



**CHIETA GENERAL CONDITIONS OF CONTRACT
GCC**

1. **PREAMBLE**

This Template (for Services) will apply to all CHIETA agreements and Request for Proposal/Bid/Quotation. Amendments to this template will be indicated in the specific agreement signed with the Service Provider.

CHIETA has submitted to the Service Provider a Request for Proposal/Bid/Quotation setting forth certain information. Based on the results of the Service Provider's review and analysis of the RFT/P/Bid/Quotation, the Service Provider has prepared and delivered to CHIETA a Proposal/Quotation containing representations, warranties including recommendations.

These representations specify the appropriate Services required by CHIETA, and related operating services required to provide CHIETA with the capabilities specified in the Request for Tender/Proposal/Bid/Quotation. CHIETA is relying upon such representations, and CHIETA has or will engage the Service Provider in accordance with the Service Provider's representations.

On the basis of the representations contained in the Service Provider Proposal/Quotation, presentations, other printed material, correspondence, discussions, and the Service Provider - developed functional specifications provided to CHIETA and in reliance upon the expertise of the Service Provider in analyzing the Services required to service CHIETA, CHIETA will engage the Service Provider to provide Services to CHIETA and implement certain or all of the recommendations contained in the Service Provider's Proposal/Quotation on the terms and conditions hereinafter set forth.

The Parties agree as follows:

2. **DEFINITIONS**

- 2.1. "**Agreement**" means this Agreement together with the annexures hereto all of which are to be considered an integral part of this Agreement;
- 2.2. "**Additional Services**" means those services not specified in **Part 3 of Annexure A**, which the Service Provider and CHIETA agree are required to enable the Service Provider to fully discharge its duties in respect of the Services;
- 2.3. "**Business**" means the procurement of services and goods for CHIETA in accordance with the regulatory regimes applicable to the procurement environment and includes any activities or actions by CHIETA which are incidental or ancillary to the foregoing;
- 2.4. "**Business Day**" means a day which is not a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;

- 2.5. **“Business Information”** means information relating to the identity of debtors, creditors, trade sources, suppliers, vendors, business contacts of CHIETA together with its supplier selection process, including without limitation the names, addresses, telephone, telefax and/or telex numbers of any such debtors, creditors, trade sources, suppliers, vendors;
- 2.6. **“Change Order”** means a written change order in a format substantially similar to that set out in Clause 16 and **Part 1 of Annexure A** and which is used for the specific purpose of recording the details of any alteration or amendment to this Agreement, including proposed alterations or amendments to the Statement of Work;
- 2.7. **“Change Request”** means a written change request in a format substantially similar to that set out in **Part 2 of Annexure A**, and which is used for the specific purpose of recording any request for the proposed alteration or amendment of this Agreement, including proposed alterations or amendments to the Statement of Work;
- 2.8. **“Commencement Date”** means the date of the last signature of this Agreement;
- 2.9. **“Consortium”** means the entities/firms/corporations/individuals whose details are set out in **Part 4 of Annexure A** hereto;
- 2.10. **“Consortium Members”** refers to the entities/ firms/corporations/individuals who have tendered as a collective to provide CHIETA with the goods and services requested in the request for proposal/bid/quotation document;
- 2.11. **“Disclose”** means the direct or indirect use, dissemination, publication, communication, replication, verbalisation, transference or transmission of Confidential Information, in any manner or form whatsoever, and **“Disclosure”** has a corresponding meaning;
- 2.12. **“Effective Date”** means the date stipulated in the Statement of Work, notwithstanding date of signature of the Agreement;
- 2.13. **“Environment”** means CHIETA’s operational, configuration and physical environment which the Supplier’s services, goods and Products’ must meet and maintain throughout the duration of the use of such services, goods and products;
- 2.14. **“Financial Information”** means any and all Information as to CHIETA’s financial affairs and its financial statements including without limitation all books of account, budgets, balance sheets, income statements, cash flow statements, invoices, schedules of rates, profit margins, capital structure, bank accounts and banking transactions, and all short, medium and long-term liabilities;

- 2.15. **“Intellectual Property”** means collectively the patents, copyrights, trade marks, designs, models, trade names, trade secrets, confidential information and know-how of CHIETA (whether registered or unregistered including applications for and rights to obtain or use same);
- 2.16. **“Loss”** means any and all losses, payments, damage, damages, liabilities, claims, proceedings, actions, penalties, taxes, fines, duties, rates, levies, charges, demands, royalties, or other sanctions;
- 2.17. **“No Notice Period”** means the period during which CHIETA undertakes not to issue a termination notice to the Service Provider and which period shall be the first 3 (three) months of the contract calculated from the effective date, but on condition that the Service Provider is not in breach of any of the conditions of the contract;
- 2.18. **“Operational Requirements”** means CHIETA’s ability to run its business in a proper, cost effective manner in accordance with its mandate;
- 2.19. **“Parties”** means collectively CHIETA and the Service Provider and the term “Party” shall include a reference to any one or more of them;
- 2.20. **“Personnel”** means the Service Provider’s employees, principals, contractors, who will be or are engaged in the performance of the Services or any part thereof and who must be notified to CHIETA prior to their engagement, as per **Part 06 of Annexure A** hereto;
- 2.21. **“Personnel Expertise Description”** means the employment description provided by the Service Provider to CHIETA in respect of the Personnel who will be engaged in performing services for CHIETA and will include skills and qualifications which the Personnel must possess to meet standard of performance required by CHIETA from the Personnel in respect of Services, to be rendered more fully contemplated in **Part 06 of Annexure A** hereto;
- 2.22. **“Proprietary Information”** means any and all data whether of a historical, current or future nature, irrespective of whether same is stored, recorded or embodied in handwritten, printed, visual, electronic, audible or other format or medium, and belonging to and created by or for CHIETA’s benefit whether in the possession or under the control of CHIETA, or in the possession or under the control of the Service Provider or any third party, including without limiting its ordinary meaning, all data, computer data, agreements and other documentation, programming code, codes, letters, telefaxes, telegrams, faxes, specifications, and strategic plans;
- 2.23. **“Services”** means the totality of the services to be rendered by the Service Provider to CHIETA which services are described in **Part 3 of Annexure A**, including all work, functions, or tasks, associated with, ancillary to or reasonably required to be undertaken in the rendering of the

services, on an on-going basis for the duration of this Agreement and any extension or renewal thereof, on the terms and conditions set forth in this Agreement;

