



SERVICE DESCRIPTION

AGREEMENT ENTERED INTO BY AND BETWEEN THE GAUTENG PROVINCIAL GOVERNMENT IN ITS _____

**AND HEREIN REPRESENTED BY _____ IN HIS /
HER CAPACITY AS _____ AND AS SUCH DULY
AUTHORISED ("THE END USER")**

AND

_____ A COMPANY WITH LIMITED

LIABILITY AND DULY INCORPORATED IN TERMS OF THE COMPANY

LAWS OF THE REPUBLIC SOUTH AFRICA, WITH COMPANY

**REGISTRATION NO _____ AND PRINCIPAL PLACE
OF BUSINESS AT _____**

**AND HEREIN REPRESENTED
BY _____ IN HIS / HER CAPACITY AS**

AND AS SUCH DULY AUTHORISED

("THE SUPPLIER").

AND WHEREAS

The Supplier is the preferred supplier for the supply, delivery, installation, commissioning and maintenance of office equipment and labour saving devices ("equipment") in terms of the contract.

AND WHEREAS

The End user is, from time to time, desirous of hiring from the supplier one or more equipment, and the Supplier is in turn desirous of renting such equipment to the End user

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1 **NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

1.1 **Rules of interpretation.** In this Agreement:-

- 1.1.1 clause headings are for convenience and are not to be used in its interpretation;
- 1.1.2 unless the context indicates a contrary intention an expression which denotes:-
 - 1.1.2.1 any gender shall include the other genders;
 - 1.1.2.2 a natural person shall include a juristic person and vice versa;
 - 1.1.2.3 the singular shall include the plural and vice versa; and
 - 1.1.2.4 references to clauses, schedules, parts and sections are, unless otherwise provided, references to clauses, schedules, parts and sections of this Agreement.

1.2 **Meanings of expressions and words.** In this Agreement the following expressions and words have the meanings assigned to them below and derivative expressions and words will have a corresponding meaning: -

- 1.2.1 **Agreement** means this agreement read together with the General and Special Conditions of Contract of Contract GT/GDH/000/000 which form an integral part of this Agreement
- 1.2.2 **Copy Charges** means the consideration, where applicable, (or, as the context may require, part thereof) payable by the End-user to the Supplier for the maintenance to be provided by the Supplier in terms hereof, which is the amount payable for each black and white or colour copy (as the case may be) that is produced by the equipment at the rate as set out in Addendum 1 of this Agreement, and which is calculated by multiplying the total black and white or colour copies (as the case may be) so produced during a copy period by the charge payable for each black and white or colour copy (as the case may be) as stipulated in Addendum 1 of this Agreement.
- 1.2.3 **Copy Period** means a period of one calendar month, each month commencing on the 1st day of each month (except the first period, which will be the period from Commencement Date until the last day of that calendar month). Copy Period means the period during which copies are made, calculated by means of an opening and closing meter reading, on a monthly basis.
- 1.2.4 **End-user** means the government institution described on

page one hereof.

- 1.2.5 **Equipment** means all or any, as the context may require, of the equipment which is/are or will be the subject matter of this Agreement and which are more fully described in Addendum 1 of this Agreement.
- 1.2.6 **Initial Period** means the period of 36 (thirty six) months from the Commencement Date.
- 1.2.7 **Maintenance** means the obligation assumed by the Supplier to maintain the relevant equipment in proper and efficient operating condition on the terms as set out herein and in accordance with the specifications applicable to the relevant equipment.
- 1.2.8 **Rental** means the consideration payable by the End-user to the Supplier for the use of the equipment in the amounts as stipulated in Addendum 1 of this Agreement.
- 1.2.9 **Working day** means days on which business is generally conducted, i.e. Saturdays, Sundays and official public holidays excluded.
- 1.2.10 **Commencement date** means the date on which the installation and commissioning of equipment is completed.
- 1.2.11 **Material breach** means an event that goes to the root of this agreement.
- 1.2.12 **Month** means calendar month.
- 1.2.14 **Termination date** means 36 months after the commencement date.

2. DURATION AND TERMINATION

- 2.1 This agreement shall commence upon the commencement and shall endure for as an Adhoc purchase and automatically terminate on the termination date by effluxion of time, unless terminated earlier or extended in terms of the provisions of this contract;
- 2.2 This agreement, may at the sole discretion of the End user, be extended in writing for a maximum period of twenty four months on the same terms and conditions except for the rental which shall be reduced by 75% (seventy five percent) of the rental specified herein.

3. OBLIGATIONS OF THE SUPPLIER

3.1 DELIVERY AND INSTALLATION

- 3.1.1 The Supplier undertakes to:
 - 3.1.1.1 deliver the equipment conforming exactly to the description of the equipment as specified in addendum 1 of this agreement;
 - 3.1.1.2 deliver and install new and unused equipment at the location selected by the End-user;
 - 3.1.1.3 ensure that the equipment is delivered and installed in good condition and working order;

3.2 MAINTENANCE

The Supplier undertakes to:

- 3.2.1 ensure that the equipment performs in accordance with the manufacturer's specifications;
- 3.2.2 keep and maintain the equipment rented by the End-user in good and proper condition and working order and in such manner that the End-user will have the use thereof in an efficient operating condition, and to take such reasonable preventative action as may be necessary or open to it in order to limit the incidence and frequency of breakdowns of equipment to a minimum.
- 3.2.3 for this purpose The Supplier shall ensure that a qualified technician responds promptly to any notification of the End user of a breakdown or malfunction of any equipment.
The response time on such notification shall be as follows:
- 3.2.4 forthwith provide temporary loan equipment to the End-user if the fault in the equipment cannot be repaired, or is not expected to be reasonably repaired, within the period as set out in of this Agreement.

- 3.2.5 the availability of an adequate number of qualified technicians and personnel on a full-time basis to perform the maintenance required under this Agreement;
- 3.2.6 to make available the services of a fully qualified technician from 08h30 to 16h30 each working day to carry out preventative maintenance on the equipment;
- 3.2.7 to supply the quantities of spare parts, toner, developer, fuser oil and other consumables necessary to keep the equipment in proper operating condition;
- 3.2.8 to make available of full coverage maintenance, including preventive maintenance, all service calls and replacement all defectives or worn parts including expandable parts, and all consumable supplies. Should the Supplier fail to provide any of the consumables, or repair or replace with an equivalent unit, any equipment as required, then the Rental Copy Charges for the relevant month in respect of such equipment shall be forfeited by the Supplier and accordingly the End-user shall not be required to pay such rental and copy charges. Should the Supplier not have remedied the failure within 10 (ten) working days of notice from the Enduser then the End-user shall be entitled on written notice to the Supplier to immediately terminate the Agreement in respect of the relevant equipment at no additional cost or penalty to the End-user and the Supplier shall be obliged to remove the relevant equipment listed in the Agreement at is sole cost and expense;
- 3.2.9 remove the equipment from location of the End-user on termination of this Agreement at no additional charge;
- 3.2.10 perform all the services in terms of this contract with due care skill, efficiency and diligence in accordance with the best professional practice;

3.3 PRODUCT SUPPORT

- 3.3.1 The Supplier will from time to time and to the extent that is reasonably necessary or required by the End-user for the proper utilisation of the equipment, provide advice and assistance to the End-user and to provide such reports and data relevant to the usage of the equipment as may reasonably be required by the End-user.
- 3.3.2 Without limiting the generality of its obligations under clause
- 3.3.1 The Supplier hereby authorises the End-user to install access key control devices on the relevant equipment and will provide all necessary assistance to ensure the proper integration of the access key control devices with the equipment. The Supplier shall also assist the End-user in the installation of any copy control devices and copy management devices on the equipment as may be reasonably required by the End-user.
- 3.3.3 Where The Supplier or any of its employees, agents or independent contractors ("Representatives") accesses the premises of the End-

user, under or pursuant to, the terms of this Agreement, The Supplier and its representatives shall abide by and comply with the safety, health and environmental policies and procedures and other lawful directions of the End-user.

3.4 TRAINING

- 3.4.1 On installation of the equipment, The Supplier shall provide adequate training to the personnel of the End-user at no additional charge.
- 3.4.2 Instruction manuals shall also be provided by the Supplier free of charge for all equipment rented in terms of this agreement. The instruction manuals shall contain, but not be limited to, the following information:
 - 3.4.2.1 Defining the capabilities of the equipment (specification).
 - 3.4.2.2 Describing the technical operations of the equipment.
 - 3.4.2.3 Describing the use criteria of the equipment.
- 3.4.3 The Supplier shall also provide such further training may be required by the End User from time to time.

3.5 INDEMNITY AND INSURANCE

The Supplier hereby:

- 3.5.1 Undertakes, at its own expense, to indemnify, protect and defend the End User from and against all actions, claims, losses or damages arising from any negligent act or omission by the Supplier including but not limited to all damages or loss which may be payable or arise as a result of any claim or proceedings in respect of the death, injury to any person and the loss or damage to any property which may arise out of or in consequence of the execution of any obligations in terms of this agreement;
- 3.5.2 at its expense take out and keep in force in respect of the indemnity given by it in terms of this agreement a public liability insurance policy providing cover with a limit of not less than R 3 000 000-00 (three million rand) for any one occurrence of an insured peril in any year and unlimited as to cumulative amount in respect of more than one such occurrence in any year;

3.6 SUBCONTRACTING

It is recorded that:

- 3.6.1 The Supplier will be entitled to appoint suitably qualified subcontractors who satisfy the eligibility criteria applicable to the award of the contract to perform all or any of its obligations arising from this Agreement;

- 3.6.2 No sub-contract can create contractual relations between any subcontractor and End- User;
- 3.6.3 The Supplier shall be responsible for all the acts, defaults and negligence of its subcontractors and their experts, agents or employees as if they were acts, defaults or negligence of the Supplier shall not be absolved from its responsibility from under this clause on the basis that such person was acting outside the scope of its engagement by The Supplier.
- 3.6.4 The Supplier will provide the End user with a list (regularly updated for the duration of this agreement) of all the subcontractors that it intends using to perform all or any of its functions in terms of this agreement.

3.7 CONFIDENTIALITY

- 3.7.1 The Supplier shall treat all documents and information received in connection with this agreement as private and confidential, and shall not, save in so far as may be necessary for the purposes of performance thereof, publish or disclose any particulars without the prior written consent of the End user.

4. OBLIGATIONS OF THE END - USER

4.1 The End - user undertakes to:

- 4.1.1 Use the equipment for the purpose that it is intended and in accordance with any reasonable manufacturers' instructions and user manual as to the use thereof;
- 4.1.2 Keep the equipment in its possession and custody and control at its premises in accordance with the same policies and procedures that the End user applies in respect of its own assets and equipment;
- 4.1.3 Advise the supplier prior to relocation equipment.
- 4.1.4 Allow the supplier or its representatives reasonable access to the inspection of the equipment on prior written notice;
- 4.1.5 Undertakes to ensure that the installation area, access ways, electrical supply and where relevant, the IT configuration of its premises and other equipment or any network are suitable for the installation, passage and electrical/or electronic connection of the equipment when it is delivered for installation and thereafter.

