

**MASTER AGREEMENT FOR THE SUPPLY OF GOODS AND/OR SERVICES**

**between**

**NISSAN SOUTH AFRICA PROPRIETARY LIMITED**

**and**

**THE PARTY STIPULATED AS THE SUPPLIER IN A PURCHASE ORDER OR  
A SCOPE OF WORK**

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## **PART A – INTRODUCTION**

### **1 INTERPRETATION**

In this Agreement –

- 1.1 headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement;
- 1.2 words importing natural persons shall include a reference to artificial or juristic persons and *vice versa*;
- 1.3 a reference to any one gender shall include a reference to the other genders;
- 1.4 a reference to the singular shall include a reference to the plural and *vice versa*;
- 1.5 a reference to a Party shall include a reference to that Party's successors and assigns;
- 1.6 annexures to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof. If any conflict arises in respect of the provisions contained in this Agreement and any annexure attached hereto, the provisions contained in this Agreement shall take precedence;
- 1.7 where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter;
- 1.8 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.9 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, calendar months or calendar years, respectively;
- 1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause

in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement;

- 1.11 expressions defined in clause 1.18 shall bear the same meanings in the Annexures to this Agreement;
- 1.12 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;
- 1.13 the termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such termination, or those which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.14 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Commencement Date, and as amended or substituted from time to time;
- 1.15 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on either Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.16 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a Party may be or become subject; and
- 1.17 the use of the word "**including**", "**includes**" or "**include**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.

1.18 the following words and expressions shall have the meanings set out below and cognate words and expressions have corresponding meanings –

1.18.1 "**AFSA**" – the Arbitration Foundation of Southern Africa, or its successor in title;

1.18.2 "**Agreement**" – this document together with all of its annexures, each as amended from time to time;

1.18.3 "**Applicable Law**" - any and all statutes and subordinate legislation, common law, regulations, ordinances and by-laws, directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, court, governmental, intra-governmental or supra-national body, agency, department or any regulatory, self-regulatory or other authority or organisation and other similar provisions from time to time, compliance with which is mandatory;

1.18.4 "**Associated Company**" - any company which from time to time is a direct or indirect holding company of the Company; or any direct or indirect subsidiary of any such holding company or of the Company;

1.18.5 "**Auditors**" – the auditors of NSA for the time being;

1.18.6 "**BCEA**" – the Basic Conditions of Employment Act, No 75 of 1997;

1.18.7 "**Business Days**" - any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.18.8 "**Commencement Date**" – the date stipulated as such -

1.18.8.1 in the relevant Purchase Order in question placed by NSA with the Supplier; or

1.18.8.2 in the relevant SOW in question entered into between NSA and the Supplier,

from time to time and for the time being;

- 1.18.9            **"Confidential Information"** – information or data in whatsoever form or medium which is disclosed by the disclosing party or otherwise comes to the knowledge of the receiving party during the course of acting pursuant to this Agreement, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed to be of a confidential nature and includes, without limitation the terms and conditions of this Agreement and any information relating to a Party's –
- 1.18.9.1            business, business policies, business plans, business strategies, pricing models and other business and commercial information; and
- 1.18.9.2            know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts;
- 1.18.9.3            potential customers, customer lists, sales, sales figures and products;
- 1.18.9.4            technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
- 1.18.9.5            past, present and future research and development;
- 1.18.10            **"Contract Price"** – the purchase price payable by NSA to the Supplier in consideration for the sale and delivery of Goods as set out in each applicable Purchase Order and/or the consideration payable by NSA to the Supplier for the rendering of a Service/s as set out in each relevant Purchase Order and/or SOW, as applicable;
- 1.18.11            **"Data Protection Legislation"** - the Protection of Personal Information Act No 4 of 2013, the EU General Data Protection Regulation 2016/679 and any applicable data protection laws that may be in force in South Africa from time to time;
- 1.18.12            **"Defective Goods"** – any Goods which –
- 1.18.12.1            do not comply with or conform to any Applicable Laws;

- 1.18.12.2 is not merchantable and/or safe and/or fit for the purpose for which it was produced; or
- 1.18.12.3 is defective, prone to failure, constitutes a hazard and/or is unsafe as contemplated in section 53 of the Consumer Protection Act, No 68 of 2008;
- 1.18.13 "**Delivery Date**" – the date on which the Supplier is obliged to deliver the Goods forming the subject matter of a Purchase Order to the Nominated Delivery Address;
- 1.18.14 "**EEA**" – the Employment Equity Act, No 55 of 1998;
- 1.18.15 "**Entity**" – includes any natural or juristic person, association, body corporate, business, close corporation, company, concern, enterprise, firm, joint venture, partnership, trust, undertaking, voluntary association and any similar entity;
- 1.18.16 "**Force Majeure Event**" - any cause beyond the reasonable control of a Party, including but not limited to any act of God, any restriction, prohibition, intervention, investigation, request, seizure or other act of any governmental or regulatory authority (such as customs authorities), agency, body or enquiry or any law, regulation or order of a competent authority, any strike, lock-out or other industrial dispute or labour trouble (but excluding any strike, lockout, industrial dispute or labour trouble involving solely the Supplier's workforce), any shortage of or inability to obtain materials or fuel or power or transportation, or any riot, commotion, war (whether declared or not) or civil or military unrest, any pandemic, fire, explosion, storm, flood, earthquake and/or other weather condition;
- 1.18.17 "**Goods**" – the goods to be sold and delivered by the Supplier to NSA as stipulated in each relevant Purchase Order;
- 1.18.18 "**Insolvency Act**" – the Insolvency Act, No 24 of 1936;



- 1.18.19        **"Insolvency Event"** – in relation to any person or Entity, the occurrence of any of the following events or circumstances –
- 1.18.19.1        a meeting of that person or Entity being convened to consider or pass a resolution, or a declaration is made in respect of that person or Entity, a petition is presented in respect of that person or Entity, legal proceedings are commenced by or in respect of that person or Entity or any other step is taken, for the provisional or final winding-up, curatorship or dissolution of such person's or Entity's assets, business, undertaking or estate, or with a view to a composition, assignment or arrangement with such person's or Entity's creditors;
- 1.18.19.2        such person or Entity being or becoming unable (or admitting its inability) to pay its debts generally as they fall due or being (or admitting to being) otherwise insolvent or stopping, suspending or threatening to stop or suspend payment of all or a material part of its debts or making a general assignment or arrangement or composition with, or for the benefit of, its creditors (or any class of them) or a moratorium is agreed or declared in respect of, or affecting, all or a part of its indebtedness;
- 1.18.19.3        such person or Entity commencing negotiations or taking any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof) in circumstances where it is unable to meet its obligations as and when they fall due, or such person or Entity proposing to commence any such negotiations or take any such steps;
- 1.18.19.4        such person's or Entity's liabilities exceed its assets (fairly valued);
- 1.18.19.5        any business rescue proceedings being commenced against it or a resolution being proposed to place that person or Entity under supervision at any duly convened meeting of the shareholders or board of directors of that person or Entity;
- 1.18.19.6        a meeting of that person or Entity being convened to consider or pass a resolution, or a declaration being made in respect of that person or

Entity, a petition being presented in respect of that person or Entity, legal proceedings being commenced by or in respect of that person or Entity or any other step being taken, to commence business rescue proceedings in respect of that person or Entity;

1.18.19.7 any liquidator, curator, judicial manager, business rescue practitioner or similar officer being appointed in respect of such person or Entity or any part of its assets, undertaking, business or estate or such person or Entity (or any organ of that person or Entity) requests such appointment;

1.18.19.8 that person or Entity ceasing to be in a position to pay its debts and meet its other obligations as and when they fall due in the normal course of business;

1.18.19.9 that person or Entity committing any act which, if it were a natural person, would be an act of insolvency as contemplated in the Insolvency Act; or

1.18.19.10 any event occurring or circumstance arising which is analogous to any of the events referred to in clauses 1.18.19.1 to 1.18.19.9 (both clauses inclusive);

1.18.20 **"Intellectual Property Rights"** collectively –

1.18.20.1 copyright, patents, know-how, confidential information, database rights, and rights in trademarks and designs (whether registered or unregistered);

1.18.20.2 applications for registration and the rights to apply for registration, for any of the above; and

1.18.20.3 other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

1.18.21 **"LRA"** - the Labour Relations Act, No 66 of 1995;

- 1.18.22        **"Nominated Delivery Address"** – the physical address nominated in writing by NSA in the relevant Purchase Order;
- 1.18.23        **"NSA"** - Nissan South Africa Proprietary Limited, registration number 1963/007428/07, a private company registered and incorporated in accordance with the laws of South Africa;
- 1.18.24        **"NSA Data"** collectively -
- 1.18.24.1        data provided by NSA, any third party or private individual in respect of or on behalf of NSA to the Supplier relating to NSA's business or its customers;
- 1.18.24.2        NSA's data which the Supplier processes or in respect of which the Supplier comes into possession pursuant to the supply of the Goods and/or the rendering of a Service/s; and
- 1.18.24.3        data specific to the Goods and/or Services which the Supplier generates, processes or supplies to NSA in the supply of the Goods and/or the rendering of a Service/s;
- 1.18.25        **"Parties"** - collectively, NSA and the Supplier, and a reference to **"Parties"** encompasses a reference to each individually;
- 1.18.26        **"Personal Information"** – any information defined as such or information treated as personal information or data under the Data Protection Legislation;
- 1.18.27        **"Purchase Order"** - NSA's written order (either in writing, by telefax or e-mail, as the case may be), issued to the Supplier by NSA, to supply Goods and/or render Services from time to time in terms of this Agreement (which Purchase Order is made subject to and incorporates the terms of this Agreement by reference);
- 1.18.28        **"Representative"** - has the meaning given to it in clause 24.1;

- 1.18.29        "**Services**" - any service to be rendered by the Supplier to NSA stipulated in a Purchase Order and corresponding SOW, as applicable;
- 1.18.30        "**Service Levels**" - the service levels which will apply to the rendering of Services by the Supplier to NSA as stipulated in the relevant SOW (as applicable);
- 1.18.31        "**South Africa**" – the Republic of South Africa;
- 1.18.32        "**SOW**" - a scope of work for a Service/s to be rendered by a Supplier to NSA, substantially in the form of the scope of work attached hereto marked Annexure B;
- 1.18.33        "**Supplier**" - the party stipulated as the Supplier in a Purchase Order and/or SOW, as applicable;
- 1.18.34        "**Supplier's Personnel**" - any partner, employee, freelancers, agent, consultant, independent associate, service provider, sub-contractor and the staff of such sub-contractor, or any other authorised representatives of the Supplier;
- 1.18.35        "**Tax Invoice**" - the document as required by Section 20 of the VAT Act;
- 1.18.36        "**TES**" - a Temporary Employment Service as defined in the LRA;
- 1.18.37        "**Termination Date**" - the date upon which this Agreement is lawfully terminated in accordance with its terms or under Applicable Law for whatsoever reason and however arising;
- 1.18.38        "**VAT**" - Value-Added Tax levied in terms of the VAT Act; and
- 1.18.39        "**VAT Act**" – the Value Added Tax Act, No 89 of 1991.

## 2 **TERM**

This Agreement shall –

- 2.1 commence on the Commencement Date; and
- 2.2 subject to the provisions of this Agreement, continue thereafter until this Agreement is terminated in accordance with its terms or in terms of Applicable Law.

## 3 **NATURE OF A PURCHASE ORDER / SOW**

### 3.1 **Purchase Order**

- 3.1.1 This Agreement (read together with a Purchase Order and/or SOW, as applicable) is the only basis upon which NSA is prepared to contract with the Supplier and this shall govern the relationship between the Parties to the exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in any documentation from the Supplier whatsoever shall form part of this Agreement or be binding on NSA.
- 3.1.2 All Purchase Orders placed with the Supplier by NSA from time to time during the duration of this Agreement shall be subject to, mutatis mutandis, the terms and conditions contained in this Agreement, notwithstanding the fact that a Purchase Order may be placed with the Supplier subsequent to the Commencement Date.
- 3.1.3 Each Purchase Order shall be regarded as a separate contract on the terms and conditions contained in this Agreement for the supply and delivery of Goods and/or provision of a Service/s ordered therein.
- 3.1.4 No binding agreement shall come into force between NSA and the Supplier in respect of the supply of any Goods and/or the rendering of a Service/s unless or until NSA issues a duly signed Purchaser Order and/or SOW in respect of such Goods and/or Service/s to be supplied by the Supplier to NSA.

- 3.1.5 The Parties agree that prior to commencing with the supply of Goods, a Purchase Order/s will be issued by NSA to the Supplier and each properly executed Purchase Order will form an integral part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 3.1.6 Insofar as any term, provision or condition contained in a Purchase Order conflicts with a term, provision or condition contained in this Agreement, the term, provision or condition in the Agreement shall prevail.
- 3.1.7 By fulfilling the Purchase Order, in whole or in part, the Supplier accepts this Agreement to the exclusion of all other terms.
- 3.1.8 Each Purchase Order shall be regarded as a separate contract ("**Individual Contract**") on the terms and conditions stipulated in this Agreement.
- 3.1.9 On the placement of a Purchase Order by NSA on the Supplier, a sale of the Goods forming the subject matter of the Purchase Order shall be deemed to have been concluded between the Supplier and NSA in terms of an Individual Contract.

## 3.2 **SOW**

- 3.2.1 In order to enable the effective management of the expectations of the Parties relating to any Service and the management of the quality of the Service Levels, NSA will issue a Purchase Order to the Supplier and the Parties will conclude and sign a SOW in respect of each Service to be rendered by a Supplier to NSA, which SOW will contain the duration of the Service (but which duration shall not exceed the duration of this Agreement) and shall be substantially in the format set out in Annexure B hereto.
- 3.2.2 Each SOW (together with the relevant Purchase Order issued by NSA to the Supplier in respect of the applicable Service) shall be regarded as a separate contract ("**Individual Contract**") on the terms and conditions stipulated in this Agreement.

- 3.2.3 Upon the issue of a Purchase Order by NSA to the Supplier in respect of the relevant Service and signature of a SOW, an Individual Contract for the rendering of the Service/s by the Supplier to NSA shall be deemed to have been concluded between the Supplier and NSA mutatis mutandis upon the terms and conditions of this Agreement.
- 3.2.4 Upon finalisation of a SOW by the Parties, such SOW shall be governed by and form part of this Agreement, provided that –
- 3.2.4.1 should any specific SOW be terminated by either Party, such termination shall not affect the continuation or enforceability of any other SOW or this Agreement;
- 3.2.4.2 should this Agreement be terminated for whatsoever reason in accordance with its terms, all SOWs entered into between NSA and the Supplier shall, contemporaneously with the termination of this Agreement, also terminate;
- 3.2.4.3 if this Agreement is amended by the Parties in accordance with the provisions of this Agreement, all SOWs in place at the time of such amendment shall be interpreted with reference to the amended Agreement, unless expressly otherwise agreed in writing by the Parties; and
- 3.2.4.4 if any specific SOW is to be amended by the Parties in accordance with the provisions of this Agreement, only such SOW shall be amended and such amendment shall not apply to any other SOW in force at the relevant time.
- 3.2.5 In the event that the Supplier is required to provide any Service prior to the conclusion of a SOW relating to such Service, the Supplier shall render such Service in terms of the relevant Purchase Order and in such a manner and with such care and skill as may be reasonably expected from an entity appointed to perform services similar to the procured Services.

## **PART B – SUPPLY OF GOODS**

### **4 SALE**

The Supplier hereby sells to NSA, which purchases from the Supplier, the Goods stipulated in the Purchase Order, as applicable, on the terms and conditions stipulated in this Agreement (and as read with the Purchase Order in question).

### **5 PLACING OF PURCHASE ORDERS**

- 5.1 NSA shall order the Goods it requires to be sold and delivered by the Supplier to NSA by submitting a Purchase Order to the Supplier.
- 5.2 Each Purchase Order shall specify the quantities and the Delivery Date for each item or items of the Goods.
- 5.3 The Supplier shall be obliged to supply to NSA the Goods ordered in terms of a Purchase Order.

### **6 DELIVERY OF GOODS**

- 6.1 Unless otherwise specified in the relevant Purchase Order, Goods ordered and purchased by NSA in terms of this Agreement shall be delivered by the Supplier to the Nominated Delivery Address.
- 6.2 The date for delivery of the Goods shall be as specified by NSA in the Purchase Order or such other date as may be agreed between the Parties in writing.
- 6.3 The Supplier shall ensure that each delivery is accompanied by a delivery note and tax invoice setting out the relevant Purchase Order number.
- 6.4 The Goods shall be delivered in the quantities stipulated in the Purchaser Order or as otherwise agreed by NSA in writing prior to delivery of the Goods. If the Supplier delivers less than the agreed quantity of Goods, NSA may reject the whole or any part of the Goods and rescind the Purchase Order or accept the partial delivery on the basis that the Supplier shall assume the costs of all additional expenses, losses or liability that it may suffer or incur as result of



such partial delivery. If the Supplier delivers more than the agreed quantity of Goods, NSA may either -

- 6.4.1 accept all of the Goods without liability to the Supplier for any additional payment; or
- 6.4.2 reject the Goods which exceed the agreed quantity which Goods shall be collected by the Supplier at its expense within 7 (seven) days of delivery, during normal business hours.
- 6.5 NSA will be deemed to have taken delivery of the Goods as soon as the Supplier has completed off-loading and stacking the Goods at the Nominated Delivery Address.
- 6.6 The Supplier shall be liable for any and all costs, fees and expenses associated with the delivery to and the off-loading of the Goods at the Nominated Delivery Address.
- 6.7 All Goods delivered by NSA shall be properly packaged, marked and delivered at Supplier's expense in accordance with the requirements of NSA.
- 6.8 Time for delivery of Goods and performance of Services shall be of the essence.
- 6.9 Acceptance of all Goods shall be subject to inspection and testing by NSA upon delivery. In the case of any Goods being found to be defective at any time after delivery thereof to NSA in any way or otherwise unable to meet NSA's specifications, NSA shall have the right to reject such Goods within a period of 12 (twelve) months after delivery thereof to NSA. In the event of rejection of any such Goods, the Supplier shall forthwith deliver replacement Goods at no additional cost to NSA. Payment by NSA shall not constitute acceptance by NSA that the Goods or Services are in conformity with the specifications in respect thereof stipulated in the relevant Purchase Order.
- 6.10 When fulfilling its delivery obligations of the Goods under this Agreement, the Supplier undertakes to comply with -
  - 6.10.1 all Applicable Laws; and

6.10.2 all relevant policies, systems or procedures of NSA, as notified to the Supplier from time to time.

## **7 RISK AND BENEFIT/OWNERSHIP**

7.1 The title in the Goods shall pass to NSA upon payment of the Contract Price for the Goods or on acceptance of the Goods when delivered by the Supplier to NSA, whichever occurs first.

7.2 The Goods shall remain at the risk of Supplier until delivery to NSA is complete in accordance with clause 6.5 and until NSA has accepted that the Goods are in accordance with the specifications of the Agreement.

## **8 QUALITY AND DEFECTS**

8.1 The Supplier warrants, represents and undertakes to NSA that the Goods shall –

8.1.1 be new and unused;

8.1.2 be free from defect in design, materials and workmanship and remain so for the period of 1 (one) year from the date of acceptance of the Goods in accordance with clause 6.9;

8.1.3 be of the best available design, of the best quality, material and workmanship;

8.1.4 be without fault;

8.1.5 be fit for any purpose held out by the Supplier or made known to the Supplier by NSA, expressly in the Purchase Order or by implication;

8.1.6 conform in all respects with the Purchase Order and specification, quality and reliability standards and/or patterns supplied and advised by NSA to the Supplier and otherwise meet NSA's requirements.

8.1.7 comply with all Applicable Laws, including rules, regulations, orders, conventions, ordinances or standards of the country of destination or which

relate to the manufacture, packaging, labelling, transportation, importation, licensing, approval or certification of the Goods, including those relating to environmental matters, wages, hours, and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety. At NSA's request, Supplier shall certify in writing its compliance with any or all of the foregoing. NSA requires strict compliance with this provision and has the right to immediately terminate a Purchase Order if there is a breach hereof;

- 8.1.8 not constitute defective goods; and
- 8.1.9 comply with all other warranties implied or provided for by Applicable Law at the place of business of the Supplier and NSA.
- 8.2 The Supplier shall ensure that at all times it has and maintains in terms of Applicable Law all the licences, permissions, authorisations, consents and permits that it need to carry out its obligations under this Agreement in respect of the Goods and/or supply of the Services.
- 8.3 The Supplier shall (at its expense) provide in respect of all Goods all applicable certificates (including, certificates of analysis, tests, inspection or origin), operating and safety instructions, warning notices and customs documentation and (on request or where otherwise expressly or by implication required) written assurance that the Goods are and will continue to be in compliance with all Applicable Law. All such certificates and documentation shall be provided whenever requested by NSA (and, in any event, at the time of delivery of the Goods and/or supply of the Services).
- 8.4 Each of the warranties, representations and undertakings set out in this clause 8 shall be a separate warranty, representation and/or undertaking and in no way be limited or restricted by reference to or inference from the terms of any other warranty, representation or undertaking or by any other words in this Agreement.

## **9 IMPORT DUTY/FREIGHT COST**

- 9.1 To the extent that the Supplier is required to pay any import duty in terms of Applicable Law on any of the Goods ordered by NSA pursuant to a Purchase Order, the Supplier (by virtue of accepting the Purchase Order) hereby acknowledges and agrees that it shall be solely liable for the payment of such import duty to the relevant authority and the Supplier shall have no recourse against NSA in this regard.
- 9.2 All freight cost incurred or to be incurred to have any of the Goods ordered by NSA pursuant to a Purchase Order by the Supplier to the Nominated Delivery Address shall be borne and paid by the Supplier.

## **PART C – RENDERING OF A SERVICE/S**

### **10 RENDERING OF A SERVICE/S**

- 10.1 The Supplier shall, from the Commencement Date set out in the Purchase Order and/or SOW, as applicable, and for the duration stipulated in the relevant Purchase Order and/or SOW, provide the Service/s to NSA in accordance with the terms of this Agreement (read together with the relevant Purchase Order and/or SOW, as applicable).
- 10.2 The Supplier shall meet any performance date for the Service specified in the Purchase Order, the SOW or notified to the Supplier in writing by NSA, as applicable.
- 10.3 In providing the Services, the Supplier shall:
- 10.3.1 co-operate with NSA in all matters relating to the Services, and comply with all instructions of NSA;
  - 10.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 10.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient numbers to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

- 10.3.4 ensure that the Service/s and the products of any Service/s will conform with all descriptions and specifications set out in the Purchase Order and/or the SOW, as applicable, and that the products of any Services shall be fit for any purpose expressly or impliedly made known to the Supplier by NSA;
- 10.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Service/s;
- 10.3.6 use the best quality goods, materials, standards and techniques, and ensure that the products of the Services, and all goods and materials supplied and used in the Services or transferred to NSA, will be free from defects in workmanship, installation and design;
- 10.3.7 obtain and at all times maintain all necessary licences and consents required to render the Service/s, and comply with all Applicable Laws;
- 10.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of NSA's premises;
- 10.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by NSA to the Supplier ("**NSA Materials**") in safe custody at its own risk, maintain the NSA Materials in good condition until returned to NSA, and not dispose or use the NSA Materials other than in accordance with NSA's written instructions or authorisation;
- 10.3.10 not do or omit to do anything which may cause NSA to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that NSA may rely or act on the Services;
- 10.3.11 in accordance with good industry practice and the Applicable Laws, establish, maintain and document from time to time disaster recovery capabilities in relation to both the systems and practices it uses for the provision of the Goods and/or performance of the Services which shall enable the Supplier to resume provision of the Goods and/or performance of the Services in accordance with this Agreement after such provision or

performance is affected by a disaster or a material business interruption. The Supplier shall, on request, provide a copy of its plan(s) relating to disaster recovery arrangements and shall review and test such plan(s) on a regular basis and in any event no less than annually; and

10.3.12 designate in the applicable SOW certain personnel as key personnel who shall be dedicated to NSA's account.

## **11 DUTIES OF NSA**

NSA shall, for the duration of this Agreement –

11.1 render all reasonable assistance to the Supplier to enable it to provide the Services efficiently and timeously;

11.2 ensure the reasonable co-operation of all its employees with regards to the provision of the Services by the Supplier in terms of this Agreement; and

11.3 provide all relevant information as the Supplier may reasonably require to enable it to perform its obligations under this Agreement.

## **12 ADDITIONAL DUTIES OF THE SUPPLIER**

12.1 The Supplier shall exercise the requisite skill, care and diligence in the provision and conduct of the Services and shall carry out all of its responsibilities and obligations in terms of this Agreement –

12.1.1 timeously;

12.1.2 in a professional and efficient manner;

12.1.3 in accordance with the professional standards required of professional suppliers who render services in the nature of the Services; and

12.1.4 in accordance with sound commercial and administrative methods and practices.

12.2 The Supplier undertakes that throughout the duration of this Agreement, all information compiled, prepared, provided or disclosed by the Supplier to NSA in relation to the provision of the Services shall to the best of the Supplier's knowledge and belief be accurate, correct and reliable at the time that it is provided.

12.3 Notwithstanding the fact that the relationship between the Supplier and NSA shall not be construed as a partnership, the Supplier shall act with the utmost good faith in conducting the Services and discharging its obligations under this Agreement.

## **PART D – PAYMENT OF CONTRACT PRICE**

### **13 SUPPLIER'S REMUNERATION AND PAYMENT**

13.1 In consideration for the supply of the Goods and/or a Service/s by the Supplier to NSA, NSA shall pay the Contract Price to the Supplier.

13.2 The Contract Price shall be set out in each relevant Purchase Order and/or each relevant SOW (as applicable).

13.3 Where applicable, unless specifically otherwise agreed in this Agreement, NSA will reimburse to the Supplier all reasonable expenses incurred directly and solely in connection with the supply of the Goods and/or Services, provided that all such expenses are agreed by NSA in advance and -

13.3.1 incurred in accordance with NSA's standard travel and expenses policies;

13.3.2 passed on to NSA at cost with no administration fee; and

13.3.3 supported by the relevant receipts and invoices.

13.4 All Tax Invoices relating to the Contract Price, actual out of pocket expenses, actual travel and accommodation costs, where applicable, without mark-up or administration fees added and the Tax Invoice will, where applicable, include VAT as a separate item.

- 13.5 Tax Invoices shall be submitted together with the calendar month's statement and payment thereof shall be made within 30 (thirty) days from receipt of the end of the calendar month's statement by NSA to the Supplier, provided that the properly detailed calendar month's statements, Tax Invoices and supporting documentation reflecting the Contract Price stipulated in the relevant Purchase Order and/or relevant SOW (as applicable) are sent by the Supplier to NSA no later than the 10<sup>th</sup> (tenth) calendar day of the month after the month in which the Goods were sold and delivered to NSA and/or a Service/s was/were rendered by the Supplier to NSA.
- 13.6 In the event that NSA disputes any Tax Invoice, it shall notify the Supplier of the disputed items in writing within 10 (ten) Business Days of receipt of the relevant Tax Invoice and shall make payment to the Supplier in respect of the undisputed items in accordance with the provisions of clause 13.5. Any dispute in relation to a Tax Invoice shall be resolved in accordance with the provisions of clause 28.
- 13.7 NSA may deduct and set-off any amount owing at any time from the Supplier to NSA against any amount payable by NSA to the Supplier under the Agreement.
- 13.8 No increase in price shall be made (whether by way of example, on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) save in accordance with any price review process agreed in writing between the Parties.

#### 14 **VALUE-ADDED TAX**

- 14.1 Unless the context of the clause concerned clearly indicates that the amount concerned is inclusive of VAT, the Contract Price, and all other amounts to be paid in terms of this Agreement, shall be exclusive of VAT.
- 14.2 All or any VAT arising from the supply of the Goods and/or Services by the Supplier in terms of this Agreement shall become due for payment and shall be paid by NSA simultaneously with payment of the invoices in accordance with the provisions of clause 13.



- 14.3 Any dispute which may arise between the Supplier and NSA as to the liability for and/or payment of VAT (or the amount thereof) in terms of the preceding provisions of this clause shall be submitted for determination and be decided on by the chairman of the Auditors (or any director or partner of such firm nominated by the said chairman) (the "**Expert**"), it being agreed that -
- 14.3.1 the Expert shall act as an expert and not as an arbitrator; and
- 14.3.2 the Expert's decision shall be final and binding on the Parties, save for manifest error, and carried into effect.

## **PART E – GENERAL**

### **15 SUPPLIER'S PERSONNEL**

- 15.1 The Supplier's Personnel shall at all times be regarded as employees, agents or sub-contractors of the Supplier and no relationship of employer and employee shall arise between NSA and the Supplier's Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Supplier's Personnel by NSA.
- 15.2 The Supplier undertakes irrevocably in favour of NSA that it will do whatever is necessary to ensure that none of the Supplier's Personnel who are employed by the Supplier in connection with the supply of the Goods and/or Services (either directly or indirectly) will have any entitlement to, or expectation of, further employment on or in connection with the supply of the Goods and/or Services which forms the subject matter of this Agreement beyond the termination (for any reason whatsoever) of this Agreement.
- 15.3 Unless specifically agreed otherwise between the Parties, the Supplier's Personnel shall at all times be subject to and work under the direction and control of the Supplier and the Supplier shall nominate management representative/s to interface with NSA's management to ensure that the lines of control remain distinct and separate.
- 15.4 The Supplier warrants that the Supplier's Personnel have the necessary training, expertise, work permits and qualifications to supply the Goods and/or Services and are entitled to work in South Africa.

- 15.5 The Supplier shall comply and ensure that the Supplier's Personnel comply with all NSA's reasonable requirements, as advised to the Supplier from time to time, concerning the conduct of the Supplier's Personnel at any NSA premises or any other premises upon which the Goods and/or Services are to be supplied, including but not limited to policies and procedures.
- 15.6 NSA reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any of the Supplier's Personnel whose admission or presence would, in the reasonable opinion of NSA, be undesirable or who, in the sole discretion of NSA, represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing NSA's employees, provided that NSA notifies the Supplier of any such refusal, with reasons. The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under this Agreement. In the event that any of the Supplier's Personnel is refused admission and/or is removed from any premises where the Goods and/or Services are being supplied, the Supplier agrees to use all reasonable endeavours to ensure continuity in the supply of the Goods and/or Services.
- 15.7 NSA may from time to time require the Services to be rendered by the Supplier's Personnel at NSA's site.
- 15.8 The Supplier's Personnel will not be entrusted with any of the following activities in rendering the Services –
- 15.8.1 the handling of cash, negotiable instruments, or valuables;
- 15.8.2 making any management decisions or recommendations on behalf of or in relation to NSA;
- 15.8.3 approving or signing agreements or similar documents on behalf of NSA;
- 15.8.4 exercising any discretionary authority to commit or bind NSA;
- 15.8.5 deciding which recommendations of third parties to implement;

- 15.8.6 authorising, or independently capturing or generating financial transactions in NSA's financial records;
  - 15.8.7 setting policies and strategic direction for NSA;
  - 15.8.8 performing a financial reporting oversight role for NSA;
  - 15.8.9 taking responsibility for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework;
  - 15.8.10 taking responsibility for designing, implementing and maintaining internal control;
  - 15.8.11 acting as a director or officer, or in a management position of NSA;
  - 15.8.12 acting as a public spokesperson of NSA;
  - 15.8.13 having custody of NSA's assets;
  - 15.8.14 directing and taking responsibility for NSA's actions;
  - 15.8.15 originating or changing source documents or originating data, in electronic or other form; or
  - 15.8.16 making investment decisions on behalf of NSA, having discretionary authority over NSA's investments, executing a transaction to buy or sell NSA's investment, taking temporary possession of securities purchased by NSA, giving advice and recommendations on investments and investment strategies for NSA, or record keeping or reporting of portfolio balances or the transmission of investment selections for NSA.
- 15.9 All persons involved in the provision of the Services ("**Employees**") shall be employed or engaged by Supplier. Supplier shall be solely responsible for all local tax (including, without limitation, pay-as-you-earn and/or income tax) contributions and deductions on behalf of Supplier and the Employees (as well as submitting all necessary declarations to the South African Revenue Service)

and all arrangements relating to leave pay, pensions, medical and other benefits in respect of the Employees.

- 15.10 The Supplier acknowledges that it shall have all responsibility and liability for (and hereby indemnifies and holds NSA harmless against) all costs (including, without limitation, legal costs), taxes, charges levied or imposed, claims or demands, awards, penalties, fines, compensation, order, settlement pay, losses, liabilities, damages and expenses ("**Costs**") relating to the employment, engagement or termination of employment or engagement of its employees.
- 15.11 The Supplier hereby indemnifies and holds NSA harmless against all Costs which it or its Affiliates may suffer or incur arising out of or in connection with any claim by or on behalf of any of the Supplier's employees:
- 15.11.1 that relates to his/her employment or engagement in relation to the supply of the Goods and/or the provision of the Services;
- 15.11.2 arising out of or in connection with his/her dismissal or termination of his/her employment or engagement(as implemented locally and amended from time to time.

## 16 **NSA'S OBLIGATIONS**

NSA undertakes to –

- 16.1 promptly comply with any reasonable request by the Supplier for information, provided that –
- 16.1.1 such information is necessary for the Supplier to supply the Goods and/or Services;
- 16.1.2 the Supplier complies with all confidentiality and security policies and procedures with regard to the information and keeps such information strictly confidential; and
- 16.1.3 disclosure of the requested information is not prohibited or unlawful; and

16.2 subject to the provisions of clause 15, provide the Supplier and the Supplier's Personnel with reasonable access to its facilities as may be necessary to allow the Supplier to supply the Goods and/or Services and perform its obligations under this Agreement, provided that the Supplier's Personnel comply with all applicable NSA policies and procedures, as advised to the Supplier by NSA, from time to time.

## **17 SUPPLIER'S ADDITIONAL OBLIGATIONS**

17.1 The Supplier undertakes to -

17.1.1 respond promptly to all enquiries from NSA ;

17.1.2 inform NSA immediately of any dispute or complaint arising in relation to the supply of the Goods and/or Services;

17.1.3 conduct its business in a professional manner and supply the Goods and/or Services and perform its duties with honesty and integrity;

17.1.4 provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;

17.1.5 keep full records clearly indicating all transactions concluded by the Supplier relating to the supply of the Goods and/or Services for a period of at least 5 (five) years from the date of each such transaction;

17.1.6 obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the supply of the Goods and/or Services and the conduct of the business and activities of the Supplier;

17.1.7 comply with all regulations, relevant policies, systems or procedures of NSA, as notified to the Supplier from time to time and demonstrate commercial best practices, management and performance and ensure that the Supplier's Personnel and sub-contractors comply with the foregoing requirements;

- 17.1.8 update the validity of all renewable certifications, including but not limited to its tax clearance certificate and Broad Based Black Economic Empowerment scorecard verification certificate for the duration of this Agreement as and when required by Applicable Law. Should the Supplier fail to present NSA with such updated certificates as they become due, NSA shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement and under Applicable Law and notwithstanding any provision to the contrary contained herein, to terminate this Agreement forthwith without any liability and without prejudice to any claims which NSA may have for damages against the Supplier;
- 17.1.9 not allow a conflict of interest to develop between its own interests (or the interests of any of its other customers) and the interests of NSA;
- 17.1.10 not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- 17.1.11 not mislead NSA or its officers, employees and stakeholders, whether by act or omission;
- 17.1.12 not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish NSA's reputation or business image; and
- 17.1.13 immediately report to NSA any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with NSA or the supply of the Goods and/or Services.

## **18 NSA DATA AND INTELLECTUAL PROPERTY**

- 18.1 Ownership in and to all NSA Data and/or Intellectual Property, whether under its control or not, shall continue to vest in NSA and the Supplier shall not obtain any proprietary rights in any such NSA Data and/or Intellectual Property. For the avoidance of doubt, the Parties agree that the NSA Data and/or Intellectual

Property will at all times be the sole property of NSA and in order to assist NSA to identify and locate the NSA Data and/or Intellectual Property, the Supplier shall, where applicable, submit a monthly schedule to NSA specifying the NSA Data and/or Intellectual Property in its possession, where same is stored and, if backups exist, where those are stored.

- 18.2 The NSA Data and/or Intellectual Property in the possession of the Supplier or to which the Supplier may have access during the currency of this Agreement, may not be used, accessed and/or tampered with by the Supplier or the Supplier's Personnel for any purposes whatsoever other than as may be specifically required to enable the Supplier to comply with its obligations in terms of this Agreement.
- 18.3 The Supplier shall provide NSA with physical access to the NSA Data and/or Intellectual Property within 5 (five) days of receipt of a written request therefor and shall make such NSA Data and/or intellectual property reasonably available to NSA electronically in such manner as the Parties may agree.
- 18.4 The Supplier acknowledges and agrees, by virtue of its acceptance of the Purchase Order and/or SOW (as applicable), that all NSA Data and/or Intellectual Property that may come into existence as a result of the Supplier supplying the Goods and/or Services to NSA will automatically become the property of NSA. For clarity, by its signature hereto, the Supplier is obliged to transfer and/or assign to NSA any NSA Data and/or Intellectual Property which comes into existence as a result of the supply of Goods and/or Services by the Supplier to NSA.
- 18.5 The Supplier shall, on written demand from NSA return all of the NSA Data and/or Intellectual Property in its possession to NSA in the format such data is in at the time of such demand.

## **19 DATA PROTECTION LEGISLATION COMPLIANCE AND WARRANTY**

- 19.1 The Supplier herewith expressly undertakes and warrants in favour of NSA that it shall ensure that the processing of any NSA or any other data subject's (as defined in the Data Protection Legislation), by it, for and on behalf of NSA or any individual specifically authorised by NSA to process Personal Information, in

its capacity as the responsible party or operator (both as defined in the Data Protection Legislation), or in any other capacity whatsoever, takes place in accordance with the purposes and subject to the lawful conditions for Processing as contemplated in the applicable Data Protection Legislation.

- 19.2 Without limiting the generality of the foregoing, the Supplier herewith indemnifies NSA from any claim, damages, penalty, fine or other liability of any nature whatsoever and from whatsoever cause arising, or failing to ensure compliance with the applicable Data Protection Legislation in respect of the processing of any Personal Information of any data subject by the Supplier, including without limitation any failure to obtain the informed consent of the relevant data subject (where applicable), and/or a failure to ensure that the conditions for the lawful processing of Personal Information as required by the applicable Data Protection Legislation are adhered to in respect of such data subject's Personal Information.
- 19.3 In addition to the above, each Party warrants and undertakes in respect of all Personal Information that it may process on behalf of the other that it shall -
- 19.3.1 only process Personal Information for the purposes provided for in this Agreement and, in so doing, shall act solely on the instructions of the other Party. In particular, a Party shall not itself exercise control, nor shall they transfer, or purport to transfer, control of Personal Information to a third party, except as it may be specifically instructed to do so by the other Party or as may be agreed by the Parties;
- 19.3.2 keep Personal Information logically separate to data processed on behalf of any third party;
- 19.3.3 not process, apply or use Personal Information for any purpose other than as required for purposes of this Agreement;
- 19.3.4 maintain appropriate and sufficient technical and organisational security measures to protect Personal Information against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in compliance with the provisions of this Agreement, in particular



where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and

19.3.5 grant the other Party such reasonable access to its premises, computer, media and other information systems and records as may be reasonably required to enable the other Party to satisfy itself that it is complying with its obligations under this Agreement.

19.4 Each Party acknowledges and agrees that the other Party may receive legally binding demands from a law enforcement authority for the disclosure of, or other assistance in respect of, Personal Information, or be required by law, court order, warrant, subpoena, or other legal judicial process to disclose Personal Information to any person other than to it and that the Personal Information will not be in breach of this Agreement for complying with such obligations to the extent legally bound. The Personal Information shall notify the other Party as soon as reasonably possible of any such demand unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.

## 20 **WARRANTIES**

20.1 The Parties hereby warrant in favour of each other that -

20.1.1 they have full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative;

20.1.2 in proceeding with the execution of their obligations under and in terms of this Agreement they will comply with all statutory requirements imposed on them in terms of the appropriate legislation of South Africa.

- 20.2 In addition to any warranties contained elsewhere in this Agreement, the Supplier hereby warrants and undertakes in favour of NSA that for the duration of this Agreement –
- 20.2.1 the entering into and performance of the obligations contemplated in this Agreement do not amount to a contravention of its memorandum of incorporation, trust deed, founding statement or similar document; and
- 20.2.2 it is validly incorporated and existing under the Applicable Laws of South Africa;
- 20.2.3 the Supplier's Personnel will at all times act in a lawful and proper manner in accordance with the provisions of this Agreement;
- 20.2.4 it will employ a sufficient number of suitably qualified, trained and skilled the Supplier's Personnel to supply the Goods and/or Services;
- 20.2.5 it will discharge its obligations in terms of this Agreement and any Annexure, with due care, skill and diligence;
- 20.2.6 it will be solely responsible for the payment of remuneration and associated benefits, if any, of the Supplier's Personnel and for all local tax (including, without limitation, income tax) contributions and deductions on behalf of the Supplier and the Supplier's Personnel (as well as submitting all necessary declarations to the local tax offices) and all arrangements relating to leave pay, pensions, medical and other benefits in respect of the Supplier Personnel in accordance with any Applicable Laws;
- 20.2.7 it will supply the Goods and/or Services -
- 20.2.7.1 in a workmanlike manner and in accordance with the practices and professional standards of operations supplying goods and/or services similar to the Goods and/or Services;
- 20.2.7.2 in accordance with all Applicable Laws;

- 20.2.8 it will be solely responsible for the payment of any taxes due to the South African Revenue Service in accordance with any Applicable Laws, including VAT;
- 20.2.9 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## 21 INDEMNITY

- 21.1 The Supplier hereby indemnifies and holds NSA harmless against all liability, cost, loss or damages (including legal and other professional fees and expenses), interest and penalties awarded against or incurred or paid by NSA as a result of or in connection with -
- 21.1.1 any breach of any of the terms of this Agreement by the Supplier, its employees, agents or subcontractors;
- 21.1.2 any claim made against NSA for any actual or alleged infringement of any third party's Intellectual Property Rights arising out of, or in connection with the use, manufacture or supply of the Goods and/or receipt, use or supply of the product of the Services, to the extent that the claim is attributable to the act, omission or negligent performance of the Supplier, its employees, agents or subcontractors;
- 21.1.3 any claim made against NSA in respect of any liability, loss, damage, injury, cost or expense sustained by NSA, NSA's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to, arises from or is attributable to any act, omission or negligent performance of the Supplier, its employees, agents or subcontractors;
- 21.1.4 any cost, loss or liability NSA may suffer or incur as a result of any action or omission of an employee, contractor or agent of the Supplier whilst on NSA's premises; and

- 21.1.5 any claim made against NSA by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the act, omission or negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors.
- 21.2 Supplier hereby indemnifies NSA against all costs (including, without limitation, legal costs), taxes, charges levied or imposed, claims or demands, awards, penalties, fines, compensation, order, settlement pay, losses, liabilities, damages and expenses relating to the employment, engagement or termination of employment or engagement of Supplier's Personnel that may be instituted against NSA by any of Supplier's Personnel.
- 21.3 The Supplier hereby indemnifies NSA and holds it harmless against all costs referred to in clause 21.2 which it or its associated companies may suffer or incur arising out of or in connection with any claim by or on behalf of any of the Supplier's Personnel -
- 21.3.1 that relates to his/her employment or engagement in relation to the supply of the Goods and/or Services;
- 21.3.2 arising out of or in connection with his/her dismissal or termination of his/her employment or engagement (as implemented locally and amended from time to time.
- 21.4 Subject to clauses 21.5 and 21.6, neither Party will be liable to the other Party or a third party claiming through or on behalf of such Party for any indirect, special or consequential damages, whether foreseen or unforeseen, (including loss of profits) arising out of or related to this Agreement.
- 21.5 The Supplier acknowledges and agrees that the exclusions contemplated in clause 21.3 shall not apply in respect of any breach by the Supplier or any the Supplier's Personnel of the provisions of clause 25.

21.6 The Parties acknowledge and agree that the exclusions contemplated in clause 21.3 shall not apply in respect of any death or personal injury to any person.

21.7 Notwithstanding any provision to the contrary contained herein, neither Party shall be liable to the other for indirect or consequential losses or damages, including but not limited to indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature.

## 22 **INSURANCE**

22.1 Without limiting the liability of the Supplier under this Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against together with such risks which are customary in respect of transactions of a similar nature, including any liability it may have as a result of its obligations in terms of this Agreement for theft, destruction, death or injury to any person and damage to property.

22.2 The Supplier shall maintain such insurance cover in such amount and against such liabilities as NSA may reasonably require from time to time and shall provide a copy of its insurance policy to NSA on demand.

## 23 **SUB-CONTRACTING AND REPRESENTATION**

23.1 Unless otherwise stipulated in this Agreement, the Supplier may not use or employ sub-contractors without obtaining the prior written consent of NSA.

23.2 In any and all instances where the Supplier appoints sub-contractors, in accordance with the provisions of clause 23.1, the Supplier shall remain principally liable for all acts and omissions by its sub-contractors and for the supply of the Goods and/or Services under and in terms of this Agreement.

## 24 **REPRESENTATIVES**

24.1 For purposes of dealing with operational issues relating to the Goods and/or Services, each Party shall appoint a representative ("**Representative**") from time to time.

24.2 Either Party shall be entitled, from time to time, by written notice to the other to replace such Representative or to appoint additional Representatives.

24.3 The Party's hereby warrant to each other that each of their Representatives have the necessary authority to represent such Party in all matters relating to day to day operational issues arising out of this Agreement and to bind such Party to any decisions which are made by such Representative.

## 25 **CONFIDENTIAL INFORMATION**

25.1 Save for the exclusions set out in clause 25.3, each Party acknowledges that all material and information which has or will come into the possession or knowledge of the other in connection with this Agreement or the performance of the obligations hereunder, consists of confidential and proprietary information, which, if disclosed to third parties, will be damaging.

25.2 Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information of the other Party ("**Disclosing Party**") to which they have access or which otherwise becomes known to them during the currency of this Agreement.

25.3 The obligations of confidentiality contained herein shall not apply to any Confidential Information which the Receiving Party can show (and it shall be for the Receiving Party to prove this by documentary evidence) -

25.3.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or

25.3.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or

25.3.3 is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or

- 25.3.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 25.3.5 is disclosed with the written approval of the Disclosing Party; or
- 25.3.6 is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
- 25.3.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 25.4 The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to personnel and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 25.5 The Parties agree that the provisions of this clause 25 will survive the termination of this Agreement.
- 25.6 The Receiving Party shall procure that any party to whom it validly discloses the Confidential Information of the Disclosing Party, as contemplated in this clause 25 undertakes to respect the secret, confidential and proprietary nature thereof.

## 26 BREACH AND TERMINATION

- 26.1 Subject to the provisions of this clause 26, in the event of either Party ("**Defaulting Party**") committing a breach of any provisions of this Agreement and failing to remedy such breach by no later than 14 (fourteen) days after having received written notice from the other Party ("**Aggrieved Party**") to remedy such breach, the Aggrieved Party shall be entitled to terminate this Agreement immediately by notice in writing to the Defaulting Party, without

prejudice to its claim to recover damages from the Defaulting Party in respect of such breach.

26.2 Notwithstanding the provisions of clause 26.1, either Party may terminate this Agreement forthwith by notice in writing to the other Party in the event that the other Party –

26.2.1 is subject to an Insolvency Event; or

26.2.2 is unable to continue operating its business due to any licence, permit, certificate, consent, exemption or other legal requirement of a material nature expiring or being withdrawn, terminated or refused for any reason whatsoever.

26.3 Notwithstanding any provision to the contrary contained herein NSA may terminate this Agreement with immediate effect and without prejudice to any other rights it may have against the Supplier, including the right to claim and recover damages from the Supplier, by providing written notice of such termination to the Supplier in the event that the Supplier –

26.3.1 breaches the provisions of clause 25;

26.3.2 makes any statement or representation to NSA which NSA considers to be materially incorrect or untrue in connection with any information furnished by it in respect of this Agreement.

26.4 NSA may terminate this Agreement without cause by providing the Supplier with 30 (thirty) days written notice of such termination. The Parties agree that such termination by NSA shall not form the subject of any arbitration or review and shall be binding upon the Supplier, who shall have no claim of any nature or howsoever arising against NSA out of such termination, save for payment of all amounts which may be lawfully due and payable to the Supplier by NSA for Goods sold and delivered and/or for Services rendered pursuant to the provisions of this Agreement up to the expiry of the said period of 30 (thirty) days.



- 26.5 In the event that the Supplier's ability to supply the Goods and/or Services becomes diminished in a manner considered material by NSA, in its sole and unfettered discretion then such action shall be deemed to be a breach of this Agreement and, notwithstanding any provision to the contrary contained herein, shall entitle NSA to give notice as is provided for in clause 26.1 above.
- 26.6 Despite the duration of this Agreement and without detracting from NSA's rights of termination in terms of this clause 26, it is specifically agreed that NSA may terminate any SOW at any time by giving the Supplier 30 (thirty) days' prior written notice of such termination without having to provide any reason for termination.
- 26.7 Any termination of this Agreement pursuant to the provisions of this Agreement will be without prejudice to any claim which any Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.
- 26.8 Clauses 1, 3, 18, 19, 21, 25, 26, 27, 28, 29, 32, 34, 35 and 38 shall survive termination of this Agreement.

## **27 CONSEQUENCE OF TERMINATION**

- 27.1 The termination of this Agreement in accordance with the provisions of clause 26 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so, shall remain in force and in effect.
- 27.2 Upon termination of this Agreement, the Supplier will immediately deliver, and procure that the Supplier's Personnel will immediately deliver to NSA all deliverables and property belonging to NSA, which may be in the possession of, or under the control of the Supplier or the Supplier's Personnel and certify to NSA in writing that such deliverables and property has been returned.
- 27.3 To the extent that any of the deliverables and property referred to in clause 27.2 above are in electronic form and contained on non-detachable storage devices, the Supplier will provide NSA with unencrypted copies of same on magnetic media and will irretrievably destroy and delete any copies held by the Supplier

and/or the Supplier's Personnel, and shall notify NSA within 14 (fourteen) days of termination that the copies as referred to above have been deleted and destroyed.

27.4 In the event that this Agreement is terminated in accordance with its terms, NSA will pay to the Supplier all outstanding amounts due to the Supplier up until the date of such termination.

## 28 **DISPUTE RESOLUTION**

28.1 This clause is a separate, divisible agreement from the remainder of this Agreement and shall not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence or consensus, lack of authority or other cause relating in substance to the remainder of the Agreement and not to this clause.

28.2 Subject to the provisions of clause 14.3, the Parties agree that any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement including, without limitation, any dispute concerning -

28.2.1 the existence of this Agreement apart from this clause;

28.2.2 the interpretation and effect of this Agreement;

28.2.3 the Parties' respective rights or obligations under this Agreement;

28.2.4 the rectification of this Agreement;

28.2.5 the breach, or any matter arising out of the breach of this Agreement;

28.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Agreement apart from this clause is valid and enforceable,

shall be referred for resolution to the Managing Directors of each Party, who shall attempt to try and resolve the dispute by negotiation within 10 (ten) Business Days of such dispute being referred to them for resolution.

28.3 In the event that the dispute has not been resolved within the 10 (ten) Business Day period referred to in clause 28.2, the Parties agree that either Party may refer the dispute, in writing, for resolution by arbitration in accordance with the remaining provisions of this clause 28.

28.4 The Parties shall agree on the arbitrator. If agreement regarding the appointment of the arbitrator is not reached within 10 (ten) days after the matter having being referred to arbitration, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

28.5 The arbitration shall be held in Sandton and the Parties shall endeavour to ensure that it is completed within 90 (ninety) days after notice requiring the dispute to be referred to arbitration is given.

28.6 The arbitration shall be governed by the Arbitration Act, No 42 of 1965 and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

28.7 The decision of the arbitrator shall be final and binding on the Parties.

28.8 Notwithstanding the provisions of this clause 28, either Party may approach a Court of competent jurisdiction for urgent relief.

## 29 **FORCE MAJEURE**

29.1 Subject to clauses 29.2, 29.3 and 29.4, should either Party be unable to perform any of its obligations in terms of this Agreement as a result of a Force Majeure Event, then the other Party shall not be entitled to terminate this Agreement nor shall the other Party have any claim for damages of whatsoever nature against the Party unable to perform its obligations.

29.2 In the event of the Supplier claiming that a Force Majeure Event has occurred and such Force Majeure Event continues for a continuous period exceeding 5 (five) Business Days, NSA will be entitled to appoint any third parties on a

temporary basis to perform the obligations of the Supplier under this Agreement. In the event that the Supplier remains unable for more than 1 (one) month, to perform all or any of its obligations to NSA under this Agreement, as a result of a Force Majeure Event, NSA shall be entitled to terminate this Agreement with immediate effect on written notice, provided that neither Party shall have any claim against the other Party as a result of the aforesaid termination.

29.3 The Party claiming Force Majeure shall -

29.3.1 immediately give notice to the other Party detailing the circumstances on which it relies and an estimate of the likely duration of its inability to perform its obligations under the Agreement; and

29.3.2 when that Party knows that such inability to perform its obligations under the Agreement is likely to terminate and again when it actually terminates, immediately give notice thereof to the other Party.

29.4 The Parties shall co-operate and use all reasonable endeavours to overcome, or failing which, to minimise the effect of such inability of either Party to perform its obligations under the Agreement due to a Force Majeure Event.

### 30 **ASSIGNMENT**

30.1 The Supplier shall not cede, assign, delegate or otherwise transfer any of its rights and/or obligations in terms of this Agreement to any third party without the prior written consent of NSA.

30.2 NSA shall be entitled to cede, assign, delegate or otherwise transfer any of its rights and/or obligations in terms of the Agreement to any third party without the consent of the Supplier.

### 31 **SEVERABILITY**

All the provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall,

only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## 32 NOTICES AND DOMICILIA

- 32.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") as set out in each relevant Purchase Order and/or SOW (as applicable) for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum and the serving of any process.
- 32.2 Either Party shall be entitled, from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*) in South Africa and to vary its e-mail Domicilium to any other e-mail address.
- 32.3 Any notice given by a Party to the other ("**Addressee**"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.
- 32.4 Any notice given by a Party to the other, which is successfully transmitted by e-mail to the Addressee's e-mail Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the Business Day immediately succeeding the date of successful transmission thereof.
- 32.5 This clause 32 shall not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 32.
- 32.6 Any notice in terms of, or in connection with, this Agreement shall be valid and effective only if in writing and if received or deemed to have been received by the Addressee.

### **33 RELATIONSHIP AND DUTY OF GOOD FAITH**

- 33.1 The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the supply of the Goods and/or Services, act according to such standard.
- 33.2 The Supplier is an independent contracting party and the relationship between NSA and the Supplier in terms of this Agreement does not constitute, nor may be construed as, constituting a fiduciary relationship, a contract of agency, partnership or employment. The Supplier shall not represent or allow itself to be represented as an employee or agent of NSA.
- 33.3 The Supplier shall incur no liability of any nature whatsoever for or on behalf of NSA and the Supplier shall have no authority to bind NSA by any representations, statements or agreements made or concluded by it.
- 33.4 The Supplier undertakes that it shall not do anything or fail to do anything which may create the impression that it has authority to act, or in any other manner represent, bind or contract on behalf of NSA.
- 33.5 This Agreement will not constitute or give rise to a TES and/or employment relationship between NSA and the Supplier in terms of section 198 of the LRA or any other provision thereof. This is strictly an independent contractual relationship for the supply of the Goods and/or Services.
- 33.6 Notwithstanding anything to the contrary in this Agreement, whether express or implied, the Supplier specifically agrees and acknowledges that NSA's rights to terminate this Agreement shall be regulated by the law of contract alone and that the Supplier in supplying the Goods and/or Services to NSA is not "an employee" as defined in the LRA and the BCEA or any other labour legislation as amended or replaced from time to time.
- 33.7 In particular, the Supplier agrees that the provisions relating to dismissal, the residual unfair labour practice or automatic unfair dismissals provisions contained in the LRA or unfair discrimination provisions in terms of the EEA shall not be applied directly or indirectly in connection with this Agreement.

## 34 GENERAL

- 34.1 The provisions of this Agreement replace and supersede all other agreements and any amendments thereto, which exist or may have existed in any form whatsoever between them, with regard to the subject matter of this Agreement.
- 34.2 No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.
- 34.3 The terms of this Agreement form the sole contractual relationship between the Parties and no variation of this Agreement or this clause shall affect the terms hereof unless such a variation is reduced to writing and signed by both Parties.
- 34.4 Neither Party shall make or issue a formal or informal announcement, advertisement or statement to the media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person, other than a professional advisor or personnel involved in the supply of the Goods and/or Services, without the prior written consent of the other Party.
- 34.5 Prior drafts of this Agreement shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the Commencement Date.
- 34.6 For the purposes of this Agreement -
- 34.6.1 no data message, as defined in the Electronic Communications and Transactions Act, No 25 of 2002 ("**ECTA**"), other than an email shall constitute writing; and
- 34.6.2 no electronic signature or advanced electronic signature, as defined in ECTA, shall constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any consent or approval in terms of this Agreement.

34.7 The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party.

### **35 JURISDICTION AND GOVERNING LAW**

35.1 This Agreement (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the Parties in terms of, and arising out of, the conclusion, breach, cancellation and termination of the provisions of this Agreement) shall be governed by, and interpreted in accordance with, the laws of South Africa.

35.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, for the purposes of clause 28.8 or having an arbitration award made an order of court.

### **36 AUDIT**

36.1 The Supplier shall allow NSA's auditors (including internal audit staff and external auditors) and any inspectors NSA may designate as auditors from time to time, access at all reasonable times to any facility or part of a facility from which the Goods and/or Services are supplied for the purpose of verifying the accuracy of the Supplier's Tax Invoices and to verify compliance with this Agreement.

36.2 The Supplier shall provide to NSA's auditors and inspectors such assistance and co-operation as they may require in order to conduct and finalise the audit.

### **37 COSTS**

Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation and implementation of this Agreement.

### **38 SIGNATURE**

The terms and conditions stipulated in this Agreement shall be deemed to have been incorporated by way of reference and to have been accepted by each of the Parties hereto upon signature of each relevant Purchase Order and/or SOW (as applicable).





**ANNEXURE A – FORM OF PURCHASE ORDER**



**NISSAN SOUTH AFRICA PROPRIETARY LIMITED**

**SUPPLIER:**

[Name of Supplier]  
 (Registration number of Supplier [●])  
 [Physical and e-mail address of Supplier]  
 (VAT Registration Number: [●])  
 (the "Supplier")

Bill Wilson Building, Ernest Oppenheimer Street, Rosslyn  
 PO box 911010 Rosslyn 0200  
 Phone: +27-12-529-6000 Fax: +27-12-529-6820  
 Nissan Information Centre: 0800 NISSAN  
 www.nissan.co.za  
 Co. Reg No. 1963/007428/07  
 ("NSA")

**PURCHASE ORDER**

[Insert Purchase Order Number]

**Nominated Delivery Address**

Bill Wilson Building  
 Ernest Oppenheimer Street  
 Rosslyn; or

Such other physical address as may be agreed upon in writing between NSA and the Supplier

Date	[Insert Date]
Delivery Date	[Insert Date]
Supplier No.	[Insert Supplier Number]
Currency	ZAR
Payment Terms	Z001
Description	N/A
Buyer	[Insert Buyer]
Email	[Insert Buyer e-mail address]
Inco Terms	N/A
Description	N/A
Inco Terms (Part 2)	N/A

Item	Material/Description/Model Job	Tracking No	Requestor	Quantity UOM	Net Price	Net Amount
[●]	[Insert description of Goods/Services]	Inv [●]	[insert name]	[insert quantity]	[insert amount]	[insert amount]
					Net Value	[insert amount]
					15% VAT	[insert VAT amount]
					Total Amount	ZAR[insert amount]

**Nissan AMI Supplier Code of Conduct:**

The Supplier assures to follow the Nissan AMI Supplier Code of Conduct ("Code of Conduct Handbook for Third Parties") shared by Renault Nissan entities. The Supplier shall also educate its employees, sub-contractors and its related parties to strictly abide by the Nissan AMI Code of Conduct Handbook for Third Parties as amended from time to time.

**Legal Agreement**

Nissan South Africa's Master Agreement for the Supply of Goods and/or Services is incorporated herein by reference and is available on [www.nissan.co.za](http://www.nissan.co.za) or from Nissan South Africa's Purchasing Representative.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
 (Nissan South Africa Proprietary Limited)

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
 (Supplier)

**Bankers:**  
 First National Bank Ltd  
 PO Box 414, Pretoria 0001  
 Republic of South Africa  
 Tel.: +27-11-309-1000  
 Fax: +27-11-309-1182  
 Swift: FIRZAJJ523

**Account no.: 51421132287**  
 Type producer registration number: TPREG0040GAU  
 Customs registration number: 329938  
 VAT registration number: 4780106102

## **ANNEXURE B – FORM OF SCOPE OF WORK (SOW)**

### **1 INTRODUCTION**

- 1.1 The terms and conditions stipulated in NSA's Master Agreement for the Supply of Goods and/or Services (a copy of which is available from NSA's purchasing department and on NSA's website) applicable at the time of issue of a Purchase Order by NSA to the Supplier or the entering into of a SOW between NSA and the Supplier, as applicable, incorporated into this SOW by way of reference, shall, read together with this SOW, govern the Service/s to be rendered by the Supplier to NSA in terms of this SOW.
- 1.2 This SOW is entered into pursuant to the terms of the Agreement.

### **2 DEFINITIONS AND INTERPRETATION**

- 2.1 In this SOW, unless the context otherwise requires, capitalised terms used but not defined in this SOW shall have the meanings given to them in the Agreement.
- 2.2 Should either Party wish to make any change to this SOW, including its annexures, such change shall only take effect once reduced to writing and signed by both Parties. This same restriction applies to the waiving of this requirement, which cannot be overridden verbally or by action implying intention.
- 2.3 All provisions of the Agreement which are not expressly changed or excluded in this SOW shall be binding on the Parties in respect of this SOW.
- 2.4 This SOW shall commence on the Commencement Date as set out below.

### **3 CONTRACTING PARTIES**

- 3.1 Nissan South Africa Proprietary Limited (hereinafter referred to as "**NSA**"); and
- 3.2 [insert name] (hereinafter referred to as the "**Supplier**").

#### 4 REPRESENTATIVES OF THE PARTIES

4.1 The operational points of contact of the Parties under this SOW are as follows –

For NSA:

<b>Name:</b>	
<b>Position within NSA:</b>	
<b>Contact Details:</b>	

For the Supplier:

<b>Name:</b>	
<b>Position within the Supplier:</b>	
<b>Contact Details:</b>	

#### 5 DURATION

<b>SOW Commencement Date:</b>	
<b>SOW Termination Date</b>	

**6 SCOPE OF WORK**

<b>Description of Services</b>	
<b>Service Levels and other standards according to which Services are to be rendered</b>	

**7 CONTRACT PRICE**

<b>CONTRACT PRICE</b>	
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**8 OTHER SPECIFIC TERMS**

<b>Additional terms applicable to this SOW</b>	
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9 **EXECUTION**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2022  
for Nissan South Africa Proprietary Limited

**NOT FOR SIGNATURE**

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who warrants that he is duly  
authorised hereto

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2022  
for The Party stipulated as the Supplier in a  
Purchase Order or a Scope of Work

**NOT FOR SIGNATURE**

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who warrants that he is duly  
authorised hereto