

## ONLINE TERMS AND CONDITIONS

### 1 INTERPRETATION

1.1 In these terms and conditions unless otherwise indicated by the context:-

1.1.1 **“Confidential Information”** means all information or data disclosed or made available in writing, electronically, orally or by any other means to the Receiving Party by the Disclosing Party and shall include but not be limited to:-

1.1.1.1 any information relating to plans, intentions, product information, know-how, design rights, trade secrets, patents, trademarks, the Software, market opportunities, business processes and techniques, customers and business affairs;

1.1.1.2 the contractual and financial arrangements between the Disclosing Party and others with whom it has business arrangements of whatsoever nature;

1.1.1.3 all other matters or information which relate or may relate to the business affairs of the Disclosing Party in respect of which information is not readily available in the ordinary course of business to third parties or to a competitor of the Disclosing Party;

1.1.1.4 details of the financial structure and operating results of the Disclosing Party's group and any shareholding arrangements in respect of the Disclosing Party;

1.1.1.5 any registration number, username and password allocated to a User to facilitate access to and use of the E Procurement Portal;

1.1.1.6 all other confidential information in whatever form, disclosed or communicated to the Receiving Party or acquired by the Receiving Party from the Disclosing Party including the fact that the Supplier has been invited to submit a tender;

but does not include information or data:–

in the public domain at the time of its disclosure to the Receiving Party or which subsequently becomes part of the public domain by publication or otherwise, other than by breach of an obligation of confidentiality by the Receiving Party;

that becomes available to the Receiving Party from a source, other than the Disclosing Party, other than by breach of an obligation of confidentiality by the Receiving Party;

that is developed independently by the Receiving Party without use of the Confidential Information; and

disclosed pursuant to a requirement by operation of law, regulation or order of court or other administrative body.

- 1.1.2 **"Disclosing Party"** means the Party disclosing or providing the Confidential Information to the Receiving Party;
- 1.1.3 **"E Procurement Portal"** means the online platform accessed via the Gateway Site that enables Users and Suppliers to view and access available tenders and submit tenders online in electronic format;
- 1.1.4 **"Gateway Site"** means the website or webpage located on the internet at <http://www.procurement.petrosa.com> via which Users gain access to the E Procurement Portal;
- 1.1.5 **"Intenda"** means Intenda (Proprietary) Limited, registration number 2000/022493/07, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.6 **"Parties"** means the parties to the agreement encapsulated by these terms and conditions being PetroSA, the User and/or Supplier and Intenda and **"Party"** means any one of them as the context may indicate;
- 1.1.7 **"Person"** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;

- 1.1.8 **"Personal Information"** means information about an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including but not limited to:-
- 1.1.8.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
  - 1.1.8.2 information relating to the education or the medical, financial, criminal or employment history of the Person;
  - 1.1.8.3 any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the Person;
  - 1.1.8.4 the blood type or any other biometric information of the Person;
  - 1.1.8.5 the personal opinions, views or preferences of the Person;
  - 1.1.8.6 correspondence sent by the Person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - 1.1.8.7 the views or opinions of another individual about the Person; and
  - 1.1.8.8 the name of the Person if it appears with other personal information relating to the Person or if the disclosure of the name itself would reveal information about the Person.
- 1.1.9 **"PetroSA"** means Petroleum Oil and Gas Corporation of South Africa (Pty) Ltd registration number 1970/008130/07, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa;

- 1.1.10 "**the Receiving Party**" means the Party receiving or gaining access to the Confidential Information from the Disclosing Party;
- 1.1.11 "**Registration Site**" means the website or webpage located at <http://www.procurement.petrosa.com/Registration.aspx> on which Persons will be able to register as Suppliers; (**Note: Please confirm webpage URL**);
- 1.1.12 "**Software**" shall mean applications and all other software developed and used (including third party software) on and in relation to the E Procurement Portal;
- 1.1.13 "**Supplier**" means a Person who is registered as a supplier to PetroSA on the E Procurement Portal;
- 1.1.14 "**User**" means the Person who accesses and makes use of the Registration Site and the E Procurement Portal ;
- 1.1.15 "**Websites**" means the websites and all web pages accessed through the PetroSA websites <http://www.petrosa.co.za> and <http://www.petrosa.com>; and
- 1.1.16 "**writing**" (or words of similar meaning) means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002.
- 1.2 In these terms and conditions clause headings are for convenience only and are not to be used in its interpretation.
- 1.3 Unless otherwise provided, defined terms in these terms and conditions in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.4 Any reference to an enactment is to that enactment as at the date of acceptance of these terms and conditions as amended or re-enacted from time to time.

- 1.5 Where any number of days is prescribed in these terms and conditions such shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or South African public holiday.
- 1.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.7 Where any term is defined within the context of any particular clause in these terms and conditions, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these terms and conditions, notwithstanding that such term has not been defined in this interpretation clause.
- 1.8 The rule of construction that these terms and conditions shall be interpreted against the party responsible for the drafting of these terms and conditions, shall not apply.
- 1.9 Any reference in these terms and conditions to a Party shall include a reference to that Party's successors in title and assigns allowed at law.
- 1.10 The use of any expression which is relevant to a process available under South African law (including "liquidation", "winding-up", "insolvency" and "judicial management") shall, if any Party to this agreement is subject to the laws of any other jurisdiction, be interpreted as to include any equivalent or similar process under the law of that other jurisdiction.
- 1.11 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.

## **2 SCOPE AND TERMS OF AGREEMENT**

- 2.1 Intenda developed and/or provided the Portal and its functionality offerings for/to PetroSA and manages and/or hosts the Portal on behalf of PetroSA.
- 2.2 This is accordingly an agreement between PetroSA and Intenda on the one hand, and the User and Supplier on the other hand. Where the User is acting on behalf of the Supplier the User warrants that it is duly authorised thereto.

2.3 The agreement is contained in these terms and conditions which have been accepted by the Supplier or the User, on behalf of the Supplier, electronically who has acknowledged that it has read, understood and accepted these terms and conditions.

2.4 This agreement records the rights and obligations of the Parties in relation to:-

2.4.1 access to and use of the E Procurement Portal;

2.4.2 the licence and use of the Software and all products, services and functionality available on or accessible through the E Procurement Portal;

2.4.3 supplier registration, access to available tenders, submission of and processing of bids/tenders; and

2.4.4 matters related or incidental to the foregoing;

but does not, save as otherwise provided herein, deal with and govern communications (whatever the medium) outside of the E Procurement Portal, the award of a tender/bid to the Supplier or the relevant agreement to be concluded between PetroSA and the Supplier pursuant to the award of a tender/bid. These agreements will be negotiated and concluded in writing and must be signed by PetroSA and the Supplier and are not in electronic format notwithstanding that draft electronic versions may be made available to a Supplier on the E Procurement Portal.

2.5 Since this agreement is concluded electronically it is only available in electronic format. A printed (hard) copy of these electronic terms and conditions shall however be sufficient proof of the content hereof provided the hard copy reflects in all material respect the text and wording of this electronic document. A certificate signed by the head of Information Technology of PetroSA as to the conformity of the hard copy to the electronic version and as to the acceptance by the User and the Supplier of these terms and conditions will be sufficient proof of the matters referred to in such certificate.

2.6 These terms and conditions may be amended by PetroSA and/or Intenda from time to time and Users and the Supplier will be required to acknowledge and accept such amended terms and conditions before being allowed access to and use of the E Procurement Portal.

Users who do not wish to accept such varied terms and conditions will not be permitted access to the E Procurement Portal.

- 2.7 The failure of Intenda and/or PetroSA to exercise or enforce any right or provision of these terms and conditions shall not constitute a waiver of such right or provision.
- 2.8 This agreement will commence on the date of acceptance by the User and endure indefinitely until terminated as contemplated in clause 12.

### **3 ACCESS AND USE**

- 3.1 Access to and use of the E Procurement Portal is restricted. Only Users who have completed the Supplier registration process and have been furnished with (or have otherwise accepted) a unique registration number, username and password will be allowed access to the E Procurement Portal.
- 3.2 The registration number, username and password is unique to the Supplier and must be safeguarded and kept confidential and access thereto must be restricted to only those who are duly authorised to represent the Supplier and gain access to the E Procurement Portal and the Supplier's account and details.
- 3.3 PetroSA will assume that when access to the E Procurement Portal is gained by a User using the registration number, username and password of the Supplier, that it is that Supplier that is gaining such access and accordingly transacting on the E Procurement Portal. Accordingly the Supplier will be and remain responsible for all activities conducted through or on the E Procurement Portal when access is gained using the Supplier's registration number, username and password.
- 3.4 Under no circumstances will PetroSA or Intenda be liable to the Supplier and/or User for any claims of whatsoever nature due to any unauthorised access to the E Procurement Portal. No active tracking of activities and transactions will be done or undertaken by PetroSA or Intenda.
- 3.5 Suppliers will be liable to PetroSA for any costs, damages and losses (including any legal costs incurred to pursue any claim on the scale as to attorney and own client) incurred as a result of its reliance on any information, data or documentation furnished or provided by the Supplier or a User

purporting to do so on behalf of a Supplier on the E Procurement Portal.

- 3.6 The User and Supplier represent and warrant that they own or otherwise lawfully entitled to access, use and make available all of the rights to the content posted, loaded or made available on the E Procurement Portal and that the content is accurate, does not violate these terms and conditions and will not cause injury to any Person.

#### **4 LICENSES AND PROHIBITED CONDUCT**

- 4.1 PetroSA and Intenda hereby grant the User and Supplier a limited license to access and make personal use of the Software, systems, functionality and other intangible products and services including other software on or accessible from the E Procurement Portal and the Websites. The User undertakes not to download (other than page caching provided that the cached content is not modified in any manner whatsoever; the cached content is updated 2 hours; and the cached content is removed or updated when so required by Intenda and/ or PetroSA) or modify it, or any portion of it, except with the express written consent of Intenda and/ or PetroSA or where the facility to download is expressly provided.
- 4.2 This license does not include any resale or commercial use of any Software or any part or component thereof, the Websites, any functionality, part or aspect of the E Procurement Portal or its contents; any collection and use of any listings and/or descriptions or any derivative use thereof; any downloading or copying of account information for the benefit of another Person; or any use of data mining, robots, or similar data gathering and extraction tools.
- 4.3 Users may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Intenda and/ or PetroSA and/or any of their respective affiliates without their express written consent.
- 4.4 Users may not use any meta tags or any other "hidden text" utilizing Intenda's and/ or PetroSA's names or trademarks without the express written consent of Intenda and/ or PetroSA.



- 4.5 Use and transmission of any material in violation of any national, international, or local laws is prohibited. This includes, but is not limited to copyrighted material, material considered to be threatening or obscene, pornography or material protected by trade secrets. Content and material that is illegal, obscene, objectionable, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties and that consists of or contains software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam" is strictly prohibited. Users and Suppliers may not use false email address, impersonate any person or entity, or otherwise mislead as to the origin of a communication. Intenda and PetroSA reserve the right (but not the obligation) to remove or edit such content and material in its sole discretion.
- 4.6 Any unauthorized use will terminate the permission or license granted by Intenda and PetroSA. Users are however are granted a limited, revocable, and non-exclusive right to create a hyperlink to the Gateway Site and Websites but PetroSA and Intenda will not be liable in any manner whatsoever for any damage, loss or liability that results from the use of content from the Gateway Site and the Websites, if such content was accessed through a hyperlink not directed at the Gateway Site or the Websites, as the case may be. The limited, revocable, and non-exclusive right to create a hyperlink to the Gateway Site and Websites is granted subject to the link not portraying Intenda or PetroSA or their respective affiliates, or their products or services in a false, misleading, derogatory, or otherwise offensive manner.
- 4.7 Users may not use any Intenda, PetroSA logo or other proprietary graphic or trademark as part of the link without the express written permission of the proprietors thereof.
- 4.8 All licences and/ or permissions granted in terms of this clause 4 are provided on a non- exclusive and non-transferable basis and may be terminated or cancelled by Intenda and/ or PetroSA at any time without giving reasons therefore.
- 4.9 Users may not deliver or attempt to deliver, whether intentionally or negligently, any damaging code, such as computer viruses, to the E Procurement Portal, the Gateway Site, the Registration Site or the Websites and the server and computer network that supports these.

Notwithstanding criminal prosecution, any Person who delivers any damaging code whether intentionally or negligently, shall without limitation be liable to Intenda and PetroSA for all liability, damages and losses Intenda and/ or PetroSA and their respective affiliates may suffer as a result of such damaging code.

- 4.10 Users may not develop, distribute or use any device to breach or overcome the security measures of the Gateway Site or the E Procurement Portal.

## **5 INTELLECTUAL PROPERTY**

- 5.1 All content on the E Procurement Portal, the Registration Site, the Gateway Site and the Websites, including but not limited to, text, graphics, logos, button icons, images, clips, digital downloads, data compilations, and software, is the property of Intenda and PetroSA or its content providers and is protected by South African and international copyright laws. All rights pertaining to the said content are reserved.
- 5.2 PetroSA, Intenda and their respective affiliates respect the intellectual property of others. If it is reasonably believed that work has been copied in a way that constitutes copyright infringement, PetroSA and Intenda should be notified immediately.
- 5.3 INTENDA, PetroSA, ISS and other marks indicated on the Websites are the registered trademarks or creations of Intenda and/ or PetroSA. These and other Intenda and/ or PetroSA graphics, logos, page headers, button icons, scripts, and service names are trademarks or trade dress of Intenda and/ or PetroSA. Intenda's and/ or PetroSA's trademarks and trade dress may not be used in connection with any product or service that is not Intenda's or PetroSA's, or in any manner that is likely to cause confusion among customers, or in any manner that disparages, prejudices or discredits Intenda or PetroSA. All other trademarks not owned by Intenda, PetroSA or its respective subsidiaries that appear on the E Procurement Portal and the Websites are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Intenda and/ or PetroSA.

- 5.4 All content, trademarks and data on the E Procurement Portal, and the Websites, including but not limited to software, domain name, database, text, graphics, icons, hyperlinks, private information, and designs are the property of or licensed to Intenda and/ or PetroSA and as such, are protected from infringement by domestic and international legislation and treaties.

## **6 INTERCEPTION OF COMMUNICATIONS**

Subject to the provisions of the Regulation of Interception of Communication Related Act No 70 of 2002, the User and Supplier agrees to PetroSA's and Intenda's right to intercept, block, filter, read, delete, disclose and use all electronic communications sent or posted by the User on the Websites and/or the E Procurement Portal or to Intenda and/ or PetroSA staff.

## **7 DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNITY**

- 7.1 PetroSA and Intenda shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to access or use E Procurement Portal, the Websites or any of the products, services or content provided thereon or therefrom. Furthermore, Intenda and PetroSA make no representations or warranties, implied or otherwise, that, amongst others, the content and technology available are free from viruses, bugs errors or omissions or that the services accessed or provided will be 100% uninterrupted and error free.
- 7.2 Users acknowledge that , the E Procurement Portal and the Websites may be unavailable due to updates or other causes beyond the reasonable control of Intenda and/ or PetroSA including but not limited to virus infection, unauthorised access, bandwidth restrictions, telecommunication failures, power failure or other 'Acts of God'.
- 7.3 The E Procurement Portal, and Websites are supplied on an "as is" basis and have not been compiled or supplied to meet the User's or Supplier's individual requirements. It is the sole responsibility of the User and Supplier to satisfy itself prior to entering into this agreement that the service available will meet the User's and Supplier's individual requirements and be compatible with the User's and Supplier's hardware and/or software.

- 7.4 Information, ideas and opinions expressed on the E Procurement Portal, and the Websites should not be regarded as professional advice or the official opinion or views of Intenda and/or PetroSA and Users and Suppliers are encouraged to independently verify such information and consult professional advice before taking any course of action related to information, ideas or opinions provided or expressed.
- 7.5 Neither Intenda, PetroSA nor any of its respective agents nor representatives shall be liable for any damage, loss or liability of whatsoever nature arising from the contamination or corruption of any data.
- 7.6 Without limiting the generality of the foregoing, neither PetroSA nor Intenda will be liable for any direct, consequential or indirect loss suffered by a User, Supplier or any other Person, and the User and Supplier hereby indemnify and hold PetroSA and Intenda harmless against any such claim or liability instituted by third parties, including but not limited to loss of profits, loss of data and/or loss of anticipated business or goodwill.
- 7.7 While PetroSA and Intenda will use all reasonable endeavours to ensure the integrity, security and confidentiality of all Personal Information submitted and/or obtained from a User, it will not be held liable under any circumstances if such information is compromised, disseminated or otherwise disclosed through conduct outside the control of PetroSA and/or Intenda such as hacking, infection by viruses, "trojan horses" or any other computer programming routines or software that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or Personal Information.

## **8 DISPUTES AND COMPLAINTS.**

Any dispute of any nature (other than any dispute for which any urgent and/ or interim relief can be obtained from a court of competent jurisdiction) arising between the Parties on any matter provided for in, or arising out of these terms and conditions shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Cape Town and in English.

## 9 CONFIDENTIALITY AND PRIVACY

- 9.1 The Receiving Party hereby undertakes in favour of the Disclosing Party, which undertaking is accepted, in order to protect the proprietary and other interest of the Disclosing Party in the Confidential Information, that:-
- 9.1.1 neither it, its employees nor its representatives shall divulge or disclose to any person whatsoever, in any form or manner whatsoever, either directly or indirectly, any of the Confidential Information without the prior written consent of the disclosing party;
  - 9.1.2 it's employees and representatives shall maintain in secrecy any and all Confidential Information which may be acquired by or disclosed to them; and
  - 9.1.3 it's employees and representatives shall not use, exploit, permit the use of or in any other manner whatsoever apply the Confidential Information disclosed to them pursuant to the provisions of this agreement for any purpose whatsoever other than for the purpose for which it was disclosed.
- 9.2 Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure which it is legally obliged to of the Confidential Information, but shall give the Disclosing Party not less than 10 (ten) days prior notice of such disclosure and shall consult with the Disclosing Party prior to such disclosure with a view to avoiding such disclosure if legally possible.
- 9.3 Subject to clause 7.7, Personal Information shall be collected, processed and stored in the manner prescribed by South African law. As far as possible the privacy of Personal Information will at all times be respected.
- 9.4 Users and Suppliers acknowledge and agree that Personal Information of Users and Suppliers may however be used by PetroSA and/or Intenda in one or more the following ways:-
- 9.4.1 Personal Information may be used to contact and communicate with Users and Suppliers including particularly, in relation to tenders and otherwise pursuant to the negotiation and implementation of the transactions or proposed transactions between PetroSA and the Supplier;

- 9.4.2 to perform background checks, due diligences, credit checks and other evaluations and investigations which PetroSA, acting reasonably, deems necessary prior to, during or after the conclusion of a transaction or agreement with a Supplier;
- 9.4.3 in the event of a sale, merger, consolidation, change in control, transfer of substantial assets, financing, reorganization or liquidation of PetroSA, PetroSA may transfer, or assign to third parties information concerning a Supplier's relationship with it including without limitation, Personal Information of Users and Suppliers;
- 9.4.4 Personal Information will be collected, used and/or disclosed if permitted by law or required to by law or where PetroSA acting reasonably, believes such action is necessary in order to detect, protect or defend it and/or other third parties against error, negligence, breach of contract, theft, fraud and other illegal or harmful activity, to comply with audit and security requirements, and to audit compliance with corporate policies, procedures, legal and contractual obligations; and
- 9.4.5 PetroSA and Intenda may disclose Personal Information to its service providers and subcontractors, including affiliates, retained to perform functions on its behalf or to provide services to it, such as warehousing and delivery; marketing and advertising; data processing; software development; website hosting and management; information technology and office services; legal, accounting, audit and other professional service providers provided that such service provider shall not be permitted to collect, use or disclose Personal Information for any purpose other than to perform such functions or to provide services to PetroSA and Intenda or as otherwise required by law.

## **10 TERMS AND CONDITIONS OF TENDER**

- 10.1 All available tenders for goods and services required by PetroSA will be made available on the E Procurement Portal and submission of tenders by Suppliers must, unless otherwise agreed to by PetroSA, be effected electronically via the E Procurement Portal subject to the terms and conditions and requirements set out in the Tender Notice and related documentation referred

to therein.

- 10.2 Available tenders published on the E Procurement Portal ("Tender Notices") do not constitute an offer by PetroSA but merely an invitation to Suppliers to submit an offer (tender) to PetroSA to supply such goods or services specified in the invitation to tender.
- 10.3 In addition to the confidentiality undertakings referred to in clause 9.1, the User and Supplier is requested not to convey to any third party any information or allegation relating to PetroSA's handling of or decisions regarding pre-qualifications or proposals or the negotiation, awarding or conclusion of tenders, contracts or orders by PetroSA.

#### Examination and Explanation of Tender Documents

- 10.4 The Supplier shall be responsible for carefully examining the complete available tender and Tender Notice, together with any documentation and addenda provided, and making whatever further arrangements and investigations as may be required to ensure that the Supplier is fully informed and acquainted with all the circumstances and matters which might in any way affect the performance or cost of the goods or services proposed to be provided. Failure to do so is at the sole risk of the Supplier and no relief shall be given for errors or omissions in the tender submitted in estimating the cost of providing the goods or of performing the services successfully.
- 10.5 Should the Supplier find discrepancies in, or omissions from, the Tender Notice (and related documents), or should these appear to be obscure or ambiguous, the Supplier shall at once contact PetroSA for clarification or correction thereof before submitting its tender.
- 10.6 Any Supplier making a request for clarification or correction will be solely responsible for the timely receipt and clarification of such request by PetroSA. Replies to such enquiries will be published on the E Procurement Portal and notified to all Suppliers via e-mail.
- 10.7 Requests shall clearly state the relevant tender reference number and the services/goods to which the tender relates.

10.8 PetroSA assumes no responsibility for any understanding or representation made or created by any of its representatives, employees or agents at the time of, or prior to, execution of the relevant agreements pursuant to a tender award.

#### Modification to Tender Documents

10.9 PetroSA reserves the right to revise any provisions of a published tender or Tender Notice, including, but not limited to, any stipulation contained in any transaction document or any drawing or other document forming part of or referred to in the Tender Notice, at any time prior to the closing date for the tender in question.

10.10 Such revisions, if any, will be published on the E Procurement Portal and notified to all Suppliers via e-mail.

#### Tender Expenses

10.11 All costs and expenses incurred by Suppliers in the preparation and submissions of their tenders, or in attending subsequent discussions or negotiations with PetroSA, are entirely for their own account and PetroSA shall not be responsible for same.

#### Currency and Language

10.12 Non South African resident suppliers shall indicate the preferred currency of payment and payment shall be effected in that currency subject to the requirements of South African Law and the South African Reserve Bank.

10.13 All tender submissions, correspondence and communications shall be in the English language.

#### Form of Tender

10.14 The Supplier shall base its tender submission on the requirements of PetroSA as stated in the Tender Notice. Should any Supplier be unable to fulfil any of these requirements it must state clearly any and all exceptions to such requirements that it may have made with words such as "This Quotation/Tender is subject to the following qualifications: ....".



10.15 The Supplier will be required to accept the standard Supplier Terms and Conditions of PetroSA. These terms shall be applicable and shall in all instances, take precedence over the Supplier's own terms and conditions. Appointment of a supplier is conditional upon acceptance of the standard Supplier Terms and Conditions of PetroSA.

#### Submission of Tender

10.16 Tenders submitted shall be accurately and truthfully executed and completed.

10.17 By submitting a tender the Supplier declares that:–

10.17.1 the information provided is true and correct;

10.17.2 the Person submitting the tender is duly authorised to submit the tender on behalf of the Supplier;

10.17.3 documentary proof regarding any tender submission will be submitted to the satisfaction of PetroSA when called upon to do so;

10.17.4 the Supplier consents to a "due diligence" being conducted on it by PetroSA or its authorised representatives regarding the Supplier's legal and empowerment status, technical ability, creditworthiness, security clearance, etc., and the Supplier undertakes to co-operate fully in this regard, within 2 days of receiving notification from PetroSA; and

10.17.5 it understands and acknowledges that any award made to it will be subject to the conclusion of a written agreement between the Supplier and PetroSA. The Supplier understands and acknowledges that the Standard Terms and Conditions (of supply) for PetroSA shall be applicable and shall take precedence over the Supplier's own terms and conditions of supply (if any). The Supplier further acknowledges that it is its responsibility to peruse same prior to making any proposal to PetroSA.

10.18 Where tenders submissions, together with attachments, exceed the size or volume restrictions stipulated by PetroSA, they should be submitted in the manner then stipulated by PetroSA.

10.19 Receipt of a tender submission shall be evidenced by a reference number and acceptance certificate automatically generated on the E Procurement Portal. No tender submissions submitted after the closing date and time shall be accepted or considered.

#### Closing Date and Time

10.20 Tenders must be submitted not later than the closing time specified in the Tender Notice. No late tenders will be considered.

#### Validity Period

10.21 Suppliers are required to keep their tenders (offers) valid and open for acceptance by PetroSA for a period of at least 90 days from the closing date or such other period as may be stipulated in the Tender Notice ("Validity Period"). During the Validity Period Suppliers shall remain bound by their tenders, which may be accepted at any time by PetroSA.

10.22 Suppliers will not be allowed to change or amend their tender submissions in any way during the Validity Period, save in response to a request from PetroSA.

#### Acceptance or Rejection of Tender

10.23 PetroSA reserves the right to reject any or all tenders for any reason whatsoever and is under no obligation to accept the lowest or any other tender. The Supplier is required to submit its full technical and commercial proposals with its tender submission, and PetroSA is under no obligation to enter into any discussions, correspondence or negotiations for the purpose of seeking clarification of any tender submitted.

#### Tender Award

10.24 The successful award of a tender submitted by a Supplier will be subject to the conclusion of a written agreement between PetroSA and the Supplier.

10.25 Save as otherwise provided or prescribed by law, PetroSA is under no obligation to furnish unsuccessful Suppliers with any reason as to why their tenders have not been accepted.

10.26 The Supplier hereby warrants that it shall:-

10.26.1 only use the Software, its related applications and the E Procurement Portal in accordance with these terms and conditions and any conditions that that mat be prescribed by PetroSA and Intenda from time to time;

10.26.2 be solely responsible for the quality and timely submission of its tender on the E Procurement Portal; and

10.26.3 provide all information honestly, accurately and free from any misleading, false, inaccurate or incomplete information or data.

## **11 BREACH**

11.1 In the event of the User and/or Supplier committing any breach of any term or act in contravention of these terms and conditions, the PetroSA shall be entitled to give the User and/or Supplier not less than twenty-four (24) hours written notice calling upon the User and/or Supplier to remedy such breach and failing such remedial action, within twenty-four (24) hours of receipt of such notice, PetroSA shall in addition to any other remedy it may have in terms of these terms and conditions or at law, be entitled to:-

11.1.1 claim specific performance under these terms and conditions by, and damages from, the User and/or Supplier; or

11.1.2 do or cause to be done whatever may be necessary to remedy such breach and claim damages from the User and/or Supplier including the cost of remedying such breach; or

11.1.3 suspend or terminate the Supplier's access to and use of the E Procurement Portal and from tendering or bidding for any tenders.

## **12 TERMINATION**

PetroSA may terminate the User and/or Supplier's access to and/ or participation in the E Procurement Portal in whole or in part at any time by giving the Supplier at least seven (7) days prior notice designating the termination date. PetroSA shall have no liability to the User and/or Supplier with respect to such termination.

## 13 GENERAL

- 13.1 If any of the terms of this agreement are in conflict with any written agreement concluded between PetroSA and Supplier after the acceptance of these terms and conditions then the terms of such written agreement will prevail.
- 13.2 The User and Supplier shall not be entitled to cede, delegate or assign its rights and/or obligations in terms of these terms and conditions or the right to use the E Procurement Portal to any third party.
- 13.3 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 13.4 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 14 CONTACT INFORMATION

Any notices or communications may be sent to the Supplier and User to the address details (including e-mail) provided on the Registration Site and to Intenda and PetroSA at the addresses and facsimile numbers referred to below.

### **Intenda**

Street Address: 183 Leonie Street, Trent Bridge Office Park, Block C, Doringkloof, Centurion, 0157,

Postal Address: PO Box 11669, Centurion, 0046

Tel: (012) 663 8815

Fax: (012) 663 1925

**PetroSA**

Street Address: 151 Frans Conradie Drive, Parow, Cape Town, 7499

Postal Address: Private Bag X5, Parow, 7500

Tel: (021) 929 3000

Fax: (021) 929 3144