- 2.24. **“Service Fee”** means the agreed cost, inclusive of VAT, of providing the Services that will be paid by CHIETA to the Service Provider, for the performance by the Service Provider of the Services, in accordance with clauses 8 of this Agreement as well as **Part 3 of Annexure A** hereto;
- 2.25. **“Service Defect”** means a part of the Service, as performed by the Service Provider which does not comply with the requirements of the Agreement;
- 2.26. **“Service Provider”** means the firm/ entity/persons engaged by CHIETA to render Services, whose details are set out in **Part 2 of Annexure A**; and include the legal successors and assignees of such firm/entity/persons;
- 2.27. **“Signed-Off”** means the written acceptance by CHIETA certifying that the Services have been performed to CHIETA’s reasonable satisfaction, the issue of which shall not in any way negate or diminish the warranties given by the Service Provider in respect of performance of that Service;
- 2.28. **“CHIETA”** means Chemical Industries Education and Training Authority is a company established by the Minister of Labour in terms in terms of section 9 of the Skills Development Act 1998, Act No. 97 of 1998, with its registered address at No. 2 Clamart Road, Richmond, JHB;
- 2.29. **“Statement of Work”** means a document which defines the CHIETA’s objectives and specifies the Services which must, or may, be provided by the Service Provider under the Agreement, as more fully described in **Part 3 of Annexure A** hereto, as amended from time to time;
- 2.30. **“Sub-Contractors”** means firms/entities/ individuals who will be engaged by the Service Provider in the execution of Services and who must be notified in writing to CHIETA prior to them being engaged by the Service Provider; as more fully contemplated in **Part 7 of Annexure A** hereto;
- 2.31. **“Termination for Convenience”** means the termination of this Agreement by CHIETA without a cause, as explained in clause 22;
- 2.32. **“Termination for Convenience Fee”** means an amount equivalent to the sum of the 10% (ten percent) actually achieved by the Supplier during the last 3 (three) months of the Termination for Convenience notice period;

2.33. "VAT" means value added tax in terms of the Value Added Tax Act, No. 89 of 1991, as amended;

3. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

3.1. words importing -

3.1.1 any one gender include the other two genders;

3.1.2 the singular include the plural and *vice versa*; and

3.1.3 natural persons include created entities (corporate or unincorporated) and the State and *vice versa*;

3.2. any reference in this Agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;

3.3. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

3.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

3.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

3.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

3.7. 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;

- 3.8. the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 3.9. 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;
- 3.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide 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;
- 3.11. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 3.12. any reference in this Agreement to a Party shall, if such Party is liquidated or sequestered, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.

4. SERVICES AND ORDER OF PRECEDENCE

- 4.1. The Services to be performed by the Service Provider will be implemented as per the Statement of Work entered into from time to time between the Service Provider and CHIETA. The purpose of this Agreement is to set forth the general terms and conditions applicable to all such Statement of Works'. Services under any such Statement of Work will be provided in accordance with the terms and conditions of this Agreement.
- 4.2. In conflict, the order of precedence of the said Agreement will be:
- 4.2.1 Change Orders, with those signed later in time taking precedence over those signed earlier in time;
- 4.2.2 amendments to the Agreement (other than those contained in any Change Order) with those signed later in time taking precedence over those signed earlier in time;
- 4.2.3 the Agreement;

4.2.4 the annexures to the Agreement, except to the extent that they have been amended as described in **Part 1** and **2** of **Annexure A**;

4.2.5 the Request for Proposal, id and quotations;

5. LETTING AND HIRING OF SERVICES

5.1. CHIETA hereby agrees to hire and the Service Provider hereby agrees to let, the Services, on the terms and conditions contained in this Agreement as more fully described in **Part 3** of **Annexure A** hereto.

5.2. The Service Provider shall provide the Services in terms of this Agreement to CHIETA's satisfaction.

5.3. CHIETA shall remunerate the Service Provider for the provision of the Services as provided for in terms of clause 8 and **Part 3** of **Annexure A** to this Agreement.

5.4. The Service Provider accepts the foregoing.

6. APPOINTMENT, DURATION AND RENEWAL

6.1. The Service Provider undertakes to sign this agreement simultaneous to signing the "abridged contract form" to which this agreement forms an annexure.

6.2. CHIETA appoints the Service Provider to render to it the Services. The foregoing appointment is non-exclusive and CHIETA shall be entitled at any time, in its sole and absolute discretion, to approach any other service provider or third party to render such Services for and on its behalf.

6.3. The Service Provider's appointment shall commence on and with effect from the Effective Date and CHIETA shall, subject to the provisions of clause 2.17 hereof, be entitled to terminate this agreement upon 7 (seven) days written notice to the Service Provider.

6.5 Notwithstanding the provisions of clause 6.3, CHIETA shall be entitled to terminate the Service Provider's appointment without disclosing any reasons for so doing.

6.6 Despite the date of signature of this agreement, this agreement shall remain in force for the duration stipulated on part 2.4 of the Contract form attached hereto.

6.7 The Service Provider accepts the foregoing.

7. DUTIES OF THE SERVICE PROVIDER

The Service Provider undertakes and warrants that it shall -

- 7.1. be true and faithful to CHIETA in all dealings and transactions whatsoever relating to CHIETA's Business, Proprietary Information, Financial Information and interests of CHIETA generally, and in terms of this Agreement and shall preserve the reputation and goodwill of CHIETA;
- 7.2. use its best endeavours to provide Services to CHIETA which meet the criteria set out in the Statement of Work;
- 7.3. ensure that all Personnel assisting the Service Provider to carry out its duties assigned to them in furtherance of CHIETA's Business, shall use their best endeavours to protect and promote the Business, Proprietary Information, Financial Information and interests of CHIETA in terms of the Agreement and shall preserve the reputation and goodwill of CHIETA;
- 7.4. provide CHIETA within 10 (ten) days of being appointed as a Service Provider with a list of all Personnel who will be assisting the Service Provider in carrying out its Services to CHIETA together with such Personnel Expertise Description as per Part 10 of Annexure A;
- 7.5. comply with CHIETA's accounting practice in respect of the processing of the Service Fees and payment terms in respect thereof, as more fully contemplated in clause 8 and **Part 3 of Annexure A** hereto;
- 7.6. The Service Provider shall perform the Services in accordance with the Statement of Work and with all reasonable care, diligence, skill, efficiency and economy, in accordance with generally accepted professional techniques and standards, and shall observe sound management practices;
- 7.7. The Service Provider shall act in a fiduciary manner towards CHIETA, and shall at all times support and safeguard CHIETA's legitimate interests in dealing with Sub-Contractors or third parties;
- 7.8. Where the Services include the exercise of powers to certify, decide or otherwise exercise discretion in regard to a contract or agreement between CHIETA and third parties, the Service Provider shall act in respect of that contract or agreement as an independent professional;
- 7.9. The Service Provider shall have no authority to relieve other service providers (appointed by CHIETA to perform other services) of any of their duties, obligations, or responsibilities under their respective agreements or contract, unless expressly authorized by CHIETA in writing to do so;

7.10. The Service Provider shall obtain CHIETA's prior approval in writing before taking, *inter alia*, any of the following actions:

7.10.1 appointing Sub-Contractors for the performance of any part of the Services;

7.10.2 any other action that may be deemed to be an Additional Service;

Notwithstanding CHIETA's prior approval, the Service Provider accepts full and exclusive liability for all work performed by any of its subcontractors in compliance of its obligations as contained in this agreement.

7.11. Regular progress and other reports as required by CHIETA and stipulated in the Statement of Work will be maintained by the Service Provider;

7.12. The Service Provider shall provide and maintain properly skilled, trained and qualified Personnel in adequate numbers, and with a job class and skill, such that the Service Provider is able to perform its obligations in a manner that meets or exceeds the service level requirements set forth in the Statement of Work; and

8. **CHIETA'S DUTIES**

CHIETA shall -

8.1. provide the Service Provider with a detailed Statement of Work which shall include, without limitation, the nature of the work, skills required, qualifications needed, deliverables, reserved matters, and experience required from the Service Provider;

8.2. CHIETA shall timeously provide to the Service Provider, free of cost, all available information and data which may be required for the performance of the Services by the Service Provider;

8.3. CHIETA shall provide the Service Provider with any assistance required in obtaining other relevant information that the latter may require in order to perform the Services;

8.4. The Service Provider shall **not** be entitled to rely on the accuracy and completeness of all information furnished by or on behalf of CHIETA;

8.5. CHIETA shall, within a reasonable time, give its decision on any matter properly referred to it in writing by the Service Provider so as not to delay the performance of Services.

8.6. CHIETA shall cooperate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. CHIETA shall as soon as is practicable:

8.6.1 authorize the Service Provider to act as CHIETA's Service Provider insofar as may be necessary for the performance of the Services;

8.6.2 provide all relevant data, information, reports, correspondence and the like, which become available;

8.6.3 provide the Service Provider access to premises, or sites, necessary for the performance of the Services;

8.6.4 Designate in writing a person to act with complete authority in giving instructions and receiving communications on CHIETA's behalf and interpreting and defining CHIETA's policies and requirements with regard to the Services.

9. REMUNERATION AND SERVICE FEES

9.1. In consideration for the Services rendered by the Service Provider to CHIETA, CHIETA shall pay the Service Provider the Service Fees in accordance with the payment terms set out in **Part 4 of Annexure A** after the successful completion of the Services on or on behalf of CHIETA.

9.2. CHIETA shall pay the Service Provider the agreed Service Fees set out in part 2.4 of the contract form, on the payment terms agreed upon between the parties.

9.3. CHIETA shall not pay any additional fees, including expenses, to the Service Provider unless such additional fees are covered by a change order and after:-

9.3.1 The Service Provider has furnished CHIETA with an itemized price breakdown in respect of each additional charge; and

9.3.2 A motivation of why the additional fees are being claimed.

CHIETA reserves the right to refuse payment of any additional fees not agreed upon and covered by a written change order.

9.4. The Service Fees shall be paid to the Service Provider by electronic transfer into the Service Provider's bank account, details of which are set out in **Part 4 of Annexure A** hereto, or into such other bank account notified in writing by the Service Provider to CHIETA.

10. **CONFLICT OF INTEREST**

- 10.1. The remuneration of the Service Provider under the Agreement shall constitute the Service Provider's sole remuneration in connection with the Agreement, or the Services, and the Service Provider shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Agreement, or in the discharge of the Service Provider's obligations under the Agreement, and shall use its best efforts to ensure that the Personnel, any Sub-Contractors, and service providers of either of them shall, similarly, not receive any additional remuneration.
- 10.2. The Service Provider shall not enter into an agreement or contract with third parties which describes any of the duties and responsibilities of the Service Provider in terms of the Agreement or which imposes obligations on the Service Provider in respect of this Agreement, without first notifying the CHIETA in writing and receiving the CHIETA's written approval.
- 10.3. The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty, fee, percentage, gratuity or commission in respect of any Intellectual Property material or process used in or for the purposes of the Agreement.
- 10.4. Neither the Service Provider nor Sub-Contractors nor Personnel shall engage, either directly or indirectly, in any of the following activities:
- 10.4.1 during the term of the Agreement, in any business or professional activities within the Republic of South Africa which would conflict with their responsibilities on this Agreement; or
- 10.4.2 after the termination of the Agreement, such other activities, if any, as may be prohibited in terms of the Statement of Work.
- 10.5 The Service Provider shall refrain from entering into any relationship which could compromise the Service Provider's independence or that of Sub-Contractors or Personnel or this Agreement.
- 10.6 For the duration of this Agreement, the Service Provider shall accept only such other assignments or conduct such other private business or pursue such other personal interests as will not impede his/her ability or conflict with his/her obligation to render the Services in terms of this Agreement.
- 10.7 The Service Provider shall not for the duration of this Agreement carry on or be interested or engaged in or concerned with any corporate entity, firm, undertaking or concern which does business in competition with CHIETA's Business without CHIETA's prior written consent.
- 10.8 The Service Provider warrants that it shall provide a copy of this Agreement to its Personnel and Sub Contractors.

11 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

11.1 Ownership of Intellectual Property, including documents, know how, value add techniques, and data developed by the Service Provider in the course of the Agreement shall be deemed to have been ceded and assigned over to CHIETA from the date of inception.

11.2 Ownership of all Intellectual Property developed by the Service Provider or the Sub-Contractors pursuant to the provision of the Services during the course, and for purposes of, the Agreement, shall deem to have vested in CHIETA from the time that such material was created and will remain CHIETA's property.

11.3 The Service Provider, its Personnel and Sub-Contractors shall assist CHIETA in registering such Intellectual Property with the relevant authorities.

11.4 The Service Provider shall make its Personnel and Sub-Contractors aware of the provisions of clause **11**.

11.5 The Service Provider can make copies or part thereof for work produced by the Service Provider arising from the Agreement for the purposes of:

11.5.1 circulating and distributing copies to all Parties required by CHIETA in accordance with the Agreement;

11.5.2 giving effect to recommendations contained therein, to the extent applicable; and

11.5.3 in general dealing fairly therewith; and

11.5.4 Ownership of all Intellectual Property developed by CHIETA to which the Service Provider may gain access, although utilised during the course of the Agreement, shall vest in CHIETA and shall remain the property of the CHIETA.

11.6 The provisions of this clause **11** shall survive the termination of this Agreement, irrespective of the reason for such termination.

12 ELECTRONIC COMMUNICATION

Should the Service Provider receive or transmit any electronic communication of whatsoever nature from CHIETA's premises, the Service Provider hereby expressly gives CHIETA permission to intercept, monitor, read, block or act upon any of the Service Provider's electronic communications (including any communications that are personal in nature) which shall include but not be limited to telephonic conversations, e-mails and any stored files.

13 **SUCCESSION AND ASSIGNMENT**

13.1 The Service Provider binds itself and its partners, successors, executors, administrators, assignees in respect of all obligations and liabilities of the Agreement.

13.2 The Service Provider shall not, without the prior written consent of CHIETA, assign the Agreement or any part thereof, or any benefit or interest thereunder.

13.3 The approval of an assignment by CHIETA shall not relieve the Service Provider of its obligations under the Agreement.

13.4 If the Service Provider has assigned this Agreement or part thereof without CHIETA's prior written consent, CHIETA may forthwith terminate the Agreement and hold the Service Provider responsible for any damages the CHIETA may have sustained in consequence thereof.

14 **SUB-CONTRACTING**

14.1 A sub-contracting arrangement shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to third parties who have been notified to CHIETA.

14.2 The Service Provider shall not subcontract to nor engage a sub-contractor to perform any part of the Services without CHIETA's prior written consent. The Services to be subcontracted and the identity of the sub contractor shall be notified to CHIETA as per the procedure described in **Part 3 and Part 5** respectively.

14.3 CHIETA shall, as soon as practical, notify the Service Provider of its decision of engaging the Sub Contractor. Should the Service Provider engage any Sub Contractor without CHIETA's prior written approval, CHIETA may forthwith terminate the Agreement.

14.4 CHIETA shall have no contractual relationships with Sub-Contractors. However, if a Sub-Contractor is found by CHIETA to be incompetent in discharging its duties, CHIETA may request the Service Provider either to provide CHIETA with a sub contractor who has qualifications and experience acceptable to CHIETA as a replacement, or to resume the performance of the Services itself.

14.5 The Service Provider shall advise CHIETA without delay of the variation or termination of any sub-contracting for performance of all or part of the Services.

14.6 The Service Provider shall be responsible for the acts, defaults and negligence of Sub Contractor and their employees, as if they were the acts, defaults of negligence of the Service Provider, or the Service Providers Personnel. Approval by CHIETA of the sub contracting of any part of the

Agreement or of the engagement by the Service Provider of Sub-Contractors to perform any part of the Services shall not relieve the Service Provider of any of its obligations under the Agreement.

15 TAX LIABILITY

15.1 The Service Provider shall be liable for and pay all value-added, sales, withholding, customs, excise and any other taxes, tariffs and duties which may be assessed or levied by any government or taxing authority on the Services provided by the Service Provider to CHIETA by no later than its due date.

15.2 The Service Provider hereby irrevocably indemnifies CHIETA against any claims or liability which the Service Provider might have to those authorities arising out of any claims or liability for such tax by those authorities or from the Service Provider's failure to make payment of same.

16 BOOKS AND RECORDS

16.1 The Service Provider shall maintain complete and accurate books and records, supporting data and other evidence related to the provision of Services hereunder in accordance with generally accepted accounting principles.

16.2 CHIETA and its representatives, shall have the right at any time during normal business hours, and upon 3 (three) business days notice, to inspect and audit such books and records which may involve performance under or transactions related to any of the Services, or which will permit an adequate evaluation of the costs and fee data related thereto, or the Service Provider's compliance with any of its warranties or obligations under this Agreement.

16.3 The Service Provider agrees to maintain such records for such period as may be required by applicable law.

16.4 The Service Provider shall cooperate fully with CHIETA or its designees in connection with audit functions or any inspections. Furthermore, the Service Provider will retain all copies of records that are received, generated or held by the Service Provider in the course of providing Services to CHIETA for the period of 5 (five) years.

17 CHANGE MANAGEMENT

17.1 Any Party wishing to initiate any amendment or alteration to this Agreement must prepare and then notify the other Party of the Change Request, as described in **Part 2 of Annexure A**.

17.2 The Parties will meet within 10 (ten) days of notification of the Change Request to determine whether or not they will process the Change Request.

17.3 Should either Party determine that it will process the Change Request, then, the Service Provider shall promptly undertake an exercise to determine the impact (including any knock-on effect) of the

proposed Change Request and within 10 (ten) days (or such other period as may be agreed between the Parties) of the meeting referred to in clause 17.2, deliver the Change Request to CHIETA incorporating all such information ("Relevant Information") as may be required by CHIETA to determine whether or not to implement the Change Request as a Change Order, including, without limitation:

17.3.1 the impact of the Change Request on the level and standard of the continued provision of the Services;

17.3.2 the impact of the Change Request on resources;

17.3.3 any impact on the Service Fees payable by CHIETA to the Service Provider (both cost savings or additional cost);

17.3.4 a plan for the implementation of the subject matter of the Change Request; and

17.3.5 any consequential changes which may be required to this Agreement.

17.4 The Parties shall provide one another with all reasonable assistance reasonably required by the other Party in the production of the Change Request and the relevant information.

17.5 Upon receipt of the Change Request incorporating the relevant information, the Parties shall determine whether or not to proceed with the Change Request. Should the Parties agree to proceed with the Change Request, then the Parties shall compile a Change Order.

17.6 CHIETA shall allocate a unique and consecutive number to each Change Order.

17.7 No Change Order shall be of any force or effect until it is signed by duly Authorised Representatives of each of the Parties.

17.8 Notwithstanding anything seemingly to the contrary contained elsewhere in this Agreement, where any amendment or alteration to this Agreement is required to implement any legislative or regulatory requirement impacting the subject matter of this Agreement, the Parties agree that they must implement the relevant amendment or alteration and will work together in good faith to achieve this objective.

18 **WARRANTIES**

The Service Provider warrants that it shall at all times -

18.1 use adequate numbers of qualified Personnel with suitable training, education, experience and skill to perform the Services;

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18.2 provide assistance and advice to CHIETA in respect of the Services and Additional Services, which assistance and advice shall be based on the Service Provider's experience in the market place;

18.3 provide the Services with promptness and diligence and in a professional manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services; and

18.4 perform all responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of CHIETA's Intellectual Property.

18.5 ensure that there are no actions, suits, or proceedings, pending or threatened against it or any of its sub-contractors, that will have a material adverse effect on the Service Provider's ability to fulfil its obligations under this Agreement.

18.6 notify CHIETA immediately if it becomes aware of any action, suit, or proceeding, pending or threatened that will have a material adverse effect on the Service Provider's ability to fulfil the obligations under this Agreement.

18.7 ensure that it is financially capable of fulfilling all requirements of this Agreement and that the Service Provider is a validly organized entity that has the authority to enter into this Agreement.

18.8 ensure that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Agreement.

19 **INDEMNITY**

The Service Provider hereby indemnifies and hold harmless CHIETA and its respective officers, directors, employees, Service Providers, successors and assigns from any and all Losses arising from:

19.1 any breach by the Service Provider of any of the terms and conditions contained in any third party service contracts;

19.2 any claim or action arising from the Service Provider's failure to observe or perform any duties or obligations to be observed or performed on or after the date of signature hereof by it under third party service contracts;

19.3 any claim or action arising from the Service Provider's breach of any obligations with respect to any third party service contracts;

19.4 death or bodily injury of any Sub Contractor of its Personnel caused by or due to the negligence or otherwise of the Service Provider;

19.5 damage, Loss or destruction to any real or tangible personal property of the sub contractor or Personnel caused by or due to the negligence or otherwise of the Service Provider;

19.6 any claim, demand, charge, action, cause of action or other proceeding asserted by such Sub Contractor or Personnel against the Service Provider but resulting from an act or omission of the Service Provider in its capacity as an employer/ or the primary contractor ; and

19.7 any claim, demand, charge, action, cause of action or other proceeding asserted by such Sub Contractor or Personnel against CHIETA but resulting from an act or omission of the Service Provider in its capacity as an employer/ or the primary contractor.

20 **INSURANCE**

20.1 Without limiting the Service Provider's liabilities or responsibilities in terms of the Agreement, the Service Provider undertakes to procure insurance to cover its liability and responsibilities in terms of the Agreement, and this insurance shall include comprehensive to cover at least the following risks:

20.1.1 In terms of the Compensation for Injuries and Diseases Act, 130 of 1993, as amended. The Service Provider will upon request from CHIETA submit proof to the satisfaction of CHIETA that it is insured under the Compensation for Injuries and Diseases Act by providing CHIETA with adequate proof stating that it has paid all assessments due.

20.1.2 Employers common law liability covering the Service Provider's liability at common law.

20.1.3 Legal liability in respect of claims for death of, or injury to, Personnel or loss of, or damage to, third party property.

20.1.4 Motor vehicle liability insurance in respect of all motor vehicles brought onto the premises of CHIETA.

20.1.5 CHIETA will have the right to examine, from time to time, the policies maintained by the Service Provider at any time before or during the Agreement period.

20.1.6 The provision of this Clause 20 shall survive the termination of this Agreement.

21 **CONFIDENTIALITY AND PUBLICITY**

21.1 The Parties undertake to treat as strictly confidential all Confidential Information. The Parties undertake not to use the Confidential Information for any purpose other than carrying out their respective obligations in accordance with and upon the terms of this Agreement.

21.2 The receiving Party shall not:

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21.2.1 disclose the Confidential Information to any person whomsoever other than the receiving Party's employees. Before revealing any Confidential Information to any such employees, the receiving Party undertakes to procure that the employees sign a similar undertaking in favour of the Designated Person and that they are aware of the confidential nature of the Confidential Information being made available to them. The receiving Party undertakes to ensure that such employees will observe and comply with their obligations in respect thereof, whether or not they are still employees of the receiving Party;

21.2.2 directly or indirectly use for the receiving Party's benefit or the benefit of any other person the Confidential Information other than for the purposes contemplated in clause 21.1, unless any part of such Confidential Information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on the part of the receiving Party or the employees contemplated in clause 21.2.1. For the purposes of the foregoing:

21.2.2.1 disclosures made to the receiving Party which are specific, e.g. design practices or techniques, shall not be deemed to be within the foregoing exceptions merely because they are encompassed by general disclosures which are generally available to the public or are in the receiving Party's possession;

21.2.2.2 any combination of features shall not be deemed to be within such exception merely because individual features thereof are generally available to the public or are in the receiving Party's possession.

21.2.3 The receiving Party agrees to use the same standard of care (which shall not amount to less than a reasonable standard of care) in protecting the Confidential Information, as its uses to protect its own confidential information.

21.2.4 The receiving Party agrees to return to the Designated Person upon request or upon termination of this Agreement, unless the Designated Person otherwise agrees in writing, all copies and partial copies of all Confidential Information (whether in paper or electronic format) which the receiving Party may have obtained from the Designated Person as well as all notes (whether in paper or electronic format) which the receiving Party may have prepared or may obtain as a result of the Confidential Information being made available to the receiving Party as contemplated in clause 21.1.

21.3 Excluded from Confidential Information will be:

21.3.1 Information which, at the time of disclosure thereof to the Receiving Party, is already

lawfully in the possession of the Receiving Party, free of restriction on the disclosure and use thereof by the Receiving Party;

21.3.2 Information which is thereafter lawfully disclosed to the Receiving Party by any third party, free of restriction on disclosure and use; and

21.3.3 Information which is or becomes generally available to the public in printed publications of general circulation through no act or omission of the Receiving Party or of its employees.

21.4 Neither Party will use the name of the other Party in publicity releases or advertising or for other promotional purposes, without securing the prior written approval of the other Party concerned.

21.5 Both Parties' obligations in terms of this Clause will survive the completion or termination of the Agreement.

22 **BREACH**

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) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so then any aggrieved party shall be entitled without notice, in addition to any other remedy available to it at 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, in either event without prejudice to the aggrieved party's right to claim damages.

23 **TERMINATION FOR CONVENIENCE**

23.1 In respect of each Statement of Work, the Agreement shall commence on the Commencement Date of each Statement of Work and shall endure for the duration specified in the relevant Statement of Work.

23.2 Notwithstanding the provisions of clause **23**, CHIETA shall be entitled to give a 1 (one) month written notice of Termination for Convenience, in accordance with the following terms:

23.2.1 CHIETA shall not be entitled to give written notice of Termination for Convenience to the other Party during the No Notice Period;

23.2.2 At any time during the Trial Period CHIETA shall not be entitled to give a written notice of Termination for Convenience to the other Party.

23.3 Should CHIETA give a notice, each Party shall continue to perform its obligations as set out in this Agreement, however, other than this, neither Party shall have any claim against the other arising out of or in connection with the early termination of this Agreement.

23.4 Upon expiry of the period contemplated in clause 23.2.1 and 23.2.2, the Parties shall continue to perform their respective obligations. Nothing in this clause shall be construed in any way to prevent or limit any Party from bringing any claim or action which had already accrued prior to the No Notice Period, or which may accrue during the No Notice Period or, arising out of any breach by the other Party of the terms of this Agreement;

23.5 Provided that: the Supplier has defaulted or that CHIETA has given written notice of Termination for Convenience; then, the Parties undertake to enter into good faith discussions and negotiations for the duration of the Agreement.

23.6 The Supplier shall not be entitled to contest or dispute the validity of the Termination of Convenience in any arbitration proceedings as envisaged in clause 23.

24 **ARBITRATION**

24.1 Save in respect of those provisions of the Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:

24.1.1 the interpretation of; or

24.1.2 the carrying into effect of; or

24.1.3 any of the Parties' rights and obligations arising from; or

24.1.4 the termination or purported termination of or arising from the termination of; or

24.1.5 the rectification or proposed rectification of

this Agreement, or out of or pursuant to this Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

24.1.6 That arbitration shall be held:

24.1.6.1 with only the Parties and their representatives other than legal representatives, present thereat;

24.1.6.2 at Johannesburg.

24.1.6.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.

24.1.7 Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration rules of the Arbitration Foundation of South Africa.

24.1.8 The arbitrator shall be, if the matter in dispute is principally:

24.1.8.1 a legal matter, an impartial practising advocate of not less than 15 (fifteen) years standing, or an impartial admitted attorney of not less than 15 (fifteen) years standing;

24.1.8.2 an accounting matter, an impartial practising chartered accountant of not less than 15 (fifteen) years standing; and

24.1.8.3 any other matter, an independent suitably experienced person agreed upon between the Parties.

24.1.9 If the Parties fail to agree on an arbitrator within 3 (three) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either of the Parties by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng). If that person fails or refuses to make the nomination, either Party may approach the High Court of South Africa (Transvaal Provincial Division) to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

24.1.10 If the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 3 (three) days after the arbitration has been demanded, it shall be a matter referred to in Clause 24.1.9.

24.1.11 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

24.1.12 The arbitrator shall have the fullest and freest discretion with regard to the proceedings save that he shall be obliged to give his award in writing fully supported by reasons. His award shall be final and binding on the Parties to the dispute.

24.1.13 Furthermore the arbitrator:

24.1.13.1 may by notice to the Parties within 3 (three) days after his appointment, dispense

wholly or in part with formal submissions or pleadings provided that the Parties are given the opportunity to make submissions;

24.1.13.2 shall determine the applicable procedure and shall not be bound by strict rules of evidence;

24.1.13.3 shall allow any Party to the arbitration to call any witnesses he determines and shall permit cross examination of witnesses;

24.1.13.4 shall be entitled to take equity into account and shall not be bound to decide the dispute according to the legal rights of the Parties;

24.1.13.5 may, in addition to any other award he may be able to make:

24.1.13.5.1 cancel this Agreement or any Schedule or determine that a Party has lawfully cancelled or is entitled lawfully to cancel this Agreement or any Schedule, or require specific performance, with an award of damages, but may not award cancellation of this Agreement or determine that the Agreement was lawfully cancelled or that a Party is lawfully entitled to cancel the Agreement unless the breach complained of is found by him to be a material one going to the root of the contract which cannot be compensated for by an award of damages or recoupment under any indemnity given in terms of this Agreement;

24.1.13.5.2 "make the contract" between the Parties by completing any gaps in the Agreement or by determining any matter which has been or is left to be agreed upon by the Parties and on which they have not reached agreement;

24.1.13.5.3 take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants;

24.1.13.5.4 award interest with effect from any date, and on any other basis, he considers appropriate in the circumstances;

24.1.13.5.5 shall make such order as to costs as he deems just.

24.1.13.6 Either Party shall be entitled to have the award made an order of court of competent jurisdiction.

24.1.13.7 Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when either Party gives written notice to the other of the dispute, demands arbitration and requests agreement on an arbitrator.

24.1.13.8 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

24.1.13.9 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

24.1.13.10 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

25 **DOMICILIUM CITANDI ET EXECUTANDI**

25.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

25.1.1 CHIETA:

Physical: No. 2 Clamart Road
Richmond
Johannesburg
2092
Republic of South Africa

Postal: P.O. Box 961
Auckland Park
2006

Telephone No: (0860244382)

Telefax No: (+2711) [726-7777]

25.1.2 Service Provider: **As set out in Part 3 of Annexure A hereto.**

25.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

25.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in South Africa or its postal address or its telefax number or e-mail address, provided that the change shall become effective on the 7th (seventh) Business Day from the deemed receipt of the notice by the other Party.

25.4 Any notice to a Party -

25.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th (seventh) Business Day after posting (unless the contrary is proved);

25.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

25.4.3 sent by telefax to its chosen telefax number stipulated in clause 25.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or

25.4.4 sent by e-mail to its chosen e-mail address stipulated in clause 25.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

25.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

26 **SEVERABILITY**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

27 **FORCE MAJEURE**

27.1 If *vis major* or *force majeure* or *casus fortuitus* ("the Interrupting Circumstances") cause delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the Interrupting Circumstances prevail, but if they affect any material part of the Agreement only for a maximum period of 90 (ninety) days whereafter any affected Party shall be entitled on 10 (ten) days' written notice to cancel this Agreement. Written notice of the Interrupting Circumstances specifying the nature and date of commencement thereof shall be despatched by the Party seeking to rely thereon (on whom the onus shall rest) to the other/s as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the Interrupting Circumstances shall be given by the Party who relied thereon within 10days after such cessation. No Party shall subsequently be obliged to comply with the obligations suspended during such period. The Party whose performance is interrupted by the Interrupting Circumstances shall be entitled, provided that such Party shall give notice to that effect with the written notice of the

Interrupting Circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

27.2 For the purposes hereof *vis major* and *force majeure* include acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, inability on the part of CHIETA as a result of *force majeure* of the nature contemplated in this clause to obtain any goods or materials from the Service Provider or contemplated Service Provider thereof, combination of workmen, prohibition of exports, rationing of supplies, flood, storm, fire or (without limitation *eiusdem generis*) any other circumstances beyond the reasonable control of the Party claiming *force majeure* or *vis major* and comprehended in the terms *force majeure* or *vis major*.

28 **GOVERNING LAW**

28.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby submit to the jurisdiction of the of the High Court of South Africa (Transvaal Provincial Division).

29 **SAFETY AND SECURITY**

29.1 The Service Provider agrees to comply with CHIETA's security and safety procedures. Without limiting the generality thereof the Service Provider will specifically comply with the Occupational Health and Safety Act. This Agreement will constitute compliance with section 2 of said Act and the Service Provider will ensure that all necessary steps are taken to comply with said Act.

29.2 CHIETA will allow the Service Provider access to CHIETA's premises to carry out its obligations in terms of this Agreement, subject to its security procedures as amended from time to time.

29.3 CHIETA will be entitled to request the Service Provider to remove any Personnel, or subcontractor from its team if CHIETA is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the Parties. Such a person will be removed by the Service Provider within the time period stipulated by CHIETA. The Service Provider indemnifies CHIETA against any claims that might arise due to such removal.

30 **CANVASSING, GIFTS, INDUCEMENTS AND REWARDS**

30.1 The Service Provider will not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of CHIETA's employees.

30.2 Such an act will be a material breach of the Agreement and will be dealt with accordingly.

31 **FRAUD**

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31.1 If, at any time during the duration of the Agreement, CHIETA in its reasonable discretion determines, based on *prima facie* evidence, that the Service Provider has, in respect of the Agreement:

31.1.1 acted dishonestly and/or in bad faith; and/or

31.1.2 made any intentional or negligent misrepresentation to CHIETA, whether in any negotiations preceding the conclusion of, or in the execution of the Agreement;

31.1.3 Then, the Service Provider shall be given an opportunity to present evidence in rebuttal of CHIETA's initial determination within 5 (five) days of notice from CHIETA to that effect. Should the Service Provider fail to present evidence in rebuttal or should CHIETA further determine that the Service Provider's evidence fail to rebut CHIETA's *prima facie* evidence, then CHIETA will be entitled by written notice to the Service Provider forthwith to terminate the Agreement.

31.1.4 Upon such termination CHIETA shall be entitled, in addition to all other remedies available to it, to recover from the Service Provider all damages it has suffered by virtue of such conduct by the Service Provider.

31.1.5 If, at any time of such termination, CHIETA be indebted to the Service Provider for any amounts whatsoever, CHIETA shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the Service Provider's conduct and any damages suffered by CHIETA.

31.2 No payment by CHIETA to the Service Provider after the lapse of such period shall preclude CHIETA thereafter, from recovering from the Service Provider any such damages as it may have suffered.

32 LIENS AND CLAIMS BY THIRD PARTY

32.1 The Service Provider waives all liens and rights of possession relating to the provisioning of Services.

32.2 If a third party makes any claim against CHIETA which is directly or indirectly related to the Services the Service Provider will:

32.2.1 After notification by CHIETA, deal with such a claim in such a manner as to avoid all prejudice to CHIETA and keep CHIETA fully informed as regards the claim; or

32.2.2 alternatively, CHIETA may deal with such a claim at its discretion, in which event the Service Provider will render to CHIETA all necessary assistance.

32.3 If CHIETA incurs any fair and reasonable expenses or makes any disbursements in terms of this Clause 32, same may be set-off against monies owed to the Service Provider.

33 CHIETA PROPERTY IN POSSESSION OF THE SERVICE PROVIDER

33.1 CHIETA property supplied to a Service Provider for the execution of the Agreement remains the property of CHIETA and will at any time be available for inspection by a CHIETA representative. Any such property in the possession of the Service Provider on completion of the Agreement will, at the Service Provider's expense, be returned to CHIETA forthwith.

34 CONSORTIUM

34.1 The Consortium members bind themselves to CHIETA, jointly and severally for the due and punctual fulfilment and performance of the Services by the Consortium to CHIETA whether such services were to be solely or jointly performed by the Consortium or in partnership with others sub contractors;

34.2 Without derogating from the generality of any of the provisions of this joint and several liability or the ambit of the obligations embraced, the liability of the Consortium members shall cover all claims for compensation or damages which CHIETA may at any time have as a result of the cancellation or termination of any contract between CHIETA and the Consortium howsoever arising; and

34.3 The Consortium members hereby renounce all benefits arising from the legal exceptions "*non numeratae pecuniae*", "*non causa debiti*", "*errore calculi*" and "*beneficia excussionis et divisionis*", with the force and effect of which they hereby declare themselves to be fully acquainted and Consortium members agree and declare that renouncement of legal obligations is to be in addition and without prejudice to any rights which CHIETA may have against the Consortium Members and notwithstanding any intermediate settlement of disputes between the Parties.

35 WHOLE AGREEMENT, NO AMENDMENT

35.1 This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof and supersedes and cancels with effect from the signature date any other agreements (written or oral), which are in force between the Parties relating to the Services.

35.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or

made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

35.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

35.4 To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

36 **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.

37 **LEGAL COSTS**

Each Party shall bear its own costs relating to the negotiation and execution of this Agreement.

SIGNED by the PARTIES and witnessed on the following dates and at the following places respectively:

CHIETA'S AUTHORISED REPRESENTATIVE

Full Names: KEDIBONE

Last name: MOROANE

Designation: Acting Chief Executive Officer

Date:

Signature:

Witness Signature:

Physical Address: **Number 2 Clamart Road**

Richmond

2092

Johannesburg

Postal Address: **P O Box 961**

Auckland Park

2006

Direct Phone No. : **011 628 7000**

e-Mail address: **kmoroane@chieta.org.za**

SUPPLIER'S/CONSORTIUM AUTHORISED REPRESENTATIVE

Full Names:

Last name:

Designation:

Date:

Signature:

Witness Signature:

Physical Address:

Direct Phone No:

Direct Fax No. :

E-Mail address:

ANNEXURE A

-----**PART 1 OF**

ANNEXURE A - STATEMENT OF WORK

REFER TO ATTACHED CONTRACT FORM

PART 2 OF ANNEXURE A

DETAILS OF THE SERVICE PROVIDER

Supplier's (Full) Name:

Postal Address:

Phone No. :

Cell No. :

E-MAIL:

PART 3 OF ANNEXURE A – PAYMENT SCHEDULE

PART 4 OF ANNEXURE A

BANKING AND PAYMENT DETAILS

[Please insert the banking details of the supplier]

1. In consideration for the services to be rendered by the Consultants to CHIETA, pursuant to this agreement, pay the Consultant as follows:
 - 1.1 The Consultant shall provide CHIETA with an invoice or statement of account for each assignment.
 - 1.2 The CHIETA shall pay the Consultant within 30(thirty) days from the date of presentation of the invoice or statement of account by the Consultant to CHIETA at its chosen domicilium citandi of executandi.
2. Payment includes all value added or sales tax which might be payable in respect of same and the Supplier undertakes to make payment of such tax to the appropriate authorities by no later than its due date and hereby irrevocably indemnifies CHIETA against any claims or liability which the Supplier might have to those authorities arising out of any claims or liability for such tax by those authorities or from the Supplier failure to make payment of same;
3. Payment shall be made by CHIETA to the Supplier (CHIETA has the right to set-off and any other deductions, which it might be entitled to in terms of any agreement with the Supplier in terms of other agreements.
4. Payment shall be made to Supplier at its bankers, in the Republic of South Africa, as follows:
 - 4.1 name of the bank:
 - 4.2 branch name and code:
 - 4.3 account holder:
 - 4.4 account number:
5. Payment to the nominated Supplier's account shall constitute payment to the sub-contractors' account. Payment to the nominated Consortium account shall constitute payment to all the Consortium Members who hereby renounce all benefits arising from the legal exceptions "*non numeratae pecuniae*", "*non causa debiti*", "*errore calculi*" and "*beneficia excussionis et divisionis*".

PART 5 OF ANNEXURE A

SPECIAL TERMS AND CONDITIONS

NOT APPLICABLE

PART 6 OF ANNEXURE A

DETAILS AND QUALIFICATIONS OF THE SERVICE PROVIDER'S PERSONNEL

A synopsis of the Service Provider's area of expertise

Details of the Persons who will be engaged for the Performance of the Services

- 1. List of all personnel to be assigned to this project**

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