

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	SCM004/2024	CLOSING DATE: 24 JANUARY 2024		CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF AN AUDITOR/AUDIT COMPANY TO AUDIT THE TENDER PROCESS AND TECHNICAL EVALUATION OF BIDS FOR THE SELECTION OF PREFERRED SERVICE PROVIDERS TO BE CONSIDERED FOR APPOINTMENT TO THE PANEL OF ACCREDITED HEALTH RISK MANAGERS FOR PURPOSES OF THE APPLICATION OF THE POLICY AND PROCEDURE ON INCAPACITY LEAVE AND ILL-HEALTH RETIREMENTS (PILIR)				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Batho Pele House					
546 Edmond Street (C/O Hamilton Street)					
Arcadia					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ms Lorraine Masenya/ Mmapula Kotsokoane		CONTACT PERSON	Ms Fredah Tabane	
TELEPHONE NUMBER	012 – 336 1126/1216		TELEPHONE NUMBER	012 – 336 1394	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Lorraine.Masenya@dpsa.gov.za		E-MAIL ADDRESS	pilirtender@dpsa.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."</p>

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: SCM004/2024
CLOSING TIME 11:00 ON 24 JANUARY 2024	

OFFER TO BE VALID FOR **90** DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF <u>VALUE ADDED TAX</u>
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APPOINTMENT OF AN AUDITOR/AUDIT COMPANY TO AUDIT THE TENDER PROCESS AND TECHNICAL EVALUATION OF BIDS FOR THE SELECTION OF PREFERRED SERVICE PROVIDERS TO BE CONSIDERED FOR APPOINTMENT TO THE PANEL OF ACCREDITED HEALTH RISK MANAGERS FOR PURPOSES OF THE APPLICATION OF THE POLICY AND PROCEDURE ON INCAPACITY LEAVE AND ILL-HEALTH RETIREMENTS (PILIR)

Services must be quoted in accordance with the attached terms of reference.

Total cost of the assignment (R inclusive VAT) R.....

NB; Bidders are also advised to indicate a total cost breakdown for this assignment.

The financial proposal for this assignment should cover all assignment activities and outputs enumerated above.

2. Period required for commencement with project after acceptance of bid

3. Are the rates quoted firm for the full period? YES/NO

4. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

.....

.....

.....
Signature Date

.....
Position

Any enquiries regarding bidding procedures may be directed to the

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

For SCM related enquiries – Lorraine Masenya/ Mmapula Kotsokoane

[Tel:012 336 1126/1389](tel:01233611261389)

Or for technical information – Fredah Tabane

[Tel:012 336 1503](tel:0123361503)

PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE FOR MORE INFORMATION.

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

I, _____ the _____ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date
.....
Position	Name of bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

a) The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (f) **Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract
- (g) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (h) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
- (i) **“Youth”** means persons between the ages of 14 and 35 in terms of the National Youth Development Agency Act, 2008. For the purpose of this bid the date to be used for determination of age will be the closing date of the bid and in a case where the closing date of a bid has been extended, the original (first) closing date shall be used for the purpose of determining age.
- (j) **“disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- (k) **“Local Content and Production”** means locally produced and manufactured products within the borders of South Africa in support of the Reconstruction Development Programme.

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 PREFERENCE POINT SYSTEM

A maximum of 80 points is allocated for price on the following basis:

80/20

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmin = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

A maximum of 80 points is allocated for price on the following basis:

80/20

$$Ps = 80 \left(1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point

system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black Equity Ownership	8	
Women Equity Ownership	6	
Persons living with disability Equity Ownership	3	
Youth Equity Ownership	3	

Refer to the Preference Point Matrix attached for ease of claiming points for the specific goals for this tender.

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
 - One-person business/sole propriety
 - Close corporation
 - Public Company
 - Personal Liability Company
 - (Pty) Limited
 - Non-Profit Company
 - State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender,

qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:

PREFERENCE POINT MATRIX (80/20)

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
Black Equity Ownership	Maximum = 8	<p><i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i></p> <ul style="list-style-type: none"> • Company Registration Certificate (CIPC). • Company Shareholders Certificate. • Certified Identification Documentation of company director/s. • Detailed Central Supplier Database Report (CSD). • B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company. • Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body. • Agreement for a Consortium, Joint Venture or Trust. • Declaration from a registered medical practitioner in support of Persons Living with Disabilities.
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
Women Equity Ownership	Maximum = 6	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
Persons Living with Disabilities Equity Ownership	Maximum = 3	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
Youth Equity Ownership	Maximum = 3	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

TERMS OF REFERENCE FOR PROPOSALS



AUDITING OF THE TENDER PROCESS AND TECHNICAL EVALUATION OF BIDS TO INFORM THE SUBSTANTIVE EVALUATION OF BIDS FOR THE SELECTION OF PREFERRED SERVICE PROVIDERS TO BE CONSIDERED FOR APPOINTMENT TO THE PANEL OF HEALTH RISK MANAGERS FOR PURPOSES OF THE APPLICATION OF THE POLICY AND PROCEDURE ON INCAPACITY LEAVE AND ILL-HEALTH RETIREMENTS (PILIR)

1. OBJECTIVE

The objective is to procure professional services of an accredited auditor/audit company to audit the tender process as listed under the key performance areas and conduct the technical evaluation of bids.

2. BACKGROUND

2.1. The Public Service as an employer is, by virtue of the applicable collective agreements, employment legislation and labour legislation, obliged to investigate applications for temporary incapacity leave (after normal sick leave of 36 days is exhausted in a sick leave cycle) and ill-health retirements. The management of sick leave and/or ill-health retirement in the Public Service received specific attention in various studies since 2000. The findings of these studies resulted in the adoption of the Policy and Procedure on Incapacity Leave and Ill-health Retirement (PILIR). Some of the features of the policy are the following:

2.1.1. This policy applies to all employees appointed in terms of the Public Service Act, 1994, as amended. Where persons employed in the services or state education institutions are not excluded from the provisions of the PILIR, those provisions apply in so far as they are not contrary to the laws governing their employment.

2.1.2. The policy document takes into consideration and supports the current leave dispensation as contained in the Determination and Directive on Leave of Absence in the Public Service, read with PSCBC Res. 7 of 2000, as amended by PSCBC Resolutions 5 of 2001 and 15 of 2002 (refer to attached copies) and legal provisions contained in employment legislation, e.g. the Public Service Act, 1994, read with the Public Service Regulations to discharge a person on grounds of ill-health.

2.1.3. The role players in the structures and processes envisaged in the policy are the Department of Public Service and Administration (DPSA), Departments, the Government Employee Pension Fund (GEPF), employees and the Health Risk Manager. The Health Risk Manager will be an entity of independent multi-disciplinary medical experts who will be appointed to a Panel of Health Risk Managers by the DPSA and contracted individually by Departments. The Health Risk Manager will assess and provide advice to the Employer regarding applications for incapacity leave and ill-health retirements.

2.1.4. The objective of this policy is to set up structures and processes, which will ensure-

2.1.4.1. that intervention and management of incapacity leave in the workplace accommodate temporary or permanently incapacitated employees; and

2.1.4.2. that opportunities for rehabilitation, re-skilling, re-alignment and retirement of temporary or permanently incapacitated employees are facilitated where appropriate.

- 2.1.5. The mission of this policy is to -
 - 2.1.5.1. adopt a holistic approach to health risk management, by seeking synergies with wellness and disease management programmes provided by members' medical schemes and by implementing sick leave management as well as rehabilitation and re-skilling structures in conjunction with health risk management;
 - 2.1.5.2. prevent abuse of sick leave by managing incapacity or ill-health as far as possible;
 - 2.1.5.3. adopt a scientific approach to health risk management based on sound medical, actuarial and legal principles;
 - 2.1.5.4. involve the various stakeholders in the health risk management processes and structures;
 - 2.1.5.5. implement health risk management that is consistent, fair and objective; and
 - 2.1.5.6. support health risk management that is cost effective and financially sound.
- 2.1.6. PILIR generally assists Departments in the professional investigation and management of incapacity leave and ill-health retirement applications. It also assists Departments in the application of the current sick leave dispensation and the management and investigation of potential ill-health retirements.
- 2.1.7. PILIR provides for assessment processes for -
 - 2.1.7.1. temporary incapacity leave in respect of periods of less than 30 days, which will be a short assessment process; and periods of 30 days and more, which will be subject to a primary assessment and where necessary a secondary assessment;
 - 2.1.7.2. ill-health retirement applications, which will be a full assessment process.
- 2.1.8. PILIR also provides for a short ill-health retirement process in the event where the Health Risk Manager advises, following the primary and secondary assessment processes, the ill-health retirement of an employee.
- 2.1.9. A set of guidelines is included to deal with high incidence illnesses. These guidelines are based upon guidelines that have been developed by the Association for Savings and Investment South Africa (ASISA). The guidelines set minimum standards and guidelines for the compilation of reports by medical practitioners/specialists.
- 2.1.10. Application forms for temporary incapacity leave are prescribed in terms of PILIR. These forms are multi-functional in that it will e.g. capture decisions by the Employer and referrals to the Health Risk Manager. A prescribed report for ill-health retirement cases is included in the policy document.
- 2.2. The PILIR was subsequent to a successful pilot study in selected pilot areas, rolled out in 2006 to all Government departments. The latter process was modeled on a centralised approach in order to incubate the policy and manage identified risks. The DPSA played a central role in the appointment and contracting, as well as the payment of the Health Risk Managers at the time. The rationale for the DPSA being centrally responsible for the payment of the Health Risk Manager was

in the main to manage identified financial risks and to incubate the implementation of PILIR in departments.

- 2.3. PILIR was decentralised to department with effect from 1 April 2009. The rationale for decentralisation was to devolve the centralised responsibilities that should be traditionally located in departments, from the DPSA to departments, i.e. the contracting of Health Risk Managers (HRM's) appointed to the Panel of Accredited Health Risk Managers to render services required in terms of their panel contracts, read with PILIR and the RFP, the budgeting and payment for the expenditure. The decentralisation model adopted is underpinned by the legal roles and responsibilities of the Minister for Public Service and Administration (MPSA) to determine the conditions of service of employees, the DPSA as the organ of state which is central to the execution of the Minister's legal responsibilities in relation to policies regulating the human resource management and development, compensation and conditions of services and the roles and responsibilities vested in Heads of Department (HOD's) supported by their departments to implement, apply and execute policies and procedures that emanate from the Public Service Act and, if applicable, other employment legislation. Further, the HOD's are, as accounting officers, in terms of the Public Finance Management Act (PFMA), entrusted with a variety of responsibilities related to the financial management and related matters of their departments.
- 2.4. For decentralisation purposes the public service has been divided into thirteen (13) implementation areas. Each of the provinces is designated as an implementation area and National Departments were clustered into four implementation areas based on employee numbers.
- 2.5. The DPSA fulfils multiple roles and responsibilities within the context of decentralisation:
 - 2.5.1. In terms of the appointment of the panel of service providers, the DPSA plays a leading role in the bidding process that informs the appointments.
 - 2.5.2. The DPSA provides support to departments with the contracting of the accredited service providers
 - 2.5.3. The DPSA sets norms and standards to ensure uniformity related to the following areas:
 - 2.5.3.1. the price structure and annual review of the fees payable for the consultancy service rendered by an accredited service provider;
 - 2.5.3.2. the turnaround times that should be adhered to by the stakeholders to ensure compliance with standards set in the legal framework;
 - 2.5.3.3. the minimum reporting standards of quarterly reports that the accredited service providers must submit to the DPSA and departments;
 - 2.5.3.4. the renewal of the appointments of the panel of accredited service providers upon expiry of the term of appointment; and
 - 2.5.3.5. the PILIR and related policies (This includes guidance to HRM's on assessment norms and standards).
- 2.6. Conversely, the decentralisation model entails the appointment of a panel of Health Risk Managers by the DPSA through a single bid in terms of its tender process. Contracts will be concluded between the DPSA and these HRMs. Departments may then select from the appointed panel of

HRMs a Health Risk Manager that will provide the services required in terms of PILIR for the relevant Department. The Department shall enter into a contract with the said HRM.

3. KEY PERFORMANCE AREAS

3.1. AUDIT OF DPSA TENDER PROCESS

- 3.1.1. The auditor/audit company must provide resources to monitor and audit the evaluation and adjudication phases of the procurement process as specified in the evaluation process document. A copy will be provided.
- 3.1.2. The methodology applied by the auditor must enable the auditor to perform the following functions:
- (a) Advise the DPSA, the Bid Evaluation Committee (BEC) and Bid Adjudicating Committee (BAC) timeously during the evaluation and adjudication phases of deviations from the tender evaluation procedure.
 - (b) Attend meetings of the BEC and BAC to present the audit report and provide clarifications.
 - (c) Attend the compulsory service provider briefing and register all attendees present.
 - (d) Receive and register all tenders submitted in response to the RFP issued by the DPSA.
 - (e) Attend the BEC and BAC meetings. The number and duration of meetings attended will be left to the discretion of the audit party and will be required to comply with paragraph 5 below.
- 3.1.3. Checking the scoring system for calculation errors and verifying samples of scores captured for correctness. Provide a written, independent opinion of the process conducted to certify that the DPSA procurement process has met the criteria of objectivity, transparency and fairness.

3.2. TECHNICAL EVALUATION OF BIDS

- 3.2.1. The bid documents must be evaluated –
- (a) for completeness;
 - (b) the presence of supporting documents required in terms of the RFP; and
 - (c) the Preference point system.
- A copy of the RFP will be provided.
- 3.2.2. The tender evaluation process must meet the criteria of objectivity, transparency and fairness.
- 3.2.3. The tender assessment process must incorporate the following:

- 3.2.3.1. The elimination of bidders who do not meet the minimum mandatory criteria.
- 3.2.3.2. The verification of information provided by bidders in each service area in respect of the prescribed tender assessment criteria.
- 3.2.3.3. The verification of registration on the central supplier database.
- 3.2.3.4. The verification company registration with CIPC.
- 3.2.3.5. The verification of registration certificates with the relevant health professions council of team members who will work on the projects.
- 3.2.3.6. The development of unambiguous motivations for the elimination of bidders.
- 3.2.3.7. The development of a report on the evaluation outcomes including recommendations on bidders that could be subjected to the substantive evaluation phase by the BEC.

4. DELIVERABLES

4.1. AUDIT OF TENDER PROCESS

- 4.1.1. The service provider shall conduct an independent audit of the tender process to determine whether it adhered to the principles of objectivity, transparency, and fairness. The service provider is required to provide a detailed audit opinion, highlighting the extent to which these criteria were met and making recommendations for future process improvements if necessary.
- 4.1.2. Audit of Tender Process Stages
 - 4.1.2.1. The service provider shall conduct a comprehensive review of each stage of the tender process, including but not limited to:
 - 4.1.2.1.1. Tender Specification and Advertisement: Verifying that tender specifications were clearly defined and publicly advertised to provide all potential service providers equal opportunity to participate.
 - 4.1.2.1.2. Bid Evaluation and Shortlisting: Ensuring that all bids were evaluated according to predetermined criteria, that scoring was consistent, and that no bias influenced the shortlisting.
 - 4.1.2.1.3. Final Recommendation: Assessing the procedures used to make the recommendation, including ensuring that all shortlisted bids were given equal consideration based on merit and predefined criteria.
- 4.1.3. Evaluation of Compliance with Criteria
 - 4.1.3.1. The service provider will assess the extent to which the tender process adhered to the following principles:
 - 4.1.3.1.1. Objectivity: The service provider will evaluate if the process is free

from personal bias and if decisions were based solely on objective criteria that were applied consistently.

4.1.3.1.2. Transparency: The service provider will verify that all stages of the process were documented and that each step was communicated clearly and promptly, with records maintained to support a transparent audit trail.

4.1.3.1.3. Fairness: The service provider will confirm that all bidders were treated equitably and that no bidder was given an undue advantage or preference, with any conflicts of interest disclosed and managed.

4.1.4. Documentation and Record Review

4.1.4.1. The service provider will review all documentation and records related to the tender process, including:

4.1.4.1.1. Tender specifications, advertising materials, and bid submission records.

4.1.4.1.2. Evaluation sheets, scoring documents, and meeting minutes of Bid evaluation committee.

4.1.4.1.3. Final recommendation documents.

4.1.4.1.4. The audit will also verify the availability and accuracy of records, ensuring they provide sufficient evidence to substantiate adherence to the principles of objectivity, transparency, and fairness.

4.1.5. Provision of an Audit Opinion

4.1.5.1. The service provider shall deliver a formal audit opinion at the conclusion of the audit, which will include:

4.1.5.1.1. A summary of findings related to the adherence to each criterion (objectivity, transparency, and fairness).

4.1.5.1.2. Identification of any deviations or potential areas of non-compliance, including context and potential implications for the process.

4.1.5.1.3. Recommendations for enhancing future tender processes to better align with these principles, if any gaps or weaknesses are identified.

4.1.6. Final Report Submission.

4.1.6.1. The service provider shall compile a final report that provides a comprehensive overview of the audit findings.

4.1.6.2. The report will detail observations, evaluations, and the audit opinion, clearly addressing each stage of the tender process and providing an assessment against each criterion.

4.1.6.3. Specific examples and actionable recommendations should be included to support continuous improvement in future tender processes.

4.1.6.4. Deliverable Timeline -

4.1.6.4.1. Completion of the audit process, including document review and committee interviews, within 7 days from the start of the engagement.

4.1.6.4.2. Draft audit opinion report to be submitted within 5 days of completing the audit.

4.1.6.4.3. Final report submission no later than 17 April 2025.

4.2. TECHNICAL EVALUATION OF BIDS

4.2.1. The appointed service provider shall conduct a thorough technical evaluation of all bids received, assessing each submission for completeness and adherence to the minimum mandatory criteria as outlined in the Terms of Reference (ToR). The service provider will compile and submit a report of findings to the Bid Evaluation Committee (BEC) to facilitate the next phase of the evaluation process.

4.2.2. Review of Bids Completeness -

4.2.2.1. The service provider will review all bid submissions to ensure that each bid includes all required documentation and follows the format specified in the ToR.

4.2.2.2. Any missing or incomplete sections in the bids will be documented to provide a clear picture of whether bids met the completeness requirements as outlined.

4.2.3. Verification Against Mandatory Criteria -

4.2.3.1. Each bid will be assessed against the minimum mandatory criteria listed in the ToR.

4.2.3.2. The service provider will ensure each bid either meets or fails to meet each criterion, documenting findings and ensuring objectivity in the review process.

4.2.4. Documentation of Findings -

4.2.4.1. For each bid, the service provider will record:

4.2.4.1.1. Whether the bid meets all required criteria as set out in the ToR.

4.2.4.1.2. Any deficiencies or areas where the bid does not comply with the mandatory requirements.

4.2.4.1.3. This documentation will provide a clear audit trail to support the BEC in making informed decisions on bid eligibility and progress to further evaluation stages.

4.2.5. Preparation of the Technical Evaluation Report -

4.2.5.1. The service provider will compile all findings into a comprehensive technical evaluation report to be submitted to the BEC.

4.2.5.2. The report will include:

4.2.5.2.1. A summary of each bid's compliance with mandatory criteria.

4.2.5.2.2. Detailed observations on completeness and compliance for each submission.

4.2.5.2.3. A final recommendation on whether each bid meets the minimum technical requirements for further evaluation.

4.2.5.2.4. Any recommendations for disqualifying bids that fail to meet mandatory requirements will be clearly stated, with justification based on the ToR.

4.2.5.2.5. Any other relevant information that is in the opinion of the auditor should be brought to the attention of the BEC, including bidders eliminated due to the provision of false or incorrect information.

4.2.5.2.6. The service provider must provide the full tender assessment report to the Project Manager that includes all information required by the auditor to certify that the process was objective, transparent and fair.

4.2.5.2.7. The tender assessment service provider must be available to present its report to the BAC should the need be established.

4.2.6. Submission to the Bid Evaluation Committee (BEC) -

4.2.6.1. The finalized technical evaluation report will be submitted to the BEC providing the committee with a clear and objective assessment of each bid's technical eligibility.

4.2.6.2. The service provider will prepare a presentation to be made to the BEC on the contents of the report.

4.2.7. Deliverable Timeline:

4.2.7.1. Completion of technical evaluation review and technical evaluation report within 5 days from receipt of bids.

4.2.7.2. Submission of the finalized report to the BEC by 8 April 2025.

5. DECLARATION OF INTEREST

- 5.1. The service provider submitting a quote must declare in its proposal whether it-
- 5.1.1. conducts work for any of the companies listed hereunder, as well as the nature of such work:
 - 5.1.1.1. Alexander Forbes (Pty) Ltd;
 - 5.1.1.2. Pro Active Health Solutions (Pty) Ltd;
 - 5.1.1.3. Soma Initiative (Pty) Ltd; and
 - 5.1.1.4. Thandile Health Risk Management (Pty) Ltd.
 - 5.1.2. has any relationship with any of the individuals employed in any of the companies listed in paragraph 5.1.1, above, as well as the nature of the relationship(s).
- 5.2. Since the companies listed in 5.1 above have an interest in this process, proposals from the companies listed above shall not be accepted for consideration in auditing the bid process.

6. TIMEFRAME

- 6.1. The timeframe for the execution of this terms of reference is as follows:

▪ Attend compulsory vendor briefing	10 March 2025
▪ Receive and register tenders received	31 March 2025
▪ Conduct technical evaluation	1 - 7 April 2025
▪ Attend BEC meetings	8-10 April 2025
▪ Submit and present report on technical evaluation to BEC	8 April 2025
▪ Submit audit report	17 April 2025
▪ Present the audit report to the BAC if required	22-25 April 2025

7. PROPOSAL REQUIREMENT

- 7.1. The appointment of an auditor/audit company under these terms of reference will be funded from the budget allocated within the DPSA and the appointment will be made in accordance with the DPSA's Supply Chain Management policy.
- 7.2. To the above end, the procurement of the professional services of an auditor/audit company will be through a request for proposal process.

- 7.3. The Director-General of the DPSA will in terms of the powers vested in her, take the final decision on the appointment of a service provider to execute these terms of reference based on the quotations obtained.
- 7.4. The following information must be included in the quotation:
- 7.4.1. Proof that the quoting entity is currently engaged in public practice as an Auditor and the submission of confirmation that the organization has an existing client base.
 - 7.4.2. A proposal by the quoting entity indicating how the service will be rendered within the timeframe specified.
 - 7.4.3. Curriculum Vitae (CV) of the individual(s) who will execute the respective deliverables described in these terms of reference. If not attached the proposal will not be further considered.
 - 7.4.4. The fee attached to rendering the service must be inclusive of VAT.
 - 7.4.5. The points claimed for attaining the four specific goals from a preference point perspective.
 - 7.4.6. Proof of registration with relevant professional body.
 - 7.4.7. The declarations as contained in paragraph 5.1 above. If not attached the proposal will not be further considered.
- 7.5. Any further queries on the terms of reference could be directed to pilirtender@dpsa.gov.za.
- 7.6. The proposal should be submitted by or not later than 11:00 on 21 January 2025 for the attention of -

Ms Loraine Masenya
Supply Chain Management
Batho Pele House, 546 Edmond Street, Arcadia, Pretoria

8. PAYMENT SCHEDULE

The payment will only be made after all the deliverables have been adequately performed in accordance with the terms of reference.

9. CHANGES TO THE TERMS OF REFERENCE

Any change to the terms of reference may only be made through mutual agreement and must be in writing.

10. EVALUATION CRITERIA

- 10.1. The evaluation criteria for the assessment of the proposals will be based on both qualitative and financial aspects of the proposal.
- 10.2. Service Providers will be evaluated on functionality. Bidders that score points which exceed the minimum threshold provided on functionality will further be evaluated on price and points claimed in attaining the four specific goals from a preference point perspective.

- 10.3. The Bid documents will be evaluated individually on score sheets by a representative evaluation panel according to the evaluation criteria indicated in the Terms of Reference. All bidders who score less than 60 out of 100 points for functionality will not be considered further.
- 10.4. Responsive bids will be adjudicated using the 80/20 preference point system, with points allocated based on Price and the four specific goals outlined.
- 10.5. The Department will in terms of specific goals focus on persons historically disadvantaged based on race (Black people), gender (women) and persons living with disabilities as well as categories of persons being youth referenced in Preferential Procurement Policy Framework Act and its associated regulations. The Preference point system will therefore be based on Price and the consolidated points scored for the four respective goals. Responsive bids will be adjudicated by the Department on the 80/20- preference point system in terms of which points are awarded to bidders based on the formulae below.
- 10.6. **The following formula will be used to calculate the points for price in respect of bidders**

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

_____ Where

_____ Ps = Points scored for comparative price of Bid under consideration

_____ Pt = Comparative price of Bid under consideration

_____ Pmin = Comparative price of lowest acceptable Bid

- 10.7. Points awarded to a bidder for attaining specific goals for the procurement initiative. A maximum of 20 points may be awarded to a bidder who meets the criteria for the four specific goals from a preference point perspective. For this Bid, the maximum number of points that could be allocated are indicated in the table below:

Specific Goals	Number of points (80/20 system)
1. Black Equity Ownership	8
2. Women Equity Ownership	6
3. Persons living with disabilities Equity Ownership	3
4. Youth Ownership	3
5. Goals not met	0

PREFERENCE POINT MATRIX (80/20)

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
Black Equity Ownership	Maximum = 8	<i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i>
<p>100% Black ownership</p> <p>>51% Black ownership</p> <p>>0<51% Black ownership</p> <p>0% Black Ownership</p>	<p>8 Points</p> <p>6 Points</p> <p>2 Points</p> <p>0 Points</p>	<p>Company Registration Certificate (CIPC).</p> <p>Company Shareholders Certificate.</p> <p>Certified Identification Documentation of company director/s.</p> <p>Detailed Central Supplier Database Report (CSD).</p> <p>B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company.</p>
Women Equity Ownership	Maximum = 6	
<p>100% ownership</p> <p>>51% ownership</p> <p>>0<51% ownership</p>	<p>6 Points</p> <p>4 Points</p> <p>2 Points</p> <p>0 Points</p>	<p>Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body.</p> <p>Agreement for a Consortium, Joint Venture or Trust.</p> <p>Declaration from a registered medical practitioner in support of Persons Living with Disabilities.</p>

0% ownership		
Persons Living with Disabilities Equity Ownership	Maximum = 3	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
Youth Equity Ownership	Maximum = 3	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	

10.8. Failure to capture the required points claimed and to submit the required support documentation will lead to a zero (0) for non-compliant service providers.

10.9. The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.

- 10.10. Bidders are requested to complete the various preference claim forms in order to claim preference points.
- 10.11. Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for points scored with the provision of support documentation thereto.
- 10.12. Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made regarding points claimed for specific goals.
- 10.13. Points scored will be rounded off to the nearest two decimals.
- 10.14. In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for the specific goals. In the event that two or more bidders are equal in all respects, the award shall be decided by drawing of lots.
- 10.15. A contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.

10.16. MANDATORY SUBMISSION REQUIREMENTS

10.16.1. Interested **service** providers should submit proposals detailing:

- 10.16.1.1. Company profile with specific reference to among others the organisational/business track record.
- 10.16.1.2. Curriculum Vitae of the resource person(s) to be assigned.
- 10.16.1.3. Proof of registration of the assigned Auditor with the relevant professional body.
- 10.16.1.4. For the bidding process the Service provider must provide the functionality and price proposal, one (1) original hard copy and one electronic copy on USB flash drive. The functionality proposal must be in MS Word and the price proposal MS Excel.
- 10.16.1.5. Economy of Proposal Preparation: Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Service provider's ability to meet the requirements of the RFP. Excessive proposal preparation will receive no extra evaluation credit. Emphasis should be on a clear, concise, factual proposal.
- 10.16.1.6. The proposal will become the property of the DPSA and shall not be returned.
- 10.16.1.7. Two current references with contact numbers must be provided to be used to verify.
- 10.16.1.8. A copy of the current memorandum and articles of association of the company or constitutional documents of the company.
- 10.16.1.9. Evidence of registration on the Central Supplier Database (CSD) must be provided.

NB: Prospective bidders responding to this bid must be registered as a service provider on the Central Supplier Database (CSD). If the company is not registered on the CSD, proceed to complete the registration of the company prior to submitting your proposal. Refer to <https://secure.csd.gov.za/> to register the company. Ensure that all documentation on the database is updated and valid.

No bid will be awarded to a Supplier/Service Provider who has not registered on the CSD

10.16.2. Failure to provide the above-mentioned mandatory submission requirements will result in disqualification and will not be considered for further evaluation.

10.16.3. The criteria outlined in paragraph 10.17 hereunder will be used as the criteria for appointment, apart from those laid down in the Preferential Procurement Regulations, 2022.

All information provided in response to this bid will solely be used for evaluation purposes and will not be availed to any third party.

Note: all personal information provided will be used in accordance with the provisions of the Protection of Personal Information Act no 4 of 2013.

10.17. FUNCTIONAL CRITERIA

1.1.1. EXPERIENCE IN AUDITING TENDER PROCESSES		WEIGHTING: 60
CRITERIA	SCORING INDICATORS	
(a) Organisational/ business track record:	(i.) 7 years and more experience (5 points) (ii.) 6 years experience (4 points) (iii.) 5 years experience (3 points) (iv.) 4 years experience (2 points) (v.) 3 and less years experience (1 point)	20
(b) Appropriately qualified resources	Allocated resource(s) is(are) a qualified and registered Auditors with- (i.) 7 years and more experience (5 points) (ii.) 6 years experience (4 points) (iii.) 5 years experience (3 points) (iv.) 4 years experience (2 points) (v.) 3 and less years experience (1 point)	20
(c) Proof of previous work conducted of a similar nature:	(i.) 7 projects and more of a similar nature (5 points) (ii.) 6 projects of a similar nature (4 points) (iii.) 5 projects of a similar nature (3 points) (iv.) 4 projects of a similar nature (2 points) (v.) 3 and less projects of a similar nature (1 point)	20

1.1.2. PROVEN DELIVERY OF PROJECT SCOPE REQUIREMENTS		WEIGHTING: 40
CRITERIA	SCORING INDICATORS	
(a) Appropriateness and quality of proposed work plan	<p>(i.) The work plan is highly detailed, realistic, and fully aligned with project objectives. Clearly defines tasks, timelines, deliverables, and responsibilities with no gaps. Includes contingency measures to address potential challenges. (5 points)</p> <p>(ii.) The work plan is well-structured, with clear tasks, timelines, and deliverables. Aligned with project objectives but may have minor gaps or areas needing further detail. Limited reference to addressing risks or contingencies. (4 points)</p> <p>(iii.) The work plan outlines basic tasks, timelines, and deliverables but lacks depth or detail. Alignment with project objectives is moderate, and there are noticeable gaps in task clarity or sequencing. Does not address potential risks or challenges. (3 points)</p> <p>(iv.) The work plan is vague or incomplete, with unclear or unrealistic tasks and timelines. Minimal alignment with project objectives. Key elements (e.g., timelines, deliverables) are either missing or poorly defined. (2 points)</p> <p>(v.) The work plan is entirely absent, irrelevant, or fundamentally flawed. No clear tasks, timelines, or deliverables are provided. Does not align with project objectives in any meaningful way. (1 point)</p>	20
(b) Proposed methodology and approach to achieve required outputs	<p>(i.) The methodology and approach are highly appropriate, innovative, and demonstrate a thorough understanding of the required outcomes. Clearly explains how the proposed approach will achieve the objectives effectively and efficiently. Includes detailed and logical steps, supported by evidence or past success, with no gaps or inconsistencies. (5 points)</p> <p>(ii.) The methodology and approach are appropriate and demonstrate a good understanding of the required outcomes. Provides clear steps to achieve the objectives, with some minor areas requiring additional detail or improvement. Generally logical and well-structured but lacks significant innovation or unique insights. (4 points)</p>	20

	<p>(iii.) The methodology and approach are moderately appropriate and demonstrate a basic understanding of the required outcomes. Includes general steps to achieve the objectives but lacks specificity or detail. Some elements may be unclear, overly generic, or not entirely aligned with the objectives. (3 points)</p> <p>(iv.) The methodology and approach are minimally appropriate and demonstrate limited understanding of the required outcomes. Steps to achieve the objectives are vague, incomplete, or unrealistic. Lacks coherence, with significant gaps or misalignment with the objectives. (2 points)</p> <p>(v.) The methodology and approach are inappropriate, irrelevant, or fundamentally flawed. Fails to demonstrate understanding of the required outcomes. Steps are either missing, illogical, or cannot realistically achieve the objectives. (1 point)</p>	
Total functionality score		100%
Minimum threshold for function		60%

11. PAYMENT SCHEDULE

11.1. The DPSA shall, within two weeks of the receipt of the report assure itself of the quality of the deliverables. Once the DPSA is satisfied with the quality of the report the payment process will commence.

12. CONTACTS

SCM ENQUIRIES:

Ms Lorraine Masenya
 Tel: 012 - 336 1126/1216
 Email: Lorraine.masenya@dpsa.gov.za

TECHNICAL ENQUIRIES:

Mr Desmond van der Westhuizen or Ms Fredah Tabane
 Email: employee benefits tender enquiries: pilirtender@dpsa.gov.za

13. DELIVERY ADDRESS:

Supply Chain Management

Department of Public Service and Administration
 Batho Pele House
 546 Edmond Street
 Arcadia
PRETORIA
 0007



RESOLUTION NO 5 OF 2001

AMENDMENTS TO RESOLUTION 7 OF 2000 (IMPROVEMENT IN THE CONDITIONS OF SERVICE OF PUBLIC SERVICE EMPLOYEES FOR 2000/2001 FINANCIAL YEAR)

The employer and employee parties agree on the terms set out below:

1. OBJECTIVES:

- 1.1 To establish processes to develop new, more equitable benefits, career paths and pay progression for all employees in the public service.
- 1.2 To establish a framework for restructuring in the public service.
- 1.3 To provide for the annual wage increase for public service employees for the 2000/2001 financial year.

2. APPLICATION

- 2.1 This agreement applies to the employer and employees:
 - a) who are employed by the State; and
 - b) who fall within the registered scope of the PSCBC.

3. MEDICAL AID RESTRUCTURING:

3.1 A joint task team of employer and employee parties shall be established to investigate:

- a) mechanisms to introduce collective buying power;
- b) extending medical assistance to all employees in the public service;
- c) the feasibility of capping and/or de-linking the present medical aid contribution from the medical price index;
- d) administrative mechanisms to control and manage costs for the employer and employee;
- e) measures and resources for the treatment of HIV/AIDS in respect of affected employees and their dependants;
- f) how medical aid schemes can strengthen the public health system in the country; and
- g) post retirement medical aid.

3.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

4. POLICY ON HIV/AIDS:

4.1 A joint task team of employer and employee parties shall be established to investigate:

- a) the development of an HIV/ AIDS policy;
- b) the elimination of discrimination against people living with HIV/ AIDS; and
- c) the development of appropriate training and materials for people who work with those affected by HIV/ AIDS.
- d) counselling systems for employees who care for people who are HIV positive and those living with AIDS.

4.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

5. HOUSING AND ACCOMMODATION RESTRUCTURING:

5.1 A joint task team of employer and employee parties shall be established to investigate:

- a) possibilities on how the employer's collective buying power can be harnessed to obtain better and affordable arrangements with financial institutions. Further,

to develop criteria for the evaluation of financial institutions that will provide mortgage bonds for public servants;

- b) measures to address the needs of the low-income and rural-based employees together with those based in tribal trust land, inner city and peri-urban areas as far as the housing benefit is concerned;
- c) measures to enable new employees with a continuous twelve-month period of service to obtain a housing subsidy;
- d) all allowances related to housing and accommodation with a view of extending the same to all employees;
- e) the current accommodation benefits provided by the employer; and
- f) the possible use of individual's actuarial value with the Government Employee Pension Fund (GEPF), to be accessed for collateral purposes.

5.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

6. PENSION RESTRUCTURING:

6.1 A joint task team of employer and employee parties shall be established to investigate:

- a) advantages and disadvantages of the present system in relation to a Pay as You Go (PAYG) and any other pension system;
- b) a reduction in the employer's contribution to the Government Employees Pension Fund (GEPF) to an agreed percentage with a view to agreeing how the funds will be used. This could include using funds accrued from such reduction towards the development of social services in general and job security in particular.
- c) the implications of the alleged mismanagement of the Venda pension fund on the affected employees; and
- d) the buying back of pensions at favourable rates to assist those employees who were previously denied access to the pension fund or who lost their pensionable service as well as all employees who were disadvantaged by collective agreements.

6.2 The joint task team shall complete its work by 31st May 2001 and submit developed recommendations to the PSCBC for negotiation by 15th June 2001.

7. LEAVE:

7.1 Annual leave:

- a) The annual leave dispensation in this agreement shall provide a framework that may be further refined, subject to service delivery requirements of any sector.
- b) Employees shall accrue leave days per annual leave cycle, which shall be granted according to Annexure A.
- c) A period of 10 working days leave per annual leave cycle shall be a compulsory requirement. The utilisation of this leave must take into account sectoral service delivery requirements.
- d) The remaining days shall be utilised within an 18 month period. All remaining unused leave shall fall away thereafter. However, where leave due is not taken due to the employer's service delivery requirements, such leave shall be paid at the end of the 18 month period.
- e) The departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements. Any refusal must be confirmed in writing.

7.2 Annual leave accruals and leave payouts:

- a) The cash value in respect of unused annual leave credits shall be payable at termination of service.
- b) For purposes of leave payouts, employees shall be paid a maximum of 22 days. Where the days are more than 22 Annexure A applies.

7.3 Payout of annual leave accrued before 1st July 2000:

- a) Employees, who in terms of the dispensation applicable prior to 1st July 2000, have earned audited leave accruals in terms of that dispensation, shall retain the same. The employer shall pay such accrued leave on:
 - i) death;
 - ii) retirement; or
 - iii) medical boarding.
- b) Parties to the PSCBC shall negotiate the method of calculating the value and payment of the audited accrued leave.
- c) Where there are no records an audit shall be conducted by the employer in order to determine whether there are periods which are audited or unaudited. Should there be a period which is not audited and a period which is audited

then the leave payout shall be paid on the basis of 6 days per completed year of service up to 100 days for unaudited leave, plus the value of the audited leave.

- d) The employer shall allow employees to utilise their accrued leave credits accrued prior to 1st July 2000. Departments shall develop procedures and measures to ensure that accrued leave is utilised in a manner that does not detrimentally affect service delivery.

7.4 Normal sick leave:

- a) Employees shall be granted 36 working days sick leave with full pay in a three-year cycle.
- b) The employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave.
- c) Practitioners shall, for this purpose, include all practitioners as defined by the Health Professionals Council of South Africa (Medical and Dental Practitioners).
- d) An employee shall produce a medical certificate at the request of the employer where a pattern has been established.
- e) Unused sick leave credits shall lapse at the end of a three-year cycle.

7.5 Disability management leave:

7.5.1 Temporary disability leave:

- a) An employee whose normal sick leave credits in a cycle have been exhausted and who, according to the relevant practitioner, requires to be absent from work due to disability which is not permanent, may be granted sick leave on full pay provided that:
 - i) her or his supervisor is informed that the employee is ill; and
 - ii) a relevant registered medical and/or dental practitioner has duly certified such a condition in advance as temporary disability except where conditions do not allow.
- b) The employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the Labour Relations Act of 1995.
- c) The employer shall specify the level of approval in respect of applications for disability leave.

7.5.2 Permanent disability leave:

- a) Employees whose degree of disability has been certified as permanent shall, with the approval of the employer, be granted a maximum of 30 working days paid sick leave, or such additional number of days required by the employer to finalise the process set out in (b) and (c) below.
- b) The employer shall, within 30 working days, ascertain the feasibility of:
 - i) alternative employment; or
 - ii) adapting duties or work circumstances to accommodate the disability.
- c) If both the employer and the employee are convinced that the employee will never be able to perform any type of duties at her or his level or rank, the employee shall proceed with application for ill health benefits in terms of the Pension Law of 1996.

7.6 Leave for occupational injuries and diseases:

- a) Employees who, as a result of their work, suffer occupational injuries or contract occupational diseases shall be granted occupational injury and disease leave for the duration of the period they cannot work.
- b) If an employee suffers a work-related injury as a result of an accident involving a third party, the employer may grant her or him occupational injury and disease leave provided that the employee:
 - i) brings a claim for compensation against the third party; and
 - ii) undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the costs arising from the accident.
- c) The employer shall be obliged to take reasonable steps to assist an employee to claim compensation according to (b) above.

7.7 Parental leave:

7.7.1 Maternity Leave:

- a) An employee shall receive four months paid maternity leave for each confinement.
- b) If an employee has utilised all her maternity leave, and wishes to extend the leave as a result of complications, she shall:
 - i) utilise available vacation leave; and/or

- ii) receive up to 184 days of unpaid leave; and/or
 - iii) utilise any sick leave due to her.
- c) An employee who experiences a miscarriage, still birth or termination of pregnancy after starting paid maternity leave:
 - i) shall be entitled to 6 weeks paid leave; and
 - ii) thereafter she may utilise sick leave for days taken off as a result of the miscarriage, still birth or termination of pregnancy.

7.7.2 Adoption leave:

- a) An employee who adopts a child who is younger than two years shall qualify for adoption leave to a maximum of 45 working days. Thereafter the provisions of 7.7.1 (b) (i) and (ii) shall apply.
- b) If both spouses or life partners are employed in the public service, both partners will qualify for adoption leave provided that the combined leave taken does not exceed the 45 days in (a) above.

7.7.3 Family responsibility leave:

- a) Employees shall be granted 3 days leave per annual leave cycle for utilisation if:
 - i) the employee's spouse or life partner gives birth to a child; or
 - ii) the employee's child, spouse, or life partner is sick.
- b) Employees shall be granted 5 days leave per annual leave cycle for utilisation if:
 - i) the employee's child, spouse or life partner dies; or
 - ii) an employee's immediate family member dies.
- c) The amount of family responsibility leave taken according to (a) and/or (b) above shall not exceed 5 days, unless special circumstance warrant further leave at the discretion of the employer.
- d) Employees who have used all their family responsibility leave shall:
 - i) use available vacation leave; and/or
 - ii) use up to 84 days of unpaid leave.

7.8 Special leave:

- a) The employer shall negotiate a policy in the relevant sectoral bargaining council.
- b) This policy shall indicate:
 - i) the circumstances or responsibilities under which the employer shall authorise special leave with full pay;
 - ii) as far as possible, events for which the employer shall not provide such leave.
- c) The policy may provide paid leave for such requirements such, as study, examinations, military service, re-settlement due to a transfer, collective bargaining or other labour-relations requirements, participation in sports, sabbaticals where appropriate, or any other purpose.

7.9 Leave for office bearers or shop stewards of recognised employee organisations:

- a) Office bearers or shop stewards of recognised employee organisations shall receive up to 10 days paid leave per annum for activities related to her or his union position.

7.10 Unpaid leave:

- a) If an employee has utilised all her or his paid vacation leave, the employer may grant her or him unpaid vacation leave. Only in exceptional cases shall the employer grant more than 184 days of unpaid vacation leave in a period of 18 months.
- b) An employee shall utilise unpaid leave for absence from work due to:
 - i) arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction; or
 - ii) a criminal sentence.

8. PAY PROGRESSION:

- 8.1 The parties shall develop and finalise a new pay progression system by 1st July 2001. The agreed new pay progression system shall replace rank and leg promotions.
- 8.2 The employer shall fund research, development and related costs in respect of a new pay progression system.
- 8.3 The parties shall set up career paths for every occupation, which shall define:

- a) grounds for promotion to higher salary levels, which must include both an improvement in competencies and good performance;
- b) the grounds for movement into occupations on the same salary level;
- c) competencies required for each salary level;
- d) procedures to assess employees' competencies at each salary level; and
- e) other requirements for promotion.

8.4 The present rank and leg promotion system shall be terminated by 1st July 2001 or earlier if a new pay progression system is agreed to before that date.

8.5 Educators shall receive a once-off, non-pensionable bonus of R850-00 in addition to the annual general salary increase.

8.6 Employees, including educators, shall receive R850-00 across the board if a pay progression system is not agreed to and implemented by 1st July 2001. If a pay progression system is not agreed to in subsequent years the amount of R850-00 shall be increased according to inflation (consumer price index).

8.7 The backlog of rank and leg promotions shall be paid within a period of 3 ½ years or earlier. In this regard the most adversely affected groups shall be prioritised in Sectoral Councils.

8.8 The parties shall establish training programmes that enable employees to obtain relevant competencies.

8.9 The employer shall provide sufficient funds per sector for research to assist in the definition of career paths.

8.10 Each sector shall define the competencies required for each level in career paths, taking into account new policies and service requirements.

8.11 Sectoral councils shall submit regular progress reports to the PSCBC regarding the development of the new pay progressing system “

9. COMMON PAY DATE FOR PUBLIC SERVANTS:

9.1 A joint task team of employer and employee parties shall be established to investigate the possibility of such a pay date in the different sectors.

9.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

10. PAYMENT OF BIRTHDAY BONUS:

10.1 Employees whose birthdays fall between January and March of each year shall receive their 13th cheque on their birthday month and not in April of each year.

10.2 The above shall be phased in over a period of 3 years.

11. PAYMENT OF 13TH CHEQUE TO EMPLOYEES:

11.1 The 13th cheque shall be equal to one month's salary and all contribution obligations on the parties in this regard shall lapse.

12. WAGE INCREASE FOR 2000/2001 FINANCIAL YEAR:

12.1 The annual wage increase for the 2000/2001 financial year shall be an average of 6.5% of which 0.5% shall be paid on a sliding scale according to Annexure B.

13. IMPLEMENTATION DATE:

13.1 The implementation date of this agreement shall be 1st July 2000.

14. DISPUTE RESOLUTION:

14.1 Disputes about the interpretation or application of this agreement shall be dealt with according to the dispute resolution procedure of the PSCBC.

15. PUBLIC SERVICE RESTRUCTURING:

15.1 The Presidential Jobs Summit that was convened to address the growing scourge of job losses, directed that all sectors convene sectoral job summits as a matter of urgency.

15.2 The parties hereby commit themselves to the urgent convening of the public service jobs summit by no later than 31 January 2001.

15.3 All matters related to the role, the size and future of the public service shall be deliberated upon and agreed during the jobs summit process.

THIS DONE AND SIGNED AT CENTURION ON THIS 27TH DAY OF JULY 2001

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as employer		

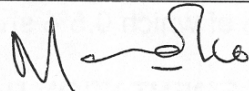
ON BEHALF OF EMPLOYEE PARTIES

Employee party	Name	Signature
DENOSA		
HOSPERSA		
NAPTOSA		
NUPSAW		
NPSWU		
NEHAWU		
PAWUSA		
POPCRU		
PSA		
SADTU		
SAPU		
SAOU		

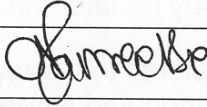
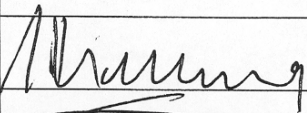
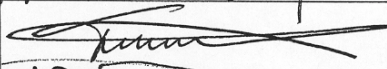
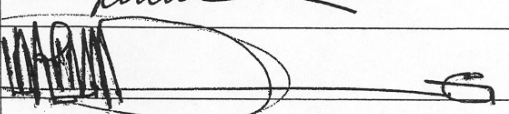
THIS DONE AND SIGNED AT CENTURION

OF THIS 27 DAY OF JULY 2001

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as employer	Manoko Nchwe	

ON BEHALF OF EMPLOYEE PARTIES

Employee party	Name	Signature
DENOSA	XXXXXXXXXX	XXXXXXXXXX
HOSPERSA		
NAPTOSA		
NUPSAW		
NPSWU		
NEHAWU	Peter Ramoetshe	
PAWUSA		
POPCRU		
PSA	HN DE CLERCK	
SADTU	T. W. NXESI	
SAPU	M. R. MONALONGA	
SAOU		

RESOLUTION NO 7 OF 2000

**IMPROVEMENT IN THE CONDITIONS OF SERVICE
OF PUBLIC SERVICE EMPLOYEES FOR 2000/2001
FINANCIAL YEAR**

**PUBLIC SERVICE CO-ORDINATING BARGAINING
COUNCIL (PSCBC)**

PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL (PSCBC)

RESOLUTION NO. 7 OF 2000

**IMPROVEMENT IN THE CONDITIONS OF SERVICE OF PUBLIC SERVICE EMPLOYEES
FOR 2000/2001 FINANCIAL YEAR**

The employer and employee parties agree on the terms set out below:

1. OBJECTIVES:

- 1.1 To establish processes to develop new, more equitable benefits, career paths and pay progression for all employees in the public service.
- 1.2 To establish a framework for restructuring in the public service.
- 1.3 To provide for the annual wage increase for public service employees for the 2000/2001 financial year.

2. SCOPE:

- 2.1 This agreement applies to the employer and employees:
 - a) who are employed by the State; and
 - b) who fall within the registered scope of the PSCBC.

3. MEDICAL AID RESTRUCTURING:

- 3.1 A joint task team of employer and employee parties shall be established to investigate:
 - a) mechanisms to introduce collective buying power;
 - b) extending medical assistance to all employees in the public service;
 - c) the feasibility of capping and/or de-linking the present medical aid contribution from the medical price index;
 - d) administrative mechanisms to control and manage costs for the employer and employee;
 - e) measures and resources for the treatment of HIV/AIDS in respect of affected employees and their dependants;
 - f) how medical aid schemes can strengthen the public health system in the country; and
 - g) post retirement medical aid.

3.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

4. POLICY ON HIV/AIDS:

4.1 A joint task team of employer and employee parties shall be established to investigate:

- a) the development of an HIV/ AIDS policy;
- b) the elimination of discrimination against people living with HIV/ AIDS; and
- c) the development of appropriate training and materials for people who work with those affected by HIV/ AIDS.

4.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

5. HOUSING AND ACCOMMODATION RESTRUCTURING:

5.1 A joint task team of employer and employee parties shall be established to investigate:

- a) possibilities on how the employer's collective buying power can be harnessed to obtain better and affordable arrangements with financial institutions. Further, to develop criteria for the evaluation of financial institutions that will provide mortgage bonds for public servants;
- b) measures to address the needs of the low-income and rural-based employees together with those based in tribal trust land, inner city and peri-urban areas as far as the housing benefit is concerned;
- c) measures to enable new employees with a continuous twelve-month period of service to obtain a housing subsidy;
- d) all allowances related to housing and accommodation with a view of extending the same to all employees;
- e) the current accommodation benefits provided by the employer; and
- f) the possible use of individual's actuarial value with the Government Employee Pension Fund (GEPF), to be accessed for collateral purposes.

5.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

6. PENSION RESTRUCTURING:

6.1 A joint task team of employer and employee parties shall be established to investigate:

- a) advantages and disadvantages of the present system in relation to a Pay as You Go (PAYG) and any other pension system;

- b) a reduction in the employer's contribution to the Government Employees Pension Fund (GEPP) to an agreed percentage. The purpose of this is to use funds accrued from such reduction towards the development of social services and job security in the public service;
- c) the implications of the alleged mismanagement of the Venda pension fund on the affected employees; and
- d) the buying back of pensions at favourable rates to assist those employees who were previously denied access to the pension fund as well as all employees in terms of previous collective agreements.

6.2 The joint task team shall complete its work by 31st May 2001 and submit developed recommendations to the PSCBC for negotiation by 15th June 2001.

7. LEAVE:

7.1 Annual leave:

- a) The annual leave dispensation in this agreement shall provide a framework that may be further refined, subject to service delivery requirements of any sector.
- b) Employees shall accrue leave days per annual leave cycle, which shall be granted according to Annexure A.
- c) A period of 10 working days leave per annual leave cycle shall be a compulsory requirement. The utilisation of this leave must take into account sectoral service delivery requirements.
- d) The remaining days shall be utilised within an 18 month period. All remaining unused leave shall fall away thereafter. However, where leave due is not taken due to the employer's service delivery requirements, such leave shall be paid at the end of the 18 month period.
- e) The departments shall not unreasonably refuse to grant leave to employees who apply, taking into consideration service delivery requirements.

7.2 Annual leave accruals and leave payouts:

- a) The cash value in respect of unused annual leave credits shall be payable at termination of service.
- b) For purposes of leave payouts, employees shall be paid a maximum of 22 days.

7.3 Payout of annual leave accrued before 1st July 2000:

- a) Employees, who in terms of the dispensation applicable prior to 1st July 2000, have earned audited leave accruals in terms of that dispensation, shall retain the same. The employer shall pay such accrued leave on:

- i) death;
 - ii) retirement; or
 - iii) medical boarding.
- b) Parties to the PSCBC shall negotiate the method of calculating the value and payment of the audited accrued leave.
- c) Where there are no records an audit shall be conducted by the employer in order to determine whether there are periods which are audited or unaudited. Should there be a period which is not audited and a period which is audited then the leave payout shall be paid on the basis of 6 days per completed year of service up to 100 days for unaudited leave, plus the value of the audited leave.
- d) The employer shall allow employees to utilise their accrued leave credits accrued prior to 1st July 2000. Departments shall develop procedures and measures to ensure that accrued leave is utilised in a manner that does not detrimentally affect service delivery.

7.4 Normal sick leave:

- a) Employees shall be granted 36 working days sick leave with full pay in a three-year cycle.
- b) The employer shall require a medical certificate from a registered medical practitioner if three or more consecutive days are taken as sick leave.
- c) Practitioners shall, for this purpose, include all practitioners as defined by the Health Professionals Council of South Africa (Medical and Dental Practitioners).
- d) An employee shall produce a medical certificate at the request of the employer where a pattern has been established.
- e) Unused sick leave credits shall lapse at the end of a three-year cycle.

7.5 Disability management leave:

7.5.1 Temporary disability leave:

- a) An employee whose normal sick leave credits in a cycle have been exhausted and who, according to the relevant practitioner, requires to be absent from work due to disability which is not permanent, may be granted sick leave on full pay provided that:
 - i) her or his supervisor is informed that the employee is ill; and

- ii) a relevant registered medical and/or dental practitioner has duly certified such a condition in advance as temporary disability except where conditions do not allow.
- b) The employer shall, during 30 working days, investigate the extent of inability to perform normal official duties, the degree of inability and the cause thereof. Investigations shall be in accordance with item 10(1) of Schedule 8 in the Labour Relations Act of 1995.
- c) The employer shall specify the level of approval in respect of applications for disability leave.

7.5.2 Permanent disability leave:

- a) Employees whose degree of disability has been certified as permanent shall, with the approval of the employer, be granted a maximum of 30 working days paid sick leave, or such additional number of days required by the employer to finalise the process set out in (b) and (c) below.
- b) The employer shall, within 30 working days, ascertain the feasibility of:
 - i) alternative employment; or
 - ii) adapting duties or work circumstances to accommodate the disability.
- c) If both the employer and the employee are convinced that the employee will never be able to perform any type of duties at her or his level or rank, the employee shall proceed with application for ill health benefits in terms of the Pension Law of 1996.

7.6 Leave for occupational injuries and diseases:

- a) Employees who, as a result of their work, suffer occupational injuries or contract occupational diseases shall be granted occupational injury and disease leave for the duration of the period they cannot work.
- b) If an employee suffers a work-related injury as a result of an accident involving a third party, the employer may grant her or him occupational injury and disease leave provided that the employee:
 - i) brings a claim for compensation against the third party; and
 - ii) undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the costs arising from the accident.
- c) The employer shall be obliged to take reasonable steps to assist an employee to claim compensation according to (b) above.

7.7 Parental leave:

7.7.1 Maternity Leave:

- a) An employee shall receive four months paid maternity leave for each confinement.
- b) If an employee has utilised all her maternity leave, and wishes to extend the leave as a result of complications, she shall:
 - i) utilise available vacation leave; and/or
 - ii) receive up to 184 days of unpaid leave; and/or
 - iii) utilise any sick leave due to her.
- c) An employee who experiences a miscarriage, still birth or termination of pregnancy after starting paid maternity leave:
 - i) shall be entitled to 6 weeks paid leave; and
 - ii) thereafter she may utilise sick leave for days taken off as a result of the miscarriage, still birth or termination of pregnancy.

7.7.2 Adoption leave:

- a) An employee who adopts a child who is younger than two years shall qualify for adoption leave to a maximum of 45 working days. Thereafter the provisions of 7.7.1 (b) (i) and (ii) shall apply.
- b) If both spouses or life partners are employed in the public service, both partners will qualify for adoption leave provided that the combined leave taken does not exceed the 45 days in (a) above.

7.7.3 Family responsibility leave:

- a) Employees shall be granted 3 days leave per annual leave cycle for utilisation if:
 - i) the employee's spouse or life partner gives birth to a child; or
 - ii) the employee's child, spouse, or life partner is sick.
- b) Employees shall be granted 5 days leave per annual leave cycle for utilisation if:
 - i) the employee's child, spouse or life partner dies; or
 - ii) an employee's immediate family member dies.

- c) The amount of family responsibility leave taken according to (a) and/or (b) above shall not exceed 5 days.
- d) Employees who have used all their family responsibility leave shall:
 - i) use available vacation leave; and/or
 - ii) use up to 84 days of unpaid leave.

7.8 Special leave:

- a) The employer shall negotiate a policy in the relevant bargaining council.
- b) This policy shall indicate:
 - i) the circumstances or responsibilities under which the employer shall authorise special leave with full pay;
 - ii) as far as possible, events for which the employer shall not provide such leave.
- c) The policy may provide paid leave for such requirements such, as study, examinations, military service, re-settlement due to a transfer, collective bargaining or other labour-relations requirements, participation in sports, sabbaticals where appropriate, or any other purpose.

7.9 Leave for office bearers or shop stewards of recognised employee organisations:

- a) Office bearers or shop stewards of recognised employee organisations shall receive up to 10 days paid leave per annum for activities related to her or his union position.

7.10 Unpaid leave:

- a) If an employee has utilised all her or his paid vacation leave, the employer may grant her or him unpaid vacation leave. Only in exceptional cases shall the employer grant more than 184 days of unpaid vacation leave in a period of 18 months.
- b) An employee shall utilise unpaid leave for absence from work due to:
 - i) arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction; or
 - ii) a criminal sentence.

8. PAY PROGRESSION:

- 8.1 The present rank and leg promotion system shall be terminated by 1st July 2001 or earlier if a new pay progression system is agreed to before that date.
- 8.2 Educators shall receive a once-off, non-pensionable bonus of R850-00 in addition to the annual general salary increase.
- 8.3 Employees shall receive R850-00 across the board if a pay progression system is not agreed to and implemented by 1st July 2001. If a pay progression system is not agreed to in subsequent years the amount of R850-00 shall be increased according to inflation.
- 8.4 The backlog of rank and leg promotions shall be paid within 4 years.
- 8.5 The employer shall fund research, development and related costs in respect of a new pay progression system.
- 8.6 The parties shall set up career paths for every occupation, which shall define:
- a) grounds for promotion to higher salary levels, which must include both an improvement in competencies and good performance;
 - b) the grounds for movement into occupations on the same salary level;
 - c) competencies required for each salary level;
 - d) procedures to assess employees' competencies at each salary level; and
 - e) other requirements for promotion.
- 8.7 The parties shall establish training programmes that enable employees to obtain relevant competencies.
- 8.8 The employer shall provide sufficient funds per sector for research to assist in the definition of career paths.
- 8.9 Each sector shall define the competencies required for each level in career paths, taking into account new policies and service requirements.

9. COMMON PAY DATE FOR PUBLIC SERVANTS:

- 9.1 A joint task team of employer and employee parties shall be established to investigate the possibility of such a pay date in the different sectors.
- 9.2 The joint task team shall complete its work by 31st January 2001 and submit developed recommendations to the PSCBC for negotiation by 15th February 2001.

10. PAYMENT OF BIRTHDAY BONUS:

- 10.1 Employees whose birthdays fall between January and March of each year shall receive their 13th cheque on their birthday month and not in April of each year.
- 10.2 The above shall be phased in over a period of 3 years.

11. PAYMENT OF 13TH CHEQUE TO EMPLOYEES:

- 11.1 The 13th cheque shall be equal to one month's salary and all contribution obligations on the parties in this regard shall lapse.

12. WAGE INCREASE FOR 2000/2001 FINANCIAL YEAR:

- 12.1 The annual wage increase for the 2000/2001 financial year shall be an average of 6.5% of which 0.5% shall be paid on a sliding scale according to Annexure B.

13. IMPLEMENTATION DATE:

- 13.1 The implementation date of this agreement shall be 1st July 2000.

14. DISPUTE RESOLUTION:

- 14.1 Disputes about the interpretation or application of this agreement shall be dealt with according to the dispute resolution procedure of the PSCBC.

THIS DONE AND SIGNED AT _____

OF THIS _____ DAY OF _____ 2000

ON BEHALF OF THE STATE AS EMPLOYER

	Name	Signature
State as employer		

ON BEHALF OF EMPLOYEE PARTIES

Employee party	Name	Signature
DENOSA		
HOSPERSA		
NAPTOSA		
NUPSAW		
NPSWU		
NEHAWU		
PAWUSA		
POPCRU		
PSA		
SADTU		
SAPU		
SAOU		

RESOLUTION NO 15 OF 2002

AMENDMENTS TO PSCBC RESOLUTION 7 OF 2000 AND PSCBC RESOLUTION 5 OF 2001: LEAVE MATTERS

1. SCOPE

1.1 This agreement binds:

- (a) the employer;
- (b) the employees of the employer who are members of the trade union parties to this agreement; and
- (c) the employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council.

2. AGREEMENT

2.1 The parties agree that the PSCBC Resolution 7 of 2000 and PSCBC Resolution 5 of 2001 be amended as follows:

3. CAPPING OF LEAVE DURING TRANSITIONAL PERIOD

3.1 As a once off arrangement, the 50% leave entitlement, or any portion thereof, which was due to employees for the period 1 July 2000 to 31 December 2000, and which could not be utilised before 30 June 2001 shall be added to the number of leave days accrued prior to 1 July 2000.

4. INCAPACITY LEAVE

4.1 The word 'disability' in clause 7.5 of PSCBC Resolution 7 of 2000 be replaced with the word 'incapacity' wherever it appears.

5. ANNUAL LEAVE FOR NON-TEACHING STAFF AT SCHOOLS/TRAINING INSTITUTIONS (Employed in the various Schools and Education and Training Institutions)

5.1 Non-teaching staff at schools and training institutions shall be:

5.1.1 Entitled to 27 working days annual leave of which at least 22 of the 27 working days annual leave must be taken during the period for which a school/education/training institution closes for the holidays. The remaining 5 days may be taken when the institution is in operation.

5.1.2 The annual leave entitlement should in these circumstances be regarded as the minimum. Therefore, if an employee is not required at the institution during the period(s) when the institution closes for holidays, an employee may utilise his/her annual leave entitlement and/or paid time off granted by the employer.

5.1.3 The head of the institution must ensure that his/her decisions are based upon the principles of fairness and equality in determining the leave roster for the affected employees.

5.2 With due regard to the principles of fairness and equality-

5.2.2 Annual leave and holidays constituting time off should be planned and scheduled at the beginning of a leave cycle, i.e. January of each year.

5.2.3 This process of scheduling of annual leave should take place in collaboration with the head of the institution and the employees concerned.

5.2.4 As for periods of time off during institution holidays (i.e. learners are on vacation) the following should be taken into account-

(a) The concept of 'if an employee is not required at the institution during the period(s)...'(refer 5.1.2): If an employee is not required during the institution holidays, the institution may not require from that employee to report for duty, *except* in circumstances which have a direct bearing on operational/ service delivery requirements of that institution.

(b) Attention needs to be given to activities/services that needs to take place/be delivered during the institution holidays.

(c) Scheduling and presenting formal training for all non-teaching members of staff during some of these periods may be considered.

(d) A roster of time off should be developed to give each member of staff a fair opportunity to time off, in the event where activities are to take place/services have to be rendered during institution holidays.

(e) Tasks should as far as possible be rotated between non-teaching members of staff and retain where possible only a minimum service delivery staff complement if their services are required during a institution holiday. To this end it should be born in mind that it is not necessary to retain the full staff complement, if only a minimum service delivery staff complement is required.

(f) It is important to make sure that non-teaching staff is retained on duty during institution holidays, only for valid official duty.

5.3 For purposes of clause 5.1 the employer shall ensure that in the case of institutions presenting a combination of courses e.g. semester and trimester courses, the annual leave and periods of time off of non-teaching staff rendering a support service to the academic staff, will be aligned with the dispensation applicable to the said academic staff.

6. PROBATION PERIODS

6.1 The employer will take the necessary steps to amend section 13 (c) of the Public Service Act, 1994, as amended, to provide that annual leave be covered within the probationary period.

7. MEDICAL CERTIFICATES: MEDICAL PRACTITIONERS

7.1 Paragraph 7.4 (c) of PSCBC Resolution 7 of 2000 and Resolution 5 of 2001 be amended to read “Practitioners shall, for this purpose include all practitioners as defined by the Health Professional Council of South Africa and who are legally certified to diagnose and treat patients”

8. This agreement shall come into effect from the date of signing.

9. If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

10. The Council will monitor the implementation of this agreement.

ANNEXURE A

EMPLOYEE CATEGORY	ANNUAL LEAVE EXPRESSED AS WORKING DAYS
1. Institution-based educators ¹	As per ELRC Resolution 7 of 2001
2. Office-based educators ¹	As per ELRC Resolution 7 of 2001
3. Non-teaching staff based at schools/institutions	27
4. Nursing personnel in institutions that provide 24 hour service	
(a) Registered nurses appointed before 1 January 1968	40
(b) Registered or enrolled nurses appointed on or after 1 January 1968:	
(i) Less than 10 years service	34
(ii) 10 or more years of service	38
(c) nursing assistants appointed before 1 January 1968	35
(d) nursing assistants appointed after 1 January 1968 with-	
• less than 10 years service	30
• 10 or more years of service	34
(e) student and pupil nurses	22
(f) part-time nurses	22
5. Employees appointed prior to 1 July 1966	28
6. Other employees:	
(a) Less than 10 years service.	22
(b) 10 or more years of service	26

¹ ELRC Res. 7 of 2001 refers

**THIS DONE AND SIGNED AT CENTURION ON THIS 7TH DAY
OF NOVEMBER 2002.**

ON BEHALF OF THE EMPLOYER PARTY


	Name	Signature
State as Employer		

ON BEHALF OF TRADE UNION PARTIES

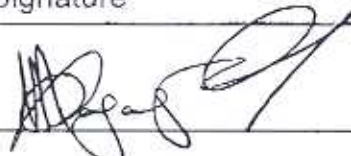
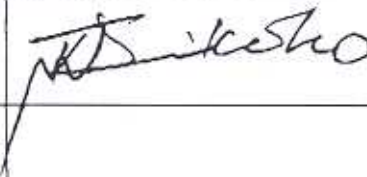

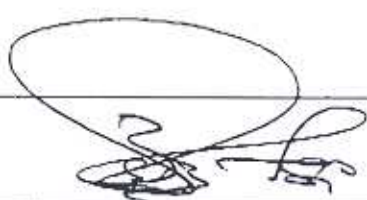
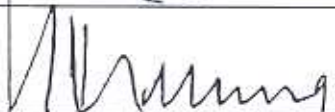
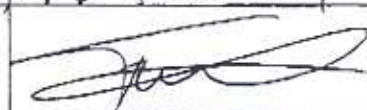
Trade Union	Name	Signature
DENOSA		
HOSPERSA		
NAPTOSA		
NUPSAW		
NEHAWU		
PAWUSA		
POPCRU		
PSA		
SADTU		
SAPU		

THIS DONE AND SIGNED AT Centurion OF THIS 7th DAY OF November 2002.

ON BEHALF OF THE EMPLOYER PARTY

	Name	Signature
State as Employer	Manokonchwe	

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
DENOSA	JABL C. MAGAQUA	
HOSPERSA		
NAPTOSA	J. K. DIKOB	
NUPSAW		
NEHAWU		
PAWUSA		
POPCRU		
PSA	H. N. DE CLERCK	
SADTU	T. W. NXESI	
SAPU		

Signed
19/06/02



**POLICY AND PROCEDURE ON INCAPACITY LEAVE AND ILL-HEALTH RETIREMENT
(PILIR)**

AUGUST 2021

**DETERMINED IN TERMS OF SECTION 3(2) READ WITH SECTION 5(6) OF THE PUBLIC SERVICE ACT,
1994, AS AMENDED BY THE MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION**



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POLICY AND PROCEDURE ON INCAPACITY LEAVE AND FOR ILL-HEALTH RETIREMENT (HEREIN REFERRED TO AS THE PILIR)

1. DEFINITIONS

In the *PILIR* any term to which a meaning has been assigned in the PSA bears that meaning and, unless the context otherwise indicates-

- 1.1. “designated office” means the office/s identified by the Head of Department for processing of PILIR applications
- 1.2. “DPSA” means the Department of Public Service and Administration;
- 1.3. “employment legislation” means the PSA, read with the Public Service Regulations, 2001, as amended and laws governing the appointment of persons in the services and state educational institutions;
- 1.4. “Employer ” means the Head of Department or his/her designated office, which will be responsible for the handling and investigation of incapacity leave applications and ill-health retirement applications;
- 1.5. “GEPF” means the Government Employees Pension Fund;
- 1.6. “Head of Department” means the incumbent of a post mentioned in the second column of Schedules 1, 2 and 3 of the PSA;
- 1.7. “Health Risk Manager” means an independent natural or juristic person appointed by the Employer to advise on the granting of incapacity leave and ill-health retirement of employees;
- 1.8. “incapacitated” means the inability to perform some or all of one’s assigned functions as a result of incapacity;
- 1.9. “incapacity” means an illness or injury;
- 1.10. “Injury on duty” – refers to an occupational disease or an occupational injury as contemplated in the Compensation for Occupational Injuries and Diseases Act, 1993 as amended
- 1.11. “Leave Determination” means the Determination and Directive on Leave of Absence in the Public Service made by the Minister for Public Service and Administration in terms of section 3(2) read with section 5(6) of the PSA, as amended from time to time;
- 1.12. “LRA” means the Labour Relations Act, 1995 (Act 66 of 1995), as amended;
- 1.13. “MISS” means the Minimum Information Security Standards as approved by Cabinet in 1996;
- 1.14. “PSA” means the Public Service Act, 1994 (promulgated under proclamation 103 of 1994, as amended;
- 1.15. “PSCBC” means the Public Service Co-ordinating Bargaining Council; and
- 1.16. “services” means the South African Police Service and the Department of Correctional Services



- 1.17. "sufficient proof" means enough accurate information from acceptable medical sources to allow the Employer to make an independent medical assessment regarding the nature and severity of the employee's medical condition.

2. SCOPE

The *PILIR* applies to all employees appointed in terms of the Public Service Act, 1994, as amended. Where persons employed in the services or state educational institutions are not excluded from the provisions of the *PILIR*, those provisions apply only in so far as they are not contrary to the laws governing their employment.

3. OVERVIEW

3.1. DETERMINATION AND DIRECTIVE ON LEAVE OF ABSENCE IN THE PUBLIC SERVICE (Leave Determination)

The leave dispensation as determined in the *Leave Determination*, read with the applicable collective agreements¹, provides for normal sick leave of 36 working days in a sick leave cycle of three years. If an employee has exhausted his/her normal sick leave, the Employer, may at his/her discretion grant additional incapacity leave, i.e. temporary incapacity leave and where applicable permanent incapacity leave. For this purpose the Employer must conduct an investigation into the nature and extent of the employee's incapacity. Such investigations must be carried out in accordance with item 10(1) of Schedule 8 of the LRA.

3.2. ILL-HEALTH RETIREMENTS IN TERMS OF EMPLOYMENT LEGISLATION

- 3.2.1. The provisions regulating ill-health retirements are contained in the applicable employment legislation.
- 3.2.2. The Employer may, in terms of the applicable employment legislation, consider on the basis of medical evidence, the discharge of an employee on account of ill-health.
- 3.2.3. The Employer may, in addition to medical evidence presented by the employee, request the employee to undergo a medical examination.

4. OBJECTIVES

The objectives of the *PILIR* are to set up structures and processes, which will ensure-

- 4.1. intervention and management of incapacity leave in the workplace to accommodate temporary or permanently incapacitated employees; and
- 4.2. that opportunities for rehabilitation, re-skilling, re-alignment and retirement, where applicable, of temporary or permanently incapacitated employees are identified for the Employer's further attention.

5. MISSION

The mission of the *PILIR* is to-

¹PSCBC Resolution 7 of 2000 as amended by PSCBC Resolutions 5 of 2001, PSCBC Resolution 15 of 2002 and PSCBC Resolution 1 of 2007



- 5.1. adopt a holistic approach to health risk management, by seeking synergies with wellness and disease management programmes provided by employees' medical schemes and by implementing sick leave management as well as rehabilitation and re-skilling structures in conjunction with health risk management;
- 5.2. prevent abuse of sick leave by managing incapacity or ill-health as far as possible;
- 5.3. adopt a scientific approach to health risk management based on sound medical, actuarial and legal principles;
- 5.4. involve the various stakeholders in the health risk management processes and structures;
- 5.5. implement health risk management that is consistent, fair and objective; and
- 5.6. support health risk management that is cost effective and financially sound.

6. ROLE PLAYERS

In the management of incapacity leave and ill-health retirement, the role players will be the following:

- 6.1. The **DPSA**: The **DPSA** will develop and maintain *the PILIR*. The **DPSA** shall be centrally responsible for the appointment of a panel of accredited Health Risk Managers. The **DPSA** will also provide advice on the interpretation and application of the *PILIR*.
- 6.2. The **Government Employees Pension Fund (GEPF)**: The GEPF shall deal with the processing of Employer-approved applications for ill-health retirements.
- 6.3. The **Health Risk Manager**: The Health Risk Manager is an entity of independent multi-disciplinary medical experts, specializing in occupational medicine, appointed by the DPSA to a panel of accredited Health Risk Managers and individually contracted by the Employer, to assess and provide advice to the Employer in respect of an employee's application for incapacity leave and ill-health retirement within specified timeframes. The systems and administrative capacity for handling the volume of forms, as well as the medical knowledge and experience to do incapacity leave and ill-health retirement assessments are the responsibility of the Health Risk Manager. The Health Risk Manager shall provide regular reports to the **DPSA** and the Employer.
- 6.4. The **Employer**: The Employer is for purposes of the *PILIR*, the departments and organisational components listed in Schedules 1 to 3 of the PSA. The Employer shall, in terms of the *PILIR*, be responsible to assign the designated office(s) for purposes of the *PILIR*, process applications and complete reports within the specified time frames. Where applicable the Employer will engage with the Health Risk Manager, the **DPSA** and the GEPF. The Employer shall, within the scope of his/her authority and with due consideration of the Health Risk Manager's advice, take a final decision on an employee's application for incapacity leave and/or ill-health retirement.
- 6.5. The **Employee**: The employee shall submit application forms for either incapacity leave or ill-health retirement. The employee shall submit all required documentation e.g. medical certificates, reports, etc. as determined in terms of the *PILIR* and in accordance with the *Leave Determination*.



7. THE MANAGEMENT OF TEMPORARY AND PERMANENT INCAPACITY LEAVE

7.1. TEMPORARY INCAPACITY LEAVE

- 7.1.1. Incapacity leave is not an unlimited amount of additional sick leave days at an employee's disposal. Incapacity leave is additional sick leave granted conditionally at the Employer's discretion, as provided for in the *Leave Determination* and the *PILIR*.
- 7.1.2. An employee who has exhausted his/her normal sick leave, referred to in the *Leave Determination*, during the prescribed leave cycle and who according to the treating medical practitioner requires to be absent from work due to a temporary incapacity, may apply for temporary incapacity leave with full pay on the applicable application forms prescribed in terms of the *PILIR* **in respect of each occasion**.
- 7.1.3. For purposes of managing temporary incapacity leave and the application of the *PILIR*, temporary incapacity leave is regarded to be-
- 7.1.3.1. a short period of incapacity leave, if the employee is absent for not longer than 29 working days per occasion, after the normal sick leave credit have been exhausted, in a sick leave cycle; and
- 7.1.3.2. a long period of incapacity leave, if the employee is absent for 30 working days or more per occasion, after the normal sick leave credit have been exhausted, in a sick leave cycle.
- 7.1.4. Applications for temporary incapacity leave must be submitted on the following prescribed application forms:
- 7.1.4.1. Annexure A for short periods of incapacity leave; or
- 7.1.4.2. Annexure B for long periods of incapacity leave.
- 7.1.5. For an employee's application for temporary incapacity leave to be considered the -
- 7.1.5.1. employee must submit sufficient proof that s/he is too ill/injured to perform his/her work
- 7.1.5.2. application form must, regardless the period of absence, be accompanied by a medical certificate with the medical information form in support of the mandatory medical certificate in the case of a short period of temporary incapacity leave, issued and signed by a medical practitioner and if the employee has consented, the nature and extent of the incapacity. Please also refer to the *Leave Determination* for further details on the acceptance of medical certificates;
- 7.1.5.3. employee is in accordance with item 10(1) of Schedule 8 to the LRA afforded the opportunity to submit together with his/her application form-
- (a) any medical evidence related to the medical condition of the employee, such as medical reports from a specialist, blood test results, x-ray results or scan results, obtained at the employee's expense; and
- (b) any additional written motivation supporting his/her application;



- 7.1.5.4. employee is requested to give his/her consent that medical information/records be disclosed to the Employer and/or its Health Risk Manager and to undergo further medical examinations in terms of the assessment process described in the *PILIR*. Where the employee chooses not to grant consent the employee's application will be assessed based on the available information at the employer's disposal, only.
- 7.1.6. An employee must submit his/her application for temporary incapacity leave in respect of clinical procedures in advance, unless the treating medical practitioner certifies that such procedures have to be conducted as an emergency.
- 7.1.7. If overcome by a sudden incapacity, the employee must personally notify his/her supervisor/manager **immediately**. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the incapacity prevents the employee to inform the supervisor/manager personally.
- 7.1.8. An employee must submit an application form for temporary incapacity leave personally or through a relative, fellow employee or friend within 5 working days after the first day of absence.
- 7.1.9. If the employee fails to submit an application within the period indicated in paragraphs 7.1.8, above, the following arrangements apply:
- 7.1.9.1. The employee's manager/supervisor must immediately notify the employee that if such application is not received within 2 working days, the sick leave period will be deemed to be leave without pay. If the employee fails to submit the application on time or submit compelling reasons or compelling reasons exist why the application cannot be submitted, the supervisor/manager must immediately inform the relevant personnel section/office in writing that relevant absence must be covered by annual leave (with the employee's consent) and/or unpaid leave if insufficient annual leave credits are available and if the employee failed to notify the Employer of his/her choice.
- 7.1.9.2. Failure by the employee to submit an application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light given the financial and service delivery implications. Disciplinary steps should be taken against both the supervisor/manager and the employee. For this purpose the employee must be charged with unauthorised absence from work, and the supervisor/manager must be charged with failure to comply with or contravening an Act, regulation or legal obligation.

7.2. SHORT PERIOD OF TEMPORARY INCAPACITY LEAVE (1-29 working days requested per occasion)

- 7.2.1. The Employer must immediately on receipt of the employee's completed application in the designated office register the date of receipt on the application form and a central register/database.
- 7.2.2. The Employer must **within 5 working days** from receipt of the employee's completed application for temporary incapacity leave-
- 7.2.2.1. verify that the employee has-



-
- (a) completed and signed Parts A and B or C of the application form. An incomplete and unsigned application form should not be accepted and must immediately be returned to the employee for completion and/or signature. The returned application form must be resubmitted within five (5) working days. Failure by the employee to resubmit the application within the specified timeframe must be dealt with in accordance with paragraph 7.1.9.2 above. The date on which the employee re-submits his/her complete and signed application to the Employer will be deemed the date of receipt for purposes of the *PILIR* and the *Leave Determination*; and
- (b) attached to his/her application the under-mentioned documents/information. The checklist provided at Part E of the application form must be used for this purpose. The Employer must not remove any documents provided additionally by the employee, since it may jeopardise the outcome of the application. If an employee, with his/her application, enclosed a sealed envelope marked for the attention of the Health Risk Manager, such envelope must not be opened and be forwarded to the Health Risk Manager with the application as is.
- i) **Compulsory information**
- A medical certificate, as determined in the *Determination and Directive on Leave of Absence in the Public Service*, with the medical information form (Appendix 1 of Annexure A) in support of the medical certificate.
- ii) **Recommended information**
- A. Current medical reports not older than 6 months. Reports for applications based on psychiatric conditions must not be older than 2 months;
- B. Current blood tests, x-ray results, scan results, etc; and
- C. Additional written motivation provided by the employee;
- (c) verify that the employee's supervisor completed and signed Part D of the application form. An incomplete and unsigned application form must immediately be returned to the supervisor/manager. The returned application form must be resubmitted within ten (5) working days. Failure by the supervisor to resubmit the application form within the specified timeframe must be dealt with in accordance with paragraph 7.1.9.2 above.

7.2.2.2. **conditionally** grant a maximum of 29 consecutive working days temporary incapacity leave with full pay subject to the outcome of his/her investigation into the nature and extent of the employee's incapacity.. The employee must accordingly be notified in writing. Use the example of the *pro forma* letter at Annexure C; and



7.2.2.3. **immediately** complete the department's report to the Health Risk Manager provided for in Part E of the application form and refer the application form to the Health Risk Manager together with -

- (a) the employee's sick leave records² for at least the current sick leave cycle and if available for the previous sick leave cycle;
- (b) the employee's annual and other leave records for the corresponding periods; and
- (c) the relevant Shift Roster if an employee is a shift worker.

(A summary of the employee's leave record could be retrieved from PERSAL, i.e. the dedicated PERSAL function is # 4.5.11-Enquiry: Leave/Leave Credits).

7.2.3. The Health Risk Manager must acknowledge receipt of the above-mentioned report within **2 working days** and confirm in writing that the Employer shall receive feedback on the application within **12 working days inclusive of the aforementioned 2 working days**. It is incumbent on the Employer to confirm that the Health Risk Manager received the report and required attachments.

7.2.4. The Health Risk Manager must then undertake an assessment. The purpose of the assessment is to-

7.2.4.1. determine the validity of the application for temporary incapacity leave;

7.2.4.2. determine the need for ongoing temporary incapacity leave;

7.2.4.3. determine the appropriate duration of the leave;

7.2.4.4. provide preliminary advice on the management of the condition; and

7.2.4.5. advise a full health assessment, if applicable.

7.2.5. guidelines for incapacity assessment at Annexure G to enhance objective, equitable and consistent advice and decision-making. The assessment by the Health Risk Manager shall include, among others-

7.2.5.1. analysis and scrutiny of the available medical information, sick leave certificate(s) by a medical practitioner, the medical information form in support of the medical certificate (Appendix 1 of Annexure A) and sick leave profile for the current and previous (if applicable) sick leave cycles, in conjunction with the employee's annual leave profile for the corresponding periods (if available);

7.2.5.2. if the employee has consented thereto, contact with the treating medical practitioner to verify information where necessary; and

7.2.5.3. categorising the application for temporary incapacity leave into one of the categories referred to in paragraph 7.2.6 hereunder and prepares advice to the Employer on the basis thereof.

² Sick leave records include all previous applications for normal sick and or incapacity leave plus supporting documents such as the medical certificates and, if available, medical reports.



-
- 7.2.6. The Health Risk Manager must divide applications for short periods of incapacity leave into the following categories:
- 7.2.6.1. Employees who applied for clearly invalid reasons and for whom temporary incapacity leave should be declined.
 - 7.2.6.2. Employees who applied for valid reasons and for whom temporary incapacity leave should be granted for a certain period.
 - 7.2.6.3. Employees who applied for valid reasons and to whom temporary incapacity leave should be granted subject to them undergoing specified medical treatment.
 - 7.2.6.4. Employees who applied for valid reasons and who must undergo a secondary assessment in accordance with the PILIR.
- 7.2.7. The Health Risk Manager may request further information before concluding its advice to the Employer.
- 7.2.8. The Health Risk Manager must, while maintaining and protecting the confidentiality relating to medical information, in the event of the categories contemplated in paragraph 7.2.6 above, forward its advice to the Employer. Applications falling under the category sited in paragraph 7.2.6.4 must be dealt with in accordance with the assessment procedure for long periods of temporary incapacity leave as set out in paragraph 7.3.5.
- 7.2.9. The Employer must within 30 working days after the receipt of both the application form and medical certificate referred to in paragraphs 7.1.4 and 7.1.5, approve or refuse temporary incapacity leave granted conditionally. In making a decision, the Employer must apply his/her mind to the medical certificate (with or without describing the nature and extent of the incapacity) contemplated in paragraph 7.1.5.2, the medical information form in support of the medical certificate (Appendix 1 of Annexure A), medical information/records contemplated in paragraph 7.1.5.4 (if the employee consented to disclosure), the Health Risk Manager's advice, the additional information supplied by the employee in paragraph 7.1.5.3 (if any) and all other relevant information available to the Employer and based thereon approve or refuse the temporary incapacity leave granted conditionally, on conditions that the Employer may determine, e.g. to return to work, etc.

Please use Part F of the application form for purposes of the decision-making process.

- 7.2.10. If the Employer -
- 7.2.10.1. approves the temporary incapacity leave granted conditionally, such leave must be converted into temporary incapacity leave; or
 - 7.2.10.2. refuses the temporary incapacity leave granted conditionally, s/he must notify the employee in writing-
 - (a) of the refusal;
 - (b) of the reasons for the refusal;
 - (c) that if s/he is not satisfied with the Employer's decision, that s/he may lodge a grievance as contemplated in paragraph 13 of this policy; and



- (d) that s/he must notify the Employer in writing within 5 working days of the date of the notice to him/her, whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if s/he fails to notify the Employer of his/her choice, the period will be covered by unpaid leave.

Please refer to an example of a draft reply at Annexure D. The draft reply must be adapted according to the circumstances of each individual case.

- 7.2.11. The Employer must cover the period of absence, referred to in paragraph 7.2.10.2 in accordance with the employee's written notification or, if the employee fails to notify that the Employer in terms of that paragraph or the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave. In instances where incapacity leave is declined which originated in the previous leave cycle, an employee has the option to have the period covered by unpaid leave or to request that annual leave of the current leave cycle be utilised to offset the declined incapacity leave.

7.3. LONG PERIODS OF TEMPORARY INCAPACITY LEAVE (30 working days or more requested per occasion)

- 7.3.1. An employee in this category may be subjected to a full assessment by the Health Risk Manager, which may include a second or further medical opinion and/or functional assessment by an occupational therapist. This will allow proper and detailed evaluation of the employee's health condition and the opportunity to assess whether the condition is serious enough to warrant temporary incapacity leave for a long period or otherwise, and where applicable alternate employment, or to adapt the work circumstances/duties of the employee in order to accommodate the employee, in his/her work environment. The assessment process shall take place in two stages, where necessary.
- 7.3.2. The Employer must immediately, on receipt of the employee's application in the designated office, register the date of receipt on the application form, as well as a central register/database.
- 7.3.3. The Employer must **within 5 working days** from receipt of the employee's application for temporary incapacity leave-

7.3.3.1. verify that the employee has-

- (a) completed and signed Parts A and B or C of the application form, and obtained his/her medical practitioners inputs as per Part D of the application form. An incomplete and unsigned application form should not be accepted and must immediately be returned to the employee for completion and/or signature. The returned application form must be resubmitted within ten working (5) days. Failure by the employee to resubmit the application within the specified timeframe must be dealt with in accordance with paragraph 7.1.9.2 above. The date on which the employee re-submits his/her complete and signed application to the Employer will be deemed the date of receipt for purposes of the *PILIR* and the *Leave Determination*; and



(b) attached to his/her application the under-mentioned documents/information. Please use the checklist at Part F, provided on the application form. The Employer must not remove any documents provided additionally by the employee, since it may jeopardise the outcome of the application. If an employee, with his/her application, enclosed a sealed envelope marked for the attention of the Health Risk Manager, such envelope must not be opened and be forwarded to the Health Risk Manager with the application as is.

i) **Compulsory information**

A medical certificate as determined in the *Leave Determination*.

ii) **Recommended information**

A. Current medical reports not older than 6 months. Reports for applications based on psychiatric conditions must not be older than 2 months;

B. Current blood tests, x-ray results, scan results, etc; and

C. Additional written motivation provided by the employee.

(c) verify that the employee's supervisor completed and signed Part E of the application form. An incomplete and unsigned application form must immediately be returned to the supervisor. The returned application form must be resubmitted within five (5) working days. Failure by the supervisor to resubmit the application form within the specified timeframe must be dealt with in accordance with paragraph 7.1.9.2 above.

7.3.3.2. **conditionally** grant a maximum of 30 consecutive working days temporary incapacity leave with full pay subject to the outcome of his/her investigation into the nature and extent of the employee's incapacity. The employee must accordingly be notified in writing. Use the example of the *pro forma* letter at Annexure C; and;

7.3.3.3. **immediately** complete the department's report to the Health Risk Manager provided for in Part F of the application form and refer the application form to the Health Risk Manager together with -

(a) the employee's sick leave records³ for at least the current sick leave cycle and if available for the previous sick leave cycle;

(b) the employee's annual and other leave records for the corresponding periods;

(c) the relevant shift roster if an employee is a shift worker; and

³ Sick leave records include all previous applications for normal sick and or incapacity leave plus supporting documents such as the medical certificates and, if available, medical reports.



-
- (d) the medical report issued in terms of section 17(3)(b) of the BCEA, 1997 if the employee performs on a regular basis work between 23:00 and 06:00 the next day and has requested to be subjected to a medical examination.

(A summary of the employee's leave records could be retrieved from PERSAL, i.e. the dedicated PERSAL function is # 4.5.11-Enquiry: Leave/Leave Credits).

- 7.3.4. The Health Risk Manager must acknowledge receipt of the above-mentioned report within **2 working days** and confirm in writing that the Employer shall receive feedback on the application **within 12 working days inclusive of the aforementioned 2 working days**. It is incumbent on the Employer to confirm that the Health Risk Manager received the documentation as required.

7.3.5. Assessment Process By The Health Risk Manager

7.3.5.1. Primary Assessment

- (a) The Health Risk Manager must within *12 working days* advise the Employer on the employee's application for temporary incapacity leave for either the full period, if a secondary assessment is not necessary, or a maximum of 30 working days in those instances where a need has been identified for a secondary assessment.
- (b) The purpose of the assessment is to-
- i) determine the validity of the application for temporary incapacity leave;
 - ii) determine the need for ongoing temporary incapacity leave;
 - iii) determine the appropriate duration of the leave;
 - iv) provide preliminary advice on the management of the condition; and
 - v) advise a full health assessment, if applicable.
- (c) The assessment by the Health Risk Manager must include, among other, the following:
- i) The scrutiny of the available medical information; sick leave certificate(s) by a medical practitioner, additional information provided by the employee with his/her application in the form of the medical reports, test results and additional motivation, as well as the employee's sick leave profile for the current and previous (if applicable) sick leave cycles, in conjunction with the employee's annual leave profile for the corresponding periods (if available).
 - ii) If the employee consented thereto, contact with the treating medical practitioner to verify information where necessary.
 - iii) The impact that the employee's medical condition has on his/her work performance and work attendance, if possible.



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- iv) By categorising the application for temporary incapacity leave into one of the categories referred to in paragraph 7.3.5.2 (e).
 - (d) The Health Risk Manager must forward its advise on the outcome of the primary assessment to the Employer in respect of the following:
 - i) The validity of the application for incapacity leave.
 - ii) The appropriate duration of the leave.
 - iii) The categories contemplated in par. 7.3.6.2 (e), whilst maintaining confidentiality relating to medical information.
 - iv) The need of the Health Risk Manager to proceed with the secondary assessment to thoroughly investigate-
 - A the necessity for ongoing temporary incapacity leave;
 - B the management of the condition; and
 - C whether the incapacity is of a permanent nature and whether the Employer should investigate and consider alternate employment, or to adapt the work circumstances/duties of the employee in order to accommodate the employee, or to retire the employee on grounds of ill-health.

In such event, the Health Risk Manager must immediately continue with the secondary investigation.

- (e) The Employer must within 30 working days after the receipt of both the application form and medical certificate referred to in paragraphs 7.1.4 and 7.1.5.2, approve or refuse temporary incapacity leave granted conditionally, or where applicable the approval or refusal of additional temporary incapacity leave. In making a decision, the Employer must apply his/her mind to the medical certificate (with or without describing the nature and extent of the incapacity) contemplated in paragraph 7.1.5.2, medical information/records contemplated in paragraph 7.1.5.4 (if the employee consented to disclosure), the Health Risk Manager's advice, the additional information supplied by the employee in paragraph 7.1.5.3 (if any) and all other relevant information available to the Employer and based thereon approve or refuse the temporary incapacity leave granted conditionally, on conditions that the Employer may determine, e.g. to instruct the employee to return to work while the secondary assessment is undertaken. Such instruction should however, be considered and applied with circumspect. However, should the employee fail to adhere to such an instruction s/he expose him/herself to possible disciplinary action.

Please use Part G of the application form for purposes of the decision-making process.

- (f) If the Employer -



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- (i) approves the temporary incapacity leave granted conditionally, such leave must be converted into temporary incapacity leave; or
 - (ii) refuses the temporary incapacity leave granted conditionally, s/he must notify the employee in writing-
 - A. of the refusal;
 - B. of the reasons for the refusal;
 - C. that if s/he is not satisfied with the Employer's decision, that s/he may lodge a grievance as contemplated in par. 10; and
 - D. that s/he must notify the Employer in writing within 5 working days of the date of the notice to him/her, whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if s/he fails to notify the Employer of his/her choice, the period will be covered by unpaid leave.

Please refer to an example of a draft reply at Annexure D. (This letter must be adapted according to the circumstances of each individual case).

- (g) The Employer must cover the period of absence, referred to in paragraph 7.3.5.2(e) in accordance with the employee's written notification or, if the employee fails to notify that the Employer in terms of that paragraph or the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave. In instances where incapacity leave is declined which originated in a previous leave cycle, an employee has the option to have the period covered by unpaid leave or to request that annual leave of the current leave cycle be utilised to offset the declined incapacity leave.
- (h) In the instance where the Health Risk Manager identified and continued with the need for the secondary assessment, the employee must be informed concurrently with the decision in paragraph 7.3.5.2(e), and the fact that s/he has to avail him/herself for possible medical examinations, if the employee has given his/her consent. The Employer may in such an instance conditionally grant the employee additional days' temporary incapacity leave pending the outcome of the secondary assessment.

7.3.5.2. Secondary Assessment

- (a) Once the Health Risk Manager has identified the need for a secondary assessment in its advice to the Employer, it must automatically continue with such an assessment.
- (b) For purposes of the secondary assessment the Health Risk Manager or the Employer may request additional information from either the Employer and/or the employee to-



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- i) investigate, verify or expand information received;
 - ii) provide further independent and impartial opinions on the nature and extent of the condition/s on which the application is based; and/or
 - iii) ascertain more precisely the functional implications of the condition(s) on the employee's work performance.
- (c) Once there is adequate information, consistent criteria will be applied to assess an application in an objective and equitable manner to determine the nature and extent of the employee's incapacity, with due consideration to-
- i) the need for ongoing temporary incapacity leave (i.e. beyond 30 working days),
 - ii) the management of the condition; and
 - iii) whether the incapacity is of a permanent nature and whether the Employer should investigate and consider alternate employment, or to adapt the work circumstances/duties of the employee in order to accommodate the employee, or to retire the employee on grounds of ill-health.
- (d) The Health Risk Manager must in the assessment of the employee's application consider the following aspects:
- i) The nature and extent of the physical impairment, with reference to factors such as mobility, strength, co-ordination, balance, vision, hearing and pain.
 - ii) The nature and extent of psychological/mental impairment, with reference to factors such as mood, cognition, behaviour, communication and motivation.
 - iii) Job specific factors, such as activities of daily work, key performance areas, specific occupational requirements, quality of work, productivity and work habits.
 - iv) Duration of the condition.
 - v) Residual functional capacity of the employee (the employee's capabilities despite the medical condition/s), with reference to factors such as effort, tolerance, endurance and psychological functioning.
 - vi) Potential to perform alternative work, taking into account the particular employee's education, training, work experience, aptitude and age.
 - vii) Rehabilitation and re-skilling potential, taking into account the reasonableness thereof with regard to the particular medical condition, the anticipated outcome, the availability of an appropriate service provider, the duration and cost.



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- viii) Future earning potential of an employee, considering existing skills and plans to generate income.
- (e) The Health Risk Manager must divide applications for a long period of temporary incapacity leave into the following categories:
 - i) Employees who applied for clearly invalid reasons and for whom temporary incapacity leave should be declined.
 - ii) Employees who applied for valid reasons and for whom temporary incapacity leave should be granted for a certain period.
 - iii) Employees who applied for valid reasons and to whom temporary incapacity leave should be granted subject to them undergoing specified medical treatment.
 - iv) Employees who applied for valid reasons and in respect of whom the Health Risk Manager advised that his/her incapacity is permanent and whose cases the Employer needs to investigate/consider with a view to alternate employment, or to adapt the work circumstances/duties of the employee in order to accommodate the employee, or to retire the employee on grounds of ill-health, if applicable.
 - (f) While the secondary assessment is undertaken, the Employer may instruct an employee to return to work, if considered appropriate. If an employee-
 - i) fails to adhere to such instruction; or
 - ii) presents a medical certificate for the same condition under consideration, the employee may expose him/herself for possible disciplinary action.
 - (g) If an application falls under any of the listed categories in (i) to (iv), contemplated in subparagraph (e) above, the Health Risk Manager must advise the Employer, within 40 working days from the commencement of the secondary assessment, on the application, while maintaining the confidentiality relating to medical information.
 - (h) The Employer must apply his/her mind to the medical certificate (with or without describing the nature and extent of the incapacity) contemplated in paragraph 7.1.5.2, medical information/records contemplated in paragraph 7.1.5.4 (if the employee consented to disclosure), the Health Risk Manager's advice, the additional information supplied by the employee in terms of paragraph 7.1.5.3 (if any) and all other relevant information available to the Employer and based thereon decides on-
 - i) the approval or refusal of the ongoing temporary incapacity leave,
 - ii) the management of the employee's medical condition;
 - iii) the approval or refusal of the additional days temporary incapacity leave granted pending the outcome of the secondary assessment;



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- iv) other conditions which the Employer may deem fit, e.g. to instruct the employee to return to work;
 - v) whether the condition is permanent, and if so action plans to implement the Health Risk Manager's advice in respect of the possible alternate employment, adaptation of the employee's work circumstances/duties or to retire the employee on grounds of ill-health (if applicable)
- (i) If the Employer -
- i) approves the temporary incapacity leave granted conditionally, such leave must be converted into temporary incapacity leave; or
 - ii) refuses the temporary incapacity leave granted conditionally, s/he must notify the employee in writing-
 - A. of the refusal;
 - B. of the reasons for the refusal; and
 - C. that he is not satisfied with the Employer's decision, that s/he may lodge a grievance as contemplated in par. 10; and
 - D. that s/he must notify the Employer in writing within 5 working days of the date of the notice to him/her, whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if s/he fails to notify the Employer of his/her choice, the period will be covered by unpaid leave.

Please refer to an example of a draft reply at Annexure D. The draft reply must be adapted according to the circumstances of each individual case).

- (j) The Employer must cover the period of absence, referred to in paragraph (i) ii) in accordance with the employee's written notification or, if the employee fails to notify that the Employer in terms of that paragraph or the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave. In instances where incapacity leave is declined which originated in a previous leave cycle, an employee has the option to have the period covered by unpaid leave or to request that annual leave of the current leave cycle be utilised to offset the declined incapacity leave.



7.4. PERMANENT INCAPACITY LEAVE

- 7.4.1. An employee shall not directly access or apply for permanent incapacity leave. The Employer may grant an employee up to a maximum of 30 working days' permanent incapacity leave once s/he has following the above-mentioned assessment process determined that an employee's condition is permanent. The Employer must during this period and in accordance with the advice of the Health Risk Manager, ascertain the feasibility of-
- (a) alternative employment; or
 - (b) adapting duties or work circumstances to accommodate the employee.
- 7.4.2. An employee, whose degree of incapacity has been certified as permanent but who can still render a service, may be redeployed horizontally with retention of his or her benefits. If the redeployment necessitates reallocation to a job of a lower grading, it must be explained well in advance and the continued utilisation of the employee must, in this regard, be with her or his consent. If the employee's redeployment entails retraining or retooling, the Employer must take requisite resources (time and financial) and potential returns into consideration before approving redeployment. The redeployment of an employee's services must ensure the optimal utilisation of her or his competencies and may not compromise service delivery.
- 7.4.3. If an employee refuses to accept the adapted duties or to move to alternative employment, which is more suitable for his/her incapacity, the Employer may, subject to due process being followed, terminate the services of the employee concerned on grounds of operational reasons in accordance with paragraph 17(2)(b) of the PSA.
- 7.4.4. If both the Employer and the employee are convinced that the employee will never be able to render an effective service at her or his level or rank, the employee/Employer may proceed with the process of termination of service on grounds of ill-health, which be dealt with in terms of section 17(2)(a) of the PSA.
- 7.4.5. The Employer may extend the period, referred to in paragraph 7.4.1, up to a maximum 30 working days in order to finalise processes already commenced. If the processes are not completed within the 60 working days, the case must be referred to the Director-General: Public Service and Administration together with a report explaining the reasons for the delay.

8. INJURY ON DUTY

- 8.1. Injury on duty cases should strictly be dealt with in terms of the processes determined in the COIDA and should not be dealt with through the PILIR process.
- 8.2. The absences of these employees are to be covered by Leave for Occupational Injuries and Diseases provided for in the Leave Determination.

9. EMPLOYEES WHO PASSED AWAY

- 9.1. If an employee passes away after submitting an application for temporary incapacity leave a decision on such application must be made where the information provided is sufficient. However, where a decision cannot be made due to a lack of information, the Head of Department or his/her



delegate must approve such application for temporary incapacity leave and close the application. Any decision must take into account the recommendation from the Health Risk Manager.

10. ILL-HEALTH RETIREMENT

10.1. The Employer must submit an application for ill-health retirement as soon as it is evident that an employee may not be able to return to work following incapacity. An employee may decide to apply for ill-health retirement.

10.2. An application for ill-health retirement may be lodged even before an employee's normal sick leave credits have been exhausted.

10.3. The advantages of early submission include:

10.3.1. sufficient time for considering additional requirements, e.g. the possible redeployment, reskilling, etc. of the employee;

10.3.2. early commencement of processing payments;

10.3.3. allows time for appropriate action by the Employer when the application is repudiated; and

10.3.4. allows early intervention and management of a condition, thereby preventing it from resulting in permanent incapacity.

10.4. APPLICATION FOR ILL-HEALTH RETIREMENT

10.4.1. The ill-health retirement form at Annexure E must be completed and forwarded without delay to the Health Risk Manager with all the supporting information. However, if an employee was as a result of his/her application for incapacity leave, subject to a full assessment by the Health Risk Manager, the shortened application contemplated in paragraph 8.7 must be used.

10.4.2. The ill-health retirement form at Annexure E comprises of seven (7) parts, i.e.:

(a) Part A: Details of Employee

(b) Part B: Employee Consent Form

(c) Part C: Employee Refusal of Consent Form

(d) Part D: Medical Report (To be completed by the attending doctor)

(e) Part E: Motivation of Supervisor/Manager

(f) Part F: Report to the Health Risk Manager Completed by the Human Resources Division

(g) Part G: Final Decision by the Head of Department

10.4.3. Parts A to F must be completed before submission to the Health Risk Manager.

10.4.4. Part A: Details of Employee



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- 10.4.4.1. The employee must complete this part. If s/he is unable to complete it (on account of health-related factors or language limitations), another person or a departmental representative may assist the employee in completing the form.
- 10.4.4.2. This part contains personal information on the employee, as well as a description of his/her impairment and its effect on his/her work duties.
- 10.4.4.3. A certified copy of the employee's Identification Document must be attached to the application.
- 10.4.5. Part B: Employee Consent Form
- The employee must complete this part indicating his/her choice to grant consent.
- 10.4.6. Part C: Employee Refusal of Consent Form
- The employee must complete this part indicating his/her choice not to grant consent.
- 10.4.7. Part D: Statement by the Treating Medical Practitioner
- 10.4.7.1. The medical practitioner(s), preferably a medical specialist treating the employee on whom the application is based, must complete this part. If a general practitioner completes the form, an additional report from a medical specialist specialising in the medical field related to the employee's condition, must be obtained and also submitted. If more than one medical practitioner is involved in the treatment of the employee, each of the medical practitioners must complete a form.
- 10.4.7.2. Any other relevant medical reports, results of investigations, such as X-rays, blood tests, ECG and histology results and reports by other health care professionals must be attached to the application.
- 10.4.7.3. The cost of consultations and completion of required reports by the medical practitioners is for the account of the employee.
- 10.4.8. Part E: Motivation of Supervisor/Manager
- 10.4.8.1. The employee's supervisor or manager must complete this part.
- 10.4.8.2. The purpose of this form is to gather information on the impact the employee's ill-health has on work performance in relation to his/her job demands as observed by the supervisor or manager and any feasible modifications to work duties and work environment that may be made to accommodate the employee.
- 10.4.9. Part F: Report to the Health Risk Manager Completed by the Human Resources Division
- 10.4.9.1. A Human Resources representative must complete this part.
- 10.4.9.2. The following documents must be attached to the application:
- (a) A job description;



- (b) Copies of all sick leave forms and medical certificates for the current and previous leave cycle;
- (c) The sealed envelope marked for the attention of the Health Risk Manager if supplied by employee;
- (d) The relevant shift roster if an employee is a shift worker; and
- (e) The medical report issued in terms of section 17 (3)(b) of the BCEA, 1997 if the employee performs on a regular basis work between 23:00 and 06:00 the next day and has requested to be subjected to a medical examination.

10.4.10. Part G: Final Decision By The Head Of Department

- 10.4.10.1. This part contain the decision of the Head of Department on the ill-health retirement requested

10.5. ASSESSMENT PROCESS

- 10.5.1. The Health Risk Manager must provide the employer with advice within 90 working days on the possible ill-health retirement of the employee.

- 10.5.2. The Health Risk Manager must assess an employee's application for ill-health retirement, which involves, amongst others, scrutinising the available medical and occupational information by the treating medical practitioners, conferring with the relevant medical practitioners (if necessary), obtaining a second opinion (if necessary) and additional information, if requested. The Health Risk Manager must provide its advice to the Employer with regard to the following:

- 10.5.2.1. The validity of the application for ill-health retirement.

- 10.5.2.2. The management of the condition, if applicable.

- 10.5.2.3. Whether the Employer should investigate and consider alternate employment, or to adapt the work circumstances/duties of the employee to accommodate the employee, if applicable.

- 10.5.3. The Health Risk Manager must consider the following factors:

- 10.5.3.1. The personal and occupational profiles of the employee, as obtained from the statements by the employee and the Employer.

- 10.5.3.2. The medical information detailing the nature and severity of the condition on which the application is based, as well as any additional information.

- 10.5.3.3. The impact that the medical condition has on the employee's work performance and work attendance.

- 10.5.4. The Health Risk Manager may request additional information to-

- 10.5.4.1. investigate, verify or expand information received; and/or



-
- 10.5.4.2. ascertain more precisely the functional implications of the condition(s) on the employee's work performance.
 - 10.5.5. The Health Risk Manager may, depending on circumstances, request the Employer to supply information from selected internal sources, such as line managers and human resources practitioners.
 - 10.5.6. The Health Risk Manager may also request information from external sources and service providers, which will be selected with reference to their expertise, impartiality and location and who would be appointed at the discretion of the Health Risk Manager. These include:
 - 10.5.6.1. Independent medical specialists.
 - 10.5.6.2. Occupational therapists for functional/work capacity assessments.
 - 10.5.6.3. Psychologists.
 - 10.5.6.4. Private investigators.
 - 10.5.7. Once adequate information is available, the Health Risk Manager must in the assessment of an employee's application consider the following aspects:
 - 10.5.7.1. The nature and extent of the physical impairment, with reference to factors such as mobility, strength, co-ordination, balance, vision, hearing and pain.
 - 10.5.7.2. The nature and extent of psychological/mental impairment, with reference to factors such as mood, cognition, behaviour, communication and motivation.
 - 10.5.7.3. Job specific factors, such as activities of daily work, key performance areas, specific occupational requirements, quality of work, productivity and work habits.
 - 10.5.7.4. Duration of the condition and period away from work.
 - 10.5.7.5. Residual functional capacity of the employee (the employee's capabilities despite the medical condition/s), with reference to factors such as effort, tolerance, endurance and psychological functioning.
 - 10.5.7.6. Potential to perform alternative work, taking into account the particular employee's education, training, work experience, aptitude and age.
 - 10.5.7.7. Rehabilitation and re-skilling potential, taking into account the reasonableness thereof with regard to the particular medical condition, the anticipated outcome, the availability of an appropriate service provider, the duration and cost.
 - 10.5.7.8. Future earning potential of an employee, considering existing skills and plans to generate income.
 - 10.5.8. The Health Risk Manager shall, with due consideration to its findings on the full assessment of the employee's application, provide advice to the Employer in respect of the following:



- 10.5.8.1. The validity of the application.
 - 10.5.8.2. The extent of the incapacity (partial /full).
 - 10.5.8.3. The appropriate duration of the incapacity (temporary/ permanent).
 - 10.5.8.4. The potential for alternative work or workplace modifications.
 - 10.5.8.5. The potential for rehabilitation or re-skilling.
 - 10.5.8.6. Future strategy and requirements.
- 10.5.9. The Employer must, after due consideration to the advice from the Health Risk Manager, decide on the following:
- 10.5.9.1. Whether the indisposition is of a permanent/temporary nature.
 - 10.5.9.2. The granting of incapacity leave, if applicable.
 - 10.5.9.3. The outcome of the investigation, if applicable, with regard to-
 - (a) Alternate employment; and
 - (b) Adapting duties or work circumstances to accommodate the employee.
- 8.6.1.1 The retirement of the employee on grounds of ill-health, if applicable.
- 10.5.10. The Employer must inform the employee in writing of his/her decision, as well as the reasons for the decision.
- 10.5.11. Once it has been decided that the employee must be retired on grounds of ill-health, the Employer must, without delay, submit the prescribed forms, with copies of all the relevant documentation used for the assessment of the case, including the Health Risk Manager's advice, to the GEPF for instituting the payment of ill-health benefits.
- 10.5.12. If an employee refuses to accept the adapted duties or to move to alternative employment, which is more suitable for his/her incapacity or retirement on grounds of ill-health, the Employer may, subject to due process being followed, terminate the services of the employee concerned on grounds of operational reasons in accordance with paragraph 17(2)(b) of the PSA.

10.6. SHORTEND APPLICATION FOR ILL-HEALTH

If the Employer, following a full assessment of an employee for purposes of long temporary incapacity leave, decides that the employee should be retired on grounds of ill-health, the shortened application form for ill-health retirement at Annexure F must be completed and submitted without delay to the GEPF. Copies of the information, which was submitted to the Health Risk Manager, as well as a copy of the Health Risk Manager's advice must be attached to the application form.



11. EMPLOYEES STATIONED ABROAD

11.1. If an employee, who is stationed abroad, has to be subjected to a medical examination for purposes of the *PILIR*, the Department of International Relations and Co-operation shall-

11.1.1. assist the Health Risk Manager to identify an appropriate practitioner who could undertake an examination, if required; and

11.1.2. facilitate the necessary medical appointment and obtaining the practitioner's report.

11.2. The cost of medical expenses for members stationed outside the borders of the Republic of South Africa will be for the account of the Employer. The Health Risk Manager will only be expected to provide services in line with the fixed fee as provided for in the Service Level Agreement.

12. CONCURRENT APPLICATIONS FOR TEMPORARY INCAPACITY LEAVE AND ILL-HEALTH RETIREMENT

An employee, who has already exhausted his/her normal sick leave, may apply for temporary incapacity leave and for ill-health retirement at the same time. The Employer must submit both applications for incapacity leave and ill-health retirement **together** to the Health Risk Manager for an assessment in terms of the *PILIR*.

13. DIFFERENCES BETWEEN THE EMPLOYEE AND THE EMPLOYER

13.1. An employee who is not satisfied with a decision of the Employer may lodge a grievance as contemplated in terms of the rules made by the Public Service Commission.

13.2. In terms of section 35 of the PSA, the Employer requires new medical evidence to defend his/her decision. The costs of such medical evidence would be for the account of the Employer.

13.3. If the employee requires new medical evidence to prove of the substance of his/her grievance, the cost will be for the employee's account.

13.4. If an employee present, with his/her grievance or in the course of the resolution of the grievance, the Employer with new and materially different medical evidence than that which accompanied the application under dispute, the Employer may refer this new medical information to the Health Risk Manager for an assessment in the context of the application concerned. For this purpose the Employer **must submit the following documentation** to the Health Risk Manager:

13.4.1. a covering letter detailing the request;

13.4.2. a copy of the official grievance form;

13.4.3. the initial application of the employee.

The cost of this assessment will be for the Employer.

13.5. Until such time as the grievance has been resolved the Employer may not implement its decision.

13.6. If an employee refuses to accept the adapted duties or to move to alternative employment, which is more suitable for his/her incapacity or retirement on grounds of ill-health, the Employer may, subject to due process being followed, terminate the services of the employee concerned on grounds of operational reasons in accordance with paragraph 17(2)(b) of the PSA.



14. DIFFERENCES BETWEEN THE EMPLOYER AND HEALTH RISK MANAGER

- 14.1. The Health Risk Manager must, in accordance with the PILIR, provide its advice with regard to the granting of incapacity and the management of illnesses, where applicable, as well as the adjustment of the work environment to meet the incapacity of the employee.
- 14.2. The Employer, based upon the advice of the Health Risk Manager must take the final decision with regard to the granting of incapacity leave, alternate employment or the adjustment of the employees work environment. If the Employer deviates from the advice of the Health Risk Manager, s/he must-
 - 14.2.1. record the reasons for the deviation in his/her decision; and
 - 14.2.2. in writing inform both the Health Risk Manager and the DPSA of the reason for the deviation.

15. CONFIDENTIALITY

The Employer must, in accordance with the constitutional rights to privacy, the Code of Conduct in the Public Service Regulations treat at all times any information regarding the medical condition of an employee with the necessary respect and confidentiality. Such information may therefore not be disclosed to any other person(s) not authorised to receive such information. If an employee discloses such confidential information of one employee to any other unauthorized person, it must be viewed in a serious light and disciplinary steps against the transgressing employee should be taken.

15.1. DOCUMENT SECURITY AND MANAGEMENT

15.1.1. CLASSIFICATION OF INFORMATION AND DOCUMENTS

- (a) All forms, documents and information received and generated in terms of the *PILIR* must be classified and treated as **'Confidential'** and not as **'Personnel Confidential'**.
- (b) The said documents must be **strictly** handled and kept safe in accordance with the prescripts for classified documents as contained in the *MISS*.

15.1.2. PLEDGE OF CONFIDENTIALITY

In terms of the *Code of Conduct* contained in the *Public Service Regulations*, read with the *MISS*, each employee responsible for the handling of applications and information in terms of the *PILIR* is to honour the confidentiality of matters, documents, discussions, classified or implied as being confidential. For this purpose all such employees must also sign the ***Pledge of Confidentiality*** at Annexure H.

16. NON-KEPT APPOINTMENTS

- 16.1. As indicated elsewhere in the *PILIR*, as well as the Leave Determination the Employer may request the employee to subject him/herself to (a) further medical examination(s), if s/he consented thereto. The Employer carries the expenses attached to such medical examinations.



- 16.2. If an employee has consented to any such examination but fails to honour an appointment scheduled by the Health Risk Manager for such examination, the employee shall be held liable for the expenses that may be charged by medical practitioners for non-kept appointments.

17. MONITORING

The DPSA shall closely monitor the application of the *PILIR*. The DPSA shall therefore utilize the following reports to analyse the application of the *PILIR*:

17.1. HEALTH RISK MANAGER

- 17.1.1. The Health Risk Manager must continuously notify the DPSA of trends in undue delays on the part of the Employer, within the above processes prescribed in the *PILIR*. The DPSA will investigate the cause of the delay and make recommendations to the Employer or the Minister for the Public Service and Administration in respect of preventative steps to avoid a similar trend in future.
- 17.1.2. The Health Risk Manager must submit a written report to the DPSA and the Employer in the format and, as a minimum, on the subject matters and at the due dates stipulated in the Service Level Agreement.

17.2. GEPF

The DPSA shall request the GEPF to provide the DPSA with an annual report on the actual ill-health retirements it had effected for the previous year.

17.3. EMPLOYERS

- 17.3.1. The Employer must report quarterly, to the DPSA as per the reporting template provided from time to time.
- 17.3.2. The Employer must in its annual report, report the outcomes, trends and impact emanating from the *PILIR*, as well as deviations from the HRM's advice. The latter reporting must also focus on the expenditure incurred for a particular financial year, the savings incurred, as well as the time frames maintained in the payment for services rendered.
- 17.3.3. In respect of temporary incapacity leave-
- (a) types of illness;
 - (b) type of incapacity leave approved;
 - (c) acceptance of/deviation from the Health Risk Manager's advice; and
 - (d) disputes and how it was resolved.
- 17.3.4. In respect of ill-health retirements-
- (a) types of illness;
 - (b) acceptance/ rejection of the Health Risk Mangers' advice; and



(c) disputes and how it was resolved.

18. ANNEXURES

The following Annexures are attached to *the PILIR*:

Annexure A: Application Form for Temporary Incapacity Leave Short Periods

Appendix 1 to Annexure A - Medical Information Form in Support of Mandatory Medical Certificate

Annexure B: Application Form for Temporary Incapacity Leave Long Periods

Annexure C: Example of *pro forma* letter on the conditional granting of temporary incapacity leave.

Annexure D: Example of *pro forma* letter on the outcome of the Employer's investigation.

Annexure E: Head of Department's Report to Health Risk Manager for Ill-Health Retirement

Annexure F: Shortened Application Form for Ill-Health Retirement

Annexure G: Guidelines for Incapacity Assessment

Annexure H: Pledge of Confidentiality



DETERMINATION AND DIRECTIVE ON LEAVE OF ABSENCE IN THE PUBLIC SERVICE

DATE ISSUED: AUGUST 2021

**MADE BY THE MINISTER FOR THE PUBLIC SERVICE
AND ADMINISTRATION**



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PART 1: TRANSITIONAL ARRANGEMENTS TO FACILITATE IMPLEMENTATION OF CHANGES TO THE LEAVE DISPENSATION

1. INTRODUCTION

- 1.1. This Part provides transitional arrangements in respect of those changes effected to the leave system that warrant special attention to facilitate proper/smooth implementation.
- 1.2. This Part must be read in conjunction with Part 4 of this document.

2. TRANSITIONAL ARRANGEMENTS TO FACILITATE IMPLEMENTATION OF PSCBC RESOLUTION 15 OF 2002

2.1 Annual leave for Non-teaching Staff at Schools/Training Institutions

- 2.1.1. All non-teaching staff at schools and training institutions is, for purposes of annual leave, now categorized in category 3 of Annexure A to this Determination and Directive. Please refer to Part 4 of this document.
- 2.1.2. In order to allow a fair opportunity for the necessary planning and scheduling of leave for employees concerned, the Minister for Public Service and Administration made a determination that this provision be effected only with effect from the start of the new leave cycle, i.e. 1 January 2004.
- 2.1.3. It is thus required that the relevant Departments of Education in collaboration with the heads of these institutions and employees concerned do the necessary planning and scheduling of leave, taking into account the principles of fairness and equity stipulated in this Determination and Directive.

2.2 Unpaid Leave (Leave without Pay)

The changed factors for reducing annual and sick leave in the event of leave without pay/unpaid leave as contemplated in paragraphs 5.3 and 14.10 of Part 4 of this document will with due consideration to good administration be effected with effect from the leave cycle which commenced on 1 January 2004.

3. TRANSITIONAL ARRANGEMENTS TO EFFECT PSCBC RESOLUTION 1 OF 2007

3.1 ANNUAL LEAVE

3.1.1 Registered/Enrolled Nurses and Nursing Assistants

- a) Registered/enrolled nurses and nursing assistants are, for purposes of annual leave now categorized in category 4(c) of Annexure A to this Determination and Directive. Please refer to Part 4 of this document. Given the fact that this change was introduced in the middle of the current annual leave cycle and that a number of employees concerned already utilised the pre-revised annual leave entitlement, the following transitional arrangements shall apply in the interest of smooth and fair implementation:



- (i) Registered and enrolled nurses and nursing assistants, employed on or before 30 June 2007, may retain their entitlement as per contract.
- (ii) Registered and enrolled nurses and nursing assistants employed on or after 1 July 2007, qualify for the annual leave entitlement as indicated in category 4(c) of Annexure A to this Determination and Directive.

3.1.2. **Contract Workers**¹:

A contract worker qualifies with effect from 1 July 2007, for pro rata leave benefits related to his/her term of contract. Please refer to Part 4 of this Determination and Directive. Since these changes were introduced in the middle of the 2007 annual leave cycle and the 2007/09 sick leave cycle the following transitional arrangements shall apply. :

3.1.2.1. **Annual Leave**

- (a) A contract worker, who was employed on or before 30 June 2007, shall retain his/her entitlements as per contract.
- (b) A contract worker appointed on or after 1 July 2007 qualifies for the pro rata annual leave entitlement as determined in Part 4 of this Determination and Directive.

3.1.2.2. **Sick Leave**

- (a) A contract worker, who was employed on or before 30 June 2007, shall retain his/her leave benefits as per contract.
- (b) A contract worker appointed on or after 1 July 2007 qualifies for the pro rata sick leave benefits as determined in Part 4 of this Determination and Directive.

3.1.2.3. **Maternity Leave**

- (a) A contract worker who was on maternity leave or whose maternity leave commenced on the date of signature of PSCBC Resolution 1 of 2007 shall retain/complete the four months maternity leave.
- (b) A contract worker appointed on or after 1 July 2007 qualifies for the pro rata paid maternity leave benefits as stipulated in Part 4 of this Determination and Directive.

¹ Also refer to the Determination on Learners and Interns.



3.1.2.4. Adoption Leave

- (a) A contract worker who was on adoption leave or whose adoption leave commenced on the date of signature of PSCBC Resolution 1 of 2007 shall retain/complete the 45 working days paid leave.
- (b) A contract worker appointed on or after 1 July 2007 qualifies for the pro rata paid adoption leave benefits as stipulated in Part 4 of this Determination and Directive.



PART 2: EXPLANATORY NOTES ON THE IMPLEMENTATION OF THE INTEGRATED FINANCIAL MANAGEMENT SYSTEM (IFMS) IN RELATION TO PROVISIONS CONTAINED IN THIS DETERMINATION AND DIRECTIVE

1. INTRODUCTION TO THE IFMS

1.1. The HR domain of the Integrated Financial Management System (IFMS) project is an integral part of the overall IFMS initiative that is aimed at modernising the South African Government's current transversal IT systems. The transversal systems to be implemented as part of the IFMS will, amongst others, support the following functional areas:

1.1.1. Human Resource Management;

1.1.2. Financial Management;

1.1.3. Supply Chain Management including Procurement Management; and

1.1.4. Business Intelligence.

1.2. The IFMS covers the full life cycle of an employee within the organisation which includes:

1.2.1. the establishment of a viable organisational structure to support the strategic objectives of the department; and

1.2.2. the effective planning and sourcing of human resources and the management of the employment relationship within the organisation which includes among others Leave Management and Health and Safety Issues.

These processes are underpinned by effective administration and reporting.

1.3. In addition, with the introduction of the IFMS, an employee self service system is established which will allow employees and their supervisors to perform a number of on-line human resource (HR) transactions such as applying for leave, viewing and updating your personal details, etc. It is envisaged that HR management activities, including decision-making, will be streamlined and enhanced by making relevant management information readily available. This will improve efficiency by eliminating duplication and reducing protracted and costly manual processes.

2. PARAGRAPH BY PARAGRAPH IMPLEMENTATION AND APPLICATION NOTES

2.1. LEAVE ENTITLEMENTS

2.1.1. The work schedules of each individual employee must be implemented on the IFMS to ensure that the employee receives the correct leave entitlements and that the utilisation thereof is managed according to the correct rules and circumstances. Work schedules would in this instance constitute employees prescribed working hours and where applicable shift rosters. It is critical that departments maintain the work schedules regularly to prevent situations where employees are unduly deprived of leave benefits or granted leave benefits not due to them.



2.2. LEAVE APPLICATIONS (EXCLUDING TEMPORARY INCAPACITY LEAVE)

- 2.2.1. Employees having access to the Employee Self Service facility on the IFMS must apply electronically for their leave. Supervisors/Managers/Heads of Department and/or their delegates are required to recommend/not recommend and/or approve/not approve these leave applications electronically. Where employees do not have access to the Employee Self Service, they should apply on manual leave application forms which the Minister for the Public Service and Administration will determine from time to time. The latter arrangement will apply in respect of those departments where the IFMS is not implemented.
- 2.2.2. An employee may be granted annual leave as part of a day or on a pro rata basis as per paragraph 7 of Part 4 of this Determination and Directive. Employees having access to the Employee Self Service facility may apply for leave for part of a day or on a pro rata basis electronically, i.e. annual leave, normal sick leave, family responsibility leave, pre-natal leave, shop stewards leave contemplated in Part 4 of this Determination and Directive. Where employees do not have access to the Employee Self Service facility in departments where the IFMS is implemented, such employees should apply for such leave on the new Z1 (a) leave form for capturing on the IFMS. Departments that are not on the IFMS should continue to keep manual records in instances where the employee utilises leave for part of a day or on a pro rata basis. No formal applications for such annual leave were determined in the past. For purposes of proper administration and management of annual leave utilised for part of a day or on a pro rata basis employees should in future apply for such leave on the new Z1(a) leave form.



PART 3: IMPLEMENTATION NOTES ON THE APPLICATION OF THE DETERMINATION AND DIRECTIVE ON LEAVE OF ABSENCE IN THE PUBLIC SERVICE

1. GENERAL

- 1.1. Additional definitions were added, i.e. commissioning parent, month, surrogate mother, surrogate motherhood agreement and work day to assist with the interpretation and application of this Determination and Directive.

2. ANNUAL LEAVE

2.1. GENERAL

- 2.1.1. Additional provisions were included to improve the effective and efficient management of annual leave generally and in particular that of shift workers.

2.2. ANNUAL LEAVE ENTITLEMENT

- 2.2.1. It has been agreed in PSCBC Res 1 of 2012 that as part of long service recognition at attaining 10 years service an employee's annual leave entitlement increases from 26 to 30 working days in the leave cycle. Annexure A to this Determination and Directive has been amended to this extent.
- 2.2.2. Employees appointed prior to 1 July 1966 and employees of the former Provincial Administrations and Development Boards (excluding nursing staff) who were taken over by the Public Service in 1986, 1987 and 1989 respectively and who previously qualified for 38 days annual leave in terms of the Special PAS" were entitled to 28 working days annual leave. In the light of the increase of the annual leave entitlement to 30 working days, the paragraph that dealt with the annual leave of employees who were taken over from the former Provincial Administrations and Development Boards and this leave category in Annexure A became superfluous and is thus deleted.
- 2.2.3. Employees who have completed 10 years service on a date prior to the signing of PSCBC Res 1 of 2012 are also eligible to 30 working days as depicted in Annexure A.
- 2.2.4. Since the annual leave entitlement is increased in the course of the 2012 annual leave cycle, Departments are urged to review leave schedules with the aim of ensuring that employees utilise their leave entitlement before the end of June 2013 (that is the end of the grace period for the 2012 leave cycle) and to avoid unnecessary claims for leave payouts.

2.3. ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS

- 2.3.1. This Determination and Directive provides that if due to a bona fide error, an employee had been granted annual leave with full pay in excess of that which stood to his/her credit at that time; such over-grant must be deducted from the subsequent leave cycle. In order for such a correction to be effected on PERSAL and IFMS, the Head of Department must have certified that the error was bona



vide in nature. A copy of this letter or submission must be presented with the system change control for the correction of the error.

3. NORMAL SICK LEAVE AND INCAPACITY LEAVE

- 3.1. Additional provisions are included to improve the effective and efficient management of normal sick leave and incapacity leave generally. To this end your attention is drawn to the-
- 3.1.1. time frames included for supervisors to dispose of sick and incapacity leave applications;
 - 3.1.2. provisions in respect of the management of shift workers' sick and incapacity leave;
 - 3.1.3. management of sick leave credits on transfer and change in employment status; and
 - 3.1.4. management of incapacity leave applications of deceased employees.

4. ADOPTION LEAVE

- 4.1. Part 4 of this Determination and Directive provides amongst others that an employee, who adopts a child that is younger than two years, shall qualify for adoption leave to a maximum of 45 working days. For purposes of the interpretation and application of this provision specific attention is drawn to section 228 of the Children's Act, 2005 which stipulates that a child is adopted if the child has been placed in the permanent care of a person in terms of a court order that has the effects contemplated in section 242. Section 242 of the Children's Act, 2005 stipulates amongst others that -
- 4.1.1. An adoption order, amongst others, confers-
 - (a) full parental responsibilities and rights in respect of the adopted child upon the adoptive parent; and
 - (b) the surname of the adoptive parent on the adopted child, except when otherwise provided in the order.
 - 4.1.2. An adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child.
- 4.2. Therefore, an eligible employee should provide the Department with a certified copy of the adoption order to access the adoption leave benefits.

5. SURROGACY LEAVE

- 5.1. Part 4 of this Determination and Directive provides amongst others that an employee, who is a commissioning parent in terms of a surrogate motherhood agreement confirmed by the High Court as contemplated in the Children's Act, 2005, is entitled to four consecutive months paid leave commencing from the date of the birth of the child. For purposes of the interpretation and application of this provision specific attention is drawn to section 292 of



the Children's Act, 2005 which stipulates that any child born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the birth of the child concerned that has the effects contemplated in section 297.

- 5.2. Section 297 of the Children's Act, 2005 stipulates amongst others that the effect of a valid surrogate motherhood agreement is that-
 - 5.2.1. any child born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the birth of the child concerned;
 - 5.2.2. the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;
 - 5.2.3. the surrogate mother or her husband, partner or relatives has no rights of parenthood or care of the child;
 - 5.2.4. the surrogate mother or her husband, partner or relatives have no right of contact with the child unless provided for in the agreement between the parties;
 - 5.2.5. subject to sections 292 and 293, the surrogate motherhood agreement may not be terminated after the artificial fertilisation of the surrogate mother has taken place; and
 - 5.2.6. the child will have no claim for maintenance or of succession against the surrogate mother, her husband or partner or any of their relatives.
- 5.3. In terms of section 292 (1) of the Children's Act, 2005 no surrogate motherhood agreement is valid unless –
 - 5.3.1. The agreement is in writing and is signed by all the parties thereto;
 - 5.3.2. The agreement is entered into in the Republic;
 - 5.3.3. At least one of the commissioning parents, or where the commissioning parent is a single person, that person, is at the time of entering into the agreement domiciled in the Republic;
 - 5.3.4. The surrogate mother and her husband or partner, if any, are at the time of entering into the agreement domiciled in the Republic; and
 - 5.3.5. The agreement is confirmed by the High Court within whose area of jurisdiction the commissioning parent or parents are domiciled or habitually resident.
- 5.4. Any surrogate motherhood agreement that does not comply with the provisions of this Act is invalid and any child born as a result of any action taken in execution of such an arrangement is for all purposes deemed to be the child of the woman that gave birth to that child.



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- 5.5. Therefore, an eligible employee should provide the Department with a certified copy of the surrogate motherhood agreement confirmed by the High Court to access the surrogate leave benefits.

6. LEAVE FOR OFFICE BEARERS OR SHOP STEWARDS OF RECOGNISED EMPLOYEE ORGANISATIONS

- 6.1. With effect from 1 January 2013 the provisions in paragraph 25.1 of Part 4 of this Determination and Directive will cease to exist. Henceforth office bearers and shop stewards of recognised employee organisations shall receive 15 working days paid leave per annum for activities related to his/her union position.
- 6.2. The 15 working days shall be pooled per recognised trade union. Office bearers or shop stewards belonging to the same recognised trade union may apply for leave days from the pool.
- 6.3. In other words if there are 10 shop stewards in the Department of which 4 belong for example to the PSA and 6 to NEHAWU-
- 6.3.1. The 15 working days of each of the 4 shop stewards belonging to the PSA will be pooled into a pool of 60 working days (4 x15); and
- 6.3.2. The 15 working days of each of the 6 shop stewards belonging to NEHAWU will be pooled into a pool of 90 working days (6x15).
- 6.4. With effect from 8 June 2018, if a shop steward of a recognised employee organisation has to perform union activities while on annual leave with full pay, such annual leave shall be converted to shop steward leave, provided that a formal request with supporting documentary evidence are submitted substantiating that he/she had to perform union activities.



PART 4: DETERMINATION AND DIRECTIVE ON LEAVE OF ABSENCE IN THE PUBLIC SERVICE

1. SCOPE

- 1.1. Except for explicit exclusions by the Basic Conditions of Employment Act, 1997, this Determination and Directive is applicable to all those that are employed either on full-time, part-time, permanent or temporary basis in terms of the Public Service Act and fall within the scope of the PSCBC.
- 1.2. This Determination and Directive gives effect to clause 7 of PSCBC Resolution 7 of 2000, as amended by PSCBC Resolutions 5 of 2001, 15 of 2002; 1 of 2007, 1 of 2012 and 2 of 2015.

2. AUTHORISATION

This Determination and Directive is made by the Minister for the Public Service and Administration in terms of the provisions of section 3(5) (a) and 5 (6) (b) of the Public Service Act, 1994 as amended.

3. PURPOSE

- 3.1. The purpose of this Determination and Directive is to give effect to, elucidate or supplement relevant collective agreements on--
 - 3.1.1. the types of leave and circumstances under which the employer may consider authorizing an employee's absence from work; and
 - 3.1.2. an employee's leave entitlement and conditions that the employee must adhere to access the said entitlement.

4. DEFINITIONS

- 4.1. "Annual leave cycle" or "Calendar year" means from 1 January to 31 December of each year;
- 4.2. "Calendar month(s)" means a calendar month as defined in section 1 of the Public Service Act, 1994.
- 4.3. "Casual worker" means a person employed on a day-to-day basis who is paid a daily wage and who does not work more than 24 hours a month.
- 4.4. "Commissioning parent" means a person who enters into a surrogate motherhood agreement with a surrogate mother.
- 4.5. "Contract worker" means a person employed on a temporary basis².

² Refer also to clause 11 of PSCBC Res 1 of 2007



- 4.6. "Head of Department" means the Head of Department or his/her delegated authority or his/her designated office responsible for leave related matters and/or investigations.
- 4.7. "Month" means a month as defined in section 1 of the Public Service Act, 1994.
- 4.8. "Remuneration" means-
- 4.8.1. in respect of employees on level 1 to 10 or equivalent Occupational Specific Dispensation levels: –
- 4.8.1.1. for purposes of calculating pay for unused annual leave and severance pay, remuneration means the employee's annual basic salary PLUS 37% of his/her annual basic salary; and
- 4.8.1.2. for purposes of calculating capped leave and unpaid leave, remuneration means the employee's annual basic salary.
- 4.8.2. in respect of a member of the Middle Management Service (MMS or equivalent Occupational Specific Dispensation levels):
- 4.8.2.1. for purposes of calculating pay for unused annual leave, unpaid leave and severance pay, remuneration means the employee's all inclusive remuneration package; and
- 4.8.2.2. for purposes of calculating capped leave, remuneration means the employee's annual basic salary.
- 4.9. "Surrogate mother" means an adult woman who enters into a surrogate motherhood agreement with the commissioning parent.
- 4.10. "Surrogate motherhood agreement" means a valid agreement in terms of section 292 of the Children's Act between a surrogate mother and a commissioning parent in which it is agreed that the surrogate mother will be artificially fertilised for the purpose of bearing a child for the commissioning parent and in which the surrogate mother undertakes to hand over such a child to the commissioning parent upon its birth, or within a reasonable time thereafter, with the intention that the child concerned becomes the legitimate child of the commissioning parent.
- 4.11. "Work day" equates to the employee's number of daily official working hours.

5. ANNUAL LEAVE

- 5.1. Employees are entitled to annual leave with full pay during each leave cycle of 12 months, commencing on 1 January of each year, in terms of Annexure A³, except if appointed after 1 January of each year. The annual leave entitlement of an employee appointed after 1 January of each year shall be calculated proportionally in relation to each full month of service at a rate of 1, 83 working days if entitled to 22 working days and 2, 5 working days if entitled to 30 working days annual leave in a leave cycle.⁴

³ Refer to Part 2 for the explanatory note on the application of this provision in relation to the IFMS and Part 3 for implementation notes.

⁴ Circular E/1/2/2/P dated 18 April 2001.



- 5.2. Annual leave should be planned and scheduled at least at the start of a leave cycle, i.e. January of each year.
- 5.3. For each 15 consecutive calendar days leave taken without pay, the employees' annual leave entitlement shall be reduced by 1/24th.
- 5.4. For the purpose of granting annual leave, working days shall mean Monday to Friday except for a shift worker for whom a working day means the day(s) she/he is scheduled for a shift in terms of their shift roster inclusive of Public Holidays, Saturdays and Sundays.
- 5.5. At least 10 working days must be taken as leave days during the annual leave cycle. The utilisation of this leave must take the service delivery requirements of a department into account. NOTE: Annual leave should, as far as possible, be taken as consecutive working days.
- 5.6. The remaining leave days, if any, must be taken no later than 6 months after the expiry of the relevant leave cycle, where after unused leave credits shall be forfeited.
- 5.7. An employee must submit his/her application for annual leave in advance, unless unforeseen circumstances prevent him/her from doing so.⁵
- 5.8. If confronted with unforeseen circumstances which necessitate the utilization of annual leave, the employee must personally notify his/her supervisor/manager immediately. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the unforeseen circumstances prevents the employee from informing the supervisor/manager personally.
- 5.9. An employee must submit an application for annual leave personally or through a relative, fellow employee within 5 working days after the first day of absence. If the employee fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately-
 - 5.9.1. notify the employee that if such application is not received within 2 working days, the leave period will be regarded as unpaid leave; and
 - 5.9.2. inform the Human Resource division, should the employee default on the notification referred to in par 5.9.1, above,and the relevant authority shall approve such absence as unpaid leave. The employee's supervisor/manager/ Head of Department and/or his/her delegate must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove this leave application and submit to the relevant Human Resource division in the department.
- 5.10. Failure by the employee to submit his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light and disciplinary steps against the employee and/or supervisor/manager should be taken.
- 5.11. Employees must be cautioned timeously if, at the end of the relevant leave cycle, they have not utilised their leave entitlements.

⁵ Refer to Part 2 for the explanatory note on the application of this provision in relation to the IFMS



-
- 5.12. An employee's application for annual leave should not be unreasonably refused. An application for annual leave should take the service delivery requirements of a department into account.
- 5.13. Any refusal of annual leave must be confirmed in writing, stating the reasons and arrangements for rescheduling of the annual leave.
- 5.14. If, due to the employer's service delivery requirements, an employee's application for leave is denied and not rescheduled, such leave must, upon request, be paid out to the employee at the end of the 6 months' period referred to in 5.6 above. Employee requests for payment of unused leave credits must be:
- 5.14.1. in writing; and
- 5.14.2. accompanied by written proof of refusal of leave by the Head of Department.
- 5.15. With effect from 31 January 2018 employees, suspended as a precautionary measure while investigations into allegations of misconduct are being completed **or** employees who have been suspended as a sanction as a result of misconduct within the 6 months (paragraph 5.6 above refers) after the expiry of the relevant leave cycle and who could not utilise their unused annual leave credits, must upon request, be paid out such annual leave credits at the end of the 6 months' period referred to in 5.6 above. Employee requests for payment of unused leave credits must be-
- 5.15.1. in writing; and
- 5.15.2. accompanied by written proof of suspension.
- 5.16. Heads of Department shall, at the end of the relevant 18 months' period, report to the relevant legislature on the number of employees denied annual leave, reasons for such denial and the amount paid in this regard.
- 5.17. The 50% leave entitlement, or any portion thereof, which was due to employees for the period 1 July 2000 to 31 December 2000, and which could not be utilised before 30 June 2001, shall be added to the number of leave days accrued prior to 1 July 2000. This provision is a once off arrangement only in respect of those cases where no leave payouts have been effected.

6. LEAVE FOR NON-TEACHING STAFF AT SCHOOLS AND TRAINING INSTITUTIONS (Employed in the various Departments of Education)

- 6.1. All non-teaching staff at schools and training institutions is, for purposes of annual leave, accommodated in category 3 of Annexure A.
- 6.2. Non-teaching staff at schools and training institutions must take at least 22 of the 27 or 30 working days annual leave, whichever is applicable, during the period for which a school/training institution closes for the holidays. The remaining 5 or 8 days, whichever is applicable, may be taken when the institution is in operation.
- 6.3. The annual leave entitlement should, in these circumstances, be regarded as the minimum. Therefore, if an employee is not required at the institution during the period(s)



when the institution closes for holidays, an employee may utilise his/her annual leave entitlement and/or paid time off granted by the employer.

- 6.4. The head of the institution should ensure that his/her decisions are based upon the principles of fairness and equality in determining the leave roster for the employees concerned.
- 6.5. With due regard to the principles of fairness and equality-
 - 6.5.1. Annual leave and holidays constituting time off should be planned and scheduled for at least at the beginning of a leave cycle, i.e. January of each year.
 - 6.5.2. Considering that most schools/training institutions do their strategic planning and year programmes for the subsequent year usually towards the end of the previous leave cycle. The planning and scheduling of annual leave and holidays constituting time off can also commence at that stage.
 - 6.5.3. Planning and scheduling should take place in collaboration with the head of the institution and the employees concerned.
 - 6.5.4. As for periods of time off during institution holidays the following could be taken into account-
 - 6.5.4.1. For the concept of 'if an employee is not required at the institution during the period(s)' refer to paragraph 6.3. If an employee is not required during the institution holidays, the institution may not require from that employee to report for duty, except in extenuating circumstances which have a direct bearing on operational/ service delivery requirements of that institution.
 - 6.5.4.2. Attention needs to be given to activities or services that need to take place or be delivered during the period when the school/institution closes for holidays.
 - 6.5.4.3. It could be considered to schedule and present formal training for all non-teaching members of staff during some of these periods.
 - 6.5.4.4. A roster of time off should be developed to give each member of staff a fair opportunity to time off, in the event where activities are to take place or services have to be rendered.
 - 6.5.4.5. Tasks should as far as possible be rotated between non-teaching members of staff and retain where possible only a minimum service delivery staff complement if their services are required during the period when the school/institution closes for holidays.
 - 6.5.4.6. Heads of institutions should ensure that duties and responsibilities assigned to the employees concerned (during these holidays) may only relate to their normal assigned duties and responsibilities as contemplated in their job descriptions, **unless arranged by mutual consent**.
 - 6.5.4.7. It is important to make sure that non-teaching staff is retained on duty during institution holidays, only for valid official duty.



6.5.5. For purposes of paragraphs 6.1 to 6.4 above, the employer shall ensure in the case of an institution presenting **a combination of courses e.g. semester and trimester courses**, that the annual leave and periods of time off of non-teaching staff rendering a support service to the academic staff, will be aligned with the dispensation applicable to the said academic staff.

7. THE GRANTING OF ANNUAL LEAVE ON A PRO RATA BASIS

- 7.1. Employees who are appointed after the commencement of an annual leave cycle shall be entitled to annual vacation leave on a pro rata basis determined as a fraction of the entitlement as per Annexure A.
- 7.2. For purposes of utilising leave entitlements, fractions or decimals must be utilised as they are. In other words fractions or decimals must not be rounded off.
- 7.3. Departments must keep manual records of the utilisation of annual leave taken for part of a day. After reaching the prescribed daily number of working hours, the employee must complete and submit a leave form.⁶
- 7.4. For purposes of converting fractions/decimals of leave entitlements into working hours the following formula(s) should apply:

Converting fractions into hours:

$$A \times B = C$$

Where-

A = represents the number of working hours in a day

B = represents the fraction

C = represents the credit in hours

For example: Employee with 7, 45 leave credits on an 8 hour working day:

$$8 \times 0.45 = 3.6 \text{ hours}$$

Converting fractions into minutes:

$$60 \times B = C$$

Where-

60 = represents the minutes in an hour

B = represents the fraction

C = total credit in minutes

For example: Employee with 3.6 hours leave credit (see example above)

$$60 \text{ min} \times 0.60 = 36 \text{ minutes}$$

In other words the employee with 7.45 days' leave credits has 7 days, 3 hours and 36 minutes leave

⁶ Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS



- 7.5. For purposes of leave payouts, fractions or decimals must be used as they are in the formula provided for in paragraphs 9.4 and 10.4 of this Determination and Directive.
- 7.6. Unused fractions and decimals lapse at the end of the six months period referred to in paragraph 5.6 above.
- 7.7. If an employee's annual leave entitlements changes, e.g. from 22 to 30 working days per annum after ten years satisfactory service, the unused fractions or decimals must also be carried over to the new leave category and be administered manually.

8. MANAGEMENT OF ANNUAL LEAVE FOR SHIFT WORKERS

- 8.1. The provisions contained in the paragraphs above apply mutatis mutandis to shift workers, suffice to indicate that specific provisions are required to enable departments employing shift workers to manage their annual leave more efficiently and effectively given their peculiar working hour arrangements.
- 8.2. Annual leave should be planned and scheduled, as far as possible, at the beginning of a leave cycle, i.e. January of each year in conjunction with the shift roster.⁷
- 8.3. As in the case of other employees, utilising annual leave counts towards the completion of an employee's prescribed work week.
- 8.4. If an employee takes unplanned annual leave for a day(s) he/she was scheduled for a shift-
 - 8.4.1. the employee's annual leave is counted according to the work days the employee is scheduled for shifts;
 - 8.4.2. he/she does not forfeit the off duty periods (conversely referred to as off days) that results from the design of the shift roster.
- 8.5. If the employee applies for annual leave in advance in accordance with the leave schedule such leave must be taken into account in the scheduling of shifts. The employee must not be scheduled for (a) shift(s) for the duration of the period of annual leave in which case the granting of annual leave will be counted as working days which shall mean Monday to Friday.

9. ANNUAL LEAVE AND PAYOUTS

- 9.1. Employees shall be paid a cash value in respect of unused leave credit upon termination of service and in terms of paragraph 5.14 and 5.15 above. The payment will be limited to a maximum number of days, equivalent to the annual leave entitlements in Annexure A.
- 9.2. The leave cycle remains unchanged, therefore, requests and motivations for leave payments in respect of leave credits mentioned in 5.14 and 5.15 above shall be lodged by no later than 31 July in respect of each year. If an employee failed to apply for the payment of such unused leave credits at the aforementioned due date such unused leave credits shall be forfeited.

⁷ Refer to Part 2 for the explanatory note on the application of this provision in relation to the IFMS



- 9.3. Payment of annual leave credits shall be calculated using the employee's remuneration.
- 9.4. For all terminations in respect of personnel without any capped leave, leave pay-outs shall be computed in terms of the following formula:

$$\frac{\{(A - B) + (C - D)\} \times E}{260.714}$$

Where-

A = represents the full annual or pro rata leave entitlement in the previous leave cycle. Pro rata entitlement calculated as

$$\frac{X}{12} \times Y$$

Where –

X = number of completed months of service; and

Y = annual leave entitlement per leave cycle as per Annexure A.

B = represents the leave taken in the previous leave cycle.

C = represents the pro rata leave entitlement in the current leave cycle (Calculated according to the formula in A above).

D = represents the leave taken in the current leave cycle.

E = represents the employee's remuneration (levels 1 to 10: annual basic salary plus 37% and MMS, the all inclusive package) at the last day of duty or at the end of the 6 months period mentioned in 5.6 above.

- 9.5. For personnel who still have unused leave credits at the expiry of the 6 months period mentioned in 5.6 above and who complied with the provisions of paragraph 5.14 and 5.15 above, leave pay-outs shall be computed in terms of the following formula:

$$\frac{(A - B) \times C}{260.714}$$

Where-

A = represents the full annual or pro rata leave entitlement in the previous leave cycle. Pro rata entitlement calculated as

$$\frac{X}{12} \times Y$$

Where –

X = number of completed months of service; and

Y = annual leave entitlement per leave cycle as per Annexure A



B = represents the leave taken in the previous leave cycle

C = represents the employee's remuneration (levels 1 to 10: annual basic salary plus 37% and the MMS the all inclusive package) at the last day of duty or at the end of the 6 months period mentioned in 5.6 above.

NOTE: For computed EXAMPLES, please refer to Annexure B

9.6. Employees who have been on suspension-

9.6.1. On or after 31 July 2016 and who has unused annual leave credits which s/he could not use as a result of the suspension in respect of the previous leave and/or expired previous leave cycles may make a written request for a leave payout in respect of such unused annual leave credits; and/or

9.6.2. Subsequently, dismissed shall also receive a leave payout for the unused annual leave credits in respect of the previous leave and/or expired previous leave cycles which s/he could not use as a result of the suspension.

9.6.3. Effective from 31 January 2018.

10. ANNUAL LEAVE ACCRUED PRIOR TO 1 JULY 2000

10.1. Employees shall retain all audited leave credits accrued prior to 1 July 2000.

10.2. The number of accrued leave days prior to 1 July 2000 shall be converted to working days using the following formula:

$$\frac{A \times 5}{7}$$

Where -

A = represents the number of audited leave credits

10.3. The payouts in respect of such leave credits shall be made in the event of:

10.3.1. Death;

10.3.2. Retirement; or

10.3.3. Medical boarding.

10.4. The leave payout in respect of personnel with capped and audited leave credits shall be determined in the following manner:

$$\frac{\{(A-B) + (C-D)\} \times E + (F \times G)}{260.714}$$

Where:

A = represents the full annual or pro-rata leave entitlement in the previous leave cycle.



- B = represents the leave taken in the previous leave cycle.
- C = represents the pro rata leave entitlement in the current leave cycle.
- D = represents the leave taken in the current leave cycle.
- E = represents the employee's remuneration (levels 1-10 annual basic salary plus 37% and MMS the all inclusive remuneration package) as at the last day of duty.
- F = represents the capped leave.
- G = represents the employee's remuneration (levels 1-10 and MMS the annual basic salary only) as at the last day of duty.

NOTE: For computed EXAMPLES, please refer to Annexure B.

- 10.5. The Head of Department shall determine whether there are periods, which are unaudited, and in such instances, the employee's leave payout shall be paid on the basis of 6 days per completed year of service up to a maximum of 100 days in respect of the unaudited leave period. The formula in calculating the payout in respect of these days shall be as per paragraph 10.4 above.
- 10.6. The Head of Department shall determine procedures and measures in keeping with service delivery needs, on how employees will be allowed to utilise their leave credits accrued prior to 1 July 2000 over and above the normal annual leave entitlements as per Annexure A.

11. **NOMINATION OF BENEFICIARIES AND LEAVE PAYOUTS**

- 11.1. Employees may, if they so desire, designate one or more beneficiaries to whom their leave payout may be paid in the event of their death. Departments should actively promote the nomination of beneficiaries in order to avoid any hardship of such beneficiaries.
- 11.2. If an employee dies and has not nominated a beneficiary, the leave payout may be paid:
- 11.2.1. In full to the spouse/life partner of that employee; or
 - 11.2.2. If there is no spouse/life partner, in equal shares for the benefit of minor and other children (including legally adopted children) of the deceased who, at the time of his/her death, were fully dependent on the employee; or
 - 11.2.3. If there are no children, to the employee's estate.

12. **ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS**

- 12.1. An employee may not be granted annual leave with full pay in excess of that which the employee is entitled to in terms of Annexure A plus capped leave in respect of persons who were in service prior to 1 July 2000.



- 12.2. If due to a bona fide error, an employee had been granted annual leave with full pay in excess of that which stood to his/her credit at that time, such over-grant must be deducted from the subsequent leave cycle.⁸
- 12.3. If an employee who has been over-granted annual leave with full pay exits the Public Service, that portion of the over-grant, which exceeded his/her normal annual, leave credit on his/her last day of duty must be regarded as an overpayment that must be recovered from him or her. The latter overpayment should be determined according to the following formula:

$$\frac{A \times B}{260,714}$$

Where-

A = represents the employee's remuneration (Levels 1-10: annual basic salary plus 37% and MMS the, all-inclusive package)

B = represents the number of days annual leave over-granted

260.714 = represents the number of working days in a year

NOTE: For a computed example, please refer to Annexure B

- 12.4. If an employee exits the Public Service during an annual leave cycle after utilising all his/her annual leave for the leave cycle, the provisions of 12.3 above shall apply.

13. ANNUAL LEAVE: GENERAL PROVISIONS

- 13.1. An employee retains all his/her annual leave credits, when he/she is transferred within or between departments, due to him/her at that point in time. The employee retains likewise the leave category as reflected in Annexure A. The utilisation of these leave credits are subject to the provisions of this Determination and Directive.
- 13.2. If an employee transfers to an occupational class to which a different leave category applies, he/she adopts the new leave category for that occupational class. The employee will retain the leave credits due to him/her of the old occupational class. The utilisation of these leave credits is subject to the provisions of this Determination and Directive.
- 13.3. The provisions in paragraphs 13.1 and 13.2 apply mutatis mutandis in the case of employees who are appointed on contract and who secures a permanent appointment in the Public Service and vice versa.
- 13.4. In the event where an employee qualifies after completion of ten years of service after the first day of the month for the higher leave category in Annexure A, the higher pro rata portion of the new leave category should be calculated from the first day of the next month. The same principle also applies to employees referred to in paragraph 13.2 if they qualify after the first day of the month for the new category of leave.

⁸ Refer to Part 3 for implementation notes.



14. NORMAL SICK LEAVE⁹

- 14.1. An employee is entitled to 36 working days sick leave with full pay over a three-year cycle. Any unused sick leave credits shall lapse at the expiry of the three-year cycle.
- 14.2. It is incumbent on the employee to utilise and manage his/her normal sick leave responsibly and with circumspect.
- 14.3. An employee must submit his/her application for sick leave in respect of clinical procedures in advance, unless the treating practitioner certifies that such procedures have to be conducted as an emergency.
- 14.4. If overcome by a sudden illness or injury, the employee must personally notify his/her supervisor/manager immediately. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the illness/injury prevents the employee to inform the supervisor/manager personally.
- 14.5. An employee must submit an application for sick leave personally or through a relative, fellow employee within 5 working days after the first day of absence. The employee's supervisor/manager/ Head of Department and/or his/her delegate/must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove the application and submit to the relevant Human Resource division in the department.
- 14.6. If the employee fails to submit an application within the period indicated in paragraph 14.5, above, the following arrangements apply:
 - 14.6.1. The employee's manager/supervisor must immediately notify the employee that if such application is not received within 2 working days, the leave period will be regarded as unpaid leave or annual leave. If the employee fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately inform the Human Resource division and the relevant authority shall approve such absence as unpaid leave or annual leave if the employee consents. The employee's supervisor/manager/ Head of Departments and/or his/her delegate must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove this leave application and submit to the relevant Human Resource division in the department.
 - 14.6.2. Failure by the employee to submit his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light and disciplinary steps against the employee and/or supervisor/manager should be taken.
- 14.7. An employee must submit a medical certificate in respect of his/her sick absence for every occasion of 3 or more sick leave days, issued and signed by a practitioner or person listed in paragraph 17.1 hereunder.

⁹ Refer to Part 3 for implementation notes.



14.8. If -

- 14.8.1. the employer establishes a pattern/trend in the employee's utilisation of normal sick leave, the employer must require the employee to submit a medical certificate from a practitioner or person listed in paragraph 17.1 hereunder, for periods of sick absences of less than 3 days; and
- 14.8.2. an employee during his/her normal sick leave period, **who has been absent from work on more than two occasions during an eight-week period**, must regardless of the duration of the sickness or injury, submit a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury. The 8-week period shall be a calendar period and commences on the first day of an employee's absence due to sickness or injury. Any subsequent day of absence due to sickness or injury after the above-mentioned period must then be regarded as the first day of the next 8-week period. If the employee fails to submit the required medical certificate, the Head of Department must notify the employee that if the prescribed medical certificate is not received within 2 working days, the sick leave period will be regarded as unpaid leave or annual leave. If the employee fails to submit the medical certificate on time, the relevant absence must be covered by annual leave (with the employee's consent) and/or unpaid leave if insufficient annual leave credits are available or if the employee failed to notify the Head of Department of his/her choice. Failure by the employee to submit his/her medical certificate within the stated period must be viewed in a serious light and disciplinary steps against the employee should be taken.
- 14.8.3. Sick leave may also be granted in respect of periods where an employee must be quarantined or isolated for at least 10 consecutive days.
- 14.9. If an employee falls ill while on annual leave with full pay, such leave may be converted to sick leave provided that a certificate from a registered medical practitioner or person listed in paragraph 17.1 hereunder is submitted to substantiate that he/she is ill.
- 14.10. For every 15 consecutive calendar days leave taken without pay, an employee's sick leave entitlement must be reduced by 1/72nd per sick leave cycle.

15. TEMPORARY INCAPACITY LEAVE

- 15.1. Incapacity leave is not an unlimited number of additional sick leave days at an employee's disposal. Incapacity leave is additional sick leave granted conditionally at the employer's discretion, read with the *Policy and Procedure on Incapacity Leave for Ill-health Retirement* determined by the Minister for Public Service and Administration in terms of the Public Service Act, 1994, (hereafter referred to as PILIR).
- 15.2. An employee who has exhausted his/her normal sick leave, referred to in paragraph 14 above, during the prescribed sick leave cycle and who according to the treating medical practitioner requires to be absent from work due to a temporary incapacity, may apply for temporary incapacity leave with full pay on the applicable application form prescribed in terms of PILIR in respect of each occasion.
- 15.3. For an employee's application for temporary incapacity leave to be considered, the-



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- 15.3.1. employee must submit sufficient proof that she/he is too ill or injured to perform his/her work satisfactorily;
 - 15.3.2. application form must, regardless the period of absence, be accompanied by a medical certificate issued and signed by a medical practitioner that certifies his/her condition as temporary incapacity and if the employee has consented, the nature and extent of the illness or injury. Please also refer to paragraph 17 in respect of the acceptance of medical certificates;
 - 15.3.3. employee is in accordance with item 10(1) of Schedule 8 to the Labour Relations Act, 1995, afforded the opportunity to submit together with his/her application form-
 - a) any medical evidence related to the medical condition of the employee, such as (a) medical report(s) from a specialist, blood tests results, x-ray results or scan results, obtained at the employee's expense; and
 - b) any additional written motivation supporting his/her application; and
 - 15.3.4. employee is requested to give his/her consent that medical information/records be disclosed to the employer and/or its Health Risk Manager¹⁰ and to undergo further medical examinations in terms of the assessment process described in PILIR.
 - 15.4. An employee must submit his/her application for temporary incapacity leave in respect of clinical procedures in advance, unless the treating medical practitioner certifies that such procedures have to be conducted as an emergency.
 - 15.5. If overcome by a sudden illness or injury, the employee must personally notify his/her supervisor/manager **immediately**. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the illness or injury prevents the employee to inform the supervisor/manager personally.
 - 15.6. An employee must submit an application for temporary incapacity leave personally or through a relative, fellow employee or friend within 5 working days after the first day of absence. The employee's supervisor or delegate must within two working days from receipt of the leave application form recommend/ not recommend the application and submit to the relevant Human Resource division in the department.
 - 15.7. If the employee fails to submit an application within the period indicated in paragraph 15.6, the following arrangements apply:
 - 15.7.1. The employee's manager/supervisor must immediately notify the employee that if such application is not received within 2 working days, the sick leave period will be regarded as unpaid leave or annual leave. If the employee fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately inform the Human Resource division and the relevant authority shall approve such absence as unpaid leave or annual leave if the employee consents. The employee's supervisor/manager/ Head of

¹⁰ The Health Risk Manager is a company of multi-disciplinary medical experts, specializing in occupational medicine, which will be appointed by the **dpsa** and National Treasury. The Health Risk Manager will assess and advise the HOD in respect of an employee's application for *inter alia* incapacity leave.



Department and/or his/her delegate must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove this leave application and submit to the relevant Human Resource division in the department.

- 15.7.2. Failure by the employee to provide his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light and disciplinary steps should be taken.
- 15.8. The Head of Department, must within 5 working days from the receipt of the employee's application for temporary incapacity leave-
- 15.8.1. **conditionally** grant a maximum of 30 consecutive working days temporary incapacity leave with full pay subject to the outcome of his/her investigation into the nature and extent of the employee's illness/injury; and
- 15.8.2. refer the application with all the supporting evidence **immediately** to its Health Risk Manager in accordance with the PILIR for an assessment and advice-
- (a) on whether the employee's illness or injury justifies the granting of incapacity leave ; *and*
- (b) which steps, if any, in accordance with the procedures contained in item 10(1) of Schedule 8 to the Labour Relations Act, 1995, read with clause 7.5.1 of PSCBC Resolution 7 of 2000, as amended by PSCBC Resolutions 5 of 2001 and 15 of 2002, are necessary;
- 15.9. The Head of Department may request the employee, if s/he has consented thereto in his/her application form, as part of the process contemplated in sub-paragraph 15.8.2, above, to subject him/herself for one or more medical examinations by medical practitioners of the employer's choice and for the employer's account. If the employee fails to honour the appointments for such medical examinations, the employee shall be held responsible for any fruitless expenses incurred.
- 15.10. The Head of Department must within 30 working days after receipt of both the application form and medical certificate referred to in paragraph 15.3.2, approve or refuse the temporary incapacity leave granted conditionally. In making a decision, the Head of Department must apply his/her mind to the medical certificate (with or without describing the nature and extent of the illness or injury) contemplated in paragraph 15.3.2, medical information/records contemplated in paragraph 15.3.4 (if the employee consented to disclosure), the Health Risk Manager's advice, the information supplied by the employee in terms of paragraph 15.3.3 (if any) and all other relevant information available to the Head of Department and based thereon approve or refuse the temporary incapacity leave granted conditionally, on conditions that the Head of Department may determine, e.g. to return to work, etc.
- 15.11. The Head of Department may on the basis of medical evidence gathered during its investigation approve the granting of additional incapacity leave days on conditions that he or she shall determine. The Head of Department may for this purpose grant conditionally further temporary incapacity leave.



15.12. The Head of Department, if applicable and as soon as possible, must after the receipt of the Health Risk Manager's advice, decide on the possibility of securing alternative employment for the employee, or adapting his/her duties or work circumstances to accommodate his/her incapacity or alternative employment and, as soon as possible, approve and implement an action plan for this purpose.

15.13. If the Head of Department-

- 15.13.1. approves the temporary incapacity leave granted conditionally, such leave must be converted into temporary incapacity leave; or
- 15.13.2. refuses the temporary incapacity leave granted conditionally, s/he must notify the employee in writing-
 - (a) of the refusal;
 - (b) of the reasons for the refusal;
 - (c) that s/he must notify the Head of Department in writing within 5 working days of the date of the notice to him/her, whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if s/he fails to notify the Head of Department of his/her choice, the period will be covered by unpaid leave; and
 - (d) the employee may, if he/she is not satisfied with the Head of Department's decision, lodge a grievance in terms of section 35 of the Public Service Act.

15.14. The Head of Department must cover the period of absence, referred to in paragraph 15.13.2 (c) in accordance with the employee's written notification or, if the employee fails to notify that the Head of Department in terms of that paragraph or the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave.

15.15. In instances where incapacity leave is declined which originated in the previous leave cycle, an employee has the option to have the period covered by unpaid leave or to request that annual leave of the current leave cycle be utilised to offset the declined incapacity leave.

15.16. As regards the management of shift workers pertaining to normal sick leave and temporary incapacity leave the provisions contained in paragraph 8, above, apply *mutatis mutandis*.

15.17. If an employee passes away after submitting an application for temporary incapacity leave a decision on such application must be made where the information provided is sufficient. However, where a decision cannot be made due to a lack of information the Head of Department or his/her delegate must approve such application for temporary incapacity leave and close the application. Any decision must take into account the recommendation from the Health Risk Manager.



16. PERMANENT INCAPACITY LEAVE

- 16.1. An employee shall not directly access or apply for permanent incapacity leave. The Head of Department may grant an employee up to a maximum of 30 working days' permanent incapacity leave once she/he has, following the assessment and investigations contemplated in par. 15.8.2, determined that the employee's condition is of a permanent nature.
- 16.2. The Head of Department must during the period referred to in paragraph 16.1 and in accordance with the advice from its Health Risk Manager ascertain the feasibility of and implement its plan of action contemplated in paragraph 15.12., above, in respect of-
 - 16.2.1. alternative employment; or
 - 16.2.2. adapting duties or work circumstances to accommodate the employee.
- 16.3. An employee, whose degree of incapacity has been certified as permanent but who can still render a service, may be transferred to an alternate appropriate vacant post without a reduction in benefits.
- 16.4. In instances where the employee's transfer entails retraining or retooling, the employer must take requisite resources (time and financial) and potential returns into consideration before approving transfer.
- 16.5. The transfer of an employee should ensure the optimal utilisation of his/her competencies and must not compromise service delivery.
- 16.6. If both the Head of Department and employee are convinced that the employee will never be able to render an effective service, the employee/employer may proceed with the process of termination of service on account of continued ill-health in terms of section 17(2)(a) of the Public Service Act, as amended.
- 16.7. The Head of Department may extend the period of permanent incapacity leave referred to in paragraph 16.1 by a further 30 working days in order to finalise processes already commenced. If the processes set out in this Determination and Directive is not completed within the 60 working days, the Head of Department must report the case to the Director-General: Public Service and Administration together with a report explaining the reasons for the delay.

17. ACCEPTANCE OF MEDICAL CERTIFICATES

- 17.1. For purposes of normal sick leave medical certificates issued and signed by the practitioners and persons **who are certified to diagnose and treat patients and who are registered with the following professional councils** established by an Act of Parliament shall be accepted:
 - 17.1.1. The Health Professions Council of South Africa.
 - 17.1.2. The Allied Health Professions Council of South Africa.
 - 17.1.3. The South African Nursing Council.



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- 17.2. The registration details of service providers could be confirmed with the above-mentioned councils.
 - 17.3. A medical certificate must contain the following information:
 - 17.3.1. The name, address and qualifications of the practitioner or person.
 - 17.3.2. The name of the patient.
 - 17.3.3. The employment number of the patient (if applicable).
 - 17.3.4. The date and time of examination.
 - 17.3.5. Whether the practitioner is issuing the certificate as a result of personal observations during an examination or as the result of information received from the patient and which is based upon acceptable medical grounds.
 - 17.3.6. If the patient has given informed consent for it to be disclosed, a description of the nature and extent of the illness or injury in layperson's language.
 - 17.3.7. Whether the patient is totally indisposed for duty or whether the patient will be able to perform less strenuous duties in the work situation.
 - 17.3.8. The exact period of recommended sick leave.
 - 17.3.9. The date of issue of the certificate of illness.
 - 17.3.10. A clear indication of the identity of the practitioner or person who issued the certificate.
 - 17.3.11. The initial and surname in block letters, and the registration or practice number of the practitioner who issued the certificate.
 - 17.4. If the practitioner or person uses pre-printed medical certificates, wording not applicable to the patient must be deleted.
 - 17.5. The Head of Department must accept medical certificates that do not describe the nature and extent of an employee's illness for sick leave taken **during the normal sick leave cycle**, i.e. 36 working days in a 3-year cycle. The employer may request from the employee a medical certificate describing the nature and extent of the illness before granting sick leave, if the employee abuses the system during the normal sick leave period of 36 working days (e.g. a pattern of regular sick leave on Mondays or Fridays). If the employee fails to submit the required medical certificate, the Head of Department must notify the employee that if the prescribed medical certificate is not received within 2 working days, the sick leave period will be either regarded as unpaid leave or annual leave. If the employee fails to submit the medical certificate on time, the relevant absence must be covered by annual leave (with the employee's consent) and/or unpaid leave if insufficient annual leave credits are available and if the employee failed to notify the Head of Department of his/her choice. Failure by the employee to submit his/her medical certificate within the stated period must be viewed in a serious light and disciplinary steps against the employee should be taken.



- 17.6. For purposes of temporary incapacity leave the employer only accepts medical certificates issued and signed by practitioners registered with the Health Professional Council of South Africa and who are legally certified to diagnose and treat patients. Such medical certificates must describe that the illness or injury is temporary and, if the employee has given his/her informed consent, the nature and extent of the employee's illness or injury. The provisions contained in paragraph 17.3 above, applies *mutatis mutandis* in respect of such medical certificates.
- 17.7. **The employer must, in accordance with the constitutional rights to privacy, the Code of Conduct in the Public Service Regulations treat at all times any information regarding the medical condition of an employee with the necessary respect and confidentiality.** Such information may therefore not be disclosed to any other person(s) not authorised to receive such information. If an employee discloses such confidential information of one employee to any other unauthorized person, it must be viewed in a serious light and disciplinary steps against the transgressing employee should be taken.

18. GENERAL: SICK LEAVE

- 18.1. In the event where an employee has to –
- 18.1.1. consult a doctor, therapist, etc. for reasons related to the employees health/wellness, or
 - 18.1.2. go for training related to a disability, e.g. a blind employee who has to get training with his/her guide dog, or
 - 18.1.3. go for maintenance work for equipment used as a result of his/her disability, the Head of Department may grant such employees time off in terms of the sick leave provisions. ¹¹
- 18.2. Where an employee is absent for a part of the day, the Head of Department could manually record such time off until a full day is completed as sick leave. ¹²
- 18.3. The Head of Department may require the necessary proof of such events or occurrences to properly monitor the utilisation of sick leave.
- 18.4. Fractions of sick leave entitlements may be converted using the formula in par.7.4 above.
- 18.5. An employee shall retain his/her sick leave credits in respect of a particular sick leave cycle, when the employee-
- 18.5.1. is transferred within a department or between departments; or
 - 18.5.2. is appointed in terms of the Public Service Act, 1994 without a break in service.

¹¹ Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS

¹² Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS



19. LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES

- 19.1. An employee who, as a result of his/her work, suffers an occupational injury or contracts an occupational disease, shall be granted occupational and disease leave for the duration of the period they cannot work.
- 19.2. If an employee suffers a work-related injury as a result of an accident involving a third party, the Head of Department shall grant him or her occupational injury leave provided that the employee:
 - 19.2.1. brings a claim for compensation against the third party; and
 - 19.2.2. undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the cost arising from the accident.
- 19.3. The Head of Department shall take reasonable steps to assist an employee to claim compensation according to 19.2 above.
- 19.4. When an employee is injured on duty or contracted an occupational disease the employer must pay the employee's medical expenses in terms of the provisions of the Compensation on Occupational and Injury and Disease Act, The employer may, depending on the circumstances, recover certain expenses in the event where a third party was involved in the accident. Please refer to the guide: *"Application of the Compensation for Occupational Injuries and Diseases Act (COIDA) In the Workplace: A Guide for Government Departments"* for further details.

20. PRE-NATAL LEAVE (EFFECTIVE FROM 1 JANUARY 2013 ONLY)

- 20.1. A pregnant employee will be entitled to 8 working days pre-natal leave, per pregnancy, allowing the employee to attend medical examinations by a medical practitioner or midwife, and tests related to the pregnancy.
- 20.2. An employee can utilise a full day or part of a day for pre-natal leave. The Head of Department shall maintain a system to record episodes where the employee utilised part of a day. One day's pre-natal leave shall be deducted once the duration of absences equates the employee's prescribed daily working hours.¹³
- 20.3. An application for pre-natal leave should be supported by reasonable proof that the employee attended a doctor's appointment and/or went for tests related to the pregnancy.
- 20.4. An employee who has used all her pre-natal leave may, subject to the approval of the Head of Department, apply to use available annual leave and/or unpaid leave.
- 20.5. Absences related to medical complications during the pregnancy will be covered by sick leave.
- 20.6. All other maternity leave provisions, as defined in this Determination and Directive on Leave of Absence, remain applicable.

¹³ Refer to Part 2 for the explanatory note on the application of this provision in relation to the IFMS.



21. MATERNITY LEAVE

- 21.1. Employees are entitled to 4 consecutive calendar months' maternity leave to commence:
- 21.1.1. at any time from four weeks before the expected date of birth; or
 - 21.1.2. on a date from which the attending medical practitioner certifies that it is necessary for the employee's health or that of the unborn child.
- 21.2. It is preferable that an employee commences her maternity leave at least two weeks prior to the expected date of birth. However, the service delivery requirements of a particular Sector may require different arrangements with regard to the period and stage at which maternity leave, with due consideration of the employee and her unborn child's health and safety, should commence.
- 21.3. For at least six weeks after the birth, no employee may commence with normal official duty unless the attending practitioner certifies that the employee is fit to do so.
- 21.4. Maternity leave may only be interrupted if-
- 21.4.1. the baby is born prematurely and is hospitalised during maternity leave; or
 - 21.4.2. the baby becomes ill and is hospitalised for a period longer than a month during the maternity leave.
- 21.5. The provisions contained in paragraph 21.4 are only applicable to an employee, who chooses to interrupt her maternity leave in these circumstances.
- 21.6. If an employee referred to in paragraph 21.4.1 and 21.4.2 above, chose to interrupt her maternity leave and failed to return to work after the six weeks mentioned in paragraph 21.3 above, such a period must be covered with annual leave or unpaid leave if she does not have enough annual leave available.
- 21.7. Maternity leave may be extended upon application by:
- 21.7.1. the granting of sick leave as a result of a medical complication;
 - 21.7.2. the granting of up to 184 calendar days unpaid leave; or
 - 21.7.3. the granting of annual leave.
- 21.8. Employees, who, during the third trimester of their pregnancy, experience a miscarriage, still birth or termination of the pregnancy on medical grounds, shall be eligible for six consecutive week's maternity leave¹⁴, where after, 21.7.1 shall apply in the event of a medical complication.
- 21.9. Provisions in 21.8 above shall also apply to an employee who experiences a miscarriage, stillbirth or termination of pregnancy on medical grounds after the commencement of maternity leave. The period prior to the miscarriage, stillbirth or termination of pregnancy shall be regarded as special leave with full pay.

¹⁴ Leave to begin after the miscarriage, stillbirth or the termination of pregnancy.



22. **ADOPTION LEAVE**¹⁵

- 22.1. An employee, who adopts a child that is younger than two years, shall qualify for adoption leave to a maximum of 45 working days, where after, 21.7.2 and 21.7.3 shall apply.
- 22.2. If both spouses or life partners are employed in the Public Service, both partners will qualify for adoption leave provided that the combined leave taken does not exceed the 45 working days mentioned in 22.1 above.

23. **SURROGACY LEAVE**

23.1. **Commissioning Parent**

- 23.1.1. With effect from 8 June 2018 an employee who is a commissioning parent in terms of a surrogate motherhood agreement confirmed by the High Court as contemplated in the Children's Act, 2005, is entitled to four (4) consecutive calendar months paid leave commencing from the date of the birth of the child.
- 23.1.2. The employee referred to in paragraph 23.1, above, must notify an employer in writing at least one (1) calendar month before a child is expected to be born as a result of a surrogate motherhood agreement, of the date on which the employee intends to commence with surrogacy leave.
- 23.1.3. If both commissioning parents are employed in the public service, only one (1) such parent will qualify for the surrogacy leave.
- 23.1.4. An application for surrogacy leave shall be supported by a surrogate motherhood agreement.

23.2. **Surrogate Mother**

- 23.2.1. An employee who is a surrogate mother, in terms of a surrogate motherhood agreement is entitled to six (6) consecutive weeks maternity leave.
- 23.2.2. An employee who is a surrogate mother may commence with normal official duty within the six (6) week period only if the attending practitioner certifies that the employee is fit to do so.
- 23.2.3. It is incumbent on the employee to notify the employer of the surrogate motherhood agreement and submit a copy thereof as soon as it has been confirmed by the High Court.
- 23.2.4. The employee's application for leave shall be supported by the surrogate motherhood agreement.

24. **FAMILY RESPONSIBILITY LEAVE**

- 24.1. Employees shall be granted 3 working days leave per annual leave cycle for utilisation if:

¹⁵ Refer to Part 3 for implementation notes.¹⁶ Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS



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- 24.1.1. The employee's spouse or life partner gives birth to a child; or
- 24.1.2. The employee's child, spouse or life partner is sick.
- 24.2. Employees shall be granted 5 working days leave per annual leave cycle for utilisation if:
- 24.2.1. The employee's child, spouse or life partner dies; or
- 24.2.2. An employee's immediate family member dies.
- 24.3. The number of family responsibility leave days taken according to 24.1 and 24.2 above shall not exceed five (5) days in an annual leave cycle, unless special circumstances warrant further leave at the discretion of the Head of Department.
- 24.4. With effect from 1 January 2013 the provisions in paragraph 24.1 to 24.3 will cease to exist. Employees would henceforth be entitled to the following family responsibility leave benefits:
- 24.4.1. 5 working days family responsibility leave per annual leave cycle for utilisation if the employee's spouse or life partner gives birth to a child; or the employee's child, spouse or life partner is sick.
- 24.4.2. "Child" for purposes of paragraph 24.4.1 means the employee's son or daughter, who is under 18 years of age.
- 24.4.3. 5 working days leave per annual leave cycle for utilisation if the employee's child, spouse or life partner or an employee's immediate family member dies.
- 24.5. Immediate family member for purposes of paragraph 24.4.3 means the employee's parent, adoptive parent, step-parent, parents-in-law, sister- and brother-in-law, grandparent, child, adopted child, stepchild, grandchild or sibling. For the purposes of this provision "child" means the employee's son or daughter, and where applicable son- or daughter-in-law, of any age. The granting of family responsibility leave must be taken with due consideration of the employee's cultural responsibilities.
- 24.6. An application for family responsibility leave shall be supported by reasonable proof.
- 24.7. With effect from 20 May 2015 an employee who has a child(ren) with severe special needs shall be granted five (5) working days family responsibility leave per calendar year.
- 24.7.1. For the purposes of paragraph 24.7, a child with severe special needs is a child who has a mental, emotional or physical disability, certified by a medical practitioner, which requires health and related services of a type or amount beyond that required by children generally. For the purposes of this provision "child" means the employee's son or daughter of any age.
- 24.7.2. An application for family responsibility leave should be supported by reasonable proof to demonstrate the severe special needs of the employee's child.
- 24.8. Employees who have used all their family responsibility leave may, subject to the approval of the Head of Department, apply to:



-
- 24.8.1. use available annual leave; or
 - 24.8.2. use up to 184 calendar days of unpaid leave.
 - 24.9. Family responsibility leave may be taken for part of a day. For example an employee who takes three hours off to attend to a family responsibility would use only three hours of their family responsibility leave entitlements.
 - 24.10. For purposes of utilising family responsibility leave entitlements, fractions or decimals must be utilised as they are. In other words fractions or decimals must not be rounded off.
 - 24.11. Departments must keep manual records of the utilisation of family responsibility leave taken for part of a day. After reaching the daily number of working hours of attendance prescribed the employee must complete and submit a leave form. ¹⁶
 - 24.12. For purposes of converting fractions/decimals of family responsibility leave entitlements into working hours the formula in paragraph 7.4 above must be utilised.

25. PATERNITY LEAVE

- 25.1. With effect from 20 May 2015 an employee shall be granted three (3) working days paternity leave per calendar year for utilisation if the employee's spouse or life partner gives birth to a child or adopts a child not older than two (2) years.
- 25.2. An employee who has used all his/her paternity leave may, subject to the approval of the Head of Department, apply to:
 - 25.2.1. use his/her part or all of 5 working days family responsibility leave provided for in paragraph 24.4.1, above; or
 - 25.2.2. use available annual leave; or
 - 25.2.3. use up to 184 calendar days of unpaid leave.
- 25.3. An application for paternity leave shall be supported by reasonable proof.

26. SPECIAL LEAVE

- 26.1. A special leave policy shall be negotiated in the relevant sectoral bargaining council.
- 26.2. The policy mentioned in 26.1 above shall define:
 - 26.2.1. circumstances and conditions under which special leave is granted; and
 - 26.2.2. as far as possible, events for which employees shall be granted special leave.
- 26.3. The policy may provide paid leave for such requirements as study, examinations, military service, resettlement due to a transfer, collective bargaining or other labour relations requirements, participation in sports, sabbaticals where appropriate or any other purpose.

¹⁶ Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS



27. LEAVE FOR OFFICE BEARERS OR SHOP STEWARDS OF RECOGNISED EMPLOYEE ORGANISATIONS

- 27.1. Office bearers or shop stewards of recognised employee organisations shall receive up to 10 working days paid leave per annum for activities related to his/her union position.
- 27.2. With effect from 1 January 2013 the entitlement for shop stewards contained in paragraph 27.1 will be increased to 15 working days.¹⁷
- 27.3. The 15 working days shall be pooled per recognised trade union. Office bearers or shop stewards belonging to the same recognised trade union may apply for leave days from the pool. A list of the recognised employee organisations are attached at Annexure C.
- 27.4. The Head of Department shall appoint an administrator of the pool. The administrator should preferably be the Human Resource Manager of the Department. The Head of Department shall develop standard operating procedures to ensure that the utilisation of the pool is properly managed, recorded and monitored to ensure that the leave days available in the pool is not exceeded and/or abused.
- 27.5. A shop steward may apply for leave from the pool in respect of the recognised employee organisation she/he belongs to only. An individual shop steward may apply due to the union activities attached to his/her union position for either less than or more than 15 working days in a leave cycle. However, the shop stewards accessing the same pool of leave may not exceed the total number of leave days available in the pool.
- 27.6. Shop steward leave may only be utilised for activities related to the employee's union position. All applications for this type of leave must be submitted in writing on the prescribed leave application form or electronically¹⁸, together with supporting documentation.
- 27.7. If a shop steward of a recognised employee organisation has to perform union activities while on annual leave with full pay, such annual leave shall be converted to shop steward leave, provided that a formal request with supporting documentary evidence are submitted substantiating that he/she had to perform union activities.
- 27.8. The employee's supervisor shall liaise with the Labour Relations Manager and Human Resource Manager to validate the employee's involvement in a union activity/business and whether sufficient credits are available in the leave pool.
- 27.9. Approved applications shall be captured on PERSAL or the IFMS, whichever system is in use in the Department.

28. UNPAID LEAVE

- 28.1. If an employee has utilised all his/her annual leave with full pay, the Head of Department may grant him or her unpaid leave.
- 28.2. Only in exceptional circumstances shall the Head of Department grant the employee more than 184 calendar days of unpaid leave in a period of 18 months.

¹⁷ Refer to Part 3 for implementation notes.

¹⁸ Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS



28.3. Unpaid leave should be regarded as calendar days.

28.4. For purposes of calculating unpaid leave, the following formula applies:

$$\frac{A \times B}{365}$$

Where -

A = represents the employee's remuneration Levels 1-10: annual basic salary and MMS, the all-inclusive package)

B = represents the number of days annual leave without pay (i.e. **calendar days**)

365 = represents the number of **calendar** days in a year

Note: For computed EXAMPLES please refer to Annexure B.

29. LEAVE PROVISIONS FOR A CASUAL WORKER

29.1. A casual worker as defined in this Determination and Directive is in terms of the Basic Conditions of Employment Act, 1998, as amended not eligible to leave.

29.2. Departments are urged to ensure that the employment of casual workers is in terms of the agreement. Existing employees appointed as casual workers for longer than 24 hours per month, must be translated to temporary employees¹⁹ with immediate effect.

30. LEAVE PROVISIONS FOR TEMPORARY²⁰ EMPLOYEES²¹

A temporary employee is eligible to the following types of leave on a pro rata basis linked to the duration of his/her contract. The utilisation of these leave types is subject to the rules that govern the relevant type of leave:

30.1. Annual leave:

A temporary employee shall at the beginning of his/her contract period be granted annual leave that is proportional to his/her term of employment at a rate of one-twelfth of the annual leave credit applicable to the employee category (as per Annexure A), per calendar month of service.

30.2. Normal Sick Leave:

A temporary employee shall at the beginning of his/her contract period be granted normal sick leave that is proportional to his/her term of employment at a rate of 1 days normal sick leave per calendar month of service.

¹⁹ Refer to clause 11 of PSCBC Res 1 of 2007

²⁰ Refer to clause 11 of PSCBC Res 1 of 2007

²¹ Refer also to the Determination on Interns and Learners



30.3. **Maternity Leave:**

30.3.1. A temporary employee shall be granted paid maternity leave that is proportional to her term of contract at a rate of 10 calendar days maternity leave with full pay calculated at each calendar month of her term of contract to a maximum of 4 calendar months, where after maternity leave without pay shall be granted. The total period granted in respect of maternity leave shall not exceed four consecutive calendar months.

30.4. **Adoption**

30.4.1. A temporary employee who adopts a child that is younger than two years, shall qualify for adoption leave at a rate of 4 working days paid leave for each calendar month of his/her term of contract to a maximum of 45 working days.

30.5. **Surrogacy Leave**

30.5.1. With effect from 8 June 2018 a temporary employee who is a commissioning parent in terms of a surrogate motherhood agreement confirmed by the High Court as contemplated in the Children's Act, 2005, shall be granted paid surrogacy leave that is proportional to his/her term of contract at a rate of ten (10) calendar days surrogacy leave with full pay calculated at each calendar month of his/her term of contract to a maximum of four (4) calendar months, where after surrogacy leave without pay shall be granted. The total period granted in respect of surrogacy leave shall not exceed four (4) consecutive calendar months.

30.5.2. A temporary employee who is a surrogate mother in terms of a surrogate motherhood agreement, confirmed by the High Court, provided for in the Children's Act, 2005, shall be granted paid maternity leave that is proportional to her term of contract at a rate of 3.5 calendar days maternity leave with full pay calculated at each calendar month of her term of contract to a maximum of six (6) consecutive weeks where after maternity leave without pay shall be granted.

30.6. **Pre-Natal Leave (Effective from 1 January 2013 only)**

30.6.1. A temporary employee who is pregnant shall qualify for pre-natal leave at a rate of 1 working day paid leave for each calendar month of her term of contract to a maximum of 8 working days.

30.7. **Paternity Leave**

With effect from 20 May 2015 a temporary employee who's spouse or life partner gives birth to a child or adopts a child not older than two (2) years shall qualify for paternity leave at a rate of 1 working day paid leave for each calendar month of his/her term of contract to a maximum of 3 working days.

30.8. **Other Provisions:**

The terms and conditions attached to the granting of the above types of leave, as well as the provisions contained in: paragraph(s) 10, 11, 12, 15, 16 (where applicable), 17 (where applicable), 19, 24, 26 and 31 apply *mutatis mutandis* to a contract worker.



31. GENERAL PROVISIONS

31.1. Except in exceptional circumstances, the employee may not stay away from his/her place of duty unless an application for leave of absence has been lodged in writing or electronically²² and he/she has been informed by the Head of Department that the application has been approved.

31.2. Heads of Department must ensure that:

31.2.1. Leave forms are submitted for all absences and all outstanding leave forms are followed up.

31.2.2. All leave taken is captured on a daily basis and there are no backlogs in respect of each annual leave cycle.

31.2.3. Individual utilisation of leave is communicated to employees at the end of each annual leave cycle in respect of annual vacation leave.

31.3. Duration of Employment

31.3.1. For purposes of determining the length of an employee's employment with an employer for purposes of annual leave, normal sick leave and family responsibility leave, previous employment in the public service must be taken into account if the break between the periods of employment is less than one year. This principle applies in respect of each break in service that occurs in the career of an employee.

31.3.2. The leave entitlement of the employee referred to in paragraph 31.3.1 in respect of annual leave, normal sick leave and family responsibility leave should be reduced with the leave benefit granted (annual leave payouts included) plus the pro rata portion for the duration of the break in service.

31.3.3. For example -

31.3.3.1. If an employee with 10 years' service terminated his/her services on 30 April 2012 and is reappointed in the public service on 1 August 2012, she/he will be grouped in the leave category applicable to employees with 10 and more years' service, i.e. 30 working days.

(a) The 30 working days are reduced by-

- i) the number of annual leave days the employee either utilised prior to his/her termination of service and/or received as a leave payout. Assuming for purposes of this example the employee received a leave payout in respect of unused annual leave for the period 1 January to 30 April 2012 amounting to 8.64 working days ($2.16^{23} \times 4$ months); and

²² Refer to Part 2 for an explanatory note on the application of this provision in relation to the IFMS on page 7

²³ At the time of that the leave payout was made the employee was only entitled to 26 working days.



ii) the pro rata portion equivalent to the break in service. In this example it would amount to 6.48 working days.

(b) The remaining leave credits, if any, will then be available to the employee for the remainder of the leave cycle. In this example the employee would be eligible to 14.88 working days annual leave. ($15.12 - 30 = 14.88$).

31.3.3.2. In respect of normal sick leave it is assumed for purposes of this example that the employee referred to in paragraph 31.3.3.1 utilised 15 working days normal sick leave prior to his/her termination of service. The pro rata portion equivalent to the period in break in service amounts 3 working days. The employee is thus eligible to 18 working days normal sick leave for the remainder of the sick leave cycle at reappointment. (i.e. $18 - 36 = 18$)

31.3.3.3. If the employee referred to in paragraph 31.3.3.1 have not utilised any family responsibility leave prior to his/her termination of service, this entitlement will be reduced with 1.25 working days representing the pro rata portion of his/her break in service. The employee will thus be eligible to 3.75 working days' family responsibility leave for the remainder of the leave cycle.

31.4. Training of disabled employees

31.4.1. Disabled employees must be afforded the opportunity to undergo training to manage their disability. Training required to be able to utilise equipment or the like to access the workplace and to perform the job, should be treated the same as other official training provided to equip employees with the knowledge and skills to do their jobs. The employee with a disability should therefore be offered the relevant training while on official duty.

31.5. Fitment, adjustment or maintenance of equipment of disabled employees

31.5.1. If a disabled employee needs periods or time off to fit, adjust or maintain equipment to enable the employee to perform his/her job, it should be treated in terms of paragraph 18 above.



ANNEXURE A

Leave Entitlements

	EMPLOYEE CATEGORY	ANNUAL LEAVE EXPRESSED AS WORKING DAYS
1.	Institution-based educators	As per ELRC Res.7/2001
2.	Office-based educators	As per ELRC Res.7/2001
3.	Non-teaching staff based at schools/institutions	
	Less than 10 years service	27
	10 or more years service	30
4.	Nursing personnel in institutions that provide 24 hour service	
4 (a)	Student and pupil nurses	22
4 (b)	Part-time nurses:	
	Less than 10 years service	22
	10 or more years of service	30
4 (c)	Registered/enrolled nurses and nursing assistants:	
	Less than 10 years service	22
	10 or more years of service	30
5.	Other employees:	
	Less than 10 years service	22
	10 or more years of service	30



COMPUTED EXAMPLES

Calculating Annual Leave at Termination of Service

EXAMPLE 1: Employees Levels 1 – 10

The employee resigns with effect from 1 April 2008, the employee's remuneration on the last day of duty is R102 750 (in other words R 75 000 (annual basic salary) + R27 750 (in respect of the 37%)), s/he falls in the 22 working day leave category and has taken at least 10 working days' leave.

The cash value in respect of unused leave credits should be computed in the following manner:

$$\frac{\{(A - B) + (C - D)\} \times E^{24}}{260,714}$$

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle (Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle (Calculated according to the formula in A above)

D = Leave taken in the current leave cycle

E = Represents the employee's remuneration (i.e. annual basic salary plus 37%)

STEP 1

Use the given information on the employee's leave category to determine A. In the event of a full annual leave entitlement, use Annexure A and in the event of a pro rata leave entitlement (in the previous leave cycle)²⁵, use the formula in STEP 3 below.

²⁴ This formula is in terms of paragraph 9.6 of the Determination issued by the MPSA.

²⁵ The pro rata leave entitlement in this regard is in respect of employees appointed after a leave cycle has commenced



STEP 2

Use the given information to determine B (Leave taken in the previous leave cycle) and D (Leave taken in the current leave cycle).

STEP 3

Use the formula in STEP 1 above to determine C (pro rata leave entitlement in the current leave cycle beginning 1 January 2008 up to and including the last day of duty).

$$\frac{X \times Y}{12}$$

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

$$\begin{aligned} \text{In other words:} &= \frac{3 \times 22}{12} \\ &= \underline{5.5 \text{ days}} \end{aligned}$$

STEP 4

Use the given information to determine E

STEP 5

Compute the cash value of leave credits available in the following manner:

$$\begin{aligned} &\frac{\{(A - B) + (C - D)\}^{26} \times E}{260.714} \\ \text{Cash value} &= \frac{\{(22 - 10) + (5.5 - 0)\} \times R 102\,750}{260.714} \\ &= \frac{(12 + 5.5) \times R 102\,750}{260.714} \\ &= \frac{17.5 \times R 102\,750}{260.714} \\ &= \underline{R6\,896.92} \end{aligned}$$

²⁶ The sum total of A – B and C - D must not exceed the maximum number days annual leave an employee is entitled to as depicted in Annexure A to this Determination.



NOTE:

The pro rata leave credits in this EXAMPLE derive from the leave credits in the current leave cycle beginning from 1 January 2008 to 31 March 2008.

EXAMPLE 2: Middle Management Service (MMS) employees

The member resigns with effect from 1 November 2007, the all-inclusive salary package on the last day of duty is R369 000 per annum, he falls in the 30 working day leave category and taken at least 5 working days' leave.

The cash value in respect of unused leave credit should be computed in the following manner:

$$\frac{\{(A - B)^{27} + (C - D)\} \times E}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle (Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle (Calculated according to the formula in A above)

D = Leave taken in the current leave cycle

E = Represents the employee's remuneration (i.e. annual inclusive package)

STEP 1

Determine C using the following formula:

$$\frac{X \times Y}{12}$$

Where –

X = Number of completed months of service in the leave cycle.

Y = Normal annual entitlement as per Annexure A.

²⁷ Since the termination of service happens after the expiry of the 6 months period, information on A and B will be represented by 0.



$$\begin{aligned}\text{In other words:} &= \frac{10 \times 30}{12} \\ &= \underline{25 \text{ days}}\end{aligned}$$

STEP 2

Use the given information to determine D. (Leave taken in the current leave cycle).

STEP 3

Compute the cash value of available leave credits using the following formula:

$$\begin{aligned}\text{Cash value} &= \frac{\{(A - B)^i + (C - D)\}^{28} \times E}{260.714} \\ &= \frac{\{(0 - 0) + (25 - 5)\} \times R369\,000}{260.714} \\ &= \frac{20 \times R369\,000}{260.714} \\ &= \underline{R\,28\,306.88}\end{aligned}$$

²⁸ The sum total of A – B and C – D must not exceed the maximum number of days annual leave entitlement as depicted in Annexure A of this Determination.



Calculating Annual Leave: Leave Payout of Unused Leave at the Expiry of the 6 Month Grace Period of a Leave Cycle

EXAMPLE 3: Employees Levels 1 – 10

The employee has unused leave credits at the expiry of the 6 months period at the end of 30 June 2008, the employee's remuneration on the last day of June is R102 750 (in other words R 75 000 (annual basic salary) + R27 750 (in respect of the 37%)), s/he falls in the 22 working day leave category and has taken at least 10 working days' leave.

The cash value in respect of unused leave credits should be computed in the following manner:

$$\frac{(A - B) \times C^{29}}{12}$$

260,714

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle
(Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = Represents the employee's remuneration (i.e. annual basic salary plus 37%)

STEP 1

Use the given information on the employee's leave category to determine A. In the event of a full annual leave entitlement, use Annexure A and in the event of a pro rata leave entitlement (in the previous leave cycle)³⁰, use the formula in STEP 3 below.

STEP 2

Use the given information to determine B (Leave taken in the previous leave cycle)

²⁹ This formula is in terms of paragraph 9.7 of the Determination issued by the MPSA.

³⁰ The pro rata leave entitlement in this regard is in respect of employees appointed after a leave cycle has commenced



STEP 3

Compute the cash value of leave credits available in the following manner:

$$\frac{(A - B) \times C}{260.714}$$

Cash value = $\frac{(22 - 10) \times R 102\,750}{260.714}$

= $\frac{12 \times R 102\,750}{260.714}$

= R 4729.32

EXAMPLE 4: Middle Management Service (MMS)

The employee has unused leave credits at the expiry of the 6 months period at the end of 30 June 2008, the all-inclusive salary package on the last day of duty is R369 000 per annum, he falls in the 26 working day leave category and taken at least 10 working days' leave.

The cash value in respect of unused leave credit should be computed in the following manner:

$$\frac{(A - B) \times C}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle (Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = Represents the employee's remuneration (i.e. annual inclusive package)



STEP 1

Use the given information on the employee's leave category to determine A. In the event of a full annual leave entitlement, use Annexure A and in the event of a pro rata leave entitlement (in the previous leave cycle)³¹, use the formula in STEP 3 below.

STEP 2

Use the given information to determine B. (Leave taken in the current leave cycle).

STEP 3

Compute the cash value of available leave credits using the following formula:

$$\begin{aligned}\text{Cash value} &= \frac{(A - B) \times C}{260.714} \\ &= \frac{(26 - 10) \times \text{R}369\,000}{260.714} \\ &= \frac{16 \times \text{R}369\,000}{260.714} \\ &= \underline{\underline{\text{R } 22\,645.50}}\end{aligned}$$

³¹ The pro rata leave entitlement in this regard is in respect of employees appointed after a leave cycle has commenced



Calculating Capped Leave

EXAMPLE 5: Employees levels 1 - 10

The employee retires or dies or is medically boarded with effect from 1 August 2007, the employee's remuneration on the last day of duty is R268 520 (in other words R 196 000 (annual basic salary) + R72 520 (in respect of the 37%)), s/he falls in the 26 working day leave category and has taken at least 10 working days' leave with 200 days of capped leave which has already been converted into working days

The cash value payable in respect of capped and audited leave at termination of service should be computed as follows:

$$\frac{\{(A-B) + (C-D)\} \times E + (F \times G)}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle
(Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle (Calculated according to the formula in A above)

D = Leave taken in the current leave cycle

E = Represents the employee's remuneration (i.e. annual basic salary plus 37%)

F = represents the capped leave

G = represents the employee's remuneration (levels 1-10 the annual basic salary only) as at the last day of duty



STEP 1

Use the given information on the employee's leave category to determine A. In the event of a full annual leave entitlement, use Annexure A and in the event of a pro rata leave entitlement (in the previous leave cycle)³², use the formula in STEP 3 below.

STEP 2

Use the given information to determine B (Leave taken in the previous leave cycle) and D (Leave taken in the current leave cycle).

STEP 3

Use the formula in STEP 1 above to determine C (pro rata leave entitlement in the current leave cycle beginning 1 January 2007 up to and including the last day of duty).

$$\frac{X \times Y}{12}$$

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

$$\begin{aligned} \text{In other words:} &= \frac{7 \times 26}{12} \\ &= 15.16 \text{ days} \end{aligned}$$

STEP 4

Use the given information to determine E

STEP 5

Use the given information to determine F. Convert capped leave into working days using the following formula (if not programmatically done already):

$$\frac{A \times 5}{7}$$

Where -

A = Number of audited leave credits

STEP 6

Use the given information to determine G

³² The pro rata leave entitlement in this regard is in respect of employees appointed after a leave cycle has commenced



STEP 7

Compute the cash value of leave credits available in the following manner:

$$\frac{\{(A-B) + (C-D)\} \times E + (F \times G)}{260.714}$$

$$\begin{aligned} \text{Cash value} &= \frac{\{(0 - 0) + (15.16 - 10)\} \times \text{R}268\,520 + (200 \times \text{R}196\,000)}{260.714} \\ &= \frac{\{(0 + 5.16)\} \times \text{R}268\,520 + (\text{R}39\,200\,000)}{260.714} \\ &= \frac{\{5.16 \times \text{R}268\,520 + (\text{R}39\,200\,000)\}}{260.714} \\ &= \frac{\text{R}1\,385\,563.20 + \text{R}39\,200\,000}{260.714} \\ &= \frac{40\,585\,563.20}{260.714} \\ &= \text{R}155\,670.82 \end{aligned}$$



EXAMPLE 6: Middle Management Service (MMS) Employees

The employee retires or dies or is medically boarded with effect from 1 August 2007, the employee's remuneration on the last day of duty is R369 000 (all inclusive package), s/he falls in the 26 working day leave category and has taken at least 10 working days' leave with 200 days of capped leave which has already been converted into working days

The cash value payable in respect of capped and audited leave at termination of service should be computed as follows:

$$\frac{\{(A-B) + (C-D)\} \times E + (F \times G)}{260.714}$$

Where:

A = represents the full annual or pro rata leave entitlement in the previous leave cycle (Pro rata leave entitlement calculated as $\frac{X \times Y}{12}$)

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle (Calculated according to the formula in A above)

D = Leave taken in the current leave cycle

E = Represents the employee's remuneration (i.e. annual inclusive package)

F = represents the capped leave

G = represents the employee's remuneration (MMS - the annual basic salary only) as at the last day of duty

STEP 1

Use the given information on the employee's leave category to determine A. In the event of a full annual leave entitlement, use Annexure A and in the event of a pro rata leave entitlement (in the previous leave cycle)³³, use the formula in STEP 3 below.

³³ The pro rata leave entitlement in this regard is in respect of employees appointed after a leave cycle has commenced



STEP 2

Use the given information to determine B (Leave taken in the previous leave cycle) and D (Leave taken in the current leave cycle).

STEP 3

Use the formula in STEP 1 above to determine C (pro rata leave entitlement in the current leave cycle beginning 1 January 2007 up to and including the last day of duty).

$$\frac{X \times Y}{12}$$

Where:

X = represents the number of completed months in the current leave cycle; and

Y = represents the annual leave entitlement per leave cycle as per Annexure A)

$$\begin{aligned} \text{In other words:} &= \frac{7 \times 26}{12} \\ &= 15.16 \text{ days} \end{aligned}$$

STEP 4

Use the given information to determine E

STEP 5

Use the given information to determine F. Convert capped leave into working days using the following formula (if not programmatically done already):

$$\frac{A \times 5}{7}$$

Where -

A = Number of audited leave credits

STEP 6

Use the given information to determine G



STEP 7

Compute the cash value of leave credits available in the following manner:

$$\frac{\{(A-B) + (C-D)\} \times E + (F \times G)}{260.714}$$

$$\begin{aligned} \text{Cash value} &= \frac{\{(0 - 0) + (15.16 - 10)\} \times R369\,000 + (200 \times R280\,440)}{260.714} \\ &= \frac{\{(0 + 5.16)\} \times R369\,000 + (R56\,088\,000)}{260.714} \\ &= \frac{\{5.16 \times R369\,000 + (R56\,088\,000)\}}{260.714} \\ &= \frac{R1\,904\,040 + R56\,088\,000}{260.714} \\ &= \frac{R57\,992\,040}{260.714} \\ &= R222\,435.46 \end{aligned}$$



Calculating Over-Granted Annual Leave

EXAMPLE 7: Employees level 1 - 10

An employee has been over-granted 10 days leave. The employee's annual basic salary plus 37% at that stage is R83 656:

$$\frac{A \times B}{260.714}$$

Where-

- A = Represents the employee's remuneration
B = represents the number of days annual leave over-granted
260.714 = represents the number of working days in a year

STEP 1

$$\frac{R\ 83\ 656 \times 10\ \text{days}}{260.714}$$

STEP 2

$$\frac{R\ 836\ 560}{260.714}$$

= R3 208.72 (value in Rand of leave days being over-granted)

Note: The value in Rand must not be rounded off. Annual leave over-granted is calculated as working days.

EXAMPLE 8: Middle Management Service (MMS) employees

A member has been over-granted 10 days leave. The member's all-inclusive salary package at that stage is R 369 000

$$\frac{A \times B}{260.714}$$

Where-

- A = represents the employee's remuneration (i.e. all inclusive package)
B = represents the number of days annual leave over-granted
260.714 = represents the number of working days in a year



STEP 1

R 369 000 X 10 days = R3 690 000

STEP 2

$$\frac{\text{R3 690 000}}{260.714}$$

= R14 153.44 (value in Rand of leave days being over-granted)

Note: The value in Rand must not be rounded off. Annual leave over-granted is calculated as working days.



Calculating Unpaid Leave

EXAMPLE 9: Employees levels 1 - 10

An employee has taken 15 calendar days unpaid leave. The employee's annual basic salary at that stage is R83 656:

$$\frac{A \times B}{365}$$

Where-

A = Represents the employee's remuneration (i.e. annual basic salary)

B = represents the number of days annual leave without pay (i.e. **calendar** days)

365 = number of calendar days in a year

STEP 1

$$\frac{R83\ 656 \times 15 \text{ days}}{365}$$

STEP 2

$$\frac{R1\ 254\ 840}{365} = R3\ 437.91 \text{ (value in Rand of leave taken without pay)}$$

Note: The value in Rand must not be rounded off. Leave without pay is calculated as calendar days

EXAMPLE 10: Middle Management Service (MMS) Employees

A member has taken 15 calendar days unpaid leave. The member's all-inclusive remuneration package at that stage is R 369 000:

$$\frac{A \times B}{365}$$

Where-

A = Represents the employee's remuneration (i.e. the all inclusive package)

B = represents the number of days annual leave without pay (i.e. **calendar** days)

365 = number of **calendar** days in a year



STEP 1

$$\frac{\text{R } 369\,000 \times 15 \text{ days}}{365}$$

STEP 2

$$\frac{\text{R}5\,535\,000,00}{365}$$

= R15 164,38 (value in Rand of leave taken without pay)

Note: The value in Rand must not be rounded off. Leave without pay is calculated as calendar days.



ANNEXURE C

LIST OF THE RECOGNISED EMPLOYEE ORGANISATIONS

DENOSA/SAMA

HOSPERSA/NATU/NUPSAW

NAPTOSA/SAOU

NEHAWU/PAWUSA

POPCRU/SASAWU

PSA/UNIPSAWU/NPSWU

SADTU/CTPA

SAPU/PEU

AGREEMENT

ENTERED INTO BY AND BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA through its
DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION
[HEREIN REFERRED TO AS “**the DPSA**”]

DULY REPRESENTED BY IN HIS/HER CAPACITY AS
.....
duly authorised thereto

and

..... (Pty) Ltd /CC
Company/CC Registration Number:

OR

Name:
Id No:

[HEREIN REFERRED TO AS “**the SERVICE PROVIDER**”]

DULY REPRESENTED BY IN HIS/HER CAPACITY AS
.....
duly authorised thereto by a Resolution of Directors/Members dated,
attached hereto marked

ANNEXURES

A. Terms of Reference

B. [State other Annexures, if any – EG: Proposal /Quotation, Resolution of Directors etc]

WHEREBY THE PARTIES AGREE AS FOLLOWS:**1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise indicates—

“**Agreement**” means the Agreement set out in this document and the Annexure/s attached hereto;

“**Letter of Award**” means the letter of award issued to the Service Provider by DPSA, dated.... [insert date]

“**POPIA**” means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**Terms of Reference**” means the Terms of Reference in Annexure A

“**Term**” means the term of this Agreement defined in **Clause 3** below;

“**Services**” means the functions and responsibilities to be provided by the Service Provider to DPSA in respect of the provision of goods and or services as detailed in the Terms of Reference as they may evolve or be supplemented;

“**staff**” means any employee, agent, consultant, sub-contractor or other representative of the Parties;

“**working days**” means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

(a) the masculine includes the feminine;

(b) the singular includes the plural; and

(c) any reference to a natural person includes a juristic person.

1.3 The headnotes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

2. APPOINTMENT

- 2.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide Services to DPSA under the Terms of Reference as attached in **annexure A**.
- 2.2. Subject to the provisions of the Terms of Reference, the Agreement generally, DPSA hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
- 2.3. DPSA shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from.
- 2.4. The Service Provider shall report directly to.....[**state position, e.g. Director: Finance, rather than the name of an individual**], who shall be the Project Manager for purposes of the Agreement and provide all instructions to the Service Provider.
- 2.5. The Service Provider shall, within 10 working days, after the last signature of the Agreement, submit a draft workplan to the Project Manager for a written approval. The Service Provider and the Project Manager may from time to time agree in writing to amend the workplan.

3. COMMENCEMENT AND DURATION

- 3.1. The Agreement shall commence on the last date of signature to this agreement and shall terminate after a period of _____ [**State the duration of the contract**]
- 3.2. The Parties may, subject to their respective prescripts for extension, in writing agree to extend the term of the Agreement.

4. FEES INVOICING AND PAYMENT

- 4.1. Fees under **Annexure "B"** (price schedule) are the only amounts payable by DPSA to the Service Provider for the Services or otherwise in connection with this Agreement, and no other charges, expenses, costs or other amounts incurred by the Service Provider will be chargeable to or payable by DPSA to the Service Provider.
- 4.2. The Service Provider will not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the fees under the Agreement; unless DPSA has subject to the procurement policies and procedures agreed thereto in writing.
- 4.3. Payment shall be made once all deliverables as set out in the Terms of Reference are successfully delivered within 30 days after receipt by the DPSA of-
- (a) Satisfactory proof that the deliverables complies with the Agreement and the Terms of Reference; and
 - (b) An original specified invoice certified as correct by the Project Manager.
- 4.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Goods delivered / Service rendered.
- 4.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to DPSA.
- 4.6. All payments in terms of this clause shall be made into the banking account of the Service Provider as provided in writing to the DPSA.
- 4.7. Payment may only be withheld in terms of this clause if the Service Provider has failed to remedy a default or breach within the required time after written notice was given in terms of clause 14.

5. TAX, DUTIES AND CURRENCY ISSUES

- 5.1. Unless otherwise specified, all Fees and expenses are recorded inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.
- 5.2. All Fees set out in this Agreement are inclusive of any export and import tax, if applicable.
- 5.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. The Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

6. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

- 6.1. The Service Provider will ensure that its personnel will at all times, whilst on the DPSA's premises, adhere to the standard health, safety and security procedures and guidelines applicable to DPSA's personnel, as such procedures and guidelines may be changed by DPSA from time to time and are available to the Service Provider on request. Should DPSA at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, DPSA will be entitled to deny such member of Service Provider's personnel to any or all of location/s and require the Service Provider to replace such member of staff without delay.
- 6.2. The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993, to ensure that the Service Provider and the Service Provider's staff comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither DPSA's staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

7. OBLIGATIONS OF DPSA

The obligations of the DPSA are as set out in the Terms of Reference.

[OR state them hereunder]

8. OBLIGATIONS OF SERVICE PROVIDER

The obligations of the Service Provider are as set out in the Terms of Reference.

[OR state them hereunder]

9. CONFIDENTIALITY, OWNERSHIP AND COPYRIGHT

- 9.1 A Party shall treat information furnished by the other Party or another person for purposes of the execution of the Agreement, as confidential. Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 9.2 The DPSA shall become the owner of information and materials derived from the provision of services under the Agreement. The Service Provider shall submit all such information and material to the DPSA before or on the termination of the Agreement, on written request by the DPSA, without the right of retention.
- 9.3 The Service Provider shall not use any information or material derived from the provision of the services under the Agreement for any purposes other than those of the DPSA, except with the written approval of the DPSA.
- 9.4 The copyright in every work or any part thereof, in which copyright may subsist, created by the Service Provider, or any person performing work on the Service Provider's behalf, in the execution of the Agreement shall vest in the State and such works or part thereof, may only be reproduced, or disclosed to another person, with the written consent of the DPSA. The term "works or any part thereof", shall not be interpreted to include a work or part thereof in which

copyright already vests in the Consultant or another person and not created in the execution of the Agreement.

- 9.5 The Service Provider may use any experience or learning acquired in the execution of the Agreement, provided that such use may not be to the detriment of the DPSA.
- 9.6 This clause is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

10. PROTECTION OF PERSONAL INFORMATION

- 10.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 10.2. Each Party shall only provide, collect and/or Process the Personal Information:
- 10.2.1. in compliance with POPIA and where binding on a Party;
- 10.2.2. as is necessary for the purposes of this Agreement and the Services;
- 10.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
- 10.2.4. for internal business-related purposes; and
- 10.2.5. in accordance with the lawful Purpose and reasonable instructions of DPSA as the Responsible Party.

11 AUDITS

11.1 Audit Rights:

- 11.1.1 The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to DPSA, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, software, personnel, data, records and

documentation relating to the Deliverables and/or Services for the purpose of performing audits and inspections of the Service Provider to: (i) verify the accuracy of the Service Provider's Fees and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (v) examine the Service Provider's performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;

11.1.2 DPSA reserves the right to appoint a third party to perform an audit under this Clause.

11.1.3 The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, DPSA's audits will not unreasonably interfere with the Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.

11.1.4 Unless DPSA has a good faith suspicion of fraud, DPSA will provide the Service Provider with reasonable notice for audits.

11.1.5 All costs incurred by DPSA in performing audits of the Service Provider will be borne by DPSA unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.

11.1.6 If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

12. WARRANTIES

12.1. The Service Provider hereby represents and warrants to DPSA that-

12.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

12.1.2. it is acting as a principal and not as an agent of an undisclosed principal;

12.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its

business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

- 12.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to DPSA;
- 12.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
- 12.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to DPSA; and
- 12.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced DPSA to conclude this Agreement.
- 12.2. The provisions of this Clause shall survive the termination of this Agreement.

13 INDEMNITY

- 13.1 Without in any way detracting from DPSA's rights in terms of this Agreement, the Service Provider hereby indemnifies DPSA from any and all losses which may be suffered as a result of any breach of the warranties including the provisions of this Agreement by the Service Provider or Service Provider personnel.
- 13.2 In addition to any remedy available to DPSA, the Service Provider agrees to indemnify in full on demand and to keep DPSA so indemnified from and against all claims, demands, actions, proceedings and losses, which are made or brought against or incurred or suffered by DPSA resulting from any action arising from the Service Provider's breach of any obligation with respect to confidential information and/or personal information.
- 13.3. The Service Provider indemnifies the DPSA against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against the DPSA arising out of any act, omission or default on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under the Agreement.

14. BREACH

If a Party is in default or breach of any obligation which arises in terms of the Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

- (a) claim specific performance;
- (b) cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect; or
- (c) claim any money due and payable in terms of the Agreement and claim damages from the defaulting Party.

15. INDEPENDENT CONTRACTOR

The Service Provider is employed as an independent contractor and not as an agent of the DPSA and has no authority to bind or represent the DPSA in any matter.

16. GOOD FAITH AND REASONABLENESS

In their dealings with each other for purposes of the Agreement, the Parties—

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

17. CONFLICT OF INTEREST

17.1 Neither the Service Provider nor their staff shall engage in any activity which conflict with or could potentially conflict with the services to be provided in terms of the Agreement.

17.2 The Service Provider shall notify the DPSA immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform the DPSA how the Service Provider intends dealing with such conflict.

18. **FORCE MAJEURE**

- 18.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-
- (a) strikes or lock-outs or any combination thereof by employees of either of the Parties;
 - (b) war or civil commotion;
 - (c) any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and
 - (d) any natural disaster.
- 18.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.
- 18.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 18.2 has been duly delivered.
- 18.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

19. **TERMINATION**

19.1. **Termination for cause by DPSA**

- 19.1.1. DPSA may, by giving notice to the Service Provider, terminate this Agreement or rendering of the Services in whole or part, as of a date set out in the notice of termination, in the event that the Service Provider-

- 19.1.1.1. breaches the confidentiality provisions of this Agreement;
 - 19.1.1.2. breaches applicable laws;
 - 19.1.1.3. is found guilty of an offence in terms of applicable laws;
 - 19.1.1.4. commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;
 - 19.1.1.5. commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or
 - 19.1.1.6. commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.
- 19.1.2. DPSA shall have no liability to the Service Provider with respect to a termination under this clause.

19.2. Termination Upon Sale, Acquisition, Merger or Change of Control

- 19.2.1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially of all the assets of the Service Provider in a single or series of related transaction, then the Service Provider shall notify DPSA of such Change Event within ten (10) working days after the Change Event is achieved.
- 19.2.2. No sale, acquisition, merger or other change of control shall be effective against and legally binding on DPSA if the Service Provider failed to notify DPSA, as required by clause 19.2.1 above.
- 19.2.3. DPSA may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30)

days written notice designating a date upon which such termination shall become effective.

19.2.4. In the event that the Service Provider fails to notify DPSA, as required by clause 19.2.1 above, then DPSA may upon discovery of the Change Event terminate the Agreement by giving the Service Provider (30) days written notice and designating a date upon which such termination shall be effective.

19.2.5. DPSA shall have no liability to the Service Provider with respect to termination of the Agreement on terms of this clause.

19.2.6. "Control" in terms of this clause means, with regard to any entity, the right or power to dictate the management of and otherwise control such by entity by any of the following:

19.2.6.1. holding directly or indirectly the majority of the issued share capital stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

19.2.6.2. controlling the majority of the voting rights in such entity; or

19.2.6.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

19.2.7. Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim, which either Party may have.

19.2.8. The DPSA may terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:

(a) on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the DPSA;

(b) the Service Provider receives a court order to be placed under judicial management, business rescue or to commence liquidation procedures that is not withdrawn or struck out within five working days;

(c) the Service Provider informs the DPSA that it intends to cease performing its obligations in terms of the Agreement;

(d) the Service Provider informs the DPSA that it is incapable of completing the Services.

19.2.9. The Service Provider shall receive remuneration for the services provided to the satisfaction of the DPSA up to the date of termination of the project.

19.2.10. Termination of the Agreement shall relieve the DPSA and the Service Provider of their respective obligations in terms of the Agreement.

19.2.11. The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause.

20. GENERAL TERMS AND CONDITIONS

20.1 WHOLE AGREEMENT AND AMENDMENT

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

20.2 INTERPRETATION OF AGREEMENT

The law of the Republic of South Africa shall govern the interpretation of the Agreement.

20.3 NO ASSIGNMENT WITHOUT CONSENT

The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of DPSA which consent shall if approved by DPSA in its sole discretion, be in compliance with the provisions of the PFMA and DPSA's procurement policies and procedures.

20.4 ADVERTISING AND MARKETING

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of DPSA.

20.5 JURISDICTION OF COURTS

If any legal proceedings arise from the provisions of the Agreement, both Parties submit to the jurisdiction of the courts of the Republic of South Africa.

20.6 ENTIRE CONTRACT

The Agreement and the Annexures attached hereto constitute the entire contract between the Parties.

20.7 VARIATION

No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

20.8 WAIVER

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

20.9 CESSATION

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.

20.10 INVALID PROVISIONS

If any provision of the Agreement contravenes any provision of the law, that provision shall be deemed to be void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any Party—

- (a) can establish in a court of law that it is adversely affected or prejudiced thereby; or
 - (b) unsuccessfully relies on that provision in any legal proceedings,
- that Party may terminate the Agreement immediately.

20.11 INTERVENING CHANGES IN LAW

If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

20.12 SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

21. COSTS

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

22. AUTHORISED SIGNATORIES

- 22.1 The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of DPSA.
- 22.2 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 22.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 22.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

23. DOMICILIUM CITANDI ET EXECUTANDI

- 23.1 DPSA chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

- 23.2 The Service Provider chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

- 23.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.
- 23.4 Any notice in terms of the Agreement shall either be—
- (a) delivered by hand during normal business hours of the recipient; or
 - (b) sent by prepaid registered post to the address chosen by the addressee.

AS WITNESSES:

1. _____
2. _____

.....
**For SERVICE
PROVIDER being
duly authorised
hereto**

SAMPLE

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.