

DPME FILE REF:	
SCM REF:	



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF PERFORMANCE MONITORING AND EVALUATION

Agreement on
[Click here to enter text.](#)

entered into between

The Department of Performance Monitoring and Evaluation,
of the Government of the Republic of South Africa
(Hereinafter referred to as "DPME")

and

[Click here to enter text.](#)
(Hereinafter referred to as "the Service Provider")

“SCHEDULE”

This Schedule contains information relating to the agreement between the parties and forms an integral part thereof.

THE PARTIES TO THIS AGREEMENT ARE

<p>THE GOVERNMENT OF SOUTH AFRICA through its Department of Performance Monitoring and Evaluation (“DPME”) Herein represented by the Accounting Officer (Director General) or the delegated officials indicated below. With registered address (hereinafter the <i>domicilium citandi et executandi</i> of the DPME): East Wing, Union Buildings Government Avenue Pretoria, 0001</p>	<p>Click here to enter text. (“The Service Provider”) Registration/ID number: Click here to enter text. Herein represented by: Click here to enter text. With registered address (hereinafter the <i>domicilium citandi et executandi</i> of the Service Provider): Click here to enter text.</p>
<p><u>Coordinator for DPME:</u> Name: Click here to enter text. Tel: Click here to enter text. Fax: Click here to enter text. e-mail: Click here to enter text.</p>	<p><u>Coordinator for the Service Provider:</u> Name: Click here to enter text. Tel: Click here to enter text. Fax: Click here to enter text. e-mail: Click here to enter text.</p>
<p>Commencement Date:</p>	<p>Click here to enter a date. Total Consideration Payable inclusive of VAT: (Subject to deliverables and timeframes described herein)</p>
<p>Duration/Termination Date:</p>	<p>Click here to enter a date. Fixed component: Click here to enter text.</p>
<p>ANNEXURES TO THIS AGREEMENT A: Summary Deliverable and Payment Schedule B: Terms and Conditions of Agreement C: Detailed Service Level Requirements and Time Frames D: Proposal submitted by Service Provider</p>	<p>Any variable component must be linked to the deliverables indicated in Annexure “C” and will be priced in accordance with the rates indicated in Annexure “A”.</p>

For and on behalf of THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA who warrants that he/she is or they are duly authorised thereto

For and on behalf of the Service Provider who warrants that he/she/they is/are duly authorised thereto

