



## DPME Evaluation Guideline 2.2.2

# Peer Review of Evaluations

Created August 2012  
Revised February 2021

|                            |   |
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| <b>Addressed to</b>        | Government Institutions (National Departments, Provincial Departments, Municipalities and State-Owned Entities) planning and undertaking evaluations.   |
| <b>Purpose</b>             | This guideline provides practical guidance on how to undertake peer reviews of evaluations.   |
| <b>Reference documents</b> | 1. National Evaluation Policy Framework 2019<br>2. Evaluation Guideline 2.2.1 How to Draw up Terms of Reference for Evaluation Projects.<br>3. Support for Evaluation Systems Component 3- Peer Review Final Report |
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## 1. Introduction

The National Evaluation Policy Framework 2019 (NEPF) supports a hybrid approach for undertaking evaluations which means a reduced reliance on outsourcing and focusing on undertaking evaluations internally to build state capacity to undertake credible evaluations. Various options for optimising the limited state capacity are outlined in the NEPF 2019, including peer review which is an internationally accepted approach to strengthen the quality of evaluations.

Peer review is a process of self-review by a professional or a process of quality assurance involving qualified and external individuals within the relevant field. Peer review methods are employed to maintain standards, improve performance and ensure credibility. In academia peer review is often used to determine an academic paper's suitability for publication. Another form is reciprocal peer review where peers at the same level in a department (e.g. where an evaluation is undertaken internally, evaluation practitioners and programme staff) review each other's' evaluation in this way they learn a lot from the process of doing reviews as well.

In the context of Government evaluations, peer review is primarily undertaken to provide quality assurance of in-process evaluation outputs by an external expert. As a subsidiary objective, peer review is also expected to contribute to learning and improvement of the evaluators in instances where the quality of an evaluation product is inadequate. This Guideline provides information on how government institutions can promote good quality evaluations through peer reviews.

## 2. Why do a peer review?

The Peer Review System within Government is undertaken to help ensure quality at different stages of an evaluation, and also provide an independent view from experts in the field as to the quality of different evaluation deliverables. Given that evaluation is not an exact science, there are often a range of possible approaches to answer the same question, and evaluations have resource constraints. A peer review for an evaluation undertaken within Government is used to review and provide an expert judgement on approaches, methods as well as the content area within the sector or field of the evaluation. Involving an expert evaluation methodology peer reviewer can provide assurance that the evaluation approach and methods are appropriate and credibly executed (e.g. whether a randomized control trial impact evaluation produces results with a high degree of validity and reliability). A content expert can review outputs and provide assurance as to whether the evaluation has sufficiently considered the relevant literature, is informed by the latest subject discourse and is contextually relevant.

## 3. When to do a peer review?

While in the academic world a peer review is often carried out at the final stage of publication, peer review of government evaluations can be undertaken at key stages of an evaluation process and should be considered formative in terms of shaping and assuring quality evaluation outputs. It is critical at the design stage of an evaluation to ensure that the design is robust at the outset as well as support good decision making at different stages of the evaluation. It is therefore important that a peer reviewer is selected and secured before finalisation of the TOR so that any problems of scope or design are identified before issuing the call for proposals.

The table below illustrates some of the key stages of an evaluation (drawing from Guideline 2.2.1 on Terms of Reference) and indicates the intended roles of a peer reviewer, distinguishing between those of a methodology expert and those of a sector expert. For a fairly simple evaluation 3-4 days will be needed, for a complex one this may be as much as 6-7 days.

**Table 1: Expected roles of a peer reviewer**

| Deliverable   | Role of peer reviewer   | Time allocation (days) |                |
|---|---|------------------------|----------------|
|   |   | Methodology expert     | Sector expert  |
| TORs  | Provide comment and make suggestions for improvement to the TOR.  | 0.5                    | 0.5            |
| Proposal  | Comment on the proposal of the successful bidder and advise on improvements on aspects such as evaluation questions, evaluation design, methodological approaches as well as practicability issues. | 0.5                    | 0.5            |
| Inception Report  | Respond to questions from the Peer Reviewer, comment on the inception report and suggest methodology questions or changes as above.   | 1                      | 1              |
| Literature and documentation review   | Comment on the relevance, coverage, suggest additional sources if needed. Comment on the conclusions.   | 0.5                    | 0.5            |
| Theory of change and analytical framework   | Assess whether the theory of change and analytical framework proposed for the evaluation (if not stated upfront by the intervention) is appropriate.  | 0.5                    | 0.5            |
| Data collection methods, instruments and other tools  | Comment on the tools, methods including the proposed sampling methodology and instruments.  | 0.5                    | 0.5            |
| Other technical or process reports, e.g. field work report                                    | Comment on reports.   | 0.5 per report         | 0.5 per report |
| Draft evaluation report for review, full and in 1/5/25 format (see Action Points);            | Comment on report.  | 1                      | 1              |
| Possibly a workshop with stakeholders to discuss the draft report;                            | Participate in and provide constructive feedback on the draft evaluation report.  | 1                      | 1              |
| The final evaluation report   | Comment on first and final draft of final report. Also write up short report summarising main issues from the peer review, and the learnings.   | 1                      | 1              |
| Proposed changes to the intervention design if needed - this may be part of the final report. | Comment   |                        | Part of above  |
| Potential total time allocation for a major complex evaluation                                | 7 - 10 days   | 7 - 10 days            |                |

## 4. How are peer reviewers selected?

For any given evaluation, there may well be few people who have both the specific sector knowledge and methodological knowledge to adequately peer review the evaluation. It is therefore proposed that there should be two peer reviewers – one with knowledge of the sector concerned, and one a methodology expert in the type of methodology needed for the evaluation in question. Even if there is one peer reviewer with skills in both methodology and content, it is a good idea to have two reviewers subject to availability of resources.

Potential content peer reviewers would probably be recommended by the custodian department / steering committee and would be approved by the Evaluation Steering Committee. In the case of methodological experts and statisticians, it is recommended that these are identified from the country's experts with extensive experience based on the type of evaluation undertaken. They could also be from other departments.

All peer reviewers will need to sign a Service Level Agreement (SLA) which includes a clause on Conflict of Interest. Refer to annex 2 for an example of an SLA.

## 5. Who contracts the peer reviewer?

Peer reviewers for evaluations would be commissioned and contracted by the custodian institution, as part of the quality assurance process.

Peer reviewers are paid a standard honorarium for the work, rather than a market rate fee for services, which means there is no need to have a normal competitive tender. The maximum is R10 000. Payment is linked to specific deliverables (Refer to Table 1 above).

It is very important that you first register potential peer reviewers as suppliers on the institutions procurement database and then confirm that they are registered on the Central Suppliers Database (CSD) and that their tax matters are in order. No service provider may be paid under any circumstances if not registered on CSD. Therefore, please contact SCM before contracting with a peer reviewer.

## 6. Appointment letter and terms of reference for peer reviewers

An outline appointment letter and model terms of reference for peer reviewers are attached in **Annex 1** and **2**. After a peer reviewer is appointed with a specific role, he or she should be made aware of whether there is another peer reviewer tasked with a complementary role.

## 7. Reporting and acknowledgement

The peer reviewers will report to the designated M&E official who sits on the Evaluation Steering Committee. The designated M&E official should ensure consistent communication with peer reviewers over the process of the evaluation. For every quality assured deliverable submitted the evaluation manager should provide some feedback to the peer reviewer about how this feedback was received. Where peer reviewers are involved for the duration of the evaluation, or at critical stages of the evaluation, they should be provided with the option of being acknowledged in the final evaluation report. At the time of completion of the evaluation, letters of thanks and acknowledgement of peer reviewers for their contributions to the evaluation should be made, regardless of whether they opt to be recognized in the final evaluation report.

## 8. Conflict of interest policy

As a peer reviewer of an evaluation the peer reviewers must avoid a conflict of interest or the potential appearance of one. Unless a waiver has been granted by the commissioner of the peer review, a peer reviewer cannot review and advise on an approved evaluation if:

- the peer reviewer, the peer reviewer's spouse, child, or business partner, the organisation where the peer reviewer is employed, has an arrangement for future employment or compensation or is negotiating for employment, or
- the organisation where the peer reviewer is an officer, director, trustee, or partner, has a financial interest in the outcome of the evaluation or other interests that effect the peer reviewer's objective judgment.

A peer reviewer is expected to recuse him or herself from reviewing an evaluation if it involves individuals with whom he/she has a personal relationship (such as a close relative, current or former collaborator, or former thesis student/advisor) that may affect his/her objective judgment. The model appointment letter in **Annex 1** includes a mandatory conflict of interest statement to sign.

Signed



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**Mr Robert Nkuna**

Director-General

Department of Planning, Monitoring and Evaluation

Date: 19/05/2021



## planning, monitoring & evaluation

Department:  
Planning, Monitoring and Evaluation  
**REPUBLIC OF SOUTH AFRICA**

**Name, contact details including email, telephone and address of peer reviewer**

Dear name

**Peer Review Appointment Letter**

We are pleased to offer you a contract for the role of a peer reviewer on the evaluation of ..... You will assist (DPME/OTP/Department of/ Municipality/ SOE.....) and the partner departments/Units in ensuring the quality of the evaluation, where quality is defined as technical rigour, policy relevance, while maximising the ownership and commitment of the partner departments.

The Peer Reviewer will be expected to pursue the activities according to the annexed terms of reference.

Please find the attached service level agreement, stipulating the rights and obligations of each party. The contract period shall be open to extension depending on mutual agreement between the Peer Reviewer and (DPME/OTP/Department of.....).

Kindly note that the General Conditions of Contract applicable to Government Procurement as updated and published by National Treasury from time to time, applies to the procurement of all goods and services and forms part of any agreement between the Department and yourself.

Payment for goods and services can only be made to Peer Reviewers registered with the Department. It is important to ensure that the correct banking details have been registered with the Department to avoid delays in payment (registration and verification of banking details can take up to 14 days).

Please also note that all information supplied by the Department and by you, should be treated as confidential and that no information related to the nature or content of this project should be shared with third parties without explicit written consent of the Department.

\_\_\_\_\_  
Name:

Head of M&E or similar:

Date:

**FOR OFFICE USE ONLY**

- 1 Once peer reviewer has been identified, forward draft SLA and banking details maintenance form to Peer Reviewer
- 2 Any changes to Annexure “B” of the SLA must receive prior approval of the CFO, DPME
- 3 Project Manager / Coordinator: Once agreement has been reached on content of SLA**
  - 3.1 At least two signatures required from Peer Reviewer (in case of companies)
  - 3.2 DPME must keep original copy. Sign two originals in case Peer Reviewer requires an original as well.  
  
Relevant Programme / Responsibility or Budget Manager (see financial delegations) must sign SLA
  - 3.3 Complete procurement application form
  - 3.4 Forward signed SLA(s), procurement application form and original banking details maintenance form to SCM: Demand and Acquisition unit
- 4 Demand and Acquisition Unit**
  - 4.1 Forward SLA to office of the CFO
  - 4.2 Office of the CFO allocates SLA reference number and CFO signs SLA
  - 4.3 Original SLA filed by Office of the CFO (Schedule and Annexures A and B)
  - 4.4 2nd Original SLA (if applicable) forwarded to project manager
  - 4.6 Tracking system updated with SLA number
  - 4.7 Copy of SLA (Cover page, Schedule and Annexure A) and procurement application to Logistics
- 5 Logistics Unit**
  - 5.1 Issues purchase order and forward to Peer Reviewer (copy to project manager and CFO)



## planning, monitoring & evaluation

Department:  
Planning, Monitoring and Evaluation  
**REPUBLIC OF SOUTH AFRICA**

Agreement on

**Peer Review:**

entered into between

**The Department of Planning, Monitoring and Evaluation/ OTP/ Department.....**

of the Government of the Republic of South Africa

(Hereinafter referred to as "DPME")

and

Xx

(Hereinafter referred to as "the Peer Reviewer")





Table 1: Fixed component: must indicate all-inclusive pricing for any specific goods or services to be delivered in terms of this agreement.

Table 2: Variable component: must include rates or units' costs to be used in the costing of additional deliverables or any costs not included under the fixed component.

**VAT must be included in all cases where the Peer Reviewer is registered for VAT.**

| Table 1: Deliverable   | Role of the peer reviewer | Time allocation | Amount due |
|--|---------------------------|-----------------|------------|
|  |                           |                 |            |
|  |                           |                 |            |
|  |                           |                 |            |
|  |                           |                 |            |
|  |                           |                 |            |
|  |                           |                 |            |
| Potential total time allocation for a major complex evaluation |                           |                 |            |

**Conditions of payment (Also see Annexure “B” Clause 4):**

1. An official purchase order will be issued by DPME after conclusion of this agreement. No invoice may pre-date the official purchase order and the Peer Reviewer shall not commence with the provision of any Goods or Services until the applicable purchase order has been issued.
2. The Peer Reviewer will invoice DPME in accordance with the above schedule after confirmation by the coordinator for DPME that a particular milestone has been reached or a deliverable has been satisfactorily completed.
3. Original invoices must be addressed to the CFO: DPME and delivered by hand or sent by mail to Private Bag X944, Pretoria, 0001 or sent to [invoices@dpme.gov.za](mailto:invoices@dpme.gov.za)
4. Invoices must contain:
  - a. A detailed description for each amount invoiced, including but not limited to the relevant deliverable or milestone;
  - b. The Peer Reviewer’s full details, including VAT number;
  - c. The purchase order number issued by DPME and DPME VAT number (419 026 3535);
  - d. Contact details in case of any accounting related enquiries.
5. Payment can only be made to the Peer Reviewer’s bank account, details of which must be provided on the official DPME suppliers registration forms (completed separately). The verification of banking details can take up to 14 days.
6. All payments will be made within 30 calendar days of receipt of an original and valid invoice. Any delays due to changes in or incorrect banking details are excluded from this period.

## 1. INTERPRETATION AND GENERAL CONDITIONS

- 1.1. In this Agreement, unless otherwise specified or the context clearly indicates the contrary, the following words and expressions shall have the meanings assigned to them below:
- 1.1.1. "Agreement" – the agreement between the parties, which consists of these terms and conditions, the Schedule, any Agreements on Scope of Work concluded by the parties from time to time and includes any schedules, annexures, exhibits and attachments thereto.
- 1.1.2. "Business Day" – any day excluding a Saturday, Sunday or a public holiday in the Republic of South Africa;
- 1.1.3. "Bespoke Deliverables" - any Deliverables (including software source code, research papers and any related documentation) developed by or on behalf of the Peer Reviewer exclusively in favour of DPME and at its special instance and request in connection with or for the purposes of providing the Deliverables to DPME or otherwise in connection with or for the purposes of this Agreement. Unless otherwise agreed to in writing, "Bespoke Deliverables" will exclude business processes and methodologies developed by the Peer Reviewer during the course of producing the "Deliverables";
- 1.1.4. "Commencement Date" – the date designated as such in the Schedule, notwithstanding the date on which this Agreement is signed by the party signing it last in time;
- 1.1.5. "Confidential Information" – the following information, belonging to either party: Any know-how, information, method of trading, technology, techniques, data, records, reports, business ideas, business forms and stationery, drawings, models, programmes and any information of whatsoever nature and form directly or indirectly related to the business of the parties, or the business of any of the parties' members, suppliers, Peer Reviewers, agents, business associates or partners which was or may be supplied to one party by the other party or any of the aforesaid entities. Without limiting the generality of this clause in any manner whatsoever, confidential information shall include:
- a. technical, financial, economic and general information, information provided orally, in computer readable media, in writing or through any other means of communication; and
  - b. information which the parties, when providing same to the each other expressly indicate to be confidential, irrespective of whether it falls within the ambit of clause 1.1.6.
- 1.1.6. "Co-ordinator" – the person, the particulars of whom are set out in the Schedule, nominated and replaced by each of the parties from time to time, who will be responsible for effective liaison between the parties and to whom all communication relating to the execution and implementation of this Agreement must be addressed;
- 1.1.7. "Deliverable" or "Deliverables" – the goods and / or services to be provided by the Peer Reviewer to DPME in terms of this Agreement, or any Agreement on Scope of Work executed to in terms of this Agreement.
- 1.1.8. "Insolvency Event" – if the Peer Reviewer:
- a. is wound-up, liquidated, subject to an offer of compromise in terms of the Companies Act (if applicable) deregistered or placed under business rescue, in any event whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event; or
  - b. becomes insolvent or commits any act which is or, if it were a natural person, would be an act of insolvency as defined in the Insolvency Act, (Act no. 24 of 1936 as amended); or
  - c. is deemed unable to pay its debts in terms of the Companies Act; or
  - d. compromises or attempts to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally or any significant class of creditors; or
  - e. takes any procedural steps (including application, proposal or convening a meeting) with a view to compromise an arrangement with any creditors generally or any significant class of creditors;
- 1.1.9. "Intellectual Property" – the following immaterial and intellectual property of which a party is the proprietor or that was developed by the Parties irrespective of whether registered/patented:
- a. all registered patents and patent applications, designs and design applications in the name of the party;
  - b. all copyright owned by the party in respect of works which are susceptible to copyright and which are used by the party in respect of its business;

c. all registered trademarks and trademark applications, unregistered trademarks as well as rights to trade and business names;

d. any confidential or proprietary information relating to the intellectual property and its exploitation, including technical information, manufacturing techniques and designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information generally;

- 1.1.10. "Payment Schedule" – the schedule of Deliverables / milestones and related payments agreed to between the Parties and attached as annexure "A" hereto.
- 1.1.11. "Proposal" – the proposal submitted by the Peer Reviewer in response to the request for proposals / tender of which a copy is attached hereto as annexure "D";
- 1.1.12. "Schedule" – the document entitled "Schedule" to which this document constitutes annexure "B" and which contains certain variable information applicable to this Agreement;
- 1.1.13. "Valid invoice" – an invoice that complies with the requirements set out in this Agreement and that refers only to Deliverables confirmed as delivered by DPME and to costs and expenses as agreed to in Annexure "A" of this Agreement.
- 1.2. In this Agreement, unless the context specifically indicates otherwise, any reference to -
- 1.2.1. the singular shall include the plural and vice versa;
- 1.2.2. any gender shall include the other genders;
- 1.2.3. natural persons shall include legal persons and vice versa.
- 1.3. The headings of clauses in this Agreement are for reference purposes only and shall not be taken into account in construing the contents hereof.
- 1.4. If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this Agreement.
- 1.5. Where any term is defined within the context of a particular clause in this Agreement, it shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.6. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.7. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day other than a Business Day, in which case the last day shall be the immediately following Business Day.
- 1.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.9. The expiration or termination of this Agreement shall not affect such of the provisions contained herein and are expressly provided that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide therefor.
- 1.10. The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.11. The terms and conditions of the General Conditions of Contract (July 2010 or as subsequently revised) from National Treasury ("GCC"), in as far as it is applicable, are incorporated into this Agreement and forms an integral part hereof. The Proposal, attached hereto as annexure "D" also forms an integral part of this Agreement. In the event of any conflict or inconsistency between the provisions contained in this Agreement on the one hand and those contained in the GCC or the Proposal, on the other hand, this Agreement shall take precedence.
- 1.12. In the event of any conflict or inconsistency between the provisions contained in this Agreement on the one hand and any South African legislation, on the other hand, the legislation shall take precedence.

## 2. APPOINTMENT, COMMENCEMENT AND DURATION

- 2.1. DPME hereby appoints the Peer Reviewer, who accepts such appointment, subject to the terms and conditions set out herein.
- 2.2. This Agreement is also binding on the successors in title, assigns and administrators of the respective parties.
- 2.3. DPME and the Peer Reviewer shall at all times be independent contracting parties and neither shall party shall be the partner, agent, representative or employee of the other party or hold itself out as such. Accordingly, neither party shall have the authority to bind the other party by any representations, statements or agreements in any manner whatsoever.
- 2.4. This Agreement shall commence on the Commencement Date and shall remain in force for the Duration or until the Termination Date indicated in the "Schedule".
- 2.5. DPME can extend the duration of this Agreement in its sole discretion provided that both parties agree in writing to the terms and conditions of extension. Any extension to the delivery dates indicated in Annexure "A" granted by DPME shall automatically extend the duration of this Agreement.
- 2.6. Either party may cancel the agreement in terms of clause 11 (Termination) below;

## 3. GENERAL OBLIGATIONS OF PARTIES

- 3.1. DPME shall furnish the Peer Reviewer with all relevant information and documentation timeously to enable the Peer Reviewer to render the Deliverables. The information will be accurate and complete in all material respects.
- 3.2. DPME shall provide the Peer Reviewer with feedback on the quality and acceptance of Deliverables rendered within 10 (ten) Business Days from submission of Deliverables, with a clear indication of areas of required improvement, if applicable.
- 3.3. DPME will, as far as possible, assist the Peer Reviewer to obtain access to stakeholders to facilitate the completion of Deliverables.
- 3.4. Neither Party shall during the currency of this Agreement, or for a period of 12 (twelve) calendar months following termination hereof for any reason, directly or indirectly solicit, offer employment to, employ or contract in any manner with any personnel of the other party (including personnel of any sub-contractors or subsidiaries of the Peer Reviewer) who were involved in the implementation or execution of this Agreement unless otherwise agreed by both parties in writing.

## 4. CONSIDERATION AND PAYMENT

- 4.1. In consideration for the Peer Reviewer rendering the Deliverables agreed upon DPME shall pay to the Peer Reviewer the fees stipulated in annexure "A" attached hereto subject to the successful completion of the Deliverables indicated in annexure "A" to this Agreement
- 4.2. An official purchase order will be issued by DPME after conclusion of this Agreement. No invoice may pre-date the official purchase order and the Peer Reviewer shall not commence with the provision of any Deliverables until the applicable purchase order has been issued.
- 4.3. The fees indicated in annexure "A" represent the full amount payable to the Peer Reviewer and are fully inclusive of all expenses to be incurred by the Peer Reviewer in completing the Deliverables within the agree times frames. It is hereby specifically recorded that, unless otherwise indicated on annexure "A", the fees payable include:
  - a. Any expense incurred by the Peer Reviewer to participate in meetings, workshops, seminars or similar events related to the completing of the Deliverables;
  - b. All national and international travel expenses related to the completion of the Deliverables;
  - c. All communication related expenses incurred by the Peer Reviewer.

- 4.4. The incurring of any expense for which the DPME can be held liable that is not included under the Fixed Component in annexure "A" (regardless of whether such expense was mentioned in the Proposal(s) submitted by the Peer Reviewer), must receive prior written approval for such a variation from the Chief Financial Officer or the Director General of DPME. Such variation will only be valid if confirmed by the DPME through the issuing of an official purchase order.
- 4.5. DPME shall be entitled to stipulate, on reasonable notice to the Peer Reviewer the invoicing standards applicable to any charges levied by the Peer Reviewer in terms of this Agreement.
- 4.6. The Peer Reviewer shall inform DPME of the completion of a particular milestone or Deliverable in writing. The DPME must within 10 (ten) Business Days in writing either;
  - a. Confirm its acceptance of the particular Deliverable or confirm that the particular milestone has been reached; or
  - b. Provide the Peer Reviewer with detailed information on any material errors or omissions related to a particular Deliverable or milestone.
- 4.7. Unless otherwise agreed to in writing, original invoices shall be rendered by the Peer Reviewer after acceptance by DPME's coordinator of a particular Deliverable.
- 4.8. Payment of valid Peer Reviewer invoices shall be made by DPME within 30 (thirty) calendar days of receipt thereof.
- 4.9. The Peer Reviewer shall maintain complete and accurate records of all amounts billed to and payments made by DPME under the agreement in accordance with generally accepted accounting principles applied on a consistent basis. The Peer Reviewer agrees to provide DPME with relevant information with respect to each invoice as may be requested by DPME to verify accuracy and compliance with the provisions of the agreement.
- 4.10. DPME may withhold any amounts that it disputes in good faith, provided that such dispute shall automatically be referred to dispute resolution in terms of clause 11.
- 4.11. Any undisputed amount payable by DPME to the Peer Reviewer can bear interest at a rate equal to that of the prime lending rate of First National Bank, from the 31st (thirty first) day after receipt by DPME of the original valid invoice until the date of payment (both days inclusive).
- 4.12. Where payment of any undisputed amount due is not made within 30 (thirty) days from the due date, the Peer Reviewer shall be entitled, without prejudice to any other right or remedy it may have, to halt the provision of the Deliverables until all payments in arrears have been paid in full.

## 5. WARRANTIES

- 5.1. Each party warrants and represents that, as at the commencement date of this Agreement:
  - 5.1.1. it has full capacity and authority to enter into and perform its obligations under this Agreement;
  - 5.1.2. this Agreement is executed by a duly authorised representative of that party;
  - 5.1.3. there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.
- 5.2. The Peer Reviewer warrants, represents and undertakes on an on-going basis that:
  - 5.2.1. its obligations under this Agreement will be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient personnel;
  - 5.2.2. it will be solely responsible for the payment of remuneration, associated benefits and expenses, if any, of its personnel and sub-contractors, and for withholding and remitting income tax (or the relevant local equivalent) for its personnel in conformance with any applicable laws and regulations;
  - 5.2.3. The Peer Reviewer will perform its obligations under this Agreement in compliance with all applicable laws, enactments, orders, and regulations;

- 5.2.4. all documents, data, software or other materials relevant to the supply of the Deliverables are kept under secure conditions with appropriate back-up arrangements in place;
- 5.2.5. where applicable, the facilities it requires for the provision of the Deliverables are available and equipped to the required standard at any of DPME's premises;

## 6. INTELLECTUAL PROPERTY

- 6.1. All right, title and ownership of any Intellectual Property developed by or for the Peer Reviewer or DPME independently and outside of this Agreement and provided during the course of this Agreement ("Background IP") shall remain the sole property of the party providing the Background IP.
- 6.2. To the extent that the Peer Reviewer utilises any of its Background IP in connection with the Deliverables, such Background IP shall remain the property of the Peer Reviewer and DPME shall acquire no right or interest therein, save that, upon payment of the applicable fees in full (as indicated in annexure "A"), the Peer Reviewer grants DPME a non-exclusive, royalty-free, non-transferable licence to use such Background IP strictly for purposes of making beneficial use of the Deliverables into which such Background IP has been incorporated.
- 6.3. All Intellectual Property rights in Bespoke Deliverables are or will be vested in and owned by DPME unless specifically agreed otherwise. The Peer Reviewer agrees that it shall not, under any circumstances, question or dispute the rights and ownership of DPME in and to the Bespoke Deliverables. DPME grants the Peer Reviewer a non-exclusive, royalty free, non-transferable licence to use the Bespoke Deliverables for the purpose of performing its obligations under this Agreement.
- 6.4. The Peer Reviewer may not publish or sell, in whole or in part, any "Bespoke Deliverables" emanating from this Agreement without the explicit written consent of DPME.

## 7. CONFIDENTIALITY

- 7.1. Each party hereby acknowledges that -
  - 7.1.1. in the course of this Agreement, it ("the Receiving Party") will become acquainted with Confidential Information belonging to the other party ("the Disclosing Party"). Unless otherwise indicated in writing, all information provided by DPME must be regarded as confidential information.
  - 7.1.2. in the event of the unauthorised disclosure of the Confidential Information, the party to whom the Confidential Information belong, may suffer irreparable financial and / or other harm;
  - 7.1.3. obligations contained in this clause 9 shall not apply to Confidential Information which -
    - a. at the time of its disclosure is part of the public domain or which subsequently becomes, through no fault or failure of the Receiving Party, part of the public domain;
    - b. at the time of disclosure can be shown by the Receiving Party to the Disclosing Party to have been in its possession prior to disclosure thereof by the Disclosing Party or to have come into the possession of the Receiving Party thereafter by disclosure of a third party.
- 7.2. The Receiving Party agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it, is in connection with the rendering of the Deliverables contemplated under this Agreement and undertakes not to disclose, in whole or in part any Confidential Information to any third party without the prior written approval of the Disclosing Party or unless compelled to do so by law.
- 7.3. The Receiving Party shall only disclose so much of the Confidential Information and at such time as may be strictly necessary to enable any of its employees, agents, sub-contractors, associates or professional advisors to fulfil their function as such. This may, however, only be done after such employee, agent, associate or professional advisor concerned is first advised of the Receiving Party's confidentiality obligations hereunder and the Receiving Party has ensured prior to the disclosure of any Confidential Information that such employee, agent, sub-contractor, associate or professional advisor has validly signed an undertaking of confidentiality wherein it is restricted in its use of the Confidential Information. The Receiving Party warrants that such employee, agent, sub-contractor, associate or professional advisor will comply with the aforesaid confidentiality undertakings.

- 7.4. The Receiving Party's confidentiality obligations hereunder shall remain in force for the duration of this Agreement and for a period of 5 (five) years after the date of termination of this Agreement, or for any such period determined by Law.
- 7.5. In the event that this Agreement is terminated or in any manner brought to an end the Receiving Party shall within 10 (Ten) Business Days of the termination return to the Disclosing Party or, at the Disclosing Party's option destroy, all Confidential Information (including but not limited to all confidential documents, data and other writings) supplied by the Disclosing Party to the Receiving Party. The Receiving Party shall not retain any copies, extracts or other reproductions in whole or in part of such documents, data or other writings comprising Confidential Information in any physical or electronic medium of format. The Receiving Party shall forthwith furnish a certificate to the Disclosing Party certifying that all the aforesaid documents and other writings have either been destroyed or returned to it.
- 7.6. The Disclosing Party shall be entitled, forthwith, without any prior written notice to the Receiving Party and without prejudice to any rights which it may be entitled to -
  - 7.6.1. obtain an interdict in any competent court to prohibit the Receiving Party to continue with the contravention of its undertakings in terms hereof;
  - 7.6.2. obtain a court order in any competent court for the delivery of any document, writings, copies, extracts or reproductions referred to in clause 9.5 above.
- 7.7. The provisions contained in this clause 9 shall survive the termination or cancellation of this Agreement.
- 7.8. The burden of providing any exemption provided for in this clause 9 shall rest on the Receiving Party.

## 8. FORCE MAJEURE

- 8.1. No party shall be liable to the other for any losses which are a result of any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by any circumstances beyond its reasonable control, including (without limitation): fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of such party; provided that: (i) the non-performing party is without fault in causing such default or delay; and (ii) such default or delay could not have been prevented by reasonable precautions; and (iii) such default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work around plans or other means.
- 8.2. If any event under clause 10.1 substantially prevents, hinders, or delays for more than 7 (seven) consecutive days performance of the Deliverables necessary for the performance of DPME's functions, reasonably identified by DPME as critical, then at DPME's option:
  - a. Where the nature of the Deliverables permit, DPME may with the written consent by the Peer Reviewer, which consent will not be unreasonably withheld, procure such Deliverables from an alternate source on behalf of the Peer Reviewer and reduce the consideration due to the Peer Reviewer by the amount paid for such Deliverables procured on behalf of the Peer Reviewer for so long as the delay in performance shall continue; or
  - b. Either Party may terminate the agreement or any portion thereof affected by the force majeure, without liability and, to the extent applicable, the charges payable under the agreement shall be equitably adjusted to reflect those terminated Deliverables.
- 8.3. The Peer Reviewer shall not have the right to any additional payments from DPME for costs or expenses incurred by the Peer Reviewer as a result of any force majeure occurrence, except for those Deliverables completed.

## 9. DISPUTE RESOLUTION

Any dispute arising from this Agreement shall be subject to the following dispute resolution procedures:

- 9.1. Informal dispute resolution: Prior to the initiation of formal dispute resolution procedures, the parties shall first attempt to resolve their dispute informally as follows:

- 9.1.1. Upon the written request of a party, any dispute, which arises between the parties relating to or arising out of this Agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, shall be referred to the chief executive officer of the Peer Reviewer ("the CEO") and to the Director-General of DPME ("the DG"). The DG and the CEO reserves the right to delegate some or all of their responsibilities in this regard to a suitable senior manager. The CEO and DG shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The CEO and DG shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 15 (Fifteen) business days of the dispute having been referred. During the course of discussion, all reasonable requests made by one party to another for non-privileged information, reasonably related to this Agreement, shall be honoured in order that each of the parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the CEO and the DG.
- 9.1.2. Formal proceedings for the resolution of a dispute may not be commenced until the earlier of: (i) the CEO and the DG concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) the expiry of a period of 15 (Fifteen) business days after the initial written request referred to in clause 9.1.1 (this period shall be deemed to run notwithstanding any claim that the process described in clause 9.1.1 was not followed or completed).
- 9.1.3. Proceedings in terms of this clause 11.1 shall not be construed to prevent a party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.
- 9.1.4. Any period of time stipulated under point 11.1 may be extended by Parties upon mutual written agreement of such extension.
- 9.2. Arbitration: If the parties are unable to resolve any dispute in the manner contemplated by clause 11.1, then subject to clause 11.2, such dispute shall on written demand by either party to the dispute be submitted to arbitration at the Arbitration Foundation of Southern Africa, in Pretoria and in accordance with the rules thereof by an arbitrator or arbitrators agreed on by the parties or should the parties fail to agree on an arbitrator within 10 (Ten) business days after arbitration has been demanded, the arbitrator shall be nominated at the request of any party to the dispute by the Arbitration Foundation of Southern Africa. The arbitration shall be held in the English language.

#### 9.2.1. Commencement of arbitration

The following shall apply to the arbitration: (i) the parties shall request that the arbitrator/s commence the arbitration within 21 (Twenty-One) business days and proceed as if time is of the essence in the arbitration proceeding. The parties shall request that the arbitrator to render his or her decision within 14 (Fourteen) business days following the conclusion of the hearing. Recognising the express desire of the parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the parties to expand the scope of discovery as may be reasonable under the circumstances; (ii) the parties undertake not to withhold their consent to join another party to the Arbitration; and (iii) the parties irrevocably agree that the submission to arbitration is subject to the parties' rights of appeal. Any party may appeal the decision of the arbitrator within a period of 20 (Twenty) business days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other party to the arbitration. The appeal shall be dealt with in accordance with the rules of the Arbitration Foundation of Southern Africa by a panel of 3 (Three) arbitrators appointed by the Arbitration Foundation of Southern Africa.

#### 9.2.2. Status of arbitration ruling

The decision of the arbitrator shall be binding on the parties to the arbitration after the expiry of the period of 20 (Twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 11.2 may be made an order of court at the instance of any party to the arbitration.

- 9.3. Continued performance: Each party agrees to continue performing its obligations under this Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).



- 9.4. Rapid resolution of disputes: The parties shall use commercially reasonable efforts to resolve disputes arising under this Agreement as rapidly as possible.
- 9.5. Excluded relief: This clause 9 shall not preclude either party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the parties are engaged.
- 9.6. Confidentiality of proceedings: Any dispute resolution or arbitration process under this clause 9 shall be conducted in camera and the parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other party provided that the parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.
- 9.7. Costs of dispute resolution: Each Party shall bear its own costs related to the resolution of disputes. No party shall be held liable for any costs incurred by another party during the informal dispute resolution process or during Arbitration.

## 10. TERMINATION AND LIABILITY

- 10.1. DPME can terminate the Agreement, in whole or in part, –
  - 10.1.1. due to changes in the strategic objectives of DPME that requires the re-prioritisation of funding allocated to the execution of this Agreement, by giving the Peer Reviewer at least 60 (Sixty) calendar days prior written notice thereof; or
  - 10.1.2. if changes in the controlling interest which vests in the Peer Reviewer on the date of signing of this Agreement can be shown to impact negatively on the ability of the Peer Reviewer to comply with the terms and conditions of this Agreement.
  - 10.1.3. in the event of the State Security Agency, which has to vet all Peer Reviewers who will have access to sensitive information of the State, determines that the Peer Reviewer or any of its members, directors or employees pose a relevant threat to the State.
- 10.2. In the event of the Peer Reviewer:
  - 10.2.1. failing to comply with any provision of this Agreement and persisting in such failure for a period of 7 (Seven) Business Days after receipt of a written notice demanding compliance; or
  - 10.2.2. suffering an Insolvency Event,
 DPME shall be entitled, without prejudice to any other right it may have in terms of this Agreement or in law, to:
  - 10.2.3. cancel this Agreement; and
  - 10.2.4. claim specific performance of any or all of the terms and conditions of this Agreement.
- 10.3. Should DPME breach any term of this Agreement, the Peer Reviewer shall be obliged to notify DPME in writing to remedy such breach, and should DPME fail to do so within 7 (Seven) Business Days of receipt of such notification, the Peer Reviewer shall without prejudice and in addition to any other remedies it may have, be entitled to:
  - 10.3.1. cancel this Agreement; and
  - 10.3.2. claim specific performance of any or all of the terms and conditions of this Agreement.
- 10.4. The maximum liability of any party to this Agreement shall not exceed the fixed component as indicated in annexure “A” to this Agreement as well as any additional amount agree to in writing in terms of clauses 6.3 and 6.4 of this Agreement. The maximum liability of DPME shall not exceed the cost indicated in annexure “A” of those Deliverables which DPME has received and accepted in terms of clause 6.6 of this Agreement.

## 11. ASSIGNMENT AND SUB-CONTRACTING

- 11.1. No party may cede, delegate or assign or in any way transfer to anyone or encumber any of its rights or obligations in terms of this Agreement, without the prior written consent of the other party, who undertakes not to delay or withhold its consent unreasonably.
- 11.2. The Peer Reviewer may appoint a competent sub-contractor of its choice to assist it in the rendering of the Deliverables subject to prior written approval by DPME.
- 11.3. The appointment by the Peer Reviewer of sub-contractor(s) does not constitute cession, delegation or assignment of the Peer Reviewer rights, duties and obligations in terms of this Agreement.
- 11.4. The Peer Reviewer warrants the quality of, and remains entirely responsible to DPME, for any work or Deliverables undertaken by a sub-contractor(s) appointed by the Peer Reviewer in respect of the rendering of the Deliverables.

## 12. DOMICILIUM AND NOTICES

- 12.1. The parties hereby select for all purposes of this Agreement as their respective domicilia citandi et executandi the addresses mentioned next to their names in the Schedule or any such other address as the parties may notify each other of in writing from time to time, for the delivery of all notices and/or processes thereto.
- 12.2. Any notice addressed by any party to the other party shall -
  - 12.2.1. if delivered by hand at the address of its domicilium in terms of this clause, be deemed to have been duly received by the addressee on the date of delivery; or
  - 12.2.2. if posted by prepaid registered post to the addressee's domicilium in terms of this clause, be deemed to have been received by the addressee on the fifth business day following the date of such posting; or
  - 12.2.3. if sent by telefax to his telefax number in terms of this clause be deemed to have been duly received by the addressee on date of successful transmission thereof, or on the next Business Day if sent after 16:30.
  - 12.2.4. if sent by email, be deemed to have been duly received by the addressee on the date of sending, or on the next Business Day if sent after 16:30, only if the email notice requests an electronic mail response acknowledging receipt and the responding email message –
    - a. clearly refers to the specific email message to which it is responding; and
    - b. includes a copy of the text of such message.
- 12.3. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

## 13. GENERAL

- 13.1. Entire Agreement: The parties hereby acknowledge that this Agreement concluded between them constitutes the entire agreement between them and that no other conditions, stipulations, warranties nor representations whatsoever, have been made by any party or that party's agent, other than as specifically included herein.
- 13.2. No Indulgence: No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment provided for in this Agreement or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of or otherwise affect any of that party's rights in terms of or arising from this Agreement, or prevent such party from importing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

- 13.3. No Variation: The parties agree that no variation of, addition to, consensual cancellation or novation of this Agreement in its entirety or of any term or condition thereof shall be of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the parties or their authorised representatives hereto.
- 13.4. Continued Enforceability: Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 13.5. Governing Law: This Agreement is governed by and construed exclusively in accordance with the laws of the Republic of South Africa. The principles governing Conflict of Laws are expressly excluded. The courts of South Africa have exclusive moment or place of actual contract formation.

### Annex 3: Outline Terms of Reference for Peer Review of the .....evaluation of .....

#### 1 Background to the evaluation

Provide some background to the evaluation. Refer to the summary of the project in the National Evaluation Plan or Terms of Reference if these are already developed. Don't make this longer than half a page.

#### 2 Purpose of the assignment

This assignment is to peer review (X evaluation) and provide advice on (the methodology OR sector-related content) and comment on the final products. The purpose is to peer review the technical quality and relevance of the products and provide quality assurance of those outputs. Where outputs reviewed are of an inadequate quality, special care should be taken to ensure feedback supports learning and improvement so as to achieve a minimum quality standard for the evaluation (in some cases you may want to peer review the process too, or this can be handled through an end of assignment reflective workshop with the steering committee).

#### 3 Tasks for the content reviewer

- 3.1 Review the terms of reference for the evaluation and provide comments on issues arising from these, and implications for the proposals.
- 3.2 Comment on the final proposal accepted so as to provide feedback to the Peer Reviewer for the inception meeting.
- 3.3 Comment on the inception report and how far issues raised have been addressed and the programme focus is appropriate.
- 3.4 Review the literature review, providing suggestions for omissions.
- 3.5 Review the theory of change, analytical framework, data collection instruments and comment on whether it adequately covers the breadth of issues in the content area of the intervention.
- 3.6 Review any case studies or evaluation deliverables prior to the draft evaluation report (if included in the TORs for the Peer Reviewer)
- 3.7 Review the draft report in depth providing suggestions for changes, in terms of logic, coherence of analysis, findings and recommendations, as well as content.
- 3.8 Attend a stakeholder workshop on the draft report (if included in the TORs for the Peer Reviewer).
- 3.9 Comment on the first and final drafts of the final report
- 3.10 Provide a short final report summarising the learnings from the peer review, including an assessment on the quality of the assignment using a standard format provided by DPME/ OTP/ Department.

Note that feedback should be given in a constructive way so it helps to build the capacity of the government staff and evaluators.

The peer reviewer should provide comments within 5 days of receiving the reports in question.

#### **4 Tasks for the methodology reviewer**

- 4.1 Review the terms of reference for the evaluation and provide comments on issues arising from these, and implications for the proposals.
- 4.2 Comment on the final proposal accepted so as to provide feedback to the Peer Reviewer for the inception meeting.
- 4.3 Comment on the inception report and how far issues raised have been addressed and the revised methodology is appropriate, as well as the programme focus.
- 4.4 Review the theory of change, analytical framework, data collection plan, data collection instruments, analysis plan and the proposed sample. Make suggestions for improvement if there are clear threats to the credibility of the assessment based on the approach and instrumentation.
- 4.5 Review any case studies or evaluation deliverables prior to the draft evaluation report (if included in the TORs for the Peer Reviewer)
- 4.6 Review the draft report in depth providing suggestions for changes, in terms of logic, coherence of analysis, findings and recommendations.
- 4.7 Attend a stakeholder workshop on the draft report (if included in the TORs for the Peer Reviewer).
- 4.8 Comment on the first and final drafts of the final report
- 4.9 Provide a short final report summarising the learnings from the peer review, including an assessment on the quality of the assignment using a standard format provided by DPME/ OTP/ Department.

Note that feedback should be given in a constructive way so it helps to build the capacity of the government staff and evaluators.

The peer reviewer should provide comments within 5 days of receiving the reports in question.

#### **5 Reporting**

In Peer departmental evaluations, peer reviewers will report to the designated M&E official from the commissioning department who sits on the Evaluation Steering Committee. In terms of evaluations in the National Evaluation Plan, it will be an official from the Department of Planning, Monitoring and Evaluation, whereas in regard to evaluations in the Provincial Evaluation Plan, it will be a designated official in the OTP.

#### **6 Remuneration**

The assignment is not a commercial assignment, but follows the approach for academic peer reviews, which are done for free on the expectation that such service is provided between peers. There will be a token remuneration based on a standard honorarium per day paid on a per deliverable or clustered deliverable basis, well below market rates.

#### **7 Intellectual property**

The intellectual property for the assignment lies with the contracting organisation. All documents should be treated as confidential and not passed on to a third party.

#### **8 Conflict of interest disclosure statement**

The peer reviewer is required to certify that to the best of their knowledge, they do not have any financial or other interest that raises an actual or potential conflict of interest with any activities on behalf of the peer review of the evaluation in question. If any actual or potential conflict of interest exists, the conflict as well as the financial or other interest upon which it is based will have to be declared and a written statement attached to the contract.