

# SERVICES AGREEMENT

Between

**SABS**

**SOUTH AFRICAN BUREAU OF STANDARDS**

An entity established in terms of section 2 of the Standards Act No, 1945 (Act No. 24 of 1945), continuing to exist in terms of section 3 of the Standards Act, 2008 (Act No. 8 of 2008) herein represented by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_  
(hereinafter referred to as "the SABS")

And

XXXXXXXXXXXXXX

A company registered as such in terms of the Laws of the Republic of South Africa with registration number \_\_\_\_\_ herein represented by \_\_\_\_\_ in his/ her capacity as \_\_\_\_\_  
(hereinafter referred to as "the Service Provider")

# General Legal Terms and Conditions of Service

## Part A

### 1. PARTS

This Standard Terms and Conditions is made up of four integral Parts as captured below:

- 1.1 **Part A: General Legal Terms and Conditions of Service;**
- 1.2 **Part B: OHS Agreement;**
- 1.3 **Part C: Special and Commercial Terms of Contract; and**
- 1.4 **Part D: Agreement in terms of Section 21 of Protection of Personal Information Act**

### 2. INTRODUCTION

- 2.1 The SABS has selected the Service Provider as its preferred service provider for the provision of Goods and Services, as set out in the RFPXXXX read with Annexure “C” (Special and Commercial Terms of Contract) hereto and has issued the Service Provider with a Letter of Award.

### 3. DEFINITIONS AND INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:-

- 3.1 **“Agreement”** means this Standard Terms and Conditions, made up of the General Legal Terms and Conditions of Service (**Part A**) with **Parts B, C** and **D** attached hereto, which form an integral part of this document and will be read in conjunction herewith together with the RFP and the Service Provider’s proposal.
- 3.2. **“Anti-Corruption Laws”** means any applicable foreign or domestic anti-bribery and anticorruption laws and regulations, including but not limited to the Foreign Corrupt Practices Act, 1977, as

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amended, 15 U.S.C. -1, et seq. (United States of America); Bribery Act, 2010, as amended, (United Kingdom); and the Prevention and Combating of Corrupt Activities Act, 2004, as amended (Republic of South Africa), as well as any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

- 3.3 **“Business Day”** means a calendar day excluding Saturday, Sunday and public holidays;
- 3.4 **“Confidential information”** means information relating to one party or its agents (the Disclosing party) and/or the business carried on or proposed or intended to be carried on by the Disclosing party and which is made available in connection with this Agreement to the other party (the Receiving party) (or its agents) by the Disclosing party (or its agents) or which is recorded following oral disclosure to the Receiving party and any other information that is otherwise made available, in any form, by the Disclosing party (or its agents) to the Receiving party (or its agents), whether before, on or after the date of this Agreement, including but not limited to the Disclosing Party’s client information; technical information; business information and / or information relating to Intellectual Property of the Disclosing Party and any analysis or specifications derived from, containing or reflecting such information; but excluding information which is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving party or any of its agents contrary to the terms of this Agreement) or was lawfully in the possession of the Receiving party or its agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed or following such disclosure, becomes available to the Receiving party or its agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing party (or its agents), which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing party in relation to such information;
- 3.5 **“Contract Period”** means the duration of this Agreement as defined in Part C hereto;
- 3.6 **“Effective Date”** means the date this Agreement comes into operation as defined in Part C hereto;
- 3.7 **“Fees”** means the fees and expenses payable to the Service Provider for the delivery of the Services to the SABS;

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- 3.8 **“Force Majeure”** means and includes acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations, civil strife, riots, insurrection, sabotage, acts of war or public enemy, prohibition of exports, flood, storm, fire or (without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of the party claiming force majeure or vis major and comprehended in the terms force majeure or vis major;
- 3.9 **“Intellectual Property”** means all Intellectual Property rights including, but not limited to, patents, trademarks, copyright, registered design rights, trade or business names, domain names, know-how, trade secrets, database rights and topography rights, whether registered or unregistered, and all rights or forms of protection of a similar nature in any country; **“Background Intellectual Property”** means the Intellectual Property that is appropriately and documentary proved to vest in either Party or any subcontractor, agent, consultant, or the like of either Party prior to the date of first negotiation between the parties, and Intellectual Property which is licensed to either Party or any subcontractor, agent, consultant, or the like prior to the date of first negotiation between the parties, and which are used in the course and scope of the execution of this Agreement;
- 3.10 **“Law”** means any law, order, rule, regulation, licence conditions or code of any governmental authority of the Republic of South Africa or the promulgation or introduction of any law, order, rule, regulation or code by any governmental authority of the Republic of South Africa.
- 3.11 **“Services”** means the services that the Service Provider will perform for the SABS as defined in **Part C** hereto;
- 3.12 **“Service Provider”** means the party appointed by the SABS as set out in Special Conditions of Contract.
- 3.13 **“Third party”** means any person or entity that is not a party to this Agreement;
- 3.14 **“VAT”** means Value Added Tax imposed in terms of the Value Added Tax Act, Act No. 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time.
- 3.15 **“Month”** shall mean a calendar month;

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- 3.16 “**Parties**” shall include the parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees, consortium members and subcontractors;
- 3.17 “**Person**” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having a separate legal personality;
- 3.18 References to the provisions of any Law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;
- 3.19 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either party because that party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
- 3.20 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;
- 3.21 References to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
- 3.22 References to any other agreement or document shall include a reference to that agreement or document as amended, varied, novated or substituted from time to time;
- 3.23 General words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words, unless inconsistent with the context;
- 3.24 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day in which case the last day shall be the immediately following business day.

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#### **4. APPOINTMENT AND DURATION**

- 4.1 The SABS hereby appoints the Service Provider, for the Contract Period, to provide the Services, as set out in **Part C hereto**, in accordance with the terms and subject to the conditions of this Agreement and the provisions of the Standards Act No. 8 of 2008, more in particular sections 26, 27, 30 and 31, as amended from time to time, and the Service Provider hereby accepts such appointment.
- 4.2 This Agreement shall commence on the Effective Date and remain in force for the Contract Period, unless as may be terminated earlier in terms of any applicable provision hereof.

#### **5. RELATIONSHIP**

- 5.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the Parties.
- 5.2 Furthermore and for the avoidance of any doubt, the Service Provider acknowledges and agrees that its status under this Agreement is that of an independent contractor and its status shall in no way be deemed to be that of an agent or employee of the SABS, for any purpose whatsoever, and the Service Provider shall have no authority or power to bind the SABS, to contract in the name of the SABS or create a liability against the SABS in any way or for any purpose.

#### **6. SERVICES**

- 6.1 The scope of Services is set out in **Part C hereto**
- 6.2 It is understood that the purpose of the Service Provider is to provide the Services in line with this Agreement. SABS will provide the Service Provider with accurate, unbiased and sufficient information and will promptly provide further information that the Service Provider reasonably deems relevant to the performance of its Services in terms of this Agreement and any written request sent to the Service Provider.
- 6.3 The Service Provider shall remain solely liable for any and all of its representatives, employees or sub-contractors who shall remain under the authority and control of the Service Provider. The SABS shall not accept any liability or obligation for such personnel and the Service Provider hereby indemnifies SABS accordingly.

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- 6.4 The Service Provider will liaise with the SABS' contact person on all arrangements through their contact person.

## **7. CONTRACT MANAGERS**

- 7.1 The Parties shall within two (2) Days reckoned from the Effective Date, designate their respective contract managers and shall in writing provide each other with their respective contact persons' full name and contact details (being telephone numbers; cell phone number and e-mail addresses).
- 7.2 The contract managers referred to in clause 7.1 above shall:
- serve as the Parties' first point of contact in matters pertaining to Services;
  - be available to consult with each other on matters relating to the Services;
  - engage with each other to ensure that day-to-day decisions and approvals in respect of the Services are made timeously; and
  - be copied in all legal correspondences addressed to the Parties' *domicilium* addresses as set out in clauses 1.1 and 1.2 of Part C.
- 7.3 Either Party may at any time, by way of at least five (5) Days' prior written notice to the other, replace its contract manager with any other person. In that event, the Party making any such change shall simultaneously provide the replacement details. The replacement contract manager shall be equally qualified and suitable as its predecessor to perform the obligations stipulated in this Agreement.

## **8. SUBCONTRACTING AND THIRD-PARTY CONTRACTS**

- 8.1 The Service Provider may, with prior written notice to and written consent of SABS, employ subcontractors for the execution of any portion of its obligations under this Agreement, but such subcontracting shall not relieve the Service Provider of its obligations under this Agreement and the Service Provider shall remain liable for any acts or omissions of such subcontractors, as if the Service Provider had performed them itself. The Service Provider shall further ensure that all subcontractors perform in terms of all applicable provisions of this Agreement.

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- 8.2 SABS shall have the right during the continued duration of this Agreement to direct the Service Provider to replace any such sub-contractor upon 30 (thirty) days written notice, if the sub-contractor's performance is materially deficient, or good faith doubts exist concerning the sub-contractor's ability to render future performance because of, inter alia, changes in the ownership, management, or the financial condition of the sub-contractor.
- 8.3 Each subcontractor shall be bound by the confidentiality and non-disclosure undertakings in favour of SABS in terms of this Agreement, and the Service Provider undertakes to make the sub-contractor aware of the confidentiality obligations embodied in this Agreement.

## **9. SERVICE PROVIDER WARRANTIES**

- 9.1 The Service Provider recognises that the SABS has entered into this Agreement relying specifically on the Service Provider's representations, being that:
- 9.1.1 it has the authority and all the necessary licences, permits, accreditation and consents to enter into this Agreement and perform and to render the Services to the SABS under this Agreement;
  - 9.1.2 It is the owner of or has the right to use under license any intellectual property employed by it during or as part of the Services;
  - 9.1.3 capacity allocations are in accordance with the Services to be provided; and
  - 9.1.4 it has an adequate number of suitably qualified and trained employees/ members/ subcontractors who shall provide the Services to the SABS in terms of this Agreement, and the allocation by the Service Provider, in its discretion, of employees, members and/or subcontractors in accordance with the technical skill and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of Services by the Service Provider to the SABS.
- 9.2 All work to be performed and Services rendered under this Agreement shall be executed with promptness and due diligence, executed by the Service Provider to the satisfaction of the SABS, so that it meets the objectives of the SABS in seeking such Service.

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- 9.3 The Service Provider is obliged to promptly inform the SABS of any delays in concluding the Service or of any variances in meeting the required deliverables of the Service. The Service Provider shall do everything within its control to ensure that the Service is not delayed.
- 9.4 The Service Provider shall render the Services in full compliance with any and all applicable and relevant legislation, regulations and guidelines applicable to the Services rendered.
- 9.5 The performance of the Service Provider shall be reviewed periodically. If any of the Services rendered by the Service Provider are not rendered in accordance with this Agreement, SABS shall notify the Service Provider in writing and afford the Service Provider a period of 14 (fourteen) Days to comply with this Agreement, failing which SABS reserves the right, in its sole discretion, to:
- 9.5.1 Act in accordance with clause 19 [Breach] hereof (the period of notice already given to be accordingly taken into account); or
- 9.5.2 If SABS is not satisfied with the performance of any of the Service Providers' representative/s, it shall notify the Service Provider in writing, who shall meet with the SABS contract manager to resolve the dissatisfaction. Where such dissatisfaction is not resolved to the reasonable satisfaction of the SABS within 2 (two) business days, the SABS shall be entitled to invoke the provisions of clause 10.1 below.
- 9.6 The Service Provider shall co-operate in absolute good faith, comply with and accurately and timeously adhere to all reasonable requests by the SABS.
- 9.7 The Service Provider shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act No. 85 of 1993 ("OHS Act") and any other applicable Law and it indemnifies the SABS against any claim that may arise in respect of such Act/ Law by its representatives/employees against the SABS, as further set out in **Part B** hereto.

