**This copy of the standard service level [SLA] agreement of the Electoral Commission is provided for information only. Please note that the final SLA will be adapted by the Electoral Commission as deemed necessary and appropriate at the time.**



**SERVICE LEVEL AGREEMENT**

**BETWEEN**

**THE ELECTORAL COMMISSION**

**AND**

**………………..**

**SCHEDULE**

The herein after mentioned entities hereby enter into a Service Level Agreement comprised of the Schedule, Standard Terms and Conditions of Contract, Appendices and Annexures set out hereunder.

1. **THE PARTIES**

The Parties to this Agreement are:-

**THE ELECTORAL COMMISSION OF SOUTH AFRICA** (“the Electoral Commission”), a body established in terms of the Electoral Commission Act 51 of 1996 herein represented by ……………………………………..in his capacity as ………………………………….….. and duly authorised.

**Physical Address:**

Riverside Office Park

1303 Heuwel Avenue

Centurion

0157

**Postal Address:**

Private Bag X112

Centurion

0046

**TEL:** (012)622 …….

**FAX:** (012)622 ……

**Email:** chaploglouwg@elections.org.za

**AND**

**……………..** (“the Service Provider”) **…………………..**, herein represented by ……………… in his/her capacity as ……. and duly authorised thereto (hereinafter referred to as “the Service Provider”)

**Physical Address:**

……..

……..

…………..

………….

**Postal Address**

……..

……..

…..

**TEL: ………………**

**FAX: ……………..**

**Email: ……………………………………**.

**(hereinafter jointly referred to as the “PARTIES”)**

1. **APPOINTMENT**

The Electoral Commission hereby appoints the Service Provider as an independent contractor for the provision of certain services further described and stipulated in clause 5 of this Schedule.

1. **COMMENCEMENT AND DURATION**

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1. **PAYMENT AND REMUNERATION**

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* 1. ……………………………………...

1. **SCOPE OF SERVICES**

…………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………….….

1. **SPECIAL CONDITIONS IF APPLICABLE**

**SIGNED AND EXECUTED** at ............................................................... in the presence of

the undersigned witnesses on this .............................day of ....................................... 2016.

**AS WITNESSES:**

1. ........................................................... ………….............................................

For the **ELECTORAL COMMISSION**

2.............................................................

**SIGNED AND EXECUTED** at ............................................................... in the presence of

the undersigned witnesses on this ..............................day of ....................................... 2016.

**AS WITNESSES:**

1. .......................................................... …….....................................................

For the **SERVICE PROVIDER**

2............................................................

**STANDARD TERMS AND CONDITIONS OF CONTRACT**

1. **INTERPRETATION**

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

Unless a contrary intention clearly appears –

* 1. words importing –
     1. any one gender include the other gender;
     2. the singular includes the plural and *vice versa*; and
     3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;
  2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
     1. “Agreement” means the Schedule, the Standard Terms and Conditions of Contract, and any Appendices and Annexures hereto;
     2. “Contract Term” means the period commencing on and ending on the date stipulated in Clause 3 of the Schedule.
     3. “Day” means the period between any one midnight and the next or any part thereof;
     4. “Electoral Commission” means the Electoral Commission of South Africa, an organ of state established in terms of section 3 of the Electoral Commission Act, No. 51 of 1996;
     5. “Goods and/or Services” means the Goods and/or the Services as stipulated in clause 5 of the Schedule;
     6. “Good Industry Practice” means, in relation to the manner in which the Services are performed, using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
     7. “Party” and “Parties” means the Electoral Commission and the Service Provider and, “third party” means any other person or entity as the context requires;
     8. “Service Provider” means the entity identified in Clause 1 of the Schedule trading as such and which is contracted as an independent contractor by the Electoral Commission to deliver the Goods or to perform the Services and includes the legal successors to the Service Provider and permitted assignees;
  3. any reference in this Agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;
  4. any reference to an enactment is to that enactment as at the Effective Date and as amended or re-enacted from time to time;
  5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
  6. when any number of Days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or public holiday, in which case the last Day shall be the next succeeding Day which is not a Saturday, Sunday or public holiday;
  7. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
  8. where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation Clause;
  9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
  10. references to a “person” shall include an individual, firm, entity, company, corporation, juristic person, and any trust, organisation, association or partnership, whether or not having separate legal personality;
  11. references to “clauses”, “sub-clauses”, “Appendices” and “Annexures” are references to the clauses, sub-clauses, Appendices and Annexures of this Agreement;
  12. the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
  13. references to “this Agreement” shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
  14. references to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, notated or substituted from time to time;
  15. general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words;
  16. all approvals, acceptances, consents or similar actions by a Party required under this Agreement shall be in writing and shall not be unreasonably delayed or withheld.

1. **NOVATION AND SUBSTITUTION OF EXISTING AGREEMENTS**
   1. This Agreement constitutes the sole record of the agreement between the Parties with regard to the Goods or Services and shall be deemed to substitute all previous negotiations, arrangements, understandings or any other agreements (whether written or oral) between the Parties pertaining to these Goods or Services.
2. **SKILL, CARE AND DILIGENCE** 
   1. The Service Provider shall exercise the requisite skill/s, care and diligence that may reasonably be expected from a similar independent Service Provider in delivering the Goods and in performing the Services in terms of this Agreement.
3. **INDEMNITY AND LIABILITY**
   1. The Service Provider hereby indemnifies the Electoral Commission against any claim made against the Electoral Commission at the instance of whomsoever where such claim arises from any act or omission on the part of the Service Provider or any person for whose actions the Service Provider may be vicariously liable under this Agreement. Included in this indemnity is an indemnity against all legal costs, incurred as between attorney and client, and all other costs as may be incurred by the Electoral Commission in connection with any such claim.
   2. The Service Provider warrants that all its employees; subcontractors; agents and any/all delegates/persons in its employ will abide by the provisions of the Occupational Health and Safety Act (Act no. 107 of 2004). Further, that these employees; subcontractors; agents and any/all delegates/persons, if it is deemed necessary, will separately enter into an Occupational Health and Safety Agreement that will indemnify the Electoral Commission against any/all claims instituted against the Electoral Commission.
   3. Unless any statute or regulation or any other provision of this Agreement indicates otherwise, liability arising out of this Agreement, whether as a result of any act or omission by either Party or of any resource or agent of that Party, shall be determined in accordance with the common law of South Africa.
   4. The Service Provider further warrants that it is entitled to supply the Goods/Services to the Electoral Commission without interference by any third party. It expressly warrants that the manufacture and supply of the Goods/provision of the Services will not infringe the intellectual property rights (including registered and unregistered rights) of any third party and may not be restrained by any third party. In the event of an alleged infringement of any intellectual property rights and/or any attempt by a third party to restrain the supply of the Goods/Services to the Electoral Commission or the use thereof by the Electoral Commission, the Electoral Commission shall permit the Service Provider to defend any infringement or other proceedings, through its own attorneys, at the expense of the Service Provider. In the event of an interdict being granted to restrain the supply and/or the use of the Goods/Services, the Electoral Commission may, in its discretion, assume that the interdict will continue to bind the Electoral Commission indefinitely and may, in its discretion, obtain equivalent Goods/Services from suppliers other than the Service Provider in order to enable the Electoral Commission to conduct its business and meet its obligations.
   5. The Service Provider indemnifies the Electoral Commission against all and any loss, liability, damage, injury, cost, expense, penalty or interest and against any award of costs, on an attorney and own client basis, of whatsoever nature and howsoever arising if at any time the Service Provider is restrained from supplying the Goods/Services to the Electoral Commission and/or the Electoral Commission is restrained from using the Goods/Services.
   6. The Service Provider expressly undertakes, if it is at any time precluded from supplying the Goods/Services to the Electoral Commission and/or the Electoral Commission is at any time precluded from using the Goods/Services in the normal conduct of its activities:
4. to bear all costs and expenses of the Electoral Commission in obtaining equivalent Goods/Services in order for the Electoral Commission to conduct its business in a normal manner and to meet its obligations, whether the obligations are imposed on it by statute or agreement or in any other manner; and
5. in particular, to pay to the Electoral Commission all amounts expended by the Electoral Commission to enable the Electoral Commission to obtain the alternative Goods/Services in order for it to meet its obligations.
   1. The Service Provider acknowledges that the amounts expended by the Electoral Commission in order to enable it to meet its obligations may be greater than the amount payable to the Service Provider as a result of the award of the tender and/or this Agreement, taking into account the possible need for the Electoral Commission to obtain the Goods/Services on an urgent basis and that Goods/Services that it requires in order to meet its obligations may be more expensive than those supplied or to be supplied by the Service Provider.
   2. The Service Provider shall effect payment of any amount payable to the Electoral Commission within 10 (Ten) business days of receipt by the Service Provider of an invoice from the Electoral Commission, accompanied by proof of the amount that the Electoral Commission paid in connection with the alternative Goods/Services. If the Service Provider disputes its liability for the payment, it shall make payment to the Electoral Commission in respect of the aforesaid invoice under protest and may, thereafter, take whatever steps it considers to be appropriate to recover any amount that it may claim is not payable by it to the Electoral Commission.
   3. This whole Indemnity and Liability clause is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated.
6. **TIME AND RENEWALS**
   1. The Service Provider is obliged to commence with the Services as from the date, stipulated in clause 3 of the Schedule.
   2. Unless at the sole discretion of the Electoral Commission or subject to the provisions of clause 3 of the Schedule on whether this Agreement is renewable or not, it is expressly agreed that this Agreement will not create any expectations, rights or options to its renewal. The Service Provider will not acquire any right to provide any further Services if this Agreement is not renewed by mutual agreement between the Parties or a new agreement entered into.
7. **REPORTING**

The Service Provider shall report to the Electoral Commission or the Electoral Commission’s representative at such time/s and in such manner as the Electoral Commission may determine from time to time.

1. **RULES AND REGULATIONS**

The Service Provider shall be subject to comply with and adhere to all rules, regulations, customs, codes, discipline and directions that apply at any venue(s) where Good are delivered or Services are rendered to the Commission.

1. **TERMINATION**

**Termination due to insolvency**

* 1. The Electoral Commission shall have the right to terminate this Agreement with immediate effect if:

1. bankruptcy, insolvency, re-organisation or other proceedings analogous in nature and effect, are instituted by or against the Service Provider; or
2. the Service Provider is dissolved or liquidated, whether voluntarily or involuntarily; or
3. an administrator or trustee is appointed for all or a substantial part of the assets of the Service Provider.
   1. The Electoral Commission may terminate this Agreement in the circumstances mentioned in Clause 8.1 with immediate effect by written notice to the other Party.

**Termination due to breach**

* 1. Subject to Clause 11 of this Agreement, if a Party is in breach of a provision/s of this Agreement and fails to rectify such breach after having received a letter of demand from the innocent Party that stipulates the period in which the breach must be rectified; either Party shall be entitled to terminate this Agreement with immediate effect by written notice to the other Party.
  2. **Consequences of termination**
     1. Any termination of this Agreement shall be without prejudice to the rights and remedies of either of the Parties.
     2. Upon termination of this Agreement by the Electoral Commission in terms of Clause 8.1, the Electoral Commission shall have the right to appoint an alternative Service Provider to supply the outstanding Goods or to complete the outstanding Services in terms of this Agreement, and the Service Provider shall be liable for payment of the difference between the amount referred to in Clause 4 of the Schedule and the amount that the new Service Provider shall charge for the Goods/Services rendered.
     3. Subject to Clause 8.4.1 and upon termination of this Agreement, either of the Parties shall be entitled to claim from the other any amounts which are due to it under this Agreement upon the effective date of such termination, including the principle of set-off.

1. **GENERAL**

**Communication and Notices**

* 1. For the purposes of this Agreement, or with regard to any matter arising from or in connection with this Agreement, the Parties designate as their respective contact persons, and choose as their *domicilia citandi et executandi,* the contact persons and addresses appearing in Clause 1 of the Schedule.
  2. Either Party shall be entitled to change its *domicilium citandi et executandi* stipulated in Clause 1 of the Schedule above by giving the other Party 10 (ten) days prior written notice of such change.
  3. Any notice or communication required to be given under this Agreement shall be valid and effective only if in writing.
  4. Unless the contrary is proved, any notice or communication to a Party:

1. sent by prepaid registered post in a correctly addressed envelope shall be deemed to have been received on the 10th (Tenth) day after posting;
2. delivered by hand to the contact person mentioned in Clause 1 of the Schedule above or, to any other representative of the Party concerned during ordinary business hours;
3. sent by facsimile to its chosen facsimile number stipulated in Clause 1 of the Schedule above, shall be deemed to have been received on the date of dispatch, if the sender maintains a log created at the time of transmission indicating receipt.
   1. Notwithstanding anything to the contrary contained in this Agreement:
4. a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address and signed; and
5. an email sent by one Party to the other shall be deemed to constitute an effective notice under this Agreement only if:
6. the electronic mail message notice prominently states that it is being given under this Agreement.

**Governing Law and Ruling Language**

* 1. This Agreement shall be governed by and be construed in accordance with the South African law.
  2. All correspondence between the Parties and all documents pertaining to this Agreement shall be in English.

**Partial invalidity**

* 1. The invalidity of one condition of this Agreement shall not affect the validity of the other conditions.
  2. Any discrepancy resulting as a consequence of such invalidity referred to in 9.8 above, shall be filled by a condition consistent with the purpose of this Agreement.

**Representations and Warranties**

* 1. The Parties represent and warrant to each other that –

1. they have the power to enter into and exercise their rights and perform their obligations under this Agreement;
2. their entry into and the exercise of their rights and the performance of their obligations under this Agreement do not –
3. conflict with, or result in, any breach of any of the conditions of, or constitute a default under, any agreement or other instrument to which they are a party or by which they are bound;
4. contravene or conflict with the provisions of any law;
5. their obligations under this Agreement are legal, valid and binding obligations and enforceable; and
6. no litigation, arbitration, tax claim or administrative proceeding is, to the best of the knowledge of each of the Parties, threatening to restrain the entry into or exercise of any of its rights or performance of its obligations under this Agreement.

**Assignment**

* 1. Neither Party shall have the right to assign or transfer its rights and obligations under this Agreement, or any part thereof, without the prior written approval of the other Party.

**Confidentiality**

* 1. The Parties undertake to keep any information obtained from each other strictly confidential. Subject to Clause 9.13 below, the other Party shall not utilise, sell, publish or otherwise disclose such confidential information to any third party in any manner whatsoever, including by means of photocopy or reproduction, without the prior written consent of the Party who releases the information.
  2. Neither Party may disclose the confidential information without the prior written consent of the Party who releases such information, to such of the following persons who have a clear need to know for purposes of this Agreement:

1. employees of the Party concerned;
2. employees of a legal entity affiliated to the Party concerned; or
3. any professional consultant, contractor or agent retained by the Party concerned, in which case the Party concerned shall, prior to making any such disclosure, obtain an undertaking of confidentiality, in the same form and content as this Clause, from each such person.
   1. The confidential information remains the property of the Party concerned and shall be returned to that Party, if –
4. that Party demands its return at any time upon giving written notice to the other Party; or
5. this Agreement is terminated.
   1. This clause shall not apply to:
6. information in the public domain otherwise than by breach of this Agreement;
7. information that was not obtained under any obligation of confidentiality; and
8. information obtained from a third party who the receiving Party believes, after reasonable inquiry, is free to divulge the information so long as such information was not obtained by the receiving Party under any obligation of confidentiality to the third party.

***Force Majeure***

* 1. For the purposes of this Agreement, “*Force Majeure* Event” means any event or circumstance, or combination of events or circumstances, beyond the reasonable control of a Party occurring on or after the date on which this Agreement has commenced, that materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement: Provided that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care.
  2. If by reason of a *Force Majeure* Event a Party is wholly or partially unable to perform its obligations under this Agreement, the affected Party shall notify the other Party of the *Force Majeure* Event not later than 48 (Forty-eight) hours after the affected Party has become aware of the occurrence of that *Force Majeure* Event, describing that *Force Majeure* Event in reasonable detail and, to the extent that it can be reasonably determined at the time of the notice, a preliminary evaluation of the obligations affected and a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations.
  3. The affected Party shall take steps at its own cost reasonably required to restore its ability to perform its obligations under this Agreement, which are affected by the *Force Majeure* Event and shall continue to perform its obligations under this Agreement in so far as they are not so affected.
  4. Upon the occurrence, and during the continuation of the *Force Majeure* Event and the effect thereof –

1. the affected Party shall not be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay in performance has been caused by, or, contributed to such *Force Majeure* Event or its effect or by any combination thereof; and
2. the time limits and deadlines for the performance by the affected Party of its obligations under this Agreement, which are affected by such *Force Majeure* Event shall be extended day-for-day for as long as the affected Party is unable to perform, or is delayed in performing, such obligations because of the occurrence of, or the effect of, such *Force Majeure* Event:

Provided that:

1. No relief shall be granted to the affected Party pursuant to this *Force Majaure c*lause to the extent that such failure or delay in performance arises as a result of a failure by the affected Party to perform its obligations under this Agreement or would have nevertheless been experienced by the affected Party, had such *Force Majeure* Event not occurred; Other than for breaches of this Agreement by the other Party, and subject to Clause 8 above, the other Party shall not be liable for any loss or damage suffered by the affected Party as a result of a *Force Majeure* Event or its effect.
   1. The whole *Force Majeure* clause provisions do not apply if the Goods/Services are supplied or rendered after the proclamation of an election or during an ongoing election. In that eventuality, the Parties agree that the Electoral Commission shall have the right to appoint an alternative Service Provider to supply the outstanding Goods or to complete the outstanding Services.

**Variation**

* 1. This Agreement constitutes the sole and exclusive agreement between the Parties relating to the transactions and matters recorded herein, and no warranties, representations or other terms and conditions of whatsoever nature not expressly recorded herein, shall be of any force or effect.
  2. No variation of the terms and conditions of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their representatives.

**Indulgences**

* 1. No indulgence, extension of time, relaxation or latitude which any Party (“the grantor”) may show, grant or allow to any other Party (“the grantee”) shall constitute a waiver by the grantor of any of its rights and the grantor shall not thereby be prejudiced or prevented from exercising any of its rights against the grantee which may have then already arisen or which may thereafter arise.

**Commencement and Duration**

* 1. This Agreement shall commence upon the commencement date as stipulated in Clause 3 of the Schedule and shall terminate upon the delivery of all the Goods or upon the completion of all the Services to be rendered.

**No direct offer of employment**

* 1. Neither of the Parties shall directly solicit for employment any person who is employed by either Party while this person carries out any work in connection with this Agreement and for a period of 1 (One) year after the said person has ceased to carry out such work.

**Intellectual Property – N/A**

9.26 The Electoral Commission will retain copyright in all materials, including methodologies, know how, software and tools, provided to the Service Provider and which has been utilised by the Service Provider in the provision of the Goods/Services in the fulfilment of the Assignment.

1. **PERSONNEL**

The Service Provider shall be responsible for all actions of its staff and shall continue to be responsible in all ways for its own obligations as employer of its employees.

1. **SETTLEMENT OF DISPUTES** 
   1. In the event of any dispute between the Parties arising from this Agreement, other than a dispute on the protection of proprietary rights, the Party wishing to declare the dispute shall deliver to the other Party a written notice, which sets out:

(a) a brief description of the nature of the Dispute, including the amount involved, if any, and the date on which the Dispute arose; and

(b) the relief sought.

* 1. Within 10 (ten) days from the date of delivery of a notice of the dispute, the Parties shall attempt to settle such dispute by negotiation conducted in good faith among those representatives of each Party with the appropriate decision-making authority.
  2. If such individuals are unable to reach agreement within the said 10 (ten) day period, or such longer period as they may agree, the Dispute shall be referred to arbitration by a single arbitrator to be nominated by the Registrar of the Arbitration Foundation of Southern Africa (AFSA).
  3. In all respects the arbitration shall be conducted in accordance with the rules, requirements and procedures determined by AFSA.
  4. The Parties record that a non-refundable administration fee is payable on demand by AFSA, which fee shall be paid equally by the Parties.
  5. Any award, including an award for costs, made by the arbitrator shall be final and binding upon the Parties and shall be carried into effect by them and made an order of any competent court.
  6. The procedures in this Clause shall not prevent either Party from obtaining appropriate relief on an urgent basis from a competent court pending the decision of the arbitrator.
  7. This Settlement of Disputes Clause is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated or if other provisions of this Agreement are voidable or void.