ANNEXURE "B"

STANDARD TERMS AND CONDITIONS FOR SERVICES

between

FOSKOR PROPRIETARY LIMITED
Registration Number 1951/002918/07
("**Foskor**")

and

[**Services Provider**]
([Registration Number [●]])
("**Service Provider**")

FOSKOR

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1. **Introduction**

The Service Provider carries on the business of [***Insert description of relevant services being procured***].

1.1 Foskor wishes to procure the Services from the Service Provider, and the Service Provider agrees to provide the Services to Foskor on the terms and conditions set out in this Agreement.

2. **Definitions**

2.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in its interpretation.

2.2 Words and expressions defined in any clause will, for the purpose of this Agreement, bear the meaning assigned to the words and expressions in that sub-clause.

2.3 Any reference to the singular includes the plural and *vice versa*.

2.4 Any reference to the natural persons includes legal persons and vice versa and reference to any gender includes reference to the other genders and vice versa.

2.5 Any provisions of the definition in 2.6 below which is a substantive provision conferring the rights or imposing obligations on a Party, shall be given effect to as if it were a substantive provisions in the body of the Agreement.

2.6 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context –

2.6.1	**Affiliates**	shall mean, in relation to a Party, all other persons or entities which directly or indirectly (whether through one or more intermediaries or otherwise) Control, or are Controlled by, or are under common Control with, that Party or its successors-in-title from time to time;
2.6.2	**Agreement**	means this services agreement, including the Annexes as amended from time to time;
2.6.3	**Anti-Corruption and Sanctions Laws**	means all Applicable Law in connection with bribery and corruption, including, *inter alia*, the Prevention and Combating of Corrupt Activities Act, 12 of 2004, United States Foreign Corrupt Practices Act and the UK Corruption Law (the United Kingdom Bribery Act, 2010 and, in relation to any conduct prior to the Bribery Act, 2010 being brought into force, the United Kingdom Public Bodies Corrupt Practices Act, 1889 and the

		Prevention of Corruption Act, 1906) and for sanctions (ii) any trade, economic or financial sanctions, laws, regulations, embargos or other restrictions enforced, imposed and administered from time to time by a sanctions authority such as the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Departments of State or Commerce, the United Nations Security Council, the European Union, Switzerland or any other applicable sanctions authority) only to the extent that such laws are in fact applicable to the Parties;
2.6.4	**Applicable Laws**	means, all relevant legislation, statutes, regulations, directives, orders, treaties, notices, promulgations and other decrees of any authority in South Africa, which have force of law or which it would be an offence not to obey, each as amended, replaced, re-enacted, restated or re-interpreted from time to time;
2.6.5	**Business Day**	means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
2.6.6	**Causal Event**	means –
		(i) a compromise, scheme of arrangement or composition by the Service Provider with any or all of its creditors;
		(ii) liquidation of the Service Provider, whether provisionally or finally or placement of the Service Provider in judicial management or business rescue, whether provisionally or finally;
		(iii) a default or cessation, or a reasonable prospect of default or cessation (as the case may be), of the Service Provider's normal line of business;
		(iv) the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act of 1936, or the existence of circumstances which would allow for the winding up of the Service Provider in terms of the Companies Act of 2008, and/or in terms of the Close

		Corporations Act of 1984, as the case may be; (v) disposal by the Service Provider of a material portion of its undertaking or assets; or (vi) any Change of Control in respect of the Service Provider.
2.6.7	**Change in Control**	means, in relation to a Party ("**the first party**"), any event which results in a third party acquiring, or having the potential or right to acquire, the direct or indirect Control of the first party (but excluding any event which results in a third party acquiring, or having the potential or right to acquire, Control of a parent company having direct or indirect Control of the first party where such parent company has all of its equity shares listed on a recognised stock exchange). For the purposes of this definition, references of "Control" to 30% shall be deemed to be references to 50%;
2.6.8	**Claims**	means claims, suits, demands, actions and proceedings;
2.6.9	**Contract Period**	means the period commencing on the Commencement Date and terminating on the Termination Date;
2.6.10	**Commencement Date**	means (i) where a specific commencement date is stated in the Letter of Award; or (ii) where no specific commencement date is stated in the Letter of Award, or where the specified date falls before the Signature Date, the date that when Services factually commenced by the Service Provider; or (iii) such other date as may be agreed in writing by the Parties after the Signature Date, but does not affect work already undertaken by the Service Provider;
Confidential Information		means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Party disclosing such information ("**Disclosing Party**") or which is provided or disclosed in confidence,

		and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Party that receives such information ("**Receiving Party**") or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation): (i) information relating to the Disclosing Party's business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party; (ii) information contained in or constituting or relating to the Disclosing Party's systems, machinery, hardware or software, networks, telecommunications services and facilities, including hardware or software in the possession of the Disclosing Party which is proprietary to a third party and associated material, and information or incidents concerning faults or defects therein; (iii) the Disclosing Party's technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets; (iv) the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto; (v) Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party, including but not limited to data relating to the customers of the Disclosing Party; and (vi) business process outsourcing knowledge of the Disclosing Party and information relating to the Disclosing Party's current and existing strategic objectives, strategy documents and plans for both its existing and future information technology, processing, business processing and business process outsourcing;
2.6.11	**Control**	means, in relation to any Party, (i) the holding or beneficial ownership of 30% or more of the voting rights in that Party; or (ii) the right or ability to direct or otherwise

		control or exercise 30% or more of the voting rights attaching to that Party's issued ordinary shares (or other like instruments), or the right or ability to direct or otherwise control or exercise the voting rights attaching to a participation interest of 30% or more in that Party; or (iii) the right or ability to appoint or remove 30% or more of the board of directors (or such other body legally representing such Party) or to appoint or remove individuals able to exercise 30% or more of the votes exercisable at the meetings of the board of directors of such Party; or (iv) the right or ability to direct, or cause the direction, or general management of, affairs of such Party, and the terms "Controls" and "Controlled" shall have a corresponding meaning;
2.6.12	**Corrupt Act**	means committing any offence under Anti-Corruption Law or offering, giving or agreeing to give Foskor or any organ of state any gift or consideration of any kind as an inducement or reward (i) for doing or not doing (or for having done or not done) any act in relation to the obtaining or performance of this Agreement or any other contract with Foskor or any organ of state; (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with any organ of state;
2.6.13	**Data Protection Laws**	means Applicable Law relating to the protection and privacy of Personal Information, including the Protection of Personal Information Act, 2013;
2.6.14	**Deliverables**	shall mean all Documents, Materials and any other items that are to be delivered by the Service Provider in tangible form and in the English language, which are described as the Service Provider's responsibility in a Scope of Work or otherwise agreed to in writing;
2.6.15	**Documents**	shall mean drawings, diagrams, specifications, calculations, reports and any other information to be provided by the Service Provider to Foskor under this Agreement;

Expenses		means reasonable expenses incurred with the prior written consent of Foskor by the Service Provider's Personnel in the discharge of the Service Provider's obligations under this Agreement, including, but not limited to travel expenses, accommodation and ad hoc costs for the Service Provider's Personnel;
2.6.16	**Foskor**	means Foskor Proprietary Limited, registration number 1951/002918/07, a private company incorporated in accordance with the laws of South Africa;
2.6.17	**Good Industry Practice**	shall mean the adherence to the standards, practices or methods and procedures and the exercise of that degree of skill, diligence, judgement, prudence and foresight which would reasonably and ordinarily be expected from time to time from an internationally skilled and experienced professional conducting any activity or any obligation of a Party in terms of this Agreement and complying with all Applicable Law;
2.6.18	**Independent Expert**	the person appointed in accordance with 0;
2.6.19	**Intellectual Property or Intellectual Property Rights**	means copyright, patents, rights in know-how and Confidential Information, database rights, internet domain names, rights in web site addresses, utility models, trademarks, service marks, trade names and design rights, in each case, whether registered or unregistered, and applications for registration of any of the foregoing and the right to apply for registration, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
2.6.20	**Letter of Award**	means the letter of award issued by Foskor to the Service Provider (and accepted by the Service Provider) confirming the award of the contract for the rendering of Services on the terms and conditions set out in that letter of award and which may list essential terms which shall be incorporated into this Agreement;
2.6.21	**Loss**	includes all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines

		and expenses of whatsoever nature (including legal and other professional charges and expenses on an attorney and own client scale) together with any VAT thereon and "**Losses**" shall have a corresponding meaning;
2.6.22	**Material or Materials**	means all products, goods, software, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, reports, plans, notes, files, , diagrams, manuals, templates, schematics, correspondence, designs, specifications, records, devices, equipment, hardware, servers, computers, platforms, computer code, derivative works, works of authorship, technology and intellectual property, and irrespective of the form and format of the foregoing and whether tangible or intangible;
2.6.23	**Party or Parties**	shall mean either or both of the Service Provider and Foskor, as the context provides;
2.6.24	**Performance Standards**	means the quantitative and qualitative performance standards and commitments for the Services set out in the Agreement, including the service levels and key performance indicators as set out in Annexe B;
2.6.25	**Performance Security**	means a bank guarantee, performance bond, or other security instrument in a form acceptable to Foskor, issued by a financial institution acceptable to Foskor, to secure the Contractor's performance of its obligations under this Agreement;
2.6.26	**Personal Information**	has the meaning as defined in Data Protection Laws;
2.6.27	**Process**	has the meaning as defined in Data Protection Laws, "**Processed**" and "**Processing**" shall have corresponding meanings;
2.6.28	**Personnel**	shall mean, with respect to any specified Party, that Party's employees, agents,

		consultants or subcontractors who perform services in terms of this Agreement;
2.6.29	**Policies**	the policies of Foskor, which may be amended from time to time set out in Annexe [●];
2.6.30	**Purchase Order**	shall mean the written order for the Services issued by Foskor to the Service Provider in accordance with this Agreement as amended by the change control procedure;
2.6.31	**RFP**	shall mean the Request for Proposal issued for a competitive tender process initiated by Foskor pursuant to which this Agreement is awarded;
2.6.32	**Scope of Work**	shall mean the Services to be provided by the Service Provider, including Performance Standards and completion timeframes and any other matter the Parties may agree in writing and included in the RFP set out in Annexe B of this Agreement;
2.6.33	**Services**	shall mean the services provided by the Service Provider to Foskor, within the timeframes specified in the Scope of Work;
2.6.34	**Service Provider's Price Schedule**	the price schedule included in Annexe A to this Agreement which details, *inter alia*, the price Foskor shall pay for the Services (as may be amended by Foskor from time to time);
2.6.35	**Signature Date**	means when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
2.6.36	**Site**	means the location where the Services and implementation of the Deliverables as agreed in a Scope of Work will be provided;
2.6.37	**South Africa**	the Republic of South Africa;
2.6.38	"**Surviving Provisions**"	clauses 2, 4 and 19 to **Error! Reference source not found.**, 33 and 34 and any other provisions of this Agreement which are expressed to continue in force after

		termination or which by necessary implication must continue after termination;
2.6.39	**Termination Date**	[●], or the date on which this Agreement is terminated in accordance with its terms;
2.6.40	**VAT**	means value-added tax levied in terms of the VAT Act; and
2.6.41	**VAT Act**	means the Value-added Tax Act, 89 of 1991.

3. Agreement Structure and Relationship

3.1 In accordance with the terms of this Agreement: (i) the Service Provider will perform the Services set out in Annexe B in accordance with the Performance Standards; and (ii) in consideration of such performance, and Service Provider's performance of its other obligations pursuant to this Agreement, Foskor shall pay the Service Provider the Fees in accordance with Annexe A of this Agreement.

3.2 The relationship between the Parties is that of independent contractors. Nothing in this Agreement, whether express or implied, shall:

3.2.1 be construed as creating an employment or labour-broking relationship between the Parties;

3.2.2 be construed as creating a partnership, quasi partnership, joint venture or the like between the Parties and each of the Parties shall at all times be independent contracting parties;

3.2.3 constitute either Party as an agent or of any other Party; or

3.2.4 entitle any Party to bind or attempt to bind any other Party, or to represent to any third person that it has the authority to bind any other Party or to confer any obligation on any other Party.

4. Duration

4.1 This Agreement shall commence on the Commencement Date and shall endure until the Termination Date, unless terminated earlier in accordance with its provisions.

4.2 Unless otherwise provided for in this Agreement, this Agreement may be terminated by Foskor immediately for any reason upon giving Service Provider 30 (thirty) days written notice of termination provided that any such termination shall not affect any other Purchase Orders, or any rights, Claims or obligations that have accrued prior to the effective date of such termination.

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5. Services

5.1 The Service Provider may not subcontract any portion of or all of the Services to a third party without the prior written consent of Foskor, provided that in the event that such consent is granted, the Service Provider remains fully responsible to Foskor for the delivery of such Services as set forth in this Agreement. This clause does not apply to third parties appointed by Foskor and responsible to interact with the Service Provider.

5.2 Foskor may issue Purchase Orders to the Service Provider at any time on or before the Termination Date, and all such Purchase Orders shall, *mutatis mutandis*, be governed by this Agreement.

This Agreement, read together with any Purchase Order issued by Foskor, constitutes the sole and exclusive basis upon which Foskor contracts with the Supplier, and no terms or conditions endorsed upon, delivered with, or contained in any quotation, acceptance, invoice, acknowledgement, delivery note, statement or other documentation from the Service Provider shall form part of or be binding on Foskor unless expressly agreed to in writing and signed by a duly authorised representative of Foskor.

5.3 Each Purchase Order shall be regarded as a separate, indivisible Purchase Order and shall specify the Services, the Contract Price due date.

5.4 In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, the terms of this Agreement shall prevail.

By fulfilling any Purchase Order, whether in whole or in part, the Service Provider shall be deemed to have accepted this Agreement and the applicable Purchase Order, to the exclusion of all other terms or conditions.

5.5 In addition to other obligations which the Service Provider may have under this Agreement, the Service Provider shall:

5.5.1 ensure that the Services and the resultant Deliverables meet and comply with the relevant Scope of Work, and in so doing shall take all measures which are necessary to ensure that the overall objective is met within the relevant timeframe as agreed;

5.5.2 cooperate, communicate and/or interact with any of Foskor's third party service providers as agreed in the relevant Scope of Work to the extent necessary for the purposes of achieving the overall objective and/or putting into effect the terms and conditions of this Agreement;

5.5.3 ensure that the Services and the performance of obligations meet or exceed the Performance Standards;

5.5.4 ensure that all of its obligations are performed in accordance with Good Industry Practice;

5.5.5 comply with all Applicable Laws and Policies;

5.5.6 cooperate with Foskor and its Affiliates, and provide all assistance and information as may be reasonably requested by any of them from time to time;

5.5.7 perform all Services and activities, and procure and provide all approvals, Deliverables, Personnel and facilities as may be necessary or desirable for the

proper, diligent and timely fulfilment and performance of its obligations in this Agreement, including the proper and timely provision of the Services, notwithstanding that such services, approvals, activities, resources, Personnel, Deliverable and facilities may not be expressly stipulated or identified in this Agreement;

5.5.8 comply, at no additional cost, with any quality standards and procedures Foskor may reasonably require;

5.5.9 in providing the Services and Deliverables, recognises and agrees that time is of the essence and, without derogating from or limiting its further obligations contained in this Agreement, the Service Provider shall perform its obligations under this Agreement in such a manner as to ensure compliance with any time frames and Performance Standards as set out in this Agreement;

5.5.10 in the event of a failure or delay by Foskor to perform any of the obligations in terms of this Agreement, use best endeavours to provide the Services and perform its obligations in accordance with Good Industry Practice and the standards and requirements set forth in this Agreement;

5.5.11 promptly inform Foskor of any event which adversely affects or may affect the rendering of the Services.

5.6 Foskor shall have the right to review the Services delivered under this Agreement at any time, and the Service Provider undertakes that is shall:

5.6.1 allow Foskor and/or its authorised agents, upon reasonable prior notice to review and inspect the Services under this Agreement, including but not limited to the Service Provider's practices and procedures relating to the delivery, quality, data handling, information, security and confidentiality aspects of the Services as well as to invoicing procedures;

5.6.2 correct any deficiencies found during such audit or inspection. The performance of such audits shall not relieve the Service Provider of its obligations under the Agreement; and

5.6.3 with regard to access to information systems and facilities, accept that Foskor has the right to audit contractual responsibilities or to have such audits carried out by a third party, provided that such third party is not a competitor of the Service Provider.

5.7 Foskor shall have the right to examine the Services and Deliverables or parts thereof at any time to confirm that the Deliverables and the Services conform to the Scope of Work and other requirements stated in this Agreement.

5.8 The Service Provider shall without delay remedy any non-conforming Services and Deliverables and Foskor shall have no obligation to pay for any Services or Deliverables which do not meet the requirements set out in the Scope of Work and other requirements of this Agreement as applicable. In addition to withholding payment, Foskor may, at its option and at the Service Provider's cost, engage third parties to remedy any non-conforming Services or Deliverables, and the Service Provider shall reimburse Foskor for all costs incurred in connection therewith.

5.9 Any acceptance or payment shall not relieve the Service Provider from any of its continuing or remaining duties and obligations under this Agreement.

5.10 The Parties agree that repeated or continuous underperformance by the Service Provider or its subcontractors, of the agreed Performance Standards and other requirements, shall be deemed to be a material breach of this Agreement, irrespective of whether each incident by itself may be considered as minor or that the incidents may be of a different nature and type, provided that such repeated or continuous underperformance taken as a whole is material.

5.11 The Service Provider shall provide all Documentation necessary to record and document the execution and/or performance of the Services. The Service Provider shall ensure that Foskor receives all Service reports, memos, meeting minutes and correspondence. In addition, and without limiting the generality of the foregoing, the Service Provider shall ensure that all meetings relating to the Services are recorded, whether they are formal or informal in nature.

6. **Payment**

In consideration of the provision of the Services procured, Foskor shall compensate the Service Provider for the agreed amount specified in Annexe A (the "**Fees**") and reimburse the Service Provider for the Expenses incurred by the Service Provider in providing Services in the manner specified in this Agreement.

The Service Provider's Price Schedule shall be fixed for [●] [months/year], subject to the provisions contained elsewhere in this Agreement.

6.1 Notwithstanding any other provisions in this Agreement, the Fees under this Agreement shall be reviewed depending on any new and additional work requested from the Service Provider.

6.2 Payment shall be due within 30 days of receipt of a statement from the Service Provider.

6.3 If not included in the Service Provider's Schedule specified in Annexe A, Foskor shall be responsible for the reasonable payment and arrangements in respect of the travel and accommodation of the members of Service Provider's Personnel required by Foskor to affect the Services, subject to Foskor's prior written approval of it.

Foskor shall reimburse the Service Provider for additional Expenses necessarily incurred by the Service Provider in the performance of the Services provided that such Expenses are approved by Foskor's management in writing in advance of being incurred by the Service Provider.

6.4 Any payment in terms of this Agreement shall be made without set-off, deduction or counterclaim.

7. **Taxes**

7.1 Each Party to this Agreement shall be responsible for its own tax obligations. Each Party releases the other Party from all possible obligations or responsibilities as to this matter.

7.2 The amounts in this Agreement are stated exclusive of VAT or similar taxes, and the Party issuing a tax invoice shall add VAT or similar tax at the applicable rate to any amount invoiced in terms of this Agreement.

7.3 If any party has to pay tax on any amount pursuant to any existing or future legislation of South African Revenue Services, such tax shall be borne by the Party which is legally liable for such tax.

7.4 If a change in the tax legislation and/ or a change in the operating way in the hands of one Party to service the other Party imply that clause 7.1 to 7.3 cannot be implemented or imply that either Party will suffer an additional tax cost which was not planned, the Parties will negotiate in good faith to mitigate the consequences of such change. Each Party shall timeously and accurately inform the other Party of any changes in the sense of this clause.

8. **Data Privacy and Protection**

8.1 Each Party agrees to comply with its obligations under Data Protection Laws in respect of any Personal Information it Processes pursuant to the exercise of its rights and performance of its obligations under this Agreement.

8.2 Where the Service Provider is an operator or processor of Personal Information in respect of which Foskor is the controller or responsible party, the Service Provider shall comply with those Data Protection Laws that apply to it in its capacity as operator or processor and shall procure that its subcontractors (including sub-processors) comply with Data Protection Laws.

8.3 Each Party must immediately notify the other Party in the event that there is any actual or threatened non-compliance with or breach of any applicable Data Protection Laws.

8.4 Without derogating from the generality of the foregoing, the Service Provider must –

8.4.1 have all notices, consents and lawful bases in place as are prescribed by Applicable Law to enable the lawful Processing of Personal Information in terms of this Agreement;

8.4.2 Process any Personal Information that is shared with it or that comes into its possession for the purposes of the implementation of this Agreement only;

8.4.3 treat any Personal Information that is shared with it or that comes into its possession as confidential; and

8.4.4 secure the integrity and confidentiality of any Personal Information that is shared with it or that comes into its possession by taking appropriate reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to or Processing of such Personal Information.

8.5 The Service Provider shall take reasonable measures to –

8.5.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;

8.5.2 establish and maintain appropriate safeguards against the risk identified;

8.5.3 regularly verify that the safeguards are effectively implemented; and

8.5.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

8.6 The provisions of this clause 8 are severable from the rest of the Agreement and shall survive the expiry or termination of this Agreement for whatever reason.

9. Good Industry Practice

9.1 The Service Provider acknowledges and hereby confirms that it does not have any interest which actually constitutes or may potentially constitute a conflict of interest relating to its obligations under this Agreement, including the rendering of the Services, except as has been disclosed to and acknowledged by Foskor prior to the Signature Date.

9.2 The Service Provider undertakes that it shall not and will ensure that its Personnel will not pay any fees, commission, or grant favours, rebates, benefits, advantages; including gifts, entertainments, hospitality of more than nominal value to employees or agents of Foskor contrary to Foskor's policy on gifts, hospitality and sponsorship, and anti-corruption policies, including in contravention of the Anti-Corruption and Sanctions Laws. Any breach of this undertaking shall constitute a material breach entitling Foskor to terminate this Agreement immediately without notice and claim damages.

9.3 The Service Provider undertakes not to:

9.3.1 violate any Anti-Corruption and Sanctions Laws, or undertake or cause to be undertaken any Corrupt Act;

9.3.2 request any action, inaction or service by a third party that would violate any Anti-Corruption Laws or constitute a Corrupt Act; and

9.3.3 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.

9.4 The Service Provider agrees to notify Foskor of any activity in the course of the conclusion or execution of this Agreement, or in the procurement process preceding this Agreement, that it or any of its Personnel reasonably suspects (i) to be a Corrupt Act or (ii) to breach any Foskor Policy. The Service Provider undertakes to ensure its Personnel are familiar with all Policies, which may be amended from time to time. The Service Provider agrees to cooperate with Foskor on the investigation of every fraudulent activity in relation to this Agreement and to implement such corrective measures as Foskor may direct to address any fraudulent activity or Corrupt Act. Failure to cooperate fully or implement corrective measures as directed shall constitute a material breach of this Agreement.

9.5 Foskor shall have the right to request and consider records and documents, upon giving the Service Provider at least [10] days' prior notice, and to interview such persons as it may deem necessary to confirm compliance by the Service Provider with the above provisions.

9.6 Other than the right of termination of this Agreement, which Foskor reserves to exercise in the event of breach of any of the above provisions, Foskor also reserves the right: (i) to recover Losses it may suffer as a result of the breach of the above provisions; (ii) to institute disciplinary proceedings against the Service Provider, which may result in the Service Provider being restricted from doing business with Foskor and/or with any organ of state for up to 10 (ten) years; and (iii) to apply a temporary restriction on new contracts being awarded to the Service Provider while any such disciplinary proceedings are ongoing. Any such disciplinary proceedings are subject to Foskor’s internal procedures and do not constitute a dispute for the purposes of clause 33 of this agreement.

10. **Change Control Procedure**

In relation to each Scope of Work, and except as otherwise expressly stated in this Agreement, the change control procedure set out in Annexe C shall apply to any changes to the Services.

11. **Service Provider's obligations and warranties**

11.1 The Service Provider warrants and undertakes as follows to Foskor as at the Signature Date and at all times during the Contract Period that:

11.1.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;

11.1.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;

11.1.3 the Agreement constitutes legal, valid and binding obligations;

11.2 The Service Provider represents, warrants and undertakes to Foskor that, as at the Signature Date and at all times during the Contract Period, it shall:

11.2.1 devote such of the Service Provider's Personnel and tools as may be necessary for the proper performance of the Services;

11.2.2 provide Services of a professional nature, and that comply with generally accepted service standards of a similar nature;

11.2.3 it shall comply with all Applicable Laws;

11.2.4 it shall obtain and maintain all relevant permits, licences and other approvals or authorisations necessary for it to render the Services;

11.2.5 conduct itself in a professional manner and in accordance with Good Industry Practice;

11.2.6 comply with Foskor's Policies, procedures, rules and regulations at the Site, including any environmental, health and safety and management plans;

11.2.7 remove from the Service Provider's Personnel, upon receipt of a written request from Foskor, such Personnel whose services Foskor reasonably considers prejudicial to the quality of the Services or the reputation of Foskor;

11.2.8 take reasonable precautions to ensure that the Service Provider's Personnel are suitable persons to enter secure areas of Foskor and will, whilst on Foskor's Sites in performance of the Services, use all commercially reasonable efforts to cause as little interference with and inconvenience to Foskor's business as reasonably possible;

11.2.9 ensure that its specific, relevant and applicable Personnel assigned to render the Services are familiar with the applicable Scope of Work and Purchase Order and have the requisite expertise, capabilities and authority and that they cooperate fully with the designated Personnel of Foskor in relation to the provision of the Services;

11.2.10 take reasonable precautions to ensure that, whilst on Foskor's Sites in performance of the Services, its Personnel adhere to those specific policies and procedures (including but not limited to access control, security, occupational health and safety, information systems security, anti-fraud, travel, telephone and internet usage, as specified by Foskor from time to time);

11.2.11 ensure that it takes all commercially reasonable steps as are necessary to ensure that Foskor is in possession of and becomes the lawful owner of Documents and Material as part of the Services;

with regard to access to Foskor's information systems and Sites:

11.2.11.1 ensure that its Personnel abide by the information security policies as published on the intranet of Foskor and updated from time to time;

11.2.11.2 ensure that Foskor has the right to monitor all connections between it and Service Provider and Foskor shall be entitled to revoke user activity; and accept that, during normal business hours and upon [●] Business Day's advance written notice, Foskor has the right to audit contractual responsibilities or to have such audits carried out by a third party provided that such third party is not a competitor of the Service Provider and provided that (i) the audit is limited solely to a review of materials relating to the performance of the Services and does not extend to any of the Service Provider's financial records, Confidential Information or data or property owned by the Service Provider or on the Service Provider's premises not directly related to the performance of the Services; and (ii) Foskor shall bear the cost of any such audit.

11.3 Each warranty is:

11.3.1 a material representation of fact inducing Foskor to enter into this Agreement;

11.3.2 a continuing representation and warranty and shall survive the termination of this Agreement; and

11.3.3 a separate warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other warranty or by any other provision in this Agreement.

12. Foskor's warranties

12.1 Foskor warrants to the Service Provider at the Signature Date and at all times during the Contract Period that:

12.1.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;

12.1.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;

12.1.3 the Agreement constitutes legal, valid and binding obligations; and

12.1.4 it shall comply with all Applicable Laws.

12.2 Each warranty is:

12.2.1 a material representation of fact inducing the Service Provider to enter into this Agreement;

12.2.2 a continuing representation and warranty and shall survive the termination of this Agreement; and

12.2.3 a separate warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other warranty or by any other provision in this Agreement.

13. **Information concerning the Site**

13.1 Visits to the Site(s) by the Service Provider for the purposes of implementing this Agreement shall be permitted, subject to the prior written approval of Foskor, which approval will not be unreasonably withheld.

13.2 The Service Provider shall be responsible for obtaining complete and accurate information concerning the Site(s) from Foskor, which information will not be unreasonably withheld.

14. **Performance Standards**

14.1 Annexe B sets out the service levels against which a service credit will be payable for service level performance that falls below the required service levels which the Service Provider will measure and report on.

14.2 In addition to the Performance Standards, the Service Provider will perform the Services in accordance with each of the following (provided that for those Services that have associated service levels, the following will not be deemed to increase such service levels):

14.2.1 at least to the same degree of accuracy, completeness, efficiency, quality, responsiveness and timeliness as:

14.2.1.1 was provided prior to the Commencement Date by, or for, Foskor; and

14.2.1.2 is provided by a well-managed service provider providing services similar to the Services;

14.2.1.3 promptly, using reasonable skill and care and in a professional and diligent manner; and

14.2.2 in accordance with any other performance standards specified in this Agreement.

14.3 The Service Provider will, throughout the Contract Period, use proven and current technology, processes and procedures that enable Foskor to take advantage of technological advancement in the Service Provider's industry and support Foskor's efforts to maintain competitiveness.

15. **Order of Precedence**

15.1 In the event of any conflict, inconsistency or ambiguity between the provisions of the documents forming this Agreement, the following order of precedence shall apply (with the first listed taking priority):

15.1.1 the Letter of Award;

15.1.2 the Purchase Order;

15.1.3 the Scope of Work;

15.1.4 the requirements of this Agreement;

15.1.5 the RFP; and

15.1.6 the Service Provider's bid response to the RFP.

15.2 The RFP and the Service Provider's bid response to the RFP form integral parts of this Agreement. Any breach by the Service Provider of its obligations under the RFP or its bid response shall constitute a breach of this Agreement, provided that, in the event of any direct conflict between the terms of the RFP, the bid response, and this Agreement, the terms of this Agreement shall prevail.

16. **Intellectual Property Rights and indemnifications**

16.1 The Service Provider shall indemnify, defend and hold Foskor harmless, immediately on demand, against any and all Losses that may be suffered or incurred (directly or indirectly) by Foskor arising out of or in connection with any Claim that the Deliverables or the use of the Services as permitted under this Agreement, or any act or omission by the Service Provider or its Personnel, infringes or misappropriates the rights (including the Intellectual Property Rights) of any third party or any regulatory authority.

16.2 Foskor shall:

16.2.1 notify the Service Provider as soon as reasonably practicable (but not later than [●] days after being notified) of the Claim in writing and provide to the Service Provider a copy of each communication, notice or other action relating to that Claim;

16.2.2 subject to clause 16.3, provide the Service Provider with sole control of the defence of that Claim and all related settlement negotiations and not make any voluntary admission, disclosure or at any time admit liability or otherwise attempt to settle or compromise the Claim; and

16.2.3 subject to clause 16.3, provide the Service Provider with all information and assistance, at the Service Provider's expense, necessary for the Service Provider to defend or settle such Claim.

16.3 Where the Service Provider assumes the control of the defence of the Claim and all related settlement negotiations:

16.3.1 Foskor shall be entitled to, and the Service Provider shall provide all assistance necessary to enable them to, participate in the defence of that Claim or any

counterclaim, including any negotiations, settlements or litigation related to that Claim or counterclaim and any related proceedings or appeals;

16.3.2 the Service Provider shall, and shall procure that its insurers (as the case may be), keep Foskor updated at all times on all progress and developments relating to that Claim and counterclaim; and

16.3.3 no admission, settlement or compromise of that Claim may be made by the Service Provider or its insurers (as the case may be) without the express prior written consent (not to be unreasonably withheld) of Foskor, where such admission, settlement or compromise will impose a financial obligation on Foskor, or constitute an admission of guilt or fault on its part, or result in any Foskor Affiliate being prevented from continuing the use of any of the Deliverables or Services as envisaged in this Agreement.

16.4 In addition to, and without limiting or derogating from the Service Provider's further obligations (including indemnification obligations in this clause 15), should any Deliverable or the use of the Services infringe or misappropriate the rights (including Intellectual Property Rights) of any third party or become, or in the Service Provider's reasonable opinion be likely to become, the subject of a Claim of such infringement or misappropriation, then the Service Provider shall, at Foskor's option:

16.4.1 modify or amend the Deliverables or the infringing part(s) thereof in order to avoid any infringement or misappropriation, provided that the Deliverables or the use of the Services shall still comply with the Scope of Work and no adverse effect or loss of functionality of the Deliverables or the use of the Services shall occur as a result of that modification or amendment;

16.4.2 procure for Foskor the right to use the Deliverables or the use of the Services free of any liability for infringement or misappropriation;

16.4.3 replace the Deliverables with non-infringing substitutes complying substantially and in all material respects with the Scope of Work; or

16.4.4 remove the Deliverables or the infringing part(s) thereof and refund the Fees and amounts paid for any Deliverables or the use of the Services that may become redundant as a result of the inability to use any of the Deliverables or inability to use the Services further.

16.5 The Service Provider's obligations under this clause 16 shall not extend to infringement arising out of any use of the Deliverables by Foskor in breach of this Agreement.

16.6 Nothing in this Agreement shall transfer any right, title or interest in any Materials owned by a Party (and/or their vendors and/or licensors as the case may be) as at the Commencement Date.

16.7 The Parties agree that all worldwide rights, title, ownership and interest (including Intellectual Property Rights) in and to each Deliverable shall vest in Foskor.

16.8 To the extent that any Deliverable incorporates any Materials that are not owned by Foskor, the Service Provider hereby grants to Foskor a non-exclusive, irrevocable, royalty free, perpetual, transferable, sub-licensable right and licence to use those Materials solely to the extent necessary to use the Deliverables and to receive the Services.

16.9 In no event shall the Service Provider be precluded from independently developing for it, or for others, materials which are competitive with, or similar to, the Deliverables. In addition, the Service Provider shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.

17. **Implementation tools and plant**

The Service Provider shall, at its own cost and expense, be responsible for the provision or acquisition of whatever permits, visas, authorities, licences, labour, services, tools or plant that may be required to enable it to fulfil its obligations under this Agreement, and Foskor shall provide such assistance as is reasonably required to assist the Service Provider.

18. **Cession**

The Service Provider shall not be entitled to cede its rights or delegate its obligations without the prior written consent of Foskor, which consent may be withheld in Foskor's sole and absolute discretion.

19. **Change of Control**

Foskor may terminate this Agreement in the event of an acquisition, directly or indirectly, by (i) a direct competitor of Foskor; and/or (ii) a company which Foskor is prohibited from doing business with and such restriction has been communicated to Service Provider prior to any Change of Control in the Service Provider or any of its subsidiary companies or any other company in which Service Provider has a shareholding and which is involved in the implementation of this Agreement.

20. **Confidentiality and Non-Disclosure**

20.1 Each Party shall keep confidential and shall not disclose to any person any Confidential Information. The Receiving Party undertakes and agrees that –

20.1.1 the disclosing Party's Confidential Information is proprietary to the disclosing Party;

20.1.2 the terms of this Agreement do not confer any rights of whatsoever nature in such Confidential Information on it; and

20.1.3 it shall not exploit, commercialise, or otherwise make use of the disclosing Party's Confidential Information in any manner not expressly provided for in this Agreement or necessary for the performance of this Agreement.

20.2 Each of the Parties agrees to keep all Confidential Information confidential and to disclose it only to their respective officers, directors, Personnel, and professional advisors who have a need to know the Confidential Information, are aware that the Confidential Information should be kept confidential, are aware of the receiving Party's undertaking in relation to such information in terms of this Agreement, and have been directed by the Receiving Party to keep the Confidential Information confidential (a "**Permitted Recipient**"). The Parties acknowledge and agree that they shall be liable for any breach of this clause 20 by such a Permitted Recipient.

20.3 The Disclosing Party may at any time on written request to the Receiving Party require that the Receiving Party returns to the Disclosing Party any Confidential Information. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on written request, destroy all such Confidential Information. The return and destruction provisions of this clause 20.3 shall not apply to Confidential Information that the Receiving

Party is required by Applicable Law to preserve or that is related to or the subject of a formal dispute between the Parties, provided that in such circumstances, the Receiving Party shall only retain the relevant Confidential Information for as long as is necessary and shall as soon as the period required by Applicable Law has expired, or the formal dispute has been resolved, immediately thereafter comply with the provisions of this clause 20.3. The Receiving Party shall comply with any request in terms of this clause 20.3 within 10 Business Days of receipt of such request.

20.4 Confidential Information does not include any information which –

20.4.1 is required to be disclosed by the provisions of Applicable Law, or during any court proceedings, or by the rules or regulations of any regulator or stock exchange, it being agreed that the Party required to make such disclosure shall, as far as reasonably possible and subject to Applicable Law, limit the extent of such disclosure and consult with the other Party prior to making such disclosure;

20.4.2 is in the public domain at the time learned by or communicated to the Receiving Party through no fault of the receiving Party;

20.4.3 is obtained by the Receiving Party from a third party lawfully in possession of such information and not subject to a contractual or fiduciary relationship to the provider of the Confidential Information; and/or

20.4.4 is already known to the Receiving Party or is independently derived by the Receiving Party without reference to the Confidential Information.

20.5 The Receiving Party shall notify the Disclosing Party immediately if it learns or has reason to believe that any person who has had access to the Disclosing Party's information from or through the Receiving Party has taken or intends to take any action which would be in breach of this Agreement.

20.6 Neither Party shall issue any public document relating to or connected with or arising out of this Agreement (save for any announcement or document which is required to be given, made or published in terms of Applicable Law or under the rules and regulations of a regulatory authority) without obtaining the prior written approval of the other Party. In the case of a release, announcement or document which is required to be given, made or published in terms of Applicable Law, the Party liable to give, make or publish the same shall give to the other Party as much advance notice thereof as is reasonable and legally permitted in the circumstances together with drafts or a copy thereof as soon as it is at liberty so to do.

20.7 The provisions of this clause 20 are severable from the rest of the Agreement and shall survive the expiry or termination of this Agreement for whatever reason.

21. **Force *majeure***

21.1 No Party shall be liable to the other Party for any Losses incurred or suffered by that Party because of delays or defaults in performance under this Agreement caused by circumstances beyond its reasonable control, whether foreseeable or not, and without its fault or negligence, including but not restricted to acts of God, perils of navigation, floods, fire, war (declared or undeclared), hostilities, executive or administrative orders or acts of either general or particular application of any government or of any officer or agent acting under the authority of such government, blockade, labour disturbance, strikes, riot, quarantine restrictions, pandemic, epidemic, earthquakes, load shedding, power failures/outages or expropriation ("**Force Majeure Event**").

21.2 If a Party is prevented from fulfilling its obligations under this Agreement by reason of Force Majeure Event, the Party so prevented shall without delay notify the other Party in writing

to that effect. The Parties shall then promptly meet with a view to reducing or mitigating the effects of the Force Majeure Event.

21.3 A Party who alleges the existence of a Force Majeure Event shall have the burden of proving the existence thereof.

21.4 A Party who, because of a Force Majeure Event, fails to perform in whole or in part its obligations under this Agreement, shall use its reasonable commercial endeavours to mitigate the effect of its failure or omission to perform in full and shall continue to perform its obligations as far as reasonably possible and practical to do and, upon the cessation of the Force Majeure Event, notify the other Party of such cessation in writing without delay.

21.5 If for reasons of a Force Majeure Event, a Party is unable, notwithstanding that Party's efforts to remove or circumvent the causes of the Force Majeure Event, to perform all or any of its obligations hereunder and such non-performance continues for more than 30 consecutive days after the Force Majeure Event has been brought to the attention of the other Party in terms of clause 21.2, then the other Party shall be entitled to terminate this Agreement by way of written notice to the other Party to that effect and no Party will have any claim against the other arising out of such termination.

22. **Breach**

22.1 Subject to the step-in rights provided for in clause 27, should any Party commit:

22.1.1 a material breach of this Agreement and, provided the breach in question is capable of remedy and is not the subject of step-in rights as provided below, and fails to remedy such breach within [10] days of notice thereof from the aggrieved Party; and/or

22.1.2 a material breach of this Agreement that is not capable of being remedied,

then the aggrieved Party shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement or in terms of Applicable Law, then the aggrieved Party shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement or in terms of Applicable Law, to terminate this Agreement and/or any obligations hereunder (in whole or in part) upon written notice to the defaulting Party, without prejudice to any claims which the aggrieved Party may have for damages against the defaulting Party or otherwise in terms of Applicable Law. In any event, the defaulting Party shall be liable to the aggrieved Party for all Losses incurred by it or resulting from the defaulting Party's breach.

22.2 Foskor may immediately terminate this Agreement in relation to the Service Provider if:

22.2.1 the Service Provider breaches clause 9; or

22.2.2 a Causal Event occurs in respect of the Service Provider.

22.3 The Service Provider may immediately cancel this Agreement in relation to Foskor if Foskor takes steps to deregister itself, or is deregistered, or place itself, or is placed, in liquidation, whether voluntary or compulsory and whether provisionally or finally.

23. **Consequences of termination**

23.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:

23.1.1 Foskor shall settle any undisputed outstanding tax invoices in respect of Services rendered by the Service Provider;

23.1.2 the Service Provider shall fulfil Purchase Orders placed with it prior to the Termination Date; and

23.1.3 each Party shall

23.1.3.1 cease all use of the other Party's Confidential Information and/or Intellectual Property; and

23.1.3.2 upon demand return to the other Party or otherwise dispose of, as such other Party may require, all Confidential Information and/or Intellectual Property of the other Party.

23.2 Any cancellation or termination of this Agreement shall not affect the Surviving Provisions which shall remain in full effect.

23.3 The termination of this Agreement shall be without prejudice to any rights that have accrued to a Party as at the Termination Date, including without limitation the right to claim damages.

24. **Limitation of liability**

Except as set forth in clause 24.2, Foskor's total aggregate liability to Service Provider whether based on an action or claim in contract, delict, breach of statutory duty or otherwise arising out of, or in relation to this Agreement, will be limited to **[**10**]**% of the aggregate Fees paid and payable to Service Provider under the applicable Purchase Order under which the Claim originated.

24.1 Except as set forth in clauses 24.2 and 24.3, the Service Provider's total aggregate liability to Foskor whether based on an action or claim in contract, delict, breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, will be limited to **[**300**]**% of the aggregate Fees paid and payable to Service Provider under the applicable Purchase Order under which the Claim originated.

24.2 Subject to clause 24.3 below, Foskor will not be liable whether based on a claim in contract, delict (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, for indirect or consequential Losses, even if foreseeable, or if such entity has been advised of the possibility of such Losses.

24.3 The limitations in clause 24.1 above will not apply to:

24.3.1 death or personal injury caused by the Service Provider's negligence, fraud (including fraudulent misrepresentation) and other Losses which cannot be excluded by law;

24.3.2 any wilful default or fraudulent act or omission of the Service Provider;

24.3.3 damage to, loss or destruction of real property or tangible personal property belonging to Foskor by the Service Provider;

24.3.4 the Service Provider indemnities;

24.3.5 the wrongful termination or abandonment of this Agreement or the Services by the Service Provider;

24.3.6 any breach of confidentiality obligations;

24.3.7 any breach of data protection obligations; and/or

24.3.8 any failure to meet Performance Standards that results in material harm to Foskor's business operations.

24.4 Each Party acknowledges its general duty at law to mitigate its Losses incurred in relation to this Agreement.

25. **Date of completion and early warning**

25.1 The Service Provider shall complete the Services in accordance with the provisions of this Agreement and on or before the dates set out in the Scope of Work

25.2 Each Party shall give an early warning to the other Party as soon as it becomes aware of any matter which could:

25.2.1 delay delivery or frustrate performance in terms of this Agreement; or

25.2.2 impair the performance of the Deliverables; or

25.2.3 increase or decrease the prices of Purchase Orders already agreed and signed between the Parties;

("**Early Warning Notification**").

25.3 The Parties shall cooperate in making and considering proposals of how the effect of each matter of the subject of an Early Warning Notification can be avoided or mitigated.

25.4 An Early Warning Notification shall:

25.4.1 contain proposals for how the effect of each matter which has been notified as an early warning can be avoided or mitigated;

25.4.2 provide solutions that will bring advantage to all those who will be affected; and

25.4.3 indicate actions which will be taken, and who, in accordance with this Agreement, will take them.

25.5 The proposals, solutions and actions set out in an Early Warning Notification shall become binding if approved by the Parties in accordance with the provisions of this Agreement.

26. **Service Level Penalties**

In addition to any other remedies available to Foskor, if the Service Provider fails to meet any Performance Standards set out in Annexe B, the Service Provider shall pay to Foskor liquidated damages as follows:

26.1 For each instance of failure to meet a Performance Standard: 2% of the monthly Fees;

26.2 For repeated failures (3 or more instances in any calendar month): 5% of the monthly Fees;

26.3 For critical failures affecting Foskor's operations: 10% of the monthly Fees. 33.2 Such liquidated damages shall be deducted from the next payment due to the Service Provider and shall not constitute a penalty but a genuine pre-estimate of Foskor's losses.

27. **Step-In Rights**

27.1 If the Service Provider fails to remedy any material breach within 48 hours of written notice by Foskor, or if any failure poses an immediate risk to Foskor's operations, Foskor may:

27.1.1 take over performance of the affected Services using its own personnel or third parties;

27.1.2 access the Service Provider's facilities, systems, and personnel as necessary;

27.1.3 direct the Service Provider's Personnel in the performance of Services.

27.2 All costs incurred by Foskor in exercising step-in rights shall be borne by the Service Provider and may be deducted from any amounts due to the Service Provider.

27.3 The Service Provider shall provide full cooperation and access during any step-in period.

28. **Continuous Improvement**

28.1 The Service Provider shall implement continuous improvement programs to achieve:

28.1.1 Annual efficiency improvements of not less than 3%;

28.1.2 Cost reductions of not less than 2% per annum; and

28.1.3 Enhanced service quality metrics as agreed with Foskor.

28.2 The Service Provider shall provide quarterly reports on improvement initiatives and achieved benefits.

29. **Performance Bond**

The Service Provider shall on or before the Signature Date, provide confirmation of the Performance Security being available and maintain the Performance Security in the amount of [●]% of the total contract value as security for the due and faithful performance of the Service Provider's obligations under this Agreement. Foskor, may in its discretion accept alternative security such as an irrevocable or unconditional parent company guarantee.

The Performance Security shall remain in full force and effect until [90] days after completion of all the Service Provider's obligations under this Agreement, or until such earlier time as Foskor may agree in writing to its release.

Foskor may call upon the Performance Security in the event of any breach by the Service Provider of its obligations under this Agreement, including but not limited to delays in performance, defective work, or failure to remedy defects within a pre-agreed time period of [ ]

30. **Independent Expert determination**

Any dispute arising out of, or in connection with (i) the Service Price Book, (ii) whether any Deliverable under a Scope of Work has been achieved or (iii) The Service Provider shall comply with the provisions set out in this clause, provided that the Parties shall, within [15] Business Days of the occurrence of

such a dispute, attempt to resolve such dispute via a meeting of the appropriate executives of each Party before referring the matter for resolution by an Independent Expert in terms of this clause 31.

The Independent Expert shall be [●].

30.1 If the Parties fail to agree on an Independent Expert within [10] Business Days after the determination has been demanded, the Independent Expert shall be nominated, at the request of either of the Parties by the Registrar of the Arbitration Foundation of Southern Africa ("**AFSA**"). If the Registrar fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

30.2 The Parties agree that the Independent Expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.

30.3 The Independent Expert shall act as an expert and not as an arbitrator. The Independent Expert's determination shall be given in writing and shall be final and binding on the Parties and shall not, save in the case of manifest error (which may be corrected by the Independent Expert) be referred to arbitration or any court. Either of the Parties ("**applicant**") may apply to court for the decision of the Independent Expert to be made an order of court, in which event the other of them shall give such assistance as shall be required to do so at the cost of the applicant.

30.4 The Parties shall be entitled to make submissions to the Independent Expert and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply each other with all information and give each other access to all documentation as the other Party reasonably requires to make a submission under this clause 31.

30.5 The Independent Expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the Independent Expert) shall be borne by the Parties in such proportions as the Independent Expert may direct.

31. **Insurance**

31.1 The Service Provider shall procure and maintain the following insurance cover:

[***Insert relevant insurance required to be procured by the Service Provider***] with a limit of not less than R[●] per incident; and

31.1.1 third party liabilities insurance with a limit of not less than R[●] per incident.

31.2 The Service Provider shall, upon request by Foskor, produce proof:

31.2.1 of the existence of the insurance policy contemplated in this clause 31;

31.2.2 that all premiums are being paid in accordance with the relevant insurance policy; and

31.2.3 that such insurance policies are in full force and effect.

31.3 If, in the reasonable opinion of Foskor, the amount of insurance cover is not adequate, the Service Provider shall increase the amount of insurance cover as required by Foskor from time to time.

31.4 Foskor may terminate this Agreement immediately upon written notice to the Service Provider in the event of a failure by the Service Provider to maintain the required insurance covers.

32. Status Meetings

The Parties agree to have at least 1 (one) in-person meeting per month during the term of this Agreement, during which meeting a duly appointed representative of each Party shall be present.

32.1 The Parties may, upon prior written agreement, dispense with the requirement to have meetings in-person and may elect to have such meetings virtually instead.

32.2 The Parties agree that neither Party shall be entitled to any compensation for attending, and preparing for, such meetings.

33. Dispute Resolution

33.1 **separate**, **divisible agreement**

33.1.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:

33.1.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause; and

33.1.1.2 remain in effect even if the Agreement expires or terminates for any reason whatsoever.

33.2 **disputes subject to arbitration**

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be decided by arbitration as set out in clause 33.2.1.

33.2.1 **appointment of arbitrator**

33.2.1.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of AFSA. If agreement is not reached within [15] days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

33.2.1.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished

to the other Party who may, within [10] days, submit written comments on the request to the addressor of the request.

33.2.2 **venue and period for completion of arbitration**

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

33.2.3 **Arbitration Act - rules**

The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

33.2.4 **arbitrator's decision**

33.2.4.1 The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties and shall not be subject to appeal unless otherwise agreed in writing between the Parties.

33.2.4.2 The arbitrator's decision may be made an order of court at the instance of any Party to the arbitration.

33.3 **Urgent relief**

Proceedings in terms of this clause 33 shall not be construed to prevent the Parties from instituting formal proceedings in any court of competent jurisdiction to obtain timely interim or urgent relief and/or for judgment in relation to a liquidated claim.

33.4 **Continued performance**

Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.

34. **Miscellaneous matters**

34.1 **addresses**

34.1.1 The Parties choose the following addresses at which written notices in connection with this Agreement may be delivered, and the Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (their *domicilia citandi et executandi)*:

34.1.2 in the case of Foskor to:

address : Hertford Office Park, Building K
2nd Floor
90 Bekker Road
Vorna Valley
Midrand
Gauteng

email : roganim@foskor.co.za

and marked for the attention of Ms Rogani Moodley (Vice President – Legal, Risk and Compliance)

in the case of [Service Provider] to:

address : [●]
[●]
[●]

email : [●]

and marked for the attention of [●]

34.1.3 A Party may at any time change that Party's *domicilium* by notice in writing, provided that the new *domicilium* consists of, or includes, a physical address at which process can be served.

34.1.4 Any notice given in connection with this Agreement shall be valid and effective only if in writing, in English, and if delivered by hand, courier or e-mail.

34.1.5 A notice given as set out above shall be deemed to have been duly given:

34.1.5.1 if delivered, on the date of delivery or if such date is not a Business Day, on the next Business Day; or

34.1.5.2 if sent by email, on the date that the email is transmitted (or if such date is not a Business Day, on the next Business Day), except that any email transmitted after 17h:00 shall be deemed to have been received on the following Business Day; and

34.1.5.3 the person on whom notice is served is not absent on leave or business.

34.2 A written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered or served at that Party's chosen address in clause 34.1.

34.3 **entire contract**

This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement. Without derogating from the generality of the aforegoing, no terms and conditions appearing on the Service Provider's invoices, delivery notes or other documentation shall be of any force and effect.

34.4 **no stipulation for the benefit of a third person**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

34.5 **no representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

34.6 **variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

34.7 **indulgences**

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

34.8 **cession and delegation**

34.8.1 Foskor may cede any or all of its rights and/or delegate any or all of its obligations under this Agreement without the prior written consent of the Service Provider.

34.8.2 The Service Provider may not cede any or all of its rights and/or delegate any or all of its obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and absolute discretion.

34.9 **applicable law**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.

34.10 **jurisdiction of South African courts**

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), for any proceedings arising out of or in connection with this Agreement and which are not subject to arbitration. In particular, any Party shall be entitled to approach the court for urgent interim relief pending the referral of the dispute to arbitration (or pending the finalisation of the arbitration proceedings) or for an order for the enforcement of any arbitration award made.

34.11 **costs**

Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

34.12 **signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

34.13 **independent advice**

Each of the Parties hereby respectively agrees and acknowledges that:

34.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

34.13.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

34.14 **good faith**

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

SIGNATURE PAGE

Signed at on 2025

Witness for **FOSKOR PROPRIETARY LIMITED**

1. ....
duly authorised and warranting such authority

2. .....

Signed at on 2025

Witness for **[SERVICE PROVIDER]**

1. ....
duly authorised and warranting such authority

2. .....

Annexe A

Service Provider's Price Schedule

RATES (per Day/Month)	**[Month 2025] – [Month 2026] Fees**	**[Month 2026] – [Month 2027] Fees**
	R[●]"	R[●]

Annexe B

Scope of Work and Performance Standards

Annexe C

Change Control Procedure

1. Change Requests

1.1 Foskor or the Service Provider (the "**Requesting Party**") may from time to time, and prior to the final milestone date, submit a proposal to the Service Provider's contract manager ("**Service Provider Contract Manager**") or Foskor's contract manager ("**Foskor Contract Manager**"), as the case may be, requesting changes to the Services or the Deliverables ("**Change Request**").

1.2 All Change Requests shall be given priority by the Service Provider. On receiving a Change Request, the Service Provider Contract Manager shall consult with the Foskor Contract Manager regarding issues arising from such Change Request, including the priority to be given to the Change Request (provided that failing agreement on the priority to be given to a Change Request, the Service Provider Contract Manager shall give the matter the priority designated by the Foskor Contract Manager acting reasonably).

1.3 Within [●] Business Days after receiving a Change Request, and provided that the Foskor Contract Manager notified Service Provider Contract Manager to investigate the Change Request further where Service Provider submitted the Change Request, the Service Provider Contract Manager shall provide the Foskor Contract Manager with a written report describing:

1.3.1 the feasibility of the changes contemplated by the Change Request;

1.3.2 the proposed method of implementing the Change Request;

1.3.3 the effect that implementation will have on the Deliverables and/or the Services;

1.3.4 proposed revised Annexes to this Agreement detailing the Services;

1.3.5 the benefits to be derived by the Parties as a result of the implementation of the Change Request, where applicable;

1.3.6 any other options that may reasonably be considered to address the matter giving rise to the Change Request;

1.3.7 any changes to the Fees;

1.3.8 any additional costs, expenses or contributions which may be necessary as a result of the implementation of the Change Request; and

1.3.9 the information which may be required by Foskor for purposes of complying with the Foskor internal change management processes (including completed change control forms, documents and notes utilised in such processes), as these may be notified to the Service Provider from time to time.

1.4 Foskor may request the Service Provider Contract Manager to conduct further or alternative investigations and thereafter revise his written report for further consideration by Foskor within [10] Business Days following such request.

1.5 Subject to 1.6 of this Annexe, if after having given the Service Provider Contract Manager an opportunity to revise its report, Foskor disputes the accuracy of any of the contents of the Service Provider Contract Manager's written report, or, disputes whether any additional costs, expenses or contributions are necessary or reasonable, this will be regarded as a dispute and Foskor shall be entitled, but not obliged, to submit the dispute for resolution in

terms of the dispute resolution process set out in the Agreement, Foskor may also choose not to accept the changes but rather to explore alternate solutions.

1.6 A Change Request shall not be implemented unless Foskor gives its approval in writing to:

1.6.1 the proposed changes to the Deliverables, and the Services;

1.6.2 any changes to the Fees;

1.6.3 any additional costs, Expenses and contributions for which it may be liable; and

1.6.4 any change to the obligations of Foskor.

1.7 Following Foskor's approval (which may be withheld in Foskor's sole discretion) in terms of paragraph 1.6, the Parties agree to make such amendments to this Agreement as may be necessary.

1.8 If a Change Request is made and one of the Parties reasonably believes that the procedure set forth in this clause 1 of this Annexe should be expedited, the Parties will use their reasonable endeavours to procure that such procedure is expedited to achieve resolution as soon as possible.

2. **Restrictions**

2.1 Once the Purchase Order has been issued, Foskor can issue only the following changes within the timelines:

2.1.1 all product/Services configuration changes within [2 weeks] of Purchase Order being issued;

2.1.2 cancellation of the Purchase Order within [2 weeks];

2.1.3 any addition to the quantities can be done at any time but this will affect the delivery times;

2.1.4 all reduction to the quantities must be done in [2 weeks]; and

2.1.5 a formal change request must be issued through an updated Purchase Order.

2.2 The Service Provider on receipt must review the amendment Purchase Order and within a week respond with a new proposal reflecting:

2.2.1 the cost implications of the changes;

2.2.2 the changes on the delivery dates; and

2.2.3 Foskor must within 2 days accept or reject the new proposal.

2.3 The Service Provider shall have no claim for compensation for additional time and resources spent on Change Requests.

2.4 The Service Provider can only claim for compensation due to Losses arising from the cancellation of a Purchase Order, if the Service Provider can prove beyond doubt at any time that the Service Provider had incurred cost towards the Change Request.

2.5 Such compensation will be based on discussions with Foskor as mutually agreed depending on the extent, quantum and nature of work performed between the time of issuance of Purchase Order and cancellation of Purchase Order.

2.6 In the event it is identified that the compensation provided to the Service Provider in the past due to cancellation of Purchase Order for Scope of Work performed is similar to Scope of Work in a new Purchase Order request, the Service Provider will provide due credit to Foskor to the extent of Scope of Work for which the Service Provider has already been compensated.