 Name: _____ Date: _____
 Position: _____ Place: _____

 Name: _____ Date: _____
 Position: _____ Place: _____

 Name: _____ Date: _____
 Position: _____ Place: _____

 Name: _____ Date: _____
 Position: _____ Place: _____

 Name: Mr Pieter Pretorius Date: _____
 Position: CFO Place: _____

 Name: _____ Date: _____
 Position: _____ Place: _____

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES**1. INTERPRETATION AND GENERAL CONDITIONS**

- 1.1. In this agreement, unless otherwise specified or the context clearly indicates the contrary, the following words and expressions shall have the meanings assigned to them below:
- 1.1.1. "Business Day" – any day excluding a Saturday, Sunday or public holiday in the Republic of South Africa;
 - 1.1.2. "Commencement Date" – the date designated as such in the Schedule, notwithstanding the date on which this agreement is signed by the party signing it last in time;
 - 1.1.3. "Confidential Information" – the following information, belonging to either party: Any know-how, information, method of trading, technology, techniques, data, records, reports, business ideas, business forms and stationery, drawings, models, programmes and any information of whatsoever nature and form directly or indirectly related to the business of the parties, or the business of any of the parties' members, suppliers, service providers, agents, business associates or partners which was or may be supplied to one party by the other party or any of the aforesaid entities. Without limiting the generality of this clause in any manner whatsoever, confidential information shall include:
 - a. technical, financial, economic and general information, information provided orally, in computer readable media, in writing or through any other means of communication; and
 - b. information which the parties, when providing same to the each other expressly indicates to be confidential, irrespective of whether it falls within the ambit of clause 1.1.3.
 - 1.1.4. "Co-ordinator" – the person, the particulars of whom are set out in the Schedule, nominated and replaced by each of the parties from time to time, who will be responsible for effective liaison between the parties and to whom all communication relating to the execution and implementation of this agreement must be addressed;
 - 1.1.5. "Insolvency Event" – if the Service Provider:
 - a. is wound-up, liquidated, subject to an offer of compromise in terms of the Companies Act (if applicable) deregistered or placed under business rescue, in any event whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event; or
 - b. becomes insolvent or commits any act which is or, if it were a natural person, would be an act of insolvency as defined in the Insolvency Act, (Act no. 24 of 1936 as amended); or
 - c. is deemed unable to pay its debts in terms of the Companies Act; or
 - d. compromises or attempts to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally or any significant class of creditors; or
 - e. takes any procedural steps (including application, proposal or convening a meeting) with a view to compromise an arrangement with any creditors generally or any significant class of creditors;
 - 1.1.6. "Intellectual Property" – the following immaterial and intellectual property of which a party is the proprietor or that was developed by the Parties irrespective of whether registered/patented:
 - a. all registered patents and patent applications, designs and design applications in the name of the party;
 - b. all copyright owned by the party in respect of works which are susceptible to copyright and which are used by the party in respect of its business;
 - c. all registered trademarks and trademark applications, unregistered trademarks as well as rights to trade and business names;
 - d. any confidential or proprietary information relating to the intellectual property and its exploitation, including technical information, manufacturing techniques and designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information generally;
 - 1.1.7. "Payment Schedule" – the schedule of deliverables / milestones and related payments agreed to between Parties and attached as annexure "A" hereto.
 - 1.1.8. "the Proposal" – the proposal submitted by the Service Provider in response to the request for proposals / tender of which a copy is attached hereto as annexure "D";
 - 1.1.9. "Schedule" – the document entitled "Schedule" to which this document constitutes annexure "B" and which contains certain variable information applicable to this agreement;
 - 1.1.10. "Service" or "Service Levels" – the quantitative and qualitative performance metrics for the Services, which Service Levels are detailed in annexure "C";
 - 1.1.11. "Valid invoice" – an invoice that complies with the requirements set out in this agreement and that refers only to deliverables confirmed as delivered by DPME and to costs and expenses as agreed to in Annexure "A" of this agreement.
- 1.2. Any reference to -
- 1.2.1. the singular shall include the plural and vice versa;
 - 1.2.2. any gender shall include the other genders;
 - 1.2.3. natural persons shall include legal persons and vice versa.

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

- 1.3. The headings of clauses in this agreement are for reference purposes only and shall not be taken into account in construing the contents hereof.
- 1.4. If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this agreement.
- 1.5. Where any term is defined within the context of a particular clause in this agreement, it shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.6. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 1.7. 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 other than a Business Day, in which case the last day shall be the immediately following Business Day.
- 1.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.9. The expiration or termination of this agreement shall not affect such of the provisions contained herein and are expressly provided that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide therefor.
- 1.10. The rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of this agreement, shall not apply.
- 1.11. The terms and conditions of the General Conditions of Contract July 2010 from National Treasury ("GCC") are incorporated into this agreement and forms an integral part hereof. The Proposal, attached hereto as annexure "D" also forms an integral part of this agreement. In the event of any conflict or inconsistency between the provisions contained in this agreement on the one hand and those contained in the GCC or the Proposal, on the other hand, this agreement shall take precedence.
- 1.12. In the event of any conflict or inconsistency between the provisions contained in this agreement on the one hand and any South African legislation, on the other hand, the legislation shall take precedence.

2. APPOINTMENT

- 2.1. DPME hereby appoints the Service Provider, who accepts such appointment, subject to the terms and conditions set out herein.
- 2.2. This agreement is also binding on the successors in title, assigns and administrators of the respective parties.
- 2.3. DPME and the Service Provider shall at all times be independent contracting parties and neither shall party shall be the partner, agent, representative or employee of the other party or hold itself out as such. Accordingly, neither party shall have the authority to bind the other party by any representations, statements or agreements in any manner whatsoever.
- 2.4. Where there is an inception phase where the proposal can be revised, should there be no agreement between the parties as to the revisions to the proposal, the contract will be terminated after the inception phase, in which case the maximum consideration due to the service provider would be the amount indicated in annexure "A" as payable at inception.

3. COMMENCEMENT AND DURATION

- 3.1. This agreement shall commence on the Commencement Date and shall remain in force for the Duration or until the Termination Date indicated in the "Schedule".
- 3.2. DPME can extend the duration of this agreement in its sole discretion provided that both parties agree in writing to the terms and conditions of extension. Any extension to the delivery dates indicated in Annexure "A" granted by DPME shall automatically extend the duration of this agreement.
- 3.3. The Service Provider may not proceed with the production of a subsequent deliverable unless DPME has accepted and approved a preceding deliverable as provided for under clause 5.5.
- 3.4. Either party may cancel the agreement in terms of clause 11 (Termination) below;

4. GENERAL OBLIGATIONS OF PARTIES

- 4.1. DPME shall furnish the Service Provider with all relevant information and Documentation timeously to enable the Service Provider to render the Services. The information will be accurate and complete in all material respects.
- 4.2. DPME shall provide the Service Provider with feedback on the quality and acceptance of Services rendered within 7 (Seven) working days from submission of deliverables, with a clear indication of areas of required improvement, if applicable.
- 4.3. DPME will, as far as possible, assist the Service Provider to obtain access to stakeholders to facilitate the completion of deliverables.

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

- 4.4. The Service Provider (including sub-contractors and subsidiaries of the Service Provider) may not to recruit, employ or remunerate in any way, any employee of DPME for a period of 12 months from the date of termination of this agreement. Remuneration, for the purposes of this clause, shall include any consideration whether in cash or in kind.

5. CONSIDERATION AND PAYMENT

- 5.1. In consideration for the Service Provider rendering the Services or providing the Goods agreed upon, and subject to 2.4, DPME shall pay to the Service Provider the fees on the relevant due dates for payment thereof as stipulated in annexure A attached hereto, subject to the successful completion of the deliverables indicated in annexures "A" and "C".
- 5.2. The fees indicated in annexure "A" represent the full amount payable to the Service Provider and are fully inclusive of all expenses to be incurred by the Service Provider in completing the deliverables within the agree times frames. It is hereby specifically recorded that, unless otherwise indicated on annexure "A", the fees payable include:
- Any expense incurred by the Service Provider to participate in meetings, workshops, seminars or similar events related to the completing of the deliverables;
 - All national and international travel expenses related to the completion of the deliverables;
 - All communication related expenses incurred by the Service Provider.
- 5.3. The incurring of any expense for which the DPME can be held liable that is not included under the Fixed Component in annexure "A" (regardless of whether such expense was mentioned in the proposal(s) submitted by the Service Provider), must receive prior written approval of the DPME.
- 5.4. DPME shall be entitled to stipulate, on reasonable notice to the Service Provider the invoicing standards applicable to any charges levied by the Service Provider in terms of this agreement.
- 5.5. The Service Provider shall inform DPME of the completion of a particular milestone or deliverable in writing. The DPME must within 7 (Seven) working days in writing either;
- Confirm its agreement with the completion of the particular milestone or deliverable; or
 - Provide the Service Provider with detailed information on any outstanding matters related to a particular deliverable or milestone.
- 5.6. Unless otherwise agreed to in writing, original invoices shall be rendered by the Service Provider after acceptance by DPME's coordinator of a particular deliverable.
- 5.7. Payment of the Service Provider invoices shall be made by DPME within 30 (Thirty) days of receipt thereof.
- 5.8. The Service Provider shall maintain complete and accurate records of all amounts billed to and payments made by DPME under the agreement in accordance with generally accepted accounting principles applied on a consistent basis. The Service Provider agrees to provide DPME with any information with respect to each invoice as may be requested by DPME to verify accuracy and compliance with the provisions of the agreement.
- 5.9. DPME may withhold any amounts that it disputes in good faith, provided that such dispute shall automatically be referred to dispute resolution in terms of clause 10.
- 5.10. Any undisputed amount payable by DPME to the Service Provider can bear interest at a rate equal to that of the prime lending rate of First National Bank, from the 31st day after receipt by DPME of the original valid invoice until the date of payment (both days inclusive).

