



STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions:

- 1.1.1 **"Acceptance Criteria"** where applicable means such criteria outlined by the Service Provider;
- 1.1.2 **"Accompanying Documents"** shall mean such documents referred to in these terms and conditions but not limited to Schedules and Implementation Plans;
- 1.1.3 **"Agreement"** means the agreement between the Eswatini Revenue Service ("ERS") and a Service Provider identified in the Purchase Order and includes but is not limited to a Seller, Supply, Contractor and Service Provider, consisting of these Terms and Conditions, the Purchase Order and any applicable Schedules or implementation plans;
- 1.1.4 **"Claim"** includes any request, demand or entitlement in relation to, arising out of or in connection with the Agreement concluded under these terms and conditions;
- 1.1.5 **"Commencement Date"** shall mean the date on which the first day of delivery of goods or provision of services under these terms and conditions which date should be specified in the Purchase Order;
- 1.1.6 **"Confidential Information"** means all proprietary and confidential information (whether written or oral) of the parties, including without limitation, trade secrets, technical information, business information, know-how, methods, techniques, formulae, data and processes as specifically referred in these terms and conditions;
- 1.1.7 **"Delivery Date"** means:
 - (a) in relation to Goods, the date for delivery of the Goods; and
 - (b) in relation to Services, the date for completion of the Services, stated in the Purchase Order, Delivery note or implementation plan;
- 1.1.8 **"Goods"** means the item(s) to be supplied by the Service Provider set out in the Purchase Order;
- 1.1.9 **"Information"** means all information including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, knowhow, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not;
- 1.1.10 **"Intellectual Property Rights"** shall mean any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by a Party, directly or indirectly, including, without limitation, patents, trade-marks, service marks, design rights, copyright, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.1.11 **"Loss"** includes any losses, damages, liabilities and costs (including legal costs);
- 1.1.12 **"Other beneficiaries"** means any entity that the ERS and the Service Provider agree in writing are beneficiaries of the Goods, services or the products of the services;
- 1.1.13 **"Parties"** means the ERS and the Service Provider as specified in the Purchase Order and "Party" shall refer to either of them;
- 1.1.14 **"Premises"** shall mean the Premises to or at which the Goods will be delivered or Services will be provided subject to the sole discretion of the ERS;
- 1.1.15 **"Project Team"** where applicable means the officials from the ERS and the Service Provider who will oversee the implementation of the project under a Purchase Order.
- 1.1.16 **"Purchase Order"** means the purchase order issued in writing by the ERS to the Service Provider, including Purchase Orders issued electronically;
- 1.1.17 **"Services"** means the services to be provided by the Service Provider set out in the Purchase Order or Schedule or Implementation plan and any related services, functions or responsibilities not specifically described in the Purchase Order which are reasonably required for the proper performance and provision of such services;
- 1.1.18 **"Service Provider"** shall mean such other party contracting with the ERS to supply goods or services and shall include a non-local Service Provider;
- 1.1.19 **"Service Provider's Key Personnel"** means such persons as may be specified by the Service Provider in any document evidencing delivery of the

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goods or services, which personnel will be made available to the ERS as and when required subject to the provisions of these terms and conditions.

- 1.1.20 **"ERS"** shall mean the Eswatini Revenue Service established under the Eswatini Revenue Service Act 01 of 2008 duly represented herein by the Commissioner General;
- 1.1.21 **"Stage Plan"** where applicable means each deliverables stage concluded under the Agreement or pursuant to the agreement;
- 1.1.22 **"Sub-Contractor"** shall mean any person appointed by the Service Provider in accordance with the provisions of this terms and conditions, to assist the Service Provider in delivering the Goods or Services;
- 1.1.23 **"Term of Agreement"** means the period for the delivery of Goods if more than one day or for the performance of the services as stated in the Purchase Order;
- 1.1.24 **"Variation "** shall mean the any modification, amendment or change of these terms and conditions or the goods or services;
- 1.1.25 **"Writing"** shall mean any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and fax transmissions, but excludes information or data in electronic form and "Written" and "Write" shall have a corresponding meaning.

1.2 Interpretation

- 1.2.1 In these terms and conditions the following rules of interpretation apply unless the contrary intention appears:
 - 1.2.1.1 headings are for convenience only and do not affect the interpretation of these terms and conditions;
 - 1.2.1.2 the singular includes the plural and vice versa;
 - 1.2.1.3 words that are gender neutral or gender specific include each gender
 - 1.2.1.4 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - 1.2.1.5 the words "such as", "including", "particularly" and similar expressions are not used as, nor are intended to be interpreted as, words of limitation.
- 1.2.2 Any reference in these terms and conditions to:
 - 1.2.2.1 **"business hours"** shall be construed as being the hours between 08h00 and 17h00 on any business day.
 - 1.2.2.2 **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a

Saturday, Sunday or public holiday as gazetted by the government of the kingdom of Swaziland from time to time;

- 1.2.2.3 **"law"** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, bylaw, order or any other enactment of legislative measure of government statutory or regulatory body which has the force of law;
- 1.2.2.4 **"person"** means any person, company, a body corporate, trust, partnership or other entity whether or not having separate legal personality.
- 1.2.2.5 **"supply"** shall be used interchangeably with the words **"Delivery of Goods"** or **"Performance of Services"**.
- 1.2.3 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 shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.4 the words **"shall"** and **"will"** and **"must"** used in the context of any obligation or restriction imposed on a party have the same meaning;
- 1.2.5 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these terms and conditions;
- 1.2.6 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.7 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Commencement Date and as amended or substituted from time to time;
- 1.2.8 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 1.2.9 if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day;

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- 1.2.10 where in the Purchase Order figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.2.11 the rule of construction that an Agreement shall be interpreted against the Party responsible for drafting it, shall not apply to the Agreement;
- 1.2.12 the expiration or termination of the Agreement shall not affect such of the provisions of the Agreement as expressly stated provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.2.13 no provision of this terms and conditions shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to the Agreement;
- 1.2.14 whenever any person is required to act "as an expert and not as an arbitrator" in terms of these terms and conditions, then:
- 1.2.14.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 1.2.14.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.2.14.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.2.14.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.2.14.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 1.2.15 under these terms and conditions the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" and "**schedule**" or "**schedules**" or refer to such terms of the agreement and accompanying documents attached to the Purchase Order.

2 PURCHASE ORDERS

2.1 Terms and Conditions of Purchase Order

2.1.1 These terms and conditions apply to all Purchase Orders issued by the ERS.

2.2 Acceptance by Service Provider

2.2.1 Upon the Service Provider's acceptance (whether in writing or by conduct) of the Purchase Order, the Service Provider agrees to these terms and conditions.

2.3 Variation

2.3.1 Any variation to these terms and conditions, including any Purchase Order, Specifications, quantity or quality of the Goods or Service must be in writing and signed by the parties. Under no circumstances will any terms or conditions contained in, or endorsed upon, any correspondence, invoices or documents issued by the Service Provider in connection with a Purchase Order issued by the ERS or otherwise stated by the Service Provider in making a quotation or accepting or acknowledging a Purchase Order, be binding upon the ERS or deemed to form any part of these terms and conditions unless agreed to by the ERS.

3 FOR THE SUPPLY OF GOODS

3.1 Supply of Goods

The Service Provider shall supply the Goods and/ or carry out the whole of the work required by the Agreement in a proper and professional manner to the satisfaction of ERS and in accordance with these terms and conditions.

3.2 Delivery

The Service Provider shall deliver the Goods to the address stated in the Purchase Order on the Delivery Date, unless the Service Provider is notified otherwise in writing by the ERS.

3.3 Inspection prior to delivery

Prior to delivery, the ERS may enter the Service Provider's premises to make such inspections and tests as may be deemed necessary to ensure that the Goods comply with these terms and conditions and the Service Provider must give all necessary assistance with such inspections and tests. The ERS shall inspect the goods upon delivery and together with the Service Provider conduct the necessary processes post-delivery.

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3.4 Risk

Goods supplied by the Service Provider to the ERS are entirely at the Service Provider's risk up to the time of acceptance of the Goods by the ERS.

3.5 Passing of ownership

Ownership of the Goods passes to the ERS upon the earlier of delivery of the Goods by the Service Provider and upon payment, without prejudice to any rights of rejection that the ERS may have.

3.6 Warranties

The Service Provider represents, warrants and undertakes in relation to the Goods that:

3.6.1 the Goods will be free from defects (latent or otherwise);

3.6.2 it is the owner or has the authority to sell the Goods;

3.6.3 it has the right to sell the Goods and upon delivery to the ERS, the Goods are free from any charge or other encumbrance;

3.6.4 where the Goods are supplied by reference to a sample or description, the Goods correspond with the sample and description, in terms of quality and all other respects;

3.6.5 the Goods are of merchantable quality; and

3.6.6 it has informed itself of the purposes for which the Goods are to be acquired by the ERS and that the Goods are fit for those purposes and that it is reasonable for the ERS to rely on the skill and judgment of the Service Provider.

3.6.7 the goods supplied hereunder are subject to the manufacturer's warranty which does not exclude the Service Provider from liability for any defective goods.

4 FOR THE PROVISION OF SERVICES

4.1 Performance of Services

The Service Provider shall perform the Services in a proper and professional manner to the satisfaction of the ERS and in accordance with these terms and conditions.

4.2 Time for performance

The Service Provider shall perform the Services promptly and in accordance with any time-table which has been agreed in writing by the ERS in the Purchase order, Schedule or implementation plan for the performance of the Services, and complete performance of the same by the Delivery Date.

4.3 Warranties

The Service Provider represents, warrants and undertakes in relation to the performance of the Services:

4.3.1 that the performance of work and services pursuant to these terms and conditions shall conform to the highest professional standards, and the Service Provider shall use its best efforts to ensure such delivery or performance.;

4.3.2 that it will use proper, relevant and professionally qualified key personnel to render the delivery of the services under these terms and conditions;

4.3.3 to cooperate with the ERS's personnel and shall not interfere with the conduct of the ERS's business. The Service Provider shall further observe all rules, regulations and security requirements of the ERS.

4.3.4 that during the term of the agreement hereunder, the Service Provider shall not render such similar services if such will be in conflict with the performance of the services herein rendered, to any other person or entity and shall subject to clause 11 not disclose any information to any other person or entity not directly involved in the program for which the consultancy services are rendered.

4.3.5 that it has informed itself of the nature of the Services and the materials necessary for the performance of the Services; and

4.3.6 that it has thoroughly inspected the site at which the Services are to be performed.

4.3.7 that all documents that it has submitted to the ERS in accordance with clause 11.1 and any other documents, methodology, tools, specifications, drawings, sketches, models, samples, records, ideas, concepts, data, information, reports, analysis, artwork, logos, graphics, video, text, and other materials, including without limitation, financial data developed by the Service Provider for purposes under the agreement shall become the property of the ERS, subject to clause 12. On termination or expiry of the Agreement, the Service Provider shall deliver same to the ERS.

4.4. Place where service to be performed

The Service Provider shall perform the services at the premises specified in the Purchase Order, or at such other place as the ERS may direct.

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4.5 Acceptance

The Service Provider shall outline his acceptance criteria for the ERS to use when accepting deliverables outlined in the Agreement.

5 SUPPLY NOT IN ACCORDANCE WITH AGREEMENT

5.1 Notice of Claim

The ERS may inspect the Goods or Services after delivery or performance and may give written notice to the Service Provider that the supply is not in accordance with the Agreement. Where notified by the ERS, the Service Provider shall promptly replace the relevant Goods or re-perform the relevant Services at its own costs.

5.2 The ERS to withhold payment;

5.2.1 In the event that the Service provider fails to render the proper delivery of the Goods or performance of the Services, the ERS may withhold payment of any amount owing by the ERS to the Service Provider on any account whatsoever, whether under the Agreement, until such time that the Service Provider has rendered proper delivery of the Goods or performance of the Services.

5.2.2 The Service Provider shall not make a set-off against the ERS for any reason whatsoever.

5.3 Costs of return of Goods

If the ERS claims that the Goods or service is not in accordance with the Agreement and subsequently returns the Goods to the Service Provider at the ERS's expense, the Service Provider shall refund or reimburse any losses incurred by the ERS.

5.4 The Service Provider shall not be liable for any damaged Good which are damaged as a result of the negligence of the ERS or its Employees upon or post-delivery of the Goods.

6 PRICE

6.1 The Price in Purchase Order

The price payable for the Supply of the Goods and Services is the price as set out in the Purchase Order.

6.2 Costs included in price

Unless otherwise stated, the price:

6.2.1 is inclusive of VAT and where applicable duties, levies, accommodation fees; and

6.2.2 also includes all of the Service Provider's costs, including all packaging, loading, delivery to the address stated in the Purchase Order, testing and certification and travel and subsistence expenses.

7 INVOICE AND PAYMENT

7.1 Service Provider to provide Invoice

The Service Provider shall provide a valid invoice for each Purchase Order and attach all necessary substantiating documentation.

7.2 Payment of invoice

Subject to the performance by the Service Provider of its obligations under the Agreement, the ERS will pay all correct and valid invoices within thirty (30) days of the date of receipt of an invoice.

7.3 Stage Plan

Where applicable the amount payable under clause 7.2 may be payable after each stage plan as may be agreed by the parties.

8 GENERAL SERVICE PROVIDERS' OBLIGATIONS

8.1. Undertakings

8.1.1 The Service Provider represents, warrants and undertakes to ERS that in performing in terms of the Agreement:

8.1.1.1 it will at all times be suitably qualified and experienced, and will exercise due skill, care and diligence;

8.1.1.2 where applicable it has obtained and will maintain all necessary consents, licences, permits and authorisations (other than those which the ERS is expressly required to obtain under the Agreement);

8.1.1.3 it will ensure all its personnel who provide the Services (either in part or in full) are of sound character and ethics;

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8.1.1.4 it will comply with all applicable laws.

8.1.2 The Service Provider warrants that it has entered into this Agreement without relying on any representation by ERS or any other person.

8.1.3 The Service Provider agrees to make its own enquiries to confirm the accuracy of any information or documents supplied by the ERS, and may not merely rely on any such information or document.

8.2 Documents

8.2.1 All necessary documentation and certification must be supplied to ERS and the supply will not be considered complete until all necessary documents and certificates have been received by ERS in correct, valid and good order.

8.2.2 Any document or other property (tangible or intangible) supplied by ERS to the Service Provider remains (as between ERS and the Service Provider) the property of ERS and must be returned immediately to ERS upon request, completion of the supply or provision of the services.

9 INDEMNITY

9.1 Service Provider indemnities

9.1.1 The Service Provider is liable for and indemnifies the ERS and its officers, agents and employees in respect of any Losses sustained, incurred or suffered by any of them as a result of:

9.1.1.1 any defect, inherent or otherwise, in the Supply or any part of the Supply, including but not limited to the replacement of any defective Supply by the Service Provider at no cost to the ERS;

9.1.1.2 any Claim that the receipt, possession or use of the Goods or Services by the ERS infringes the intellectual property right or other rights of any person; 9.1.1.3 any breach of this Agreement by the Service Provider; and

9.1.1.4 any personal injury, death, disease or illness (including mental illness) of any person or loss of, or damage to, or loss of use of, any property of any person to the extent caused by the Service Provider, though negligence, omission or willful conduct

9.2 No consequential loss

The ERS will not under any circumstances be liable to the Service Provider for any loss of profit or for any loss of an indirect, special or consequential nature whatsoever and howsoever suffered by the Service Provider.

10 INSURANCE REQUIRED BY SERVICE PROVIDER

10.1 Unless otherwise specified in the Purchase Order, the Service Provider must hold the insurances that a prudent Service Provider of the Goods and Services would hold, including:



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10.1.1 insurance to cover physical loss or damage to the Goods;

10.1.2 workmen's compensation insurance as required by law; and

10.1.5 if Services are to be provided by Service Provider's personnel, professional indemnity insurance.

11 CONFIDENTIAL INFORMATION

11.1 Any information received by the Service Provider in furtherance of the obligations under the Agreement or which concern any of the affairs of the ERS, will be treated by the Service Provider in full confidence and will not be released to any other persons or entities, whether during the tenure of the Agreement or after termination, without the prior written consent of the ERS, except as may be necessary in the ordinary course of performing the services under this Agreement.

11.2 Clause 11.1 shall not apply to ERS's information that;

11.2.1 is in the public domain;

11.2.2 the Service Provider is required by law to disclose;

11.2.3 the Service Provider is required to disclose to its insurers or legal advisers;

11.2.4 is necessary for the Service Provider to disclose in order to reasonably perform the services;

11.2.5 is information that the Service Provider independently developed; or

11.2.6 the Service Provider received from a third party without restriction and without breach of a duty of confidentiality.

11.3 The ERS agrees to keep confidential and not to disclose to any third party any methodology or technology the Consultant uses to perform the services.

12 INTELLECTUAL PROPERTY

12.1 The ERS hereby warrants that any instructions given in relation to the Service Provider's use of any third party item supplied directly or indirectly by the ERS shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

12.2 The foregoing states the entire liability of the Service Provider with regard to the infringement of any Intellectual Property Right by the utilisation of the

Deliverables by or on behalf of the ERS or in connection with the receipt of the Goods or Services.

12.3 The Service Provider owns or hold the rights lawfully to the copyright and all other intellectual property rights, whether oral or written, tangible or intangible, in the service, the product of the service, the methodology and technology it uses to perform the services and in its working papers. ERS shall be given ownership of the product of the service in its final and tangible form upon payment of the Service Provider's fees due.

13 BREACH OF CONTRACT

Save for as otherwise provided in clause 14 or elsewhere in the Agreement, if the Service Provider breaches any material provision of this Agreement and fails to cure the breach within seven (7) days after receipt of written notice from the ERS specifying the breach and requiring the Service Provider to remedy the breach, then the ERS may terminate this Agreement without further notice, which right of termination shall be in addition to, and not in lieu of, all other rights and remedies the ERS may have against the Service Provider under this Agreement or at law .

14 DEFAULT AND TERMINATION

14.1 Termination

14.1.1 The ERS may terminate the Agreement with immediate effect by providing written notice to the Service Provider if:

14.1.1.1 the Service Provider is in breach of this Agreement and such breach is incapable of being remedied (including if the Service Provider advises



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the ERS that it is unable or unwilling to complete performance of the Agreement);

14.1.1.2 the Service Provider is in breach of this Agreement and such breach is capable of being remedied, but the Service Provider fails to remedy the breach within seven (7) days of its receipt of a notice requiring it to do so;

14.1.1.3 the Service Provider or the Service Provider's personnel act or omit to act in a manner calculated or likely to bring the ERS into disrepute; or

14.1.1.4 the Service Provider is subject to an Insolvency Event, (each an Event of Default).

14.1.1.5 the Service Provider or any of its Personnel makes a fraudulent misrepresentation ;

14.1.1.5 the Service Provider fails to render delivery or to perform the service in accordance with professional standards.

14.1.2 The ERS may terminate this agreement without cause and without any penalty, by written notice prior to the date of termination of the agreement; provided, however, that no such termination under this clause shall be construed as entitling the ERS to be found without fault or without liability where it has breached the agreement.

14.2 Recovery of the ERS's costs

If the Service Provider defaults and the ERS terminates the Agreement under clause 14.1.1, the ERS may engage others to, or itself, carry out any part or the whole of the remaining Supply. The ERS may determine the reasonable cost so incurred by the ERS and any other Losses sustained by the ERS as a consequence, and the same will constitute a debt due and owing by the Service Provider to the ERS.

14.4 Procedure upon termination or taking work out of hands

14.4.1 If the ERS terminates the Agreement or engages others to carry out or itself carries out any part or the whole of the remaining Supply, the ERS may without payment of compensation to the Service Provider:

14.4.1.1 take possession of all documents (including design documentation) and the like in the Service Provider's possession which is connected with the Supply and reasonably required by the ERS to facilitate completion of the Supply; and

14.4.1.2 take an assignment of the Service Provider's rights and benefits under any contracts with sub-Service Providers, including any warranties and guarantees (the Service Provider must do all things necessary to effect such an assignment).

15 DISPUTE RESOLUTION

15.1 Any dispute or controversy arising from the implementation or application of this Agreement shall be settled by negotiation, with a view to an amicable settlement.

15.2 If any matter remains unresolved after such negotiations referred to in Clause 15.1 above, this shall be resolved by means of arbitration. The arbitrator shall be appointed by the Law Society of Swaziland.

15.3 Any party shall be entitled to demand in writing that the dispute be referred for arbitration within seven (7) days after an agreement could not be reached.

15.4 The finding of the arbitrator shall be final and binding on the parties and may be made an order of court should one of the parties fail, refuse or neglect to give effect to the arbitrator's finding or award.

15.5 Otherwise save for the generality of this clause the parties shall reserve the right to refer such dispute to a court with competent jurisdiction.

16. SPECIAL CONDITIONS ON TAXATION

16.1 Where the ERS engages a non-local Service Provider to supply Goods or performs services for it, these special terms and conditions on taxation shall apply;



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16.1.1 The Service Provider shall be obliged to pay all taxes on any moneys paid to it by the ERS including but not limited to income tax or withholding tax, as the case may be, and to that end, the ERS shall be entitled to deduct and withhold from any fees due to the Service Provider any money due as tax in accordance with the laws of the Kingdom of Swaziland.

16.2.1 Notwithstanding clause 16.1.1, it is recorded that the parties do accept that if there exist a tax treaty (the "Treaty") signed between the government of the Kingdom of Swaziland and the country of residence of the Service Provider, which treaty shall relate to the avoidance of double taxation and the prevention of fiscal evasion with respect to the taxes on income, the provisions of such Treaty shall form part of these terms and conditions.

17 GENERAL PROVISIONS

17.1 Assignment

17.1.1 The Service Provider may not sub-contract, assign, novate, transfer or otherwise dispose of or any or all of its rights and/or obligations under the Agreement without the prior written consent of ERS.

17.1.2 The Service Provider is liable for the acts and omissions of its personnel and its affiliates, sub-contractors and Service Providers, and each of their personnel, as if such acts and omissions were those of the Service Provider.

17.2 Entire Agreement

The Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

17.3 Severability

In the event that any provision of this Agreement shall be declared invalid, illegal or otherwise unenforceable by a competent court with relevant jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby unless it is a material term of the Agreement.

17.4 Jurisdiction

The law governing these terms and conditions is the law of the kingdom of Eswatini. Each party submits to the non-exclusive jurisdiction of the courts of the country.

17.5 Rights cumulative

The rights, powers, privileges and remedies provided under any provision of these terms and conditions are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of the Agreement or by applicable law or otherwise.

17.6 No waiver

No waiver of any right under these terms and conditions will be of any force or effect unless such waiver is in writing, signed by the party making the waiver and is expressly stated to be a waiver. Either party's waiver or failure to enforce any rights under these terms and conditions will not in any way affect or limit that party's right thereafter to enforce strict compliance with the terms and conditions.

17.7 Independence of Service Provider

The Service Provider shall act as an independent Contractor in the performance of his duties under the Agreement.

18 FORCE MAJEURE

18.1 Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.



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18.2 Should either Party be prevented from carrying out its contractual obligations as a result of a Force majeure event lasting continuously for a period of 30 (thirty) days, either Party shall be entitled, after due consultation with the other Party in

an effort to come to a mutually acceptable arrangement, to terminate the Agreement on written notice to the other Party, without any liability.

19 ADDRESSES

The Parties both hereby as their *domicilium citandi et executandi* for all purposes in connection with or arising from out of these terms and conditions the addresses as specified in the Purchase Order: