

COMMUNICARE

PROCUREMENT POLICY

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1 DEFINITIONS AND INTERPRETATION

1.1 In this Policy-

1.1.1 clause headings are for convenience only and are not to be used in its interpretation;

1.1.2 an expression which denotes -

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*; and

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Policy, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.2.1 **Accredited BEE Verification Agency:** means a verification agency that has been accredited in terms of the Codes;¹

1.2.2 **"Adjusted Generic Scorecard:** means the generic scorecard available to be used by Specialised Enterprises as defined by Code 000 Statement 004;²

1.2.3 **BEE Accredited:** means being validated as having achieved a certain standard of BEE contribution in terms of a recognised BEE scorecard or accreditation system as stipulated by the Code;

1.2.4 **BEE Act:** means the Broad-Based Black Economic Empowerment Act, 2003;

¹ All verification agents need to be accredited to provide BEE rating services.

² A special BEE scorecard for use by companies that do not have share capital.

- 1.2.5 **BEE scorecard or Scorecard:** means a gazetted industry charter or the generic balanced scorecard referred to in the Code as gazetted in terms of the BBBEE Act, as may be applicable;³
- 1.2.6 **Beneficiaries:** mean the intended beneficiaries of the Procurement Policy, including but not limited to Black people generally and Black Women, Black Disabled People, Black Youth and Black Designated Groups and Black Unemployed People, Enterprises, Qualifying Small Enterprises and Exempted Micro Enterprises, in which Black People hold Economic Interest and Exercisable Voting Rights;
- 1.2.7 **Black Older People:** mean black people who are also older people as defined in the Older Persons Act 13 of 2006;⁴
- 1.2.8 **Black Designated Groups** means:
- 1.2.8.1 black workers;
 - 1.2.8.2 black unemployed people;
 - 1.2.8.3 black youth;
 - 1.2.8.4 black aged people;
 - 1.2.8.5 black people with disabilities; and
 - 1.2.8.6 black people living in rural areas;⁵
- 1.2.9 **Black People with Disabilities:** means black people who also satisfy the criteria in the definition of 'persons with disabilities' set out in

³ Certain industries have their own BEE criteria and scorecards.

⁴ This Act replaced the Aged Persons Act and one no longer refers to "aged" or "senior" persons. The ages are 60 for women and 65 for men, as is currently the case.

paragraph 5.1 of the "Code of Good Practice on the Employment of People with Disabilities" issued in terms of section 54(1)(a) of the Employment Equity Act;⁶

- 1.2.10 **Black People:** has the meaning defined in the BEE Act⁷ qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent or are citizens of the Republic of South Africa by naturalisation:
- 1.2.10.1 occurring before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or
- 1.2.10.2 occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation for before then;
- 1.2.11 **Capital Expenditure:** this expenditure includes but is not limited to, the acquisition of immovable property, and the maintenance and management of immovable property;
- 1.2.12 **Codes:** means all the Codes of Good Practice issued in terms of section 9 of the BEE Act and published on 9 February 2007;
- 1.2.13 **Contract:** means the agreement that results from the acceptance of a Tender, or the conclusion of any written or oral agreement between Communicare and a service provider in relation to any Procurement;
- 1.2.14 **Contracting Enterprise:** means an Enterprise appointed by contract in relation to any Procurement by Communicare;
- 1.2.15 **Contractor:** means any natural or legal person, company, close

⁵ These are specified in the BEE Act and Codes as they are the ultimate beneficiaries of BEE.

⁶ See related definition of "Disability".

corporation, firm, or joint venture whose Tender has been accepted by Communicare. For the purposes of this document “contractor” shall include suppliers and service providers;

- 1.2.16 **Contract Participation Goal:** means the amount equal to the sum of the value of work for which the Prime Contractor contracts to engage specific target groups in the performance of the contract, expressed as a percentage of the Tender Sum less provisional sums, contingencies and VAT;
- 1.2.17 **Communicare:** means, Communicare (Association not for Gain), Registration No 1929/001590/08 or any person/persons/committee delegated with the authority to act on its behalf;
- 1.2.18 **Corrected Tender Sum:** means the Tender Sum, corrected in terms of the tender documentation, where applicable;
- 1.2.19 **Delegated Authority:** means any person/persons/committee delegated with the authority to act for or on behalf of Communicare;
- 1.2.20 **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;
- 1.2.21 **Duly Appointed Agent:** means the decision maker/manager mandated by Communicare to implement projects and invite tenders/quotations for procurement of any nature;
- 1.2.22 **Economic Interest:** means a Black Person's or Black Participant's claim against an Enterprise representing a return on ownership in the Enterprise.

⁷ African, Coloured and Indian persons.

- 1.2.23 **Engineering and Construction Works:** means the provision of a combination of Goods and Services, arranged for the development and provision of an asset, including building and engineering infrastructure, or for the refurbishment of an existing asset;
- 1.2.24 **Enterprise:** means a natural and/or a juristic person, partnership or joint venture or any form of co-operative society, conducting a business, trade or profession in the Republic of South Africa;
- 1.2.25 **Equity Interest:** is the collective term referring to the entitlement of a Black Person/s to receive Economic Interest and to exercise Exercisable Voting Rights in an Enterprise;
- 1.2.26 **Equity Ownership:** means the percentage of an enterprise or business owned by individuals or, in respect of a private company or limited interest company⁸, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the Enterprise or business and exercise control over the Enterprise, commensurate with their degree of ownership at the closing date of the tender;
- 1.2.27 **Exempted Micro Enterprise or EME:** means an entity with an annual turnover of less than R5 million (five million rand);⁹
- 1.2.28 **Exercisable Voting Rights:** means a voting right attaching to an instrument owned by or held on behalf of a Black person;
- 1.2.29 **Functionality:** means the suitability of a proposal, design or product for the use for which it was intended;
- 1.2.30 **Goods:** means those raw materials or commodities, which are available

⁸ As defined in the Corporate Laws Amendment Act No. 24 of 2006.

⁹ As defined in the BEE Codes.

for general sale;

- 1.2.31 **JBCC contract:** means the Joint Building Contracts Committee standard agreements used in the building constructions industry and **GCC** means the General Conditions of Contract;
- 1.2.32 **Joint Venture/Consortium:** means an association of persons, companies, close corporations or firms formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 1.2.33 **Legislation:** means for the purposes of this Policy Document, the BEE Act, the PPPF Act and the Codes;
- 1.2.34 **Management:** means the membership of the Board or similar governing body that is charged with the day-to-day management control of the business. This entails the power to determine policies and the direction of economic activities and resources;
- 1.2.35 **Operational Expenditure:** this expenditure includes but is not limited to, expenditure incurred in conducting Communicare's operations;
- 1.2.36 **Participant:** means a participant as defined in Schedule 1 of the Codes;
- 1.2.37 **Policy Document:** means this Policy Document and any formal amendments thereto adopted by the Board of Communicare from time to time;
- 1.2.38 **PPPF Act:** means the Preferential Procurement Policy Framework Act No 5 of 2000 and the regulations thereto;
- 1.2.39 **Prime Contractor:** means the legal entity with whom Communicare will contract (as opposed to sub-contractors/suppliers/manufacturers/service providers who contract with the Prime Contractor);

- 1.2.40 **Procurement:** means all expenditure provided for in clause 4, including any elements of expenditure provided for in any Code dealing with the measurement of Procurement for purposes of the BEE Act from time to time;
- 1.2.41 **Procurement Committee** means the Committee as described in clause 4 below be responsible for all procurement of Communicare, within its delegated authority, the development and implementation of this procurement policy, establishment of contracts, management of tendering processes and provision of assistance and advice to staff;
- 1.2.42 **Procurement Policy:** means the Policy set out in this document;
- 1.2.43 **Procurement Scorecard:** means the scorecard adopted by Communicare from time to time commencing with the Procurement Scorecard attached hereto in Annexe 'A' applicable from the date of commencement of the Procurement Policy;¹⁰
- 1.2.44 **Professional Service Providers:** means professionals that are appointed on the basis of having specialised knowledge in their respective areas of expertise and registered formally with a professional body;¹¹
- 1.2.45 **Qualifying Small Enterprise or QSE:** means an enterprise which qualifies for measurement under the qualifying small enterprise scorecard¹², in terms of the definition specified in the Code, and may be a medium, small or very small enterprise as defined in the National Small Enterprise Act No 102 of 1996 (as amended);
- 1.2.46 **Quotation:** means a written offer which is not submitted in the form of a

¹⁰ This is the Preferential Procurement scorecard on which Communicare is scored in terms of the BEE Codes. It measures how much Communicare spends on black suppliers.

¹¹ These usually have memberships and pay yearly fees as well as Fidelity Insurance.

tender document contemplated by this Policy Document, but which complies with the specification, conditions of supply and purchase and any schedules and/or annexes such as drawings or plans, as may be applicable or stipulated by Communicare;

- 1.2.47 **Responsive Tender:** means a tender which conforms to all the Terms, Conditions and Specifications of the tender without material deviation or qualification;
- 1.2.48 **Services:** means the provision of labour and/or work carried out by hand, or with the assistance of plant and equipment, including the input, as necessary, of knowledge based expertise;
- 1.2.49 **Small, Medium and Micro Enterprise or SMME:** bears the same meaning assigned to this expression in the National Small Enterprise Act 102 of 1996 (as amended);
- 1.2.50 **Specialised Enterprises:** means companies limited by guarantee, Higher Education Institutions, non-profit organisations ("NGOs"), public entities and other Enterprises wholly owned by organs of state, Public Benefit Schemes and section 21 companies;¹³
- 1.2.51 **Sub-contracting:** means the primary Contracting Enterpriser's assigning or leasing or making out work to, or employing another Enterprise or person to support such primary Contracting Enterprise or in the execution of part of a project in terms of any Contract, subject to the written consent of Communicare;
- 1.2.52 **Supervisory Site Staff:** means a member of the Contractor Enterprise's supervisory personnel comprising Site Agent, Site Engineer(s), Chief Surveyor and Head Foremen directly employed on the site in the day-to-

¹² These have an annual turnover between R5 million and R35 million.

day management of any construction in terms of any Contract;

- 1.2.53 **Tender:** means a written offer on the tender documents prescribed by the Company in response to an invitation to tender;
- 1.2.54 **Tender Evaluation Committee** means the committee established in terms of clause 5 and responsible for the evaluation, scoring and recommendation of tenders to the Procurement Committee;
- 1.2.55 **Tenderer:** means any Enterprise submitting a tender or price quotation in the format contemplated by this Policy and as prescribed from time to time by Communicare;
- 1.2.56 **Tender Sum:** means the amount stated on the tender documents prescribed by Communicare;
- 1.2.57 **Woman:** means a female and registered as such by the Department of Home Affairs.

2 INTRODUCTION

- 2.1 Communicare operates within the social housing industry and has developed a Procurement Policy that requires the application of a fair, equitable, transparent and cost effective procurement system that encourages the engagement of both the established and small emerging business entities/individuals for provision of work, goods and professional services in a manner that aligns to its transformation and empowerment objectives. Communicare supports and is committed to align its procurement in terms of the BEE Act of 2003.
- 2.2 The overall goal of Communicare within this context is to procure goods and services in a manner that is cost effective, professional and provides

¹³ As defined in the BEE Codes.

mutual value to the objectives of Communicare and its targeted communities and/or clients.

- 2.3 This Policy has been informed and guided by Communicare's corporate strategic objectives and recognises largely the requirements of enabling legislation to create an environment conducive to such development and empowerment initiatives (i.e. Preferential Procurement Policy Framework Act No 5 of 2000, the Preferential Regulations, 2001, the Broad-based Black Economic Empowerment Act, 2003 and the Codes of Good Practice Gazetted 9 February 2007).

3 OBJECTIVES AND PURPOSE OF THE POLICY

- 3.1 Through this policy Communicare broadly aims to:
- 3.1.1 incorporate and align its Procurement Policy with its broader empowerment imperatives;
 - 3.1.2 specify its Procurement Scorecard;
 - 3.1.3 specify the key measurement principles to be applied when calculating its preferential procurement contributions to BEE;
 - 3.1.4 specify principles to be applied when calculating its Procurement expenditure;
 - 3.1.5 ensure that service provider competitiveness, quality of service and price are properly integrated into its procurement processes; and
 - 3.1.6 continue to apply sound commercial principles regarding generally, quality of service, risk, reward, and the continuing profitability of its various departments when purchasing products or services, notwithstanding the implementation of this Policy.

3.2 This Procurement Policy forms part of Communicare's core business principles and shall:

3.2.1 be implemented by all departments within Communicare and the extent of its implementation by all departments within Communicare shall constitute an integral part of the performance measurement of each department;

3.2.2 be the responsibility of all employees who have procurement as their line functions, job descriptions or key performance areas (or components of their line functions, job descriptions or key performance areas);

3.2.3 be managed and measured by Communicare's respective department managers, which procurement management and measurement shall constitute a key performance area of all Communicare department managers and the Managing Director and shall comprise an aspect of their performance assessment implemented by Communicare from time to time;

3.2.4 be required to be monitored and continuously implemented throughout the duration of any Contract between Communicare and an Enterprise; and

3.2.5 constitute the whole of Communicare's policy in regard to procurement and any amendment thereof shall be valid only if reduced to writing and approved by the Directors of Communicare, from time to time.

3.3 The objectives of Management are:

3.2.6 continuing improvement in value for money;

3.2.7 to enhance competitiveness;

- 3.2.8 to combat corruption;
- 3.2.9 to maintain standards and pursue best practices;
- 3.2.10 to enhance efficient and effective procurement practices and systems;
and
- 3.2.11 the implementation of a uniform procurement system.

4 PROCUREMENT COMMITTEE

- 4.1 The Procurement Committee may consist of:
 - 4.1.1 the Financial Manager;
 - 4.1.2 the Procurement Officer, which may be the Managing Director;
 - 4.1.3 any other Managers or staff not involved in the evaluation process;
 - 4.1.4 the Property and/or Social Executive;
 - 4.1.5 the Managing Director, should the Procurement Officer be a different *ex officio* position; and
 - 4.1.6 any board member(s) as required.
- 4.2 Prior to any decision being made by the Procurement Committee, a quorum of any 4 (four) members is necessary of which at least 1 (one) must be the Managing Director or an Executive.
- 4.3 The Procurement Committee shall meet as regularly as needed with regard to recommendations made by the Tender Evaluation Committee.
- 4.4 The Procurement Committee adheres to and upholds the Code of Ethics of Communicare, attached marked Annexe "J".

- 4.5 All tenders and quotations are to be handled in the strictest confidence.
- 4.6 Employees/Members of the Procurement Committee who may possibly have a personal interest in a specific tender, quotation or offer or who are in any way connected or related to a tenderer or his direct relatives must recuse themselves from the receipt, adjudication or acceptance thereof.
- 4.7 Any possibility of a conflict of interest should immediately be disclosed to the Procurement Officer.

5 THE TENDER EVALUATION COMMITTEE

- 5.1 Tender evaluation committees shall be appointed for each tender award and may have the following functional representation however:
 - 5.1.1 the Managing Director;
 - 5.1.2 the Financial Manager;
 - 5.1.3 the Property Executive and/or Social Housing Executive; and
 - 5.1.4 any Manager or staff involved in the tender.
- 5.2 In the case of a tender that calls for specific expertise, the Tender Evaluation Committee shall co-opt a technical manager in respect of operational, construction or maintenance tenders, special experts by invitation and if possible a representative of the user group that initiated the request for tender.
- 5.3 The role of the Tender Evaluation Committee shall be to facilitate the evaluation and scoring of tenders within their specialist areas and prepare a short-list in preference of scoring to submit to the Procurement Committee for approval or recommendation to the Board.

- 5.4 The members of the Tender Evaluation Committee shall adhere to the Communicare Code of Ethics and shall complete a conflict of interest declaration prior to the commencement of any evaluation process.
- 5.5 All tenders and quotations are to be handled in the strictest confidence.
- 5.6 Employees/Members of the Procurement Committee who may possibly have a personal interest in a specific tender, quotation or offer or who are in any way connected or related to a tenderer or his direct relatives must recuse themselves from the receipt, adjudication or acceptance thereof.

6 **PROCUREMENT SYSTEM**

- 6.1 This Procurement Policy distinguishes between the Procurement expenditure of –
 - 6.1.1 Goods, services, engineering and construction works; and
 - 6.1.2 Professional service providers;And establishes different procurement procedures for each.
- 6.2 All procurement of goods and services, inclusive of professional services, by Communicare, other than the exclusions listed in Annexe "B", constitutes Procurement and is to be included in the calculation of the Procurement expenditure of the various departments within Communicare, and also for Communicare's performance on its Procurement Scorecard as provided for in Annexe "A".
- 6.3 The authority (and delegation thereof) to incur any Procurement expenditure on behalf of Communicare and any correspondence, contracts and payments relating thereto, must be exercised and signed, respectively, in accordance with Communicare's Delegation of Authorities Framework Resolution adopted by the Board of Directors of Communicare, as

amended from time to time. A copy of the current Resolution is annexed as Annexe "C".

- 6.4 The procedures provided for in clause 7 below shall apply, in relation to the Procurement expenditure of a capital nature or operational nature and regardless of whether or not the expenditure has been budgeted for, provided that any expenditure which is not budgeted for shall, in addition to the procedures in clause 7 below, require the written consent of the Managing Director and the Manager of the Finance Department before such supplier Enterprise is engaged and any expenditure is incurred.

7 PROCUREMENT PROCEDURES FOR GOODS, SERVICES AND ENGINEERING AND CONSTRUCTION WORKS

- 7.1 Tenders (preference point system applicable) shall be invited for the supply of any goods or services, or the execution of any work, which involves, or is likely to involve, an estimated amount exceeding R250 000. In respect of procurement involving an estimated amount of less than or equal to R250 000, written quotations shall be invited. The process flow diagram is provided for in Annexe "E".
- 7.2 The following procedures shall be applied in relation to procurement of goods, services, engineering and construction works (capital and operational expenditure). It should be noted that the threshold amounts may be adjusted from time to time by Communicare, which will be specified in any call for proposals.
- 7.3 For any Procurement expenditure up to the sum of R500 (five hundred rand) excluding VAT ("level one procurement threshold") – the amount may be expended from petty cash.
- 7.4 For any Procurement expenditure between the sum of R501 (five hundred

and one rand) and R10 000 (ten thousand rand) excluding VAT ("level two procurement threshold") - a minimum of one quote is required from any Enterprise. Endeavours should be made to procure quotes from an Enterprise that comprises of Beneficiaries or from an Enterprise in whom Black persons hold an Equity Interest.

7.5 For any Procurement expenditure between the sum of R10 001 (ten thousand and one rand) and R50 000 (fifty thousand rand) excluding VAT ("level three procurement threshold") -

7.5.1 Quotations from any two Enterprises, which are suppliers listed on Communicare's supplier database, where possible, of which at least one Enterprise shall be an Enterprise, which comprises of Beneficiaries or is an Enterprise in whom Black persons hold an Equity Interest;

7.5.2 With the choice of supplier being approved by the Line or Department Manager (incurring the expense);

7.6 For any Procurement expenditure between the sum of R50 001 (fifty thousand and one rand) and R100 000 (one hundred thousand rand) excluding VAT ("level four procurement threshold") –

7.6.1 Quotations from any three Enterprises, which are suppliers listed on Communicare's supplier database, where possible, of which at least two Enterprises shall be Enterprises, which comprise of Beneficiaries or are Enterprises in whom Black persons hold an Equity Interest;

7.6.2 With the choice of supplier being approved by the Executive Manager incurring the expense.

7.7 For any Procurement expenditure between the sum of R100 001 (one hundred thousand and one rand) and R250 000 (two hundred and fifty thousand rand) excluding VAT ("level five procurement threshold")-

- 7.7.1 Quotations from any four Enterprises, which are suppliers listed on Communicare's supplier database, of whom at least 2 (two) Enterprises shall be Enterprises which comprise of Beneficiaries or are Enterprises in whom Black persons hold an Equity Interest;
- 7.7.2 With the choice of supplier being approved by the Executive Manager (incurring the expense).
- 7.8 For any Procurement expenditure above R250 000 (two hundred and fifty thousand rand) excluding VAT ("level six procurement threshold") a tender by invitation or an advertising process in the appropriate media shall apply-
 - 7.8.1 An 80/20 preference point system shall be applied in respect of a Responsive Tender with an estimated value of between R250 001 (two hundred and fifty thousand and one rand) and R500 000.00 (five hundred thousand rand) in the manner provided for in clause 7.14 below.
 - 7.8.2 A 90/10 preference point system shall be applied in respect of a Responsive Tender with an estimated value of greater than R500 000 (five hundred thousand rand) in the manner provided for in clause 7.15 below.
 - 7.8.3 The system is intended to result in –
 - 7.8.3.1 either 20 or 90 points, depending on the value of the Responsive Tender being awarded to the Tenderer who tenders the lowest price, and proportionately fewer points are awarded to those with higher prices, and either 30 or 10 points are then available as preference points for any of the following –
 - 7.8.3.1.1 broad-based black economic empowerment;

- 7.8.3.1.2 quality of service;
 - 7.8.3.1.3 capacity and resources;
 - 7.8.3.1.4 experience;
 - 7.8.3.1.5 financial ability; and/or
 - 7.8.3.1.6 other specific goals consistent with this Policy, identified by Communicare in relation to the procurement of a specific product or service or in relation to a specific project.
- 7.8.4 The points for price will normally be fixed at 80 or 90 points, as the case may be, but if Communicare considers it appropriate, in relation to the procurement of a specific product or service or in relation to a specific project, to provide for points for functionality, then the 80 or 90 points, as the case may be, may include points for functionality provided that the total number of points for price and/or functionality do not exceed the 80 or 90 points applicable under this Policy.
- 7.8.5 Similarly, the points for equity interest held by Black Persons in tendering Enterprises will normally be fixed at 20 or 10 points. Should Communicare consider it appropriate it may provide for points for other specific goals consistent with this Policy, then the 20 or 10 points, as the case may be, may include points for these specific goals provided that the total number of points for equity interest does not fall below a minimum of 10 points or 5 points in the case of either the 20 or 10 points, as the case may be, and the points for equity interest and specific goals do not exceed the 20 or 10 points applicable under this Policy.
- 7.9 A maximum of 10 or 5 points, as the case may be, may be awarded to a Tenderer for achieving procurement related socio-economic objectives as

per the BEE Codes. The total percentage scored for Broad-Based Black Economic Empowerment will be converted to a point out of a maximum of 10 or 5 points. This will be calculated by multiplying the total percentage scored by either 10 or 5. No points will be scored for achieving Broad-Based Black Economic Empowerment if the total percentage scored for Broad-Based Black Economic Empowerment is less than the prescribed minimum.¹⁴

- 7.10 Invitations to tender, for goods or services must comply with the following minimum requirements, namely that they should state –
- 7.10.1 the tender reference number;
 - 7.10.2 the scope of the tender or where and when, a detailed tender document describing fully the scope may be collected;
 - 7.10.3 the provision for a site visit (if applicable) and whether or not it is compulsory in order to qualify to tender;
 - 7.10.4 whether any deposit is payable;
 - 7.10.5 the locality of the tender box and the fact of its accessibility during Communicare's office hours;
 - 7.10.6 the final date and time for the submission of tenders;
 - 7.10.7 instructions for the registration of tender documents received and to be completed by Tenderers;
 - 7.10.8 the relevant points system to be applied (if the initiator of the tender is of the opinion that the estimate could be close to the R250 000 (two hundred and fifty thousand rand) price, then both (80/20 and 90/10)

¹⁴ This is the provision as per the Proposed Amendment to the Preferential Procurement Regulations, the scores having been adjusted to accommodate other objective criteria.

point systems must be in the document);

- 7.10.9 that late tenders will not be accepted nor considered;
 - 7.10.10 that tenders will be opened as soon as possible after the closing date and time;
 - 7.10.11 that tenders will be opened in the presence of the relevant departmental Manager and another Senior Communicare official; and
 - 7.10.12 adjudication points calculated for both price and preference shall be rounded off to the nearest two decimal places.
- 7.11 Tenders will be evaluated by the Tender Evaluation Committee in accordance with the criteria provided for in this Policy Document. The final adjudication and approval shall be made by the Procurement Committee, provided this tender is within its delegated authority.
- 7.12 The Tender Evaluation Committee must, in relation to each tender submitted –
- 7.12.1.1 determine whether each tender has been submitted on the prescribed form and is properly signed;
 - 7.12.1.2 is responsive to the requirements of the tender documents;
 - 7.12.1.3 provides any clarification and/or substantiation that may be required; and
 - 7.12.1.4 is realistically priced in relation to the goods, services or works required.
- 7.13 For purposes of this clause 7, a responsive tender is one which conforms to

all the terms, conditions and specifications of the contract without material deviation or qualification. A material deviation or qualification is one which, in the opinion of Communicare, the Procurement Committee or the Tender Evaluation Committee, as the case may be -

- 7.13.1.1 could detrimentally affect the scope, quality or performance of the contract;
- 7.13.1.2 changes Communicare's or the Contractor's risks and responsibilities under the contract; or
- 7.13.1.3 could affect the competitive position of the Tenderers who have submitted responsive tenders.

7.14 The 80/20 points system shall operate as follows –

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

$$\mathbf{Np = 80 [1 - \frac{(Pt - Pmin)}{Pmin}]}$$

Where :

Np = the number of tender adjudication points awarded for price,
Pt = the tender sum (corrected if applicable) of the responsive tender under consideration, and
Pmin = the tender sum (corrected if applicable) of the lowest responsive tender.

7.14.2 A maximum of 20 points is allocated to preference on the following basis:

$$\mathbf{Ng = 20(\text{Broad-Based Black Economic Empowerment objectives}^{15}, \text{Quality of Services, Capacity, Experience and Financial ability})}$$

Where :

Ng = the number of tender adjudication points awarded for

¹⁵ Where 10 of the 20 points are available for the BBBEE objectives alone.

preference.

7.15 The 90/10 points system shall operate as follows –

7.15.1 A maximum of 90 points is allocated to price on the following basis:

$$Np = 90 [1 - \frac{(Pt - Pmin)}{Pmin}]$$

Pmin

Np = the number of tender adjudication points awarded for price,

Pt = the tender sum (corrected if applicable) of the responsive tender under consideration, and

Pmin = the tender sum (corrected if applicable) of the lowest responsive tender.

7.15.2 A maximum of 10 points is allocated to preference on the following basis:

$$Ng = 10(\text{Broad-Based Black Economic Empowerment objectives}^{16}, \text{Quality of Services, Capacity, Experience and Financial ability})$$

Where:

Ng = the number of tender adjudication points awarded for preference.

7.16 The above points system shall be applied to the primary contracting Enterprise.

7.17 Where a joint venture partnership is the Enterprise tendering as a primary contractor, the joint venture agreement –

7.17.1 must state the percentage of the contract value that will be managed or executed by the parties thereto. In this regard the adjudication points for Equity Interest held by Black persons shall be calculated on the pro rata contribution of each of the parties to the joint venture partnership; and

7.17.2 must state the percentage of the contract value that will be managed or

¹⁶ Where 5 of the 10 points are available to BBBEE objectives alone.

executed by the parties thereto.

7.18 Where a tendering Enterprise claims preference points for Equity Interest held by Beneficiaries, substantiation to Communicare's satisfaction, including but not limited to –

7.18.1 Company secretarial records, corporate documents and relevant shareholders and other agreements;

7.18.2 Close Corporation founding statements, association agreements and any other relevant agreements;

7.18.3 Partnership and Joint venture agreements;

7.18.4 Copies of Identification Documents; and/or

7.18.5 an accreditation certificate by an accredited BEE verification agency

may be required.

7.19 A Standard format in which the tender adjudication results should be presented to the Procurement Committee or its nominated agent, as the case may be, is provided for in Annexe "H".

8 COMMUNICARE DATABASE FOR ALL SERVICE PROVIDERS

8.1 Communicare shall invite expressions of interest annually from professional service providers and suppliers of goods, services and engineering and construction works and, where possible, engage with Enterprises which comprise Beneficiaries or, are Enterprises in whom Black persons hold an Equity Interest (minimum of 25%) to provide services to Communicare. In addition, Communicare shall annually call for an update on the Black Equity status of its existing professional service providers and suppliers of goods,

services and engineering and construction works in order to ascertain that Communicare itself is not falling foul of the provisions of this Policy.

8.2 Professional service providers and suppliers of goods, services and engineering and construction works will be required to provide details of their businesses including, inter alia, the disciplines and sub-disciplines in which the firm/professional is competent, resources, the Black Equity Interest status of individuals in the firm, personnel details, locality of offices, professional indemnity insurance cover and the percentage of the total annual salary/wage bill spent on education and training of Black persons overall. Should the firm be in possession of a BEE scorecard rating or an accreditation, this must be included in the Tender.

8.3 The above information shall be used by Communicare, together with other criteria, to evaluate and adjudicate the firms or professionals who respond to the expressions of interest. In evaluating the BEE scorecard rating of an Enterprise, due regard will be given to EME's and any exemption in terms of Codes they may be entitled to. However, Communicare reserves the discretion to request any such additional documentation or information in respect of any EME's written and concrete commitments to BEE initiatives. Communicare further reserves the right to accept or reject any EME as a service provider, professional service provider or a supplier based on the additional documentation or information furnished.

9 PROCUREMENT FROM PROFESSIONAL SERVICE PROVIDERS

9.1 This procurement includes, but is not limited to the procurement for consulting, engineering, architectural, legal, auditing and accounting services.

The process flow diagram is provided for in Annexe D.

- 9.2 For any professional service provider or consultant appointment –
 - 9.2.1 selection for a suitable Enterprise will be from Communicare's database, where possible, and based on specialist expertise and experience. The procedure followed in identifying the Enterprise to be appointed needs to be recorded;
 - 9.2.2 appointment assessment may be based on expertise, experience, quality and value for money of work delivered, financial ability, available capacity, BEE Scorecard rating and commitment to Transformation and BEE imperatives and continuity of previous work where this will provide time or financial benefit to Communicare;
 - 9.2.3 with the choice of Enterprise being approved by the relevant delegated authority incurring the expense.
- 9.3 For any Procurement expenditure under R50 000 (fifty thousand rand) excluding VAT ("level one procurement threshold") Communicare shall –
 - 9.3.1 Identify and select one suitable professional service provider in line with the criteria as set out in 9.2.
- 9.4 For any Procurement expenditure between R50 001 (fifty thousand and one rand) and R500 000 (five hundred thousand rand) excluding VAT ("level two procurement threshold"), Communicare shall –
 - 9.4.1 Identify and select two suitable professional service providers in line with the criteria as set out in 9.2.
- 9.5 For any Procurement expenditure over R500 000 (five hundred thousand rand) excluding VAT ("level three procurement threshold") Communicare shall –
 - 9.5.1 Identify and select three or more suitable professional service providers

in line with the criteria as set out in 9.2.

9.6 General

9.6.1 Notwithstanding the provisions of this clause 9.6, departments shall from time to time and in exceptional circumstances (or, in relation to specific projects) be permitted to utilise the professional services of Enterprises other than those on the database in accordance with the remaining provisions of this clause 9.6, provided that prior to such appointment and engagement of such Enterprise the following will have been primarily undertaken -

9.6.1.1 a written motivation to utilise such other Enterprise is submitted to the relevant delegated authority; and

9.6.1.2 the written consent of the relevant delegated authority and the Managing Director is obtained.

9.6.2 Communicare may also call for proposals from suitably qualified professional service providers for certain projects where limited detail or no final product has been defined. Selection process is similar to 9.2 and also taking into consideration the approach and methodology of the proposals.

9.6.3 It is recorded that Communicare's Board of Directors may from time to time adjust the procurement level thresholds.

9.7 Special circumstances warranting deviation from selection process

9.7.1 Circumstances do arise from time to time when it is neither practical nor expedient to implement the procedures prescribed above. In such instances the procedure that was followed in identifying the professional

service provider to be appointed shall be stated in the report to the Delegated Authority.

- 9.7.2 The special circumstances envisaged include the following -
 - 9.7.2.1 application of specialist technology or expertise where limited capacity in the market or an exclusive right such as a patent or a copyright may be in effect and the application of such specialist technology or expertise is in Communicare's interest;
 - 9.7.2.2 continuity of previous work which requires the re-appointment of a service provider in order to avoid dispute or undesirable contractual situations which are not in Communicare's interest or where such continuity will provide time or financial benefit to Communicare;
 - 9.7.2.3 investigations, which require specialised testing and expertise, may be allocated to Universities, the Council for Scientific and Industrial Research or similar institutions when it is in Communicare's interest to do so and
 - 9.7.2.4 other circumstances not foreseen, such as an emergency, where implementation of the standard procurement procedure is impractical.
- 9.8 The brief or "terms of reference"
 - 9.8.1 As a minimum the following information should be included in the brief or terms of reference -
 - 9.8.1.1 the nature and scope of the Professional Services required;
 - 9.8.1.2 the time frame for the provision of the Professional Services;
 - 9.8.1.3 any specific or exceptional requirements in regard to the performance of the Professional Services;

- 9.8.1.4 detailed design parameters if appropriate;
- 9.8.1.5 an estimate of professional fees and the total project cost;
- 9.8.1.6 a description of the objectives and goals of the project;
- 9.8.1.7 the conditions of engagement (Form of Agreement) to be used for the eventual appointment and the manner of determining professional fees, including disbursements; and
- 9.8.1.8 should Communicare have utilised the services of a professional or consultant to assist it in drafting the terms of reference or specifications for a tender, that consultant shall be precluded from tendering for that project as it will have an unfair advantage over the rest of the tenderers.

9.9 Appointment if professional service provider

Once approval has been obtained a letter of appointment shall be sent to the successful Enterprise confirming the project brief, deliverables and the documentation basis of the Professional Services agreement. Unsuccessful Enterprises in a proposal call process should have their proposal returned, together with all copies, to protect their intellectual property rights associated with the proposal call.

9.10 Fee arrangements

- 9.10.1 All letters of appointment and Professional Services agreements should state the basis for remuneration of the Professional Service Provider.
- 9.10.2 Where fees for a particular profession have been pre-determined, these fee scales, including time-based fees, shall be applied wherever possible. The relevant Government Gazette or Scale schedule or any discounts negotiated should be recorded and shall apply for the duration of the stage of assignment unless otherwise agreed.

9.10.3 The basis for payment of disbursements shall be separately agreed and recorded.

9.10.4 Where fees for a particular profession have not been pre-determined, or where such fees are not considered to be appropriate in a particular instance, fees shall be determined on the basis of functionality and price as described in the proposal call process above.

9.11 Professional Indemnity Insurance

Where Communicare considers Professional Indemnity Insurance cover to be warranted because of the size or nature of a particular project, the nominated Professional Service Provider must provide written proof that such insurance has been obtained prior to the appointment being finalised.

9.12 Professional Conduct and Ethics

9.12.1 Professional Service Providers applying for registration on Communicare's database must undertake to subscribe to the codes of conduct and ethical behaviour laid down by their respective professional societies and statutory councils, and to the following general principles-

9.12.1.1 Any attempt to exploit or influence the operation of the database by misrepresentation of information used in the operation of the database will be deemed to constitute unprofessional conduct.

9.12.1.2 Misrepresentation of the Principals, composition, structure, competencies, status, available staff, resources and capacity, Professional Indemnity Insurance and the like of a Professional Service Provider in order to obtain an assignment, which would otherwise not be awarded to the Professional Service Provider will be regarded as unprofessional conduct.

9.12.1.3 Professional Service Providers must update their particulars

whenever a change in their Principals, competencies and contact particulars occurs or when a Professional Service Provider is no longer eligible to remain on the database, within two months of such a change in eligibility status occurring and, in any event, at intervals not exceeding six months.

- 9.12.1.4 Professional Service Providers shall exercise due care and diligence and undertake all their duties with professionalism, competence, integrity and good faith.

10 **SCREENING CRITERIA**

10.1 Notwithstanding the provisions of clauses 7 and 9 above, decisions made by any Department Manager, Executive, the Managing Director, the Procurement Committee or any authorised agent regarding the appointment of any Enterprise or Tenderer, shall take account of the following screening principles, in relation to all procurement, namely –

- 10.1.1 financial standing of the tendering Enterprise;
- 10.1.2 reputability of the tendering Enterprise;
- 10.1.3 whether the tendering Enterprise has sufficient expertise and skills required to successfully complete the scope of work;
- 10.1.4 whether the tendering Enterprise has any experience and has worked on projects of a similar size and nature;
- 10.1.5 whether the tendering Enterprise is able to deliver the products or services within the required time-frames;
- 10.1.6 whether the tendering Enterprise has sufficient resources to complete the scope of work;

- 10.1.7 whether the tendering Enterprise is able to deliver a quality of workmanship of a standard acceptable to Communicare; and
- 10.1.8 any other requirements by departmental managers regarding any additional criteria that relate to their relevant departments provided that such additional criteria are approved in writing by the Board and are deemed not to disadvantage qualifying small enterprises and enterprises in which Black Persons enjoy an Equity Interest.

11 MEASUREMENT OF BEE COMPLIANCE OF ENTERPRISES AND SUPPLIERS

- 11.1 Enterprises which contract with Communicare as service providers shall be compelled to co-operate fully with Communicare to ensure that it is in a position to determine the Enterprises' Ownership Score for BEE purposes, specifically and BEE Compliance, generally and must undertake to procure that each of the Enterprises' directors/officers/employees and professional advisors shall provide such support and co-operation as may be required hereunder, including inter alia –
 - 11.1.1 to procure that Communicare and its representatives are given full and unrestricted access to all the books of account, records and all other documents of such Enterprise;
 - 11.1.2 to furnish Communicare with all such information (in the manner and format prescribed by Communicare), as may reasonably be required by it in terms of any applicable statement of Code 100 to enable Communicare to undertake the measurement of the Enterprise's Ownership Score or BEE Compliance, which information shall be furnished to Communicare within 10 (ten) days of a written request there

for; and

- 11.1.3 to co-operate with any Accredited BEE Verification Agency and any professional advisors appointed by Communicare from time to time and to furnish all information as may be requested by such verification agency or professional advisors from time to time.
- 11.2 Subject to clauses 11.1.1 and 11.1.2, any Enterprise which contracts to provide services to Communicare shall undertake not to, at any time for the duration of such contract, sell or encumber all or any of the shares, members interest or any portion of any ownership (as the case may be) of the Enterprise to or in favour of any person except in accordance with this Policy Document.
- 11.3 Any Enterprise which contracts to provide services to Communicare shall undertake not to, at any time for the duration of such contracts, be entitled to sell encumber all or any of the shares, members interest or any portion of any ownership (as the case may be) of the Enterprise in terms of this Policy Document or otherwise, provided that -
 - 11.3.1 the Ownership Score for BEE purposes, of the Enterprise does not, as a result thereof, decrease below the required scoring set by the specific tender;
 - 11.3.2 subject to clause 11.3.1, the Transferee, as a condition precedent to the sale of all or any of the shares, members interest or any portion of any ownership (as the case may be) of the Enterprise to that transferee, that Transferee agrees in writing to be bound, mutatis mutandis, by the terms and conditions of any contract with Communicare in regard to this aspect of its Procurement Policy.
- 11.4 In addition, any Enterprise which contracts to provide services to

Communicare shall, at any time for the duration of such contracts, be entitled to restructure its shareholding, members interest, ownership, partnership or joint venture (whether direct or indirect), provided that it undertakes that –

- 11.4.1 following any such restructuring the Ownership Score for BEE purposes of the Enterprise will not decrease; and
- 11.4.2 the person acquiring such shareholding, members interest, ownership, partnership or joint venture (or part thereof), whether directly or indirectly (following such restructuring) agrees, in writing, to be bound mutatis mutandis by the terms and conditions of any contract with Communicare in regard to this aspect of its Procurement Policy.
- 11.4.3 Communicare shall make reasonable efforts to ensure that the above provisions of this clause 11 are written into its contracts with Enterprises and suppliers.

12 FRONTING AND BLACKLISTING

Notwithstanding the imposition of any penalties that may be applied in terms of this Policy, where a contracting Enterprise or Tenderer is found guilty of misrepresenting any facts in respect of either an ownership or empowerment indicator in relation to any Beneficiaries, and either in a quotation, tender submission, or on Communicare's database, in order to effect the outcome of a Tender, either before or after the award of a Contract, then that contractor shall be blacklisted on Communicare's supplier database for a period of 12 (twelve) months and shall be notified accordingly. The effect of such blacklisting shall be that absolutely no further work may be awarded to that contractor by Communicare for the duration of the blacklisting and Communicare may, subject to the provisions of the professional services contract, elect to terminate the contract and claim damages in the normal course for breach of contract.

13 SURETIES AND RETENTION

13.1 Sureties for Performance (where applicable)

13.1.1 Communicare shall from time to time determine whether and the extent to which sureties securing performance by contracting enterprises is necessary.

13.1.2 Communicare acknowledges that one of the major obstacles facing Enterprises that are majority owned and controlled by Black persons is their inability to secure performance guarantees from financial institutions.

13.1.3 Accordingly, in circumstances where Communicare determines it a commercial imperative to secure performance guarantees the following shall apply: the value of the sureties required by Communicare may be reduced, or waived altogether, depending on the level of the procurement.

13.2 Where sureties or performance guarantees are required then -

13.2.1 For level 3 (three) to level 4 (four) procurement the amount of surety or performance guarantee required shall not exceed 2.5% of the contract sum or tender amount,

13.2.2 For level 5 (five) and level 6 (six) procurement, the amount of surety or performance guarantee required shall be in line with the JBCC and GCC contracts.

13.2.3 Notwithstanding the provisions of this clause 13.2.3, Communicare's decisions with regard to its requirements in respect of any suretyship or performance guarantee required from contracting enterprises, as the case may be, shall take cognisance of any decision it may take

regarding retentions dealt with in clause 13.3 below.

13.3 Retention (where applicable)

13.3.1 Communicare shall from time to time determine whether and the extent to which retention of contract sums is necessary to secure it from undue commercial risk.

13.3.2 Communicare recognizes that the insistence upon retention may undermine the benefits it wishes to confer upon the Beneficiaries and the latter are the least likely to sustain the cash-flow challenges presented by regular commercial retentions.

13.4 In the circumstances the following shall apply:

13.4.1 For level 3 (three) to level 5 (five) procurement, where the value of the surety required has been reduced, or even waived under clause 13.2.3, the usual retention of 5% (five percent) of the value of work carried out with no limit, reducing to 2.5% (two point five percent) for the duration of any maintenance agreement (if applicable), shall apply; and

13.4.2 For level 6 (six) procurement and above, where the value of the surety required has been reduced, or even waived under clause 13.2.3, the usual retention of 10% of the value of work carried out, up to a limit of 5% of the tender sum, reducing in terms of the JBCC or GCC contract for the duration of any maintenance period (if applicable), shall apply.

14 TENDER/QUOTATION ADMINISTRATION DIRECTIVES

14.1 These Tender/Quotation/Appointments Administration Directives contain the general conditions and procedures and are applicable, as amended from time to time, to all formal tenders, informal tenders, contracts, quotations, appointments and orders for Communicare.

- 14.1.1 Tax Clearance Certificate - no contract may be awarded to a person/company/closed corporation/firm who has failed to submit an original Tax Clearance Certificate from the South African Revenue Service (SARS) certifying that the taxes of that legal entity are in order or that suitable arrangements have been made with SARS.
- 14.1.2 Acceptance of Tender/Quotation - every acceptance of a tender/quotation shall be in writing.
- 14.1.3 Tender preparation costs - unless otherwise indicated in the tender documents, Communicare shall not be liable for any expenses incurred in the preparation and/or submission of a tender.
- 14.1.4 Additional information - Communicare may, if necessary, communicate with tenderers prior to tenders closing in order to supply additional information or to clarify vague points in the tender documents. Such communication shall be in the form of a notice and should, where possible, be issued at least one week prior to the tender closing date.
- 14.1.5 Validity period - the period for which tenders/quotations are to remain valid and binding shall be indicated in the documents. The period is calculated from the closing time and tenders/quotations shall remain in force and binding until the end of the final day of the period. This period of validity may be extended by mutual consent in writing between Communicare and the tenderers, provided that the original validity period has not expired, and that all tenderers shall have an opportunity

to extend such period.

14.1.6 Tender Prices and Contract Periods - for all contract periods equal to or exceeding one year in duration, an appropriate contract price adjustment formula may be specified in the tender documents. In general, where contract periods do not exceed one year in duration, the tender shall be a fixed price tender (not subject to contract price adjustment).

14.1.7 Late Tenders - Tenders are late if they are received at the address indicated in the tender documents after closing time. A late tender shall not be admitted for consideration and where feasible shall be returned unopened to the tenderer.

14.1.8 Tender opening - as soon as a tender has been opened, the tender document shall be stamped with the official stamp, and where necessary, endorsed with the opening official's signatures.

14.1.9 Invalid Tenders - tenders shall be considered invalid and shall be endorsed as such by the responsible official who opened the tender in the following instances:

14.1.9.1 where the tender is not submitted on the official Form of Tender,

14.1.9.2 where the tender is not completed in non-erasable ink,

14.1.9.3 where the Form of Tender has not been signed,

- 14.1.9.4 where the Form of Tender is signed, but the name of the tenderer is not stated, or is indecipherable.
- 14.1.10 Consideration of tenders/quotations - all valid tenders/quotations shall be considered.
- 14.1.11 Communicare shall not be obliged to accept the lowest or any tender/quotation nor a quotation from the tenderer that scores highest in terms of BEE and lowest in terms of price. For goods and services tenders, Communicare shall have the right to accept the whole tender or part of a tender or any item or part of an item or accept more than one tender, in the event of a number of items being tendered for.
- 14.1.12 Communicare may, before tenders/quotations are considered for acceptance examine and take into account the following, although not limited thereto:
- 14.1.12.1 the financial standing of tenderers, including their ability to furnish the required institutional guarantee, where applicable,
- 14.1.12.2 the tenderers goods standing with Communicare,
- 14.1.12.3 the tenderer's ability to fulfill their obligations in terms of the tender documents.
- 14.1.13 Request for Withdrawal of Tender - where a tenderer requests in writing, after the closing of tenders prior evaluation and adjudication process,

that this tender be withdrawn, then such a request may be granted by the Delegated Authority if it is in the best interests of Communicare.

15 EXCEPTIONS TO THE FORMAL TENDER PROCESS

15.1 The invitation of tenders shall not apply in respect of:

15.1.1 any contract relating to an emergency (as defined in clause 9.7) where it would not be in the interest of Communicare to invite tenders;

15.1.2 any purchase on behalf of Communicare at a public auction sale;

15.1.3 the appointment of any person to provide urgent professional advice or services (i.e. senior legal counsel);

15.1.4 any contract for which only one authorised (sole) supplier is available in the CMA;

15.1.5 repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for tenders;

15.1.6 the appointment of estate agents;

15.1.7 a new service provider in the event of the liquidation or sequestration, as the case may be, of an existing service provider.

15.2 The conditions warranting Emergency Procurement should include the existence of one or more of the following:

15.2.1 the possibility of damage to property;

15.2.2 the interruption of essential services;

15.2.3 the possibility that failure to take necessary action may result in the Company not being able to render an essential service;

15.2.4 the possibility of unnecessary financial loss to Communicare.

SIGNED at _____ on _____ 2008.

COMMUNICARE'S PROCUREMENT SCORECARD

Criteria	Weighting points	Compliance target 0 to 5 years	Compliance target 6 to 10 years
1. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition levels as a percentage of Total Measured procurement spend	12	50%	70%
2. BEE Procurement Spend from Qualifying or Exempted Micro Enterprises based on applicable B-BBEE procurement Recognition Levels as a percentage of Total Measured Procurement Spend	3	10%	15%
3. B-BBEE Procurement Spend from any of the following Suppliers as a percentage of Total Measured Procurement Spend: suppliers that are 50% black owned (3 out of 5 points); or suppliers that are 30% black women owned (2 out of 5 points)	5	15%	20%

EXCLUSIONS FROM PROCUREMENT SPEND

DELEGATION OF AUTHORITY FRAMEWORK

**FLOW DIAGRAM OF PROCUREMENT PROCESS OF PROFESSIONAL SERVICE
PROVIDERS**

**FLOW DIAGRAM OF PROCUREMENT PROCESS OF GOODS, SERVICES AND
ENGINEERING AND CONSTRUCTION WORKS**

COMMUNICARE PURCHASING AND PAYMENT PROCEDURES



DRAFT

COMMUNICARE BOARD OF DIRECTORS CONFLICT OF INTEREST POLICY

GUIDING PRINCIPLES

1. Directors shall serve and be seen to serve the Company honestly and in good faith with a view to the best interests of Communicare in a conscientious and diligent manner.
2. Directors shall uphold both the letter and the spirit of all applicable national and provincial legislation and regulations, the Articles and Memorandum of Association of the Company, and the guidelines detailed in the Board Charter.

DEFINITION OF CONFLICT OF INTEREST

Conflict of interest is a situation where the other personal or business interests of a party are in conflict with the best interests of the Company. A conflict of interest may occur when a direct or indirect personal gain, benefit or advantage is given to or received by a Director of the Board, or their family member. The existence of a pecuniary interest, even one that has not been confirmed, may give rise to a conflict of interest situation.

APPLICATION OF CONFLICT OF INTEREST POLICY

Communicare relies on the integrity of all Directors who have knowledge of a decision or activity of the Company that involves or might involve a conflict of interest to disclose the circumstances. Some conflicts are quite clear, while others are less obvious. However, there may be situations which could be perceived as a conflict of interest, no matter how innocent the intentions of a Director. For instance, no Director shall receive a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties as a Director. ***[JAJ: It is generally accepted practice that a director may be allowed to gain from a conflict, if that conflict has been disclosed and the Board ratifies the gain.]***

Exceptions to the non-acceptance of gifts or personal benefits by Directors in relation to their official duties are:

- (a) compensation authorised by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, custom, or social obligations;
- (c) suitable memento of a function honouring the Director.

CONFIDENTIAL INFORMATION

Confidential information includes information in the possession of the Company which the Company is prohibited from disclosing, such as confidential information received from third parties; matters that have been discussed at a Board meeting or that are the subject matter of a report to the Board or a Board resolution that accompanies any such “in camera” Board meeting. Such information shall remain confidential until its disclosure is authorized by the Board Chairman.

No Director shall disclose or release by any means to any member of the public any confidential information in either oral or written form except when required by law or authorised by the Board to do so. No Director shall use confidential information for personal or private gain, or for the gain of relatives or any person or company.

CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT

No Director shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to Communicare. Once again, a pecuniary interest, even one that has not been confirmed, may give rise to a situation where the best interests of the Company are not considered against the personal interests of the Director.

BUSINESS RELATIONS

No Director shall act as a paid agent before the Board or its Committees or with any of the Company’s subsidiaries’, officers or employees. Any pecuniary interest held by a Director appearing in such a capacity, while this may be not actual conflict of interest, will give rise to the appearance of a conflict of interest.

**Drafted by Allan Hardie and based on the Conflict of Interest Policy of the
Toronto Community Housing Corporation.
July 2006**

CALCULATION OF TENDER ADJUDICATION POINTS

ASSESSMENT SHEET FOR PROFESSIONAL SERVICE PROVIDERS

COMMUNICARE CODE OF ETHICS