho	R6,000.00
23/11/2018	Internet Pmt to Zero1two lct - Lesley	R87,607.00
26/11/2018	Internet Pmt to Lesley Lee.	R20,000.00
04/12/2018	Internet Pmt to Ko1 General Trading Lesley	R50,000.00
11/01/2019	FNB App Payment to Ko1 General Trading Lesley	R4,000.00

⁴ See *The Enablers: The Bankers, Accountants and Lawyers that Cashed in on State Capture*, Open Secrets, at page 17.

16/01/2019	FNB App payment to Lesley NRS 01	R35,000.00
18/01/2019	FNB App Rtc Pmt to Lesley	R5,000.00
08/02/2019	FNB App payment to Denzhe Primary Care Lesley	R6,000.00
02/04/2019	Internet Pmt to V Mabe - Lesley Ramulifho	R10,000.00
03/04/2019	FNB App payment to Dalia Consulting - Lesley Ramulifho	R10,000.00
29/04/2019	Dalia Consulting Lesley Ramulifho	R10,000.00
		R 243, 607.00

33. Lesley Ramulifho is a Pretoria Based attorney. It is believed that Ramulifo has a child with an active director on the Board of Zibsifusion, namely Liesl Joy Moses, an active director on the Board of Zibsifusion, and that he holds or has held directorships in the following companies, as reflected on **ANNEXURE “NLC9”**:

- 33.1. African Dune Investments (removed from Board);
- 33.2. Amufin (Resigned);
- 33.3. Astradeal S220 (Resigned);
- 33.4. Dinosys (Resigned);
- 33.5. Fly Cargo;
- 33.6. IAfrica Transcriptions;
- 33.7. Khethakanye Trading and Projects;
- 33.8. Mandlatex (Mandlatex);
- 33.9. Molokomme and Associates (Resigned);
- 33.10. Ndivho Vhugala Printing and Book Sellers;
- 33.11. NoraSpex;
- 33.12. Pro edge recordings and Transcriptions;
- 33.13. Pro Edge Solutions;
- 33.14. Pro Group Asset Management and Financial Consultants;
- 33.15. R J N Consulting (Resigned);
- 33.16. Ramulifho Legal Work;
- 33.17. RN Consultants;
- 33.18. Sefikile Legal Insurance Advisors;
- 33.19. Wonderwall Investments 47; and
- 33.20. Zibsifusion NPC (Resigned).

34. Ramulifho is also the chairperson of the following NPO's:
- 34.1. I am made for God's Glory;
 - 34.2. Denzhe Primary Care (the details at Department of Social Development still reflect that Takalani Tsikalange is the Chairperson of Denzhe which suggests that Ramulifho forged the Board resolutions taken to appoint himself as Chairperson of Denzhe)

