



# SERVICE LEVEL AGREEMENT

BETWEEN:

TRANS-CALEDON TUNNEL AUTHORITY  
("TCTA")

AND

XX

("THE SERVICE PROVIDER")

Registration Number: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISION OF CONSTRUCTION  
HEALTH AND SAFETY AGENCY SERVICES

## BY AND BETWEEN:

A. Trans Caledon Tunnel Authority ("TCTA") is a public sector entity, established in terms of Notice No. 2631 published in Government Gazette No. 10545 dated 12 December 1986, as amended by Notice No. 277 published in Government Gazette No. 21017 dated 24 March 2000, and listed in Schedule 2 of the Public Finance Management Act of 1999. TCTA conducts business in the water sector in the implementation of large infrastructure projects for the supply of bulk raw water.; and

B. Project 50, a limited liability private company duly incorporated in terms of laws of South Africa.

(each a "**Party**" and together the "**Parties**").

## 1. DEFINITIONS AND INTERPRETATIO

1.1. In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear bear the following meanings and cognate words shall bear corresponding meaning:

1.1.1. "**Agreement**" means this service level agreement together with the schedules and annexures (if any) hereto, as amended from time to time.

1.1.2. "**Applicable Laws**" means any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, directive or requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the persons to whom it is addressed or applied) of any government, local government, statutory, regulatory, self-regulatory or similar body, authority or court and the common law, as amended, replaced, re-enacted, restated or reinterpreted from time to time;

1.1.3. "**Anti-Bribery Laws and the Anti-Money Laundering Laws**" means any and all applicable laws, statutes, regulations specific to anti-bribery and anti-money laundering which are in force and have legal effect from time to time in the Territory including but not limited to Independent Corrupt Practices and Other Related Offences Act, The Economic and Financial Crimes Commission Establishment Act, Money Laundering (Prohibition) (Amendment) Act and Advance Fee Fraud and Other Related Offences Act;

1.1.4. "**Best Industry Practice**" means the exercise of such skill, diligence, prudence, foresight and/or good judgment which would be expected from a

highly skilled, experienced and reputed person engaged in the provision of the Services at a world-class level.

- 1.1.5. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in South Africa.
- 1.1.6. **“Commencement Date”** means the date on which the last party signs this Agreement.
- 1.1.7. **“Confidential Information”** shall have the meaning ascribed to the term in clause below.
- 1.1.8. **“Deliverables”** means those Services delivered by the Service Provider in tangible form as described in **Annexure A**.
- 1.1.9. **“Force Majeure”** means an event beyond the control of the affected Party which was not reasonably foreseeable by the affected Party and which was not caused by and could not have been reasonably planned for, or avoided by the exercise of reasonable foresight and/or reasonable care and diligence on the part of the affected Party, including acts of God, strikes, lockouts, pandemics and other industrial disputes (except in relation to that Party's own Personnel), war, riot or civil unrest/commotion, a consequence of government direction and authority.
- 1.1.10. **“Fees”** means the fees to be paid by TCTA to the Service Provider for the Services as set out in the relevant **Annexure B**.
- 1.1.11. **“Government Authority”** means any governing authority having jurisdiction over the Services (or any part thereof), the Parties or any other matter under this Agreement and/or a Statement of Work, including the Financial Services Board and/or any State organ or authority, whether national, provincial, local or municipal or any department thereof, subdivision (political or otherwise), agency, parastatal, corporation or commission, under the direct or indirect control thereof. The term “Governmental Authorities” shall be construed accordingly.
- 1.1.12. **“Intellectual Property”** means any trademarks, designs, patents, copyright, concepts, source code, Confidential Information, ideas, inventions, methods, methodologies, procedures, processes, know-how, techniques, models, reports, statements, templates, software, software tools, utilities and routines or any changes or additions thereto (if any) whether capable of registration or not and whether registered or not.

