

CONFIDENTIAL



Eswatini Revenue Authority Tender

REQUEST FOR PROPOSAL FOR FLEET MANAGEMENT SERVICES

RFP No: SRA 2021/010

RFP Name: FLEET MANAGEMENT SERVICES

Tender Closing Date:

Friday, 29th October 2021, 12h00 Noon

CONFIDENTIALITY

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SECTION A - INTRODUCTION

Tenderers are requested to complete their proposals following the outline indicated in this document:

1. BACKGROUND

The Eswatini Revenue Authority (SRA) is a semi-autonomous revenue administration agency, established through the Revenue Authority Act No. 1 of 2008. It operates within the broad framework of Government but outside of the civil service. The SRA is structured as a corporate entity and strives for operational excellence and efficiency. It is headed by a Commissioner General and is organised on functional lines. It has a Governing Board which is appointed by the Honourable Minister of Finance in accordance with the Eswatini Public Enterprise Act and read with the founding Act.

This Request for a Proposal (“RFP”) outlines the requirements of the Eswatini Revenue Authority operating in Eswatini, (hereinafter referred to as the Authority) and the process to be followed by prospective tenderers in submitting a response to the **Fleet Management Services**. Prospective Tenderers are expected to unequivocally specify their capability to deliver the services, in line with the SRA’s requirements as outlined below.

2. PARTICIPATING COMPANIES

All Tenderers that can demonstrate knowledge and experience to deliver the services required.

3. CONTRACT

Upon award of the tender, the parties will enter into a contract which will spell out in more detail the items mentioned herein.



SECTION B - SCOPE OF TENDER

The tender aims to appoint Vendors to provide Fleet Management Services for the SRA for a period of 3 years starting from the financials of the 1st April 2022.

The Scope of work for the fleet management shall include the following;

- a) Driver management support by on-board computer providing data on driver behaviour, time attendance and driving time.
- b) Vehicle management-monitor aspect of vehicle use, driver and manner of driving.
- c) Vehicle navigation-logging GPS information recording trip data events en-route, with option for real time tracking and location.
- d) Driver identification-personalised driver key system to provide driver ID to prevent unauthorised use.
- e) Provide monthly reports on driver performance.

SECTION C : INSTRUCTIONS TO TENDERERS AND TERMS AND CONDITIONS OF TENDER

1. The SRA is seeking reliable, financially stable service providers who can meet its stringent cost, quality and service requirements.
2. The tender document as well as all other correspondence and documents relating to the tender exchanged by the tenderer and the SRA, shall be written in the English language.
3. Tenderers should double check the prices quoted for accuracy before submitting their tender documents. Under no circumstances will the SRA accept any request for price adjustment on grounds that a mistake was made in the tendered prices.
4. To assist in the examination, evaluation and comparison of tenders, the SRA may, at its discretion, ask the tenderer for a clarification on any part of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
5. By submission of the tender, the Tenderer implicitly certifies that:
 - the prices in the tender have been arrived at independently without consultation, communication or agreement for the purpose of restricting



- competition, as to any matter relating to such prices, with any other Tenderer or competitor;
- unless otherwise required by law; the prices quoted in the tender have not knowingly been disclosed by the Tenderer and will not knowingly be disclosed, directly or indirectly, to any other Tenderer or competitor until he has been informed of the results of the Tender.
 - no attempt has been made or will be made by the Tenderer to induce any other tenderer or competitor to submit or abstain from submitting a tender for the purpose of restricting competition.
6. The SRA does not bind itself to accept the lowest or any tender nor give any reason for the acceptance or rejection of a tender. The SRA may accept a tender for a part of the quantity offered or reject any tender without assigning any reason.
 7. Acceptance or rejection of tender offer will be communicated by a formal acceptance or rejection letter sent by fax, email and or normal post, directly to the tenderer. An acceptance by such letter will not mean the SRA is binding itself to an agreement. The SRA shall only be bound under the agreement once the terms and conditions of the contract are agreed between the parties. Failure to agree thereto for a period exceeding thirty (30) days will render the whole tender transaction *void ab initio*.
 8. The offers shall be deemed to be under consideration immediately after the tender closing date until the SRA makes an official award of contract. Whilst the offers are under consideration, Tenderers and or their representatives or other interested parties are advised to refrain from contacting the SRA by any means. If necessary, the SRA will obtain further clarifications on the offers by requesting for such information from any or all the tenderers, either in writing or through personal contacts, as may be considered necessary. The SRA reserves the right to eliminate from the evaluation a tenderer contravening this provision.
 9. Tenderers will not be permitted to change the substance of their offers after the tender box has been opened. Tenders may modify or withdraw their bids after submission, provided that written notice of the modification is received by the SRA prior to the deadline for its submission. A withdrawal notice may also be sent to procurement@sra.org.sz, but followed by a signed confirmation copy. The changes or modifications shall be initialled in black ink.

No Bids may be modified after the deadline for submission of Bids.



No Bids may be withdrawn in the interval between the deadline for submission of Bids and the expiration of its validity.

10. SRA reserves the right to modify or change the specifications or even cancel the tender before the tender opening and such modifications or changes will be communicated to the tenderers in advance as and when decided.
11. Participation in this tender process, or in relation to any matter concerning the tender, will be at the tenderer's sole risk, cost and expense. SRA will not be responsible in any circumstance for any costs or expenses incurred by any tenderer in preparing or lodging a tender or in taking part in the tender process or taking any action related to the tender process.
12. Signed tender documents must be submitted by placing them in a suitably large envelope which must be sealed to ensure the contents cannot fall out or be viewed without opening the envelope and it must be marked **FLEET MANAGEMENT SERVICES**.
13. Nothing shall prevent the SRA from conducting a diligence search of the business of the Tenderers.
14. Each page of the offer must be numbered consecutively, bear the tender number, signed and stamped by the Tenderer at the bottom. A reference to the total number of pages comprising the offer must be made at the top right-hand corner of the first page.
15. The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialled by the person or persons signing the tender.
16. Tenders submitted by Fax and Telex will not be accepted.
17. Completed Tender documents must be placed in the Tender Box situated at the **Eswatini Revenue Authority Headquarters, Ground Floor Reception, before 12h00 Noon on Friday, 29 October 2021. Portion 419 of Farm 50 Ezulwini Along MR 103 (Mvutshini-Gables Road) GPS Coordinates: S 26 25.120 E 31 10.623** Electronic documents must also be submitted by email to procurement@sra.org.sz
18. Tenders or any part thereof received after the stipulated closing date and time will not be accepted. No tender may be modified after the deadline for submission of tenders.



19. Tenders will be opened from 12h01 on the date of closing at the SRA Headquarters, Ezulwini. Tender Opening Meeting will not be conducted due to covid-19 restrictions. However, tenders may be opened even if Tenderers or their representatives are not present at the scheduled time. Each Tenderer and the eventual contract holder agree to be bound by the laws of Eswatini and shall be subject to the Courts of the country. Each Tenderer shall indicate a place in Eswatini and specify it in the Tender as his domicilium, where all notifications may be served on him.
20. The SRA requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present regulations, the following terms are defined as follows;
- 20.1 **“corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a company official in the procurement process or in contract execution; and
- 20.2 **“fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of SRA, and includes collusive practice among tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive SRA of the benefits of free and open competition; SRA will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question. Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being blacklisted from procurement at SRA.
- 20.3 Tenderers and their officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation or submission of tenders. In addition to any other remedies available under any law or any contract, the SRA may at its sole discretion immediately reject any tender submitted by a tenderer that engaged in any collusive tendering, anti-competitive conduct or any other similar conduct with any other tenderer or any other person in relation to the preparation or submission of Tenders.
- 20.4 Any collusion amongst Tenderers or between Tenderers and SRA personnel is forbidden and discovery of any such act will disqualify the Tenderer(s) and result in disciplinary action against the SRA employee.



The tender, or contract if it has been concluded already, will be declared invalid if SRA determines that the Tenderer, or any person acting on his behalf, has offered, promised or given a bribe, gift or other inducement to an officer or employee of SRA with the intention of influencing the award of the contract.

20.5 The tenderers must disclose, if they or any of their sub-contractor(s):

- are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or financial standing.
- Have been convicted of any offence relating to professional misconduct.
- Has not fulfilled any obligations relating to the payment of taxes in Eswatini.
- Disclosure extends to any company in the same group of a tenderer (including but not limited to parent subsidiary and sister companies, and companies with common shareholders whether direct or indirect and parties with whom the tenderer is associated, in respect of this tender).

21. The Tenderer should provide satisfactory evidence acceptable to SRA to show that:

21.1 It is a reputable company who has adequate technical knowledge, professional qualification, and wide experience in performing project management services.

21.2 It has adequate financial stability and status to meet the stipulations under the contract. It is financially solvent and without current judgments or any other financial background which could prevent it from operating bank accounts, raising finance and conducting other activities which are essential to the running of a business.

21.3 It has an adequately qualified and experienced team assigned for the work under this tender.

22. The tender shall remain valid and open for acceptance by SRA for not less than ninety (90) days after the submission of tenders.

23. A tender document submitted by a joint venture (JV) of two or more companies must be accompanied by a document forming the joint venture; duly registered and authenticated by a notary public or other official deputed to witness sworn statements, in which precisely defined the conditions under which the joint venture will function, its period of duration, the persons authorized to represent it and obligated thereby, the participation of the several companies forming the joint venture, and any other information necessary to permit a full appraisal of its function. The JV agreement should be submitted with the tender documents.

24. Tenderers are advised to provide all relevant information as required.



25. Any document submitted in reply to the Invitation to Tender shall become the property of the SRA. SRA will use commercially confidential or proprietary information solely for the purpose of the evaluation of tenders and the selection of a suitable contractor.
26. Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
27. Arithmetical errors will be rectified only if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity. In such case, the unit price shall prevail, and the total price shall be corrected. If the tenderer does not accept the correction of the errors, his tender will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.
28. SRA will award the contract to the tenderer whose tender has been determined to be substantially responsive to the tender documents and who has offered the best evaluated tender price, provided that, such tenderer has demonstrated the capability and resources to complete the contract, and has offered the appropriate equipment and experienced personnel for the intended operation.
29. An intention of notice to award shall be sent to all concerned Tenderers and also published to the ESPPRA website at least 10 days before the contract award.
30. Tenderers must provide the following information in three sets; two in hard copies and the other in a soft copy (scanned format); the technical and financial proposals must be submitted in two separate envelopes;
 - A. Checklist as attached in Section E of this document.
 - B. Business Profile with CVs of key personal.
 - C. Technical proposal
 - D. Financial proposal
 - E. Original Valid Tax Compliance Certificate
 - F. Certified Copy of Valid Trading License
 - G. Certified Labour compliance Certificate
 - H. An official statement of the Directors, (for Eswatini Bidders: Form 'J')
 - I. An official statement of the annual summary of shares capital and shares (for Eswatini Bidders: Form 'C')
 - J. Police Clearance for Company Directors
 - K. Company audited annual financial statements for the past 3 years or since inception.



M. Names and contact details of at least three (3) reference customers

N. Statement of joint ventures / partnerships (if any).

NB: The Absence of any of the items above may render the tender disqualified on opening. The discretion to disqualify rests with the SRA.

31. If the tenderer has any doubts as to the meaning of any portion of this document, he should set out in his covering letter the interpretation on which he relies.

32. The onus is on tenderers to furnish enough information for a full technical and financial evaluation of offers.

33. The SRA reserves the right at any point of the tender process, to disqualify any non-compliant tender proposal (i.e. proposals failing to meet the terms of these instructions) received;

34. The SRA reserves the right to require a performance guarantee for any upfront payment required by the vendor.

35. Tender prices must clearly reflect separately all taxes to be charged.

Tax in the form of withholding tax shall be deductible on the **gross amount of any payment** made to a non-resident at the rate of 15 %.

A reduced Double Taxation Agreement (DTA) rate may be applied for. In the absence of a reducing directive, the tax payable remains at 15%.

36. Any query in connection with the Tender or the Invitation to Tender shall be submitted in writing to: procurement@sra.org.sz not later than **22 Oct 2021**.

SECTION D : TENDER EVALUATION PROCESS AND CRITERIA

Tenders shall be evaluated using, but not limited to the following tender evaluation criteria: There are six components in the tender evaluation process, five of which are non-financial and the last one being financial. These are set out below:

Please note the following:

- A tender which obtains a NO in one of the required allocated Criteria
 - 1 - Responsiveness to Tender Assessment shall be deemed to be non-responsive and eliminated from further evaluation.
- A tender which obtains less than 70% of the total points allocated to Criterion 2 to 5, Resources and Capability Assessment, Technical Assessment, Risk



Assessment, and Promotion of Swazi Business; shall be deemed to be non-responsive and eliminated from further evaluation.

1. Responsiveness of Tender Assessment

This will determine whether:

- all required documentation and information has been submitted;
- all the tenders have been appropriately signed and authorised;
- the document has been submitted in the correct format; and
- The correct number of legible copies has been submitted.

2. Resources and Capability Assessment

This will address the experience of the Tenderer as well as the capability and qualifications of the key personnel who will be operating under the contract, including the management and supervisory back up. Where appropriate, reference checks are essential and must cover aspects such as:

- a. The Tenderer's track record: i.e. past performance of similar contracts; industry knowledge;
- b. The availability of trade references (A list of at least three suitable references is to be provided to support this process);
- c. The contractors managerial and expertise capacity (as evidenced by sound management practices as well as qualifications, experience and extent of involvement/availability of key personnel and supervisory staff) to deliver the services.
- d. Project implementation plan.

3. Technical Assessment

The technical assessment will establish whether the tender meets the requirements set out in the specification and, if not, the significance of any variation from that specification.

4. Risk Assessment

The assessment will establish all risk factors which may be prejudicial to the SRA and performance of the contract. This may include ascertaining the integrity and general conduct in business dealings, professional conduct of the tenderer's directors and senior management; compliance with the law and encumbrances which may hinder due performance under the contract. This may involve investigations into whether any of the



directors and senior managers have criminal records in connection with corruption, fraud, theft or forgery; financial track record of the tenderer, etc.

5. Promotion of Swazi Business

This criterion shall determine the extent to which ownership of the business is vested in Swazi citizens and/or the extent to which the Tenderer will:

- a. Encourage Swazi citizens to be involved in business;
- b. Improve levels of Swazi citizens' participation in SRA business;
- c. Enhance economic development for Swazi citizens;
- d. Increase the numbers and types of Swazi business activities in the area;
- e. Promote opportunities for employment of Swazi citizens and
- f. Promote business enterprise development for Swazi citizens.

Where the scope of the works is of a highly specialised nature or the successful Tenderer is non-Swazi, the SRA shall negotiate with the successful Tenderer to sub-contract or partner with a service provider who is a Swazi citizen.

6. Financial Criteria in Emalangeni

This will entail identification of all relevant costs including capital costs to the SRA. The initial (once off) costs, the on-going costs including any basis for escalations, penalties and/or discounts, should be identified and considered.

The following evaluation formulae shall be used in the allocation of scores:

$$P_s = 15 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where:

- P_s - Points scored for bid under consideration.
 P_t - Tender price for bid under consideration.
 P_{min} - Tender price for the lowest bid.



EVALUATION CRITERIA AND WEIGHTINGS

Non Price Elements: Criteria and weightings are summarised below;

Criteria Elements	Criteria Weighting Factors
<p>1. Responsiveness of Tender (YES/NO)</p> <ul style="list-style-type: none"> • all required documentation and information have been submitted; <p>The following weightings shall apply:</p> <p>A. Checklist as attached in Section E of this document. B. Business Profile with CVs of key personal C. Technical proposal D. Financial proposal E. Original Valid Tax Compliance Certificate F. Certified Copy of a Valid Trading License G. Certified Copy of Labour Compliance H. An official statement of the Directors, (Form 'J') I. An official statement of the annual summary of shares capital and shares (Form 'C') J. Police Clearance for Company Directors (3 months old) K. Company audited annual financial statements for the past 3 years or since inception. H. Names and contact details of at least three reference customers</p> <ul style="list-style-type: none"> • all the tender documents have been appropriately signed and authorised; • the document has been submitted in the correct format; • The correct number of legible copies has been submitted. <ul style="list-style-type: none"> • NB: A tender which does not contain the documents listed above shall be deemed to be non-responsive and eliminated from further evaluation 	<p>YES/NO</p>



<p>2. Resources and Capability</p> <ul style="list-style-type: none"> • Reputation/brand/size of Tenderer; • Key personnel, relevant qualification(s) and relevant experience; • Trade references. • Project implementation plan. 	<p>30</p>
<p>3. Technical Capability</p> <ul style="list-style-type: none"> • Quality of the product/service, i.e. extent to which it meets tender specification or scope. • A list of relevant/similar projects completed within the last 3 years, complete with date, description, Project cost. 	<p>30</p>
<p>4. Risk Assessment</p> <ul style="list-style-type: none"> • All risk factors which may be prejudicial to SRA and performance of the contract, including but not limited to availability of resources (human, financial or suitable equipment for the tender) or extent of the Tenderer's commitment in other projects; • Size of the tender in relation to the size of the company in order to determine the ability to complete the tendered works; • Ascertaining the integrity and general conduct in business dealings, professional conduct of the Contractor's directors and senior management; • Compliance with the law; (e.g. workmen's compensation etc.) • Circumstances which may expose SRA and hinder due performance under the contract, e.g., criminal records in connection with corruption, fraud, theft or forgery by the contractor's directors and management etc. 	<p>10</p>



<p>5. Swazi Business Promotion</p> <ul style="list-style-type: none"> • Degree to which ownership of business vests with Swazi citizen; • Degree to which business is managed by Swazi citizen. • Extent to which the Tenderer will: <ul style="list-style-type: none"> – Encourage more Swazi citizens to be involved in business; – Encourage the impartation of technical and business skills to Swazi citizens; – Improve levels of Swazi citizens participation in SRA business; – Promote opportunities for employment of Swazi citizens; 	10
<p>6. Financial in Emalangeni</p> <ul style="list-style-type: none"> • Pricing / Costs • Payment terms and conditions • Clear reflection of all taxes to be charged 	20

SECTION E : SUBMISSION CHECKLIST

REQUIREMENT	AVAILABLE / NOT AVAILABLE (Please tick - √ or cross – x as appropriate)
Company Profile	
Technical Proposal	
Financial Proposal	
Original Valid Tax Compliance Certificate	
Certified copy of labour compliance	
Police clearance for company Directors	
Certified copy of a Valid Trading License	
An official statement of the Directors, (Form 'J')	
An official statement of the annual summary of shares capital and shares (Form 'C')	
Company audited annual financial statements for the past 3 years or since inception.	
Names and contact details of at least three (3) reference customers	
Statement of joint ventures/partnerships (if any)	



NB: Please submit checklist attached on the first page of tender documents. The documents must follow the sequence on the checklist.

DECLARATION OF ELIGIBILITY

[The service provider must provide a signed declaration on its company letterhead in the following format. If the Proposal is being presented by a joint venture or consortium all members must each sign their own declaration.]

[>>>Name of the Tenderer, Address, and Date>>>]

To: The Commissioner General, Eswatini Revenue Authority Building, Portion 419 of Farm 50 Ezulwini, Along MR 103 (Mvutshini-Gables Road), P. O Box 5628 Mbabane

Dear Sirs,

Re Tender Reference: **RFP 2021/010**

We hereby declare that: -

- (a) We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- (b) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- (c) We have fulfilled our obligations to pay taxes and social security contributions;
- (d) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (e) We do not have a **conflict of interest** in relation to the procurement requirement.

Signed

Authorised Representative

Date



FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

[Note to service providers: This Financial Proposal Submission Form should be on the letterhead of the vendor and should be signed by a person with the proper authority to sign documents that are binding on the entity. It should be included by the bidder in its financial proposal.]

[>>>Location>>>]

[>>>Date>>>]

Procurement Reference No: [>>>insert Tender Reference number>>>]

To: The Commissioner General, Eswatini Revenue Authority, P.O. Box 5628 Mbabane

Dear Sirs:

We, the undersigned, declare that:

- (a) We offer to provide required Services for [>>insert a brief description of the Services>>] in conformity with your Request for Proposal and our technical and financial proposals;
- (b) The schedule of prices of our proposal is attached.
- (c) Our proposal shall be valid for a period of [>>specify the number of calendar days>>] days from the date fixed for the proposal submission deadline in accordance with the Request for Tender, and it shall remain binding upon us, subject to any modifications resulting from negotiations, and may be accepted at any time before the expiration of that period;
- (d) We understand that you are not bound to accept any proposal that you receive;

Dated on _____ day of _____, _____ *[insert date of signing]*

Name: *[insert complete name of person signing the proposal]*

In the capacity of *[insert legal capacity of person signing the proposal]*

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorised to sign the proposal for and on behalf of: *[insert complete name of Tenderer]*



AGREEMENT FOR THE SUPPLY OF GOODS OR SERVICES

Made and entered into by and between

ESWATINI REVENUE AUTHORITY

A statutory body duly established in terms of the Revenue Authority Act of 2008, and duly represented herein by **Mr. Dumisani E. Masilela** in his capacity as the Commissioner General, hereinafter referred to as “the Authority”.

And

.....

A company duly incorporated and registered in accordance with the company laws ofand represented herein by in his capacity as the , herein referred to as “the Service Provider”.



WHEREAS; the Authority seeks the supply and/ or provision ofgoods/ services;

AND WHEREAS; the Service Provider is willing to provide the services to the Authority subject to the terms and conditions of this Agreement;

NOW THEREFORE; the Parties agree as follows;

1. DEFINITIONS

- 1.1. In this Agreement, headings embodied in the clauses are for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention. The singular shall include the plural and vice versa;
- 1.2. A reference to any one gender shall be capable of being construed as a reference to the other gender;
- 1.3. A reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;
- 1.4. Unless the context of this Agreement clearly indicates a contrary intention, the words or phrases defined in this contract shall have the meanings assigned to them herein.
- 1.5. In this Agreement, the words hereunder will have the meanings assigned to them below:-
 - 1.5.1. **"After Hours"** means any time that falls outside the Parties' normal Business Hours;
 - 1.5.2. **"Agreement"** means the agreement as envisaged in clause 14 and shall include this main body of terms and any conditions, Schedules, Annexures and any agreed written amendments hereto;
 - 1.5.3. **"Authority"** means the Eswatini Revenue Authority;
 - 1.5.4. **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in Eswatini;
 - 1.5.5. **"Business Hours"** means 08h00 to 17h00 during Mondays to Fridays and 09h00 to 13h00 Saturdays, excludes public holidays;
 - 1.5.6. **"Contract Documents"** shall mean the entire Agreement as envisaged under Clause 12 and any other document(s) as may be specified in the Agreement;
 - 1.5.7. **"Effective Date"** means, notwithstanding the commencement date, the date when each Service/s reflected in the Schedules/ SOW is commissioned to commence by agreement between the Parties;
 - 1.5.8. **"Commencement Date"** shall mean the date on which the delivery of services under this Agreement commences as envisaged in Clause 2.1;



- 1.5.9. **“Contract Documents”** shall mean such other document(s) as may be specified in this Agreement;
- 1.5.10. **“Confidential Information”** means information that is identified (orally or in writing) as confidential or of such a nature that a reasonable person would understand such information to be confidential and as envisaged in clause 11;
- 1.5.11. **“Service Provider”** shall mean
- 1.5.12. **“Intellectual Property Rights”** shall mean any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by a Party, directly or indirectly, including, without limitation, patents, trade-marks, service marks, design rights, copyright, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.5.13. **“Parties”** means the Eswatini Revenue Authority and and party shall refer to the singular of them;
- 1.5.14. **“Services”** means the services, which shall be carried out by the Service Provider as described in Annexure “A”, attached hereto;
- 1.5.15. **“Sub-Contractor”** shall mean any person appointed by the Service Provider in accordance with the provisions of this Agreement, to assist the Service Provider in providing the Services;
- 1.5.16. **“Writing”** shall mean any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and fax transmissions, but excludes information or data in electronic form and “Written” and “Write” shall have a corresponding meaning.

2. DURATION OF THE AGREEMENT

- 2.1. The Agreement shall be for a period not exceeding months and shall commence on up to and including
- 2.2. Save for when terminated by either party in accordance with clause 11, the Authority shall have the option to renew this Agreement, exercised by written notice thirty (30) days before the termination of this Agreement as per clause 2.1.
- 2.3. The Service Provider shall begin carrying out the services immediately upon the signing of the Agreement.



3. INDEPENDENT

- 3.1 The parties agree that this Agreement creates an independent contractual relationship, not an employment relationship. The Service Provider will act as an independent Service Provider in the performance of the duties under this Agreement.
- 3.2 The Service Provider acknowledges and agrees that the Authority will not provide the Service Provider or any of its employees with any employee benefits, including without limitation any public liability insurance, medical, or pension payments. In addition, the parties acknowledge that neither party has, or shall be deemed to have, the authority to bind the other party in anything other than as stated in this Agreement.

4. PAYMENT OF THE SERVICE PROVIDER

The Service Provider shall be paid for performance of the services under this Agreement as indicated in the Financial Provisions as specified in Annexure B.

5. TAXATION

The Service Provider shall where applicable be obliged to pay all taxes on any moneys paid to it by the Authority including but not limited to income tax or Value Added Tax, as the case may be, and to that end, the Authority shall be entitled to deduct and withhold from any fees due to the Service Provider any money due as tax in accordance with the laws of the Kingdom of Eswatini.

6. SCOPE OF SERVICE

The Service Provider has agreed to render the service in line with the programme as described in Annexure A.

7. EMPLOYMENT OF OTHER PERSONS

- 7.1 The Service Provider shall not engage, cede or assign other persons to perform the work required under this Agreement. However the Authority shall have the sole discretion in consenting to the appointment of a sub-contractor.
- 7.2 If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any sub-contractor, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- 7.3 If the Authority finds that any of the Service Provider's employees or sub-contractor(s) has (i) committed a serious misconduct or has been charged with having committed a criminal act, or (ii) have



reasonable cause to be dissatisfied with the performance of the Service Provider or sub-contractor, the Authority shall have the sole discretion of electing to exercise the its rights subject to clause 10.

8. THE SERVICE PROVIDER'S OBLIGATIONS

- 8.1 The Service Provider agrees that the performance of the work and services pursuant to this Agreement shall conform to the highest professional standards and shall use its best efforts in such performance. It further undertakes that it is an expert in the field of work for which it is being engaged.
- 8.2 The Service Provider shall cooperate with the Authority's personnel and shall not interfere with the conduct of the Authority's business. The Service Provider shall further observe all rules, regulations and security requirements of the Authority.
- 8.3 During the term of the Agreement, the Service Provider shall not render such services if such will be in conflict with the performance of the services herein rendered, to any other person or entity and shall subject to clause 12 not disclose any information to any other person or entity not directly involved in the program for which the services are rendered.
- 8.4 The Parties undertake to sign and give the other a signed copy of the Agreement and failure to do so shall render the Agreement void.
- 8.5 The Service Provider shall send monthly comprehensive reports on the service which reports shall be presented to the Authority's Senior Management.
- 8.6 The Service Provider shall where required provide training and management support on the service provided.
- 8.7 The Parties shall maintain a record for all work done in terms of this Agreement.
- 8.7 The Service Provider shall use its best endeavours to protect the assets of the Authority and shall act honestly and in good faith towards the Authority at all times.
- 8.8 All documents submitted by the Authority to the Service Provider including without limitation accordance with clause 9.1 and any other documents, methodology,, or any tools, specifications, drawings, sketches, models, samples, records, ideas, concepts, data, information, reports, analysis, artwork, logos, graphics, video, text, and other materials, including without limitation, any financial data developed by the Authority for purposes under this Agreement, shall be and shall remain the property of the Authority. On termination or expiry of the Agreement, the Service Provider shall deliver same to the Authority.

9 THE AUTHORITY'S OBLIGATIONS

- 9.1 The Authority shall;
 - 9.1.1 ensure that the Service Provider has access to the Authority's premises, and also ensure that the Service Provider has access to such information as may be reasonably required to allow the Service Provider to carry out its obligations hereunder.



- 9.1.2 appoint a contact person to attend to all the Authority's responsibilities for purposes of executing the provisions of this Agreement.
- 9.1.3 ensure that the Service Provider's personnel are fully assisted on instances wherein they require access to any of the Authority's premises or platforms to carry out any services as well as any other duties that require to be conducted on such premises or platforms.
- 9.1.4 pay the amount envisaged in annexure B through an Electronic Funds transfer or otherwise for the duration of this Agreement, to also allow for month-end reports preparation and presentation by the Service Provider.

10. WARRANTIES

- 10.1 The Service Provider represents and warrants to the Authority that it is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of its services.
- 10.2 The Service Provider further warrants that it is aware of the Authority's strict confidentiality requirements and shall ensure such confidentiality in accordance with Clause 12.
- 10.3 In performing the Services, the Service Provider shall comply, to the best of its knowledge, with all business conduct, regulatory health and safety guidelines established by the Authority or any governmental authority with respect to the Authority's business.
- 10.4 The Service Provider warrants the effectiveness of the service that is provided under this Agreement and that where it is not able to fully warrant same it warrants that it shall assist the Authority in effectively remedying any defect or fault to the service by ensuring the expeditious effectiveness of the service irrespective of any manufacturer's warranty.

11. BREACH AND TERMINATION

- 11.1. If either Party breaches any of the material provisions of this Agreement and fails to remedy that breach within 7 (seven) business days after receipt of a written notice from the non-defaulting Party requiring it to remedy that breach, the non-defaulting Party shall be entitled, without prejudice to any remedies which it may otherwise have in terms of this Agreement or at law, to terminate this Agreement without further notice to the defaulting Party.
- 11.2. Either Party shall have the right to terminate upon a 30 (thirty) day notice this Agreement forthwith (but without affecting its accrued rights in terms of this Agreement or any Service Schedule, as the case may be) should either Party discover that any of the following events have occurred, namely:
 - 11.2.1 Failure by the Authority to pay for services performed.
 - 11.2.2 Failure by the Service Provider to effectively provide the Service to the Authority.
 - 11.2.3 Fraudulent misrepresentation by either party.



- 11.2.4 Insolvency of the Service Provider;
 - 11.2.5 A judgment is granted against either Party and such party fails to satisfy or appeal against such judgment within 30 (thirty) days of the judgment being granted;
 - 11.2.6 Breach of any one or more of the provisions of this Agreement.
 - 11.2.7 Disclosure of confidential information contrary to clause 12.
- 11.3 Either party may terminate this Agreement without cause and without any penalty, by a thirty (30) day written notice, provided, however, that no such termination under this clause shall be construed as entitling any of the parties after having committed any of the applicable acts envisaged in clauses 11.1 and 11.2, to be found without fault or without liability for such acts.
- 11.4 In the event the Agreement is terminated under this clause 11 or clause 2.1, the Service Provider will surrender to the Authority all documentation relating to the service.

12. CONFIDENTIALITY

Any information received by the Service Provider in furtherance of the obligations under this Agreement or which concern any of the affairs of the Authority, will be treated by the Service Provider in full confidence and will not be released to any other persons or entities, whether during the tenure of this Agreement or after termination, without the prior written consent of the Authority, except where the information has already become public information at the instance of the Authority or as may be necessary in the ordinary course of performing the services under this Agreement or for the compliance with any law or lawful court order.

13. WAIVER

Failure by either Party to insist upon the strict compliance with any of the terms and conditions of this Agreement shall not be deemed a waiver of any right or remedy that such Party may have, and shall not be deemed a waiver of that Party's right to require the strict performance of all terms and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms or conditions.

14. ENTIRE AGREEMENT

14.1. This Agreement represents the entire agreement by and between the Parties with respect to the matters contained herein. Any prior or contemporaneous oral or written agreements by and between the Parties or their agents and representatives relating to the subject matter of this Agreement are hereby revoked.

14.2. In the event that any provision of this Agreement shall be declared invalid, illegal or otherwise unenforceable by a competent court with relevant jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

15. MODIFICATION

This Agreement may not be modified in whole or in part, at any time, except by mutual agreement between the parties and provided that such agreement is in writing, signed by the duly authorised representatives of both Parties, dated and attached hereto.



16. GOVERNING LAW AND JURISDICTION

This Agreement shall be considered as an Agreement made in the Kingdom of Eswatini and governed by the law of Eswatini and save as expressly referred to anywhere else in this Agreement, the parties hereby submit to the jurisdiction of the Courts of Eswatini.

17. INDEMNITY

17.1. Without prejudice to any other rights that the Parties may have under applicable law or under this Agreement, it is hereby agreed that no Party shall be indemnified for failure to comply with any of the terms and conditions under this Agreement, for any reason including failure to perform due to the negligent acts or omissions or wilful misconduct of either Party's officers, employees or agents, under or in connection with or arising out of any work, or the Authority delegated to such Party under this Agreement.

17.2. The Service Provider agrees to indemnify and hold the Authority and its Staff harmless against all claims, suits and losses (including reasonable attorney's fees) by any third party, including any member of the Service Provider's staff member or personnel, that arise due to personal injury, death or damage to property

18. DISPUTE RESOLUTION

18.1. Any dispute or controversy arising from the implementation or application of this Agreement shall be settled by negotiation, with a view to an amicable settlement.

18.2. If any matter remains unresolved after such negotiations referred to in Clause 18.1 above, these shall be resolved by means of arbitration. Any party shall be entitled to demand in writing that the dispute be referred for arbitration within seven (7) days after an agreement could not be reached.

18.3. The arbitrator shall upon application be appointed by the Law Society of Eswatini at its own discretion and upon agreement by both parties to the rules to be followed by the arbitrator. The costs of arbitration shall be borne by the parties jointly.

18.4. The finding of the arbitrator shall be final and binding on the parties and may only be made an order of court should one of the parties fail, refuse or neglect to give effect to the arbitrator's finding or award.

18.5. Otherwise save for the generality of this clause the parties shall reserve the right to refer such dispute to a court with competent jurisdiction.

19. ADDRESS FOR SERVICE/NOTICE

19.1. The Parties both hereby choose the following addresses as their *domicilium citandi et executandi* for all purposes in connection with or arising from out of these terms and conditions:

The Eswatini Revenue Authority



**Portion 419 of Farm 50
Mvutshini-Gables Road
Zulwini, Eswatini**

And

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.....
.....

19.2 Any notice given in terms of this Agreement shall be in writing and shall:

- a. if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- b. if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting;
- c. if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) business day after despatch;
- d. if sent electronically, be deemed to have been received on the first business day following the successful transmission thereof as evidenced by the electronic confirmation of receipt, unless the contrary is proven.

20. INTELLECTUAL PROPERTY

20.1 The Authority hereby warrants that any instructions given in relation to the Service Provider's use of any third party item supplied directly or indirectly by the Authority shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

20.2 Service Provider warrants that by the utilisation of the Deliverables by or on behalf of the Authority or in connection with the receipt of the Services it shall not infringe any Intellectual Property Right of any third party and that it further warrants that no such third party shall have any claim against the Authority for use of any intellectual property belonging to the third party that is subject to this agreement.

21. LIMITS TO SERVICE PROVIDER'S ADVISE, REPORTS AND PRODUCT OF SERVICES

21.1 While performing the services, the Service Provider may supply oral, draft or interim advice, reports or presentations. However, the written advice or opinion, as the case may be, in the final version of the product of services shall take precedence. The Authority may not rely on any draft, interim or oral advice, opinion, report or presentation.

21.2 The Service Provider shall have no obligation to update, orally or in writing, any product of service for events that occur after it has issued the final version of the of the product of the service unless;



- 21.2.1 the law requires the Service Provider to do so;
- 21.2.2 the Service Provider has agreed to do so in this Agreement;
- 21.3 Except for reports expressly prepared for publication, the Service Provider shall supply the products of service for the Authority's benefit and information only. The product of service may not (except for the Authority's own internal purposes) be copied, referred to or disclosed to any third party, wholly or partially, without the Service Provider's prior written consent and then only on terms acceptable to the Service Provider. The Authority may disclose any product of the services to its bankers, legal representatives and other professional advisers when seeking advice about the services. However, the Authority must inform them that;
- 21.3.1 Except when utilised for their internal purposes, these groups must not disclose the product of the services to any third party without the Service Provider's prior written consent and then only on terms acceptable to the Service Provider;
- 21.3.2 The Service Provider accepts no liability to the Authority's Bankers or legal and other professional advisers in connection with the services; and
- 21.3.3 The Service Provider does not have a duty of care or any legal obligation to the Authority's bankers or legal and other professional advisers in connection with the services.
- 21.4 The Authority may not quote the Service Provider's name or reproduce its logo in any form or medium without the Service Provider's prior written consent.

22. FORCE MAJEURE

- 22.1 If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of any event or circumstance beyond that Party's reasonable control including, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving employees of either party), pandemics (as declared by the World Health Organisation) or acts of local or central government or other competent authorities, or event beyond the reasonable control of suppliers to either party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and the affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.
- 22.2 The Parties agree that should the circumstances giving rise to force majeure continue for more than 3 (three) months, either party may terminate this Agreement by notice in writing to the other Party.

23. THIRD PARTY RIGHTS



- 23.1 By entering into this Agreement the Service Provider does not and is not intending to create any rights for a third party.
- 23.2 The Service Provider does not owe any third party any legal obligation or duty concerning this Agreement. On the Authority's written request, the Service Provider may allow a third party to have access to the product of the services on terms acceptable to the Service Provider. The Service Provider is not bound by any agreement between the Authority and any third party.

24. EXCLUSIONS AND LIMITATION OF THE SERVICE PROVIDER'S LIABILITY

- 23.1 Each provision of clauses 24.2 to 24.5 shall apply to this agreement and to the rendering of the services and will be enforceable between the Service Provider and the Authority. If and to the extent that any provision of clauses 24.2 to 24.5 is contrary to or is illegal in terms of legislation, it shall not apply to this Agreement nor to the rendering of the service and will not be enforceable between the Parties.
- 24.2 The Service Provider's maximum liability arising out of and in connection with this Agreement in respect to direct economic loss or damage incurred or suffered by the Authority, or by other beneficiaries, or by any of the Authority's employees or agents, or by any other third party whosoever, is limited to two times the fees for the rendering of the service.
- 24.3 The maximum liability referred to in clause 24.2 shall be an aggregate (total, maximum) liability for all claimants and all claims arising out of or in connection with this Agreement and the rendering of the services, whether under legislation, in this Agreement or delict and whether caused by negligence, gross negligence or otherwise.
- 24.4 In working out the liability of the Service Provider under this Agreement, the maximum (total) amount of which liability shall in any event not exceed the limits mentioned in clause 24.2 and 24.3, a court or an arbitrator must limit the liability to the loss or damage suffered which the court or arbitrator holds the Service Provider responsible for based on relative degrees of fault. Apportionment of damages shall be at the discretion of the court or arbitrator.
- 24.5 The Authority may not bring any claim personally against any individual employee or director of the Service Provider. All claims arising out of this agreement must be brought only against the Service Provider.

25. INTERNAL POLICIES AND PROCEDURES

Both Parties warrant that by entering into this agreement that they have acted within their respective mandates and have complied with all policies and procedures, including supply-chain policies and procedures, where necessary.



SIGNED AT ON THE..... DAY OF 2021.

AS WITNESSES:

1.

2.

.....
Signed by me, Mr Dumisani E. Masilela, on behalf of the Eswatini Revenue Authority

SIGNED AT ON THE..... DAY OF 2021.

AS WITNESSES:

1.

2.

.....
Signed by me, on behalf of the Service Provider