Table 2: Payments made in relation to: Lee Liesl Joy Moses

DATE	LINE ITEM DESCRIPTION	AMOUNT
22/11/2018	Rtc Express Pmt to Lee.	R50,000.00
23/11/2018	Internet Pmt to Lee.	R500.00
24/11/2018	Internet Pmt to Lee.	R55,000.00
26/11/2018	Internet Pmt to Lesley Lee.	R20,000.00
28/11/2018	Tel-banking Pmt to Engineer Lee	R150,000.00
29/11/2018	FNB App Rtc Pmt to Survey Site Lee	R150,000.00
04/12/2018	Rtc Express Pmt to Lee.	R50,000.00
04/12/2018	Internet Pmt to Site Survey Lee	R52,000.00
05/12/2018	Internet Pmt to Site Survey Lee	R10,000.00
18/12/2018	Internet Pmt to Site Survey Lee	R100,000.00
12/01/2019	FNB App Payment to Site Lee	R25,000.00
16/01/2019	FNB App payment to Lesley Nrs 01	R35,000.00
18/01/2019	FNB App Rtc Pmt to Lee	R40,000.00
18/01/2019	FNB App Rtc Pmt to Lesley	R5,000.00
06/03/2019	FNB App Rtc Pmt to Zibsifusion Lee	R10,000.00
11/03/2019	FNB App Payment to L J Moses	R31,000.00
04/04/2019	Internet Pmt to L J Moses	R18,556.00
11/04/2019	Teller Cash - Woodlands Boulevard - Lee	R30,000.00
12/04/2019	FNB App Rtc Pmt to Zibsifusion Lee	R20,000.00
20/04/2019	Internet Pmt to Lufuno - L J Moses	R2,000.00
23/04/2019	FNB App Payment to Lufuno - L J Moses	R1,500.00
25/04/2019	Internet Pmt to L J Moses	R57,000.00
30/04/2019	FNB App Payment to L J Moses	R37,000.00
09/05/2019	Internet Pmt to Bricks - L J Moses	R2,700.00
10/05/2019	FNB App Payment to Bricks - L J Moses	R4,050.00
28/05/2019	Internet Pmt to Bricks - L J Moses	R6,000.00
30/05/2019	FNB App Payment to Bricks - L J Moses	R160,000.00
		R1,122,306.00

35. OUTA has established that the reference made to "Lee", totalling and amount of R1,122,306.00 refers to Liesl Joy Moses ("Moses"), as the email address

reflected on the above mentioned bank statements reflect an address of "leemoses@telkomsa.net". Moses is a director of the following companies:

- 35.1. Amufin (Resigned);
 - 35.2. Dinosys;
 - 35.3. Fly Cargo;
 - 35.4. Mandlatex (Resigned);
 - 35.5. Nadowize;
 - 35.6. Peulane Projects;
 - 35.7. Sefikile Legal Insurance Advisors;
 - 35.8. Sifikile Aviation Consultant; and
 - 35.9. Zibsifusion
36. It should be noted with concern that Dinosys as per paragraph 33.2 above had also entered into a similar (almost verbatim) grant agreement with the NLC on 8 November 2018, thus also making Dinosys a beneficiary of the NLC's PAF. The grant agreement entered into between the aforementioned parties is attached hereto and marked **ANNEXURE "NLC10"**.
37. Of significance, is the utilisation of tranche-based payments in both grant agreements in the absence of any form of progress reporting. Had Zibsifusion submitted the relevant progress reports, the *onus* to determine whether the tranches had been utilised for the purposes set out in the grant agreement rested upon the NLC. Had Zibsifusion failed to do so, the NLC would still be liable in terms of the Public Finance Management Act, 1999 ("PFMA") to ensure that such report be submitted. OUTA is unable to determine either of the scenarios as described above but submits that a contravention of section 49 and 51 of the PFMA.
38. As apparent from the grant agreement, Dinosys had received R10,000,000.00 in terms of such agreement for the construction of sanitation facilities in some 15 schools. Both Zibsifusion and Dinosys' registered business address is situated at 21A Garsfontein Office Park, Jacqueline Street, Pretoria.

Coincidentally, this is the same address at which Ramulifho Incorporated is situated, as can be seen from the address reflected on the firm's website.⁵

Table 3: Payments made in relation to: Dinosys NPC

DATE	LINE ITEM DESCRIPTION	AMOUNT
12/01/2019	FNB App transfer to Dino.	R500,000.00
25/01/2019	FNB App Payment to Elliotdale Enviroloo Dinosys NPC	R50,000.00
14/02/2019	FNB App Rtc Pmt to Elliotdale Mkapusi - Dinosys NPC	R246,076.00
26/02/2019	FNB App Payment to Elliotdale Mkapusi - Dinosys NPC	R15,000.00
05/03/2019	Internet Pmt to Elliotdale Enviroloo - Dinosys NPC	R7,000.00
13/03/2019	FNB App Rtc Pmt to Elliotdale Mkapusi - Dinosys NPC	R97,000.00
04/04/2019	Internet Pmt to Mkapusi - Dinosys NPC	R45,076.00
05/04/2019	Internet Pmt to Mkapusi School - Dinosys NPC	R45,000.00
29/04/2019	Internet Pmt to Reports - Dinosys NPC	R10,000.00
		R1,015,152.00

Table 4: Payments made in relation to: Enviroloo

DATE	LINE ITEM DESCRIPTION	AMOUNT
28/11/2018	Internet Payment to Enviroloo - Dj 2063 & Dj 2064	R213,374.86
25/01/2019	FNB App Payment to Enviroloo - WB 2064	R113,229.35
21/02/2019	Internet Payment to Enviroloo - WB 2066	R108,193.15
12/04/2019	FNB App Payment to Enviroloo - WB 2086	R107,158.15
02/05/2019	FNB App Payment to Enviroloo / ref # Dj2152	R129,284.79
23/05/2019	FNB App Payment to Enviroloo / ref # WB 2095	R132,308.65
23/05/2019	Internet Payment to Enviroloo / WB 2094	R107,158.15
		R910,707.10

⁵ <https://www.ramulifho.co.za/>

39. OUTA has established that Enviroloo is listed on the NLC’s supplier database as a distinctive entity that supplies waterless, on-site, dry sanitation toilet systems that functions without water or chemicals. It is designed for the benefit of all communities and can be installed almost anywhere. It should be noted that there is no justification for Zibisfusion to subcontract Enviroloo for the erection of toilets given the circumstances.

Table 5: Payments made in relation to: Karabo Sithole

DATE	LINE ITEM DESCRIPTION	AMOUNT
03/12/2018	Internet Pmt to Karabo - Toiletsconstruction	R250,000.00
03/12/2018	Internet Pmt to Karabo - Toiletsconstruction	R5,000.00
		R255,000.00

40. It is reasonable to conclude that reference made to “Karabo”, in fact refers to Karabo Sithole (“Sithole”), who is the first cousin of Letwaba. OUTA is unable to confirm this suspicion, however, consideration of the identities of Letwaba’s family members suggest that this is the case. Sithole holds active directorships in BA Radebe Group, Kaone Wethu, Karaledge, TKC IT Solutions and With Us Foundation. Sithole also previously held directorships in Ironbridge travelling Agency and Events, PKT Consulting Engineers, Redtaq and Zero1Two ICT. Sithole has no other affiliation with the NLC aside from his family relationship with Letwaba.

Table 5: Payments made in relation to: construction/building material related

DATE	LINE ITEM DESCRIPTION	AMOUNT
04/12/2018	Internet Pmt to Bricks Delivery - Toilets	R50,000.00
05/12/2018	Internet Pmt to Bricks and Cement - Toilets	R450,000.00
06/12/2018	Internet Pmt to Cement for Construction - Zibsifusion	R250,000.00
06/12/2018	Internet Pmt to Construction	R50,000.00
11/12/2018	Internet Pmt to Construction	R100,000.00
17/01/2019	FNB App Payment to - Cement Supply	R3,000.00
25/01/2019	FNB App Payment to - Cement Supply	R8,000.00
20/02/2019	FNB App Payment to - Construction / Zibsifusion	R5,000.00
15/03/2019	Internet Pmt to Cement Supply	R7,000.00

26//03/2019	Internet Pmt to Cement Supply	R54,000.00
01/04/2019	Internet Pmt To - Building material	R20,000.00
25/04/2019	Rtc Express Pmt to - Materials / 01-03-19/001	R9,000.00
03/05/2019	FNB App Payment to - Construction	R70,500.00
09/05/2019	Internet Pmt to Cement Supply	R50,000.00
		R1,126,500.00

41. OUTA can neither confirm, nor dispute whether the materials related to the above-mentioned payments had been delivered to Zibsifusion, and if so, whether such material had been utilised for the purpose set out in the grant agreement. It is therefore necessary that the SAPS conduct further investigations in order to establish the origin of the payments so reflected.

Table 6: Payments made in relation to: Zibsifusion

DATE	LINE ITEM DESCRIPTION	AMOUNT
28/02/2019	Rtc Express Pmt to Zibsifusion	R10,000.00
28/02/2019	FNB App Payment to - Zibsifusion	R4,500.00
03/05/2019	FNB App Payment to - Zibsifusion	R10,000.00
24/05/2019	FNB App Payment to Zibsifusion	R150,000.00
28/05/2019	Internet Pmt to Zibsifusion	R114,816.24
29/05/2019	FNB App Payment to Zibsifusion	R20,000.00
03/06/2019	FNB App Payment to Zibsifusion	R28,300.68
		R337,616.92

Table 7: Payments made in relation to: Management Fees

DATE	LINE ITEM DESCRIPTION	AMOUNT
14/12/2018	Internet Pmt To - Management Fee	R25,000.00
14/12/2018	Internet Pmt To - Management Fee	R25,000.00
07/05/2019	Internet Pmt To - Management Fee	R100,000.00
		R 150,000.00

Table 8: Payments made in relation to: Salaries

DATE	LINE ITEM DESCRIPTION	AMOUNT
19/12/2018	FNB App Rtc Pmt to - Salaries	R63,912.00
15/01/2019	FNB App Rtc Pmt to - Salaries	R55,000.00
15/01/2019	FNB App Rtc Pmt to - Salaries	R93,000.00
24/01/2019	FNB App Rtc Pmt to - Salaries	R30,000.00
24/01/2019	FNB App Rtc Pmt to - Salaries	R2,500.00
24/01/2019	FNB App Rtc Pmt to - Salaries / 1532 Letwaba Maloman	R107,272.80
29/01/2019	FNB App Rtc Pmt to - Salaries / Zibsifusion	R8,000.00

		R359,684.80
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Table 9: Payments made in relation to: Sukambe

DATE	LINE ITEM DESCRIPTION	AMOUNT
22/01/2019	FNB App Payment to - Sunkambe	R3,000.00
19/02/2019	FNB App Payment to - Sunkambe	R1,500.00
02/03/2019	FNB App Payment to - Sunkambe	R2,000.00
15/03/2019	FNB App Payment to - Sunkambe	R500.00
		R 7,000.00

Table 10: Payments made in relation to: Mmakoto

DATE	LINE ITEM DESCRIPTION	AMOUNT
2019/01/16	Internet Pmt to - Mmakoto Business - Zibsifusion	R383,051.60
2019/03/15	Internet Pmt to - Mmakoto Business - Zibsifusion	R200,000.00
2019/04/18	FNB App Payment to Mmakoto Business / Zibsifusion.	R183,051.60
		R766,103.20

Table 11: Payments made in relation to: KO1 General Trading

DATE	LINE ITEM DESCRIPTION	AMOUNT
2018/12/04	Internet Pmt to Ko1 General Trading - Lesley	R50,000.00
2019/01/11	FNB App Payment to Ko1 General Trading - Lesley	R4,000.00
2019/01/12	FNB App Payment to Ko1 General Trading - Premier Hotel Regent	R1,545.00
2019/01/16	Internet Pmt to Ko1 General Trading - Limpopo	R5,200.00
2019/01/22	FNB App Payment to Ko1 General Trading - Limpopo	R18,900.00
2019/02/06	FNB App Payment to Ko1 General Trading - Zibsifusion	R6,300.00
2019-02-06	FNB App Payment to Ko1 General Trading - Zibsifusion	R1,200.00
2019-03-04	Internet Pmt to Ko1 General Trading - Zibsifusion	R8,000.00
2019-03-20	FNB App Payment to Ko1 General Trading - Zibsifusion	R4,000.00
2019-04-01	Internet Pmt to Ko1 General Trading - Zibsifusion	R8,000.00

2019-04-12	FNB App Payment to Ko1 General Trading - Zibsifusion	R4,000.00
		R111,145.00

Table 12: Payments received: Zibsifusion

DATE	LINE ITEM DESCRIPTION	AMOUNT
21/11/2018	FNB OB Pmt - Reference number C113081-1/2	R7,000,000.00
07/12/2018	Internet Trf from Zibsifusion	R500,000.00
11/01/2019	FNB OB Pmt - Dino	R1,000,000.00
16/01/2019	FNB App Transfer from - Zibsifusion	R250,000.00
24/01/2019	FNB App Transfer from - Zibsifusion	R30,000.00
24/01/2019	FNB App Transfer from - Zibsifusion	R220,780.00
25/01/2019	FNB App Transfer from - Silobert Transport	R50,000.00
06/02/2019	Internet Trf from Sunkambe	R10,000.00
08/02/2019	FNB App Transfer from - Denzhe	R27,000.00
14/02/2019	FNB App Transfer from - Silobert Transport	R250,000.00
20/02/2019	FNB App transfer from Zibsifusion	R10,000.00
21/02/2019	Internet Trf from - Enviroloo	R250,000.00
08/03/2019	Internet Trf from Zibsifusion	R100,000.00
13/03/2019	FNB App Transfer from - Zibsifusion	R100,000.00
15/03/2019	Internet Trf from Zibsifusion	R200,000.00
29/03/2019	FNB App Transfer From - Zibsifusion	R100,000.00
01/04/2019	Internet Trf From - Zibsifusion	R50,000.00
04/04/2019	FNB OB Pmt - Reference number C113081-f	R3,000,000.00
12/04/2019	Internet Trf From - Zibsifusion	R107,158.15
16/04/2019	Internet Trf From - Zibsifusion	R200,000.00
18/04/2019	Internet Trf from Zibsifusion	R500,000.00
07/05/2019	Internet Trf from Zibsifusion	R200,000.00
23/05/2019	Internet Trf from Zibsifusion	R300,000.00
24/05/2019	FNB App Transfer from - Zibsifusion	R200,000.00
29/05/2019	FNB App Transfer from - Zibsifusion	R200,000.00
30/05/2019	FNB App Transfer from - Zibsifusion	R150,000.00
		R15,004,938.15

Table 13: Cash Withdrawals: Zibsifusion

DATE	LINE ITEM DESCRIPTION	AMOUNT
26/11/2018	Chq Card ATM Local Cash Advance	R1,500.00
13/12/2018	Chq Card ATM Local Cash Advance - Cash Engen Highveld	R2,000.00
20/03/2019	ATM Cash - Menlyn M / ref # 485442*7629	R3,000.00
11/04/2019	Teller cash - Woodlands Boulevard / Lee	R30,000.00

		R36,500.00
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Table 14: Irregular Line Items: Zibsifusion

DATE	LINE ITEM DESCRIPTION	AMOUNT
27/11/2018	Internet Pmt to Vuladzindila Cc - Zibsifusionenviroloo.	R500,000.00
27/11/2018	Opening Transfer to - 6279244762792447289	R4,000,000.00
03/12/2018	Internet Pmt to Couzin Herzog Horak - Dut24/0010	R500,000.00
07/12/2018	Internet Payment to SMG North - 080399	R150,000.00
11/12/2018	Internet Pmt to - Toilets	R50,000.00
25/01/2019	FNB App Rtc Pmt to Matome	R10,000.00
01/02/2019	Internet Pmt to – P.T. Thwala	R21,000.00
08/02/2019	FNB App Payment to – Adv G Naude / Denzhe Primary	R20,389.50
02/03/2019	FNB App Payment to - Waterval / ref # 01-03-19/001	R43,000.00
04/03/2019	Rtc Express Pmt to – Zibsifusion / Adv Kayingo	R25,000.00
08/03/2019	Rtc Express Pmt to Waterval - ref 01-03-19/001	R10,100.00
18/03/2019	FNB App Payment to - Waterval / ref # 01-03-19/001	R5,000.00
29/03/2019	FNB App Payment to - Waterval / ref # 01-03-19/001	R53,350.00
29/03/2019	FNB App Rtc Pmt To Lesley / Adv Kayingo	R30,000.00
05/04/2019	Internet Trf to – Zibsifusion	R2,700,000.00
16/04/2019	Internet Pmt to - Rhlahlwa Primary	R154,301.00
17/04/2019	Internet Pmt to - Rhlahlwa Primary	R50,000.00
09/05/2019	Internet Pmt to Tshikhovhokhovho / ref # 01-03-19001	R104,500.00
21/05/2019	FNB App Payment to Reahlahlwa Primary	R30,000.00
		R8,456,640.50

42. In reference to tables 7 to 14, OUTA is unable to determine to which entities or individuals these monies were transferred. However, a thorough investigation by the South African Police Service (“SAPS”) is required to establish the identities of the account holders in question. At face value, the referencing used by Zibsifusion is trivial.

43. In terms of the grant agreement entered into between Zibsifusion and the NLC, ad paragraph 9 thereof, Zibsifusion must adhere to the following:
- 43.1. reflect the NLC grant as a separate line item on their financial records and administer the grant in terms of generally accepted financial practices or principles;
 - 43.2. submit independently audited financial statements to the NLC in the case that the grant total exceeds R5,000,000.00;
 - 43.3. in any event, submit audited financial statements irrespective of the grant total in accordance of any other law.
44. OUTA is unable to determine whether Zibsifusion had adhered to the above-mentioned obligations as set out in the grant agreement. However, even if Zibsifusion had done so, the information reflected in the bank statements and/or audited financial statements ought to reflect the exact transactions as reflected in the tables above. Thus, the NLC reasonably ought to have known about Zibsifusion's transactional history subsequent to receiving tranches 1 and 2.
45. The NLC would therefore have at the least supposedly been negligent had they transferred the second tranche payments without confirming the aforementioned audited financial statements corresponded with the reality on the ground and the expectation created as per the GA.
46. Should the NLC therefore cite the contrary, it (as a public entity) failed in its duties as contemplated in the PFMA in that it exposed, and continued to do so, the NLC to severe financial loss in maintaining the grant agreement.

G LEGAL FRAMEWORK

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 ("PRECCA")

47. In terms of section 4 of PRECCA, a public officer⁶ is guilty of an offense under the following circumstances, if such public officer:
- 47.1. is directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- 47.2. is directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner that amounts to illegal, dishonest, unauthorised, incomplete, or biased misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;⁷

⁶ According to PRECCA, the term 'public officer' refers to any person who is a member, an officer, and employee or servant of a public body. In this regard, the totality of personnel on both executive and operation level within the NLC is potentially subject to the provisions of section 4.

⁷ Section 4(1)(b)(ii) describes that such an act by a public officer must amount to the abuse of a position of authority, a breach of trust or the violation of a legal duty or set of rules.

- 47.3. designed to achieve an unjust result or that amounts to any other unauthorised or improper inducement to do or not to do anything.
48. Furthermore, the public officer's act (his or her conduct in physically putting his agenda into action) includes the following:⁸
- 48.1. voting at any meeting of a public body;
 - 48.2. performing or not adequately performing any official functions;
 - 48.3. expediting, delaying, hindering or preventing the performance of an official act;
 - 48.4. aiding, assisting or favouring any particular person in the transaction of any business with a public body;
 - 48.5. aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
 - 48.6. showing any favour or disfavour to any person in performing a function as a public officer;
 - 48.7. diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
 - 48.8. exerting any improper influence over the decision making of any person performing functions in a public body.

PREVENTION OF ORGANISED CRIME ACT, 1998 ("POCA")

RACKETEERING

⁸ Section 4(2)(a)-(h).

49. In terms of section 2(1)(a) to (b) of POCA, a person is guilty of an offense if such person:
- 49.1. receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and
 - 49.2. knows or ought reasonably to have known that such property is so derived; and
 - 49.3. uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;
 - 49.4. receives or retains any property, directly or indirectly, on behalf of any enterprise; and
 - 49.5. knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity.
50. Additionally, section 1(c) to (f) provides that a person is guilty of an offense, if such person:
- 50.1. uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and
 - 50.2. knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;
 - 50.3. acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;
 - 50.4. whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity; or

50.5. manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity.

MONEY LAUNDERING

51. In terms of section 4 of POCA, a person is guilty of an offense, if such person knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –

51.1. enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not;
or

51.2. performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect –

51.2.1. of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

51.2.2. of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere to avoid prosecution or to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence.

PUBLIC FINANCE MANAGEMENT ACT, 1999

52. As the NLC is considered a public entity in terms of the Public Finance Management Act, 1999 (“the PFMA”) various provisions relating to financial conduct and fiduciary duties are applicable to the NLC.
53. In terms of section 49(2)(a) of the PFMA, the NLC’s Board is the entity’s Accounting Authority.⁹ For purposes of identifying liability, note that all liability accrues to the Board as the responsible party in terms of the PFMA.
54. In conjunction with its fiduciary duties over the Fund, the Board also has the following fiduciary duties in terms of the PFMA, contravention of which is enforceable by law:
- 54.1. exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
 - 54.2. act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
 - 54.3. seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state (own emphasis added);
 - 54.4. act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of the PFMA; and
 - 54.5. use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.

⁹ The NLC classifies as a public entity as it is listed as such in Schedule 1 of the PFMA.

55. In turn, the members of the Board must:¹⁰
- 55.1. disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
 - 55.2. withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.
 - 55.3. Non-compliance with disclosure of personal interest is in contravention of the PFMA.
56. In terms of section 51(1)(a), the accounting authority must ensure that the public entity has and maintains:
- 56.1. effective, efficient and transparent systems of financial and risk management and internal control;
 - 56.2. a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
 - 56.3. an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - 56.4. a system for properly evaluating all major capital projects prior to a final decision on the project.

¹⁰ Section 50(2) of the PFMA.

57. Section 51(1)(b)(i) – (iii) provides that the accounting authority must take effective and appropriate steps to:

- 57.1. collect all revenue due to the public entity concerned; and
- 57.2. prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
- 57.3. manage available working capital efficiently and economically.

58. In terms of section 51(1)(c) – (e), the accounting authority:

- 58.1. is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- 58.2. must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- 58.3. must take effective and appropriate disciplinary steps against any employee of the public entity who:
 - 58.3.1. contravenes or fails to comply with a provision of the PFMA;
 - 58.3.2. commits an act which undermines the financial management and internal control system of the public entity; or
 - 58.3.3. makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

59. Moreover, in terms of section 51(1)(f) – (h), the accounting authority:

- 59.1. is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant

provincial legislature and to the relevant executive authority or treasury,
as may be required by the PFMA;

59.2. must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and

59.3. must comply, and ensure compliance by the public entity, with the provisions of the PFMA and any other legislation applicable to the public entity.

60. Lastly, section 51(2) provides that if an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority as referred to above, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

H CONCLUSION

61. Upon consideration of the factual illustration(s) as set out above, read together with the legal framework under 'G', it is clear that the elements reflected in such framework had been adequately set out. In instances where the elements are distorted due to OUTA's limited investigative capability to pursue further investigations, we urge the SAPS to do so in line with its statutory powers.

62. OUTA remains committed in assisting the SAPS with any further investigations and is amenable to the production of additional evidence if and when possible.

DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this the ____ day of _____ 2020 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

COMMISSIONER OF OATHS