- 1.1.13. **"Invoices"** means the original tax invoice prepared by the Service Provider, reflecting the Fees to be paid by TCTA to the Service Provider for the Services rendered and which invoice conforms to this Agreement and the provisions of the VAT Act.
  - 1.1.14. **"Parties"** means TCTA and the Service Provider, and **"Party"** shall mean either one of them as context may require.
  - 1.1.15. **"Personnel"** means all directors, employees, officers, agents, representatives, consultants, contractors and/or sub-contractors of the Service Provider, who are assigned from time to time to work in connection with the performance of the Services.
  - 1.1.16. **"Scope of Work"** means the general scope of work that informs the Services as set out as per **Annexure A**.
  - 1.1.17. **"Signature Date"** means the date of the last signature to this Agreement; and
  - 1.1.18. **"South Africa"** means the Republic of South Africa.
  - 1.1.19. **"Systems"** means any electronic system, software, technology or digital tool.
  - 1.1.20. **"TCTA"** means Trans-Caledon Tunnel Authority, established by Notice No. 2631 published in Government Gazette No. 10545 dated 12 December 1986, as amended by Notice No. 277 published in Government Gazette No. 21017 dated 24 March 2000, a major public entity listed in Schedule 2 of the Public Finance Management Act, Act No. 1 of 1999 and a water management institution in terms of the NW Act, operating in the water sector inter alia, in the funding and implementing of bulk raw water infrastructure development projects, as directed by the Minister from time to time;
  - 1.1.21. **"VAT"** means value added tax in terms of the VAT Act or any similar tax that has an impact of a similar nature on the supply or sale of goods and/or services; and
  - 1.1.22. **"VAT Act"** means the Value Added Tax Act 89 of 1991 and/or any equivalent legislation of the jurisdiction(s) applicable to the Services and/or to the area where the Services are being provided and/or performed.
- 1.2. any reference to:
- 1.2.1. the singular includes the plural and vice versa.

- 1.2.2. natural persons include legal persons and vice versa; and
- 1.2.3. gender includes the other genders.
- 1.3. references to a “**person**” includes any natural person, firm, company, corporation, legal entity, government, organ of state or state agency or any association, trust, consortium or partnership (whether or not having a separate legal personality).
- 1.4. the clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5. when any number of days is prescribed in this Agreement, same shall be Business Days reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.6. any reference to days, months or years shall be a reference to calendar days, months or years, as the case may be.
- 1.7. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 1.8. if any provision in a definition is a substantive provision imposing rights or obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.9. where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this interpretation clause.
- 1.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.11. the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s.

- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

## 2. INTRODUCTION

- 2.1. The Parties wish to record and regulate the terms and conditions governing their relationship in writing in this Agreement.

- 2.2. This Agreement is subject to and shall be read together with:

- 2.2.1. The contents of this Request for Bid, including all annexures hereto and any additional requirements, stipulations, and amendments by TCTA.
- 2.2.2. The relevant bid response from the Service Provider.
- 2.2.3. The signed letter of award acknowledged by the Service Provider

- 2.3. TCTA hereby appoints the Service Provider, and the Service Provider hereby accepts such appointment, to provide the services on the terms and conditions set out in this Agreement.

- 2.4. TCTA has appointed the Service Provider to render the Services on a non-exclusive basis and the Service Provider has agreed to provide such Services to TCTA on the terms and conditions set out in this Agreement.

### 3. COMMENCEMENT AND DURATION

- 3.1. This Agreement shall be deemed to have come into effect on  
 XXX  
 XXX.

- 3.2. Should the Service Provider's services remain needed as of date of expiry TCTA shall reserve the right to extend the term of this Agreement, on prior written notice to the Service Provider.

#### 4. FEES AND PAYMENT

- 4.1. The Service Provider shall render the Services in accordance with this Agreement, TCTA undertakes to make payment in respect of the Fees stipulated in **Annexure B**.
- 4.2. TCTA shall accept invoices based on the actual services rendered, and payment of invoices shall be affected within 30 days from date of receipt.
- 4.3. Invoices must be submitted with supporting documents, where requested.

- 4.4. TCTA reserves the right to request the following information from the Service Provider prior to making payment:
- 4.5. A VAT registration certificate if the Service Provider is a VAT vendor.
- 4.6. Statement of account detailing cumulative costs claimed from contract inception against the contract amount.
- 4.7. All invoices shall contain a Purchase Order number as a reference and the Service Provider's VAT number, if registered for VAT, the Service Providers registered name, date of invoice, amount due, services rendered, due date, and any other relevant details. TCTA's VAT number is **4360104923**.
- 4.8. Payment will only be made against original invoices which complies with the requirements of the VAT Act. Failure to remit fully compliant invoice will result in late payment, without forfeiture of any settlement discounts that may be due to TCTA.
- 4.9. TCTA shall pay the Service Provider into the banking details provided to it by the Service Provider on a stamped bank letter.
- 4.10. The Service Provider shall ensure that any change in its banking details is communicated to TCTA through written communication and duly signed by its duly authorised persons.
- 4.11. Should TCTA object to the whole or part of an invoice of the Service Provider, TCTA shall notify the Service Provider within 10 (ten) Business Days of receipt of relevant invoice, of its intention to withhold payment and shall state the reasons why including but not limited to affected invoice, specific amount in dispute and alleged reasons or grounds of dispute.
- 4.12. If TCTA objects only to a part of the invoice, it shall pay that part of the invoice to which it has not objected within the period specified.
- 4.13. No variations or contract price adjustments to the Fees will be accepted within 6 months from the date of acknowledgement of the Letter of Award, unless otherwise stipulated in the Letter of Award.
- 4.14. Any increases to the Fees, shall be dealt with as follows:
  - 4.14.1. If the Letter of Award made provision for the increase:
    - 4.14.1.1. TCTA will prepare a notice of increase to the service provider.

- 4.14.1.2. TCTA will endeavour to send the notice at least 2 weeks prior to the effective date of the increase.
- 4.14.2. If the Letter of Award did not make provision for the increase The Service Provider must request the increase in writing quoting the relevant contract name and PO Number and send the request to the TCTA contract manager.
- 4.15. No claim by the Service Provider for additional payment, on any grounds, will be allowed, including any misunderstanding or misinterpretation in respect of a Statement of Work, nor will the Service Provider be released from any risk or obligations imposed on and/or undertaken by the Service Provider on any such grounds or on the ground that it could not have foreseen any matter which might affect, or has affected its performance and/or Fees in terms of this Agreement and/or a Statement of Work.
- 4.16. All payments are provisional and are subject to being audited by TCTA. The Service Provider shall preserve its records for such period as the South African Revenue Services may require or 5 (five) years from date of payment of the Fees, whichever period is longer.

## **5. OBLIGATIONS OF THE PARTIES**

- 5.1. The Service Provider hereby undertakes to:
  - 5.1.1. ensure that its personnel abide by the provisions of the Confidentiality undertakings contained in clause 10;
  - 5.1.2. provide suitable, qualified, and experienced personnel to render the services.
  - 5.1.3. comply with requests by TCTA from time to time in relation to the services
  - 5.1.4. perform the services timeously and in a manner consistent with all applicable laws and Best Industry practice.
- 5.2. TCTA undertakes:
  - 5.2.1. without charge, to furnish to the Service Provider within a reasonable time all pertinent data and information available to it and relevant to the tasks to be performed by the Service Provider under this Agreement.
  - 5.2.2. ensure the availability of, and access to its staff for purposes of meetings, discussions, and the like, which may be reasonably required by the Service Provider in the performance of its obligations under this Agreement.
  - 5.2.3. consult with, and give the Service Provider reasonable notice where



required; and

- 5.2.4. it will discharge its obligations under this Agreement in a diligent, competent, workmanlike and professional manner.

## **6. AUDITS AND ACCESS TO ACCOUNTS**

TCTA is audited by its auditors (internal and external) from time to time and for this purpose TCTA shall, on a reasonable notice require copies of all relevant information relating to this Agreement. For the avoidance of doubt the Service Provider is not obliged to disclose documents or parts of documents that do not relate to the Services, compliance with TCTA's requirements, procedures or any other obligations owed to TCTA under this Agreement.

## **7. MAINTENANCE OF RECORDS AND INFORMATION**

For the duration of this Agreement and for a period of at least 5 (five) years afterwards (or for such other retention period as may be required by law from time to time in relation to any particular record(s), whichever period is the longer), the Service Provider agrees to maintain and safekeep, in a digital format, to keep accurate records in respect of the Services.

## **8. SUB-CONTRACTING**

- 8.1. The Service Provider shall not, without the prior written consent of TCTA, sub-contract any part or the whole of this Agreement to any other Service Provider.
- 8.2. Notwithstanding TCTA's consent to sub-contracting any portion of this Agreement, the Service Provider shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of Services in terms of this Agreement or any part thereof.
- 8.3. TCTA may, by giving no less than 48 (forty-eight) hours written notice thereof to the Service Provider, setting out full and precise reasons, require the Service Provider to remove any member of its Personnel or subcontractors who, in TCTA's reasonable opinion, is failing to perform their duties in a satisfactory manner and the Service Provider shall take such steps as may be necessary to give effect to such notice.

## **9. PERFORMANCE MANAGEMENT AND MEETINGS**

The Service Provider agrees to provide TCTA the services timeously, and of a high quality and skill.

- 9.1. The Service Provider agrees to provide TCTA the services timeously, and of a high quality and skill.

- 9.2. This Agreement shall be subject to performance management in line with TCTA's Contract Management Policy and Procedure as amended from time to time. Failure to provide satisfactory goods or services may result in the bidder's blacklisting within TCTA or other organs of state.
- 9.3. The Parties will ensure that performance management meetings are held at least every 12 months for duration of the contract.
- 9.4. The Services Provider shall ensure that the relevant key staff members as being required to attend meetings shall attend each such meeting.
- 9.5. Minutes of all meetings between the TCTA and the Service Provider shall be taken (in English) by the Service Provider's representative attending at such meeting and provided to TCTA by the Service Provider for confirmation within 5 (five) Business Days of the relevant meeting to which they refer.

## **10. CONFIDENTIAL INFORMATION**

- 10.1. Confidential information shall refer to any information or data, other than personal information, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party (intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises), or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the duration:
  - 10.1.1. information relating to methods of operation, data and plans of the disclosing Party.
  - 10.1.2. the contents of this Agreement; private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information.
  - 10.1.3. any information disclosed by either Party, and which is clearly marked as being confidential or secret.
  - 10.1.4. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities.
  - 10.1.5. information relating to the past, present and future research and development of the disclosing Party.

- 10.1.6. information relating to the business activities, business relationship, products, services, customers, clients and subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information.
- 10.1.7. technical and scientific, and trade secrets of a disclosing Party including inventions, applications and processes.
- 10.1.8. copyright works.
- 10.1.9. commercial, financial and marketing information.
- 10.1.10. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party.
- 10.1.11. plan, design, concepts, drawings, functional and technical requirements and specifications of the disclosing Party.
- 10.1.12. information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- 10.1.13. information concerning the charges, Fees and/or costs of the disclosing Party or its authorised subcontractors, or their methods, practices or service performance levels actually achieved.
- 10.2. All literature, correspondence, and documentation, whether in written, electronic or any other form whatsoever, shall be always and remain the property of TCTA and must be returned to TCTA on termination of the Service Provider's services to TCTA.
- 10.3. The Service Provider is expressly prohibited from divulging any confidential information to any third party, including the media, without TCTA's express prior written consent, nothing at all excepted.
- 10.4. The confidentiality obligations will not apply to information which:
  - 10.4.1. is public knowledge or becomes public knowledge at any time through no fault of the Service Provider.
  - 10.4.2. is disclosed to the Service Provider by a third party with the lawful right to such make disclosure and who did not obtain such information directly or indirectly from TCTA.
  - 10.4.3. was known to the Service Provider prior to the date of disclosure by TCTA as it is able to prove through documentary material in its possession; and or

10.4.4. is required to be disclosed in terms of an order of court.

## **11. PERSONAL INFORMATION**

### **11.1. Why we collect Personal Information**

#### **11.1.1. The Service Provider's Information**

11.1.1.1. To help manage the Agreement

11.1.1.2. To vet the Service Provider

11.1.1.3. To use for audit and financial reporting purposes

#### **11.1.2. The Service Provider's Clients Information**

11.1.2.1. To render client related services and administration of client accounts.

11.1.2.2. To conduct criminal, credit, reference, and other related reference checks.

11.1.2.3. To authenticate the client.

11.1.2.4. To provide the client with information which TCTA believes may be of interest to the client, such as information relating to public awareness campaigns and matters of public interest in which TCTA is involved or has decided to lend its support to.

#### **11.1.3. The Service Provider's Supplier and Third-Party Contractor/Supplier Information**

11.1.3.1. To secure the products and services of the supplier/service provider or contractor as part of TCTA's product and service offering.

11.1.3.2. To manage the TCTA supply chain and relationship with the supplier and/or contractor for any purposes required by law by virtue of the relationship between the supplier and TCTA.

11.1.3.3. To render services relating to the administration of supplier/service provider or contractor accounts.

11.1.3.4. To provide the supplier/service provider or contractor with information which TCTA believes may be of interest, such as

information relating to public awareness campaigns and matters of public interest in which TCTA is involved or has decided to lend its support to.

#### 11.2. Sources of Personal Information

Personal information may be collected from the following sources:

- 11.2.1. Directly from the person when he/she applies for any TCTA related employment, provide services to TCTA, submit forms requests or transactions, use our websites, or make use of any of the TCTA services.
- 11.2.2. From public registers, credit bureaus and law enforcement agencies and any other organisation from which TCTA may acquire your information.
- 11.2.3. From people and entities employed by TCTA to provide services to TCTA which may be legally entitled to provide TCTA with personal information.

#### 11.3. The Storage of Personal Information

All personal information collected by TCTA will be stored as follows:

- 11.3.1. In a secure and safe manner according to strict information security principles with safeguards to ensure its privacy and confidentiality.
- 11.3.2. For no longer than is necessary to achieve the purpose for which it was collected unless further retention is:
  - 11.3.2.1. Required by law or contractual obligation.
  - 11.3.2.2. Otherwise reasonably required by TCTA for lawful purposes related to its functions and activities.
- 11.3.3. Retained further with the person's consent:

After which the information will be de-identified and disposed of as per the TCTA Records policy.

#### 11.4. Sharing of Personal Information

- 11.4.1. Any information supplied to TCTA will be treated as confidential and TCTA will not disclose information unless legally permitted thereto. No information will be transferred to a Third Party without the explicit consent of the data subject unless legally obliged thereto. By providing the personal information, the data subject agrees that TCTA may transfer the information to the

following people and organisations in pursuit of the data processing purposes set out in our Policy on the Protection of Personal Information.

- 11.4.2. To the divisions and departments in TCTA, including directors, employees, contractors, agents, auditors, legal and other professional advisors who are authorised to process this information.
- 11.4.3. To financial and government organisations who may request information from TCTA, in which case the data subject will be notified in advance; the provision of such information, including banks, governmental, judicial, regulatory and law enforcement bodies including the South African Revenue services and the National Credit Regulator.
- 11.4.4. To persons employed by TCTA to provide services on our behalf and that adhere to principles like TCTA regarding the treatment of personal information.
- 11.4.5. To any person to whom TCTA cede, delegate, transfer or assign any of our rights or obligations pertaining to products and/or services provided to the person or contracts concluded with the person.
- 11.4.6. To any person who acts as legal guardian, executor of an estate, curator or in a similar capacity.
- 11.4.7. To any person or persons who may be permitted by applicable law or that you may consent to, including persons or entities who may request such information to evaluate the credit worthiness of the person.

#### 11.5. Your Rights regarding your Personal Information

- 11.5.1. A data subject (employee, contractor, supplier and/or customer) has the following rights to his/her personal information collected, processed, and stored by TCTA:
  - 11.5.1.1. Right of access to and the right to rectify or update the personal information collected.
  - 11.5.1.2. The right to object at any time to the processing of the personal information in which event the consequences of the objection will be explained to the data subject.
  - 11.5.1.3. The right to request TCTA to no longer process the personal information of the data subject should the information not be required for further processing or by law.

## 11.6. General Conditions pertaining to Personal Information

11.6.1. TCTA accepts no liability whatsoever for any loss, damage (whether direct, indirect, special, or consequential) and/or expenses of any nature whatsoever which may arise because of, or which may be attributable directly or indirectly from information made available on this document, or actions or transaction resulting there from.

11.6.2. This disclaimer shall be read together with the TCTA terms and conditions also available on the TCTA website <https://www.tcta.co.za>.

## 12. SYSTEMS

12.1. The Service Provider shall ensure that its systems have the capacity and performance necessary to enable the Service Provider to perform the Services and to fulfil the Service Provider's obligations under this Agreement. Without prejudice to the generality of the foregoing, the Supplier shall procure that the Systems enable it to:

12.1.1. send electronic mail to and receive electronic mail from TCTA.

12.1.2. maintain electronic records, including records of all electronic mails received from TCTA.

### 12.2. The Supplier warrants and undertakes that:

12.2.1. the performance of the Service Provider's obligations shall not be interrupted, and the Systems and the performance of the Services shall not be adversely affected, directly or indirectly.

12.2.2. the Supplier shall comply with its obligations in respect of data backups and shall procure that the Systems include such back-up and fail safe features as are necessary to ensure that failures in the performance or operation of any of the Systems do not have a significant adverse effect on the Services or on the Service Provider 's ability to comply with its obligations under this Agreement;

12.2.3. the Service Provider shall comply with and procure that its employees and sub-contractors comply with the obligations in relation to the security and integrity of the Services and the Systems, without prejudice to the foregoing, the Service Provider shall ensure that no virus is coded or otherwise introduced into the Systems or into any systems used or owned by TCTA. If a virus is found to have been introduced, the Service Provider shall at its own cost take all necessary remedial action to eliminate the virus and, if the virus causes a loss of operational efficiency or loss of data, take all steps

necessary and provide all assistance required by TCTA to mitigate the losses and restore efficiency and data; and

12.2.4. the Systems and each of their respective components shall be maintained at all times.

12.3. The Supplier further undertakes:

12.3.1. to inform TCTA prior to incurring significant expenditure in relation to any new Systems which are relevant to the Service Provider's provision of the Services to TCTA or the compatibility of the Service Provider's Systems with those of TCTA.

12.3.2. to comply with any Systems integration or interfacing plan agreed between it and TCTA provided that a different scope and rates are agreed between the Parties in writing.

**13. INTELLECTUAL PROPERTY RIGHTS**

13.1. All Intellectual Property rights owned by and licenced to each Party remains the sole property of such Party.

13.2. TCTA shall acquire all copyright and other proprietary rights in the Deliverables including but not limited to all reports, written advice or other written materials generated by the Service Provider in the execution of its obligations in terms of this Agreement. For the avoidance of doubt, this clause does not cover Service Provider Intellectual Property (which, for the purpose of this clause shall include any third-party Intellectual Property) embedded or employed in the Deliverables or execution of the Services.

13.3. The Service Provider warrants that no aspect of the Service Provider Intellectual Property utilised by TCTA in terms of this Agreement will infringe any patent, design, copyright, trade secret or other proprietary right of any third party and the Service Provider shall, at its cost, defend TCTA against any claim that the Services infringe any such third-party Intellectual Property.

13.4. At TCTA's request and expense, the Service Provider will do all such things including signing all documents or other instruments reasonably necessary to confirm or vest in TCTA the rights assigned or otherwise transferred to TCTA in terms of this Agreement.

13.5. On request by TCTA and in any event on the expiry or termination of this Agreement, the Service Provider will promptly deliver to TCTA, all copies of materials relating to the Services then in the Service Provider's possession.



#### **14. LIABILITY**

- 14.1. Neither Party shall be liable to the other for any indirect, special, or consequential loss or damage including without limitation loss of profit, business revenue, goodwill or loss of data arising out of this Agreement.
- 14.2. Each Party shall be liable to the other Party for all direct loss or damage sustained by the other Party arising out of its wilful or negligent actions or omissions.
- 14.3. Notwithstanding the clause above, the Service Provider shall only be liable to a maximum of twice the Fees.
- 14.4. Clause 14.3 above does not limit the Parties rights in terms of any court remedy.

#### **15. DISCLAIMER AND INDEMNITY**

- 15.1. Neither the Service Provider, nor its Personnel shall have any claim against TCTA, directors or employees in the event of any loss, injury (whether fatal or otherwise), or damage to property occurring during the performance of the Services.
- 15.2. Save where a clause makes provision for its own indemnity, the Service Provider indemnifies TCTA against all loss, injury, costs or damage howsoever caused which TCTA may suffer or incur and any and all claims which may be brought against TCTA in respect of any loss, liability, damage, costs and/or expenses of any nature whatsoever as a consequence of or which may arise from or is attributable to any acts or omissions on the part of the Service Provider and/or its Personnel.

#### **16. INSURANCE**

- 16.1. The Service Provider shall at its own cost (which shall be excluded from the Fees) take out and maintain adequate insurance cover, with a reputable insurance company to the reasonable satisfaction of TCTA for the duration of this Agreement period, in respect of:
  - 16.1.1. its liabilities pursuant to this Agreement including its liabilities under clause 15.
  - 16.1.2. general liability for the provision of the Services, public liability and products liability including all liability to third parties howsoever arising (including as a result of the acts and omissions of its employees and sub-contractors and negligence).
  - 16.1.3. employer's liability.

- 16.1.4. professional indemnity liability.
  - 16.1.5. property damage (including insurance covering the full reinstatement value of the Premises and any other associated land and buildings and the cost of general building and site repairs).
  - 16.1.6. any other statutory and legal obligations which are the responsibility of the Service Provider (including employer's liability or workers compensation, motor liability).
- 16.2. Upon request, the Service Provider shall promptly provide TCTA with copies of its insurance policies and certificates together with receipts for current premiums.

## **17. BREACH**

- 17.1. A Party commits a breach of this Agreement if such Party fails to perform any of its obligations in terms of any provision of this Agreement.
- 17.2. Should a Party breach this Agreement; then the aggrieved Party shall notify the other party in writing of such default or failure and the other Party shall within 14 (fourteen) days of receipt of such notice, remedy such default or failure, failing which the aggrieved Party shall be entitled, if it so elects, to terminate this Agreement.

## **18. TERMINATION OF AGREEMENT**

- 18.1. Either Party may terminate this Agreement by providing the other Party 1 (one) month prior written notice.
- 18.2. Where this Agreement has been cancelled as provided for above, then:
  - 18.2.1. a final account shall be prepared for that portion of the services executed by the Service Provider, which has not been paid for by TCTA. TCTA shall assess the claim, and if in order, make payment of such amount within 30 (thirty) days after receipt of a tax invoice, by electronic fund transfer into the nominated bank account of the Service Provider.
  - 18.2.2. TCTA shall be entitled to employ a third party to complete the outstanding services and to rectify any sub-standard work in that portion of the services executed by the Service Provider; and
  - 18.2.3. TCTA shall be entitled to use all data, working papers, research, documentation, and other information for purposes of proceeding with the execution of the services.

## **19. FORCE MAJEURE**

- 19.1. If either Party is prevented or restricted directly from carrying out all or any of its obligations or duties under this Agreement by a Force Majeure, this clause 19 shall apply.
- 19.2. If either Party is prevented or delayed in the performance of any of its obligations or duties under this Agreement and/or a Scope of Work, by a Force Majeure, then that Party shall within 1 (one) Business Day of that Party becoming aware of the Force Majeure, notify the other Party specifying the nature and extent of the circumstances giving rise to the Force Majeure.
- 19.3. The affected Party shall, subject to service of the notice under clause 19 hereof, have no liability in respect of the performance of such of its obligations or duties as are directly prevented by the Force Majeure during the continuation of such event(s) and for such time after they cease, as is reasonably necessary for that Party to begin re-performing the affected obligation or duty.
- 19.4. The affected Party shall use all reasonable endeavours, both to notify the other Party of the end of the Force Majeure and to recommence its affected operations as soon as reasonably practicable in order for it to perform its obligations or duties under this Agreement and/or a Statement of Work.
- 19.5. The affected Party shall use all reasonable endeavours to bring the Force Majeure to a close or to find a solution by which this Agreement and/or a Scope of Work, may be performed despite the continuance of the Force Majeure.
- 19.6. The Parties agree that, should the Force Majeure last for more than 2 (two) weeks, then the Party who has not invoked Force Majeure to excuse any non-performance of its obligations or duties, may submit a recovery plan with revised fee schedule for TCTA's approval.
- 19.7. Should the Party not be able to provide as per clause 19.6, the Parties may elect to terminate this Agreement.

## **20. DISPUTE RESOLUTION**

- 20.1. Any dispute, question or difference arising at any time between the parties to this Agreement out of or in regard to:
- 20.1.1. the rights and duties of either of the Parties herein.
- 20.1.2. the interpretation of,

- 20.1.3. the termination of,
  - 20.1.4. any matter arising out of the termination of, or
  - 20.1.5. the rectification of this Agreement,
  - 20.1.6. shall be discussed between the Parties who will attempt, in good faith, to resolve such dispute.
- 20.2. Should the Parties fail to resolve the dispute, it may be referred to arbitration as set out below.
- 20.3. Any such arbitration shall be held in Johannesburg in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended.
- 20.4. The arbitrator shall be appointed by the Parties, and failing agreement, shall be nominated by the Chairperson for the time being of the Johannesburg Bar Council.
- 20.5. The arbitrator shall be entitled to:
- 20.5.1. determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence.
  - 20.5.2. investigate or cause to be investigated any matter, fact or thing which the arbitrator considers necessary or desirable in connection with any matter referred to him for decision.
  - 20.5.3. decide the matters submitted to the arbitrator according to what he or she considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
  - 20.5.4. make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as the arbitrator in his or her discretion may deem fit and appropriate.
- 20.6. The arbitration shall be held as promptly as possible after it is agreed between the Parties, with a view to it being completed within 30 (thirty) Business Days.
- 20.7. The Parties agree that the decision of the arbitrator shall be final and binding.
- 20.8. Nothing contained in this clause shall preclude either party from seeking relief of an interim or urgent nature in any court of competent jurisdiction.

- 20.9. This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.

**21. BROAD BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)**

The Service Provider shall ensure that it provides TCTA on an annual basis with a valid BBBEE certificate for the duration of the Agreement.

**22. ANTI-BRIBERY AND ANTI-MONEY LAUNDERING UNDERTAKINGS**

- 22.1. The Parties hereby represent, warrant, and undertake to each other on a continuous basis that:

- 22.1.1. they have not violated, and that they will at all times comply with, any applicable laws, regulations or administrative requirements including but not limited to the Anti-Bribery Laws and the Anti-Money Laundering Laws.
- 22.1.2. they have not and shall not engage in the following conducts: making of any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any person, private or public, either directly or indirectly, whether in money, property or services to (i) obtain favourable treatment or to secure any contracts, Agreements or commitments, (ii) pay for favourable treatment or for any contracts, Agreements or commitments secured, (iii) obtain special concessions or for special concessions a Supplier ready obtained, or (iv) obtain or retain business, commercial advantage or the improper performance of any function or activity, in each case, in violation, in any material respect, of any Anti-Bribery Laws;
- 22.1.3. they will cause their directors, officers, employees, subcontractors and agents (the "Representatives"), their affiliates (current or future) and their affiliates' representatives, to comply at all times with the obligations under this clause 22;
- 22.1.4. none of the payments between the Parties were or shall be the product of or derived from unlawful activity and none of either Party's activities will (to the extent such matters are within the control of such Party) cause said Party or the other Party to be in violation of applicable Anti-Money Laundering Laws; and
- 22.1.5. if either Party gains knowledge of any conduct by one of their respective Representatives, Affiliates, or Affiliates' Representatives, which violates applicable Anti-Bribery and/or Anti-Money Laundering Laws, or if it has specific suspicion of such conduct based on any official investigation, action,

lawsuit or proceeding by a competent authority, it shall immediately inform the other Party of such knowledge and information thereof.

- 22.2. Should either party determine in good faith, or have good reasons to suspect that the other party, its affiliates, or their respective representatives are engaging, or have engaged in a conduct that violates, or may place such party at risk of liability under the anti-bribery laws or anti-money-laundering laws, including the breach of any representation herein, it may terminate this Agreement immediately upon written notice to the other party, without prejudice to the damages it may claim in relation to such termination.

### **23. CONFLICT OF INTEREST**

The Service Provider shall not act in any way inconsistent with the responsibilities assigned to them, the provisions of the Notice of Establishment of TCTA, the PFMA or other applicable legislation, or use their positions or privileges or confidential information obtained for personal gain, or to improperly benefit any third party.

### **24. GENERAL**

- 24.1. Any latitude, extension of time or other indulgence which may be granted by one Party to the other or any failure by a Party to enforce any of its rights under this agreement at any time shall not, under any circumstances, be deemed to be a waiver of any of that Party's rights thereafter to enforce same and each Party shall be entitled to compel strict compliance with the terms and conditions of this Agreement.
- 24.2. This agreement and the annexures hereto constitute the entire Agreement between the Parties who by their signatures hereby acknowledge that no representations have been made nor warranties given save as set out in this Agreement.
- 24.3. No variation of this Agreement shall be of any force or effect unless recorded in writing and signed by the Parties.
- 24.4. Neither Party be entitled to cede or assign any of its rights or obligations under this Agreement without the express prior written consent of the other Party first being had and obtained.
- 24.5. Each Party will bear its own costs relating to the drafting, negotiating, and settling of this Agreement.

## 25. DOMICILIUM CITANDI ET EXECUTANDI

- 25.1. The Parties hereby choose their domicilium citandi et executandi for all purposes of this Agreement as follows:

TCTA at:

Byls Bridge Office Park Building 9  
Corner of Olievenhoutbosch & Jean Ave  
Doringkloof  
Centurion  
PO Box 10335  
0046

the Service Provider at:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Cell Phone Number: XXXXXXXXXXXXXXXXXXXXXXXX

Email: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

- 25.2. Each Party shall be entitled to nominate an address in substitution for the address set out above in respect of it at any time by giving each Party hereto 21 (twenty-one) days written notice of such change of address.
- 25.3. Any notice to be given in terms hereof shall be given by hand delivery thereof to the hand delivery address of the addressee set out above, or by posting by registered post to the postal address of the addressee set out above.
- 25.4. Any notice or letter posted by registered post to the postal address provided above shall be deemed to have been received 10 (ten) days after the date of posting thereof.
- 25.5. Any notice or letter sent by electronic mail to the electronic mail address provided above shall be deemed to have been received on the day following that on which it was sent.

## 26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## 27. COSTS

Each Party shall pay its own costs and expenses incurred in the preparation of this Agreement.

THUS, DONE AND SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2024  
AS WITNESSES:

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

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

\_\_\_\_\_  
FOR AND ON BEHALF OF:  
TRANS CALEDON TUNNEL  
AUTHORITY

NAME: \_\_\_\_\_

CAPACITY: \_\_\_\_\_

THUS, DONE AND SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2024  
AS WITNESSES:

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

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

\_\_\_\_\_  
FOR AND ON BEHALF OF:  
THE SERVICE PROVIDER

NAME: \_\_\_\_\_

CAPACITY: \_\_\_\_\_

ANNEXURE A



## **SCOPE OF WORK**

### **INSERT SCOPE OF WORK AS PER THE BID DOCUMENT**

1. The Service Provider shall in the course of this contract deliver the following services:

XX  
XX  
XX  
XX  
XX  
X

**ANNEXURE B**

## **FEES SCHEDULE**

**[INSERT FINAL PAYMENT SCHEDULE AS PER THE BID SUBMISSION]**

