

**AGREEMENT FOR PROFESSIONAL SERVICES**



<<ENTER CONTRACT DESCRIPTION AND MC NUMBER>>

**SHELL & BP SOUTH AFRICAN PETROLEUM  
REFINERIES (PTY) LTD  
("SAPREF")**

**REG.NO.1960/000007/07**

**AND**

**<< LEGAL ENTITY - ENTER FULL NAME  
INCLUDING CC/(PTY) LTD>>**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**TABLE OF CONTENTS**

<b>1.</b>	<b>PART</b>	<b>1 – GENERAL FORMS OF AGREEMENT .....</b>	<b>5-7</b>
<b>2.</b>	<b>PART</b>	<b>2 – LEGAL TERMS AND CONDITIONS .....</b>	<b>8-42</b>
<b>3.</b>	<b>PART</b>	<b>3 – PARTIES REPRESENTATIVES .....</b>	<b>48</b>
<b>4.</b>	<b>PART</b>	<b>4 – HSSE CONDITIONS.....</b>	<b>49-58</b>

**ADDENDUMS**

<b>5.</b>	<b>PART</b>	<b>5 – SCOPE OF WORK .....</b>	<b>XX</b>
<b>6.</b>	<b>PART</b>	<b>6 – COMMERCIAL TERMS.....</b>	<b>XX</b>

## AGREEMENT FOR PROFESSIONAL SERVICES

### INDEX

<b>PART 1 – GENERAL FORM OF AGREEMENT</b> .....	5
1. DEFINITIONS .....	5
2. STRUCTURE AND ORDER OF PRECEDENCE.....	5
3. START DATE AND DURATION .....	6
4. PARTIES OBLIGATIONS .....	6
5. ENTIRE AGREEMENT.....	6
<b>PART 2 – LEGAL TERMS AND CONDITIONS</b> .....	8
1. DEFINITIONS .....	8
2. APPOINTMENT OF CONTRACTOR.....	11
3. SPECIAL CONDITIONS .....	11
4. PARTIES REPRESENTATIVES .....	12
5. OBLIGATIONS OF THE CONTRACTOR.....	12
6. PROGRESS REPORTS AND INSPECTION AND TESTING OF WORK .....	14
7. ARTICLES OR SUBSTANCES SUPPLIED BY SAPREF.....	14
8. PERFORMANCE LEVEL.....	15
9. PERFORMANCE SECURITY .....	15
10. CONTRACT PRICE.....	16
11. VARIATIONS .....	17
12. CONDITIONS OF PAYMENT.....	19
13. MONTHLY STATEMENTS.....	20
14. SET OFF .....	20
15. RISK AND OWNERSHIP.. ..	21
16. WARRANTIES AND REPRESENTATIVES .....	21
17. LIMITATION OF LIABILITY.....	22
18. INDEMNITIES .....	22
19. CLAIMS .....	23
20. INSURANCE .....	24
21. INDUSTRIAL RELATIONS .....	25
22. COMPLIANCE .....	28
23. OCCUPATIONAL HEALTH AND SAFETY .....	32
24. OCCUPATIONAL INJURIES AND DISEASES .....	34
25. PREVENTION AND REMEDIATION FOR BREACH OF HSSE CONDITIONS .....	35
26. SAPREF SECURITY.....	35
27. TAXATION (INDEPENDENT CONTRACTOR).....	36
28. INTEREST .....	37

**AGREEMENT FOR PROFESSIONAL SERVICES**

29. LIENS ..... 37

30. PROTECTION OF RIGHTS ..... 37

31. SUB-CONTRACTING, CESSION AND ASSIGNMENT ..... 37

32. CONFIDENTIALITY ..... 38

33. NON-SOLICITATION OF EMPLOYEES ..... 39

34. INTELLECTUAL PROPERTY RIGHTS ..... 39

35. FORCE MAJEURE ..... 41

36. BREACH AND TERMINATION ..... 42

37. DISPUTE RESOLUTION ..... 43

38. GOVERNING LAW AND JURISDICTION ..... 45

39. NOTICES AND ADDRESSES FOR SERVICE ..... 45

40. MISCELLANEOUS LEGAL PROVISIONS ..... 45

**41. SAPREF AUDIT RIGHTS ..... 46**

**PART 3 – PARTIES REPRESENTATIVES ..... 48**

**PART 4 – HSSE CONDITIONS ..... 49-58**

**AGREEMENT FOR PROFESSIONAL SERVICES****PART 1  
GENERAL FORM OF AGREEMENT**

**This agreement** made between:

**SHELL & BP SOUTH AFRICAN PETROLEUM REFINERIES (PTY) LTD**

**REGISTRATION NUMBER 1960/000007/07**

**("SAPREF")**

and

**[<< LEGAL ENTITY >>]**

**REGISTRATION NUMBER [ << ENTER NUMBER >> ]**

**("the contractor")**

WHEREAS **SAPREF** operates as a Crude Oil Refinery at its plant in Prospecton, Durban, South Africa and regards its business as highly specialised in nature;

AND WHEREAS **SAPREF** requires, in the course of its business, a **contractor** with the necessary knowledge, experience and expertise to supply [**<< DESCRIPTION OF SERVICES>>**] for **SAPREF** meeting the minimum specifications and requirements as set out in **Part 5** ("the **services**");

**AND WHEREAS** the **contractor** has carefully examined **Part 5** and has represented to **SAPREF** that the **contractor** has the necessary knowledge, experience, expertise and resources and is willing and able to supply the services according to the detailed specifications as set out in **Part 5** for the consideration set out in and in accordance with this **agreement**.

The parties hereby agree as follows:

**1. DEFINITIONS**

Unless otherwise specified, words and expressions used in this **agreement** shall have the meaning set out in clause 1 of **Part 2**.

**2. STRUCTURE AND ORDER OF PRECEDENCE**

2.1 The following documents shall be read as one document and form the agreement:

- 2.1.1 Part 1 General Form of Agreement**
- 2.1.2 Part 2 Legal Terms and Conditions**
- 2.1.3 Part 3 Parties Representatives / Addresses**
- 2.1.4 Part 4 HSSE conditions**
- 2.1.5 Part 5 Scope of Services**
- 2.1.6 Part 6 Commercial Terms**

## AGREEMENT FOR PROFESSIONAL SERVICES

- 2.2 The parts shall be read as one document and in the event of ambiguity or contradiction between any of these documents the order of precedence shall be as listed above with the exception that any **amendments**, reduced to writing and signed by the parties, to the Legal Terms and Conditions will take precedence over **Part 2**.

### 3. START DATE AND DURATION

- 3.1 Despite the date the parties sign this **agreement**, this **agreement** will endure for an initial period ("the initial period") of << PERIOD >> subject to an annual renewal of the **agreement** based on due and proper performance by **contractor**,
- 3.2 The **agreement** will commence on << START DATE >> and subject to its other provisions, will terminate on << END DATE >> ("the termination date").
- 3.3 **SAPREF** may, either on or before the termination date, give written notice to the **contractor** of **SAPREF's** intention to extend this **agreement** ("the extension period"). Such extension period shall not be longer than 12 **months**.
- 3.4 Upon receipt of **SAPREF's** notice and if the **contractor** wishes to extend the **agreement**, the **contractor** must within 5 (five) **days** give written notice to **SAPREF** of the **contractor's** acceptance of the renewal period.
- 3.5 Notwithstanding anything else to the **contractor**, this **agreement** shall be subject to 1 (one) extension and will terminate on expiry of the extension period, or in such other manner as provided for in this **agreement**, and no further contract extensions will be allowed.

### 4. PARTIES OBLIGATIONS

- 4.1 In accordance with the terms and conditions of the **agreement**, the **contractor** shall perform and complete the supply of the **services** and **SAPREF** shall pay the **contract price**.

### 5. ENTIRE AGREEMENT

- 5.1 The **agreement** constitutes the entire agreement between the parties and, save where otherwise stated in the **agreement**, supersedes all prior negotiations, representations or agreements related to the **agreement**, either written or oral. No **amendments** to the **agreement** shall be effective unless evidenced in writing and signed by the parties.

**AGREEMENT FOR PROFESSIONAL SERVICES**

THUS DONE AND SIGNED AT .....ON THIS THE.....DAY OF ..... 20

.....  
Signature

.....  
Name

.....  
Designation

Duly authorized to act & bind the **Contractor**

AS WITNESSES:

1.....

2.....

THUS DONE AND SIGNED AT .....ON THIS THE.....DAY OF ..... 20

.....  
Signature

.....  
Name

.....  
Designation

Duly authorized to act & bind **SAPREF**

AS WITNESSES:

1.....

2.....

**AGREEMENT FOR PROFESSIONAL SERVICES****PART 2  
LEGAL TERMS AND CONDITIONS****1. DEFINITIONS**

- 1.1. The following definitions shall have the meanings hereby assigned to them and shall be used for the purpose of interpreting **Part 2** of this **agreement**:
- 1.1.1. "**Amendment**" shall mean any change to the **contractor** other than a **variation**;
- 1.1.2. "this **Agreement**" means all the parts of this **agreement** as described in Part 1 together with all annexures thereto;
- 1.1.3. "**Business Day**" means any **Day** other than a Saturday, Sunday or South African Public Holiday;
- 1.1.4. "**COID Act**" means the Compensation for Occupational Injuries and Diseases Act, 1993;
- 1.1.5. "**Completion**" shall mean **completion** of the supply the **services**, or any separately identified section or part of the supply the **services**, by the **contractor**;
- 1.1.6. "**Confidential Information**" shall include but not be limited to the terms of this **agreement**, trade information, know-how, financial records, records of any past, present or prospective employee/s, technical data, commercial information, formulae, processes, manufacturing methods and **confidential information** as to the business and affairs of **SAPREF** or any other information which is not readily available to the public;
- 1.1.7. "**Contractor's Personnel**" means the **contractor's** employees, agents, **contractor** and **sub-contractor**, and their employees;
- 1.1.8. "**Contract price**" shall mean the price payable by **SAPREF** to the **contractor** for the punctual and satisfactory supply of the **services** as set out in **Part 5**;
- 1.1.9. "**Contractor representative**" shall mean that person named in **Part 3**;
- 1.1.10. "**Day**" means a calendar **Day**;
- 1.1.11. "**Force Majeure**" will include fire, explosion, flood, riot, war, terrorist attack, accident, act of God, **pandemic, epidemic,** embargo, legislation, regulation or directive having the force of law, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, local or other authority, non-availability or rationing of raw material worldwide, non-



**AGREEMENT FOR PROFESSIONAL SERVICES**

availability of electricity to **SAPREF**, failure of **SAPREF's contractor** to supply raw materials to **SAPREF** or a breakdown or malfunction of **SAPREF's** plant, strikes, labour disputes, lock-out or any other cause resulting in the impossibility of performance which is beyond the control of the affected party whether similar or dissimilar to the causes described above.

- 1.1.12. **"HSSE Conditions"** means **SAPREF's** Health, Safety, Security and Environmental standards as referred to in clause 23.4 and more fully detailed in **Part 4**
- 1.1.13. **"Intellectual Property (IP) Rights"** include, without limitation, the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and **confidential information** and may include:
- 1.1.13.1. **Background IP** means any **Intellectual Property Rights** of the **contractor** which
- 1.1.13.1.1. are in existence at the date of this **agreement**; or
- 1.1.13.1.2. come into existence after the date of this **agreement** otherwise than in connection with this **greement**.
- 1.1.13.2. **Principal Background IP** means any **Intellectual Property Rights** of **SAPREF** which:
- 1.1.13.2.1. are in existence at the date of this **agreement**; or
- 1.1.13.2.2. come into existence after the date of this **agreement** otherwise than in connection with this **agreement**.
- 1.1.13.3. **Project IP** means all **Intellectual Property Rights** (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the supply of the **services** or this **agreement** (including without limitation all **Intellectual Property Rights** developed by the **contractor** in supplying the **services** and any **Intellectual Property Rights** in the **technical materials** provided by **SAPREF** to the **contractor**) and any system or software developed, information processes and technology used in devising, developing or implementing the **services**, any improvements or discoveries in relation thereto and all records, data, documents, drawings, plans and electronic or other information

## AGREEMENT FOR PROFESSIONAL SERVICES

prepared or used by the **contractor** or by its personnel pursuant to this **agreement**.

- 1.1.13.4. **Technical Materials** include plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this **agreement**;
- 1.1.14. **"Key Performance Indicators"** means the standards of performance to be agreed by **SAPREF** and the **contractor** in order to measure and monitor the **contractor's** performance in the supply of the **services**;
- 1.1.15. **"Month"** means a **Month** calculated from a particular **day** in one **Month** to the **day** before the **day** numerically corresponding to it in the following **month**
- 1.1.16. **"OHS Act"** means the Occupational Health and Safety Act, 1993;
- 1.1.17. **"OHS Regulations"** means the Regulations promulgated in terms of the **OHS Act**;
- 1.1.18. **"Performance security"** means the security to be provided by the **contractor** in accordance with clause 6 for the due performance of the services
- 1.1.20. **"PPE"** means personal protective clothing and equipment to be used by the **contractor** on **SAPREF's premises** in terms of **SAPREF's HSSE** requirements;
- 1.1.21. **"SAPREF's Premises"** means the property on which the refinery is situated and **SAPREF** controlled sites at Island View and Bayhead within the port of Durban, the single buoy mooring (SBM) located approximately 1.4 nautical miles on bearing 150° offshore from Reunion Rocks, the silt canal adjacent to the port of Durban and/or any other site owned, operated or leased by **SAPREF**;
- 1.1.22. **"SAPREF's Property"** means any plant, equipment, tools, appliances and/or other property and items that **SAPREF** may provide to the **contractor** to enable the **contractor** to supply the **services**;
- 1.1.23. **"SAPREF representative"** shall mean that person named in **Part 3**;
- 1.1.24. **"Services"** means all the **services** to be carried out by the **contractor** in accordance with this **agreement** and as specified in **Part 5** hereof;
- 1.1.25. **"Sub-contract"** shall mean any contract between the contract and any party (other than the company or any employees of the **contractor**) for the performance of any part of the **services**;

## AGREEMENT FOR PROFESSIONAL SERVICES

- 1.1.26. **"Sub-contractor"** shall mean any party (other than the **contractor**) to a **sub-contract**;
- 1.1.27. **"Third party"** shall mean any party other than the company and the **contractor**, unless expressly stated otherwise in the contract;
- 1.1.28. **"Variation"** shall mean any change to the **services** described in clause 11;

- 1.2. Whenever any number of **day** is prescribed, it excludes the first and includes the last **day** unless the last **day** falls on a Saturday, Sunday or South African public holiday in which case the last **day** will be the next succeeding **business day**.
- 1.3. Unless inconsistent with the context, words signifying any one gender must include the other, words signifying the singular must include the plural and *vice versa* and words signifying natural persons will include artificial persons and *vice versa*.
- 1.4. Clause headings are for convenience only and are not to be used in the interpretation of the clause to which they relate.

### 2. APPOINTMENT OF CONTRACTOR

- 2.1. **SAPREF** appoints the **contractor** to supply the **services** for **SAPREF** in accordance with and as specified in this **agreement**.
- 2.2. The **contractor** acknowledges that the **contractor** is an independent **contractor** and is not an employee or agent of **SAPREF**. The **contractor** must ensure that it, its employees, and **sub-contractor** do not represent to any **third party** that the **contractor**, its employees, and **sub-contractors** are **SAPREF's** employees or agents.
- 2.3. The appointment of the **contractor** to supply the **services** for **SAPREF** is on a non-exclusive basis and does not in any way prevent **SAPREF** from appointing any other **third party** to supply the **services** or other similar **services**.

### 3. SPECIAL CONDITIONS

- 3.1. Despite any provisions to the contrary in this **agreement** or the annexures, the following special conditions will apply to this **agreement**:
- 3.1.1. this **agreement** is subject to a maximum aggregate value limit of R[<< ENTER RAND VALUE >>] ("the limit"); and
- 3.1.2. the **contractor** must monitor the value of the **services** rendered to **SAPREF** by the **contractor** ("the aggregate value") and must immediately notify **SAPREF** in writing when the aggregate value exceeds 80% of the limit;
- 3.1.3. If the aggregate value at any time exceeds the limit, this **agreement** will immediately terminate without notice to the **contractor**.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 3.2. **SAPREF's** annual and **monthly** estimated requirements for the **services** are estimates only and **SAPREF** does not warrant in any way whatsoever that it will require the **contractor** to supply the **services** up to the limit within the initial period or the renewal period nor does **SAPREF** warrant that it will purchase any maximum or minimum quantities of the **services** from the **contractor**.

### 4. PARTIES' REPRESENTATIVES

- 4.1. The parties' **representatives** are reflected in **Part 3**.
- 4.2. Either party may, by written notice to the other, change their respective **representatives**.
- 4.3. The **contractor** must ensure that the person appointed in terms of **Part 3** has authority from the **contractor** to represent it in all matters and is at all times during normal business hours, and after hours in the case of an emergency, available to liaise with **SAPREF's representative**.
- 4.4. Any instruction or notice which **SAPREF** gives to the **contractor's representatives** shall be deemed to have been given to the **contractor**.

### 5. OBLIGATIONS OF THE CONTRACTOR

- 5.1. The **contractor** must, at the **contractor's** cost:
- 5.1.1. supply the **services** in accordance with **Part 5** and the other terms and conditions of this **agreement**;
  - 5.1.2. supply the **services** at the **contractor's** risk;
  - 5.1.3. supply the **services** timeously, time being of the essence in relation to the supply of the **services** and if the **services** are not timeously or properly supplied or delayed beyond a date specified by **SAPREF** or if **SAPREF** has reasonable grounds for believing that the **contractor** will be unable to perform or complete performance of the **services** on or before the specified date, **SAPREF** may, at its discretion and without prejudice to any of **SAPREF'S** rights, cancel this **agreement** in whole or in part and recover damages or enforce this **agreement** and recover damages. **SAPREF** may further to the recovery of damages, recover penalties from the **contractor** for the delay at the rate of 1% of the **contract price**, per week or part thereof that the delay persists;
  - 5.1.4. not, outside of the scope of this **agreement**, interfere with any of **SAPREF's** activities on **SAPREF's premises**;
  - 5.1.5. comply with, and ensure that the **contractor's personnel** comply with all directions and instructions given by **SAPREF'S representatives** to the **contractor** and comply with all the provisions of this **agreement**;
  - 5.1.6. ensure that the **contractor** and the **contractor's personnel** who provide the **services** have the qualifications (the validity

## AGREEMENT FOR PROFESSIONAL SERVICES

- of which the **contractor** warrants) and the experience and skills from time to time specified by **SAPREF**;
- 5.1.7. ensure that the **contractor's personnel** who provide the services perform all tasks required by **SAPREF** competently, efficiently and timeously in a co-operative manner with the required degree of skill and care and in accordance with the **agreement**;
  - 5.1.8. ensure that the **contractor's personnel** who provide the **services** deliver only work of a high standard;
  - 5.1.9. verify the qualifications of all the **contractor's personnel** who provide the **services** and maintain detailed records thereof in a form and manner approved by **SAPREF** in writing and give **SAPREF** access to those records on request;
  - 5.1.10. ensure that **SAPREF's premises** are left secure, clean, orderly and fit for immediate use on **completion** of the **services**;
  - 5.1.11. ensure that if the **contractor** provided **SAPREF** with a demonstration or a result (which may include any electronic presentation, data or information, any tender documents or request for quotation document) of the **services** before the conclusion of this **agreement**, the **services** must, in addition to conforming with the scope of the **services** in **Part 5** or if agreed, to any **variations** thereof in terms of clause 11 below, correspond in nature and quality with the **services** so demonstrated and/or the result achieved as the case may be;
  - 5.1.12. ensure that the **services** are performed by appropriately qualified, experienced and trained personnel;
  - 5.1.13. ensure that the **services** are carried out in good faith and are performed with due care, skill and diligence;
  - 5.1.14. ensure that the **services** are fit for the purposes for which the **services** are intended; and
  - 5.1.15. where the **contractor** is required to design something exclusively for **SAPREF**, ensure that the designs are the **contractor's** original work and the result of the **contractor's** own efforts and expertise and such designs do not infringe any **intellectual property rights** of any person;
- 5.2. The **contractor** must immediately upon receipt of a notice from **SAPREF**, at its own risk and expense, promptly repair, replace or re-execute, at **SAPREF's** option, any portion of the **services** which within a period of 12 **months** from the date upon which it is performed for **SAPREF** is found to be defective in design, workmanship, material or suffer from any non-conformity with this **agreement**. The **contractor** is liable to **SAPREF** for any other costs, damages or losses incurred or suffered by **SAPREF** as a result of such defects or non-conformity.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 5.3. The obligations of the **contractor** in terms of clause 5.2 above must, in respect of all repaired, replaced or re-executed the **services**, be extended for a further period of twelve (12) **months** from the date of **completion** of such repair, replacement or re-execution.
- 5.4. Notwithstanding the time period mentioned in clause 5.3 above, the obligations of the **contractor**, in respect of latent or other defects in the **services** which have not manifested themselves prior to the expiry of the **12 month** period, shall be deemed to arise when **SAPREF** becomes aware of the defect.
- 5.5. **Services** supplied prior to the agreed date of performance will, for the purpose of this **agreement**, including the conditions of payment, be deemed to have been performed on the stipulated performance date.

### 6. PROGRESS REPORTS AND INSPECTION AND TESTING

- 6.1. The **contractor** must, at the request of **SAPREF**, provide progress reports in respect of the supply of **services**. Such documentation must provide sufficient detail to allow **SAPREF** to ascertain whether the **services** are in conformity with this **agreement**.
- 6.2. The **contractor** must ensure that the **contractor's representative**, at **SAPREF'S** request, attends all meetings convened by **SAPREF** relating to the performance of the **services**.
- 6.3. At any time, **SAPREF** may, at its cost, either itself, through its agent or any other **Third Party** inspect the **services** or conduct tests on the **services**.
- 6.4. Despite the provisions of clause 6.3 above, if in **SAPREF's** opinion, any of the **services** does not comply with **Part 5** or the provisions of this **agreement**; and **SAPREF** requires the **services** to be inspected or tested (which inspection or testing must be done in terms of **SAPREF's** requirements) either prior to, during or after supply of **services**, the **contractor** must, at **SAPREF's** option, either procure such **third parties** or the **contractor** itself to inspect or test the **services**. The **contractor** must supply all reports or documentation as required by **SAPREF** relating to such inspections or testing. The **contractor** will be liable for all costs in this regard.
- 6.5. No such testing or inspection, or failure of **SAPREF** to identify any defects during such testing or inspection, will relieve the **contractor** of any of its obligations to **SAPREF** or be deemed to constitute final approval of the **services**.
- 6.6. Without prejudice to **SAPREF's** rights in terms of this **agreement**, **SAPREF** may either before or within a reasonable time period after supply of **services**, reject the **services** either in whole or in part, which during testing or inspection in terms of this clause 6, do not comply with the requirements of this **agreement** or are, or will be otherwise defective, in which event clauses, 5.2, 5.3 and 5.4 above will apply.

### 7. ARTICLES OR SUBSTANCES SUPPLIED BY SAPREF

## AGREEMENT FOR PROFESSIONAL SERVICES

- 7.1. **SAPREF's property** will remain in the ownership of **SAPREF** and must only be used for the purposes of fulfilling the **contractor's** obligations under this **agreement**.
- 7.2. The **contractor** must keep **SAPREF's property** in good order and condition, subject, in certain specified cases, to fair wear and tear.
- 7.3. The **contractor** is responsible and must compensate **SAPREF** for any loss or damage to or waste of **SAPREF's property** by the **contractor's personnel**.
- 7.4. **SAPREF's property** may not be used without **SAPREF'S** prior written consent unless otherwise provided for in this **agreement**.
- 7.5. Where **SAPREF's property** is made available or supplied to the **contractor**, including but not limited to tools and material, the **contractor** must, before it is used, take all steps necessary to ensure, as far as reasonably practical, that the article or substance complies with all the requirements prescribed by the **OHS Act** and the **OHS Regulations** and will be safe and without risks to health when properly used.
- 7.6. The **contractor** indemnifies and holds **SAPREF** harmless against and for any claims, loss, damage or costs (including costs on an attorney and own client scale) arising out of or in connection with the use by the **contractor** of **SAPREF'S property**.
- 7.7. The **contractor** is liable for any loss or wastage of or damage to **SAPREF's property** from the time of delivery of **SAPREF's property** to the **contractor** until such time as **SAPREF's property** is returned to **SAPREF**, fair wear and tear excluded.

### 8. PERFORMANCE LEVEL

- 8.1. The objectives of **SAPREF** are to engage efficiently, responsibly and profitably in crude oil refining and other selected businesses. **SAPREF** is obligated to maximise the return to its shareholders while respecting **SAPREF's** people, the community and the environment. With this in mind, **SAPREF** seeks a high standard of performance within **SAPREF** and by its **contractor's** and suppliers in order to maintain a long-term position in this competitive environment.
- 8.2. **SAPREF** therefore requires that **Key Performance Indicators (KPI's)** aligned with **SAPREF's KPI's** be agreed from time to time between **SAPREF** and the **contractor** in order to measure and monitor the level/s of contract performance of the **services**.
- 8.3. The agreed **KPI's** shall be deemed to form part of this **agreement** and shall include but not be limited to adherence to safety and environmental standards; adherence to quality controlled plan and procedures and the implementation of business improvement and efficiency and cost saving initiatives by the **contractor** etc.
- 8.4. Failure by the **contractor** to satisfy the performance levels referred to in clause 8.3 above shall be deemed to constitute a material breach of this **agreement** and may result in invoking the provisions of clause 36 below.



## AGREEMENT FOR PROFESSIONAL SERVICES

8.5. In line with **SAPREF's** objective of operational excellence, both **SAPREF** and the **contractor** agree to ensure that the **services** are carried out as efficiently and as cost effectively as possible.

### 9. PERFORMANCE SECURITY

9.1. If required by **SAPREF**, the **contractor** shall immediately on signing the agreement provide **SAPREF** with a **performance security** acceptable to **SAPREF** for 10% (ten percent) of the **contract price** in the form issued by a first class South African or International bank acceptable to **SAPREF**.

9.2. The **performance security** shall be valid until the **contractor** has executed, completed, and remedied all defects in the **services** in accordance with this **agreement**.

9.3. Provided that no claims against the **performance security** are outstanding, the **performance security** shall be returned to the **contractor** within 30 **days** of the **completion** of the **services** or the remedying of all defects, whichever is the later.

9.4. **SAPREF** undertakes in every case to, prior to making a claim under the **performance security**, notify the **contractor** in writing stating the nature of the default in respect of which the claim is to be made and the amount of the claim.

### 10. CONTRACT PRICE

10.1. Subject to proper compliance by the **contractor** with the provisions of this **agreement**, the **contract price** payable by **SAPREF** to the **contractor** for the punctual and satisfactory supply of the **services** is set out in **Part 6**.

10.2. Subject to clauses 10.3 to 10.4 below, the price is fixed and will not be subject to escalation or adjustment for the full duration of this **agreement**. In the event that the contractor, in full compliance with clause 8.3 above, motivates for a price escalation during the term of the agreement and should this be agreed to by **SAPREF**, then **SAPREF** shall have the sole discretion to determine the indices that will be taken into account in determining the escalation..

10.3. **SAPREF** may, at any time call for tenders for supply of the **services** in order to test the market.

10.4. **SAPREF** will have the right, at any time, to claim a price reduction from the **contractor**:

10.4.1. where **SAPREF** has reason to believe that the **contractor** is supplying the **services** at lower prices for **third parties** on similar terms and conditions to those contained in this **agreement**; or

10.4.2. where **SAPREF** has reason to believe that another **contractor** is able to perform the **services** for **SAPREF** at lower prices and otherwise on terms and conditions no less favourable than those contained in this **agreement**.



## AGREEMENT FOR PROFESSIONAL SERVICES

- 10.5. In circumstances in clause 10.4.1 above, **SAPREF** will notify the **contractor**, where after the **contractor** will be afforded the opportunity to reduce its prices within 30 **days**. If within such 30 **day** period the parties are unable to reach agreement on such reduced prices, **SAPREF** may on 30 **day** written notice to the **contractor** terminate this **agreement**.
- 10.6. In circumstances in clause 10.4.2 above, **SAPREF** will notify the **contractor**, where after the **contractor** will be afforded the opportunity, within 30 **day** of such notification, to match and meet the prices of such other **contractor**. If within such 30 **day** period, the **contractor** cannot match and meet such prices, **SAPREF** may on 30 **day** written notice terminate this **agreement**.
- 10.7. Neither party will have any claim whatsoever against the other arising from any termination in terms of clauses 10.5 and 10.6 above.

### 11. VARIATIONS

- 11.1. The **contractor** shall not alter, amend, omit, add to or otherwise vary any part of the **services** unless so instructed by **SAPREF** by means of:
- 11.1.1. a written instruction given by **SAPREF** at any time in accordance the terms of this **agreement**; or
  - 11.1.2. a written **variation** order made in terms of clause 11.1.1 above
  - 11.1.3. a formal **contract amendment** made in terms of clause 40.4 below
- 11.2. **SAPREF Instruction**
- 11.2.1. If the **contractor** is of the opinion that any instruction given by **SAPREF** in terms of clause 11.1.1 above may give rise to an extension of the time for the **completion** of the **services** or an increase in the **contract price** the **contractor** shall:
    - 11.2.1.1. notify **SAPREF** thereof in writing within 3 **days** of receipt of such instruction; and
    - 11.2.1.2. not proceed with the instruction until **SAPREF** confirms such instruction in writing to the **contractor**.
- 11.3. Notwithstanding clause 11.2.1 above, **SAPREF** shall be entitled at its discretion by written notice to the **contractor** require the **contractor** to immediately proceed with an instruction in which event the provision of clause 11.4 below shall apply.
- 11.4. The **contractor** shall promptly carry out **SAPREF** instructions given in terms of clause 11.3 above. The **contractor** and **SAPREF** shall endeavour to agree the effect of such instruction on the time for **completion** and/or the **contract price**. Should **SAPREF** and the **contractor** agree thereon then **SAPREF** shall issue a suitable **variation** order. Should **SAPREF** and the **contractor** fail to agree then the matter shall be determined in accordance with clause 11.7 below.

## AGREEMENT FOR PROFESSIONAL SERVICES

### 11.5. Variation Order

- 11.5.1. Alterations, **amendments**, omissions, additions to or other **variations** to the **services** may be ordered by **SAPREF**, by way of a written **variation** order, as follows:
- 11.5.1.1. **SAPREF** shall not issue a **variation** order without first consulting the **contractor** but may issue a **variation** order without first giving an instruction.
- 11.5.1.2. Where **SAPREF** and the **contractor** have agreed upon the effect of the **variation** order on the time for **completion** of the **services** and/or the **contract price**, **SAPREF** shall issue a written **variation** order to be signed by the **contractor**.
- 11.5.2. Unless otherwise directed in writing by **SAPREF**, the **contractor** shall not commence work under a **variation** order until he has signed and returned the **variation** order to **SAPREF**.
- 11.5.3. No payment shall be made under any **variation** order which has not been signed by **SAPREF** and the **contractor** saves in respect of a **variation** order referred to in clause 11.5.4 below.
- 11.5.4. **SAPREF** shall be entitled, notwithstanding clause 11.5.2 above, to direct the **contractor** to do anything which constitutes an alteration, **amendment**, omission, addition or other **variation** to the **services** notwithstanding that the **contract price**, time for **completion** and program implications thereof have not yet been agreed between **SAPREF** and the **contractor** and may issue a **variation** order to that effect. The **contractor** and **SAPREF** shall endeavour to agree the effect of any such **variation** order on the **contract price** or on the time for **completion** or both (as may be applicable). If they fail to agree then the matter shall be determined in accordance with the provisions of sub-clause 11.7 below.

### 11.6. Formal Amendment of Agreement

- 11.6.1. This **agreement** may be varied by formal written **amendment** without a preceding **SAPREF** instruction or **variation** order. No **amendment** shall be effective unless reduced to writing and signed by **SAPREF** and the **contractor**. No payment shall be made in respect of any **amendment** prior to its execution by the **contractor**. Any dispute in respect of payment following from such an **amendment** will be dealt with in respect of clause 11.7 below.
- 11.7. If, resulting from a **SAPREF** instruction or the initiation of a **variation** order or the formal **amendment** of the **agreement**, the **contractor** and **SAPREF** are unable to agree on the adjustment of the **contract price**:
- 11.7.1. the adjustment shall be determined in accordance with the rates specified in the schedule of prices; or

## AGREEMENT FOR PROFESSIONAL SERVICES

- 11.7.2. if the rates contained in the schedule of prices are not directly applicable to the specific supply of **service** in question, then suitable rates shall be established by **SAPREF** reflecting the level of pricing in the schedule of prices; or
- 11.7.3. where rates are not contained in the said schedule or where for any reason the provisions of clauses 11.7.1 or 11.7.2 above are not appropriate, then the amount of the adjustment in the **contract price** shall be such as is in all the circumstances reasonable.
- 11.7.4. if, resulting from a **SAPREF** Instruction or the initiation of a **variation** order, or the formal **amendment** of the **agreement** the **contractor** and **SAPREF** are unable to agree on the applicable **variation** in the time for **completion** then such **variation** in the time for **completion** shall be such as is in all the circumstances reasonable.
- 11.7.5. **SAPREF** shall:
- 11.7.5.1. make an initial determination of the relevant adjustment in the **contract price** on the basis set out in clause 11.7.1 above or of any extension in the time for **completion** on the basis set out in clause 11.7.4 above;
- 11.7.5.2. communicate its said determination to the **contractor** in writing;
- 11.7.6. In the event that the **contractor** is dissatisfied with the adjustment of the **contract price** or time for **completion** as determined by **SAPREF**, in accordance with clause 11.7.5.1 above, then the **contractor** shall submit a claim in accordance with the provisions of clause 19 below.
- 11.7.7. The **services** shall not be delayed pending agreement between the **contractor** and **SAPREF** regarding any extension of the time for **completion** or adjustment to the **contract price**.
- 11.7.8. In any case where the **contractor** is instructed to proceed with a **SAPREF** instruction or a **variation** order prior to the determination of the adjustment to the **contract price** in respect thereof the **contractor** shall keep accurate records of the cost of undertaking the relevant instruction or **variation** and of time expended thereon. Such records shall be open to inspection by **SAPREF** at all reasonable times.

## 12. CONDITIONS OF PAYMENT

- 12.1. The **contractor** must on a **monthly** basis, either by hand delivery or post to att: ACCOUNTS - P O Box 26312 Isipingo Beach, 4115 (a further copy may be sent via e-mail to [accounts@sapref.com](mailto:accounts@sapref.com)), provide **SAPREF** with an original tax invoice for services supplied ("invoice") which must include or be supported by the following details:

- 12.1.1. **SAPREF's** purchase order number;

**AGREEMENT FOR PROFESSIONAL SERVICES**

- 12.1.2. the **work** and/or material mescode;
  - 12.1.3. the total price in respect of the supply of the **work**;
  - 12.1.4. the amount due in respect of VAT;
  - 12.1.5. the **contractor's** VAT registration number;
  - 12.1.6. **SAPREF's** VAT registration number;
  - 12.1.7. Attach completed Work Progress Certificate as set out in **Part 6** of the **Agreement**;
  - 12.1.8. such additional information/documentation as **SAPREF** may reasonably require.
- 12.2. Subject to compliance with all the provisions of this **agreement**, **SAPREF** will subject to clauses 12.4 and 12.5 below make payment to the **contractor** within **60 days (sixty)** of receipt of the **contractor's** original tax invoice ("the payment terms").
- 12.3. The **contractor** must allow **SAPREF** a minimum settlement discount of 2.5% provided payment is effected according to the payment terms stipulated in clause 12.2 above.
- 12.4. In circumstances where **SAPREF** disputes an invoice due to the **contractor** not fulfilling any of its obligations in terms of this **agreement** or **SAPREF** exercises its right to retain part of the price pursuant to clauses 14 and 20.7.2 below, the **contractor** must provide **SAPREF** with a new original tax invoice for the undisputed amount and **SAPREF** will make payment to the **contractor** for such undisputed amount according to the payment terms in clause 12.2 above.
- 12.5. If upon resolution of the disputed balance **SAPREF** is required to pay such disputed balance, the **contractor** must provide **SAPREF** with an original tax invoice for such disputed balance whereupon **SAPREF** will pay such disputed balance according to the payment terms in clause 12.2 above.
- 12.6. Unless the parties agree otherwise in writing, payment will be made in South African Rands, at such place and in such manner reasonably stipulated by the **contractor**, provided always that where payment is effected by cheque, electronic transfer or the postal system, the risk of any loss will rest with the **contractor**.
- 12.7. Payment for the **services** does not constitute acceptance of the **services**.

**13. MONTHLY STATEMENTS**

- 13.1. The **contractor** must, in the manner prescribed in clause 12.1 above, prepare and submit to **SAPREF** for review and reconciliation by **SAPREF** **monthly** statements of all the **services** supplied by the **contractor** by the 7<sup>th</sup> working **day** of the **month**.

**14. SET OFF**

## AGREEMENT FOR PROFESSIONAL SERVICES

- 14.1. **SAPREF** may withhold, deduct or offset from any monies due and owing to the **contractor** either in terms of this **agreement** or any other agreement that the **contractor** may have with **SAPREF**, an amount equal to the amount of any outstanding claims that **SAPREF** may have against the **contractor** for damages, costs or any other indebtedness arising out this **agreement**:

Provided that **SAPREF** will first provide the **contractor** with written notice of its intent to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred by **SAPREF**.

- 14.2. If such indebtedness is not liquidated, a certificate signed by **SAPREF's** Finance Manager specifying the amount due in terms of or arising out of this **agreement** shall be prima facie proof thereof.

### 15. RISK and OWNERSHIP

- 15.1. The risk in the **services** will remain with the **contractor** at all times.
- 15.2. The **contractor** warrants that on completion of the **services**, ownership in the **services** and in any products resulting from the **services** will pass to **SAPREF**.
- 15.3. Any drawings, documents, or technical data devised by the **contractor** for **SAPREF** in connection with the **services** shall become and will remain the property of **SAPREF**, and as such, may subsequently be used and/or disposed of by **SAPREF** in its discretion.

### 16. WARRANTIES AND REPRESENTATIONS

- 16.1. The **contractor** warrants that:
- 16.1.1. the **contractor** has the capacity, qualifications and expertise to timeously supply the **service**, time being of the essence,
  - 16.1.2. the **services** shall be supplied to the standards of an expert in the applicable field of expertise;
  - 16.1.3. the **services** shall be supplied in a manner consistent with good legal practice and of high professional standards;
  - 16.1.4. on completion of supply of the **services**, the **services** will be suitable for the purpose intended;
  - 16.1.5. the **services** will comply with **Part 5**, being **SAPREF's** specifications and standards and will comply with such other requirements as may reasonably be inferred from **Part 5**. Any departure from such specifications or standards is a breach of this **agreement** unless such departure has been authorised in advance by **SAPREF** in writing in terms of clause 11 above;
  - 16.1.6. no facts or circumstances exist that may materially affect the **contractor's** capacity to perform its obligations under this **agreement**;

## AGREEMENT FOR PROFESSIONAL SERVICES

- 16.1.7 the **contractor** has made no misrepresentations, either verbal or implied as to **contractors'** qualification and experience in regard to the performance of the **services**.
- 16.2. All written warranties and representations made by or on behalf of the **contractor** before conclusion of this **agreement** are binding upon it and are deemed to have induced **SAPREF** to enter into this **agreement**.
- 16.3. The **contractor** undertakes to obtain optimum guarantees and warranties from its **contractor** and to extend to **SAPREF** such guarantees and warranties in respect of the **services** and products supplied in terms of this **agreement**.
- 16.4. **SAPREF's** rights in terms of this clause 16 are in addition and without prejudice to any other rights it may have in terms of this **agreement** or by virtue of any common law warranty against latent defects or otherwise.

### 17. LIMITATION OF LIABILITY

- 17.1. Neither party nor its officers, employees, agents or assignees will be liable to the other party under this **agreement** for indirect or consequential damages any kind except:
- 17.1.1. to the extent to which such claims, losses, damages and costs arise out of the unlawful conduct, wilful misconduct or gross negligent act or omission of such party; and
- 17.1.2. in the case of the **contractor**, in relation to liability under clause 32 ("Confidentiality"), clause 34 ("**Intellectual property rights**"), clause 18 ("Indemnities") and clause 20 ("Insurance"); and
- 17.2. In all cases the party claiming a breach of contract or a right to be indemnified in accordance with the contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.

### 18. INDEMNITIES

- 18.1. The **contractor** acknowledges that if it enters **SAPREF** premises, it does so at its own risk. The **contractor** must ensure that its personnel are also aware that they enter **SAPREF'S premises** at their own risk.
- 18.2. The **contractor** will be liable for and will indemnify **SAPREF** and keep **SAPREF** indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from or in connection with:
- 18.2.1. any breach of any warranty or any of the terms or conditions of this **agreement** by the **contractor**;
- 18.2.2. any claim arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
- 18.2.2.1. the supply of the **services** by the **contractor**; and/or

## AGREEMENT FOR PROFESSIONAL SERVICES

- 18.2.2.2. the entry onto, and the activities undertaken on and in, **SAPREF's premises** by the **contractor** and/or its personnel; and/or
- 18.2.2.3. any negligence or wilful act or omission by the **contractor** and/or any of its **personnel** in connection with this **agreement**.
- 18.2.3. any claim made against **SAPREF** by any of the **contractor's personnel** in respect of any relevant legislation concerning income tax, workmen's compensation, annual leave, severance pay, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.
- 18.2.4. any claim made against **SAPREF** by any of the **contractor's personnel** arising out of or in connection with the termination of this **agreement** for whatsoever reason by **SAPREF**;
- 18.2.5. any penalty imposed for breach of an applicable law in connection with the **supply of the services** by the **contractor**;
- 18.2.6. any loss of/or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the **contractor** and used in relation to this **agreement**, except to the extent that any liability, loss or damage is solely and directly caused by **SAPREF's** unlawful or wilful misconduct or gross negligence or that of **SAPREF's** employees, agents, **contractor** and **sub-contractor** (other than the **contractor**).
- 18.2.7. any claim, liability, loss or expense arising from actual or asserted infringement or improper appropriation or use of trade secrets, proprietary information, know-how, copyrights or patented or unpatented inventions, or for alleged imitation of the work of others; arising out of the use of the method, processes, designs, or other information, used or in respect of which knowledge may be acquired by the **contractor** in the performance of the **service**;
- 18.3. The **contractor** acknowledges that **SAPREF** has concluded this **agreement** with the **contractor** due to the **contractor** having the necessary expertise, experience and resources to supply the **services** and agrees that **SAPREF** can rely on all advices and recommendations made by the **contractor** to **SAPREF**, and the **contractor** indemnifies **SAPREF** against any claim, liability, loss or expense incurred by **SAPREF** in adopting such advices and recommendations.
- 18.4. Every exemption, limitation, defence, immunity or other benefit contained in this **agreement** to which **SAPREF** is entitled will also be held by **SAPREF** to the benefit of, and will extend to protect, each of **SAPREF's** employees, agents, **contractor** and **sub-contractor** (excluding the **contractor**, its employees, agents, **contractor** and **sub-contractor**).
- 18.5. Each indemnity in this clause 18 is a continuing obligation separate and independent from the **contractor's** other obligations and survives termination of this **agreement**.



## AGREEMENT FOR PROFESSIONAL SERVICES

18.6. It is not necessary for **SAPREF** to incur expense or make payment before enforcing a right of indemnity conferred by this **agreement**.

### 19. CLAIMS

19.1 The procedure to be followed in respect of claims arising out of this **agreement** shall be as follows:

19.1.1. The **contractor** shall submit to **SAPREF** a notice in writing within 14 **days** of any event occurring which could give rise to a claim against **SAPREF** or which the **contractor** reasonably believes will delay the performance or **completion** of the **services** supplied and/or increase the **contract price**.

19.1.2. The notice referred to in clause 19.1.1 above, shall contain the details and circumstances of such event and, where applicable, the **contractor's** estimate of the extension of the time for **completion** of **the services** supplied and/or the increase in the **contract price**.

19.1.3. The **contractor** shall, within 14 **days** of such notification, provide **SAPREF** with a fully detailed and substantiated claim together with all and any supporting proof of such claim. No claim shall be granted unless the validity thereof has been proved to the satisfaction of **SAPREF**.

19.1.4. **SAPREF** shall within a reasonable time of receiving the information indicated in clause 19.1.3 above, and any such further information as **SAPREF** may have requested, determine whether the **contractor's** claim is approved or rejected and shall notify the **contractor** accordingly.

19.1.5. The **contractor** shall continue with the supply of **services** while a claim is being assessed in terms of clause 19.1.4 above.

19.1.6. **SAPREF** may reject any claim for additional payment and/or extensions of time which does not comply with the requirements of clause 19.1.3 above.

19.1.7. Should the **contractor** be dissatisfied with **SAPREF's** determination in terms of clause 19.1.4 above the matter shall be dealt with in terms of clause 37 below.

19.1.8. The **contractor** hereby waives and **SAPREF** shall not be liable for any claim which the **contractor** knew of or should reasonably have known of and which has not been reported to **SAPREF** in accordance with the provisions of this clause.

### 20. INSURANCE

20.1. The **contractor** must take out and maintain in accordance with this **agreement**:



## AGREEMENT FOR PROFESSIONAL SERVICES

- 20.1.1. general liability insurance for an amount of not less than R10, 000, 000 to cover all sums which an insured under the policy may become legally liable to pay as compensation for any loss which arises out of anything other than the provision of the **services**;
- 20.1.2. balance of **Third Party** motor vehicle insurance for an amount of not less than R10, 000,000 for loss or damage to person or property;
- 20.1.3. professional indemnity insurance for an amount of not less than R10, 000, 000 ;
- 20.2. The **contractor** must ensure that all policies of insurance required to be taken out in terms of this **agreement** must include **SAPREF** as a named co-insured to the extent permissible by law.
- 20.3. The **contractor** must require any **sub-contractor** to effect and maintain adequate insurance including workers compensation, general liability and balance of **Third Party** motor vehicle insurance. The **contractor** must not permit any **sub-contractor** to enter upon **SAPREF's premises** or continue to provide any goods or **services**, unless it remains insured.
- 20.4. The **contractor** must notify **SAPREF** immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects **SAPREF's** interests.
- 20.5. If any event occurs which may give rise to a claim involving **SAPREF** under any policy of insurance to be taken out by the **contractor** under this clause then the **contractor** must:
  - 20.5.1. notify **SAPREF** within 14 **day** of that event; and
  - 20.5.2. ensure that **SAPREF** is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 20.6. At **SAPREF's** request, the **contractor** must either provide **SAPREF** with a certified copy of the insurances the **contractor** is required to maintain by this clause and produce evidence that the **contractor** is maintaining the insurances required by this clause or alternatively provide a confirmation letter from the **contractor's** broker or insurer to this effect.
- 20.7. **SAPREF** may:
  - 20.7.1. take out and maintain any policy of insurance required by this clause if the **contractor** fails to do so;
  - 20.7.2. set off payment on any invoice until the **contractor** complies with its obligations under this clause.
- 20.8. Nothing contained in this clause 20 will be construed as:
  - 20.8.1. a limitation of the **contractor's** obligations, liability, responsibilities or of any rights which **SAPREF** may have in terms of any other provision of this **agreement** or at law; or

**AGREEMENT FOR PROFESSIONAL SERVICES**

- 20.8.2. a waiver of any rights of subrogation which the insurers of **SAPREF** may have at any time arising from any claim in connection with this **agreement** or the **services supplied**.

**21. INDUSTRIAL RELATIONS**

- 21.1. The **contractor** will be solely responsible for and will bear all costs in connection with the recruitment, employment and development of suitable personnel required to comply with the **contractor's** obligations in terms of this **agreement**, and will be solely responsible for their conduct in the execution of their duties.
- 21.2. The **contractor** must ensure that it and its employees endeavour to ensure that its representatives, **sub-contractor** and their employees observe sound employment and industrial relations policies and prevent industrial action.
- 21.3. The **contractor** must comply with the Labour Relations Act, 1995, the Employment Equity Act, 1998, the **COID Act**, the Unemployment Insurance Act, 2001, the Basic Conditions of Employment Act, 1997, the Skills Development Act, 1998, the Skills Development Levy Fund Act, 1999, the **OHS Act**, the Income Tax Act and any legislation amending and / or replacing the above Acts from time to time as well as any one or more of the following:
- 21.3.1. any collective agreement concluded with the relevant Bargaining Council that regulates terms and conditions of employment; and
- 21.3.2. a binding arbitration award that regulates terms and conditions of employment; and
- 21.3.3. a determination under the Basic Conditions of Employment Act or by the Bargaining Council or any other legally constituted body governing the **contractor's** industry; and
- 21.3.4. any applicable sectoral determination promulgated by the Minister of Labour from time to time.
- 21.4. Any failure by the **contractor** to comply with any Basic Condition of Employment in respect of any of its employees supplying the **services** will constitute a material breach of **contractor** which will entitle **SAPREF**, in its entire discretion and without prejudice to its other rights, to immediately cancel this **agreement** on written notice to the **contractor** either in whole or in part or to suspend any payments due to the **contractor** in terms of the supplying the **services**.
- 21.5. The **contractor** must liaise with **SAPREF's** management on a regular basis to discuss matters of mutual interest which may impact on industrial relations and to consider contingency plans in the event of industrial action.
- 21.6. The **contractor** must furnish **SAPREF** with all relevant information regarding the composition of its workforce, trade union activities and all matters which in the opinion of **SAPREF** are relevant to the avoidance of industrial action.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 21.7. The **contractor** shall ensure that where the **contractor** or its **sub contractor** has, at any one time, more than 50 employees on **SAPREF's** site, the **contractor** shall, for the duration of the said period, have an IR representative on site.
- 21.8. The **contractor** must, if reasonably possible, timeously notify **SAPREF** of any anticipated industrial action and must in the event of any industrial action co-operate with **SAPREF** in respect of:
- 21.8.1. implementation and co-ordination of contingency plans;
  - 21.8.2. measures to prevent industrial action from spreading to **SAPREF's** employees or employees of other **contractor**;
  - 21.8.3. the evacuation and removal of the **contractor's personnel** by **SAPREF's** security personnel and / or the South African Police Services;
  - 21.8.4. obtaining any interdict or other legal relief in respect of any unprotected strike action or picket action that the **contractor's personnel** may embark upon; and
  - 21.8.5. ensuring the maintenance of acceptable strike and picket rules during the currency of a protected strike.
- 21.9. **SAPREF** may require the **contractor** to remove from **SAPREF's premises** any member of the **contractor's personnel** whose conduct and/or performance is not in keeping with the **contractor's** obligations in terms of this **agreement**, or who has breached any provision of this **agreement**, or is suspected of a misconduct, or who **SAPREF** considers to be undesirable, or is guilty of any act or omission which is prejudicial to **SAPREF's** interests or those of its employees, service providers, agents or other **contractor**, provided that **SAPREF** must as soon as possible notify the **contractor** in writing of any concerns that it has with any of the **contractor's personnel**.
- 21.10. The **contractor** must ensure that any **personnel** so removed are not utilised for the purpose of supplying the **services**, unless the **contractor** obtains **SAPREF's** prior written consent and must furthermore ensure, that any removed **personnel** are replaced within 24 hours and with no disruption to the execution of the **contractor's services** in terms of this **agreement**.
- 21.11. Notwithstanding any other provision in this **contractor**, **SAPREF** shall at all times have the discretion, to be exercised reasonably, to determine the number of persons to be employed as the **contractor's personnel**.
- 21.12. The **contractor** must engage the optimum number of necessary personnel required to adequately carry out the **services** in accordance with **this agreement** and as specified in **Part 5**. Should **SAPREF** be of the opinion that the number of persons engaged by the **contractor** is either inadequate or excessive, notwithstanding any numbers specified in this **agreement**, then **SAPREF** shall be entitled to instruct the **contractor** to adjust its personnel numbers accordingly;
- 21.13. In the event of a requirement for the reduction of personnel, the determination by the **contractor** of the identity of persons who may need to

## AGREEMENT FOR PROFESSIONAL SERVICES

be retained for the execution of the **services** will take place in consultation with **SAPREF**.

- 21.14. **SAPREF** shall give the **contractor** reasonable notice of its requirement and proposal regarding the reduction of the **contractor's personnel** and the **contractor** shall, within 24 hours consult with **SAPREF** in order to finalise the process and extent of reduction that will be given effect to.
- 21.15. The **contractor** shall forthwith implement the terms of any arrangements agreed to on the reduction of personnel and any other instructions as **SAPREF** may issue from time to time and shall ensure that fair labour practices are applied in dealing with any of its personnel in giving effect to any agreements or instructions received from **SAPREF**. Any costs of doing so, including but not limited to, severance pay and any related expenses such as notice pay, shall be for the **contractor's** account
- 21.16. The **contractor** shall hold **SAPREF** harmless and shall indemnify and compensate **SAPREF** in the event that there is industrial action, which leads to damage on and/or to **SAPREF's premises** and /or **SAPREF's property** or any other loss that **SAPREF** may suffer, as a consequence of any reduction in the **contractor's personnel**.

## 22. COMPLIANCE

### 22.1. LAWS AND POLICIES

- 22.1.1. The **contractor** warrants that it is familiar with all applicable legislation pertaining to this agreement including but not limited to the Occupational Health and Safety Act 85 of 1993, as amended from time to time ("the **OHS act**") and the Regulations promulgated in terms of the **OHS act** ("the **OHS regulations**").
- 22.1.2. The **contractor** accepts that it is an "employer" as defined in the **OHS act** and that it must fulfil all its obligations as an employer in terms of the **OHS act** and the **OHS regulations**.
- 22.1.3. The **contractor** and the **contractor's personnel** must comply with and conform to all applicable laws, including but not limited to those dealing with the conditions of its labour, the safety relating to the supply of the **work** and the health and safety of all persons on **SAPREF's premises** and conform to all provisions of all statutes, ordinances, regulations, proclamations or by-laws that relate to this **agreement** or the execution thereof and hereby indemnifies **SAPREF** against any breach thereof.
- 22.1.4. The **contractor** and the **contractor's personnel** must comply with:
- 22.1.4.1. all laws and by-laws including but not limited to the provisions of all labour and other legislation and any other collective agreements which may become binding upon the **contractor** and/or its employees;
  - 22.1.4.2. **SAPREF's** written policies on health, safety, security and environmental issues, as amended from time to time by **SAPREF**;

**AGREEMENT FOR PROFESSIONAL SERVICES**

22.1.4.3. **SAPREF's HSSE** Management Standards, **SAPREF's** Life Saving Rules, **SAPREF's** Business Principles, **SAPREF's** HSSE rules and regulations, as amended from time to time, all of which are available from **SAPREF's** representative;

22.1.4.4. any additional guidelines and/or operating standards provided to the **contractor** by the **SAPREF** representative; and

22.1.4.5. the provisions of any relevant permit, license or approval of any public authority held by **SAPREF** or its shareholders,

(collectively referred to as "the **HSSE conditions**").

22.1.5. The **contractor** must endeavour to ensure that its **sub-contractors** and its personnel comply with 22.1.4 above.

22.1.6. Copies of the relevant standards, policies and regulations and the **HSSE conditions** are attached hereto marked **Part 4**.

22.1.7. If the requirements of the law be of a different standard or quality than those stipulated by **SAPREF** under the **HSSE conditions** then the more stringent requirements will apply to the extent permitted by the applicable law.

**22.2 ETHICS COMPLIANCE**

22.2.1. The **contractor** confirms having received a copy of the **SAPREF's** General Business Principles and **SAPREF's** Code of Conduct.

**22.2.2** Each Party represents and warrants, in connection with this **agreement** and the business resulting therefrom, that:

**22.2.2.1** it is knowledgeable about and will comply with all laws, regulations, rules and requirements relating to anti-bribery and anti-money laundering;

**22.2.2.2** whether directly or indirectly, it has not made, offered, authorized, or accepted and will not make, offer, authorize, or accept any payment, gift, promise, or other advantage, to or for the use or benefit of any government official or any other person where that payment, gift, promise, or other advantage would comprise a facilitation payment or otherwise violate the Anti-Corruption Laws;

**22.2.2.3** it has maintained and will maintain adequate written policies and procedures to comply with Anti-Corruption Laws or, alternatively, has made itself aware of and shall adhere to **SAPREF's**

**AGREEMENT FOR PROFESSIONAL SERVICES****General Business Principles and SAPREF's Code of Conduct;**

22.2.3. In the event that the **contractor** supplies staff that **work** on behalf of the **contractor**, the **contractor** also commits that such staff will behave in a manner that is consistent with **SAPREF's** Code of Conduct and the contents of this clause 22.

22.2.4 **SAPREF** represents and warrants to the **contractor** that its payments to the **contractor** shall not constitute the proceeds of crime in contravention of anti-money laundering laws.

22.2.5 Without prejudice to any rights that **SAPREF** may have by operation of law or in terms of this **agreement**, **SAPREF** may invoke the provisions of clause 36 below and terminate this **agreement** with immediate effect upon written notice to the **contractor**, if in its reasonable judgment supported by credible evidence, the **contractor** is in breach of any of the provisions of this clause 22, or any condition of **SAPREF's** code of conduct and / or general business principles, and has failed to provide information demonstrating such compliance.

22.2.6 Nothing in this **agreement** shall require a Party to perform any part of this **agreement** or take any actions if, by doing so, the Party would not comply with anti-bribery or anti-money laundering laws.

**22.3 PROTECTION OF PERSONAL INFORMATION**

22.3.1 For the purposes hereof, "Personal Information" means personal information as defined in the "POPI" Act which means the Protection of Personal Information Act 4 of 2013, as amended from time to time;

22.3.2 Both parties agree that they will comply with requirements of POPI, which they warrant they are fully conversant with, and process all the information and/or personal data in respect of this **agreement** in accordance with POPI and only for the purpose of providing the services set out in the **agreement**.

22.3.3 In amplification of clause 22.3.2 above, the Parties agree that:

22.3.3.1 Personal data must only be processed for legitimate purposes and in accordance with applicable data privacy laws;

22.3.3.2 Personal data must be accurate and relevant for the purpose for which it was collected;

## AGREEMENT FOR PROFESSIONAL SERVICES

22.3.3.3 Personal data must be properly protected from inappropriate access or misuse, unlawful or unauthorized access, disclosure, corruption, destruction, loss, unavailability, or acquisition;

22.3.3.4 Personal data must be properly safeguarded when it is shared with a Third Party.

### 22.4 TRADE CONTROL

22.4.1 Notwithstanding anything to the contrary herein, nothing in the **agreement** is intended to induce or require either Party to act or refrain from acting in any manner which is inconsistent with, penalised or prohibited under any laws, regulations or decrees applicable to such Party which relate to foreign trade controls, export controls, sanctions, embargoes, boycotts, non-proliferation and anti-terrorism.

22.4.2 The **contractor** represents that it is not a Restricted Party. The **contractor** must notify **SAPREF** immediately if it becomes a Restricted Party or the **contractor** becomes aware that it may become a Restricted Party. If the **contractor** becomes, or will become with the expiration of time, a Restricted Party, **SAPREF** may terminate this **agreement** with immediate effect by written notice to the **contractor**.

22.4.3 For the purposes of this clause "Restricted Party" means any person or entity targeted by national, regional, or multilateral trade or economic sanctions under applicable Trade Control Laws, any Affiliates of such persons or entities or any person or entities acting on behalf of a person or entity referred to in the foregoing.

22.4.4 **SAPREF** has the right to terminate this **agreement** with immediate effect in the event that the **contractor** does not satisfactorily pass **SAPREF's** counterparty due diligence review process at any time during the term of this **agreement**.

### 22.5 BROAD BASED BLACK ECONOMIC EMPOWERMENT

22.5.1 The **contractor** confirms that it is familiar with and fully understands the implications of, and, were appropriate, will comply with Broad Based Black Economic Empowerment, Act No. 53 of 2003 ("BBBEE Act"), and any sector Charter gazette in the manner contemplated



## AGREEMENT FOR PROFESSIONAL SERVICES

by the BBBEE Act, which applies to the parties or the Department of Trade and Industry Code ("DTI Code").

22.5.2 The **contractor** is required to have a minimum BBBEE rating of a Level 1 to Level 4.

22.5.3 Upon request from **SAPREF**, the **contractor** will provide **SAPREF** with a BBBEE verification certificate issued by a rating agency accredited by the South African National Accreditation Service alternatively, the **contractor** shall ensure that SAPREF has at all times an up to date verification certificate.

22.5.4 For the duration of the agreement, the **contractor** will:

22.5.4.1 maintain or improve its BBBEE rating in accordance with the DTI Code;

22.5.4.2 notify **SAPREF** in writing within 14 (fourteen) days of any occurrence that materially affects or may materially affect its BBBEE rating; and

22.5.4.3 notify **SAPREF** in writing within 30 (thirty) days of the occurrence as to the steps which have been or will be taken to restore its BBBEE rating.

22.5.5 Any failure or refusal by the **contractor** to comply with the requirements of this clause will constitute a material breach of this **agreement**, and **SAPREF** will be entitled to terminate the **agreement** with immediate effect and claim any damages suffered without prejudice to any other rights it may have under the **agreement** or at law.

### 23. OCCUPATIONAL HEALTH AND SAFETY

23.1. The **contractor** must procure that the **contractor's personnel** who will gain access to **SAPREF's premises** undergo Induction Training annually with the safety training service provider nominated by **SAPREF** for this purpose before gaining access to **SAPREF's premises**. The cost of the Induction Training will be for the **contractor's** account.

23.2. The **contractor** must procure that all **contractor's personnel** undergo a compulsory annual medical examination before the **contractor's personnel** are permitted to **work** at **SAPREF**. The cost of the medical examination will be for the **contractor's** account. A certificate of fitness, signed by the Occupational Medical Practitioner to conduct the medical examination, must be issued to the **contractor**. The **contractor** must ensure that, at termination of the contract, all **contractors'** personnel exiting **SAPREF** complete an exit medical declaration.



## AGREEMENT FOR PROFESSIONAL SERVICES

- 23.3. The **contractor** must ensure that the **contractor's personnel** at all times whilst performing the **work** observe and comply with **SAPREF's** safety security rules and other relevant regulations and take all necessary precautions prescribed for the activity in which they are engaged.
- 23.4. The **contractor** must ensure that the **contractor's personnel** at all times whilst on **SAPREF's premises**, where specified by **SAPREF** (by notice, sign, regulation, instruction, etc), wear the required safety clothing and equipment ("**PPE**"). It is the responsibility of the **contractor** to ensure that its personnel are in possession of such required **PPE** and to maintain it in a serviceable condition at the **contractor's** cost.
- 23.5. If the performance of the **work** or any part of the performance thereof is to be executed at **SAPREF's premises**, the **contractor** must, on or before the commencement date depending on the nature of the **work**:
- 23.5.1. appoint a safety co-ordinator to liaise with **SAPREF** on matters pertaining to safety;
  - 23.5.2. provide **SAPREF's** safety department with copies of all appointments required by the **OHS act** and **OHS regulations** and, in particular, without limiting this obligation, the **contractor** must advise **SAPREF** of the responsible person appointed by it in terms of section 16(2) of the **OHS act** in respect of each separate performance of the **work**;
  - 23.5.3. provide **SAPREF** with a hardcopy of the **contractor's HSSE** file in respect of the **work** to be performed together with all supporting documents. If required, the **contractor** agrees to make itself available to attend an interview with **SAPREF's HSSE** department in order to discuss the **HSSE** file.
- 23.6. The **contractor** must ensure that the **contractor's personnel** do not do or omit to do any act which would be an offence in terms of the **OHS act** and to take all reasonable steps to prevent any such act or omission.
- 23.7. The **contractor** must immediately and in writing advise **SAPREF's** safety department of any hazardous situation which may arise from the performance of the **work** and/or **work** being performed by the **contractor** at **SAPREF's premises**.
- 23.8. The **contractor** must, before the end of shift, report all accidents and incidents of injuries to any person, or the fact that any person in his employment contracts a disease to **SAPREF** as well as the Department of Labour and the Workmen's Compensation Commissioner, where applicable, as soon as he becomes aware of the injury or the disease.
- 23.9. Without prejudice to its other rights in law or in terms of this **agreement**, **SAPREF** is entitled at any time, to require the **contractor** to cease the performance of the **work** if, in the reasonable opinion of **SAPREF**, the **contractor** has breached any provision of this clause 23. **SAPREF** will be entitled to recover from the **contractor** any losses and/or damages occasioned to it as a result of the cessation of the performance of the **work**, including but not limited to the cost of procuring the performance of the **work** by another **contractor**.

## AGREEMENT FOR PROFESSIONAL SERVICES

23.10. Unless specified elsewhere in the agreement, the **contractor** and **SAPREF** must ensure that all **contractor personnel** working on **SAPREF's** premises have access to shower and change-room facilities within reasonable proximity to **SAPREF** worksite. The **contractor** must make suitable transport arrangements for those employees and **contractors** who need to make use of the **contractor's** shower and change-room facilities at the end of the **Business Day**. Where **SAPREF** makes shower and / or change-room facilities available for use by the **contractor**, the **contractor** agrees that the **contractor**, at its own expense, will be solely responsible for the maintenance and safe and hygienic operating of the facilities by the **contractor**. **SAPREF** will be responsible for the structural upkeep of the shower and / or change-room facilities provided that the **contractor** informs **SAPREF** of any **work** that needs to be done in this regard.

23.11. The provisions of this clause 23 summarises the obligations relating to health and safety that the **contractor** is expected to assume, as a mandatory of **SAPREF** and are intended to satisfy the requirements of Section 37(2) of the **OHS act** in that:

23.11.1 the **contractor** hereby agrees, as mandatory, to assume full responsibility for the performance of, observance of and compliance with the duties and responsibilities imposed upon **SAPREF** as an employer in terms of the Act in respect of:

- 23.11.1.1 the scope of **work** to be undertaken by the **contractor**;
- 23.11.1.2 the area within **SAPREF's premises** where the **contractor** is to perform the **work**; and
- 23.11.1.3 the employees and/or other persons engaged in the execution of the **work**.

## 24. OCCUPATIONAL INJURIES AND DISEASES

- 24.1. The **contractor**, and the **contractor's personnel**, warrants that they are duly registered in terms of the **COID Act** or that it is not obliged to so register.
- 24.2. If applicable the **contractor** must ensure that it complies with the **COID Act** as amended or replaced from time to time, including the timeous payment of all assessments payable in terms of the **COID Act** and must within fourteen (14) **days** after signature, and thereafter at any time immediately on request, provide **SAPREF** with written proof of Compensation Fund registration and with a certificate of good standing issued by the Compensation Commissioner.
- 24.3. **SAPREF** may, where required to do so by the Compensation Commissioner, make payment of assessments due in respect of the **contractor's personnel** in terms of the **COID Act** if the **contractor** fails to do so, and may set off such payment, against any amounts owed by it to the **contractor** until the **contractor** complies with its obligations under this clause. 24.4. Despite any other contrary provision, **SAPREF** will not be liable for any occupational injury or disease sustained or contracted by the **contractor** or any of the **contractor's personnel**.

## AGREEMENT FOR PROFESSIONAL SERVICES

24.5. Notwithstanding anything to the **contractor** elsewhere, the **contractor** indemnifies **SAPREF** and undertakes to hold it harmless against all claims which may be made against **SAPREF**, and against all losses, damages and costs (including costs on an attorney and own client scale) which **SAPREF** may incur or suffer arising out of or in connection with any occupational injury or disease sustained or contracted by the **contractor** or any of the **contractor's personnel** (if applicable), irrespective of any fault or negligence on the part of **SAPREF**.

### 25. PREVENTION AND REMEDIATION FOR BREACH OF HSSE CONDITIONS

25.1. The **contractor** agrees that in the event that the **contractor** or any of the **contractor's sub-contractor** breach the **HSSE conditions** it must immediately notify **SAPREF**. Any breach or breaches must be remedied within the period of time stipulated by **SAPREF** in writing and, as agreed with **SAPREF**, steps must be taken to avoid recurrence.

25.2. If **SAPREF** observes an act or becomes aware of an omission which in its opinion violates any of the **HSSE conditions** (including but not limited to any unsafe act or omission), or becomes aware of a planned act, or any other act that in its opinion might violate any of the **HSSE conditions**, **SAPREF** may direct the **contractor** or the **contractor's personnel** to cease doing, or not to proceed with such an act. The **contractor** must, at the **contractor's** own cost and risk, promptly modify the **contractor's** and/or the **contractor's personnel** method of work so that the supply of the **services** are carried out in accordance with these **HSSE conditions**.

25.3. **SAPREF** may direct the **contractor** to remove from **SAPREF'S premises**, or from any activity connected with the **services** supplied, within such time as **SAPREF** directs, any of the **contractor's personnel** who, in **SAPREF's** opinion, has engaged, or is likely to engage, individually, or in concert with any other person, in any conduct which is unsafe or likely to cause an accident or incident. The costs associated with the removal and subsequent appointment of a replacement person will be borne by the **contractor**.

25.4. Nothing in this clause 25 will limit any other right or remedy available to **SAPREF**.

### 26. SAPREF SECURITY

26.1. **SAPREF** premises is a **Critical Infrastructure** as defined in the **Critical Infrastructure Protection Act No 8 of 2019**, and as such are of strategic importance to South Africa. Any person entering **SAPREF's premises** must have positive identification in the form of either a government issued identity document or a valid passport.

26.2. Consequently, the **contractor**, the **contractor's personnel** and representatives must take cognisance of the security measures put in place by **SAPREF** and must at all times comply with all **SAPREF's** security rules and instructions whilst on **SAPREF's premises**.

26.3. The **contractor** agrees that **SAPREF** may subject its personnel to surveillance, appropriate questioning and polygraph examinations with due regard to the individual's personal legal rights in each instance. The

## AGREEMENT FOR PROFESSIONAL SERVICES

**contractor** further undertakes to co-operate and assist **SAPREF** in the conducting of all and any required or necessary investigations.

- 26.4. **SAPREF** is entitled to not allow any of the **contractor's personnel** from entering **SAPREF's premises** who, in **SAPREF's** opinion, are undesirable or who pose a security risk to **SAPREF**.
- 26.5. The **contractor** must ensure that its personnel and those of its **sub-contractors** are not in possession or under the influence of alcohol or addictive drugs whilst seeking access to or exit from **SAPREF** or whilst on **SAPREF** premises. The **contractor** acknowledges that it is aware that **SAPREF** conducts alcohol and drug testing on personnel entering, leaving or on **SAPREF's premises** and all **contractors' personnel** and those of its **sub-contractors** are required to submit to such testing.
- 26.6. Should the **contractor**, in supplying the **services**, be required to drive a vehicle on **SAPREF's premises**, then the **contractor** must ensure that the **contractor** and the **contractor's personnel** are in possession of a valid vehicle entry permit and drivers licence at all times and must present same to **SAPREF** on request.
- 26.7. In the interests of security as well as in respect of the **contractor** obligations under clause 32 (Confidentiality), the taking of photographs, video or cine footage on **SAPREF's premises** for whatever reasons is forbidden unless expressly authorised by **SAPREF**. Any such request shall be addressed in writing to **SAPREF**.

## 27. TAXATION

- 27.1. The **contractor** warrants that it:
- 27.1.1. has read and understands the provisions of the Fourth Schedule to the Income Tax Act no 58 of 1962, as amended
- or replaced from time to time, ("the Income Tax Act") pertaining to the deduction of employees tax; and
- 27.1.2. will for the duration of this **agreement**, keep up to date with any **amendments** to the provisions of the Fourth Schedule to the Income Tax Act pertaining to the deduction of employees' tax.
- 27.2. Unless the **contractor** can provide **SAPREF** with proof to **SAPREF's** written satisfaction that there are no provisions of the Fourth Schedule to the Income Tax Act in terms of which **SAPREF** must deduct employees' tax from any amounts paid by **SAPREF** to the supplier in terms of this **agreement** and in particular that the supplier in not; shall provide **SAPREF** with satisfactory proof that it is not:
- 27.2.1. a Personal Service Provider; or
- 27.2.2. a Labour Broker without a current and valid certificate of exemption; or
- 27.2.3. an Employee,

## AGREEMENT FOR PROFESSIONAL SERVICES

as each of the above terms is defined in the Fourth Schedule to the Income Tax Act, **SAPREF** may deduct employee's tax from any or all amounts paid by **SAPREF** to the **contractor** in terms of this **agreement**, without giving rise to any claim by the **contractor** against **SAPREF**.

27.3. The **contractor** must immediately, and in any event prior to accepting any payments from **SAPREF**, notify **SAPREF** in writing of any change of fact or circumstance that affects or which may affect **SAPREF's** liability to deduct employee's tax from any amounts paid by **SAPREF** to the **contractor** in terms of this **agreement**.

27.4. The **contractor** hereby indemnifies and holds **SAPREF** harmless against and for any claims, losses, interest, penalties, damages or costs (including costs on an attorney and own client scale) arising out of or in connection with the **contractor's** failure to comply with this clause 27.4 and/or the Fourth Schedule to the Income Tax Act or with the non-deduction by **SAPREF** of any employees tax or other tax from any amounts paid by **SAPREF** to the **contractor** in terms of this **agreement**.

### 28. INTEREST

Any monies (including costs, claims and damages) due and owing to **SAPREF** will accrue interest at the prime overdraft rate from time to time of **SAPREF's** principal bankers, such interest to accrue from the due date, or in the case of damages, from the date the cause of action arose.

### 29. LIENS

The **contractor** hereby waives any lien or right of retention it may have over the **services** or any equipment, tools or other articles owned or supplied by **SAPREF**.

### 30. PROTECTION OF RIGHTS

30.1. If the **contractor** fails to comply with any obligation imposed upon it by this **agreement**, **SAPREF** may, without prejudice to any of its rights, effect such compliance at the risk and expense of the **contractor** and recover the costs and expenses of doing so from the **contractor**.

30.2. The **contractor** will have no claim against **SAPREF** nor defence to any claim by **SAPREF** arising out of or in relation to any act or omission on the part of **SAPREF** in the course of effecting or attempting to effect such compliance or, even if **SAPREF** has undertaken to effect such compliance and then fails to do so properly or at all.

### 31. SUB-CONTRACTING, CESSION AND ASSIGNMENT

31.1. The **contractor** must not, without the prior written consent of **SAPREF**, **sub-contract**, cede or assign any of its rights or obligations in terms of this **agreement** to any **Third Party**.

31.2. If consent is given to the **contractor**:

## AGREEMENT FOR PROFESSIONAL SERVICES

- 31.2.1. the **contractor** is deemed to have bound itself as surety and co-principal debtor with the **Third Party** for the due performance by the **Third Party** of all its obligations in terms of this **agreement**; and
  - 31.2.2. such consent does not relieve the **contractor** of any of its obligations in terms of this **agreement**; and
  - 31.2.3. the **contractor** is responsible to **SAPREF** for the acts and omissions of the **Third Party** as if such acts have been acts and omissions of the **contractor**; and
  - 31.2.4. the **contractor** warrants and undertakes that the **Third Party** will comply with and will not breach any obligations in terms of this **agreement**; and
  - 31.2.5. that all the provisions of this **agreement** relating to any **sub-contractor** must be expressly reflected in the **contractor's** agreement with the **Third Party**.
- 31.3. The **contractor** must ensure that any guarantees or other undertakings given by the **Third Party** to the **contractor** are transferable to **SAPREF** and warrants that such guarantees will, at the request of **SAPREF**, be transferred to **SAPREF**. The **contractor** must ensure that all third parties to whom the **contractor** may have **sub-contracted**, ceded or assigned any of its rights or obligations under this **agreement** abide by the health, safety and security requirements contained in this **agreement** and all other terms and conditions of this **agreement** as if they were the **contractor**.
- 31.4. On termination of this **agreement** for any reason whatsoever, and without prejudice to any of its other rights, **SAPREF** shall have the option of taking assignment of any such **sub-contracts** from the **contractor** and enforce any such **sub-contracts**.
- 31.5. **SAPREF** may, without the consent of the **contractor**, cede, assign, delegate or otherwise transfer all or any of its rights, interest or obligations under and in terms of this **agreement** to any other party.

## 32. CONFIDENTIALITY

- 32.1. Each party undertakes that it will not disclose to any person any **confidential information** belonging to the other party which has come into its possession as a result of this **agreement** or the negotiations preceding this **agreement**.
- 32.2. The **contractor** must immediately on demand from **SAPREF** either return or destroy all **confidential information** including but not limited to all copies or discs which the **contractor** has obtained or become possessed as a result of this **agreement**.
- 32.3. The **contractor** must on demand from **SAPREF** obtain secrecy undertakings in the form specified by **SAPREF** from any of the **contractor's personnel**, officer, employee, and agent or **sub-contractor** of the **contractor**.



## AGREEMENT FOR PROFESSIONAL SERVICES

- 32.4. The **contractor** agrees not to use the names, trademarks or brand names of **SAPREF** in publicity releases or advertising or for promotional purposes, without the prior written consent of **SAPREF**.
- 32.5. Nothing in this **agreement** prohibits disclosure of information which:
- 32.5.1. is in the public domain;
  - 32.5.2. after disclosure to a party comes within the public domain otherwise than as a result of the wrongful act of that party;
  - 32.5.3. is received from a **Third Party** provided that such **Third Party** is not itself subject to confidentiality constraints of which the disclosing party is aware; or
  - 32.5.4. is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party.
- 32.6. The terms of this **agreement** may be disclosed to:
- 32.6.1. any legal, financial and other adviser of a party;
  - 32.6.2. the auditor of a party; or
  - 32.6.3. a bona fide prospective purchaser of a party or the business of that party provided that such bona fide prospective purchaser agrees to keep the terms of this **agreement** confidential in accordance with this clause 32.
- 32.7. The parties agree that for purposes of section 65 of the Promotion of Access to Information Act 2 of 2000, neither party may disclose any information relating to this **agreement** or the performance of the **service** in terms of this **agreement** to any **Third Party** without the other party's written consent.
- 32.8. The provision of clause 32 will survive the cancellation or termination of this **agreement** for any reason whatsoever and remain binding on the **contractor** in perpetuity.

### 33. NON-SOLICITATION OF EMPLOYEES

- 33.1. Neither party may, without the prior written consent of the other party, for the duration of this **agreement** and for a period of 1 year thereafter, directly or indirectly solicit for employment, employ or engage the **services** of any person who is in the employ of the other party during the course of this **agreement**.

### 34. INTELLECTUAL PROPERTY RIGHTS

- 34.1. **SAPREF** acknowledges that the **contractor** will remain the owner of all **Background IP**.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 34.2. The **contractor** grants **SAPREF** a non-exclusive, royalty free licence to use all **Background IP** to the extent necessary to enable **SAPREF** to exercise rights in the **Project IP**.
- 34.3. The **contractor** acknowledges that **SAPREF** remains the owner of all **Principal Background IP**.
- 34.4. **SAPREF** grants the **contractor** a non-exclusive, royalty free licence to use all **Principal Background IP** to the extent necessary to enable the **contractor** to supply the **services** in accordance with this **agreement**.
- 34.5. The **contractor** acknowledges and agrees that all **Project IP** will be vested in **SAPREF** and will be **SAPREF's property** as and when created and the **contractor** hereby assigns all rights, title and interest including moral rights in and to the **Project IP** to **SAPREF** (including but not limited to any **Project IP** created prior to or after the date of this **agreement**).
- 34.6. **SAPREF** grants the **contractor** a non-exclusive, non-transferable, revocable licence to use the **Project IP** for the sole purpose of supplying the **services**.
- 34.7. The **contractor** must not disclose, reproduce or otherwise deal with the **Project IP**, or allow any other person to do the same, for any purpose other than to supply the **services** pursuant to this **agreement**.
- 34.8. The **contractor** warrants that:
- 34.8.1. the supply of the **services** does not and will not infringe the rights (including, but not limited to, **Intellectual property rights**) of any **Third Party**.
  - 34.8.2. the **contractor** will, at no further cost to **SAPREF**, procure all licences and consents to use any **Intellectual property rights** of a **Third Party** which are necessary to supply the **services**;
  - 34.8.3. the **Project IP** does not and will not infringe any rights of third parties (including, without limitation to any **intellectual property rights**); and
  - 34.8.4. the **contractor** has the obligation to assign all **Project IP** to **SAPREF** in accordance with clause 34.5 above.
- 34.9. The **contractor** hereby agrees to indemnify **SAPREF** and hold it harmless against all damages, losses, claims and costs (including legal costs on an attorney and own client scale) which may be incurred or suffered by **SAPREF** as a result of a breach by the **contractor** of any of the warranties in clause 34.8 above.
- 34.10. The **contractor** agrees that any **sub-contract** the **contractor** enters into in relation to this **agreement** will contain a condition that the **sub-contractor** agrees to assign to **SAPREF** all **Intellectual property rights** in any **Project IP** created by it for the purposes of this **agreement**.
- 34.11. The **contractor** agrees to notify **SAPREF** as soon as the **contractor** becomes aware of any suspected, threatened or actual infringement of any



## AGREEMENT FOR PROFESSIONAL SERVICES

**Intellectual property rights** in the **Project IP** or the Principal **Background IP** and to provide all reasonable assistance in defending against such infringement.

- 34.12. The **contractor** agrees to provide all reasonable assistance **SAPREF** may request to protect the **Intellectual property rights** in the **Project IP** and the **Principal Background IP**.
- 34.13. If the **Project IP** is found to be registerable or patentable, **SAPREF** will be entitled to file applications for such registrations in its name in whichever **contractor** it chooses and the **contractor** will, if and when so required by **SAPREF** and at the expense of **SAPREF**, apply for or join or apply for a patent or such other registered protection as may be appropriate on behalf of **SAPREF** and will execute all documents and do all things necessary for vesting the protection and all rights in **SAPREF** or **SAPREF's** nominee, absolutely and as sole beneficial owner.
- 34.14. The obligations in this clause 34 will survive the cancellation or termination of this **agreement** for any reason, and will remain binding on the **contractor** in perpetuity.

### 35. FORCE MAJEURE

- 35.1. If either party, despite all reasonable efforts, be prevented or hindered directly or indirectly by **force majeure** from performing, except to the extent that such liability is covered in terms of appropriate insurance cover, all or any of its obligations under this **agreement** other than the obligation to make monetary payments, the party so affected ("the affected party") should be relieved of performance of its obligations hereunder other than the obligation to make monetary payments during the period that such circumstances and the consequences thereof will continue, but only to the extent so prevented or hindered, and will not be liable for any delay or failure in the performance of any of its obligations in terms of this **agreement** or loss or damage whether direct, general, special, or consequential which the other party ("the unaffected party") may suffer due to or resulting from such delay or failure, provided that notice must be given by the affected party to the unaffected party promptly upon the occurrence of the event constituting **force majeure**, together with details thereof and an estimate of the period of time for which it will endure.
- 35.2. If the **force majeure** is of such a nature that it will result in impossibility of performance of an obligation going to the root of this **agreement**, **either party** is entitled, despite any provision to the **contractor** contained in this clause 35, to immediately terminate the **agreement** but will not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 35.3. If **force majeure** is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the affected party is entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties, provided that if such **force majeure** situation persists for a period in excess of 30 **day** **then either** party may be entitled to terminate this **agreement** but is not entitled to recover any damages which it may suffer as a result of such premature termination.

## AGREEMENT FOR PROFESSIONAL SERVICES

### 36. BREACH AND TERMINATION

- 36.1. In addition to all its other rights under this **agreement** or at law, either party may cancel this **agreement** on 30 **day** written notice or uphold this **agreement** and demand performance and in either event, claim such damages as it may have suffered in the event that the other party:
- 36.1.1. breaches clause 5.1.3 and / or clause 8.4; or
  - 36.1.2. in any way commits any material breach of this **agreement** which is not capable of being remedied; or
  - 36.1.3. in any way breaches any provision of this **agreement** which is capable of being remedied and fails to remedy such breach within 7 **day** after receipt of a notice from the other party calling upon it to remedy the breach (this clause does not prevent **SAPREF** from invoking its rights in terms of the provisions of clause 36.1.1); or
  - 36.1.4. breaches any material provision of this **agreement** in circumstances where the aggrieved party has given notice on three or more occasions in the previous 365 **day** period calling for the breach to be remedied; or
  - 36.1.5. takes steps to enter into a compromise with any of its creditors or takes steps or has steps taken against it for liquidation, winding up, de-registration or judicial management or commits an act of insolvency in terms of the Insolvency Act 24, 1936, or
  - 36.1.6. fails to satisfy any final judgement entered against it (after all of its appeal rights have been exhausted) and fails within 10 **days** of the date on which such final judgement is granted to take such steps and to continue to take such steps as may be necessary to have the judgment stayed or otherwise set aside, if either such remedy remains available through due process of law.
- 36.2. In addition to its other rights under this clause 36, **SAPREF** may immediately terminate this **agreement**, if any of the following circumstances occur or exist:
- 36.2.1. if the **contractor** commits an act of professional misconduct, or professional or technical incompetence, which is substantial and serious; or
  - 36.2.2. if the **contractor** commits or participates in any unlawful, dishonest or unethical act in the performance of its obligations under this **agreement**; or
  - 36.2.3. if the **contractor** commits an act or omission in the performance of its obligations under this **agreement** that may in any way endanger the health or safety of any person or that may cause damage to or pose a threat to any property, the environment or to the security at **SAPREF's premises**;
- 36.3. If **SAPREF** terminates this **agreement** pursuant to clause 36.2 above, the termination will be effective on 24 hours notice to the **contractor** and

## AGREEMENT FOR PROFESSIONAL SERVICES

**SAPREF** will be entitled to terminate all other open purchase orders, agreements and commitments which may be in existence between the **contractor** and **SAPREF** at that time.

- 36.4. Notwithstanding any other provisions in this **agreement**, **SAPREF** may, at its absolute discretion, even where the **contractor** is not in default, terminate the **agreement** at any time by giving written notice to the **contractor** whereupon the **contractor** shall stop the supply of the **services** as at the date specified in such notice.
- 36.5. 36.5. In the event of a termination in terms of clause 36.4 above, **SAPREF** shall be liable to pay to the **contractor** (subject to valid set offs) the amounts actually earned, in terms of the **agreement**, by the **contractor** up to the date of termination.
- 36.6. The **contractor's** compensation in respect of a termination in terms of clause 36.4 above shall be limited to the above and the **contractor** will have no further claim whatsoever against **SAPREF**.
- 36.7. Payment by **SAPREF** of the costs referred to clause 36.5 above will be subject to the terms and conditions contained herein and in particular to clause 12 above.
- 36.8. Notwithstanding any other provisions in this **agreement**, where **SAPREF** and the **contractor** are not able to reach an agreement in circumstances described in clauses 10.6 and 10.7 above, **SAPREF** may terminate this **agreement** on 30 **day** notice to the **contractor**.

### 37. DISPUTE RESOLUTION

#### 37.1. Mediation

- 37.1.1. In the event of any dispute or difference between the parties in regard to any matter arising out of this **agreement**, including the implementation, interpretation, rectification, termination or cancellation of this **agreement**, or any matter arising out of its cancellation, the parties shall first endeavour to settle such dispute amicably by mediation in accordance with the provisions set out below.
- 37.1.2. Either party shall be entitled to give written notice to the other, requiring a meeting to be convened in terms of this clause and selecting a venue in Durban for the meeting.
- 37.1.3. The other party shall thereupon select a time for the meeting, which time shall be within 14 **day** after the date of receipt of the notice given in terms of clause 37.1.2 above.
- 37.1.4. The parties shall authorise their respective representatives that the meeting to enter into any agreement or make such other arrangements as may be negotiated at the meeting as a means of resolving the dispute;

## AGREEMENT FOR PROFESSIONAL SERVICES

- 37.1.5. Should the parties fail to reach an amicable settlement at a meeting held in terms of clause 37.1.2 above then the matter shall be referred to arbitration in terms of clause 37.2 below.
- 37.1.6. Should either party unnecessarily delay a meeting held or to be held in terms of clause 37.1.2 above or if it is clear to either party that the dispute cannot be amicably resolved, then that party shall be free to refer the matter to arbitration in terms of clause 37.2 below.

### 37.2. **Arbitration**

- 37.2.1. Subject to clause 36.1 above, any dispute or difference between the parties in regard to any matter arising out of this **agreement**, including the implementation, interpretation, rectification, termination or cancellation of this **agreement**, or any matter arising out of its cancellation, shall be submitted to and decided by arbitration in accordance with the provisions set out below.
- 37.2.2. Such arbitration shall be held at Durban and in a summary manner on the basis that it shall not be necessary to observe or carry out the strict rules of evidence or the strict formalities or procedures prescribed under the arbitration laws so that there shall be no written pleadings or evidence or formal discovery of documents, except insofar as required by the arbitrator, but otherwise the arbitration shall be conducted according to the procedures prescribed by the arbitration laws of the Republic of South Africa.
- 37.2.3. Such arbitration shall be held as soon as practicably possible and with a view to it being completed within 60 (sixty) **Business Days** after it is demanded, having regard to any urgency with respect to the matter in issue.
- 37.2.4. The parties undertake to co-operate with one another with a view to expeditiously concluding any arbitration in terms of this clause 37.
- 37.2.5. The arbitrator shall be a senior advocate who has been an advocate for at least 10 (ten) years.
- 37.2.6. The parties to the arbitration shall jointly appoint the arbitrator and, should they fail to agree on a joint appointment, the arbitrator shall be appointed by the president for the time being of the Kwa-Zulu Natal Bar Council.
- 37.2.7. The decision of the arbitrator shall be final and binding.
- 37.2.8. Any party shall be entitled to require that the decision of the arbitrator be made an Order of Court in the Republic of South Africa.
- 37.2.9. Nothing contained in this clause 37 shall prevent a party from bringing an urgent application, in any appropriate court of law, for

## AGREEMENT FOR PROFESSIONAL SERVICES

a temporary interdict or injunction pending the determination of any matter in accordance with the provisions of this clause 37.

- 37.2.10. The foregoing arbitration provisions shall continue to be binding on the parties notwithstanding any termination or cancellation of this **agreement**.

### 38. GOVERNING LAW AND JURISDICTION

This **agreement** will be construed and interpreted in accordance with the laws of the Republic of South Africa and the parties consent to the jurisdiction of the High Court of South Africa.

### 39. NOTICES AND ADDRESSES FOR SERVICE

- 39.1. Unless otherwise specified any notice or communication in terms of this **agreement**:

39.1.1. must be in writing to be effective;

39.1.2. must be sent by hand, fax or e-mail to the addresses/fax numbers/e-mail addresses set out in **Part 3**, which physical addresses the parties select as their respective domicilium citandi et executandi.

- 39.2. Either party may change its postal address/fax number/e-mail address to any other postal address/fax number/e-mail address within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.

- 39.3. Any notice or communication will:

39.3.1. if delivered by hand during business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery; and

39.3.2. if faxed or e-mailed to the selected fax number or e-mail addresses, be deemed to have been received on the first **Business Day** following the date of transmission of fax or sending of e-mail.

- 39.4. Any written notice or communication, which has actually been received by a party, will be regarded as sufficient notice even if it has not been sent in the manner or to the address/fax number provided for above.

### 40. MISCELLANEOUS LEGAL PROVISIONS

- 40.1. Subject only to clause 16.3 above, this **agreement** constitutes the whole agreement between the parties as to the subject matter hereof and no contracts, representations or warranties, other than those set out herein, are binding on the parties.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 40.2. The terms and conditions contained on the **contractor's** tender, delivery note, order acceptance forms and/or invoices or any other documentation will not apply to, supplement or supersede any provision of this **agreement** and will be of no force and effect.
- 40.3. By tendering, the **contractor** is deemed to have satisfied itself regarding all conditions affecting this **agreement**, and must at all times comply with the manifest intent and obligations of this **agreement**.
- 40.4. No agreement varying, adding to, deleting from or cancelling this **agreement** and no waiver of any right under this **agreement** is effective unless it is in writing and signed by or on behalf of the parties.
- 40.5. Except in the circumstances provided for in clauses 5.1.7 and 16.3 above, no party may rely on any other representations which allegedly induced that party to enter into this **agreement**, unless the representation is recorded in this **agreement**.
- 40.6. The expiry or termination of this **agreement** shall not affect those provisions of this **agreement** which 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.
- 40.7. This **agreement** may be signed by the parties in any number of **contractors**, each of which will be deemed to be an original, but all of which will together constitute one and the same agreement.
- 40.8. Since the provisions of this **agreement** have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 40.9. No relaxation by a party of any of its rights in terms of this **agreement** at any time will prejudice or constitute a waiver of a party's rights, unless reduced to writing and signed by both parties; a party is entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 40.10. In the event that any of the terms of this **agreement** is found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which will remain in full force and effect. If any invalid term is capable of **amendment** to render it valid, the parties agree to negotiate in good faith an **amendment** to remove the invalidity.
- 40.11. Each party will bear its own costs relating to the negotiation, preparation and signature of this **agreement**

### **41. SAPREF AUDIT RIGHTS**

- 41.1 SAPREF will have the right to audit invoiced charges and proper invoicing by the **contractor**, other books and records relating to the **agreement** and the performance of any other of the **contractor** obligations under the **agreement**, where capable of being verified by audit.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 41.2 Based on the findings of the audit, the parties will settle any amounts charged incorrectly within 30 (thity) days of any audit finding and the **contractor** will provide or re-perform any agreement scope where the requirement to do so is identified by any audit within 30 (thity) days days of any audit finding.
- 41.3 The **contractor** will keep books and records available for audit for the longer of the following periods: (i) five (5) years following termination of the **agreement** or any longer period as required by applicable laws; or (ii) two (2) years after the period expires on any obligation of the **contractor** to perform or re-perform any agreement scope.



**AGREEMENT FOR PROFESSIONAL SERVICES**

**PART 3**

**PARTIES' REPRESENTATIVES**

**SAPREF's** representative for the purpose of giving effect to this **agreement** and his/her contact particulars are as follows:

**Name:** \_\_\_\_\_

**Designation** \_\_\_\_\_

**office tel** \_\_\_\_\_

**cell** \_\_\_\_\_

**E-mail** \_\_\_\_\_

The **contractor's representative** for the purpose of giving effect to this **agreement** and his/her contact particulars are as follows:

**Name:** \_\_\_\_\_

**Designation** \_\_\_\_\_

**cell** \_\_\_\_\_

**E-mail** \_\_\_\_\_

Either party may, by written notice to the other, change their respective **representatives**.

**PARTIES' PHYSICAL ADDRESSES**

<b>SAPREF</b>	1 Refinery Road, Prospecton
<b>The contractor</b>	

## AGREEMENT FOR PROFESSIONAL SERVICES

### PART 4 HSSE conditions

#### 1. HEALTH, SAFETY, SECURITY AND ENVIRONMENT ("HSSE")

1.1 **HSSE** is of prime importance and the following **HSSE** requirements, including **contractor** Health, Safety, Security and Environmental Qualification for **work** at **SAPREF** must be strictly adhered to:

1.1.1. The **contractor** must ensure that all employees on the worksite are fully conversant with **SAPREF's HSSE** requirements which must be rigidly adhered to. In this regard the **contractor's personnel** shall not be allowed access to the site unless they have attended a safety induction course. It is the **contractor's** responsibility to ensure that all its employees who intend working on the **SAPREF** worksite attend this course prior to being required on the worksite. Any cost associated with the safety induction courses as controlled by the Durban South Training Trust ("DSTT") shall be for the **contractor's** own account. All arrangements must be made with **SAPREF's** Contract Holder in this regard.

The course will equip the employees on special requirements, precautions and procedures required when working on **SAPREF** sites. For **work** carried out in the H.F. Alkylolation unit, attendance of a separate safety induction course is required.

1.1.2. Any **HSSE** related instruction given by **SAPREF's** authorised safety personnel or the representative shall be immediately adhered to.

1.1.3. **SAPREF** sets and reviews **HSSE** targets on a continuous basis. All **SAPREF** personnel and **contractors** working at **SAPREF** sites are expected to **work** towards achieving such targets.

1.1.4. At the beginning of each working **day** a "tool-box" talk is required to be carried out by the **contractor's** site supervisors. The "4 what" cards and "the life saving rules" are to be carried and displayed by all **contractor's personnel** at the worksite.

1.1.5. The **contractor** shall make himself and his employees familiar with **SAPREF's** permit/clearance system and shall provide the necessary administration, supervision and preparation requirements to comply. The **contractor** shall ensure that all his personnel authorised to sign clearance certificates have passed **SAPREF's** Clearance Receiver Certificate test.

1.1.6. The **contractor** must ensure that all employees at the worksite are fully conversant with and adhere to their Contractor's **HSSE** plan / policy and to all relevant **SAPREF** requirements in this respect.

1.1.7. The **contractor** shall comply with the requirements of **SAPREF's** Rules and Regulation Booklet, Rev4, November 2015 as amended

## AGREEMENT FOR PROFESSIONAL SERVICES

from time to time. In particular Tenders will not be considered unless they contain a Safety Action Plan for the contract.

The Safety Action Plan shall, inter alia, provide proposals addressing the following issues:

- 1.1.7.1. Safety organisation
- 1.1.7.2. Safety training of all staff and operatives
- 1.1.7.3. Safety inspections/audits
- 1.1.7.4. Safety visits
- 1.1.7.5. Accident/Near Miss reporting
- 1.1.7.6. Housekeeping
- 1.1.7.7. Safety communication
- 1.1.7.8. Sub contractors
- 1.1.7.9. Current HSSE records
- 1.1.7.10. Incident Investigation Techniques

The **HSSE** Plan shall be amended to suit the requirements of individual **works** order, in particular to include specific housekeeping and hazard study proposals.

- 1.1.8. The safe operation of the **contractors** business at the refinery and the individual worksites shall also be subject to audit by **SAPREF**. The **contractor** shall allow for these requirements and attending regular meetings with the representative to discuss audit results and other related **HSSE** matters including Behavioural Based Safety initiatives and 16(2) quarterly meetings with the **SAPREF** Managing Director.
- 1.1.9. If, in the opinion of the engineer, the **contractor** adopts any unsafe working practice the engineer may instruct the **contractor** to stop the **works** until the unsafe practice is rectified. Any loss suffered or expense incurred by the **contractor** in this respect will not be reimbursed to the **contractor**, nor will the **contractor** be released from his obligation to complete the **works** in accordance with the agreed PLAN.
- 1.1.10. The **contractor** must at all times demonstrate a positive attitude towards working safely, and continuing to improve working methods to facilitate safe working. If, in the opinion of the engineer, the **contractor** fails in this respect, **SAPREF** will advise the **contractor** in writing that he shall rectify the specified shortcomings within a specified period. **SAPREF** reserves the right to remove individuals and or **contractors** from site.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 1.1.11. A medical certificate is required for each of the **contractor's personnel** and the employees of any **sub contractors** before they are allowed to **work** at the **SAPREF** sites.
- 1.1.11.1. Medical Certificates of Fitness will be valid for one year only as per the definition of a Medical Certificate of Fitness as per the Construction Regulations 2014.
- 1.1.11.2. Note that **SAPREF** security clearance is for a maximum of one year and that expiry of **HSSE** inductions and Certificate of Fitness will block renewal after the one year period.
- 1.1.11.3 Exemptions from the Requirement for Medical Examination are quoted in **contractor** medicals procedure HSSE.PR.0057 (section 2.3.8).
- 1.1.12. No Medium or High Risk job shall commence without **SAPREF's** Task Risk Assessment being completed by the **contractor** and attached to the **work**.
- 1.1.13. Safety awards can be made to all individuals of contracting companies who participate in the **SAPREF** target man-hour scheme. The applicable cost of any awards made will be recoverable (50%) by **SAPREF** from participating **contractors**.

### 1.2. Protective and Safety Clothing and Equipment

- 1.2.1. The **contractor** shall provide **SAPREF** approved Fire Resistant one piece overalls and all other protective clothing including rainwear and other items of equipment for the use of his personnel to ensure safe working and as specified in the respective **work** permits for individual Pacer Orders. The quality of the clothing and equipment shall be in accordance with **SAPREF** standards. Rainwear in sufficient quantities must be available at the worksite at all times.
- 1.2.2. The specifications for the Fire Resistant overalls must be 200g/m<sup>2</sup> Nomex or 235g/m<sup>2</sup> Tecasafe density, antistatic one piece overall that covers the entire body from ankles to neck, including arms.
- 1.2.3. The **contractor's** rates will be deemed to be inclusive of all protective clothing and equipment.
- 1.2.4. The **contractor** shall maintain a register of operatives who have been trained in the use of breathing apparatus and fresh air masks and make such operatives available when the circumstances arise. The training documentation shall be available for **SAPREF's** scrutiny. All Escape masks must be serviced every 5 years.
- 1.2.5. All single piece overalls shall be made from Fire Resistant material of the same colour and sport the **contractor's** logo. All safety helmets shall be the same colour. The use of **SAPREF** overalls and personal (non-specialised) safety equipment is prohibited and can lead to expulsion from the worksite.

## AGREEMENT FOR PROFESSIONAL SERVICES

- 1.2.6. Due to hazardous materials present at **SAPREF** site, overalls are to be laundered by a **SAPREF** approved laundry service provider, for the **contractors** account. Overalls are not to leave site without the permission of the **SAPREF** representative.

### 1.3. Security

- 1.3.1. The **contractor** shall make himself and his employees familiar with **SAPREF's** security rules
- 1.3.2. The **contractor** undertakes to provide the necessary administration, supervision and preparation to comply with the Regulations regarding entry of personnel and vehicles to the worksite. Failure to comply with any of the above could result in the instant removal of an individual from the worksite or the debarment of the **contractor**.

### 1.4. Responsible Person

- 1.4.1. The **contractor** shall assume full responsibility for any **works** being performed in terms of Occupational Health and Safety Act of 1993 (the "**Act**") and any subsequent revisions.
- 1.4.2. The **contractor** will thus be obliged to provide appropriate letters of appointment as required by the Act to the Representative.

### 1.5. Services and Facilities

- 1.5.1. **SAPREF** will supply the following facilities to the **contractor**, which will be for **SAPREF's** account:
- 1.5.1.1. Octel medical tests (specific for lead containing equipment)
  - 1.5.1.2. Connection to the **SAPREF** internal telephone system. External calls are for the **contractor's** account.
  - 1.5.1.3. Connection to the **SAPREF** internal computer system, including relevant hardware, software and e-mail.
- 1.5.2. The **contractor** will have access to:
- 1.5.2.1. General **SAPREF** clinic facilities at a nominal charge as per **SAPREF** current procedures.
- 1.5.3. The **contractor** will set up his own facilities for:
- 1.5.3.1. External telephone lines
  - 1.5.3.2. Computer hardware (excluding that provided for by **SAPREF**), which is completely compatible to **SAPREF** standards at all times
- 1.5.4. The **contractor** shall allow for the following (no additional compensation shall be made by **SAPREF** to the **contractor**):
- 1.5.4.1. All induction courses
  - 1.5.4.2. All skills training requirements
  - 1.5.4.3. All safety training

## AGREEMENT FOR PROFESSIONAL SERVICES

### 1.5.4.4. All **contractors' personnel** medical certificates

## 1.6. SAPREF Driving Standard - Use of Seatbelts

1.6.1. The **SAPREF** driving standard with respect to use of seatbelts are as follows:

1.6.1.1. All occupants of any vehicle shall use seatbelts at all times.

1.6.1.2. All vehicles (owned, leased or rented) must be fitted with effective seat belts for each occupant.

1.6.1.3. As from the 01 January 2014 transportation of passengers shall only be done by vehicles designed and fit for this purpose i.e. buses; kombis fitted with three-point seat belts. Passengers and tools must be clearly separated by means of a solid partition when transported together.

Note: Lap Belts will no longer be allowed. Transporting people at the back of the Trucks and Bakkies /Vans will also not be allowed from the 1<sup>st</sup> of January 2014.

The above standard applies to all vehicles used on site.

## 1.7. Construction Regulations, 2014 issued in terms of the Occupational Health and Safety Act 85 of 1993

1.7.1. In terms of regulation 5(1) (k) of the Construction Regulations 2014, **SAPREF** hereby appoints the **contractor** as the principal **contractor** responsible at "**SAPREF Refinery, Prospecton**" to carry out all the construction **work** of "**Scaffolding Services**".

1.7.2. The **contractor** shall ensure that it meets all the requirements in terms of the OCCUPATIONAL HEALTH AND SAFETY ACT, ACT 85 OF 1993 and in particular the terms of the Construction Regulations. The **contractor** must, in terms of 1(c)(v) of the Construction Regulations 2014, appoint any **sub-contractors** in writing for the part of the project that the **sub-contractor** will be involved in on the construction site and shall ensure that all its appointed **sub contractors** comply with the requirements as stipulated in the Construction Regulations 2014.

1.7.3. The **contractor** shall ensure that all the information and specifications to ensure that the construction **work** is carried out in a safe manner are carried over to all **sub-contractors** appointed and reporting to the **contractor**.

1.7.4. The **contractor** shall further ensure that all records, registers and required lists are maintained and that all persons appointed to carry out tasks as stipulated by these regulations are competent and have the necessary

## AGREEMENT FOR PROFESSIONAL SERVICES

resources to complete their tasks effectively in such a manner that health and safety is not in any manner compromised.

- 1.7.5. This appointment is valid from "**DATE**" to the completion of the stipulated construction **work**.
- 1.7.6 Where applicable, **SAPREF** shall appoint a competent person to act for and on its behalf as **SAPREF's** agent assigned to the **work**. **SAPREF** shall inform **contractor** in writing of the name and contact information of the agent
- 1.7.7 Where the services of the **contractor** involve those of a designer as defined in the Construction Regulations 2014, the **contractor** shall ensure that such designer is a competent person and is aware of and understands the duties imposed on such designer by the Construction Regulations 2014.

### 1.8. Testing for Alcohol and Drug Abuse Procedure

- 1.8.1. The **contractor** must ensure that all employees at the worksite are fully conversant with the **SAPREF** Testing for Alcohol and Drug Abuse Procedure as amended from time to time which describes the testing for alcohol and drugs at **SAPREF** which must be strictly adhered to.
- 1.8.2. The overall responsibility for ensuring adherence and compliance of the **SAPREF** Testing for Alcohol and Drug Abuse Procedure rests with **contractor**. Failure to comply with and testing positive for alcohol or drugs will result in the removal of the individual from the worksite.
- 1.8.3. **SAPREF** reserves the right to conduct random alcohol and drug searches and testing of all **contractors**, **contractor's** employees or **sub contractor's** present on **SAPREF** property or attempting to gain access to **SAPREF** property (including **SAPREF** sites at Reunion Rocks and Island View and adjacent areas owned by **SAPREF** such as car parks but excluding the **SAPREF** club).

### 1.9. Permits and Licenses

The **contractor** shall ensure that properly authorised documents to permit safe execution of work are obtained from **SAPREF**. These include but are not limited to Clearances Certificate, Safety Certificate and a Task Risk Assessment (TRA). No work will be executed on site without a valid permit for the particular area. Only approved clearance receivers will be allowed to take a clearance.

At **SAPREF** there are set times for issuing permits, currently these are as follows:

- 06.30 - 07.15
- 10.00 - 11.00

### 1.10. Core Contractors Safety Requirements

- **Contractor** to submit safety improvement plan to HSSE department for review annually.



## AGREEMENT FOR PROFESSIONAL SERVICES

- **Contractor** to ensure that 15% of their employees is BBS trained as observers, the training takes approximately 2 days
- **Contractor** to participate in **SAPREF** Asikhulume nge (=let's talk) BBS which is conducted every Monday mornings for 30 minutes
- **Contractor** to ensure that one Supervisor and one DFL to participate in weekly BBS steering team meeting for 1 hour.
- Some steering team members are required to attend a two days Sustainability review session once a year with a selected steering team members.
- **Contractor** to participate in safety gift programme varies from R 300 to R 600 per employee on site of which company contribute 50% of the price of a gift per employee upon reaching a million safe hours.
- **Contractor's** 16(2) to do safety walks every Friday from 10:00 to 11:00 am for visible leadership to engage with the people in the field.
- Incident flash for all injuries to be prepared within 24 hours to be submitted to the 16(2) of the zones for publishing within 48hours to site.
- **Contractor's** safety practitioner to perform daily Permit to Work audits and attend **Tuesdays** Safety practitioners' meetings – **08:00 to 09:00**. During Turnarounds the safety practitioners daily meetings are 1 hour.
- **Contractor** to take part in peer to peer intervention programme called Eyethu, and participates in Eyethu steering team and walks. Training takes 4 hours
- **Contractor** to implement an on boarding programme for new people coming to Sapref sites.
- **Contractor** to ensure that supervisors are Permit receivers. Training takes approximately one day
- Quarterly meetings of 16(1) and 16(2) with MD – HSSE executive meeting (1 hour 30 minutes).
- 16(2) to assist **SAPREF** in any other activities **to promote health, safety and security within SAPREF**. (Meet and greet Safety days, BBS week, Eyethu week, HIV week, wellness week, fatigue management programme, safety stand down etc.)

### 1.11. Safety certificate and daily clearance system

The **Contractor** must adhere to the requirements of this system in order to carry out work.

Safety Certificates must be applied for by the Contractor in advance of any **work**, fully detailing the work to be carried out, **Method Statement**, tools and equipment to be used, the area in which it is to be carried out, a **Safe Working Procedure** and any other issues that might impact on the safe execution of the **work**. This information is discussed by all the relevant parties, including **the Contractor**, during a **Task Risk Assessment (TRA)**, which forms an integral part of validating the Safety Certificate, prior to endorsement and approval by the Department Heads. All documentation in the Safety Work Pack should tie up with each other and not have any contradicting information. A **CSE permit** would have to be generated for **work** inside confined space including culverts, excavations, the fin fan plenum chambers etc. Zones will generate **CSE** permits as requested by the service provider.

## AGREEMENT FOR PROFESSIONAL SERVICES

Daily Clearance Certificates are raised against the approved Safety Certificates and must be obtained from and signed off by the relevant Operations Department on a daily basis.

**Last Minute Risk Assessment (LMRA)** must be done for every activity. These are to be displayed at the work front on a yellow folder.

It is the **Contractors** responsibility to plan and liaise with **SAPREF's** Operations staff to minimise delays resulting from the issue of daily clearances.

All costs in relation to complying with the requirements of this Safety Certificate System are deemed to be included in the tendered rates. TRA will be signed by an appointed person in line with Construction Regulations

### 1.12. Accident and near miss reporting

All HSSE incidents, including Near Misses must be reported to MSFP / Contract Holder ASAP. **SAPREF's** Incident Reporting System (CIS) must be filled before the end of that shift or close of business.

NB: All injuries, no matter how slight, must be reported at the **SAPREF** clinic immediately on the day of the incident. No injured person will leave site unless the person has been seen by the clinic or shift manager after hours.

### 1.13. Life Saving Rules and Consequences

- Work with a valid work permit when required
- Conduct gas test when required
- Verify isolation before work begins and use the specified life protecting equipment
- Obtain authorisation before entering a confined space
- Obtain authorisation before overriding or disabling safety critical equipment
- Protect yourself against a fall when working at height
- Do not walk under suspended load
- Do not smoke outside designated smoking areas
- No alcohol or drugs while working or driving
- While driving, do not use your phone and do not exceed speed limits
- Wear your seat belt
- Follow prescribed journey management plan

Failure to comply with the above mentioned rules would result in the termination of contract.

### 1.14. Green banding requirements

- The **Contractor** has an acceptable HSSE management system for the scope of the contract.
- **Contractor's** site supervision must be determined as suitable for worksite activity
- **Contractor** must be capable of executing the work

## AGREEMENT FOR PROFESSIONAL SERVICES

- **Contractor** has a continuous improvement philosophy (i.e. seeking accreditation with recognized auditing institution e.g. NOSA, OSHAS 18001, ISO certification) if not in place yet.
- The **Contractor** must have a competence assurance process for its personnel and have proof that they are competent and skilled.
- The **Contractor** must show that its training supports the management of the HSSE Risks.

Post award of the contract, the Company will be graded based on safety performance, improvement against targets, and conformance to the **SAPREF** Management Procedure. Although the main focus is on safety, the grading system takes integrated HSSE performance into account. The Zone / Department Leadership could request the Company to be reassessed if non-conformances have been formally identified in the execution of work. The onus remains with the Company to establish the commitment, organizational ability and competencies to effectively and efficiently manage their HSSE performance capabilities. The Company Capability Ranking will be classed Green/Yellow/Red.

### 1.14.1 GREEN

Green graded **Contractors** are considered to possess the commitment, organizational ability and competencies to manage their HSSE performance effectively and efficiently.

A Green graded **Contractor** has:

- A TRCFR at least equal to the **SAPREF** TRCFR limit
- A Safety Management System with proof of current accreditation with recognized auditing institution e.g. NOSA, OHSAS 18001, ISO etc.
- A score of  $\geq 85\%$  on the Safety Assessment conducted by **SAPREF** selected team or independent company. Alternatively an "A" score on the HSSE File.

### 1.14.2 YELLOW

Yellow graded **Contractors** are considered to possess the commitment, organizational ability and competencies to manage their HSSE performance.

A Yellow graded **Contractor** has:

- A TRCFR less than 2.5
- A continuous improvement philosophy, i.e. seeking accreditation with recognized auditing institution.
- A score  $\geq 70\%$  and  $< 85\%$  on the Safety Assessment conducted by **SAPREF** selected team or independent company. Alternatively a "B" score on the HSSE File

### 1.14.3 RED

Red graded **Contractors** are considered to have significant gaps in its management of HSSE.

A Red graded **Contractor** has:

- A TRCFR more than 2.5

## AGREEMENT FOR PROFESSIONAL SERVICES

- Cannot demonstrate a continuous improvement philosophy, i.e. seeking accreditation with recognized auditing institution.
- A score of less than 70% on the Safety Assessment conducted by **SAPREF** selected team or independent company. Alternatively a "C" score on the HSSE File

## References (Records, Internal/External References)

Record/Doc. ID	Title
----------------	-------