

# TEMPLATE

## MASTER SERVICES AGREEMENT

(SPECIAL CONDITIONS OF CONTRACT FOR THE RENDERING OF BROADBAND AND PUBLIC WIFI SERVICES IN THE WESTERN CAPE)

entered into between

### THE STATE INFORMATION TECHNOLOGY AGENCY SOC LIMITED

(a state owned company established under and incorporated pursuant to sections 2 and 3 of the State Information Technology Agency Act 88 of 1998, represented herein by **Dr Bongani Mabaso** in the capacity as Managing Director, duly authorised)

(hereinafter referred to as "**SITA**")

and

**<INSERT NAME OF SERVICE PROVIDER>**

(a **<to be inserted>**, with registration number **<to be inserted>**, having its principle place of business at **<insert physical address>**, represented herein by **<to be inserted>** in the capacity as **<to be inserted>**, duly authorised)

(hereinafter referred to as the "**Service Provider**")

(collectively hereinafter referred to as the "**Parties**")

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## TERMS AND CONDITIONS

### PREAMBLE

- A. The Western Cape Government (WCG) required Broadband and Public WiFi network services in the Western Cape Province and provided a business case to SITA for the procurement of such services in terms of the State Information Technology Agency Act 88 of 1998. The services to be rendered by the Service Provider in terms of this Agreement are therefore, essentially, services as requested and required by the WCG. Accordingly, the WCG, although not a party to this Agreement, will have a significant interest in the execution of SITA's and the Service Provider's obligations in terms of this Agreement.
- B. In response to the business case submitted by the WCG, SITA, with the assistance of the WCG in compiling the service requirements, issued the RFB. Subsequent to an evaluation and adjudication process performed by SITA, and in which the WCG participated, a recommendation was made by SITA to the WCG for the appointment of the Service Provider to render the required Broadband and Public WiFi Services. The Parties' role under this Agreement and WCG's obligations under its agreement with SITA are therefore fundamental in achieving the WCG's, and also Government's objectives as a whole, for Broadband connectivity and specifically for rendering the Broadband and Public WiFi network services, through the Service Provider, in the Western Cape Province.
- C. The Service Provider will render the Broadband and Public WiFi Services as required and set out in the RFB, its reply thereto and on the terms and conditions set out in this Agreement. The Service Provider's obligations include the Broadband and Public WiFi network services.
- D. To regulate the provision of the Broadband and Public WiFi network and related services by the Service Provider to SITA, and matters incidental thereto, the Parties agree on the terms and conditions set out below.

## 1. INTERPRETATION

- 1.1. In this Agreement clause headings are for convenience only and are not to be used in its interpretation.
- 1.2. In this Agreement an expression which denotes a natural person includes a juristic person and *vice versa*, one gender refers to all other genders, and the singular includes the plural and *vice versa*.
- 1.3. References to the provisions of any law shall include such provisions as amended, re-enacted, replaced or consolidated from time to time in so far as such amendment, re-enactment, replacement or consolidation applies or is capable of applying to any transaction entered into under this Agreement.
- 1.4. References to clauses, sub-clauses and annexures are references to clauses, sub-clauses and annexures to this Agreement.
- 1.5. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions contained in this Agreement shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.6. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.7. A reference or requirement in this Agreement that an agreement, consent, approval, permission or similar action (collectively, the "Action") of SITA may be granted or refused, shall be construed as requiring SITA, in making any decisions regarding such Action, to take into account its respective constitutional obligations and responsibilities and any other obligations and responsibilities under Applicable Law (including, where relevant, section 217 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the Public Finance Management Act 1 of 1999, the State Information Technology Agency Act 88 of 1998, the Preferential Procurement Policy Framework Act 5 of 2000 and the Promotion of Administrative Justice Act 3 of 2000).
- 1.8. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing

in lower case shall be interpreted in accordance with their ordinary English meaning.

- 1.9. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day.
- 1.10. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the Business Day immediately preceding the due date.
- 1.11. If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.
- 1.12. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 1.13. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.14. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.15. For interpretation purposes of this Agreement and the General Conditions of Contract for Government Procurement (July 2010), attached as Annexure A ("the GCC"), –
  - 1.15.1. the terms "Purchaser" and "Supplier", as it appears in the GCC, shall refer respectively to SITA and the Service Provider as defined in this Agreement; and
  - 1.15.2. the term "goods" in the GCC includes Services as referred to in this Agreement.
- 1.16. The following clauses of the GCC shall not apply to this Agreement:
  - 1.16.1. the term 'Delivery' (as defined in clause 1.10 of the GCC); and

- 1.16.2. the term '*Force Majeure*' (as defined in clause 1.12 of the GCC).
- 1.17. The following clauses of the GCC are replaced by clauses of this Agreement as indicated below:
- 1.17.1. Payment (clause 16 of the GCC) is replaced by clause 10 of this Agreement;
- 1.17.2. Subcontracts (clause 20 of the GCC) is replaced by clause 19 of this Agreement;
- 1.17.3. Limitation of Liability (clause 28.1 of the GCC) is replaced by clause 23 of this Agreement;
- 1.17.4. Settlement of Disputes (clause 27 of the GCC) is replaced by clause 24 of this Agreement;
- 1.17.5. Notices (clause 31 of the GCC) is replaced by clause 26 of this Agreement; and
- 1.17.6. *Force Majeure* (clause 25 of the GCC) is replaced by clause 27 of this Agreement; and
- 1.18. All the provisions of this Agreement should be read to give effect to all other provisions. In the event of a direct conflict between provisions in this Agreement, the following order of precedence shall govern the Agreement's interpretation –
- 1.18.1. these Terms and Conditions;
- 1.18.2. Annexure A through to Annexure I hereto, but excluding Annexure B;
- 1.18.3. the Request For Bids (RFB) issued by SITA under RFB **<to be inserted>**/2023, which is incorporated herein by reference; and
- 1.18.4. the GCC (Annexure B);

provided, however, that silence on a topic in one document and treatment of that topic in another document shall not be construed as a conflict.

- 1.19. All Services ordered by SITA under this Agreement will be subject only to the Terms and Conditions of this Agreement. Any order forms or other correspondence that SITA may use for the ordering of Services or either Party otherwise may use for administering this Agreement or the Services will be for administrative convenience only. Any terms or conditions included on any such order form that adversely affect a Party will have no effect (including any provision on such a form which states that it supersedes, cancels, amends, modifies or supplements the Agreement). No such term or condition will vary any Terms or Conditions of the Agreement, either in general or in a specific instance.

## 2. APPOINTMENT

- 2.1. The Western Cape Government has, in terms of regulation 9.5 of the General Regulations (No R.904, 23 September 2005) of the State Information Technology Agency Act 88 of 1998, appointed the Service Provider to render the Services to SITA and which appointment was made in a letter of award to the Service Provider, dated **<to be inserted>**, and is subject to the terms and conditions stated therein.
- 2.2. The Service Provider accepted the appointment and agreed to render the Services to STIA on the terms and conditions set out in this Agreement.

## 3. CONDITIONS

- 3.1. The operation of this entire Agreement is subject to the following conditions being fulfilled within 60 (sixty) Calendar Days after the Signature Date (the "**Fulfilment Date**"), namely:
- 3.1.1. that an agreement be concluded between SITA and the WCG and becomes unconditional in accordance with its terms, save for any condition requiring the conclusion and implementation of this Agreement; and
- 3.1.2. that a migration agreement is concluded between the Service Provider, the current service provider (Liquid Intelligent Technologies (Pty) Ltd)) and SITA ("Migration Agreement") and such agreement becomes unconditional in accordance with its



terms, save for any condition requiring the conclusion and implementation of this Agreement.

- 3.2. Should any one of the aforesaid conditions not be fulfilled on or before the Fulfilment Date, then this entire Agreement shall never become effective. No Party shall have any liability towards the other Party in the event of this Agreement not becoming effective because of a failure of any one or more of the aforesaid conditions.
- 3.3. The appointment of the Service Provider shall be exclusive to the Service Provider and the Service Provider shall accordingly not appoint any other party to provide the Services to SITA (except for the sub-contractors authorised in terms of this Agreement), unless with the prior written approval of SITA; and subject to such subcontractor, agreeing in writing to being bound by the terms and conditions of this Agreement and the provisions of the Preferential Procurement Policy Framework Act 5 of 2000.
- 3.4. The awarding of this bid and the conclusion of this Agreement is based on the information provided by the Service Provider in its bid response. The Service Provider shall maintain its status in respect of its BBBEE compliancy and tax matters for the duration of this Agreement. Should any deviation or changes occur, the Service Provider shall advise SITA accordingly. Material deviations may result in SITA having to apply remedial action, suspending or terminating this Agreement.

#### **4. RELATIONSHIP OF THE PARTIES AND RIGHTS TO PROCURE**

- 4.1. The Service Provider, in furnishing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
- 4.2. The Service Provider will in writing notify its employees or agents or other contracting parties who are performing in terms of the Agreement that no employee-employer relationship exists between them and SITA, and where possible include such a clause in the contracts of services of such employees or agents or contracting parties.
- 4.3. Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any

kind, between any of the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Party and its affiliates other than as specifically set out herein.

- 4.4. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.
- 4.5. Nothing contained in this Agreement must be construed as creating an exclusive arrangement between the Parties.
- 4.6. SITA may request Services from the Service Provider at any Sites (in terms of the Service Request Management process set out in the BB SOW and the PW SOW), but SITA reserves the right to procure services, similar to the Services, from a third party and without any liability to the Service Provider in terms of this Agreement.
- 4.7. The Service Provider acknowledges that during the Term it may be necessary for SITA to embark on a public procurement process for the appointment of a Successor Service Provider; and for the commencement of a planning process for Migration Out to SITA, or the Successor Service Provider. Accordingly, it is agreed that such processes shall not be construed in any way as a repudiation of this Agreement by SITA.

## **5. DURATION AND TERMINATION**

### **Duration**

- 5.1. Notwithstanding the Signature Date of this Agreement, or the Date of Award, the rights and obligations of the Parties under the Agreement shall commence on the Commencement Date.
- 5.2. Unless terminated otherwise in terms of this Agreement, or as may be agreed to in writing by the Parties, this Agreement will terminate on the Termination Date, subject to the provisions of this Agreement, including Migration Out as set out in clause 6 below.

- 5.3. Notwithstanding the provisions above, SITA will have the right, and apart from its other rights set out in this Agreement (including commencement of Migration Out) to extend the Agreement, by providing written notice to the Service Provider at least 6 (six) Calendar Months prior to the Termination Date, or as otherwise agreed in writing, and which extension will -
- 5.3.1. be on the same terms and conditions, save for the continuation of the Agreement on a month-to-month basis at each of the Sites, and whereby SITA may provide 30 (thirty) Calendar Days' written notice to the Service Provider to terminate the Services at a Site; and
- 5.3.2. be limited to a period of 12 (twelve) Calendar Months, or as otherwise agreed in writing by the Parties; and
- 5.3.3. during such extension period SITA may provide notice to the Service Provider to commence with Migration Out as set out in clause 6 below.

#### **Termination**

- 5.4. The Parties agree to the provisions of clause 23 of the GCC relating to termination of this Agreement due to default by the Service Provider, subject to the breach provisions of this Agreement contained in clause 22 below.
- 5.5. Without limiting the provisions of clause 26.1 of the GCC, SITA shall be entitled to immediately terminate this Agreement for cause if any of the following events or circumstances occur in respect of the Service Provider, namely:
- 5.5.1. an order or declaration is made or a meeting of the directors or shareholders of the Service Provider is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up, judicial management or dissolution, (and whether provisional or final) of it or its estate;
- 5.5.2. the Service Provider's licence required to provide the Services is revoked or it lapses or it is otherwise amended such that the Service Provider cannot continue to provide the Services in accordance with the Applicable Law;

- 5.5.3. the Service Provider is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or compromise with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;
  - 5.5.4. any receiver, administrative receiver, judicial receiver, judicial manager, administrator, compulsory manager, judicial custodian, curator, trustee in bankruptcy, liquidator or the like is appointed in respect of the Service Provider or any material part of its assets or it requests any such appointment;
  - 5.5.5. the Service Provider -
    - 5.5.5.1. commits a fraudulent or dishonest act;
    - 5.5.5.2. conducts itself in a manner which is prejudicial to SITA's interest; or
    - 5.5.5.3. has a civil judgment entered against it;
  - 5.5.6. any event occurs against the Service Provider which is within the purview of Chapter 6 of the Companies Act, 2008; or
  - 5.5.7. the Service Provider commits an act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act 24 of 1936 or any equivalent legislation in any jurisdiction to which the Service Provider is subject.
- 5.6. The Service Provider shall be obliged to immediately notify SITA in writing of any events or circumstances which is likely to result in the occurrence of one or more of the events or circumstances contemplated in clause 5.5 above.
- 5.7. In the event of a termination resulting from the circumstances referred to above, and to ensure a seamless transition from the Service Provider to either a Successor Service Provider, or to SITA, as SITA may elect, it is agreed that a

Migration Out phase, as set out in clause 6 below shall be followed. The Service Provider shall be obliged to cooperate in good faith with SITA and any third parties nominated by SITA (whether the Successor Service Provider or otherwise) as may be necessary to finalise the formulation of the Migration Out phase and other items or functions that are necessary to effect a seamless transition and in accordance with the timetable set out for the Migration Out phase.

## **6. MIGRATION OUT**

- 6.1. Notwithstanding the manner and reason why this Agreement terminates, a Migration Out phase will commence, when so instructed in writing by SITA, to allow for the transition from the Service Provider to SITA, or a Successor Service Provider, with minimum disruption of network connectivity at the Sites.
- 6.2. The planning for Migration Out will commence prior to the termination of this Agreement and will entail the Service Provider to cooperate in good faith with SITA and any third parties nominated by SITA, including a Successor Service Provider, as may be necessary, to finalise the formulation of a migration agreement (similar to the Migration Agreement referred to in clause 3.1.2 above) for the Migration Out phase.
- 6.3. During such Migration Out phase, and subject to SITA obtaining the required prior internal approvals, -
  - 6.3.1. this Agreement will continue on the same terms and conditions, or as otherwise agreed in writing by the Parties (provided they are no less favourable to SITA than the terms and conditions contained herein), save that the Services will be provided on a month-to-month basis at each of the Sites, or as otherwise agreed in writing by the Parties; and
  - 6.3.2. SITA will have the right to provide at least 30 (thirty) Calendar Days' written notice to the Service Provider to -
    - 6.3.2.1. terminate the Services at such Site; or
    - 6.3.2.2. as otherwise agreed in writing by the Parties.
- 6.4. The Service Provider may not charge SITA for any goods supplied or services rendered (other than for the Services) to execute its Migration Out obligations.

## 7. SERVICES, SERVICE CREDITS AND PENALTIES

- 7.1. The Services must be performed by the Service Provider, on the terms and conditions of this Agreement, at the Sites, as listed in Annexure C, and as more fully described in and in compliance with -
  - 7.1.1. the Broadband Statement of Work (BB SOW), attached as Annexure D; and
  - 7.1.2. the Public WiFi Statement of Work (PW SOW), attached as Annexure E.
- 7.2. The Service Provider shall deliver the Services, in accordance with the Service Level Indicators and the Milestone Targets, as applicable, set out in the BB SOW and the PW SOW.
- 7.3. Except for guaranteeing the number of Sites on the Initial Site List (and their Bandwidth and Service Level Type stated in the RFB Site List) for the rendering of the BB Services for the duration of this Agreement, subject to the 2% (two percent) Decommission provision contained in the BB SOW, nothing contained in this Agreement (including the RFB bid pricing scenario) must be construed as SITA guaranteeing any minimum number of Sites where the BB Services may be required at the Sites on the Additional Site List or the Nomadic Site List (or the Bandwidth or Service Level Types at such Sites).
- 7.4. Nothing contained in this Agreement (including the RFB bid pricing scenario) must be construed as SITA guaranteeing any minimum number of Sites for the rendering of the PW Services, or PW Bandwidth at such Sites.
- 7.5. Where the Services do not conform to the BB SOW and PW SOW requirements, service credits may accrue to SITA as described in this Agreement, read with the BB SOW and PW SOW.
- 7.6. SITA may impose penalties in terms of clause 22 of the GCC, or claim damages in lieu of such penalties, provided that it may not impose penalties in terms of clause 22 of the GCC where provision has been made for the accrual of service credits as set out in the BB SOW and the PW SOW.

- 7.7. SITA's decision to impose a penalty, accrue service credits or claim damages in lieu of a penalty or a service credit, shall not prevent it from exercising any other rights it may have in law.
- 7.8. No service credits will accrue, or penalties imposed, as provided for above, if the Service Provider's failure to deliver any element of the Services (including, but not limited to, Milestone Targets or Service Requests), is attributable to any unfulfilled dependency as provided for in Annexure F (*Dependencies*) or SITA's failure to carry out any action without which the Service Provider is unable to provide the Services.
- 7.9. The Service Provider's non-performance of any particular obligation under this Agreement shall be excused if, and to the extent, that the Service Provider's non-performance results from any unfulfilled dependency in Annexure F (*Dependencies*) or from SITA's failure to perform its obligations resulting in the Service Provider being unable to render the Services.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1. Deliverables**

The Service Provider represents and warrants that for the duration of the Agreement following SITA's acceptance of a Service Handover Certificate for the Service at a particular Site (the "**Warranty Period**"), the Services at each Site shall conform to the Broadband Statement of Work and the Public WiFi Statement of Work without material errors or deficiencies.

### **8.2. Work Standards**

The Service Provider represents and warrants that it shall perform its obligations under this Agreement with promptness and in accordance with the standards agreed upon in this Agreement and at the very least, in accordance with Best Industry Practice. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it (and including, but not limited to, its members, employees, agents, representatives and approved subcontractors) has, and shall assign to perform the Services, and resources having the skills, experience and expertise, capacity and knowledge reasonably required to perform the Services.

### 8.3. **Workmanship, Goods, Equipment and Technologies**

- 8.3.1. The Service Provider warrants that the workmanship performed, and the goods, materials and Equipment used, must effectively and efficiently render the Services.
- 8.3.2. The Service Provider acknowledges that during the Warranty Period, SITA may notify the Service Provider in writing of any defects noticed in the workmanship performed, or the goods, materials and Equipment used to render the Services. Upon receipt of such notice, the Service Provider shall immediately take steps to rectify the defective workmanship, or repair or replace the defective goods, materials or Equipment or parts thereof, without any additional charge to SITA.
- 8.3.3. The Service Provider warrants and represents that if any advances in technology becomes available that may substitute or improve the Services, it shall timeously make such information known to SITA in writing.

### 8.4. **Milestone Targets and Service Requests**

- 8.4.1. The Service Provider acknowledges that time is of essence for the delivery and implementation of the Services at all Sites.
- 8.4.2. In respect of the Sites on the Initial Site List (Annexure C), the Service Provider warrants and represents that it shall meet the Milestone Targets and present the Service Handover Certificates per Site as set out in the BB SOW and PW SOW.
- 8.4.3. In respect of the Sites on the Additional Site List and the Nomadic Site List (Annexure C), the Service Provider undertakes to use reasonable endeavours to achieve completion of the Service Requests and present the Service Handover Certificates per Site as set out in the BB SOW and PW SOW.
- 8.4.4. The Service Provider shall not be in breach of any warranty or representation under this clause 8.4 if its failure to achieve any Milestone Target or Service installation date is solely attributable to any unfulfilled dependency in Annexure F (*Dependencies*).



## 8.5. Safeguarding Designated Data

8.5.1. The Service Provider represents and warrants that it shall at all times implement appropriate safeguards against any unauthorised access to, and destruction, loss, or alteration of, Designated Data which is at any time in the Service Provider's possession, which safeguards are –

8.5.1.1. acceptable to SITA;

8.5.1.2. no less than the generally accepted industry standard in respect of similar data as the Designated Data, or maintained by the Service Provider as at the Commencement Date; and

8.5.1.3. that conform to Applicable Law, including but not limited to, the Electronic Communications and Transactions Act 25 of 2002 and the Protection of Personal Information Act 4 of 2013.

8.5.2. The Service Provider further represents and warrants that it shall maintain such safeguards for so long as it has any Designated Data in its possession. Where the Designated Data is made available by the Service Provider to a third party, then such third party and its employees shall also be bound by the same safeguards and confidentiality undertakings provided by the Service Provider to SITA in accordance with this Agreement. The Service Provider shall ensure that it concludes the necessary agreements with third parties and its employees to ensure that they are bound by the same obligations as the Service Provider herein and shall be liable for any unlawful disclosure by such parties.

8.5.3. The Service Provider represents and warrants that the Service Provider –

8.5.3.1. shall not utilise Designated Data for any purpose other than that of rendering the Services under this Agreement;

8.5.3.2. shall not possess or assert any lien or other right against or to Designated Data;

8.5.3.3. shall not sell, assign, lease or otherwise dispose of Designated Data; and

8.5.3.4. shall not commercially exploit Designated Data.

#### 8.6. **Financial considerations**

8.6.1. The Service Provider represents and warrants that it shall render the Services under this Agreement in a cost-effective manner.

8.6.2. Subject to clause 7.9 above, the Service Provider acknowledges that it shall only with the prior written consent of SITA reschedule or delay installation dates for service elements or the Services. Accordingly, the Service Provider warrants and represents that no additional Charges shall be levied as a result of such reschedules or delays.

8.6.3. The Service Provider represents and warrants that it has and undertakes that it shall continue to maintain throughout the Term, the financial ability to sustain its operations and the operations of its subcontractors.

8.6.4. The Service Provider represents and warrants that it and/or its Subcontractors shall own (free of all liens and encumbrances) or lease all right, title and interest in and to the tangible or intangible property and technology and the like that the Service Provider intends to use or uses to provide the Services, and in and to the related Intellectual Property and any other proprietary rights, or has received appropriate licenses, leases or other rights from third parties to permit such use.

#### 8.7. **No actual, pending or threatened litigation**

The Service Provider represents and warrants that there is no actual, pending or threatened litigation against or affecting the Service Provider before any court or administrative body or arbitral tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Agreement.

#### 8.8. **Protecting SITA's and the WCG's Reputation**

The Service Provider warrants and represents that it shall not do, nor omit to do, anything which would adversely impact on, or prejudice, SITA's or the WCG's reputation in any way whatsoever.

#### 8.9. **No fraudulent or corrupt practices**

The Service Provider, and/or its members, warrants and represents that it has not been involved in any fraudulent or corrupt activities or anything that might be deemed as such and which, if disclosed to SITA prior to making an award to the Service Provider, would have resulted in SITA not awarding RFB<to be inserted>/2023 to the Service Provider.

#### 8.10. **Non-Infringement**

8.10.1. The Service Provider represents and warrants that it shall perform its responsibilities under the Agreement in a manner that does not infringe any Intellectual Property or other rights of any third party.

8.10.2. Without derogating from clause 8.10.1 above, the Service Provider further warrants and represents that to the extent that there is any such infringement, the Service Provider will, at its option and expense, either: (a) negotiate a license or other agreement with such third party so that there is no longer any infringement; or (b) modify any infringing item suitably or substitute a suitable item, provided that such substituted item is possessed of no lesser functionality than is the item which is the subject of the alleged infringement.

8.10.3. Notwithstanding the above, the Service Provider will not be liable for any damage or costs resulting from claims pursuant to –

8.10.3.1. the Service Provider's compliance with SITA's design, specifications, or instructions;

8.10.3.2. the use by SITA of any item provided by the Service Provider in combination with a product not supplied by the Service Provider; or

- 8.10.3.3. a manufacturing by or through SITA and utilising any item provided by the Service Provider which constitutes either direct or contributory infringement of any patent.

#### 8.11. **Authorisation**

The Service Provider represents and warrants to SITA that:

- 8.11.1. it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- 8.11.2. the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorised and approved by the requisite corporate action on the part of the Service Provider.

#### 8.12. **Inducements**

The Service Provider represents and warrants to SITA that it has not violated any Applicable Laws or policies of SITA or the WCG which it has been given notice, regarding the offering of unlawful inducements in connection with this Agreement.

#### 8.13. **Broad Based Black Economic Empowerment and SMME Development**

- 8.13.1. The Service Provider represents, warrants and undertakes that as at the Signature Date its Broad-Based Black Economic Empowerment ("**BBBEE**") compliance level is a Level **<to be inserted>** Contributor as measured and determined in accordance with the current criteria in terms of the Broad-Based Black Economic Empowerment Codes of Good Practice ("**BEE Codes**") applicable as at the Signature Date (the "**Current BEE Codes**"), published under section 9 of the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003) and hence has a BBBEE recognition level of **<to be inserted>**% (**<to be inserted>** percent) (the "**BBBEE Rating**").
- 8.13.2. Without limiting the Service Provider's obligations in terms of clause 8.13.1, the Service Provider shall:

- 8.13.2.1. throughout the Term and on an ongoing basis, use reasonable endeavours to retain and/or improve its BBBEE level;
  - 8.13.2.2. advise SITA in writing within a period of 1 (one) Calendar Month if the BBBEE Rating or (if the New BEE Codes are in force) the Equivalent BBBEE Rating changes (not occasioned by changes in the Applicable Law);
  - 8.13.2.3. use its best endeavours to ensure that it has at all times a current and valid BBBEE rating certificate issued by an accredited verification agency; and
  - 8.13.2.4. save for instances due to changes in the Current BEE Codes or the Applicable Law, in the event of an adverse change to its BBBEE Rating or (if the new BEE Codes are in force) the Equivalent BBBEE Rating, advise SITA in writing within a period of 3 (three) Calendar Months of receipt of the new BBBEE rating certificate, what steps have been and/or will be taken by the Service Provider to restore its BBBEE status to the level of the BBBEE Rating or the Equivalent BBBEE Rating (as the case may be).
- 8.13.3. If the Service Provider fails to restore its BBBEE status to the level of the BBBEE Rating or the Equivalent BBBEE Rating (as the case may be) as aforesaid within 180 (one hundred and eighty) Business Days after the notice contemplated in clause 8.13.2.4 above, then the Service Provider shall have a further period of 6 (six) Calendar Months to restore its BBBEE status provided that the Service Provider can demonstrate the steps taken in the prior period of the aforesaid 180 (one hundred and eighty) Business Days to restore its BBBEE status and the steps still required to attain such compliance. If the Service Provider fails to restore its BBBEE status as aforesaid within the aforesaid 180 (one hundred and eighty) Business Days or (if it is applicable) the aforesaid 6 (six) Calendar Months, then SITA shall have a right to terminate the Agreement for cause on the basis of such failure, provided that such right shall not be exercisable where

the changes to the BBBEE status were solely occasioned by changes in the Applicable Law.

#### 8.14. **Tax Compliance**

8.14.1. The Service Provider represents and warrants that as of the Commencement Date it is in full compliance with, and throughout the Term shall remain in full compliance with, all Applicable Laws relating to taxation in South Africa.

8.14.2. The Service Provider further undertakes that, upon request from SITA, it shall deliver to SITA, as soon as possible, copies of valid tax clearance certificates for the Service Provider and the subcontractors issued for the then-current year.

8.14.3. It is furthermore agreed that failure to provide a valid and original tax clearance certificate or maintain it, within 7 (seven) Calendar Days upon written request made by SITA to provide same, shall afford SITA with the right to cancel this Agreement in terms of the breach procedures set out in clause 22 (Breach) below.

#### 8.15. **Occupational Injuries and Diseases Act 13 of 1993**

8.15.1. The Service Provider warrants and represents that all its employees (including the employees of any of its subcontractors that may be appointed) are covered in terms of the Compensation for Occupational Injuries and Diseases Act 13 of 1993 and that such cover shall remain in force for the duration of the Agreement.

8.15.2. SITA may from time to time request the Service Provider to submit documentary proof of the Service Provider's (and its subcontractor's) registration and "good standing" with the Compensation Fund.

#### 8.16. **Continued Performance**

Considering the essential nature of the Services to SITA and the WCG, it is hereby recorded and agreed and the Service Provider hereby irrevocably and unconditionally undertakes and warrants in favour of SITA and the WCG that for so long as the Term endures:

8.16.1. it shall not disrupt or interfere with the provision or implementation of the Services (whether by means of interdict or otherwise); and

8.16.2. it shall not discontinue the provision of the Services,

for any reason including for breach by SITA of any provision of this Agreement, other than a breach of payment obligations.

8.17. **General**

Without prejudice to any specific warranty furnished above, the Service Provider warrants and represents in favour of SITA that:

8.17.1. it shall carry out all undertakings furnished by it under the Bid Response (including, without limitation, in regard to technical specifications, technical mandatory requirements and pricing) and shall comply with any other requirements outlined in the RFB (irrespective of whether such requirements have been set out in this Agreement);

8.17.2. it (i) has in place and will maintain in place all the necessary licenses, certificates, authorisations, permits, type approvals and consents that are required in terms of the Electronic Communications Act of 2005 and any other Applicable Law to provide the Services to SITA; and (ii) will comply in all material respects with the terms and conditions of (a) its licenses, certificates, authorisations, permits, type approvals and consents; (b) the provisions of the Electronic Communications Act of 2005 and any other Applicable Law; and (c) any ruling or determination made by the Independent Communications Authority of South Africa in respect of the Service Provider in so far as it relates to the Service Provider's ability to use or perform the Services;

8.17.3. it shall (as part of the Services) at its cost obtain, provide and employ all the necessary Equipment, licenses, permits, infrastructure, means, consumables, materials, services and staff to perform the Services as contracted for in terms of the Agreement;

8.17.4. it will perform the Services diligently, in a timely manner, and in accordance with any applicable time schedules set forth in the

Agreement or relating to the Services. The Service Provider will promptly notify SITA upon becoming aware of any circumstances (including SITA's failure to perform or to perform on a timely basis, any Retained Responsibility) that may reasonably be expected to jeopardize the performance or timely performance of any part of the Services;

- 8.17.5. it will, as part of the Services, implement and maintain a robust business continuity plan in accordance with Best Industry Practices and as is applicable to the Service Provider's environments that relate to the performance of the Services;
- 8.17.6. it will provide the required (as provided for in the BB SOW and PW SOW) and otherwise appropriate number of personnel to meet its Service obligations, and that the personnel that the Service Provider assigns to perform the Services will be adequately trained and qualified to perform the Services;
- 8.17.7. no post-contract adjustments to pricing, Service Levels or other similar provisions will be sought following the Signature Date, including any adjustment in its fees and Charges based on any incorrect assumptions made by the Service Provider in arriving at the fees and Charges set forth in the Agreement;
- 8.17.8. it shall timeously provide Documentation (to the extent that such Documentation is available) that accurately and comprehensively describes the operation, use, functions and features of the Services. Furthermore, it shall maintain and update such Documentation, for the duration of the Agreement so that it remains current. Without limiting the generality of the foregoing, the Service Provider shall update the Documentation as soon as reasonably practical following any material changes thereto; and
- 8.17.9. if considered necessary by SITA, and when so requested, it will make available all required information to allow for the performance of benchmarking by a third party, on behalf of SITA, ("Benchmarker") in relation to the Charges for the Services received. This will be subject to the Benchmarker agreeing to the reasonable



confidentiality undertakings in respect of the information made available to it.

#### 8.18. Further Acknowledgements

- 8.18.1. A breach by the Service Provider of any warranty, representation or other provision of this clause 8 or of any warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on SITA the right, in its sole discretion, to utilise any remedy it may have in law or under this Agreement for the enforcement of SITA's rights, including termination in terms of clause 5 above.
- 8.18.2. SITA has entered into this Agreement, *inter alia*, on the strength of the warranties and representations outlined herein and on the basis that such warranties and representations will be correct as at the Signature Date and throughout the Term.
- 8.18.3. Nothing contained in this Agreement shall relieve the Service Provider from its obligation to make those disclosures which the Service Provider is in law obliged to make but which are not recorded herein.
- 8.18.4. The Service Provider shall be obliged to notify SITA as soon as possible if it becomes aware of a fact, circumstance or event which causes, or may cause, any warranty or representation to become untrue, inaccurate or misleading in any material respect.
- 8.18.5. Each of the warranties and representation given by the Service Provider in terms of this clause 8, shall be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or representation or by any other word/s in this Agreement.

### 9. GOVERNANCE

The Parties shall, during the Term, comply with the governance principles and processes as detailed in Annexure H (Governance).

## 10. PRICING AND PAYMENT TERMS

### 10.1. Charges

- 10.1.1. The charges payable by SITA to the Service Provider as consideration for all elements of the Services during the Term (the "Charges") shall be levied, for the duration of the Agreement, in accordance with the pricing provided in Annexure I (Pricing Schedule). The Pricing Schedule provides pricing for all elements of the Services as described in the BB SOW and the PW SOW.
- 10.1.2. Notwithstanding anything to the contrary, the Charges shall only be due and payable against the due and punctual performance of the various elements of the Services.
- 10.1.3. Based on the scenario provided in the pricing schedule of the RFB, the total maximum all-inclusive cost for the Service Provider to provide the Services to the number of Sites indicated in the scenario, amounts to R<to be inserted> (<to be inserted> RAND), inclusive of VAT at 15% ("Contract Value").
- 10.1.4. It must be noted that the Contract Value amount was only used for bid comparison purposes, and it is not a guarantee of the amount to be paid to the Service Provider during the Term. The Contract Value is therefore specific to the bid scenario only and no obligation, warranty or representation whatsoever is made by SITA that it will pay the Service Provider the full Contract Value over the Term of this Agreement.

### 10.2. Payment Process

The following sequence of events shall be followed for all payments under this Agreement (save as expressly contemplated to the contrary):

- 10.2.1. the Service Provider shall render monthly invoices to SITA (with a copy thereof sent to WCG at the same time) for the Services rendered. For purposes of the foregoing it is agreed that the Service Provider shall only render invoices to SITA for a Service upon completion of the Handover process set out in the BB SOW and the PW SOW, as relevant.

- 10.2.2. within five (5) Business Days following receipt of an invoice from the Service Provider, SITA shall prepare and submit its own invoice to the WCG for an equivalent amount due under the Service Provider's invoice;
- 10.2.3. within 14 (fourteen) Calendar Days following receipt of a copy of the invoice of the Service Provider, the WCG shall advance to SITA such amount of funds as is due for payment as per the copy of such invoice. Within such 14 (fourteen) Calendar Days WCG shall provide proof of payment to the Service Provider (with a copy thereof to SITA), of having put SITA in funds for the amount due to the Service Provider under the aforesaid copy of invoice.
- 10.2.4. within 5 (five) Business Days after receipt of the funds from the WCG, SITA shall settle the invoice contemplated in clause 10.2.1 in full, failing which the Service Provider shall have an action against SITA for the payment of the invoice in question.

### 10.3. **Interest on Overdue Charges**

- 10.3.1. If any amount is overdue, SITA shall be liable to pay interest on the overdue amount at the prescribed rate in terms of the PFMA. Such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).
- 10.3.2. If SITA in good faith disputes any amount on the Service Provider's invoice, then no interest shall accrue on such invoice until the dispute has been finally resolved or adjudicated upon, provided that if the dispute is determined in favour of the Service Provider, then the interest as aforesaid shall be payable to the Service Provider from the date that such invoice was due and payable.

### 10.4. **Invoicing Errors**

- 10.4.1. If an invoice is identified as incorrect, then the Service Provider shall, at SITA's instance –
  - 10.4.1.1. issue a corrected invoice; or

- 10.4.1.2. issue a credit note to SITA and forthwith refund to SITA the overpayment (if any); or
    - 10.4.1.3. make a correction on the invoice for the month following the month in which the incorrect invoice was issued.
  - 10.4.2. If the Service Provider issues a credit note and forthwith refund to SITA the overpayment as contemplated in clause 10.4.1.2 above, or if the Service Provider makes a correction on the invoice for the month following the month in which the incorrect invoice was issued as contemplated in clause 10.4.1.3 above, then the Service Provider shall calculate the credit note or invoice correction (as the case may be) on the basis that interest calculated at the Prime Rate shall accrue in favour of SITA for the number of days from the date of payment by SITA to the date of the refund (in the case of clause 10.4.1.2) and the date of the payment of the corrected invoice (in the case of 10.4.1.3) (assuming a 365 (three hundred and sixty five) calendar day year).
  - 10.4.3. Neither SITA, nor the WCG, shall be responsible for paying interest on undercharged amounts, if any.
  - 10.4.4. Where there are confirmed duplicate payments or overpayments, the value of the duplicate payments or overpayment will be deducted from the subsequent invoice issued by the Service Provider.
- 10.5. **Taxes and Other Costs**
- 10.5.1. All charges shall include all duties and taxes, including VAT or any other similar locally imposed tax. The Service Provider shall fully comply with all SITA's requirements for invoicing.
  - 10.5.2. If the rate at which VAT is required to be calculated should change during the Term, Charges invoiced from and after the date the change to the VAT rate is effective, shall be adjusted on a Rand for Rand basis to reflect such change.

- 10.5.3. The Charges are the total amount payable by SITA to the Service Provider in respect of the Services and includes all and any further direct and indirect costs (whether foreseeable or not) that the Service Provider may incur in the supply of the Services, including, but not limited to, transportation, delivery, storage, insurance, clearance charges, travelling and lodging expenses and the like.

## **11. ROLES AND RESPONSIBILITIES OF THE PARTIES**

- 11.1. SITA agrees and undertakes, in addition to its other duties and obligations set out in the Agreement, to –
- 11.1.1. against due and proper performance of the Services, pay the Service Provider the amounts due in accordance with the provisions of clause 10.2;
  - 11.1.2. provide access to the Service Provider's representatives at Sites to enable the Service Provider to perform its duties and obligations in terms of the Agreement. This access may, where appropriate and feasible, include network access to the WCG or any other network. This access is further subject to the specifications provided in the RFB by SITA and only where technically possible and where availability is reasonably assured and approved by SITA and other security agencies of the Government. SITA acknowledges that this access is required by the Service Provider on an ongoing basis to enable monitoring of the Services by the Service Provider;
  - 11.1.3. provide the Service Provider and/or its subcontractors access to the Equipment (including all software related thereto), either at SITA's site or remotely in accordance with SITA processes and procedures;
  - 11.1.4. provide adequate floor space, as well as power, for the Equipment at SITA's PE Nodes in Cape Town and George at no charge;
  - 11.1.5. not permit any work to be carried out to eliminate Faults and/or to alter the physical or software configuration of the Service Provider Equipment by any person other than the Service Provider or its duly authorised agents;

- 11.1.6. upon termination, expiry or cancellation of this Agreement for any reason, return to the Service Provider any Equipment provided by the Service Provider to SITA;
  - 11.1.7. assist the Service Provider with the integration of SITA's Information Technology Service Management (ITSM) system with the Service Provider's ITSM system; and
  - 11.1.8. provide the Service Provider with reasonable on-site assistance in the form of a technical liaison, as needed.
- 11.2. The Service Provider agrees and undertakes, in addition to its other duties and obligations set out in the Agreement, to –
- 11.2.1. perform the Services, as contemplated in the BB SOW and the PW SOW;
  - 11.2.2. immediately notify SITA, in writing, if for any reason it is incapable of performing the Services contemplated in this Agreement, specifying which alternative or remedial steps should be taken. Such notification will however not excuse the Service Provider from continuing the rendering of the Services, or from incurring Service Credits;
  - 11.2.3. as applicable, comply with the Site requirements communicated to the Service Provider prior to the installation of any SITA CPE or Equipment at a Site;
  - 11.2.4. accept all risks related to housing its Equipment at Sites and PE Nodes in Cape Town and George; and
  - 11.2.5. provide SITA with remote diagnostics and network problem analysis when required by SITA.
- 11.3. The Service Provider further agrees and undertakes, in addition to its other duties and obligations set out in the Agreement, to attend to the following in respect of **network security**:
- 11.3.1. ensure that the Service Provider's systems that potentially could impact the Services and/or SITA's and the WCG's networks are free from any viruses and to prevent viruses from entering SITA's and the

WCG's networks via the Service Provider and to prevent Distributed Denial Of Service (DDOS) attacks;

- 11.3.2. immediately upon becoming aware of a virus that potentially could impact the Services and/or SITA's and the WCG's networks, respond to the virus, taking all steps required to contain the virus, assess the scope of the damage caused by the virus, eliminate the virus and restore the Services to their prior state, as soon as possible. Services that are affected by a virus via the Service Provider will not be excused from compliance with the Service Level Indicators in the SOWs;
  - 11.3.3. implement industry-leading practices with regard to threat management, including deployment of anti-virus and malware protection on the Service Provider's systems;
  - 11.3.4. cooperate with SITA and the WCG, including sharing information regarding all security matters, to:
    - 11.3.4.1. avoid security incidents that could adversely impact the Services or SITA's and the WCG's networks, and
    - 11.3.4.2. isolate and prevent unauthorised or fraudulent use of the Services or SITA's and the WCG's networks; and
  - 11.3.5. for the Internet Service via VPN's at Non-Corporate Sites and the PW Service, implement appropriate centralised security measures such as malware detection systems, intrusion detection systems, and intrusion prevention systems to detect and mitigate potential threats.
- 11.4. The Service Provider further agrees and undertakes, in addition to its other duties and obligations set out in the Agreement, to attend to the following in respect of **physical security**:
- 11.4.1. comply with restrictions on access to SITA's and the WCG's facilities as set out in the relevant policies and procedures stipulated by SITA;
  - 11.4.2. implement, establish and maintain appropriate safeguards against the unauthorised access, destruction, loss or alteration of SITA (and

WCG) data and confidential information to the extent that the Service Provider has access to such data and confidential information;

11.4.3. implement physical security measures at sites from which the Services are performed that minimise the impact of theft and vandalism in order to comply with the Service Level Indicators in the SOWs; and

11.4.4. coordinate requests with SITA / the WCG for access to Sites.

11.5. The Service Provider further agrees and undertakes, in addition to its other duties and obligations set out in the Agreement, to attend to the following in respect of **personnel security**:

11.5.1. Service Provider personnel who are required to work with information related to National Security must have a valid South African security clearance to the level of "Confidential" from the South African State Security Agency or duly authorised Personnel Security Vetting entity of the South African Government. All expenses related to the attainment of the valid South African security clearance must be borne by the Service Provider;

11.5.2. Service Provider personnel who are required to access government restricted areas must be a South African citizen and at the expense of the Service Provider, be security vetted (pre-employment screening, criminal record screening and credit screening);

11.5.3. the Service Provider must ensure that the security clearances of all personnel involved in the rendering of the Services remains valid for the duration of the Agreement;

11.5.4. the Service Provider agrees that any employee or agent of the Service Provider who provides (or is intended to provide) on-site services to SITA shall be subject to SITA background and security checks, prior to providing services to SITA, as well as during the course of providing services to SITA; and

11.5.5. SITA shall be entitled to refuse such employee or agent access to its sites should such background check indicate, at the sole discretion



of SITA, that such employee or agent does not comply with SITA's background and security requirements. Such refusal of access shall not absolve Service Provider from the fulfilment of its obligations.

## **12. INTELLECTUAL PROPERTY AND PUBLICATION**

- 12.1. Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.
- 12.2. Notwithstanding anything to the contrary contained herein, all right, title, and interest worldwide, including all Intellectual Property Rights, relating to any item of Intellectual Property developed pursuant to or in connection with any component of the Services that is unique and exclusive to SITA shall vest exclusively in SITA.
- 12.3. The Service Provider shall not publish its rendering of the Services for marketing and advertising purposes without the prior written consent of SITA.

## **13. OWNERSHIP AND RISK OF EQUIPMENT**

- 13.1. The Parties agree that all Equipment embodied in the Services provided by the Service Provider as part of the Service is, and remains, the property of the Service Provider or the owner of the equipment or software, as the case may be, for the duration of the Agreement.
- 13.2. Where the Equipment is in the possession, or under the control, of SITA, then SITA agrees:
  - 13.2.1. not to remove or allow the Equipment to be removed without the Service Provider's consent or legal authorisation (including, without limitation, a court order);
  - 13.2.2. to keep the Equipment in good condition and complete, normal wear and tear excepted;
  - 13.2.3. not to allow the Equipment to be encumbered by SITA by operation of law or otherwise;
  - 13.2.4. to allow the Service Provider to inspect the Equipment at reasonable times;

- 13.2.5. to accept all risk in the Equipment, taking reasonable steps to protect the Equipment from loss and/or damage; and
  - 13.2.6. to return such Equipment to the Service Provider on termination of the Agreement, alternatively, replace such Equipment with new equipment of the same standard, quality and specification.
- 13.3. All newly procured equipment that will form part of the Services will be the property of Service Provider or the owner of the Equipment or software, as the case may be, for the duration of the Agreement.
- 13.4. SITA is responsible for ensuring that all Equipment or devices used by SITA to access the Services are kept in a secure location and taking all practical steps to restrict access to the security and configuration parameters of all such Equipment or devices to only those individuals who are actively involved in activities for which use of the information is required.
- 13.5. At the termination of the Agreement the ownership of all the Equipment will remain vested in the Service Provider unless agreed otherwise in writing by the Parties.

#### **14. OWNERSHIP OF DATA**

- 14.1. SITA is the owner of all electronic data at any time on the Layer 2 network.
- 14.2. The Service Provider shall at all times provide such data to SITA immediately upon written request, at no cost to SITA and in an electronic format accessible to SITA or its Successor Service Provider.

#### **15. INSURANCE**

- 15.1. Without limiting the Service Provider's obligations under this Agreement, the Service Provider must have in force, and maintain with a reputable insurance company, insurance cover during this Agreement, as follows:
  - 15.1.1. adequate public liability policy of insurance and which is adequate to cover the Service Provider's and its sub-contractors' obligations under this Agreement;

- 15.1.2. adequate insurance cover to allow the replacement of any Equipment at a Site and prior to the risk in the Equipment passing to SITA;
  - 15.1.3. property insurance in an adequate amount to cover assets owned by the Service Provider used in connection with its provision of the Services, excluding SITA's equipment located on the Sites;
  - 15.1.4. adequate insurance cover to allow for the replacement of any of SITA's, or the WCG's equipment (where the risk in such equipment vests in the WCG), in possession and/or control of the Service Provider as part of the rendering the Services, be it at the Services Provider's various premises or being transported between such premises and Sites;
  - 15.1.5. workers compensation insurance in accordance with any relevant applicable laws in the jurisdiction where the Services are performed; and
  - 15.1.6. a professional indemnity insurance policy which is adequate to cover the Service Provider's obligations under this Agreement.
- 15.2. The Service Provider shall lodge all insurance claims in respect of this Agreement within the period required in the terms of its insurance policies.
- 15.3. On request by SITA, the Service Provider shall produce to SITA, on reasonable request, the required reasonable evidence that the Service Provider has complied with and continues to comply with its obligations under this clause 15 and on request by SITA, or the WCG, the Service Provider shall cause, if so allowed by the Service Provider's insurers, that SITA or the WCG's (as the case may be) interest be noted by such insurer.

## **16. GOOD FAITH AND COOPERATION**

- 16.1. The Parties undertake to act at all times with the utmost good faith, good will and shall be transparent in all their dealings with each other.
- 16.2. SITA undertakes to make available to the Service Provider, and as soon as reasonably possible after a written request for specific information from the Service Provider, all such specific information which is necessary for the Service

Provider to fulfil its contractual obligations, provided that SITA or WCG is in possession of such specific information, that it is reasonably possible for SITA to provide the information to the Service Provider and that such information cannot be obtained by the Service Provider elsewhere. The provision of this clause 16 shall apply, *mutatis mutandis*, in favour of SITA vis-à-vis the Service Provider.

## 17. CESSION AND ASSIGNMENT

- 17.1. The Service Provider may not, whether by operation of law, contract or otherwise, cede, assign, delegate or transfer any of its rights or obligations emanating from this Agreement without SITA's prior written consent. SITA's decision as to whether or not to provide its aforesaid consent shall be reached in consultation with the WCG.
- 17.2. Subject to the Service Provider's prior written consent (which consent shall not be unreasonably withheld or delayed), if SITA and the WCG in future reach an agreement that SITA assign all or part of its rights and obligations under this Agreement to the WCG, then if either the WCG or SITA delivers a written notice to the Service Provider to the effect that the WCG has taken assignment of the rights and obligations of SITA (either in whole or in part), then the Service Provider shall discharge its obligations under this Agreement directly to the WCG. The provisions of this clause constitute a *stipulatio alteri* in favour of the WCG and shall be capable of acceptance by it at any time and from time to time on written notice to SITA and the Service Provider.
- 17.3. If SITA is dissolved for any reason, it is envisaged that the successor body (if any) would take assignment of this entire Agreement, failing which this entire Agreement would be assigned to another Government organ or state institution or state owned entity nominated by the relevant Minister (being the Minister having jurisdiction over SITA at the time of its dissolution) (if any), failing which this entire Agreement shall be assigned to the WCG. The Parties and the WCG hereby consent to all of the aforesaid assignments. The foregoing shall *mutatis mutandis* apply in the event of changes in the Applicable Law or government procurement policies or changes in national or provincial structures of the government, changes in objects, duties and/or functions of SITA, all of which, together or singularly, results in SITA no longer being able to continue performing under this Agreement.

17.4. Except for any specific instances expressly provided in this Agreement for assignment by either Party without the consent of the other Party, the Parties shall not, without the prior written consent of the other, assign, cede or transfer this Agreement or any rights or obligations hereunder, to any third party, provided that in the event of a merger, consolidation, transfer, take over or sale of all, or substantially all, of the assets or shares of a Party, then in addition to the aforesaid prior written consent, such Party shall, prior to the implementation of such a merger, consolidation, transfer, take over or sale, also ensure that its successor agrees in writing to be bound by all provisions of this Agreement and thereby automatically assume all rights and obligations of such Party it succeeded and further that it shall discharge and perform all the promises, agreements, duties and obligations of such Party, and all references in this Agreement to such Party shall refer to and include such successor.

## **18. CHANGE OF CORPORATE CONTROL**

18.1. SITA must be notified of any Change of Control of the Service Provider, and/or its members, or of the business of the Service Provider, and/or its members, or of a majority of the assets of the business of the Service Provider, and/or its members, howsoever that may occur.

18.2. The Service Provider and/or its members shall upon written demand by SITA, ensure that any party acquiring control, agrees in writing to be bound by all the provisions of this Agreement, on the same basis as the Service Provider and/or its members is bound to this Agreement, prior to the implementation of the aforesaid Change of Control. If such agreement in writing is not obtained, SITA may terminate this Agreement summarily and claim damages in lieu thereof.

## **19. SUB-CONTRACTORS**

19.1. SITA acknowledges and hereby consents to the Service Provider engaging the sub-contractors for the rendering of the Services as set out in the Service Provider's bid response.

19.2. The Service Provider may not subcontract any part of the Services without the prior written consent of SITA, and subject to Applicable Law. Subcontractors must be duly registered on the Central Supplier Database (CSD).

## 20. CONFIDENTIALITY AND DISCLOSURE

- 20.1. The Service Provider must not, during the Term, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of SITA, government in any other sphere, or any government institution or organ of state.
- 20.2. The Service Provider, its members, employees, agents and/or contracting parties shall -
  - 20.2.1. use the Confidential Information only for purposes of discharging its functions under this Agreement;
  - 20.2.2. treat and safeguard the Confidential Information as private and confidential; and
  - 20.2.3. ensure proper and secure storage of all Confidential Information.
- 20.3. Any documents or records (including written instructions, notes or memoranda) relating to the Services which are to be provided to the Service Provider, its members, employees, agents and/or contracting parties by SITA, or which come into a Service Provider's possession during the currency of this Agreement, are deemed to be the property of SITA and shall be surrendered to SITA on demand, and in the event of the expiry or termination of this Agreement, the Service Provider may not retain any copies thereof or extracts therefrom without obtaining the prior written permission of SITA.
- 20.4. The Service Provider undertakes to comply with applicable laws and regulation on the protection of personal information relating to any person to which it may have access in the framework of the performance of its contractual obligations. To this end the Service Provider must implement technical and organisational measures to address risks of alteration, loss and unauthorised access or processing of such personal information.
- 20.5. The Service Provider, its employees, agents and/or contracting parties undertake to keep such personal information confidential. Such data will be used for the sole purpose of the rendering of the Services. Only the Service Provider's employees, its suppliers, agents or its affiliates, taking part in the performance of the obligations under this Agreement, may have access to

such personal information on a need-to-know basis and in compliance with this confidentiality undertaking.

- 20.6. To assist with this obligation, SITA shall, as far as reasonably possible, make all reasonable endeavours to ensure that any data/images that it may provide to the Service Provider (or allow the Service Provider access to) are suitably anonymized, where necessary and appropriate, with the aim to ensure that such data/images do not constitute 'personal information' as defined under applicable law including the Protection of Personal Information Act 4 of 2013.
- 20.7. In case of termination of this Agreement, the Service Provider must at its cost, destroy such personal information or return to SITA or transfer to the Successor Service Provider (as SITA may request in writing) any copies thereof, unless the Service Provider is authorised by SITA to keep such information for specific purposes or unless the Service Provider is prevented to do so, for instance by law, in which event the data will be kept confidential and will not be processed for any purpose other than those necessary to comply with legal obligations.

## **21. INDEMNITY**

The Service Provider indemnifies SITA and the WCG against all and any claims which may arise, directly from the rendering of the Services and where such claim was caused by the negligence, violation of any law or breach of this Agreement by the Service Provider, its employees, agents, sub-contractors or representatives or any other cause howsoever including but not limited to delictual damages.

## **22. BREACH**

- 22.1. if either Party commits a breach of any provision of this Agreement, the other Party may request in writing the Party in breach to remedy the breach within a period which will not be less than 14 (fourteen) Calendar Days. If the breach is not remedied upon expiry of the notice period, the aggrieved Party may institute proceedings immediately for enforcement of the terms of this Agreement or for any other remedy that it may have in law.
- 22.2. Notwithstanding the above, SITA reserves the right to impose penalties as set out in this Agreement, or claim damages in lieu of penalties, as contemplated in clause 7 above (Services, Service Credits and Penalties) due to the late or non-performance of the Service Provider's obligations in terms of this Agreement.

- 22.3. In the event of cancellation of this Agreement due to breach, SITA shall be entitled to recover all damages which may be suffered as a result of such breach, or arising from any liability which SITA may directly or indirectly incur as a result of such breach.
- 22.4. The Service Provider acknowledges that during the Term, it may be necessary for SITA to embark on a public procurement process relating to all or part of the Services. Accordingly, it is agreed that such processes shall not be construed in any way as a repudiation of this Agreement by SITA, provided that the Successor Service Provider shall only commence rendering the services for which it is appointed after the Termination Date, other than any services required for the Successor Service Provider migration in process of its services.

### **23. LIMITATION OF LIABILITY**

- 23.1. Subject to clause 23.2 below, notwithstanding anything to the contrary in this Agreement, under this Agreement –
- 23.1.1. the Service Provider shall not be liable to SITA, whether in contract, delict, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Service Provider to pay penalties or issue Service Credits to SITA; and
- 23.1.2. the aggregate liability of the Service Provider to SITA, whether in contract, delict or otherwise, shall not exceed the Contract Value, provided that this limitation shall not apply to the cost of repairing or replacing any defective Equipment.
- 23.2. Notwithstanding anything to the contrary in this Agreement, the limitations set out in this clause 23.1 shall not apply in respect of any claim that may arise as a result of any criminal negligence or wilful misconduct by the Service Provider or in the case of any infringement by the Service Provider of any patent rights as contemplated in clause 6 of the GCC.

### **24. SETTLEMENT OF DISPUTES**

- 24.1. Without detracting from a Party's right to institute action or motion proceedings in the High Court or another court of competent jurisdiction in respect of any



dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure set out in clauses 24.2 and 24.3 below.

24.2. Mediation:

- 24.2.1. Subject to the provisions of clause 24.1, any dispute arising out of this Agreement shall be referred by the Parties, without legal representation, to a Mediator.
- 24.2.2. The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.
- 24.2.3. The Mediator shall be selected by agreement between the Parties.
- 24.2.4. If an agreement cannot be reached upon a particular Mediator within three Business Days after the Parties have agreed to refer the matter to mediation, then the the Provincial Director of the Western Cape Provincial Office of the Legal Practice Council (established in terms of section 4 of the Legal Practice Act 28 of 2014), shall nominate the Mediator after the Parties have failed to agree.
- 24.2.5. The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.
- 24.2.6. The Parties shall have seven Business Days within which to finalise their representations. The Mediator shall within seven Business Days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.
- 24.2.7. The opinion so expressed by the Mediator shall not be final and binding upon the Parties unless the Parties are willing to accept the opinion expressed by the Mediator. In the event that either Party is dissatisfied with the opinion of the mediator it may institute legal proceedings in a court of competent jurisdiction, unless the Parties

agree to refer the dispute to arbitration in accordance with clause 24.3. The expressed opinion of the Mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of it proceeding to court or to arbitration.

24.2.8. The cost of mediation shall be determined by the Mediator.

24.2.9. Liability for such cost shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

24.3. Arbitration:

24.3.1. Subject to the provisions of clause 24.1, a dispute arising out of, or in connection with, this Agreement may be referred by the Parties to arbitration.

24.3.2. Arbitration shall be held in Pretoria informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within ten days after it has been demanded.

24.3.3. Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is:

24.3.3.1. primarily a legal matter, a practising Senior Advocate;

24.3.3.2. any other matter, an independent and suitably qualified person as may be agreed upon between the Parties to the dispute.

24.3.4. If agreement cannot be reached on whether the question in dispute falls under clause 24.3.3.1 or 24.3.3.2 and/or upon a particular Arbitrator within three Business Days after arbitration has been demanded, then the Chairperson of the Pretoria Bar Association for the time being shall be requested to:

24.3.4.1. determine whether the question in dispute falls under clauses 24.3.3.1 or 24.3.3.2); and/or

24.3.4.2. nominate the Arbitrator after the Parties have failed to agree.

24.3.5. The Arbitrator shall give his decision within five Business Days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both Parties.

24.4. The decision of the arbitrator shall be final and binding and may be made an order of the North Gauteng High Court, Pretoria, upon the application by any Party to the arbitration.

24.5. No referral of any dispute for a resolution process will relieve any Party from any liability for the due and punctual performance of its responsibilities under this Agreement.

## **25. NON-SOLICITATION**

Neither Party shall, for the duration of this Agreement and for a further period of 12 (twelve) months after the expiration thereof, directly solicit or encourage or attempt to solicit or encourage any employee or subcontractor of the other Party to leave the employment of such Party, unless prior consent is obtained from such Party, which may be given or withheld in such Party's sole discretion. It shall not be a violation of this provision for a Party to advertise its openings in the generally available media and to hire the other Party's personnel that may contact it as a consequence of such advertising. The benefits conferred and restriction imposed by this clause 25 shall apply, *mutatis mutandis*, in favour of, and against, the WCG.

## **26. NOTICES AND DOMICILIUM**

26.1. The Parties choose as their respective domicilium citandi et executandi and for the purpose of legal proceedings the following addresses:

26.1.1. SITA

Physical Address:

459 Tsitsa Street

Erasmus Kloof

Pretoria,

0048

## 26.1.2. Service Provider

Physical Address:

.....

.....

.....

or such other address as may be substituted by notice given as herein required. Each of the Parties shall be entitled from time to time by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

- 26.2. All notices referred to in clause 26.1 above that are to be given in terms of this Agreement shall be given in writing and be delivered, to the Party's chosen domicilium citandi et executandi.
- 26.3. If delivered by hand, a notice shall be presumed to have been received on the date of delivery if on a Business Day. If not delivered on a Business Day, it shall be presumed to have been received on the immediate following Business Day.
- 26.4. A written notice or communication actually received by a Party shall be deemed to be adequate notice notwithstanding that it was not delivered or sent to its chosen domicilium address. If transmitted by electronic mail message it shall be deemed to have been received by the addressee on the expiration of 1 (one) Business Day after transmission.

**27. FORCE MAJEURE**

- 27.1. Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves –
- 27.1.1. that the failure was due to an impediment beyond its control;
- 27.1.2. that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and
- 27.1.3. that it could not reasonably have avoided or overcome the impediment or its effects.

- 27.2. An impediment, as aforesaid, may result from events such as the following (this list is not exhaustive):
- 27.2.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;
  - 27.2.2. natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
  - 27.2.3. explosions, fires, destruction of machines, of factories and of any kind of installations; or
  - 27.2.4. acts of authority, whether lawful or unlawful, apart from acts from which the Party seeking relief has assumed the risk of by virtue of any other provisions of this Agreement.
- 27.3. Relief from liability for non-performance because of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon, and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) Business Days, either of the Parties shall be entitled to terminate this Agreement.

## **28. DATA PRIVACY AND PROTECTION**

- 28.1. The Parties acknowledge that for the purposes of the Agreement the Parties may come into contact with or have access to Personal Information and other information that may be classified, or deemed as private or confidential and for which the other Party is responsible. Such Personal Information may also be deemed or considered as private and confidential as it relates to any third party who may be directly or indirectly associated with the Agreement. Further, it is acknowledged and agreed by the Parties that they have the necessary consent to share or disclose the Personal Information and that the information may have value.
- 28.2. The Parties agree that they will at all times comply with the Protection of Personal Information Act 4 of 2013 ("POPIA"), its Regulations and Codes of Conduct and that it shall only collect, use and process Personal Information it comes into contact with pursuant to the Agreement in a lawful manner, and

only to the extent required to execute the Services, or to provide the goods and to perform their respective obligations in terms of the Agreement.

- 28.3. The Parties agree that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of Personal Information that it, or its employees, its contractors or other authorised individuals comes into contact with pursuant to the Agreement.
- 28.4. Unless so required by law, the Parties agree that it shall not disclose any Personal Information as defined in POPIA to any third party without the prior written consent of the other Party, and notwithstanding anything to the contrary contained herein, neither Party shall in any manner whatsoever transfer any Personal Information out of the Republic of South Africa.

## **29. GENERAL**

- 29.1. The Service Provider acknowledges that its personnel and its subcontractors who are engaged in the rendering of the Services may be required by SITA to undergo the state security clearance processes as may be determined, from time to time, by the State Security Agency (or any other security agency under the control of the Ministry of State Security of the Republic of South Africa) and/or SITA as may be commensurate with the nature of the activities they are involved in. The costs of obtaining such clearance shall be borne by the Service Provider.
- 29.2. No alteration, variation, amendment or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the authorised representatives of the Parties.
- 29.3. This document contains the sole and entire record of the agreement between the Parties. No Party shall be bound by any express or implied term, representation, warranties or promise not recorded herein or otherwise created by operation of law.
- 29.4. No indulgence, leniency or extension of time, which a Party may grant to the other Party in any way, shall in any way whatsoever prejudice that Party, preclude it from exercising any of its rights in the future, or be capable of founding an estoppel.

29.5. Applicable Law and South African jurisdiction shall apply to the Parties and their subcontractors or successors in title.

29.6. Each provision of this Agreement is severable from all other, notwithstanding the manner in which they may be linked or grouped together. If in terms of any judgment or order any provision, phrase, sentence or paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs or clauses will nevertheless continue to be of full force.

SIGNED ON BEHALF OF **SITA** AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

\_\_\_\_\_  
**Dr Mabaso**, duly authorised

IN THE PRESENCE OF THE UNDERSIGNED WITNESS:

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness signature

SIGNED ON BEHALF OF **THE SERVICE PROVIDER** AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024

\_\_\_\_\_  
....., duly authorised

IN THE PRESENCE OF THE UNDERSIGNED WITNESS:

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness signature

## ANNEXURE A

### DEFINITIONS

In the Agreement, to which this glossary is Annexure A (Definitions), unless the context indicates a contrary intention, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

1. "**Access Link**" means the network connection or communication channel between the Service Provider's CPE at a Site and its broader network infrastructure;
2. "**Access Point**" means a networking device that allows wireless-capable devices to connect to a wired network;
3. "**Additional Site List**" or "**ASL**" means the list of Sites per Annexure C (Site List) where SITA may order new BB Services (via the Service Request Management process described in section D.10.2 of the BB SOW) at a fixed location;
4. "**Agreement**" means the Master Services Agreement to which this glossary is Annexure A (*Definitions*) and which comprises of:
  - 2.1. the Terms and Conditions;
  - 2.2. Annexure A (*Definitions*) to Annexure I (*Pricing*) hereto; and
  - 2.3. the Request For Bids and the Bid Response both of which are hereby incorporated herein by reference;
5. "**Applicable Law**" means any of the following, from time to time, the extent that it applies to a Party, or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring):
  - 5.1 any statute, regulation, policy, by-law, directive, notice or subordinate legislation (including treaties, multinational conventions and the like having the force of law, and to which the Republic of South Africa is a party);
  - 5.2 the common law;
  - 5.3 any binding court order, judgment or decree;
  - 5.4 any applicable industry code, policy or standard enforceable by law; or
  - 5.5 any applicable direction, policy or order that is given by a regulator having the force of law;
6. "**Authorised Representative**" means a person nominated by each Party to fulfil the role of that Party's authorised representative under this Agreement from time to time;
7. "**Availability**" means that portion of a period of time (typically a Calendar Month) when a service is provided; a period of time during which a service is unavailable is referred to as "downtime" and so Availability is synonymous with "uptime";
8. "**Bandwidth**" means the bit speed available to any data service traversing any part of a network;



9. "**Benchmark**" shall bear the meaning ascribed to that term in clause 8.17.9 of the Terms and Conditions;
10. "**Best Industry Practice**" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in telecommunications (holding himself as being an Expert in providing services in the nature of the Services) seeking in good faith to fully comply with his contractual obligations;
11. "**Bid Response**" means the submitted documentation from the Service Provider in response to the RFB;
12. "**Broadband**" means the concept of "*data moving between devices so quickly that it appears to be instantaneous*", which in practice is generally taken to mean that "*the speed at which an individual can send and receive packets of data across multiple interconnected networks (also known as 'the Internet') is very fast*";
13. "**Broadband Public Wi-Fi Site**" means a Site where the Service Provider provides an Internet service for the Public Wi-Fi Service to SITA where BB Services are also being provided (at either a Corporate Site or a Non-Corporate Site);
14. "**Broadband Services**" or "**BB Services**" means the broadband connectivity services to be provided to SITA in accordance with the Broadband Statement of Work (Annexure D);
15. "**Broadband Site Type**" means either a Corporate Site or a Non-Corporate Site where the BB Service is required per paragraph D.3 of the BB SOW;
16. "**BB SOW**" means the Broadband Statement of Work (Annexure D);
17. "**Business Day**" means any day other than a Saturday, Sunday or statutory proclaimed public holiday in the Republic of South Africa;
18. "**Calendar Day**" means any day of the week and includes weekends and statutory proclaimed public holidays in the Republic of South Africa;
19. "**Calendar Month**" means the period of time that begins on the 1<sup>st</sup> (first) Calendar Day of any given month and shall consist of the number of Calendar Days in such month, ending at the last Calendar Day of the same month;
20. "**Change of Control**" refers to a scenario when the Service Provider's majority ownership and business decision-making powers move from one person or entity to another;
21. "**Change Request**" means a formal request effected via the Change Management process described in section D.10.2 of the BB SOW and section 7.1 of the PW SOW to make a change to an IT system, service, or infrastructure;
22. "**Charges**" shall bear the meaning ascribed to it under clause 10.1 of the Terms and Conditions;
23. "**City of Cape Town**" means the metropolitan municipality of Cape Town located in the south-western corner of the Western Cape;
24. "**Commencement Date**" means the date of Service Handover of the 1<sup>st</sup> (first) Site;

25. "**Contention Ratio**" means the ratio of the potential maximum demand to the actual Bandwidth. The higher the contention ratio, the lower the effective Bandwidth available to each End User;
26. "**Contract Value**" shall have the meaning ascribed to this term in clause 10.1.3 of the Terms and Conditions;
27. "**Corporate Site**" means a Site that requires the provision of a Layer 2 Service to SITA, which connects to SITA's Provider Edge (PE) nodes in Cape Town and George via Network Node Interfaces (NNI's), as per paragraph D.3.1 of the BB SOW;
28. "**CPE**" means the Customer Premises Equipment, being the telecommunication Equipment installed by the Service Provider at each Site;
29. "**Customer**" means the "*customer*" of SITA (nominally the WCG) at whose Sites the Service Provider will provide the Services;
30. "**Date of Award**" means the date of the letter in which the Service Provider is informed of the acceptance of its response to the RFB;
31. "**Decommission**" means terminating the Service and removing the Equipment from a Site;
32. "**Deliverable**" means Operational Deliverables and Non-Operational Deliverables, and any reference to a Deliverable, includes all of the related Deliverables of such a Deliverable;
33. "**Designated Data**" means all information that at any time during or before the Term was or is in either Party's possession and that would constitute confidential information if it were furnished by one Party to the other Party, as the case may be;
34. "**Documentation**" means any documentation relating to the Services, including project plans, functional specifications, technical specifications, designs and templates, technical manuals, training manuals, user manuals, flow diagrams, file descriptions, installation specifications and plans, and other information that describes the function and use, or is reasonably required for the efficient use, of any Deliverables, including descriptions of the configuration of hardware required to use such Deliverables, whether written or electronic;
35. "**Electronic Communications Network**" shall bear the meaning attributed to it in section 1 of the Electronic Communications Act 36 of 2005;
36. "**End User**" means any person intended to use or receive the benefit of the Services from time to time;
37. "**Equipment**" means all telecommunication equipment used by the Service Provider to provide the Services to SITA, including the following:
  - 37.1 switches, routers, cabinets, patch panels, antennas, and wireless transmitters and receivers and all other items of equipment;
  - 37.2 all cabling connecting these items of equipment, together with associated ducts;
  - 37.3 all Software integral to the functioning of such equipment; and
  - 37.4 backup power, where applicable.

38. "**Final Service**" means the BB Service at a Site, with the corresponding technology type, listed as such in Annexure C (Site List);
39. "**Fixed Satellite**" means a radiocommunication service between earth stations at fixed positions, when one or more satellites are used;
40. "**Gbps**" means Gigabits per second, which is a measure of transmission capacity (also referred to as 'Bandwidth'). For the purposes of the foregoing, 1Gbps is equal to 1000Mbps;
41. "**Government**" means the Government of the Republic of South Africa;
42. "**Incident**" means any unplanned interruption or reduction in quality of the Service;
43. "**Incident Management**" means the set of processes, activities, and procedures that is followed to identify, assess, respond to, and resolve incidents, disruptions, or unexpected events that may impact operations, services, or information systems;
44. "**Information Technology Service Management System**" or "**ITSM System**" means the software system used by the Service Provider or SITA to manage the end-to-end delivery of IT services, including but not limited to service, change, problem, incident, asset and knowledge management.
45. "**Initial Site List**" or "**ISL**" means the list of Sites per Annexure C (Site List) where BB Services are required at a fixed location, and which Sites represent SITA's minimum connectivity requirement on this Agreement, and SITA will only be permitted to decommission a maximum of 2% (two percent) of such Sites at no charge;
46. "**Intellectual Property**" means all computer programmes, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, confidential information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, and includes all Intellectual Property Rights in any of the foregoing set out in this clause;
47. "**Intellectual Property Rights**" means all intellectual property rights of whatever nature, including (i) all patents and other patent rights, including divisional and continuation patents, utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs; (vi) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension,

renewal and re-issuance, continuations, continuations in part or divisionals of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

48. "**Interim Service**" means the BB Service to a Site requested by SITA via the Service Request Management process either prior to the implementation of the Final Services, or during an event of Force Majeure that has disrupted the Final Services;
49. "**Internet Statistics Log Report**" means the monthly report delivered to SITA in Word and PDF format by 8AM of the 5<sup>th</sup> (fifth) business day after the end of the reporting month, and including the statistics for the preceding month related to Non-Corporate Sites in accordance with paragraph D.13.2.4 of the BB SOW;
50. "**Jitter**" means the measure of variance (phase difference) in the delay (Latency) of the delivery of packets of data sent across a network;
51. "**Latency**" means the time delay in the delivery of packets of data across a network;
52. "**Layer 2**" means the data layer of a telecommunications network as defined by the OSI Model;
53. "**Layer 2 Service**" means a Service in relation to Layer 2;
54. "**Layer 3**" means the network layer as defined by the OSI Model;
55. "**Mbps**" means "Megabits" per second, which is a measure of transmission capacity (also referred to as 'bandwidth');
56. "**Mobile Network Technology**" means a radiocommunication service using cellular communication technology;
57. "**Mobile Satellite**" means two-way voice and data communications to users who are mobile or in remote locations with terminals ranging in size from handheld to laptop-size units. Terminals can also be mounted in or on a vehicle, with communications maintained while the vehicle is moving;
58. "**Microwave**" means wireless communication technology that uses high frequency beams of radio waves to provide high speed wireless connections that can send and receive voice, video, and data information;
59. "**Migration Agreement**" shall have the meaning ascribed to it in clause 3.1.2 of the Terms and Conditions;
60. "**Migration In**" means the process of implementing the Services at each of the Sites, executed according to this Agreement in a phased and iterative-cycle approach;
61. "**Migration Out**" means the process of replacing the Services as used during the Term, with another solution at termination of the Agreement;
62. "**MRC**" means the "Monthly Recurring Charges" payable to the Service Provider by SITA monthly for the Services rendered and as per Annexure I - Pricing;
63. "**ms**" means milliseconds, which is one thousandth ( $10^{-3}$ ) of a second;

64. "**MTU**" means "*Maximum Transmission Unit*", a protocol data unit measured in bytes;
65. "**Network**" means the Electronic Communications Network used by the Service Provider to provide Telecommunications Network Services to SITA and its Customers;
66. "**Network Management System**" or "**NMS**" means a system which is used to manage, monitor, configure and control the Service;
67. "**Nomadic Site List**" or "**NSL**" means the list of Sites per Annexure C (Site List) where SITA may order new BB Services (via the Service Request Management process described in section D.10.2 of the BB SOW) at a moveable location (i.e. they are Sites that move locations, such as a mobile clinic (vehicle) or road construction camp);
68. "**Non-Corporate Site**" means a Site that requires the provision of Internet access services (with a Contention Ratio of 1:1 via VPNs) as per paragraph D.3.2 of the BB SOW;
69. "**Non-Operational Deliverables**" mean project plans, implementation plans, evaluations, gap analyses, business requirements documents, proposals, or any other documentation and anything else to be delivered under the Agreement whether during the rendering or in contemplation of the rendering of the Services other than the Operational Deliverables, whether written or electronic;
70. "**NRC**" means the "Non-Recurring Charges" payable to the Service Provider by SITA for once-off costs for Services rendered and as per Annexure I (Pricing);
71. "**Operational Deliverables**" means any hardware, network and software to be delivered under the Agreement;
72. "**Optic Fibre Cable**" or "**Fibre**" means a cable owned by the Service Provider that forms part of its telecommunications infrastructure, used to transmit information as light impulses;
73. "**OSI Model**" means the "*Open Systems Interconnection Model*", which is a conceptual model that describes the internal architecture of a communications system by splitting its components into abstraction layers;
74. "**Packet Loss**" means the measure of the reliability that packets of data sent across a network will be received;
75. "**Path**" means the virtual route connecting the two Ethernet interfaces at the two end points of the virtual route between any two Sites;
76. "**Personal Information**" shall mean the race, gender, sex, pregnancy, marital status, national or ethnic origin, race, sexual orientation, age, physical or mental health, disability, religion, conscience, belief, culture, language and birth of a person; information relating to the education or the medical, financial, criminal or employment history of the person; any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; the biometric information of the person; the personal opinions, views or preferences of the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; the views or opinions of another individual about the person whether the information is recorded electronically or otherwise;

77. "**Point-to-point**" means a wireless communications connection between two communication endpoints or nodes;
78. "**Point-to-multipoint**" means wireless communication, with a networking topology in which one central point connects to multiple remote points;
79. "**Prime Rate**" means Nedbank's prevailing prime overdraft rate of interest compounded monthly in arrears and calculated on a 365 (three hundred and sixty-five) Calendar Day year, and as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
80. "**Processing**" shall mean any operation or activity, or any set of operations, whether by manual or electronic means, performed by the Service Provider concerning a person's Personal Information, including the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; dissemination by means of transmission, distribution or making available in any other form; merging, linking, as well as restriction, degradation, erasure, or destruction of information;
81. "**Project**" means all the tasks and activities relating to the implementation of the Services at the Sites;
82. "**Provider Edge Node**" or "**PE Node**" means the network device or router positioned at the edge of the Service Provider's network (in SITA's switching centre in Cape Town and George), serving as the boundary between the Service Provider's network and SITA's network;
83. "**Public Wi-Fi Services**" or "**PW Services**" means the public Wi-Fi services to be provided to SITA in accordance with the Public Wi-Fi Statement of Work (Annexure E);
84. "**PW**" is an acronym for Public Wi-Fi and refers to the Public Wi-Fi Services;
85. "**PW SOW**" means the Public Wi-Fi Statement of Work (Annexure E);
86. "**Replacement Service**" means the alternate carrier technology, as requested by SITA via the Service Request Management process, to be implemented by the Service Provider as a Final Service;
87. "**Reporting Portal**" means an online webpage (or website) that provides SITA an entryway to access real-time and historical information (for up to 2 years) for the BB Services, and per paragraph D.13.1 of the BB SOW;
88. "**Reports**" means the reports to be provided by the Service Provider to the SITA under the Agreement and as further detailed in the BB SOW and PW SOW;
89. "**Request for Bid**" or "**RFB**" means the invitation of bids issued by SITA under bid number RFB<to be inserted>/2023;
90. "**Resolution**" means service restoration after an Incident;
91. "**Roundtrip Latency**" means a measure of the delay in the delivery of packets of data sent across a network and back to the point of origin;

92. "**Service Credits**" means the value of penalties or service credits to be recovered by SITA from the Service Provider for the failure to meet the service level indicators as contained in the BB SOW and the PW SOW;
93. "**Service Handover Process**" means the procedure to be followed by the Service Provider following the completion of the installation and testing of the Services which process shall be for the purposes of handing the Services over to SITA in accordance with paragraph D6.5 of the BB SOW and paragraph E4.4 of the PW SOW;
94. "**Service Level Indicator**" means a numerical measure of conformance to a service standard;
95. "**Service Level Indicator Report**" means the monthly report delivered to SITA in Word and PDF formats by 8AM of the 5<sup>th</sup> (fifth) Business Day after the end of the reporting Calendar Month, and including the information for the preceding Calendar Month in accordance with paragraph D.13.2.3 of the BB SOW and paragraph E.10.2.3 of the PW SOW;
96. "**Service Level Type**" means the level(s) of service (either Best Effort, Basic, Resilient or Fully Redundant) required in relation to the provision of the relevant Service at a Site by the Service Provider, with availability and redundancies as further explained in the BB SOW;
97. "**Service Management Organisation**" means an organisation that SITA may appoint to manage the delivery of the Services;
98. "**Service Request**" means any request made by SITA for a Service to be provided or altered in terms of this Agreement, arising from an identified need and not from an Incident and provided that a Service Request shall not be deemed to be a Change Request (although may result in such Change Request where there is a possibility of such Service Request affecting network performance);
99. "**Service Review Meeting**" means a formal monthly meeting evaluating the performance metrics of the Service Provider's Network as they pertain to the Services;
100. "**Services**" means all the services, functions and responsibilities relating to the provision of the BB Services and the PW Services, which are to be carried out by the Service Provider to SITA as set out in this Agreement and specifically in the BB SOW and the PW SOW;
101. "**Signature Date**" means the date of signature of the Party who signs this Agreement last in time;
102. "**Sites**" means, collectively, -
- 101.1 the Sites on the Initial Site List; and
  - 101.2 the Sites on the Additional Site List; and
  - 101.3 the Sites on the Nomadic Site List; and
  - 101.4 includes an individual reference to any one of them as the context may require;
103. "**Software**" means a computer program software module or package or any part thereof, provided as part of or in connection with the Services (or any part thereof);

104. "**Stand-alone Public Wi-Fi Site**" means a Site where the Service Provider provides an Internet service for the Public Wi-Fi Service to SITA where BB Services are not being provided (i.e. at a Site that is not a Corporate or a Non-Corporate Site);
105. "**Statistics Portal**" means an online webpage (or website) that provides SITA an entryway to access real-time and historical information (for up to 2 years) for the PW Services, and per paragraph E.10.1 of the PW SOW;
106. "**Statistics Report**" means the monthly report delivered to SITA in Word and PDF format by 8AM of the 5<sup>th</sup> (fifth) business day after the end of the reporting month, and including the information for the preceding month in accordance with paragraph E.10.2.4 of the PW SOW;
107. "**Successor Service Provider**" means any party (including any affiliate of SITA) which SITA appoints to render all or part of the Services consequent upon the Migration Out;
108. "**Temporary Service**" means the BB Service provided to a Site when the Final, Interim or Replacement Service is unavailable, and the Service Provider wishes to continue billing for the Final Services at a Site;
109. "**Term**" is the period of time from the Service Commencement Date to the Termination Date;
110. "**Termination Date**" means the 7<sup>th</sup> (seventh) anniversary of the Commencement Date, or if the Agreement was extended, the date on which the extended period ends;
111. "**Terms and Conditions**" means the first part of this master services agreement which is titled "Terms and Conditions" and which is immediately followed by this Annexure A (Definitions) hereto;
112. "**Throughput**" or "**Throughput Line Capacity**" means a percentage achievement associated with the relevant bits per second transferred when measured against the provisioned bandwidth capacity (upload and download);
113. "**VAT**" means value added tax levied in terms of Value-Added Tax Act 89 of 1991;
114. "**VSAT**" means Very Small Aperture Terminal, which is a technology used to create a Transmission Link using a Fixed Satellite;
115. "**Virtual Private Network**" or "**VPN**" means a technology and service that allows for a secure, private and encrypted connection over a public network;
116. "**Warranty period**" shall bear the meaning ascribed to that term in clause 8.1 of the Terms and Conditions;
117. "**WCG**" means the Western Cape Provincial Government; and
118. "**Wireless**" means the provision of an Access Link by means of a pair of radio transceivers.



## **ANNEXURE F**

### **Dependencies**

#### **1. DEPENDENCIES ON SITA:**

- 1.1. SITA to facilitate the completion of **site assessments** in order to provide the Service Provider with the required authorisation from the Site owner or custodian to enter and install Equipment at the Site.
- 1.2. SITA to facilitate **access**, via the Site owner or custodian, to a Site when required by the Service Provider or their appointed contractors.

#### **2. DEPENDENCIES ON LOCAL, PROVINCIAL AND NATIONAL GOVERNMENT AUTHORITIES (INCLUDING SANRAL) (INDIVIDUALLY REFERRED TO AS "THE AUTHORITY"):**

- 2.1. For requirements where fibre optic routes need to be installed, right of way approvals (or way leaves) need to be granted to the Service Provider by the Authority within 60 Calendar Days of application.
- 2.2. After submitting any application for a right of way (or way leave), the Service Provider must actively pursue and follow up in writing (at least fortnightly) with the relevant Authority until approval has been granted or otherwise advised by the relevant Authority. If approval is not granted within 60 Calendar Days after submission, SITA (and the WCG) must be informed in writing and thereafter fortnightly, also in writing, on progress made. The Service Provider must, on request from SITA, provide written evidence of its attempts made to obtain such approvals.
- 2.3. For approvals to be obtained from an Authority for requirements other than stated in clause 2.1 above, and which relates to the ability to provide the Services (installation and delivery thereof), such approvals need to be granted to the Service Provider within 60 Calendar Days of application. The provisions contained in clause 2.2 above shall apply mutatis mutandis to such other applications.

#### **3. GENERAL DEPENDENCIES**

- 3.1. Site owner or custodian approvals relating to Site assessments; and
- 3.2. Site readiness.

Annexure G

Template Service Handover Certificate

	Broadband Corporate Service
	Broadband Non-Corporate Service
	Public Wi-Fi Service

Service Commencement Date:	
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Order Information

Site Name:						
Site List:	Initial Site List		Additional Site List		Nomadic Site List	
Site Address:						
Site Code:						
Service ID:						
Technology Type:						
Bandwidth Required:						
VPN's Required:						
Service Level Type:	Fully Redundant		Resilient		Basic	Best Effort

Test Results & Service Confirmation

(NB: ITU-T Y.1564 soak test results must be attached)

Service Level Type						
Throughput Capacity		Uplink		Downlink		
MTU size						
Latency						
Jitter						
Packet Loss						
On Site Mains Power Monitoring						
NMS Proactive Monitoring						

Other Comments

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Sign-Off

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## **Annexure H**

### **Governance**

#### **1. GENERAL**

- 1.1 This sets out the governance arrangements which shall be followed by the Parties from the Commencement Date and, thereafter, throughout the Term.
- 1.2 Each Party acknowledges and agrees that the objectives of the governance arrangements herein are to ensure that:
- 1.2.1 a successful working relationship is maintained between the Parties;
  - 1.2.2 the Parties communicate regularly and effectively with one another;
  - 1.2.3 any issues or risks are identified and addressed quickly and appropriately; and
  - 1.2.4 the Service Provider successfully delivers the BB Services in full compliance with the terms of this Agreement.
- 1.3 SITA has its own customised project management methodology that incorporates PRINCE 2 and PMBOK (Project Management Body of Knowledge) practices. It is expected that the Service Provider aligns to this methodology.

#### **2. COMMITTEES**

- 2.1 Each of the committees specified below shall be established as of the Signature Date and –
- 2.1.1 shall be comprised of representatives of SITA, the Service Provider and the WCG, who occupy the roles identified herein below at the time of the meeting; and
  - 2.1.2 have terms of reference and powers as set out herein, or as otherwise resolved by a committee from time to time, provided that none of the committees shall have the authority to amend the Agreement.
- 2.2 Escalations of issues and risks will follow the governance structure hierarchy set out in the order in which the committees are listed below. For example, issues not resolved at the Broadband Operational Committee, will be escalated to the Broadband and Public Wi-Fi Management Committee, and those not resolved at the Broadband and Public Wi-Fi Management Committee, will be escalated to the Broadband and Public Wi-Fi Steering Committee.

### 2.3 **BROADBAND AND PUBLIC WI-FI STEERING COMMITTEE**

- 2.3.1 Meetings will be held at least every six (6) Calendar Months and chaired by a SITA Executive.
- 2.3.2 SITA is responsible for the capturing of the minutes of this committee's meeting and must be compiled and circulated within 3 (three) Business Days after each meeting.
- 2.3.3 This committee is responsible for:
  - 2.3.3.1 managing the contractual relationship between the Parties;
  - 2.3.3.2 reviewing high level performance summaries of the Services;
  - 2.3.3.3 providing resolutions to issues escalated from its subordinate committees;
  - 2.3.3.4 reviewing and approving Changes to the Agreement;
  - 2.3.3.5 setting strategic direction; and
  - 2.3.3.6 reviewing improvement proposals.
- 2.3.4 The Service Provider must ensure that representatives with the appropriate delegation of authority to take decisions on behalf of the Service Provider, on the aspects listed in clause 2.3.3 above, attend this committee's meetings. This must include at least one member of its executives.
- 2.3.5 This committee is mandated to establish further sub-committees, in addition to those listed below, as may be required.

### 2.4 **BROADBAND AND PUBLIC WI-FI MANAGEMENT COMMITTEE**

- 2.4.1 Meetings will be held once a Calendar Month and be chaired by a SITA senior management representative.
- 2.4.2 SITA is responsible for the capturing of the minutes of this committee's meeting and must be compiled and circulated within 3 (three) Business Days after each meeting.
- 2.4.3 This committee is responsible for reviewing and managing the commercial and contractual performance of the Parties under the Agreement including:

- 2.4.3.1 invoicing or payment disputes that may arise;
  - 2.4.3.2 adopting updates to Appendix C (Site List) in accordance with the process set out in clause 4 below;
  - 2.4.3.3 Service Credits;
  - 2.4.3.4 billing and invoice management;
  - 2.4.3.5 a financial review of the previous 12 months and a forecast for the coming 12 months;
  - 2.4.3.6 dispute resolution;
  - 2.4.3.7 audits;
  - 2.4.3.8 contractual notifications;
  - 2.4.3.9 Service Requests;
  - 2.4.3.10 Change Requests in accordance with the process set out in clause **Error! Reference source not found.** below;
  - 2.4.3.11 performance trends; and
  - 2.4.3.12 improvements implemented during the previous month.
- 2.4.4 This committee shall provide inputs on the aspects mentioned above including:
- 2.4.4.1 relevant Request Proposals; and
  - 2.4.4.2 minutes and actions.
- 2.4.5 This committee shall provide outputs on the aspects mentioned above including:
- 2.4.5.1 Request Proposal recommendations; and
  - 2.4.5.2 minutes and actions.
- 2.4.6 The Service Provider must ensure that representatives, with the appropriate delegation of authority, to take decisions on behalf of the Service Provider on the aspects listed in clause 2.4.3 above, attend this committee's meetings. This must include its regional executive responsible for the Western Cape, Services Manager (for BB and PW), Project Manager (for BB and PW) and the representatives fulfilling the financial and contract management roles.
- 2.4.7 This committee is mandated to establish sub-committees as required (eg billing and invoice verification sub-committee; technical sub-committee, etc).

## 2.5 **BROADBAND OPERATIONAL COMMITTEE**

- 2.5.1 Meetings will be held once a week, or otherwise agreed, and convened and chaired by the SITA project manager.
- 2.5.2 The Service Provider is responsible for drafting minutes of meetings and these meeting minutes must be compiled and circulated within 3 (three) Business Days after each meeting.
- 2.5.3 This committee is responsible for project management and oversight of day-to-day activities by the Project Manager and Service Manager against the BB SOW, including:
  - 2.5.3.1 monitoring the performance of all the BB Services;
  - 2.5.3.2 Site availability and readiness;
  - 2.5.3.3 BB Service improvement plans;
  - 2.5.3.4 Service Requests and Change Management;
  - 2.5.3.5 BB Service operations procedures;
  - 2.5.3.6 capacity management; and
  - 2.5.3.7 Reports;
- 2.5.4 This committee shall provide inputs on:
  - 2.5.4.1 previous minutes and actions;
  - 2.5.4.2 project plans; and
  - 2.5.4.3 monthly Reports.
- 2.5.5 This committee shall provide outputs as per its functions specified above including operations process updates.
- 2.5.6 The Service Provider must ensure that representatives, with the appropriate delegation of authority to take decisions on behalf of the Service Provider on the aspects listed in clause 2.5.3 to 2.5.5 above, attend this committee's meetings. This must include the Services Manager, Project Manager and lead technical engineer.

## 2.6 PUBLIC WI-FI OPERATIONAL COMMITTEE

- 2.6.1 Meetings will be held once a week, or otherwise agreed, and convened and chaired by the SITA project manager.
- 2.6.2 The Service Provider is responsible for drafting minutes of meetings and must be compiled and circulated within 3 (three) Business Days after each meeting.
- 2.6.3 This committee is responsible for project management and oversight of day-to-day activities by the Project Manager and Service Manager against the PW SOW including:
  - 2.6.3.1 monitoring the performance of all the PW Services;
  - 2.6.3.2 Site availability and readiness;
  - 2.6.3.3 PW Service improvement plans;
  - 2.6.3.4 Service Requests and Change Management;
  - 2.6.3.5 PW Service operations procedures;
  - 2.6.3.6 capacity management;
  - 2.6.3.7 Reports;
- 2.6.4 This committee shall provide inputs on:
  - 2.6.4.1 previous minutes and actions;
  - 2.6.4.2 project plans; and
  - 2.6.4.3 monthly Reports.
- 2.6.5 This committee shall provide outputs including:
  - 2.6.5.1 minutes and actions;
  - 2.6.5.2 risks and issues register;
  - 2.6.5.3 end of life report; and
  - 2.6.5.4 operations process updates.
- 2.6.6 The Service Provider must ensure that representatives, with the appropriate delegation of authority to take decisions on behalf of the Service Provider on the aspects listed in clause 0 above, attend this committee's meetings. This must include the Services Manager, Project Manager and lead technical engineer.

## 2.7 SERVICE REVIEW COMMITTEE

- 2.7.1 Meetings will be held within 10 (ten) Business Days of each Calendar Month end and will be chaired by the SITA Services Manager.
- 2.7.2 SITA is responsible for capturing minutes of meetings and it must be compiled and circulated within 3 (three) Business Days after each meeting.
- 2.7.3 The basis for discussion during this meeting will be the presentation of the Service Level Indicator Report and the Internet Statistics Log Report (in relation to the BB Services), and the Statistics Report (in relation to the PW Services). These reports can be summarised in a PowerPoint version for the meeting.
- 2.7.4 This may also act as the forum for raising detailed technical issues, including trend analysis of the network performance and the identification of service improvement opportunities, planning and tracking Service Requests (e.g. new Services), planning for expected changes in required capacity, upgrades and similar related issues.
- 2.7.5 Service Level Indicators will be reviewed in the meeting. The analysis and recommendations will be provided to SITA in writing.
- 2.7.6 The Service Provider must ensure that representatives, with the appropriate delegation of authority to take decisions on behalf of the Service Provider on the aspects listed in clauses to above, attend this committee's meetings. This must include the Services Manager (for BB and PW), Project Manager (for BB and PW) and the representatives fulfilling the financial and contract management roles.

## 3. MEETINGS

- 3.1 The Service Provider's identified personnel (in the clauses above) must attend each meeting of a relevant committee. In addition such other personnel (including subject matter experts) of the Service Provider, as are reasonably required by SITA given the purpose for such meeting, must attend such meetings.



- 3.2 The quorum for any meeting shall be those of the Service Provider's personnel that must attend such meeting (as per the clause above), plus at least 1 (one) representative of each of SITA and the WCG.
- 3.3 Meeting attendance will be managed according to the Service Level Indicators in paragraph D12.15 of the BB SOW (for the BB Services) and paragraph E.8.8 of the PW SOW (for the PW Services).
- 3.4 With the approval of SITA, which may be given or withheld on a meeting-by-meeting basis, individuals may participate in meetings remotely.
- 3.5 All meetings shall have formal attendance registers completed and meeting minutes will be taken. Apart from the Broadband Operational Committee, minutes shall be prepared by SITA unless, on a meeting-by-meeting basis, SITA directs the Service Provider to prepare the minutes. Meeting minutes and attendance registers must be stored electronically by the Service Provider in a cloud-based location that is accessible by SITA.
- 3.6 SITA (or the Service Provider, if SITA so requests) shall, in advance, prepare and circulate an agenda for the meeting and the other Parties may add additional items.
- 3.7 To the extent reasonably practicable, each Party shall circulate in advance any reports or documents for consideration at any meeting.
- 3.8 For committee meetings, each Party shall, to the extent reasonably practicable, minimise changes to its representatives from meeting to meeting.
- 3.9 Reasonable comments and changes shall be incorporated into the minutes.
- 3.10 The final minutes shall be subject to each Party's approval (not to be unreasonably withheld, delayed or conditioned).
- 3.11 The functions of each chairperson shall be to manage the proceedings of the meeting and issue all minutes of meetings.

- 3.12 The Parties shall hold such other ad-hoc meetings as SITA or the Service Provider may reasonably request. A minimum of five (5) Business Days' written notice (stating the time, place and agenda for such a meeting) shall be given to effectively call an ad-hoc meeting.
- 3.13 SITA and the Service Provider agree that the discussions at the meetings contemplated shall not serve to amend the Agreement, and that in the event of a conflict between such discussions and the provisions of the Agreement, the provisions of the Agreement shall continue to be in force unless and until the Parties execute an amendment to the Agreement.

#### **4. SITE LIST GOVERNANCE**

- 4.1 The Site List, which includes certain information related to the Services, and which was attached to the Agreement at the time of signature, will also be distributed and maintained in electronic version by the Parties and the WCG.
- 4.2 As per the BB SOW and PW SOW, following SITA's acceptance of any BB Services that have been modified, added or decommissioned, the electronic version of the Site List must immediately be updated by the Service Provider.
- 4.3 The electronic version of the Site List, as updated by the Parties and the WCG, will be approved by the Broadband and Public Wi-Fi Management Committee, from time to time. Such most recently approved version of the Site List will constitute the valid and applicable list of the Sites where the Services are required to be rendered.