5. BREACH

- 5.1 Either party commits a breach of contract where it fails to discharge any of its obligations in terms of this agreement;
- 5.2 Should either party commit a material breach of this agreement ("the defaulting party") and fail to remedy such breach within ten (10) days of written demand from the other party ("the aggrieved party") then the aggrieved party may, in addition to any other rights and remedies that it may have, including the right to claim damages:-
 - 5.2.1 Claim specific performance ;

5.2.2 or Terminate this agreement, such termination to be effective immediately upon receipt by the defaulting party of written notice to that effect

5.3 In any case where the End – User is entitled to damages, then the End -user may claim such damages from the Supplier;

5.4 This agreement shall automatically and without notice terminate upon occurrence of the following events:

- 5.4.1 a receiver, liquidator or administrator is appointed over any of the property or assets of that the Supplier;
- 5.4.2 the Supplier makes any voluntary arrangement with its creditors by reason of financial difficulty or becomes subject to an administration order, or provisional or final liquidation or insolvency order;
- 5.4.3 the Supplier goes into liquidation or is declared insolvent; or
- 5.4.4 that the Supplier ceases, or threatens to cease, to carry on business.

6. PAYMENT

The End – User shall pay the Supplier:

- 6.1 the rental applicable to the contract at the time of signing this agreement which rental shall be fixed for the entire initial rental period of 36 months. In the event of the extension of the contract, the rental shall reduce by 75% of the original rental The first Rental Charge shall be paid after the Commencement Date of the Agreement, within 30 days of the date of the original copy of statement or tax invoice to the Enduser and shall thereafter be payable monthly in arrear within 30 days of the last day of the month in which The Supplier delivers an original copy of statement and tax invoice to the End-user.
- 6.2 Copy Charges, applicable on the contract at the time of signing this Agreement will apply and would thereafter be adjusted on the thirteenth month and twenty-fifth month of the contract period.
- 6.3 The first of the Copy Charges shall be paid within thirty (30) days in which the original copy of statement and tax invoice in respect thereof is rendered, and shall thereafter be payable monthly in arrears on the first day of the month following the month in respect whereof the Copy Charge has arisen or within 30 days of the last day of the month in which the original copy of statement and tax invoice is delivered to the End-user, whichever is the later.
- 6.4 Payment shall be paid by electronic means into bank account :
Name :
Bank :
Branch :
Account number :
- 6.5 No other charges other than those set out herein will be payable for any other service rendered unless specifically agreed to in writing by the parties

7. NOTICES AND DOMICILIA

7.1 The parties select as their respective domicile citandi et executandi the following addresses:

7.1.1 End User
Physical address
Postal Address
Telephone No.
Fax No.
Email
Contact person

7.1.2 Supplier
Physical address
Postal Address
Telephone no
Fax No
Email
Contact person

Or such other address, telefax or telephone number as may be substituted by notice as herein required

7.2 Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post or delivered by hand or sent by telefax.

7.3 Any notice shall be deemed to have been given:

7.3.1 if posted 14 calendar days after the date of posting;

7.3.2 if hand delivered, on the day of the delivery; The parties may communicate by electronic means.

7.4.3 if sent by telefax, on the date and time of sending, which telefax, is evidenced by a fax confirmation print out.

8. GENERAL

8.1 **Whole Agreement.** This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

8.2 **No Variation.** This agreement together with General Conditions of Contract, Special Conditions of the contract and all Standard Bidding Documents constitutes the entire agreement between the parties. No variation or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

8.3 **Waiver.** No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be

effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- 8.4 **Severability.** Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 8.5 **Applicable Law.** This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 8.6 **Jurisdiction.** The Parties hereto hereby consent and submit to the jurisdiction of such High Court of South Africa, in any dispute arising from or in connection with this Agreement.
- 8.7 **Survival.** Notwithstanding termination of this Agreement, any clause which, from the context, contemplates ongoing rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.

SIGNED AT _____ ON THIS _____ DAY OF _____ 2023.

END USER

WITNESSES

1. _____
2. _____

SIGNED AT _____ ON THIS _____ DAY OF _____ 2023.

SUPPLIER

WITNESSES

1. _____
2. _____