



TENDER DOCUMENT -SALE OF ASSETS AS ONE INDIVISIBLE TRANSACTION

concluded between

The Trustees of

HBM-SA Health Protection (Pty) Ltd

Registration Number: 2014/167399/07

("HBM")

("the Seller")

and

THE PARTY DEFINED IN THE TENDER DOCUMENT AS THE "PURCHASER"

PART A: INTERPRETATION AND PRELIMINARY

1. DEFINITIONS

The headings of the clauses in this Tender Document are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Tender Document no any clause hereof. In this Tender Document, unless the context requires otherwise:

Words importing –

- 1.1.1. the masculine gender shall include the feminine gender and neuter genders and *vice versa*;
- 1.1.2. the singular include the plural and *vice versa*; and

- 1.1.3. persons include natural persons, created entities (corporate and unincorporated) and the State and *vice versa*.
- 1.2. Each of the following terms shall have the meaning assigned to them in the body of this Tender Document (in each case, in the clauses indicated in brackets after the term) and cognate expressions shall have corresponding meanings: “**Act Of Default**” (clause 16.1); “**Formula**” (clause 12.2); “**Offer**” (clause 4.1); “**Peter Maskell Auction Valuation**” (clause 12.2.1); “**Related Person**” (clause 15.2); “**Signatory**” (clause 27.2); and “**VAT**” (clause 8).
- 1.3. In addition, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
- 1.3.1. “**Acceptance Date**” shall mean the date on which this Tender Document is signed by the Seller in acceptance of the Offer, which date shall be no more than 5(five) business Days after the Submission Date.
- 1.3.2. “**Buyers Commission**” shall mean 10% plus VAT of the purchase price of the Subject matter defined in paragraph 1.3.16 below.
- 1.3.3. “**Due Date**” shall mean 7 Days after the Acceptance Date.
- 1.3.4. “**Deposit**” shall mean an amount equivalent to 10% of the full Purchase Price inclusive of VAT (if applicable) payable by way of bank guaranteed cheque or EFT to the account nominated by Peter Maskell’s Auctions in clause 7.1.
- 1.3.5. “**Days**” shall mean week days excluding any public holidays.
- 1.3.6. “**Effective Date**” shall mean the date on which the Purchase Price is fully and finally paid to the satisfaction of the Seller.
- 1.3.7. “**ENS Africa**” means the firm of attorneys appointed to represent the Mortgagee being KZN Growth Fund in the matter of KZN Growth Fund vs HBM-SA Health Protection (Pty) Ltd Registration Number: 2014/167399/07.

- 1.3.8. **"Parties"** means collectively the Sellers and the Purchaser, and includes an individual reference to any one or more of them, as the context may require.
- 1.3.9. **"Premises"** shall mean the premises location on the Cnr of Mhlathuza & Mzimkhulu, La Mercy, Dube Trade Port, Kzn.
- 1.3.10. **"Prime Rate"** shall mean the publicly quoted rate at which Standard Bank Limited, lends to its ordinary clients in the private sector on overdraft from time to time.
- 1.3.11. **"Purchase Price"** shall mean the Price payable by the Purchaser to the Seller is the sum inserted by the Purchaser, where provided in for in clause is indicated in clause 3.
- 1.3.12. **"Purchaser"** shall mean the person, entity, partnership, company, close corporation or body corporate whose name and other relevant details are inserted as purchaser below:
- Name: _____
- Registration/Identity No.: _____
- who signs this Tender Document or on whose behalf this Tender Document is signed as an offer to purchase the Subject Matter.
- 1.3.13. **Rand** or **"R"** means the lawful currency of South Africa.
- 1.3.14. **"Seller"** shall mean HBM-SA Health Protection (Pty) Ltd
Registration Number: 2014/167399/07
- 1.3.15. **"South Africa"** means the Republic of South Africa.
- 1.3.16. **"Subject matter"** shall mean
- 1.3.16.1. the movable assets indivisibly, as identified by the Purchaser in Annexure A hereto;
- 1.3.17. **"Submission Date"** shall mean 12 noon on 31 August 2022.

- 1.3.18. **"Tender Document"** shall include this document and all annexures and other documents that may be specifically incorporated by reference herein.
- 1.3.19. **"VAT"** means value-added tax, as levied in terms of the VAT Act, as amended from time to time.
- 1.4. Any reference in this Tender Document to a statutory provision is to that statutory provision as at the Signature Date and as amended or re-enacted or replaced from time to time, and includes any subordinate legislation made from time to time under such enactment.
- 1.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Tender Document.
- 1.6. When any number of days is prescribed in this Tender Document, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Day, in which case the last day shall be the next succeeding Day.
- 1.7. Expressions defined in this Tender Document shall bear the same meanings in schedules or annexures to this Tender Document which do not themselves contain their own conflicting definitions.
- 1.8. The use of any expression in this Tender Document covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Tender Document is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.
- 1.9. Where any term is defined within the context of any particular clause in this Tender Document, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Tender Document, notwithstanding such that term has not been defined in this interpretation clause of the Tender Document.

- 1.10. The expiration or termination of this Tender Document shall not affect such of the provisions of this Tender Document as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.11. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.12. Any reference in this Tender Document to a Party shall include a reference to that Party's assigns expressly permitted under this Tender Document and, if such Party is liquidated, sequestrated or placed under business rescue, be applicable also to and binding upon that Party's liquidator, trustee or business rescue practitioner, as the case may be.
- 1.13. Any reference in this Tender Document to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.14. The words "**include**", "**including**", "**in particular**", "**other**" and "**otherwise**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the meaning or generality of any preceding word/s (and as such the *eiusdem generis* rule shall not apply).

PART B: TENDER CONDITIONS

2. TENDER CONDITIONS

- 2.1. The only offers to purchase the Subject Matter which need be considered by the Seller, are those which are submitted on this Tender Document especially prepared for this purpose by the Seller, and accordingly no tender or Offer which:
- 2.1.1. is made on any Tender Document other than this Tender Document obtained from the Seller; and/or
- 2.1.2. seeks to impose any conditions or provisions in addition to or at variance with the conditions and provisions contained in this Tender

Document need be considered by the Seller unless the Seller acting in its own entire discretion decides otherwise.

The Seller shall –

2.2.1. not be obliged to accept the highest or any particular offer for the Subject Matter or part thereof, made in terms of this Tender Document.

2.2.2. in its sole discretion decide:

2.2.2.1. whether the Seller shall accept any offer or offers for the purchase of the Subject Matter made in terms of this Tender Document; and/or

2.2.2.2. which offer or offers for the purchase of the Subject Matter made in terms of this Tender Document, shall be accepted by the Seller.

2.3. The Purchaser may, by utilising this Tender Document only, or any number of copies of this Tender Document, and by following the tender conditions and instructions referred to herein, offer to purchase the entire Subject Matter of this Tender Document.

2.4. In making an offer to purchase the Subject Matter in terms of this Tender Document, each Tender Document submitted by the Purchaser shall be completed, signed and submitted to the Seller strictly in accordance with the following procedures:

2.4.1. This Tender Document must be completed by the Purchaser inserting all of the particulars required in clauses 1.3.12, 19.1.3 and (if applicable)27.2. In the aforesaid clauses, if the Purchaser is a natural person, s/he shall insert his/her full names, identity number, marital status, physical address (not post box address) and e-mail address. If the Purchaser is a company, close corporation or body corporate, then it shall insert the full name and registration of that entity, together with the full names and identity number of the authorised signatory, as well as the physical address (not box

number) and e-mail address of that entity. Should the Purchaser be a partnership, the full names, identity numbers and email addresses, and physical addresses (not box numbers) of all the partners are required.

- 2.4.2. By delivering and lodging the Deposit simultaneously with the Tender Document.
- 2.4.3. By completing the purchase price in numerals and words in the place specified herein in clause 3, which the Purchaser offers to pay for the purchase of the Subject Matter.
- 2.4.4. In the event of the Purchaser being a company, close corporation or body corporate, this Tender Document must be completed by inserting the full names of the party signing on behalf of the Purchaser, as provided for in clause 27.2, which party is hereinafter referred to as the signatory.
- 2.4.5. By completing the date and place of signature of this Tender Document where provided for, by the Purchaser and the two witnesses, all of who shall initial each page of this Tender Document at the foot thereof.
- 2.4.6. By attaching a certified copy of the authorising resolution, if the Purchaser is a company, a close corporation or body corporate.
- 2.4.7. By delivering this Tender Document, duly completed, initialled and signed as above, in a sealed envelope which must in each case and in respect of each tender be delivered by hand delivery clearly marked "**HBM** – Tender Document" at the following address, on or before 12 noon on 31 August 2022. (being the Submission Date), namely :

c/o J.V HART
SUITE 1, GROUND FLOOR, BLOCK C,
TOWN BUSH OFFICE PARK
460 TOWN BUSH ROAD
MONTROSE

KWAZULU NATAL, SOUTH AFRICA

- 2.4.8. No consideration will be given to any Tender Document which is not delivered timeously in accordance with these provisions and which is not accompanied by the required Deposit.
- 2.4.9. Every Tender Document delivered to the Seller and the contents thereof in each case, shall become the confidential and exclusive property of the Seller who shall open the Tender Documents in the presence of an independent third party.
- 2.4.10. The Seller shall not be obliged to:
- 2.4.10.1. make available the contents of any Tender Document to any person whatsoever;
 - 2.4.10.2. publish the contents of any Tender Document; and
 - 2.4.10.3. make known to any person, save to the relevant Purchaser, the name of the successful tenderer in each case, and/or the price offered for the Subject Matter.
- 2.4.11. The delivery to the Seller of a Tender Document duly completed and signed in terms of this clause, shall and does hereby constitute:
- 2.4.11.1. an Offer which the Purchaser hereby extends to the Seller to purchase the Subject Matter, as inserted and indicated in this Tender Document; and
 - 2.4.11.2. an agreement between the Seller and the Purchaser, in terms of which the Offer shall be and is irrevocable and open and capable of acceptance by the Seller for the period up to and including the Acceptance Date in the manner stipulated below, and which is hereby confirmed by the signature by or on behalf of the Purchaser of this Tender Document.

3. OFFER SCHEDULE

The Purchase Price applicable to the Offer to Purchase the Subject Matter is R _____

(In words: _____
 _____ (set out words and figures)

(Plus Vat as per Clause 8.1 hereunder)

4. THE TENDER OFFER

4.1. The Purchaser hereby offers to the Seller (herein called the “Offer”) to purchase the Subject Matter as one indivisible transaction.

4.2. The Offer is subject to the following terms and conditions:

4.2.1. The Offer is irrevocable and open for acceptance by the Seller at any time up to and including the Acceptance Date.

4.2.2. Acceptance of the offer shall be transmitted to the Purchaser by an acceptance letter dispatched, either by personal delivery to the Purchaser at the address, or e-mail address, set forth by the Purchaser, whose details are set out in Paragraph 19.1.3. Delivery of the acceptance letter shall be deemed to have taken place on date of personal delivery or within 3 Days of dispatch of the letter by pre-paid normal mail or on transmission by the Seller of the e-mail. Proof of such delivery shall be a written receipt by the Purchaser or by production of an e-mail transmission slip from the Seller.

4.2.3. The Offer is subject to confirmation by directions given by creditors at a General Meeting specifically convened for the purposes of giving directions to the ENS Africa either specifically or generally.

5. SALE AND PURCHASE

Upon the proper and timeous acceptance, by the Seller, of the Offer by the Purchaser under this Tender Document (and subsequent confirmation of the acceptance of the Offer by the Master of the High Court, as contemplated in clause 4.2.2), a binding sale of

Subject Matter shall come into force between the Seller and Purchaser, in terms of which the Seller sells to the Purchaser, who purchases the Subject Matter, subject to the terms and conditions contemplated in this Tender Document.

6. PURCHASE PRICE

6.1. The Purchase Price payable by the Purchaser to the Seller is the sum inserted by the Purchaser, where provided in for in clause 3 of this Tender Document.

7. PAYMENT OF THE PURCHASE PRICE

7.1. The Purchaser shall lodge with this tender a deposit equivalent to 10% of the full Purchase Price inclusive of VAT (if applicable) thereon payable to PETER MASKELL`S AUCTIONS CC (the "Auctioneer") by way of a bank guaranteed cheque or EFT into the following bank account:

Peter Maskell Auctions CC

Nedbank

Account No. 1016 693 400

Branch Code: 116-535

Reference: **purchaser's name /HBM***

7.2. The deposit shall be held in the Auctioneer`s Trust Account.

7.3. The deposit shall be refunded within 24 hours after the rejection of the Offer.

7.4. In the event of the Purchaser being successful in its tender, the deposit will be a non-refundable deposit, and should the Purchaser fail to perform in terms of this Tender Document, the said deposit will be dealt with in terms of clause 16 below.

7.5. The Purchaser shall deliver to the Seller`s Agent, by the Due Date, a cash amount equivalent to the balance of the Purchase Price.

7.6. Should the Purchaser fail to comply with clause 7.5, it will result in a material breach and the Seller shall be entitled to exercise their right under clause 16 of this Tender Document.

7.7. The Auctioneer is authorized by the Purchaser to invest all cash payments in an interest-bearing account and interest thereon, shall, from the Effective Date, accrue to the Seller.

8. VAT

8.1. VAT is payable over and above the Purchase Price at the applicable rate.

8.2. In the event that the Purchaser claims that VAT is not payable, he shall;

8.2.1. Initially pay over the VAT to the Purchaser;

8.2.2. the Furnish the Seller with a ruling from the South African Revenue Services of South Africa, confirming that VAT is not payable which ruling shall be acceptable to the Seller;

8.2.3. Thereafter be entitled to a refund of the VAT portion from the Seller within 7 (Seven) days of acceptance by the Seller of the ruling.

9. SUSPENSION OF PASSING OF OWNERSHIP

9.1. Ownership of the Subject Matter sold shall not pass to the Purchaser unless and until the full Purchase Price of the Subject Matter, has been paid together with all interest thereon, has been discharged in full.

9.2. Until date of discharge of the Purchase Price, the Purchaser shall not be entitled to:

9.2.1. alienate, pledge, mortgage or hypothecate any of the Subject Matter acquired by the Purchaser in terms of this Tender Document; and/or

9.2.2. dispose of the Subject Matter or any part thereof, or offer same for sale to any other party, unless and until the written consent of the Seller has been obtained.

10. EFFECTIVE DATE AND RISK

10.1. All risks which may attach to or flow from the conduct of the Subject Matter, shall pass to the Purchaser with effect from the Effective Date, and from such date the

Purchaser shall be responsible for taking out all insurance cover that may be required by the Purchaser to cover any such risk.

- 10.2. The Purchaser hereby indemnifies and holds the Seller harmless against loss, claims, debts or damages from whatsoever cause arising, in connection with the use, occupation and administration of the Subject Matter or any of its assets as from the Effective Date.

11. **VOETSTOOTS SALE**

- 11.1. Subject only to the written representation and warranties that may be specified in this Tender Document, the Subject Matter is sold “*voetstoots*” (as is) and the Seller gives no warranties or undertakings (whether express or implied) whatsoever in respect thereof, other than those specifically mentioned herein.

12. **SPECIAL CONDITIONS**

- 12.1. Subject to the payment of the purchase price having been received in full, delivery of the subject matter shall be deemed to have taken place *in situ* on the Effective Date and there shall be no obligations on the Seller to make any further delivery.
- 12.2. In the event of any asset comprising the Subject Matter not being owned by the Seller, or which Asset the Seller was not entitled to sell, being sold in terms of this Tender Document, it will not result in grounds for cancellation of the Tender Document, or a claim for damages or any refund to the Purchaser other than set out hereunder. The Purchaser shall be entitled to a pro rata refund of the Purchaser Price calculated according to the following formula (the “**Formula**”):

IV

X PP

TV

Where:

- 12.2.1. IV is the individual valuation of the asset in question as determined by the Peter Maskell Auction`s valuation conducted shortly after liquidation of the Seller (the “**Peter Maskell Auction`s Valuation**”);
- 12.2.2. TV is the total valuation of the subject matter as determined by the Peter Maskell Auction`s Valuation;
- 12.2.3. PP is the Purchase Price allocated to the subject matter as listed in Annexure A attached hereto;
- 12.2.4. The Purchaser acknowledges and agrees that the Peter Maskell Auction`s Valuation:
 - 12.2.4.1. contains sensitive information which it is important for the Seller to protect and conceal, in the light of the sale and tender process;
 - 12.2.4.2. is only relevant to the Purchaser insofar as providing a mathematical basis for the Formula, and its content is therefore not significant or material to the Purchaser.
- 12.3. The Peter Maskell Auction`s Valuation shall therefore not be disclosed by the Purchaser, and the Purchaser shall have no right to obtain same from the Seller or elsewhere, prior to the happening of the later of the following events:
 - 12.3.1. a dispute arising in terms of which the Formula is required to be invoked.
- 12.4. If the Purchaser obtains, or attempts to obtain, the Peter Maskell Auction`s Valuation (or obtain knowledge of its contents) at any time prior to, or after, this Tender Document being signed, such conduct shall comprise a material breach of this Tender Document.
- 12.5. Even if the Seller does not accept the Purchaser`s Offer as contained herein, by signing this Tender Document the Purchaser acknowledges that the Seller will suffer irreparable harm and damages if the Purchaser acts contrary to this clause 12.3, and shall therefore be liable for damages to the Seller. The benefit in favour of the Seller in this regard shall therefore be capable of separate acceptance by the Seller at any time.

13. DELIVERY AND REMOVAL OF ASSETS PURCHASED

- 13.1. Subject to the payment of the Purchase price having been received in full, delivery of the subject matter shall be deemed to have taken place in situ on the effective date and there shall be no obligations on the Seller to make any further delivery.
- 13.2. The Purchaser accepts that should he/she damage a building or any permanent structure or article or movable asset when removing the goods purchased by himself/herself, he/she shall be liable in his/her capacity as Purchaser to restore or repair or make good any damage so caused and that the said repairs shall only be deemed to have been satisfactorily completed once the Seller has accepted same.
- 13.3. The Purchaser acknowledges that all assets purchased in terms of this Tender Document are to be removed from the within 30 (Thirty) days after the effective date.
- 13.4. Should the Purchaser fail to remove the assets purchased within the time period as stipulated in Clause 13.3 he/she will be held directly liable for any damages suffered by the Seller and in addition to this, shall be responsible for the payment of rental at a rate of _____ per month.

14. LATITUDE AND WARRANTIES

- 14.1. Any latitude or extension of time allowed by the Seller to the Purchaser in respect of any payment provided for herein, or relating to any other matter which the Purchaser is bound to perform or observe in terms hereof shall under no circumstances be deemed to be a waiver of the Seller's rights at any time, and the Seller shall be entitled to require strict and punctual compliance with each and every provision of the terms hereof.
- 14.2. The parties hereto acknowledge that this agreement constitutes the entire contract between them, and that no other conditions, stipulations, warranties or representations whatsoever have been made by either party, or that party's agent other than as specifically included herein. Nothing herein contained shall be interpreted to restrict or exclude the liability of the Seller to indemnify the Purchaser against eviction.

- 14.3. Both parties warrant that no amendments will be accepted to the agreement, unless reduced to writing and signed by all parties.

15. CONFIDENTIALITY AND PUBLICITY

- 15.1. Any information obtained by any Party to this Tender Document in terms of, or arising from the implementation of, or the contents of this Tender Document shall be treated as confidential by the Parties and shall not be used, divulged or permitted to be divulged to any person not being a Party to this Tender Document, without the prior written consent of the other Party (which consent shall not be unreasonably withheld), save that each Party shall be entitled to disclose such information to such of its Related Persons who need to know for the purposes of this Tender Document or for any act which a Party is obliged to take in law.
- 15.2. For the foregoing, "Related Persons" includes employees, directors, agents, advisors (including, but not limited to legal, tax and/or financial advisors, bankers), contractors and/or consultants.

16. BREACH

- 16.1. The Purchaser is deemed to have committed an act of default (the "Act of Default") if the Purchaser:
- 16.1.1. fails to comply strictly with its obligations in terms of this Tender Document or to pay any amount due to the Sellers in terms of this Tender Document, by the time and on the date due; or
 - 16.1.2. materially breaches any provision of this Tender Document that is incapable of being remedied; or
 - 16.1.3. breaches any other provision of this Tender Document and fails to remedy such breach within 2 Days of receipt of a notice from the Sellers calling on it to do so; or
 - 16.1.4. breaches the provisions of this Tender Document on 2 or more occasions irrespective whether any such breaches have been remedied or not; or

- 16.1.5. takes steps or has steps taken against it, or effects or has effected against it, a sequestration or surrender of estate, winding up, judicial management or deregistration, in any jurisdiction; or
 - 16.1.6. effects a compromise with any of its creditors generally; or
 - 16.1.7. at any time prior to or during the currency of this Tender Document commits an act which is an act of insolvency as defined in the Insolvency Act No. 24 of 1936 (as amended or replaced from time to time) or, being a juristic person, has committed an act that would be an act of insolvency if committed by a natural person; or
 - 16.1.8. has a final judgment or arbitration award granted against it and fails to satisfy such judgment or award within 21 Days of such judgment or award becoming final, where a “final judgment or award” is a judgment or award which is not or is no longer subject to appeal; or
 - 16.1.9. is a juristic person (other than a public company listed on a recognised stock exchange) and its membership changes without the prior written consent of the Sellers; or
 - 16.1.10. is a trust and any of the trustees or beneficiaries, or the provisions of its trust deed, change without the prior written consent of the Sellers; or
 - 16.1.11. is a juristic person and any member of the Purchaser breaches any written undertaking given by such member to the Sellers relating to such member’s shareholder, member’s interest or other financial interest in the Purchaser; or
 - 16.1.12. issues any cheque, bill of exchange or promissory note to any person and such cheque, bill of exchange or promissory note has been dishonoured or rejected due to insufficient funds or payment has been stopped.
- 16.2. Without prejudice to their other rights under this Tender Document or at law, an Act of Default entitles the Sellers to any or all of the following remedies:

- 16.2.1. to require the Purchaser to immediately pay all amounts owing to the Sellers whether or not they are then payable;
 - 16.2.2. in the case of any Act of Default which is capable of being remedied by the Purchaser, to withhold the performance of any obligation due to the Purchaser until the default has been remedied to the Seller's reasonable satisfaction;
 - 16.2.3. to claim specific performance with the right to subsequently cancel this agreement upon abandonment of any such claim or order for specific performance;
 - 16.2.4. to cancel this agreement;
 - 16.2.5. to claim damages arising out of such Act of Default or the premature cancellation of this agreement or otherwise; and/or
 - 16.2.6. to retain all amounts paid by the Purchaser (including the deposit) as a genuine pre-estimate of damages or an account of damages payable.
- 16.3. Interest at the published prime overdraft rate from time to time of the Nedbank Limited accrues:
- 16.3.1. on all amounts due by the Purchaser to the Seller which are not paid by the due time on the due date for payment; and/or
 - 16.3.2. on all damages payable by the Purchaser to the Seller with effect from the date on which the cause of action arises.
- 16.4. A certificate signed by a manager of any branch of Nedbank Limited setting out the prime overdraft rate and the date and extent of any changes to that rate shall be prima facie proof of the contents thereof.

17. **LIMITATION OF LIABILITY**

- 17.1. The Parties agree that the Seller's aggregate liability to the Purchaser under and in connection with this Tender Document, whether arising in contract (including under any indemnity), delict (including for negligence), statute or otherwise, shall

not exceed the sum of the aggregate of all monies already paid by the Purchaser to the Seller under this Tender Document at the time that the Purchaser is entitled to claim from the Seller.

18. **BUYERS COMMISSION**

- 18.1. The parties record and agree that the Purchaser shall be responsible for the payment of a Buyers Commission to the Auctioneers in the amount of 10% (ten percent) of the Purchase Price, plus VAT, and shall on the Submission Date by electronic transfer, free of any deductions or set-off whatsoever, make payment of such amount to PETER MASKELL`S AUCTIONS CC into the following bank account :

Account Name : Peter Maskell Auctions CC

Bank : Nedbank

Branch Code : 116-535

Account Number : 1016 693 400

Reference : *purchasers name / HBM*

For the avoidance of doubt, the aforesaid payment shall be in addition to the Purchase Price and shall not form part of the Purchase Price. This clause constitutes a *stipulation alteri* in favour of PETER MASKELL`S AUCTIONS CC capable of acceptance by PETER MASKELL`S AUCTIONS CC at any time on written notice to the Purchaser.

- 18.2. The Buyers Commission shall be held in the Auctioneers Trust account. The Buyers Commission may be drawn by Peter Maskell Auctions on the acceptance of the Offer by the Seller. Peter Maskell Auctions shall furnish the Buyer with a valid Tax Invoice for the Buyers Commission within 24 hours of acceptance of the Offer.
- 18.3. Should the Offer not be accepted, the Buyers Commission shall be refunded within 24 hours after the rejection of the Offer.

19. **DOMICILIA – ADDRESSES AND EMAIL**

19.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Tender Document, whether in respect of Court process, notices or other documents or communications of whatsoever nature, the following addresses and Email addresses:

19.1.1. **SELLER:**

HBM-SA Health Protection (Pty) Ltd c/o ENS Africa

Physical address : 1 Richefond Circle, Ridgeside
Office Park, Umhlanga,
Durban,4320
Postal address : P.O.Box 3052, Durban, 4000
Telephone : +27 31 536 8600
Email : alombard@ensafrica.com
Attention : Adam Lombard

19.1.2. **PURCHASER:** The physical address and e-mail address specified in Clause 19.1.3 below.

19.1.3. The Purchaser hereby furnishes and inserts the following information, for the purpose of completing the Offer contained in this Tender Document.

The names, identity number and physical address of the Purchaser (not post box number)

(Full Names)

(Registration Number/Identity Number)

(Physical Address)

Telephone Number/s _____

Cellphone Number/s _____

E-Mail Address/es _____

- 19.2. The Seller and Purchaser's selected domicilium address and e-mail address is as set out in Paragraph 19.1.1, and 19.1.3 above.
- 19.3. A notice given as set out above shall be deemed to have been duly given if delivered, on the date of delivery; if sent by post, 3 (THREE) Days after posting; if sent by email 1 (ONE) hour after the time of transmission of the email address provided that the email is transmitted between the hours of 08h00 and 15h30 on a normal working day.
- 19.4. Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-à-vis that party to another physical address in South Africa or its e-mail address, provided that the change shall become effective vis-à-vis that addressee on the 5th (FIFTH) Day from the receipt (or deemed receipt) of the notice by the addressee.
- 19.5. Notwithstanding anything to the contrary herein contained a written notice or communication (including e-mail) actually received by the person named in clause 19.1.1, and 19.1.3 on behalf of a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

20. INDEPENDENT ADVICE AND RELIANCE

Each party hereby acknowledges and agrees that –

- 20.1. they have been free to secure independent legal and other professional advice (including financial and tax advice) as to the nature and effect of the transaction contemplated in this Tender Document and that they have either taken such independent advice or have dispensed with the necessity of doing so;
- 20.2. all of the provisions of this Tender Document and the restrictions contained herein are fair and reasonable and are in accordance with their intentions; and
- 20.3. they have not placed any reliance upon the advice, views and/or opinions expressed by the other of them or the other Parties independent legal, tax and other advisors in the preparation, negotiating, executing and implementing of this Tender Document.

21. VARIATION AND WAIVERS

- 21.1. No variation, modification or waiver of any portion of this Tender Document or consent to any departure there from shall in any event be of any force and effect unless confirmed in writing and signed by the Parties; and such variation, modification, waiver or consent shall be effective only in the specific instance and for the purpose and to the extent of which it was made or given.
- 21.2. The waiver by any party of any breach of any of the terms and conditions of this Tender Document shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereof.
- 21.3. No indulgence on the part of any party in exercising any power or rights conferred on such party in terms of this Tender Document shall operate as a waiver of such power or right nor shall any singly or partial exercise of any such power or right preclude any other or further exercise thereof in the exercise of any power or right under this Tender Document.
- 21.4. No oral undertaking not to sue (pactum de non petendo) shall be of any force and effect.

22. SEVERABILITY

Any provision in this Tender Document which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Tender Document shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (*pro non scripto*) and severed from the balance of this Tender Document, without invalidating the remaining provisions of this Tender Document or affecting the validity or enforceability of such provision in any other jurisdiction.

23. NO CESSION AND ASSIGNMENT

No party shall be entitled to cede, delegate and/or assign all or any of their rights, obligations and/or interests in, under or in terms of this Tender Document to any third party without the prior written consent of the other of them, which consent shall not be unreasonably withheld, conditioned or delayed.

24. STIPULATIO ALTERI

No part of this Tender Document shall constitute a contract in favour of any person who is not a party to the Tender Document (*stipulatio alteri*) unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

25. SUBMISSION TO JURISDICTION

The Parties hereby consent and submit to the non-exclusive jurisdiction of High Court of South Africa, Kwazulu Natal Local Division, Pietermaritzburg for all purposes of and in connection with this Tender Document.

26. COSTS

Each party shall bear their own costs of and incidental to the negotiation, drafting and implementation of this Tender Document.

27. EXECUTION

27.1. This Tender Document may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute

one and the same agreement as at the date of signature of the party that signs its counterpart last in time.

27.2. In the event of the Purchaser being a company, close corporation or body corporate, this Tender Document is hereby signed on behalf of the Purchaser by

(herein referred to as the “**Signatory**”)

who warrants to the Seller that he has the authority to bind the Purchaser and who attaches a certified extract of the resolution conferring authority on him to sign.

27.3. The signatory renouncing the benefits of excussion and division, hereby personally interposes and binds himself as surety and co-principal debtor with the Purchaser to and in favour of the Seller for the fulfilment of the Purchaser’s obligations hereunder.

THUS, DONE BY THE PURCHASER AND SIGNED AT..... ON

THIS.....DAY OF 2022.

AS WITNESSES:

1. _____

2. _____

by or on behalf of the Purchaser
and as Surety for the Purchaser

THUS ACCEPTED BY THE SELLER AND SIGNED AT.....ON

THIS.....DAY OF.....2022.

AS WITNESSES:

1. _____

2. _____

SELLER

Annexure A

Asset Number	Asset Name
Location: Latex Processing Hall (Hall No.5)	
1	Vulcanizing Tank 1
2	Vulcanizing Tank 2
3	Vulcanizing Tank 3
4	Sanding Machine 1
5	Sanding Machine 2
6	Sanding Machine 3
7	Sanding Machine 4
8	Sanding Machine 5
9	Soft Water Tank 1
10	Hot Water Tank 1
11	Parking Tank 1
12	Parking Tank 2
13	Parking Tank 3
14	Parking Tank 4
15	Latex Tank Filter Funnel 1
16	Water Purifier 1
17	Pressure Tank 1
18	Pressure Tank 2
19	High Speed Centrifuge 1
20	Centrifugal Filter Barrel 1
21	Filter Screen 1
22	Filter Screen 2
23	Filter Screen 3
24	Filter Screen 4
25	One Time Filter Barrel 1

Asset Number	Asset Name
26	Compounding Drive Cabinet 1
27	Air Compressor
Location: Dipping Hall (Hall No.6)	
28	Pressure Tank 3
29	Dipping Machine 01
30	Dipping Machine 02
31	The first time Latex adding Tank 1
32	The first time Latex adding Tank 2
33	The first time Latex adding Tank 3
34	The first time Latex adding Tank 4
35	The Second and Third time latex tank 1
36	The Second and Third time latex tank 2
37	The Second and Third time latex tank 3
38	The Second and Third time latex tank 4
39	The Second and Third time latex tank 5
40	The Second and Third time latex tank 6
41	Spin Dryer 01
42	Spin Dryer 02
Location: Post Vulcanizing Hall (Hall No.7)	
43	Vulcanizing Machine 1
44	Vulcanizing Machine 2
45	Vulcanizing Machine 3
46	Vulcanizing Machine 4
47	Vulcanizing Machine 5
Location: Electronic Testing Hall (Hall No.8)	
48	Dry Type Electric Pinhole , Testing Machine 1
49	Dry Type Electric Pinhole, Testing Machine 2

Asset Number	Asset Name
Location: Primary Packing Hall (Hall No.9)	
50	Square Packing Foiling Machine 1
51	Square Packing Foiling Machine 2
52	Square Packing Foiling Machine 3
53	Square Packing Foiling Machine 4
54	Square Packing Foiling Machine 5
55	Square Packing Foiling Machine 6
56	Square Packing Foiling Machine 7
57	Square Packing Foiling Machine 8
58	Square Packing Foiling Machine 9
59	3 Row Square Packing Foiling Machine 1
Location: Main Laboratory (Hall No.13)	
60	Automatic Water Testing Machine with 12 Heads - Machine 1
61	Automatic Water Testing Machine with 12 Heads - Machine 2
62	Inflation Tester with 2 Heads - Machine 1
63	Inflation Tester with 2 Heads - Machine 2
64	Ageing Oven
Location: Secondary Packing Hall (Hall No.11)	
66	Flow Wrap Machine 1 (serial number:SN - 16090141)
67	Flow Wrap Machine 2 (serial number: SN - .16090141)
Location: Finished Goods Warehouse (Hall No.12)	
65	Dust Removing Assembly for post- vulcanization
68	4 Pallet Jacks

