

SABEN REN SERVICES AGREEMENT

Version 1.0

13 December 2017

between

SOUTH AFRICAN BROADBAND EDUCATION NETWORK NPC

A Non-Profit Company Incorporated in terms of the Companies Act, Registration Number: 2015/199907/08, herein represented by **ARNOLDUS HART, Chief Executive Officer**, he being duly authorised thereto.

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(hereinafter referred to as "SABEN")

and

[NAME OF INSTITUTION]

A [description of legal identity], herein represented by [name of signatory], [capacity of signatory], she/he being duly authorised thereto.

Facsimile: [fax number of the INSTITUTION]

Email: [email address of the INSTITUTION]

Physical Address:

[physical address of the
INSTITUTION]

Postal Address:

[postal address of the
INSTITUTION]

(hereinafter referred to as "the INSTITUTION" or "the CLIENT")

[SABEN and the INSTITUTION hereinafter jointly referred to as "the Parties"]

1. RECORDAL

- 1.1. The INSTITUTION requires REN Services for use at one or more of its campuses and/or other locations; and consequently wishes to use SABEN's REN Services under the terms and conditions set forth in this agreement.
- 1.2. SABEN is willing to provide the SABEN REN Services to the INSTITUTION under the terms and conditions set forth in this agreement.
- 1.3. The Parties affirm their commitment to using collaborative problem resolution and service level improvement processes as are characteristic of NREN general practice worldwide.
- 1.4. Accordingly, the Parties wish to record the terms of their resultant agreement in writing, as they hereby do.

2. INTERPRETATION

- 2.1. The stipulations in this clause 2.1 apply to this Agreement and to the SABEN REN Services Standard Terms and Conditions.
 - 2.1.1 Clause headings are for convenience, and shall not be used in interpreting clauses.
 - 2.1.2 Unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other gender; a natural person includes an artificial person, and vice versa; the singular includes the plural, and vice versa.
 - 2.1.3 Any reference to an enactment shall be deemed to refer to that enactment as at the date of signature hereof; but subsequent to any amendments or re-enactments thereof, from time to time.
 - 2.1.4 Where figures are referred to in both numerals and words, if there is any conflict between the two, the words shall prevail.
 - 2.1.5 Any reference to "months" or "years" shall be construed as denoting calendar months or calendar years, as the case may be.
 - 2.1.6 If any provision within a definition is a substantive provision conferring rights or imposing obligations, then notwithstanding that it occurs only in a definition clause, effect shall be given to it as if it were a substantive provision within the body of this agreement.
 - 2.1.7 Where any term is specifically defined within the context of a particular clause, the term so defined shall bear the meaning ascribed to it for all purposes of this agreement, notwithstanding that that term has not been defined in this interpretation clause, unless it is clear that the term so defined has limited application to the relevant clause.
 - 2.1.8 No provision herein shall be construed against, or interpreted to the disadvantage of, either Party, by reason of such Party having or being deemed to have drafted or introduced such provision.
- 2.2. The expressions in the following sub-clauses bear the meanings assigned to them therein, and cognate expressions bear corresponding meanings.
- 2.3. "**Service Schedule**" means a document in which SABEN presents a detailed quotation for the provision of SABEN REN Services to the INSTITUTION by SABEN and/or one or more SABEN-Appointed Service Providers, and with provision for the INSTITUTION to formally record its acceptance of the quote through the signature of an authorised representative.
- 2.4. "**Business Day**" means any day other than a Saturday or a Sunday or a day proclaimed as a public holiday in South Africa.

- 2.5. "**Commencement Date**" means the date specified as such in Annexure A, or, if no such date is recorded in Annexure A, then the date of last signature of this Agreement.
- 2.6. "**Electronic Communications Services**" and "**Electronic Communications Network Services**" have the meanings ascribed to these terms in the Electronic Communications Act No. 36 of 2005.
- 2.7. "**External Gateway**" means network routing and switching facilities that are operated by TENET at various locations within South Africa and elsewhere, for the purposes of connecting SANReN to other networks.
- 2.8. "**Global Internet Access Service**" means IP connectivity between the Site to which the service is delivered and any Internet node anywhere in the World.
- 2.9. "**Global REN**" means the internetwork comprising the recognised research and education networks of the world, including the European Commission's GÉANT Network, that interconnect with each other directly or indirectly.
- 2.10. "**Global REN Connectivity Service**" means IP connectivity between the Site and any node on the Global REN, via a SABEN Access Network, via SANReN itself, and via SANReN's upstream interconnectivity with the Global REN.
- 2.11. "**Local REN Access Service**" means connectivity at Layer 2, which is also known as the data link layer, over a SABEN Access Network between the Site and a conveniently located SABEN Service Delivery Point.
- 2.12. "**Networking Services**" means all services related to the deployment, maintenance and use of electronic networks and connectivity, including but not limited to Electronic Communications Services and Electronic Communications Network Services, access network services, value-added services, above-the-net services and local area networking services.
- 2.13. "**NREN**" means a National Research and Education Network.
- 2.14. "**Participating Institutions**" means those institutions with which SABEN has concluded SABEN REN Service Agreements.
- 2.15. "**Parties**" means the INSTITUTION and SABEN.
- 2.16. "**PFMA**" means the Public Finance Management Act No. 1 of 1999, as amended.
- 2.17. "**REN**" means Research and Education Networking
- 2.18. "**REN Services**" means a suite of interdependent Networking Services that meets the needs of post-schools and tertiary education and research institutions to communicate and collaborate with each other and with like institutions across the world and are delivered via the Global REN, including but not limited to Internet Protocol connectivity with universities, colleges, research institutions, science gateways, high performance scientific computing centres, online scientific instruments, scientific data and information resources, worldwide.
- 2.19. "**REN Network**" means the network within South Africa comprising
- 2.19.1 SANReN;
- 2.19.2 networks that connect Sites of Participating Institutions to SANReN ("**Access Networks**");
- 2.19.3 Such circuits as TENET procures that connect External Gateways to networks of other service providers.
- 2.20. "**SABEN Acceptable Use Policy**" means the sequence of versions of a document of that name that forms part of the SABEN General Polices as described in clause 6.
- 2.21. "**SABEN Access Network**" means an electronic communications network that is operated by SABEN and interconnects one or more TVET Colleges and/or Schools

Networks to SABEN Service Delivery Point.

- 2.22. **“SABEN-Appointed Service Provider”** means a duly licensed provider of electronic communications services and/or electronic communications network services that SABEN has specifically appointed to provide certain SABEN REN Services in terms of this SABEN REN Services Agreement to Participating Institutions that have appointed SABEN as its agent for this purpose.
- 2.23. **“SABEN General Policies”** means a set of documents that are freely available from SABEN as set out in clause 6.
- 2.24. **“SABEN REN Services Standard Terms and Conditions”** means the sequence of versions of a document of that name that forms part of the SABEN General Policies as described in clause 6.
- 2.25. **“SABEN REN Service”** means a REN Service that is offered or provided by SABEN itself or a SABEN-Appointed Service Provider, including but not limited to SABEN's Local REN Access Service, SABEN's Global REN Connectivity Service, and SABEN's Global Internet Access Service.
- 2.26. **“SABEN REN Service Agreement”** means an agreement entered into between SABEN and a Participating Institution for the provision of the SABEN REN Services, and includes this agreement.
- 2.27. **“SABEN Service Delivery Point”** means a port on a SANReN device at a SANReN point-of-presence at which SABEN Access Networks may connect to SANReN. Each SABEN Service Delivery Point is uniquely identified by a TENET Site Number (TSN) that TENET assigns to it.
- 2.28. **“SABEN's web site”** means the web site at <http://www.saben.ac.za>.
- 2.29. **“SANReN”** means the South African National Research Network, the high-speed electronic communications network known by that name that has been and continues to be deployed by the SCA, as augmented by certain circuits and facilities deployed from time to time by both TENET and SABEN.
- 2.30. **“SCA”** means the SANReN Competency Area within the Meraka Institute of the Council for Scientific and Industrial Research.
- 2.31. **“Schools Network”** means an organisation that provides electronic communications services to Schools as a reseller of services from upstream providers and/or using its own network.
- 2.32. **“Service Order”** means a Service Schedule that the INSTITUTION has formally accepted and which thereby has become a formal order placed by the INSTITUTION for SABEN to implement.
- 2.33. **“Site”** means a campus, premises or other location to which the INSTITUTION may request SABEN to provide SABEN REN services.
- 2.34. **“TENET”** means Tertiary Education and Research Network of South Africa NPC, Registration Number 2000/020780/08.
- 2.35. **“TENET's Connection Policy”** means the policy which defines the institutions that are eligible to connect to SANReN, published on TENET's web site.
- 2.36. **“TENET's REN Service Agreement”** means the document that defines the standard terms and conditions of TENET's services, published on TENET's web site.
- 2.37. **“TENET's web site”** means the web site at <http://www.tenet.ac.za>.
- 2.38. **“Termination Date”** means the date specified as such in Annexure A.
- 2.39. **“TVET College”** means a Technical Vocational Education and Training College as defined in the Technical Vocational Education and Training Act No. 29 of 2013.

3. COMMENCEMENT, AMENDMENTS AND TERMINATION

- 3.1. Unless otherwise agreed between the Parties in writing, this Agreement takes effect as from the Commencement Date.
- 3.2. If a Termination Date has been recorded in Annexure A, this agreement shall terminate on that Termination Date; subject however to the further provisions of this agreement.
- 3.3. If no Termination Date has been agreed and recorded in Annexure A, this agreement shall continue until terminated in accordance with clause 3.5.
- 3.4. This Agreement may be amended at any time while it is in force as provided for explicitly in clause 6.4, and also by means of the Parties signing an additional agreement that:
 - 3.4.1 refers to this Agreement;
 - 3.4.2 describes precisely the deletions, additions and/or replacements that constitute the agreed amendments;
 - 3.4.3 states that all other clauses of this Agreement remain in full force and effect.
- 3.5. Notwithstanding anything to the contrary hereinbefore contained, this agreement shall terminate in any one of the following circumstances, viz:
 - 3.5.1 upon effluxion of the existing contract period which terminates as at the Termination Date, or upon any other earlier or later date mutually agreed in writing by the Parties;
 - 3.5.2 upon the expiry of six (6) months' notice in writing, which may be given at any time by either Party to the other; or
 - 3.5.3 upon the occurrence of a material breach of this agreement, which in terms of the provisions and procedures contemplated by clauses 9, 10 and 11 below shall entitle the aggrieved Party to terminate this Agreement.

4. The SABEN REN Services

- 4.1. SABEN warrants that the SABEN REN Services are especially scoped and provided to meet the requirements of TVET Colleges and Schools Network for REN Services.
- 4.2. SABEN acknowledges that TVET Colleges and Schools Networks in South Africa are eligible to apply for and receive the SABEN REN Services on condition that they enter into a SABEN REN Services Agreement with SABEN.
- 4.3. The INSTITUTION acknowledges its awareness that each SABEN REN Service is provided to Participating Institutions only by either SABEN itself or a SABEN-Appointed Service Provider.
- 4.4. SABEN warrants that it is entitled in terms of the Electronic Communications Act No. 36 of 2005, as amended, to provide SABEN REN Services to TVET Colleges and Schools Networks by virtue of SABEN's appointment as a reseller of electronic communications services and electronic communications network services provided by duly licensed operators, including TENET.
- 4.5. SABEN further warrants every SABEN-Appointed Service Provider is entitled in terms of the Electronic Communications Act No. 36 of 2005, as amended, to provide SABEN REN Services to TVET Colleges and Schools Networks either in terms of its own electronic communications services and electronic communications network services licenses or by virtue of its appointment as a reseller by duly licensed service providers.
- 4.6. The Parties recognise and acknowledge that:
 - 4.6.1 TENET is the sole direct provider of REN Services in South Africa;

- 4.6.2 TENET's REN Services depend fundamentally upon TENET's access to and intensive use of SANReN in terms of a long-standing collaboration agreements between the SCA and TENET; and
- 4.6.3 SANReN and TENET are jointly recognised as the National Research and Education Network of South Africa, in which capacity the SANReN Network, as operated by TENET, interconnects directly with and is part of the Global REN.
- 4.7. SABEN warrants that it is an active collaborator and participant in the South African NREN, together with the SCA and TENET and that TENET permits SABEN to:
 - 4.7.1 connect campus networks of TVET Colleges and Schools Networks via SABEN Access Networks to SABEN Service Delivery Points on SANReN;
 - 4.7.2 to re-bundle TENET's REN Services as SABEN sees fit as upstream inputs into the SABEN REN Services;
 - 4.7.3 to provide such SABEN REN Services to TVET Colleges and Schools Networks via such SABEN Access Networks and SANReN; and
 - 4.7.4 to participate in TENET's collaborative processes for the management of the service level agreement that governs TENET's delivery of its REN Services.
- 4.8. SABEN further warrants that the SCA recognises:
 - 4.8.1 SABEN's deployment and use of SABEN Access Networks to connect TVET Colleges and Schools Networks to the SANReN Network at SABEN Service Delivery Points and SABEN's provision of the SABEN REN Services to TVET Colleges and Schools Networks; and
 - 4.8.2 SABEN as the sole supplier of REN Services to South African TVET Colleges and Schools Networks.
- 4.9. In consequence of the above warranties, SABEN warrants, and the INSTITUTION recognises and accepts that SABEN, duly assisted by its SABEN-Appointed Service Providers, is the sole provider of REN Services to TVET Colleges and Schools Networks.

5. APPOINTMENT OF SABEN AS SERVICE PROVIDER AND AGENT

- 5.1. Subject to the further provisions of this Agreement, the INSTITUTION appoints SABEN to:
 - 5.1.1 provide SABEN REN Services directly to the INSTITUTION; and to
 - 5.1.2 act as the INSTITUTION's sole and exclusive agent for the procurement from SABEN-Appointed Service Providers of SABEN REN Services as may be required by the INSTITUTION.
- 5.2. SABEN will act as general consultant to the INSTITUTION in all matters concerning the purchase of REN Services and will keep the INSTITUTION informed of:
 - 5.2.1 the sources of supply of REN Services required by the INSTITUTION;
 - 5.2.2 the general level of market prices of REN Services applicable from time to time; and
 - 5.2.3 the general conditions appearing likely to affect SABEN REN Services or likely to interfere with the prompt supply of SABEN REN Services to the INSTITUTION.
- 5.3. SABEN and/or any SABEN-Appointed Service Provider shall provide SABEN REN Services to the INSTITUTION only as duly ordered by the INSTITUTION through its formal acceptance of a Service Schedule that has been prepared and presented to the INSTITUTION by SABEN.
- 5.4. When dealing with any SABEN-Appointed Service Provider ("the Provider") as the agent of the INSTITUTION :

- 5.4.1 SABEN shall inform the Provider of the purposes for which the INSTITUTION intends to use the SABEN REN Services provided by the Provider and of the fact that the SABEN is acting as an agent of the INSTITUTION; and
- 5.4.2 SABEN shall secure such warranties as to the nature, quality and suitability of such SABEN REN Services as the INSTITUTION may require.
- 5.5. SABEN shall execute promptly the INSTITUTION's Service Orders and will effect all purchases at prices and on conditions which are the most technologically and commercially advantageous for the INSTITUTION.
- 5.6. The INSTITUTION undertakes that it will not, during the continuance of this Agreement, place orders for the purchase of any of connectivity between any of its Sites and the REN Network otherwise than through the SABEN in terms of this Agreement.
- 5.7. The INSTITUTION agrees that it shall not provide to any other entity any Networking Service that depends upon any SABEN REN Service provided to the INSTITUTION at any of its Sites by SABEN or by any SABEN-Appointed Service Provider, without the written permission of SABEN and under conditions prescribed by SABEN.

6. THE SABEN GENERAL POLICIES

- 6.1. The INSTITUTION acknowledges its awareness of SABEN General Polies that are published SABEN's web site and are available to the INSTITUTION upon request and as documents that can be downloaded from SABEN's web site, including:
 - 6.1.1 The current version of "**SABEN Acceptable Use Policy**", which sets out the current permissible and impermissible usage practices;
 - 6.1.2 The current version of "**SABEN REN Services Standard Terms and Conditions**", which sets out the current terms and conditions under which SABEN provides the SABEN REN Services at any time; and
- 6.2. The INSTITUTION agrees that at any time all then current SABEN General Policies form an integral part of this Agreement; that all references to "the INSTITUTION" in each SABEN General Policy are references to and apply to the INSTITUTION and that the INSTITUTION is bound by all provisions therein other than those that have been explicitly excluded in Annexure A to this Agreement.
- 6.3. SABEN acknowledges that it is itself bound by the provisions of all current SABEN General Policies.
- 6.4. The Parties agree that from time to time SABEN may revise one or more SABEN General Policies, subject to SABEN's compliance with the following requirements:
 - 6.4.1 SABEN shall not bring any new version of a SABEN General Policy into force before the Board of SABEN has formally resolved to adopt it.
 - 6.4.2 Each version of any SABEN General Policy shall be uniquely identified by a version number and shall bear the date upon which the Board of SABEN approved it and the date upon which it comes into force, thereby superseding the previous version.
 - 6.4.3 SABEN shall notify the INSTITUTION in writing of the adoption of each new version of any SABEN General Policy at least ten (10) Business Days before the date on which the new version comes into force.
 - 6.4.4 Before it adopts a new version of a SABEN General Policy the Board of SABEN shall satisfy itself that SABEN management has informed the INSTITUTION at least thirty (30) Business Days before the Board's consideration of the matter as to the nature and scope of the intended changes to the current version and that any comments or objections that INSTITUTION has submitted on the matter have been duly considered.

7. CHARGES, PAYMENTS AND ACCOUNTING RECORDS

- 7.1. The INSTITUTION acknowledges that all once-off charges and recurring charges for which it is liable in respect of SABEN REN Services specified in any Service Order and provided by SABEN itself are due to SABEN and must be duly paid to SABEN in accordance with the SABEN REN Services Standard Terms and Conditions.
- 7.2. The INSTITUTION acknowledges that all once-off charges and recurring charges for which it is liable in respect of any SABEN REN Services provided by any SABEN-Appointed Service Provider as specified in any Service Order are due to that SABEN-Appointed Service Provider, but must be duly paid to SABEN in its capacity as the agent of the INSTITUTION, in accordance with the SABEN REN Services Standard Terms and Conditions.
- 7.3. In respect of all charges and recurring charges referred to in clause 7.2 as are due by the INSTITUTION to any SABEN-Appointed Service Provider under this Agreement and that SABEN has received from the INSTITUTION, SABEN shall pay over such amounts to such SABEN-Appointed Service Provider timeously and in accordance with the SABEN REN Services Standard Terms and Conditions.
- 7.4. The INSTITUTION acknowledges and accepts that SABEN recovers its operational costs through the following additional charges that are set from time to time by the Board of SABEN and published on SABEN's web site:
 - 7.4.1 A Project Management Charge that is set as a percentage of all once-off charges for SABEN REN Services provided by SABEN itself or by any SABEN-Appointed Service Providers; and
 - 7.4.2 An Operational Cost Recovery Charge that is set as a percentage of all recurring charges for SABEN REN Services provided by SABEN itself or by any SABEN-Appointed Service Providers.
- 7.5. The INSTITUTION acknowledges that it is aware of the prevailing values of the percentages referred to in clause 7.4 as at the Commencement Date.
- 7.6. The INSTITUTION agrees that upon the commissioning of the SABEN REN Services specified in any Service Order it will pay to SABEN such Project Management Charges that are specified in such Service Order, as contemplated in clause 7.4.1.
- 7.7. The INSTITUTION agrees that in any month it will pay to SABEN such Operational Cost Recovery Charges, as are due at the then prevailing set percentage in respect of all recurring service charges that are due in terms of any Service Order, as contemplated in clause 7.4.2.
- 7.8. The INSTITUTION understands and acknowledges that the charge structures and rates for the SABEN REN Services and the charges contemplated in clause 7.4 apply equally and uniformly to all Participating Institutions and are not subject to negotiation with individual Participating Institutions.
- 7.9. Other than the charges provided for in clause 7.4 SABEN shall not charge any commission for acting as an agent of the INSTITUTION.
- 7.10. SABEN shall keep separate, proper and accurate accounts and records of Service Orders placed on SABEN-Appointed Service Providers on behalf of the INSTITUTION, including full details of the persons from whom they are purchased, the quantity, the total price paid and, wherever possible, the price per unit or quantity, and also the expenses incurred by SABEN in making those purchases and arranging for delivery as required by the INSTITUTION, and of

mail and similar charges incurred in relation to such purchases, and SABEN shall permit inspection by the INSTITUTION's appointed representatives of those accounts and records at such reasonable times as the INSTITUTION may require.

- 7.11. The INSTITUTION agrees that SABEN, when implementing a Service Order, may ship physical components from the suppliers to such destinations as may be notified to SABEN by the INSTITUTION from time to time, and may arrange insurance cover for the goods in transit and recover the costs thereof from the INSTITUTION.

8. LIMITATION OF SABEN's LIABILITY

- 8.1. Subject to any statutory limitation or constraint that may be applicable to the INSTITUTION in terms of the PFMA, the INSTITUTION acknowledge and agrees that SABEN shall bear no liability to the INSTITUTION, or to any other person whomsoever, in respect of any loss, damage or claims arising from this agreement where such loss, damage or claim may be attributed to decisions of SABEN that are undertaken in good faith or to the provision to the INSTITUTION of SABEN REN Services, whether by SABEN or by any SABEN-Appointed Service Provider, unless such loss, damage or claim may be ascribed to SABEN's gross negligence, or wilful act; provided that, insofar as the PFMA may be applicable to the INSTITUTION, the following further provisions in this clause 8 shall apply.
- 8.2. SABEN hereby acknowledges itself to be aware of the provisions of the PFMA, and it undertakes to take due cognisance of the restrictions imposed thereunder – including, but not limited to, the provisions of section 66 thereof, which pertains to guarantees, indemnities and securities.
- 8.3. The INSTITUTION acknowledges that it has satisfied itself that the terms of this Agreement do not conflict with the provisions of the PFMA; and it acknowledges further that it remains responsible to ensure its continued compliance with the provisions of that Act.
- 8.4. In the event of the INSTITUTION at any time becoming aware of any fact or circumstance that would constitute a breach of its obligations under the PFMA, it shall notify SABEN thereof forthwith in writing.

9. DISPUTES AND MEDIATION

- 9.1. The Parties declare their intention that any difference or dispute that may at any time arise with respect to the meaning or effect of the provisions of this agreement, or the rights and obligations of the Parties thereunder, shall, if possible, be resolved directly and amicably between the Parties concerned, with the assistance, if necessary, of their Chief Executive Officers/senior management or their duly designated representatives.
- 9.2. If such high-level intervention fails to result in a settlement of the matter in issue, then either Party shall be entitled to request mediation of the issue by some mutually acceptable independent third party, in which event, with the agreement of both Parties, such mediator shall attempt to facilitate a mutually acceptable resolution of the issue, without recourse to litigation or arbitration, as the case may be.
- 9.3. If neither the intervention of the Parties' Chief Executive Officers/senior management as contemplated by clause 9.1 nor the mediation of an independent third party, as contemplated by clause 9.2, shall achieve a settlement of the matter in issue, then the matter shall be determined by a competent Court having jurisdiction in respect of both the Parties and the matter in issue, unless the Parties mutually agree in writing that it should be determined by Arbitration in accordance with clause 10.

10. ARBITRATION

In respect of any matter which the Parties mutually agree in writing should be determined by Arbitration, the following provisions shall apply:

- 10.1. The Arbitration proceedings shall be held on an informal basis, in order that a decision may be reached as expeditiously, and as inexpensively, as possible, subject only to due observance of the principles of justice.
- 10.2. Each Party shall be entitled to be represented at such Arbitration proceedings by its legal representatives and/or any other appointed expert or specialist/s.
- 10.3. The Arbitrator shall permit each Party to adduce such evidence and argument as the Arbitrator may consider relevant to the matter in dispute.
- 10.4. The Arbitrator shall be such suitably qualified person as the Parties may mutually agree; and in the absence of agreement, the Arbitrator shall be a person having appropriate skills and knowledge as may be appointed by SABEN's Auditors as follows:
 - 10.4.1 if it is primarily an accounting matter, then an independent practicing Chartered Accountant;
 - 10.4.2 if it is primarily a legal matter, then a practicing Senior Counsel; or
 - 10.4.3 if it is any other matter, then a person considered by the Auditors to have appropriate knowledge and skills in relation to the matter in issue.
- 10.5. The Arbitration shall be conducted at such place as may be determined by the Arbitrator.
- 10.6. Notwithstanding the foregoing, the Arbitrator shall be entitled to base a decision and award not only upon principles of law, but also upon a principle of equity and fairness, having due regard to both the interests of the Parties to the dispute, and also the interests of the other Participating Institutions.
- 10.7. The decision of the Arbitrator shall be final and binding upon both Parties and capable of being made an Order of Court upon application by either of them.
- 10.8. Nothing herein contained or implied shall preclude a Party from applying to Court for a temporary interdict, or other relief of an urgent and temporary nature, pending the award of the Arbitrator.
- 10.9. The Arbitrator shall be further vested with powers to make interim orders, and to give directions as to alternative provisions, which are to be implemented by the Parties pending the final Arbitration award, in the event of circumstances which in the opinion of the Arbitrator render such interim orders or directions necessary or desirable.
- 10.10. The costs of and incidental to any such Arbitration proceedings shall be at the discretion of the Arbitrator, who shall be entitled to direct that they be taxed as between "party and party", or as between "attorney and client".

11. BREACH

- 11.1. Subject to any provisions to the contrary in the Agreement, in the event of the INSTITUTION or SABEN, as the case may be ("the defaulting Party"), failing to comply with any material condition of this agreement; and should neither the intervention of the Parties' Chief Executive Officers / senior management / designated representatives, as contemplated by clause 9.1, nor the mediation of an independent third party, as contemplated by clause 9.2, achieve a settlement of the matter in issue, then the other Party ("the aggrieved Party") shall be entitled to deliver formal written notice to the defaulting Party requiring that the breach be rectified within a period not exceeding ten (10) Business Days of such notice (or

such extended period as may be reasonable in the circumstances, and with due regard to the nature and extent of the breach).

- 11.2. Should the defaulting Party fail to remedy the breach within the stated period of notice, the aggrieved Party shall be entitled to cancel this Agreement and to institute such judicial proceedings as it may deem appropriate in order to recover its claims and damages, if any, and in order to enforce such other relief to which it may be entitled in consequence thereof.

12. CESSION AND ASSIGNMENT

This agreement shall be personal to the Parties, and neither of them may cede, assign or transfer any of their rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

13. CONFIDENTIALITY

Each Party shall honour any request from the other to treat as confidential any information exchanged (other than Service Performance Data).

14. APPLICABLE LAW: JURISDICTION

- 14.1. This agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 14.2. Subject to the provisions of this agreement, the Parties hereby consent and submit to the jurisdiction of the High Court of South Africa, in respect of any disputes arising from or in connection with this agreement.

15. DOMICILIUM AND NOTICES

- 15.1. The Parties respectively choose as their *domicilium citandi et executandi* ("domicilium") for the purposes of giving notices, the payment of any sum, the service of any process, and for any other purposes arising from this agreement, the addresses on the fronting page of this Agreement, specified in respect of each of them, including the e-mail addresses therein stated.
- 15.2. Each of the Parties shall be entitled from time to time by written notice to the other of them to change such domicilium or other particulars, provided that no physical address may be a post office box or poste restante.

16. GENERAL

- 16.1. This document, its Annexure, the SABEN General Policies, and all duly signed and accepted Service Orders together constitute the entire record of the agreement between the Parties in regard to the subject matter thereof.
- 16.2. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like which is not recorded in the entire record of agreement referred to in clause 16.1.
- 16.3. No addition to, variation or agreed cancellation of this Agreement, including its Annexures, shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.4. No extension of time or indulgence which either Party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, which shall not be thereby precluded from exercising any rights against the grantee which may have arisen in the past, or which might arise in the future.
- 16.5. Each Party shall bear its own legal and other costs incurred in the negotiation,

drafting and execution of this Agreement.

17. SIGNATURES

SIGNED at this _____ day of _____ 20____

AS WITNESSES :

1. **for SABEN**
- 2.

the signatory warranting that s/he is duly authorised thereto.

SIGNED at this _____ day of _____ 20____

AS WITNESSES :

1. **for the INSTITUTION**
- 2.

the signatory warranting that s/he is duly authorised thereto.

SABEN REN SERVICE AGREEMENT - ANNEXURE A

Between SABEN and
[Name of Institution]
(hereinafter referred to the INSTITUTION)

1. The Commencement Date that applies to this Agreement is

2. The Termination Date that applies to this Agreement is

3. Unique Services and/or Conditions applicable to the INSTITUTION

3.1. None.