

AGREEMENT

FOR THE PROVISION OF PROCUREMENT SERVICES

BETWEEN

Africa Medical Supplies Platform

AND

The National Department of Health  
South Africa

## **THIS AGREEMENT FOR THE PROVISION OF PROCUREMENT SERVICES**

(together with any attachments, this "Agreement") is made BETWEEN The National Department of Health, South Africa. Its offices at Civitas Building, 222 Thabo Sehume St, CBD, Pretoria, 0001, South Africa (hereinafter: the "CLIENT"). AND: Africa Medical Supplies Platform, ("AMSP", together with the "CLIENT": the "PARTIES"), having its headquarters at AMSP HOUSE, P.O. Box 3243 | Roosevelt Street (Old Airport Area) | W21K19 | Addis Ababa, Ethiopia WHEREAS

These Terms of Use describe the terms and conditions applicable to your access and use of the websites, mobile sites, mobile applications and other portals owned, operated, branded or made available by <https://amsp.africa> (defined below) from time to time which relate to (a) the AMSP e-commerce platform including but not limited to the web and mobile-optimized versions of the websites identified by the uniform resource locator "<https://amsp.africa>" This document is a legally binding agreement between you as the user(s) of the Sites (referred to as "you", "your" or "User" hereinafter) and the amsp.africa contracting entity determined in accordance with clause 2.1 below (referred to as "we", "our" or "amsp.africa" hereinafter).

A. The Africa Medical Supplies Platform (AMSP) unlocks immediate access to an African and global base of vetted manufacturers and procurement strategic partners and enables African Union Member States to purchase certified medical equipment such as diagnostic kits, PPE and clinical management devices with increased cost-effectiveness & transparency. The platform serves as a unique interface enabling volume aggregation, quota management, payment facilitation as well as logistics and transportation to ensure equitable and efficient access to critical supplies for African governments.

B. The online platform was developed under the leadership of African Union Special Envoy, Strive Masiyiwa and powered by Janngo on behalf of the African Union's Africa Centres for Disease Control and Prevention (Africa CDC) and in partnership with African Export-Import Bank (Afreximbank), the United Nations Economic Commission for Africa (ECA) and other leading African & international corporations, institutions and foundations. In case a permanent legal entity is created to host the platform, this agreement would be updated to reflect any relevant change.

C. The CLIENT has asked AMSP to undertake procurement on its behalf in accordance with AMSP's regulations and rules and AMSP has agreed to do so on the terms and conditions set forth herein. NOW, THEREFORE, AMSP AND THE CLIENT hereby agree as follows:  
DEFINITIONS In this Agreement the following terms have the following meanings unless otherwise stated:

1.1 Procurement Services means the activities undertaken by AMSP on behalf of the CLIENT pursuant to this Agreement for the purchase of Supplies where such Supplies are required for purposes related to AMSP activities and consistent with the aims and policies of AMSP.

1.2 Request for Procurement Services means a request, in writing, either on the website through an order or offline for provision of Procurement Services.

1.3 Supplies means supplies, equipment and services provided by AMSP in response to an accepted Request for Procurement Services.

1.4 Services means supply-related or management services provided by AMSP and executed through Procurement Services.

1.5 Standard Supplies means Supplies for which the specification is recommended by AMSP and that are listed in the AMSP Supply Catalogue and Price List at the time a Request for Procurement Services is accepted by AMSP.

1.6 Non-Standard Supplies means Supplies that are not listed in the AMSP Supply Catalogue and Price List at the time a Request for Procurement Services is accepted by AMSP

1.7 AMSP Supply Catalogue and Price List means the catalogue of standard Supplies and equipment available through AMSP and the sales price of each.

#### **PROCUREMENT SERVICES TO BE OFFERED**

2. For the term of this Agreement, AMSP will offer Procurement Services to the CLIENT (a) in respect of Standard Supplies, (b) in respect of Non-Standard Supplies where the specifications for such Non-Standard Supplies provided to AMSP are clear and complete and (c) in respect of Services where the Terms of Reference have been set out in writing by AMSP.

#### **REQUESTS FOR PROCUREMENT SERVICES**

3. The CLIENT will request Procurement Services in accordance with this Agreement by delivering to AMSP a completed Request for Procurement Services or by placing an order on the AMSP website.

4. Each Request for Procurement Services will include the estimated total costs of the requested Supplies based on the then-current AMSP Supply Catalogue and Price List or estimates earlier provided by AMSP.

5. Upon receipt of a Request for Procurement Services, AMSP will notify the CLIENT of whether the Request for Procurement Services is accepted, is declined or is incomplete. AMSP reserves the right to decline any Request for Procurement Services delivered pursuant to this Agreement.

6. In case of acceptance, AMSP's invoice will be accompanied by a Cost Estimate for delivery of the requested Supplies.

#### **CONTRACT UPON ACCEPTANCE OF REQUEST FOR PROCUREMENT SERVICES**

7. A Request for Procurement Services accepted in accordance with this Agreement, and the AMSP notice of acceptance will together constitute a contract between AMSP and the CLIENT, governed by the terms and conditions of this Agreement.

8. Contract amendments, including amendments as to the quantity of Supplies or scope of Services, may only be made by subsequent written agreement between AMSP and the CLIENT. The CLIENT will be responsible for any costs, including any penalties imposed by the original manufacturer/supplier of the Supplies or service provider, resulting from an amendment entered into at the CLIENT'S request. Equally, AMSP will credit the CLIENT with any cost savings.

#### **PAYMENT**

9. Upon receipt of AMSP's notice accepting an online order / Request for Procurement Services, the CLIENT will make a payment of the amount as set out in the accompanying cost estimate.

10. For payment, the CLIENT will make payment by transferring that amount to the Afreximbank bank account set out in AMSP's terms and conditions.

11. No order will be acted upon by AMSP until the payment due has been made.

12. The CLIENT will be liable for payment of (a) price increases resulting from the difference between prices given in the Cost Estimate and actual prices to be paid by AMSP to the selected supplier(s) or service provider(s), including variations in freight costs, as well as currency exchange fluctuations or other incidental costs. Similarly, the CLIENT will be credited in the case of cost decreases.

#### **PROCUREMENT SUBJECT TO AMSP'S PROCEDURES**

13. Supplies and Services will be procured in accordance with AMSP's rules, regulations, and procedures for procurement and financial regulations and rules.

### **DELIVERY OF SUPPLIES Shipment and Insurance**

14. The CLIENT or its nominated representative will be the consignee of the Supplies. AMSP will not serve as consignee of the Supplies. AMSP will arrange for shipment of the Supplies to a single delivery address that is previously agreed upon via the platform
15. The specifics of each shipment will be agreed to separately with the buyer, for eg. if it includes cold-chain transportation, customs clearance, insurance, etc. The quoted shipping price will then include the cost of providing such additional services.
16. Irrespective of the agreed terms of shipment the CLIENT remains liable for paying any foreseen or unforeseen taxes, toll or other duties that may arise during the shipment.
17. AMSP will not accept the return of any Supplies procured for the CLIENT; provided however that in exceptional circumstances and with the prior written agreement of AMSP, certain items can be returned to source at the CLIENT'S expense.

### **DELIVERY OF SERVICES**

18. Services will be deemed delivered when effected. If AMSP provides Services and these Services require that the CLIENT obtains or assists with obtaining permits, licenses and other official approvals or that the CLIENT furnishes powers of attorney or other authorizations to AMSP, the CLIENT shall cooperate in a timely and expeditious manner.

### **FINAL ACCOUNT**

19. After shipment of all Supplies and/or delivery of Services, and recording of all expenses incurred, if there is a variation in cost that needs to be settled, AMSP will notify the CLIENT with details of the additional costs. The CLIENT is then liable to settle this variation in cost at the earliest, or in case of a credit AMSP will reimburse the CLIENT at the earliest.

20. The statement of account will be expressed in United States dollars subject to prevailing market rates.

### **WARRANTY; LIABILITY**

21. AMSP is liable for executing Procurement Services requests with reasonable diligence. Beyond this commitment AMSP does not assume liability, express or implied, written or oral, with regard to delivery delay, loss or damage, value, freedom from fault or infringement of Supplies, product quality, efficiency, characteristics, suitability or usefulness, and third party Services. For delivery of Services with own resources, AMSP does not assume liability except where arising from gross negligence, misconduct or intent. AMSP's total liability, in any event, shall not exceed the order value of the procurement services with respect to which a claim is

made. In no event shall AMSP be liable for incidental, indirect, consequential or immaterial losses or damages, or for lost revenues or profits.

22. To the extent legally possible, AMSP will pass on to the CLIENT any warranty offered, minimum shelf life assurance (for pharmaceuticals and medical supplies), and liability entered by the supplier or service provider.

23. All claims related to any defect in quality or other non-conformity of Supplies or for any loss or damage shall be handled directly by the CLIENT with the original manufacturer, supplier, or insurance underwriter. AMSP will provide to the CLIENT any assistance that the CLIENT may reasonably request in handling such claims.

24. AMSP accepts no liability for any third party claims arising out of or in connection with its performance under any contract for Procurement Services entered into in accordance with this Agreement. The CLIENT will indemnify, deal with, defend and hold AMSP harmless in connection with any third party claim or other cause of action arising out of or related to any such contract.

#### **SETTLEMENT OF DISPUTES**

25. Any relevant matter for which no provision is made in this Agreement, and any controversy, claim or dispute regarding the interpretation or application of this Agreement shall be settled by negotiations between and/or among the Parties concerned. Any controversy, claim or dispute that cannot be resolved by negotiations shall be referred to the Heads of Management of each party. In the event that the controversy, claim or dispute is not resolved within sixty (60) days from the date on which it has been so referred, any Party may request that the controversy, claim or dispute be resolved through consultation between the Executive Heads of each Party.

#### **TERM AND TERMINATION**

26. This Agreement will enter into force on the day of the last signature affixed by the PARTIES and shall remain in force until terminated by either Party.

27. Either Party may terminate this agreement without cause upon ninety (90) days' written notice to the other and may terminate this Agreement for cause upon fourteen (14) days' written notice to the other.

28. Upon termination of this agreement, the PARTIES will take all reasonable and necessary measures to conclude any Procurement Services already commenced in accordance with this Agreement.

29. The provisions of this Agreement will survive any termination, to the extent necessary to permit an orderly settlement of accounts between the PARTIES.

## GENERAL PROVISIONS

30. Any notice, request or consent required or permitted to be given or made pursuant to this Agreement will be in writing, and addressed and sent by registered mail or confirmed facsimile transmission as follows: If to AMSP: AMSP Country Office Att: The Representative With a copy to AMSP, P.O. Box 3243 | Roosevelt Street (Old Airport Area) | W21K19 | Addis Ababa, Ethiopia If to the CLIENT: The National Department of Health - South Africa, Civitas Building, 222 Thabo Sehume St, CBD, Pretoria, 0001, South Africa

31. Notices will be deemed to be effective as follows: in the case of registered mail, seven (07) days after posting; in the case of facsimiles, twenty-four (24) hours following confirmed transmission.

32. The CLIENT confirms that no official of AMSP has received or will be offered by the CLIENT any direct or indirect benefit arising from this Agreement. AMSP confirms the same to the CLIENT. The PARTIES agree that any breach of this provision is a breach of an essential term of this Agreement.

33. Nothing contained in this agreement shall be construed as establishing a relationship of employer and employee or of principal and agent between the PARTIES.

34. The CLIENT shall not assign or make other disposition of this Agreement or any part thereof, or any of the CLIENT's rights, claims or obligations under this Agreement, except with prior written consent of AMSP.

35. A party prevented by force majeure from fulfilling its obligations shall not be deemed in breach of such obligations. The said party shall use all reasonable efforts to mitigate the consequences of force majeure. At the same time, the Parties shall consult with each other on modalities of further execution of this Agreement. Force majeure as used in this Agreement is defined as acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

36. The Parties shall keep confidential any documents, data or other information furnished to each other. The Parties may, however, disclose such information to their subcontractors or partners, as may reasonably be required to execute the Procurement Services, and provided that the subcontractors or partners shall be bound by similar confidentiality requirements. The Parties may also report on executed transactions in the scope of their periodic reports and publications.

37. The PARTIES shall coordinate public relations measures, if any, in regard to their cooperation.

38. This Agreement may be altered, modified or amended only by a written instrument duly executed by all PARTIES.

IN WITNESS THEREOF, the PARTIES hereto have executed this agreement.

The CLIENT By:

Authorized Representative AMSP By: