

**GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT**

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable.

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- ~~1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.~~
- ~~1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.~~
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
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- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
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- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 ~~If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.~~
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with

supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. ~~The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.~~

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:

(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. ~~The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.~~

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
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- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
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- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
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- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard

the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security,

damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation Programme (NIP)

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.



National Treasury
REPUBLIC OF SOUTH AFRICA

GOVERNMENT TECHNICAL ADVISORY CENTRE

AGREEMENT ENTERED INTO BY AND BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN THE GOVERNMENT TECHNICAL ADVISORY CENTRE AND HEREIN REPRESENTED BY MS LINDIWE NDLELA IN HER CAPACITY AS ACTING HEAD OF THE GOVERNMENT TECHNICAL ADVISORY CENTRE (HEREIN AFTER REFERRED TO AS "GTAC") AND AS SUCH DULY AUTHORISED THERETO

AND

Company Registration: _____

(HEREINAFTER REFERRED TO AS THE "SERVICE PROVIDER")

(Hereinafter referred to as "the Parties")

FOR THE PROVISION OF TECHNICAL ADVISORY SERVICES TO INTERGOVERNMENTAL RELATIONS, NATIONAL TREASURY FOR THE DIAGNOSTIC REVIEW OF THE SYSTEM OF CAPACITY BUILDING FOR LOCAL GOVERNMENT

Contract No.: _____

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WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1. words importing –
- 1.1.1. any one gender includes the other gender;
 - 1.1.2. the singular includes the plural and *vice-versa*; and
 - 1.1.3. natural persons include created entities (incorporated or unincorporated) and the State and vice-versa;
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- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
- 1.2.1. “Agreement” means this Agreement including the annexes thereto;
 - 1.2.2. “Effective Date” means the _____ notwithstanding the date of signature of this Agreement;
 - 1.2.3. “GTAC” means the Government Technical Advisory Centre established under Proclamation No. 25 of 2012 promulgated in terms of section 7(5) (c) of the Public Service Act, 1994 (Proclamation No.103 of 1994);
 - 1.2.4. “Client” means Intergovernmental Relations, National Treasury;
 - 1.2.5. “Material Breach” means an event which goes to the root of this Agreement;
 - 1.2.6. “Parties” means the GTAC and the Service Provider and “Party” means either of them;
 - 1.2.7. “Service Provider” means the company that provides services under this agreement;
 - 1.2.8. “Services” means the provision of services as set out in the ToR (Annexure “B”) hereto and in terms of this Agreement;

- 1.2.9. **"ToR"** means the attached Terms of Reference (Annexure B);
- 1.2.10. **"Termination Date"** means _____, unless terminated earlier in terms of this Agreement;
- 1.2.11. **"Level of Effort"** means the complete deliverable submitted as per agreed upon timelines and the amount of work performed within a time and is measured in working days or hours per day/week/month/duration of the contract.
- 1.2.12. **"IGR"** means Intergovernmental Relations.
- 1.3. any reference in this Agreement to **"date of signature hereof"** shall be read as meaning a reference to the date of the last signature of this Agreement;
- 1.4. 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;
- 1.5. 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 Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. 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;

- 1.10. the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply;
- 1.11. any reference in this Agreement to a Party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be.

2. STANDARD CONDITIONS

2.1. This Agreement constitutes the whole contract between the parties relating to the subject matter hereof and includes the following documents which form an integral part of this agreement:

- 2.1.1. Annexure A: GTAC, General Standard Conditions of the contract are referred to in Schedule 1;
- 2.1.2. Annexure B: GTAC Terms of Reference;
- 2.1.3. Annexure C: Code of Conduct for Technical Advisors.
- 2.1.4. Annexure D: Travel Policy.

2.2. In the event of a conflict between the provisions of the Contract and the Annexures, the ToR shall take precedence.

3. APPOINTMENT

- 3.1. The GTAC appoints the Service Provider to provide the services and the Service Provider accepts such appointment on the terms and conditions herein, and subject to positive security clearance.
- 3.2. The Service Provider appointed to perform work under this agreement is _____
- 3.3. The Technical Advisor's nominated to perform work under this agreement are as follows:

Resource Name	Resource Role

Resource Name	Resource Role

3.4. Nothing in this Agreement shall be construed as constituting an employment service as contemplated in section 198 of the Labour Relations Act, 1995 (Act No. 55 of 1995).

4. DURATION

4.1. This Agreement shall be valid and binding for eight (8) months from the Effective Date and shall end on the Termination Date or on completion of the Services set out in Clause 6 below should this be sooner.

4.2. Despite clause 4.1 above, this agreement may be renewed at the GTAC's discretion for a period and on terms determined by the GTAC at least 30 (thirty) days prior to the termination date.

4.3. Should the Service Provider terminate the contract before the expiry of an original term or an extended term, one month's notice should be given to the GTAC, which notice shall-

4.3.1. be given in writing; and

4.3.2. be given on or before the last day of a month and take effect on the first day of the succeeding month.

5. REPLACEMENT

5.1 Should it become necessary to replace any of the contracted resource(s), the Service Provider shall propose other staff of at least the same level of qualifications and expertise for prior approval by GTAC. In this regard GTAC has a sole discretion not to allow for a replacement of a resource.

5.2 If the proposed resource does not meet the requirements of the TOR upon evaluation by GTAC, the Service Provider shall be notified and the contract terminated.

6. SERVICES

- 6.1. The Service Provider shall provide services to GTAC as specified in the Terms of Reference (Annexure B).
- 6.2. Any changes to the Services will only be made with the prior written approval of the GTAC.
- 6.3. The Service Provider’s performance will be assessed based on the agreed and approved project work plan plus the agreed-upon deliverables.

7. FEES AND PAYMENT

- 7.1. The fixed total contract price (professional fees plus disbursements) will add up to a maximum figure of R _____ Including VAT. The professional fees will be charged on an hourly basis.
- 7.2. The Professional Fee payment schedule is as follows:

Team Member	Hours	Hourly Rate	Amount
Total Amount Excluding VAT			
Disbursement up to 10% of professional fees			
VAT			
Total Amount Including VAT and Disbursements			

- 7.3 Subject to the satisfactory completion of the Services, the GTAC shall pay the corresponding amount due including VAT, within 30 (thirty) days after receipt of a correct invoice and relevant documents.
- 7.4 Invoices for the level of effort shall include VAT as a separate line item and shall be supported by progress reports for the period covered by the invoice.
- 7.5 The Service Provider shall invoice GTAC for payment of services rendered according to actual hours worked and supported with a timesheet and the relevant progress report confirming deliverables during the period of the service, failing which the invoice shall not be paid.
- 7.6 No payments shall be made unless the invoice and deliverables have been countersigned by the Project Manager.
- 7.7 The GTAC shall make all payments to the Service Provider's nominated bank account.

8. DISBURSEMENTS

- 8.1. The Service Provider shall be allocated an amount of R _____ as indicated in terms paragraph 7.2 of the pricing schedule for the disbursements. GTAC shall grant prior approval for all the expenditure to be incurred as provided for hereunder:
- 8.1.1. Accommodation (three star hotel equivalent), meals and incidental expenses;
- 8.1.2. Air transport (economy class equivalent) and car rental at the destination in respect of a vehicle with an engine capacity of 1 300cc – 1 600cc. Prior approval should be sought from GTAC for a different class of vehicle if required for a particular terrain. Mountainous and gravel roads are considered difficult terrain and vehicles with higher ground clearance may be required. Ticket stubs and boarding passes must be included with the invoice;
- 8.1.3. A kilometre rate for official journeys in accordance with the ruling rates of the Department of Transport;
- 8.1.4. Parking and tollgate fees for official journeys and substantiated by copies of the till slips and invoices;
- 8.1.5. Other direct expenses as approved and substantiated by copies of the till slips and invoices.

- 8.2. Gratuity (tips) and alcohol expenses will be borne by the Service Provider.
- 8.3. Costs incurred by the Service Provider in operating a home-based or external office, other than the offices of GTAC or of client, such as computing, printing, email, internet and fax facilities will be borne by the Service Provider.

9. PERFORMANCE MEASURES

- 9.1. It shall be the duty of the Service Provider to deliver the services to the satisfaction and standard of GTAC in accordance with the Terms of Reference.
- 9.2. The Service Provider shall abide with the dates, format and method of delivery of the services and deliverables.
- 9.3. The Service Provider should ensure that all reports, files, notes, electronic files and documents are submitted according to GTAC requirements. Invoices shall be submitted for payment once the reports have been evaluated and approved by GTAC.
- 9.4. The following reports will be expected from the Service Provider:
- 9.4.1. An inception report including process plan (electronic);
 - 9.4.2. Monthly progress reports (electronic);
 - 9.4.3. Executive summary, main report and committee report in draft and final version (electronic and two unbound copies);
 - 9.4.4. Presentations and draft reports to address project progress matters for 1-3 engagements with the IGR's reference group as directed by IGR and/or GTAC;
 - 9.4.5. Ms Power Point presentation for use in the internal and stakeholder meetings, and political forums;
 - 9.4.6. Individual outputs in the formats as specified in the relevant work parcels, mainly the Annexures to the Main Reports (electronic only in original and PDF versions, no hard copies required);

- 9.4.7. The Service Provider to ensure deliverables are completed in accordance with the stipulated project time frame for the delivery of milestones;
- 9.4.8. All outputs to be archived as electronical files, logically named, in original format as well as PDF's where practical, in a DropBox folder;
- 9.4.9. All reports to be in plain English and numeric data is to be aligned with National Treasury standard.
- 9.5. In the event that the Service Provider fails to produce the reports it is specifically obliged to prepare, GTAC reserves the right to claim for losses incurred due to the failure to produce the reports provided.
- 9.6. The quality of the reports will be assessed by the IGR project counterpart, GTAC project management team and/or any established reference group.
- 9.7. Should outputs not comply with the specifications GTAC may withhold payment of invoice until the identified shortcoming have been corrected.
- 9.8. If any part of the report is found to be defective or different in any way from the Specification or otherwise has not been provided to the Contract standard other than as a result of a default or negligence on the part of GTAC. GTAC will provide written comments to the Service Provider specifying the defects and/or differences that the Service Provider is expected to rectify. The Service Provider shall at its own expense re-supply the Goods and/or Services in question (without additional remuneration therefore) within such time as GTAC may reasonably specify.
- 9.9. Monthly performance evaluations will be based on monthly progress reports submitted against the outputs and outcomes contained in the terms of reference, other contract documents and as agreed from time to time between IGR, GTAC and Service Provider.
- 9.10. The Service Provider is responsible for the following logistic requirements:
- 9.10.1 Provision and cost of all equipment, including computers, telecommunications and stationery, support infrastructure and secretarial services required to compete this project;
- 9.10.2 Provision of own transport and mobile communications.

9.11. GTAC and IGR will provide logistic administrative support only for in-house workshops and meetings (limited to invitations, agendas, venues, attendance registers). Logistics for all other engagements required for the project are to be provided by the Service Provider.

10. DOMICILIUM CITANDI ET EXECUTANDI

10.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

GTAC

**Government Technical Advisory Centre
National Treasury Building
240 Madiba Street
PRETORIA, 0001
Tel.: 012-315 5136
Fax: 012-315 5786
E-mail: PSP@gtac.gov.za**

SERVICE PROVIDER

Tel.: _____
Cell: _____
E-mail: _____

10.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail;

10.3. Either Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address provided that the change shall become effective *vis-à-vis* that addressee on the 5th (fifth) business day from the receipt of the notice by the addressee;

10.4. Any notice to a Party –

10.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 5th (fifth) business day after posting (unless the contrary is proved);

10.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;

- 10.4.3. sent by telefax to its chosen telefax number, shall be deemed to have been received on the date of dispatch (unless the contrary is proved); or
- 10.4.4. sent by e-mail to its chosen e-mail address, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 10.5. Notwithstanding anything to the contrary herein contained 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 *domicilium citandi et executandi*.

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11. EXECUTION

This Agreement is hereby signed by **Ms Lindiwe Ndlela** in her capacity as **Acting Head of the Government Technical Advisory Centre** (being duly authorised thereto) at **PRETORIA** on this the ____ day of _____ 2020.

.....

ACTING HEAD OF GOVERNMENT TECHNICAL ADVISORY CENTRE

AS WITNESSES:

SIGNATURE

1.

2.

This Agreement is hereby signed by in his/her

Capacity as on this the day of 2020.

.....

SERVICE PROVIDER

AS WITNESSES:

SIGNATURE

1.

2.

ANNEXURE "A" – GTAC: GENERAL STANDARD CONDITIONS OF THE CONTRACT ARE REFERRED TO IN SCHEDULE 1

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ANNEXURE "B" - TERMS OF REFERENCE

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ANNEXURE "C" - CODE OF CONDUCT FOR TECHNICAL ADVISORS

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ANNEXURE "D" – TRAVEL POLICY

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National Treasury
REPUBLIC OF SOUTH AFRICA

**GOVERNMENT TECHNICAL ADVISORY CENTER
(GTAC)**

Code of Conduct

For

Technical Advisors (TAs)

GTAC Code Of Conduct for Technical Advisors

1. PURPOSE OF DOCUMENT

2. This document outlines the expected behaviour of a Technical Advisors who is appointed by the Government Technical Advisory Centre (GTAC). It outlines the expected behaviours of the TA in relationship to:
 - The Legislature and the Executive
 - The Public
 - The Client Employees
 - Performance of duties
 - Personal Conduct and Private Interests

3. RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

A GTAC Technical Advisor -

- 3.1. is faithful to the Republic of South Africa and honours the Constitution and abides thereby in the execution of his or her daily tasks;
- 3.2. puts the public interest first in the execution of his or her duties;
- 3.3. loyally executes the policies of the South African Government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;
- 3.4. strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and
- 3.5. co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

4. RELATIONSHIP WITH THE PUBLIC

A GTAC Technical Advisor

- 4.1. promotes the unity and well-being of the South African nation in performing his or her official duties;
- 4.2. will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;

GTAC Code Of Conduct for Technical Advisors

- 4.3. is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- 4.4. has regard for the circumstances and concerns of the public in performing his or her duties, providing advice and in the making of decisions affecting them;
- 4.5. is committed through timely service to the development and upliftment of all South Africans;
- 4.6. does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- 4.7. does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;
- 4.8. respects and protects every person's dignity and his or her rights as contained in the Constitution; and
- 4.9. recognises the public's right of access to information, excluding information that is specifically protected by law.

5. RELATIONSHIP TO THE CLIENT EMPLOYEES

A GTAC Technical Advisor —

- 5.1. co-operates fully with the assigned client employees to advance the public interest;
- 5.2. executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- 5.3. uses the appropriate channels to air his or her grievances or to direct representations;
- 5.4. deals fairly, professionally and equitably with all client employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- 5.5. refrains from party political activities in the workplace.

GTAC Code Of Conduct for Technical Advisors

6. PERFORMANCE OF DUTIES

A GTAC Technical Advisor —

- 6.1. will serve the GTAC clients with integrity, competence and objectivity;
- 6.2. will only accept engagements and lawful instructions for which he or she is qualified by experience and competence;
- 6.3. will mutually establish realistic expectations of the benefits and results of his or her services;
- 6.4. will strive to achieve the objectives of his or her appointment diligently, cost-effectively and in the public's interest;
- 6.5. will be creative in thought and in the execution of his or her duties and seek innovative ways to solve problems and enhance effectiveness and efficiency within the context of the law;
- 6.6. gives honest and impartial advice, based on all available relevant information, to GTAC clients or relevant authorities when requested for such assistance;
- 6.7. will only represent opinions as independent if they are free from subordinated judgment and there is no undisclosed interest in the outcome of the client's decision;
- 6.8. is punctual in the execution of his or her duties;
- 6.9. will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and will ensure that this is properly declared;
- 6.10. accepts the responsibility to avail himself or herself of ongoing training and self-development throughout his or her appointment;
- 6.11. is honest and accountable in dealing with public funds and uses the Public Service's property and other resources effectively, efficiently, and only for authorized official purposes;
- 6.12. in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;

GTAC Code Of Conduct for Technical Advisors

- 6.13. honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret; and
- 6.14. will keep the client informed of any matters relating to the contract even if the information is unfavorable, or may jeopardize the contract.

7. PERSONAL CONDUCT AND PRIVATE INTERESTS

A GTAC Technical Advisor —

- 7.1. during official duties, dresses and behaves in a manner that enhances the reputation of the Public Service;
- 7.2. acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- 7.3. shall not, without written approval of the Head of GTAC obtain or accept any gifts, benefits or item of monetary value in excess of R350, from any person for himself or herself during the performance of duties;
- 7.4. will keep client information and records of client engagements confidential and will use proprietary client information only with the client's permission;
- 7.5. does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- 7.6. will immediately acknowledge any influences on his or her objectivity to the client and will offer to withdraw from a consulting engagement when his or her objectivity or integrity may be compromised;
- 7.7. will avoid conflicts of interest or the appearance of such and will immediately disclose to the client circumstances or interests that he or she believe may influence his or her judgment or objectivity; and
- 7.8. will not accept commissions, remuneration, or other benefits from a third party in connection with the recommendations to a client without that client's prior knowledge and consent, and will disclose in advance any financial interests in goods or services that form part of such recommendations.

SCHEDULE 1

1. TERMINATION

- 1.1. The GTAC shall be entitled to terminate this Agreement if one or more of the following occur:
 - 1.1.1. The Service Provider conducts itself in a manner which will justify termination according to the common law;
 - 1.1.2. The Service Provider conducts itself in a manner which brings or is likely to bring the GTAC into disrepute;
 - 1.1.3. The Service Provider breaches any term of this Agreement and fails to remedy such breach within 30 (thirty) calendar days of written demand from the other party, taking into consideration the nature of the breach and the consequences thereof;
 - 1.1.4. When the objectives of this Agreement no longer exist, have materially changed and/or when the funding is no longer available to provide the Services;
 - 1.1.5. Should the level or quality of service provided by the TA not meet GTAC's requirements and where a recorded discussion with the Service Provider has failed to resolve identified shortcomings in the level of quality of service;
 - 1.1.6. Provided that the GTAC shall have given the Service Provider 30 (Thirty) days' written notice of its intention to terminate.
- 1.2. The GTAC shall be entitled to immediately terminate this Agreement if any one or more of the following occur –
 - 1.2.1. The Service Provider is provisionally or finally liquidated, making it impossible for the Service Provider to perform its functions in terms of this Agreement;
 - 1.2.2. The Service Provider enters into settlement arrangements with its creditors;
 - 1.2.3. The Service Provider commits an act of insolvency.
- 1.3. Notwithstanding the provisions above, either Party may terminate this Agreement by giving the other Party 1 (one) month notice to that effect.

2. OBLIGATIONS OF THE SERVICE PROVIDER

- 2.1. The Service Provider shall:
- 2.1.1. interact with the GTAC on a regular basis;
 - 2.1.2. execute the Service strictly in compliance with the Bid Documentation;
 - 2.1.3. That neither it, nor its employees/ consultants, will furnish any information concerning the activities of the Client to public or news media;
 - 2.1.4. utilise staff that is adequately trained, qualified and skilled to perform the Services;
 - 2.1.5. conduct the Services in a professional manner and render the Services with due diligent, skill and proper care and in accordance with the standards of performance which can be expected from the industry in which the Service Provider operates;
 - 2.1.6. timeously submit to the GTAC such information and reports as may be required in connection with the rendering of the Services;
 - 2.1.7. not engage in any conduct which is calculated to or has or may have the effect of bringing the GTAC or any of its employees into disrepute;
 - 2.1.8. use the assets of the GTAC with the utmost care and only for the purposes of rendering the Services;
 - 2.1.9. abide by all the policies, regulations and procedures of the GTAC whilst on the GTAC premises;
 - 2.1.10. disclose to the GTAC all acts or omissions which may constitute a breach by the Service Provider of its obligations to the GTAC;
 - 2.1.11. perform any other function reasonably required for the Services rendered in terms of this Agreement.
 - 2.1.12. be true and faithful to the GTAC in all dealings and transactions whatsoever relating to the National Treasury's business and interests.

- 2.2. Persistent non-compliance with the obligations set out in clause 2.1 and the provision of the services in accordance with the ToR (Annexure A) will constitute breach of this agreement.
- 2.3. In the event of any conflict between the provision of this agreement and the Bid Documentation, the provisions of the Bid Documentation shall prevail.

3. OBLIGATIONS OF THE GTAC

- 3.1. The GTAC shall:
 - 3.1.1. co-operate and assist the Service Provider in performing its obligations in terms of this Agreement;
 - 3.1.2. timeously furnish the Service Provider with all required information and documentation in its possession to enable the Service Provider to render the Services in terms of this Agreement;
 - 3.1.3. give the Service Provider timeous instructions and approvals;
 - 3.1.4. verify and confirm information or documentation submitted by the Service Provider in the performance and execution of its duties in terms of this Agreement.

4. INDEMNITY

- 4.1. The GTAC shall not be liable for any act or omission on the part of the Service Provider in the rendering of the Services under this Agreement (whether negligent or otherwise) which causes injury or death to any employee or officer of the GTAC and or any third party and the Service Provider hereby indemnifies and holds the GTAC harmless against any claims of the nature mentioned above in this regard.

5. LIMITATION OF LIABILITY

- 5.1. The maximum liability of the Service Provider for all claims (other than those in respect of gross negligence or wilful default) arising out of the services provided in connection with this engagement shall be limited to an amount equal to the total fees charged for all services provided in connection with this project. This maximum liability shall be an aggregate liability for all claims (other than those in respect of gross negligence or wilful default) from whatever source and howsoever arising, whether in contract, delict or otherwise.

- 5.2. The Service Provider will not be liable to the GTAC or any cessionary or third party claiming through or on behalf of the GTAC for any consequential or other loss or damages beyond the maximum liability specified except to the extent that the Service Provider has contributed to such damage or loss from their own wilful default or gross negligence.

6. THIRD PARTY WORK

- 6.1. This Agreement shall in no way limit the Service Provider's right to conduct any business with and/or for any third parties and to enter into contracts of any nature with any third parties, provided, firstly, that the Service Provider's obligations in terms of this Agreement shall always be timeously and satisfactorily fulfilled, and secondly that the Service Provider shall not conduct any business with and/or for any third party whose interests may conflict with the GTAC's interests. In cases of scheduling conflicts regarding the rendering of the Services, the Service Provider shall give priority to the Services provided to the GTAC under this Agreement.

7. INTELLECTUAL PROPERTY

- 7.1. Insofar as may be necessary, the Service Provider assigns to the GTAC the copyright in all present and future works eligible for copyright of which the Service Provider may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of the Service Provider's rendering of Services to the GTAC. No consideration shall be payable by the GTAC to the Service Provider in respect of this assignment.
- 7.2. All reports, manuals, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled or devised or brought into being by the Service Provider or come into the Service Provider possession during the course and scope of this Agreement, and all copies thereof, shall be the property of the GTAC. The Service provider may obtain one copy of the said documents, permission has been granted that the documents be used for internal use only and not for publication or external use. Upon the date of termination of this Agreement, or earlier if required by the GTAC, such documents and all copies shall be returned to the GTAC.
- 7.3. On termination of this Agreement, the Service Provider shall deliver to the GTAC all property in the Service Provider possession or under its control belonging to the GTAC or created in pursuance of the Service Provider duties in terms of this Agreement including, without limiting the generality thereof, documents, drawings, plans, reports, data sheets and disks.

- 7.4. The Service Provider shall be responsible for all costs and other liabilities in regard to infringement of intellectual property rights in respect of performance of duties in terms of this agreement.

8. GOOD FAITH

- 8.1. The Parties shall at all times owe each other a duty of good faith which includes the code of conduct of technical advisors as indicated in Annexure B.

9. CONFIDENTIALITY

- 9.1. Confidential information shall mean all information obtained by the Service Provider from, or disclosed to the Service Provider by the GTAC or any other state departments or agencies or organ of state in pursuance of their work in the GTAC across all the three spheres of Government.

- 9.2. The Service Provider shall not for the duration of this Agreement or thereafter, regardless of the reasons for termination, use for its benefit or the benefit of any other person or communicate or divulge to any unauthorised person any confidential matter or information relating to the business affairs, processes, marketing techniques, trade secrets, client lists and / or professional connections of the GTAC or any of its clients.

- 9.3. This obligation shall not apply to any confidential information which:

- 9.3.1. is known to, or in the possession of, the Service Provider prior to the disclosure thereof by the GTAC;
- 9.3.2. is, or becomes publicly known otherwise than pursuant to breach of this Agreement by the Service Provider;
- 9.3.3. is disclosed by the Service Provider to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time;
- 9.3.4. is disclosed to a third party pursuant to the prior written authorization of the GTAC;
- 9.3.5. is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

10. NON-PARTNERSHIP

Nothing in this Agreement shall be deemed to constitute either of the Parties the partner of the other or constitute either of those Parties the agent or legal representative of the other. It is not the intention of the Parties to create, nor shall this Agreement be construed to create any commercial or other partnership. Neither the GTAC nor the Service Provider shall have any authority to act or to assume any obligation or responsibility on behalf of the other of them.

11. NO CESSION OR ASSIGNMENT

The Service Provider shall not cede or assign any of its rights and obligations in terms of this Agreement to any third party without prior written consent of the GTAC.

12. WARRANTIES

The Service Provider warrants that its resources have the ability, skill and experience to render the Services and perform all related functions expected of it in terms of this Agreement.

13. FORCE MAJEURE

- 13.1. If, by reason of any event of *force majeure*, any of the Parties to this Agreement will be delayed in, or prevented from performing any of its obligations in terms of this Agreement (otherwise than as to the payment of money), then such delay or non-performance shall not be deemed to be a breach of this Agreement and no damages may be claimed by the other Party by reason thereof.
- 13.2. Should the exercise of the rights and obligations under this Agreement be materially hampered, interrupted or interfered with by reason of any event of *force majeure*, then the obligation to the delayed party shall be suspended during the period of such hampering, interruption or interference consequent upon such event or events and shall be postponed for a period of time equivalent to the period or periods of suspension before being reinstated, and both Parties shall use their best endeavours to minimize and reduce any period of suspension occasioned by any of the aforesaid events.
- 13.3. The expression "an event of *force majeure*" shall mean and include fire, flood, casualty, satellite failure, lockout, labour condition, industrial action of any kind, unavoidable accident, breakdown of equipment, national calamity or riot, act of God, enactment of any Act of Parliament or the act of any other legally constituted authority, or any cause or event arising out of or attributable to war, or terrorist activity or any other cause or event whatsoever outside the control of the Parties.

14. DISPUTE RESOLUTION

- 14.1. The parties undertake to notify one another in writing in the event of any perceived breach of this contract.
- 14.2. Parties shall be afforded 14 (fourteen) days to remedy such breach.
- 14.3. The aggrieved party / parties shall, in good faith, make every reasonable effort to resolve, between themselves, any dispute that may arise between the parties emanating from the implementation of this contract.
- 14.4. Should any disputes, disagreements or claims arising between the parties concerning this contract not be resolved by the parties, either party may institute action in any court that has jurisdiction.

15. IMPLEMENTATION

- 15.1. The Parties undertake to do all such things, perform all such acts, take all such steps and procure the doing of all such things, the performance of all such acts, and the taking of all such steps as may be necessary to give effect to the terms and conditions under the import of this Agreement.

16. SEVERABILITY

- 16.1. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

17. WHOLE AGREEMENT, NO AMENDMENT

- 17.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 17.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such

extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

17.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

17.4. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18. GOVERNING LAW

18.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such laws.

19. EXECUTION

This schedule is hereby signed by **Ms Lindiwe Ndlela** in her capacity as **Acting Head of Government Technical Advisory Centre** (being duly authorised thereto) at **PRETORIA** on the _____ of _____ 2019.

.....

ACTING HEAD OF GOVERNMENT TECHNICAL ADVISORY CENTRE

AS WITNESSES:

SIGNATURE

1.

.....

2.

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This schedule is hereby signed by a duly authorised person, that being in his/her

Capacity as on the day of2019.

Signature.....

(a duly authorised representative)