

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	DOH(FS)18/2023/2024	CLOSING DATE:	05 APRIL 2024	CLOSING TIME:	11H00
<b>REQUEST FOR EXPRESSION OF INTEREST BY THE POTENTIAL SERVICE PROVIDERS TO ACCESS AND DISTRIBUTE CONTRACEPTIVES TO FREE STATE COMMUNITY</b>					
DESCRIPTION	PERIOD: FIVE YEARS (05 YEARS) FROM DATE OF SIGNING CONTRACT				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
DEPARTMENT OF HEALTH FREE STATE					
GROUND FLOOR, BOPHELO HOUSE, BLOCK C-WEST, OPPOSITE MAIN DOOR					
C/O CHARLOTTE MAXEKE STREET AND HARVEY ROAD, BLOEMFONTEIN					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	C.J.B Naicker/ N. Tsiloane		CONTACT PERSON	Me. M.R Makena	
TELEPHONE NUMBER	051 408 1707/1160		TELEPHONE NUMBER	051 408 1659	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	NaickerCJB@fshealth.gov.za		E-MAIL ADDRESS	MakenaMR@fshealth.gov.za	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
(Proof of authority must be submitted e.g. company resolution)

DATE: .....

# EXPLANATORY MEETING CERTIFICATE

BID NUMBER: **DOH (FS) 18/2023/2024**

Attendance list number: \_\_\_\_\_

**REQUEST FOR EXPRESSION OF INTEREST BY THE POTENTIAL SERVICE PROVIDERS TO ACCESS AND DISTRIBUTE CONTRACEPTIVES TO FREE STATE COMMUNITY**

## Attendance of the explanatory meeting is Non-Compulsory

An official of the Department must sign this certificate at the explanatory meeting. No certificate will be signed outside the meeting. The original certificate must be included in the bid document and will not be accepted after the closing time and date of the bid.

**EXPLANATORY MEETING DATE: 25 March 2024**

**TIME: 10H00**

**VENUE:** Auditorium, First Floor  
Bophelo House  
CNR Charlotte Maxeke and Harvey Road  
Bloemfontein, 9301

**CONTACT PERSON/S:** Me M.R Makena

Tel: (051) 408 1659

This is to certify that \_\_\_\_\_ in his/her capacity as  
\_\_\_\_\_ of the company \_\_\_\_\_ has attended the  
explanatory meeting on the \_\_\_\_\_ day of \_\_\_\_\_ 2024 and is therefore  
familiar with circumstances and the scope of the items to be supplied.

\_\_\_\_\_  
**SIGNATURE /DEPARTMENTAL  
OFFICIAL**

\_\_\_\_\_  
**RANK**

\_\_\_\_\_  
**SIGNATURE OF REPRESENTATIVE  
OF COMPANY**

\_\_\_\_\_  
**DATE**

OFFICIAL DATE  
STAMP

**\* Note: Only one certificate per company**



**health**

Department of  
Health  
FREE STATE PROVINCE

**REQUEST FOR EXPRESSION OF INTEREST BY  
THE POTENTIAL SERVICE PROVIDERS TO  
ACCESS & DISTRIBUTE CONTRACEPTIVES TO  
FREE STATE COMMUNITY**

**PERIOD: FIVE YEARS FROM DATE OF SIGNING OF  
CONTRACT**

**CONTACT PERSON**

**Me M.R. Makena**

**Department of Health**

**TEL: 051-408 1659**

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## 1 RECORDAL

- A. It is the policy of the Department of health to facilitate access to sexual reproductive health and family planning services by expanding access thereto through private sector facilities.
- B. The Service Provider has committed to assist the Department of health to expand access to contraceptives in the private sector.
- C. The Department and the Service Provider wish to establish a working relationship in implementing Sexual Reproductive Health and contraceptives in the Province of the Free State.
- D. The Parties wish to record in writing the terms and conditions upon which the Service Provider will assist the Department to render Sexual Reproductive Health and contraceptives.

## 2 INTERPRETATION AND DEFINITIONS

### 2.1 In this MOA -

- 2.1.1 clause headings are for convenience only and are not to be used in its interpretation; and
- 2.1.2 an expression which denotes -
  - 2.1.2.1 a gender includes the other gender;
  - 2.1.2.2 a natural person includes a juristic person and *vice versa*; and
  - 2.1.2.3 the singular includes the plural and vice versa.

### 2.2 This MOA incorporates its annexures which shall have the same force and effect as if set out in the body of this MOA.

### 2.3 In this MOA, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them below:

- 2.3.1 **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 2.3.2 **"Calendar Day"** means any day of the week and includes weekends and statutory public holidays proclaimed as such in the Republic of South Africa;
- 2.3.3 **"Contraceptives"** means a device or drug serving to prevent pregnancy;
- 2.3.4 **"Districts"** means Fezile Dabi, Mangaung Metro, Lejweleputswa, Thabo Mofutsanyana, Xhariep;
- 2.3.5 **"Medicines Act"** means the Medicines and Related Substances Act 101 of 1965, as amended;
- 2.3.6 **"MOA"** means this Memorandum of Agreement and all annexures incorporated herein by reference;

- 2.3.7 **"NHLS"** mean National Health Laboratory Services;
- 2.3.8 **"Nurse"** means a person registered as such under the Nursing Act No. 33 of 2005, as amended;
- 2.3.9 **"Parties"** means the Department and the Service Provider, and **"Party"** means either one of them as the context dictates;
- 2.3.10 **"Patient"** any person to whom State Stock is administered in terms of this MOA;
- 2.3.11 **"Pharmacy Act"** means the pharmacy Act 1974 (Act no 53 of 1974), as amended;
- 2.3.12 **"Premises"** means the facility where the Services are rendered as stipulated in Annexure A;
- 2.3.13 **"Project"** means the implementation of the Services described in this MOA;
- 2.3.14 **"Province"** means the Free State Province in the Republic of South Africa;
- 2.3.15 **"Project Manager"** means the District pharmacist in each of the five Districts as appointed by the Free State Department of Health.
- 2.3.16 **"Responsible Pharmacist"** means, as defined in the Pharmacy Act 53 of 1974, as amended, a natural person who is a pharmacist and who shall be responsible to the South African Pharmacy Council for complying with all the provisions of the Act and other legislation applicable to services which specially pertain to the scope of practice of a pharmacist, and the legislation applicable to the pharmacy which is under his or her personal supervision;
- 2.3.17 **"Services"** means the rendering of contraceptives and cervical screening by the Service Provider to Patients, as specified in this MOA;
- 2.3.18 **"Signature Date"** means the date of signature of this MOA by the Party last to sign;
- 2.3.19 **"Stock"** means Family Planning oral, injectable medicines, Intra uterine contraceptive devices, subdermal implants, vaginal speculums, brushes and Liquid Based consumables

### **3 DURATION AND TERMINATION**

- 3.1 This MOA shall commence on the Signature Date and shall, subject to the provisions of clause 18, continue for an initial period of 5 (five) years from the Signature Date ("Initial Period").
- 3.2 Return to the Department all unopened and unused Stock provided by the Department, the number of items of which shall be determined by having regard to, *inter alia*, the following criteria:
  - 3.2.1.1 the quantity of Stock provided to the Service Provider by the Department;
  - 3.2.1.2 the quantity of actual Services performed utilizing the Stock provided;
  - 3.2.1.3 the amount of Stock returned to the Department in terms of clause

- 3.2.1.4 the amount of unused, but opened stock; and
- 3.2.1.5 the contents of the reports referred to in clause 9.1.7 as well as the Stock control records of the Department;

#### **4 MANAGEMENT OF STOCK**

##### **4.1 Ownership of Stock**

The Stock shall at all times remain the property of the Department and shall not at any time during the duration of this MOA become the property of the Service Provider.

##### **4.2 Ordering of Stock**

The Stock shall be ordered according to the procedure described in Annexure D to this MOA.

##### **4.3 Storage of Stock**

4.3.1 State Stock shall at all times be stored, transported and handled in accordance with the manufacturers' requirements, Good Pharmacy Practice.

4.3.2 In addition, State Stock shall be stored separately and shall be clearly marked as "State Stock".

4.3.3 The Service Provider accepts responsibility for the compromised quality of State Stock arising as a result of its failure to store or handle the State Stock correctly. The Department shall bear the onus of proving that the damage to the State Stock occurred while in the possession of the Service Provider.

##### **4.4 Delivery of Stock**

4.4.1 The receipt will be signed by the Service Provider's authorized signatory, for each collection, to indicate receipt of the correct quantity and description of State Stock.

4.4.2 Subject to clause 4.3.3 and 4.4.3, risk in and to the State Stock will pass to the Service Provider upon the receipt of the State Stock by the Service Provider.

4.4.3 The Service Provider shall be required to complete the fine check procedures within two (2) Business Days and report any discrepancies to the relevant District Project Manager in that time period, failing which the Service Provider shall be deemed to have received the State Stock in the quantity and description reflected in the signed receipt.

##### **4.5 Expired Stock**

4.5.1 The Service Provider shall report monthly on stock that is about to expire six months before expiry and return it back to the department.

4.5.2 The report referred to in clause 4.6.1 above shall be provided electronically to the relevant District Project Manager within six (6) Business Days after the end of each calendar month.

4.5.3 Should stock expire the service provider shall complete annexure L and M on Losses and damages to state property



4.5.4 Poor accountability of expired stock will lead to withdrawal of contract

#### 4.6 Wastage of Stock

- 4.6.1 The Service Provider must report monthly by not later than the 6<sup>th</sup> Calendar Day of each month by way of an electronic report to the relevant District Project Manager on the wastage of Stock in the previous month, clearly stating the wastage rate ("Wastage Report").
- 4.6.2 Notwithstanding clause 4.6.1, the Service Provider must strive to manage Stock according to good pharmacy practices in order to limit the wastage of Stock.
- 4.6.3 Should the Service Provider exceed the maximum acceptable wastage rates stipulated in Annexure L, the Service Provider shall be held liable for the price of the excess wastage, as reflected in the Department's invoice to the Service Provider upon the Service Provider's collection of the Stock from the Department.
- 4.6.4 The Service Provider shall reimburse the Department for the excess wastage after every period of six months and within 90 (ninety) Business Days from the Service Provider's receipt of the Department's invoice for such wastage.

#### 4.7 Product Complaints and Product Recall

- 4.7.1 The Service Provider will manage and be responsible for the processing of product complaints in accordance with Annexure J to this MOA.
- 4.7.2 The Parties will manage the processing of product recalls according to the legislated procedures.
- 4.7.3 If any State Stock is required by reason of any defect in the State Stock or by virtue of requirement of any applicable legislation, to be recalled, the Parties shall inform each other in writing of such, together with details of the reasons for the recall.
- 4.7.4 If it is established that recall of the Stock is attributable to a defect in the State Stock prior to its delivery to the Service Provider, the Department shall bear the cost of such recall and the Service Provider shall not be liable for any costs whatsoever associated with such recall.
- 4.7.5 If it is established that the recall is solely attributable to a defect in the State Stock due to its storage or handling while it was in the possession of the Service Provider, the reasonable costs thereof shall be borne by the Service Provider.
- 4.7.6 If the cause for Stock recall is not solely attributable to either Party, the costs of such recall shall be borne equally by the Parties.

#### 4.8 Adverse Events

- 4.8.1 The Service Provider will manage and be responsible for the processing of Adverse Events in accordance with Annexure K to this MOA.
- 4.8.2 The Department shall:

- 4.8.2.1 furnish any technical information which the Service Provider may reasonably request in writing;
- 4.8.2.2 investigate and respond as promptly as possible to any complaints in respect of the State Stock received from the Service Provider or any third party; and
- 4.8.2.3 inform the Service Provider immediately should the Department receive complaints concerning State Stock directly from third parties.

#### 4.9 Dispensing and Prescribing of medicines

The Service Provider shall ensure compliance with all relevant legislation for the dispensing and prescribing of medicines as envisaged in this MOA. In particular, the Service Provider shall ensure full compliance with the provisions of section 56(6) as well as other relevant sections of the Nursing Act, 33 of 2005 and all relevant Acts mentioned under annexure G.

#### Requirements when submitting bid document

- Section 22A of the Pharmacy Act.
- Proof of registration of Nurses
- Proof of Registration of Pharmacy
- ID document got shareholders or directors
- SARS (Tax Clearance)
- CSD report

## 5 OBLIGATIONS OF THE DEPARTMENT

The Department undertakes to -

- 5.1 Identify a Project Manager per district, preferably the district pharmacist, for overall coordination of the Project per district, and who shall -
  - 5.1.1 Assign designated officials of the Department to visit, on not less than one (1) Business Days' notice, the Service Provider's Premises for purposes of conducting compliance checks, the monitoring and evaluation ("M&E") of the Project at operational level;
  - 5.1.2 co-ordinate the Project; and
  - 5.1.3 provide to the Service Provider the necessary, appropriate and proper functioning State Stock using the ordering mechanism set out in Annexure D;
- 5.2 Conduct periodic visits at random and without notice and through authorized representatives of the Department, to the Service Provider's Premises to monitor compliance with the guidelines, protocols and operating procedures specified in this MOA;
- 5.3 Provide the Service Provider with Stock (Contraceptives, Vaginal speculum and liquid Based consumables) which shall be fit for its intended purpose and which will not be within sixty (60) calendar days of the expiry date of the Stock at the time of delivery;
- 5.4 Support private facilities with tools for data collection and material for Cervical and breast cancer screening.
- 5.5 Pay all cytology costs to NHLS.

- 5.6 Support the Service Provider by marketing the Services to Patients by distributing in its clinics pamphlets and other marketing materials prepared by the Service Provider advertising the Services being offered by the Service Provider ("Marketing Material"), subject to the Service Provider first having given its approval of any such Marketing Material, which approval shall not be unreasonably withheld or delayed.
- 5.7 Share the Department's current policies, guidelines & protocols with the Service Provider pertaining to maternal, newborn, child and women's health and nutrition;

## **6 OBLIGATIONS OF THE SERVICE PROVIDER**

- 6.1 The Service Provider shall provide the Services at the Premises in the Free State Province in accordance with the provisions of this MOA. The Services shall be provided to Patients who shall at all times be regarded as the Service Provider's Patients for purposes of this MOA.
- 6.2 The Service Provider agrees to render the Services itself and shall not subcontract, cede, assign or transfer any right or obligation in terms of this MOA to an unrelated third party without the prior written authorization of the Department, which authorization shall not be unreasonably withheld or delayed.

## **7 FEES**

- 7.1 The Service Provider may request Patients to pay a consultation fee for the Services provided, subject to the following conditions:
  - 7.1.1 **The fee charged will be R\_\_\_\_\_ (maximum, inclusive of VAT) per Patient per visit. Bidders must fill-in the amount to be charged.**
  - 7.1.2 The Service Provider shall explain to Patients, prior to rendering the Services, that the fee is for consultation levied by the Service Provider;
  - 7.1.3 The Service Provider shall explain to the Patient that the fee is not intended as either a health service fee for the Department or a fee for payment of the contraceptives;
  - 7.1.4 The Service Provider shall further inform the Patients that they might be eligible to receive these Services free of charge at State health facilities.
- 7.2 The fee may be reviewed annually by written agreement between the Parties.
- 7.3 The Department shall at no point be liable for the fee and the Department accepts no liability for the recovery of this fee.

## **8 MEETINGS**

The Parties agree to meet quarterly and, on an ad, -hoc basis as is required to discuss the implementation of this MOA and other matters of mutual interest.

## **9 ORDERING OF STOCK**

- 9.1 The Service Provider shall:



- 9.1.1 only use the State Stock as directed by the manufacturers of such Stock for the rendering of the Services in terms of this MOA;
- 9.1.2 not misuse, sell, damage, trade in, alienate or dispose of any of the State Stock or use it for any purpose other than in terms of this MOA;
- 9.1.3 only permit the Service Provider's suitably qualified and properly trained personnel in terms of the relevant legislation to render the Services to Patients;
- 9.1.4 ensure compliance with the procedures stipulated in this MOA for the placement of orders, collection and Stock management;
- 9.1.5 allow reasonable access to the Department's assigned officials to the Service Provider's Premises for purposes stipulated in clauses 5.1.1 and 5.2 above;
- 9.1.6 Provide the Services to Patients in accordance with the relevant legislation and this MOA;
- 9.1.7 prepare and provide to the Department the following reports:
  - 9.1.7.1 monthly Stock control reports providing Stock balance in the Service Provider's Premises as per the sample report marked Annexure F2 and such report to specifically include Wastage Rates;
  - 9.1.7.2 review, with the Project Manager, on a quarterly basis the Stock delivered to the Service Provider by the Department with a view to perform Stock management and control and also to affect the timeous re-distribution of Stock;
  - 9.1.7.3 perform a physical Stock count at the end of March annually and report the results thereof to the Project Manager within ten (10) Business Days after 31 March; and
  - 9.1.7.4 refer Patients for further health care to health facilities when required.

