

**MEMORANDUM OF AGREEMENT IN RELATION TO DONATION  
(PARTICIPATION IN COVAX FACILITY)**

entered into by and between

**SOLIDARITY RESPONSE FUND NPC**

(Registration number: 2020/179561/08)

herein represented by **Ms Amanda Tandiwe Nzimande**  
in her capacity as **CHIEF EXECUTIVE OFFICER**  
and duly authorised ("**Donor**")

and

**NATIONAL DEPARTMENT OF HEALTH**

herein represented by **Dr Sandile Buthelezi**  
in his capacity as **DIRECTOR-GENERAL**  
and duly authorised  
("**NDoH**")

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## PREAMBLE

- A. **WHEREAS** the Donor is an independent non-profit company, incorporated in accordance with the provisions of the Companies Act, 2008 and approved as a public benefit organisation in terms of section 30 of the Income Tax Act, 1962 that was established in direct response to the Covid-19 pandemic in South Africa;
- B. **AND WHEREAS** the Donor is mandated to, among other things, work in collaboration with the South African Disaster Management Command Council and other social partners to prevent the spread of the coronavirus;
- C. **AND WHEREAS** NDoH is in the process of procuring COVID-19 vaccines for distribution and use in South Africa and intends to do so, in part, by participating in the COVAX Facility, administered by Gavi;
- D. **AND WHEREAS** the Donor wishes to make a cash donation to NDoH in the form of the Down Payment to Gavi required to be made in accordance with the provisions of the Commitment Agreement (the "**Permitted Purpose**") and NDoH wishes to accept such cash Donation on the terms and conditions set out in this Agreement.

THEREFORE THE PARTIES AGREE AS FOLLOWS –

### 1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1. words importing -
- 1.1.1. any one gender include the other two genders;
  - 1.1.2. the singular include the plural and vice versa; and
  - 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and vice versa;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.2.1. "**Agreement**" means this donation agreement entered into between the Parties and includes all annexures hereto, as amended from time to time;

- 1.2.2. **"Business Day"** means each day other than a Saturday, Sunday or proclaimed public holiday in South Africa;
- 1.2.3. **"Commitment Agreement"** means the agreement titled "Commitment Agreement (Committed Purchase Arrangement) entered into (or to be entered into) between NDoH and Gavi which sets out, among other things, (i) the basis on which NDoH agrees to participate in the COVAX Facility, namely, as a self-financing economy that has elected the Committed Purchase Arrangement (as defined therein); and (ii) the terms and conditions of such participation;
- 1.2.4. **"Commitment Agreement Signature Date"** means the date on which the Commitment Agreement has been duly signed and delivered on behalf of NDoH and Gavi;
- 1.2.5. **"Committed Amount"** means US\$126,600,000 (one hundred and twenty six million six hundred thousand United States Dollars), being the Weighted Average Estimated Cost Per Dose multiplied by the Doses per Person multiplied by the Vaccination Percentage;
- 1.2.6. **"COVAX Facility"** means the COVID-19 Vaccine Global Access Facility, administered by Gavi, being a mechanism through which demand and resources are pooled to support availability of, and equitable access to, COVID-19 vaccines for all participating economies in the world;
- 1.2.7. **"DM Regulations"** means, collectively (i) the regulations issued in terms of section 27(2) of the Disaster Management Act, 2002, under GNR 480 of 29 April 2020; and (ii) the National Treasury Circular: Facilitating the Receipt, Reporting and Accounting of donations for COVID-19, dated 15 April 2020;
- 1.2.8. **"Donation Amount"** means an amount equal to the Down Payment plus any transaction costs incurred in paying the Down Payment to Gavi;
- 1.2.9. **"Doses Per Person"** means 2 (two), being the expected number of doses per person required on average in a COVID-19 vaccine regimen;
- 1.2.10. **"Down Payment"** means US\$19,200,000 (nineteen million two hundred thousand United States Dollars), being an amount that is equal to 15% (fifteen per cent) of the Committed Amount and which is required to be paid by NDoH to Gavi in terms of the Commitment Agreement by no later than 15 December 2020;
- 1.2.11. **"Effective Date"** means, notwithstanding the Signature Date, the date on which:

- 1.2.11.1. NDoH has fulfilled its obligations under clause 4.1 of this Agreement to the satisfaction of the Donor; and
- 1.2.11.2. the Donor has completed such "know your customer" checks as may be required to permit the payment, by the Donor of the Down Payment on behalf of NDoH;
- 1.2.12. "**Financial Guarantee**" means a written undertaking, issued by the government of the Republic of South Africa (acting through the Minister of Finance) in favour of (and in a form acceptable to) Gavi to ensure availability of, as and when it falls due in terms of the Commitment Agreement, an amount of up to US\$107,400,000 (one hundred and seven million four hundred thousand United States Dollars), being the Committed Amount net of the Down Payment;
- 1.2.13. "**Gavi**" means the Gavi Alliance (previously known as the Global Alliance for Vaccines and Immunization), a non-profit foundation registered in the canton of Geneva (registry number CH-660-1699006-1) with offices at Chemin du Pommier 40, 1218 Le Grand-Saconnex, Switzerland;
- 1.2.14. "**Parties**" means collectively the Donor and NDoH, and "**Party**" means either one of them as the context indicates;
- 1.2.15. "**Permitted Purpose**" has the meaning given to this term in paragraph D of the preamble to this Agreement;
- 1.2.16. "**Signature Date**" means the date upon which this Agreement has been signed by the last Party to do so, provided that both of the Parties have signed this Agreement;
- 1.2.17. "**Termination Date**" means the earlier of:
- 1.2.17.1. the date that falls 6 (six) months after the date on which the Donor receives confirmation of the receipt of the Down Payment from Gavi; and
- 1.2.17.2. the date on which this Agreement is terminated by SF;
- 1.2.18. "**Termination Trigger Event**" means any of the following events, determined in the discretion of the Donor:
- 1.2.18.1. NDoH fails to provide evidence of its entry into the Commitment Agreement by 11 December 2020 or such later date as the Donor notifies to NDoH in writing;



- 1.2.18.2. NDoH fails to issue the Financial Guarantee to Gavi by 11 December 2020 or such later date as the Donor notifies to NDoH in writing; and
- 1.2.18.3. the Donor fails to complete such "know your customer" checks as may be required to permit the payment, by the Donor of the Down Payment on behalf of NDoH by 11 December 2020 or such later date as the Donor or Gavi, as applicable, may notify in writing;
- 1.2.19. "**Vaccination Percentage**" means 10% (ten per cent) being the maximum percentage of the population of South Africa, as set out in the World Bank Data Bank, in respect of which COVID-19 vaccines will be procured by NDoH through its participation in the COVAX Facility; and
- 1.2.20. "**Weighted Average Estimated Cost Per Dose**" means US\$10.55 (ten United States Dollars and fifty five cents), being the estimated all-inclusive ex-factory cost per vaccine dose for COVID-19 vaccines procured through the COVAX Facility, it being noted that (i) participants in the COVAX Facility will ultimately purchase vaccine doses at the actual price offered; and (ii) the cost of transport and distribution is not included;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. 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;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next Business Day;
- 1.6. if figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;

- 1.8. the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if either Party to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.9. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.13. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.14. any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and
- 1.15. the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

## 2. DONATION AND PERMITTED PURPOSE

- 2.1. The Donor agrees to donate the Donation Amount to NDoH strictly for application towards the Permitted Purpose and NDoH agrees to accept the Donation Amount strictly for application towards the Permitted Purpose and otherwise on the terms and conditions set out in this Agreement.

- 2.2. The Donor shall, as soon as reasonably practical after the Effective Date, pay the Donation Amount directly to Gavi by electronic transfer to the following bank account of Gavi, without (and free and clear of any deduction for) set-off or counterclaim:

Name of Beneficiary: Gavi Alliance  
Name of Bank: USB Switzerland AG  
Account No: 0240 264568.50U  
IBAN USD Account: CH05 0024 0240 2645 6850 U  
Swift Code: UBSWCHZH80A  
Bank address: Rue des Noirettes 35, 1227, Carouge  
Reference: COVAX, South Africa

- 2.3. The Donor shall notify NDoH once the Donation Amount has been transferred to Gavi.
- 2.4. The Parties agree and record that the Donor's obligations to donate the Donation Amount in terms of this Agreement arises on the Effective Date. If the Effective Date has not occurred by 11 December 2020 or such later date as the Donor notifies to NDoH in writing (i) such obligation shall not arise and (ii) a Termination Trigger Event shall have occurred and the Donor shall be entitled to terminate this Agreement in the manner envisaged in clause 8 (*Events of Default, breach and remedies*).

### 3. DURATION

- 3.1. Subject to the provisions of clause 3.2, this Agreement shall commence on the Signature Date and terminate on the Termination Date.
- 3.2. The Donor shall in its sole and absolute discretion be entitled to extend the terms of this Agreement by giving written notice of such extension to NDoH.
- 3.3. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

### 4. OBLIGATIONS OF NDOH

Subject to the terms and conditions set out in this Agreement, NDoH shall:

- 4.1. provide the Donor with:



- 4.1.1. a copy of the duly signed Commitment Agreement; and
- 4.1.2. confirmation of the issue of the Financial Guarantee together with a copy thereof,

in each case, by no later than 11 December 2020 or such later date as the Donor notifies to NDoH in writing;

- 4.2. comply with all the requirements of the DM Regulations in as far as they are applicable to the Donation Amount and to this Agreement generally;
- 4.3. comply generally with all its obligations under the Commitment Agreement and implement the transactions contemplated therein in good faith and for the benefit of the people of South Africa;
- 4.4. comply with, and ensure that its employees, staff and personnel comply with, the following policies of the Donor:
  - 4.4.1. Solidarity Fund Child Protection Policy;
  - 4.4.2. Solidarity Response Fund NPC Anti-Bribery and Anti-Corruption Policy; and
  - 4.4.3. Solidarity Fund Safeguarding, Sexual and Racial Harassment Policy,

as amended from time to time (and which policies can be accessed on the Donor's website at [www.solidarityfund.co.za](http://www.solidarityfund.co.za)).

## 5. MONITORING AND REPORTING

- 5.1. In order to ensure compliance by NDoH with the Permitted Purpose, NDoH hereby irrevocably and unconditionally agrees and undertakes to permit any person authorised by the Donor such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the fulfilment of the provisions of this Agreement by NDoH and shall, if so required, provide appropriate oral or written explanations from them to the Donor.
- 5.2. In order to enable the Donor to account to members of the South African public and foreign entities who have contributed financially to its activities through donations, NDoH hereby undertakes to provide the Donor with a written report at the end of the 3<sup>rd</sup> (third) month and at the end of the 6<sup>th</sup> (sixth) month after the Commitment Agreement Signature Date, that contains detail on (i) the impact and reach of its participation in the COVAX Facility; (ii) challenges faced in the implementation of its participation in the COVAX Facility; (iii) the impact of the application of the Donation Amount towards the Permitted Purpose, other than payment of the Down Payment; and (iii) an evaluation of lessons learnt.

## 6. COMMUNICATION AND BRANDING

- 6.1. NDoH will collaborate and proactively look for ways to raise awareness of the Donor's support and funding to it in terms of this Agreement. NDoH will, wherever this is practical, explicitly acknowledge the Donor's support and funding in written and verbal communications about activities related its participation in the COVAX Facility to the public and to third parties, including in announcements, and through use, where appropriate, of the Donor's logo.
- 6.2. The Donor shall make its logo available to NDoH strictly for the purpose of fulfilling its obligations in clause 6.1 above, subject to the Donor's brand guidelines.

## 7. WARRANTIES AND REPRESENTATIONS

- 7.1. NDoH hereby gives the Donor the warranties and representations and makes the undertakings set out in clauses 7.2, 7.3 and 7.4 below on the basis that –
- 7.1.1. each warranty, representation and undertaking shall be deemed to be material;
- 7.1.2. each warranty, representation and undertaking shall, unless such warranty, representation or undertaking is expressly stated to be given only at a particular date or time, be deemed to be given as on the Signature Date and repeated every day until and including the Termination Date;
- 7.1.3. insofar as any warranty, representation or undertaking is promissory or relates to a future event, such warranty, representation or undertaking shall be deemed conclusively to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be;
- 7.1.4. each warranty, representation and undertaking shall be a separate and independent warranty, representation and undertaking and shall not be limited by any reference to, or inference from, the terms of any other warranty, representation or undertaking or by any other provision in this Agreement; and
- 7.1.5. each warranty, representation and undertaking, to the extent that it is expressed in the inappropriate tense, shall be construed and read in the appropriate tense.
- 7.2. NDoH warrants and represents unto and in favour of the Donor that –
- 7.2.1. it has -
- 7.2.1.1. the legal capacity and power to enter into and perform under this Agreement; and

- 7.2.1.2. taken all necessary actions to authorise its entry into and the performance of its obligations under this Agreement, including but not limited to obtaining the approval required in terms of regulation 21.2 of the "Treasury Regulations" issued in terms of section 76 of the Public Finance Management Act, 1999;
  - 7.2.2. the obligations expressed to be assumed by NDoH under this Agreement are legal and valid, and are binding on and enforceable against NDoH;
  - 7.2.3. the entering into of this Agreement by NDoH and the performance by NDoH of its obligations hereunder do not and will not –
    - 7.2.3.1. contravene any applicable laws; or
    - 7.2.3.2. contravene any provision of its constitutional documents;
  - 7.2.4. as at the Signature Date all material authorisations, consents, approvals, exemptions, required for the conduct by NDoH of its activities have been obtained and are of full force and effect;
  - 7.2.5. the entering into of this Agreement, the performance by NDoH of its obligations under this Agreement do not and shall not give rise to any authorisation, consent, approval, exemption, referred to in clause 7.2.4 above being suspended, cancelled, revoked or not being renewed or only being renewed on terms less favourable to NDoH; and
  - 7.2.6. NDoH is fully aware of and acquainted with the provisions of this Agreement and the meaning and effect of all such provisions.
- 7.3. NDoH hereby irrevocably undertakes unto and in favour of the Donor that it shall –
- 7.3.1. comply with all applicable laws binding on it or required for the conduct of its activities;
  - 7.3.2. obtain and maintain in full force and effect all authorisations consents, approvals, exemptions, required for the conduct by it of its activities in the places and in the manner in which such activities are presently carried on and it shall promptly make and renew from time to time all such filings and registrations as may be required under any applicable law to enable it to perform its obligations under this Agreement and for the validity, enforceability of this Agreement;
  - 7.3.3. promptly inform the Donor in writing of the likely occurrence or the occurrence of any Event of Default;

- 7.3.4. keep or cause to be kept proper books of account relating to its activities and recipient and utilisation of any Advances in accordance with all applicable law;
  - 7.3.5. comply strictly with the provisions of clause 5 (*Monitoring and reporting*) of this Agreement, as well as such other requests for access to NDoH's personnel and/or any additional information (in whatsoever form) as may be made by the Donor from time to time, at all times from the Signature Date until the Termination Date; and
  - 7.3.6. at all times act with integrity and good faith and exercise all reasonable skill, care and diligence in the performance of all of its duties in respect thereof as set out under this Agreement in accordance with a standard that can reasonably be expected of someone who undertakes duties of a similar nature and kind.
- 7.4. NDoH undertakes unto and in favour of the Donor that it shall not:
- 7.4.1. commit any act or fail to take any action which is likely to bring its reputation and/or the reputation of the Donor into disrepute by virtue of association; and
  - 7.4.2. commit any act which is contrary to, or is likely to undermine, the purpose and objects of the Donor.

## 8. EVENTS OF DEFAULT, BREACH AND REMEDIES

- 8.1. Each of the events and circumstances set out in clause 8.2 below shall constitute an Event of Default, if such event is –
- 8.1.1. incapable of remedy; or
  - 8.1.2. capable of remedy but within 14 (fourteen) days from the date that a Party has been notified of its breach, fails to remedy such breach.
- 8.2. Each of the following events shall constitute an Event of Default in accordance with the provisions of clause 8.1 above –
- 8.2.1. any representation, warranty, undertaking or statement which is made NDoH in this Agreement or in any certificate, statement or notice provided under or pursuant to this Agreement proves to be inaccurate when made (or deemed to be made or repeated), provided that even in the case of any such inaccuracy being remedied, the Donor may elect to deem such breach to be incapable of remedy;
  - 8.2.2. a Termination Trigger Event occurs;



- 8.2.3. any provision of this Agreement is or becomes invalid or unenforceable for any reason due to the fault of NDoH or is repudiated by NDoH the validity or enforceability of any provision thereof is at any time contested by NDoH; and/or
- 8.2.4. any other breach of any undertaking given by NDoH in terms of this Agreement, or any breach of any other material provision of this Agreement, by NDoH.
- 8.3. If an Event of Default occurs, then the Donor, without prejudice to any of its other rights in terms of this Agreement or at law shall have the right to immediately –
- 8.3.1. cancel this Agreement;
- 8.3.2. require immediate specific performance by NDoH of its obligations under this Agreement;
- 8.3.3. claim direct damages from NDoH,
- without prejudice to any other rights which it may have in law against NDoH.

#### 9. **LIMITATION OF LIABILITY**

Notwithstanding any provision to the contrary, neither Party shall incur any liability for incidental or consequential damages, including but not limited to loss of profit or revenues, it being agreed that liability arising out of this Agreement, shall be limited to direct damages only.

#### 10. **DOMICILIUM CITANDI ET EXECUTANDI**

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

10.1.1. the **Donor**:

Physical : c/o ENSafrica, Tower 1, The Marc, 129 Rivonia Road,  
Sandton, Johannesburg, 2196  
E-mail : [CEO@solidarityfund.co.za](mailto:CEO@solidarityfund.co.za)  
Attention : The Chief Executive Officer

10.1.2. **NDoH:**

Physical : Corner Thabo Sehume and Broes Streets  
 Civitas Building, Pretoria \*  
 E-mail : [DG@health.gov.za](mailto:DG@health.gov.za)  
 Attention : The Director General

- 10.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by electronic mail or fax.
- 10.3. Either Party may by notice in writing to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa or its fax number, provided that the change shall become effective on the 5th (fifth) Business Day from the deemed receipt of the notice by the other Party.
- 10.4. Any notice to a Party -
- 10.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 10.4.2. sent by e-mail or fax to its chosen e-mail address or fax number, as the case may be, stipulated in clause 10.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 10.5. Notwithstanding anything to the contrary herein contained a written notice or communication (including an e-mail) actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

11. **ARBITRATION**

- 11.1. Any dispute (including any controversy or claim) which arises in regard to this Agreement, or out of or pursuant to this Agreement (including with respect to the formation, breach, termination or invalidity hereof) (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration in accordance with this clause.
- 11.2. The arbitration shall be held with only the Parties and their representatives present thereat.
- 11.3. The seat of the arbitration shall be Johannesburg, South Africa.

- 11.4. Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa shall be administered by Arbitration Foundation of Southern Africa.
- 11.5. The arbitrator shall be an impartial practising advocate of not less than 10 (ten) years' standing, or an impartial practising attorney of not less than 10 (ten) years' standing appointed by the Parties or, failing agreement by them within 10 (ten) Business Days after the arbitration has been demanded, at the request of any one of the Parties, shall be nominated by the Chairperson of the Legal Practice Council whereupon the Parties shall forthwith appoint such person as the arbitrator.
- 11.6. If that person fails or refuses to make the nomination, or if any such office does not exist, a Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 11.7. Within 10 (ten) Business Days after the pleadings have closed, the arbitrator shall determine the period within which the hearing will be concluded, taking into account the particular circumstances of the dispute.
- 11.8. The arbitrator shall be entitled to extend the aforesaid time period under exceptional circumstances.
- 11.9. The determination made by the arbitrator as regards the period within which the hearing will be concluded and/or the commencement date and/or the recommencement date shall be final.
- 11.10. Neither Party may raise as good and sufficient cause for the absence of a Party to the arbitration proceedings the unavailability of that Party's legal representative.
- 11.11. The arbitrator shall, subject to the provisions of this clause, have the sole, fullest and freest discretion with regard to the proceedings save that the arbitrator, shall be obliged to give his/her award in writing fully supported by reasons and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- 11.12. The Parties shall be entitled to have the award made an order of court of competent jurisdiction.
- 11.13. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 11.14. The arbitrator shall have the power to give default judgment if any of the Parties fail to make submissions on due date and/or fails to appear at the arbitration.

- 11.15. The arbitrator, but exercising the powers of an expert and not of an arbitrator, may "make the contract", but only as between the Parties, by completing any gaps in the contract or by determining any matter which has been or is left to be agreed upon by the Parties and on which they have not reached agreement. In such a case the arbitrator shall be entitled to reject any submissions made by the Parties and to make his/her own independent decision. His/her decision shall be final and binding on the Parties.
- 11.16. The arbitrator shall be competent to rule on his/her own jurisdiction, including with respect to the existence or validity of this clause.
- 11.17. Notwithstanding any other provisions of this Agreement, each Party agrees not to challenge the arbitrator's ruling on his/her own jurisdiction, and if any application to court on any such matter is made the Parties agree that they will not request the court to exercise its discretion and will be satisfied if a court does not exercise its discretion in such circumstances.
- 11.18. The arbitrator's authority to determine his/her own jurisdiction does not affect a competent court's authority to determine the arbitrator's jurisdiction, but any application to court on any such matter shall not affect the continuation of the arbitration proceedings, save and to the extent that a court otherwise orders.
- 11.19. There shall be a right of appeal against any arbitral award provided that:
- 11.19.1. the appeal is noted within 10 (ten) Business Days of the arbitral award;
  - 11.19.2. the appellant delivers the record to the respondent within 10 (ten) Business Days of the record becoming available to the appellant. The relevant provisions of this arbitration clause shall apply mutatis mutandis in regard to the appeal (including any cross appeal); and
  - 11.19.3. the appeal shall be heard before a panel of 3 (three) arbitrators and the provisions of clauses 11.5 and 11.6 shall apply.
- 11.20. The Parties, together with the arbitrator, will agree from time to time on the arbitrator's remuneration and when and how it shall be paid in the interim.
- 11.21. The Parties shall, pending the final determination of the arbitrator as to which of the Parties shall ultimately be liable for the costs of the arbitration, fund the costs (such as the costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the arbitration) which need to be paid in the interim, in equal proportions.
- 11.22. If at any time a Party does not pay his/her/its portion of the costs when required in the interim, that Party will be excluded from participating in the arbitration and the other Party shall be entitled to request a final award from the arbitrator as regards that Party.



- 11.23. Within 10 (ten) days of the making by the arbitrator of a final determination as to which Party shall bear the costs of the arbitration, the Party against which such determination has been made shall reimburse to the other Party the costs borne by such Party in the interim together with interest thereon, if the arbitrator so awards.
- 11.24. The provisions of this clause shall survive the termination of this Agreement.
- 11.25. If it is alleged or found that the agreement embodied in this Agreement was induced by a fraudulent misrepresentation or if such agreement is void or voidable on any other ground, then notwithstanding that the remainder of this Agreement may be void or voidable the Parties agree that the provisions of this clause are severable from the rest of this Agreement and shall remain in effect.
- 11.26. In such circumstances any dispute relating to any such fraudulent misrepresentation or relating to whether this Agreement or the agreement embodied herein is void or voidable shall be submitted to and decided by arbitration in accordance with this clause.

## 12. **ANTI-BRIBERY AND CORRUPTION**

- 12.1. The Parties shall conduct their business in an honest, ethical and professional manner and adhere to the Prevention and Combating of Corrupt Activities Act, 2004.
- 12.2. The Parties shall each adopt a 'zero' tolerance approach towards all corrupt activities and shall not support any individuals or organisations that participate in any acts of fraud, bribery, corruption or in the practice of making use of facilitation payments.
- 12.3. In performing their respective obligations in terms of this Agreement, each Party must reasonably ensure that individuals associated with each of them:
- 12.3.1. comply with all applicable anti-bribery and/or anti-corruption laws and regulations,
  - 12.3.2. not offer any bribe or facilitation payment to any public official or other person,
  - 12.3.3. not accept any bribe or corrupt payment in respect of any activity related or attributable to the other Party,
  - 12.3.4. not do anything that may cause the other Party to breach any applicable anti-bribery and/or anti-corruption laws and regulations; and

12.3.5. comply with all anti-money laundering laws and any know-your-client requirements (as applicable).

12.4. The affected Party must promptly notify the other Party in writing of any actual or potential breach of this clause.

12.5. If a Party or any individual associated with such Party breaches or appears to breach this clause, the other Party shall have the right to terminate this Agreement with immediate effect, without thereby incurring any liability for damages.

13. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of South Africa.

14. **INDEPENDENT ADVICE**

The Parties acknowledge that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and the agreement embodied herein that it has either taken such independent legal and other advice or dispensed with the necessity of doing so.

15. **GOOD FAITH AND CO-OPERATION**

15.1. The Parties undertake to observe good faith in the implementation of this Agreement and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything, which might prejudice or detract from the rights, assets or interests of any other/s of them.

15.2. Each Party hereby undertakes to:

15.2.1. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and

15.2.2. pass and to procure the passing of all such resolutions,

to the extent that the same may lie within such Party's power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

16. **GENERAL**

16.1. This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof.

- 16.2. None of the Parties shall be bound by any express or implied term, representation, warranty, promise nor the like not recorded herein.
- 16.3. The Parties hereby represent that it has all requisite power and authority to enter into this Agreement and that the person signing this Agreement on behalf of such Party is authorised to do so.
- 16.4. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 16.5. The rights, powers, privileges and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.
- 16.6. No addition to, waiver, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 16.7. If at any time any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be or become illegal, invalid or unenforceable under any applicable law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is already illegal, invalid or unenforceable, shall not be affected or impaired thereby.
- 16.8. The Parties agree in such event, and insofar as may be available under applicable law, to substitute valid, legal and enforceable provisions for the invalid, illegal or unenforceable provisions so as to implement the intention of the Parties hereto to the extent legally possible.
- 16.9. No indulgence or extension of time which a Party may grant to the other Party shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 16.10. Without prejudice to any other provision of this Agreement any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of a Party shall be bound by this Agreement.
- 16.11. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument as at the Signature Date.

- 16.12. No Party shall be entitled to cede, assign, transfer, encumber or delegate any of its rights, obligations and/or interests in, under or in terms of this Agreement to any third party without the prior written consent of the other Party.
- 16.13. Each Party shall bear and pay its own costs of and incidental to the negotiation and execution of this Agreement.

***[Signature page follows]***



**SIGNATURE PAGE**

For: **SOLIDARITY RESPONSE FUND NPC**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: Ms Amanda Tandiwe Nzimande

Capacity Chief Executive Officer

Date: \_\_\_\_\_

Place: \_\_\_\_\_

For: **THE NATIONAL DEPARTMENT OF HEALTH**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: Dr Sandile Buthelezi

Capacity Director-General

Date: \_\_\_\_\_

Place: \_\_\_\_\_