6. WARRANTIES

- 6.1. Each party warrants and represents that, as at the date of this agreement:
- it has full capacity and authority to enter into and perform its obligations under this agreement;
 - this agreement is executed by a duly authorised representative of that party;
 - there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this agreement.
- 6.2. The Service Provider warrants, represents and undertakes on an on-going basis that:
- its obligations under this agreement will be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient personnel;
 - it will be solely responsible for the payment of remunerations and associated benefits, if any, of the personnel, and for withholding and remitting income tax (or the relevant local equivalent) for its personnel in conformance with any applicable laws and regulations;
 - all personnel will be vetted in accordance with good industry practice (where applicable);
 - The Service Provider will perform its obligations under this agreement in compliance with all applicable laws, enactments, orders, regulations, guidance and all regulatory changes;
 - all Documents, data, software or other materials relevant to the supply of the Services are kept under secure conditions with appropriate back-up arrangements in place;

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- 6.2.6. it has satisfied itself that the facilities it requires for the provision of the Services are available and equipped to the required standard at any DPME's premises;

7. INTELLECTUAL PROPERTY

- 7.1. The Service Provider hereby acknowledges and confirms that all Intellectual Property rights related to the services provided, research conducted or systems developed in terms of this agreement vest exclusively in DPME, except in so far as such intellectual property rights belonged to the Service Provider or to a third party prior to the commencement of this agreement.
- 7.2. No Intellectual Property rights are in any manner or for any purpose transferred to the Service Provider in terms of this agreement, nor does the Service Provider obtain any Intellectual Property rights at any stage or in any manner or for any purpose.
- 7.3. The Service Provider may not publish or sell, in whole or in part, any research emanating from this agreement or any software developed as part of deliverables to this agreement without the explicit written consent of DPME.

8. CONFIDENTIALITY

- 8.1. Either party hereby acknowledges that -
- 8.1.1. in the course of the rendering of the Services, it ("the Receiving Party") will become acquainted with Confidential Information belonging to the other party ("the Disclosing Party") and Confidential Information which will be disclosed to it. Unless otherwise indicated in writing, all information provided by DPME must be regarded as confidential information.
- 8.1.2. in the event of the unauthorised disclosure of the Confidential Information, the party to whom the Confidential Information belong, may suffer irreparable financial and other harm;
- 8.1.3. obligations contained in this clause 8 shall not apply to Confidential Information which -
- a. at the time of its disclosure is part of the public domain or which subsequently becomes, through no fault of failure of the Receiving Party, part of the public domain;
- b. at the time of disclosure can be shown by the Receiving Party to the Disclosing Party to have been in its possession prior to disclosure thereof by the Disclosing Party or to have come into the possession of the Receiving Party thereafter by disclosure of a third party.
- 8.2. The burden of providing any exemption provided for in this clause 8 shall rest on the Receiving Party.
- 8.3. The Receiving Part undertakes not to disclose, in whole or in part any Confidential Information to any third party without the prior written approval of the Disclosing Party or unless compelled to do so by a court of law.
- 8.4. The Receiving Party shall only disclose so much of the Confidential Information and at such time as may be strictly necessary to enable any of its employees, agents, associates or professional advisors to fulfil their function as such. This may, however, only be done after such employee, agent, associate or professional advisor concerned is first advised of the Receiving Party's confidentiality obligations hereunder and the Receiving Party has ensured prior to the disclosure of any Confidential Information that such employee, agent, associate or professional advisor has validly signed an undertaking of confidentiality wherein it is restricted in its use of the Confidential Information. The Receiving Party warrants that such employee, agent, associate or professional advisor will comply with the aforesaid confidentiality undertakings.
- 8.5. The Receiving Party's confidentiality obligations hereunder shall remain in force for an indeterminate period after the date of signature hereof, or for any such period determined by Law.
- 8.6. The Disclosing Party agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it, is in connection with the rendering of the Services contemplated under this agreement.
- 8.7. The Receiving Party undertakes not to use the Confidential Information for any other purpose or in any manner that is adverse or detrimental to the interests of the Disclosing Party.
- 8.8. In the event that this agreement is terminated or in any manner brought to an end the Receiving Party shall within 10 (Ten) Business Days of the termination return to the Disclosing Party all documents, data and other writings supplied by the Disclosing Party to the Receiving Party and which constitute Confidential Information. The Receiving Party shall not retain any copies, extracts or other reproductions in whole or in part of such documents, data or other writings containing Confidential Information in any physical or electronic medium of format. The Receiving Party shall forthwith furnish a certificate to the Disclosing Party certifying that all the aforesaid documents and other writings have either been destroyed or returned to it.
- 8.9. The Disclosing Party shall be entitled, forthwith, without any prior written notice to the Receiving Party and without prejudice to any rights which it may be entitled to -
- 8.9.1. obtain an interdict in any competent court to prohibit the Receiving Party to continue with the contravention of its undertakings in terms hereof;

