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PROFESSIONAL SERVICES AGREEMENT

entered into by and between

SOUTH AFRICAN RESERVE BANK

(hereinafter referred to as the “Customer”)

AND

***[Insert supplier name]***

**Registration No. *[Insert]***

(hereinafter referred to as the “Supplier”)

(hereinafter collectively referred to as the “Parties” or individually as the “Party”)

FOR

*[Insert contract description]*

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**PART I: GENERAL TERMS AND CONDITIONS**

1. **INTRODUCTION**

* 1. The Customer has appointed the Supplier on a non-exclusive basis, pursuant to the issuing of the RFx reflected in **Schedule A**,to deliver the Goods and/or render the Services described in **Schedule B**. The Supplier has accepted such appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.
1. **STRUCTURE OF THE AGREEMENT**
	1. This Agreement consists of the following Parts:
		1. **Part I: General Terms and Conditions**
		2. **Part II: Contract Specific Terms and Conditions**
		3. **Part III: Schedules**
2. Schedule A – Key Details of the Agreement
3. Schedule B – Description of the Goods and/or Scope of the Services or project
4. Schedule C – Pricing
5. Schedule D – Standards of Performance (if applicable)
	* 1. **Part IV:** **POPIA Annexures**
6. Annexure 1 – Provisions applicable to the sharing of personal information between the Customer and the Supplier where both Parties are deemed to be responsible parties; or Provisions applicable to the sharing of personal information between the Customer as responsible party and the Supplier acting as an operator
7. Annexure 2 – Third-Party Risk Assessment
	1. In the event of a conflict between the documents comprising this Agreement, such conflict will be resolved in accordance with the order of precedence (in descending order of priority) as follows, unless expressly indicated otherwise:
8. Contract Specific Terms and Conditions;
9. General Terms and Conditions;
10. Annexures; and
11. Schedules.

1. **INTERPRETATION**
	1. In this Agreement clause headings are for convenience and will not be used in its interpretation.
	2. If any provision in a definition is a substantive provision conferring any right or imposing any obligation on a Party, then notwithstanding that it is only in the interpretation clause, effect will be given to it as if it were a substantive provision in the body of this Agreement.
	3. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in a particular clause.
	4. When any number of days is prescribed, such number will exclude the first and include the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next succeeding day which is a Business Day.
	5. Any reference to days (other than a reference to Business Days) or to months or years, will be a reference to calendar days, months or years, as the case may be.
	6. A reference to “Person” means any person, trust, firm, company, corporation, statutory body, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
	7. The terms of this Agreement having been negotiated, the rule of interpretation to the effect that an agreement will be interpreted against the Party responsible for its preparation, will not be applied in the interpretation of this Agreement.
	8. Should there be a conflict between a provision of this Agreement, a provision in the RFx and/or a provision of the Proposal, then the terms and conditions of this Agreement will prevail to the extent of such conflict.
	9. No provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement, unless expressly indicated otherwise in **Schedule A**. The Bank may, from time to time, conclude agreements on behalf of and for the benefit of any Bank Subsidiary or for the benefit of any other juristic person falling under the administration of the Bank.
	10. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
	11. No terms and conditions stipulated by the Supplier, whether in its Proposal or otherwise, will be of any force and effect unless specifically incorporated in this Agreement.
2. **DEFINITIONS**

Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings and related expressions will have corresponding meanings:

* 1. "**Agreement**" means collectively, this Agreement together with all of its schedules and/or annexures, as may be amended by the Parties, in writing, from time to time ;
	2. "**Bank**" means the South African Reserve Bank;
	3. "**Bank Subsidiary**" means a wholly owned subsidiary of the Bank such as the South African Bank Note Company (RF) Proprietary Limited or South African Mint Company (RF) Proprietary Limited;
	4. "**B-BBEE**" means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act 53 of 2003;
	5. "**Business Day**" means any day which is not a Saturday, Sunday or official public holiday in the RSA in terms of the Public Holidays Act 36 of 1994;
	6. "**Confidential Information**" means any information, including documents or records (whether in electronic form or any other medium whatsoever), relating to either of the Parties or to such Party’s assets and affairs, including all communications (whether written, oral or in any other form) and all reports, statements, schedules and other data concerning any financial, technical, labour, marketing, administrative, accounting or other matter;
	7. "**Customer**" means the Bank and/or the Bank Subsidiaries specified in **Schedule A**;
	8. "**Deliverables**" means the deliverables (if any) as more fully detailed in **Schedule B** and will include all Intellectual Property comprised in or in any way relating to or associated with such Deliverables;
	9. "**Delivery Address**" means the physical address(es) set out in **Schedule A**, at which the Goods must be delivered and/or where the Services must be rendered;
	10. "**Delivery Date**" means the actual date on which the Goods and/or Services will be delivered or rendered to the Customer at the Delivery Address;

* 1. "**Duration**" means the contract term as set out in **Schedule A**;

* 1. "**Effective Date**" means the date on which the Agreement will commence, as reflected in **Schedule A**;
	2. "**Employees**" means employees, approved contractors, sub-contractors and/or independent contractors of the Supplier;
	3. "**Expiry Date**" means the date reflected in **Schedule A** on which the Agreement will expire, if this Agreement is a fixed term agreement;
	4. "**Good Industry Practice**" means the exercise of the highest degree of skill, diligence, prudence, judgment, care and foresight and the use of practices, equipment and materials which would reasonably be expected from appropriately qualified, experienced and skilled leading professionals with experience in carrying out work of a similar scope, type, nature and complexity as to the Services;
	5. "**Goods**" means the goods (if applicable) ordered from the Supplier by the Customer from time to time, it being recorded that the Customer will only be entitled to order the Goods listed in **Schedule B**,read with **Schedule C**;
	6. "**Intellectual Property**" means all intellectual property of any nature or form, wherever situated (and whether registered or unregistered), including any copyright, name, trading style, mark, logo, trademark, brand, drawing, design, pattern, registered design, patent, invention, discovery, process, formula, know-how, computer software, customer lists, rights to domain names, goodwill or any application in respect of any of the foregoing;
	7. "**Losses**" means all losses, liabilities, costs, expenses, fines, penalties, damages, claims as well as related costs and expenses as determined in law, unless specifically excluded in terms of this Agreement;
	8. "**Main Agreement**" means **Part I** read with **Part II** of the Agreement;
	9. "**Parties**" means the Customer and the Supplier collectively and "**Party**" will mean any one of them as the context may indicate;
	10. "**Price**" means the amount payable by the Customer to the Supplier for the Goods ordered by and delivered to the Customer and/or for the Services rendered by the Supplier to the Customer, which amount will be set out in **Schedule C**;
	11. "**Pricing Schedule**"means the Supplier’s list of fees, rates and prices (whichever is applicable) for the Goods to be delivered and/or the Services to be rendered to the Customer and which is attached to the Agreementas **Schedule C**;
	12. "**Proposal**" means the written proposal or quotation (as the case may be) received from the Supplier in response to the RFx;
	13. "**RFx**" means the request for proposal or request for quotation (whichever is applicable) issued by the Customer to procure the Goods and/or the Services, as reflected in **Schedule A**;
	14. “**SARB Group Information”** means any Confidential Information pertaining to the Bank or a Bank Subsidiary;
	15. "**Services**" means the services (if applicable) rendered by the Supplier to the Customer, it being recorded that the Customer will only be entitled to order the Services set out in **Schedule B**,read with **Schedule C**;
	16. "**Signature Date**" means the date of signature of this Agreement by the last of its signatories;
	17. "**Specifications**" means the requirements, criteria and specifications which the Goods and/or Services are required to meet as set out in **Schedule B**;
	18. "**Standards of Performance**" means the standards specified in this Agreement, including applicable service levels (if any) set out in **Schedule D**;
	19. "**Supplier**"means the Person that will deliver the Goods and/or render the Services to the Customer, as described in **Schedule A**;
	20. "**Target Date**" means the estimated completion date for a project, which date is recorded in **Schedule A** (where applicable) and may be extended by written agreement between the Parties; and
	21. "**VAT**" means Value-Added Tax as levied in terms of the Value-Added Tax Act 89 of 1991.
1. **NATURE OF RELATIONSHIP**
	1. The Supplier will deliver the Goods and/or render the Services to the Customer as an independent contractor and nothing in this Agreement, the RFx, and/or the Proposal will be construed as creating any relationship of agency, employment, partnership or joint venture between the Customer and the Supplier.
	2. The Supplier specifically acknowledges and agrees that this Agreement does not establish an undertaking by the Customer that it will procure minimum or any quantities of the Goods and/or any guaranteed volumes of the Services from the Supplier in future under this Agreement.
	3. The Supplier undertakes and agrees to co-operate and consult with other suppliers of the Customer, should it be necessary for purposes of ensuring the delivery of the Goods and/or rendering of the Services in a seamless manner.
	4. The Supplier will (and will secure same from its Employees) in delivering the Goods or rendering the Services, at all times ensure that it avoids any situation which may reasonably result in a conflict between its interests and those of the Customer.
2. **CONFIDENTIALITY**
	1. This Agreement and the delivery of the Goods and/or provision of the Services will at all times be subject to the confidentiality requirements and provisions incorporated in the RFx, as well as the provisions of the National Key Points Act 102 of 1980 and the South African Reserve Bank Act 90 of 1989. Such requirements and provisions are incorporated herein by reference.
	2. Neither Party will, at any time after the Signature Date, notwithstanding any termination or cancellation of this Agreement, directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of another Person any Confidential Information.

* 1. Confidential Information may be disclosed by a Party (the "**Disclosing Party**") to:
1. Any expert appointed in terms of this Agreement;
2. The extent to which the prior written consent for such disclosure has been obtained from the other Party;
3. The extent to which disclosure is required by law (excluding contractual obligations) or by the rules of any stock exchange by which it (or any of its affiliates) is bound;
4. The extent to which it is made public other than as a result of any breach of this Agreement or any other agreement;
5. The extent to which the Confidential Information corresponds in substance to information disclosed and/or made available by a third party to the Disclosing Party;
6. The extent that it is information which was already in the possession of the Disclosing Party prior to its disclosure by the other Party to the Disclosing Party;
7. The extent to which such Party's directors, responsible Employees and professional advisors require such disclosure for the purpose of the Disclosing Party's implementing or enforcing this Agreement or obtaining professional advice or for the purpose of complying with any law.
	1. Notwithstanding this clause, either Party will be entitled to disclose and use any Confidential Information for the purposes of conducting its business.
8. **SECURITY AND VETTING**
	1. The Supplier recognises and accepts that the Customer and its Cash Centres are deemed National Key Points in terms of the National Key Points Act 102 of 1980 and the performance of its obligations at the Delivery Address(es) in terms of this Agreement will at all times be subject to the Customer’s security requirements (“**Security Rules**”) set out below.
	2. The Supplier will ensure that the Employees comply with all security related instructions issued by or on behalf of the Customer while such Employees are on the Customer's premises.
	3. The Supplier acknowledges and accepts that the Customer may at any time, and at its sole discretion, require it to remove any specific Employee from the Customer's premises;
	4. The Supplier acknowledges and accepts the right of the Customer and its personnel to search the Employees and their baggage at any time while such Employees are on the Customer's premises. The Customer's security personnel will screen all equipment brought onto the Customer's premises by the Supplier or its Employees.
	5. No photographic or electronic records or images of the interior and/or exterior of the Customer's premises may be taken without the prior written consent of the Customer. If such consent is granted, all photographs and other images will be taken under the direct supervision of an authorised representative of the Customer.
9. **SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL**
	1. In the event of a sale, acquisition, merger, or other change of control of the Supplier (a “**Change Event**”) the Supplier must notify the Procurement Division of the Customer of such Change Event within 1 (one) month of the change becoming effective.
	2. Upon being notified of a Change Event, the Customer will conduct the necessary due diligence checks on the Supplier.
	3. The Customer may, in its sole discretion, immediately terminate the Agreement should the Change Event pose any security, reputational and/or operational risk to the Customer.
10. **SCOPE**

The Goods to be delivered and/or the Services to be rendered to the Customer are described in **Schedule B**,read with **Schedule C**.

1. **DURATION**
	1. This Agreement will commence on the Effective Date and terminate on the Expiry Date reflected in **Schedule A**, unless terminated earlier in terms of the Agreement.
	2. The Customer reserves the right to renew the Agreement on the basis as set out in **Schedule A**, on the same terms and conditions as contained in this Agreement. Alternatively, the Customer may enter into negotiations with the Supplier to incorporate new terms or to amend certain terms pursuant to exercising its election to renew this Agreement.
	3. In the event where the Agreement is not concluded for a fixed term but instead relates to the execution of a project, the Target Date for completion of the project will be reflected in **Schedule A** (as opposed to an Expiry Date). Such Target Date may be extended by agreement between the Parties. In the case of a project, the Agreement will only expire once the Supplier has met all its obligations and completed all Deliverables and the Customer has accepted all Deliverables as required in terms of this Agreement.
2. **CONSIDERATION AND PAYMENT**
	1. The Customer will pay the Supplier for the Goods delivered and/or the Services rendered in accordance with the fees, rates and/or prices set out in **Schedule C**, which amounts will include VAT (where applicable).
	2. The manner in which and/or frequency with which payment will be made by the Customer to the Supplier is set out in **Part II** of the Agreement, alternatively in **Schedule C**.
	3. The Price will not be subject to any escalation, unless specifically provided for in **Schedule A** and/or **Schedule C**.
	4. All payments will be made by way of electronic funds transfer into the bank account nominated by the Supplier.
3. **INVOICES AND PAYMENT DISPUTES**
	1. The Customer will not be liable for payment of invoices submitted by the Supplier in respect of any fees, rates, expenses and/or prices that are not reflected in **Schedule C**, unless agreed to in writing by a duly authorised representative of the Customer.
	2. Each invoice issued by the Supplier will specify in sufficient detail the Goods delivered and/or Services rendered to which the invoice relates and set out the Price payable in respect thereof. Each invoice will be accompanied by a statement of account (where applicable) and any relevant supporting documentation such as time sheets and/or delivery notes.
	3. The Customer will pay all undisputed invoices within the period stipulated in **Schedule A** of receipt of the Supplier’s duly issued tax invoice and accompanying statement of account (where applicable), provided such invoices are accurate and meet all relevant legislative and operational requirements.
	4. The Supplier will submit its invoices to the Customer in the manner as set out in **Schedule A**.
	5. The Customer may withhold payment of fees that it disputes in good faith or, if the disputed fees have already been paid, the Customer may withhold an equal amount from a later payment. If the Customer withholds any such amount, the Customer will promptly notify the Supplier that it is disputing such amount and the basis therefor, which dispute the Parties will promptly address. Any dispute which remains unresolved after a period of 10 (ten) Business Days will be dealt with in terms of the dispute resolution procedures set out in **clause 23** of the Agreement.
	6. The Customer may set off any amounts due to it in terms of the Agreement against any amounts payable by the Customer to the Supplier.
4. **AUDITS**
	1. The Supplier will maintain complete and accurate records and supporting documentation pertaining to the Agreement, including all amounts invoiced to and payments made by the Customer as well as a complete audit trail of the Goods delivered and/or Services rendered under this Agreement, sufficient to permit a complete audit thereof for a period of 5 (five) years after the termination of this Agreement.
	2. The Customer reserves the right to require the Supplier to submit to an audit by any auditor of the Customer’s choosing. The Customer may initiate an audit annually upon 30 (thirty) days written notice to the Supplier or at any time, with 7 (seven) days’ notice, in the event that the Customer become aware of possible fraud and/or any breaches or vulnerabilities of the Supplier’s security and privacy policies and procedures. The Customer and/or its auditor will take reasonable care to limit the impact on the Supplier’s business when conducting the audit.
	3. The Supplier will upon request from the Customer provide access to the auditor appointed by the Customer to all of its records, which relate directly or indirectly to this Agreement. The auditor will be required to comply with the Supplier’s reasonable confidentiality and security requirements. Access may be required either electronically or at the Supplier’s place of business during business hours.
	4. The Supplier agrees to provide such assistance as may be necessary to facilitate the audit by the Customer to confirm the Supplier’s compliance with amongst others applicable legislative and regulatory requirements, business continuity, security, vetting, confidentiality, accounting and financial standards. The provisions of this **clause** **13** applies to all subcontractors of the Supplier and the Supplier will ensure compliance by its subcontractors.
	5. If an audit pursuant to this clause:
5. Discloses overpricing or overcharges of any nature by the Supplier to the Customer in excess of 5% (five percent) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the audit will be reimbursed to the Customer by the Supplier. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Supplier’s invoices and/or records, will be made within 60 (sixty) days from presentation of the Customer’s audit findings to the Supplier; and/or
6. Discovers substantive findings related to fraud, misrepresentation, or non‐performance, the Customer may recoup the costs of the audit work from the Supplier. The Customer may further summarily terminate the Agreement; and/or
7. Discovers breaches or vulnerabilities of the Supplier’s business continuity, security and privacy policies and procedures, the Supplier will implement such controls as the Customer reasonably require to mitigate against information security risks that may arise from the identified vulnerabilities in the Supplier’s systems.
8. **BENCHMARKING**
	1. The Customer requires that the Services be rendered in a cost-effective manner, so that the Customer receives value for money.
	2. The Customer may therefore, at its own cost, from time to time carry out a benchmark evaluation of the Services and the pricing and costs for the Services. A benchmark exercise will not be carried out more than once per calendar year.
	3. The benchmark will constitute a comparative analysis of the pricing and costs for the Services, as compared to the average pricing for an equivalent service quoted for by other independent service providers providing similar services.
	4. The Customer will give the Supplier at least 10 (ten) Business Days prior written notice of its intention to conduct a benchmark exercise. The Supplier will provide all reasonable assistance to the Customer, or to such independent expert as may be appointed by the Customer, in conducting the benchmark exercise.
	5. In the event that the benchmark exercise finds the pricing and costs for the Services are not comparative to an equivalent service quoted for by other independent service providers providing similar services, alternatively are not market related, the Parties will engage in good faith to amend the Price. Should the Parties be unable to reach consensus, the Customer reserves the right to terminate the Agreement without incurring any liability.
9. **FRAUD, BRIBERY, CORRUPTION AND MONEY LAUNDERING**
	1. For purposes of this clause:
10. “**Applicable Anti-Corruption Laws**” means any law or regulation that prevents or combats fraud, corruption, bribery, money laundering or other similar activities in any relevant jurisdiction, including but not limited to the Prevention and Combating of Corrupt Activities Act 12 of 2004, as amended; and
11. “**Associated Person**” means any person (whether juristic or natural) who performs any service for and on behalf of the Supplier, including but not limited to an Employee, agent or subcontractor.
	1. The Supplier represents that, to the best of its knowledge and belief, and save as disclosed to the Customer, neither it nor an Associated Person has been investigated (or is being investigated or is subject to a pending or threatened investigation) in relation to any contravention of Applicable Anti-Corruption Laws by any law enforcement, regulatory or other governmental agency or any customer or supplier; or has admitted to or been found by a court in any jurisdiction to have engaged in, any activity in contravention of Applicable Anti-Corruption Laws.
	2. The Supplier undertakes to –
12. comply with all Applicable Anti-Corruption Laws;
13. implement reasonably adequate processes and procedures to prevent it or any Associated Person from engaging in an activity which would constitute an offence under Applicable Anti-Corruption Laws;
14. promptly, during the term of this Agreement, notify the Customer of any alleged or actual contravention of Applicable Anti-Corruption Laws, or of any investigation in respect of such an alleged contravention, whether against it or any Associated Person;
	1. The Supplier warrants that it and its Associated Person(s) have not made, offered, or authorised and will not make, offer, or authorise with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any officer or employee of the Customer or any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate Applicable Anti-Corruption Laws.

* 1. A breach by the Supplier of any of the provisions of this clause will be deemed to be a material breach of this Agreement, entitling the Customer, without prejudice to any of its rights under this Agreement or at law, to terminate this Agreement with immediate effect.
	2. Despite any contrary provision elsewhere (including other provisions in this or other agreements between the Parties), the Supplier will be liable for and will indemnify, defend and hold the Customer harmless to the maximum extent provided in law from and against any Losses incurred in connection with or arising from the investigation of, or defense against, any litigation or other judicial, administrative, or other legal proceedings brought against the Customer by a regulator or governmental enforcement agency as a result of acts or omissions by the Supplier or its Associated Person(s) in contravention of, or alleged contravention of, Applicable Anti-Corruption Laws. The indemnity contained in this clause will survive the termination of the Agreement.
	3. The Customer may at any time request the Supplier to provide a declaration to the effect that neither it nor any of its Associated Person(s), directors, officers, agents or other representatives acting on its behalf in connection with its performance under this Agreement have engaged in any transaction or activity in contravention of Applicable Anti-Corruption Laws. Upon request, the Supplier will deliver such declaration within 10 (ten) Business Days.
1. **GENERAL WARRANTIES**

 The Supplier warrants and represents to the Customer that:

* 1. It has the necessary expertise, experience, resources, equipment and infrastructure to deliver the Goods and/or render the Services in a professional manner and in accordance with the Standards of Performance set out in **Schedule D** (if any);
	2. It is a member of all professional and other bodies as may be required by applicable legislation and/or relevant industry regulations pertaining to its business and that such membership is current and valid and will be maintained for the Duration of the Agreement;
	3. It holds, and will hold throughout this Agreement, all licences, certificates or certification, permits, consents, registrations, accreditations and authorities required to perform its obligations pursuant to this Agreement, the details of which are set out in **Schedule A** (if any);
	4. It will comply with all applicable laws in performing its obligations pursuant to this Agreement;
	5. It will comply with the Customer’s health, safety, security, environmental, information technology and other standards (whichever is applicable);
	6. It will not infringe any third party’s Intellectual Property rights, alternatively use or incorporate into its Goods and/or the Services any Intellectual Property of a third party without such third party’s prior written consent;
	7. It has documented business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that products and services provided under this Agreement will be maintained continuously in the event of a disruption to the Supplier’s operations, regardless of the cause of the disruption;
	8. Reasonable care has been taken to ensure that all information and documents given to the Customer by the Supplier in its Proposal, was, at the time it was so given, and is, as at the Signature Date, true, accurate and complete;
	9. A breach of any of the warranties contained in this clause or in the Specific Warranties clause in **Part II** of this Agreement will be deemed to be a material breach of the Agreement entitling the Customer to terminate the Agreement forthwith, provided that the Supplier has failed to remedy such breach when called upon to do so in accordance with the provisions of **clause** **24**, unless such breach is incapable of being remedied. A termination under this clause will be without prejudice to any of the Customer’s rights; and
	10. The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Goods and/or Services.

1. **MANAGEMENT OF SUPPLIER’S EMPLOYEES**
	1. The Employees will at all times be and remain the Employees of the Supplier. The Customer will not be deemed to have accepted responsibility for the Employees, irrespective of whether the Customer was involved in and/or otherwise consulted in the selection of the Employees to be used by the Supplier for the delivery of the Goods and/or rendering of the Services.
	2. The Supplier will ensure that the Employees are able to communicate in the English language to the reasonable satisfaction of the Customer.
	3. The Customer will be entitled, by written notice to the Supplier at any time, to require the Supplier to:
2. replace any of the Employees with another Employee that has at least the same skills, expertise and experience within a reasonable period, at its own cost; or
3. remove any of the Employees from the Delivery Address.
	1. The Supplier will immediately comply with any directive as provided for in **clause 17.3**, provided that such directive by the Customer will be pursuant to the reasonable exercise of its discretion.
	2. In delivering the Goods and/or rendering the Services the Supplier will use all reasonable endeavours to ensure that the Employees deliver the Goods or render the Services with minimal disruption to the Customer and its staff, including making provision for sufficient back-up Employees to fill-in for each other when and if necessary.
4. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
	1. The Supplier will maintain its B-BBEE level as evidenced by means of a current, valid B-BBEE certificate (where applicable) for the Duration of this Agreement.
	2. Should the Supplier fail to maintain its B-BBEE level for the Duration of this Agreement, then:
5. The Supplier will notify the Customer in writing of such change in its B-BBEE level within 7 (seven) days of the Supplier becoming aware of such change; and
6. The Customer may, upon written notice to the Supplier, request that the Supplier take reasonable steps to remedy the deterioration in its B-BBEE level, failing which the Customer may invoke the provisions of **clause 24**.
7. **DATA PROTECTION AND PRIVACY**
	1. The Parties acknowledge that they may, from time to time, share personal information, as defined in the Protection of Personal Information Act No. 4 of 2013 (POPIA), with one another as a result of this Agreement.
	2. Where the Parties share personal information with each other, the provisions contained in **Part IV: Annexure 1** and **2** of this Agreement will apply.
	3. The nature of the information sharing relationship between the Parties for purposes of POPIA is set out in **Schedule A**,together with the type of personal information that will be processed.
	4. The Customer’s privacy notice is available at [SARB Privacy Notice](https://www.resbank.co.za/content/dam/sarb/quick-links/popia-policy-/SARB%20Group%20Privacy%20Notice%20Version%201.0.pdf) and forms part of this Agreement.
	5. It is recorded and agreed that the Customer has notified its employees that it may from time to time share personal information with its associates, authorized third parties or in compliance with applicable law or a court order.
	6. Notwithstanding **clause 13**,the Customer may reasonably require the Supplier to demonstrate its compliance with the provisions of POPIA and any applicable internal policies and procedures by allowing the Customer to conduct an audit of the Supplier, sufficient enough for the Customer to determine the Supplier’s level of compliance.
	7. Notwithstanding **clause 22**,the Supplier will indemnify the Customer against any Losses that may arise from the Supplier’s non-compliance with POPIA, or alternatively any other applicable data protection legislation.
8. **INTELLECTUAL PROPERTY**
	1. It is recorded that the Customer and the Supplier will each retain ownership of any and all Intellectual Property that such Party owned as at the Signature Date and which it may acquire during the lifetime of this Agreement.
	2. This Agreement will further be subject to any additional provisions relating to Intellectual Property set out in **clause 42** of the Agreement.
9. **LIMITATION OF LIABILITY**
	1. The Supplier will be liable to the Customer for any Losses incurred by the Customer as a result of the breach by the Supplier of the terms and conditions contained in the Agreement, to the extent specified in **clause 44** of the Agreement.
	2. In no event, unless otherwise provided for in **Part II** of this Agreement, will either Party be liable, whether claimed in breach of contract, delict or under statute for –
10. any incidental, indirect, special, or consequential damages or loss; and/or

1. loss of use, revenues, profits or savings; and/or
2. claims, demands or actions against the other Party by any Person, or payments made by or due from the other Party to third parties.
	1. The limitations of liability set forth in **clause 21.2** and **clause 44** of the Agreement will not apply to either Party in respect of any:
3. infringement of a third party’s Intellectual Property rights; or
4. breach of confidentiality; or
5. loss of data; or
6. unlawful processing of personal information, as defined in the Protection of Personal Information Act 4 of 2013; or
7. claims for death or personal injury resulting from the negligence or wilful misconduct of either Party and/or their appointed agents or liability resulting from the wilful misconduct of either Party.
	1. The limitations of liability set forth in **clause 21.2** and **clause 44** of the Agreement will furthermore not apply to Losses suffered arising from the investigation of, or defense against, any litigation or other judicial, administrative, or other legal proceedings brought against the Customer by a regulator or governmental enforcement agency as a result of acts or omissions by the Supplier or its Associated Person(s) in contravention of, or alleged contravention of Applicable Anti-Corruption Laws or POPIA.
8. **INDEMNITY AND INSURANCE**
	1. The Supplier further indemnifies the Customer in respect of all Losses incurred by the Customer as a result of a breach of this Agreement by the Supplier.
	2. The indemnity provided for in **clause 22.1** will be subject to:
9. The Customer giving the Supplier a reasonable notice in writing of any claim;
10. The Supplier assuming sole control of the defense or settlement of the claim in consultation with the Customer;
11. The Customer using reasonable measures to mitigate any Losses that may occur; and
12. The Customer giving the Supplier all reasonable information and assistance in connection with such action.
	1. The Supplier also undertakes to procure and maintain at its cost and at all times during the subsistence of this Agreement adequate insurance policies with reputable insurers reasonably acceptable to the Customer, necessary to cover its normal business exposures and exposures and liabilities in terms of this Agreement, as well as:
13. to protect them against the financial consequences of damage to/loss of their own property/assets (including vehicles)/liabilities towards their Employees; and
14. such other specific insurance coverage as may be prescribed in **Schedule A** (if any).
	1. The Supplier will on demand furnish the Customer with such evidence as the Customer may require that the foregoing insurance cover has been obtained and is being maintained.
15. **DISPUTE RESOLUTION**
	1. Save in respect of those provisions in this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising out of this Agreement will first be mediated between a nominee of the Supplier and a nominee of the Customer.
	2. Should the persons referred to in **clause** **23.1** not be able to resolve the said dispute within a period of 14 (fourteen) days from the date of commencement of the mediation, it will be referred for arbitration.
	3. The dispute will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa, provided that either Party will be entitled to approach a court of competent jurisdiction for urgent relief.
	4. This clause will be severable from the rest of the Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of the Agreement
16. **BREACH**
	1. Should a Party breach any provision of the Agreement, then the aggrieved Party will be entitled to require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable period agreed to between the Parties.
	2. If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party’s obligations, whether due or not. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.
17. **TERMINATION**
	1. Either Party will be entitled to terminate this Agreement as provided for in terms of the Agreement with immediate effect, should the other Party –
18. be placed under compulsory, or take any steps toward, voluntary winding-up, liquidation or business rescue, to the extent permitted by applicable law; or, being a natural person, commit an act of insolvency; or be provisionally or finally sequestrated; or
19. be deregistered or take any steps to be deregistered by the Companies and Intellectual Property Commission; or
20. suffer any judgement to be obtained against it and allow such judgement to remain unsatisfied or fail to apply for the rescission thereof within a period of 10 (ten) Business Days from the time the judgement was obtained; or
21. do or suffer any act or thing whereby the other Party’s rights or interest may be prejudiced or which might cause the other Party to suffer any loss or damage.
	1. The Supplier acknowledges and accepts that it is a material term of this Agreement that the Standards of Performance prescribed in **Schedule D** (if any) be maintained for the entire Duration of this Agreement, failing which the Customer my terminate the Agreement with immediate effect.
	2. The Customer may on written notice to the Supplier terminate the Agreement for the sake of convenience, if provided for in **Schedule A**, in accordance with the notice period stipulated in **Schedule A** (if any).
	3. Upon termination for whatsoever reason except breach of the Agreement, the Supplier will only be entitled to be paid for the Goods delivered and/or the Services rendered.
22. **CESSION, ASSIGNMENT AND SUBCONTRACTING**
	1. The Supplier will not cede or assign any of its rights or delegate any part of its obligations in terms of this Agreement without the Customer’s prior written consent, which may be withheld at the Customer’s sole discretion.
	2. The Supplier will not enter into any subcontract in respect of the delivery of the Goods and/or rendering of the Services without the prior written approval of the Customer which approval may be given at the Customer's sole discretion, unless such subcontracting arrangement was disclosed upfront in the Supplier’s Proposal.
	3. Approval given in terms of **clause 26.2** will not relieve the Supplier of any responsibility, duty or obligation imposed upon it in terms of this Agreement, or by the Customer. The Supplier will be and remain solely liable and responsible for the delivery of the Goods and/or rendering of the Services, all acts, omissions, negligence or breaches of the Agreement on the part of the subcontractor or any of its Employees.
	4. The details of any subcontractors who have been appointed by the Supplier to execute a portion of the contract are set out in **Schedule A**.
	5. The Supplier will ensure that its subcontractors are bound by an agreement containing substantially the same terms and conditions as those set out in this Agreement and any subcontractors appointed by the Supplier will be the direct responsibility of the Supplier.
	6. The Customer may at its sole and absolute discretion pay any subcontractor who executed any portion of the Supplier's obligations directly and the amount paid to any such subcontractor by the Customer will be deducted from any amount due by the Customer to the Supplier in terms of this Agreement.
	7. Nothing in **clause 26.6** will be construed as placing an obligation on the Customer to pay any subcontractor of the Supplier.
	8. If the Supplier fails to inform and obtain the necessary written consent from the Customer, the Supplier will be deemed to have breached a material term of this Agreement and the Customer will be entitled to terminate the Agreement without any prior notice to the Supplier.
23. **DISENGAGEMENT ASSISTANCE**
	1. The Supplier agrees that, notwithstanding the termination of this Agreement for any reason whatsoever the Supplier will, if so required by the Customer, assist the Customer with the seamless transition of the delivery of the Goods and/or rendering of the Services to an incoming supplier. Any disengagement assistance required by the Customer is set out in **Schedule B** (if applicable).
24. **FORCE MAJEURE**
	1. In the event of any act beyond the control of a Party or of any circumstances arising beyond the reasonable control of a Party hereto such as war, fire, flood, explosion, lightning, storm, earthquake, strikes, riots, insurrection, level 4 (or higher) load-shedding, an epidemic or pandemic, state of emergency or disaster or other act of God preventing or delaying such Party from the performance of any obligation hereunder, then the Party affected by such *force majeure* will be relieved of its obligations hereunder during the period that such *force majeure* continues.
	2. Written notice will promptly be given by the affected Party of any such inability to perform. Such Party will not be liable for any Losses which the other Party may suffer due to, or resulting from the *force majeure*.
	3. Should the *force majeure* continue for a period of more than 20 (twenty) Business Days, then either Party has the right to terminate the Agreement with immediate effect.
	4. The Supplier consents that during any period of *force majeure* the Customer will be entitled to procure the Goods and/or Services from a third party supplier.
25. **ADDRESSES AND NOTICES**
	1. The Parties choose as their *domicilia citandi et executandi* for the purpose of giving or serving any notice (other than communication of day-to-day operational matters in relation to the rendering of the Services) the addresses set out in **Schedule A**.
	2. For purposes of this clause, the word “notice” will include a notice with regard to a dispute, demand, breach, renewal and termination.
	3. All notices given in terms of this Agreement will be in writing:
26. For delivery by hand: a notice will be deemed to have been received by the addressee on the 1st (first) Business Day after the date of delivery during normal office hours;
27. For delivery by pre-paid registered mail from an address within the Republic of South Africa: a notice will be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such dispatch; and
28. For delivery by email: a notice will be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, with an automatic “read receipt” not constituting acknowledgement of an e-mail for purposes of this clause.
	1. E-mailed notices of intended legal proceedings as contemplated in the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 will remain subject to section 4(2) of this Act.
29. **PARTIES’ REPRESENTATIVES**
	1. In order to ensure that a successful working relationship is maintained between the Parties, the Customer and the Supplier will each designate an appropriately qualified and skilled employee with sufficient seniority, who will act as its primary day-to-day representative for purposes of managing its obligations in terms of the Agreement; and to whom all communications from the other Party (other than legal processes) should be addressed.
	2. The Parties’ respective representatives are reflected in **Schedule A**. Either Party may, on 14 (fourteen) days written notice to the other Party, change their nominated representative.
30. **GENERAL**
	1. This Agreement constitutes the sole record of the Agreement between the Parties in relation to the subject matter hereof. Neither Party will be bound by any representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
	2. No indulgence granted by a Party will constitute a waiver of any of that Party's rights under the Agreement; accordingly, that Party will not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.
	3. The Supplier will pay all legal costs, as between attorney and own client, incurred by the Customer as a result of any breach of the Agreement by the Supplier.
	4. The Supplier may not utilise the Customer’s name in any marketing material or prospectus, unless the Customer’s prior written consent has been obtained.  Use of the Customer’s logo is prohibited.  The Customer will furthermore, as a matter of policy, not provide any references to suppliers except to confirm that a Supplier has rendered services, worked on a project, supplied goods to the Customer, or has been appointed to a panel of service providers for the Customer during a specific period, unless a deviation from the Customer’s Group Procurement and Supplier Management Policy has been approved by the relevant delegated authority.
	5. The Agreement will be governed by the laws of the Republic of South Africa and the Parties submit to the jurisdiction of the courts of the Republic of South Africa.
	6. Unless otherwise provided for in this Agreement, no addition to, variation, novation or agreed cancellation of any provision of the Agreement will be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
	7. It is specifically recorded that the Parties may correspond via e-mail during the currency of the Agreement. For the purposes of this Agreement, a “written document” will include any written document that is in a form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002 and “sign” will mean a signature executed by hand with a pen or by means of any electronic process or intervention.
	8. Any provision of this Agreement which is, or becomes invalid, unenforceable or unlawful in any jurisdiction will, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the other provisions of the Agreement, which will remain of full force and effect.
	9. Where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement such action will not be unreasonably delayed or withheld.
	10. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

**PART II: CONTRACT SPECIFIC TERMS AND CONDITIONS**

**(PROFESSIONAL SERVICES)**

1. **DEFINITIONS**

 Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings and related expressions will have corresponding meanings (capitalised terms not defined herein, are defined in **Part I** of this Agreement):

* 1. "**Account Manager**" means the person designated by the Supplier as its representative in **Schedule A** to manage the Services;
	2. "**Customer Equipment**" means any equipment, tools, materials, apparatus, machinery, hardware, software and/or information technology infrastructure owned, controlled or operated by the Customer;
	3. “**Instructions**” means any instructions issued by the Customer to the Supplier relating to the Services or Project, whichever is applicable;

* 1. “**Key Personnel**” means the Employees (whether by name or description) put forward by the Supplier in its Proposal and reflected in **Schedule A**,or as substituted from time to time by agreement between the Parties, who will be involved with the rendering of the Services or execution of the Project;
	2. “**Penalty**” means the amount or percentage of the Service Fee payable by the Supplier to the Customer in terms of **Schedule D** (if any);
	3. “**Problem Escalation Procedures**” means the procedures set out in **Schedule D**;

* 1. **“Project”** means the project detailed in **Schedule B**;
	2. **“Project Manager”** means the person designated by the Supplier in **Schedule A**, to manage a Project (where applicable);
	3. "**Project Plan**" means, where the Services are Project related, a sufficiently detailed plan setting out amongst others the manner in which the Supplier will provide the Deliverables to the Customer, and specifying the agreed dates on which Deliverables are to be completed, delivered, and signed-off by the Customer which will be contained in **Schedule B,** alternatively attached to **Part IV** of this Agreement;
	4. “**Quality Assurance**” means the process of verifying if the Services were rendered or the Project was executed in accordance with the Specified Objectives and if the Supplier provided the Customer with acceptable Deliverables;
	5. “**Rejection Notice”** means a notice issued by the Customer to the Supplier setting out the Customer’s reasons for rejecting a specified Deliverable;
	6. “**Retention**” means the amount or percentage of the Service Fee which the Customer may retain as security for the due and proper performance of the Services or execution of the Project, as set out in **Schedule A**.
	7. “**Service Address**” means the Delivery Address(es) specified in **Schedule A**, at which the Services must be rendered or the Project executed, which terms will be used interchangeably in this Agreement;
	8. “**Service Fee**” means the Price payable by the Customer to the Supplier for the Services or execution of the Project as set out in **Schedule C**, which terms will be used interchangeably in this Agreement;
	9. “**Service IP**” means any Intellectual Property created by the Supplier and its Employees during the course of providing the Services or executing the Project and excludes the Supplier’s pre-existing Intellectual Property rights;
	10. "**Specified Objectives**" means the Customer's aims, objectives, requirements and expectations in respect of the Services or Project (whichever is applicable) as set out in **Schedule B**;
	11. “**Working Hours**” means the hours during which the Supplier is required to render the Services or complete the Project as set out in **Schedule A**; and
	12. “**Work Programme**” means, where the Services are not Project related, a schedule specifying the Target Date(s) by which the Services will be rendered and/or the Deliverables are to be completed, delivered, and signed-off by the Customer.

1. **ACCESS TO THE SERVICE ADDRESS**
	1. Where necessary, the Customer will provide the Supplier with access to the Service Address(es) for purposes of and in connection with the rendering of the Services or execution of the Project.
	2. The Supplier will be granted access by the Customer to any of the Customer's facilities that are reasonably necessary for the Supplier to render the Services or execute the Project.
2. **CUSTOMER EQUIPMENT**
	1. It is recorded that from time to time, the Supplier and/or its Employees, may be required and/or may need to use Customer Equipment in the rendering of the Services or execution of the Project. Any such usage will not be construed as a presumption of employment of any of the Supplier’s Employees as provided for in Section 200A of the Labour Relations Act 6 of 1995 and will be subject to the provisions of this clause.
	2. Unless otherwise provided in this Agreement, the Supplier and/or its Employees, as the case may be, will be entitled to use the Customer Equipment provided that:
3. The Customer consents in writing to the use of such Customer Equipment prior to the use thereof;
4. The Supplier will be responsible for timeously arranging for, and for the costs associated with, the repair of any damage to the Customer Equipment caused due to its negligence and/or wilful default or the negligence and/or wilful default of any of its Employees; and
5. Ownership of the Customer Equipment will at all times vest in the Customer.
	1. Upon termination of the Services or completion of the Project, the Supplier will (where applicable) within 5 (five) Business Days following such termination or completion, return all Customer Equipment to the Customer in substantially the same condition as it was received, reasonable wear and tear excluded.

1. **SUPPLIER’S REPRESENTATIVE**
	1. The Supplier’s representative (i.e. Account Manager or Project Manager, whichever is applicable), will be responsible for, amongst others, the following:
2. management, administration, monitoring and supervision of the Services or execution of the Project;
3. ensuring that the Services or Project (whichever is applicable) are rendered or executed in accordance with the Standards of Performance (if any) as well as in accordance with the Scope;
4. Quality Assurance of the Services or Project;
5. facilitation of any consents or approvals required from the Customer; and
6. certification of Services rendered or payment milestones achieved, whichever is applicable.
	1. The Supplier’s representative will ensure that lawful and reasonable Instructions received from the Customer are executed.
	2. Any corrective action and improvements recommended by the Customer and agreed with the Supplier will be implemented by the Supplier’s representative within the time frame agreed between the Parties from time to time.
7. **EMPLOYEES OF THE SUPPLIER**
	1. The Employees utilised by the Supplier to render the Services to the Customer will comprise of the Employees in number, name and/or credentials as set out in the Proposal, which Employees may be substituted from time to time by agreement between the Parties.
	2. Where the Customer is of the view that the Supplier has failed to dedicate a sufficient number of suitably qualified and trained Employees to render the Services or execute the Project in accordance with the timelines and or Standard of Performance (if any) contained in this Agreement, the Customer reserves the right to intervene and to instruct the Supplier to allocate additional resources to the Services or Project at no additional cost.
	3. Where the Supplier is providing resources to the Customer that are being paid for on a time and materials basis, the Customer further reserves the right to instruct the supplier to remove any redundant or over qualified Employees from the Services or Project.
	4. In providing the Services or executing the Project, the Supplier will use all reasonable endeavours to ensure that the Employees provide the Services or execute the Project with minimal disruption to the Customer and its personnel.
	5. The Customer may request the Supplier to replace an Employee who is incapable of achieving the Specified Objectives or alternatively cannot meet the Standards of Performance (if any) set out in **Schedule D**.
	6. Should it at any time become necessary to replace an Employee, either on request from the Customer or for any other reason, the Supplier will immediately remove the Employee and within a maximum of 30 (thirty) days, or such alternative period as may be agreed between the Parties, substitute such Employee with an Employee that has similar skills, experience and qualifications.
	7. The Supplier will use reasonable endeavors to ensure the availability of its Employees approved by the Customer for purposes of providing the Services for the full Duration of the Agreement.
	8. Should any of the Supplier’s Key Personnel no longer be available to render the Services or execute the Project after the Effective Date, the Customer reserves the right to conduct a thorough assessment of the substitute Key Personnel proposed by the Supplier and if, in the Customer’s sole discretion, the Services or Project will be adversely affected through such substitution, the Customer may summarily terminate this Agreement.
8. **CHANGE CONTROL PROCEDURES**
	1. From time to time during the Duration of this Agreement, the Supplier or the Customer may propose changes to the scope of the Services or the Project.
	2. Should any changes be proposed to the scope of the Services or the Project by the Supplier, the reasons for the change and the anticipated impact of such changes, including any price- and/or service implications, must be clearly set out in a change document.
	3. The Customer may either accept or reject the proposed change within 10 (ten) Business Days of receiving the written request from the Supplier.
	4. Where the Customer rejects a change proposed by the Supplier and such proposed change arose as a result of a negligent act or omission solely attributable to the Supplier, the Supplier will have no recourse against the Customer in the event that the Customer’s refusal to accept the change, results in the Supplier’s inability to produce the requisite Deliverables.
	5. Should any changes be proposed to the scope of the Services or the Project by the Customer, the Supplier will provide the Customer with a written response setting out the anticipated impact of such changes on the Services or Project, including any price- and/or service implications within 10 (ten) Business Days, or any longer period the Parties may agree to, of receiving the written request from the Customer.
	6. No changes or additions to the scope of the Services or Project will be effective or binding on the Parties unless the proposed change is reduced to writing and signed by authorised representatives of both Parties.
	7. Pending written agreement the Parties will continue to perform their obligations without taking account of the proposed changes.
	8. Neither Party will be obliged to agree to any change proposed by the other Party but the Parties will not without valid reasons withhold their agreement to a proposed change.
9. **QUALITY ASSURANCE AND/OR ACCEPTANCE TESTING**
	1. Quality Assurance and/or acceptance testing whichever is applicable) will be conducted in respect of the Services or Project in accordance with the Quality Assurance standards and/or acceptance testing criteria contained in **Schedule B**, alternatively attached to **Part IV** of this Agreement.
	2. The Customer’s duly authorised representative will sign off each Deliverable, provided that the Deliverable meets the specified Quality Assurance standards and/or acceptance testing criteria (if any).
	3. Where the Customer is of the view that the Services have not been rendered, alternatively the Project has not been executed in accordance with the specified Quality Assurance standards and/or acceptance testing criteria (if any), the Specified Objectives, the Specifications (if any), Good Industry Practice or the Standards of Performance (if any) set out in this Agreement, the Customer will issue a Rejection Notice to the Supplier. The Rejection Notice will contain details of the reasons why the Customer is of the opinion that the Services have not been rendered in accordance with the Quality Assurance standards and/or acceptance testing criteria.
	4. The Rejection Notice may afford the Supplier the opportunity of remedying, replacing or re-testing the relevant Deliverable(s) at the Supplier's cost and expense, within the period stipulated in the Rejection Notice. Such period will be mutually agreed between the Parties.
	5. In the event that the Customer again fails to accept the amended Deliverable(s) or any part thereof within 5 (five) Business Days of the Customer receiving such Deliverable(s), the Customer will be entitled, to:
10. require the Supplier to provide a work-around until such time as the requisite Deliverable is accepted by the Customer; or
11. receive a refund for any Service Fee paid for such rejected Deliverable(s) and/or any related Services; or
12. retain the amount or percentage reflected as Retention in **Schedule A** (if any) until such time as the requisite Deliverable is accepted by the Customer; or
13. appoint a third party service provider to take over the Services or the Project from the Supplier and claim damages, if any suffered by the Customer from the Supplier; or
14. claim any damages suffered by the Customer from the Supplier.
	1. Final acceptance will only occur when the Customer certifies in writing that it is satisfied that each and every Deliverable related to the Services or Project, whichever is applicable, has been completed to its satisfaction.
	2. All costs incurred by the Supplier as a result of the Customer exercising its rights in terms of this clause will be for the Supplier's account, unless it is found by way of dispute resolution or otherwise, that final acceptance of the Deliverable(s) was wrongfully refused or delayed.
	3. Payment by the Customer under this Agreement will not be construed as acceptance by the Customer of any Deliverables.
	4. Any acceptance of the Deliverables will not relieve the Supplier of its warranty obligations or liability in terms of this Agreement.
	5. The issuing by the Customer of a Rejection Notice will not affect the Supplier’s liability for the payment of any Penalties (if such Penalties are agreed and recorded in **Schedule D**) due to the Customer in terms of **clause 40**.
15. **STANDARDS OF PERFORMANCE**
	1. The Supplier is obliged to comply with the Service Levels set out in **Schedule D** (if any).
	2. It is recorded that multiple Service Level Failures(i.e.more than three incidents in one calendar month, or during two consecutive months) will be sufficient proof of persistent non-compliance by the Supplier and will constitute a material breach as contemplated in **clause** **25.2**.
	3. The Customer may require the Supplier to comply with certain reporting obligations regarding its adherence to the Service Levels, on the basis and in the format set out in **Schedule A**.
16. **PENALTIES**
	1. It is recorded that the rendering of the Services or execution of the Project in accordance with the timelines set out in the Works Programme or Project Plan and the Standards of Performance in **Schedule D** (if any), is of material importance to the Customer and any non-adherence to such timelines or Standards of Performance may impact adversely on the Customer’s business.
	2. Accordingly, in the event that the timelines or Standards of Performance are not adhered to by the Supplier due to factors attributable to the conduct of the Supplier and/or its Employees, the Customer will be entitled, but not obliged, and without prejudice to any of its other rights, to charge the Supplier a Penalty calculated as agreed and set out in **Schedule D** (if any), which Penalty will be payable by the Supplier to the Customer on demand.
	3. Should the Supplier fail to make payment of any Penalty due to the Customer, the Customer will be entitled to set-off such Penalty against any Service Fee payable to the Supplier, provided that such Penalties are not disputed. In the event that the Penalties are disputed, the Customer may withhold payment of an amount equivalent to the Penalty until the Dispute has been finally resolved.
17. **SPECIFIC WARRANTIES**
	1. The Supplier warrants and represents to the Customer that:
18. The Deliverables will, as of the date of final acceptance as contemplated in **clause 38.6**, be free from defects and suitable for the purpose for which the Supplier was appointed, with reference amongst others to the Specifications and the Specified Objectives;
19. It will render the Services timeously, alternatively complete the Services or Project by the Target Date(s) specified in **Schedule A** (where applicable);
20. It will at all times use and adopt the best available techniques and standards to enable it to render the Services or execute the Project in a fit and proper manner and to render the Services or execute the Project with due care, skill and diligence;
21. It will at all times comply with the reasonable Instructions of the Customer's representative and co-operate, communicate and closely consult with such entities, partners and third parties as the Customer may reasonably require in relation to the Services or execution of the Project from time to time. The Customer will however be responsible for the management of such third parties and their performance, including their attendance at meetings and the timelines and quality of their input and work;
22. It will for the Duration of this Agreement have a sufficient number of adequately qualified, skilled and experienced Employees to render the Services or execute the Project in accordance with the provisions of this Agreement; and
23. The Services, Project and/or specified Deliverables are sufficient, insofar as sufficiency reasonably depends on the Supplier, to ensure that the Customer is able to successfully achieve the Specified Objectives.
	1. In addition to the warranties set out in **clause 41.1**, the Supplier will also provide to the Customer the warranties described in **Schedule A** (if any).

1. **INTELLECTUAL PROPERTY**
	1. To the extent necessary for the rendering of the Services or execution of the Project, the Customer and the Supplier hereby grant to the other a royalty free licence, valid for the Duration of the Agreement to make use of their respective Intellectual Property, solely for purposes of facilitating the rendering of the Services or execution of the Project.
	2. The aforesaid license is granted on the basis that the Intellectual Property is made available as is, without warranty of any kind.
	3. The Parties accept and agree that a Party will not acquire or have any claim to the ownership and/or continued use in any Intellectual Property:
2. Owned by or licensed to the other Party;
3. Used by the other Party; and/or
4. In which the other Party has interests, vested or otherwise.
	1. If the Supplier, in the course of its engagement with the Customer expressly and exclusively for the Customer creates, makes or discovers any Intellectual Property, work, invention or design (collectively “Service IP”) or makes any improvement upon or derivation from any existing Intellectual Property of the Customer, whether or not the same has, or is capable of having, patent, registered design, copyright, design right, or other like protection and whether alone or in conjunction with any other person, such Service IP will vest in the Customer and the Supplier will at the Customer’s request and expense do all such acts and execute all such documents as may be necessary (including waiving any moral rights) to transfer all rights in and to or relating to any such work, invention, design or improvement in the name of the Customer, so that all such rights will become the absolute property of the Customer or its nominee.
	2. For the purpose of this clause, the Supplier irrevocably appoints the Customer as its attorney in its name to execute all documents and do all things required to give effect to the provisions of **clause 42.4**.
	3. The rights and obligations under this clause will continue in force after the termination of this Agreement in respect of Service IP created during the Supplier’s appointment and will be binding upon the heirs, successors and assigns of the Supplier.
5. **CONSIDERATION AND PAYMENT**
	1. The Customer will be liable to pay the Supplier the Service Fee reflected in **Schedule C**.
	2. The Supplier will submit to the Customer a tax invoice and a statement of account (where applicable) in a format acceptable to the Customer, setting out the amount owed to the Supplier.
	3. The Customer will pay the Supplier within the period stipulated in **Schedule A** of receipt of a duly issued tax invoice and accompanying statement of account (where applicable).
	4. The Supplier will not be entitled to claim payment from the Customer in respect of any disbursements and/or travel and/or subsistence expenses incurred unless expressly stipulated in **Schedule C**.
6. **LIMITATION OF LIABILITY**
	1. The total liability of a Party in respect of any claim arising in terms of this Agreement (whether arising from negligence, breach of contract or otherwise howsoever) is limited to twice the aggregate Service Fee, subject to **clause 21.3**.
7. **NON-SOLICITATION**
	1. The Parties acknowledge that both Parties have invested substantial time, capital and resources into the training of their Employees.
	2. The Parties accordingly agree that neither Party will, for the Duration of this Agreement and for 12 (twelve) months after termination of the Agreement, without the prior written consent of the other Party, solicit for employment, whether directly or indirectly, any person who during the currency of the Agreement is or was an employee or contractor of the other Party.
	3. It will not be a violation of this clause for a Party to advertise vacancies in the generally available media and to hire the other Party's Employees that may contact it as a consequence of such undertaking, in which case the Supplier confirms that any restraint of trade clauses applicable to its Employees in terms of their employment agreements with the Supplier will be waived.
8. **SIGNATURES**

 This Agreement is thus done and signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in his/her capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Customer being duly authorised thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For the South African Reserve Bank**

This Agreement is thus done and signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in his/her capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Customer being duly authorised thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For the South African Reserve Bank**

This Agreement is thus done and signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in his/her capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Supplier being duly authorised thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For *[insert supplier name]***

Cascade Ref: ***[Insert]***

CMS Ref: ***[Insert]***

LSD Ref: ***[Insert]***

**PART III: SCHEDULE A – KEY DETAILS OF THE AGREEMENT**

|  |
| --- |
| **PART I: GENERAL TERMS AND CONDITIONS** |
| **ITEM** | **CLAUSE REF** | **VARIABLES** | **DETAILS** |
|  | Part I: 4.24 | **RFx no.** |  |
|  | Part I: 4.7 | **Customer** | South African Reserve BankEstablished in terms of Section 9 of the Currency and Banking Act 31 of 1920 and governed by the South African Reserve Bank Act 90 of 1989 (as amended) |
|  | Part I: 4.30 | **Supplier** |  |
|  | Part I: 4.16 & 4.25 | **Short description of the Goods / Services or Works** |  |
|  | Part I: 4.9 &Part II:32.13 | **Delivery Address(es) / Service Address(es)** |  |
|  | Part I: 4.12 | **Effective Date** |  |
|  | Part I: 4.14 & 10.1 | **Expiry Date**  |  |
|  | Part I: 4.31 & 10.3 | **Target Date** |  |
|  | Part I: 4.11 | **Duration** |  |
|  | Part I: 10.2 | **Renewal** | Option to renew | YES | NO |
|  |  |
| Renewal term |  |
| Notice to renew |  |
|  | Part I: 25.3 | **Termination for convenience** | Applicable | YES | NO |
|  |  |
| Notice period |  |
|  | Part I: 4.21 & Part II:32.14 | **Price / Service Fee (total contract value)** | Fixed |  |
| OREstimation |  |
|  | Part I: 11.3 | **Price escalation** | Details |  |
| Effective Date |  |
|  | Part I: 12.4 | **Invoices, credit notes & statements**  | Transmit to  | fsd-creditors@resbank.co.za |
| Queries to |  |
|  | Part I: 12.3 | **Payment period for undisputed invoices** | Payable within |  |
|  | Part I: 22.3(ii) | **Insurance** | Types andloss limits |  |
|  | Part I: 16.3 | **Licenses, certificates/ certifications, registrations, accreditations permits and/or consents** | Details |  |
|  | Part I: 30.2 | **Customer’s representative** | Business Unit  |  |
| Name  |  |
| Capacity |  |
| Tel |  |
| Cell |  |
| Email  |  |
|  | Part I: 29.1 | **Customer’s*****domicilium citandi et executandi***  | Building | Head Office |
| Street | 370 Helen Joseph Street |
| Suburb | Pretoria |
| Town | Pretoria |
| Province | Gauteng |
| Postal code | 0002 |
| Attention | Head of Department: LSD |
|  | Part I: 30.2 | **Supplier’s representative** | Name  |  |
| Capacity |  |
| Tel |  |
| Cell |  |
| Email  |  |
|  | Part I: 29.1 | **Supplier’s*****domicilium citandi et executandi***  | Building |  |
| Street |  |
| Suburb |  |
| Town |  |
| Province |  |
| Postal code |  |
| Attention |  |
| 1.
 | Part I: 26.4 | **Supplier’s subcontractors** | Applicable | YES | NO |
|  |  |
| Name  |  |
| Reg. No. |  |
| Address |  |
| Tel No. |  |
| Type and extent of work |  |
|  | Part I:19.3 | **Data protection and privacy** | POPIA compliance | For purposes of this Agreement, the Supplier is deemed to be a - |
| **Description** | **Select** |
| Responsible party |  |
| Operator |  |
| Type of personal Information to be shared | The type of information that will be shared between the Parties will include, but not be limited to the following:*Personal Information*1. …
2. …

*Special personal information*1. …
2. …

*Unique identifiers*1. …
2. …
 |

|  |
| --- |
| **PART II: CONTRACT SPECIFIC TERMS AND CONDITIONS** |
| **ITEM** | **CLAUSE REF** | **VARIABLES** | **DETAILS** |
|  | Part II: 32.1 or 32.8 | **Supplier’s Account Manager / Project Manager** |  |
|  | Part II: 32.4 | **Details of Supplier’s Key Personnel** | 1 |  |
| 2 |  |
| 3 |  |
|  | Part II: 32.17 | **Working Hours** |  |
|  | Part II: 39.3 | **Supplier’s reporting obligations** |  |
|  | Part II: 41.2 | **Warranty(ies), warranty period & start date** |  |
|  | Part II: 32.12 & 38.5 (iii) | **Retention**  | Applicable | YES | NO |
|  |  |
| Amount / Percentage of Service Fee |  |

**PART III: SCHEDULE B – SCOPE OF THE SERVICES OR PROJECT**

1. **SPECIFIED OBJECTIVES**

Placeholder

1. **BACKGROUND**

Placeholder

1. **SCOPE OF THE SERVICES**

Placeholder

1. **APPROACH AND METHODOLOGY**

Placeholder

1. **STAKEHOLDER ENGAGEMENT**

Placeholder

1. **KNOWLEDGE AND SKILLS TRANSFER**

Placeholder

1. **DELIVERABLES**

Placeholder

1. **QUALITY ASSURANCE STANDARDS**

Placeholder

1. **ACCEPTANCE CRITERIA**

Placeholder

1. **REVIEW AND SIGN-OFF OF DELIVERABLES**

Placeholder

1. **TIMELINES**

Placeholder

1. **PROJECT PLAN / WORK PROGRAMME**

Placeholder

1. **CUSTOMER OBLIGATIONS**

Placeholder

1. **MEETINGS**

Placeholder

1. **DEPENDENCIES**

Placeholder

1. **DISENGAGEMENT ASSISTANCE**

Placeholder

1. **OUT OF SCOPE**

Placeholder

**PART III: SCHEDULE C – PRICING**

1. **SERVICE FEES**

Placeholder

1. **BREAKDOWN OF THE FEES**

Placeholder

1. **PAYMENT MILESTONES**

Placeholder

1. **PRICE INCLUSIONS**

Placeholder

1. **PRICE EXCLUSIONS**

Placeholder

1. **ASSUMPTIONS**

Placeholder

# PART III: SCHEDULE D – STANDARDS OF PERFORMANCE

1. **SERVICE LEVELS**

Placeholder

1. **PENALTIES**

Placeholder

1. **PROBLEM MANAGEMENT AND ESCALATION PROCEDURES**
2. *Classification of Problems*
	1. Any problems experienced by the Customer or the Supplier relating to the Project and/or Services will promptly be communicated to the Supplier or the Customer (whichever is applicable) in accordance with the escalation channels specified below.
	2. Problems will be classified by the Customer or the Supplier according to the possible impact it may have on the Customer or Supplier (whichever is applicable) and allocated a corresponding priority as follows:

|  |  |  |
| --- | --- | --- |
| Classification | Impact  | Priority |
| **Level 1** | Serious operational, financial and/or reputational impact on the Customer or Supplier | High |
| **Level 2** | Moderate operational, financial and/or reputational impact on the Customer or Supplier | Medium |
| **Level 3** | Minor operational, but no financial or reputational impact on the Customer or Supplier | Low |

* 1. Problems must be acknowledged and resolved by the Supplier or the Customer (whichever is applicable) in accordance with the specified Service Levels (if any), or if no Service Levels have been specified, within a reasonable time period with reasonableness being determined based on the complexity and severity of the problem.
	2. Problems must be reported to the relevant staff members based on such problem’s classification level.
	3. Any problems not resolved by the responsible staff members within the specified resolution times (if any) must be escalated to management via the applicable escalation channels.
1. *Escalation Channels*

The Customer and the Supplier’s escalation channels are as follows:

* 1. SUPPLIER ESCALATION CHANNELS

|  |  |  |  |
| --- | --- | --- | --- |
| **CONTACT** **PERSON** | **POSITION** | **EMAIL ADDRESS** | **CONTACT NUMBER** |
| Level 1 (Serious)Name: |  |  |  |
| Level 2 (Moderate)Name: |  |  |  |
| Level 3 (Minor)Name: |  |  |  |

* 1. CUSTOMER ESCALATION CHANNELS

|  |  |  |  |
| --- | --- | --- | --- |
| **CONTACT** **PERSON** | **POSITION** | **EMAIL ADDRESS** | **CONTACT NUMBER** |
| Level 1 (Serious)Name: |  |  |  |
| Level 2 (Moderate)Name: |  |  |  |
| Level 3 (Minor)Name: |  |  |  |

# PART IV: ANNEXURE 1 – PROVISIONS APPLICABLE TO THE SHARING OF PERSONAL INFORMATION BETWEEN THE CUSTOMER AND THE SUPPLIER WHERE BOTH PARTIES ARE DEEMED TO BE RESPONSIBLE PARTIES

1. INTRODUCTION
	1. The provisions contained in this **Annexure 1** are applicable in the event where Personal Information is shared between the Parties by one Responsible Party with another Responsible Party.
2. DEFINITIONS AND INTERPRETATION
	1. Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings and related expressions will have corresponding meanings (capitalised terms not defined in this Annexure, are defined in Part I or Part II of this Agreement):
		1. "**Data Subject**" has the meaning set out in POPIA;
		2. "**Personal Information**" has the meaning set out in section 1 of POPIA, and includes special personal information as defined in section 26 of POPIA and relates only to Personal Information shared between the Parties as a result of the Agreement;
		3. "**POPIA**" means the Protection of Personal Information Act, 2013;
		4. "**Processing**" has the meaning set out in POPIA;
		5. "**Regulator**" means the Information Regulator of South Africa;
		6. "**Responsible Party**" has the meaning set out in POPIA;
		7. "**Security Compromise**" means an incident where there has been, or there are reasonable grounds to believe that, Shared Personal Information has been accessed or acquired by an unauthorised person;;
		8. "**Shared Personal Information**" means Personal Information shared by the Parties or transferred from one Party to the other Party for purposes of this Agreement.
3. PURPOSE AND OBLIGATIONS
	1. The Parties may, in terms of the Agreement share Personal Information with each other as Responsible Parties.
	2. Each Party shall comply at all times with POPIA when performing its obligations under this Agreement and shall not perform any of their respective obligations under this Agreement in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.
	3. Each Party undertakes to Process Shared Personal Information and to secure the integrity and confidentiality of Shared Personal Information by taking appropriate, reasonable technical and organisational measures.
	4. Each Party shall ensure that, in respect of all Shared Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this Agreement:
4. all necessary fair processing notices have been provided to and consents obtained from Data Subjects by that Party, where required, in terms of POPIA, including to specify that the other Party is also a Responsible Party in respect of the Data Subject’s Personal Information and to provide a link to the other Party’s Privacy Statement or to include a statement that the other Party’s Privacy Statement can be found on the other Party’s corporate website; and
5. all necessary steps have been taken to ensure that Shared Personal Information has been collected and Processed in accordance with the conditions for lawful processing of personal information set out in Chapter 3 of POPIA, including in particular those relating to:
	* + - lawful, fair and transparent Processing;
			- specified, legitimate and explicit purposes of Processing; and
			- adequate, relevant and not excessive Processing.
	1. If either Party receives any complaint, notice or communication from the Regulator which relates directly to:
6. the other Party’s Processing of the Shared Personal Information; or
7. a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this Agreement,
	1. it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.
	2. If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent that the request concerns the Processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:
8. promptly and without undue delay forward the request to the other Party; and
9. cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.
	1. Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.

1. SECURITY COMPROMISE
	1. The one Party will notify the other Party in writing immediately and in any event, no later than within 24 (twenty-four) hours if there has been a Security Compromise. Such notifications will be transmitted by the notifying Party to the email address of the other Party specified below:
		1. For attention of the Customer: Privacy@resbank.co.za; or
		2. For attention of the Supplier: [INSERT EMAIL ADDRESS].
	2. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Security Compromise in an expeditious and compliant manner.
	3. The affected Party will as soon as reasonably possible investigate the Security Compromise and furnish the other Party with:
		1. a preliminary report within 24 (twenty four) hours from its initial notification to the other Party in terms of **clause 4.1 above** setting out the details of the Data Subjects affected by the Security Compromise and the nature and extent of the Security Compromise, including details of the identity of the unauthorised person who may have accessed or acquired the Personal Information; and
		2. daily reports on progress made at resolving the compromise.
	4. The affected Party will take reasonable steps to mitigate the effects and to minimise any damage resulting from a Security Compromise and assist the other Party in remediating or mitigating any potential damage from the breach to the extent that such remediation or mitigation is within the affected Party’s control as well as reasonable steps to prevent a recurrence of such a Security Compromise, including interviewing and the possible removal of Employees from the performance of the Services for the other Party.
2. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR REGULATORS
	1. In the event of a dispute or claim brought by a Data Subject or the Regulator concerning the Processing of Personal Information against either or both Parties, the Parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
	2. The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Regulator. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
	3. Each Party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of the Regulator.
3. SEPARATION OF PERSONAL INFORMATION
	1. The Parties will Process the Shared Personal Information separately from Personal Information, data and property relating to any third party, and may not be combined or merged with information of another party, unless otherwise agreed upfront between the Parties in writing.
4. INDEMNITY
	1. Each Party hereby indemnifies and holds the other harmless from any liability whatsoever arising from the other Party’s failure to comply with the warranties contained in this Agreement.

#

# PART IV: ANNEXURE 1 – PROVISIONS APPLICABLE TO THE SHARING OF PERSONAL INFORMATION BETWEEN THE CUSTOMER AS RESPONSIBLE PARTY AND THE SUPPLIER ACTING AS AN OPERATOR

1. INTRODUCTION
	1. The provisions contained in this **Annexure 1** are applicable in the event where Personal Information is shared by the Customer as the Responsible Party, with the Supplier acting as its Operator.
2. DEFINITIONS AND INTERPRETATION
	1. Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings and related expressions will have corresponding meanings (capitalised terms not defined in this Annexure, are defined in **Part I** or **Part II** of this Agreement):
		1. "**Data Subject**" has the meaning set out in POPIA;
		2. “**Employees**” means the employees, subcontractors, agents, or third parties of the Responsible Party or the Operator, whichever is applicable;
		3. "**Operator**" has the meaning set out in POPIA;
		4. "**Personal Information**" has the meaning set out in section 1 of POPIA, and includes special personal information as defined in section 26 of POPIA and relates only to Personal Information shared between the Parties as a result of the Agreement;
		5. "**POPIA**" means the Protection of Personal Information Act, 2013;
		6. "**Processing**" has the meaning set out in POPIA;
		7. "**Regulator**" means the Information Regulator of South Africa;
		8. "**Responsible Party**" has the meaning set out in POPIA;
		9. "**Security Compromise**" means an incident where there has been, or there are reasonable grounds to believe that, Shared Personal Information has been accessed or acquired by an unauthorised person;
		10. "**Shared Personal Information**" means Personal Information shared by the Parties or transferred from one Party to the other Party for purposes of this Agreement.
3. PROCESSING BY THE OPERATOR
	1. It is recorded that, pursuant to its obligations under this Agreement, the Supplier will Process Shared Personal Information –
4. in connection with and for the purposes of the provision of the Services;
5. strictly in accordance with any applicable processing limitations; and
6. as an Operator.
	1. The Operator acknowledges and agrees that the Responsible Party retains all right, title and interest in and to the Shared Personal Information and that the Shared Personal Information will constitute the Responsible Party's Confidential Information.
	2. Unless required by law, the Operator will Process the Shared Personal Information only:
7. in compliance with this Agreement; and
8. for the purposes connected with the provision of the Services or as specifically otherwise instructed or authorised by the Responsible Party in writing.
	1. If the Operator is ever unsure as to the parameters or lawfulness of the instructions issued by the Responsible Party, the Operator will, as soon as reasonably practicable, revert to the Responsible Party for the purpose of seeking clarification or further instructions.
	2. The Operator will co-operate and assist the Responsible Party with consultations with or notifications to relevant regulatory authorities and/or Data Subjects that the Responsible Party considers are relevant pursuant to POPIA in relation to the Shared Personal Information.
	3. The Operator will treat the Shared Personal Information that comes to its knowledge or into its possession as confidential and will not disclose it without the prior written consent of the Responsible Party, unless required to do so by law. For avoidance of doubt, the provisions of this Agreement in relation to Confidential Information or any non-disclosure agreement, or the provisions regarding confidentiality contained in any other contract, as the case may be, entered into between the Parties will with the necessary changes, apply to this Agreement.
	4. Without limiting the Operator's obligations under this Agreement, the Operator will comply with the Responsible Party’s written instructions, applicable industry or professional rules and regulations, in relation to the safeguarding of the Shared Personal Information, which may apply to it and take steps to keep abreast and ensure that it and its Employees comply fully with all applicable laws and regulations that are applicable to the Agreement.
9. SECURITY
	1. The Operator undertakes to Process Shared Personal Information by applying adequate technical and organisational security measures, in accordance with the Responsible Party's privacy and cyber information security requirements.
	2. The Operator will secure the integrity and confidentiality of Shared Personal Information by taking appropriate, reasonable technical and organisational measures to prevent:
10. loss of, damage to or unauthorised destruction of the Shared Personal Information;
11. unlawful access to or Processing of the Shared Personal Information; and
12. must take reasonable measures to:
	* + - identify all reasonably foreseeable internal and external risks to the Shared Personal Information in its possession or under its control;
			- establish and maintain appropriate safeguards against the risks identified;
			- regularly verify that the safeguards are effectively implemented; and
			- ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
	1. Within 3 (three) Business Days of a request from the Responsible Party, the Operator will provide to the Responsible Party a written explanation and full details of the technical and organisational measures taken by or on behalf of the Operator to demonstrate and ensure compliance with this **clause 4**.
13. OPERATOR EMPLOYEES

The Operator will:

* 1. Limit the Processing of and access to the Shared Personal Information to those Employees who need to know the Shared Personal Information to enable the Operator to render the Services;
	2. Ensure that its Employees will not Process the Shared Personal Information –
1. except in accordance with the provisions of this Agreement; and
2. procure that its Employees are contractually obligated to maintain the security and confidentiality of any Shared Personal Information and this obligation continues even after their engagement ends; and
	1. Take all reasonable steps to ensure the Employees Processing the Shared Personal Information receive adequate training on compliance with this Agreement and POPIA applicable to the Processing.
3. ACCESS REQUESTS
	1. The Operator will provide the Responsible Party with full co-operation and assistance in relation to any requests for access to, correction of or complaints made by the Data Subjects relating to their Personal Information which forms part of the Shared Personal Information.
	2. The Operator will notify the Responsible Party in writing:
4. within 3 (three) Business Days of receipt thereof, of any request for access to or correction of the Shared Personal Information or complaints received by the Operator relating to the Responsible Party’s obligations in terms of POPIA and provide the Responsible Party with full details of such request or complaint; and
5. promptly of any legally binding request for disclosure of the Shared Personal Information or any other notice or communication that relates to the Processing of the Shared Personal Information from the Regulator or any supervisory or governmental body.
6. SEPARATION OF PERSONAL INFORMATION
	1. The Operator will Process the Shared Personal Information in relation to the Services separately from Personal Information, data and property relating to the Operator or any third party and may not be combined or merged with information of another party unless otherwise agreed to in writing by the Responsible Party.
7. RETURN AND RETENTION OF PERSONAL INFORMATION
	1. The Responsible Party may, at any time on written request to the Operator, require that the Operator immediately return to it any Shared Personal Information and may, in addition, require that the Operator furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, whether directly or indirectly, any such Shared Personal Information or material.
	2. Alternatively, the Operator will, as and when required by the Responsible Party on written request, destroy all such Shared Personal Information and material and furnish the Responsible Party with a certificate of destruction to the effect that the same has been destroyed, unless the law prohibits the Operator from doing so. In that case, the Operator agrees that it will maintain the confidentiality of the Shared Personal Information and will not actively Process the Shared Personal Information any further.
	3. The Operator will comply with any request in terms of this **clause 8** within 5 (five) Business Days of receipt of such request.
8. SUBCONTRACTING
	1. The Operator may not subcontract the performance of any of its obligations under this Agreement without the Responsible Party's prior written consent having been obtained. All references to the Operator's Employees will be deemed to include the employees of any subcontractor of the Operator.
	2. In the event that the Responsible Party agrees to the Operator subcontracting certain or all of the Operator’s obligations, the Operator must only do so by way of a written contract with the subcontractor which contract must impose the same obligations on the subcontractor as are imposed on the Operator in terms of this Agreement insofar as the Processing of the Shared Personal Information by the subcontractor is concerned.
9. TRANSBORDER DATA TRANSFER
	1. It is hereby recorded and agreed that the Operator is prohibited from transferring the Shared Personal Information to a third party outside of South Africa to fulfil its obligations in terms of this Agreement, unless such third party has been identified in this Agreementor alternatively, the Operator has obtained the prior written consent of the Responsible Party.
	2. In the event of such transborder transfer, the Operator hereby warrants and undertakes in favour of the Responsible Party that:
10. it will procure the third party’s compliance with all the obligations of this Agreement insofar as the Processing of the Shared Personal Information by the third party is concerned;
11. the Operator will at all times be responsible to the Responsible Party for fulfilment of all the Operator's obligations under the Agreement and remain the Responsible Party’s sole point of contact regarding the Services, including with respect to payment;
12. the third party is prevented from further transferring the Shared Personal Information to other third parties;
13. it will ensure that the third party has implemented appropriate technical and organisational security measures, similar to those required by the Responsible Party from the Operator, in the relevant jurisdiction to which the Shared Personal Information is being transferred; and
14. it has implemented and applied technical and organisational security measures to safeguard the security of the Shared Personal Information in-transit.
	1. The Operator hereby agrees that the Responsible Party will solely hold it responsible for the fulfilment of all obligations under this Agreement and it hereby indemnifies and holds the Responsible Party harmless from any and all Losses arising from any claim or action brought against the Responsible Party by any party, including by any regulator, arising from or due to the Operator's or the offshore third party's breach of the obligations contained in this Agreement in relation to the lawful Processing of the Shared Personal Information in South Africa or anywhere else in the world.

# PART IV: ANNEXURE 2 – THIRD-PARTY RISK ASSESSMENT

1. Third-party risk assessment outcome
	1. The outcome of the third-party risk assessment conducted on the Supplier by the Customer’s Privacy Office and Cyber Information Security Unit (CISU) is reflected in the attached Third-Party Risk Assessment Memo (Memo).
2. Findings
	1. The Supplier acknowledges the findings made against it regarding compliance with the Customer’s privacy requirements in Part A, as well as the findings made against it regarding compliance with the Customer’s cyber information security requirements in Part B.
3. Risk mitigation controls
	1. The Supplier accepts the risk mitigation controls prescribed by the Customer in the Memo to achieve privacy compliance in Part A, as well as cyber information security compliance in Part B.
4. Obligation to comply
	1. The Supplier will become fully compliant with the Customer’s privacy and cyber information security requirements and undertakes to implement all risk mitigation controls prescribed in the Memo within the specified time periods.
	2. Time periods will be measured starting from the date of signing of the Agreement.
	3. Failure by the Supplier to become fully compliant within the stipulated time periods will entitle the Customer, within its sole discretion, to –
		1. Suspend the Services and extend the time periods for compliance; or
		2. Negotiate revised terms and conditions relating to compliance; or
		3. Terminate the Agreement.
5. Special conditions
	1. *[Insert, if applicable]*