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**RESELLER TRANSVERSAL FRAMING TERM CONTRACT**  
**IN RESPECT OF THE PROVISION OF VARIOUS INFORMATION**  
**TECHNOLOGY SERVICES**

**RFB 2005/2015**

Entered into between

**THE STATE INFORMATION TECHNOLOGY AGENCY SOC**  
**LIMITED (SITA)**

ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH  
AFRICA *IN ITS DEPARTMENT OF PUBLIC SERVICE AND*  
*ADMINISTRATION*

And

**WRITE FULL NAME OF THE SERVICE PROVIDER**

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**Foreword**

This Contract determines the relationship, roles and responsibilities established by and  
between the State Information Technology Agency (Pty) Ltd and the [Service Provider](#).

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**Preamble**

- A. Regulation 10 (1) made under Section 23 of the State Information Technology Agency Act, 1998 (Act No. 88 of 1998) [The Act], enjoins SITA to ensure the procurement of information technology goods or services for the repetitive requirements of government departments through the conclusion of appropriate transversal term contracts by means of a competitive bidding process.
  
- B. In order to give effect to SITA Regulations 10 (2) and 8.1.(a), SITA issued a Request for Bids (RFB 2005/2015) for the provision of computer provision of personal computers, mobile devices and services for SITA and all Government Departments for a period of three years. Subsequent to an evaluation and adjudication process performed by SITA, a recommendation was made by SITA to the Department of Public Service and Administration (DPSA) for the appointment of the Service Provider to render the required services.
  
- C. The procurement of information technology goods and services by departments through SITA must, among others, serves to:
  - (i) leverage economies of scale to provide cost effective procurement by using the collective purchasing power of departments and public bodies;
  - (ii) ensure that all procurement results in values for money, including, if economically feasible, paying for usage only;
  - (iii) promote the South African information technology industry, with a particular emphasis on broad based black economic empowerment as defined in Section 1 of the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
  - (iv) stimulate competitive bidding.
  
- D. The Service Provider will render the services as essentially required and set out in the RFB, its reply thereto and on the terms and conditions set out in this Contract.
  
- E. In order to regulate the provision of the services by the Service Provider to the End User, and matters incidental thereto, the Parties agree on the terms and conditions set out below.

## **1 DEFINITION AND RULES OF INTERPRETATION**

- 1.1 In this Contract, unless the context indicates otherwise:
- 1.1.1 an expression which denotes any gender, includes the other gender, a natural person includes a judicial person and vice versa, and the singular includes the plural and vice versa;
  - 1.1.2 words and phrases defined in this Contract shall bear the meaning assigned to them throughout the Contract;
  - 1.1.3 words and expressions defined in any sub-clause, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause;
  - 1.1.3 words and phrases defined or used in any statute which applies to the subject matter, professional person, goods or services provided for in this Contract shall be construed in accordance with the applicable statute or regulations; and
  - 1.1.4 clause headings shall be used in aid of interpretation of this Contract;
  - 1.1.5 Unless specifically otherwise provided, any number of days prescribed be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day , the next succeeding Business Day.
  - 1.1.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
  - 1.1.7 The rule of construction that this Contract shall be interpreted against the Party responsible for the drafting of this Contract, shall not apply.
  - 1.1.8 The terms and conditions contained in the Government Procurement: General Conditions of Contract (July 2010) ("the GCC"), forms part of this Contract.
  - 1.1.9 For interpretation purposes of this Contract and the GCC-
    - 1.1.9.1 the terms "Purchaser" and "Service Provider", as it appears in the GCC, shall refer respectively to SITA and the Service Provider as defined in this Contract; and
    - 1.1.9.2 the term "goods" in the GCC includes services as defined in this Contract.
  - 1.1.10 In the event of any inconsistency between the provisions of this Contract and the provisions of the GCC, the provisions of this Contract will prevail.
  - 1.1.10 In the event of a direct conflict between provisions of this Contract and the provisions of other documents constituting the Contract, the following order of precedence shall govern the Contract's interpretation:
    - 1.1.10.1 this Contract;
    - 1.1.10.2 the Service Level Agreement to be signed between the End User and the Service Provider;
    - 1.1.10.3 the Request for Bid; and
    - 1.1.10.4 the General Conditions of Contract,

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provided, however, that silence on a topic in one document and treatment of that topic in another document shall not be construed as a conflict.

- 1.2 In this Contract, unless the context indicates a contrary intention, the following expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings, namely-
- 1.2.1 **"Best Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in information technology (holding himself as being an expert in providing services in the nature of the Services) seeking in good faith to fully comply with his contractual obligations.
- 1.2.2 **"Bid Response"** means the submitted documentation from the Service Provider in response to the RFB.
- 1.2.3 **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa.
- 1.2.4 **"Calendar Day"** means any day of the week and includes weekends and statutory public holidays in the Republic of South Africa.
- 1.2.5 **"Calendar Months"** means the period of time that begins on the 1<sup>st</sup> (first) Calendar Day of any given month and shall consist of the number of Calendar Days in such month, ending on the last Calendar Day of the same month.
- 1.2.6 **"Change Request"** means a written change request in a format agreed to by the Parties, which is used for the specific purpose of recording any request for the proposed alteration or amendment of this Contract;
- 1.2.7 **"Confidential Information"** means information or data as stipulated in clause 15 below;
- 1.2.8 **"Contract"** means the following
- 1.2.8.1 this Contract and all the annexes and forms attached hereto;
- 1.2.8.2 the General Conditions of Contract (GCC);
- 1.2.8.3 the Request for Bids and the Bid Response both of which are hereby incorporated herein by reference;
- 1.2.8.4 the Agreement to be entered into between the Service Provider and the End User
- 1.2.9 **"Duration for the accreditation"** means the period commencing on 01 November 2016 until 31 October 2019;
- 1.2.10 **"End User"** means any national government department, provincial government and public entities that participate in this Contract and procure the Services from the Service Provider from time to time;
- 1.2.11 **Force Majeure** means any event which is beyond the reasonable control of a Party or which could not have been reasonably foreseen or prevented by a Party

and which renders impossible the performance of a Party in terms of this Contract

- 1.2.12 **"General Conditions of Contract"** means the General Conditions of Contract: July 2010, issued by National Treasury;
- 1.2.13 **"Government"** means the Government of the Republic of South Africa;
- 1.2.14 **"Intellectual Property"** means all computer programmes, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data , works protected under the Copyright Act 98 of 1978,work of authorship, video recordings, audio recordings, photographs, models, samples , substances, trade secrets, formulae, know how, show-how, confidential information, concepts and ideas of any nature ( including of a technical, scientific, engineering, commercial ,strategic, financial, marketing or organisational nature), inventions, discoveries, drawings , notes ,manuals ,documentation, training materials, job aids ,trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin ,regardless of whether Intellectual Property actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, and includes all Intellectual Property Rights in any of the foregoing set out in this clause;
- 1.2.15 **"Intellectual Property Rights"** means all intellectual property rights of whatever nature, including (i) all patents and other patent rights, including divisional and continuations patents ,utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks , logos, slogans, corporate, business and trade names, trade dress, trade names and other indicia of origin;(iv) rights in designs, topography rights, rights in circuit layouts and mask-works;(v) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vi) copyright, including all copyright in and to computer programs; (vii) rights in database and data collections; (viii) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisionals of, any of these and the right to apply for any of foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

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- 1.2.16 **"Parties"** means SITA and the Service Provider, and as and when an End User procures the Services from the Service Provider, "Parties" shall refer to the Service Provider and such End User
- 1.2.17 **"Purchase Order"** means an Order form issued, approved and signed by a duly authorised representative of the End User, identifying goods or services to be provided at a firm price as agreed by the Parties;
- 1.2.18 **"Services"** means the totality of the services to be rendered by the Supplier to the End User which services are listed in Annexure A.
- 1.2.19 **"Service Fee"** means the agreed cost, inclusive of VAT, of providing the Services that will be paid by the End User to the Service Provider, for the performance by the Service Provider of the Services;
- 1.2.20 **"Service Level Agreement"** means a document that specifies the Services and Service performance standards, levels and measurement criteria that must be applicable to the provision of the Service;
- 1.2.21 **"SITA"** means the State Information Technology Agency established in terms of the State Information Technology Act, 1998, (Act No. 88/1998) as amended, registered under registration number 1999/001899/07 in terms of the Companies Act, 1971 (Act No. 71/2008) as amended;
- 1.2.22 **"Sub-Contractors"** means firms, entities, or individuals who may be engaged by the Service Provider in the execution of Services and who the End User must be notified about in writing prior to them being engaged by the Service Provider;
- 1.2.23 **"Service Provider"** means any Service Provider who signs this Contract.
- 1.2.24 **"SOW"** means Statement of works

