

SABS

SABS STANDARD LEGAL TERMS AND CONDITIONS FOR PROCUREMENT OF GOODS AND SERVICES

1. INTRODUCTION

The SABS has selected the Supplier as its preferred supplier for the provision of Good or Services as set out in the RFX read with Annexure “B” (where applicable) hereof, and has issued the Supplier with a Letter of Award and/or Purchaser Order.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement, unless the context indicates otherwise:

2.1.1 **“Agreement”** means this memorandum of agreement, the Occupational Health and Safety Agreement (Annexure “A”), the Commercial Terms and Special Conditions of Contract (Annexure “B” – where applicable) and the RFX, Purchase Order (where applicable) and all other annexures thereto, which form part of and are incorporated into this Agreement;

2.1.2 **“Confidential Information”** means information relating to one party or its agents (the Disclosing party) and/or the business carried on or proposed or intended to be carried on by the Disclosing party and which is made available in connection with this Agreement to the other party (the Receiving party) (or its agents) by the Disclosing party (or its agents) or

which is recorded following oral disclosure to the Receiving party and any other information that is otherwise made available, in any form, by the Disclosing party (or its agents) to the Receiving party (or its agents), whether before, on or after the date of this Agreement, including but not limited to the Disclosing Party’s client information; technical information; business information and / or information relating to Intellectual Property of the Disclosing Party and any analysis or specifications derived from, containing or reflecting such information; but excluding information which is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving party or any of its agents contrary to the terms of this Agreement) or was lawfully in the possession of the Receiving party or its agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed or following such disclosure, becomes available to the Receiving party or its agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing party (or its agents), which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing party in relation to such information;

2.1.3 **“Contract Period”** means the duration of this Agreement as stated

in the RFX or as communicated otherwise by the SABS as per the Letter of Award to the Supplier, or as stated in the Commercial Terms and Special Conditions of Contract (Annexure “B”);

2.1.4 **“Day”** means a calendar day excluding Saturday, Sunday and public holidays;

2.1.5 **“Effective Date”** means the date on which this Agreement comes into operation, being: (a) the date on which either Party last signs the Agreement; or (b) the date specifically agreed to by the Parties as the Effective Date; or (c) the date specifically stipulated in the Letter of Award as the Effective Date; or (d) the date upon which the SABS issues Purchase Order, whichever is applicable;

2.1.6 **“Fees”** means the fees and expenses payable to the Supplier by the SABS for the full and proper performance of the Services or delivery of the Goods and all other obligations by the Supplier under this Agreement;

2.1.7 **“Force Majeure”** means and includes acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations, civil strife, riots, insurrection, sabotage, acts of war or public enemy, prohibition of exports, flood, storm, fire or (without limitation eiusdem

generis) any other circumstances beyond the reasonable control of the party claiming Force Majeure or vis major and comprehended in the terms force majeure or vis major;

2.1.8 **“Goods”** means all of the equipment, machinery, and / or any other materials that the Supplier is required to deliver and supply to the SABS under this Agreement as specified in the RFX read with Annexure “B” hereof;

2.1.9 **“Intellectual Property”** means all Intellectual Property rights including, but not limited to, patents, trademarks, copyright, registered design rights, trade or business names, domain names, know-how, trade secrets, database rights and topography rights, whether registered or unregistered, and all rights or forms of protection of a similar nature in any country; “Background Intellectual Property” means the Intellectual Property that is appropriately and documentary proved to vest in either Party or any subcontractor, agent, consultant, or the like of either Party prior to the date of first negotiation between the parties, and Intellectual Property which is licensed to either Party or any subcontractor, agent, consultant, or the like prior to the date of first negotiation between the parties, and which are used in the

- course and scope of the execution of this Agreement;
- 2.1.10 **“Law”** means any law, order, rule, regulation, licence conditions or code of any governmental authority of the Republic or the promulgation or introduction of any law, order, rule, regulation or code by any governmental authority of the Republic;
- 2.1.11 **“Letter of Award”** means a letter issued by the SABS to the Supplier, in which the SABS communicates its selection of the Supplier as its preferred supplier for the provision of Good or Services set out in the RFX, read with Annexure “B” (where applicable) hereof;
- 2.1.12 **“Month”** shall mean a calendar month;
- 2.1.13 **“Services”** means the services or works to be rendered by the Supplier under this Agreement as set out in the RFX, read with Annexure “B” (where applicable) hereof;
- 2.1.14 **“Republic”** means the Republic of South Africa;
- 2.1.15 **“RFX”** means the SABS’ invitation for persons to offer to provide Goods or Services, be it a Request for Proposals (RFP) or Request for Quotations (RFQ), which invitation is incorporated into and forms part of this Agreement by reference;
- 2.1.16 **“Supplier”** means the party to this Agreement selected by the SABS as its preferred supplier for the provision of Good or Services;
- 2.1.17 **“Parties”** means the SABS and the Supplier when referred to jointly. Where the Parties are referred to individually they shall be referred to as “Party” or the “SABS” or the “Supplier” depending on the prescripts of the context. The “Parties” shall also refer to the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees, consortium members and subcontractors;
- 2.1.18 **“Personal Information”** means information relating to an identifiable, living, natural person, where it is applicable, an identifiable, existing juristic person, as fully defined in the POPI Act;
- 2.1.19 **“POPI Act”** means the Protection of Personal Information Act, 2013 (Act 4 of 2013);
- 2.1.20 **“Purchase Order”** means the official purchase order of the SABS, duly signed by an authorized representative of the SABS and issued to the Supplier;
- 2.1.21 **“Third Party”** means any person or entity that is not a party to this Agreement; and

- 2.1.22 “**VAT**” means Value Added Tax imposed in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991) (as amended), including any similar tax which may be imposed in place thereof from time to time.
- 2.2 References to the provisions of any Law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.
- 2.3 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either party because that party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 2.4 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 2.5 References to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time.
- 2.6 General words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words, unless inconsistent with the context.
- 2.7 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day in which case the last day shall be the immediately following business day.
- 2.8 Paragraph headings and head-notes to clauses shall be for reference purposes only and shall not modify or vary any provision of this Agreement, nor be taken into account in construing or interpreting the tenor or import of this Agreement or any provision hereof.
- 2.9 The expiration or termination of this Agreement shall not affect any provision of this Agreement in respect of which it is expressly provided that it shall operate after any such expiry 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.
- 3. APPOINTMENT AND DURATION**
- 3.1 The SABS hereby appoints the Supplier for the Contract Period, to provide the Services or Good in accordance with the terms and conditions of this Agreement, and the Supplier accepts such appointment.
- 3.2 This Agreement shall commence on the Effective Date and remain in force for the Contract Period, unless as may be terminated earlier in terms of any applicable provision hereof.

3.3 Should the Supplier not accept a Purchase Order, the Supplier shall advise the SABS in writing within five (5) Days from the date of receipt of a Purchase Order, failing which it shall be deemed, for all intents and purposes, that the Supplier has in fact accepted the Purchase Order.

4. PARTIES' RELATIONSHIP

4.1 It is specifically recorded that the Supplier is an independent contractor, and neither the Supplier, nor its representatives, nor its employees nor its other officers are employees of the SABS.

4.2 The Supplier shall in no way be deemed to be an agent of the SABS, for any purpose whatsoever, and the Supplier shall have no authority or power to bind the SABS or to contract in the name of the SABS, or create any liability against the SABS in any way or for any purpose other than as stated in this Agreement.

4.3 Nothing in this Agreement shall constitute, or be deemed to constitute a partnership or joint venture between the Parties.

5. SUPPLIER'S WARRANTIES

5.1 The Supplier warrants that:

5.1.1 it has the authority and all the necessary licences, permits, accreditation and consents to enter into this Agreement and to provide the Services or Goods to the SABS under this Agreement;

5.1.2 it is the owner of or has the right to use under license any intellectual property employed by it during or as part of the Services or Goods;

5.1.3 it has the capacity and an adequate number of suitably qualified and trained employees, officers or personnel who shall provide the Services or Goods to the SABS under this Agreement. The allocation by the Supplier, in its discretion, of employees, officers or personnel in accordance with the technical skill and knowledge required, shall not negatively impact on the provision of the Services or Goods by the Supplier to the SABS;

5.1.4 all the work to be performed, Good to be delivered or Services to be rendered under this Agreement shall be executed with promptness and due diligence, executed by the Supplier to the satisfaction of the SABS, so that it meets the objectives of the SABS in seeking such Services or Goods;

5.1.5 the Goods supplied under this Agreement are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials; and

5.1.6 the Goods supplied under this Agreement shall have no defect, arising from design, materials, workmanship or from any act or omission of the Supplier and carry an

manufacturer and other appropriate warranties.

- 5.2 The SABS shall promptly notify the Supplier, in writing, of any claims arising under the warranty referred to in clause 5.1.6 hereof. Upon receipt of the notice, the Supplier shall, urgently repair or replace the defective Goods or parts thereof, without costs to the SABS.

6. SERVICES AND GOODS

- 6.1 The Supplier shall provide the Services or Goods to the SABS, which Services or Goods are described and set out in the RFX, read with Annexure "B" (where applicable) of this Agreement.

6.2 The Supplier shall:

6.2.1 exercise reasonable professional skill, care and diligence in the performance of all its obligations in this Agreement;

6.2.2 ensure that its employees, officers or personnel who provide the Services or Goods to the SABS, do not conduct themselves in any manner as may interfere with or occasion any risk to the SABS;

6.2.3 ensure that decisions as may be required to be made by it under this Agreement are promptly made and communicated to the SABS in writing;

6.2.4 cooperate in absolute good faith with the SABS and other persons whose assignments have a bearing on the

Services or Goods to be provided under this Agreement;

6.2.5 comply with and accurately and timeously adhere to all the timeframes set out in this Agreement, and reasonable requests made by the SABS in writing; and

6.2.6 be liable to the SABS for the work, actions or omissions relating to the Services or Goods performed or supplied by itself (Supplier), its employees, agents, representatives or the like.

6.3 The Supplier shall render the Services or Goods in full compliance with any and all applicable and relevant legislations, regulations and guidelines applicable to the Services or Goods provided under this Agreement.

6.4 The Supplier shall remain solely liable for any and all of its representatives, employees or sub-contractors who shall remain under the authority and control of the Supplier. The SABS shall not accept any liability or obligation for such persons, and the Supplier hereby indemnifies SABS accordingly.

