

SABS STANDARD TERMS AND CONDITIONS

1 BACKGROUND

SABS has selected the **Supplier** as its preferred supplier for services as set out in Annexure A (the *Services*).

The parties have agreed to enter into this *Agreement* to cover their respective rights and obligations in relation to the provision of the *Services*.

2 DEFINITIONS

In this *Agreement*, unless the context otherwise indicates:

- 2.1 *Agreement* means this contractual document with annexures/appendices hereto, which form an integral part of this document and will be read in conjunction herewith;
- 2.2 *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 in agreed minutes following oral disclosure to the *Receiving party* and any other information which is otherwise made available 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 any information, 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;
- 2.4 *Fees* mean the *fees* payable to the **Supplier** for the delivery of the *Services* to **SABS**;
- 2.5 *Intellectual property rights* mean all *intellectual property rights* including, but not limited to, patents, trade marks, service marks, trade names, copyright (including rights in computer software), design rights, trade or business names, domain names, know-how, database rights and topography rights, whether registered or unregistered, and all rights or forms of protection of a similar nature in any country;
- 2.6 *SABS Data* means all data, information, text, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which are supplied to the **Supplier** by **SABS** or by any of its affiliates or which the **Supplier** and any subcontractors are required to generate, collect, process, store or transmit in connection with this *Agreement*;
- 2.7 *Services* means the *services* to be provided by the **Supplier** to **SABS** under this *Agreement* as specified;
- 2.8 *Third party* means any person or entity which is not a party to this *Agreement*;

- 2.9 VAT means Value Added Tax imposed in terms of the Value Added Tax Act, Act No. 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time.

3 FEES, INVOICING AND PAYMENT

- 3.1 For any amounts payable by **SABS** to the **Supplier** under this *Agreement*, the **Supplier** shall invoice **SABS** the *Fees*, and **SABS** shall pay the **Supplier** in accordance with the **SABS** standard of invoicing and payment provisions.
- 3.2 All *Fees* and other sums payable under this *Agreement* are exclusive of VAT and/or equivalent taxes in other countries which will be payable at the applicable rate.
- 3.3 *Fees* are specified in a separate annexure attached to this *Agreement*.
- 3.4 **Supplier** shall invoice **SABS** on the first working day of the month for work already done, and the **SABS** to settle the account on or before the last day of the month.

4 SUPPLIER OBLIGATIONS

- 4.1 The **Supplier** is obliged to supply the *Services* as specified in a separate Annexure between the parties at the required frequency and within the required time frame.
- 4.2 The **Supplier** is obliged to take all reasonable care in delivering the *Service* so that it meets the objectives of **SABS** in seeking such *Service*.
- 4.3 The **Supplier** is obliged to inform **SABS** of any delays in concluding the *Service* or of any variances in meeting the required deliverables of the *Service*.

5 SABS OBLIGATIONS

- 5.1 **SABS** is obliged to allow the **Supplier** to conduct its *Service* without hindrance or obstruction.
- 5.2 **SABS** is obliged to supply sufficient information to allow the *Service* be conducted and finalized.

6 BREACH

- 6.1 Should either party commit a breach of any provision of this *Agreement* (save for 8.1 below) and fail to remedy such breach within 10 (ten) business days of receiving written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to its other rights at law, to terminate this *Agreement* and to claim. Any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this *Agreement* shall be borne by the party in breach.
- 6.2 Such a claim shall be subject to the applicable Court rules, failing which the aggrieved party will be entitled to cancel the *Agreement*.

7 TERMINATION

- 7.1 **SABS** may terminate this *Agreement* based on dissatisfaction, **SABS** operational requirements and/or any reason, which it deems justifiable, subject to 20 (twenty) business days notice to the **Supplier**.
- 7.2 **SABS** will have the right, without prejudice to its other rights or remedies, to terminate this *Agreement* immediately by written notice to the **Supplier**, if the **Supplier** is unable to pay its debts or becomes insolvent, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in any applicable jurisdiction.

8 LIMITATIONS OF LIABILITIES

- 8.1 Subject to clause 8.2, the aggregate liability of the **Supplier** to the **SABS** for all defaults occurring during the term of this *Agreement* shall either be the amount payable as per the **Supplier's** maximum total liability insurance cover plus 10% or the total contract value of this contract plus 10%, whichever the **SABS** opts for, and the **SABS** shall have the sole right to so choose.
- 8.2 Subject to clause 8.3, the **Supplier** may be liable to the **SABS** or third party for indirect or consequential loss or damage, loss of profits, business, revenue, goodwill, or anticipated savings suffered by the other party during the term of this *Agreement*.
- 8.3 The **Supplier** agrees not to limit its liability to the other party for death, personal injury caused by its proven gross negligence or that of its employees, agents or subcontractors (as applicable), fraud or theft by it or its employees or breach of Confidentiality and *Intellectual property rights*.

9 INDEMNITY

- 9.1 The **Supplier** shall indemnify and release the **SABS** at all times from any and all claims brought against the **SABS** including but not limited to claims arising from omissions and negligence by the **Supplier** or any of its employees or security personnel and vice versa;
- 9.2 Neither party can commit the other to contractual obligations unless a written undertaking is provided and signed by authorized signatories.

10 INSURANCE

It is recorded that:

- 10.1 The **Supplier** is, in terms of its existing and valid insurance policy ("the Policy) insured against any risks associated with the *Service* delivery, including public liability and all liabilities to the total amount of services/products supplied plus 10%. The **Supplier** undertakes to provide proof of such policy upon signature of this *Agreement*.
- 10.2 In the event of any claim, suit, case, liability or demand being made against the **Supplier** arising out of this *Agreement*, the **SABS** hereby agrees, as far as possible, to co-operate with and give reasonable assistance to the **Supplier** in the investigation thereof.
- 10.3 The **SABS** further agrees to permit the **Supplier** and/or its agent's reasonable access to its premises and the right to interview and take statements from its employees.

11 CONFIDENTIAL INFORMATION

- 11.1 The parties agree to disclose *Confidential information* to one another to the extent deemed necessary or desirable by each of them in their sole discretion.
- 11.2 The parties acknowledge that the *Confidential information* is a proprietary, special, and unique asset to the *Disclosing party*.
- 11.3 The parties agree that neither of them nor any of their employees will, at any time, disclose the information to any *Third party* for any reason or purpose whatsoever without the prior written consent of the *Disclosing party*, save as in accordance with the provisions of this *Agreement*.
- 11.4 Notwithstanding anything to the contrary contained in this *Agreement* the parties agree that the *Confidential Information* may be disclosed by the *Receiving party* to its professional advisors, agents and consultants on a need-to-know basis: Provided that the *Receiving party* takes whatever steps are necessary to procure that such professional advisors, agents and consultants agree to abide by the terms of this provision to prevent the unauthorised disclosure of the *Confidential information* to any *Third party*.
- 11.5 The *Receiving party* agrees that the unauthorised disclosure of the *Confidential information* to a *Third party* may cause

irreparable loss, harm, and damage to the *Disclosing 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*.

- 11.6 The obligations of the parties shall not apply to any *Confidential information* that:
- 11.6.1 is known, or in the possession of the *Receiving party* prior to the disclosure thereof by the *Disclosing party*;
- 11.6.2 is or becomes publicly known, otherwise than pursuant to a breach of this *Agreement* by the *Receiving party*;
- 11.6.3 is developed independently of the *Disclosing party* by the *Receiving party* in circumstances that do not amount to a breach of the provisions of this *Agreement*;
- 11.6.4 is disclosed by the *Receiving party* to satisfy an order of court of competent jurisdiction or
- 11.6.5 to comply with the provisions of any law or regulation in force from time to time; provided that in the circumstances, the *Receiving party* shall advise the *Disclosing party* to take whatever steps it deems necessary to protect its interests in this regard; provided further that the *Receiving party* will disclose only that portion of the information which it is legally required to disclose and the *Receiving party* will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 11.6.6 is disclosed to a *Third party* pursuant to the prior written authorisation of the *Disclosing party*;
- 11.7 is received from a *Third party* in circumstances that do not result in a breach of the provisions of this *Agreement*.
- 11.8 Upon termination of this *Agreement* for whatever reason, the parties shall return to the other party, all *Confidential information* as well as all relevant confidential documentation in their possession.
- 11.9 The parties will only use the *Confidential information* for the sole purpose of complying with their obligations under this *Agreement*.
- 11.10 The contents, existence and the scope of this *Agreement* are *Confidential information*.

12 DISPUTE RESOLUTION

Both parties agree to the following dispute mechanism:

- 12.1 In the event of any disagreement arising out of this *Agreement* or the interpretation thereof, while in force or after its termination and the parties being unable to reach agreement, the matter will be referred to the Management within 5 business days after the parties disagreed, of each of the parties who will endeavour to settle the dispute through bona fide negotiations;
- 12.2 In the event that the parties are still unable to reach agreement within 5 business days after the dispute was referred through the process referred to in clause 13.1, it is hereby agreed that a dispute shall be submitted to and decided by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA), by an arbitrator agreed upon between the parties or, failing agreement, appointed by AFSA;
- 12.3 Each party is entitled to give notice of arbitration, provided that such notice shall be given within 5 (five) business days and not later than 20 (twenty) business days from the date that the Management of the parties or their nominees first met as contemplated in clause 13.1; unless the parties agree to extend the time periods referred to herein;
- 12.4 Unless otherwise agreed by the Parties in writing the arbitration shall be held at Pretoria, in the Republic of South Africa;

- 12.5 Only the parties and their legal representatives or persons agreed to shall attend the arbitration proceedings;
- 12.6 The parties shall use their best endeavours to expedite the arbitration process;
- 12.7 Subject to the other provisions of this paragraph, arbitration shall be held in accordance with the provisions of the Arbitration Act, Act No 42 of 1965, as amended.
- 12.8 Nothing precludes either party in this agreement from approaching a Competent Court or Tribunal for an appropriate relief.

13 LANGUAGE

All communications shall be made in the English language.

14 JURISDICTION

This *Agreement* is governed and construed in accordance with the laws of the Republic of South Africa, where applicable, in the event of there being a conflict of law between the law of the Republic of South Africa. The parties consent to the jurisdiction of SA Courts.

15 FORCE MAJEURE

- 15.1 If *vis major* or *force majeure* or *casus fortuitus* (the Interrupting circumstances") cause delays in or failure or partial failure of performance by a 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 *Interrupting circumstances* prevail, but if they affect any material part of the *Agreement* only for a maximum period of 20 (twenty) business days where after any affected party shall be entitled on 5 (five) business days written notice to cancel this *Agreement*.
- 15.2 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/s as soon as reasonably possible after the commencement thereof.
- 15.3 Written notice of the cessation of the *Interrupting circumstances* will be given by the party who relied thereon within 2 (two) business days after such cessation.
- 15.4 No party shall subsequently be obliged to comply with the obligations suspended during such period.
- 15.5 The party whose performance is interrupted by the *Interrupting circumstances* shall be entitled, provided that such party shall give notice to that effect with the written notice of the *Interrupting circumstances* as provided above, to extend the period of this *Agreement* by a period equal to the time that its performance is so prevented.

NOTE: For the purposes hereof *vis major* and *force majeure* include acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, 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*, provided that labour disputes (including, without limitation, strikes, go-slows or lockouts) shall not be included as events *vis major* or *force majeure*.

16 SEVERABILITY

- 16.1 Any provision in this *Agreement* which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this *Agreement*, without invalidating the remaining provisions of this *Agreement*. This is subject to the severed clause not being material to the enforceability or existence of this *Agreement*.

16.2 Entire Agreement - Modifications

This *Agreement* constitutes the entire *Agreement* between the parties and any previous written agreements, communications, correspondences and the like, oral or written, shall be deemed null and void except as incorporated in the present *Agreement*;

- 16.3 The parties are bound by the provisions of this *Agreement*, which cannot be modified or changed except by amendments in writing signed by duly authorised representatives of each party.
- 16.4 Proposed amendments to this *Agreement* shall be agreed between the parties. The validity of this *Agreement* will not be affected whilst proposed changes are being processed.
- 16.5 The issued certificate and, where necessary, an amendment to this *Agreement* will contain the latest details as agreed and accepted by both parties.

17 WARRANTIES

- 17.1 The **Supplier** hereby warrants and undertakes that it has the full capacity, legal standing and authority and all necessary licenses, permits and consents to enter into and to provide the services under this *Agreement*.
- 17.2 The **Supplier** hereby also warrants and undertakes that the performance of its obligations under this *Agreement* will not:
- 17.2.1 result in a breach of, or constitute a default under any instrument, agreement or arrangement to which the **Supplier** is a party or by which the Supplier is bound;
- 17.2.2 result in a breach of any order, judgment of any court or government agency to which the **Supplier** is a party or by which the **Supplier** is bound;
- 17.2.3 result in a breach of any provision of its Memorandum or Articles of Association, in the event that the **Supplier** is a company.
- 17.3 The **Supplier** hereby further warrants and undertakes that:
- 17.3.1 the provision of the Services and SABS' use thereof shall not infringe any rights of any third party;
- 17.3.2 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel;
- 17.3.3 it shall use and adopt reasonable professional techniques and standards in providing the services and shall further provide the services with all due care, skill and diligence;
- 17.3.4 the Services shall be performed in compliance with all applicable laws, including but not limited to all applicable legislation relevant to the Supplier.

18 WAIVER

The non-exercise of or delay in exercising any rights or power of a Party does not operate as a waiver of that power or rights.

Should either party waive any of its rights in terms of this *Agreement*, such waiver shall not apply or be construed as waiver of all the other rights herein.

19 CESSION AND DELEGATION

Subject to the provisions of this *Agreement*, neither Party shall be entitled to cede or delegate any of its rights or obligation in terms of this *Agreement*, in whole or in part to any other Party or person without prior written consent of the other Party.