## 2 PURPOSE OF CONTRACT

- 2.1 In accordance with SITA Regulation 10.5, SITA is required to conclude the necessary transversal term contracts with the successful bidders for the repetitive requirements of departments.
- 2.2 The Service Provider has accepted the terms and conditions of this Contract as applicable and binding in the event of being contracted to provide any of the Services.
- 2.3 The Service Provider acknowledges that the acceptance of the terms and conditions of this Contract should not create an expectation of an appointment to a project, as projects will be allocated as and when required through the Buy-site system/RFQ process.
- 2.4 A Service Level Agreement will be entered into between the Service Provider and the End User at the time when the Service Provider is awarded business through the PPPFA system.
- 2.5 It is the responsibility of the Service Provider to continually check daily for placed orders on the system, and or published RFQs on the SITA or End User website



- 2.6 Neither SITA nor the End User will be held responsible for any claims from the Service Provider as a result of a Service Provider not being aware of any awarded contract.

### **3 RELATIONSHIP OF THE PARTIES**

- 3.1 The Service Provider, in furnishing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Contract.
- 3.2 Nothing contained in this Contract shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, between any of the Parties, nor anything contained in this Contract to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Party and its affiliates other than as specifically set out herein.
- 3.3 Unless expressly authorised by this Contract, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.
- 3.4 Nothing in this Contract shall be construed as creating an exclusive arrangement between the Parties.

### **4 SUB CONTRACTORS**

- 4.1 The Supplier may not subcontract its obligations under this Agreement without the prior written consent of SITA. Should SITA consent to such appointment, the Supplier will at all times be responsible to SITA for the fulfilment of all the Supplier's obligations under this Agreement and remain SITA's sole point of contact regarding the Services.
- 4.2 All equipment on this contract is subject to a mandatory standard warranty and support which can range from 1 to 5 years, depending on the category. The majority of systems will have a 3 year on-site support SLA. Successful contractors must ensure that the appropriate SLA is delivered with each supplied solution.
- 4.3 Contracted suppliers must continuously ensure that their contact details are updated on the SITA database, maintain their accreditation with the OEM and ensure that Tax matters are in order throughout period of the contract.

## 5 DURATION

The duration of this Contract is three years, commencing on 01 November 2016 and terminating on 31 October 2019.

## 6 TERMINATION

### 6.1 Termination for Cause

6.1.1 The Parties agree to the provisions of Clause 23 (and related clauses) of the GCC relating to the termination of this Contract due to default by the Service Provider.

6.1.2 Without limiting the provisions of clause 26.1 of the GCC, SITA shall be entitled to immediately terminate this Contract for cause if any of the following events or circumstances occur in respect of the Service Provider, namely:

6.1.2.1 an order or declaration is made or a meeting of the directors or shareholders of the Service Provider is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding up, business rescue or dissolution, (and whether provisional or final) of the Service Provider;

6.1.2.2 The Service Provider's licence required to provide the Services is revoked or it lapses or is otherwise amended such that the Service Provider cannot continue to provide the Services in accordance with the OEM agreement;

6.1.2.3 the Service Provider is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debt or proposes or seeks to make or makes a general assignment of any arrangement or compromise with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

6.1.2.4 any receiver, administrative receiver, judicial manager, administrator, administrator, compulsory manager, judicial custodian, curator, trustee in bankruptcy, liquidator or the like is appointed in respect of the Service Provider or any material part of its assets or it requests any such appointment;

6.1.2.5 the Service Provider commits an act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 (Act No 24 of 1936) or any equivalent legislation in any jurisdiction to which the Service Provider is subject.

6.1.2 The Service Provider shall be obliged to immediately notify SITA in writing of any events or circumstances which is likely to result in the occurrence of one or more of the events or circumstances contemplated in clause 6.1.2 above.;

6.2 Early Termination for Convenience

6.2.1 The End User shall be entitled to terminate the Contract by providing the Service Provider with 30 (thirty) days' prior written notice to that effect.

6.2.2 In the event of termination in accordance with clause 6.2.1, the End User shall be liable to pay the Service Provider the costs it has incurred in implementing the Services.

6.2.2.1 Warranty and support

All warranty, service, maintenance, repairs and support for devices, systems and installations must be performed locally within South Africa to ensure acceptable turn-around times, as well as build the required capacity within the country, i.e. establish OEM-accredited repair centres

6.2.3 Termination for Breach

6.2.3.1 If either Party fails to meet its obligations in terms of this Contract, the non-breaching Party, at its choice, without prejudice to any other rights and remedies the Party may have, and after giving 7 (seven) business days' written notice to the breaching Party at its domicilium, calling on the latter to remedy the breach, may:

6.2.3.1.1 cancel the Contract and claim damages.

**7 WORK STANDARDS**

7.1 The Service Provider warrants and represents that it shall perform its obligations under this Contract with promptness and in accordance with the standards agreed upon in this Contract and at the very least, in accordance with the Best Industry Practice. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it has, and shall assign to perform the Services, resources having the skills, experience and expertise, capacity and knowledge reasonably required to perform the Services.

**7.2 The Supplier warrants that:**

7.2.1 as at commencement date, it has the rights, title and interest in and to the Hardware and/or Services to deliver such Hardware and/or Services in terms of this Agreement and that such rights are free from any encumbrances whatsoever;

7.2.2 the Hardware shall be in good working order, free from defects in material and workmanship, and shall substantially conform to the Specifications, for the warranty period stated in the SOW, commencing from the commencement date;

7.2.3 during the warranty period from the installation date, the Supplier shall repair or replace any defective item or part component of the hardware within 03 (three) days after receiving a written notice from SITA/Department;

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- 7.2.4 the hardware shall possess all material functions and features required for operational requirements;
- 7.2.5 the Supplier shall not cause the hardware to be disconnected or the provision of the services to cease during the term of the agreement;
- 7.2.6 Maintenance services shall be provided during the warranty period at no expense as indicated in the SOW;
- 7.2.7 Supplier's ability to fulfil its obligations under the Agreement;  
it shall notify SITA immediately if it becomes aware of any action, suit, or proceeding, pending or threatened that shall have a material adverse effect on the supplier's ability to fulfil the obligations under the agreement;
- 7.2.8 that all services performed under the agreement shall be performed in a good and workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services;
- 7.2.9 that it is financially capable of fulfilling all requirements of the agreement and that the supplier is a validly organized entity that has the authority to enter into the agreement;
- 7.2.10 that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into the agreement;
- 7.2.11 that it will perform the services in the most cost-effective manner consistent with the level of quality and performance required under the SOW;

**8 DUTIES OF THE SERVICE PROVIDER**

- 8.1 The Service Provider undertakes and warrants that it shall:
  - 8.1.1 use its best endeavours to provide Services to the End User which meet the criteria set out in the Service Level Agreement;
  - 8.1.2 provide the End User, within agreed timelines, with a list of all personnel who will be assisting the Service Provider in carrying out its Services to the End User together with such personnel expertise description;
  - 8.1.3 perform the services in accordance with the Service Level Agreement and with all reasonable care, diligence, skill, efficiency and economy, in accordance with generally accepted professional techniques and standards, and shall observe sound management practices;
  - 8.1.4 act in a fiduciary manner towards the End User, and shall at all times support and safeguard the End User's legitimate interests in dealing with Sub-Contractors or third parties;
  - 8.1.6 provide and maintain properly skilled, trained and qualified personnel in adequate numbers, and with a job class and skill, such that the Service Provider

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is able to perform its obligations in a manner that meets or exceeds the service level requirements set forth in the Service Level Agreement;

- 8.1.7 Provide SITA with quarterly reports on contracts entered into with the End Users detailing the name of the End User contracted, the Services procured, the contract value and the duration of the contracts.
- 8.1.8 ensure that there is proper skills transfer to the End User.
- 8.1.9 shall further designate a team leader who will be assigned to work exclusively with the End User.

## 9 CONTRACTUAL REQUIREMENTS

- 9.1 No supply of grey imports to Government will be allowed.
- 9.2 Product-level certification: bidder must be trained on specific product range(s) offered here, and be able to supply, install and support the offered products.
- 9.3 Resellers are required to establish back-to-back and service level agreements/underpinning contracts with their principals (OEMs). This includes taking responsibility for service levels as specified in the technical specifications, and agreed upon by OEMs in the OEM Memorandum of Agreement.
- 9.4 All warranty, service, maintenance, repairs and support for devices, systems and installations must be performed locally within South Africa to ensure acceptable turn-around times, as well as build the required capacity within the country, i.e. establish OEM-accredited repair centres.
- 9.5 Service providers shall take all reasonable precautions to ensure that no data is lost during the process of repairing faulty equipment.
- 9.6 Service providers shall not remove storage media (e.g. disk drives or SSDs) of relevant products from sites where security policies do not permit removals of those media. Written permission would be required to remove any equipment from applicable sites. In the case of mobile devices, if the device has to be taken off-site for repairs or replacement, a secure backup of all data must be made, and a secure, non-reversible wipe of the device must be performed. Data must be restored to the replacement device as part of the repair.
- 9.7 Bidders must support the use of a Government hard drive image provided by the relevant requester for offered PCs that support the relevant Government departments' requirements, including installed software and settings.
- 9.8 All products supplied to Government must include mark-up percentage to the OEM Base price for all standard power and interface cables, the specified warranty, documentation, packaging and delivery, and all other components (e.g. software, drivers) that are specified to be included in the Base price. User manuals and setup

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guidelines for the complete system must be included in Base Price for all components and/or devices.

- 9.9 No unnecessary utility programs, software that contains marketing, trial ware or other software may be installed on systems supplied to Government.
- 9.10 For the purposes of this tender, batteries (are deemed to be consumables) with a minimum mandatory warranty of 12 months.
- 9.11 Warranty registration must be done on behalf of Government by bidders or OEMs contractor on delivery of unit. Under no circumstances will warranties specified to be included in the Base price be repudiated due to the non-completion of registration information. The warranty registration must be delivered with items delivered.
- 9.12 If during the contract period it is found that a supplier is in contravention of any contract conditions, including accreditation, certification, service levels or technical specifications, the supplier will be blacklisted according to National Treasury processes.
- 9.13 Contractors will not be allowed to appoint Contractor Agents to act as representatives in terms of sales. Only bidders whose bids were submitted, evaluated and awarded will be allowed to participate in terms of the contract.
- 9.14 If equipment is leased to the South African Government, the PFMA, National Treasury and the engagement prescripts will be followed and the customers will be informed on legal aspects.
- 9.15 The offered product and all its cables and accessories must be delivered in a single box to prevent misplacement of these add-ons during shipping and all applicable software in according with South African Bureau of Standards-(SABS)
- 9.16 The SITA Regulations require that ICT procurement must result in value-for-money, and if economically feasible, paying for usage only. In support of this, any transversal contract based on this bid will support and include a leasing component.
- 9.17 SITA or Department may request Corporate Financial Solvency - Provide solvency statement signed by qualified independent auditor that the financial position of the organisation is sound and that the organisation will be able to mobilise resources to deliver the project.
- 9.18 Bidders need to ensure that the % markup supplied will include all services, quality and functionality as specified in the product technical specification. Bidders must ensure that this % markup is sustainable, and SITA reserves the right to verify sustainability and bidder capability.
- 9.19 Updates of the % markup will be done periodically. SITA will notify contractors of the period.

## **10 DUTIES OF THE END USER**

10.1 The End User shall:

- 10.1.1 Upon request provide the Service Provider, free of cost, with all available information and data which may be required for the performance of the Services by the Service Provider;
- 10.1.2 provide the Service Provider with any assistance required in obtaining other relevant information that the latter may require in order to perform the Services;
- 10.1.3 within agreed time limits, give its decision on any matter properly referred to it in writing by the Service Provider so as not to delay the performance of Services;
- 10.1.4 cooperate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services;
- 10.1.5 provide SITA with information on the Services procured, the names of the Service Providers and the amounts spent on each Service.

## **11 THE SERVICES**

- 11.1 The Services shall only be provided by the Service Provider in the Province for which they have been accredited for.
- 11.2 The Services provided under this contract must be certified by the OEM.

## **12 PARTICIPATING INSTITUTIONS**

- 12.1 Any national department, provincial department, and public entities may participate in this Contract and contract directly with any of the Service Providers that have been accredited by SITA to provide the Services.

## **13 TAXATION**

- 13.1 Any income tax or other taxation payment required by law such as value-added, sales, withholding, customs, excise and any other taxes, tariffs and duties which may be assessed or levied by any government or taxing authority on the Services provided by the Service Provider to the End User, is the responsibility of the Service Provider and the End User shall not deduct any income tax or other taxation from any payments due to the Service Provider, unless required to do so by legislation.

**14 CESSION AND ASSIGNMENT**

- 14.1 The Supplier binds itself and its partners, successors, executors, administrators, assignees in respect of all obligations and liabilities of the Agreement.
- 14.2 The Supplier shall not, without the prior written consent of SITA, cede, assign, delegate or transfer the Agreement or any part thereof, or any benefit or interest thereunder.
- 14.3 The approval of a cession, assignment, delegation or transfer by SITA shall not relieve the Supplier of its obligations under the Agreement.

**15 CONFIDENTIALITY**

- 15.1 Confidential Information means any information or data, irrespective of the form or medium in which it may be stored, which is not in the public domain and which becomes available or accessible to a Party as a consequence of this Contract, including information or data which is prohibited from disclosure by virtue of:
  - 15.1.1 the Promotion of Access to Information Act, 2000 (Act no. 2 of 2000);
  - 15.1.2 being clearly marked "Confidential" and which is provided by one Party to another Party in terms of this Contract;
  - 15.1.3 being information or data, which one Party provides to another Party or to which a Party has access because of Services provided in terms of this Contract and in which a Party would have a reasonable expectation of confidentiality;
  - 15.1.4 being information provided by one Party to another Party in the course of contractual or other negotiations, which could reasonably be expected to prejudice the right of the non-disclosing Party;
  - 15.1.5. being information, the disclosure of which could reasonably be expected to endanger a life or physical security of a person;
  - 15.1.6 being technical, scientific, commercial, financial and market-related information, know-how and trade secrets of a Party;
  - 15.1.7 being financial, commercial, scientific or technical information, other than trade secrets, of a Party, the disclosure of which would be likely to cause harm to the commercial or financial interests of a non-disclosing Party; and
  - 15.1.8 being information supplied by a Party in confidence, the disclosure of which could reasonably be expected either to put the Party at a disadvantage in contractual or other negotiations or to prejudice the Party in commercial competition; or
  - 15.1.9 information the disclosure of which would be likely to prejudice or impair the safety and security of a building, structure or system, including, but not limited to, a computer or communication system; a means of transport; or any other property; or a person; methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of



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the public or any part of the public; or the security of property; information the disclosure of which could reasonably be expected to cause prejudice to the defence of the Republic; security of the Republic; or international relations of the Republic; or plans, designs, drawings, functional and technical requirements and specifications of a Party,

- 15.2 Notwithstanding the provisions of this Contract, no Party shall be entitled to disclose Confidential Information, except where required to do so in terms of a law, without the prior written consent of any other Party having an interest in the disclosure;
- 15.3 Parties may not, except to the extent that a Party is legally required to make a public statement, make any public statement or issue a press release which could affect another Party, without first submitting a written copy of the proposed public statement or press release to the other Party and obtaining the other Party's prior written approval for such public statement or press release, which consent shall not unreasonably be withheld.
- 15.4 The End User must ensure that it maintains adequate information security with regard to sensitive/classified information of the Republic in accordance with the Minimum Information Security Standard.

**16 DISPUTE RESOLUTION**

**16.1 *Informal Dispute Resolution***

- (a) Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures. Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve the dispute informally as set out below.
- (b) Upon the written request of a Party, any dispute which arises between the Parties shall be referred to the Authorised Representatives. The Authorised Representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution.
- (c) The Authorised Representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceedings. During the course of discussions, all reasonable requests made by one Party to another for non-privileged information reasonably related to the Agreement shall be honoured in order that each of the Parties may be fully advised of the other Party's position. The specific format for the discussions shall be left to the discretion of the Authorised Representatives.

- (d) Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
  - (i) the Authorised Representatives concluding in good faith that an amicable resolution through continued negotiation of the matter does not appear likely; or
  - (ii) 14 (fourteen) days after the initial written referral to the Authorised Representatives pursuant to clause 1.1(a) (this period shall be deemed to run notwithstanding any claim that the process described in this clause was not followed or completed).
- (e) Proceedings in terms of this clause 0 shall not be construed to prevent a Party from applying to the appropriate court for urgent relief.

**16.1.1** Subject to clauses (d)(i) and (d)(ii), the Parties will have a period of 5 (five) days within which to agree in writing to refer the dispute to arbitration proceedings in terms of clause 16.2. In the event that the Parties fail to reach agreement in terms of this clause 16.1.1, either Party may commence formal proceedings in a court of competent jurisdiction.

## **16.2 Arbitration**

**16.2.1** Save in respect of those provisions of the Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:

**16.2.1.1** the interpretation of; or

**16.2.1.2** the carrying into effect of; or

**16.2.1.3** any of the Parties' rights and obligations arising from; or

**16.2.1.4** the rectification or proposed rectification of the Agreement, or out of or pursuant to the Agreement or on any matter which in terms of the Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

**16.2.2** That arbitration shall be held:

**16.2.2.1** with only the Parties and their representatives other than legal representatives, present thereat;

- 16.2.2.2** at Pretoria.
- 16.2.2.3** with the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 16.2.3** Save as expressly provided in the Agreement to the contrary, the arbitration shall be subject to the arbitration rules of the Arbitration Foundation of South Africa ("**AFSA**").
- 16.2.4** The arbitrator shall be, if the matter in dispute is principally:
- 16.2.4.1** a legal matter, an impartial practising advocate of not less than 15 (fifteen) years standing, or an impartial admitted attorney of not less than 15 (fifteen) years standing;
- 16.2.4.2** an accounting matter, an impartial practising chartered accountant of not less than 15 (fifteen) years standing; and
- 16.2.4.3** any other matter, an independent suitably experienced person agreed upon between the Parties.
- 16.2.5** If the Parties fail to agree on an arbitrator within 3 (three) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either of the Parties by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng). If that person 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.
- 16.2.6** If the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 3 (three) days after the arbitration has been demanded, it shall be a matter referred to in clause 16.2.4.3 .
- 16.2.7** The arbitrator shall have the fullest and freest discretion with regard to the proceedings save that he shall be obliged to give his award in writing fully supported by reasons. Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 16.2.8** Furthermore the arbitrator:

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- 16.2.8.1** may, by notice to the Parties within 3 (three) days after his appointment, dispense wholly or in part with formal submissions or pleadings provided that the Parties are given the opportunity to make submissions;
- 16.2.8.2** shall determine the applicable procedure and shall not be bound by strict rules of evidence;
- 16.2.8.3** shall allow any Party to the arbitration to call any witnesses he determines and shall permit cross examination of witnesses;
- 16.2.8.4** shall be entitled to take equity into account and shall not be bound to decide the dispute according to the legal rights of the Parties;
- 16.2.8.5** may, in addition to any other award he may be able to make:
- 16.2.8.5.1** cancel the Agreement determine that a Party has lawfully cancelled or is entitled lawfully to cancel the Agreement, or require specific performance, with an award of damages, but may not award cancellation of the Agreement or determine that the Agreement was lawfully cancelled or that a Party is lawfully entitled to cancel the Agreement unless the breach complained of is found by him to be a material one going to the root of the contract which cannot be compensated for by an award of damages or recoupment under any indemnity given in terms of the Agreement;
- 16.2.8.5.2** "make the contract" between the Parties by completing any gaps in the Agreement or by determining any matter which has been or is left to be agreed upon by the Parties and on which they have not reached agreement;
- 16.2.8.5.3** take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants;
- 16.2.8.5.4** award interest with effect from any date, and on any other basis, he considers appropriate in the circumstances; and
- 16.2.8.5.5** shall make such order as to costs as he deems just.
- 16.2.8.6** Either Party shall be entitled to have the award made an order of court of competent jurisdiction.
- 16.2.8.7** Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when either Party gives written notice to the other of the dispute, demands arbitration and requests agreement on an arbitrator.
- 16.2.8.8** The provisions of this clause are severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

- 16.2.8.9** The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 16.2.8.10** The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

## **17 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Any Intellectual Property created and all Intellectual Property rights acquired prior to the commencement date of this Contract shall vest exclusively with the Party or Parties who created same; Any Intellectual Property derived, produced or developed by the Service Provider after the commencement date expressly and exclusively for the End User shall vest in the End User.

## **18 PAYMENT OF THE SERVICE PROVIDER**

- 18.1 The Service Provider shall be remunerated by the End User for services rendered and verified by the End User, in accordance with the terms of an agreement to be entered into by the Service Provider and the End User as and when there is specific business awarded to the Service Provider by the End User.
- 18.2 All quotes and payments shall be in South African currency.

## **19 PENALTIES FOR NON-PERFORMANCE**

- 19.1 If the Service Provider fails to deliver any or all of the goods or to perform the Services within the periods specified in the Service Level Agreement signed with the End User, the Service Provider shall be liable to pay penalties as stipulated in Clause 22 of the GCC.

## **20 UNSATISFACTORY PERFORMANCE**

- 20.1 In the event of unsatisfactory performance (i.e. in areas of delivery, installation, maintenance and after-sales support) by the supplier that results in products that are not performing optimally or rendering bad service, SITA may terminate the contract.

- 20.2 If the bidder fails to meet its obligations or is in breach of contract or fails to remedy the breach within the agreed period in terms of the Agreement, which will be signed between SITA and the bidder, this shall result to contract termination with penalties.  
If a new supplier is appointed for delivering this product or service at a loss to the client, the loss will be recoverable from the defaulting supplier.
- 20.3 If the Original Equipment Manufacturer (OEM) has temporarily suspended the services of the Reseller for the specific product/brand, SITA will temporarily remove the Reseller product/brand from the list until the matter has been resolved.

**21 DOMICILIA AND NOTICES**

21.1 The Parties choose as their *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Contract, as follows:

**SITA:**

**Physical address** 459 Tsitsa Street  
 ERASMUSKLOOF  
 Pretoria  
 0046  
 Republic of South Africa

**The Service Provider:** .....

.....

.....

- 21.2 Either party may from time to time, and upon written notice to the other party, vary its physical address or facsimile number to any other physical address or facsimile number within the Republic of South Africa.
- 21.3 Any notice given by either party to the other party, which:
  - 21.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* shall be deemed to have been received by the addressee at the time of delivery;
  - 21.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* will be deemed to

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have been received by the addressee on the 7<sup>th</sup> (seventh) day after the date of posting; and

- 21.3.3 is sent by telex or facsimile copier during the normal business hours of the addressee to the addressee's domicilium will be deemed to have been received on the date and time of successful transmission thereof.

## 22 LIMITATION OF LIABILITY AND INDEMNITY

- 22.1 Each Party's maximum aggregate liability for any and all claims arising from or due to this Contract, including claims under any indemnities contained in the Contract shall not exceed the contract price **(VAT Inclusive)**;
- 22.2 Throughout the duration of this Contract, both Parties shall maintain in force adequate insurance to cover the risks in terms of this Contract.
- 22.3 Neither party excludes or limits liability to the other party for death, personal injury caused by its proven gross negligence.
- 22.4 Service Provider will not be liable for any damage or costs resulting from claims pursuant to the Service Provider's compliance with the End User's design, information, specifications, or written instructions;

## 23 SOLE RECORD

- 23.1 This Contract, together with its annexes, constitutes the sole record of the Contract between the Parties in regard to its subject matter.

## 24 NON VARIATION

- 24.1 No variation, modification, addition, alteration, erasure or abandonment of any clause of this Contract, including this clause, or consent to deviation from the Contract shall be valid unless such amendments have been recorded in writing and signed by both Parties.

## 25 COMPLIANCE WITH CONTRACT

- 25.1 No grace, delay, relaxation, leniency or indulgence granted by the End User to the Service Provider shall be deemed to be an abandonment of any right by the End User contemplated in this Contract, and any such grace, delay, relaxation, leniency or indulgence shall not prevent the End User from insisting on strict future compliance by the Service Provider with all the terms and conditions of this Contract.

**26 SEVERABILITY**

26.1 Each clause of this Contract is severable from each of the other clauses and if any clause in this Contract is found to be void, invalid or unenforceable for any reason, the remaining clauses remain in full force and effect.

**27 APPLICABLE LAWS**

27.1 This Contract shall be governed by the laws of the Republic of South Africa.

**28 MOST FAVOURED CUSTOMER**

28.1 All of the benefits and terms granted by the Service Provider herein are at least as favourable as the benefits granted by the Service Provider to any of its current customers utilising the services described in this Contract. Should the Service Provider enter into any Contract with any other buyer of its services, during the term of this Contract, which provides for benefits or terms more favourable than those contained in this Contract, then this Contract shall be deemed to be modified to provide the End User with those more favourable benefits and terms.

28.2 The Service Provider shall ensure that there is not difference in prices for the same Services procured by different End Users.

**29 FORCE MAJEURE**

29.1 Neither Party will be liable for failure to fulfil its obligations when due to causes beyond its reasonable control including, without limitation, the failure or delay of any Service Provider including Eskom or local telecommunications service providers (such as Telkom); acts of God or acts of nature; strikes or lock outs; war (whether declared or not); terrorism; sabotage; revolution; invasion; insurrection; strike; lock-out or any other industrial action; riot; civil commotion; mob violence; blockade; embargo; boycott; the exercise of military power; acts or restrains of government including the imposition or restrictions of or embargos on imports or exports;

29.2 If any Force Majeure occurs in relation to either Party that affects or may affect the performance of any of its obligations under this Contract, it shall forthwith notify the other Party as to the nature and extent of the circumstances in question. Neither Party shall be deemed to be in breach of this Contract, or shall otherwise be liable to the other, by reason of any delay in performance, or the non-performance of any of its obligations under this Contract to the extent that the delay or non-performance of that obligation is due to any Force Majeure of which it has notified the other Party and the time for performance shall be extended accordingly.

29.3 If the performance by either Party of any of its obligations under this Contract is prevented or delayed by Force Majeure for a continuous period in excess of thirty (30) days, the other Party shall be entitled to terminate this Contract by giving written notice to the Party so affected, whereupon all money due up to the point of



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termination under this Contract shall be paid immediately, and in particular the End User shall pay to the Service Provider all payments that are in arrears.

**30 Signatures**

**For the Service Provider**

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2016

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature

Witness:

\_\_\_\_\_  
Full name    Signature

**For SITA**

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2016

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Signature  
Duly authorised

Witness:

\_\_\_\_\_  
Full name    Signature