6.5 The Supplier and the SABS shall liaise with one another through their respective contact persons or project managers identified in clause 9 of this Agreement.

6.6 The Supplier shall be responsible for ensuring compliance with all the provisions of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) ("OHS Act") and any other applicable Law. The Supplier

indemnifies the SABS against any claim that may arise in respect of OHS Act or any other Laws against the SABS, as further set out in Annexure "A" hereto.

7. OBLIGATIONS OF THE SABS

7.1 The SABS shall:

7.1.1 provide the Supplier, free of cost, with reasonable and available information at its disposal that may be required by the Supplier for the performance of the Services or provision of the Goods;

7.1.2 co-operate with the Supplier to enable the Supplier to render the Services or provide the Goods;

7.1.3 instruct other suppliers whose work have a bearing on the Services or Goods to be delivered under this Agreement, to cooperate with the Supplier; and

7.1.4 ensure that decisions as may be required to be made by it (SABS) under this Agreement are promptly made and communicated to the Supplier in writing.

7.2 The SABS may in its sole and exclusive discretion, by way of a written notice to the Supplier, direct the Supplier to suspend rendering the Services or Goods or any part thereof. In that event:

7.2.1 the Supplier shall immediately suspend rendering the Goods or Services, unless directed otherwise by the SABS; and

7.2.2 the SABS shall only be liable to the Supplier for Fees in respect of Services actually rendered or Goods actually delivered as at the date of the notice calling for suspension thereof or a later date as determined by the SABS.

8. REVIEW AND PENALTIES

8.1 The performance of the Supplier shall be reviewed periodically. If the (a) Services or Goods are not performed or delivered in accordance with this Agreement (b) the Supplier fails to meet the timeframes stipulated in this Agreement (c) there is non-performance or poor performance of any aspect of the Services (d) non-delivery of the Goods or any item of the Goods or (d) the Supplier does not carry out its obligations, at all or in accordance with this Agreement - the SABS is entitled, without prejudice to its other remedies under this Agreement, to:

8.1.1 subject to clauses 8.2 and 8.3 hereof, deduct from the Fees, as a penalty, a sum calculated on the total Fees payable to the Supplier using the current prime interest rate calculated for each day of the incident referred to in clause 8.1 hereof, until same is corrected by the Supplier or the Agreement is terminated or cancelled, whichever occurs first;

8.1.2 notify the Supplier in writing of its dissatisfaction, who shall meet with the SABS' contact person or project manager identified in clause 9 hereof

and other persons representing the SABS, to resolve the SABS' dissatisfaction; or

8.1.3 act in accordance with clauses 14 or 15 of the Agreement (being the breach or termination clauses of the Agreement).

8.2 For purposes of imposing a penalty as contemplated in clause 8.1.1 hereof, the SABS shall firstly and in writing communicate to the Supplier, the basis of the Supplier's non-performances as contemplated in clause 8.1 hereof and its (SABS) intention to impose a penalty on the Supplier.

8.2.1 The Supplier shall within a period of three (3) Days of receipt of the said notice submit written representations, if any, to the SABS as to why the SABS should not impose a penalty on it.

8.2.2 Within a period of three (3) Days of receipt of the Supplier's written representations, the SABS shall consider and communicate its decision to the Supplier on whether it will impose a penalty or not. The decision of the SABS pertaining to imposition of a penalty shall be final and binding on the Supplier, and shall not be subjected to the dispute resolution mechanisms set out in clause 23 of this Agreement.

8.3 No penalty shall be imposed on the Supplier by the SABS if the Supplier is unable to perform its obligations under this Agreement,

and such failure to perform, failure to meet timeframes, non-performance or poor work performance is caused by either a failure of the SABS to comply with its obligations under this Agreement, conduct of another supplier contracted by the SABS whose work bears on the Supplier's performance or influence of a Force Majeure.

9. CONTACT PERSONS

9.1 The Parties shall within two (2) Days reckoned from the Effective Date, designate their respective contact persons and shall in writing provide each other with their respective contact person's full name and contact details (being telephone numbers; cellphone number and e-mail addresses).

9.2 The contact persons referred to in clause 9.1 hereof shall:

9.2.1 serve as the Parties' first point of contact in matters pertaining to the Services or Goods;

9.2.2 be available to consult with each other on matters relating to the Services or Goods;

9.2.3 engage with each other to ensure that day-to-day decisions and approvals in respect of the Services or Goods are made timeously by authorized persons; and

9.2.4 be copied in all legal correspondences addressed to the Parties' *domicilium* addresses.

9.3 Either Party may at any time, by way of at least five (5) Days' prior written notice to the other, replace its contact person with any other person. In that event, the Party making any such change shall simultaneously provide the replacement details. The replacement contact person shall be equally qualified and suitable as its predecessor to perform the obligations stipulated in this Agreement.

10. FEES AND DISBURSEMENTS

10.1 As a consideration for the Services rendered or Goods provided by the Supplier, the SABS shall pay the Supplier as per Annexure "B", or Purchase Order or price schedule provided by the Supplier in its response to the RFx. The Fee referred to in Annexure "B", or Purchase Order or price schedule provided by the Supplier in its response to the RFx is fixed and the SABS shall not be liable to the Supplier for any disbursements, operating costs or the like.

10.2 The Fees charged by the Supplier for Goods delivered or Service performed under this Agreement shall not vary from the Fees quoted by the Supplier in its bid, with the exception of any price adjustments authorized by the SABS under appropriate and permissible circumstances.

10.3 The Supplier shall account/invoice SABS for Services rendered and/or work already done, and the SABS shall settle the specific account/invoice in accordance with the payment structure set out in Annexure "B". All undisputed invoices, subject to the payment structure referred to in Annexure "B", shall be paid by the SABS within a (30) Days after the

date of receipt of the account/invoice based on the assumption that the account/invoice date is the end of the month in which the invoice was issued.

10.4 All payments due to the Supplier in terms of this Agreement shall be paid into the bank account designated by the Supplier for that purpose.

10.5 The Supplier indemnifies the SABS from any liability arising out of any incorrect information or banking details provided to the SABS by the Supplier for the purpose of effecting any payment under this Agreement.

10.6 The Supplier may at any time, by way of a least seven (7) Days' prior written notice to the SABS, change or replace its banking details referred to in clause 10.4 hereof.

10.7 Should the SABS dispute an invoice/account submitted by the Supplier, the SABS shall request the Supplier, within a reasonable period of becoming aware of the disputed aspect, to correct and resubmit such invoice. Should any dispute arise regarding such invoices, such dispute shall be dealt with in accordance with clause 20 of this Agreement.

10.8 Notwithstanding any dispute referred to in clause 10.7 of this Agreement being referred for resolution under the dispute resolution mechanisms contemplated in clause 20, the Supplier shall continue to render the Services or deliver the Goods, and shall not be entitled suspend the rendering of any aspect of the Services or the Goods.

10.9 The Supplier shall remain solely responsible for the remuneration of its employees, officers,

personnel, agents or the like, for the Services performed or Goods delivered during any period of this Agreement.

11. ACCESS TO SABS PREMISES

11.1 The SABS shall, where applicable, grant the Supplier and/or its representatives, access to the SABS' premises to perform its obligations in terms of this Agreement.

11.2 The Supplier shall at all times when entering the premises and/or service areas of the SABS, comply with all applicable rules, laws, regulations and policies of the SABS.

12. CONFIDENTIALITY

12.1 The Parties acknowledge that during negotiations and meetings with each other for the purposes of concluding and/or carrying out their obligations in terms of this Agreement, either Party may gain access to Confidential Information. The Parties acknowledge that Confidential Information is a proprietary, special, and unique asset to the disclosing party.

12.2 The Parties hereby agree to hold and retain such Confidential Information in the strictest confidence. Without limiting the foregoing, the Parties hereby undertake to keep as confidential any information obtained whether orally, visually or in computer language or by reason of inspection of documentation and to prevent any copying thereof by whatever method and not to make use thereof other than for the purpose of this Agreement and to release it only to such properly authorised persons or third parties requiring such information for the purpose of this Agreement.

12.3 The Parties further agree not:

12.3.1 to disclose Confidential Information to any person whomsoever other to their employees (which shall include any directors, agents or professional advisors). Before revealing such Confidential Information to any such employees, agents or professional advisors, the Parties undertake to procure that such persons sign a similar undertaking as the one made in this clause 12. The Parties undertake to ensure that their employees, agents or professional advisors will observe and comply with their obligations in respect thereof, whether or not they remain employees, agents or professional advisors;

12.3.2 to disclose Confidential Information to any person whomsoever other than as required by Law. In that event, the Party required to so disclose Confidential Information shall, prior to disclosure, notify the other Party in writing so that such Party can obtain an appropriate protection order or take any other action as can be taken by the said Party, prior to any such disclosure; and

12.3.3 to directly or indirectly use for their benefit or for the benefit of any other person such Confidential Information other than for the purposes contemplated in this clause, unless any part of such information is, or

becomes public knowledge or is in the public domain, other than through an act or omission on the part of the Party restrained in terms of this Agreement or the employees, agents, professional advisors and/or Suppliers contemplated in this clause 12, and such Confidential Information, as the Parties are able to show, came lawfully into their possession from a third party lawfully possessing such Confidential Information.

12.4 The Parties acknowledge that Confidential Information is being made available to the Parties solely for the purpose of this Agreement, and that such information would not have been made available but for this undertaking.

12.5 The Parties agrees that unauthorised disclosure of Confidential Information to a third party may cause irreparable loss, harm, and damage to the other Party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage, or whatever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this Agreement.

12.6 For purposes of this undertaking "information" shall, without detracting from the general meaning, include letters, telefaxes, agreements, formulae, processes and methods, inventions or patents whether actual or proposed and whether in writing or otherwise or any information that is or may be

of value to any of the Parties, whether directly or indirectly including information which may be discarded for the purpose of disposing thereof.

12.7 This undertaking shall survive termination of this Agreement for whatever reason.

12.8 Upon termination of this Agreement for whatever reason, the Supplier shall return to the SABS, all Confidential Information as well as all relevant confidential documentation in its possession.

13. PROTECTION OF PERSONAL INFORMATION

13.1 Each Party shall ensure that its employees, representatives and officers comply with the provisions of the POPI Act and all other data protection laws applicable to this Agreement. Without limitation to the foregoing, each Party shall ensure the security and confidentiality of all Personal Information processed by it in accordance with the POPI Act and all other applicable data protection laws.

13.2 If a Party ("Recipient"), its agents, subcontractors, officers, representatives or employees have access to any Personal Information held by the other Party ("Responsible Party") for any reason connected with this Agreement or are supplied with or otherwise provided with Personal Information by the Responsible Party or on its behalf for any purpose, it (being Recipient), its agents, subcontractors, officers, representatives or employees) shall:

13.2.1 use and/or hold such Personal Information only for purposes of

performing its obligations under this Agreement and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so by the Responsible Party, or as required by law or any regulatory body, and shall take all such steps as may be necessary to safeguard such Personal Information;

13.2.2 without prejudice to the generality of the foregoing, ensure that appropriate technical and organisational measures shall be taken by it against the unauthorised or unlawful processing of such Personal Information and against the accidental loss or destruction of, or damage to, such Personal Information; and

13.2.3 promptly notify the Responsible Party when it becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Personal Information;

13.3 The Recipient shall be liable for all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), fines, losses and damages arising from or incurred by reason of any wrongful processing of any Personal Information by the Recipient or breach of its obligations or warranties under this clause 13.

14. BREACH

14.1 Should either Party commit a breach of any term of this Agreement (“the Defaulting Party”) then the affected Party (“Aggrieved Party”) shall be entitled, to demand, from the Defaulting Party in writing, to remedy such failure or breach within 14 (fourteen) calendar days and should the Defaulting Party fail to remedy the breach within 14 (fourteen) calendar days after receipt of the demand, the so Aggrieved Party shall be entitled, but subject to any limitations of liability agreed to by the Parties and recorded in this Agreement, to:

14.1.1 claim specific performance;

14.1.2 cancel this Agreement, such cancellation to be effective immediately upon delivery to the Defaulting Party of written notice to that effect or at the end of a notice period if the Aggrieved Party has opted to allow the Defaulting Party notice period prior to cancellation of the Agreement; or

14.1.3 subject to 15.3, 18 and 20 of this Agreement, claim damages.

15. TERMINATION AND CANCELLATION

15.1 The termination of this Agreement may occur:

15.1.1 if the Parties agree thereto in writing;

15.1.2 by the SABS giving thirty (30) Days’ written notice thereof to the Supplier or such other shorter notice as circumstances may require, if the

SABS, in its sole discretion, decides to terminate this Agreement;

- 15.1.3 if the SABS is of the opinion that the Supplier:
- 15.1.3.1 has ceased to perform its obligations in terms of this Agreement; or
- 15.1.3.2 is incapable of completing the Services or delivering the Goods as described in this Agreement;
- 15.1.4 in the event that the Supplier:
- 15.1.4.1 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936);
- 15.1.4.2 is placed in provisional or final liquidation, or under provisional or final receivership, judicial management; business rescue, administration or the like;
- 15.1.4.3 enters into or attempts to enter into any scheme similar to or in the nature of a composition, compromise or scheme of arrangement, release or novation with any or all of its creditors; or
- 15.1.4.4 its accreditation or registration with a regulatory or professional body is cancelled, terminated or suspended.
- 15.2 For purposes of terminating this Agreement as contemplated in:
- 15.2.1 clause 15.1.3 hereof, the process set out in clause 14 shall, with the necessary changes, apply; and
- 15.2.2 clause 15.1.4 above, the SABS shall in writing inform the Supplier of its termination of the Agreement relying on any grounds set out in clause 15.1.4 and the Agreement shall terminate immediately, unless if the SABS communicates otherwise to the Supplier.
- 15.3 Upon termination or cancellation of this Agreement by the SABS or Supplier relying on any provision of this Agreement or based on any ground valid in Law, the SABS shall:
- 15.3.1 not be liable to the Supplier for any loss or damages whatsoever flowing directly or indirectly from the termination or cancellation of this Agreement;
- 15.3.2 be entitled to deduct any penalty imposed on the Supplier as contemplated in clause 8 hereof from Fees payable to the Supplier;

15.3.3 be entitled to withhold any payment that has not yet been paid to the Supplier and shall set-off/deduct any amount, including damages, which the Supplier owes the SABS in terms of this Agreement or otherwise. The Supplier shall not be entitled to advance a right of retention or any similar right if this Agreement is terminated or cancelled; or

15.3.4 pay the Fees to the Supplier only in respect of Services or Goods provided in accordance with this Agreement.

16. CESSION AND SUBCONTRACTING

16.1 The Supplier shall not be entitled to transfer, cede, sub-contract or assign any of its rights or obligations under this Agreement to any other person or body without prior written consent of the SABS.

16.2 In the event that the SABS has consented to the Supplier sub-contracting any one or more of the Services or Goods (or part of them) to be provided under this Agreement, the Supplier shall:

16.2.1 shall remain wholly liable for carrying out each of the Services or deliver the Goods in all respects in accordance with this Agreement and shall be wholly responsible for its sub-contractors, and their (being sub-contractors) acts, omission or defaults shall, for the purposes of this Agreement, be regarded as the

Supplier's own acts, omissions or defaults; and

16.2.2 the Supplier shall procure that its sub-contractors at all times comply with applicable laws, regulations and procedures, the SABS' policies and with the terms of their agreement with the Supplier which shall encompass all the material terms of this Agreement.

16.3 The SABS decision to consent to subcontracting shall be exercised by the SABS in its sole and exclusive discretion taking into account any such considerations as it may consider relevant, in its best interest and requirements of the law.

16.4 The SABS shall have the right during the continued duration of this Agreement to direct the Supplier to replace any such sub-contractor upon thirty (30) Days written notice, if the sub-contractor's performance is materially deficient, or good faith doubts exist concerning the sub-contractor's ability to render future performance because of, *inter alia*, changes in the ownership, management, or the financial condition of the sub-contractor.

17. FORCE MAJEURE

17.1 If Force Majeure cause delays in or failure of performance by Party of all or any of its obligations hereunder, this Agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the Force Majeure prevail. Written notice of the Interrupting Circumstances specifying the nature and date of

commencement thereof shall be despatched by the Party seeking to rely thereon (on whom the onus shall rest) to the other as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the Force Majeure shall be given by the Party who relied thereon within five (5) days after such cessation. No Party shall subsequently be obliged to comply with the obligations suspended during such period.

17.2 During the period of the suspension, the Parties will meet from time to time in order to discuss and find solutions to bring about the termination of the Force Majeure. If after thirty (30) Days from the commencement of the Force Majeure there is no reasonable prospect of the cessation of such Force Majeure within a reasonable period thereafter, the other Party shall be entitled to terminate this Agreement on written notice to the Party suffering the Force Majeure.

17.3 If a Party is unable to perform its obligation under this Agreement due Force Majeure and time is of the essence regarding any such obligations, then the affected Party shall be entitled, in its sole discretion, to terminate the Agreement by way of fourteen (14) Days' notice to the other Party.

18. SEVERABILITY

The Parties agree that the limitations and exclusions incorporated in this Agreement are reasonable in all the circumstances of the SABS and those of the Supplier, but if any term is later found to be illegal, void, unenforceable or invalid in any circumstances, the other terms of this Agreement and the

remainder of the provision in question shall remain in full force and effect. Each provision of this Agreement is severable from the other.

19. PUBLICATION AND MARKETING

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

19.2 The Supplier shall not, without the SABS' prior written consent, disclose the Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the SABS in connection therewith, to any person other than as provided for in this Agreement.

19.3 Under no circumstances will the Supplier release any public or media statements or publish material related to the Services, the Goods or any aspect of this Agreement.

19.4 Unless authorised in writing by the SABS through its accreditation processes, the Supplier shall not refer to itself, its facilities or services as "SABS accredited" or any other similar description.

19.5 The Supplier shall not falsely claim, declare or conduct its affairs or business under a name or in a manner likely to create the impression that any commodity, product or service complies with a South African National Standard as defined in the Standards Act, 2008 (Act No. 8 of 2008) or other publication of the SABS.

19.6 Breach of this clause 19 by the Supplier shall entitle the SABS to terminate this Agreement by way of a written notice, with the termination date determined by the SABS in its sole discretion.

20. INDEMNITY

20.1 Notwithstanding anything to the contrary contained in this Agreement, it is specifically recorded and agreed that:

20.1.1 neither the SABS, its directors, employees, agents, representatives nor the like, shall under any circumstances whatsoever and from whatsoever cause and howsoever arising, be liable to the Supplier or any other person for any damages or loss whatsoever, be it direct; indirect; special; punitive or consequential damage or loss, including but not limited to loss of profits relating to any aspect of this Agreement; and

20.1.2 the Supplier shall hold harmless and indemnify the SABS, its directors, employees, agents, representatives and the like, from any and all actions, claims, demands, losses, judgments or costs of any nature by any third party resulting from the Supplier's rendering of the Services, provision of the Goods or any matter incidental to the Services or Goods provided by the Supplier under this Agreement.

20.2 The Supplier warrants that the performance by it of its obligations in terms of this Agreement, will not infringe the rights,

including (without limitation) the Intellectual Property rights, of any third party. The Supplier hereby indemnifies the SABS against any loss, liability, claim or damage which may be suffered by SABS relating to any claim by a third party that the performance by the Supplier of its obligations in terms hereof infringes the rights of that third party.

20.3 The provisions of clause 20 do not apply in respect of a claim for Fees payable to the Supplier for Services or Goods provided properly in terms of this Agreement and which Fees are due by the SABS.

20.4 This clause 20 shall survive the termination of this Agreement.

21. INSURANCE

21.1 The Supplier is, in terms of its existing and valid insurance policy (the Policy) insured against any risks associated with the rendering of the Service or provision of the Good under this Agreement, professional indemnity insurance, public liability and all liabilities. If no such Policy is in place the Supplier will take out such a policy.

21.2 The Supplier shall maintain the Policy for the duration of this Agreement, and shall provide proof of such Policy upon its signature of this Agreement or at any time as may be requested by the SABS.

21.3 In instances where the Supplier renders 'goods-in-transit' Services, the Supplier shall be automatically liable for any loss or damages caused to the SABS' Goods in transit for claims lodged with the Supplier within a period of six (6) months of delivery of

the goods to the SABS. All other claims thereafter shall be regulated by applicable laws, including the Prescription Act, 1969.

22. GOVERNING LAW

Notwithstanding the place of signature, this Agreement shall be governed and construed in terms of the Laws of the Republic. Subject to the relevant provisions of this agreement, the Parties submit to the exclusive jurisdiction of the North Gauteng High Court, Pretoria.

23. DISPUTES RESOLUTION

23.1 The Parties undertake to resolve disputes of any kind as may arise under this Agreement or the interpretation thereof, while in force or after its termination, through *bona fide* negotiations by the parties' senior management.

23.2 Should a dispute remain unresolved after having been referred to the Parties' senior management, and a period of seven (7) Days has elapsed, either Party may refer the said dispute for arbitration as contemplated in clause 23.3.

23.3 Either Party may refer a dispute for arbitration by giving written notice to that effect to the other Party, provided that the mechanism for resolving disputes referred to in clause 23.1 have been exhausted first and the dispute remain unresolved. The arbitration must be held in Pretoria under the auspices of and subject to the rules and procedures of the Arbitration Foundation of South Africa ("AFSA").

23.4 Subject to clause 23.5, the Parties irrevocably agrees that the decision of the arbitrator (including any costs award) will be final and binding on each of them; will be carried into effect; and may be made an order of court on application by either Party.

23.5 Either Party may approach a competent Court to set aside an arbitration award if: an arbitrator has misconducted himself in relation to his duties as arbitrator; or an arbitrator has committed any gross irregularity in the conduct of the arbitration proceedings, or has exceeded its powers; or an award has been improperly obtained.

23.6 Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings contemplated in this clause 23.

23.7 Nothing contained or implied in this Agreement will preclude either party from applying to court for an interdict or any other relief of an urgent or temporary nature, pending the decision or award of the arbitrator.

23.8 The provisions of this clause 23 shall survive the termination of this Agreement.

24. PROPRIETARY RIGHTS

24.1 All Intellectual Property owned by the Parties prior to entering into this Agreement shall remain proprietary owned by such Party. All Intellectual Property developed for the SABS or on the SABS' instruction, as part of this Agreement, including all documentation for this Agreement, shall be proprietary owned by the SABS, and the Supplier undertakes to sign

any documentation required to affect such recordal of ownership.

24.2 The Supplier grants the SABS a perpetual, royalty-free, non-exclusive, worldwide license to use any Background Intellectual Property embedded in the deliverables of the Agreement.

24.3 The Supplier has the right to the use and the benefit of the documentation produced for the sole purpose of its intended use during its provision of the Services or Goods, subject to compliance with the terms and conditions of this Agreement. Upon termination of this Agreement, all such records or documents, including copies thereof, shall be left with the SABS or, in so far as they are in possession of the Supplier, the same shall be handed over to the SABS or shall be destroyed at the SABS' written request.

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

24.5 The provision of this clause 24 shall survive the termination of this Agreement.

25. ANTI-CORRUPTION AND GOOD FAITH

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

25.2 The Supplier shall not:

25.2.1 offer, give, receive or solicit anything of value (directly or indirectly) with the view to influencing the behavior of any person, including employees; representatives; officers or the like of the SABS in relation to execution of this Agreement; or

25.2.2 misrepresent facts in order to influence selection process or the execution of the project underpinned by this Agreement, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition in the procurement of the Services.

25.3 Upon discovery of any conduct on the part of the Supplier in contravention of clause 25.2 above, the SABS shall be entitled to immediately terminate this Agreement.

26. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")

26.1 The Supplier undertakes to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (the BBBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act.

26.2 The Supplier shall use reasonable endeavors to maintain or improve its current BBBEE rating status for the duration of this Agreement.

26.3 During the tenure of this Agreement, the Supplier shall provide the SABS with updates (annually or when requested by the SABS) on its status in respect of BBBEE compliance

requirements and confirmation that it has maintained or improved its BBBEE rating.

27. CONFLICT OF INTEREST

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

27.2 The Supplier shall not engage in any activity that may conflict with the interests of the SABS in terms of this Agreement.

28. DOMICILIA AND NOTICES

28.1 The Parties hereby choose as their *domicilium citandi* as set out below:

FOR THE SABS

Head of Legal Services

Physical address: 1 Dr. Lategan Road,
Groenkloof, South Africa

Postal address: Private Bag X 191, Pretoria,
0001

E-mail: Legal@sabs.co.za

FOR THE SUPPLIER

The *domicilium citandi* shall be business address, postal address, facsimile or e-mail address provided by the Supplier in its response to the RFX.

28.2 Either Party may, by written notice to the other Party, change its aforesaid *domicilium citandi et executandi* to any other address, which is not a post office box or *poste restante*.

28.3 Any notice given by either Party to the other which:

28.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium citandi et executandi* shall be rebuttably presumed to have been received by the addressee at the time of delivery;

28.3.2 is posted by registered mail to the addressee at the addressee's *domicilium citandi et executandi* shall be rebuttably presumed to have been received by the addressee on the 10th (tenth) Day after the date of posting; and

28.3.3 is sent by telefax copier or electronic mail during the normal business hours of the addressee, to the addressee's *domicilium citandi et executandi*, shall be rebuttably presumed to have been received on the date of successful transmission thereof.

28.4 Notwithstanding anything to the contrary, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address/es for that purpose.

29. MISCELLANEOUS

29.1 This Agreement constitutes the entire agreement between the Parties on matters covered in it, and all prior agreements,

warranties, statements and representations which are not incorporated herein are not binding on the Parties and therefore unenforceable.

29.2 No latitude, indulgence, consent or forbearance or any other similar act by either party in enforcing any provisions of this Agreement shall constitute a variation or novation of this Agreement or a waiver of rights or Estoppel in terms of this Agreement.

29.3 No alteration or variation of this Agreement or its parts shall be of any force or effect, unless recorded in writing in a formal addendum hereto and signed by the (at the time) duly authorised representatives of the Parties, in compliance with any existing delegation of authority policies applicable on the Parties.

29.4 In the event of any conflict between any provision of the Agreement and any provision in any of the annexures to the Agreement, the provisions in the Agreement shall be applicable and enforceable.

29.5 The Commercial Terms and Special Conditions of Contract (Annexure "B" – where applicable) will supplement the SABS Standard Legal Terms and Conditions for Procurement of Goods and Services. Whenever there is a conflict, the provisions in the Commercial Terms and Special Conditions of Contract shall prevail.

30. APPLICATION AND ENFORCEABILITY

30.1 Unless provided otherwise in the RFX or communicated otherwise in the Letter of Award, this Agreement is applicable to all

instances of procurement of Goods or Services by the SABS.

30.2 The terms and conditions of this Agreement and all its annexures or parts are binding on and enforceable against the SABS and the Supplier.

30.3 By submitting a quotation, proposal, bid or response to the RFX for the provision of Goods or Services to the SABS, the Supplier shall be bound by and subject to this Agreement. This Agreement shall supersede any other terms and conditions that may be proposed by the Supplier in its response to the RFX.

ANNEXURE "A" OCCUPATIONAL HEALTH AND SAFETY AGREEMENT

This is the Occupational Health and Safety Agreement between the SABS and Supplier, which forms of and it is incorporated into the Agreement.

1. APPLICATION OF SECTION 37(2)

1.1 The Parties hereby agree that the provision of section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and its regulations (henceforth referred to as the OHS Act), shall apply to the Supplier.

1.2 The SABS shall not be responsible nor liable for the actions or inaction's whatsoever in contravention of the OHS Act taken by the employees of the Supplier, in the provision of the Services or Goods undertaken by the Supplier.

1.3 As an employer in its own right, the Supplier is obliged to comply with all the provisions of the

OHS Act while on the premises of the SABS, the Supplier shall also be required to comply with the conditions and safety procedures of SABS.

- 1.4 The SABS hereby reserves the right to cause all work undertaken by the Supplier, that is in contravention of the OHS Act and that has come to the attention of the SABS to cease, until satisfied that such contravention has been rectified. Non-compliance to the SABS arrangements and procedures will adversely affect future contracts, while serious non-compliance may lead to immediate expulsion from the premises.

2. REQUIREMENTS ARRANGEMENTS AND PROCEDURES FOR SUPPLIERS

- 2.1 It is a condition of this contract that the Supplier's employees, and any sub-contractors, be covered in terms of the Compensation for Occupational Injuries and Diseases Act, Act No. 130 of 1993, as amended. A copy of good standing with the Compensation Commissioner shall be attached to the signed copy of this document. Furthermore, the Supplier certifies that such cover will not expire during the execution of the task, nor will the Supplier become in arrears with any payment due to the Commissioner or any other documentation required by the Commissioner.

- 2.2 The Supplier furthermore agrees to the following health and safety rules of the SABS:

2.2.1 The Supplier shall have available a copy of the OHS Act on request.

2.2.2 Any Supplier with more than five employees at any time on the premises shall have available a first aid box for prompt first aid.

2.2.3 Any Supplier with ten or more employees shall have at least one competent and valid first aider on the premises at their workplace. Should there be fifty or more employees on the premises a further first aider for every fifty employees or part thereof shall be available.

2.2.4 Any Supplier with less than ten employees on the premises shall ensure that such employees are made conversant with the first aider at their workplace.

2.2.5 The Supplier shall keep up to date and available for inspection all applicable legally required registers.

2.2.6 The Supplier shall make himself and his employees conversant with SABS' emergency and evacuation procedures.

2.2.7 The Supplier shall not misuse anything, which is supplied in the interest of health and safety.

2.2.8 The Supplier shall adhere to all of SABS' safe working procedures.

2.2.9 The Supplier shall be subject to the health and safety and security rules of the SABS.

2.2.10 No intoxicating drugs or liquor will be consumed on or brought onto the

premises and no person under the influence or who appears to be under the influence will be permitted to come onto or remain on the premises or at a workplace.

3. INDEMNIFICATION

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

3.1.1 Enters the property entirely at his/her own risk and therefore the Supplier waives any claim of whatsoever nature against SABS, its employees, agents and/or mandatories in respect of any loss, damage and/or injury whether same is the result of any negligent act or omission on the part of the SABS, its employees, agents and/or mandatories or other independent Suppliers or by a third person or by way of defective equipment or materials supplied by the company, and further the Supplier; and

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