



Appendix E

Sample AGSA Memorandum of Agreement (MoA)

Memorandum of Agreement

for the appointment of the external auditors

entered into by and between

Auditor-General South Africa

duly established in terms of Section 181(1)(e) of the Constitution of the Republic of South Africa, 1996, read with the Public Audit Act No 25 of 2004
(hereinafter the '**AGSA**')

and

[•]

a [professional partnership / company] duly established in accordance with the laws of the Republic of South Africa, and bearing the IRBA practice number: [•]
(hereinafter the '**Service Provider**')

Contract number: AGSA/[•]

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1. Definitions and interpretation

- 1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.1.1. **“Adverse Event”** has the meaning given to it in clause 7.1.
 - 1.1.2. **“Agreement”** means this written document together with all written and signed appendices, annexures, exhibits or amendments attached to it from time to time.
 - 1.1.3. **“AGSA”** means the Auditor-General South Africa as an institution contemplated in section 181(1) of the Constitution of the Republic of South Africa, 1996.
 - 1.1.4. **“Amount Payable”** means the fees payable to the Service Provider for the Services in terms of the Annual Audit Planning Memorandum for a financial year of the AGSA or, where no such memorandum has yet been approved for that year, the fees quoted for the first year in the Service Provider’s bid, in each case whether or not those fees have been invoiced or paid.
 - 1.1.5. **“Annual Audit Planning Memorandum”** means the formal document that outlines the planned work and fees which is approved annually by the Audit Committee, each of which shall form part of this Agreement.
 - 1.1.6. **“Applicable Law”** includes the Constitution and all statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court), other secondary legislation, and directives having force of law in the Republic of South Africa, and the common law arising out of judicial decisions, notifications, which are applicable to the Parties and the Services and with which the Parties are bound to comply.
 - 1.1.7. **“Audit Committee”** means the AGSA Audit Committee.
 - 1.1.8. **“Business Day”** means any day of the week other than weekends and public holidays in the Republic of South Africa.
 - 1.1.9. **“Contractual Term”** means, notwithstanding the date of signature of this Agreement and subject to annual review and confirmation by the Parliamentary Standing Committee on the Auditor-General, the period commencing on [•] until [•] on which date it shall expire unless terminated by either Party in terms of any right specified in this Agreement.

- 1.1.10. **“Corrupt Activities Act”** means the Prevention and Combating of Corrupt Activities Act 12 of 2004, as amended.
- 1.1.11. **“Covered Person”** has the meaning given to it in clause 5.2.
- 1.1.12. **“Deputy Auditor-General”** or **“DAG”** means the person appointed in terms of section 31 of the Public Audit Act, and includes a person acting as Deputy Auditor-General.
- 1.1.13. **“Disbursements”** means subsistence and travelling expenditure as well as administrative expenditure incurred by the Service Provider when it renders the Services.
- 1.1.14. **“Disclosure Default”** and **“Material Disclosure Default”** have the meanings given to them in clauses 5.10 and 5.11 respectively.
- 1.1.15. **“Disclosure Schedule”** means the schedule of disclosures completed by the Service Provider and attached as annexure A, as updated in terms of this Agreement.
- 1.1.16. **“Key Individual”** has the meaning given to it in clause 6.1.
- 1.1.17. **“Notice”** means a written notice by one Party to the other in writing, which shall include, without limitation, paper-based or email notification.
- 1.1.18. **“Oversight Mechanism”** means the Parliamentary Standing Committee on the Auditor-General (**“SCoAG”**).
- 1.1.19. **“Parties”** means the AGSA and the Service Provider, where **“Party”** shall mean either one as the context may require.
- 1.1.20. **“Principal”** means each partner, director, member or other person with equivalent ownership or authority in the Service Provider.
- 1.1.21. **“Professional Standards”** means all auditing, ethical, independence and quality standards, codes and rules that apply to a registered auditor in the Republic, together with any other standard of a similar kind, generally recognised for the audit of public sector bodies, that the AGSA has notified to the Service Provider in writing as applying to the audit of the AGSA, in each case as amended from time to time.
- 1.1.22. **“Project Leader”** means the Chief Risk Officer of the AGSA or any other person delegated by the Chief Risk Officer.
- 1.1.23. **“Public Audit Act”** means the Public Audit Act, 2004 (Act No. 25 of 2004), as amended from time to time.
- 1.1.24. **“Public Official”** means any person who is employed by or holds office in an organ of state or public entity, any member of Parliament or of a provincial legislature or municipal council, and any other person who performs a public function or acts in an official capacity.

- 1.1.25. **“Regulatory Authority”** means any statutory, professional, regulatory, supervisory, investigative, prosecutorial or oversight body, and any court, tribunal or commission of inquiry, in the Republic or elsewhere, and includes the Independent Regulatory Board for Auditors, any professional body of which a Covered Person is a member, and Parliament (including its committees), together with any successor to any of them.
- 1.1.26. **“Remediation Costs”** has the meaning given to it in clause 7.7.
- 1.1.27. **“Reportable Event”** has the meaning given to it in clause 5.4.
- 1.1.28. **“Reputational Event”** has the meaning given to it in clause 7.8.
- 1.1.29. **“Services”** means the services the AGSA requires the Service Provider to provide as set out in clauses 2.1 and 4.1 below.
- 1.1.30. **“Termination Event”** has the meaning given to it in clause 7.4.
- 1.2. Any reference to:
- 1.2.1. the singular shall include the plural and vice versa;
- 1.2.2. natural persons shall include legal persons and vice versa;
- 1.2.3. any provision of a statute, rule or regulation shall be construed as a reference to that provision as from time to time amended or extended; and
- 1.2.4. the parties shall include their respective members, partners, directors, officers and employees, agents and sub-contractors.
- 1.3. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation and definitions clause.
- 1.4. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.

- 1.7. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.8. The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement shall not apply.

2. Recordal

- 2.1. In terms of section 39 of the Public Audit Act, the Oversight Mechanism must annually appoint an independent external auditor to audit the accounts, financial statements and financial management and performance information of the AGSA.
- 2.2. The Audit Committee recommended the appointment of the Service Provider as the independent external auditor of the AGSA and the Oversight Mechanism duly approved the appointment of the Service Provider in accordance with section 39 of the Public Audit Act, subject to the conditions referred to in the letter from the Oversight Mechanism dated [•], a copy of which is attached hereto and marked annexure B, and subject to each re-appointment letter from the Oversight Mechanism, a copy of which shall be attached hereto and marked annexure C as and when issued.
- 2.3. The Service Provider submitted a proposal to render the services, which was accepted by the AGSA. The request for proposals, all appended documentation and the proposal in response thereto, read together, form part of this Agreement. The declarations made by the Service Provider in its bid and the Disclosure Schedule also form part of this Agreement.
- 2.4. The Service Provider warrants that it has the necessary skill, knowledge, capacity and resources to meet the needs and expectations of the AGSA, and to carry out its obligations on the terms and conditions set out in this Agreement.
- 2.5. The parties agree to submit before the Oversight Mechanism a transformation plan between the Service Provider and the Audit Committee by no later than [•], and thereafter annually by no later than 30 June of each year during the Contractual Term, for the Oversight Mechanism's review. The contents of each transformation plan, once finalised and agreed to, will form part of this Agreement and be included herein as an annexure.
- 2.6. The Audit Committee shall be responsible for reviewing and monitoring the implementation of the Service Provider's respective transformation plans for the periods set out in clause 2.5 above.

2.7. The parties therefore wish to record their Agreement on the terms set out below.

3. Contractual term and termination

- 3.1. This Agreement shall, subject to annual review and confirmation by the Oversight Mechanism, commence on [•] until the date of the meeting of the Oversight Mechanism at which it reviews the appointment and confirms the extension or otherwise, on which date it shall expire unless terminated by either party in terms of any right specified in this Agreement. Should the Oversight Mechanism approve any annual extension, the Audit Committee shall annually monitor and continue to assess the transformation plan. The Service Provider acknowledges that the Oversight Mechanism appoints the external auditor annually in terms of section 39 of the Public Audit Act, that the final date in clause 1.1.9 is a maximum and not an entitlement to be re-appointed in any year, and that a decision of the Oversight Mechanism not to confirm the appointment is neither a breach nor a termination of this Agreement by the AGSA and gives rise to no claim for damages, compensation or loss of profit, save for payment of fees for services properly rendered up to the date of expiry.
- 3.2. Should the Audit Committee be dissatisfied with the service of the Service Provider, the Audit Committee shall give thirty (30) days' written notice to the Service Provider to rectify the dissatisfactory service, and provided that the Service Provider has failed to rectify such service complained of within the abovementioned thirty (30) days' notice period, motivate the termination of the Agreement to the Oversight Mechanism for final approval. The Service Provider shall have the right to make representations to the Audit Committee, to ensure that the termination is not unjustified. This clause does not apply to a Termination Event, which is dealt with in clause 7.5.
- 3.3. The Audit Committee shall have the right to terminate this Agreement without prejudice to any of its other rights upon the occurrence of any of the following:
- 3.3.1. if the Service Provider ceases to be registered as an accountant and auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005), or its registration is suspended or restricted, and engaged in public practice as an accountant and auditor;
 - 3.3.2. if the Service Provider becomes aware of any conflict of interest or threat to its independence, whether or not it arises as a result of the appointment, and fails to disclose it in terms of clause 6.4 or to resolve it to the satisfaction of the Audit Committee within ten (10) Business Days;
 - 3.3.3. if the Oversight Mechanism resolves that the Agreement should be terminated; or

- 3.3.4. a Termination Event occurs, in which event clause 7.5 applies.
- 3.4. In the event of this Agreement being terminated for whatever reason the Service Provider shall be entitled to payment for all satisfactory work conducted and approved disbursements incurred up to the date of termination of the Agreement, subject to clause 7.6 and to the AGSA's rights of set-off and recovery in terms of this Agreement.
- 3.5. Exit assistance
- 3.5.1. Upon termination or expiry of this Agreement for any reason (including a decision of the Oversight Mechanism not to confirm the appointment), the Service Provider shall, for a period of up to sixty (60) days, provide such reasonable cooperation and assistance as the AGSA may request to enable an orderly transition of the Services, including the handover of information and Deliverables of the AGSA and access to the audit files and working papers by the replacement external auditor, to the extent permitted by the Professional Standards.
- 3.5.2. Such assistance shall be provided without disruption, withholding or degradation of access and shall not be conditional upon the payment of any fees other than fees properly due and payable in terms of this Agreement.
- 3.5.3. The Service Provider shall not exercise any lien, suspension right or other form of leverage over the AGSA's information or Deliverables in connection with termination or transition.

4. Obligations of the Service Provider

- 4.1. The Service Provider is required to perform its duties in accordance with the Public Audit Act and each annual Audit Planning Memorandum, which is to be attached hereto within 7 (seven) days of approval by the Audit Committee as an annexure and marked with a reference to the dates on which they have been approved.
- 4.2. The Service Provider must have professional liability insurance cover with a reputable insurer, in an amount that is adequate for the nature, scale and risk of the Services and of any liability it may incur in terms of this Agreement, for the duration of the Agreement and thereafter until any claim arising from the Services has prescribed, proof of which shall be provided to the AGSA annually. Adequacy of the cover is the sole responsibility of the Service Provider, which shall increase the cover without request if it is or becomes inadequate. Receipt of proof of cover by the AGSA, or its silence on the amount, is neither an approval nor a waiver, and the cover is not a limit of the Service Provider's liability. The Service Provider

shall notify the AGSA immediately if the cover is cancelled, not renewed, materially reduced or materially eroded by a claim.

- 4.3. The services to be rendered by the Service Provider must conform to the highest quality standards expected of its profession.
- 4.4. It is a material term of this Agreement that the Service Provider will provide the services on the agreed dates and times as required by the AGSA, which dates and times will be conveyed by the AGSA and are contained in each Annual Audit Planning Memorandum.
- 4.5. It is further a material term of this Agreement that the Service Provider shall at its own cost and within a period of 1 (one) year from the commencement of this Agreement ensure that its audit team undergo public sector audit training.
- 4.6. The Service Provider shall not have the power to enter into any agreement or to otherwise bind itself or incur liability on behalf of the AGSA.
- 4.7. The Service Provider guarantees that it shall perform all its duties professionally, and that all work prepared by it shall be conducted with the highest degree of skill, care and diligence that is expected of the International Standards on Auditing, and that it shall comply at all times with Applicable Law and the Professional Standards.
- 4.8. The Service Provider shall ensure, where applicable, that reasonable levels of care and responsibility are exercised when using items belonging to the AGSA in the performance of its duties and its obligations as stipulated in this Agreement. Such items may not be used unless prior written permission has been received from an authorised representative of the AGSA.
- 4.9. The Service Provider shall conduct its affairs and activities (whether or not in connection with the Services) in a manner to prevent any damage to the good name, reputation and standing of the AGSA, and may not undertake any activity which may, in the reasonable opinion of the AGSA, formed on grounds recorded in writing, damage the good name, reputation and standing of the AGSA.
- 4.10. The Service Provider hereby accepts the appointment and undertakes to render the services in accordance with the terms of this Agreement, for the scope of work set out in each Annual Audit Planning Memorandum attached hereto from time to time.

5. Disclosure and reporting

- 5.1. The Service Provider acknowledges that the Oversight Mechanism appoints the external auditor of the AGSA annually in terms of section 39 of the Public Audit Act on the recommendation of the Audit Committee, and that it can do so properly

only if the Service Provider makes full and timely disclosure of the matters in this clause 5. The obligations in this clause 5 are mandatory and are material terms of this Agreement. They do not depend on a request by the AGSA or on the Service Provider's own view of whether a matter is material or related to the Services.

- 5.2. In this clause 5 and in clauses 6 and 7, "**Covered Person**" means the Service Provider, each Principal, each Key Individual and any other person through whom the Service Provider performs the Services and includes any predecessor firm and any network or affiliated firm to the extent that a matter affecting that firm is reasonably likely to affect the Service Provider, the Services or the standing of the AGSA.
- 5.3. The Service Provider warrants that the Disclosure Schedule has been completed under the authority of a Principal after due enquiry of each Covered Person, and that it discloses every Reportable Event that occurred, commenced, was pending or remained in force (including a sanction that is suspended or conditional) at any time in the [five] years before the date of the Service Provider's bid up to the date of signature of this Agreement, whether or not it was made public and whether or not it relates to the AGSA or the Services. The Service Provider warrants that the Disclosure Schedule and the declarations in its bid are true, complete and not misleading, and repeats this warranty on each anniversary of the date of signature and each time the Oversight Mechanism considers its appointment in terms of section 39 of the Public Audit Act.
- 5.4. A "**Reportable Event**" means any of the following in respect of a Covered Person, whether it occurs before or after the date of signature, whether or not it relates to the AGSA or the Services, whether or not it is public, and whether or not the Covered Person disputes it or has appealed or intends to appeal it:
- 5.4.1. any investigation, inquiry, inspection, review, complaint, charge, or disciplinary or enforcement proceeding by or before a Regulatory Authority, from the time the Covered Person is notified of it or otherwise becomes aware of it;
 - 5.4.2. any finding, sanction, fine, penalty, caution, reprimand, suspension, restriction, condition, order, undertaking or other adverse outcome imposed by or agreed with a Regulatory Authority, or arising from an inspection, practice review or quality review of the Covered Person's audit practice or of any audit file, including an outcome reached by admission of guilt, consent or settlement or without a formal finding, and including any part of a sanction that is suspended, conditional or subject to training or remedial requirements;

- 5.4.3. any criminal investigation, charge or conviction, and any civil or other proceeding involving an allegation of dishonesty, fraud, corruption, money laundering, tax evasion or a breach of professional ethics or independence;
 - 5.4.4. any claim alleging professional negligence or a failure of audit quality, or notified to a professional indemnity insurer; any suspension, withdrawal, restriction or non-renewal of a registration, licence, accreditation or membership; any cancellation, non-renewal or material reduction or erosion of the cover required by clause 4.2; and any insolvency, business rescue, liquidation, sequestration or arrangement with creditors, or event reasonably likely to result in any of them;
 - 5.4.5. any media enquiry, publication, broadcast or social media campaign, any question, statement or enquiry by Parliament or a committee of Parliament, and any other public allegation, concerning the conduct, competence, integrity, compliance or standing of a Covered Person; and
 - 5.4.6. any internal investigation or whistleblowing report concerning a Principal or Key Individual (other than one that is manifestly frivolous), any actual, potential or perceived conflict of interest or threat to independence, any change notifiable in terms of clause 6.5, and any other fact or circumstance that could reasonably be expected to damage, or to draw adverse public attention to, the AGSA by association with the Service Provider, or to affect the assessment by the AGSA, the Audit Committee or the Oversight Mechanism of the fitness, integrity, independence or competence of a Covered Person.
- 5.5. The Service Provider shall give the Project Leader and the Chairperson of the Audit Committee written notice of each Reportable Event in the manner set out in clause 21.1. A Reportable Event that exists at the date of signature shall be disclosed in the Disclosure Schedule; every other Reportable Event shall be notified within two (2) Business Days after any Covered Person knows or ought reasonably to know of it, save that a Reportable Event referred to in clause 5.4.5 shall be notified by email within twenty-four (24) hours and confirmed in writing. The notice shall describe the nature, date and status of the Reportable Event, the Covered Persons and the Regulatory Authority or other person involved, the possible outcomes and the steps the Service Provider proposes to take, and shall be updated every thirty (30) days and within two (2) Business Days of any material development, until the Reportable Event is finally resolved.
- 5.6. Where Applicable Law or a lawful directive of a Regulatory Authority restricts disclosure of the details of a Reportable Event, the Service Provider shall

nevertheless inform the AGSA, within the period in clause 5.5, that a Reportable Event exists and which Covered Person and category in clause 5.4 it falls within. It shall disclose everything that it lawfully may, shall immediately ask the Regulatory Authority to consent to disclosure of the remaining details in confidence to the Project Leader, the Audit Committee and the Oversight Mechanism, and shall provide those details as soon as the restriction ends or consent is given.

- 5.7. The Service Provider may not withhold, delay or qualify a disclosure on the basis that it considers the matter immaterial, unrelated to the Services, historical, settled, confidential, disputed, under appeal or already known to the AGSA, or that the AGSA could have discovered it from public sources or by making enquiries. Where the Service Provider is in doubt whether a matter is a Reportable Event, it shall disclose it. The AGSA has no duty to make enquiries, and nothing that the AGSA knows, ought to have known or fails to ask is a waiver or limits any right of the AGSA.
- 5.8. Not later than thirty (30) days before the Oversight Mechanism considers the Service Provider's appointment for the following year, and within five (5) Business Days of a written request from the Audit Committee at any time, the Service Provider shall deliver to the Audit Committee:
 - 5.8.1. a written certificate signed by a Principal who is authorised to bind the Service Provider, confirming that every Reportable Event has been disclosed, that the warranties in clause 5.3 remain true, and that the professional indemnity cover required by clause 4.2 is adequate;
 - 5.8.2. a declaration signed by each Key Individual, confirming personally that the Key Individual is registered and in good standing, that no Reportable Event concerning the Key Individual has occurred which has not been disclosed, and that the Key Individual consents to the verification contemplated in clause 6.2; and
 - 5.8.3. an updated list of the Principals, together with confirmation of the matters in clause 6.5 and the declaration of independence in clause 6.4.
- 5.9. On a Reportable Event the Service Provider shall, within five (5) Business Days of a request (or such shorter period as the Audit Committee reasonably requires where the matter is urgent), provide all documents and information that the AGSA, the Audit Committee or the Oversight Mechanism reasonably requests, including the correspondence, findings, charge sheets and orders of the Regulatory Authority, to the extent not prohibited by law or protected by legal privilege (in which case the Service Provider shall identify the privilege claimed). It shall make the relevant Principals and Key Individuals available to meet the Audit Committee and the Oversight Mechanism.

- 5.10. The Service Provider acknowledges that this clause 5 gives effect to a specific duty of good faith in disclosure which it owes to the AGSA, in addition to and without limiting clause 20.7. A failure to give notice of a Reportable Event when due, a notice that is late, incomplete, inaccurate or misleading, and a certificate or declaration that is untrue, is each a “**Disclosure Default**” and a breach of a material term. The removal or replacement of a Covered Person does not remedy a Disclosure Default.
- 5.11. A “**Material Disclosure Default**” means a Disclosure Default that:
- 5.11.1. concerns a Reportable Event referred to in clauses 5.4.1 to 5.4.4 and is not remedied by full written notice within ten (10) Business Days after the notice was due; or
 - 5.11.2. was committed knowingly or recklessly, including where a Covered Person knew or was reckless as to whether notice was due, or knowingly or recklessly gave information that was inaccurate or misleading.
- 5.12. This clause 5 continues to apply, in respect of any Reportable Event concerning the Services or the period during which this Agreement was in force, for three (3) years after the expiry or termination of this Agreement.

6. Key individuals, independence and continuity

- 6.1. “**Key Individual**” means the engagement partner, the engagement quality reviewer and each other Principal or senior person who is named in the Disclosure Schedule or in the Service Provider’s proposal as responsible for the Services, and any other person later designated as such by agreement in writing. The Service Provider shall not remove, replace or materially reduce the involvement of a Key Individual without the prior written approval of the AGSA, except by reason of death, incapacity, resignation or a requirement of a Regulatory Authority, in which event it shall notify the AGSA immediately and nominate a replacement within five (5) Business Days. A replacement shall have qualifications and experience equivalent to or better than the person replaced, is subject to clause 6.2, and may not start work on the Services until approved in writing by the AGSA. The Service Provider shall bear all costs of any replacement and handover, and no additional fees are payable for them.
- 6.2. The Service Provider warrants that each Key Individual is, and shall remain, a person of integrity who is registered and in good standing with the relevant professional bodies and who has no outstanding or undisclosed Reportable Event. The Service Provider shall obtain, on request, each Key Individual’s written consent, in compliance with Applicable Law, to the AGSA verifying the registration, regulatory and disciplinary history, directorships and any other

matter bearing on the fitness and propriety of that person, with the Regulatory Authorities and any other source. A Key Individual may not be appointed or replaced until the AGSA has completed that verification to its reasonable satisfaction.

- 6.3. The AGSA may, on reasonable grounds recorded in writing, require the Service Provider to remove a Key Individual or any other member of the engagement team from the Services, and the Service Provider shall replace that person in accordance with clause 6.1. No additional fees are payable for the replacement, and the AGSA is not liable to the Service Provider or to that person for the removal.
- 6.4. The Service Provider shall at all times remain independent of the AGSA in accordance with section 39 of the Public Audit Act and the Professional Standards, and shall rotate the engagement partner and the engagement quality reviewer as the Professional Standards and the Oversight Mechanism require. It shall immediately disclose in writing to the Project Leader and the Chairperson of the Audit Committee any actual, potential or perceived conflict of interest or threat to its independence, whether or not it arises from the appointment, and shall propose and implement safeguards approved by the Audit Committee. It shall not provide any service to the AGSA other than the Services without the prior written approval of the Audit Committee, and shall deliver a signed declaration of independence each year with the certificate in clause 5.8.
- 6.5. The Service Provider warrants that it is the legal person described on the cover page of this Agreement, that its legal form, name, practice number and Principals are correctly recorded in the Disclosure Schedule, and that the Disclosure Schedule identifies every related, predecessor, network or affiliated firm that will take part in the Services or hold information of the AGSA. The Service Provider shall give the AGSA written notice, with supporting documents (including any amended partnership agreement, deed of admission or retirement, and the relevant extract of the IRBA register), within five (5) Business Days of any change in its name, legal form, practice number, ownership or Principals (including the admission, retirement, withdrawal or death of a Principal), any merger, acquisition, restructuring or transfer of all or part of its practice, and any change in its network affiliation. A change that the AGSA has not approved in writing does not novate or transfer any right or obligation under this Agreement, and the Service Provider remains bound by it.

7. Adverse Events, termination and reputational harm

- 7.1. “**Adverse Event**” means any of the following in respect of a Covered Person, whether or not it relates to the Services:

- 7.1.1. a finding, sanction, fine, penalty, conviction, suspension, restriction or other adverse outcome of the kind described in clauses 5.4.2 to 5.4.4;
 - 7.1.2. an admission by a Covered Person, or a determination by a court or Regulatory Authority, that the Covered Person has breached Applicable Law, the Professional Standards or this Agreement, or has been negligent or has acted dishonestly in the performance of a professional engagement;
 - 7.1.3. a Disclosure Default; or
 - 7.1.4. any other act or omission of a Covered Person that the Audit Committee, after following the process in clause 7.5, reasonably finds, on grounds recorded in writing, to be a breach of Applicable Law, the Professional Standards or this Agreement.
- 7.2. Every fine, penalty, cost, sanction and other consequence of an Adverse Event, and every cost that the Service Provider incurs in responding to it (including additional supervision, review, training or insurance), is for the sole account of the Service Provider. The Service Provider shall not recover any of them from the AGSA, whether as fees, Disbursements, additional work or otherwise.
- 7.3. On becoming aware of a Reportable Event, whether through disclosure or otherwise, the AGSA may, acting reasonably and in proportion to the nature of the event and without prejudice to its other rights, require a meeting with the relevant Principals and Key Individuals; require the Service Provider to submit within ten (10) Business Days, and then to implement at its own cost, a remedial plan approved by the Audit Committee (including additional supervision or engagement quality review); require the suspension or removal of a Key Individual in terms of clause 6.3; require the Service Provider to suspend any part of the Services where the Audit Committee considers it necessary to protect the integrity of the audit, without liability to the AGSA; refer the matter to the Audit Committee for its recommendation to the Oversight Mechanism; and, where the Reportable Event is or gives rise to a Termination Event, proceed in terms of clause 7.5.
- 7.4. Each of the following is a “**Termination Event**” and entitles the AGSA, on the recommendation of the Audit Committee and with the approval of the Oversight Mechanism, to cancel this Agreement by written notice with immediate effect and without any period to rectify, once the process in clause 7.5 has been followed:
 - 7.4.1. a Material Disclosure Default;

- 7.4.2. the cancellation, suspension or restriction of the registration of the Service Provider as a registered auditor, or the Service Provider ceasing to hold the professional indemnity cover required by clause 4.2;
 - 7.4.3. an Adverse Event concerning the Service Provider or a Principal that involves dishonesty, fraud, corruption, a lack of integrity, or serious or repeated failures of audit quality, or a conviction of a Covered Person for an offence involving dishonesty;
 - 7.4.4. an Adverse Event of the kind in clause 7.4.3 concerning a Key Individual, where the Service Provider does not remove that Key Individual from the Services within ten (10) Business Days of a request in terms of clause 6.3, it being recorded that the removal of a Key Individual does not remedy a Disclosure Default;
 - 7.4.5. a loss of independence, a conflict of interest or threat to independence, or a change referred to in clause 6.5, that the Audit Committee reasonably considers cannot be adequately safeguarded or materially prejudices the independence, capacity, continuity or integrity of the Services; or
 - 7.4.6. a Reputational Event that, in the reasonable opinion of the Audit Committee, recorded in writing with reasons, has materially damaged or is reasonably likely to materially damage the standing of the AGSA or public confidence in the audit of the AGSA.
- 7.5. Before cancelling this Agreement in reliance on a Termination Event, the AGSA shall give the Service Provider written notice of the Termination Event relied on, the facts and documents on which it relies and the action it proposes to take. The Service Provider may make written representations within fourteen (14) days of receipt of the notice, or within such shorter period (not being less than five (5) Business Days) as the Audit Committee determines where urgent action is required to protect the AGSA or the integrity of the audit. The Audit Committee shall consider the representations before making its recommendation to the Oversight Mechanism. This process is the only process required before cancellation for a Termination Event, and clauses 3.2 and 15.1 do not apply to it.
- 7.6. If the AGSA cancels this Agreement for a Termination Event, the Service Provider is entitled to payment in terms of clause 3.4 only for work that has been completed, accepted by the AGSA and is not affected by the Termination Event. The AGSA may set off against that payment any amount that it is entitled to recover in terms of this clause 7, and the Service Provider shall pay the AGSA the reasonable additional cost of procuring replacement services for the balance of the Contractual Term, being the amount (if any) by which the fees payable to

the replacement external auditor for the first twelve (12) months exceed the fees that would have been payable to the Service Provider for the same period.

- 7.7. **“Remediation Costs”** means the reasonable and documented costs that the AGSA incurs, as a result of an Adverse Event for which the Service Provider is responsible, in investigating and responding to it and in protecting the integrity of the audit. They include the costs of independent reviews, re-performance of audit work, additional assurance, legal advice, crisis and media communications, additional Audit Committee and Oversight Mechanism processes that require external support, and re-procurement and transition to a replacement external auditor. The Parties record that Remediation Costs are within their contemplation at the date of signature, are a direct and foreseeable consequence of an Adverse Event, are not consequential loss, and are recoverable from the Service Provider in addition to any other remedy, subject to clause 14.5. The AGSA shall take reasonable steps to mitigate Remediation Costs.
- 7.8. **“Reputational Event”** means any publication, broadcast, online or social media post, or public statement (including by Parliament, a committee of Parliament or a Regulatory Authority) that arises from an Adverse Event for which the Service Provider is responsible and that either identifies the Service Provider as the external auditor of the AGSA or results in the AGSA being asked, or, in the reasonable opinion of the Audit Committee, being required, to respond, explain or account publicly, to Parliament or to the Oversight Mechanism.
- 7.9. On the occurrence of a Reputational Event, the AGSA may, on the determination of the Audit Committee acting reasonably, reduce the fees payable to the Service Provider for the financial year of the AGSA in which it occurs by up to fifteen percent (15%) of those fees for each Reputational Event, to a maximum reduction of [thirty percent (30%)] of those fees in any financial year. The reduction is a penalty stipulation in terms of the Conventional Penalties Act 15 of 1962 and a genuine pre-estimate of the loss of public confidence and standing that the AGSA is likely to suffer, which cannot readily be quantified. It is in lieu of, and not in addition to, any claim for general damages for harm to the reputation of the AGSA arising from the same Reputational Event. It does not limit the right of the AGSA to recover Remediation Costs, to cancel this Agreement or to exercise any other remedy. The AGSA may give effect to the reduction by set-off against any invoice and may withhold the amount concerned pending the resolution of any dispute in terms of clause 15.1.
- 7.10. The Service Provider shall consult the AGSA before making any public statement about a Reportable Event or an Adverse Event in which it refers to the AGSA, the Services or its appointment as external auditor of the AGSA, shall obtain the prior written approval of the AGSA to any such reference (which shall not be unreasonably withheld where the statement is required by Applicable Law), and

shall not make any statement on behalf of the AGSA. The Service Provider shall, within two (2) Business Days of a request, give the AGSA the information and draft holding statements that it reasonably requires to respond to Parliament, the Oversight Mechanism, the media or the public, and shall make a senior Principal available for that purpose.

8. Obligations of the Auditor-General of South Africa

8.1. The AGSA shall:

8.1.1. make all the relevant information available;

8.1.2. provide suitable office accommodation and parking on its premises; and

8.1.3. provide logistical support and access to its office equipment,

which may reasonably be required by the Service Provider to complete its tasks fully.

9. Additional work

9.1. Any work required by the AGSA outside of and unrelated to any of the services contemplated in clauses 2.1 and 4.1 shall be deemed to be additional work.

9.2. It is the responsibility of the Service Provider to inform the Project Leader in writing of any additional work requested.

9.3. The Project Leader shall, in writing, acknowledge the request to perform additional work and inform the DAG thereof. If the DAG supports the request, the request must be referred to the Audit Committee for approval and the Service Provider may not commence the additional work until the approval is confirmed in writing and signed by a member of the Audit Committee or recorded in the minutes of an Audit Committee meeting.

9.4. The approval for additional work may in certain circumstances be delegated to the DAG. This could, inter alia, relate to ad hoc work approved in the audit plan, or be an approval containing a “subject to” clause, and the DAG must be satisfied that the condition(s) have been met. The approval of the DAG must be recorded in writing.

9.5. The AGSA shall pay the Service Provider for additional work authorised in terms of clauses 9.3 and 9.4 above.

9.6. If no prior written authorisation as described in clauses 9.3 and 9.4 above has been obtained, the AGSA shall not reimburse the Service Provider for the additional work executed.

10. Amounts payable

- 10.1. In consideration for the services to be rendered in terms of this Agreement, the Service Provider shall be remunerated per submitted invoice only for the services rendered for the duration of this Agreement, in line with the fees contained in each Annual Audit Planning Memorandum, which fees have been approved by the Audit Committee annually, subject to clause 10.6 below.
- 10.2. The AGSA recognises that disbursement costs may arise. It is the responsibility of the Service Provider to inform the Project Leader of any of these costs which the Project Leader and/or the DAG must approve before paying for. The Service Provider may be requested to provide supporting documents to validate its disbursement cost claims before they are accepted and paid by the AGSA.
- 10.3. Provided that the Service Provider has delivered to the AGSA a valid and current Tax Clearance Certificate and a valid and current B-BBEE certificate for the period/s when payment/s is/are expected, the AGSA shall endeavour to pay, on average, 30 (thirty) days from the date of the Service Provider's invoice being presented, accepted, verified and authorised on the AGSA's ERP system and subject to clause 10.6 below.
- 10.4. Should the services be completed or carried out in terms of this Agreement, and provided that the Service Provider submits an invoice and statement which are verified and accepted by the Project Leader, payment shall be made into the Service Provider's banking account.
- 10.5. The bank details of the Service Provider are:
- | | |
|------------------|-----|
| Name of account: | [•] |
| Account number: | [•] |
| Name of bank: | [•] |
| Branch code: | [•] |
- 10.6. Should the services for any reason not be carried out by the Service Provider in terms of this Agreement, or should the Service Provider fail to meet the deadline(s) set out herein and as set out in the Annual Audit Planning Memorandum, or fail to comply with clause 5 (Disclosure and reporting), the AGSA shall withhold payment until the Service Provider has complied or meets the AGSA's new deadlines, expectations or requirements.
- 10.7. The AGSA reserves the right to impose a penalty on the Service Provider by the reduction of the amount of the fee payable related to the specific service(s) with which the AGSA is dissatisfied. Such penalty to the Service Provider shall be at a rate of 5% (five percent) per month or part thereof, subject to the Conventional Penalties Act 15 of 1962 and provided further that the fault resulting in the delay

is not attributable to the AGSA. The penalty must be approved by the Audit Committee. This penalty is separate from, and does not limit, clause 7.9.

- 10.8. Any and all extra audit fees and disbursements incurred by the Service Provider resulting from the Service Provider having to attend to queries arising from, or in respect of, work carried out, a delay in the execution of any task or any task not executed according to the satisfaction of the AGSA, shall be for the account of the Service Provider, provided that the delay is not attributable to the AGSA.
- 10.9. Without the prior written consent of the AGSA, the Service Provider shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payment from the AGSA under this Agreement for any reason whatsoever.
- 10.10. In the event of an overpayment for whatever reason to the Service Provider in terms of this Agreement, the Service Provider shall be obliged to immediately repay such amount to the AGSA and if such amount is not repaid within 7 (seven) days after notice has been provided to the Service Provider, interest at the prime bank lending rate permissible in law shall accrue on the amount due with effect from the 8th (eighth) day.

11. Delays and extensions

- 11.1. Should circumstances arise which may cause a delay in, or deviation from, the performance by the Service Provider of its obligations under this Agreement, and provided that such circumstances are not caused by the AGSA, the Service Provider shall:
 - 11.1.1. take all reasonable steps to avoid or reduce the delay; and
 - 11.1.2. provide the AGSA with timeous notice of such circumstances and request an extension or condonation. Such request shall fully set out the reasons for the anticipated delay and the expected time frame thereof.
- 11.2. The AGSA shall consider the request for extension or condonation, but shall be under no obligation to grant the request, save where the AGSA has contributed to or caused the delay.
- 11.3. In the event that the request for extension or condonation has been granted, the Audit Committee shall, on recommendation by the Project Leader, approve any payments payable under this clause.

12. Computer equipment

- 12.1. As far as it may be applicable herein, the Service Provider shall be required:
 - 12.1.1. to make use of its own computers and computer software;

- 12.1.2. to sign a confidentiality agreement with the AGSA in respect of any of the AGSA's software it utilises;
 - 12.1.3. to bear all hardware and computer-related training costs; and
 - 12.1.4. upon termination of this Agreement, to certify that the software provided by the AGSA has been removed from all its computers.
- 12.2. All rights in and to the software are reserved and retained by the AGSA, as the sole proprietor thereof.
- 12.3. The Service Provider is not granted a licence or any other rights in or to the software.
- 12.4. The Service Provider shall be deemed to be in illegal possession of the software should it be found in possession of the said software after termination of this Agreement.

13. Force majeure

- 13.1. If either party is rendered unable, wholly or in part, by force majeure to carry out any obligation under this Agreement other than an obligation to make monetary payments, such party shall give prompt notice to the other party of such force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing such obligation, whereupon such obligation of the party giving the notice shall be suspended insofar as it is affected by such force majeure during, but no longer than, the continuance thereof.
- 13.2. The party giving the notice shall use all possible diligence to remove such force majeure as quickly and effectively as possible. In the event of a substantial and material portion of the overall obligation of a party being thus suspended for a period exceeding 30 (thirty) days, either party shall be entitled to terminate the Agreement on 30 (thirty) days' written notice.
- 13.3. The requirement that any force majeure shall be remedied with all possible diligence shall not require the settlement of strikes, lockouts or other labour difficulties by the party concerned on terms contrary to its reasonable wishes. How all such difficulties shall be handled shall be entirely within the discretion of the party concerned.

14. Indemnity and limitation of liability

- 14.1. The parties record their agreement, as prescribed by section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), that the AGSA will not be liable for any act or omission committed by the Service Provider or any other person to whom the Service Provider is liable in terms of section 37(1) of

the Occupational Health and Safety Act of 1993. The Service Provider indemnifies the AGSA against any liability arising in terms of section 37(1) of the Occupational Health and Safety Act of 1993, for any act or omission by the Service Provider.

- 14.2. The AGSA is not liable in respect of any loss or damage resulting from the carrying out of any duty in good faith in terms of section 49 of the Public Audit Act.
- 14.3. The Service Provider hereby indemnifies the AGSA against all and any claims or loss (including Remediation Costs), subject to clauses 14.5 and 14.6, as a result of a failure by the Service Provider, its employees, agents, assignees or sub-contractors, to comply with the terms and conditions of this Agreement.
- 14.4. The Service Provider agrees that it shall be liable to the AGSA for the services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the services.
- 14.5. Subject to clause 14.6, the aggregate liability of the Service Provider to the AGSA arising out of or in connection with this Agreement, whether in contract, delict or otherwise, is limited to the greater of the amount of the professional indemnity cover that the Service Provider is required to hold in terms of clause 4.2, or actually holds, and two (2) times the Amount Payable for the financial year of the AGSA in which the event giving rise to the claim occurred.
- 14.6. The limit in clause 14.5 and the exclusion in clause 14.7 do not apply to loss arising from
 - 14.6.1. fraud, dishonesty, wilful misconduct or gross negligence;
 - 14.6.2. a Material Disclosure Default;
 - 14.6.3. a breach of clause 19 (Confidentiality) or of Applicable Law on the protection of personal information;
 - 14.6.4. the indemnities in clauses 14.1, 16.4 and 16.7; or
 - 14.6.5. any liability that cannot be limited or excluded by law.
- 14.7. The Service Provider is not liable for indirect or consequential loss, except that Remediation Costs and the reductions in clause 7.9 are direct and are recoverable in accordance with clause 7, and the exclusion does not apply to the matters in clause 14.6.

15. Breach of contract and dispute resolution mechanism

- 15.1. If either party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of

a breach thereof) or in the event of a dispute between the parties and if such breach or dispute cannot be resolved by the immediate persons involved, it shall be referred within 3 (three) days of such failure to the Chairperson of the Audit Committee, the Deputy Auditor-General or an executive of the AGSA who is nominated by the DAG and 1 (one) appointed representative of the Service Provider. At a joint meeting, which the Chairperson of the Audit Committee shall chair, the attendees of the meeting, acting in terms of clause 20.7 below, shall try to resolve the dispute or the breach complained of within 5 (five) days of the dispute or breach having been referred to them and the Chairperson of the Audit Committee shall issue a written directive to the party/ies required to remedy the breach or resolve the dispute. The directive issued by the Chairperson of the Audit Committee shall be final and binding upon the parties for the purposes of remedying the breach or resolving the dispute. This clause does not apply to the exercise by the AGSA of its rights in respect of a Termination Event, which is governed by clause 7.5.

- 15.2. Should the party/ies required to remedy the breach or resolve the dispute in terms of clause 15.1 above fail to follow the direction of the joint meeting within 2 (two) days of receipt of the directive in writing from the Chairperson of the Audit Committee (electronic mail included) requiring it to do so (or if it is not reasonably possible to remedy the breach within 2 (two) days, within such further period as the Chairperson of the Audit Committee has directed in the circumstances), then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it under law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived.
- 15.3. The defaulting party shall be liable for any legal costs occasioned by the other party in any legal proceedings against the defaulting party. In any legal proceedings instituted by a party against the defaulting party arising from any aspect of this Agreement, the defaulting party agrees to pay the other party's legal costs on a scale as between attorney and own client, which shall include interest from the date of default at the maximum rate prescribed by law as well as collection charges at the maximum rate permissible in law. The defaulting party also agrees to pay all collection costs and tracing fees where applicable.
- 15.4. The parties consent to the authority of a South African High Court with competent jurisdiction for the purpose of any action arising out of or based on this Agreement which either party may bring against the other.
- 15.5. Notwithstanding the above provisions relating to a breach, in the event of the Service Provider being involved in any business rescue proceedings, liquidation, sequestration, voluntary surrender or any insolvency-related application or proceedings being granted by a court with competent jurisdiction to grant such

an order whether interim or final, the AGSA, with the approval of the Audit Committee and the Oversight Mechanism, shall have the right to cancel this Agreement forthwith by written notice to the Service Provider.

16. Copyright and intellectual property

- 16.1. Any documents, reports and materials produced, except for working papers produced by the Service Provider in terms of this Agreement, including this Agreement, remain the property of the AGSA. The Service Provider may only have use of these reports and materials with the prior written permission of the AGSA.
- 16.2. Save for reports expressly prepared for publication, any product of the services released to the AGSA in any form or medium shall be supplied by the Service Provider on the basis that it is for the AGSA's benefit and information only and that it shall not be copied, referred to or disclosed, in whole (save for the AGSA's own internal purposes) or in part, without the Service Provider's prior written consent.
- 16.3. The services shall be provided on the basis that the Service Provider shall not quote the AGSA's name or reproduce the AGSA's logo in any form or medium without the AGSA's prior written consent. The AGSA may disclose in whole any product of the services to its Audit Committee and legal advisors for the purposes of seeking advice in relation to the services.
- 16.4. The Service Provider hereby indemnifies the AGSA against any action, claim, damages or legal action that may be instituted against the AGSA on the grounds of an alleged infringement of any copyright or any other intellectual property right in connection with the work outlined in this Agreement. This limitation of liability is not applicable in the event of any action or omission that amounts to criminal conduct.
- 16.5. All information, documents, recommendations, programmes, reports and other deliverables collected or compiled shall be regarded as confidential and may not be communicated or made available to any person outside the AGSA's service and may not be published without the prior written consent of the AGSA.
- 16.6. The Service Provider undertakes to obtain the necessary consent from the proprietors or their licensees should it make use of the intellectual property of any other person.
- 16.7. The Service Provider further indemnifies the AGSA against any claim or action (including legal or other professional costs) caused by, or arising from, the failure to obtain such consent.

- 16.8. To the extent that the Service Provider utilises any of its pre-existing proprietary tools and methodologies and/or other intellectual property in connection with the provision of the assignment, the AGSA shall receive no right to an interest in any such tools and methodologies or intellectual property, except to the extent that the parties otherwise separately agree in writing.

17. No public official interest

- 17.1. The Service Provider represents and warrants that none of its owners, direct or indirect, nor its directors, officers or employees is a Public Official as of the execution of this Agreement, and that no Public Official will have an ownership interest in, or be employed by, the Service Provider during the Contractual Term, or has or will have any legal or beneficial interest in this Agreement or in any payment made by the AGSA hereunder.

18. Anti-corruption

- 18.1. The Service Provider hereby agrees and undertakes that in accordance with this Agreement and the transactions contemplated by this Agreement, it will comply with all Applicable Law and anti-corruption laws, rules and regulations, decrees and/or official government orders of South Africa, with particular reference but not limited to the provisions of the Corrupt Activities Act and the laws of any country where any of the Parties will undertake the performance of their obligations in connection with this Agreement.
- 18.2. The Service Provider represents, warrants and undertakes that it, and each of its owners, directors, officers, employees, and every other person acting on its behalf will not engage in acts or transactions (including any not involving a Party), otherwise in violation of or inconsistent with the principles of any applicable anti-corruption legislation, including but not limited to anti-corruption laws of South Africa or successor legislation.
- 18.3. The Service Provider hereby agrees and undertakes that, whether in South Africa or elsewhere, it and each of its affiliates have and will apply effective disclosure controls and procedures; have and will maintain proper and accurate books, records and accounts, for a period of at least five (5) years after the period to which they relate, which, in reasonable detail, accurately and fairly reflect any and all payments made, expenses incurred and assets disposed of; and have and will maintain an internal accounting controls system that is sufficient to ensure the proper authorisation, recording and reporting of all transactions to provide reasonable assurances that violations of the anti-money laundering or anti-corruption laws of the applicable jurisdictions will be avoided, prevented, detected and deterred.
- 18.4. The Service Provider shall allow the AGSA to review or audit its books, records and files relating to this Agreement and will provide information and answer any

reasonable questions that the AGSA may have relating to its performance of this Agreement.

19. Confidentiality

- 19.1. Either party shall hold the other party's confidential information in the strictest of confidence for the duration of this Agreement and after its termination and shall not make use thereof other than for the execution of this Agreement. In the execution of this Agreement either party may disclose to the other certain information relating to its business which the other party shall keep confidential in terms of this clause.
- 19.2. Neither party shall use the name of the other party to this Agreement, either in publicity releases or advertising, or for any promotional purposes, without the prior written approval of the other.
- 19.3. Where this clause is contravened, the contravening party shall be liable for all fees and damages, excluding consequential losses, special damages, lost profits or loss of business foreseeable due to the nature of the infringement or this confidentiality clause.
- 19.4. The attention of the Service Provider is specifically directed to sections 18 (Protection of information), 50 (Disclosure of information) and 51 (Offences and penalties) of the Public Audit Act, 2004 (Act No. 25 of 2004).
- 19.5. The Parties shall comply, without deviation, with the relevant sections of the Protection of Personal Information Act 4 of 2013, particularly the sections which set out the conditions for the lawful processing of personal information of each other.
- 19.6. Nothing in this clause, or in clauses 5 and 7, prevents the AGSA from disclosing a Reportable Event or an Adverse Event, and any information received in terms of those clauses, to the Audit Committee, the Oversight Mechanism, Parliament, any Regulatory Authority and its own auditors and advisers, and to the extent that the AGSA reasonably considers necessary to account to Parliament or the public, to the public. The AGSA shall, where reasonably practicable, give the Service Provider prior notice of any public disclosure that identifies it.
- 19.7. Upon termination or expiry of this Agreement, the Service Provider shall, at the AGSA's election, return to the AGSA or securely delete all information of the AGSA in its possession or control, save to the extent that retention of such information is required by Applicable Law or the Professional Standards.
- 19.8. The Service Provider shall, within ten (10) Business Days of such return or deletion, provide the AGSA with a written certificate signed by a duly authorised representative of the Service Provider confirming compliance with clause 19.7,

including confirmation of the scope of the information returned or deleted and identifying any information retained pursuant to Applicable Law or the Professional Standards.

20. General provisions

- 20.1. This Agreement, together with the annexures hereto, constitutes the record of the agreement between the parties with regard to the subject matter hereof. In the event of a conflict in the interpretation of this main Agreement and the annexures attached hereto, the content of this main Agreement shall prevail.
- 20.2. The laws of the Republic of South Africa shall govern this Agreement.
- 20.3. No addition to or variation, waiver, consequential cancellation or novation of this Agreement, including this clause, shall be of any force unless reduced to writing and signed by the parties.
- 20.4. Neither party shall be entitled to cede, assign or delegate any of its rights and/or obligations hereunder without the prior written approval of the other party, which consent shall not be unreasonably withheld. Any request by the Service Provider to cede, assign or delegate its rights and/or obligations must be referred to the Audit Committee for approval.
- 20.5. No condonation, relaxation or indulgence afforded by any party to the other will prejudice the rights of the former and the former will not be prohibited from exercising such rights due to its actions.
- 20.6. The Service Provider is independent and is not an employee or agent of the AGSA and neither party shall have any authority to commit the other party contractually, nor shall any delict which either party may cause, place liability on the other.
- 20.7. In the implementation of this Agreement and in all dealings with each other, the parties undertake to observe the utmost good faith and to give full effect to the intent and purpose of this Agreement.
- 20.8. If any clause or portion of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain unaffected and shall retain full force and effect.
- 20.9. The person signing this Agreement in a representative capacity warrants his/her authority to do so and confirms that all the required internal approval(s) authorising him/her to enter into this Agreement have been obtained.
- 20.10. Clauses 3.5, 5 (for the period stated in clause 5.12), 7, 14, 16 and 19, and any other provision which by its nature is intended to survive, survive the expiry or termination of this Agreement for any reason.

21. Domicilia citandi et executandi and notices

- 21.1. All notices or correspondence in terms of this Agreement shall be delivered by hand, sent by certified mail, or as an attachment to an e-mail and shall be addressed as below which the parties hereto choose as domicilium citandi et executandi:

AGSA: Auditor-General South Africa, Corporate Legal Services
Building 3
Lynnwood Bridge Office Park
4 Daventry Street
Lynnwood Manor
Pretoria, 0081
Tel no.: (012) 426 8000
Email: legalnotices@agsa.co.za

Service Provider: [•]
Attention: [•] (Engagement Partner: AGSA)
Tel no.: [•]
Email: [•]

- 21.2. Notice of change of address stated may be given by either party in the same manner as set out in clause 21.1 above.
- 21.3. Any notice to a party contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address, or delivered by hand by a responsible person during ordinary business hours at its chosen address, or sent by email shall be deemed to have been received, in cases where it is sent by prepaid registered post, on the 14th (fourteenth) Business Day after posting (unless the contrary is proved), in cases where it is delivered by hand, on the day of delivery, and in cases where it is sent by email, on the date of transmission, unless the sender receives an automated notice of non-delivery.

22. Confirmation of Agreement and signature

- 22.1. Now, therefore, the parties hereto, having fully understood and agreed to the terms and conditions set forth herein, hereby confirm their acceptance and consent to be bound by this Agreement. In witness whereof, the parties have affixed their signatures to this document in the presence of the undersigned witnesses.
- 22.2. This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are

executed by the Parties shall constitute a full original of this Agreement for all purposes.

FOR THE AUDITOR-GENERAL SOUTH AFRICA:

THUS DONE AND SIGNED at (place of signing)
on (signature date)

.....
Signature obo AGSA (Witness signature)

.....
Full Names (Witness Full Names)

.....
Designation Telephone Number

FOR THE SERVICE PROVIDER:

THUS DONE AND SIGNED at (place of signing)
on (signature date)

.....
Signature obo Service Provider (Witness signature)

.....
Full Names (Witness Full Names)

.....
Designation Telephone Number

Annexure A

Disclosure Schedule

This schedule must be completed in full by the Service Provider and signed by a Principal who is authorised to bind it. Where a question does not apply, “None” or “Not applicable” must be written expressly. This schedule is a warranty in terms of clause 5.3 and forms part of the Agreement. The expressions used in it have the meanings given to them in the Agreement.

Part 1. Particulars of the Service Provider

Full legal name	
Legal form (professional partnership, company or other)	
IRBA practice number	
Registration number (if any) and VAT number	
Previous names, and the date of each change	
Network or international affiliation (name, status and licence holder)	
Related, predecessor or affiliated firms that will take part in the Services or hold information of the AGSA	
Names of all Principals (attach a list if necessary)	

Part 2. Key Individuals

Role	Full name	IRBA registration number	Registered since
Engagement partner			
Engagement quality reviewer			
Other (specify)			

Part 3. Reportable Events (look-back period stated in clause 5.3)

Covered Person	Reportable Event (clause 5.4 paragraph)	Regulatory Authority or body	Date	Status	Outcome, and any sanction still in force

Attach additional pages if required. If there is no Reportable Event, write “None” in the first row.

Part 4. Professional indemnity insurance

Insurer	Policy number	Cover per claim	Policy period

This information is provided for record purposes. The adequacy of the cover remains the sole responsibility of the Service Provider in terms of clause 4.2.

Part 5. Declaration

I, the undersigned, a Principal authorised to bind the Service Provider, declare that, after due enquiry of each Covered Person, the information in this Disclosure Schedule is true, complete and not misleading, and that I understand that the AGSA relies on it in terms of clause 5 of the Agreement.

Full name	
Designation	
Signature	
Date and place	