## **10 DATA MANAGEMENT**

- 10.1.1 Prepare and provide the Department of health with the monthly statistics report with all relevant information as specified in the attached sample report, marked Annexure M within seven (7) Business Days after the end of each calendar month.

## **11 FORCE MAJEURE**

- 11.1 In the event that either Party ("the Affected Party") is unable to perform any of its obligations under this MOA and such non-performance is caused by an act of God, riots, civil insurrection, floods, earthquakes or fire, or any other event beyond the Affected Party's reasonable control ("Force Majeure"), such failure to perform shall not constitute a breach of this MOA.
- 11.2 The Affected Party shall immediately notify the other Party in writing of the reason for its

inability to perform and shall submit an estimated duration of such inability to perform.

- 11.3 During such period of non-performance, the relevant terms of this MOA will be suspended.
- 11.4 If the force majeure prevents the Affected Party from performing for a period exceeding 3 (three) months, either Party may terminate this MOA without any liability towards the other Party and upon written notice to the other Party.

## **12 LIABILITY**

- 12.1 The Service Provider shall be liable for direct harm, damage or loss, including death or injury suffered by any Patient or any of the Service Provider's employees when rendering the Services, provided that such harm, damage, or loss arises from the negligence or willful misconduct of the Service Provider.
- 12.2 The Department shall be liable for all claims, damages and loss suffered by the Service Provider arising from the negligent or willful misconduct of the Department and/or a breach of the Department's obligations in terms of this MOA and such damages, death or injury arising out of a defect in the State Stock, subject to such defect not having arisen as a result of the negligent or willful misconduct of the Service Provider.
- 12.3 Notwithstanding anything to the contrary contained in this MOA, neither Party shall be liable for any indirect or consequential damages or losses suffered by the other Party in terms of this MOA.
- 12.4 The Service Provider must obtain adequate public liability insurance at its own cost commensurate with the risk to which its staff is exposed in executing the Services in terms of this MOA.
- 12.5 The Service Provider shall, upon the written request of the Department, submit to the Department, proof of the validity of its public liability insurance policy.
- 12.6 Should the Service Provider's public liability insurance policy lapse due to its failure to make payment of the premiums, such failure will constitute a material breach of this MOA.

## **13 INDEPENDENT CONTRACTOR**

- 13.1 The Service Provider is appointed as an independent contractor to render the Services.
- 13.2 The Department shall not be held vicariously liable for any actions of the Service Provider or its employees or agents.

## **14 ENTIRE AGREEMENT**

- 14.1 This MOA constitutes the entire agreement between the Parties and no variation of this MOA will be of any force or effect unless reduced to writing and signed by the Parties. No Party shall be bound by any term or condition not recorded herein.
- 14.2 This MOA replaces all verbal and written agreements entered into between the Parties regarding the subject matter of this MOA.

## **15 WAIVER**

- 15.1 No failure or delay on the part of either Party in exercising any right under this MOA precludes the further exercising thereof or the exercising of any other right under this MOA.
- 15.2 No indulgence, leniency or extension of time which any Party ("the Grantor") may grant to the other party shall preclude the Grantor from exercising any of its rights in terms of this MOA.

## **16 DISPUTE RESOLUTION**

- 16.1 In the event of any dispute of whatsoever nature arising from this MOA the Parties shall endeavor to resolve the dispute by negotiation.
- 16.2 Any Party shall declare a dispute by advising the other Party in writing of the nature of the dispute in broad terms.
- 16.3 Should the Parties fail to resolve the dispute by negotiation in terms of clause 16.1 within ten (10) Business Days after the dispute arises, or such extended period of time as the Parties may agree in writing, the Parties may agree to submit the matter in dispute for resolution through mediation.
- 16.4 A mediator will be chosen by agreement among the Parties within ten (10) calendar days of the expiry of the period determined in terms of clause 16.3, failing which the mediator will be appointed by the then chairperson of the Arbitration Foundation of Southern Africa ("AFSA").
- 16.5 The mediation proceedings will be held on a date and at a venue determined by the mediator and will be confidential. No Party to the dispute will be entitled to subpoena the mediator to give evidence in any subsequent court or arbitration proceedings concerning the dispute.
- 16.6 In the event that the mediation does not take place, does not result in agreement, or is not effective, such dispute shall be submitted for arbitration in accordance with the rules of AFSA by an arbitrator appointed by AFSA in terms of AFSA's rules, provided that nothing herein contained shall prohibit any Party from applying to any competent court for an interdict or other interim urgent relief pending the outcome of such arbitration proceedings.
- 16.7 Any mediation and arbitration proceedings will, in the absence of written agreement to the contrary, be held in Bloemfontein and in the English language.

## **17 CONFIDENTIAL INFORMATION**

- 17.1 No Party shall, during the currency of this MOA, or at any time thereafter, disclose or cause to be disclosed to any third party, any of the Confidential Information of the other Party, its Patients and clients.
- 17.2 For purposes of this MOA "Confidential Information" means all information of a confidential nature belonging to the disclosing Party which is not publicly available in the ordinary course of business to any of the disclosing Party's Patients, customers, competitors or suppliers, including manufacturing processes and systems, samples of goods, software, unpublished financial information, licences, prices, pricing policies, customer and supplier information, marketing plans, material of a technical, operational, administrative, planning, business or

financial nature, Intellectual Property and the Dossiers disclosed by one Party to any other Party.

**17.3 The Parties shall –**

17.3.1 use the Confidential Information only for the purpose of implementing this MOA;

17.3.2 treat the Confidential Information as private and confidential; and

17.3.3 use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure of the Confidential Information.

If at the time of termination of this MOA, a Party has in its possession any Confidential Information, irrespective of what media same are stored in, that Party shall, if required to do so in writing by the disclosing Party, within five (5) Business Days after the termination date, return all such Confidential Information to the disclosing Party and shall not retain any copies thereof, alternatively, destroy such Confidential Information and certify such destruction in writing to the receiving Party

**17.4 The obligations imposed upon a Party herein shall not apply to information whether or not designated as confidential which:**

17.4.1 made public by the disclosing Party;

17.4.2 the receiving Party can reasonably demonstrate is already in the possession of the receiving Party, is not subject to an existing agreement of confidence, and has been obtained by lawful means;

17.4.3 is received from a third Party without restriction and without breach of this MOA or any agreement under which such Party received the information;

17.4.4 is independently developed by the receiving Party as evidenced by its records; or

17.4.5 the receiving Party is required to disclose pursuant to a valid order of a court or of other governmental authority; provided however, that the receiving Party shall first give written notice to the disclosing Party that such information is required to be disclosed and the receiving Party shall, if requested to do so by the disclosing Party, co-operate with the disclosing Party to obtain any protective order or undertaking requiring that the information so disclosed will be used only for the purposes for which the order was issued.

**17.5 Patient records and information obtained from a Patient during the provision of the Services shall remain the property of the Service Provider.**

**17.6 The obligations contained in this clause 17 regarding confidentiality shall endure in perpetuity notwithstanding any termination of this MOA.**

**18 BREACH**

**18.1 If a Party breaches any of the provisions of this MOA and fails to remedy such breach within 5 (five) Business Days after receipt of written notice requiring the Party in breach to do so, then the Party giving such notice shall be entitled, without prejudice to its rights in law:**

- 18.1.1 to claim immediate specific performance of the defaulting Party's obligations;
  - 18.1.2 to claim compensation in lieu of or in addition to specific performance where only partial specific performance is possible;
- to cancel this MOA upon written notice to the defaulting Party and to claim such direct damages as it may have suffered.

**19 DOMICILIUM CITANDI ET EXECUTANDI**

19.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice in terms of this MOA, the following addresses:

**Department:**

**Office of the Head of Department**

Insert Address line 1

Insert Suburb

Insert City

Insert Province

Insert Postal Code

Fax no:

Email:

Marked for the attention of: Insert name

**The Service Provider:**

Insert Address line 1

Insert Suburb

Insert City

Insert Province

Insert Postal Code

Fax no:

Email:

Marked for the attention of: Insert name

19.2 All notices to be given in terms of this MOA shall be given in writing and be delivered to the Party's chosen *domicilium citandi et executandi*.

