



INVITATION TO TENDER

Supply and Delivery of ICT Equipment to PEPFAR-Informatics

REF.: BHP002/0618

12 June 2018

Invitation to Tender for Supply of ICT Equipment to PEPFAR-Informatics

Further to your enquiry regarding the publication of the above-mentioned invitation to tender, please find enclosed the following documents, which constitute the tender dossier:

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Any request for clarification must be received by the Contracting Authority in writing at least **5** days before the deadline for submission of tenders. The Contracting Authority will respond to tenderers' questions at least **3** days before the deadline for submission of tenders. If the Contracting

Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it will send such information in writing to all tenderers at the same time. Costs incurred by the tenderer in preparing and submitting the tender proposals will not be reimbursed.

We look forward to receiving your tender at the address specified in the Instructions to Tenderers before **20th June 2018, 1000hrs** Botswana Time. If you decide not to submit a tender, we would be grateful if you could inform us in writing, stating the reasons for your decision.

A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: BHP002/0618

In submitting a tender, the tenderer accepts in full and without restriction the special and general conditions governing this contract as the sole basis of this tendering procedure, whatever his own conditions of sale may be, which he hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; any reservation will result in the immediate rejection of the tender without further evaluation.

A glossary of the terms used here is included in Part C of this tender dossier.

1 Supplies to be provided

1.1 The subject of the contract is the supply and delivery by the Contractor of the following supplies:

- Lot 1:** 215 desktops
- Lot 2:** 90 UPS (Uninterruptible Power Supply)
- Lot 3:** 105 printers
- Lot 4:** 65 Wireless Access Points.

1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and other instructions.

1.3 Tenderers are not authorised to tender for a variant in addition to the present tender.

2 Timetable

ACTIVITY	DATE	TIME
Deadline for Request for clarifications from the Contracting Authority	15 June 2018	1500hrs
Deadline for Submission of Tenders	20 June 2018	1000hrs
Tender opening session	20 June 2018	1000hrs
Notification of Award to the successful tenderer(s)	22 June 2018	1000hrs
Signature of the Contract	25 June 2018	1400hrs

All times are in the time zone of Botswana.

3. Participation

3.1. Participation* in tendering is open to all legal persons registered in and residing in Botswana. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.

3.2. These terms refer to all companies or partnerships constituted under, and governed by, the civil, commercial or public law of Botswana and having their statutory office, central administration or principal place of business in Botswana.

3.3. These rules apply to:

- a) tenderers
- b) any subcontractors.

3.4 To be eligible for participation in this tender procedure, tenderers must prove to the satisfaction of the Contracting Authority that they comply with the necessary legal, technical and financial requirements and have the wherewithal to carry out the contract effectively.

4. Type of contract

Unit price

5. Currency

Tenders must be presented in Botswana Pula.

6. Lots

6.1 The tenderer may submit a tender for one lot or all of the lots.

6.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders for part of the quantities required be taken into consideration. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.

6.3 A tenderer may include in his tender the overall discount he would grant in the event of some or all of the lots for which he has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.

6.4 Contracts will be awarded lot by lot, but the Contracting Authority may select the most favourable overall solution after taking account of any discounts offered.

7. Period of validity

7.1. Tenderers shall be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.

7.2. In exceptional cases, and prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period by 30 days. Tenderers that agree to do so will not be permitted to modify their tenders. If they refuse, their participation in the tender procedure will be terminated.

The successful tenderer will be bound by his tender for a further period of 90 days following receipt of the notification that he has been selected. The further period is added to the initial period of 90 days irrespective of the date of notification.

8. Language of offers

The offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure which is English.

9. Submission of tenders

9.1. Tenders must be received before the deadline specified in the letter of invitation to tender. They must include all the documents specified in point 10 of these Instructions and be sent to the following address:

**Botswana Harvard Aids Institute Partnership
PEPFAR Building
Plot 1836
Northring Road
Princess Marina Hospital
Gaborone
Botswana**

Tenders **MUST ENSURE COMPLIANCE WITH THE FOLLOWING CONDITIONS:**

9.2. All tenders must be submitted in one original, marked “original”, and 2 copies signed in the same way as the original and marked “copy”.

9.3. All tenders must be received by registered letter with acknowledgement of receipt, or hand-delivered against receipt signed by Dr T. Gaolathe, PEPFAR Director or her representative.

9.4. All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

- a) the address in **point 9.1** above;
- b) the reference code of this tender procedure, **(BHP002/0618)**;
- c) where applicable, the number of the lot(s) tendered for;
- d) the words **“Not to be opened before the tender opening session”** in the language of the tender dossier and,
- e) the name of the tenderer
- f) the contact e-mail address of the tenderer.

The technical and financial offers must be placed together in one sealed envelope, unless their volume requires a separate submission for each lot.

10. Content of tenders

All tenders submitted must comply with the requirements in the tender dossier and comprise:

Part 1: Technical offer:

a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required. The technical offer should be presented as per template (annex III*, the contractor’s technical offer) completed when and if necessary by separate sheets for details.

Part 2: Financial offer:

A financial offer calculated on a basis of DDP₁ for the supplies tendered.

Part 3: Documentation:

To be supplied following templates in annex*:

- i) The “Tender Form for a Supply Contract”, duly completed, which includes the tenderer’s declaration,, (from each member if a consortium):
- ii) The details of the bank account into which payments should be made (financial identification form). Where the tenderer has already signed another contract with the Botswana Harvard Partnership, he may provide a copy of the financial identification form provided on that occasion, unless a change occurred in the meantime.
- iii) The legal entity file and the supporting documents to be supplied on free formats.
- iv) A description of the organisation of the warranty tendered, which must be in accordance with the conditions laid down in **Article 27 of the General Conditions**.

- v) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture is duly authorised to do so.
- vi) (Other)

Remarks:

¹ DDP (Delivered Duty Paid)

Tenderers are requested to follow this order of presentation.

Annex* refers to templates attached to the tender dossier.

11. Pricing

11.1. Tenderers will be deemed to have satisfied themselves, before submitting their tender(s), as to (its)(their) correctness and completeness, to have taken account of all that is required for the full and proper execution of the contract and to have included all costs in their rates and prices.

11.2. Depending on whether the supplies proposed are manufactured locally or are to be imported into the country of the Beneficiary, Tenderers must quote, by lot, unit (and overall) prices for their tenders on the following:

a) for supplies to be imported into the country of the Beneficiary, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, including all duties and taxes applicable to their importation and VAT.

11.3. The prices for the contract are fixed and not subject to revision.

12. Additional information before the deadline for submission of tenders

The tender dossier should be clear enough to preclude the need for tenderers to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time. Tenderers may submit questions in writing to the following address by the deadline specified in **2) Timetable**, specifying the **publication reference and the title**:

Punah Kegoeng
Botswana Harvard Partnership
PEPFAR-Informatics Building
Plot 1836 North Ring Road
Princess Marina Hospital
Fax: 00 267 3903553
E-mail pkegoeng@bhp.org.bw

Any prospective tenderers seeking to arrange individual meetings with either the Contracting Authority and/or the Botswana Harvard Partnership may be excluded from the tender procedure.

13. Alteration or withdrawal of tenders

13.1. Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in point 9.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.

13.2. Any such notification of alteration or withdrawal must be prepared and submitted in accordance with point 9. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.

14. Costs of preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are re-imbursable. All such costs will be borne by the tenderer.

15. Ownership of tenders

The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

16. Joint venture or consortium

16.1. If a tenderer is a joint venture or consortium of two or more persons, the tender must be single with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior consent in writing of the Contracting Authority.

16.2. The tender may be signed by the representative of the joint venture or consortium only if he has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the Contracting Authority in accordance with **point 10** of these Instructions to Tenderers.

All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under **Article 3.5** as if it, itself, were the tenderer.

17. Opening of tenders

17.1. The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the required documents have been properly included and whether the tenders are generally in order.

17.2. The tenders will be opened in public session on **20th June 2018 at 1000hrs** at **Botswana Harvard PEPFAR Conference Room 1, Plot 1836 North Ring Road, Princess Marina Hospital** by the Procurement Committee /committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.

17.3. At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of modification and withdrawal, and/or such other information as the Contracting Authority may consider appropriate may be announced.

17.4. After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed.

17.5. In the interests of transparency and equal treatment and without being able to modify their tenders, tenderers may be required, at the sole written request of the evaluation committee, to provide clarifications within a reasonable time limit to be fixed by the evaluation committee. Any such request for clarification must not seek the correction of formal errors or of major restrictions affecting execution of the contract or distorting competition.

17.6. Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of his tender.

17.7. All tenders received after the deadline for submission specified in the procurement notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

19. Evaluation of tenders

19.1. Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

If a tender does not comply with the tender dossier, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

19.2. Technical evaluation

After analysing the tenders deemed to comply in administrative terms, the evaluation committee will rule on the technical admissibility of each tender, classifying it as technically compliant or non-compliant. The minimum specifications required (see selection criteria in Procurement Notice [point 15](#)) are to be evaluated at the start of this stage.

Where contracts include after-sales service and/or training, the technical quality of such services should also be evaluated by using yes/no criteria as specified in the tender dossier.

19.3. To facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of his tender, including breakdowns of prices. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to [Article 19.4](#). Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

19.4. Financial evaluation

a) Tenders found to be technically compliant shall be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.
- where VAT has not been explicitly indicated, or where the price has not been explicitly indicated as being inclusive of VAT, the price will be taken as being exclusive of VAT and VAT will be added to the price.
- where the amount for VAT has been incorrectly calculated, the correct VAT calculation will be taken into account.

b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, their tender will be rejected.

19.5. Variant solutions

Variant solutions will not be taken into consideration.

19.6 Award criteria

For supply contracts also involving simple services, the sole award criterion will be the price. The contract will be awarded to the lowest compliant tender.

20. Signature of the contract and performance guarantee

20.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award).

20.2 The successful tenderer shall also provide evidence of the financial and economic standing and the technical capacity according to the selection criteria for this call for tender specified in the procurement notice, point 19.

20.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of the financial and economic standing and the technical and professional capacity within 3 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to another tenderer or cancel the tender procedure.

20.4 The Contracting Authority reserves the right to vary the quantities specified for the items within a range of 100%. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25 % of the contract price at the time of contracting and during the validity of the contract. The unit prices used in the tender shall be applicable to the quantities procured under the variation.

20.5 Within 2 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee, to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.

20.6 If he fails to sign and return the contract and any financial guarantee required within 2 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

20.7 The performance guarantee referred to in the General Conditions is set at **10%** of the amount of the contract and must be presented in the form specified in the annex to the tender dossier. It will be released within 45 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to aftersales service.

21. Tender guarantee

No tender guarantee is applicable for this tender.

22. Ethics clauses

22.1. Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.

22.2. Without the Contracting Authority's prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

22.3. When putting forward a candidacy or tender, the candidate or tenderer shall declare that he is affected by no potential conflict of interest and has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.

22.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.

22.5. For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiaries.

22.6. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

22.7. The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.

22.8. The contract shall govern the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.

22.9. The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

22.10. BHP reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contractor fails to take all appropriate

measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.

22.11. All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses.

22.12. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

22.13. The Contractor undertakes to supply PEPFAR on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

22.14. Contractors found to have paid unusual commercial expenses on projects funded by PEPFAR are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving PEPFAR funds.

23. Cancellation of the tender procedure

In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur where:

- i) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
- ii) the economic or technical parameters of the project have been fundamentally altered;
- iii) exceptional circumstances or force majeure render normal implementation of the project impossible;
- iv) all technically compliant tenders exceed the financial resources available;
- v) there have been irregularities in the procedure, in particular where these have prevented fair competition.

24 Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 30 days of receipt of the complaint.

If this procedure fails, the tenderer may have recourse to the following:

Where the BHP is informed of such a complaint, must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority.

If this procedure fails, the tenderer may have recourse to procedures established under the recipient's national legislation.

The tenderer may have recourse to procedures established under BHP rules and Regulations.

B. DRAFT CONTRACT AND SPECIAL CONDITIONS, INCLUDING ANNEXES

1. DRAFT CONTRACT

SUPPLY CONTRACT FOR PEPFAR-Informatics

NO

FINANCED FROM THE PEPFAR GENERAL BUDGET

Botswana Harvard Aids Institute Partnership PEPFAR
Plot 1836 North Ring Road
Princess Marina Hospital
Gaborone

("The Contracting Authority"),
of the one part,
and
<Full official name of Contractor>
[Legal status/title]²
[Official registration number]³
[Full official address]
[VAT number]⁴, ("the Contractor")
of the other part,
have agreed as follows:

CONTRACT TITLE Supply of ICT Equipment for PEPFAR-Informatics

Identification number BHP002/0618

Article 1 Subject

² Where the contracting party is an individual.

³ Where applicable. For individuals, mention their ID card or passport or equivalent document - number

⁴ Except where the contracting party is not VAT registered.

1.1 The subject of the contract shall be the supply and delivery, by the Contractor, of the following supplies:

- Desktops
- UPS
- Printers
- Wireless Access Points

The place of acceptance of the supplies shall be the Botswana Harvard Aids Institute Partnership.

1.2 The Contractor shall comply strictly with the terms of the Special Conditions and the technical annex.

⁵ DDP - Incoterms 2000 International Chamber of Commerce.

Article 2 Price

3.1 The price of the supplies shall be that shown on the financial offer (specimen in Annex IV). The total maximum contract price shall be <.....BWP>.

3.2 The price referred to in **Article 3.1** above shall be the sole remuneration owed by the Contracting Authority to the Contractor under the contract. It shall be firm and shall not be subject to revision.

3.3 Payments shall be made in accordance with the General and/or Special Conditions (Articles 21 to 23).

Article 3 Order of precedence of contract documents

The contract is made up of the following documents, in order of precedence:

- i) the contract agreement;
- ii) the Special Conditions;
- iii) the General Conditions (Annex I);
- iv) the Technical Specifications (Annex II, including clarifications before the deadline for submission of tenders);
- v) the Technical Offer (Annex III [including clarifications from the tenderer provided during tender evaluation];
- vi) the budget breakdown (Annex IV);
- vii) (specified forms and other relevant documents (Annex V)).

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

Done in English in three originals, two originals being for the Contracting Authority and one original being for the Contractor.

For the Contractor

Name:
Title:
Signature:
Date:

For the Contracting Authority

Name:
Title:
Signature:
Date:

B2. SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the competent Commission departments, other clauses may be introduced to cover specific situations.

ARTICLE 1 LAW APPLICABLE

ARTICLE 2 COMMUNICATIONS

ARTICLE 3 PERFORMANCE GUARANTEE

ARTICLE 4 INSURANCE

ARTICLE 5 IMPLEMENTATION PROGRAMME (TIMETABLE)

ARTICLE 6 TENDER PRICES

ARTICLE 7 PATENTS AND LICENCES

ARTICLE 8 COMMENCEMENT ORDER

ARTICLE 9 PERIOD OF IMPLEMENTATION

ARTICLE 10 VARIATIONS

ARTICLE 11 QUALITIES OF SUPPLIES

ARTICLE 12 INSPECTIONS AND TESTING

ARTICLE 13 METHODS OF PAYMENT

ARTICLE 14 DELIVERY

ARTICLE 15 PROVISIONAL ACCEPTANCE

ARTICLE 16 WARRANTY

ARTICLE 17 AMICABLE SETTLEMENT OF DISPUTES

ARTICLE 18 DISPUTE SETTLEMENT BY LITIGATION

Article 1 Law applicable

1.1 Botswana law shall apply in all matters not covered by the provisions of the contract.

1.2 The language used shall be English.

Article 2 Communications

Any written communication relating to this Contract between the Contracting Authority and/or the Project Manager, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by registered mail, or by hand.

For the Contractor

Name:

Address:

Fax:

Email:

For the Contracting Authority

Name:

Address:

Fax:

Email:

Article 3 Performance guarantee

The amount of the performance guarantee shall be 10% of the Contract Value.

Article 4 Insurance

The contractor shall bear all risk costs, including transportation, until the provisional acceptance of the supplies by the Contracting Authority.

Article 5 Implementation programme (timetable)

Action Time Frame Responsibility

ACTION	TIME FRAME	Responsibility
Contract signature	Within 2 days after notification of award of contract	Project Manager and Supplier
Delivery period	Within 20 days from commencement date	Supplier
Inspection and Testing. Provisional acceptance	Within 5 days after the supplies are delivered to the final destination	Project Manager and the Supplier's Representative.
Warranty Period	12 Months after Provisional Acceptance	Supplier
Final acceptance	12 Months after Provisional Acceptance	Project Manager

The ability to deliver within the specified delivery period is a key factor in awarding. Bids must therefore have a clear declaration to abide by the specified delivery period.

Article 6 Tender prices

No additional provisions regarding Article 11 of the General Conditions shall apply.

Article 7 Patents and licences

There is no derogation from Article 12 of the General Conditions

Article 8 Commencement order

18.1 The last date of signing the contract is the date on which performance of the contract is to commence.

Article 9 Period of Implementation

19.1 The period of execution will start from the commencement date of the contract and will end at the latest 30 days after provisional acceptance. The delivery time for each lot shall not exceed 21 days from the commencement date as stipulated in Articles 5 above.

Article 10 Variations

The Contracting Authority reserves the right, to vary the quantities specified for the listed items at the time of contracting and during the validity of the contract within a range of +/- 100%. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25% of the contract price. The unit prices used in the tender shall be applicable to the quantities procured under the variation.

Article 11 Quality of supplies

No preliminary technical acceptance is required.

Article 12 Inspection and testing

Provisional/Final inspection will take place at the location(s) of delivery as mentioned in the attached distribution chart. The inspection will test the completed installations and integration and the proper operation confirming the technical validity of the equipment and the specification documents and quality standards prescribed. The provisional acceptance will be the basis for final acceptance.

Article 13 Methods of payment

13.1 Payments shall be made in Botswana Pula. Interim and/or final payments shall be processed upon the provision by the Contractor to the Contracting Authority of an invoice (payment request), which shall be subjected to approval by the Contracting Authority. For payment of pre-financing, the Contractor shall submit, along with his invoice, a pre-financing guarantee with the template provided as Annex V.

Payments shall be authorised by the PEPFAR Coordinator, and made by the Finance department
In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 13.1 above:

- a)** For the 40% pre-financing: in addition to the payment request, the performance guarantee and a photocopy of the contract. If a pre-financing is requested and this payment exceeds BWP300,000.00 (Three hundred thousand pula), the Contractor must provide a financial guarantee for the full amount of the pre-financing payment.
- b)** For the 60% balance: the invoice(s) in duplicate. Payment of the 60% balance shall be made as follows:
 - 60% following provisional acceptance of the supplies

13.2 Price revision

This contract does not include provision for a price revision.

Article 14 Delivery

14.1 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.

14.2 Packaging must be as per accepted international standards for air/surface transportation taking into account the climatic conditions prevailing in Botswana at time of delivery.

14.3 The packaging shall become the property of the recipient subject to respect for the environment.

14.4 Each delivery shall include all necessary documents as specified in the technical specifications (operating and maintenance manuals, installation software, material, conformity or test certificates and other certificates etc). The necessary documents shall include an inventory list of items delivered indicating the make, model and serial numbers of the goods provided. All operating and maintenance manuals shall be in English.

All packages must be clearly marked on the outside with:

Publication reference:

Case number.....of.....
Supply address
Destination address.

Article 15 Provisional acceptance

The Certificate of Provisional Acceptance must be issued using the template in Annex C11. Reception sites will be made available by the Contracting Authority. Provisional acceptance shall take place at the reception sites. The Contracting Authority will send a letter to the contractor at least one week before the inspection takes place.

Article 16 Warranty

The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for at least one year after provisional acceptance.

Article 17 Amicable settlement of disputes

The Parties may agree to request the Botswana Harvard Aids Institute Partnership to initiate a conciliation process.

Article 18 Dispute settlement by litigation

Any dispute between the Parties that may arise during the execution of this contract and that it has not been possible to settle otherwise between the Parties shall be submitted to the Botswana Courts in accordance with the national law of the Contracting Authority.

ANNEX I : GENERAL CONDITIONS FOR SUPPLY CONTRACTS FINANCED BY PEPFAR

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1. PRELIMINARY PROVISIONS

Article 1 Definitions

- 1.1** The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.2** Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3** Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

Article 2 Law and language of the contract

- 2.1** The Special Conditions shall specify the law governing all matters not covered by the contract.
- 2.2** The contract and all written communications between the parties will be drafted in the language of the procedure.

Article 3 Order of precedence of contract documents

- 3.1** Save where otherwise provided in the special conditions, the contract is made up of the following documents, in order of precedence:
- a) the contract agreement;
 - b) the Special Conditions;
 - c) the General Conditions (Annex I);
 - d) the Technical Specifications (Annex II) including clarifications before the deadline for submission of tenders
 - e) the Technical Offer (Annex III), including clarifications from the Contractor provided during tender evaluation;
 - f) the budget breakdown (Annex IV);
 - g) specified forms and other relevant documents (Annex V)

Addenda have the order of precedence of the document they are modifying.

- 3.2.** The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

Article 4 Communications

4.1 Communications between the Contracting Authority and/or the Project Manager on the one hand, and the Contractor on the other, shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and/or the Project Manager on the one hand, and the Contractor on the other hand, shall be sent registered mail or delivered by hand, to the addresses designated by the Parties for that purpose.

4.2 If the person sending a communication requires acknowledgement of receipt, he shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication.

4.3 Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "certify", "approve" or "decide" shall be

construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

Article 5 Subcontracting

For purposes of this tender, subcontracting will not be allowed.

2. OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 6 Supply of documents

There are no other documents required apart from this tender document.

3. OBLIGATIONS OF THE CONTRACTOR

Article 7 General Obligations

7.1 The Contractor shall implement the contract with due care and diligence including, where specified, delivery to site. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the execution of the contract.

7.2 The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the contract, he shall, on pain of breach of contract, notify the Project Manager thereof, giving his reasons, within 30 days of receipt of the order. Execution of the administrative order shall not be suspended because of this notice.

7.3 The Contractor shall respect and abide by all laws and regulations in force in Botswana and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, his employees and their dependants of such laws and regulations.

7.4 The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.

7.5 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the state of the Contracting Authority and shall, at the request of the Contracting Authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium shall not be altered without the prior consent in writing of the Contracting Authority.

Article 8 Performance guarantee

8.1 The Contractor shall, together with the return of the countersigned contract, furnish the Contracting Authority with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall not exceed 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.

8.2 The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

8.3 The performance guarantee shall be in the format given in Annex V and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company or an irrevocable letter of credit.

8.4 The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

8.5 During the execution of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter.

8.6 The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

8.7 Except for such part as may be specified in the Special Conditions in respect of aftersales service, the performance guarantee shall be released within 45 days of the issue of the final acceptance certificate.

Article 10 Implementation programme

10.1 If the Special Conditions so require, the Contractor shall submit a programme of implementation of the contract for the approval of the Project Manager. The programme shall contain at least the following:

- a) the order in which the Contractor proposes to perform the contract supply delivery to place of receipt, installation and testing
- b) a general description of the methods which the Contractor proposes to adopt for executing the contract; and
- c) such further details and information as the Project Manager may reasonably require.

10.2 The Special Conditions shall specify the time limit within which the programme of implementation must be submitted to the Project Manager for approval. They may set time limits within which the Contractor must submit all documents and items. They shall also state the deadline for the Project Manager's approval or acceptance of the programme of implementation and items. The approval of the programme by the Project Manager shall not relieve the Contractor of any of his obligations under the contract.

10.3 No material alteration to the programme shall be made without the approval of the Project Manager. If, however, the progress of the implementation of the contract does not conform to the programme, the Project Manager may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

Article 11 Sufficiency of tender prices

11.1 Subject to any provisions which may be laid down in the Special Conditions, the Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper execution of the contract and to have included in his rates and prices all costs related to the supplies, in particular:

- a) the costs of transport;
- b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of the Contracting Authority unless otherwise provided in the Special Conditions;
- c) the cost of documents relating to the supplies where such documents are required by the Contracting Authority;
- d) execution and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- f) furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the contract;
- g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, with the stipulation that this service shall not release the Contractor from any warranty obligations under the contract.

11.2 Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall, at no additional charge, carry out any work that is the subject of any item in his tender for which he indicates neither a unit price nor a lump sum.

Article 12 Patents and licences

Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the Contracting Authority and the Project Manager against any claim resulting from the use as specified in the contract of patents, licences, drawings, models, or brand or trademarks, unless such infringement results from compliance with the design or specification provided by the Contracting Authority and/or the Project Manager.

8 COMMENCEMENT OF IMPLEMENTATION AND DELAYS

Article 13 Commencement order

13.1 The Contracting Authority shall fix the date on which implementation of the contract is to commence and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued by the Project Manager.

13.2 Save where the Parties agree otherwise, implementation of the contract shall begin no later than 218 days after notification of award of contract. After that date the Contractor shall be entitled not to implement the contract and to obtain its termination or compensation for the damage he has suffered. The Contractor shall forfeit this right unless he exercises it within 30 days of the expiry of the 90-day period.

Article 14 Period of implementation

14.1 The period of implementation of tasks shall commence on the date fixed in accordance with Article 14 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 16.

14.2 If provision is made for separate periods of implementation for separate lots, such periods shall not be aggregated in cases where one Contractor is allocated more than one lot.

Article 15 Extension of period of implementation

15.1 The Contractor may request an extension to the period of implementation if his implementation of the contract is delayed, or expected to be delayed, for any of the following reasons:

- a) extra or additional supplies ordered by the Contracting Authority;
- b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
- c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent contractor;
- d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
- e) failure of the Contracting Authority to fulfil its obligations under the contract;
- f) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;
- g) force majeure;
- h) any other causes referred to in these General Conditions which are not due to the Contractor's default.

15.2 Not less than 10 days before delivery deadline, upon realising that a delay might occur, the Contractor shall notify the Project Manager of his intention to make a request for extension of the period of implementation to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Project Manager, within 2 days provide the Project Manager with comprehensive details so that the request can be examined.

15.3 Within 2 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

Article 16 Delays in implementation

16.1 If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled, for every day which shall elapse between the expiry of the implementation period and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.

16.2 If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages provided for in paragraph 17.1 shall be calculated on the basis of the total contract value.

16.3 If the Contracting Authority has become entitled to claim at least 15% of the contract value it may, after giving written notice to the Contractor:

- seize the performance guarantee;
- terminate the contract, in which case the Contractor will have no right to compensation;
- and
- enter into a contract with a third party for the provision of the balance of the supplies. The Contractor shall not be paid for this part of the contract. The Contractor shall also be liable for the additional costs and damages caused by his failure.

Article 17 Variations

17.1 Subject to the limits set in the BHP Procurement Policy to contract procedures, the Contracting Authority reserves the right, to vary the quantities as stated in the Special Conditions. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25% of the contract price. The unit prices used in the tender shall be applicable to the quantities procured under the variation. Substantial modifications to the contract, including modifications to the total contract amount, must be made by means of an addendum.

17.2 The Project Manager shall have the power to order any variation to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such variations may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as specifications where the supplies are to be specifically manufactured for the Contracting Authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the supplies. No order for a variation may result in the invalidation of the contract, but the financial effect of any such variation shall be valued in accordance with Article 18.6.

17.3 No variation shall be made except by Purchase order, subject to the following provisions:

- a) if, for whatever reason, the Project Manager believes it necessary to give an order orally, he shall confirm the order by an Purchase order as soon as possible;
- b) if the Contractor confirms in writing an oral order given for the purpose of Article 18.3.a and the confirmation is not contradicted in writing forthwith by the Project Manager, a Purchase order shall be deemed to have been issued for the variation.

17.4 Save where Article 17.2 provides otherwise, prior to issuing an administrative order for a variation, the Project Manager shall notify the Contractor of the nature and form of that variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Project Manager a proposal containing:

- a description of the tasks, if any, to be performed or the measures to be taken and an implementation programme;
- any necessary modifications to the implementation programme or to any of the Contractor's obligations under the contract;
- any adjustment to the contract price in accordance with the rules set out in Article 17.

17.5 Following the receipt of the Contractor's submission referred to in Article 17.4, the Project Manager shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide as soon as possible whether or not the variation should be carried out. If the Project Manager decides that the variation is to be carried out, he shall issue an administrative order stating that the variation is to be made at the prices and under the conditions given in the Contractor's submission referred to in Article 18.4 or as modified by the Project Manager in accordance with Article 18.6.

17.6 The prices for all variations ordered by the Project Manager in accordance with Articles 17.3 and 17.5 shall be ascertained by the Project Manager in accordance with the following principles:

- where the task is of similar character and implemented under similar conditions to an item priced in the bill of quantities or budget breakdown, it shall be valued at such rates and prices contained therein;
- where the task is not of similar character or is not implemented under similar conditions, the rates and prices in the contract shall be used as the basis for valuation in so far as is reasonable, failing which a fair valuation shall be made by the Project Manager;
- if the nature or amount of any variation relative to the nature or amount of the whole of the contract or to any part thereof is such that, in the opinion of the Project Manager, any rate or price contained in the contract for any item of work is by reason of such variation rendered unreasonable, then the Project Manager shall fix such rate or price as he thinks reasonable and proper in the circumstances;
- where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

17.7 On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by that order in so doing as if such variation were stated in the contract. The supplies shall not be delayed pending the granting of any extension of implementation period or adjustment to the contract price. Where the order for a variation precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the variation and of the time expended thereon. Such records shall be open to inspection by the Project Manager at all reasonable times.

17.8 Contractual variations not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Changes of address or bank account may simply be notified in writing by the Contractor to the Contracting Authority. Any contractual variations must respect the general principles defined in the BHP Procurement Policy.

Article 18 Suspension

18.1 The Project Manager may, by administrative order, at any time, instruct the Contractor to suspend:

- a) the delivery of supplies to the place of acceptance at the time specified for delivery in the implementation programme or, if no time specified, at the time appropriate for it to be delivered; or
- b) the installation of the supplies which have been delivered to the place of acceptance.

18.2 The Contractor shall, during suspension, protect and secure the supplies affected at the Contractor's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by the Project Manager, even if supplies have been delivered to the place of acceptance in accordance with the contract but their installation has been suspended by the Project Manager.

18.3 Additional expenses incurred in connection with such protective measure shall be added to the contract price. The Contractor shall not be paid any additional expenses if the suspension is:

- a) dealt with differently in the contract; or
- b) necessary by reason of normal climatic conditions at the place of acceptance; or
- c) necessary owing to some default of the Contractor; or
- d) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Contracting Authority.

18.4 The Contractor shall not be entitled to such additions to the contract price unless he notifies the Project Manager, within 30 days of receiving the order to suspend progress of delivery, of his intention to make a claim for them.

18.5 The Project Manager, after consultation with the Contracting Authority and the Contractor, shall determine such extra payment and/or extension of the period of implementation to be made to the Contractor in respect of such claim as shall, in the opinion of the Project Manager, be fair and reasonable.

18.6 If the period of suspension exceeds 180 days, and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request to proceed with the supplies within 30 days, or terminate the contract.

18.7 Where the award procedure or execution of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may also refuse to make payments or may recover monies already paid, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision resulting from an act or an omission that causes or might cause a loss to the Community budget.

9 MATERIALS AND WORKMANSHIP

Article 19 Quality of supplies

19.1 The supplies must in all respects satisfy the technical specifications laid down in the contract.

19.2 Any preliminary technical acceptance stipulated in the Special Conditions should be the subject of a request sent by the Contractor to the Project Manager. The request shall specify the materials, items and samples submitted for such acceptance according to the contract and indicate the lot number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by the Project Manager as meeting the requirements for such acceptance prior to their incorporation in the supplies.

Article 20 Inspection and testing

The Contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow the Project Manager to proceed with acceptance of the supplies. The Contractor is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay.

10 PAYMENTS

Article 21 General principles

21.1 Payments shall be made in BWP currency. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions.

21.2 Payments due by the Contracting Authority shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account.

21.3 Sums due shall be paid within no more than 30 calendar days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.

21.4 The 30-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 5 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawnup payment request is registered.

21.5 The payments shall be made as follows:

- a) 40% of the contract price after the signing of the contract, against provision of the performance guarantee. If the pre-financing payment exceeds P300, 000.00 (Three hundred thousand pula), the Contractor must provide a financial guarantee for the full amount of the prefinancing payment. This financial guarantee must remain valid until it is released 30 days at the latest after the provisional acceptance of the goods;
- b) 60% of the contract price, as payment of the balance outstanding, following provisional acceptance of the supplies

21.6 Where only parts of the supplies have been delivered, the 60% payment due following partial provisional acceptance shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.

21.7 For supplies not covered by a warranty period, the payments listed above shall be aggregated. The conditions, to which the payments of pre-financing, interim and/or final payments are subject, shall be as stated in the Special Conditions.

21.8 The payment obligations of **PEPFAR** under this Contract shall cease at most 6 months after the end of the period of implementation, unless the Contract is terminated in accordance with these General Conditions.

21.9 Unless otherwise stipulated in the Special Conditions, contracts shall be at fixed prices, which shall not be revised.

21.10 The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 15 days of receiving a request to do so. Should the Contractor fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may (unless the Contractor is a government department or public body) increase the amounts due by adding interest:

- at the rediscount rate applied by Bank of Botswana;
- at the rate applied by the Bank of Botswana to its main refinancing transactions in Pula on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority (exclusive), and the date on which

payment is actually made (inclusive). Any partial payments shall first cover the interest thus established. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Article 22 Payment to third parties

22.1 No payments will be made to third parties by the Contracting Authority.

22.2 In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract, and without prejudice to the time limit laid down in the Special Conditions, the Contracting Authority shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

Article 23 Delayed payments

23.1 The Contracting Authority shall pay the Contractor sums due within 30 days of the date on which an admissible payment is registered, in accordance with Article 24 of these General Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article 13 of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 30 days following their receipt accompanied by the requisite documents.

23.2 Once the deadline laid down in **Article 23.1** has expired, the Contractor may, within two months of late payment, claim late-payment interest:

- at the rediscount rate applied by the issuing institution of the country of the Contracting Authority where payments are in national currency;
- at the rate applied by Bank of Botswana to its main refinancing transactions in pula, on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).

23.3 Any default in payment of more than 90 days from the expiry of the period laid down in Article 23.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority and the Project Manager.

11 ACCEPTANCE AND MAINTENANCE

Article 24 Delivery

24.1 The Contractor shall deliver the supplies in accordance with the conditions of the contract. The supplies shall be at the risk of the Contractor until their provisional acceptance.

24.2 The Contractor shall provide such packaging of supplies as is required to prevent their damage or deterioration in transit to their destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, and precipitation during transit and open storage. Package size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the supplies and the possible absence of heavy handling facilities at all points in transit.

24.3 The packaging, marking and documentation inside and outside the packages shall comply with such requirements as shall be expressly provided for in the Special Conditions, subject to any variations subsequently ordered by the Project Manager.

24.4 No supplies shall be shipped or delivered to the place of acceptance until the Contractor has received a delivery order from the Project Manager. The Contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract. If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period.

24.5 Each delivery must be accompanied by a statement drawn up by the Contractor. This statement shall be as specified in the Special Conditions.

24.6 Each package shall be clearly marked in accordance with the Special Conditions.

24.7 Delivery shall be deemed to have been made when there is written evidence available to both Parties that delivery of the supplies has taken place in accordance with the terms of the contract, and the invoice(s) and all such other documentation specified in the Special Conditions, have been submitted to the Contracting Authority. Where the supplies are delivered to an establishment of the Contracting Authority, the latter shall bear the responsibility of bailee, in accordance with the requirements of the law applicable to the contract, during the time which elapses between delivery for storage and acceptance.

Article 25 Verification operations

25.1 The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The inspections and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods.

25.2 The Project Manager shall, during the progress of the delivery of the supplies and before the supplies are taken over, have the power to order or decide:

- a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of the Project Manager, are not in accordance with the contract;
- b) their replacement with proper and suitable supplies;
- c) the removal and proper re-installation, notwithstanding any previous test thereof or interim payment therefor, of any installation which in respect of materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Project Manager, in accordance with the contract;
- d) that any work done or goods supplied or materials used by the Contractor is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.

25.3 The Contractor shall, with all speed and at his own expense, make good the defects so specified. If the Contractor does not comply with such order, the Contracting Authority shall be entitled to employ other persons to carry out the orders and all expenses consequent thereon or incidental thereto shall be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.

25.4 Supplies which are not of the required quality shall be rejected. A special mark may be applied to the rejected supplies. This shall not be such as to alter them or affect their commercial value.

Rejected supplies shall be removed by the Contractor from the place of acceptance, if the Project Manager so requires, within a period which the Project Manager shall specify, failing which they shall be removed as of right at the expense and risk of the Contractor. Any works incorporating rejected materials shall be rejected.

25.5 The provisions of Article 26 shall not affect the right of the Contracting Authority to claim under Article 16, nor shall it in any way release the Contractor from any warranty or other obligations under the contract.

Article 26 Provisional acceptance

26.1 The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

26.2 The Contractor may apply, by notice to the Project Manager, for a certificate of provisional acceptance when supplies are ready for provisional acceptance. The Project Manager shall within 10 days of receipt of the Contractor's application either:

- issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the supplies were completed in accordance with the contract and ready for provisional acceptance; or
- reject the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued.

26.3 Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Project Manager after consultation, where possible, with the Contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

26.4 If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period, except where the certificate of provisional acceptance is deemed to constitute a certificate of final acceptance. In this case, **Article 28.2** below does not apply. If the supplies are divided by the contract into lots, the Contractor shall be entitled to apply for a separate certificate for each lot.

26.5 In case of partial delivery, the Contracting Authority reserves the right to give partial provisional acceptance.

26.6 Upon provisional acceptance of the supplies, the Contractor shall dismantle and remove temporary structures and materials no longer required for use in connection with the implementation of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.

Article 27 Warranty obligations

27.1 The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The Contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the

specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in Botswana. This warranty shall remain valid as specified in the Special Conditions.

27.2 The Contractor shall be responsible for making good any defect in, or damage to, any part of the supplies which may appear or occur during the warranty period and which:

- a) results from the use of defective materials, faulty workmanship or design of the Contractor; or
- b) results from any act or omission of the Contractor during the warranty period; or
- c) appears in the course of an inspection made by, or on behalf of, the Contracting Authority.

27.3 The Contractor shall at his own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date on which the replacement or repair was made to the satisfaction of the Project Manager. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.

27.4 If any such defect appears or such damage occurs during the warranty period, the Contracting Authority or the Project Manager shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

- a) remedy the defect or the damage itself, or employ someone else to carry out the work at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority shall be deducted from monies due to or guarantees held against the Contractor or from both; or
- b) terminate the contract.

27.5 In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority or the Project Manager may have the work carried out at the expense of the Contractor. The Contracting Authority or the Project Manager shall as soon as practicable inform the Contractor of the action taken.

27.6 The warranty obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the warranty period is not specified, it shall be 365 days. The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 28.3.

Article 28 Final acceptance

28.1 Upon expiry of the warranty period or, where there is more than one such period, upon expiry of the latest period, and when all defects or damage have been rectified, the Project Manager shall issue the Contractor a final acceptance certificate, with a copy to the Contracting Authority, stating the date on which the Contractor completed his obligations under the contract to the Project Manager's satisfaction. The final acceptance certificate shall be issued by the Project Manager within 30 days of the expiry of the warranty period or as soon as any repairs ordered under Article 28 have been completed to the satisfaction of the Project Manager.

28.2 The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Project Manager.

28.3 Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfilment of any obligation incurred under the

contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

12 BREACH OF CONTRACT AND TERMINATION

Article 29 Breach of contract

29.1 A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract.

29.2 Where a breach of contract occurs, the injured Party shall be entitled to the following remedies:

- a) damages; and/or
- b) termination of the contract.

29.3 In addition to the above-mentioned measures, damages may be awarded. They may be either:

- a) general damages; or
- b) liquidated damages.

29.4 Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

Article 30 Termination by the Contracting Authority

30.1 The Contracting Authority may, after giving the Contractor seven days' notice, terminate the contract in any of the following cases:

- a) the Contractor substantially fails to perform his obligations under this contract;
- b) the Contractor fails to comply within a reasonable time with a notice given by the Project Manager requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely implementation of the supplies;
- c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
- d) the Contractor assigns the contract or subcontracts;
- e) the Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f) the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- h) the Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- i) the Contractor, following another procurement procedure or grant award procedure financed by PEPFAR budget, has been declared to be in serious breach of contract for failure to perform its contractual obligations;
- j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- k) any other legal disability hindering execution of the contract occurs;

l) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments.

30.2 Termination shall be without prejudice to any other rights or powers of the Contracting Authority and the Contractor under the contract. The Contracting Authority may, thereafter, conclude any other contract with a third party on behalf of the Contractor. The Contractor's liability for delay in completion shall immediately cease upon termination without prejudice to any liability thereunder that may already have occurred.

30.3 The Project Manager shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the implementation of the supplies to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

30.4 In the event of termination, the Project Manager shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the work performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the Contracting Authority as at the date of termination of the contract.

30.5 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the supplies are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of providing the supplies or shall pay any balance due to the Contractor prior to the termination of the contract.

30.6 If the Contracting Authority terminates the contract it shall be entitled to recover from the Contractor any loss it has suffered under the contractual conditions set out in **Article 2 of the Special Conditions**.

30.7 This contract shall be automatically terminated if it has given risen to no payment in the one year years following its signing.

Article 31 Termination by the Contractor

31.1 The Contractor may, after giving 14 days' notice to the Contracting Authority, terminate the contract if the Contracting Authority:

- fails to pay the Contractor the amounts due under any certificate issued by the Project Manager after the expiry of the deadline stated in the Special Conditions;
- consistently fails to meet its obligations after repeated reminders; or
- suspends the delivery of the supplies, or any part thereof, for more than **180** days, for reasons not specified in the contract or not attributable to the Contractor.

31.2 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.

31.3 In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

Article 32 Force majeure

32.1 Neither Party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any event of force majeure arising

after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.

32.2 For the purposes of this Article, the term "force majeure" means acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.

32.3 Notwithstanding the provisions of **Articles 15 and 30**, the Contractor shall not be liable for forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in implementation or other failure to perform his obligations under the contract is the result of an event of force majeure. Nor, notwithstanding the provisions of **Articles 22 and 26**, shall the Contracting Authority be liable for the payment of interest on delayed payments, for non-implementation or for termination by the Contractor for default if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

32.4 If either Party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other Party and the Project Manager, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent him from performing. The Contractor shall not employ such alternative means unless directed to do so by the Project Manager.

32.5 If the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 32.4, the amount thereof shall be certified by the Project Manager.

32.6 If circumstances of force majeure have occurred and continue for a period of **180** days then, notwithstanding any extension of time for completion of the contract that the Contractor may by reason thereof have been granted, either Party shall be entitled to serve the other with 30 days' notice to terminate the contract. If, on the expiry of the period of 30 days, the situation of force majeure still applies, the contract shall be terminated and, by virtue of the law governing the contract, the Parties shall be released from further execution of the contract.

Article 33 Death

33.1 Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.

33.2 Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the contract, and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.

33.3 In the cases provided for in Articles 33.1 and 33.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease.

33.4 Such persons shall be jointly and severally liable for the proper execution of the contract to the same extent as the original Contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in **Article 10**.

13 DISPUTE SETTLEMENT

Article 34 Amicable dispute settlement

34.1 The Parties shall make every effort to settle amicably any dispute which may arise between them.

Once a dispute has arisen, the Parties shall notify each other in writing of their positions on the dispute and any solution which they consider possible. If either Party deems it useful, the Parties shall meet and try and settle the dispute. A Party shall respond to a request for amicable settlement within **30 days** of such a request. The maximum period laid down for reaching such a settlement shall be 120 days from the commencement of the procedure.

Should the attempt to reach an amicable settlement fail or a Party fail to respond in time to requests for a settlement, either Party shall be free to proceed to the next stage of the dispute-settlement procedure by notifying the other.

34.2 If the amicable dispute-settlement procedure fails, the Parties may, in the case of decentralised contracts, agree to try conciliation through the Procurement Committee. If no settlement is reached within 120 days of the start of the conciliation procedure, each Party shall be entitled to move on to the next state of the dispute-settlement procedure.

Article 35 Dispute settlement by litigation

If no settlement is reached within 120 days of the start of the amicable dispute-settlement procedure, each Party may seek:

- a) either a ruling from a national court
- b) or an arbitration ruling in accordance with the Special Conditions of this contract.

ETHICS CLAUSES

Article 36 Ethics clauses

36.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender.

36.2 This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

36.3 When putting forward a candidacy or tender, the candidate or tenderer shall declare that he is affected by no potential conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.

36.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project

or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.

36.5 For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary parties.

36.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

36.7 The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.

36.8 The contract shall govern the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

36.9 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

36.10 PEPFAR reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.

36.11 Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

36.12 The Contractor undertakes to supply PEPFAR on request with all supporting documents relating to the conditions of the contract's execution. PEPFAR may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

Article 37 Administrative and financial penalties

37.1 Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations or has been found to have seriously failed to meet his contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the PEPFAR budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by PEPFAR within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty

shall become enforceable. That period may be increased to three years in the event of a repeat offence within five years of the first infringement.

37.2 If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 10% of the total value of the contract in question.

ANNEX II : TECHNICAL SPECIFICATIONS

1.1 GENERAL

a) Minimum Specification

The specifications listed here within represent the minimum acceptable. Tenderers may offer items of equal or higher but comparable specification. Tenderers should clearly state where an offered specification is different but superior to the minimum specification given here.

b) Distribution

All items will be distributed as indicated in the Distribution Matrix Tables for Lots 1, 2, 3 and 4, unpacked, installed and tested with operator training carried out in accordance with the instructions in this tender dossier.

c) Certification

Tenderers will be required to provide original documents during or prior to delivery, to support the 'CE' mark in respect of the related directives for IT equipment.

d) Electricity

The electricity supply in Botswana is 220 V (single-phase) and 380 V (three-phase (+ neutral)). The quality and stability of the supplied current may undergo fluctuations (+ and -) of more than 10%. All supplied hardware must operate on a 220 V AC supply and be suitable for direct connection to the standard square power outlets.

e) Uniform Supply of Equipment

All items of the same code shall be of identical make/model and configuration for the entire delivery. In the event of unavoidable changes during delivery, (external to the bidder's control), only upgrades to the existing models, with identical configurations will be acceptable.

f) Quality

The quality of all items supplied will be determined during provisional acceptance. The durability of items, such as hand tools etc, will also be determined during service prior to issuing the Final Acceptance Certificate.

g) Specifications and Nomenclature

This tender dossier is organised to guarantee non-discrimination to all tendering parties.

1.2 Supply and Delivery of IT Equipment for PEPFAR-Informatics

Introduction

1.2.1 The outline for the required supplies:

PEPFAR invites established, experienced companies in the IT field that are able to execute this urgent project, to present their Technical and Financial offer to meet the stated minimum requirements.

Hardware Requirements:

Below is a list of the equipment/hardware required:

1) Desktop PC

Brand: HP

-Processor: i5 3.0 GHz, 3MB cache or equivalent

-RAM: 4GB

-Hard disk drive: 500 GB

-Optical Drive: DVD+/-RW

-Ethernet: Integrated 10/100/1000 BASE-T Ethernet LAN.

-Wireless: Integrated 802.11b/g/n

- Ports: USB Ports (6 minimum), 1 serial, RJ45

- Graphics Card: Integrated Graphics Controller

-I/O: USB standard Keyboard and optical USB Mouse

- Audio: Integrated High Definition Audio, internal speaker
- Soundcard: Inbuilt/integrated sound card
- Operating system: Windows 10 preloaded.

Monitor

Size: 17 inch LCD / LED Flat Panel
Brightness: minimum 250nits,
Native Resolution: 1280*1024
Input/Connector: Analogue/Digital

Warranty: at least One (1) year back up to base parts and labour.

Both Monitor and CPU should have round plugs.

2) Tower Standby Backup UPS

1300VA
4 outlet sockets
Minimum 40mins runtime on 100VA load
Warranty: One (1) year back up to base parts and labour.

3) Printers HP M202dw LaserJet monochrome

-24-35 ppm automatic duplex
- 1.8M USB A Male To B Male v.2 Cable
-Installation media
-Round plugs

4) Wireless N-Series Access Points

-Dual-band 2.4/5GHz 802.11n 300Mbps
-Minimum 4 ports
-WAP2
-Range: 300m+

1.2.5 General Conditions:

1. All tenderers or their local partners must currently have an open working office in Botswana with qualified technical staff.

Project Team

A project coordinator and a project manager have been appointed by the Botswana Harvard Partnership and the successful contractor will be required to liaise closely with them.

Warranty

The tenderer should provide a 1 year warranty for quality and performance of the goods supplied.

Asset Register

All printers, desktops and Wireless access points should have a solidly fixed metallic type (or similar) approved label, size 75 X 35 mm, bearing the Botswana government sticker (obtained from Department of Information and Technology DIT), item and serial number.

ANNEX III : TECHNICAL OFFER

Annex III - the Contractor's technical offer

The tenderers are **required** to complete the template on the next pages:

- a) the column "Specifications" shows the required specifications,
- b) the column "Specifications offered" is to be filled in by the tenderer and must detail what is offered (for example the words "compliant" or "yes" are not sufficient). All aspects in the specifications must be indicated.

- c) the column “Notes, remarks, ref to documentation” allows the tenderer to make comments on his proposed supply and to make eventual references to the documentation
- d) the column “Evaluation Committee’s notes” is to be left empty for the evaluators. The eventual documentation supplied should clearly indicate (highlight, mark) the models offered and the options included, if any, so that the evaluators can see the exact configuration. Offers that do not permit to identify precisely the models and the specifications may be rejected by the evaluation committee.
- The offer must be clear enough to allow the evaluators to make an easy comparison between the requested specifications and the offered specifications.

Instructions:

Column 3-4 MUST be completed by the tenderer

Column 5 is reserved for the evaluation committee

Contract title: Supply and Delivery of IT Equipment for PEPFAR-Informatics

Publication reference: BHP002/0618

1 Item No	2 Specifications	3 Specifications offered (include brand/model	4 Notes, Remarks, Ref to documentation	5 Evaluation Committee’s Notes
1	<p>Desktop PC Brand: HP -Processor: i5 3.0 GHz, 3MB cache or equivalent -RAM: 4GB -Hard disk drive: 500 GB -Optical Drive: DVD+/-RW -Ethernet: Integrated 10/100/1000 BASE-T Ethernet LAN. -Wireless: Integrated 802.11b/g/n - Ports: USB Ports (6 minimum), 1 serial, RJ45 - Graphics Card: Integrated Graphics Controller -I/O: USB standard Keyboard and optical USB Mouse - Audio: Integrated High Definition Audio, internal speaker Soundcard: Inbuilt/integrated sound card -Operating system: Windows 10 preloaded.</p> <p>Monitor Size: 17 inch LCD / LED Flat Panel Brightness: minimum 250nits, Native Resolution: 1280*1024 Input/Connector: Analogue/Digital</p> <p>Warranty: at least One (1) year back up to base parts and labour. Both Monitor and CPU should have round plugs.</p>			
2	<p>Tower Standby Backup UPS 1300VA 6 round plug outlets Minimum 40mins runtime on 100VA load 1 Year Warranty</p>			
3	<p>Printers HP M202dw LaserJet monochrome -24-35 ppm automatic duplex - 1.8M USB A Male To B Male v.2 Cable -Installation media -Round plugs</p>			

4	Wireless N-Series Access Points -Dual-band 2.4/5GHz 802.11n 300Mbps -WAP2 -Minimum 4 ports -Range: 300m+			
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ANNEX IV: Budget breakdown (Model financial offer) Page No 1 [of...]

PUBLICATION REFERENCE:
NAME OF TENDERER: [.....]

A	B	C	D	E
ITEM NUMBER	Quantity	Specifications Offered (Incl Brand/Model)	Unit costs with Delivery to BHP	Total(BWP)

ANNEX V: MODEL PERFORMANCE GUARANTEE

<To be completed on paper bearing the letterhead of the financial institution >
 For the attention of

Botswana Harvard Aids Institute Partnership, PEPFAR Finance Department, Plot 1836 NorthRing Road, Princess Marina Hospital

<Financial Unit mentioned in the Contract>
 referred to below as the “Contracting Authority”

Subject: Guarantee No...

Performance Guarantee for the full and proper execution of contract **BHP.....: Supply and Delivery of IT Equipment for PEPFAR-Informatics** (please quote number and title in all correspondence)

We the undersigned, <name and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as a surety on behalf of <Contractor's name and address>, hereinafter referred to as “the Contractor”, payment to the Contracting Authority of <amount of the performance guarantee>, representing the performance guarantee mentioned in Article 11 of the Special Conditions of the contract **BHP.....: Supply and Delivery of IT Equipment for PEPFAR-Informatics** concluded between the Contractor and the Contracting Authority, hereinafter referred to as “the Contract”.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) stating that the Contractor has failed to perform his contractual obligations fully and properly or that the Contract has been terminated for any reason whatsoever. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made. We accept notably that no amendment to the terms of the Contract agreed between the Contracting Authority and the Contractor can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment to the Contract.

We note that the guarantee will be released within 30 days of the issue of the final acceptance certificate (except for such part as may be specified in the Special Conditions in respect of after sales service). [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)].

The law applicable to this guarantee shall be that of Botswana. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Botswana.

This guarantee shall enter into force and take effect upon its signature.

Name: Position:

7Signature: Date:

7The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

ANNEX VI: PRE-FINANCING GUARANTEE FORM

<To be completed on paper bearing the letterhead of the financial institution >

For the attention of
Botswana Harvard Aids Institute Partnership, PEPFAR Finance Department, Plot 1836 NorthRing Road, Princess Marina Hospital

referred to below as the "Contracting Authority"
Subject: Guarantee No...

Financing Guarantee for the repayment of pre-financing payable under contract
BHP..... Supply and Delivery of IT Equipment for PEPFAR-Informatics
(please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as surety on behalf of <Contractor's name and address>, hereinafter referred to as "the Contractor", the payment to the Contracting Authority of <indicate the amount of the pre-financing>, corresponding to the pre-financing as mentioned in Article 26.1 of the Special Conditions of the contract **BHP..... Supply and Delivery of IT Equipment for PEPFAR-Informatics** concluded between the Contractor and the Contracting Authority, hereinafter referred to as "the Contract".

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation or receipt) stating that the Contractor has not repaid the pre-financing on request or that the Contract has been terminated for any reason whatsoever. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We accept notably that no amendment to the terms of the Contract agreed between the Contracting Authority and the Contractor can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the Contract.

We note that the guarantee will be released 30 days at the latest after the provisional acceptance of the goods. [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)].

The law applicable to this guarantee shall be that of Botswana. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Botswana.

The guarantee will enter into force and take effect on receipt of the pre-financing payment in the account designated by the Contractor to receive payments.

Name: Position:

Signature: Date:

ADMINISTRATIVE COMPLIANCE GRID

Contract title :	IT Equipment Supply and Services for PEPFAR-Informatics	Publication reference:	BHP.....
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Tender Envelope number	Name of Tenderer	Is Tenderer (consortium) nationality eligible?(Y/N)	Id Documentation complete?(Y/N)	Is Language as required(Y/N)	Is Tender submission form complete?(Y/N)	Is Tenderer's declaration signed by consortium members if a consortium)(Yes/No/N/A	Other administrative requirements of the tender dossier(Y/N/N/a)	Overall Decision (Accept/Reject)
1								
2								
3								
4								
5								
6								

Chairperson's Name	
Chairperson's signature	
Date	

EVALUATION GRID

Contract title:	Supply of IT equipment	Publication ref:	BHP
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Tender envelope No	Name of Tenderer	Economic & Financial capacity(Y/N)	Technical Capacity (Y/N)	Compliance with technical specifications(Y/N)	Other technical requirements in tender dossier?(Yes/No/Not applicable)	Notes:

Evaluators Name & Signature	
Evaluators Name & Signature	
Evaluators Name & Signature	
Date:	

D. TENDER FORM FOR A SUPPLY CONTRACT

Publication reference:

Title of contract: Supply and Delivery of IT Equipment for PEPFAR-Informatics

A: Botswana Harvard Aids Institute Partnership, PEPFAR Finance Department, Plot 1836 North Ring Road, Princess Marina Hospital ,Gaborone

One signed original form must be supplied (for each lot, if the tender procedure is divided into lots), together with the number of copies specified in the Instruction to Tenderers. The form must include a signed declaration using the annexed format from each legal entity making the application. Any additional documentation (brochure, letter, etc) sent with the form will not be taken into consideration. Applications being submitted by a **consortium** (i.e., either a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure) must follow the instructions applicable to the consortium leader and its members.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator.

1 SUBMITTED BY

	Name(s) of tenderer(s)	Nationality
Leader		
Member		
member		

¹ add/delete additional lines for members as appropriate If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as '**leader**' (and all other lines should be deleted)

2 CONTACT PERSON (for this tender)

Name.....

Address.....

Telephone.....

Fax.....

E-mail.....

3 ECONOMIC AND FINANCIAL CAPACITY

Please complete the following table of financial data ^{based} on your annual accounts and your latest projections. If annual accounts are not yet available for this year or last year, please provide your latest estimates, clearly identifying estimated figures in italics. Figures in all columns must be on the same basis to allow a direct, year-on-year comparison to be made (or, if the basis has changed, an explanation of the change must be provided as a footnote to the table). Any clarification or explanation which is judged necessary may also be provided.

Financial data	Year before last P	Last year P	This year P	Next year P	Average ⁴ P
Annual turnover , excluding this contract					
Cash and cash equivalents at beginning of year					
Net cash from / (used in) operating, investing & financing activities excluding future contracts					
Net forecast cash from/ (used in) future contracts, excluding this contract					
Cash and cash equivalents at end of year [i.e., the sum of the above three rows]					

³ If this application is being submitted by a partnership/joint venture, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members – see point 7 of this tender form for a supply contract.

⁴ Amounts entered in the 'Average' column must be the mathematical average of the amounts entered in the four preceding columns of the same row.

⁵ The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

⁶ Cash and cash equivalents comprise cash on hand and demand deposits, together with short-term, highly liquid investments that are readily convertible to a known amount of cash and that are subject to an insignificant risk of changes in value. An investment normally meets the definition of a cash equivalent when it has a maturity of three months or less from the date of acquisition. Equity investments are normally excluded, unless they are in substance a cash equivalent (e.g. preferred shares acquired within three months of their specified redemption date). Bank overdrafts which are repayable on demand and which form an integral part of an enterprise's cash management are also included as a component of cash and cash equivalents.

⁷ **Operating activities** are the main revenue-producing activities of the enterprise that are not investing or financing activities, so operating cash flows include cash received from customers and cash paid to suppliers and employees.

Investing activities are the acquisition and disposal of long-term assets and other investments that are not considered to be cash equivalents. **Financing activities** are activities that alter the equity capital and borrowing structure of the enterprise. Interest and dividends received and paid may be classified as operating, investing, or financing cash flows, provided that they are classified consistently from period to period. Cash flows arising from taxes on income are normally classified as operating, unless they can be specifically identified with financing or investing activities.

6 EXPERIENCE

Please complete a table using the format below to summarise the **major relevant supplies** carried out in the course of the past **3** years by the legal entity or entities making this tender. The number of references to be provided must not exceed 3 for the entire tender **Ref #** (maximum 3)

Project title ...

Name of legal entity	Overall supply value(BWP)	Proportion supplied by legal entity %	Name of client	Origin of funding	Dates	Name of members, if any
Detailed description of supply				Related services provided		

7 TENDERER'S DECLARATION(S)

To be completed and signed by the tenderer (including one from each member in a Partnership/joint venture).

In response to your letter of invitation to tender for the above contract, we, the undersigned, hereby declare that:

1 We have examined and accept in full the content of the dossier for invitation to tender Noof <date>. We hereby accept its provisions in their entirety, without reservation or restriction.

2 We offer to deliver, in accordance with the terms of the tender dossier and the conditions and time limits laid down, without reserve or restriction:

The procurement, supply and delivery of IT equipment:

- Lot 1:** 215 desktops
- Lot 2:** 90 UPS (Uninterruptible Power Supply)
- Lot 3:** 105 printers
- Lot 4:** 65 Wireless Access Points

3 The price of our tender **excluding** spare parts and consumables, if applicable [*excluding the discounts described under point 4*] is:

- Lot No 1: [.....]
- Lot No 2: [.....]
- Lot No 3: [.....]
- Lot No 4: [.....]

4 We will grant a discount of [%], or [P.....] *in the event of our being awarded Lot No 1 and Lot No 2.*

5 This tender is valid for a period of 90 days from the final date for submission of tenders.

6 If our tender is accepted, we undertake to provide a performance guarantee of 10%, as required by Article 10 of the General Conditions.

7 Our firm/company has/have the following nationality:

<.....>

8 We are making this tender in our own right [**as member in the partnership/joint venture** led by < name of the leader / ourselves >]*. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a member in the consortium, that all members are jointly and severally liable by law for the execution of the contract, that the lead member is authorised to bind, and receive instructions for and on behalf of, each member, that the execution of the contract, including payments, is the responsibility of the lead member, and that all members in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's execution].

9 We are not in any of the situations excluding us from participating in contracts which are listed in Article 3 of the instructions to tenderers. In the event that our tender is successful, we undertake, if required, to provide the proof usual under the law of the country in which we are established . The date on the evidence or documents provided will be no earlier than 1 year before the date of the notification of award, in addition, we will provide a sworn statement that our situation has not altered in the period which has elapsed since the evidence in question was drawn up.

We also understand that if we fail to provide this proof or evidence of the financial and economic capacity and the technical and professional capacity according to the selection criteria within 5 calendar days after receiving the notification of award, or if the information provided is proved false, the award will be considered null and void.

10 We agree to abide by the ethics clauses in Clause 37 of the instructions to tenderers and, in particular, have no potential conflict of interests or any equivalent relation in that respect with other candidates or other parties in the tender procedure at the time of the submission of this application.

11 We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by PEPFAR.

12 We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.

Name and first name: <[.....]>

Duly authorised to sign this tender on behalf of:

<.....>

Place and date: <.....>]

Stamp of the firm/company:

This tender includes the following annexes:

[*Numbered list of annexes with titles*]

C. FURTHER INFORMATION

GLOSSARY

Successful tenderer: The tenderer selected at the end of the procedure for the award of the contract.

Contracting Authority: The party which concludes the contract as provided in the Financing Agreement, be it the Commission for and on behalf of the beneficiary, a country or a legal person governed by public or private law, as mentioned in the financing agreement.

Project Manager: The legal or natural person responsible for monitoring the execution of the contract on behalf of the Contracting Authority and/or the Commission, where the latter is not the Contracting Authority.

Supplies: All items which the Contractor is required to supply to the Contracting Authority, including, where necessary, services such as installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under the contract.

Hybrid contract: A contract between the contracting authority and a service provider, supplier or construction firm covering two or more of the following: works, supplies and services.

General conditions: The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

Special conditions: The special conditions laid down by the Contracting Authority as an integral part of the tender dossier, including modifications to the general conditions, clauses specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

Evaluation committee: A committee made up of an odd number of voting members (at least three) appointed by the Contracting Authority and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

Written communications: Certificates, notices, orders and instructions issued in writing under the contract.

Administrative/Purchase order: Any instruction or order issued by the Project Manager to the Contractor in writing regarding the provision of the supplies.

Conflict of interest: Any event influencing the capacity of a candidate, tenderer or contractor to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or contractor, or any conflict with his own interests.

Breakdown of the overall price: A heading-by-heading list of the rates and costs making up the price for a lump-sum contract.

Period: A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day in the country of the Contracting Authority, the period expires at the end of the next working day.

Implementation period. The period from contract signature, or alternative date if specified in the Special Conditions, until the provisional acceptance of the supply.

Execution period. The period from contract signature until 18 months after the provisional acceptance of the supply. This period includes the warranty and the final acceptance of the supply.

Day: Calendar day.

In writing: This includes any hand-written, typed or printed communication, including telex, cable, e-mail and fax transmissions.

Supply contract: Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

Foreign currency: Any currency, other than the BWP, which is permissible under the applicable provisions and regulations and has been indicated in the tender.

National currency: The currency of the country of the Contracting Authority.

Tender price: The sum stated by the tenderer in its tender for carrying out the contract.

Contract value: The sum stated in the contract representing the initial estimate payable for carrying out the supplies, or such other sum as ascertained at the end of the contract as due under the contract.

Most economically advantageous tender: The tender deemed to be best in terms of the specific criteria laid down for the contract in question, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance and the price or lowest price. These criteria must be published in the procurement notice or stated in the tender dossier.

Tenderer: Any natural or legal person or consortium thereof submitting a tender with a view to concluding a contract. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operators, natural or legal persons, who supply products, execute works and provide services respectively.

Open procedure: Calls for tender are open where all interested economic operators may submit a tender.

Liquidated damages: The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

General damages: The sum not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

Warranty obligations: The warranty of the Contractor that the supplies are new, unused, without defects, of the most recent models and incorporate all recent improvements in design and materials. This warranty must remain valid for a maximum of 1 year after provisional acceptance. See article 32 of the General Conditions.

Commercial warranty: The warranty the manufacturer provides for a defined period that the supply will be free from structural defects due to substandard material or workmanship, under conditions of normal commercial use and service. The Commercial warranty should not be confused with - and might go beyond - the warranty period of the contract.

FINANCIAL IDENTIFICATION

ACCOUNT HOLDER

NAME:.....

ADDRESS:.....TOWN/CITY /VILLAGE:.....

VAT NUMBER:.....

CONTACT PERSON:.....TELEPHONE FAX:.....

E – MAIL:.....

BANK

BANK NAME:.....

BRANCH ADDRESS:.....

TOWN/CITY /VILLAGE:.....

COUNTRY:.....

ACCOUNT NUMBER:.....

IBAN

REMARKS:

BANK STAMP

SIGNATURE of BANK REPRESENTATIVE:.....

DATE AND SIGNATURE of ACCOUNT HOLDER:.....

(Both Obligatory) (Obligatory)