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

- 8.9.2. obtain a court order in any competent court for the delivery of any document, writings, copies, extracts or reproductions referred to in clause 8.7 above.
- 8.10. The provisions contained in this clause 8 shall survive the termination or cancellation of this agreement.

9. FORCE MAJEURE

- 9.1. No party shall be liable to the other for any losses which are a result of any default or delay in the performance of its obligations under this agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of such party; provided that: (i) the non-performing party is without fault in causing such default or delay; and (ii) such default or delay could not have been prevented by reasonable precautions; and (iii) such default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work around plans or other means.
- 9.2. If any event under clause 9.1 substantially prevents, hinders, or delays for more than 7 (Seven) consecutive days performance of the Services necessary for the performance of DPME's functions, reasonably identified by DPME as critical, then at DPME's option:
- Where the nature of the Services permit, DPME may with the written consent by the Service Provider, which consent will not be unreasonably withheld, procure such Services from an alternate source on behalf of the Service Provider, and the Service Provider shall pay the alternate source for such Services for so long as the delay in performance shall continue; or
 - DPME may terminate the agreement or any portion thereof affected by the force majeure, without liability and, to the extent applicable, the charges payable under the agreement shall be equitably adjusted to reflect those terminated Services.
- 9.3. The Service Provider shall not have the right to any additional payments from DPME for costs or expenses incurred by the Service Provider as a result of any force majeure occurrence, except for those deliverables completed / goods delivered.

10. DISPUTE RESOLUTION

Any dispute arising from this agreement shall be subject to the following dispute resolution procedures:

- 10.1. Informal dispute resolution: Prior to the initiation of formal dispute resolution procedures, the parties shall first attempt to resolve their dispute informally as follows:
- 10.1.1. Upon the written request of a party, any dispute, which arises between the parties relating to or arising out of this agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this agreement, shall be referred to the chief executive officer of the Service Provider ("the CEO") and to the Director-General of DPME ("the DG"). The DG and the CEO reserves the right to delegate some or all of their responsibilities in this regard to the Chief Financial Officer (the CFO) or another suitable senior manager. The CEO and DG 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. The CEO and DG shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (Fourteen) days of the dispute having been referred. During the course of discussion, all reasonable requests made by one party to another for non-privileged information, reasonably related to this agreement, shall be honoured in order that each of the parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the CEO and the DG.
 - 10.1.2. Formal proceedings for the resolution of a dispute may not be commenced until the earlier of: (i) the CEO and the DG concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) the expiry of a period of 14 (Fourteen) days after the initial written request referred to in clause 10.1.1 (this period shall be deemed to run notwithstanding any claim that the process described in clause 10.1.1 was not followed or completed).
 - 10.1.3. Proceedings in terms of this clause 10.1 shall not be construed to prevent a party from instituting, formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.
 - 10.1.4. Any period of time stipulated under point 10.1 may be extended by Parties upon mutual written agreement of such extension.
- 10.2. Arbitration: If the parties are unable to resolve any dispute in the manner contemplated by clause 10.1, then subject to clause 10.2, such dispute shall on written demand by either party to the dispute be submitted to arbitration at the Arbitration Foundation of Southern Africa, in Pretoria and in accordance with the rules thereof by an arbitrator or

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

arbitrators agreed on by the parties or should the parties fail to agree on an arbitrator within 10 (Ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any party to the dispute by the Arbitration Foundation of Southern Africa. The arbitration shall be held in the English language.