## **10. REMOVAL OF THE SERVICE PROVIDER'S STAFF**

- 10.1 The SABS shall be entitled, subject to clause 10.2 below, to request the Service Provider to remove any of its employees, agents, consultants, or the like from its team that renders the Services under this Agreement, if the SABS acting reasonably is of the view that such a person:

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10.1.1 has performed in a dissatisfactory manner in rendering the Services entrusted to him by virtue of this Agreement;

10.1.2 is a security or safety risk for the SABS;

10.1.3 has conducted himself in a manner detrimental to the relationship between the Parties;

10.1.4 has contravened any of the policies and procedures of the SABS; or

10.1.5 has, based on any reasonable ground, conducted himself or herself in a manner that justifies their removal.

10.2 In its request for the removal of any person as contemplated in clause 10.1 above, the SABS shall in writing inform the Service Provider of the reasons for invoking the removal, and the Service Provider shall, within the period stated in the SABS' request for removal, ensure that the said person is so removed and shall advise the SABS accordingly in writing.

10.2.1 For purposes of this clause 10, the Service Provider indemnifies, protects, defends and holds as harmless the SABS, its employees, officers or agents from and against all actions, claims, losses and damage by any of the Service Provider's employees, agents, consultants or the like so removed in terms of this clause from the Service Provider's team; or

10.2.2 any third party in respect of any and all claims, actions, losses and damage, by and arising from the removal of the Service Provider's employee, agent, consultant or the like from its team as stated in this clause 10.

## 11. FEES

11.1 As consideration for the Services supplied by the Service Provider to SABS, SABS shall pay the Service Provider the fees as set out in **Part C** hereto.

11.2 The Service Provider shall invoice the SABS for work already done and the SABS shall settle that specific account 30 (thirty) days after date of invoice. All payments made by the SABS to the Service Provider shall be in compliance/ subjected to the policies and procedures including any applicable legislation.

11.3 Each Party shall remain solely responsible for the remuneration of its respective personnel for work performed during any period of this Agreement.

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- 11.4 The Service provider indemnifies the SABS from any liability arising out of any incorrect information or banking details provided by the Service Provider for the purpose of effecting such payment.
- 11.5 Should the SABS dispute an invoice submitted by the Service Provider, the SABS shall request the Service Provider, within 5 (five) working days of receipt of the disputed invoice, to correct and resubmit such invoice. Should any dispute arise regarding such invoices, such dispute shall be dealt with in accordance with Clause 20 [Disputes].

## **12. DISBURSEMENTS**

- 12.1 Unless otherwise stated in **Part C**, the Contract value is inclusive of all disbursements.

## **13. ACCESS**

- 13.1 The SABS shall grant the Service Provider and/or its representatives, access to the SABS premises to perform its obligations in terms of this Agreement.
- 13.2 The Service Provider shall, at all times when entering the premises and/or service areas of the SABS comply with all applicable rules, laws, regulations and policies of the SABS.

## **14. SABS' OBLIGATIONS**

- 14.1 The SABS is obliged to allow the Service Provider to conduct its Services without hindrance or obstruction.
- 14.2 The SABS shall provide information, decisions and instructions and shall supply sufficient and accurate information to the Service Provider to allow the Services to be conducted and finalised.

## **15. INSPECTION**

- 15.1 The SABS may at any time inspect the service levels performed by the Service Provider in terms of this Agreement.
- 15.2 If the SABS is at any time dissatisfied with the service levels provided by the Service Provider, the SABS will notify the Service Provider in writing thereof and the SABS will be entitled, but not obliged, to act in accordance with clause 9.5 of this Agreement.

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## 16. CONFIDENTIALITY

- 16.1 The Parties agree to disclose confidential information to one another to the extent deemed necessary or desirable by each of them in their sole discretion.
- 16.2 The Parties acknowledge that the confidential information is a proprietary, special, and unique asset to the Disclosing party.
- 16.3 The Parties agree that neither of them nor any of their employees, representatives/subcontractors will, at any time, disclose the information to any third party for any reason or purpose whatsoever, without the prior written consent of the Disclosing party, save as in accordance with the provisions of this Agreement.
- 16.4 Notwithstanding anything to the contrary contained in this Agreement the Parties agree that the Confidential Information may be disclosed by the Receiving party to its professional advisors, agents and consultants on a need-to-know basis: Provided that the Receiving party takes whatever steps are necessary to procure that such professional advisors, agents and consultants agree to abide by the terms of this provision to prevent the unauthorised disclosure of the Confidential information to any Third party.
- 16.5 The Receiving party agrees that the unauthorised disclosure of the confidential information to a third party may cause irreparable loss, harm, and damage to the Disclosing party. Accordingly, the Receiving party indemnifies and holds the Disclosing party harmless against any loss, action, expense, claim, harm or damage, or whatever nature, suffered or sustained by the Disclosing party pursuant to a breach by the Receiving party of the provisions of this Agreement.
- 16.6 The obligations of the Parties shall not apply to any Confidential information that:
- 16.6.1 Is known, or in the possession of the Receiving Party prior to the disclosure thereof by the Disclosing party;
  - 16.6.2 Is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Receiving party;
  - 16.6.3 Is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;

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- 16.6.4 Is disclosed by the Receiving Party to satisfy an order of court of competent jurisdiction;
- 16.6.5 to comply with the provisions of any Law in force from time to time; provided that in the circumstances, the Receiving party shall advise the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard; provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 16.6.6 Is disclosed to a Third party pursuant to the prior written authorization of the Disclosing party;
- 16.6.7 Is received from a Third party in circumstances that do not result in a breach of the provisions of this Agreement.
- 16.7 Upon termination of this Agreement for whatever reason, the Service Provider shall return to the SABS, all Confidential information as well as all relevant confidential documentation in their possession.
- 16.8 The Service Provider will only use the confidential information for the sole purpose of complying with their obligations under this Agreement.
- 16.9 The contents, existence and the scope of this Agreement are Confidential information.
- 16.10 This clause shall survive termination of this Agreement for a period of 5 (five) years commencing from the termination date.

## **17. FORCE MAJEURE**

- 17.1 In the event of circumstances arising which a Party ("the Affected Party") believes constitutes *Force Majeure*, then such Affected Party shall send, within 2 (two) Days from the interrupting circumstances, a written notice specifying the nature and date of commencement of the interrupting event to the other Party.
- 17.2 The Agreement shall be suspended for the duration of the Force Majeure event or as otherwise agreed to by the parties in writing. The Affected Party shall do everything it reasonably can to reduce the impact of the *Force Majeure*.

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- 17.3 In the event that both Parties reasonably believe that the Affected Party shall be unable to continue to perform its obligations after the suspension/agreed period, or should 'time be of the essence', they/either Party shall be entitled to terminate this Agreement without further notice.

## **18. CESSION**

- 18.1 The SABS shall be entitled to cede, transfer or assign any of its rights or obligations in terms of this Agreement to any of its affiliates (subsidiaries or holding company) without prior approval of the Service Provider.
- 18.2 The Service Provider shall not be entitled to cede or assign or transfer or in any other way alienate its rights and obligations in terms of this Agreement, without the prior written consent of the SABS which consent may not be unreasonably withheld.

## **19 BREACH**

- 19.1 Should either Party commit a breach of any term of this Agreement ("the Defaulting Party") then the affected Party ("Aggrieved Party") shall be entitled, to demand, from the Defaulting Party in writing, to remedy such failure or breach within 14 (fourteen) calendar days and should the Defaulting Party fail to remedy the breach within 14 (fourteen) calendar days after receipt of the demand, the so Aggrieved Party shall be entitled without prejudice to any of its rights under this Agreement or other remedy for breach of contract to:-
- 19.1.1 Immediately terminate this Agreement without further written notice and claim damages; or
- 19.1.2 Enforce specific performance and claim damages for those parts which were not cured by the specific performance claim.
- 19.2 In the case of termination of this Agreement, the SABS reserves the right to withhold any payment that has not yet been paid to the Service Provider and shall set-off/deduct any amount, including damages, which the Service Provider owes the SABS in terms of this Agreement or otherwise. The Service Provider shall not be entitled to advance a right of retention or any similar right if this Agreement is terminated.
- 19.3 The Defaulting Party shall be liable for all reasonable costs incurred by the Aggrieved Party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including

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collection charges and costs on an attorney and client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

## **20. DISPUTES**

Both Parties agree to the following dispute mechanisms:

- 20.1 In the event of any disagreement of any kind arising out of this Agreement or the interpretation thereof, while in force or after its termination and the Parties being unable to reach agreement, the matter will be referred to Executive Management from both Parties within seven (7) calendar days after the Parties disagreed, who will endeavour to settle the dispute through *bona fide* negotiations.
- 20.2 In the event that the Parties are still unable to reach agreement within seven (7) calendar days after the dispute was referred through the process referred to in clause 20.1, it is hereby agreed that a dispute shall be submitted to and decided by arbitration and by an arbitrator agreed upon between the Parties. Failing agreement between the Parties, the arbitrator shall be selected by the then Chairman of the Association of Arbitrators of South Africa. The decision by the arbitrator will be final and binding and shall not be subjected to appeal.
- 20.3 Unless otherwise agreed by the Parties in writing the arbitration shall be held at Pretoria, in the Republic of South Africa and in the English language.
- 20.4 Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 20.5 The Parties shall use their best endeavours to expedite the arbitration process.
- 20.6 Subject to the other provisions of this paragraph, arbitration shall be held in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA").

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- 20.7 Nothing contained or implied in this Agreement will preclude either party from applying to court for an interdict or any other relief of an urgent and temporary nature, pending the decision or award of the arbitrator.
- 20.8 This clause is severable from the rest of the Agreement and will remain in effect even if this Agreement is terminated, lapses or is declared invalid for whatever reason.
- 20.9 This clause in no way detracts, delays or precludes a Party from exercising its rights in terms of clause 19 (Breach) or clause 23 (Termination) hereof. For avoidance of doubt arbitration as contemplated herein is not a precondition to cancellation and/ or termination of this Agreement.

## **21. GOVERNING LAW**

- 21.1 Notwithstanding the place of signature, this Agreement shall be governed and construed in terms of the laws of the Republic of South Africa and the Parties submit to the exclusive jurisdiction of the North Gauteng High Court, Pretoria, South Africa.

## **22. PROPRIETARY RIGHTS**

- 22.1 All Intellectual Property owned by the Parties prior to entering into this Agreement shall remain proprietary owned by such Party. All Intellectual Property developed for the SABS or on the SABS' instruction, as part of this Agreement, including all documentation for this Agreement, shall be proprietary owned by the SABS and the Service Provider undertakes to sign any documentation required to effect such recordal of ownership subject to full payment of the contract price by SABS.
- 22.2 The Service Provider grants the SABS a perpetual, royalty-free, non-exclusive, worldwide license to use any Background Intellectual Property embedded in the deliverables of the Agreement.
- 22.3 The Service Provider has the right to the use and the benefit of the documentation produced for the sole purpose of its intended use during its performance of the Services, subject to compliance with the terms and conditions of this Agreement. Upon termination of this Agreement, all such records or documents, including copies thereof, shall be left with the SABS or, in so far as they are in possession of the Service Provider, the same shall be handed over to the SABS or shall be destroyed at the SABS' written request.

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22.4 The Parties hereby acknowledge the other's Intellectual Property rights and undertake to one another that they shall not challenge those rights and shall do all things necessary to ensure that the Intellectual Property of the other remains preserved.

22.5 The provision of this clause shall survive the termination of this Agreement.

## **23. TERMINATION**

23.1 The termination of this Agreement may occur:

23.1.1 if the Parties agree thereto in writing;

23.1.2 if there is a *Force Majeure* event, each Party may terminate in terms of clause 17.3.

23.1.3 if in SABS' opinion it becomes necessary for safety or technical reasons;

23.1.4 by the SABS giving not less than thirty (30) Days' written notice thereof to the Service Provider, if the SABS, in its sole discretion, decides to terminate this Agreement;

23.1.5 if the SABS is of the opinion that the Service Provider:

23.1.5.1 has ceased to perform its obligations in terms of this Agreement; or

23.1.5.2 is incapable of completing the Services as described in this Agreement;

23.1.6 in the event that the Service Provider:

23.1.6.1 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) and is placed in provisional or final liquidation,

23.1.6.2 is placed under administration, curatorship, business rescue or the like under the Companies Act, 2008 or such other relevant legislation;

23.1.6.3 enters into or attempts to enter into any scheme similar to or in the nature of a composition, compromise or scheme of arrangement, release or novation with any or all of its creditors; or

23.1.6.4 membership to legislative or voluntary regulatory authority responsible for the industry is withdrawn or suspended;

23.1.6.5 license or authorisation to carry out the Services is suspended or withdrawn by the relevant authority.

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23.2 For purposes of terminating this Agreement as contemplated in:

23.2.1 clause 23.1.6.3 above, the process set out in clause 19 [Breach] shall, with the necessary changes, be applicable;

23.2.2 clause 23.1.6.4 above, the SABS shall in writing inform the Service Provider of its intention to terminate the Agreement relying on any grounds set out in clause 23.1.6.4 and the Agreement shall terminate within seven (7) Days of the notice unless the SABS communicates otherwise to the Service Provider.

23.3 The provisions of clause 19.2 above shall be applicable to the termination of this Agreement by the SABS relying on any provision of this Agreement.

23.4 Notwithstanding any other provision in this Agreement, the SABS shall be entitled to either cancel the Agreement or reduce the scope thereof, at no additional cost to the SABS (SABS shall only be liable for payment of Services already rendered), by giving 14 (fourteen) Days' notice in writing to the Service Provider.

23.5 Any termination of this Agreement will be without prejudice to any other rights or remedies of either party under this Agreement or any applicable law and will not in any way affect any accrued rights or liabilities of either party at the date of termination.

## **24. ANTI-CORRUPTION AND GOOD FAITH**

24.1 In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe the utmost good faith and to give effect to the intent and purpose of this Agreement.

24.2 The Service Provider will not make or cause to be made any offer, gift or payment or consideration or benefit of any kind, which would or could be construed as illegal or a corrupt practice, either directly or indirectly to any Party, as an inducement or reward in relation to the execution of this Agreement. Any such practice will be grounds for immediate termination of this Agreement.

24.3 Neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the Anti-Corruption Laws in connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties.

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24.4 The offending Party shall indemnify, keep indemnified and hold harmless the other Party and its directors, officers, employees, consultants and agents from and against all losses, damages, costs (including but not limited to legal costs and disbursements) arising from or incurred by reason of the offending Party's breach of the Anti-Corruption Laws.

24.5 The provisions of this clause 24 as well as any other clauses in relation thereto shall survive the termination of this Agreement for any reason whatsoever

## **25. CONFLICT OF INTEREST**

25.1 Unless otherwise agreed to in writing between the Parties, neither the Service Provider nor its personnel/ employees shall have interest, or receive remuneration, in connection with this Agreement except as provided for herein and agreed upon by the Parties.

25.2 The Service Provider shall not engage in any activity that may conflict with the interests of the SABS in terms of this Agreement.

## **26. PUBLICATION AND MARKETING**

26.1 The Service Provider shall not use the name, logo, trademark and the like of the SABS in any marketing material, as part of its business or anywhere else without prior written approval of the SABS, which approval may be made subject to any such conditions as may be determined by the SABS in its sole discretion.

26.2 Under no circumstances will the Service Provider release any public or media statements or publish material related to the Services or any aspect of this Agreement unless the prior written authorization of the SABS has been obtained and the SABS has vetted the intended public or media statement.

26.3 Unless duly authorised by the SABS in writing, the Service Provider shall not:

26.3.1 refer to itself, its facilities or services as "SABS accredited/approved" or any other similar description; or

26.3.2 claim, declare or conduct its affairs or business under a name or in a manner likely to create the impression that any commodity, product or service complies with a South African National Standard or other publication of the SABS.

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- 26.4 Breach of this clause 26 by the Service Provider shall entitle the SABS to immediately terminate this Agreement by way of a written notice to that effect.

## **27. SEVERABILITY**

- 27.1 If any provision of this Agreement is or becomes illegal, void or invalid this shall not affect the legality and validity of the other provisions.
- 27.2 Each provision of this Agreement is severable from the other.

## **28. LIMITATION OF LIABILITY AND INDEMNITY**

Save where otherwise provided for herein:

Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, the Service Provider's maximum liability to compensate SABS for direct damages for any breach, penalty, act or omission arising out of this Agreement shall not exceed the amount of the total fees already paid by SABS to the Service Provider in respect of the Services leading to such damage and/or loss. Such maximum amount shall be an aggregate amount for all claims arising out of the Agreement during the currency thereof;

- 28.1 Where a party suffers damages as a result of the wilful misconduct, dishonesty, gross negligence or fraud of the other Party in relation to the performance of the Services in respect of this Agreement, the party who committed such wilful misconduct, dishonesty, gross negligence or fraud hereby fully indemnifies the 'innocent Party' against any losses arising therefrom.
- 28.2 Notwithstanding anything to the contrary contained in this Agreement, neither Party nor its directors or employees shall, under any circumstances whatsoever, be liable to the other Party or any other person for any special, indirect, punitive or consequential loss or damage, including but not limited to direct and indirect loss of profits.
- 28.3 The Service Provider agrees to hold harmless and indemnify SABS, its employees, contractors, proprietors and its agents, from any and all actions, claims, demands, losses, judgments or costs of any nature by any third party resulting from the Service Provider's Services in terms of this Agreement.

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- 28.4 The Service Provider warrants that the performance by it of its obligations in terms of this Agreement, will not infringe the rights, including (without limitation) the Intellectual Property rights, of any third party. The Service Provider hereby indemnifies the SABS against any loss, liability, claim or damage which may be suffered by SABS relating to any claim by a third party that the performance by the Service Provider of its obligations in terms hereof infringes the rights of that third party(hereinafter referred to as the "Claim") and hereby undertakes to defend, at the Service Provider's own cost and expense, the Claim, all subject to SABS complying with its obligations in terms of clause 28.5 below;
- 28.5 The Service Provider shall pay any costs and damages awarded or agreed to in settlement of the Claim, provided that SABS furnishes the Service Provider with prompt written notice of the Claim and provides the Service Provider with all reasonable assistance, for which the Service Provider shall reimburse all expenses properly incurred by SABS in providing such assistance and shall grant the Service Provider sole authority to defend or settle the Claim.
- 28.6 Should any third party succeed in its claim for the infringement of any Intellectual Property rights, the Service Provider shall, at its discretion and within 30 (thirty) Business Days of the infringing item having been found to so infringe either:
- 28.6.1 Obtain for the Customer the right to continue using the infringing Service which constitutes the infringement; or
- 28.6.2 Replace the infringing Service with another service which does not infringe and which in all respects operates substantially in accordance with the specifications thereof; or
- 28.6.3 Alter the infringing Service in such a way as to render it non infringing while still in all respects operating substantially in accordance with the specifications thereof; or failing any of the above; or
- 28.6.4 Withdraw the infringing Service and refund to the Customer all Fees paid by it to the Service Provider in respect of any unexpired period of this Agreement.
- 28.5 This clause shall survive termination of this Agreement.

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## 29 PROFESSIONAL INDEMNITIES INSURANCE

- 29.1 The Service Provider is, in terms of its existing and valid insurance policy (the Policy) insured against any risks associated with the Service delivery, professional indemnity insurance, public liability and all liabilities.
- 29.2 The Service Provider undertakes to provide proof of such policy upon written request by SABS
- 29.3 The Service Provider shall maintain the Policy for the duration of this Agreement.

## 30. DOMICILIA AND NOTICES

- 30.1 The Parties hereby choose as their *domicilium citandi et executandi* for all purposes arising from or pursuant to this Agreement the addresses as set out in clauses 1.1 and 1.2 of Part C.
- 30.2 Either Party may, by written notice to the other Party, change its aforesaid *domicilium citandi et executandi* to any other address, which is not a post office box or *poste restante*.
- 30.3 Any notice given by either Party to the other which:
- 30.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium citandi et executandi* shall be rebuttably presumed to have been received by the addressee at the time of delivery;
- 30.3.2 Is posted by registered mail to the addressee at the addressee's *domicilium citandi et executandi* shall be rebuttably presumed to have been received by the addressee on the 10<sup>th</sup> (tenth) Day after the date of posting; and
- 30.3.3 Is sent by telefax copier or electronic mail during the normal business hours of the addressee, to the addressee's *domicilium citandi et executandi*, shall be rebuttably presumed to have been received on the date of successful transmission thereof.
- 30.3.4 Notwithstanding anything to the contrary, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address/es for that purpose.

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## **31. MISCELLANEOUS**

- 31.1 This Agreement, with all its **Parts A – D**, constitutes the entire Agreement between the Parties and all prior agreements, warranties and representations shall become invalid and unenforceable after the Effective Date.
- 31.2 No latitude, indulgence, consent or forbearance or any other similar act by either party in enforcing any provisions of this Agreement shall constitute a variation or novation of this Agreement or a waiver of rights or Estoppel in terms of this Agreement.
- 31.3 No alteration, variation or cancellation of this Agreement or its **Parts B, C and D** shall be of any force or effect, unless recorded in writing in a formal addendum hereto and signed by the (at the time) duly authorised representatives of the Parties, in compliance with any existing delegation of authority policies applicable on the Parties.
- 31.4 The special and commercial terms and conditions appearing in **Parts C** hereto are hereby incorporated into this Agreement.
- 31.5 The terms and conditions appearing in **Parts A - D** constitute the entire Service Level Agreement. In the event of any conflict between the terms and conditions contained in Parts A and C and the terms and conditions contained in Parts B and D of this Agreement, the terms and conditions contained in Parts B and D shall prevail to the extent of such conflict. For the sake of clarity, the prevailing terms and conditions of this Agreement shall be interpreted in the following order of preference, first, Parts B and D, and then Part A and lastly Part C.
- 31.6 The Parties by signing this Agreement shall be deemed to have satisfied themselves as to all the conditions and circumstances affecting this Agreement.

## **32. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")**

- 32.1 The Service Provider undertakes to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (the BBBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act.

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32.2 The Service Provider shall use reasonable endeavours to maintain or improve its current BEE rating status for the duration of this Agreement.

32.3 The Service Provider shall upon request provide the SABS with annual updates on its status in respect of BEE compliance requirements and confirmation that it has maintained or improved its BEE rating. Failure to comply with provisions of this clause will entitle SABS to terminate the Agreement on 30 (thirty) days' notice.

## **SIGNATURE**

**For and on behalf of the Service Provider, duly authorised hereto.**

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

## **SERVICE PROVIDER**

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

Capacity: \_\_\_\_\_

## **WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

**For and on behalf of the SABS, duly authorised hereto.**

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

## **SABS**

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

Capacity: \_\_\_\_\_

## **WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

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## **Part B**

### **MEMORANDUM OF OHS AGREEMENT**

Between:

**SOUTH AFRICAN BUREAU OF STANDARDS**

And

**THE SERVICE PROVIDER**

#### **1. APPLICATION OF SECTION 37(2)**

- 1.1 The parties hereby agree that the provision of Section 37(2) of the Occupational Health and Safety Act, Act No. 85 of 1993 and its regulations (henceforth referred to as the OHS Act), shall apply to the Service Provider.
- 1.2 SABS shall not be responsible nor liable for the actions or inaction's whatsoever in contravention of the OHS Act taken by the employees of the Service Provider, in the fulfilment of the Services undertaken by the Service Provider.
- 1.3 As an employer in its own right, you, the Service Provider is obliged to comply with all the provisions of the OHS Act while on the premises of the SABS, the Service Provider shall also be required to comply with the conditions and safety procedures of SABS.
- 1.4 SABS hereby reserves the right to cause all work undertaken by the Service Provider, that is in contravention of the OHS Act and that has come to the attention of the SABS to cease, until satisfied that such contravention has been rectified. Non-compliance to the SABS arrangements and procedures will adversely affect future contracts, while serious non-compliance may lead to immediate expulsion from the premises.

#### **2. REQUIREMENTS ARRANGEMENTS AND PROCEDURES FOR SERVICE PROVIDERS**

- 2.1 It is a condition of this contract that the Service Provider's employees, and any Sub-contractors, be covered in terms of the Compensation for Occupational Injuries and Diseases Act, Act No. 130 of 1993, as amended. A copy of good standing with the Compensation Commissioner shall be attached

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to the signed copy of this document. Furthermore, the Service Provider certifies that such cover will not expire during the execution of the task, nor will the Service Provider become in arrears with any payment due to the Commissioner or any other documentation required by the Commissioner.

2.2 The Service Provider furthermore agrees to the following health and safety rules of SABS:

- 2.2.1 The Service Provider shall have available a copy of the OHS Act on request.
- 2.2.2 Any Service Provider with more than five employees at any time on the premises shall have available a first aid box for prompt first aid.
- 2.2.3 Any Service Provider with ten or more employees shall have at least one competent and valid first aider on the premises at their workplace. Should there be fifty or more employees on the premises a further first aider for every fifty employees or part thereof shall be available.
- 2.2.4 Any Service Provider with less than ten employees on the premises shall ensure that such employees are made conversant with the first aider at their workplace.
- 2.2.5 The Service Provider shall keep up to date and available for inspection all applicable legally required registers.
- 2.2.6 The Service Provider shall make himself and his employees conversant with SABS' emergency and evacuation procedures.
- 2.2.7 The Service Provider shall not misuse anything, which is supplied in the interest of health and safety.
- 2.2.8 The Service Provider shall adhere to all of SABS' safe working procedures.
- 2.2.9 The Service Provider shall be subject to the health and safety and security rules of the SABS.
- 2.2.10 No intoxicating drugs or liquor will be consumed on or brought onto the premises and no person under the influence or who appears to be under the influence will be permitted to come onto or remain on the premises or at a workplace.

### 3 INDEMNIFICATION

3.1 The Service Provider hereby certifies that all contracting workmen recognize the inherent hazards that exist on the premises of the SABS and that the Service Provider:

- 3.1.1 Enters the property entirely at his/her own risk and therefore the Service Provider waives any claim of whatsoever nature against SABS, its employees, agents and/or mandatories in respect of any loss, damage and/or injury whether same is the result of any negligent act or omission on the part of the SABS, its employees, agents and/or mandatories or other

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independent Service Providers or by a third person or by way of defective equipment or materials supplied by the company, and further the Service Provider;

- 3.1.2 Hereby indemnifies SABS, its employees, agents and/or mandatories against any claims from the Service Providers employees and/or from any other person, arising and being caused in the manner set out above.

#### 4 ACCEPTANCE

I, \_\_\_\_\_, on behalf of the Service Provider, do hereby declare that my company acknowledges having read and understood the conditions contained in this legal document and furthermore, our employees agree to abide by these conditions.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

#### SERVICE PROVIDER

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

Capacity: \_\_\_\_\_

#### WITNESSES

1. \_\_\_\_\_ 2. \_\_\_\_\_

For and on behalf of the SABS, duly authorised hereto.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

#### SABS

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

Capacity: \_\_\_\_\_

#### WITNESSES

1. \_\_\_\_\_ 2. \_\_\_\_\_

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## Part C

### Special & Commercial terms of Contract

#### 1. THE PARTIES

This Agreement is entered into by and between the following parties:

- 1.1 **SABS**, a public entity continuing to exist in terms in terms Section 3 of the Standards Act 8 of 2008, herein represented by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of the South African Bureau of Standards, with its chosen *domicilium citandi et executandi* at:

1 Dr Lategan Road

Groenkloof

Pretoria

Tel: (012) 428 7049

Fax: (012) 428 6291

E-mail: [legal@sabs.co.za](mailto:legal@sabs.co.za)

Postal address: Private Bag X191, Pretoria, 0122.

**Contact Person:** Mr. Joseph Leotlela: Head: Compliance Risk & Legal Services

And

- 1.2 **XXXXXXXX**, a company registered in accordance with the Laws of South Africa, with registration number: \_\_\_\_\_, herein duly represented by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ and duly authorised hereto, with its chosen *domicilium citandi et executandi* at:

[Address]

Tel: +27...

Cell: +27

E-mail: xxxxxx

Postal address: xxxxxx

**Contact Person:** xxxxxx

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1. DEFINITIONS:

- 2.1 “**Contract Period**” shall mean a \_\_\_\_\_ months from the Effective Date;
- 2.2 “**Effective Date**” shall mean \_\_\_\_\_, notwithstanding the date of signature of this Agreement;
- 2.3 “**Fees**” means the fees and expenses payable by the SABS to the Service Provider for the full and proper performance of the Services and all other obligations by the Service Provider under this Agreement;
- 2.4 “**Purchase Order**” means the official purchase order of the SABS, duly signed by an authorized representative of the SABS and issued to the Service Provider;
- 2.5 “**Services**” means the provision of \_\_\_\_\_ to SABS by the Service Provider, as fully outlined in clause 4 below.

3 FEES

- 3.1 As a consideration for the Services rendered by the Service Provider to SABS, SABS shall pay to the Service Provider the sum of \_\_\_\_\_, for Services actually rendered as per the accepted quotation provided by the Service Provider in response of SABS’s Purchase Order.

4. SCOPE OF WORK

The Service Provider shall provide the following Services to the SABS:

XXXXXXXXXX

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

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\_\_\_\_\_

**SERVICE PROVIDER**

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

Capacity: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

For and on behalf of the SABS, duly authorised hereto.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

**SABS**

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

Capacity: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

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## Part D

### AGREEMENT IN TERMS OF SECTION 21 (1) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013)

Entered into by and between



#### SOUTH AFRICAN BUREAU OF STANDARDS

An entity established in terms of section 2 of the Standards Act No, 1945 (Act No. 24 of 1945), continuing to exist in terms of section 3 of the Standards Act, 2008 (Act No. 8 of 2008) herein represented by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_  
(Hereinafter referred to as “the SABS”)

And

**XXXXXXXXXXXXXX**

A company registered as such in terms of the Laws of the Republic of South Africa with registration number \_\_\_\_\_ herein represented by \_\_\_\_\_ on his / her capacity as \_\_\_\_\_ (hereinafter referred to as “the Operator”)

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## 1. PREAMBLE

**WHEREAS** the Operator may and/or processes personal information on behalf of the SABS;

**WHEREAS** the Operator is cognizant of the legal requirements to process such information only with the knowledge or authorization of the SABS; and

**WHEREAS** the Operator agrees to treat personal information which comes to its knowledge, where the SABS is concerned, as confidential and to not disclose and/ or process such information, unless required by law or required by any agreement concluded between the Parties.

**NOWHEREFORE** the parties record their agreement as follows:

## 2. DEFINITIONS

**Unless the context provides otherwise, the words in this agreement shall be given the same meaning as ascribed to them in the Protection of Personal Information Act, 2013 (Act No. 3 of 2013) where such words have been defined. For avoidance of doubt the salient words used in this agreement are defined as follows:**

- 2.1 **“Data subject”** means the person to whom personal information relates;
- 2.2 **“Operator”** means a person or a juristic person who processes personal information for the SABS in terms of a contract or mandate, without coming under the direct authority of the SABS, and as described more fully on the cover of this agreement;
- 2.3 **“Personal Information”** means information received or disseminated from SABS as a result of the contractual relationship between the Operator and SABS as a

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responsible party relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- (b) information relating to the education or the medical, financial, criminal or employment history of the person;
- (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- (d) the biometric information of the person;
- (e) the personal opinions, views or preferences of the person;
- (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the person; and
- (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

2.4 “**Processing**” means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:

- (a) the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or
- (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

### 3. UNDERTAKING

- 3.1 The Operator hereby undertakes to secure the integrity and confidentiality of personal information in its possession or under its control and shall take appropriate, reasonable technical and organizational measures to prevent the loss of, damage to or unauthorized destruction or unlawful Processing of personal information.
- 3.2 The Operator further undertakes that:
- 3.2.1 it shall not do anything, or omit to do anything, which will contravene any applicable Law, including any applicable data protection legislation and that it shall comply at all times with any policies and procedures relating to the protection, privacy, processing including, but not limited to, the destruction of Personal Information which apply to the relevant services / products; and
  - 3.2.2 it shall only retain Personal Information for as long as it is required to be retained by the Operator in line with the purpose for which the Personal Information was provided, in accordance with any applicable Law.
- 3.3 In order to give effect to the above undertaking, the Operator shall take reasonable measures to identify all reasonably foreseeable internal and external risks to 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.
- 3.4 In pursuance of the undertaking made herein, the Operator shall have due regard to generally accepted information security practices and procedures that may apply to it generally or that are required in terms of specific industry or professional rules and regulations.

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- 3.5 For the purpose of the above undertaking, the Operator confirms it has established and maintains the security measures outlined in Annexure A hereto. Annexure A may be amended as and when there are changes to the security measures established and maintained by the Operator. Should any contemplated changes be less stringent than any other measures established or maintained at any time, the Operator shall inform the SABS of such changes and the SABS will, in its sole discretion, have the right to decide on the continued authorization granted to the Operator to Process Personal Information on behalf of the SABS, which may include termination of the main Services agreement, to which this agreement is an Annexure.
- 3.6 The Operator must notify the SABS immediately where there are reasonable grounds to believe that the personal information of a Data subject has been compromised or accessed or acquired by any unauthorized person.
- 3.7 The Operator hereby indemnifies, defends and holds SABS harmless from and against any and all claims, demands, causes of action, liabilities, losses, damages, judgements, settlements, fines, penalties, awards, costs, expenses and fees (including actual attorney's fees) that may be sustained, suffered or secured against or incurred by SABS arising out of or resulting from: (i) the unlawful Processing by the Operator of personal information; (ii) the Operator failing to establish and maintain adequate security measures; or (iii) a breach in relation to the Personal Information Processed by the Operator.
- 3.8 On completion by the Operator of its obligations to Process any Personal Information for SABS, the Operator must cease Processing such Personal Information and, at the election of SABS, return the Personal Information to SABS or destroy such Personal Information and certify to SABS that it has done so, subject to any applicable legislation that requires the Operator to retain such Personal Information.

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#### 4. MISCELLANEOUS

- 4.1 Should there be any inconsistency between this agreement and any other agreement which this agreement seeks to amend in as far as the protection and Processing of Personal Information relates, the provisions of this agreement shall prevail.
- 4.2 No latitude, indulgence, consent or forbearance or any other similar act by either Party in enforcing any provision of this Agreement shall constitute a variation or novation of this Agreement or a waiver of rights or estoppel in terms of this Agreement.
- 4.3 No alteration, variation, amendment or addition made to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives, as an addendum to this Agreement.

#### 5. SIGNATURES AND AUTHORITY

- 5.1 By signing this Agreement Parties confirm that they have read and understood the contents thereof, are bound by the terms of this Agreement and undertake to execute its terms and conditions. Also, a signatory representing either of the Parties warrants that he or she has due authority to do so and bind their respective principals.

#### SIGNATURE

**For and on behalf of the Service Provider, duly authorised hereto.**

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

#### SERVICE PROVIDER

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

Capacity: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

**For and on behalf of the SABS, duly authorised hereto.**

**Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.**

\_\_\_\_\_

**SABS**

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

Capacity: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ 2. \_\_\_\_\_

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