19.3 If delivered by hand, a notice shall be presumed to have been received on the Business Day following the date of delivery.

19.4 If transmitted by fax or email shall, unless the contrary is proved, be deemed to have been received by the other Party on the first Business Day following the day of transmission, provided



a copy thereof is delivered in terms of clause 19.3 within 2 Business Days of transmission.

19.5 A written notice or communication actually received by a Party shall be deemed to be adequate notice notwithstanding that it was not delivered in terms of this clause 19.

DATED AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF

\_\_\_\_\_

\_\_\_\_\_  
**HEAD OF DEPARTMENT**  
for and on behalf of the Department

**WITNESS:**

SIGNATURE: \_\_\_\_\_

FULL NAMES: \_\_\_\_\_

DATED AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF

\_\_\_\_\_

\_\_\_\_\_  
**SERVICE PROVIDER**

**WITNESS:**

SIGNATURE: \_\_\_\_\_

FULL NAMES: \_\_\_\_\_

**ANNEXURE A: THE SERVICE PROVIDER ADDRESS**

	RESPONSIBLE PERSON	PHARMACY/PRACTICE NAME	CELLPHONE NUMBER	E-MAIL ADDRESS	STREET / SUBURB	TOWN/AREA	POSTAL CODE	LICENCE #
1								
2								
3								
4								
5								
6								
7								
9								
10								
11								
12								

**ANNEXURE B: STOCK TO BE PROVIDED BY THE DEPARTMENT**

**Contraceptives**

Item Numbers	Item Description	Registered Product Name
189753751	Intra-uterine contraceptive device (IUCD), device + inserter + explanatory booklet. flexible T-shaped, radio-opaque device with safe load and sound probe. Copper wire, producing 380mm <sup>2</sup> copper, to be wound around the stem, to which a monofilament thread is attached and around the transverse arms. Device width approximately 32mm; shaft length 36mm, wire diameter 0.4mm. Sterile, individually packed.	Nova T 380
180359299	Intra-uterine system containing, Levonorgestrel 52 mg, releasing Levonorgestrel 20 mcg/24 hours. Sterile, individually packed unit containing inserter. T-body with removal threads in sealed sterilization pouch. Unit: each	Mirena
189705093	Levonorgestrel 0.03mg tablet, 28 tablets, calendar packed	HY-AN
181901862	Levonorgestrel 1.5 mg tablet, 1 tablet	ESCAPELLE
189705223	Levonorgestrel and Ethinylestradiol 0.15/0.03mg 21 tablet plus 7 inert, 28 tablets	Oralcon (Nordette)
18707391	Levonorgestrel and Ethinylestradiol triphasic, 0.05/0.03mg (6); 0.075/0.04mg (5); 0.125/0.03mg (10); inert (7) tablet, 28 tablets, calendar packed	Triphasil Tabs
189762873	Medroxyprogesterone 10mg tablet, 30 tablets	Provera 10mg
189702739	Norgestrel and Ethinylestradiol monophasic, 0.5/0.05mg (21); inert (7) tablet, 28 tablets, calendar packed	Famynor
189705261	Norethisterone enanthate 200 mg injection 1 ml	Nur-Isterate 100's
181902532	Subdermal implant containing Etonogestrel 68 mg + ready-for-use, disposable applicator (inserter). Sterile, radiopaque, individually packed.	Implanon nxt

**Please note:**

- Stock supply is subject to availability and may vary according to relevant Departmental contracts and tenders
- The Department may at its discretion limit the supply of stock in accordance with budgetary constraints.

**Cervical cancer screening**

Item Numbers	Item Description	Registered Product Name
	Vaginal speculum	
	Liquid base cytology vials	
	Combi brush	
	Cervex-brush	
	Specimen plastic bags	
	Cytology request form N2	
	PHC Order Book Material for specimen collection N3	
	PHC Facility Specimen Register N4	

Use: PHC Order Book for Specimen Collection Materials (Additional Annexure)

(B)

## **ANNEXURE C: DEPARTMENTAL OFFICIALS AUTHORISED TO PERFORM INSPECTIONS**

All new facilities are subject to inspection, vetting and approval from the relevant District Office or upon expiry of current MOA

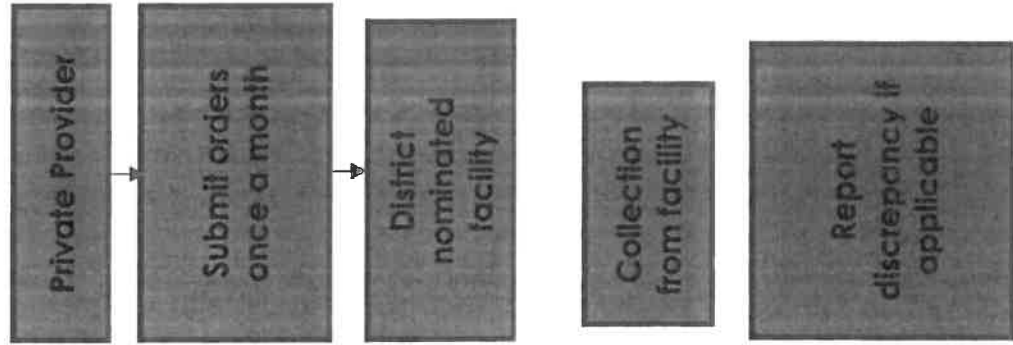
The persons authorized in terms of this MOA to perform inspections of the Service Provider's facilities are:

1. The Project Manager: District Pharmacist.
2. Pharmacists of the Directorate: Pharmaceutical Services
3. Standard Compliance Unit & District Quality Assurance Managers
4. Delegated authority within the District/Sub-Structure
5. Women's/Maternal Health Managers Provincial and District

**ANNEXURE D: PROCUREMENT OF STOCK**

# Procurement of Stock

NB Note: Please note that the stock ordering and collection process is subject to change. Affected service providers will be informed accordingly.



- Private provider will be registered with district nominated facility as demander on RX solution/stock card.
- District/facility will provide the demander with a requisition form for ordering.

- Private provider will submit orders via email/manually to the nominated facility on duplicate requisition forms.

- Facility Manager to confirm whether relevant reporting data has been submitted before approving order.

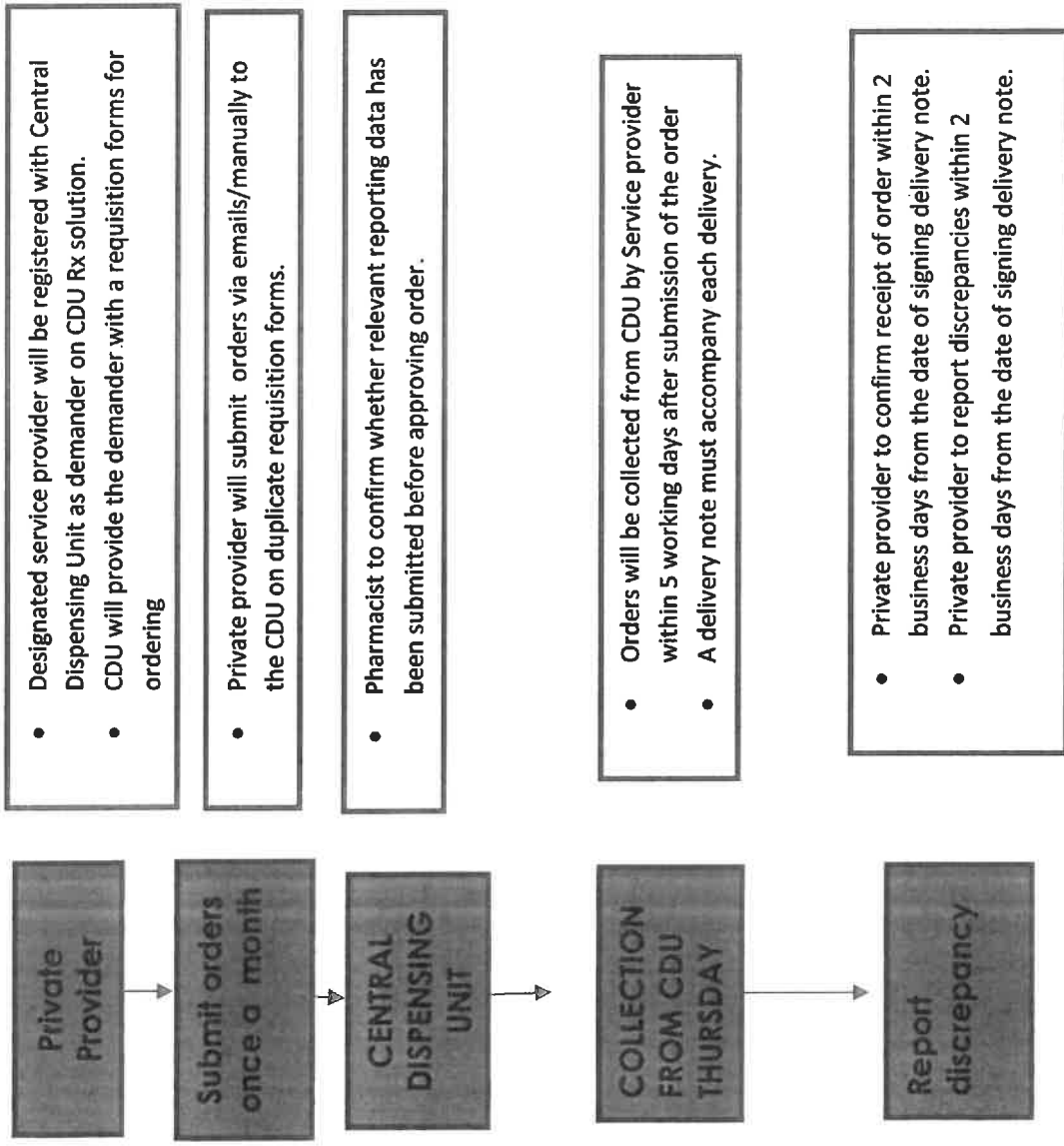
- Orders will be collected from the facility by the service provider within 5 working days after submission of the order.
- A delivery note must accompany each delivery

- Private provider to confirm receipt of order within 2 business days from the date of signing delivery note.
- Private provider to report discrepancies within 2 business days from the date of collection.



# Procurement of Stock

NB Note: Please note that the stock ordering and delivery process is subject to change. Affected service providers will be informed accordingly.



Ordering Process

Collection Process

SC





## ANNEXURE F: INSPECTION TOOL

\*Please note that this tool is subject to change without prior notice.

Sexual Reproductive Health Services				
Contraceptive service	Yes	No	Comment	Notes for supervisor
Can the provider indicate when Oral pills is given to a woman?				Oral pills are therapeutic pills for only three cycles
Can the provider rub the area of injected site when injected Depo Provera to a woman?				no
Counselling is done before and after administering contraceptive methods				observe
Are infection control measures adhered to				Hand washing between patients.
Is the checked and correctly filled in?				Observe
Stock Management	Yes	No	Comment	Notes for supervisor
Is there an up-to-date, completed stock card for all the contraceptive methods?				Stock cards must reflect name of method, expiry date, quantity received
Has any of the contraceptive methods been out of stock?				check stock cards

Adverse events	Yes	No	Comment	Notes for supervisor
Are there any adverse events forms and one reported?				
Information Management	Yes	No	Comment	Notes for supervisor
Does the provider have a copy of the daily tick sheet (Data Collection Tool)?				
Is the data at the facility the same as the data at the next level?				
Human Resources	Date		Comment	Notes for supervisor
State the date of the last Family Planning course attended				Contract only valid if competency training done in the last 3 years
	Yes	No	Comment	Notes for supervisor
Provider wears a name badge				
Documentation	Yes	No	Comment	Notes for supervisor
Is there a copy of the following documents?				
Contraception and Fertility Planning Manual				

Proof of annual registration with regulatory body				Healthcare professional and service site
Additional	Yes	No	Comment	Notes for supervisor
Prices of services and a notice indicating DOH stock availability is placed in a prominent place				
Is there a copy of the following documents?				
Authorization to practice				
Are supervisory visits conducted				Check documentation for proof.

## ANNEXURE G: RELEVANT LEGISLATION

The Service Provider needs to comply with the following Acts and their amendments:

*Please note that this list is not exclusive and the Service Provider will have to comply with other relevant legislation not listed in this Annexure*

1. Pharmacy Act 1974 (Act no 53 of 1974)
2. Medicines and Related Substances Act, 1965 (Act No. 101 of 1965)
3. Good pharmacy practice
4. Nursing Act, 2005 (Act No. 33 of 2005)
5. National Health Act (Act No 61. of 2003)

### Additional resources provided:

National Contraception Policy Guidelines 2019 \*Subject to change\*

### Additional training requirements

1. Medicines may be administered by nurses and medical practitioners. A pharmacist may keep vaccines in a pharmacy, but must have completed an injection/immunization course in order to immunize. Certified proof of competency must be supplied.
2. Certified copies of registration certificates, permits and licences (as applicable) must be provided by the Service Provider

### Training Courses

1. The Service Provider must liaise with the District Trainers to keep abreast of training requirements and available course
2. If no training courses are available from the Department, all proof of registration and reasonable attempts that have been made to apply for the training must be provided
3. Training from other accredited training institutes is acceptable in the event of point 2.

## ANNEXURE H: DISPENSING AND PRESCRIBING OF MEDICINES

1. Medicines may be administered by nurses and medical practitioners. A pharmacist may keep vaccines in a pharmacy, but must have completed an injection/immunization course in order to immunize. Certified proof of competency must be supplied.
2. In the case of a nurse practicing in a private pharmacy, the pharmacist may keep vaccines in the pharmacy and a nurse may administer vaccines.
3. Certified copies of registration certificates, permits and licenses (as applicable) must be provided as part of the application process and annually thereafter.
4. Nurses who prescribe medicines must be authorized in terms of the Nursing Act, Act 33 of 2005. (Section 56)

**ANNEXURE I: PRODUCT COMPLAINT FORM**

**DEPARTMENT OF HEALTH: FREE STATE**

**MEDICINE COMPLAINT FORM**

**PLEASE NOTE:**

This form does NOT replace the "Report on Suspected Adverse Drug Event" form to the Medicine Information Centre

**FACILITY**

**DATE**

- 1 Name of person lodging complaint:.....
  - 1.1 Qualifications:.....Designation :.....
  - 1.2 Signature:.....
  - 1.3 Department:.....
- 

**2. NATURE OF COMPLAINT: Delete which is not applicable**

- Poor quality of preparation
- Poor quality of packaging
- Ineffective medicine expected/claimed effect not attained
- Unstable medicine
- Other(please specify)

Please report fully (if possible, sample of product or empty container to be submitted to the Provincial Office with Complaint form).

.....

.....

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.....  
.....  
.....

---

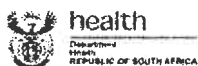
**3. INFORMATION ON PRODUCT**

- 3.1 Catalogue number(Annexure B): .....
- 3.2 Trade name of product:.....
- 3.3 Name of manufacturer:.....
- 3.4 Generic description:.....
- 3.5 Strength:.....
- 3.6 Dosage form: (tablet, injection etc.).....
- 3.7 Batch number and expiry date:.....

**PLEASE RETURN THE COMPLETED FORM TO DISTRICT PHARMACIST**

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# ANNEXURE J: ADVERSE EVENT REPORTING



**NATIONAL PHARMACOVIGILANCE CENTRE (NPC)**  
 TEL: 012 395 9506/ 8099  
 Fax2email: 086 241 2473  
 Email: npc@health.gov.za

## ACTIVE SURVEILLANCE REPORTING FORM FOR SUBDERMAL IMPLANTS

FACILITY NAME			
SUB-DISTRICT			
DISTRICT		TEL	
PROVINCE		FAX	

Please send duplicate to NDoH using the above mentioned details and complete additional information on a separate sheet if necessary

<b>PATIENT DETAILS:</b>			
Patient Initials	Age	Date of Birth (dd/mm/yyyy)	
File No/Reference No	Weight	Height	
<b>MEDICINES (AND CONCOMITANT MEDICINES, INCLUDING HERBAL PRODUCTS, IF KNOWN)</b>			
<b>Concomitant Condition</b>	<b>Medicine taken for concomitant condition</b>		
TB <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Cycloserine <input type="checkbox"/> Ethambutol <input type="checkbox"/> Ethionamide <input type="checkbox"/> Isoniazid <input type="checkbox"/> Lanezolid <input type="checkbox"/> Rifampicin <input type="checkbox"/> Para-aminosalicylic acid <input type="checkbox"/> Protonamide <input type="checkbox"/> Pyrazinamide <input type="checkbox"/> Teridazone Other TB Meds (Please Specify) _____		
HIV/AIDS <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Abacavir <input type="checkbox"/> Efavirenz <input type="checkbox"/> Emtricitabine <input type="checkbox"/> Lamivudine <input type="checkbox"/> Lopinavir/Ritonavir <input type="checkbox"/> Nevirapine <input type="checkbox"/> Stavudine <input type="checkbox"/> Tenofovir <input type="checkbox"/> Zidovudine Other ARVs (Please Specify) _____		
Epilepsy <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Eslicarbamazepine <input type="checkbox"/> Carbamazepine <input type="checkbox"/> Clobazam <input type="checkbox"/> Lamotrigine <input type="checkbox"/> Oxcarbazepine <input type="checkbox"/> Phenobarbital <input type="checkbox"/> Phenytoin <input type="checkbox"/> Primidone <input type="checkbox"/> Topiramate <input type="checkbox"/> Felbamate Other Epileptic Meds (Please Specify) _____		
Any other Meds, INCLUDING HERBAL PRODUCTS (Please Specify)	<input type="checkbox"/> Garlic <input type="checkbox"/> St John's wort _____		
<b>LABORATORY RESULTS: SELECT ABNORMAL ONE(S) AND WRITE THE VALUES (BL=BASELINE; CUR=CURRENT)</b>		<b>Pregnancy Test</b> Yes <input type="checkbox"/> No <input type="checkbox"/>	
Hb	CD4	Viral Load	Other:
BL			
CUR			
		Brand Name	Batch No
			Expiry Date
<b>RELEVANT CLINICAL HISTORY (ATTACH ADDITIONAL INFORMATION)</b>			
<input type="checkbox"/> DVT <input type="checkbox"/> CA Breast <input type="checkbox"/> CVA <input type="checkbox"/> Other (Please Specify) _____			
Previous Pregnancies	<input type="checkbox"/> PARA <input type="checkbox"/> GRAVIDA		
LMP	DATE: _____		
Previous Contraception	<input type="checkbox"/> Condom <input type="checkbox"/> IUD <input checked="" type="checkbox"/> Injectable contraception <input type="checkbox"/> Oral contraception		
Breast Feeding (currently)	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>ADVERSE DRUG REACTION (PLEASE DESCRIBE)</b>			
_____ _____ _____			
Date of Onset of Reaction (dd/mm/yyyy)		Date Reported (dd/mm/yyyy)	
<b>COUNSELING</b>			
Date of counseling (dd/mm/yyyy)		<b>Suggested Visits</b>	
Topics covered <input type="checkbox"/> Traditional Beliefs <input type="checkbox"/> Religious Beliefs <input type="checkbox"/> Bleeding Profile Changes <input type="checkbox"/> Drug Interactions <input type="checkbox"/> Efficacy of Sub-Dermal Implant <input type="checkbox"/> Insertion and Removal Technique <input type="checkbox"/> Clinic Visit <input type="checkbox"/> Other Insertion date (dd/mm/yyyy): _____ Arm used <input type="checkbox"/> Left <input type="checkbox"/> Right		Suggested Date Visit 1 – Counseling and insertion- palpable <input type="checkbox"/> Yes <input type="checkbox"/> No _____ Visit 2 – 1 week after insertion- palpable <input type="checkbox"/> Yes <input type="checkbox"/> No _____ Visit 3 – 3 months after insertion- palpable <input type="checkbox"/> Yes <input type="checkbox"/> No _____ Other visits – free to return to the clinic Was X-Ray taken when not palpable <input type="checkbox"/> Yes <input type="checkbox"/> No _____ Removal Date (if applicable) _____ Reason for removal (if applicable) _____	
<b>REPORTED BY:</b>			
Name	Designation		Highest Qualification
	<input type="checkbox"/> Doctor <input type="checkbox"/> Nurse <input type="checkbox"/> Pharmacist <input type="checkbox"/> Other		Email
Tel	Signature	Date	

Version 3.5

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**Annexure L: Consent form for receiving/ acknowledgement of receiving Government services**

**Checklist for receiving Government services**

Facility/Pharmacy	
Date	
Patient's name and surname	
Contraceptive method received	
Cervical cancer screening	

I hereby acknowledge that I will only be charged a consultation fee of \_\_\_\_\_

Signature: \_\_\_\_\_

Service provider Surname and Initials: \_\_\_\_\_

Signature: \_\_\_\_\_

**ANNEXURE M**

**LOSSES & DAMAGES TO STATE PROPERTY AND OTHER LOSSES**

- 1. NB: Please use separate folio sheet (write on one side only) if the space is insufficient and refer to it on the specific question concerned.
- 2. Copies of the reports and the correspondence between your office and this office must always be kept for reference purpose
- 3. Please take note that additional information/reports/documents/statements may be requested to enable the Department to determine liability in terms of paragraph 12 of Treasury Regulations.

1. INSTITUTION: .....

1.1 Sub-Directorate/Division/Section/Ward: .....

2. ITEM DESCRIPTION:

2.1 Describe the item in full:

See attached Disposal certificate of expired medication/consumables/Vaccine/ART &TB.....

2.2 What is/was the item/s used for?

.....  
.....

3. PREVENTATIVE MEASURES (to be completed by OPM)

3.1 Are circumstances such that this incident can occur again? YES or NO (if please elaborate)

.....  
.....  
.....  
.....  
.....



3.2 What preventative measure/s was/were implemented to prevent a similar event from taking place?

.....  
.....  
.....  
.....

If no preventative measure/s has/have been implemented yet, kindly indicate why not and when will it be done:

.....  
.....  
.....  
.....

I..... (Initials & Surname) in my capacity as the Head of this Institution confirms that the above measures were discussed with all the relevant stakeholders and will be implemented to prevent similar incident from taking place.

Signature: ..... Rank: .....

Date: .....

4. REPORT/STATEMENT AND RECOMMENDATIONS (By the District Pharmacist/  
District Manager/Local Area Manager concerned)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

[Please use separate folio sheet (write on one side only) if the space is insufficient]

RECOMMENDATIONS (in terms of Treasury Regulation 12.2.1)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

Initials and  
Surname.....Signature.....Rank.....

Date .....

Loses form Approved by: .....  
District Pharmacist

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5. REPORT/STATEMENT AND RECOMMENDATIONS (By the District Manager/CEO concerned)

.....  
.....  
.....  
.....  
.....  
.....

[Please use separate folio sheet (write on one side only) if the space is insufficient]

RECOMMENDATIONS (in terms of Treasury Regulation 12.2.1)

.....  
.....  
.....  
.....  
.....

Initials and Surname..... Signature..... Rank.....

Date ..... Loses form Approved by.....  
District Manager/CEO

6. REPORT/STATEMENT AND RECOMMENDATIONS (By the relevant DDG concerned)

.....  
.....  
.....  
.....  
.....  
.....

[Please use separate folio sheet (write on one side only) if the space is insufficient]

RECOMMENDATIONS (in terms of Treasury Regulation 12.2.1)

.....  
.....  
.....  
.....  
.....  
.....

Initials and Surname..... Signature..... Rank.....

Date .....

Loses form Approved by.....  
Relevant DDG concerned

## BIDDER'S DISCLOSURE

**1. PURPOSE OF THE FORM**

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

**2. Bidder's declaration**

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State Institution

2.2 Do you, or any person connected with the bidder, have a relationship

---

<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

**3 DECLARATION**

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....	.....
<b>Signature</b>	<b>Date</b>
.....	.....
<b>Position</b>	<b>Name of bidder</b>

**SPECIAL CONDITIONS OF CONTRACT**  
**DEPARTMENT OF HEALTH**

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37) Acceptance of the Special Conditions of Contract and/or General Conditions of Contract	11
38) The company must complete the following	11



**THE FOLLOWING SPECIAL CONDITIONS OF CONTRACT WILL APPLY TO THIS BID / QUOTATION :****1. EVALUATION CRITERIA**

The following preference point system is applicable to the bid/quotation 80/20.

The preference points for this bid/quotation are allocated as follows and will be applied when adjudicating the bid / quotation:

Price	=	80 points
Specific goals	=	20 points
		—
<u>Total points</u>	=	<u>100 points</u>

**2. BROAD-BASED BLACK ECONOMIC EMPOWERMENT STATUS LEVEL CERTIFICATES**

- 2.1 Bidders may claim points for B-BBEE as part of the specific goals in the following manner:
- 2.1.1 An Exempted Micro Enterprise (EME), is required to submit a sworn affidavit confirming their annual total revenue of R10 million or less and level of black ownership to claim B-BBEE points allocated under the specific goals.
- 2.1.2 An Exempted Micro Enterprise (EME) is required to submit a sworn affidavit confirming their annual turnover, allocated budget or gross receipts of R10 million or less and level of percentage of black beneficiaries to claim B-BBEE points allocated under the specific goals.
- 2.1.3. An EME may be measured in terms of the Qualifying Small Enterprise scorecard should they wish to maximize their points and move to a higher B-BBEE recognition level. It is in this context that an EME may submit a B-BBEE verification certificate to claim points allocated under the specific goals.
- 2.1.4. A Qualifying Small Enterprise (QSE), other than submitting the B-BBEE level verification certificate, may submit a sworn affidavit confirming their annual total revenue of between R10 million and R50 million and level of black ownership to claim B-BBEE points allocated under the specific goals.
- 2.1.5. A Qualifying Small Enterprise (QSE) that regarded as a specialized enterprise, other than submitting the B-BBEE level certificate, may submit a sworn affidavit confirming their annual turnover, allocated budget or gross receipt of R50 million or less and level of percentage of black beneficiaries to claim B-BBEE points allocated under the specific goals.
- 2.2 Bidders who do not submit B-BBEE Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for specific goals on B-BBEE. **They will therefore score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for specific goals.**

- 2.3 A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid and Public Entities and Tertiary Institutions must submit B-BBEE Status Level Verification Certificate together with their bids.

### 3. **ONCE-OFF BID PRICES**

#### 3.1 Firm prices:

Prices for once-off bids must be firm. No application for price adjustment will be considered except in the case where rate of exchange is applicable. All the necessary documentary proof must be submitted.

Where the exchange rate is applicable the bidder is expected to complete the SBD 3.2 in full at the time of bidding.

### 4. **PERIOD CONTRACT PRICES**

#### 4.1 1<sup>st</sup> year of the contract period:

Prices must be firm for the 1<sup>st</sup> (first) year of the contract period. No price adjustments will be allowed during the 1<sup>st</sup> year of the contract period except in the case where rate of exchange is applicable. The request for price adjustment due to rate of exchange will be considered per consignment. All the necessary documentary proof must be submitted.

#### 4.2 2<sup>nd</sup> year and rest of the contract period – Prices subject to escalation

- 4.2.1 A request for price adjustment due to statutory increases on period contracts will be considered **after** the 1<sup>st</sup> year of the contract period if the bid/quotation is qualified as such and with the necessary documentary proof.

- 4.2.2 In order to be considered for price increases from the 2<sup>nd</sup> year of the contract period (statutory increase) and where the rate of exchange is applicable (on request per consignment), the price escalation form SBD 3.2 must be completed in full.**

#### **4.2.3 Submitting of price adjustment claims:**

Claims for statutory increases must be submitted within 90 days of the change in price. If a claim is received after 90 days, the adjusted price will only be considered from the date the claim was received by the Department.

Delivery of goods and/or services must not be withheld as a result of the price adjustment not being finalized or as a result of any dispute.

Companies must indicate in the bid document the amount to be remitted abroad as well as the rate of exchange applied in the conversion of that amount into SA currency, when calculating the bid price. Proof from the bank for rate of exchange applicable to the bid at time of bidding **must** be attached to the bid document.

**Price adjustments based on Rate of Exchange will only be applied per consignment delivered to the applicable institution of the Department due to the continuous fluctuation.**

4.2.4 Documentary proof for price adjustments:

- (i) All claims must be properly substantiated by documentary evidence to the satisfaction of the Head of Health.
- (ii) The following information must be supplied when claims for rate of exchange variations are lodged:
  - Documentary evidence of currency and amount paid to foreign supplier
  - Supplier's invoice
  - Bill of entry/landing
  - Copy of institutions order, delivery note and invoice

4.2.5 Failure to comply with the conditions as per par. 4.2.2 to 4.2.4 **will invalidate** the claim.

**5. QUALIFICATION OF BID DOCUMENTS**

- 5.1 The invitation form (SBD 1) must be **completed in full and signed originally** (in black pen ink) by the person in the company who is authorised to do so. Failure to sign the offer will invalidate the offer.
- 5.2 The SBD forms and all other bid forms must be submitted in the original format. The Office will only consider the original bid documents issued by the Office and signed by the company. Bid documents that are retyped, transmitted by facsimile, electronic mail or changed in any other way, will invalidate the bid. Scanned documents, which are completed in the original, will be acceptable.

**6. DECLARATIONS – SBD 4, SBD 6.1:**

All declarations must be **originally completed** in full and duly signed by the bidder and where required, two witnesses.

**6.1 SBD 4 – Declaration of Interest**

All the state employees are not allowed to do a business with the Free State Department of Health.

**7. CORRECTIONS TO DOCUMENTS:**

- 7.1 Correction fluid (like Tippex for example) must not be used in bid documents in order to correct mistakes. Where a company wishes to correct a mistake, a single line must be drawn through it and the company must place his/her signature and date next to the correction, so that the original entry is still visible and legible. Failing to rectify mistakes in this manner **will invalidate the bid or the relevant item, or the relevant clause.**

- 7.2 In all other cases of alterations/corrections a full signature and date must be attached above, next to or below the said alteration or correction. If not signed in full at the correction the specific item/bid/quotation **will not** be taken into consideration.
- 7.3 Companies must check the numbers of the pages on the bid document and should satisfy themselves that the document is complete and that none of the pages are missing or duplicated before the closing date of the bid. No liability shall be accepted with regard to claims arising from the fact that pages are missing or duplicated.
- 7.4 Where **specific goal points** are claimed on the various SBD 6 forms, the forms must be completed in full, must be signed by the company and both witnesses otherwise the points claimed **will not be considered**.
- 7.5 The bid must be submitted in a sealed envelope. The **correct** bid number and closing date must be clearly indicated on the front of the envelope and the bidder's details on the back. The envelope must be placed in the bid box as indicated, before or on the closing date and time of the bid. On failure to comply the bid **will not be considered**. Bids, which are **received after the closing date and time**, will not be accepted and will be returned to the bidder.

## **8. TAX COMPLIANCE STATUS OF THE BIDDER**

- 8.1 Designated employee(s) must verify the bidder's tax compliance status prior to the awarding of price quotations or competitive bids. Where the bidder is not tax compliant, the bidder must be notified in writing of their non-compliant status and the bidder must be requested to submit written proof from SARS of their tax compliance status or proof that they have made an arrangement to meet their outstanding tax obligations within 7 working days. The bidder should thereafter provide the accounting officer or accounting authority with proof of their tax compliance status which should be verified via the Central Supplier Database or eFiling. Should the recommended bidder fail to provide written proof of their tax compliance status, accounting officers and accounting authorities must reject the bid submitted by the bidder.

## **9. COMPULSORY EXPLANATORY MEETING AND / OR SITE VISIT**

- 9.1 A compulsory explanatory meeting and/or site visit if so required in the bid documents and bid advertisement must be attended. **Failure to attend will invalidate the bid. In case of a joint venture, consortium all companies must attend the meetings and submit their own attendance certificate in the company's name.**
- 9.2 An attendance certificate per company must be signed and stamped by an official of the Department with registration at the meeting. The document/s must be attached in its original to the bid document. Copies of the document will not be accepted.
- 9.3 Information already provided at the meeting will not be repeated to late attendees.
- 9.4 A copy of the minutes of the meeting can be made available to companies on request.

**10. PAYMENT TO SUPPLIERS**

Payments will be handled as prescribed by the PFMA and will normally be effected within 30 days of receipt of all the required documentation, which should be correct in every respect.

**11. LEGISLATION / LAWS**

Companies must comply with the provisions of current Labour Legislation as well as any other relevant legislation or legal requirement.

**12. VALIDITY PERIOD OF BID**

The period for which offers are to remain valid and binding (in order for the Department to finalize it), is indicated in the bid documents (SBD 3.1 / 3.2) and is calculated from the closing day with the understanding that offers are to remain in force and binding until the close of business on the last day of the period calculated and if this day falls on a Saturday, Sunday or Public Holiday, the bid is to remain valid and binding until the close of business on the following working day.

**13. QUANTITIES**

Where quantities are specified in the bid documents the Department cannot guarantee that they will be ordered as such, as it depends on Departmental needs. The Department is not liable for any losses the contractor might suffer for not ordering specific quantities.

Where quantities are specified, "as required" the quantities will be ordered as and when needed.

**14. SAMPLES**

- 14.1 Samples to be submitted (if so required in the bid documents), must be clearly marked with the bid and item number as well as the company's name.

**UNDER NO CIRCUMSTANCES SAMPLES SHALL BE INCLUDED IN THE BID DOCUMENTS. SAMPLES INCLUDED IN BID DOCUMENTS WILL NOT BE CONSIDERED**

- 14.2 The samples must be delivered to the addressee mentioned in the bid documents so as to reach him/her not later than the closing date and time of the bid.
- 14.3 Samples shall be supplied by the bidder at his/her own expense and risk.
- 14.3 Samples of the successful company will be kept with the Department until the end of the contract period and will be returned to the company only if so stated in the bid/quotation documents.
- 14.4 All samples provided, which must be returned to the company must be removed on request of the Department at the company's own expense and risk within the specified

period. On failing to comply with, the company will forfeit ownership and the sample shall forthwith be disposed of at the discretion of the Department.

## 15. BID PRICES

- 15.1 Prices of bids must be provided for the specific units as required per SBD 3.1/3.2 forms. The packaging may vary and will be considered unless specific packaging is required.
- 15.2 Bid prices must be all inclusive and no additional cost will be paid for e.g. delivery, VAT, etc.
- 15.3 Bid prices must be indicated on the relevant SBD 3.1/3.2 form/s unless otherwise requested by the Department.

## 16. PRICE LISTS

Price lists **will not** be considered for acceptance of the bid unless it was specifically requested in the bid / quotation documents.

## 17. SPECIFICATION – COMPANY'S RESPONSE

Where a specification provides for the company's response to the different points of specification, the bidder's part must be properly completed or the bid or the relevant item will be disqualified. **Where items deviate from the requirement, the deviation must be indicated.**

## 18. ADJUDICATION OF BID

- 18.1 Chapter 6 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), that deals with the Register for Tender Defaulters, as well as Regulations made by the Minister of Finance in this regard, are applicable when adjudicating a bid/quotation.
- 18.2 The Department may terminate the bid/contract in whole or in part if representatives of the Department, is in the judgement that the bidder has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 18.3 In the event of a bid being awarded as a result of specific goal points claimed in terms of the revised Preferential Procurement Regulations 2022, the contractor may be required to furnish documentary proof to the satisfaction of the Department.
- 18.3.1 The Department will act against the bidder or person awarded the contract upon detecting that the specific goal points for B-BBEE status level of contribution has been claimed of obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.

18.3.2 The Department may, in addition to any other remedy that it may have against the bidder or person:

18.3.3 Disqualify the bidder or person from the bidding process;

18.3.4 Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;

18.3.5 Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

18.3.6 Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and

18.3.7 Forward the matter for criminal prosecution.

**19. RESTRICTION OF BUSINESS INTEREST OF EMPLOYEES CONDUCTING BUSINESS WITH THE PROVINCIAL GOVERNMENT**

An employee may not have a business interest in any entity conducting business with the Provincial Government.

**20. COMPLIANCE TO CONTRACT**

20.1 The Department will monitor compliance to the contract after adjudication of the bid that include, but need not be limited to, site inspections and the request for documentary proof of compliance with the PFMA and relevant legislation.

20.2 Where services are rendered, which involves minimum wages for employees in terms of the sectoral wage determination, the Department reserves the right to request copies of payslips of employees during the period of the contract.

**21. CONTRACT SIGNING**

In response to an invitation to bid, companies must submit bid which in terms of the law represent offers. Once an offer is accepted and a bid is awarded to a successful company, a legal contract comes into existence.

The Department **will not** enter into any other contract than the SDB 7.1 or 7.2 form to be concluded as a result of acceptance of the bid.

**22. FINANCIAL SCHEDULES**

The financial schedule and annexure(s) for breakdown on salaries/wages where applicable, must be fully completed and submitted with the bid.

**23. DECLARATION OF INTEREST**

Failure to declare interest on the part of the company or officials from the Department is unacceptable, which **will** lead to the bid/quotation not being considered.

**24. DESCRIPTIVE LITERATURE / BROCHURES / PAMPHLETS**

If so required, the company must supply descriptive literature, brochures or pamphlets.

Descriptive literature is regarded as text and photos as issued by the original manufacturer.

**25. PERFORMANCE SECURITY / SURETY**

A Performance Security / Surety is not applicable to all bid. Where it is a requirement in a specific bid, it will be indicated in the bid documents as well as the period in which the performance security / surety must be submitted. If so required, it must be provided to the Department within the required period or the Department will have the right to cancel the contract and to claim any damages suffered from the contractor.

**26. ACCREDITED REPRESENTATIVE**

If you are an accredited representative in South Africa for the goods/services offered written proof from the original supplier must be enclosed. (Refer to the SDB 1 form). Failure to do so will result in the offer not being considered.

**27. EQUIPMENT EXCEEDING SPECIFICATIONS**

There might be cases where the specifications do not address latest developments in technology. Where this is the case, the company must indicate next to the specific requirement in the specification to what extent the improved technology is offered. The Department may consider such offers in the adjudication process on condition that full details are provided for comparison purposes.

**28. DELIVERY AND DOCUMENTS**

If so required, details of shipping and/or other documents to be furnished by the supplier are specified in the bid document

**29. INSURANCE**

Insurance as prescribed in the GCC par. 11 is applicable. Specific requirements over and above GCC par. 11 will be specified in the bid/quotation document.

**30. INCIDENTAL SERVICES**

Incidental services if so required will be handled as specified in the bid document.



**31. SPARE PARTS**

Spare parts forms part of the specification of the bid/quotation and must be dealt with as such.

**32. WARRANTY**

- 32.1 Only new, unused goods must be supplied unless otherwise stated in the bid document.
- 32.2 The General Conditions of Contract par. 15 will apply unless otherwise stated in the bid documents.
- 32.3 Suppliers must remedy defect(s) on goods delivered within the period stated in the bid/quotation document or within the period as required by the Department.

**33. PENALTIES**

Penalties will be imposed as per current prime interest rate as prescribed by the General Conditions of Contract par. 22 unless otherwise stated in the bid/quotation document.

**34. SETTLEMENT OF DISPUTES**

The parties hereby agree that in the case of a dispute that cannot be resolved mutually, the dispute will be referred for settlement to the Secretary of the Law Society in the Free State, and in the case of the said Society's unwillingness to hear the dispute, such dispute will be referred to the Chairperson of the Bar Council for the Society for Advocates and/or his/her nominee.

The parties agree that the decision of the presiding officer in the dispute settlement procedure will be final and that neither of the parties will institute legal action against the other following the dispute settlement.

**35. TERMINATION OF CONTRACTS: UNFULFILLED ORDERS**

On termination of the contract, unfulfilled orders will automatically be cancelled and where appropriate, be supplied in terms of any subsequent contract.

**36. CESSION OF CONTRACTS**

The supplier shall not cede, in whole or in part, its obligations to perform under the contract or payments made/or to be made by the Department to the supplier, except with the Department's prior written consent.

**37. ACCEPTANCE OF THE SPECIAL CONDITIONS OF CONTRACT AND GENERAL CONDITIONS OF CONTRACT**

Failure to accept the Special Conditions of Contract and the General Conditions of Contract or any part thereof, may result in the bid/quotation not being considered.

**38. THE COMPANY MUST COMPLETE THE FOLLOWING:**

I, .....in my capacity as ..... of the company, hereby certifies that I took note and accept the above-mentioned Special Conditions of Contract.

.....  
**SIGNATURE**

.....  
**CAPACITY**

**Contact person of company:** .....

**Tel. of company:** (.....) ..... **Fax of company:** (.....) .....

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

## NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of

origin and which have the potential to harm the local industries in the RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance,

training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

**2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**4. Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

**5. Use of contract documents and information; inspection.**

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights



arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

**11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

**12. Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual

- (d) for each appropriate unit of the supplied goods; performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

**14. Spare parts**

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s)

within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities

or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in

terms of the contract or any other contract or any other amount which may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.



- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

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