

BANKING SERVICES AGREEMENT

Between

THE STANDARD BANK OF SOUTH AFRICA LIMITED

and

SEKHUNKHUNE DISTRICT MUNICIPALITY



JNG

INDEX

No.	Clause	Page No.
1.	DEFINITIONS	2
2.	APPOINTMENT	7
3.	DURATION	8
4.	THE SERVICES	8
5.	THE CUSTOMER UNDERTAKINGS AND OBLIGATIONS.....	9
6.	WARRANTIES.....	10
7.	SERVICE LEVELS	11
8.	RELATIONSHIP MANAGEMENT	12
9.	FEES.....	13
10.	INVOICING AND PAYMENT	14
11.	EXCLUSION OF LIABILITY	14
12.	LIMITATION OF LIABILITY.....	14
13.	INTELLECTUAL PROPERTY	15
14.	SAFETY AND SECURITY	15
15.	STANDARD BANK PROPERTY	16
16.	CONFIDENTIALITY	16
17.	DATA PROTECTION.....	17
18.	CORRUPTION.....	19
19.	SANCTIONS.....	20
20.	FORCE MAJEURE	21
21.	BREACH AND TERMINATION.....	21
22.	DISPUTE RESOLUTION	22
23.	NOTICES AND DOMICILIUM	23
24.	NATURE OF RELATIONSHIP	25
25.	ASSIGNMENT AND CESSION.....	25
26.	SEVERABILITY	26
27.	WAIVER	26
28.	MODIFICATION.....	26
29.	APPLICABLE LAW	26
30.	ENTIRE AGREEMENT	26
31.	COUNTERPARTS	26

1. DEFINITIONS

- 1.1 The headings to the clauses, schedules and annexures of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of the Agreement nor any clause, schedule or annexure thereof.
- 1.2 Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1 **Agreement** means the agreement as set out in this document together with any annexure hereto, the LOA and the Product Terms and conditions;
- 1.2.2 **Applicable Laws** means all national, provincial, local and municipal legislation or subordinate legislation, ordinances, regulations, by-laws, rules and/or other laws of any relevant Regulatory Authority and any other instrument having the force of law as may be issued and in force from time to time as well as common law, all as relating to or connected with the activities contemplated under this Agreement and as updated from time to time;
- 1.2.3 **Business Day** means Monday to Friday between the hours of 08:00 to 16:30, excluding Saturdays, Sundays or a day which from time to time is proclaimed public holiday in South Africa;
- 1.2.4 **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a Party;
- 1.2.5 **“Collusive Practice”** means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 1.2.6 **“Commercialisation”** means the use of any Intellectual Property, with or without additions or modifications, for purposes of generating profit, whether through manufacturing, sales, rendering of services or by any other lawful means without limitation;

MNA


- 1.2.7 **Confidential Information** means all information (written, oral or electronic) disclosed by one Party to the other Party whether before or after the Effective Date and concerning the business affairs of the disclosing Party including any Data, information relating to that Party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers and shall include this Agreement;
- 1.2.8 **Contact Person** means the relevant persons appointed by each Party from time to time, to oversee the execution of this Agreement and whose name and designation will be provided to the other Party in writing;
- 1.2.9 **"Corrupt Practice"** means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another;
- 1.2.10 **CPI** means the consumer price index for all urban areas published by Statistics South Africa from time to time or if the calculation of such index has ceased, the most similar index, as compiled and published by Statistics South Africa or any body authorised in its stead, in terms of the Statistics Act, No. 66 of 1976 or any statute replacing such Act, to compile and publish national statistics;
- 1.2.11 **Customer** means the Sekhukhune District Municipality, a local municipality constituted in terms of Section 155 of the Constitution of the Republic of South Africa Act No. 108 of 1996, and herein represented by Nkwane Danger Matumane, in his capacity as Municipal Manager, he being duly authorised thereto;
- 1.2.12 **Data** means any data, including Personal Information as amplified if applicable by the definition thereof set out in the Protection of Personal Information Act 4 of 2013 and/or any equivalent legislation of the jurisdiction(s) where the Services are being provided and/or performed, supplied by one Party to the other Party or Processed on behalf of one Party by the other Party;
- 1.2.13 **Effective Date** means 1 June 2023, notwithstanding the date of signature of this Agreement by the last signing Party;
- 1.2.14 **Fees** means the fees that the Customer shall pay to Standard Bank for the rendering of the Services, which shall be computed as set out in the Proposal;



- 1.2.15 **General Conditions of Contract** means the Government Procurement: General Conditions of Contract;
- 1.2.16 **Intellectual Property** means all intellectual property rights worldwide arising under statutory or common law, whether or not perfected, including, without limitation all patents, trademarks, design rights, brand names, domain names, emblems, symbols, slogans or any other marks, copyright (including all copyright in any designs and computer software), proprietary material, know-how, trade secrets, methods, techniques, confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, including printed and on-line merchandise catalogues, performance improvement methodology and reward formula design, and all applications and rights to apply for protection of any of the same, devised, created and produced by the Parties prior to this Agreement;
- 1.2.17 **Invoice** means the tax invoice in the form of a monthly bank statement prepared by Standard Bank reflecting the Fees to be paid by the Customer to Standard Bank or debited by Standard Bank against the Nominated Bank Account and which invoice conforms to this Agreement and the provisions of the VAT Act;
- 1.2.18 **LOA** means the letter of acceptance in terms of which the Customer advised Standard Bank of its appointment, subject to the conclusion of this Agreement;
- 1.2.19 **Nominated Bank Account** means the Customer's bank account held at Standard Bank's branch office and notified by the Customer to Standard Bank in writing as the account that Standard Bank must debit for the payment of monthly Fees;
- 1.2.20 **Parties** means Standard Bank and the Customer and **Party** shall as the context requires, be either of them;
- 1.2.21 **Personal Information** means information relating to an identifiable natural or juristic person, including information relating to race, gender, sex, marital status, nationality, ethnic or social origin, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, biometric information and financial, criminal or employment history as well as correspondence that is implicitly or explicitly of a private or confidential



nature or further correspondence that would reveal the contents of the original correspondence;

- 1.2.22 **Personnel** means all directors, members, employees, agents, representatives and permitted subcontractors that assist the Parties to perform their obligations;
- 1.2.23 **Prime Rate** means the publicly quoted variable basic rate of interest per annum, compounded monthly in arrears, at which Standard Bank lends on overdraft, and such rate to be proved *prima facie* by means of a certificate under the hand of any executive manager of Standard Bank whose appointment and authority need not to be proved;
- 1.2.24 **Process** means any operation or activity or any set of operations, whether or not by automatic means, concerning Data, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means and Processing shall have a corresponding meaning;
- 1.2.25 **Product Terms and Conditions** means the agreed terms and conditions for the Services which Standard Bank shall provide to the Customer under this Agreement;
- 1.2.26 **Prohibited Activities** means:
- 1.2.26.1 illegal or terrorist activities;
 - 1.2.26.2 money laundering;
 - 1.2.26.3 any activities which are subject to Sanctions;
- 1.2.27 **Proposal** means the written response of Standard Bank to the RFP issued by the Customer;
- 1.2.28 **Receiving Party** means the Party to which Confidential Information is disclosed in terms of this Agreement;
- 1.2.29 **Regulatory Authority** means any authority having jurisdiction over a Party or the activities covered by this Agreement, including:



- 1.2.29.1 any national, municipal, provincial, other local or administrative government, authority or department;
- 1.2.29.2 any agency, tribunal, commission, regulator, self-regulatory body or other similar body (including the South African Reserve Bank);
- 1.2.30 **RFP** means the formal written invitation issued by the Customer inviting registered banks to submit proposals to the Customer in respect of the rendering of banking services to the Customer under the tender number T SK-8/3/1-13/2022/2023;
- 1.2.31 **Sanctions** means any measures imposed by a Sanctioning Body, including but not limited to diplomatic, travel, trade and/or financial sanctions or embargoes;
- 1.2.32 **Sanctioning Body** means the European Union (EU), Her Majesty's Treasury (HMT), the Ministry of Economy, Finance and Industry (France) (MINEFI), the Office of Foreign Assets Control of the Department of Treasury of the United States of America (OFAC), the United Nations Security Council (UNSC), or any other sanctioning body recognised by Standard Bank;
- 1.2.33 **Sanctioned Entity** means:
- 1.2.33.1 any natural or juristic person or country;
- 1.2.33.2 in the case of a juristic person, any person who (i) owns or controls it; or (ii) it owns or controls (and for these purposes, owns means holding any percentage of ownership or beneficial interest and controls means the ability, directly or indirectly and whether through the voting of shares, the appointment of directors or similar officers or through any other means, to control the business or policy of the relevant juristic person);
- 1.2.33.3 in the case of any country, its ministries, departments, agencies and/or any other governmental organisations,
- listed on any Sanctions List and/or who is subject to any Sanctions;
- 1.2.34 **Sanctions List** means, whenever updated, any list of Sanctioned Entities issued by a Sanctioning Body;



- 1.2.35 **Services** means the banking product and/or services that Standard Bank will provide to the Customer in terms of this Agreement and which are set out in clause 4 below and further detailed in the Proposal;
- 1.2.36 **Service Levels** means the standard service levels for respective Services which Standard Bank shall comply with in rendering the Services to the Customer and which are set out in the Proposal;
- 1.2.37 **Standard Bank** means The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), a public company duly incorporated with limited liability according to the company laws of the Republic of South Africa and herein represented by Timothy Matlala in his capacity as Head: Public Sector, he being duly authorised thereto;
- 1.2.38 **VAT** means value added tax at the rates specified in the VAT Act; and
- 1.2.39 **VAT Act** means the Value Added Tax Act 89 of 1991.
- 1.3 Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.
- 1.4 Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.
- 1.5 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.
- 1.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.
- 2. APPOINTMENT**
- 2.1 The Customer issued the RFP to procure banking services under for a period of 5 Years with effect from the Effective Date and Standard Bank was successfully awarded the bid.
- 2.2 In light of the above, the Customer hereby appoints Standard Bank to render the



Services to the Customer on the terms and conditions of this Agreement as from the Effective Date, and Standard Bank duly accepts the appointment.

- 2.3 The Parties agree that the tender documentation, which includes the RFP, the Proposal and the General Conditions of Contract forms part of the agreement between the Parties. In the event of any inconsistency between the provisions of this Agreement (this excludes the Product Terms and Conditions which will be dealt with in accordance with clause 2.4 below) and the tender documentation, the provisions of the tender documentation shall prevail.
- 2.4 The Customer agrees that it will be required to sign the Product Terms and Conditions applicable to the Services. It further agrees that the relationship between Standard Bank and the Customer in respect of each Service, will be governed by the Product Terms and Conditions that are applicable to such Service. Notwithstanding the tender documentation, in the event of any dispute relating to any Service, the relevant Product Terms and Conditions will apply.

3. DURATION

Notwithstanding the date of signature, this Agreement shall commence on the Effective Date and shall thereafter remain in full force and effect for a period of 5 years subject to the right of either Party to terminate it in accordance with the applicable termination provisions of this Agreement.

4. THE SERVICES

- 4.1 The Services that Standard Bank shall render to the Customer in terms of this Agreement are set out in the Proposal and shall include, but not be limited to:

4.1.1 transactional banking services;

4.1.2 electronic banking services; and

4.1.3 general banking services.

- 4.2 Notwithstanding the provisions of clause 4.1 above, it is recorded that Standard Bank may agree to provide funding for corporate and social investment projects (which includes the funding of a project or providing a donation in favour of an entity nominated by the Customer) and/or sponsorship opportunities identifies by the Customer. These funding requests may be included as a Service in the Proposal or as an additional funding request made by the Customer, in addition to the Services included in the Proposal. If Standard Bank agrees to provide funding to the



Customer for this purpose, the Parties agree to enter into negotiations in good faith and conclude separate commercial agreements to govern the terms and conditions on which Standard Bank will provide the funding.

- 4.3 The Parties may, when and where necessary, vary the Services by agreement in writing from time to time.

5. THE CUSTOMER UNDERTAKINGS AND OBLIGATIONS

- 5.1 The Customer undertakes to:

5.1.1 duly complete and sign all necessary documents and to do all such things as are required by Standard Bank for the purposes of opening of bank accounts;

5.1.2 to comply with all requirements of Standard Bank for the opening of bank accounts stipulated by the Financial Intelligence Centre Act 38 of 2001 and any other Applicable Laws;

5.1.3 provide timeous management decisions, any necessary approvals or authorisations and any additional documentation required to enable Standard Bank to provide the Services;

5.1.4 provide Standard Bank with the necessary written resolutions and/or mandates appointing officials of the Customer who are authorised to issue written instructions to Standard Bank in respect of the Products. It is recorded that Standard Bank will be entitled to rely on the latest resolutions and/or mandates in its possession (as provided by the Customer), as it relates to the relevant Product.

- 5.2 The Customer acknowledges that Standard Bank shall not render the Services to the Customer until the Customer has duly complied with all requirements contemplated in clause 5.1 above.

- 5.3 The Customer understands and agrees that to the extent that any Products as contemplated in the Services includes any bank accounts (including the Nominated Bank Account), the following will apply:

5.3.1 Standard Bank is required to comply with any and all lawful and valid court orders and/or Sheriff attachments (**Attachment**) served on it in respect of its clients bank accounts. If Standard Bank receives an Attachment in respect of any of the Customer's bank accounts and such account:



5.3.1.1 is in a debit balance position then, Standard Bank will immediately place a stop debit indicator on the account, to prevent any further payments being made from the account and to only allow payments to be made into the account, so that the account can reach a credit balance. Once the account reaches a credit balance position that is equal to or greater than the amount indicated on the Attachment, Standard Bank shall be entitled to secure the amount and fulfil its obligation under the Attachment. Thereafter, Standard Bank will release the stop debit indicator from the account;

5.3.1.2 in a credit balance position with sufficient funds to satisfy the amount specified indicated on the Attachment, then Standard Bank will be entitled to immediately secure the amount from the account to fulfil its obligations under the Attachment;

notwithstanding the above, Standard Bank will pay the monies secured from the account to the Sheriff, in strict compliance with the provisions of the Attachment and provided that all the legal requirements have been complied with; and

5.3.2 if the Customer has more than one bank account, Standard Bank will have the right to set-off credit and debit balances in these accounts, in terms of Applicable Laws. If this happens, Standard Bank will notify the Customer if it has applied set-off to any of the Customer's bank accounts and statements will be provided to the Customer in accordance with the relevant Product Terms and Conditions to show the set-off position.

6. WARRANTIES

6.1 Each Party warrants and undertakes to the other Party that:

6.1.1 it has full capacity, power and authority to enter into this Agreement and this Agreement shall, when executed, constitute valid and binding obligations either Party and all its successors in title and assigns;

6.1.2 the execution and performance by it of this Agreement will not cause a breach of any other agreement to which it is a party;

- 6.1.3 the performance of its obligations and the rendering of the Services under this Agreement shall comply with all Applicable Laws;
 - 6.1.4 it is not aware of anything which might or shall adversely affect its ability to perform its obligations under this Agreement; and
 - 6.1.5 it shall ensure that all information supplied to each other is true, accurate and complete in all respects and is supplied to other Party timeously.
- 6.2 Standard Bank further warrants that it has the requisite skills, expertise, and systems to perform the Services. Except as expressly stated in this Agreement, Standard Bank provides no warranties, express or implied, by operation of law or otherwise, as to the suitability, working or fitness for purpose of the performance of the Services.
- 6.3 the Customer acknowledges that the warranty and the performance of the Services by Standard Bank can only be relied upon in so far as the Customer supplies Standard Bank with correct and complete information, timeously.
- 6.4 Unless provided elsewhere in this Agreement, neither Party makes any other representations or warranties, whether expressed or implied.

7. SERVICE LEVELS

- 7.1 Standard Bank shall perform the Services in accordance with the Service Levels set out below:
- 7.1.1 using the appropriate level of skill, care and diligence in performing the Services;
 - 7.1.2 utilising staff that are adequately trained, qualified and skilled to perform the Services;
 - 7.1.3 notifying the Customer within a reasonable time, should Standard Bank be unable to render the Services for any reason whatsoever, and advising the Customer how such situation will be remedied;
 - 7.1.4 using the proper systems (hardware and software) to provide the Services;
 - 7.1.5 assuming professional and technical responsibility for the performance of the Services, which will be in accordance with recognised professional service providers performing work of a comparable nature;



7.1.6 ensure that all instructions are executed by authorised representatives of Standard Bank; and

7.1.7 endeavouring to constantly improve and enhance the quality of the Services during the course of this Agreement.

7.2 Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between any employee, contractor, or agent, of the Customer and Standard Bank.

7.3 Any consultant or contractor supplied by one Party to the other Party to assist in the rendering of the Services in terms of this Agreement shall not be considered as having employee status for the purpose of any benefit applicable to the other Party's employees generally.

7.4 Where Standard Bank has to render the Services at the Customer's premises, Standard Bank will render the Services at the addresses notified to Standard Bank by the Customer in writing.

8. RELATIONSHIP MANAGEMENT

8.1 Each Party must provide to the other Party in writing within 7 (seven) days from the Effective Date, the names and contact details of the individuals who will be authorised to act as a central point of contact on behalf of such Party in relation to this Agreement (**Relationship Management Team**); and

8.2 The Relationship Management Team will:

8.2.1 act as the first point of contact relating to any issues and discussions arising out of this Agreement, including the Parties' performance under the Agreement;

8.2.2 convene meetings as follows at such times and places as may be reasonably required:

8.2.2.1 on a monthly basis to report on the delivery of Services in terms of this Agreement;

8.2.2.2 on a quarterly basis to report on any strategic issues relevant to this Agreement; and

JS


8.2.2.3 as and when required by any Party on reasonable notice to the other Party.

8.2.3 will use their best endeavours to resolve by negotiations any disputes which may arise at such meetings. If such disputed matters cannot be resolved, then such dispute will be referred for resolution under clause 22.

8.3 If any representative on the Relationship Management Team is replaced for any reasons, the Party whose representative is being replaced must endeavour to notify the other Party of this fact within 7 (seven) Business Days.

9. FEES

9.1 In consideration for the rendering of the Services, the Customer shall pay to Standard Bank the Fees as set out in the Proposal.

9.2 All Fees shall be inclusive of VAT, unless otherwise advised to the Customer in writing by Standard Bank.

9.3 The Fees as quoted in the Proposal are effective from 1 January to 31 December of the Proposal year. Standard Bank shall be entitled to review the Fees annually each year commencing on 1 January 2023. Any consequential increases in Fees resulting from such reviews shall at all times comply with all applicable laws as well as any predefined agreements between the Parties.

9.4 For the avoidance of doubt, it is hereby recorded that the review of Fees as contemplated in clause 9.3 above will be subject to the CPI and any other associated costs.

9.5 In the event that the Customer instructs Standard Bank to render additional services to the Customer, which do not form part of the Services, Standard Bank may render such services at the standard prices applicable to all Standard Bank customers at the time.

9.6 The Parties acknowledge that the Fees are based on the scope of the Services and the Service Levels as stipulated in the Proposal. Consequently, any material change to the nature of the Services shall be undertaken by mutual agreement between the Parties and may result in the Fees being varied by Standard Bank. Should the Parties not be able to reach agreement on any amendment to the Services, the Services shall remain as specified in the Proposal and shall continue to be performed in accordance with the Service Levels, with the Fees as set out in the Proposal being payable.

10. INVOICING AND PAYMENT

10.1 The Fees referred to in clause 9 above shall be deducted by Standard Bank from the Nominated Bank Account. Standard Bank will submit to the Customer a monthly Invoice setting out the amount deducted from the Nominated Bank Account for that month.

10.2 In the event that Standard Bank is unable to deduct the Fees as envisaged in clause 10.1 above, payment of Invoices shall be:

10.2.1 made into Standard Bank's nominated bank account within 30 (thirty) days of the Invoice date failing which;

10.2.2 Fees paid later than the Invoice date will accrue interest at the Prime Rate;

10.3 The Fees shall be paid by the Customer without any set-off or deduction.

10.4 the Customer's liability towards Standard Bank will be deemed to be met when the Payment is reflected in Standard Bank's account.

10.5 All Invoices must be sent to the Customer at Private Bag X8611, Groblersdal, 0470.

11. EXCLUSION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

12. LIMITATION OF LIABILITY

Standard Bank shall not be liable to the Customer for any:

12.1 loss, damage or cost incurred by the Customer, in respect of the Services unless such loss, damage or cost is caused by the negligence or wilful misconduct of Standard Bank;

12.2 loss occasioned by any failure on the part of the Customer to fulfil any of its obligations under this Agreement, including incorrect or incomplete information supplied and/or the late submission of information supplied, by the Customer;

- 12.3 loss occasioned by any failure or absence of any systems, telecommunication networks or electricity supply or failure by a supplier of telecommunication networks or electricity services to provide the respective network or service; and
- 12.4 claim or loss by the Customer and/or any third party, which relates to the actions of the Customer, which took place before the Effective Date.

13. INTELLECTUAL PROPERTY

- 13.1 All Intellectual Property rights of whatsoever nature, belonging to the Parties (or its third-party licensors) shall remain vested at all times in such Party (or its third-party licensors).
- 13.2 the Customer acknowledges and agrees that all Intellectual Property in the Advertising, shall be and remain exclusively vested in Standard Bank and the Customer shall have no claim thereto whatsoever.
- 13.3 Nothing in this Agreement shall be construed to be a license of each Party's Intellectual Property and the Parties shall not have the right to use, and will not use, the Intellectual Property belonging to each other.
- 13.4 The Parties shall not represent that they have any right, title or interest in or to each other's Intellectual Property.
- 13.5 To the extent that the Parties require the use of each other's Intellectual Property for the purposes of performing its obligations in terms of this Agreement, such Party must obtain the other Party's prior, written consent to use the other Party's Intellectual Property which will include, if necessary, the conclusion of a separate trade mark licence agreement, which is solely within the discretion of Standard Bank.
- 13.6 The Parties shall not be permitted to create any new Intellectual Property (**Bespoke IP**) in terms of this Agreement, without the prior, written consent of the other Party and to the extent that such Bespoke IP is created, the Customer acknowledges that Standard Bank shall own such Bespoke IP and hereby cedes and assigns such Bespoke IP to Standard Bank.

14. SAFETY AND SECURITY

- 14.1 the Customer must allow Standard Bank's employees, contractors, consultants or agents, access to the Customer's premises where necessary to perform the Services.

Handwritten signature


14.2 Standard Bank agrees to comply with the Customer's security and safety procedures when on the Customer's premises. Without limiting the generality thereof, Standard Bank will specifically comply with the Occupational Health and Safety Act 85 of 1993 (as amended).

14.3 the Customer shall be entitled to request Standard Bank to remove any employee, agent, consultant or contractor from its team if the Customer is of the reasonable 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. Standard Bank will endeavour to remove such person within a reasonable time if Standard Bank is satisfied that such person is a safety or security risk.

15. STANDARD BANK PROPERTY

15.1 Standard Bank's property (in all manner of forms) supplied to the Customer remains the property of Standard Bank and will at any time be available for inspection by a Standard Bank representative. Any such property that is in the possession of the Customer on termination of this Agreement will, at Standard Bank's expense, be immediately returned to Standard Bank.

15.2 the Customer will be responsible, at all times, for any loss of or damage to Standard Bank's property in its possession, and if required the Customer will furnish such security for the payment of any such loss or damage as Standard Bank may require.

16. CONFIDENTIALITY

16.1 Except as otherwise provided, each Party (**Receiving Party**) shall:

16.1.1 keep each other's Confidential Information confidential. The Receiving Party shall not disclose the other Party's Confidential Information to any third party without the prior consent of the other Party (**Disclosing Party**);

16.1.2 use the Confidential Information only as set out in this Agreement or as agreed by the Disclosing Party.

16.2 The undertaking set out in clause 16.1 will not apply:

16.2.1 when the Receiving Party discloses the Disclosing Party's Confidential Information to its Personnel and advisors who need to know the Confidential



Information for the Agreement, provided that such Personnel and advisors must be made aware of and comply with their confidentiality obligations as if they were a party to this Agreement;

16.2.2 where the Receiving Party or any other third party knows about the Confidential Information before the Effective Date without breaching any duty of confidentiality. This clause 16.2.2 should not be construed as placing an onus on the Receiving Party to try to ascertain whether the information received was subject to a confidentiality agreement between the Disclosing Party and such third party;

16.2.3 where the Receiving Party must disclose the Disclosing Party's Confidential Information to comply with a court order, or any Applicable Law;

16.2.4 where Standard Bank must provide the Company's Confidential Information to any Regulatory Authority or Sanctioning Body; or

16.2.5 where the Receiving Party pursues any legal remedy under this Agreement.

16.3 The Receiving Party must:

16.3.1 implement reasonable security procedures to prevent the unauthorised disclosure of the Disclosing Party's Confidential Information;

16.3.2 use the same standard of care (which must as a minimum be a reasonable standard of care) in protecting the Disclosing Party's Confidential Information as it uses to protect its own confidential information.

16.4 The Parties may not, without each other's prior consent, release any statement to the press, or make any other public statement which could reasonably be expected to be published regarding their relationship or the subject matter of this Agreement.

17. DATA PROTECTION

17.1 The Parties acknowledge and agree that all Data provided by one Party to the other Party, or to which the Parties may be exposed, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Party in question.

17.2 The Parties hereby warrant, represent and undertake in favour of each other that where either Party Processes any Personal Information as a result of their



obligations in terms of this Agreement, such Party will obtain written consent from the affected parties, failing which, the other Party shall not assume liability for any failure by such Party to comply with provisions of this clause 16.1.

17.3 Each Party hereby warrants, represents and undertakes in favour of the other that:

17.3.1 it shall at all times strictly comply with all Applicable Laws and with all the provisions and requirements of any of each Party's data protection policies and procedures which may be in force from time to time;

17.3.2 it shall not, at any time Process Data for any purpose other than to perform its obligations in terms of this Agreement.

17.4 The Parties further warrant, represent and undertake to each other that they shall ensure that all of their systems and operations which are used to perform their obligations in terms of this Agreement, including all systems on which Data is Processed, shall, once the applicable data protection legislation comes into force, be of a minimum standard required by Applicable Laws and be of a standard no less than the standards which are in compliance with the best industry practice for the protection, control and use of Data.

17.5 The Parties shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or Processing of Data. The measures taken must at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with the best industry practice for the protection, control and use of Data.

17.6 The Parties shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under their possession or control and establish and maintain appropriate safeguards against any risks identified. The Parties shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards.

17.7 The Parties shall immediately notify each other a) of any risks posed to Data that it has identified; b) of the safeguards established by the Party to mitigate the impact of the risks; and c) that the safeguards have been effectively implemented.

17.8 The Parties shall notify each other of any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion.

18. CORRUPTION

18.1 If, at any time during the term of this Agreement, either Party has a reasonable suspicion that the other Party has, in respect of this Agreement (or any other agreement), directly or indirectly given or agreed to give or offered to give any gratification to another person whether for the benefit of that person or any other person in order to improperly influence any person to:

18.1.1 award a tender for provision of services to any public body, private organisation or corporate body;

18.1.2 in the absence of a tender process, promote the procurement of a contract with any public body, private organisation or corporate body;

18.1.3 withdraw a tender awarded to another service provider by any public body, private organisation or corporate body;

18.1.4 fix the price, consideration or other moneys stipulated or otherwise provided for in any such contract referred to in clause 18.1.2;

then the aggrieved Party shall be entitled, by written notice to the defaulting Party, to terminate this Agreement forthwith, in addition to all other remedies available to them and to recover damages it has suffered by virtue of such conduct by the defaulting Party.

18.2 Each Party confirms that it has not and undertakes that it shall not engage in the following conduct:

18.2.1 accepting or agreeing or offering to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

18.2.2 giving or agreeing or offering to give to any other person any gratification, whether for the benefit of that person or for the benefit of another person,

18.2.3 in order to act, personally or by influencing another person so to act, in a manner that amounts to:



18.2.3.1 the abuse of a position of authority;

18.2.3.2 a breach of trust; or

18.2.3.3 the violation of a legal duty or a set of rules;

that is designed to achieve an unjustified result or amounts to any other unauthorised or improper inducement to do or not to do anything.

18.3 For purposes of clause 18.2, the term "*gratification*" refers to anything of value and is not limited to cash or cash equivalents.

18.4 Each Party shall inform the other Party of:

18.4.1 any breach or suspected breach of this clause 18; and

18.4.2 all requests or demands for any undue financial or other benefit or gratification of any kind received by it in connection with the performance of this Agreement.

19. SANCTIONS

19.1 Neither Party will:

19.1.1 act to benefit any Sanctioned Entity;

19.1.2 be involved in any Prohibited Activities.

19.2 The Parties warrant to each other that it is not:

19.2.1 a Sanctioned Entity; or

19.2.2 the subject of any investigations relating to Sanctions.

19.3 The Parties will notify each other in writing immediately upon the Party becoming aware that it is the subject of an investigation relating to Sanctions.

19.4 Notwithstanding any provision to the contrary contained in this Agreement, either Party knows or suspects that the other Party is in breach of the provisions of this clause 19 and/or is or is about to become subject to Sanctions, then such Party may, in its sole discretion, be entitled with immediate effect to terminate this Agreement.

20. FORCE MAJEURE

- 20.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement as a result of but not limited to strike, pandemic, lock-out, fire, explosion, floods, riot, war, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party (**Force Majeure**), the Party so affected (**Affected Party**) shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented.
- 20.2 The Affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages of any nature which the other Party may suffer due to or resulting from such delay or failure, provided that written notice shall be given in terms of clause 22 by the Affected Party to the other Party within one (1) day of becoming aware of the *Force Majeure* event.
- 20.3 Any Party invoking *Force Majeure* shall upon termination of such event giving rise thereto immediately give written notice thereof to the other Party. Should such *Force Majeure* continue for a period of more than 90 (ninety) days then either Party shall be entitled to immediately cancel this Agreement in respect of any obligations still to be performed hereunder.

21. BREACH AND TERMINATION

- 21.1 Either Party shall be entitled to give notice to terminate this Agreement with immediate effect, such termination to be effective upon deemed receipt of such notice, if the other Party:
- 21.1.1 fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 21 (twenty-one) days of receiving written notice to do so; or
 - 21.1.2 commits a material breach of any provision of this Agreement and fails to remedy such breach within 5 (five) Business Days (or such period as may be agreed in the circumstances) of receiving written notice to do so; or
 - 21.1.3 takes steps to place itself, or is placed in liquidation or under administration, whether voluntary or compulsory and whether provisionally or finally;

- 21.1.4 in the case of the Customer, commits a breach by failing to satisfy any obligations for which it is liable in the ordinary course of its operation as a statutory body;
- 21.1.5 the other Party has any reason to believe that the other Party or anyone employed by it or acting on its behalf, whether with or without that Party's knowledge, engages in a fraudulent practice in connection with this Agreement or otherwise;
- 21.1.6 a Party fails to satisfy a judgment against it within 21 (twenty-one) days after that Party becomes aware of the judgment, except if that Party provides evidence on an ongoing basis to the reasonable satisfaction of the other Party that steps have been initiated within the 21 (twenty-one) days to appeal or rescind the judgment and to procure suspension of execution of the judgment and that such steps are being expeditiously pursued. The period of 21 (twenty-one) days shall run from the date succeeding the date on which judgment becomes final, or the date on which the attempts to procure the suspension of the execution fail;
- 21.2 The termination of this Agreement will not prejudice the rights of a Party to claim damages or to obtain any other relief in respect of any breach of the terms and conditions of this Agreement.

22. DISPUTE RESOLUTION

- 22.1 If a dispute of any nature arises between the Parties in connection with this Agreement, including any question regarding its existence, validity or termination, then, upon written request of any Party, each of the Parties shall appoint a senior representative whose task it shall be to meet for the purposes of resolving such dispute. Such representatives shall discuss the matter in dispute and negotiate in good faith in an effort to resolve the dispute on amicable terms within 14 (fourteen) days.
- 22.2 Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute shall be submitted to and decided by arbitration in terms of this clause 22, or, by agreement between the Parties, by a court of competent jurisdiction.
- 22.3 The dispute shall be referred to and finally resolved by arbitration under the Rules of the Arbitration Foundation of Southern Africa (AFSA) for Commercial Arbitrations (the



Rules), including the right to appeal, which Rules are deemed to be incorporated by reference into this clause 22.

- 22.4 There shall be 1 (one) arbitrator, whose identity shall be agreed in writing between the Parties within 5 (five) Business Days following the declaration of a dispute between the Parties, failing which the arbitrator shall be appointed by AFSA from the senior legal practitioners on its panel in terms of the Rules, taking into account the value and complexity of the dispute under referral.
- 22.5 The seat, or legal place, of the arbitration shall be South Africa and any hearing shall be held in Johannesburg. The language to be used in the arbitral proceedings shall be English. Unless the Parties agree otherwise, the arbitration shall be conducted on an urgent basis in terms of the Rules.
- 22.6 Nothing contained in this clause 22 shall preclude any Party from approaching a court of competent jurisdiction within the Republic of South Africa for interim relief on an urgent basis pending the final outcome of an arbitration referral under this clause 22.
- 22.7 The Parties agree and irrevocably undertake to keep the arbitration and all matters related thereto strictly confidential. Each Party (i) acknowledges and agrees that it shall not disclose any such information to any person other than its own employees, members, officers, professional advisors and/or other divisions who need to know such information for the purposes of this clause 22 (Permitted Recipient) or to third parties where it is required to do so under law or in terms of regulatory process; (ii) shall procure that each Permitted Recipient is made aware of and complies with its obligations of confidentiality in terms of this clause 22 and (iii) shall give reasonable notice to the other Party as and when any obligation for third party disclosure arises.

23. NOTICES AND DOMICILIUM

23.1 The Parties choose as their *domicilia citandi et executandi* (address for purpose of legal proceedings and legal notices) their respective addresses set out in clause 23.2 below, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

23.2 For the purposes of this Agreement the Parties' *domicilia citandi et executandi* are:

23.2.1 as regards Standard Bank at:

Standard Bank Centre



5 Simmonds Street
Johannesburg
2001
Attention: Group Governance/ Legal

With a copy to be sent to:

Standard Bank Centre
5 Simmonds Street
Johannesburg
2001
Attention: Timothy Matlala
Telephone Number: 011 721 7389

23.2.2 as regards the Customer at:

3 West Street
Groblersdal
0470
Attention: Nancy Rampedi
Telephone Number: 013 262 7584
Email: nrampedi@sekhukhune.gov.za

or at such other physical address, not being a post office box or poste restante, of which the party concerned may notify the other in writing.

23.3 Any written notices required in terms of clause shall 23.1 only be satisfied if such notice is given in a written, paper-based form. The provisions of the Electronic Communications and Transactions Act 25 of 2002 are expressly excluded from the provisions of clause 23.1.

23.4 Any other written notices in connection with this agreement shall be addressed:

23.4.1 as regards Standard Bank at:

PO Box 8687
Rosebank
2196
Attention: Timothy Matlala
Telephone Number: 011 721 7389

Handwritten signature and logo of the Sekhukhune District Municipality.

23.4.2 as regards the Customer at:

Private Bag X8611

Groblersdal

0470

Attention: Nancy Rampedi

Telephone Number: 013 262 7584

Email: nrampedi@sekhukhune.gov.za

or at such other address of which the Party concerned may notify the other in writing.

23.5 Any notice given in terms of this Agreement shall be in writing and shall -

23.5.1 if delivered by hand or courier be deemed to have been received by the addressee on the date of delivery; and

23.5.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting.

23.5.3 if sent electronically, will be deemed to have been received 1 (one) Business Day following the successful transmission thereof. It is recorded for the avoidance of doubt that a legal notice sent by a Party will not be regarded as valid legal notice, if sent electronically in terms of this clause 23.5.3

23.6 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen domicilium address set out above shall be an adequate written notice of communication to such Party.

24. NATURE OF RELATIONSHIP

This Agreement does not create a partnership, joint venture or agency between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred.

25. ASSIGNMENT AND CESSION

Neither of the Parties shall cede, assign, transfer, charge or in any manner make over this Agreement or any of its rights or obligations hereunder or any part thereof to any



other person, firm, company, corporation, association or any other entity whatsoever without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

26. SEVERABILITY

If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

27. WAIVER

The failure of either Party to insist upon the strict performance of any provision of this agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

28. MODIFICATION

28.1 This document embodies the entire Agreement between the Parties hereto.

28.2 No amendment or variation of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed (which includes by means of an electronic signature) by both Parties. This requirement will only be satisfied if such amendment or variation is made in a written, paper-based form and through Standard Bank's approved digital signing process.

29. APPLICABLE LAW

This Agreement shall be governed exclusively in all respects by and shall be interpreted in accordance with the laws of South Africa.

30. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Standard Bank and the Customer, cancelling and taking the place of all prior oral, written or implied agreements between them, with respect to the supply of the Services.

31. COUNTERPARTS

This Agreement may be signed in counterparts and the copies (electronic or faxed) signed in counterpart shall constitute the Agreement.




SIGNED AT ROSEBANK
Gundwanda ON THE 22nd DAY OF AUGUST 2023.
21st May



Duly authorised for and on behalf of
**THE STANDARD BANK OF SOUTH
AFRICA LIMITED**

SIGNED AT Gobiersdal ON THE 31 DAY OF May 2023.



Duly authorised for and on behalf of
**SEKHUKHUNE DISTRICT
MUNICIPALITY**

