

**CONTRACTUAL AGREEMENT FOR SUPPLY OF  
MEDICAL IMAGING CONSUMABLES  
BETWEEN  
MINISTRY OF HEALTH & MEDICAL SERVICES  
AND  
XXXXXXXXXXXXXXXXXX**

**AN AGREEMENT** dated this \_\_\_\_ day of \_\_\_\_\_

**Between:** **MINISTRY OF HEALTH & MEDICALSERVICES** (“the Purchaser”)

**And:** **XXXXXXXXXXXXX**  
**(“the Supplier”)**

(herein called the “Parties”);

*Recitals*

- A. The Purchaser requires the supplier to supply **“Medical Imaging Consumables”** under this agreement.
- B. The supplier is **XXXXXX**
- C. In XXXX the Purchaser called for tender submissions for the provision of a specified list of Goods was determined through the tender process and the Supplier was the successful awardee for the above tender.
- D. In reliance upon the representations made by the Supplier during and after the tender process, the Purchaser has selected the Supplier to provide the specified Goods as defined in this agreement to the Purchaser with the terms and conditions of this agreement.

**Definitions and Interpretation**

In this agreement, unless the context otherwise requires:

1. **“Authorized Officer of the purchaser”** means the individual(s) responsible for placing purchase orders for Goods.
2. **“Supplier’s Representative”** means the person appointed by the supplier who is the duly authorised representative of the supplier for all purposes connected with this agreement and any purchase order agreement and who is identified in sub clause 9.7 or any person who is subsequently appointed by the supplier and notified in writing to the purchaser.
3. **“Goods”** means the goods to be supplied by the supplier pursuant to the terms and conditions of this agreement and more particularly described in Schedule 1.
4. **“Currency”** in this Agreement refers to the Fijian dollars
5. **FPBS** – stands for Fiji Pharmaceutical & Biomedical Services
6. **FPO** – Fiji Procurement Office
7. **FOB** – stands for Freight on Board
8. **CNF/CIF** – stands for Cost and Freight/Cost Insurance Freight

A reference to a clause or schedule means a clause or Schedule of this agreement.

The schedules form part of this agreement.

## THE PARTIES NOW AGREE AS FOLLOWS:

### 1.0 Agreement Period

#### 1.1 Commencement and Expiry Date – Time is of Essence

- a) This Agreement commences xx day of xxxxxxxx(month, year) and concludes on xxxx day of xxxxx,xxxx unless otherwise terminated or extended in accordance with this Agreement. This Agreement replaces all previous arrangements and agreements, which the purchaser may have with the supplier in relation to the supply of goods.

### 2.0 Appointment and Duties of the Supplier

#### 2.1 Appointment of the Supplier

- a) The Purchaser engages the supplier to supply the Goods.
- b) The Goods shall be supplied at the unit prices stated in Schedule 1 as a standing offer for the period of this agreement in accordance with the terms and condition contained in this document;
- c) The unit prices are fixed for the period of this agreement unless stated otherwise in Schedule 1;
- d) The supplier will be required to submit a Performance Bond in the form of a Bank Guarantee through the FPO to local Bank, Westpac Banking Cooperation, or at a Bank acceptable to the Purchaser, at the time of executing the agreement.

| Award Total in Currency | PB in FJD |
|-------------------------|-----------|
| \$xxxxx                 | \$xxxxx   |

The amount will be held as security against any default in supplying of goods against the specifications or quantity as in the purchase order and delivery of goods on time as will be specified by the Purchaser,. The Performance Bond will be released at the expiry of this Agreement if unused. The Performance Bond shall be deposit in the following bank details;

Government Supplies Trust Account  
Westpac Banking Corporation  
1 Thomson Street  
Suva  
**Account number: 9802057886**

- e.) Any delay by the Supplier in supplying the goods after the specified date of delivery in the Agreement would entitle the Purchaser to deduct \$100 per day.

## 2.2 *Supply of Goods*

During the period of this agreement, the Supplier must:

- a) Supply the Goods when required by the Purchaser,;
- b) The Supplier acknowledges that from time to time, the Purchaser may purchase a particular good from the Supplier or another supplier if the Supplier cannot supply according to the specification, price, quantity and delivery time. The Supplier will bear the reasonable difference in total cost compared to the Agreement price upon further agreement with the Purchaser ; and
- c) The Supplier acknowledges that the order patterns from the Purchaser vary and that the volumes indicated in the tender are annual estimates only.

Actual order volumes contained in purchase orders will reflect required demand.

## 3.0 **Purchase Plan for Selected Items from Schedule 1.**

3.1.1 The Purchaser in consultation with the Supplier will issue a Purchase Plan for selected essential medicine from the list in Schedule 1 over the contract period (3 year period).

3.1.2 The Purchase Plan will detail the supply of goods at a specified: quantities, at approved tender price and at specified delivery times over the contract period.

3.1.3 However the purchaser reserves the right to vary the Purchase Plan in accordance with it's requirements.

3.1.4 The Purchaser and Supplier have to come into an Agreement before initiating supply of selected essential medicine on the Purchase Plan. The Purchase Order Agreement is stipulated in clause 3.2

### **3.1 *Terms of Purchase Order Agreement***

#### **3..1 *Formation of purchase order agreement***

- a) When the Purchaser, requires the Supplier to provide one or more of the Goods in schedule 1, the purchase order must be delivered to the Supplier.
- b) The Purchase order should clearly state the item description, quantity required, unit cost as contracted price, and the preferred specified time for delivery.

#### **3.2. *Special conditions of purchase order***

- a) All purchases by the Purchaser are to be delivered as directed by the Purchaser.
- b) If the Supplier does not accept the special conditions, it must notify the authorised Officer within 5 days of receipt of Purchase Order.

- c) If the Supplier does not notify the authorised Officer within 5 working days of the purchase order containing the special conditions, it is deemed to have accepted the purchase order.

#### **4.0 Delivery of the Goods**

##### *4.1 Cost of packaging, insurance and delivery of the Goods*

- a) The Supplier must bear all the costs involved in packing, storing and delivery of the Goods.
- b) The Supplier must also bear the costs of insuring the Goods under goods in transit policy with a reputable insurer.

##### *4.2 Delivery*

- a) Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in this contract. The details of shipping and/or other documents to be furnished by the Supplier are specified in clause 4.3.
- b) For purposes of this Agreement, “**FOB**,” “**CNF**,” or “**CIF**,” and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of *Incoterms* published by the International Chamber of Commerce, Paris.
- c) The fixed time period of delivery of the goods will be specified in the purchase orders after consultation with the Supplier.

##### *4.3 Documents*

The Supplier will dispatch the following documents to the Purchaser:

- a) Commercial invoice
- b) Packing list
- c) Certificate of origin
- d) Manufacturer’s certificate
- e) Lab Test or other relevant technical documents
- f) Fumigation Certificate (if applicable)

The documentation details will read as follows

Consignee:                      Fiji Pharmaceutical Biomedical Services  
   Lot 1 Jerusalem Road, Vatuwaqa  
   P.O Box 106,  
   SUVA  
   Fiji  
   Tel: +679 338 8000  
   Fax: +679 338 8003

#### 4.4 *Transportation*

- a) The Supplier is required under the Agreement to deliver the goods CIF (Delivery Point) undertaking full responsibility of the custody of the goods from point of departure to the port of Arrival that is either to Nadi International Airport or Suva seaport.
- b) For local suppliers; parties acknowledge that on occasion, the supplier receives goods at its location with its own supplies. In those instances, the supplier undertakes to deliver the Goods at its own responsibility and risk to the Purchaser in the required condition.

#### 4.5 *Delivery in Excess Quantity or at wrong destination*

- a) If the Supplier delivers goods in excess of the amount specified in a purchase order, the Purchaser will hold them at the Supplier's risk. The Purchaser does not accept any responsibility for any goods delivered to a place or at a time not specified in a purchase order.
- b) If the Supplier delivers to the wrong place or at the wrong time and additional cost is incurred is the responsibility of the Supplier.

#### 4.6 *Short supply / or delivery*

- a) In the event a Supplier is unable to supply to the Purchaser the required goods /product at the specified date and time, the supplier should inform the Purchaser immediately.
- b) The Purchaser can seek an alternative supplier to the goods/ products as therein required.
- c) In the event there is a difference (s) in price (s) as agreed to between the Supplier and the purchaser the differences in price(s) shall be met by the Supplier.
- d) If the Supplier is unable to supply the goods as specified in this clause, the Purchaser would be entitled to claim damages and such amount can be deducted from the Performance Bond, kept with the Purchaser.

#### 4.7 *Standard*

The Goods must meet the requirements and standards set out in **Schedule 1**. In addition, the following rules apply:

- a) The Goods must be accompanied with the required instructions, and other technical documents;
- b) All Goods must comply with standard specification.
- c) When Goods are evaluated and accompanied by the sample, the accompanying sample must be consistent to the supplied goods.

- d) If there is any inconsistency between the requirements of **Schedule 1** the requirements of this clause, the provisions of this clause shall prevail.
- e) Supplier's performances are measured according to their ability to comply with the required standard.
- f) A minimum level standard is herein attached and marked as **Schedule 2**. The minimum standard will be set and performance against this minimum standard regularly monitored.
- g) Failure to meet and comply with the required standard will result in the termination of the agreement forthwith.
- h) Any substituted goods in place of the actual goods awarded needs to be approved by the Purchaser or the Government Tender Board.

#### 4.8 1) *Warranties by the Supplier*

The Supplier warrants each of the following in relation to Goods supplied under a purchase order.

- a) The Goods are of merchantable quality, made of good material and workmanship, free from defect;
- b) The Goods are fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Supplier;
- c) The Purchaser is not liable for any infringement in the sale of goods, and the rights of any person, including patents, trademark, designs, and copyrights; and
- d) The Supplier will deliver the Goods to the Purchaser in the contracted quantity and at the contracted time.
- e.) All warranties made by the Supplier in this Agreement shall be considered to have been relied upon by the Purchaser and shall survive the execution and delivery of this Agreement.

#### 4.9 *Acceptance and Rejection of Goods*

- a) Goods delivered in accordance with this Agreement are only accepted when an appropriate representative of the Purchaser has inspected them. The Purchaser may reject goods, if they are defective or are not in accordance with the requirements of this Agreement or as notified to the Supplier by the Purchaser in the Purchase Order on the Condition that Goods are stored by the Purchaser upon delivery in accordance with the required conditions (see Schedule1 ...). The Supplier is liable for any loss or damage suffered or incurred by the Purchaser in relation to Goods that are rejected.
- b) The Purchaser must promptly inform the Supplier of the rejection of Goods.
- c) The Purchaser at the Supplier's risk holds goods that are rejected.



**5.0 Invoicing and payment****5.1 Price**

- a) The price for the Goods will be based on the unit prices set out in Schedule 1 and shall be stated in the purchase order.
- b) Unless otherwise stated, prices tendered shall include all applicable costs, in respect of the Goods.
- c) The Supplier is responsible for any variation.

**5.2 Payment**

- a) The Purchaser will make payment upon receipt of the required goods at the Purchaser warehouse in the right quantity and at the right time, in accordance with the relevant Purchase Order, not more than the amount and currency bided in the tender, within 30 days from receipt of goods at FPBS warehouse. Payment will be made in accordance with the approval sum in the Government Tender board approval.

**5.3 Disputed claims for payment**

If the Purchaser Authorised Officer disputes the whole or any portion of the amount stated in the invoice:

- a) The Purchaser will pay that portion of the invoice that is not in dispute. The authorised Officer must notify the Supplier in writing of the reasons for disputing the remainder of the invoice;
- b) If the authorised Officer and the Supplier's Representative are unable to agree, the dispute will be dealt according to Law of Fiji

- 5.4 If there changes in price as long as the payment made to these prices remain the same approved by the Government Tender Board any increase in payment requires approval by the Government Tender Board.

**6.0 Other obligations of the Supplier****6.1 Maintenance**

- a) In the event a warranty is issued by the manufacturer in relation to goods and services, the Supplier must ensure that the warranty is made known to the Purchaser.

**6.2 Patent Rights**

- a) The Supplier shall indemnify the Purchaser against all third –party claims of infringement, of patent, trademark, of goods and services, or any matter in relation to intellectual property.

**6.3 Insurance**

- a) The Supplier must at all times have a valid Insurance cover for both the contracted goods and personnel involved in the delivery of the goods.

#### 6.4 *Supplier's indemnity*

- a) The Supplier must indemnify the Purchaser against any claim and liability, incurred for loss, damage or expense incurred or suffered as a direct result of the loss for the term of the agreement.

#### 6.5 *Corrupt Practices*

- a) The Supplier shall not:

- A. Offer or give or agree to give any person employed by the Ministry any gift or consideration of any kind as an inducement or regard of doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of this or any other Agreement with the Ministry or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Agreement with the Ministry; or

- B. Enter into this Agreement with the Ministry or any other Department of the Ministry in connection with which has been paid or agreed to be paid by him or her on his or her behalf, or to his or her knowledge, unless before the Agreement is made particulars of any such commission and of the terms and condition of any agreement for the payment therefore have been disclosed in writing to the representative of the Ministry.

- b) Any breach of this conditions, whether with or without the knowledge of the Supplier or the commission of any offence under the Crime Decree 2009 by the Supplier or by anyone employed by it or acting on its behalf, shall entitle the Ministry to terminate the Agreement and recover from the Supplier the amount of any loss resulting from such determination and/or to any such gift, consideration or commission.

- c) If any dispute arises, the amount recoverable from the supplier in respect of any loss resulting from such determination of the Agreement, the right of the Ministry to determine the Agreement, or the amount or value of any, consideration or commission shall be decided by the Ministry whose decision shall be final and conclusive.

### **7.0 *Dispute or Cancellation of Agreement***

#### **7.1 *Arbitration and Mediation***

- a) If a dispute arises between the Purchaser and the Supplier in relation to this agreement, the Purchaser and the Supplier shall make every effort to resolve the dispute amicably by direct informal negotiation.
- b) That in the event the parties are unable to resolve the dispute between themselves that the parties shall appoint a single arbitrator to be agreed by the parties to determine the matter in accordance with the Arbitration Act Cap 38.
- c) If, after 30 days from commencement of informal negotiation the Purchaser and the supplier have been unable to resolve the dispute, the parties may refer the dispute to the Court of Law.
- d) In the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be governed by the Laws of Fiji.
- e) Pending determination of any dispute under this agreement the parties in dispute agree that they will continue to adhere to and perform all of their respective obligations under this Agreement.

## 7.2 *Termination*

- a) The Purchaser may terminate this Agreement and any purchase order immediately by notice to the Supplier if any of the following transpires.
  - i. Anything that reasonably indicates that there is a significant risk that the Supplier will be declared bankrupt.
  - ii. Execution of distress being levied against any income or assets of the Supplier, or the company as the case may be.
  - iii. Where a meeting of the Supplier's creditors are being called or held, a floating charge becoming fixed or a security becoming enforceable, or a security being enforced on the Supplier's assets or undertakings.
  - iv. Where proceedings in Bankruptcy are initiated against the Supplier for his personal assets, or proceedings is initiated against the company to wind up the company pursuant to the it's respective laws.
  - v. Where an administrator or controller is appointed for the benefit of creditors and the Supplier is subject to a deed of arrangement with its creditors.
  - vi. Where the Supplier ceases or it indicates that it will cease business forthwith.
  - vii. Performance of the Supplier is disputably unresolved and not satisfactorily meeting the Purchaser Key Performance Indicators described in Schedule 2.
- b) Either party can at any time without having to provide reasons terminate the Agreement upon one months notice in writing duly served on the other party.

### 7.3 *Consequence of breach*

- a) Notwithstanding the above if one of the events in clause 7 occurs, the Purchaser, without prejudice, to any of their other remedies under this Agreement and without prejudice to any rights of action which shall accrue or shall have already accrued, the Purchaser, suspend payment to the Supplier and retain any amounts due to the Supplier pursuant to this Agreement or otherwise.

### 7.4 *Termination of purchase order agreement*

- a) Termination of a purchase order does not terminate this Agreement.

## 8.0 **Product Recall**

### 8.1 *Pharmaceutical Recall*

- a) In the event that the Supplier is required to recall the item or a particular batch of the item, the Supplier will notify the Purchaser immediately so the Purchaser becomes aware of the need to recall the item or the Purchaser can advise the Supplier on the need to recall an item given that the goods are not in accordance with the agreement between both parties.
- b) Where goods are recalled the Supplier will replace the goods at no cost to the Purchaser. Replacement goods will be provided urgently. Where the Supplier is unable to supply replacement goods within an acceptable time the Purchaser may purchase an alternative good elsewhere. Any reasonable additional costs incurred by the Purchaser will be recoverable from the Supplier as per 2.2. above.
- c) Any decision relating to a recall of the Goods (including any decision relating to the initiation or implementation of strategy relating to a recall of the Goods) will be made at the Purchaser's discretion.
- d) In the event of product recall, the Purchaser may implement or take any action in relation to a recall of the Good without the Supplier's prior consent and without liability.
- e) Procedures relating to a withdrawal of the Goods, recall and tampering and records necessary to support a recall of the Goods, shall be made available for inspection by the Supplier upon reasonable notice to the Purchaser.

### 8.2 *Shelf Life of Goods Supplied*

- a) The Supplier will not supply goods with unacceptably close "use by / expiry dates". An unacceptable use by / expiry date is one where in the normal course of events the Goods could not be used before the use-by date within the Purchaser's usual stock holding period. In general this period will be **NOT LESS THAN 75% OF ITS SHELF LIFE** from the date of receipt at the Purchaser. The expiry date will not take into account the time of delivery.

- b) The Purchaser may accept shorter expiry dates at its discretion.
- c) Where goods are delivered with unacceptably close expiry dates the Supplier will replace the goods at no cost to the Purchaser. Replacement goods will be provided urgently. Where the Supplier is unable to supply replacement goods within an acceptable time the Purchaser may purchase an alternative good elsewhere. Any reasonable additional costs incurred by the Purchaser will be recoverable from the Supplier from the Performance Bond as per 2.2. above.

## **9.0 Miscellaneous**

### **9.1 *Prior representations***

- a) That the Supplier warrants that all information as referred to in their tender application can be construed to be true and correct and that the Purchaser can relate to the information therein supplied.

### **9.2 *Force Majeure***

- a) Except for payment due to the supply of goods delivered by the Supplier, neither party shall be liable to the other party for any failure or delay in performance of all or part of this Agreement, if such failure or delay is caused by any reason or circumstances, directly or indirectly, beyond its reasonable control including but not limited to acts of GOD, earthquake, storms, flood, drought, fire, unusual severe weather, governmental orders, regulations or restriction, war, threat of war, war-like conditions, act of terrorism, armed conflict, explosions, hostilities, sanctions, blockage, embargo, revolution, civil disturbance, riot, looting, strike or other labour dispute, lockout, plague or other epidemics, chemical or radioactive contamination, utility failure.
- b) Upon the occurrences of any Force Majeure Event, the affected party shall notify the other party of such event and any further developments within reasonable time period.
- c) If the affected party's inability to perform this Agreement continues for more than thirty (30) consecutive calendar days, either party may terminate this agreement by written notice to the other party

### **9.3 *Variation***

Any variation, whatsoever to this Agreement may only be made by written agreement between the parties. Each party will give due consideration and not unreasonably delay a considered response to any proposals for variation made by the other party.

### **9.4 *Waiver***

- a) A written waiver by the Purchaser is only effective in relation to the particular obligation or breach in respect of which it is given.
- b) It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

### 9.5 *Assignment and sub-contracting*

- a) The Supplier may only assign any of its rights under this Agreement with the Purchaser prior written consent.
- b) The Supplier must not sub-contract the Purchaser work without the written consent of the Purchaser. This consent will not be unreasonably withheld.

### 9.6 *Governing Law*

This agreement shall be construed in all respects by the Laws of Fiji

### 9.7 *Notices to the Supplier*

- a) Any notice required to be given to the Supplier under this Agreement must be in writing and must be served on the Supplier
- b) The person serving the notice must do an Affidavit of Service. The Affidavit of Service must be filed with the Purchaser within 14 days from the date of service.

*Name of the Supplier's Representative:*

**Namexxxx**

**Designation-xxxxx**

### 9.8 *Notices to FPBS*

- a) Any notice to be given to the Purchaser under the Agreement must be in writing. The notice is served at the time it is given or delivered.

*Name of FPBS's Authorized Officer:*

**Mr. Apolosi Vosanibola**

**Chief Pharmacist**

### 9.9 *Moneys*

All reference to moneys in the Agreement will be deemed to be references to the Currency specified in the Definitions and Interpretations section of this Agreement.

### 9.10 *Severe*

If any part of this agreement is invalid or unenforceable, this will not affect the remaining clauses. The remainder of this Agreement will continue to be in force.

### 9.11 *Entire Agreement*

This agreement contains all the provisions and includes all attachments hereto agreed by the parties shall not be bound by, or be liable for, any statement, representation, or promise or Agreement made by a party or any employee of a party outside the terms of this Agreement

**Execution of Agreement**

The Parties have executed this Agreement as follows:

|  |               |
|--|---------------|
| <b>Signed</b> for the Government of Fiji       | )             |
| .....  | )             |
| (Permanent Secretary of Health)                | )             |
| this ..... day of ....., 201...                | ) (Signature) |
| in the presence of:                            | )             |
| .....  | )             |
| (Full Name of Witness)                         | )             |
|  | )             |
|  | ) (Signature) |
| <b>Signed</b> for and on behalf of             | )             |
| .....  | )             |
| (Full Name of Supplier)                        | )             |
| by   | )             |
| .....  | )             |
| (Full Name of Signatory)                       | ) (Signature) |
| .....  | )             |
| (Designation)                                  | )             |
| .....  | )             |
| Who certifies that he/she has the authority to | )             |
| so sign,                                       | )             |
| This ..... Day of ....., 201...                | )             |
| in the presence of:                            | )             |
| .....  | )             |
| (Full Name of Witness)                         | ) (Signature) |

**The Common Seal** of <Name of Supplier>  
was Affixed hereby;

|   |   |
|---|---|
| ..... in                                | ) |
| accordance with its Constitution in the | ) |
| presence of:                            | ) |
|   | ) |
| Director (Print)                        | ) |
|   | ) |
|   | ) |
| Secretary (Print)                       | ) |



**Schedule 1 - Goods & Price List and Good Specifications**

The Supplier must provide the Goods listed in the User Guide attached for the unit prices specified for a period of 2 years with an option to extend for a further 12 months

*Award List Attached*

**Schedule 2 – Supplier Key Performance Indicators (KPIs)**

There is a need to ensure that all current suppliers can perform to a satisfactory level and meet the needs of the Purchaser for the supply of materials. This process will be based on measurable criteria which are recorded and reviewed with Suppliers on a quarterly basis. The criteria should be based on standards agreed to during the agreement process.

The following KPIs will be used for the purpose of managing supplier performance or compliance to the following KPIs:

- Supplier order accuracy compliance – quality and quantity compliance
- Supplier On time delivery
- Supplier price and reliability compliance
- Damages

**Instructions**

1. a. Order accuracy measures the percentage of products that were received without error out of all lines shipped during a defined period of time.  
b. On Time delivery measures the percentage of all orders delivered by the requested delivery date as in the purchase order.  
c. Price and reliability measures – percentage of all order lines raised with adjusted cost from initial awarded cost.  
d. Damages – measures the percentage of all orders that received at the Purchaser damaged.

2. Formula for measuring total compliance:

Number of orders meeting all criteria defined in purchase orders

Total number of orders fulfilled

3. The Purchaser will provide a quarterly report to Supplier on KPI performances of the period.
4. The Purchaser will reserve the right to terminate the Agreement if the performance of the Supplier is disputably unresolved as stipulated in Clause 7 of the Agreement.