10.2.1. Commencement of arbitration

The following shall apply to the arbitration: (i) the parties shall request that the arbitrator/s commence the arbitration within 21 (Twenty One) days and proceed as if time is of the essence in the arbitration proceeding. The parties shall request that the arbitrator to render his or her decision within 14 (Fourteen) days following the conclusion of the hearing. Recognising the express desire of the parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the parties to expand the scope of discovery as may be reasonable under the circumstances; (ii) the parties undertake not to withhold their consent to join another party to the Arbitration; and (iii) the parties irrevocably agree that the submission to arbitration is subject to the parties' rights of appeal. Any party may appeal the decision of the arbitrator within a period of 20 (Twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other party to the arbitration. The appeal shall be dealt with in accordance with the rules of the Arbitration Foundation of Southern Africa by a panel of 3 (Three) arbitrators appointed by the Arbitration Foundation of Southern Africa.

10.2.2. Status of arbitration ruling

The decision of the arbitrator shall be binding on the parties to the arbitration after the expiry of the period of 20 (Twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 10.4 may be made an order of court at the instance of any party to the arbitration.

- 10.3. **Continued performance:** Each party agrees to continue performing its obligations under this agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).
- 10.4. **Rapid resolution of disputes:** The parties shall use commercially reasonable efforts to resolve disputes arising under this agreement as rapidly as possible.
- 10.5. **Escrow deposits for disputed payments:** To the extent that any dispute referred to determination in terms of this clause 10 involves the withholding of payment of any amount otherwise due in terms of this agreement to the DPME, the Service Provider shall deposit the amount of the withheld payment into escrow and, if any part of the withheld amount is found properly due to the DPME, any capital award plus interest accruing in escrow in the same ratio as the capital award, shall be paid to DPME.
- 10.6. **Excluded relief:** This clause 10 shall not preclude either party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the parties are engaged.
- 10.7. **Confidentiality of proceedings:** Any dispute resolution or arbitration process under this clause 10 shall be conducted *in camera* and the parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other party provided that the parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.
- 10.8. **Costs of dispute resolution:** Each Party shall bear its own costs related to the resolution of disputes. No party shall be held liable for any costs incurred by another party during the informal dispute resolution process or during Arbitration.

11. TERMINATION AND LIABILITY**11.1. DPME can –**

- 11.1.1. terminate the agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 60 (Sixty) days prior written notice thereof;
- 11.1.2. terminate the agreement in the event of the State Security Agency, which has to vet all service providers who will have access to sensitive information of the State, determines that the Service Provider or any of its members, directors or employees pose a relevant threat to the State.

11.2. In the event of the Service Provider:

- 11.2.1. failing to comply with any provision of this agreement and persisting in such failure for a period of 7 (Seven) Business Days after receipt of a written notice demanding compliance; or
- 11.2.2. suffering an Insolvency Event,
DPME shall be entitled, without prejudice to any other right it may have in terms of this agreement or in law, to:
- 11.2.3. cancel this agreement; and
- 11.2.4. claim specific performance of any or all of the terms and conditions of this agreement.

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SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

- 11.3. Should DPME breach any term of this agreement, the Service Provider shall be obliged to notify DPME in writing to remedy such breach, and should DPME fail to do so within 7 (Seven) Business Days of receipt of such notification, the Service Provider shall without prejudice and in addition to any other remedies it may have, be entitled to:
- 11.3.1. cancel this agreement; and
 - 11.3.2. claim specific performance of any or all of the terms and conditions of this agreement.
- 11.4. The maximum liability of any party to this agreement shall not exceed the fixed component as indicated in annexure "A" to this agreement as well as any additional amount agree to in writing in terms of clauses 5.2 and 5.3 of this agreement. The maximum liability of DPME shall not exceed the cost indicated in annexure "A" of those deliverables which DPME has received and accepted in terms of clause 5.5 of this agreement.

12. ASSIGNMENT, SUB-CONTRACTING AND CHANGE IN CONTROL

- 12.1. No party may cede, delegate or assign or in any way transfer to anyone or encumber any of its rights or obligations in terms of this agreement, without the prior written consent of the other party, who undertakes not to delay or withhold its consent unreasonably.
- 12.2. The Service Provider may appoint a competent sub-contractor of its choice to assist it in the rendering of the Services subject to prior written approval by DPME. Approval for the appointment of a subcontractor included in the proposal by the Service Provider (annexure "D") is deemed to have been given unless specifically indicated to the contrary by DPME in writing.
- 12.3. The appointment by the Service Provider of sub-contractor(s) does not constitute cession, delegation or assignment of the Service Provider rights, duties and obligations in terms of this agreement.
- 12.4. The Service Provider warrants the quality of, and remains entirely responsible to DPME, for any work or services undertaken by a sub-contractor(s) appointed by the Service Provider in respect of the rendering of the Services.
- 12.5. The Service Provider shall not permit the controlling interest which vests in it on the date of signing of this agreement to be transferred to any other person(s) or entity(ies) without the prior written consent of DPME, which consent DPME may not withhold or delay unreasonably.

13. DOMICILIUM AND NOTICES

- 13.1. The parties hereby select for all purposes of this agreement as their respective *domicilia citandi et executandi* the addresses mentioned next to their names in the Schedule or any such other address as the parties may notify each other of in writing from time to time, for the delivery of all notices and/or processes thereto.
- 13.2. Any notice addressed by any party to the other party shall -
- 13.2.1. if delivered by hand at the address of its *domicilium* in terms of this clause, be deemed to have been duly received by the addressee on the date of delivery; or
 - 13.2.2. if posted by prepaid registered post to the addressee's *domicilium* in terms of this clause, be deemed to have been received by the addressee on the fifth day following the date of such posting; or
 - 13.2.3. if sent by telefax to his telefax number in terms of this clause be deemed to have been duly received by the addressee on date of successful transmission thereof, or on the next Business Day if sent after 16:30.
 - 13.2.4. if sent by email, be deemed to have been duly received by the addressee on the date of sending, or on the next Business Day if sent after 16:30, only if the email notice requests an electronic mail response acknowledging receipt and the responding email message –
 - a. clearly refers to the specific email message to which it is responding; and
 - b. includes a copy of the text of such message.
- 13.3. Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

14. GENERAL

- 14.1. Entire Agreement: The parties hereby acknowledge that the agreement concluded between them constitutes the entire agreement between them and that no other conditions, stipulations, warranties nor representations whatsoever, have been made by any party or that party's agent, other than as specifically included herein.
- 14.2. No Indulgence: No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment provided for in this agreement or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of or otherwise affect any of that party's rights in terms of or arising from this agreement, or prevent such party from importing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

Initials - 1: 2: 3: 4: 5: 6:

SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

- 14.3. No Variation: The parties agree that no variation of, addition to, consensual cancellation or novation of this agreement in its entirety or of any term or condition thereof shall be of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the parties or their authorised representatives hereto.
- 14.4. Limitation of liability: The liability of any party to this agreement for the aggregate of all claims due to neglect, omission or error is limited to the value of the contract and no party can be held liable for any consequential damages of any nature unless determined so by a court of law. This limitation shall not apply to the cost of repairing or replacing defective equipment supplied by the Service Provider.
- 14.5. Continued Enforceability: Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 14.6. Governing Law: This Agreement is governed by and construed exclusively in accordance with the laws of South Africa. The principles governing Conflict of Laws are expressly excluded. The courts of South Africa have exclusive jurisdiction for all purposes of this agreement irrespective of the moment or place of actual contract formation.

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Initials - 1: 2: 3: 4: 5: 6:

SERVICE LEVEL REQUIREMENTS AND TIME FRAMES

[NOTE: TO BE ATTACHED]

Annexure C must contain a detailed scope of work and work plan, inclusive of:

- Definition of deliverables
- Methodology and indicative allocation of resources
- Milestones and associated payment schedule (aligned to Annexure A)
- Project management arrangements

Initials - 1: 2: 3: 4: 5: 6:

PROPOSAL SUBMITTED BY SERVICE PROVIDER

[NOTE: TO BE ATTACHED]

Initials - 1: 2: 3: 4: 5: 6: