

PROFESSIONAL SERVICES AGREEMENT

ENTERED INTO BY AND BETWEEN

FIRSTRAND BANK LIMITED
(REGISTRATION NUMBER 1929/001225/06)
(VAT REGISTRATION NUMBER 4210102051)
(hereinafter referred to as "the Bank")

AND

SKAI SKAI (PTY) LIMITED
(REGISTRATION NUMBER 2019/257993/07)
(hereinafter referred to as "the Supplier")



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WHEREAS

- A. The Bank requires the Services of the Supplier from time to time;
- B. The Supplier undertakes to provide the Services to the Bank from time to time upon the terms and subject to the conditions contained in this Agreement; and
- C. The Parties hereby record the agreement between them in writing, set out below.

1 INTERPRETATION

In this Agreement, unless the context otherwise indicates:

- 1.1 the singular will include the plural and vice versa;
- 1.2 the masculine gender will include the feminine gender and vice versa;
- 1.3 persons will include juristic entities;
- 1.4 the headings in this Agreement are used for the sake of convenience, and will not govern the interpretation of the Agreement;
- 1.5 all expressions and or definitions contained in the Main Agreement will have the same meaning in all Transactional Documents and in any document incorporated by reference;
- 1.6 any conflict between the provisions of the Main Agreement, Transactional Documents or documents incorporated by reference will be resolved in the following order of precedence in relation to that conflict:
 - 1.6.1 for provisions specifying the Services:
 - 1.6.1.1 the Schedules/SOW/Purchase Order;
 - 1.6.1.2 the Annexures;
 - 1.6.1.3 the Main Agreement; and
 - 1.6.1.4 any document incorporated by reference;
 - 1.6.2 for other provisions:
 - 1.6.2.1 the Main Agreement;
 - 1.6.2.2 the Annexures;
 - 1.6.2.3 the Schedules/SOW/Purchase Order; and

1.6.2.4 any document incorporated by reference;

1.7 The Bank and Supplier acknowledge that regulatory regimes and local operational requirements in each jurisdiction where Services are provided may differ. Accordingly, it may be appropriate to modify certain provisions of the Main Agreement for those reasons. Such modifications and or supplements are made by the use of Local Conditions. If the Parties enter into any Transactional Document for the provision of Services in a jurisdiction other than the Republic of South Africa, then any conflict between the provisions of the Main Agreement, Transactional Documents or any document incorporated by reference will be resolved in the following order of precedence:

1.7.1 For the Services:

1.7.1.1 the Transactional Document;

1.7.1.2 any Annexures or attachments to the Transactional Document;

1.7.1.3 any Local Conditions applicable to the Transactional Document;

1.7.1.4 the Main Agreement; and

1.7.1.5 any document incorporated by reference.

1.7.2 For other provisions:

1.7.2.1 any Local Conditions applicable to the Transactional Document;

1.7.2.2 the Main Agreement;

1.7.2.3 any Annexures or attachments to the Transactional Document;

1.7.2.4 the Transactional Document; and

1.7.2.5 Any document incorporated by reference.

1.8 Despite clauses 1.6 and 1.7, in the event of any conflict, the provisions set out in any Transactional Document titled "**Special Conditions**" will take precedence and govern over any other provision of the Main Agreement provided that such Special Condition is approved by Bank's procurement legal division in writing.

1.9 if any provision in a definition is a substantive provision granting rights or imposing obligations on either Party, despite the fact that it is only in the definitions clause, effect will be given to it as if it were a substantive provision of this Agreement;

- 1.10 words and expressions defined in any clause will have the meaning given to the word or expression right through this Agreement, unless the application of any such word or expression is specifically limited to that clause;
- 1.11 defined terms appearing in this Agreement in title case will be given their meaning as defined. The same terms appearing in lower case will be interpreted by their plain English meaning, and will, unless the context otherwise requires, include the terms as defined;
- 1.12 a reference to any statutory enactment will be construed as a reference to that enactment as at the Effective Date or Commencement Date, as the case may be,
- 1.13 and as amended or substituted from time to time;
- 1.14 "Days" will mean calendar days unless qualified by the word "business". A "business day" will be any day other than a Saturday, Sunday or official public holiday as gazetted or declared by the government of the Republic of South Africa. "Business hours" will be the hours between 08h00 and 17h00 on any business day. Any reference to time will be based upon South African standard time being Greenwich Mean Time plus 2 (two) hours;
- 1.15 unless specifically provided, any number of days prescribed will be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next business day;
- 1.16 where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention;
- 1.17 the rule of construction that this Agreement will be interpreted against the Party responsible for the drafting of this Agreement, will not apply;
- 1.18 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be interpreted as limiting the meaning of the general wording preceding it: the application of the *eiusdem generis* rule is excluded;
- 1.19 all amounts in this Agreement are exclusive of value-added tax ("VAT"), unless specifically otherwise recorded; and
- 1.20 The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002 are expressly excluded from this Agreement in respect of amendments to this Agreement and/or cancellation of this Agreement (in whole or in part), as well as legal or

other formal communications and/or communications which involve time periods which must be met. Any such amendments, cancellation and/or communications will only be valid if either written or printed in a paper-based form. However, for clarity and subject at all times to the foregoing, day-to-day (operational) communications may be sent electronically between the Parties.

2 DEFINITIONS

- 2.1 "Affiliate" will mean any subsidiary or a holding company or a subsidiary of a holding company of either Party or any entity that controls, is controlled by, or is under common control with, either Party. The terms "subsidiary" and "holding company" will have the meanings assigned to them in Chapter 1 of the Companies Act. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity through the ownership of voting securities representing 50% (fifty percent) plus 1 (one) of the possible votes;
- 2.2 "Agreement" will mean this Main Agreement, all of the Transactional Documents and any other document incorporated by reference, as attached to the Agreement and or amended;
- 2.3 "Annexure" will mean any document attached to the Agreement, marked "Annexure" and initialled or signed by the Parties;
- 2.4 "Bank" will mean FirstRand Bank Limited (registration number 1929/001225/06), a company with limited liability, incorporated under the company laws of the Republic of South Africa,
- 2.5 "BBBEE" will mean Broad-Based Black Economic Empowerment;
- 2.6 "Commencement Date" will mean the date of commencement set out in any Transactional Document or any document incorporated by reference;
- 2.7 "Companies Act" means the Companies Act, 71 of 2008;
- 2.8 "Compensation Commissioner" means the compensation commissioner appointed under the Compensation for Injuries and Diseases Act, 130 of 1993;
- 2.9 "Confidential Information" will mean any information or Data relating to either Party ("the Disclosing Party") (whether or not it is marked as confidential, restricted, secret, proprietary or any similar designation). Information or Data is confidential, when looking at the nature or content of the Information or Data, it is identifiable as

confidential and or proprietary to the Disclosing Party or is intended or could reasonably be expected to be confidential and or proprietary to the Disclosing Party, and includes the proprietary Intellectual Property of the Disclosing Party. The information or Data can be in whatever format, whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or other recordable format);

- 2.10 "Consultants" will mean the individuals, as stipulated in the relevant SOW, with the delegated authority of the Supplier to render the Services to the Bank under this Agreement on behalf of the Supplier;
- 2.11 "Consulting Services" will mean the professional services provided by the Supplier through Consultants, the details of which are contained in the relevant SOWs attached hereto;
- 2.12 "Contact Person" means the person whose name and or designation appears in the applicable Transactional Documents or any document incorporated by reference and who is appointed by the Bank or the Supplier (as the context indicates) to perform roles set out in the Transactional Documents, and who will generally oversee the provision of the Services;
- 2.13 "Cost to Company" will mean the basic salary of an employee together with medical aid and pension contributions only, and specifically excludes any bonuses, including sign on bonuses and shares or bursaries;
- 2.14 "Data" will mean any data, including personal information as defined in the Protection of Personal Information Act, 4 of 2013, and data and personal information as defined in the Electronic Communications and Transactions Act, 25 of 2002, supplied to the Supplier by the Bank or stored, collected, collated, accessed or processed on behalf of the Bank by the Supplier;
- 2.15 "Deliverables" will mean the services which will meet the agreed standards for the completion, to be provided by the Supplier as part of the Services, set out in the Transactional Documents or any documents incorporated by reference;
- 2.16 "Direct Employment Costs" means all and any costs, expenditure or other amounts directly related to the employment of any Consultants, including (but not limited to) salaries, leave pay, long service awards, retrenchment or severance payments or packages, bonuses, retirement, pension or provident fund contributions, workman's compensation insurance, unemployment insurance fund, group life and/or income

protection disability insurance contributions, skills levies and any other levies, costs or amounts payable in terms of any applicable legislation from time to time;

- 2.17 "Effective Date" will mean **1st March 2020**, irrespective of the actual date of signature of this Agreement;
- 2.18 "Income Tax Act" means the Income Tax Act, 58 of 1962;
- 2.19 "Intellectual Property" will include, without limitation, patents, rights to inventions (whether patentable or not), copyright and related rights, moral rights, registered design, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered, and any application for any of the aforementioned and renewals or extensions thereof, and all similar or equivalent rights or forms of protection which may exist now or in the future, in any part of the world;
- 2.20 "IRBA" will mean the Independent Regulatory Board for Auditors;
- 2.21 "Law" will mean any law of general application including the common law and any statute, constitution, decree, treaty, regulation, restriction, directive, ordinance, by-law, order, policy or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.22 "Local Conditions" will mean the terms set out in an appendix to the applicable Transaction Document that (a) amend or supplement any provision of the Main Agreement, and (b) solely address (i) mandatory requirements of applicable Law in the relevant jurisdiction and or (ii) local operational requirements.
- 2.23 "Losses" will mean all direct losses, liabilities, costs, expenses, fines, penalties, *ex gratia* payments, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties). This will specifically exclude consequential, indirect and special damages, save as otherwise set out in this Agreement;
- 2.24 "LRA" will mean the Labour Relations Act, 66 of 1995;
- 2.25 "Main Agreement" will mean this main services agreement, and specifically excludes the Transactional Documents and any document incorporated by reference;

- 2.26 "OHS Act" means the Occupational Health and Safety Act, 85 of 1993;
- 2.27 "Parties" will mean the parties to this Agreement, being the Bank and the Supplier, and "Party" will mean either the Bank or the Supplier, as the case may be;
- 2.28 "PAYE" will mean pay-as-you-earn withholding tax levied in terms of the Income Tax Act;
- 2.29 "Purchase Order" will mean an electronic purchase order generated by the Bank's electronic purchasing system, setting out the Services ordered by the Bank from the Supplier under this Agreement, and which will be incorporated into the Agreement by reference;
- 2.30 "Regulator" will mean any supervisory or government agency, body or authority having regulatory or supervisory authority over the Bank's or its assets, resources or business or over the Services, and "Regulatory" will be interpreted accordingly;
- 2.31 "SANAS" will mean the South African National Accreditation System;
- 2.32 "Services" will mean the provision of professional services, encompassing Deliverables and/or Consulting Services, by the Supplier to the Bank, as may be requested by the Bank from time to time, as more fully described in this Agreement and/or in each of the SOWs attached hereto from time to time;
- 2.33 "SOW" or "Statement of Work" will mean any document attached hereto, detailing the specifications of Services to be provided, marked "SOW" or "Statement of Work", and signed or initialled by both of the Parties hereto; and
- 2.34 "Supplier" will mean Skai Skai (Pty) Ltd (registration number 2019/257993/07), an entity incorporated under the company Laws of the Republic of South Africa, Affiliates and permitted assigns.
- 2.35 "Transactional Document" will mean any Schedule, Annexure, SOW, addendum, exhibit, appendix and or Purchase Order containing terms and conditions applicable to this Agreement and specifying the Services to be provided by the Supplier to the Bank.
- 2.36 "UIF" will mean the South African Unemployment Insurance Fund.

3 SEPARATE AGREEMENTS

This Main Agreement will be a severable and distinct services agreement for each Transactional Document. Any additional conditions contained in a Transactional Document will be deemed to be incorporated into and form part this Agreement.

4 DURATION AND TERMINATION

- 4.1 Subject to clause 4.2, this Main Agreement will commence on the Effective Date and will endure indefinitely until terminated as provided for in the Agreement.
- 4.2 Each of the Transactional Documents attached to this Main Agreement, will start on the Commencement Date and will endure for the period agreed to in the Transactional Document, unless terminated or renewed as set out in this Agreement.
- 4.3 The Bank will be allowed to terminate this Main Agreement or the Agreement in its entirety at any time, by giving the Supplier at least 30 (thirty) days' prior written notice of its intention to terminate. The provisions of this Agreement will continue to apply to any active Transactional Document until the Transactional Document has expired and or is terminated.
- 4.4 Unless otherwise provided for in the Agreement, any Transactional Document may be terminated at any time on at least 30 (thirty) days' written notice by the Bank to the Supplier. Any termination of a Transactional Document will not affect the operation of the remainder of this Agreement.
- 4.5 If the Main Agreement is terminated, the Supplier will immediately return to the Bank, all Confidential Information, papers, materials, and other property of the other in its possession at the time of termination. The Supplier will not have to return Confidential Information, papers, materials, and other property if any of it is needed to carry out the Services for any active Transactional Document. Confidential Information, papers, materials, and other property that is not needed to carry out the Services for any active Transactional Document must be returned.
- 4.6 The Bank may, on written request to the Supplier, require that the Supplier immediately return any of the Data, Confidential Information, Intellectual Property and or material related to this Agreement which belongs to the Bank. The Bank may also require that the Supplier furnish it with a warranty that it has not kept in its possession or under its control, either directly or indirectly, any Data, Confidential Information or material belonging to the Bank. Alternatively, the Supplier will, as and when required by the Bank on written request, destroy or permanently delete all Data, Confidential Information, Intellectual Property and or material and give the Bank a written statement confirming the destruction or permanent deletion as requested. The Supplier will not keep copies of Data, Confidential Information, Intellectual Property and or material belonging to the Bank, unless required to do so by Law. The Supplier

will comply with a request in terms of this clause 4.6, within 7 (seven) days of receipt of a request.

- 4.7 If this Agreement is terminated, the Supplier must either return, delete or destroy any and all Data, Confidential Information, Intellectual Property and or material related to this Agreement and belonging to the Bank, and the Supplier will give the Bank written confirmation to the effect thereof.

5 AFFILIATES

- 5.1 The Parties agree that the rights afforded to the Bank under this Agreement may extend to its Affiliates to the extent agreed:

5.1.1 between the Parties under a Transactional Document signed by them; or

5.1.2 directly between the Supplier and Bank Affiliate under a Transactional Document signed by the Supplier and the Bank Affiliate.

- 5.2 For any rights afforded to the Bank under this Agreement which extend to its Affiliates as per clause 5.1.1 above (a) the Bank will at all times remain liable to the Supplier against any acts of its Affiliates; and (b) any action arising in the hands of the Affiliate due to the acts or omissions of the Supplier shall, for purposes of any action for recovery of that loss (subject to the provisions of the Agreement), be regarded as being an action arising in the hands of the Bank.

- 5.3 For any rights afforded to the Bank under this Agreement which may extend to its Affiliates as per clause 5.1.2, a severable and independent agreement will result between the Supplier and that Bank Affiliate. The independent agreement will be governed by the terms of this Main Agreement, read with the specific terms set out in the relevant Transactional Document, setting out the specific Services to be provided by the Supplier directly to the Bank Affiliate.

- 5.4 Each independent agreement occurring as per clause 5.3 will be a separate and divisible relationship between the Supplier and the relevant Bank Affiliate on the basis that:

5.4.1 any termination of the relevant Transactional Document will not affect the continuation or enforceability of this Main Agreement or any other Transactional Document concluded between the Supplier and the Bank and or any other Bank Affiliate;

5.4.2 any termination of this Agreement will not affect the continuation or enforceability

of the independent agreement between the Supplier and the Bank Affiliate. The active Transactional Document will remain active for the duration of the Transactional Document subject to the rights of termination of the Supplier and the Bank Affiliate; and

- 5.4.3 the Bank Affiliate will remain solely liable for any obligations agreed to or liability incurred in terms of the Transactional Document and Main Agreement. The Supplier will be required to provide the Services to the Bank Affiliate in terms of the Transactional Document read together with the Main Agreement.

6 THE SERVICES

- 6.1 The Supplier agrees to provide the Services as described in this clause 6 and as described in each Transactional Documents.
- 6.2 The Supplier will provide the Services to the Bank at the Bank's chosen location(s) set out in a Transactional Document.
- 6.3 The Supplier will be obliged to ensure that the Services provided will always be of a standard corresponding with the instructions and requirements of the Bank.
- 6.4 When providing the Services, the Supplier will adhere to:
- 6.4.1 the Bank's policies, code of conduct, rules, procedures and regulations, including specifically security regulations and access to the Bank's information resources, networks and systems, in force and as amended from time to time, which are available on request or may be accessed on www.firststrand.co.za; and
- 6.4.2 the OHS Act, and specifically section 37 (1) of the OHS Act, relating to the acts or omissions of the Supplier's employees which would be an offence for the employer of such employee. This clause, read with Annexure One attached to this Agreement, constitutes an agreement in terms of section 37(2) of the OHS Act.
- 6.4.3 COIDA; and
- 6.4.4 all other relevant employment laws, including but not limited to the Basic Conditions of Employment Act, 75 of 1997; the LRA and the Employment Equity Act, 55 of 1998.
- 6.5 It will be the Supplier's responsibility to request any and all Bank policies and procedures, including updated and or revised versions, relating to the Services, throughout the currency of the Agreement

- 6.6 Without limitation of clause 6.4.1 , if the Bank grants the Supplier permission to remotely access the Bank's infrastructure and or network, the Supplier will adhere to the Bank's remote access policy, set out in the Group Information Security Policy (Third Party Access), as may be amended, provided that unless otherwise expressly stated by the Bank in writing, the Supplier will have "read only" access to the Bank's infrastructure and or network.
- 6.7 The Supplier will have disaster recovery and business continuity plans ("**the Supplier DR Plan**") which support the Services being provided to the Bank and the Bank's business disaster recovery and business continuity plans ("**the Bank DR Plan**").
- 6.8 The Supplier will provide the Bank with a copy of the Supplier's DR Plan to allow the Bank to conduct a comparison between the Bank's DR Plan and the Supplier's DR Plan. If the Bank determines that there is a gap between the Supplier's DR Plan and the Bank's DR Plan, the Bank will notify the Supplier of these gaps and the Supplier shall amend its DR Plan to ensure that it's in line with the Bank's DR Plan. At least once annually, the Supplier shall test the Supplier's DR Plan and will provide the Bank with copies of the test results. Should any deficiencies be identified during such a test, the Supplier shall within two weeks (or on a mutually agreeable timeline) from the test, provide the Bank with remedial measures to rectify the deficiencies identified during the test. In the event of a disaster the Supplier will support the execution of the Bank's DR Plan.
- 6.9 The Parties will act as independent contracting parties under this Agreement. Neither Party will be deemed to be an agent or representative of the other Party, or Parties to a joint venture or as partners for any purpose. Except as expressly stated in this Agreement to the contrary, neither Party will have the authority to speak for, represent or bind the other Party in any way without the prior written approval of the other Party.
- 6.10 The Supplier will not be the exclusive provider of the Services to the Bank. The conclusion of the Main Agreement will not be interpreted as a commitment by the Bank to use the Supplier for the provision of services of the same or similar nature as the Services and will not be interpreted as a commitment to request any specific services from the Supplier. The conclusion of this Main Agreement does not provide the Supplier with any right to a minimum level or volume of Services. Any specific services which the Bank requests from the Supplier will be set out in a Transactional Document, the terms of which will be subject to this Main Agreement.

- 6.11 The Bank may require service credits and or delivery credits (as the case may be) related to the provision of the Services. If the Bank requires service and or delivery credits, same will be agreed to and recorded in a Transactional Document.
- 6.12 On reasonable notice, the Bank and third parties appointed by the Bank, may audit the Supplier's compliance with the Agreement. The Supplier agrees to cooperate with the Bank's audit and provide reasonable assistance and access to information. Any audit will not unreasonably interfere with the Supplier's normal business operations.
- 6.13 The Bank's right to Audit the Supplier's compliance with this Agreement may be extended to the Bank's Regulators if required.
- 6.14 The Supplier will, and will ensure that its subcontractors will, deal in an open and cooperative way with any Regulators carrying out Audits.
- 6.15 The Supplier will promptly notify the Bank of any developments which may have a material adverse impact on the Supplier's, or a Subcontractor's, ability to meet the Supplier's obligations under this Agreement, including of any material control weaknesses identified by the Supplier's or a subcontractor's internal or external auditors.
- 6.16 The Bank may provide a Regulator with any information relating to this Agreement that the Regulator requires, including any developments notified to the Bank. The provision by the Bank to a Regulator of any Confidential Information of the Supplier will be in accordance with clause 14 (Confidentiality) of the Agreement.
- 6.17 The Supplier will cooperate with the Bank and any Regulator if the same make further enquiries in respect of any developments notified pursuant to clause 6.15 above.
- 6.18 If the audit determines that the Supplier has not complied with the provisions of this Agreement, the Supplier will be liable for the costs of the audit, in addition to any other rights the Bank may have under this Agreement.

7 CONSULTANTS

- 7.1 The Supplier undertakes to manage all administrative functions related to the Consultants' assignment to the Bank, including but not limited to the payment of the Consultants' remuneration and benefits, prudent health and life insurance cover, the fulfilment of its obligations in terms of the Unemployment Insurance Fund Act, 63 of 2001, the Skills Development Act, 97 of 1998, the Skills Development Levies Act, 9 of 1999 and the Income Tax Act, the deduction of UIF contributions, PAYE and any other applicable statutory deductions from the Consultants' remuneration, payment of

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all levies and/or taxes, and accounting to the appropriate statutory bodies.

7.2 The Supplier will manage, monitor and control the human resources function insofar as the Consultants are concerned and will at all times conduct an industrial relations function regarding disciplinary and grievance procedures. In this regard, the Bank will channel all instructions related to human resources and/or labour relations via the Supplier who will in turn address the matter with the Consultants.

7.3 The Supplier confirms, as per the Affidavit annexed hereto marked Annexure Three, that it is not a "Personal Service Provider" as defined in the Fourth Schedule to the Income Tax Act, by virtue of the following:

7.3.1 the Supplier has more than 3 (three) full time employees who are not directors or members of the Supplier or connected persons in relation to the directors or members; and

7.3.2 the Supplier does not and will not earn more than 80% (eighty percent) of its income on an annual basis from the Bank.

Therefore, the Bank shall not be obliged to deduct employees' tax from the fees due and payable to the Supplier. As the Supplier is registered for PAYE, it will deduct employees' tax according to the prevailing tax tables from the Consultants' remuneration on a monthly basis.

7.4 The Supplier hereby indemnifies and holds the Bank harmless against all claims, legal actions, costs or expenses of whatsoever nature:

7.4.1 instituted or claimed by the Consultants, arising out of or in connection with the provision of the Services; and or

7.4.2 instituted or claimed by the South African Revenue Service, arising in connection with the income tax deductions due in respect of the Supplier.

7.5 The Supplier will be obliged to ensure that the Consultants use their best endeavours to meet and achieve the work deadlines and completion dates set by the Bank.

7.6 The Supplier shall:

7.6.1 provide to the Bank a copy of its Certificate of Good Standing upon request by the Bank at any time; and

7.6.2 ensure that the Supplier will at no stage be/become in arrears with any payment due to the Compensation Commissioner.

- 7.7 The Supplier undertakes, prior to the commencement of the Services, to conduct criminal and credit checks on all its employees who will be providing the Services to the Bank. In addition, the Supplier will provide the Bank with a list of the employees' names and identity numbers in order for the Bank to conduct a reference check against the Register of Employees Dishonesty System ("REDS").
- 7.8 The Supplier undertakes to immediately inform the Bank in writing, where any of its employees who are providing Services to the Bank are undergoing a disciplinary or poor performance process. Furthermore, the Supplier undertakes to keep the Bank updated on the progress thereof and inform the Bank on the outcome of such disciplinary or poor performance process.
- 7.9 If any of the results of the above checks and/or the outcomes of such disciplinary or poor performance actions are, in the Bank's reasonable opinion, adverse to the interests of the Bank, the Supplier will immediately stop the employee in question from providing any of the Services to the Bank and provide the Bank with a replacement of equal or better qualification, experience and expertise. In addition the Bank will be entitled to list such employee on REDS.
- 7.10 If the Bank has any complaints regarding a Consultant, it may in its sole discretion request that the Supplier replace the Consultant during the course of the SOW. If the Bank exercises such discretion, the Supplier will be obliged to replace such Consultant with another of the same or better qualification, experience and expertise at no extra cost to the Bank. Furthermore, the Supplier acknowledges and agrees that the aforesaid Consultant will be replaced no later than 7 (seven) days after receipt of notification from the Bank or within such other period as may be agreed to between the Parties in writing. If the Bank decide not to request the Supplier to replace such Consultant, the SOW for such Consultant will, on written notice from the Bank, terminate with immediate effect or at such time as may be agreed to between the Parties.
- 7.11 If a Consultant can no longer perform the Services for whatever reason, the Supplier will notify the Bank in writing and immediately thereafter provide the Bank with another Consultant with the same or better qualification, experience and expertise at no additional cost to the Bank.
- 7.12 Notwithstanding the provisions of clauses 7.7 to 7.11, the Supplier will remain liable for Services performed and to be performed by any Consultants as well as the

conduct of each Consultant to the same extent as if the Supplier had performed such Services.

- 7.13 The Bank is not responsible for the payment of any remuneration or benefits to the Consultants. To the extent applicable, the Supplier will be responsible for maintaining prudent health and life insurance cover and payment of taxes and any other deduction required by law.
- 7.14 The Supplier will ensure that none of its Consultants or other employees makes or purports to make any representation, warranty or undertaking or otherwise acts or purports to act in any manner that might be interpreted as binding or committing the Bank to any obligation to any third party.

8 CONSIDERATION AND PAYMENT

- 8.1 The Bank will pay the Supplier the fees and charges outlined in each Transactional Document. No other fees, expenses and charges will be payable by the Bank unless agreed to in advance and in writing by an authorised representative of the Bank. Without limitation, this includes set up and or outlay costs incurred by the Supplier, any airfare, accommodation and or other travel-related expenses which will be subject to the Bank's prior written approval and will be subject to the Bank's current travel and expense policies, (a copy of the relevant policy will be made available to the Supplier on written request).
- 8.2 All fees and charges will be paid by the Bank to the Supplier within 30 (thirty) days from the date of receipt of a statement of account and supporting documentation by the Bank.
- 8.3 The Bank will only pay for goods delivered to the Bank as part of the Services, on acceptance of the goods, by the Bank, in writing.
- 8.4 Unless otherwise stated in a Transactional Document, the Supplier will be entitled to submit original tax invoices and statements of account by electronic mail, provided that the invoices and statements are in uneditable (PDF) format.
- 8.5 All invoices will:
- 8.5.1 reflect the relevant division's purchase order number;
 - 8.5.2 specify the Services rendered and or being charged and the costing for the Services;
 - 8.5.3 comply with the Value Added Tax Act, 89 of 1991; and

- 8.5.4 be made out to FirstRand Bank Limited and also indicate the name of the specific division of the Bank.
- 8.6 All payments to be made by the Bank to the Supplier will be made in accordance with the terms and conditions contained in the Agreement.
- 8.7 All payments to be made by the Bank to the Supplier will be dependent on the Supplier's performance of its obligations under the Agreement, up to and including the day on which the payment becomes due.
- 8.8 The Bank will be allowed to withhold (if required by law), defer, and make any deduction from, obtain deferment of judgment for, or set off against, any payment due to the Supplier in terms of this Agreement.
- 8.9 If any undisputed sum payable under this Agreement is not paid within the payment period set out in clause 8.2, the Supplier will give the Bank a default notice informing it of its non-payment and requesting that payment is made within 30 (thirty) days from the date of the default notice (the "Default Notice Period"). If the Bank still fails to pay the undisputed sum before the expiry of the Default Notice Period, the Supplier will be allowed (without prejudice to any other rights and remedies that the Supplier may have) to charge the Bank interest on the outstanding sum. Interest may be charged at the rate of 1% (one percent) per month or the maximum rate allowed by Law, whichever is lower, calculated from the date of expiration of the Default Notice Period to the date of actual payment (both dates inclusive).
- 8.10 If the Bank disputes any fees, charges or an invoice (in whole or in part), the Bank will notify the Supplier as soon as the Bank becomes aware of the disputed amount(s). The notification will set out the amount(s) disputed. The Bank will be allowed to withhold payment of the disputed amount(s) until the dispute is resolved. If the Parties are unable to resolve the dispute within a reasonable period after it is raised by the Bank, it will be for determination as per clause 20.
- 8.11 If an invoice contains disputed and undisputed amounts and the Supplier requires payment of the undisputed portion of the invoice, the Supplier will issue a credit note for the full value of the invoice and simultaneously issue two new invoices showing the undisputed amount and the disputed amount. The Supplier will not charge interest on the disputed invoice until the dispute is resolved. The payment period will be suspended for the duration of the dispute.
- 8.12 The undisputed invoice will be payable in terms of clause 8.2.

8.13 With regard to time and material charges (where applicable):

8.13.1 the Supplier will keep accurate time sheets of hours worked and these time sheets will be presented to an authorised representative of the Bank, who will sign same to verify the correctness of the hours. The Bank will only be obliged to pay the Supplier for hours actually worked in accordance with signed-off time sheets; and

8.13.2 the Supplier will not be entitled to charge the Bank a fee in relation to any Services rendered by a Consultant on a day that falls on a public holiday, unless otherwise agreed to between the Parties and set out in the Transactional Document;

8.14 Upon reasonable notice, the Bank may audit the Supplier's compliance with this Agreement, including but not limited to records and documentation pertaining to the charges in terms of this Agreement. The Supplier agrees to cooperate with the Bank's audit and provide reasonable assistance and access to information. Any such audit will not unreasonably interfere with the Supplier's normal business operations.

8.15 If an audit determines that the Supplier has over charged the Bank, the Supplier will, on demand, pay back the excess amount with interest at the prime rate quoted by First National Bank. The Supplier will also be liable for the costs of the audit, payable on demand by the Bank.

8.16 The Bank has the right to recover any *ex gratia* payments made to or on behalf of the Supplier.

9 PRICE PROTECTION

9.1 The Supplier assures the Bank that the fees and charges set out in each Transactional Document attached to the Agreement are at least as favourable as those charged to the Supplier's best customers for the same or similar services.

9.2 If the Supplier wants to apply for an increase in its fees and charges for any Transactional Document:

9.2.1 it will be limited to once a year (on the anniversary of the Commencement date of the Transactional Document);

9.2.2 the request will be in writing and accompanied by supporting documents motivating the increase; and

9.2.3 the request will need the prior written approval of the Bank before any increase will be allowed.

10 WARRANTIES

10.1 The Supplier warrants that:

- 10.1.1 it has the necessary skills, experience, expertise and resources to carry out the Services, and the Services will be carried out with due care, skill and diligence;
- 10.1.2 the Services will be performed in a timely and professional manner in accordance with industry best practice;
- 10.1.3 it is allowed to enter into this Agreement and perform the Services which will not infringe and or violate the rights of any third party;
- 10.1.4 it will ensure that while any of its Consultants or other employees are at the Bank's premises they will not use the premises or any part of it for any purpose other than the performance of the Services;
- 10.1.5 it will obtain and maintain, locally and internationally, all licenses and permits to ensure that the Supplier functions as a lawful business entity. The Supplier must conform to national and (where applicable) international statutes, rules, regulations and other requirements at all times;
- 10.1.6 where any approvals and or permits are required by Law (local and or international) for provision of the Services, the Supplier will ensure that these are obtained and remain valid throughout the provision of the Services to the Bank;
- 10.1.7 the Supplier will devote the specified time attending to the Services;
- 10.1.8 it will comply with all applicable Laws relating to the Services;
- 10.1.9 it will comply with the Bank's policies as they relate to the Services, including the supplier code of conduct which is available at www.firststrand.co.za; and
- 10.1.10 it will not, during the currency of this Agreement, or after its termination, use, utter, publish or cause to be published in any medium, any comments likely to discredit or damage the reputation of the Bank or any of its products or services.

10.2 A breach of any of the provisions of clause 10 will be a material breach of this Agreement.

10.3 The provisions of this clause 10 will survive the termination of this Agreement.

11 INDEMNIFICATION

Third Party Claims

- 11.1 The Supplier indemnifies and holds the Bank harmless against all claims, legal actions, costs or expenses arising out of any infringement or alleged infringement by the Bank of any rights of any third party attributable to the provision of the Services, or any part thereof, to the Bank.
- 11.2 The Supplier also indemnifies the Bank against any claim, including third party claims arising out of the Consumer Protection Act 68 of 2008, which arise out of the provisions of the Services under the Agreement.
- 11.3 The Bank will as soon as possible notify the Supplier, in writing, of any proceedings instituted by a third party against the Bank about any alleged infringement referred to in clause 11.1 and or 11.2. Any delay by the Bank in giving the notice will not limit the Supplier's obligations under the Agreement except for any losses suffered due to the delay.
- 11.4 The Supplier will, at its expense, defend any action instituted by a third party against the Bank, and will be obliged to apply to be joined as a defendant in terms of the rules of the High Court. The Bank will, at the Supplier's expense, assist it, by providing the Supplier with reasonable information as may be required so that it may defend any proceedings instituted against it.
- 11.5 The Supplier will hold the Bank harmless against all third party claims legal actions, costs or expense arising out of any use, implementation or utilisation of the Services provided by the Supplier to the Bank under this Agreement.
- 11.6 If a third party claim causes the Bank's use of the Services to be materially or adversely affected, then, without prejudice to any other right that the Bank may have against the Supplier, the Supplier will at its own cost:
- 11.6.1 immediately replace the Services with compatible, functionally equivalent and non-infringing Services; or
 - 11.6.2 make the necessary modification/s to the Service to avoid the infringement; or
 - 11.6.3 obtain a license for the Bank to continue using the Service, which licence will be a perpetual, irrevocable, and royalty-free worldwide license for the Bank; or
 - 11.6.4 if there are no other alternatives for the provision of the Services even after the Supplier's best efforts, the Supplier will return a *pro rata* portion of the fees and

charges to the Bank. This refund will not nullify or in any way affect the Bank's right to claim damages. The portion of this Agreement relating to the infringing Services will terminate. If the refund is deemed to be a penalty under any existing legislation, the Bank may elect whether or not to claim damages or enforce these provisions.

11.7 Negligence and or Wilful Misconduct of the Supplier and/or Consultants

11.7.1 The Services are to be executed by the Consultants on the Supplier's behalf and the Supplier is and will remain responsible for the actions and/or omissions of the Consultants. Accordingly, the Supplier will ensure that the Consultants comply with all obligations imposed upon the Supplier in this Agreement, to the extent relevant to the Services provided by the Consultants hereunder.

11.7.2 The Supplier hereby indemnifies and holds the Bank harmless for and against any and all claims, loss, damages, bodily injuries or death, of whatsoever nature, arising or occurring as a result of:

11.7.2.1 the Supplier's breach of its obligations under clause 11.7 above; and/or

11.7.2.2 the:

11.7.2.2.1 negligence (whether gross or otherwise);

11.7.2.2.2 omission; and/or

11.7.2.2.3 wilful misconduct, of the Consultants.

11.8 The Supplier's obligation to indemnify the Bank will survive the termination of this Agreement.

12 LIMITATION OF LIABILITY

12.1 To the extent permitted by law, each Party will be liable for Losses arising out of or relating to its performance or failure to perform under this Agreement.

12.2 The limitation set forth in clause 12.1 will not:

12.2.1 apply in any way to the Supplier's liability to the Bank arising from or in relation to a breach of warranty, any indemnity, any confidentiality obligation, a data protection obligation or any Intellectual Property rights contained in this Agreement, including a breach of any of the following clauses, 10 (Warranties) and 11 (Indemnification) above, and clauses 13 (Confidentiality), 15 (Data Protection) and or 17 (Intellectual Property Rights);

- 12.2.2 apply to regulatory fines imposed on Bank as a result of the acts or omissions of the Supplier;
- 12.2.3 apply to liability resulting from the gross negligence and or wilful misconduct of the Supplier;
- 12.2.4 apply to claims against the Supplier for death or personal injury.
- 12.3 For the avoidance of doubt, any claim instituted by the Bank under clause 12.2 will be in respect of all loss and damage and includes indirect, special and consequential damages and will be uncapped.
- 12.4 This clause will survive the termination of this Agreement.

13 ACCEPTANCE TESTING

- 13.1 The Bank has the right to conduct acceptance testing on any Deliverables that form part of the Services.
- 13.2 The Bank will determine if the Deliverables agreed to as part of the Services are in accordance with the Agreement. The Bank will have 30 (thirty) business days, or such other period agreed to between the Parties in writing, from the date the Deliverables are received by the Bank to conduct acceptance testing.
- 13.3 If, after conducting acceptance testing, the Bank is not satisfied with the Deliverables, then it will notify the Supplier, in writing, detailing how the Deliverables do not meet the Bank's expectations. The Supplier will have 30 (thirty) days, or such other period agreed to between the Parties in writing, in which to modify or improve the Deliverables. The Bank will then have a further 30 (thirty) business days, or such other period agreed to between the Parties in writing, to conduct further acceptance testing.
- 13.4 If, after the Bank conducts further acceptance testing, the Deliverables still do not meet the specifications as agreed to between the Parties, then the Bank may, at its sole discretion, either repeat the procedure set out in 13.3 above or terminate the whole or part of the relevant Transactional Document relating to the Deliverables. The Bank may request a refund of fees already paid and take any other action available to the Bank against the Supplier for its failure to deliver the Deliverables in accordance with the Agreement.
- 13.5 There will be no deemed acceptance of any Deliverables that the Supplier gives the Bank as part of the Services.

14 CONFIDENTIALITY

- 14.1 Each Party ("the Receiving Party") undertakes, during the operation of, and after termination of, this Agreement, to keep confidential all Confidential Information. The Receiving Party agrees to only use the Confidential Information in order to provide the Services and not to disclose or use any Confidential Information for its own or anyone else's benefit. The Supplier may only release Confidential Information to employees and or sub-contractors reasonably requiring such information in order to perform the Services and who are bound by written confidentiality obligations no less stringent than those contained in this Agreement, prior to such release. The Supplier will not release or disclose Confidential Information to any other party unless so required by Law.
- 14.2 If the Supplier is uncertain about whether any information is to be treated as Confidential Information, it will be obliged to treat it as such.
- 14.3 Neither Party will use the Intellectual Property and or Confidential Information of the other Party, without having secured the prior written approval of the other Party.
- 14.4 The obligations of confidentiality placed on the Receiving Party in terms of this clause 13 will cease to apply in respect of any information or data which the Receiving Party can show:
- 14.4.1 at the time of disclosure, is or has become generally available and known by the public and or any competitors of the Disclosing Party in a manner other than by the negligence or default of the Receiving Party or by breach of this Agreement by the Receiving Party;
 - 14.4.2 has lawfully become known by or come into the possession of the Receiving Party, on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party; or
 - 14.4.3 is disclosed pursuant to a requirement or request by operation of Law, regulation or court order, to the extent of compliance with such requirement or request only, or
 - 14.4.4 to have been developed for the Receiving Party at any time independently of any information disclosed by the Disclosing Party; or
 - 14.4.5 is disclosed by the Receiving Party with the prior written approval of the authorised representative of the Disclosing Party,

provided that:

- 14.4.5.1 the onus will at all times rest on the Receiving Party to establish that such information falls within the exclusions set out in clauses 14.4.1 to 14.4.5; and
 - 14.4.5.2 such information will not be deemed to be within the foregoing exclusions merely because the information is embraced by more general information in the public domain or in the Receiving Party's possession.
- 14.5 If the Receiving Party is required to disclose Confidential Information as contemplated in clause 14.4.3, the Receiving Party will:
- 14.5.1 as soon as possible advise the Bank thereof in writing prior to making any disclosure, provided that there is no restriction on the Supplier to inform the Bank;
 - 14.5.2 take steps to limit any disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
 - 14.5.3 afford the Bank an opportunity to intervene in the proceeding, if possible; and
 - 14.5.4 comply with the Bank's requests as to the manner and extent of any such disclosure.
- 14.6 The Parties' obligations of confidentiality under this Agreement will survive the termination of this Agreement.

15 DATA PROTECTION

- 15.1 The Supplier acknowledges that, it may be exposed to the Data of the Bank's employees, suppliers, customers and or clients, whilst providing the Services.
- 15.2 All Data provided by the Bank to the Supplier, or to which the Supplier may be exposed, will constitute Confidential Information and, where applicable, Intellectual Property belonging to the Bank.
- 15.3 The Supplier warrants in favour of the Bank that it will at all times strictly comply with all applicable Laws and with all the provisions and requirements of any of the Bank's Data protection policies and procedures which may be in force from time to time.
- 15.4 The Supplier warrants and undertakes that it will not do any of the following: copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the Bank and or the Data owner (where applicable), and to the extent necessary to provide the Services to the Bank.

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- 15.5 The Supplier warrants that it will immediately inform the Bank in writing, if any Data it has access to is compromised. The Supplier undertakes to immediately inform the Bank in writing as to how it will manage such compromise and what steps will be taken, at the Supplier's cost, to rectify the situation to the satisfaction of the Bank.
- 15.6 The Supplier warrants that it will ensure that all its systems and operations which it uses to provide the Services, including all systems on which Data is: copied, compiled, collated, processed, transmitted, stored, collected, mined, altered or deleted or otherwise used as part of providing the Services, will at all times be of a minimum standard required by Law and be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Data.
- 15.7 The Supplier warrants that it will not, without the written consent of and on the terms approved by the Bank, do anything, or omit to do anything that would cause Data to be transferred to and or stored in a country other than the Republic of South Africa.
- 15.8 The Supplier's obligations under this clause 15 will survive the termination of this Agreement.

16 PUBLICITY

The Supplier will submit to the Bank all advertising, written sales promotions, press releases and any other publicity material relating to this Agreement in which the Bank's trade names or trademarks are mentioned. The Supplier will not publish or use or allow the publication or the use of such advertising, sales promotions, press releases or publicity material, Intellectual Property (including customer lists) without the prior written approval of the Bank in each instance.

17 INTELLECTUAL PROPERTY RIGHTS

- 17.1 Subject to the remaining provisions of this clause 17, all Intellectual Property owned by either Party (whether before or after the Effective Date) will remain the sole and exclusive property of that Party.
- 17.2 The Supplier acknowledges that the Bank will become the owner of the Intellectual Property in any work which is created or executed by the Supplier, for the Bank (other than generic tools and methodologies developed by the Supplier), whether alone or with others, in the course and scope of this Agreement.
- 17.3 Where the Supplier's Intellectual Property is incorporated into the Deliverables of the Service provided by it to the Bank, or otherwise required for the use of the Intellectual

Property owned by the Bank referred to in clause 17.2 , the Supplier grants a non-exclusive, worldwide, perpetual, fully paid up license to the Bank to use, reproduce and modify such Supplier Intellectual Property as part of the Deliverables in which it is incorporated, provided that the Bank will not separate and use the Supplier's Intellectual Property independently from the Deliverables in which they are incorporated.

- 17.4 Upon termination of this Agreement for any reason whatsoever, the Parties agree that the Intellectual Property rights which have accrued to the Bank in terms of this Agreement, will remain vested in the Bank and that, notwithstanding such termination, the Supplier will have no rights in or to such Intellectual Property rights.
- 17.5 The Supplier hereby assigns to the Bank the full right, title and interest in and to all the Intellectual Property rights referred to in clause 17.2 , such assignment to be with effect from the date of the commencement of the Services to the Bank. The Supplier hereby undertakes to sign all documents and to do all things that may be necessary to record and perfect the transfer of the Intellectual Property into the name of the Bank.
- 17.6 The Supplier agrees that the assignment (contained in clause 17.5) terminates all rights of the Supplier to claim any further rights in the Intellectual Property, whether moral, residual or of any other kind, and hereby waives in favour of the Bank any right to claim ownership of works in which copyright may subsist or to object to any distortion, mutilation or other modification thereof under any circumstances.
- 17.7 The Supplier will not do, cause or permit anything to be done which may adversely affect any element of the Bank's Intellectual Property, or the Bank's rights in and to its Intellectual Property, and will not attack or assist in any attack on the validity , and or registration of Intellectual Property of the Bank.
- 17.8 The Supplier acknowledges the Bank and its Affiliates' rights, title and interest in and to its series of FIRST prefixed trademarks and will never in the future do anything, or assist, directly or indirectly, anyone to do anything to impair any part of that right, title and or interest, or attack or interfere in any way with the Bank's and or its Affiliates' use or registration of its series of FIRST prefixed trademarks.
- 17.9 The Supplier undertakes never to use or register a corporate name, trading style, trade mark or domain name that incorporates the mark FIRST, or any confusingly or deceptively similar mark, in relation to financial, banking, monetary and related services.

- 17.10 The Parties' obligations in respect of the Intellectual Property under this Agreement will survive the termination of this Agreement.

18 BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)

- 18.1 The Supplier will provide the Bank with a copy of a valid certificate issued in compliance with the applicable Laws, evidencing its current BBBEE rating/accreditation and provide the Bank with its updated rating/accreditation on an annual basis.
- 18.2 If the Supplier is not yet rated or accredited, the Supplier will provide the Bank with a) copies of its application to a verification agency accredited either by SANAS, or an IRBA approved registered auditor, or b) other written evidence it may have, within 3 (three) days of receipt of a request by the Bank. The Supplier undertakes to keep the Bank updated as to the rating/accreditation process, and will promptly provide the Bank with its BBBEE rating/accreditation certificate, within 3 (three) days from receipt thereof.
- 18.3 The Supplier undertakes to promptly notify the Bank in writing, and provide the updated BBBEE rating/accreditation certificate in the event of any change to its BBBEE rating/accreditation.

19 INSURANCE

Without limiting the Supplier's liabilities or responsibilities in terms of this Agreement, the Supplier will secure insurance to cover its liability and obligations in terms of this Agreement.

20 DISPUTE RESOLUTION

- 20.1 Any dispute which arises will be referred to a committee consisting of 2 (two) appointed members each from the Bank and Supplier, who will use their best efforts to resolve a dispute within 14 (fourteen) days of the dispute being referred to them. Such period may be extended by the Parties in writing. The committee will meet at premises agreed to by the members, failing which they will meet at an available meeting room at the local offices of the Bank. The committee members will act as experts and not as arbiters.
- 20.2 If the committee is unable to resolve a dispute in accordance with clause 20.1, then the dispute may be submitted to and decided by arbitration or litigation in terms of clause 21 below. Neither Party will be entitled to refer a matter to arbitration or litigation (save for

litigation contemplated in terms of clause 21.2.7 below) without first attempting to resolve the dispute in terms of this clause 20.

21 ARBITRATION / LITIGATION

21.1 Subject to clause 20, any dispute connected with this Agreement, including the validity, interpretation, implementation, execution, rectification, and or termination of this Agreement, may, at the instance of the Party seeking relief be decided either by way of arbitration or litigation as set out below.

21.2 In the case of arbitration:

21.2.1 Unless otherwise agreed to by the Bank, the arbitration will take place in Johannesburg in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA"); and

21.2.2 the arbitrator, as agreed upon by the Parties, will be, if the question in issue is:

21.2.2.1 primarily an accounting matter, an independent accountant with not less than 10 (ten) years' experience;

21.2.2.2 primarily a legal matter, a practising senior counsel with no less than 10 (ten) years' standing; or

21.2.2.3 any other matter, an independent person, with expertise relevant to the dispute.

21.2.3 If the Parties cannot agree upon a particular arbitrator in terms of 21.2.2 above within 7 (seven) business days after the arbitration has been demanded, the nomination in terms of clause 21.2.2.1, 21.2.2.2 or 21.2.2.3, as the case may be, will be made by the President of the Law Society of the Northern Provinces (or its successor) or his or her nominee, within 7 (seven) days after the Parties have so failed to agree.

21.2.4 In the event that the arbitration is not held in the Republic of South Africa, the head of the organisation governing the legal profession in the country of arbitration will select an arbitrator.

21.2.5 The Parties agree that the decisions in these arbitration proceedings:

21.2.5.1 will be binding on them, subject to review;

21.2.5.2 will be carried into effect;

21.2.5.3 may be made an order of any Court of competent jurisdiction; and

21.2.5.4 will not exclude the Parties' right to urgent relief.

- 21.2.6 Neither Party may appeal the decision of the arbitrator(s).
- 21.2.7 No Party will be prevented or prohibited from applying to the appropriate court for urgent relief pending the outcome of the arbitration proceedings.
- 21.2.8 Any arbitration in terms of this clause will be conducted *in camera* and the Parties will treat it as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.
- 21.3 In the case of litigation, each Party consents and submits to the High Court of South Africa having jurisdiction in respect of all proceedings and disputes arising from or connected with this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute falls outside such High Court jurisdiction.
- 21.4 The Bank may, at its sole discretion, consent to another court's jurisdiction.

22 BREACH

- 22.1 If either Party to this Agreement ("the Defaulting Party") commit a breach of any of the terms and conditions of this Agreement and remain in default for a period of 14 (fourteen) days after receipt by it of a written notice from the other Party calling for such breach to be remedied, then the Party delivering such notice will be entitled, without prejudice, and in addition to any other rights it may have hereunder or in Law, to terminate this Agreement immediately by written notice to the Defaulting Party.
- 22.2 The Bank will be entitled, without prejudice to any other rights it may have hereunder or in law, to terminate this Agreement on written notice to the Supplier where the Supplier receives at least 3 (three) notices of breach during a continuous 12 (twelve) month period during the currency of the Agreement from the Bank.

23 SUMMARY TERMINATION

- 23.1 The Bank will be entitled to terminate this Agreement, at any time and with immediate effect, without prejudice to any other rights it may have hereunder or in law, by providing the Supplier with notice of such termination if:
- 23.1.1 the Supplier is, other than for the purposes of reconstruction or amalgamation, i) placed under voluntary or compulsory winding up, ii) business rescue or iii) receivership or the equivalent of any of the foregoing; or

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- 23.1.2 the Supplier makes any arrangement or composition with its creditors generally, or ceases or threatens to cease to carry on business or disposes of any of its material assets other than in the normal course of business; or
- 23.1.3 the Supplier consolidates or merges with or into any entity (other than the consolidation or merger of the Supplier with an Affiliate of the Supplier in which the Supplier is the surviving entity); or
- 23.1.4 beneficial ownership of 20% (twenty percent) or more of the outstanding voting securities or other ownership interests of the Supplier is acquired by any entity, or group of entities acting in concert; or
- 23.1.5 a substantial part of the Supplier's property becomes subject to levy, seizure, assignment or sale for or by any creditor or governmental agency;
- 23.2 Summary Termination for non-compliance with anti-corruption, anti-money laundering Laws and or terrorism
- 23.2.1 The Supplier will comply with all South African and international Laws relating to the combating of corruption, money laundering and terrorism, locally or internationally.
- 23.2.2 The Bank may verify (check and confirm) a Supplier or any persons related to or acting on behalf of, or involved with such Supplier. This includes, but is not limited to, mandated persons, directors, signatories, shareholders and related entities. The Bank will do this at the start of the business relationship and as often as it or the Law considers necessary thereafter. The Bank can refuse to do business with any person or entity that it considers undesirable.
- 23.2.3 If the Bank is of the view that the Supplier or any person related to, acting on behalf of, or involved with the Supplier:
- 23.2.3.1 has or is suspected to have contravened any anti-corruption and or anti-money laundering Laws (locally or internationally); and or
- 23.2.3.2 is, or is suspected to be involved in terrorist activities; and/or
- 23.2.3.3 whose name appears on any sanction list prescribed by legislation or that is used by the Bank in the management of its risk, or that is linked to any person that appears on such sanction list, or linked to any restricted countries or the government agencies of such restricted countries as determined from time to time;
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then the Bank will be entitled to terminate this Agreement with immediate effect, without cost or penalty, on written notice to the Supplier.

24 FORCE MAJEURE

24.1 If a Party ("the Invoking Party") be prevented from fulfilling any of its obligations in terms of this Agreement due to any Act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo or any economic or other cause beyond the reasonable control of the Invoking Party ("*force majeure*") then the Invoking Party will immediately give written notice to the other Party:

24.1.1 specifying the cause and anticipated duration of the *force majeure*; and

24.1.2 promptly, upon termination of the *force majeure*, stating that *force majeure* has terminated.

24.2 Performance of any obligations will be suspended from the date on which notice is given of the *force majeure* until the date on which notice is given of the termination of the *force majeure* (the "Suspension Period"), subject always to the remaining provisions of this clause 24.

24.3 The Invoking Party will not be liable for any delay or failure in the performance of any obligation in terms of this Agreement, or loss or damage due to or resulting from the *force majeure* during the Suspension Period provided that:

24.3.1 the Invoking Party uses and continues to use its best efforts to perform its obligation; and

24.3.2 if the *force majeure* continues for more than 60 (sixty) consecutive days, then the other Party will be entitled to terminate this Agreement on the expiry of such period. The other Party will not be entitled to claim damages against the Invoking Party as a result of the delay or failure in the performance of any obligations, due to or resulting from the *force majeure*. If the Supplier provides the Bank with fixed term Services, paid for in advance by the Bank, then the Supplier will refund the portion of the fees paid, as from the date of the notice of the *force majeure* being given by the Supplier.

24.4 Without prejudice to any other rights of the Bank, where the Supplier is the Invoking Party and gives written notice to the Bank that it is unable to provide the Services due to the *force majeure*, the Bank will be entitled to make arrangements for the provision of those Services or that part of the Services that the Supplier is unable to perform during the period that the *force majeure* persists. If the Services or part of thereof:

- 24.4.1 cannot be performed by the Supplier, the Bank's payment set out in the relevant Transactional Document will be suspended until such time as performance is resumed, provided that any fees and charges incurred prior to the *force majeure* are payable; or
- 24.4.2 are performed by the Supplier, the fees payable by the Bank as set out in the relevant Transactional Document will be appropriately reduced to take into account the extent and period of the Supplier's inability to provide the full Services to the Bank; or
- 24.4.3 are fixed term Services, paid for in advance by the Bank, then the Supplier will refund the portion of the fees paid for the Services that the Supplier was unable to provide during the Suspension Period.

25 ADDRESSES FOR SERVICE

- 25.1 Each Party hereby selects as its *domicilium citandi et executandi* the address set out opposite its name below, at which all notices and legal processes must be delivered to it for the purposes of this Agreement:

- 25.1.1 THE BANK: Attention: Procurement Legal
 c/o FNB Legal
 3rd Floor, No. 1 First Place
 Cnr Pritchard and Simmonds Street
 Johannesburg, South Africa
 and
 Attention: RMB Legal Risk
 4th Floor, 3 Merchant Place
 1 Friedman Drive
 Sandton, South Africa
- 25.1.2 THE SUPPLIER: Attention: Managing Director
 Skai Skai Pty Ltd
 186 Shingara Sands
 Petroy Drive
 Fourways

Johannesburg

2191

Contact No: 072 932 2445

E-mail: shaun@skai.co.za

In respect of invoices and statements and any other related queries, the Supplier acknowledges that the Bank hereby selects the address as set forth in the relevant Transactional Document.

- 25.2 Any termination and or breach notice will be valid and effective only if in writing and delivered by hand, registered post or electronic mail message ("e-mail") to the addresses as set out in clause 25.1 above by a party authorised to do so.
- 25.3 Any legal notice required or permitted to be given in terms of this Agreement will be valid and effective only if in writing and delivered by hand and or registered post.
- 25.4 Any notice to the other Party delivered by hand to its *domicilium* address will be deemed, unless the contrary is proved, to have been received on the day of delivery.
- 25.5 Any notice to a Party posted by prepaid registered mail will be deemed, unless the contrary is proved, to have been received by the addressee, on the 5th (fifth) day following the date of such posting.
- 25.6 Any termination and or breach notice sent by e-mail to a Party using its chosen e-mail address, as stipulated in clause 25.1, will be regarded as having been received by the recipient when the complete data message enters the information system designated and used for that purpose by the recipient, and is capable of being retrieved and processed by the recipient, or upon receipt by the sender, of an automated acknowledgement of receipt by the recipient or any conduct of the recipient reasonably sufficient to indicate to the sender that the email has been received. Any termination notice sent by e-mail to a Party will be deemed, unless the contrary is proved, to have been received by the recipient, 24 (twenty-four) hours after the e-mail was sent.
- 25.7 If either Party changes its *domicilium* address, it will notify the other Party in writing of the change.
- 25.8 Notwithstanding anything to the contrary contained in this Agreement, a notice actually received by either Party from the other Party will be adequate written notice or communication to such Party, despite the terms and conditions of this clause 25

were not strictly complied with.

26 CESSION AND ASSIGNMENT

- 26.1 The Supplier acknowledges and agrees that the Bank will be entitled to cede, assign, transfer or make over this Agreement to any Affiliates.
- 26.2 Except as provided for in clause 26.1 above, no part of this Agreement may be ceded, assigned, transferred or made over by either Party without having secured the prior written consent of the other Party.

27 SUB-CONTRACTING

The Supplier will not be entitled to appoint sub-contractors to perform all or part of the Services, unless prior written approval is obtained from the Bank. Where written approval is obtained from the Bank, the Supplier will be liable for all actions of the sub-contractors and any such appointment will not relieve the Supplier of any of its obligations as set out in this Agreement.

28 NON SOLICITATION

Except as otherwise agreed in writing, neither Party will directly solicit, offer work to, employ or contract with, whether as a partner, employee or independent contractor, any of the other Party's personnel who are directly and currently involved in the provision of the Services, or for a period of 6 (six) months thereafter. If either Party solicits the other Party's personnel in contravention of this clause, the soliciting Party will pay to the other Party an amount equal to 15% (fifteen percent) of the employee's current annual cost to company as a penalty. This clause will not apply if a Party's personnel actively seeks employment with the other Party by applying for employment directly.

29 EXIT ASSISTANCE

- 29.1 Exit Assistance may be required by the Bank to ensure the continuity of the Services provided by the Supplier to the Bank if the Agreement is terminated as a whole or in part.
- 29.2 The Supplier must provide the Bank with Exit Assistance if the Bank requires it.
- 29.3 Exit Assistance will be provided by the Supplier to the Bank on the following conditions:
- 29.3.1 the Bank must agree to the period in which Exit Assistance ("Exit Assistance Period") will be provided;

- 29.3.2 the Bank must agree what Services the Supplier will provide during the Exit Assistance Period;
- 29.3.3 the cost of the Services to be provided during the Exit Assistance Period will be as favourable to the Bank as the cost of the Services at the time of termination of the Agreement;
- 29.3.4 the Services provided during the Exit Assistance Period will be of the same quality and at the same level of Service provided by the Supplier during the currency of the Agreement;
- 29.3.5 the Supplier will provide every assistance to the Bank to either wind down the provision of the Services to the Bank or transfer the provision of the Services to the Bank or its nominated service provider;
- 29.3.6 the Parties will agree to an Exit Assistance plan, which will be recorded in writing and signed by both Parties; and
- 29.3.7 the Bank will pay the Supplier for all costs agreed to for the Exit Assistance Period in accordance with clause 8 of the Agreement.
- 29.3.8 The Parties' obligations in respect of this clause 29 will survive the termination of this Agreement.

30 GOVERNING LAW

This Agreement will be governed by and construed under and in accordance with the Laws of the Republic of South Africa.

31 GENERAL

- 31.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all prior agreements and or proposals, whether oral and or written, between the Parties on this subject. Unless otherwise agreed, the provisions set out in this clause will apply to any active Transactional Document still in place under any preceding agreement.
- 31.2 No Party will have any claim or right of action arising from any undertaking or representation not included in this Agreement whether tacit or implied.
- 31.3 No failure or delay by a Party in exercising any right, power or privilege under this Agreement or delay by a Party to enforce a provision of the Agreement will it be deemed to be a waiver thereof. Any waiver of a subsequent breach will not nullify the effectiveness of that provision. No waiver, suspension or postponement by either

Party of any right arising out of or in connection with this Agreement will be of any force or effect unless reduced to writing and signed by both Parties. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

- 31.4 No agreement to amend or cancel this Agreement or any part thereof, including this clause, will be effective unless reduced to writing and signed by both Parties.
- 31.5 Any invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of any other of its provisions, and such invalid provision will be severed from the Agreement.
- 31.6 Any provision of this Agreement which contemplates performance or observance after any termination or expiration of this Agreement will survive and continue in full force and effect, notwithstanding that the clause itself does not provide for such survival.
- 31.7 This Agreement will be binding on and enforceable by the trustees, permitted assigns liquidators or other legal successors of the Parties.
- 31.8 This Agreement may be executed in counterparts, each of which will be deemed to be an original and which together will constitute one and the same agreement.
- 31.9 A scanned or electronically reproduced copy or image of this Agreement will be deemed as an original and may be submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof.


32 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

EXECUTION

This Main Agreement is executed:

For and on behalf of FirstRand Bank Limited	
Signed at:-	_____
Date:-	_____
Signature	_____
Full Name	_____
Position	_____
By signing above I warrant that I have been duly authorised to sign this Agreement	
Signatory Mandatory level	_____

JP 

For and on behalf of **FirstRand Bank Limited**

Signed at:-

Date:-

Signature

Full Name

Position

By signing above I warrant that I have been duly authorised to sign this Agreement

Signatory Mandatory level

For and on behalf of **Skai Skai Pty Ltd**

Signed at:-

Fourways

Date:-

Signature

Full Name

Position

By signing above I warrant that I have been duly authorised to sign this Agreement

Signatory Mandatory level

Managing Director

JP 

ANNEXURE ONE

ARRANGEMENTS AND PROCEDURES FOR SUPPLIERS ON BANK PREMISES IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 AND ITS REGULATIONS AND THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AND ALL APPLICABLE ENVIRONMENTAL LEGISLATION

1 ADDITIONAL DEFINITIONS

- 1.1 "Act" and "OHS Act" shall mean the Occupational Health & Safety Act, No. 85 of 1993, as amended from time to time, as read with all regulations and standards promulgated in terms of the former Machinery and Occupational Act, No. 6 of 1983, as amended, and all regulations & standards promulgated in terms of the Occupational Health & Safety Act from time to time;
- 1.2 "Associated Staff" shall mean to include, but not be limited to all employees, agents, contractors and sub-contractors;
- 1.3 "COIDA" shall mean the Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended, and all regulations & standards promulgated thereunder from time to time;
- 1.4 "DEL" shall mean the Department of Employment and Labour;
- 1.5 "EHS" shall mean environmental health and safety requirements as set out in the Act and National Environmental Act, 1998;
- 1.6 "NEMA" shall mean the National Environmental Management Act 108 of 1998, as amended and all regulations & standards promulgated thereunder from time to time;
- 1.7 "PPE" shall mean personal protective equipment; and

2 OBLIGATIONS OF EACH PARTY

- 2.1 Each Party: -
 - 2.1.1 acknowledges that it is fully aware of the terms and conditions of the OHS Act;
 - 2.1.2 acknowledges that it is an employer in its own right with duties and responsibilities as prescribed in the Act;

- 2.1.3 agrees to ensure that it shall comply with its obligations stipulated in this Agreement and that it shall use all equipment in accordance with the provisions of the OHS Act,
- 2.1.4 accepts accountability for its Associated Staff (other than the other Party) to the extent that such Associated Staff contravene the provisions of the Act; and
- 2.1.5 agrees that it and any of its Associated Staff (acting in the course and scope of its employment with such Party) who accesses the other Party's premises for purposes of, or pursuant to, this Agreement, shall comply with the standard health and safety rules and regulations applicable at such premises to the extent that such health and safety rules are communicated in writing to such Party.

3 DULY AUTHORIZED REPRESENTATIVE

- 3.1 Each Party shall appoint a duly authorized representative to ensure the discharge of its duties in terms of Section 16(1) and (2) of the OHS Act.

4 SECTION 37(2) AGREEMENT

- 4.1 The Parties acknowledge and agree that this Agreement between the Parties shall constitute an agreement as contemplated in Section 37(2) of the OHS Act, whereby all responsibility for health and safety matters relating to the work the Supplier and its Associated Staff are required to perform on the premises shall be the obligation of the Supplier.

5 COMMENCEMENT OF WORK

- 5.1 The Supplier and/or his designated person appointed in term of Section 16(2) of the Act, shall ensure that all access requirements of the Bank are being complied with prior to access.
- 5.2 The Supplier shall ensure that the following is in place before commencing with any work activities on any of the Bank's premises:
 - 5.2.1 This Agreement is signed by both Parties;
 - 5.2.2 Where applicable, the Supplier's health and safety plan is handed to, and approved by the Bank;

- 5.2.3 All Supplier Associated Staff have attended all relevant EHS induction and orientation;
- 5.2.4 A risk assessment was done on work to be done and a copy handed to the Supplier EHS representative;
- 5.2.5 Access requirements with regards to vehicles, personnel, machinery, articles, substances etc are complied with;
- 5.2.6 All the required legal appointments are made, and copies are included in the Supplier's health and safety plan.

6 REQUIREMENTS, ARRANGEMENTS AND PROCEDURES FOR SUPPLIERS

- 6.1 It is a condition of this Agreement that the Supplier and its Associated Staff is registered and in good standing with the DEL, and, be covered in terms of COIDA. A copy of their valid certificate of good standing with the Compensation Commissioner shall be attached to the signed copy of this legal document. Furthermore, the Supplier certifies that such cover will not expire during the execution of the task nor will the Supplier become in arrears with any payment due to the compensation commissioner or any other documentation required by law, including same for Supplier Associated Staff where applicable.
- 6.2 The Supplier furthermore agrees to adhere to all the Bank's EHS policies and procedures.
- 6.3 The Supplier shall ensure that it provides a detailed scope of work to the Bank and that it will further ensure that its Associated Staff are conversant with the safe work procedures associated with the specific scope of work and as agreed upon by all affected parties.
- 6.4 The Supplier shall ensure that it provides an attendance register to the Bank indicating that the Supplier's Associated Staff attended a briefing on the scope of work and EHS policies and procedures associated with same.

7 WARRANTY OF COMPLIANCE

- 7.1 In terms of this Agreement, the Supplier, together with its Associated Staff, including any persons under supervision and/or control of the Supplier or its Associated Staff warrants that it:

-
- 7.1.1 agrees to the arrangements and procedures as prescribed by the Bank and as provided for in terms of Section 37(2) of the Act;
 - 7.1.2 undertakes to maintain such compliance with the Act, the regulations thereunder;
 - 7.1.3 shall have available and display a copy of the OHS Act at the place where work is performed in the fulfilment of the Supplier's duties;
 - 7.1.4 shall keep up to date and available for inspection all applicable legally required registers and legal appointment letters and training certificates;
 - 7.1.5 shall not misuse anything, which is supplied in the interest of the environment and/or health and safety; and
 - 7.1.6 undertakes to ensure that the health and safety of any other person on the premises are not endangered by the conduct and/or activities of the Supplier and its Associated Staff, while they are on the premises.
- 7.2 The Bank hereby reserves the right to cause all work undertaken by the Supplier, that is in contravention with any of the applicable legislation and that has come to the attention of the Bank to cease, until satisfied that such contravention has been rectified. Non-compliance to the Bank arrangements and procedures will adversely affect future contracts, while serious non-compliance may lead to immediate expulsion from the premises

8 APPOINTMENTS AND TRAINING

- 8.1 The Supplier shall appoint competent Associated Staff as per Section 16(2) of the Act. Any such appointed Associated Staff shall be trained on any occupational health and safety matter and the Act and provisions pertinent to the work that is to be performed under their responsibility. Copies of appointments made by the Supplier shall be included in the Health and Safety Plan.
- 8.2 The Supplier shall further ensure that all its Associated Staff are trained on health and safety aspects relating to their work/role and that they understand the hazards associated with such work being performed. The Supplier shall ensure that all users or operators of any materials, machinery or equipment are properly trained and declared competent in the use of such materials, machinery and equipment.

- 8.3 The Supplier shall ensure that it has always appointed responsible persons where necessary and that its Associated Staff are aware of the provisions of the Act with which they are required to comply with.

9 SUPERVISION, DISCIPLINE AND REPORTING

- 9.1 The Supplier shall ensure that work is performed under supervision and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced by the Supplier against any of its Associated Staff regarding non-compliance with health and safety policies, rules and regulations.
- 9.2 The Supplier shall exercise strict supervision under industrial relations and attempt to foster a sound industrial relations climate and ensure compliance with all labour legislation.

10 ACCESS TO LEGISLATION

- 10.1 The Supplier warrants that it has access to the latest and updated health and safety legislation and regulations and that such is accessible to its appointed responsible persons and Associated Staff.

11 COOPERATION

- 11.1 The Supplier and its Associated Staff shall provide full cooperation and information when the Bank inquiries into Health and Safety compliance.
- 11.2 The Bank may at any time, be entitled to make such inquiries and request proof of compliance with the Act, and the requirements, policies and procedures of the Bank.

12 HEALTH AND SAFETY MEETINGS

- 12.1 If required in terms of the OHS Act, the Supplier shall establish its own Health and Safety Committee and ensure that it regularly conducts health and safety meetings as required in terms of the Act.

13 MEDICAL EXAMINATIONS

- 13.1 The Supplier shall ensure that all its Associated Staff undergo routine medical examinations (if required) and that its Associated Staff are medically fit for the purpose of the work they are required to perform.

14 INCIDENT REPORTING AND INVESTIGATION

- 14.1 All incidents referred to in section 24 of the OHS Act shall be reported by the Supplier to the DEL without any undue delay, although any workplace incident may have occurred on the Bank premises. All incidents shall also immediately be reported to the applicable EHS specialist manager. The Bank shall further be provided with copies of all relevant documentation relating to any incident.

15 SUBCONTRACTORS

- 15.1 The Supplier shall notify the Bank of any subcontractors it may wish to appoint to perform work on the Bank's premises. The Supplier shall assume responsibility for all activities performed by subcontractors that it appoints and that all such subcontractors shall comply with the health and safety requirements, including but not limited to the provisions of this Agreement.

16 FIRE PRECAUTIONS AND FACILITIES

- 16.1 The Supplier shall ensure that an adequate supply of fire protection and first aid facilities is provided for the work to be performed on the Bank's premises, save that the Parties may mutually make arrangements for the provision of such facilities.
- 16.2 The Supplier shall further ensure that all his Associated Staff are familiar with fire precautions at the premises, which include fire alarm signals and emergency exits, and that those precautions are adhered to.
- 16.3 Any Supplier with 5 (five) or less Associated Staff shall ensure that Supplier's Associated Staff are made aware of who the Bank's first aiders are and will be aware of where the Bank's first aid box is kept.
- 16.4 Any Supplier with more than 5 (five) Associated Staff at any time on the premises shall have available its own first aid box for prompt first aid.
- 16.5 Any Supplier with 10 (ten) or more Associated Staff shall have at least one competent and valid first aider on the premises at their workplace. Should there be 50 (fifty) or more Associated Staff on the premises a further first aider for every 50 (fifty) Associated Staff or part thereof shall be available.

17 HYGIENE AND CLEANLINESS

- 17.1 The Supplier shall ensure that the area where the work is performed is, always, maintained to reasonably practicable levels of hygiene and that it maintains the surrounding area of the work site to a reasonably practicable level of cleanliness. In this regard, no loose materials shall be left lying around unnecessarily, and the work site shall be cleared of waste material regularly and on completion of the work to the satisfaction of the Bank.

18 NO NUISANCE

- 18.1 The Supplier shall ensure that neither it nor its Associated Staff undertake any activity that may cause environmental impairment or constitute any form of nuisance to the Bank and/or its surroundings.
- 18.2 The Supplier shall ensure that no hindrance, hazard, annoyance, or inconvenience is inflicted on other suppliers of the Bank, or tenants. Where such situations are unavoidable, the Supplier shall give prior notice to the Bank.

19 INTOXICATION NOT ALLOWED

- 19.1 No intoxicating substance of any form shall be allowed on site. Any person suspected of being intoxicated shall not be allowed on the site, save that any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

20 PERSONAL PROTECTION EQUIPMENT

- 20.1 The Supplier shall ensure that its responsible persons and Associated Staff are provided with the correct type of suitable PPE for the work they may perform and in accordance with the requirements of General Safety Regulation 2(2) of the OHS Act. The Supplier shall further ensure that its responsible persons and Associated Staff wear PPE issued to them at all material times.

21 TRANSPORT

- 21.1 The Supplier shall ensure that all road vehicles used on the premises are in a roadworthy condition, are licenced, and are insured. All drivers shall have relevant valid driver's licences and no vehicle shall carry passengers unless it is specifically

designed to do so. All drivers shall adhere to the speed limits and road signs on the premises.

- 21.2 In the event that any hazardous substances are to be transported on the premises. The Supplier shall ensure that the requirements of the Hazardous Chemical Substances Act, 15 of 1973 are always complied with.

22 CLARIFICATION

- 22.1 If the Supplier requires clarification of any of the terms or provisions of this Agreement, it should contact the EHS manager of the Bank.

23 DURATION OF AGREEMENT

- 23.1 This Agreement shall remain in force for the duration of the work to be performed by the Supplier and/or while any of the Supplier's Associated Staff are present on the Bank's premises.

24 INDEMNIFICATION

- 24.1 The Supplier hereby certifies that all Associated Staff recognize the inherent hazards and aspects that exist on the premises of the Bank and that the Supplier:

24.1.1 Enters the property entirely at his/her own risk and therefore the Supplier waives any claim of whatsoever nature against the Bank, its employees, agents and/or mandataries in respect of any loss, damage and/or injury whether same is the result of any negligent act or omission on the part of the Bank, its employees, agents and/or mandataries or other independent suppliers or by a third person or by way of defective equipment or materials supplied by the Bank; and;

24.1.2 The Supplier will ensure that no activities undertaken by the Supplier and/or its Associated Staff will pollute or detrimentally affect the environment in which the Bank operates.

24.2 The Supplier hereby indemnifies the Bank, its employees, agents and/or mandataries against any claims from the Supplier's Associated Staff from any claim or financial loss to the fullest extent permissible in law which the Bank may suffer as a result of the Supplier's breach of the provisions of the Agreement.

25 ENVIRONMENTAL

25.1 The Bank prides itself in the strides to respect, promote and fulfil the environmental clause of section 24 of the Constitution of the Republic of South Africa, 1996. Without limiting the generality of any other obligations imposed on the Supplier in terms of this agreement, the Supplier, together with its Associated Staff, shall comply with the wide range of environmental legal requirements applicable to its activities, products and/or services. Environmental legal requirements include, but are not limited to, various legislative measures enacted in terms of section 24(b) of the Constitution and principles based on environmental considerations.

25.2 In terms of these environmental legal requirements, the Supplier, together with its Associated Staff, is required to inter alia comply to section 28 of NEMA, which articulates the duty of care and the remediation of environmental damage:

"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonable be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."

25.3 Section 28 of NEMA should be interpreted in relation to whom the obligation is imposed; section 28(2) specifically provides for the inclusion of contractors to the duty of care. Further, section 28 of NEMA has retrospective effect. The contractor who has caused pollution in the past is thus obliged to ensure that reasonable measures are taken to prevent such pollution or degradation from occurring, continuing or recurring.

25.4 It is the responsibility of the Supplier to ensure that all its Associated Staff are always informed of their obligations arising in terms of this Agreement.

ANNEXURE TWO

THE BANK'S REQUIREMENTS FOR SUPPLIERS CONNECTING REMOTELY TO THE BANK'S NETWORK

The Supplier will comply, and will ensure that the employees and or contractors are aware of and comply, with the terms and conditions set out below:

1. The Supplier may only use remote connectivity to the Bank's network for the sole purpose of supporting the Bank's systems.
2. The Supplier will have no expectation of privacy with regard to its access to the Bank's network and it accepts that access and activity logs may be monitored and examined on an ad hoc basis.
3. The Supplier may not remain connected to the Bank's network for any period longer than what is necessary to perform the support task at hand.
4. The Supplier will be issued with its own personal credentials to access the network which may not be shared with anyone else, or divulged to anyone else under any circumstances. The Supplier will protect the personal credentials according to the strictest standards of confidentiality.
5. The Supplier may not store any of the Bank's data on non-Bank equipment without prior written authorisation from the Bank.
6. The Supplier's employees/sub-contractors may not leave their workstation/PC/laptop connected to the Bank's network unattended and must ensure that they are physically present at the said workstation/PC/laptop when connected to the Bank's network.
7. The Supplier may not use the Bank's network for private purposes.
8. The Supplier's employees/sub-contractors may not access any other network, including their employer's network, while connected to the Bank's network.
9. The Supplier's employees/sub-contractors must ensure that the latest security patches are applied to their workstations/PCs/laptops and that they have anti-viruses with the latest signatures installed on their workstation/PC/laptop.
10. The Bank will have the right to audit the workstations/PCs/laptops of the Supplier's employees/sub-contractors in the event of any suspicious traffic being identified as originating from their workstation/PC/laptop.

11. Failure to comply with these agreed terms and conditions will result in the revocation of the Supplier's access to the Bank's network with immediate effect.
12. The Supplier is and will remain responsible for the actions and or omissions of its employees and or contractors.

ANNEXURE THREE

AFFIDAVIT

I, the undersigned Kamani Naidoo

Do hereby make oath and state as follows:

1. The facts herein contained are within my own personal knowledge and are to the best of my belief, both true and correct.
2. I am the Managing Director of Skai Skai Pty Ltd ("the Supplier").
3. The Supplier is not a "Personal Service Provider" as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act 1962, and therefore is not subject to the deduction of employees' tax by our clients.
4. The Supplier is registered for PAYE, and deducts employees' tax according the current tax tables from its employees and contractors on a monthly basis.
5. The Supplier has more than three full time employees who are not directors or members of the Supplier or connected persons in relation to the directors or members.
6. The Supplier will not earn more than 80% of its income on an annual basis from the Bank.



DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT:

- (a) He/she knows and understands the contents of this declaration;
- (b) He/she has no objection to taking the oath; and
- (c) He/she considers the oath to be binding on his/her conscience.

THUS signed and sworn to before me, at Douglasdale on the 24 day of February 2020, the Regulations contained in Government Notice No R1258 of 21 July 1972 having been fully complied with.



COMMISSIONER OF OATHS

Business Address:
Designation:
Area / Office:

COMMISSIONER OF OATHS
ANGELA BILLINGHURST CI04/08-2017
Johannesburg North District Randburg
Owner of Business - 3@1 Douglasdale
Shop 3B Douglasdale Village
Shopping Centre
Leslie Avenue, Douglasdale