

KWAZULU-NATAL HELTH
Department:
Health
PROVINCE OF KWAZULU-NATAL

**REQUEST FOR QOUTATION FOR THE LEASE OF TEMPORARY CLINIC
STRUCTURES: GWEBU CLINIC**

entered into between

KWAZULU-NATAL DEPARTMENT OF HEALTH represented by
Dr., in his capacity as Head of
Department, duly authorised
(hereinafter referred to as the "Department")

and

(Registration Number: _____) represented by
_____, his capacity as
_____, duly authorise

(hereinafter referred to as "the Service Provider")

(both parties hereinafter collectively referred to as "the Parties")

1. DEFINITIONS

- 1.1 . In this Agreement, clause headings and sub-headings are for convenience and shall not be used to interpret such Agreement, unless the context clearly indicates a contrary intention.
- 1.2. Any expression which denotes any gender includes the other gender.
- 1.3. The following expressions shall bear the meanings assigned to them below:
 - 1.3.1 "Agreement" means this agreement together with all annexes as may be amended from time to time;
 - 1.3.2 "Annexure" means annexes referenced in this agreement;
 - 1.3.3 "Effective Date" means the date of site handover as signed off by the parties;
 - 1.3.4 "the Department Representative" means the person appointed by Department to liaise with the Service Provider on a day to day basis in respect of services provided by the Service Provider to the Department in terms of this Agreement;
 - 1.3.5 "Industrial Action" means any labour protest action; strike; lockout; and any general retardation of work, whether unprotected or protected by legislation and as further comprehensively defined by the South African Labour Relations Act, 66 of 1995 and other relevant regulatory legislation;
 - 1.3.6 "Intellectual Property" means any computer software, material, name, concept, training material, training instruments, copyright in documents, patentable or non-patentable inventions, discoveries and improvements, patent, trade mark, trade name, drawings, designs, operational analysis, technology and know-how or other intellectual property;
 - 1.3.7 "Month" means a calendar month, being one of the 12 (twelve) periods into which a year is divided;
 - 1.3.8 "Parties" means the Department and the Service Provider and "Party" means either the Department or the Service Provider.
 - 1.3.9 "Service Provider" means _____, registration number _____, a private company registered under the laws of the Republic of South Africa;
 - 1.3.10 "Service Provider Representative" means the person appointed by the Service Provider to liaise with the Department on a day to day basis in respect of services provided by the Service Provider to the Department in terms of this Agreement;
 - 1.3.11 "Services" mean the services provided by the Service Provider to the Department and as described in this Agreement;
 - 1.3.12 "Tax Invoice" means an invoice as defined in the Value Added Tax Act, No. 89 of 1991, as amended;
 - 1.3.13 "Written" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods and "Writing" shall have a cognate meaning."
- 1.4. Unless the context clearly requires a different interpretation, any reference to:
 - 1.4.1 the singular includes the plural and vice versa; and
 - 1.4.2 natural persons include juristic persons and vice versa.

- 1 .5. Where appropriate, meanings ascribed to defined words and expressions in clause 1.3 of this Agreement shall impose substantive obligations on the Parties.
- 1 .6. Words and phrases defined in the main body of this Agreement shall bear the same meanings in the annexes to this Agreement where such words or phrases are not specifically defined.
- 1 .7. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1 .8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1 .9. When any number of days is prescribed in this Agreement, it refers to working days and same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1 .1 0. The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule (i.e. the rule that a general word or clause is restricted in meaning to the same class as the specific words which precede it) shall not be applied in the interpretation of such general wording or such specific example/s.
- 1 .1 1 The terms of this Agreement having been negotiated, the contra proferentem rule (i.e. that words should be interpreted against the stipulator) shall not be applied in the interpretation of this Agreement.
- 1 .1 2. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Effective Date, and as amended or substituted from time to time.
- 1 .1 3. Any reference in this Agreement to a document being "in writing and signed" by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding the provisions of sections 12 and 13 of the Electronic Communications and Transactions Act, No 25 of 2002.

2. APPOINTMENT

The Department hereby appoints the Service Provider, who hereby accepts such appointment, to provide the Services on the terms and conditions stipulated in this Agreement.

3. COMMENCEMENT DATE AND DURATION

Notwithstanding the date of signature hereof, this Agreement shall commence on the Effective Date and shall endure as follows:

- 3.1. the design, build, deliver and installation process: a continuous period of three (3) calendar weeks from the Effective Date; and
- 3.2. the lease term shall commence on date of Practical Completion of the units on site to the satisfaction of the Department, and will continue thereafter for a leasing period of 24 months (the "lease term"),

unless terminated earlier by either party in terms of clauses 19 or 20 of this Agreement, if applicable.
- 3.3. The duration of the lease term may be extended, subject to the approval of the Head of Department and all other relevant legislative approvals, where applicable,

4. SCOPE OF SERVICE (the "Services")

- 4.1. The Service Provider shall design, build, deliver, install and lease to the Department, temporary PHC Clinic, comprising of three blocks (Clinic building, Staff House and Security offices) as per attached drawings Annexure A, and ancillary items (General waste area, Garden and Medical waste area), to be used for temporary clinic purposes at a site identified, including provision of water and electricity at all times, at the **Gwebu Clinic**, situate in **KwaGwebu, Vryheid**, in accordance with the **Ideal Clinic policy**
- 4.2. The Department shall inspect the units within 2 days of installation thereof and inform the Service Provider in writing of any defects or damage discovered therein. Any units found to be damaged or defective at the time of installation shall be repaired or replaced by the Service Provider without additional cost to the Department.
- 4.3. The Service Provider shall repair or replace any damaged or defective units, materials or equipment upon 3 working days' notice by the Department to repair

or replace such unit, materials or equipment found to be damaged or defective at the time of delivery, failing which the Department shall, upon written notice to the Service Provider, repair or replace the unit and deduct the cost from any amounts due, or to become due, to the Service Provider.

4.4 At the conclusion of the lease period, the Department shall vacate the units for dismantling, which vacation includes but is not limited to:

- 4.4.1. vacating all patients from the units;
- 4.4.2. disinfecting the units and disconnecting all utilities;
- 4.4.3. removing all personal property of the Department from the units; and
- 4.4.4. providing clear access for the pickup and return delivery of the units from the site.

4.5. At the conclusion of the lease period, the Department and Service Provider shall jointly conduct an inspection of the units and note any damage to the units (fair wear and tear excepted), the market-related cost of which shall be borne by the Service Provider.

CLIENT DIRECT CONTRACTORS

The service provider must give reasonable access to the building for all Direct Sub-Contractors and Client employees to perform their duties, relating, but not limited to equipping the building in terms of ICT, HTS, etc.

5. RENTAL, SITE ESTABLISHMENT, PREPARATION COSTS, SEPTIC TANK, AND PAYMENT

5.1. The Department shall pay to the Service Provider a monthly rental amount of R _____, including VAT (_____) for all three blocks for the lease period, which rental sum shall include maintenance of the units, commencing as per clause 3.2.

5.1.1 Allow an amount of **R 1000 000.00** excluding VAT (One Million Rand Only) for civil works, septic tank, etc.

5.2. Ten percent (10%) of the entire rental sum for the duration of the contract shall be paid by the Department to the Service Provider on establishment of the site to the satisfaction of the Department, which amount shall be deducted from the monthly rental payable by the Department to the Service Provider. This cost shall take into account all labour, transport, delivery, installation and removal costs associated with the Service.

5.3. The Department may reimburse the Service Provider for any levelling of site/earth works and septic tank undertaken by the Contractor on a cost plus 12% mark-up basis, based on proven, market-related costs, acceptable to the Department.

5.4. The Service Provider shall not be entitled to any escalation for the duration of this Agreement.

5.5. Payment of amounts in terms of this clause 5 shall be made by the Department into a bank account nominated by the Service Provider, within

30 days of receipt of the Service Provider's tax invoice, which invoice shall be:

5.5.1. in a format acceptable to the Department;

5.5.2. approved by an official of the Department with the necessary authority.

5.7 If the Service Provider fails to complete the installation of the sites as per the applicable time-frames, the Department shall be entitled, without prejudice to any other remedy it may have, to deduct from the Contract Price, as a penalty, a sum equivalent to 1% of the monthly rental per day, for each day of the delay until actual performance.

5.8. The penalties, referred to in clause 5.7 above, will only become applicable where such delay is the sole cause of the Service Provider, excluding any and all situations of force majeure or where such delay is caused by any negligent act, omission or failure by the Department to perform its obligations.

5.9. No charges other than those set out herein will be payable unless specifically approved by the accounting officer of the Department, agreed upon in writing and signed by both parties.

5.10. In the event that the lease term is extended, rental shall be payable as follows, subject to all HOD and relevant legislative approvals:

5.10.1. extension by an additional three (3) months: 75% of the original monthly rental amount;

5.10.2. any further extension: 50% of the original rental amount.

6. OBLIGATIONS OF THE DEPARTMENT

The Department shall:

6.1 . make payment to the Service Provider for the Services, as set out in clause 5;

6.2. provide the Service Provider with all necessary documents and information in order to render the Services;

6.3. appoint a Departmental contact person or supervisor whose responsibility will be to oversee and monitor the provision of the Service;

6.4. provide the Service Provider with clear access to the site to effect delivery and installation of the units, and to provide any other service in terms of this agreement;

6.5. take all reasonable steps to ensure access to the units is duly secured;

6.6. preserve the units in good condition and repair (normal wear and tear excluded), and shall not make any alterations, modifications, additions, or improvements to the units without the Service Provider's prior written consent;

6.7. ensure that the units remains on site, and shall not move the units to a new location without the prior written consent of the Service Provider;

6.8. shall immediately notify the Service Provider of any loss or damage to, or destruction or theft of, the units.

7. OBLIGATIONS OF THE SERVICE PROVIDER

The Service Provider:

7.1. shall provide the Services in a professional and competent manner on the terms and conditions set out herein, and in accordance with any occupational health and safety requirements;

7.2. warrants that it has sufficient and relevant skills, knowledge and expertise to perform its obligations in terms of this Agreement;

7.3. shall ensure that it dedicates sufficient resources to enable it to perform its obligations as set out in this agreement;

7.4. shall timeously bring to the attention of the Department any challenges it may foresee arising or is encountering in the provision of the Services;

7.5. shall not be permitted to appoint any sub-contractors to perform any of the Services in terms of this agreement, without the consent of the Department;

7.6. shall ensure all necessary approvals from the relevant local authority are obtained in order to ensure the effective installation of the units on site;

7.7. shall ensure that the foundation and ground surfaces are level and suitable to allow for installation of the units;

7.8. shall ensure that the electricity, water, waste and ventilation connections are suitable and in working order, in order for the units to function as per its purpose;

7.9. shall ensure that the design and facility provided is in compliance with the design requirements of the Infrastructure Guidelines for **Ideal Clinic**;

7.10. shall timeously and efficiently attend to any day-to-day ' and structural maintenance of the units, as and when called to do so by the Department.

8. TITLE, POSSESSION AND RISK

8.1. Ownership of the units vest in the Service Provider.

8.2. All risk in and to the units shall remain with the Service Provider, despite the units being in possession of the Department for the duration of this Agreement.

8.3. From the date of commencement of this agreement until the units have been dismantled and removed from the site, the Service Provider shall ensure that the units are adequately insured against any loss, theft, damage and destruction, in an amount not less than the full replacement value of the units. In this regard:

- 8.3.1 the insurance shall be in a form and with a company to the satisfaction of the Department, and shall not be subject to cancellation without 30 days' prior notice to the Department.
- 8.3.2 the Service Provider shall provide the Department with satisfactory proof of the validity of such insurance policy.
- 8.3.3 proceeds of such insurance shall be applied to the replacement, repair or restoration of the units.

9. WARRANTIES

- 9.1 . The Service Provider hereby warrants that the units and/or services covered by this Agreement will meet the requirements and conditions of the specification herein, shall be fit for the purpose intended, will be of high-quality material and workmanship and free from defects.
- 9.2. The Department reserves the right to cancel the unfilled portion of any order without liability to the Service Provider for the Service Provider's breach of this warranty. The units will be received subject to reasonable inspection and acceptance at site by the Department and risk of loss before acceptance shall be borne by the Service Provider. Defective goods reasonably rejected by the Department may, without prejudice to any legal remedy, be held by the Department at the Service Provider's risk and returned to the Service Provider at the Service Provider's expense. Defects shall not be waived by acceptance of goods or by failure to notify the Service Provider thereof.
- 9.3. The Service Provider hereby warrants to the Department that title to the material, supplies, equipment or units covered by this Agreement, when delivered to the Department, is free from all liens and encumbrances.

10. AGENCY

- 8.1. Nothing contained in this Agreement or otherwise shall authorize, empower:
 - 8.1.1 constitute the Service Provider as an agent of the Department in any manner;
 - 8.1.2 the Service Provider to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the Department;
 - 8.1.3 the Service Provider to bind the Department in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the Department.
- 8.2. This Agreement is for the provision of the Services as specified under this Agreement and nothing in this Agreement shall be deemed or construed to

create, or have been intended to create, a partnership, joint venture, employment, franchise, agency or other similar relationship between the Parties hereto. In furtherance of and without limiting the foregoing, the Service Provider shall not hold itself out to be the Department, and the Service Provider is not and shall not hold itself out to be or be deemed to be the legal representative or agent of the Department, for any purpose whatsoever; and the Service Provider shall not act or bind the Department in any way or represent that the Department is in any way responsible for the Service Provider's acts or omissions.

9. DATA PROTECTION

9.1 In performing the obligations as set out in this Agreement, the Service Provider shall at all times:

- 9.1 .1 . comply with the provisions of all laws, which regulate the protection of personal data, including but not limited to the Protection of Personal Information Act 2013 and the Electronic Communications and Transaction Act 2002;
- 9.1 .2. comply with all laws, policies, and procedures relating to the protection, storage, handling, privacy, processing and retention of data as well as the destruction of data, including personal data;
- 9.1 .3. ensure that it shall not sell, offer for sale or dispose of or attempt to dispose of or create or allow the encumbrance over any data;
- 9.1 .4. ensure that it is able to identify all data relating to this Agreement separately from other data under its control;
- 9.1 .5. ensure that it does not disclose personal data of any Departmental employee, other than in terms of this Agreement;
- 9.1 .6. ensure that it processes data for only the express purpose for which it was obtained;
- 9.1 .7. ensure that, once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
- 9.1 .8. ensure that it has all reasonable technical and organisational measures in place to protect the personal data from unauthorised access and/or use;
- 9.1 .9. ensure that all usernames and passwords affording access to the personal data remain secure, confidential and exclusively attributable to a specific employee; and
- 9.1.10. notify the Department of any actual or suspected breach of its security measures.

9.2 The parties agree that they may obtain personal information during the duration of the Agreement for the fulfilment of the rights and obligations contained

herein and may further only process such information for the specific purposes for which it was obtained.

9.3 The parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to further processing.

9.4 The parties agree that they will destroy any information once it no longer serves the purpose for which it was collected in relation to this agreement, subject to any legal retention requirements. The information must be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.

9.5 The Service Provider warrants that it has the appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information being processed in terms of this agreement.

10. CONFIDENTIALITY OF INFORMATION

1 0.1. "Confidential Information" means any information or other data, whether in written, oral, graphic or in any other form, which a party discloses or provides to the other party, or which otherwise becomes known to a party, and which is not in the public domain and includes, without limiting the generality of the term:

10.1 .1 Information relating to methods of operation, data and plans of the disclosing party;

10.1.2 The contents of this contract and the appendices hereto;

10.1 .3 Private details of employees of the disclosing party or any other person where an onus rests on the disclosing party to maintain the confidentiality of such information;

10.1 .4 Any information disclosed by either party and which is clearly marked as being confidential or secret;

1 0.1 .5 Information relating to the disclosing party's strategic objectives and planning for both its existing and future business needs;

10.1 .6 Information relating to the disclosing party's past, present and future research and development;

10.1 .7 Information relating to the disclosing party's business activities, business relationships, products, services, customers, clients and subcontractors;

10.1 .8 Information contained in the disclosing party's software and associated material and documentation;

10.1 .9 Technical, scientific, commercial, financial and market information, know-how and trade secrets of a disclosing party;

1 0.1 .10 Data regarding architecture, processes, information, demonstrations, and machinery of the disclosing party;

10.1 .11 Plans, designs, drawings, functional and technical requirements and specifications of the disclosing party;

1 0.1 .12 Information concerning faults or defects in equipment, hardware or software or the incidence of such faults or defects; and

1 0.1 .13 Information concerning the charges, fees and costs of the disclosing party or its contractors/service providers or their methods, practices or service performance levels actually achieved;

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1 0.2. The Service Provider shall not, during the currency of this Agreement or at any time thereafter, disclose to any person or otherwise make use of any Confidential Information which it has obtained or may in the course of this Agreement obtain relating to the Department.

1 0.3. If the Service Provider is not sure whether the information is confidential or not he shall treat such information as confidential until otherwise directed by the Department.

1 0.4. The Service Provider shall not disclose, reproduce or distribute any of the Department's Confidential Information without the prior written authority of the Department.

1 0.5. The Service Provider shall remain loyal and faithful to the Department in the performance of his duties, and shall, during this contract and at any time thereafter:

10.5.1. not be entitled, either directly or indirectly, whether for his own benefit or that of anyone else, to make use of or avail himself of or to derive profit from any Confidential Information specifically related to the business or affairs of the Department, which he shall or may have acquired by reason of his position in or association with the business of the Department; and

10.5.2. during this contract and any time thereafter, keep secret and not, either directly or indirectly, disclose or divulge to any person any confidential information relating to the business and affairs of the Department, of its clients, customers or trade connections.

10.6 It is recorded that the Service Provider shall maintain the confidentiality recorded in this clause 10 in perpetuity.

1 1 . CONFLICT OF INTEREST AND ANTI-CORRUPTION

1 1 .1 . Whilst the Service Provider is entitled to engage in other remunerative work, such work shall not conflict with the Service Provider's obligations in terms of this Agreement and the Service Provider shall notify the Department of any possible or potential conflict of interest which may result from its engaging of other remunerative work.

11.2. The Service Provider shall not:

11.2.1 offer, give, receive or solicit anything of value with a view to influencing the behaviour or action of anyone, directly or indirectly, whether in any performance of this Agreement; and/or

11.2.2 misrepresent any facts in order to influence any person or body in the execution of his/her/its service, including but not limited to the use of

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collusive practices intended to stifle or reduce the quality of reports and recommendations.

12. DEPARTMENTAL PROPERTY

Upon termination of this Agreement, the Service Provider shall return to the Department all property belonging to the Department, including but not limited to any books, documents, manuals, specifications and technical data.

13. INTELLECTUAL PROPERTY

Intellectual Property rights in material developed for the Department in terms of the Services shall vest in the Department.

14. CONTRACT MANAGEMENT

14.1. The Department

The Department will appoint a representative to co-ordinate and provide overall guidance in terms of strategy, policy standards and priorities as deemed appropriate for the provision of the Services by the Service Provider and as a single point of contact. This representative shall not have the authority to change any aspect of the services or amend this Agreement without written approval from the Head of Department.

14.2. Service Provider

The Service Provider will appoint in writing from time to time a representative, who from the Effective Date, shall have overall responsibility for managing and coordinating the performance of the Service Provider's obligations under this Agreement and who will have the authority to act for and on behalf of the Service Provider in respect of all matters relating to this Agreement.

15. REPORTING

- 15.1. The Service Provider shall report to the Department as per Annexure "B".
- 15.2. Should the Department require additional reports from the Service Provider, such reports shall be submitted to the Department as per the deadline stipulated by the Department.

16. INDEMNITIES AND LIMITATION OF LIABILITY

- 16.1. The Service Provider hereby undertakes, at its own expense, to indemnify, protect and defend the Department from and against all actions, claims, losses or damages arising from any negligent act or omission by the Service Provider including but not limited to all damages or loss which may be payable or arise as a result of any claim or proceedings in respect of the death, injury to any person and the loss or damage to any property which may arise out of or in consequence of the execution of any obligations in terms of this Agreement.
- 16.2. The Parties shall be exempted from and not be liable to each other under any circumstances whatsoever for any indirect or consequential damages of any kind or any loss of profit or special damages of any kind.

17. FORCE MAJEURE/IMPOSSIBILITY OF PERFORMANCE

- 1 7.1. If any Party is prevented or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay, and such delay shall not be construed as a breach.
- 1 7.2. Any Party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay has arisen. A party shall be entitled to rely on the provisions of clause 17.1 only if it has given such notice.
- 17.3. The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party.
- 17.4. While any such prevention or delay continues, the Parties shall continue to comply with their obligations under this Agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its

obligations under this Agreement, to cancel this Agreement by giving written notice of such termination to the other Party.

1 7.5. For the purpose of this Agreement "Force Majeure" shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:

1 7.5.1 the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;

17.5.2 war, revolution, riots, mob violence, sabotage, epidemics, accidents, state of emergency, breakdown of machinery or facilities where such are not part of a Party's equipment or under a Party's control;

17.5.3 Industrial Action by workers, agents or employees; and/or

17.5.4 earthquakes, floods, fires or other natural physical/declared disasters;

17.6. The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

18. DISPUTE RESOLUTION

18.1 . In the event of any dispute or difference arising between the Parties out of, or in relation to, or in connection with this Agreement, or the interpretation thereof, or its termination, both while in force and after its termination, the Party claiming such dispute or difference shall, subject to any of its rights as per clause 19, forthwith advise the other in writing thereof.

18.2. The dispute shall be referred to the applicable authorities of the Service Provider and the Department who shall within 14 (fourteen) days of receipt of such notice, meet and negotiate in good faith in order to resolve such dispute or difference.

18.3. Should the Parties fail to resolve such dispute or difference within 14 (fourteen) days of their first meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of the Arbitration Act, Act No 42 of 1965, as amended and as amplified or limited by this clause.

18.4. Any Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

18.5. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

18.6. The arbitration shall be held:

18.6.1 In Pietermaritzburg or Durban, in the English language;

18.6.2 Immediately in an informal manner on such basis as the arbitrator may determine with a view to it being completed within 90 (ninety) days after it is demanded.

18.6.3 The Parties irrevocably agree that the decision in arbitration proceedings:

18.6.3.1 shall be subject to appeal;

18.6.3.2 shall be carried into effect; and

18.6.3.3 may be made an order of any court of competent jurisdiction.

18.7. This clause is severable from the rest of this Agreement and will remain valid and binding on the Parties notwithstanding any termination of this Agreement.

19. BREACH

19.1 .In the event that one of the Parties (the "aggrieved party") is of the opinion that the other Party (the "offending party") is in breach of any of the terms and conditions of this agreement, the aggrieved party shall notify the offending party of the breach of contract by written notice in which it requires the offending party to remedy the breach of contract within 14 days.

19.2.In the event of the offending party failing to remedy the breach within 14 days after delivery of the notice referred to in 19.1 above, the aggrieved party shall, without prejudice to any other remedy available to it in terms of this Agreement or in law, be entitled, without further notice to the defaulting party to:

19.2.1 claim from the offending party specific performance of the provisions of this Agreement together with compensation for such damage and/or loss as may have been incurred by the aggrieved party as a result of such breach; alternatively

19.2.2 Cancel this Agreement forthwith and claim from the offending party compensation for such damage and/or loss as may have been incurred by the aggrieved party as a result of such breach.

20. SUMMARY TERMINATION

The Department may summarily terminate this Agreement if the Service Provider is liquidated, whether provisionally or finally; has an execution levied against its assets,

and/or or is investigated or found guilty by any official prosecution/investigative authority with regards to fraud or dishonesty or any criminal act and/or civil liability.

21. NON-SOLICITATION CLAUSE

21 .1. The Service Provider shall not, for the duration of this Agreement and for a period of 1 year from the date of termination of this Agreement, directly or indirectly solicit or offer employment or any other form of contract for services to any of the Department's employees.

212. In the event that the Service Provider breaches clause 21.1 herein, the Service Provider shall be liable to pay the Department an amount equivalent to three months' cost-to-company salary payable by the Department to the employee, as at the date of the solicitation.

22. DOMICILIA CITANDI ET EXECUTANDI

22.1. The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

THE DEPARTMENT:

Physical address:

For the attention: The Head of Department, Health

SERVICE PROVIDER:

Physical address: _____

For the attention of:

22.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. Other than notices and documents for court processes, it shall be competent to give any other notice by e-mail to the aforementioned appointed e-mail addresses.

22.3. Either Party may give notice to the other Party to change the physical address chosen as its domicilium citandi et executandi to another physical address in South Africa, provided that such change shall become effective on the 7th (seventh) day from the deemed receipt of the notice by the other Party.

23. SEVERABILITY

Each of the provisions of this Agreement shall be considered as separate terms and conditions and in the event that, this Agreement is affected by legislation or any amendment thereto, or if the provision herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, than any such provisions shall be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part thereof.

24. COSTS

Each Party to this Agreement shall be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

25. RELAXATION, INDULGENCE AND WAVER

No relaxation or indulgence which any Party may allow the other Party at any time, in exercising any power or right conferred on it by the terms hereof, shall operate as a waiver of, or prejudice, such power or right, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any power or right hereunder.

26. GOVERNING LAW

Notwithstanding the place of signature, this Agreement will be construed, executed and delivered in accordance with the laws prevailing in the Republic of South Africa.

27. CESSION AND ASSIGNMENT

The Service Provider shall not be entitled to cede and/or assign its rights and obligations in terms of this Agreement without the prior written consent of the Department.

28. CONTROLLING LANGUAGE

The original of this Agreement has been drafted and executed in the English language. This Agreement may be translated into any other language, but only this Agreement in the English language version shall be deemed the original document. If any conflict arises between the English version and any version in any other language into which this Agreement has been translated, the English language version shall have the controlling authority.

29. SURVIVAL

Notwithstanding the expiry or termination of this Agreement, any clause which, from the context, contemplates ongoing rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

30. ENTIRE AGREEMENT AND AMENDMENT

30.1. This Agreement, including this clause 30, together with the Annexures hereto, constitutes the entire agreement between the Parties, and no representations, terms, conditions or warranties contained in any other documents, will be binding on the Parties, unless such representations or warranties formed the material basis for the Service Provider being awarded the tender upon which this Agreement is based.

30.2. No amendment or variation hereto will be of any force or effect unless reduced to writing, signed by both Parties and attached hereto.

SIGNED AT _____ **ON**

_____ **2023**

FOR THE DEPARTMENT DULY AUTHORIZED

NAME: _____

WITNESSES:

1. _____

NAME:

ON THIS _____ **,DAY OF** _____ **,2023**

2. _____

NAME:

ON THIS _____, DAY OF _____, 2023

SIGNED AT _____ ON THIS _____ DAY OF
2023

FOR THE SERVICE PROVIDER,
DULY AUTHORISED

NAME: _____, ON BEHALF OF
_____, DULY AUTHORISED

WITNESSES:

1.

NAME:

2.

NAME: