



STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

1. Parties

- 1.1 **FOSKOR PROPRIETARY LIMITED** (registration number 1951/002918/07), a private company duly incorporated under the laws of South Africa ("**Foskor**"); and
- 1.2 **[•]** (registration number **[•]**), a private company duly incorporated under the laws of [South Africa] ("**Contractor**"),
- (collectively, the "**Parties**").

2. Introduction

The Contractor binds itself and undertakes to perform the services and/or deliver the goods as further detailed in the scope of work and/or the Letter of Award, attached hereto, marked [] subject to the terms and conditions set out in this Agreement.

3. Definitions

For purposes of this clause 3, the following terms have the meanings set forth below:

- 3.1 "**Agreement**" means these standard terms and conditions entered into between Foskor and the Contractor;
- 3.2 "**Applicable Law**" means all relevant legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any authority in South Africa, which have force of law or which it would be an offence not to obey, each as amended, replaced, re-enacted, restated or re-interpreted from time to time and shall include any trade, economic or financial sanctions laws or regulations or other restrictions enforced, imposed and administered from time to time by a sanctions authority (European Union, United Nations, Council of Europe, Governments of USA and UK and their agencies);
- 3.3 "**Affiliated Persons**" means the Contractor's officers, directors, employees, and/or agents, and/or any of its shareholders (and any other company Controlled by such shareholder), principals or owners acting on its behalf or in its interests;
- 3.4 "**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
- 3.5 "**Control**" has the meaning given to it in section 2 of the Companies Act No 71 of 2008 as amended;
- 3.6 "**Government Official**" means an officer, employee, agent or representative of any governmental authority, including a department or agency of any government or a government-owned or controlled entity, a candidate for political office, a political party, any official of a political party, any state-owned enterprise, social or public organization, or any member of a Government Official's immediate family. Examples of Government Officials include police officers, persons responsible for issuing official permits or licenses, health inspectors, labour/employment authorities, and employees of companies or entities owned by the government such as oil companies, the news media, transportation entities, hospitals, schools and universities;

- 3.7 **"Key Personnel"** means those personnel of the Contractor identified as key personnel in the Letter of Award whose removal or replacement requires Foskop's prior written consent;
- 3.8 **"Letter of Award"** means the letter of award issued by Foskop to the Contractor (and accepted by the Contractor) confirming the award of the contract for the supply of goods and/or the rendering of services on the terms and conditions set out in that letter of award and which may list essential terms which shall be incorporated into this Agreement;
- 3.9 **"Liquidated Damages"** means the predetermined amount of damages payable by the Contractor to Foskop for delay in performance or other specified breaches, as set out in the RFP and/or Letter of Award;
- 3.10 **"Performance Security"** means a bank guarantee, performance bond, or other security instrument in a form acceptable to Foskop, issued by a financial institution acceptable to Foskop, to secure the Contractor's performance of its obligations under this Agreement;
- 3.11 **"Personal Information"** has the meaning given to it in the POPIA;
- 3.12 **"Policies"** means Foskop policies relating to procurement, anti-corruption, health and safety, and supplier integrity matters, as amended from time to time as further set out in Annexure [] of this Agreement;
- 3.13 **"POPIA"** means the Protection of Personal Information Act, 4 of 2013, as amended;
- 3.14 **"RFP"** means a Request for Proposal issued for a competitive tender process initiated by Foskop pursuant to which this Agreement is awarded;
- 3.15 **"Signature Date"** means the last date on which this Agreement has been signed by each Party;
- 3.16 **"VAT"** means value-added tax levied in terms of the VAT Act; and
- 3.17 **"VAT Act"** means the Value-added Tax Act, 89 of 1991.

4. Specifications, quality requirements and warranty

- 4.1 The Contractor warrants and represents to Foskop that it shall in all respects comply with Foskop's requirements in respect of the services to be rendered / goods to be delivered in terms of the RFP and/or the Letter of Award.
- 4.2 The Contractor warrants further that if it is found by Foskop that the services to be rendered / goods to be delivered or any part thereof is defective and / or not in accordance with the agreed requirements and/or specifications, then the Contractor shall rectify the position at its own cost and expense without recourse to Foskop.

5. Performance Security

- 5.1 The Contractor shall on or before the Signature Date, provide confirmation of the Performance Security being available and maintain the Performance Security in the amount of [●]% of the total contract value as security for the due and faithful performance of the Contractor's obligations under this Agreement.
- 5.2 The Performance Security shall remain in full force and effect until [90] days after completion of all the Contractor's obligations under this Agreement, or until such earlier time as Foskop may agree in writing to its release.
- 5.3 Foskop may call upon the Performance Security in the event of any breach by the Contractor of its obligations under this Agreement, including but not limited to delays in performance, defective work, or failure to remedy defects within a pre-agreed time period of [].

6. Liquidated Damages

- 6.1 Without prejudice to any other rights or remedies available to Foskor, the Contractor shall pay Liquidated Damages to Foskor for any delay in performance, poor performance or other specified breaches as set out in this Agreement.
- 6.2 The payment of Liquidated Damages shall not relieve the Contractor from its obligation to complete performance or from any other obligations under this Agreement.

7. General warranties

- 7.1 The Contractor warrants to Foskor as at the Signature Date and for the duration of this Agreement that:
- 7.1.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;
 - 7.1.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;
 - 7.1.3 the Agreement constitutes legal, valid and binding obligations;
 - 7.1.4 it shall comply with all Applicable Law/s and Policies; and
 - 7.1.5 it shall obtain and maintain all relevant permits, licences and other approvals or authorisations necessary for the supply and delivery of the Goods or any other obligations;
- 7.2 Foskor warrants to the Supplier at the Signature Date and for the duration of this Agreement that:
- 7.2.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;
 - 7.2.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;
 - 7.2.3 the Agreement constitutes legal, valid and binding obligations; and
 - 7.2.4 it shall comply with all Applicable Law/s.
- 7.3 Each warranty is:
- 7.3.1 a material representation of fact inducing the relevant Party to enter into this Agreement;
 - 7.3.2 a continuing representation and warranty and shall survive the termination of this Agreement; and
 - 7.3.3 a separate warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other warranty or by any other provision in this Agreement.

8. Consideration and terms of payment

- 8.1 The consideration payable by Foskor to the Contractor for the duration of this Agreement is set out in the Letter of Award and/or a separate pricing schedule to be annexed as Annexe [X]. The consideration may be subject to escalation and is exclusive of VAT, other applicable taxes, levies, bank charges, insurance charges, and labour costs if approved prior to issuing the Letter of Award or otherwise agreed in writing between the Parties in accordance with the Foskor governance processes.

- 8.2 The Contractor shall apply continuous improvement processes to the services rendered or goods supplied. If such processes reduce the Contractor's cost in rendering the services, this reduction of cost shall be applied so as to reduce the consideration payable by Foskor.
- 8.3 The prices the Contractor offers to Foskor shall not exceed those prices the Contractor offers to third parties for similar goods or services. If the Contractor offers prices to third Parties that are lower than those offered to Foskor for such similar services as are rendered in terms of this Agreement, then those prices, in relation to those services, shall become effective for Foskor. This means that Foskor shall always be given "most favoured customer status" by the Contractor.
- 8.4 The consideration shall be payable by Foskor to the Contractor 30 days after the date of statement received from the Contractor unless otherwise agreed upon between the Parties in writing.
- 8.5 **Payments to Contractor**
- 8.5.1 Any payment to the Contractor under this Agreement shall be made by electronic transfer to Contractor's bank account (confirmed in writing by the relevant bank).
- 8.5.2 In addition, payment shall only be made under the condition and to the extent that, in the sole discretion of Foskor:
- 8.5.2.1 Foskor has received a complete, accurate and comprehensive invoice from the Contractor detailing the date of service, service/goods provided and the amount;
- 8.5.2.2 The Contractor has furnished sufficient proof that all pre-conditions for payment have been met; and
- 8.5.2.3 payment is due and is legally and practically possible.
- 8.5.3 Foskor shall be entitled to set off against any amounts payable to the Contractor under this Agreement, against any amounts owing by the Contractor to Foskor under this Agreement or any other agreement.
- 8.5.4 Foskor may withhold payment of any disputed amounts pending resolution of such dispute in accordance with the dispute resolution provisions of this Agreement.

9. Delivery conditions

The subject matter of this Agreement shall be delivered by, or on behalf of the Contractor to Foskor, on the basis and according to the delivery provisions set out in the Letter of Award.

10. Term and termination

- 10.1 This Agreement shall be applicable for the duration of the period as set out in the Letter of Award.
- 10.2 Foskor may elect to terminate this Agreement, at any time, by giving the other Party 30 days written notice of its intention to terminate the Agreement.
- 10.3 These Terms shall automatically terminate at the expiry of the period of supply, in the event that the Agreement had not been terminated earlier pursuant to clause 10.2 above.
- 10.4 Foskor may terminate this Agreement immediately upon written notice to the Contractor in the event of: (a) material breach by the Contractor which is not remedied within [ten] days of written notice; (b) insolvency, liquidation, or judicial management of the Contractor; (c) failure by the Contractor to maintain required insurances; or (d) any breach of the anti-bribery and corruption provisions in clause 289.
- 10.5 Upon termination of this Agreement for any reason, Foskor may, at its option and at the Contractor's cost and risk, engage alternative contractors to complete any outstanding work, and the Contractor shall be liable for any additional costs incurred by Foskor.

11. Risk and ownership (if applicable)

- 11.1 The risk in the goods and/or services of this Agreement shall pass to Foskop upon Foskop's duly authorised representative accepting delivery and/or the rendering of the services thereof in full, in accordance with the provisions of the Letter of Award.
- 11.2 Ownership in the subject matter of this Agreement for the supply of goods shall, pass to and vest in Foskop upon payment of the purchase price of the goods in full by Foskop.

12. Confidential information and intellectual property rights

- 12.1 The Parties shall at all times during the duration of this Agreement comply with each other's security regulations and procedures.
- 12.2 Each Party shall retain all confidential information of the other Party (the "**disclosing Party**") in strict confidence and undertakes not to disclose such information to any third Party without the prior written consent of the disclosing Party, which consent shall not be unreasonably withheld. The term "confidential information" shall, for purposes of this Agreement, mean all information of the disclosing Party which is not generally available to the public or persons involved in the same industry as the disclosing Party.
- 12.3 The above provisions shall remain in effect after the expiration or termination of this Agreement.
- 12.4 The Contractor shall comply with all Applicable Law relating to data protection, including POPIA, and shall implement appropriate technical and organisational measures to protect any Personal Information processed in connection with this Agreement.
- 12.5 The Contractor shall immediately notify Foskop of any actual or suspected data breach and shall cooperate fully in any investigation or remedial action.
- 12.6 Upon termination of this Agreement, the Contractor shall return or securely destroy all Personal Information and confidential information of Foskop, as directed by Foskop.
- 12.7 The Contractor hereby indemnifies Foskop and holds it harmless against all damages, losses and/or costs which may be incurred by Foskop by virtue of the fact that Foskop has infringed the intellectual property and/or other rights of any person, as a result of the execution this Agreement by the Parties or any of them; or as a result of Foskop utilising the subject matter of this Agreement.
- 12.8 All work product, deliverables, inventions, discoveries, and intellectual property created, developed, or produced by the Contractor in the performance of this Agreement shall be deemed works made for hire and shall be the exclusive property of Foskop.
- 12.9 The Contractor warrants that it has the right to grant the rights granted herein and that the work product will not infringe any third party intellectual property rights.

13. Indemnity and liability

- 13.1 The Contractor shall, for the duration of this Agreement, insure itself and keep itself insured to the full extent available against its liability to its employees engaged in the execution of this Agreement.
- 13.2 The Contractor shall indemnify Foskop, its officers, directors, employees or agents from and against all actions, claims, demands, damages, losses, costs and expenses (including the cost of defending or settling any action, claim or demand) which may be brought or made against or suffered or incurred by Foskop, its officers, employees or agents in respect of or by reason of or arising out of the negligence or other act of the Contractor or its officers, servants, employees or agents, or any other person for whose negligence or other act Contractor is vicariously liable or in connection with the performance or breach of this Agreement.
- 13.3 Whilst Foskop shall bear no liability to the Contractor in terms of the provisions of this clause 134, the Contractor indemnifies Foskop, its officers, directors, employees or agents against:

- 13.3.1 all costs and liability arising out of, or in connection with the presence of the Contractor's representatives on or about the premises of Foskor;
- 13.3.2 any loss sustained by Foskor due to non-compliance with Applicable Laws;
- 13.3.3 all liability for their injury or death or loss or damage of whatever nature whilst carrying out their duties for any purpose contemplated in this Agreement or resulting from the misuse of and/or tampering with the subject matter of this Agreement or the incorrect interpretation of any documentation and for all loss or damage to their personal effects;
- 13.4 It is expressly agreed that Foskor shall not be liable to the Contractor for any loss or damage, howsoever caused to the Contractor's property and/or equipment while on Foskor's premises.

14. Insurance Requirements

- 14.1 The Contractor shall obtain and maintain, at its own cost, the following minimum insurance coverage: (a) public liability insurance of not less than R[●]; (b) professional indemnity insurance of not less than R[●]; (c) employer's liability insurance as required by Applicable Law; and (d) such other insurance as may be specified in Letter of Award and this Agreement.
- 14.2 All insurance policies shall name Foskor as an additional insured and shall contain a provision requiring [●] days' written notice to Foskor before cancellation or material change.
- 14.3 The Contractor shall provide certificates of insurance evidencing such coverage to Foskor prior to commencement of work and annually thereafter.

15. Force majeure

- 15.1 Neither Party shall be responsible for, or liable for any delay or non-performance of its obligations under this Agreement, directly caused by or resulting from:
 - 15.1.1 major accident, fire or flood;
 - 15.1.2 sabotage or any officially declared state of emergency;
 - 15.1.3 embargoes, boycotts, strikes, lockouts, combination of workmen;
 - 15.1.4 non-availability of transport facilities; and
 - 15.1.5 restrictions imposed by any government or governmental authority; or without limitation, any other cause of a *force majeure* nature beyond the reasonable control of the Parties, which prevents any performance in terms of this Agreement.
- 15.2 Any Party affected by any of the conditions referred to in clause 15.1 above shall give the other Party written notice of the existence of such condition within [2] days of its existence being discovered.
- 15.3 Neither Party shall be entitled to rely on the provisions of clause 15.1 above unless it has given notice as envisaged in clause 15.2 above.
- 15.4 In the event of the *force majeure* situation continuing for a period of more than [30] consecutive days after the giving of the notice referred to in clause 15.2 above, either the Contractor or Foskor shall be entitled to terminate this Agreement by giving written notice to that effect to the other Party in which event neither Party shall be liable to the other for damages as a result of the *force majeure*.

16. Assignment and subcontractors

- 16.1 The rights and obligations of the Contractor in terms of this Agreement and all related contracts shall not be ceded, assigned, delegated, sublet, relinquished or transferred, by the Contractor, to any person without the prior written consent of Foskor.

- 16.2 During the term of this Agreement, direct or indirect control in the Contractor shall not be transferred without the prior written consent of Foscok, which consent shall not be unreasonably withheld. Any such transfer or allotment of members' interests or shares effected without such written consent shall constitute a material breach of the provisions of this and shall entitle Foscok to terminate this Agreement forthwith.
- 16.3 The Contractor shall, if so requested by Foscok, timeously submit in writing to Foscok a list of the names of any proposed subcontractors for approval and the Contractor shall not, in such event, without the prior written approval of Foscok, enter into any subcontract with any person for the execution of a contract or any part thereof or for the manufacture or supply of the materials or the rendering of services which shall be used in the execution of this Agreement other than the subcontractors who are named in the list which has been approved by Foscok.
- 16.4 The non-performance or partial performance or partial non-performance of a subcontractor, shall not in any manner detract from, or lessen the Contractor's liability for satisfactory performance to Foscok and the Contractor shall enforce such action or remedies against such subcontractors as Foscok may direct.
- 16.5 All requirements of this Agreement and of individual contracts shall be incorporated by the Contractor in all related subcontracts.
- 16.6 Foscok reserves the right to audit and/or witness any activity relating to a contract performed either on the premises of the Contractor or any of his subcontractors.

17. Key Personnel

- 17.1 The Contractor shall not remove or replace any Key Personnel without the prior written consent of Foscok, which consent shall not be unreasonably withheld.
- 17.2 Any replacement Key Personnel must have qualifications and experience at least equivalent to those being replaced and must be approved by Foscok in writing before commencement of work.

18. Audit Rights

- 18.1 Foscok shall have the right, upon reasonable notice, to audit the Contractor's performance, financial records, and compliance with this Agreement, either directly or through appointed third parties bound by confidentiality obligations.
- 18.2 The Contractor shall provide full cooperation and access to all relevant records, personnel, and facilities as reasonably required for such audits.

19. Health, Safety and Environmental Compliance

- 19.1 The Contractor shall comply with all Applicable Law and Policies relating to health, safety, and environmental protection, and shall ensure that all its personnel are appropriately trained and equipped.
- 19.2 The Contractor shall immediately report any health, safety, or environmental incidents to Foscok and shall cooperate fully in any investigation.

20. Independent contractor

- 20.1 The Contractor's relationship to Foscok shall be that of an independent contractor. Personnel supplied by the Contractor hereunder shall be deemed employees of the Contractor and shall not for any purpose be considered employees or agents of Foscok. The Contractor assumes full responsibility for the actions of such personnel while performing services under this Agreement and shall solely be responsible for their supervision, daily direction and control, payment of salary, worker's benefits and the like. The Contractor's supervisors and/or management shall resolve all performance and personnel matters of the Contractor's employees.
- 20.2 The Contractor shall ensure that its employees while performing services under this Agreement are insured with the relevant liability insurance, in accordance with the applicable legal provisions.
- 20.3 Nothing contained in this Agreement shall be construed as granting to the Contractor or any personnel of the Contractor rights under any Foscok benefit plan.

21. Contractor's employees

- 21.1 Prior to the Contractor's assignment of any personnel to perform work hereunder, the Contractor agrees to take appropriate preventive steps to ensure that such personnel shall not engage in inappropriate conduct while on Foskop's premises. Inappropriate conduct shall include, but shall not be limited to:
- 21.1.1 being under the influence of or affected by alcohol, illegal drugs or controlled substances, the manufacture, use, distribution, sales or possession of alcohol, illegal drugs or any other controlled substances, except for approved medical purposes;
 - 21.1.2 the possession of weapons of any sort;
 - 21.1.3 harassment, threats or violent behaviour; and
 - 21.1.4 fraudulent, collusive or dishonest dealings of any nature.
- 21.2 In the event of any behaviour deemed by Foskop to be inappropriate (including but not limited to those examples set out in clause 21.1 above), Foskop shall be entitled to elect to:
- 21.2.1 terminate the Agreement with immediate effect;
 - 21.2.2 institute disciplinary proceedings against the Contractor, which may result in the Contractor being restricted from doing business with Foskop or the State generally for a period of up to 10 (ten) years;
 - 21.2.3 institute a temporary restriction on new contracts being implemented with the Contractor while any disciplinary proceedings are ongoing; and/or
 - 21.2.4 direct that the Contractor remove any specified employee or employees of the Contractor from Foskop's premises and to direct that such employee shall not be re-assigned to Foskop's premises.

22. Gifts and gratuities

The Contractor shall not give or offer any gifts or gratuities of any type to Foskop employees or members of their families, except promotional material and other items of value up to a maximum of (R500 (five hundred rand)).

23. Governing law and jurisdiction

- 23.1 This Agreement shall in all respects be subject to the provisions of the law of the Republic of South Africa and shall be interpreted and enforced in terms of that law.
- 23.2 The Contractor hereby subjects itself to the provisions of clause 23 and consents and submits itself to the non-exclusive jurisdiction of such arbitration and / or other court within the Republic of South Africa which may otherwise in terms of South African law be competent to adjudicate on any particular matter arising from this Agreement.

24. Arbitration

- 24.1 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, in the event of any dispute arising at any time between the Parties which cannot be resolved amicably or by means of mediation in regard to:
- 24.1.1 the formation or existence this Agreement;
 - 24.1.2 the implementation of this Agreement;
 - 24.1.3 the interpretation of this Agreement;

- 24.1.4 the effect of their respective rights or obligations in terms of this Agreement; and
- 24.1.5 a breach of, a determination of, any matter arising out of, the termination or purported termination of, or the rectification or proposed rectification of this Agreement;
- then the dispute may be referred to and be determined by arbitration in terms of this clause 24 and be finally settled in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law.
- 24.2 This clause shall not preclude any Party from obtaining interim relief by way of motion proceedings from a court of competent jurisdiction pending the decision of the arbitrator.
- 24.3 Each such arbitration shall be held in Johannesburg, in accordance with the formalities and procedures settled by the arbitrator, which may be in an informal summary manner without any pleadings or discovery of documents and without it being necessary to observe strict rules of evidence, unless otherwise provided under the provisions of the Arbitration Act 42 of 1965; and forthwith with a view to the Agreement being terminated within [20] days from the date on which the dispute is referred to the arbitrator.
- 24.4 The Parties shall agree on the arbitrator who shall be an attorney or advocate (with at least [10] years' experience in commercial legal practice) on the panel of arbitrators of AFSA. If agreement is not reached within [15] Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate (with at least [10] years' experience in commercial legal practice) nominated by the Registrar of AFSA for the time being.
- 24.5 The Parties hereby agree that the decision of the arbitrator in such arbitration proceedings shall be final and binding on them and may be made an order of court.
- 24.6 The provisions of clauses 24 and 25 are severable from the rest of these this Agreement and shall remain in effect even after this Agreement is terminated for any reason.
- 24.7 Notwithstanding the provisions of this clause each Party shall retain the right to notify the other Party that it has declared a dispute and that it elects to have that dispute adjudicated by the High Court of South Africa (Gauteng, Local Division) ("**High Court**"), in such an event, such a Party shall not be precluded from submitting such a dispute to the High Court.

25. Breach

- 25.1 In the event of either Party to this Agreement failing to comply with its obligations in terms of this Agreement and remaining in such breach for a period of [14] days after a written notice requiring it to remedy such a breach has been served on it by or on behalf of the aggrieved Party, then and in that event, without derogating from any other remedy which it may lawfully have and without further notice, the aggrieved Party shall be entitled to:
- 25.1.1 terminate the Agreement forthwith and institute action against the defaulting Party for the recovery of damages which the aggrieved party may have suffered as a result of such breach; or
- 25.1.2 institute action for the specific performance of the terms of this Agreement and/or the recovery of damages which the aggrieved party may have suffered.
- 25.2 Should the Contractor be placed in provisional or final liquidation or provisional or final judicial management (either voluntarily or compulsorily) or, being an individual, be provisionally or finally sequestered, then in such event it, or he, shall be deemed to have breached this Agreement and Foskor shall have the rights referred to in clause 25.1 save that it shall not be necessary for Foskor to give the Contractor any written notice as contemplated therein.
- 25.3 No indulgence which either Party may allow at any time whatsoever to the other Party in regard to the carrying out of any of the terms and conditions of this Agreement shall:

- 25.3.1 constitute a waiver of; or
 25.3.2 prejudice its rights under this Agreement.

26. Exclusion of other terms and conditions

- 26.1 This Agreement replaces all negotiations, arrangements, whether oral or in writing, as well as any other communications between the Parties which preceded the conclusion of this Agreement, with the exception of any RFP and bid submitted by the Contractor which resulted in this Agreement being concluded.
- 26.2 No alteration or variation of this Agreement shall be of any force or effect unless such alteration or variation is reduced to writing and signed by both Parties.
- 26.3 This Agreement, its annexures (if any) and any RFP, bid submitted in response to the RFP, and/or Letter of Award in connection with this Agreement shall constitute the entire Agreement between the Parties.

27. Addresses

- 27.1 The Parties hereby choose as their respective *domicilia citandi et executandi* for purposes of any notices or process in terms of this Agreement, the following addresses:

- 27.1.1 in the case of Foskor to:

address : Hertford Office Park, Building K
 2nd Floor
 90 Bekker Road
 Vorna Valley
 Midrand
 Gauteng
 email : roganim@foskor.co.za

and marked for the attention of Ms Rogani Moodley (Vice President – Legal, Risk and Compliance)

- 27.1.2 in the case of [Contractor] to:

address : [●]
 [●]
 [●]
 email : [●]

and marked for the attention of [●]

28. Conflict of interest/bribery

28.1 Compliance with Applicable Laws

- 28.1.1 The Parties hereby confirm that they are aware of the Applicable Laws, and, in connection with the activities of the Parties related to these this Agreement.
- 28.1.2 The Contractor hereby commits to strict compliance with such Applicable Laws, Policies and makes the following representations and warranties as of the date of this Agreement and for the duration of this Agreement in connection with its activities related to this Agreement, the Contractor, for itself and on behalf of its Affiliated Persons, represents warrants and covenants that:
- 28.1.2.1 it and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and shall comply, with Applicable Laws and have to their best knowledge, not taken

and shall not take or fail to take any action, which act or omission would subject Foskor to liability under Applicable Laws;

- 28.1.2.2 neither it nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or shall offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (i) influencing any act or decision of such Government Official in his official capacity, (ii) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (iii) securing any improper advantage or (iv) inducing such Government Official to use his influence with an entity government to affect or influence any act or decision of that entity government, in each instance to direct business to the Contractor or Foskor;
- 28.1.2.3 in case it or any of its Affiliated Persons is or shall become a government entity or a Government Official whose official duties include decisions to direct business to the Contractor, or Foskor or its affiliated companies, or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to the Contractor or Foskor or its affiliated companies, the Contractor or the respective Affiliated Persons shall ensure that conflicts of interest shall be excluded and shall inform Foskor without undue delay, about the measures taken; and
- 28.1.2.4 it shall assist and cooperate fully with the efforts of Foskor to comply with Applicable Laws. In particular, the Contractor shall keep accurate books and records and the Contractor shall immediately notify Foskor of any information that bribes or other improper payments are being requested, made, or offered in connection with this Agreement. Upon request of Foskor, the Contractor shall make those records which are necessary for Foskor to verify the Contractor's compliance with the Applicable Laws relating to this Agreement, available to a sworn auditor who is obligated to observe secrecy and selected by Foskor. If such auditor notices any failure by the Contractor to comply with the Applicable Laws, the Contractor agrees that the auditor may disclose information relating to the Contractor's failure to Foskor and, to the extent required by a legal demand by a competent court of law or government body, to third Parties.
- 28.1.3 In no event shall Foskor be obligated to the Contractor under or in connection with this Agreement to act, or refrain from acting, if Foskor believes that such act or omission would cause Foskor to be in violation of Applicable Laws. In no event shall Foskor be liable to Contractor for any act or omission which Foskor believes is necessary to comply with Applicable Laws.
- 28.1.4 If the Contractor or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this clause, each of which is deemed to be material and continuously made throughout the term of this Agreement, then, in addition to any other rights Foskor may have under this Agreement, Foskor may:
- 28.1.4.1 institute disciplinary proceedings against the Contractor, which may result in the Contractor being restricted from doing business with Foskor and/or with the State for up to 10 (ten) years;
- 28.1.4.2 apply a temporary restriction on new contracts being awarded to the Contractor while any such disciplinary proceedings are ongoing;
- 28.1.4.3 declare a forfeit of any unpaid amounts owing to Contractor and shall be entitled to repayment of any amounts paid or credited to Contractor, in each case, which are prohibited by Applicable Laws; (i) terminate this Agreement; and (ii) claim from the Contractor:
- 28.1.4.3.1 all claims, penalties, fines, judgments or administrative actions made, imposed, rendered or taken against an indemnitee with respect to that matter, and all settlements to resolve an indemnitee's alleged liability for that matter;
- 28.1.4.3.2 all reasonable costs and expenses (including the fees and disbursements of counsel or other advisors) incurred by an indemnitee in assessing and defending against any

alleged liability which would, if successfully asserted, be indemnifiable under clause 28.1; and

28.1.4.3.3 all losses and direct damages incurred by an indemnitee by reason of that matter.

28.1.5 Pursuant to clause 28.1.4.3, the Contractor shall, upon first written request by Foskor, indemnify and hold harmless Foskor in regard to any and all cost and claims brought forward against Foskor arising out of any failure of the Contractor to comply with its representations, warranties and covenants of this clause 28.1.

[Signature page follows]

Signed at _____ on _____ 2025

Witness _____ for **FOSKOR PROPRIETARY LIMITED**

1. _____
_____ duly authorised and warranting such authority

2. _____

Signed at _____ on _____ 2025

Witness _____ for **[CONTRACTOR]**

1. _____
_____ duly authorised and warranting such authority

2. _____

ANNEXURE A – FOSKOR POLICIES