



CAPE AGULHAS MUNICIPALITY

1 July 2014 through 30 June 2017

COLLABORATOR FOUNDATION SYSTEM ON-SITE SUPPORT AGREEMENT



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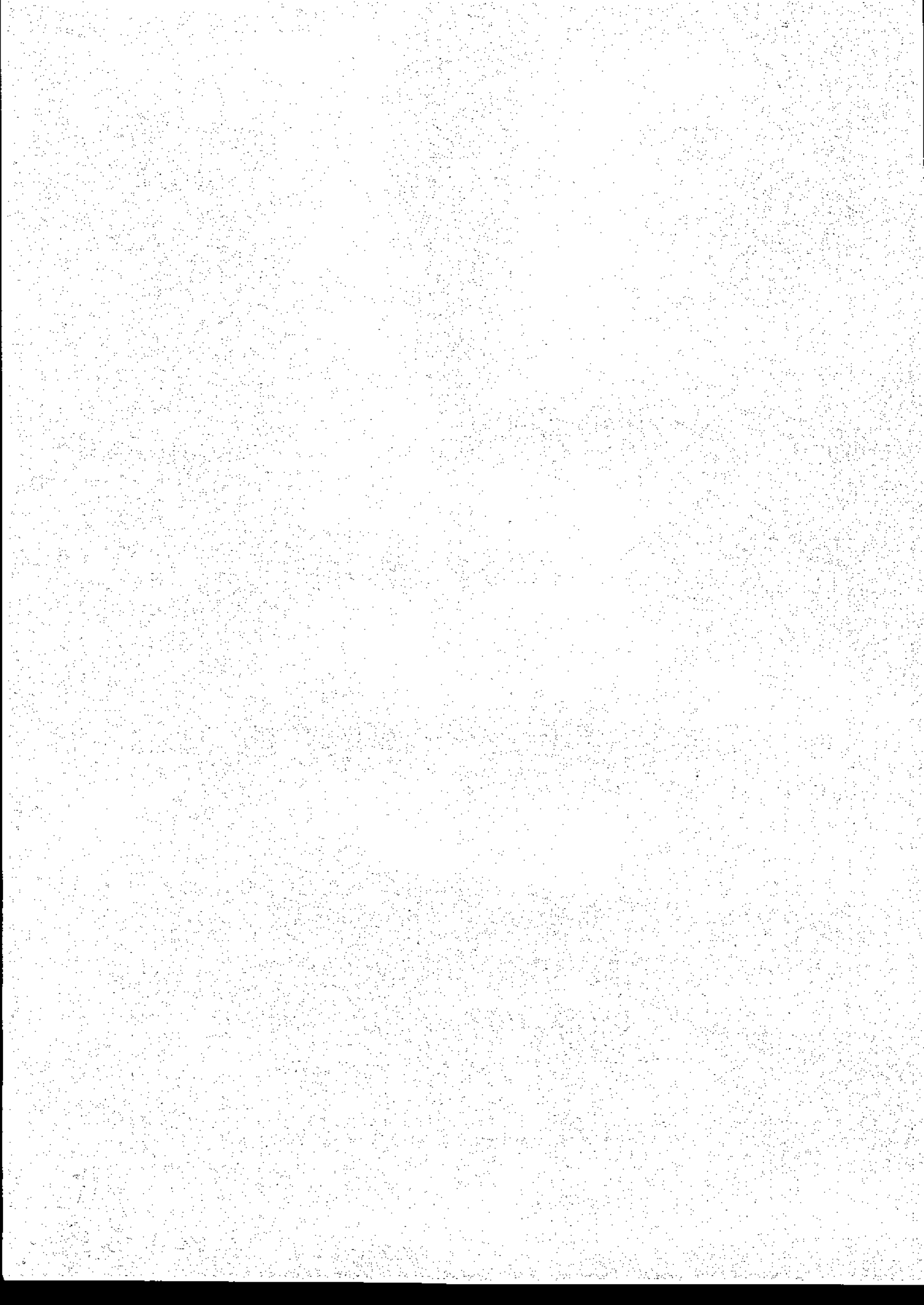




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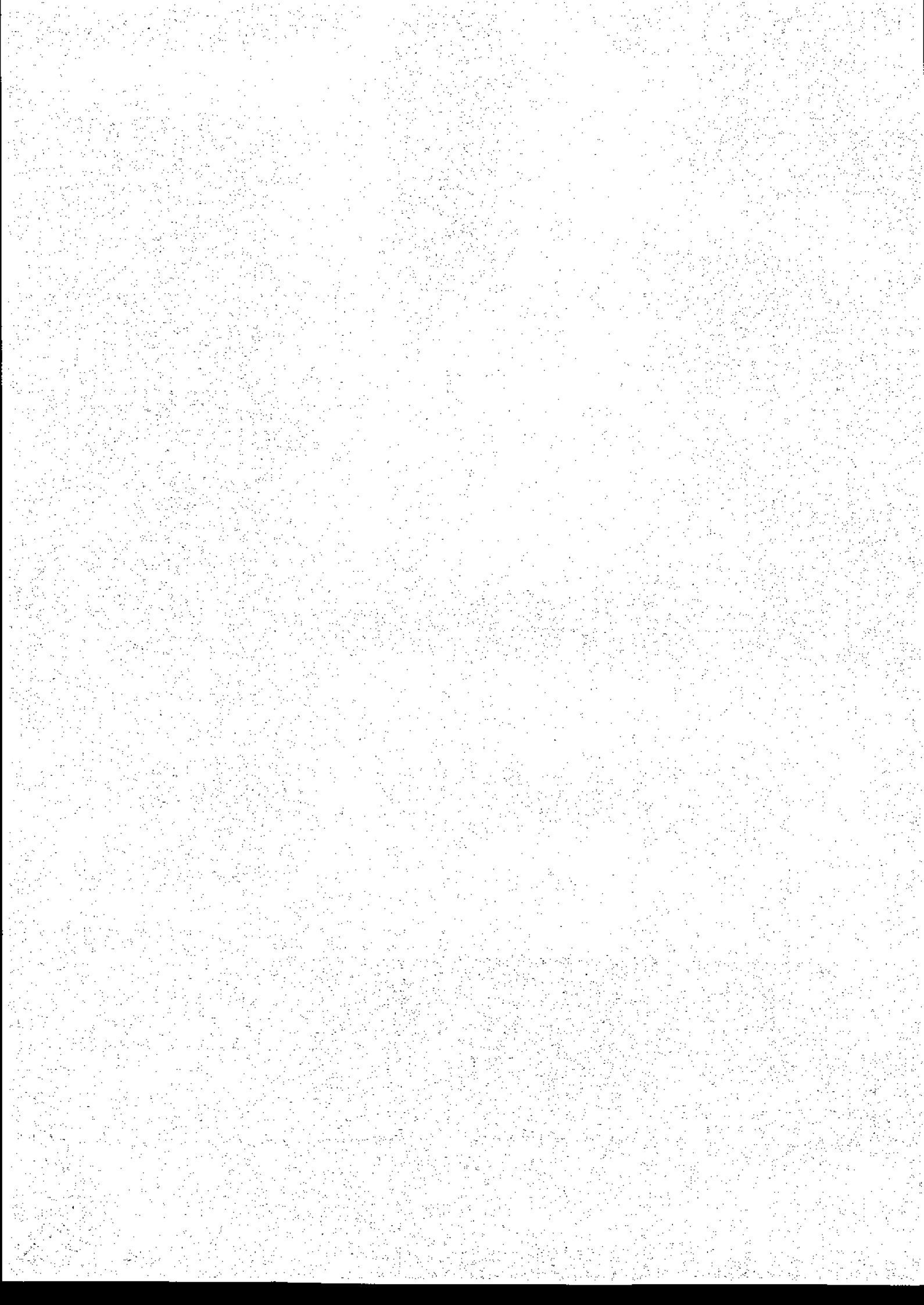
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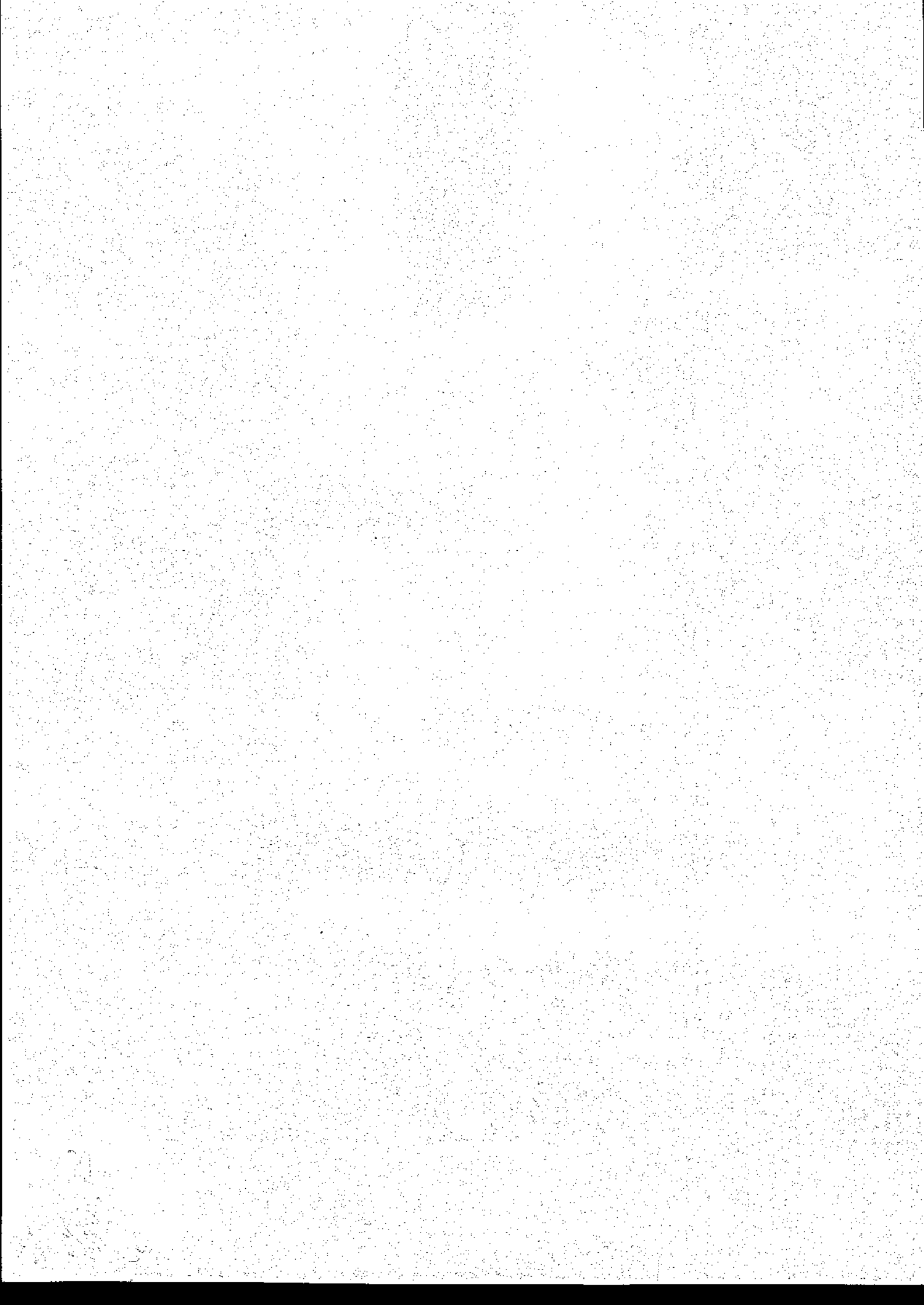
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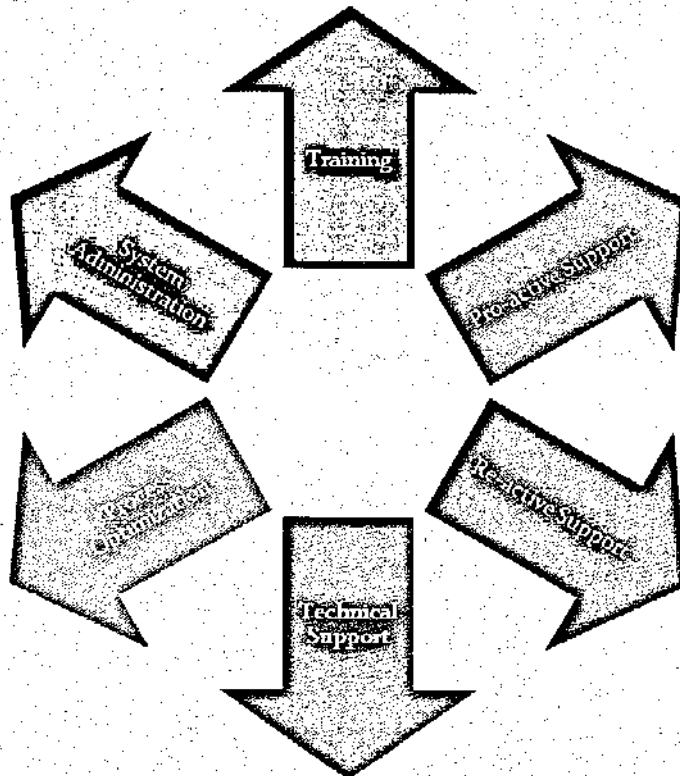


1 INTRODUCTION

Business Engineering would like to use this opportunity to present you with our on-site support services methodology so as to enable you to make an informed decision on the expectations to be associated with the Collaborator Foundation System Support Agreement.

The basis of the Collaborator Foundation System Support Agreement is the provisioning of a host or a variety of services so as to ensure that a holistic approach is taken in addressing the customer support requirements in the most comprehensive manner possible.

You will come to realise that Support in its defined term and with specific reference to this agreement involves Business Engineering as an organisation and is not limited restricted to an individual.



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1.1 SITE HEALTH MANAGEMENT

The onsite support process includes four components. The first component deals with the movement of personnel in the organisation. This movement includes new employees, promotions, demotions as well as redeployments.

The second component ensures that the implemented business processes flow correctly throughout the organisation. Each transaction is monitored to ensure that it does not get stuck somewhere inside the organisation.

The third component of support reacts on requests coming from the users. The fourth component focuses on improvements for the implemented business processes. Our project approach has included the onsite support for the initial period of the project.

The initial period is concluded when the users involved in the workflows have completed 7 transactions or three months has expired from the date of going live. We recommend that the client have staff that can perform the activities mentioned below.

1.2 PRO-ACTIVE SUPPORT

To ensure that the daily transactions for the defined workflows are processed through the organisation, a Senior Support Consultant uses predefined reports to identify potential problem areas in the organisation. The support consultant then receives the applicable instruction from the Senior Support Consultant. This Support Instruction directs the support consultant as well as manages the support process proactively.

This report displays a list of unopened tasks issued by Collaborator to a user. Each task in the list contains the number of days that the task is unopened. In the ideal environment, a task should be opened as soon as the workflow engine has issued the task (e-mail notifications helps this activity immensely). The users that appear on this report all require support

This report indicates users that receive more tasks than what they complete on a monthly basis. The report therefore indicates growing backlogs for a user. The senior report consultant uses this report to determine if the work given to a specified user can be shared between users or if the workflow must change to ensure a more balanced approach. Depending on the problem, the Support Instructions are assigned relevant priority and shall be addressed during the next on-site support day.

1.3 RE-ACTIVE SUPPORT

The users may require some additional support. The user may log a call or register a "Support Request". This type of support is mostly re-active. If the pro-active support (Support Instructions) works effectively, the number of Support Requests will be low.



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1.4 TRAINING

Training and development forms an integral part of the Human Resource Development methodology. It is the means to close the gap between the competence profile of the employee and the required competency profile of the organisation. This intervention is not about training, but the focus is on the learning path of the employee. This means that the employee must gain the required competencies irrespective of the methods or techniques that are available. The crucial point to training and development is that it must make provision for any technique that could be used in facilitating the learning process of the employee. The training department cannot facilitate all training gaps and there are other providers who can provide and focus on developing specific competencies. A training and development system must thus also make provision for internal as well as external training providers.

The assessments are the essential ingredient of training and development. It will determine if the employee gained the sub-competence and eventually test if the employee can demonstrate the integration of these sub-competencies to prove the level of competence. Typical assessments that can be used to test the sub-competence are objective questionnaires to test the cognitive ability and checklists to test the affective and psychomotor abilities. To test the level of competence, typical case studies could be used where the learner's ability to integrate forms the major part of the test.

In the flow of normal day to day activities of any organisation, users leave the organisation and others start. New users need to be trained in the general use of Collaborator as well as the type of transactions they are involved in. It is therefore important to differentiate between General Collaborator Training and Transactional Training.

1.5 WORKFLOW OPTIMISATION

Workflow optimisation is the practice of making changes or adjustments to a workflow, to get results. Optimisation is the use of specific techniques to determine the most cost effective and efficient solution to a problem or design for a process. This technique is one of the major quantitative tools in industrial decision making.

Any organisation goes through a continuous cycle of optimisation. This optimisation may include the integration of business processes, changing (for the better) existing business processes or implementing (using technology) a new business process. The monitoring of the existing business processes is done with the use of Business Activity Monitoring functionality in Collaborator. The senior support consultant with the applicable analyst may present the optimisation strategy to the client. This optimisation strategy may be done under the support agreement or be a completely new project.



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1.6 ADMINISTRATION

In the course of business new people will join the organisation and other will leave the organisation. This is referred to as staff turnover.

New staff members must be registered in the system and linked to the potential tasks (workflow) that can be performed. In some cases where one staff member is replaced by another, the work in progress of the one staff member must be transferred to the new member.

Staff that leaves the organisation must be de-activated from Collaborator and their work in progress must be given to other registered users.

1.7 TECHNICAL SUPPORT

Technical support (also tech support) is a range of services providing assistance with computer hardware, software, or other electronic or mechanical goods associated with the Collaborator environment. In general, technical support services attempt to help the user solve specific problems with a product—rather than providing training, customisation, or other support services. This includes:

- 1.7.1 Email Services
- 1.7.2 Folder Monitoring
- 1.7.3 Electronic Forms
- 1.7.4 Facsimile Console
- 1.7.5 SMS Server
- 1.7.6 Web Services
- 1.7.7 Export Data Services
- 1.7.8 Local Cache Services
- 1.7.9 Periodic Workflow Trigger Services
- 1.7.10 Collaborator Upgrade Services
- 1.7.11 Web Server Environment



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2 PARTIES

The parties to this agreement shall be

Business Engineering (Proprietary) Limited, herein after referred to as BE

and

The Cape Agulhas Municipality, herein after referred to as the client

The parties agree as set out below.

2.1 INTERPRETATION

- 2.1.1 In this agreement, unless clearly inconsistent with or otherwise indicated by the context
- 2.1.2 "the agreement" means the agreement set out in this document, together with all the appendices attached hereto. It should be note from the outset that this is a services agreement which deals in the main with the provisioning of Professional Services;
- 2.1.3 "the commencement date" means the date on which BE start to render the services to the customer;
- 2.1.4 "the customer and/or the client" means the Cape Agulhas Municipality, a local municipality duly registered and incorporated with liabilities as defined in the Constitution of the Republic of South Africa, the Municipal Systems act and related and applicable laws, bylaws and statues published and amended from time to time in the Government Gazette, that govern the function and management of a Local municipality, or a limited company listed on a local or international bourse and/ or any other form of legal business entity or individual entity trading in business as a government department, government agency, non-governmental organisation, company or corporation registered in accordance with the applicable laws of the Republic of South Africa.
- 2.1.5 "BE" means Business Engineering (Proprietary) Limited, a private company duly registered and incorporated with limited liability in accordance with the company laws and related acts, of the Republic of South Africa, with its registered head office at Unit 23, Garsfontein Business Park, Garsfontein, Pretoria.



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- 2.1.6 "the services" means the services set out in Appendix One (1) hereto;
- 2.1.7 "the service charges" means the service charges set out in Appendix Two (2) hereto;
- 2.1.8 any reference to the singular includes the plural and vice versa;
- 2.1.9 any reference to natural persons includes legal persons and vice versa;
- 2.1.10 any reference to a gender includes the other genders.
- 2.1.11 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.1.12 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.1.13 This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 2.1.14 Unless the agreement specifies otherwise if either party is required to notify the other in terms of this agreement, such notification shall be of no force or effect unless –
- (a) it is reduced to writing; and
 - (b) it is delivered in a timely manner and without delay but in any event not later than 30 (thirty) days after being required to do so in terms of this agreement.

3 DURATION

- 3.1 This Agreement shall commence on the Commencement Date and continue for a period of 36 (THIRTY SIX) consecutive months thereafter ("the Initial Term") unless terminated in accordance with the provisions of this Agreement.
- 3.2 This agreement will on the last day of the initial term auto-renew for a period of 12 (twelve) consecutive months ("the new term") unless cancelled in terms of the provisions of this agreement by the customer.
- 3.3 The initial term of this agreement shall be as agreed from 1 July 2014 until 30 June 2017.
- 3.4 Notwithstanding any provisions or clauses contained in this or any other agreement the minimum term of this agreement shall not be less than thirty-six (36) consecutive months, including a 10% annual increase, on the anniversary date of the agreement, without an extension or expansion of any services as defined herein.



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4 APPOINTMENT

The customer hereby appoints BE too solely and exclusively render the services to the customer with effect from the commencement date for the duration of this agreement and BE accepts such appointment on the terms and conditions set out in this agreement.

4.1 NATURE OF RELATIONSHIP

The parties agree and acknowledge that at all times -

- 4.1.1 BE shall be responsible for BE's obligations specified in this agreement;
- 4.1.2 the customer shall be responsible for the customer's obligations specified in this agreement; and
- 4.1.3 the provisions of the Basic Conditions of Employment Act, No 3 of 1983 (as amended) and the Labour Relations Act, including other statutes, regulations, agreements or policies that regulate the employer/employee relationship, or any substituted legislation replacing them shall not apply to the relationship between BE and the customer; and
- 4.1.4 the scope of the services shall be limited to the agreed scope specified in Appendix 1, subject to any limitations or exclusions provided for in this agreement or agreed otherwise in writing between the parties from time to time.
- 4.1.5 Both the customer and BE agree and undertake to not under any circumstances approach, solicit or make any kind of alternative work offers to each others staff members or other directly or indirectly employed human resources for the duration of this agreement and for a period of 36 (thirty-six) months after this agreement has been terminated.



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4.2 SERVICE MANAGEMENT

- 4.2.1 For the purpose of liaising from time to time with the customer regarding the services, BE shall appoint an authorised designated representative and supply the customer with the relevant contact details of such representative within 7 (seven) days of the commencement date of this agreement.
- 4.2.2 Any complaints, queries, requests, notices or like information relating to the services which may in any way be reasonably regarded as material to BE's responsibilities under this agreement shall be communicated in writing forthwith to the designated representative by the customer and BE undertakes to take such action as may be appropriate in a timely manner upon receiving such notice.
- 4.2.3 This agreement shall not prevent BE from performing such similar services for any other customers of BE.

4.3 OBLIGATIONS OF THE CUSTOMER

- 4.3.1 The customer shall, unless otherwise agreed in writing –
 - 4.3.1.1 assign a duly authorised representative that shall be responsible for communicating and managing both the content and output of services and monitoring the services to be performed by BE;
 - 4.3.1.2 provide BE with full access to the customer's premises to enable BE to render the services;
 - 4.3.1.3 be responsible for all customer activities on which BE insists, which customer activities shall remain under the supervision, management and control of the customer;
 - 4.3.1.4 not unreasonably interfere with the activities of BE or its members of staff;
 - 4.3.1.5 in the event of any default or unacceptable performances and acts on the part of BE to the customer's knowledge, bring to the attention of BE management such knowledge of default or unacceptable performances and acts in a timely manner to enable BE to take appropriate corrective action;
 - 4.3.1.6 reimburse BE for all abnormal travelling expenses, overtime fees or any other extraordinary charges as agreed between the parties from time to time.



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4.4 OBLIGATIONS OF BE

- 4.4.1 For the duration of this agreement, BE undertakes for the purpose of rendering the services to –
- 4.4.1.1 comply with safety, health and security requirements of the customer;
 - 4.4.1.2 perform the services, as stated in this service agreement, comprehensively, competently, diligently, to the best of its ability and to the standards set by BE and required by the customer;
 - 4.4.1.3 remain abreast of all developments in the field in respect of which services are being provided to the customer;
 - 4.4.1.4 be qualified and capable to provide the services in a professional manner and have the necessary skills, know-how and competence to perform the services;
 - 4.4.1.5 refrain from any action that may be prejudicial or be adverse to the customer's standing, reputation or goodwill. BE shall act in the utmost good faith towards the customer including the business or other partners of the customer;
 - 4.4.1.6 keep confidential all information it may acquire during the course of execution of this agreement in strict accordance to the provisions of this agreement;

4.5 CHANGES AND/OR ADDITIONS TO SERVICES

- 4.5.1 If the customer requires changes to be made to the services of any nature which are beyond the scope of the services agreed between the parties in terms of this agreement, the customer shall first consult with BE to discuss the nature and scope of the requested change where after the customer shall formalise its request in writing to BE setting out as much detail as possible and available at the time of making the proposal(s);
- 4.5.2 Forthwith upon receiving the written request, BE shall acknowledge receipt of the request in writing and either immediately or not more than 30 (thirty) days thereafter confirm receipt and change implementation criteria in writing if to the extent in which the requested changes can be implemented, accommodated or effected either by BE or its appointed agent, if at all – including any and all details concerning its (BE's) requirements, limitations, exclusions and estimated time for completion; together with the additional fees and costs required to be paid to effect the changes,



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- 4.5.3 BE's notice being deemed to constitute an offer ("the offer").
- 4.5.4 If the customer accepts the offer, the customer shall sign in acceptance thereof where after the signed offer shall be deemed to constitute a valid addendum to this agreement and be deemed to form a part hereof as if specifically incorporated herein.

4.6 SERVICE CHARGES AND PAYMENT TERMS

- 4.6.1 The service charges payable by the customer are as specified in Appendix Two (2) and may be amended from time to time in writing and in accordance with this agreement, which amendments shall be attached as addenda hereto.
- 4.6.2 The customer shall pay to BE the service charges after BE has submitted invoices to the customer, which payment will be made within 7 (seven) days from date of invoice, one month in advance for all services specified in this contract.
- 4.6.3 All payments in terms of or arising out of this agreement -
 - 4.6.3.1 shall not afford or allow either party to have the right to defer, adjust or withhold any payment due to the other in terms of or arising out of this agreement or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 4.6.4 Any increase shall be limited to not more than -
 - 4.6.4.1 the increase in the Consumer Price Index for the period in question, as published by the Central Statistical Service in the Republic of South Africa and confirmed by the Reserve Bank of South Africa;
 - 4.6.4.2 or 10% (ten per centum), whichever is the highest.
- 4.6.5 BE undertakes to give the customer 21 (twenty-one) days prior written notice of any increases.
- 4.6.6 All amounts due by one party to the other in terms of or arising out of this agreement will, unless paid on due date, bear interest from the due date to date of payment. Such interest shall be -
 - 4.6.6.1 calculated at the ruling prime overdraft rate, publicly quoted by ABSA BANK of Southern Africa, +5%;
 - 4.6.6.2 capitalised monthly in arrears on the balance due.



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 WZ [Signature] AT



4.7 SUPPLY OF EQUIPMENT

- 4.7.1 Business Engineering has a secondary and non-core focus on the supply of any and all equipment and/or hardware and as such:
- 4.7.2 Save for the equipment that BE requires to provide in order to render and perform the contracted services as detailed in this agreement to the client, Business Engineering shall not be bound, implicated or be expected to provide, supply, commission, configure and/or maintain any equipment (hardware) required by the customer (whether or not required or procured on the advice of BE or not) in respect of which services are or may have to be rendered throughout the duration of this agreement unless BE, in writing, agrees otherwise.



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5 INTELLECTUAL PROPERTY RIGHTS

- 5.1.1 All intellectual property rights including, but not limited to, copyright, trade marks, service marks, patent rights, trade secrets and know how relating to any products owned by the parties, their vendors and/or suppliers and the software used to implement such products shall at all times remain the sole property of such parties, their vendors or suppliers. These include and do not in any manner limited the application of same as defined above, by BE during the execution of the tasks and services during the term of this agreement and thereafter.
- 5.1.2 All intellectual property rights including, but not limited to, copyright, trade marks, service marks, patent rights, trade secrets and know how relating to any processes, products or service delivery methodologies owned by BE and the software developed and/or used to implement such processes, products or service delivery methodologies shall at all times remain the sole and exclusive property of BE.
- 5.1.3 Neither party shall in any manner alter or effect the display of the respective intellectual property rights (and disclaimers) of the other party, vendors or suppliers, without the prior written approval of the other party, vendor or supplier.

6 CONFIDENTIALITY

- 6.1 Each party hereby undertakes for the continuance of this agreement and for a period not shorter than 18 (eighteen) months after termination to the other to –
- 6.1.1 keep confidential all information (written, including information contained in electronic format, or oral) concerning the business and affairs of the other that it shall have obtained or received from the other party ("the information");
- 6.1.2 not without the other's written consent to disclose the information in whole or in part to any other person save those of its employees involved in the implementation, of this agreement and who have a need to know the same; and
- 6.1.3 use this information solely in connection with the implementation of this agreement and not for its own or the benefit of any third party.



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6.2 The provisions of 6.2 shall not apply to the whole or any part of the information to the extent that it is –

6.2.1 already known to the recipient without obligation of confidence; or

6.2.2 independently developed by the recipient; or

6.2.3 publicly available without breach of this agreement; or

6.2.4 released for disclosure by the disclosing party with the written consent of both parties; or

6.2.5 required to be disclosed in a response to a valid order of court or if disclosure is otherwise required by law.

6.3 BE will not be under any obligation; and the customer agrees that BE will not be under any obligation or forced in any manner or form; to disclose information about the private information and related activities of the customers' employees relating to materials kept on personal or other computing devices; to which BE will or might have access too during the term of this agreement; in direct or in-direct relation to any and all pornographic material or X rated documentation in any format including but not limited to printed, paper or electronic format.

6.3.1 BE agrees to inform the customer of the use of or existence of any such information on the customers network or in the customers environment but BE will not compromise its obligation to the right of privacy of any and all individuals as granted to such individuals through the Constitution of South Africa and the customer agrees to respect this reserved right as expressed by BE.

6.3.2 BE agrees to provide any and all information that it may have to the customer to enable the customer to fulfil its duties and/or obligations as required by the laws of the Republic of South Africa – but only after receipt of a formal written request has been lodged with BE by the customer.

6.4 Each party hereby undertakes to the other to make all relevant employees and agents aware of the confidentiality of the information and the provisions of this Clause 5 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, associates or agents with the provisions of this clause 5.



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7 EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY

- 7.1 Under no circumstances will Business Engineering (BE) be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the customer (including, but not limited to, claims for loss of data, goodwill, profits, use of money or use of hardware or software, interruption in use or availability of data or the hardware or software, stoppage of other work or impairment of other assets), arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise, whether based on this agreement, any commitment performed or undertaken under or in connection with this agreement, or otherwise except only in the case of personal injury where and to the extent that applicable law requires such liability.
- 7.2 In no event will the aggregate liability which BE may incur in any claim by the customer exceed the aggregate of the service charges paid by the customer to BE under this agreement for a two (2) month period, preceding the date of written notification of any claim, provided that BE shall incur no liability whatsoever unless –
- 7.2.1 BE receives written notice of the claim; and
- 7.2.2 the notice is served upon BE within a Twenty One (21) day period calculated from the date the customer became aware of any possible claim or ought to reasonably have become so aware of any possible claim.
- 7.3 Notwithstanding any provisions to the contrary contained in this agreement, BE's liability to the customer in terms of this agreement will be completely discharged and the customer shall have no recourse against BE of any nature whatsoever if the customer, its employees, representatives, agents, assignees and successors attempt to perform, or allow third parties to attempt to perform, services which are the responsibility of or will have an affect on the responsibilities of BE under this agreement without the prior written consent of BE, provided that nothing in this clause may be construed as affecting BE's rights in terms to and of this agreement.



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8 WARRANTIES

- 8.1 BE warrants that the services shall be rendered with such diligence, care and skill as may be reasonably expected by the customer having due regard to the nature of the services.
- 8.2 Save as expressly contained in this agreement, BE is not bound by any warranties or representations in respect of the services referred to in this agreement.
- 8.3 The customer warrants that in entering into this agreement it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties and other terms implied by statutes or common law are excluded to the fullest extent permitted by law.

9 BREACH

- 9.1 Should any party ("the defaulting party") commit a breach of any of the provisions of this agreement, then the other party ("the aggrieved party") shall be obliged to give the defaulting party 21 (twenty-one) days written notice or such longer period as may reasonably be required in the circumstances, to remedy the breach.
- 9.2 If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this agreement against the defaulting party or to claim immediate payment and/or specific performance by the defaulting party of all the defaulting party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved party's rights to claim damages.
- 9.3 The foregoing is without prejudice to such other rights as the aggrieved party may have at law; provided always that, notwithstanding anything to the contrary contained in this agreement, the aggrieved party shall not be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and is incapable of being remedied by payment in money, or if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) days after such amount has been finally determined.



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10 TERMINATION

- 10.1 Notwithstanding anything to the contrary contained in this agreement, this agreement may be terminated –
- 10.1.1 forthwith by BE if the customer fails to pay any sum due in terms of this agreement within 7 (seven) days of a written demand therefore;
 - 10.1.2 forthwith by any party if any of the others shall convene a meeting of its creditors generally or a proposal shall be made for a voluntary winding-up within the provisions of the Insolvency Act, No 24 of 1936 (as amended)
 - 10.1.3 or a proposal for any composition scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the other shall be unable to pay its debts within the meaning of section 8 of the Insolvency Act, No 24 of 1936 (as amended) or if a trustee or judicial manager is appointed in respect of all or any part of the business or assets of the other party
 - 10.1.4 or if a petition is presented
 - 10.1.5 or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party
 - 10.1.6 or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
- 10.2 by either party at the end of the initial or new term by giving one to the other three (3) months written notice to effect the cancellation of services as per the terms and conditions of this agreement.

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11 DISPUTE RESOLUTION

- 11.1 The parties accept that dispute may arise between the parties during the course of this agreement.
- 11.2 Any dispute which is agreed by the parties to be technical or operational in nature, shall be referred to a joint committee comprising the duly authorised representative of the customer and BE's Managing Director, or alternates appointed by them, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of it having been referred to them.
- 11.3 Any dispute not resolved in accordance with the foregoing, will be submitted to and decided by arbitration in terms of clause 12.

12 ARBITRATION

- 12.1 The parties hereby agree that notwithstanding the referral of any matter for resolution in terms of 9 or 10 or 11, the parties shall continue to perform their respective obligations as provided for in this agreement pending the outcome of the resolution of any disputes in terms of 9 or 10 or 11 of this agreement.
- 12.2 Any dispute arising from or in connection with this agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.
- 12.3 This clause constitutes an irrevocable consent by the parties to any proceedings in terms thereof and no party shall be entitled to withdraw there from or to claim at any such proceedings that it is not bound by this clause.
- 12.4 This clause is severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason.



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13 NOTICES AND DOMICILIUM

13.1 The parties choose as their domicilium citandi et executandi their respective addresses set out in this clause 13 for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

13.2 For the purpose of this agreement the parties' respective addresses shall be as

13.2.1 regards BE at 645 Jacqueline Drive, Unit 23 Garsfontein Business Park, Garsfontein, Pretoria, Gauteng ; South-Africa and at facsimile number : (011) 388 – 3657

13.2.2 as regards the customer at:

01 Dirkie Mys Street

Bredasdorp

7280

and at facsimile number: 028 - 425 1019

B

13.2.3 or at such other address in the Republic of South Africa, not being a post office box or poste restante, of which the party concerned may notify the others in writing.

13.3 Any notice given in terms of this agreement shall be in writing and shall –

13.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

13.3.2 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;

13.3.3 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) business day after despatch.

13.4 Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.



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14 FORCE MAJEURE

- 14.1 If any party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, inability to obtain supplies and raw material as a result of *force majeure*, or any other cause or contingency beyond the control of that 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 shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other party may suffer due to or resulting from such delay or failure, provided always that the affected party shall use its best endeavours to mitigate the losses of the other party and to remedy the position as far as possible in the prevailing circumstances.
- 14.2 The affected party undertakes to give the other reasonable written notice of *force majeure* referred to above, provided that failure to do so either timeously or at all shall not in any manner be interpreted as limiting the generality of 14.1.
- 14.3 Any party invoking *force majeure* shall upon termination of such event giving rise thereto forthwith give written notice thereof to the other party. Should such *force majeure* continue for a period of more than 90 (ninety) days then the party not invoking *force majeure* shall be entitled forthwith to cancel this agreement in respect of any obligations still to be performed hereunder.



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15 MISCELLANEOUS

15.1 WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject-matter hereof and no agreement, representations or warranties between the parties other than those set out herein are binding on the parties.

15.2 VARIATION

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

15.3 RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this agreement or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

15.4 ASSIGNMENT

Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other, provided BE shall be entitled to assign this agreement for the purpose of any internal re-organisation or restructuring of the Business Engineering (PTY) Limited Group of companies, which includes all operating subsidiaries and related shareholding companies in which the Business Engineering (PTY) Limited Group may have an interest.



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15.5 CONFLICT OF INTERPRETATION

If any conflict arises in respect of the provisions contained in this agreement and the appendices attached hereto, the provisions contained in this agreement shall take precedence.

15.6 WARRANTY OF AUTHORITY

Each party warrants to the other party that it has power, authority and legal right to sign and perform this agreement and that this agreement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this agreement.

15.7 SEVERABILITY

The agreements and undertakings of parties contained in this agreement shall each be construed as an agreement and undertaking independent of any other provision of this agreement. The parties hereby expressly agree that it is not the intention of any party to violate any public policy, statutory or common law, and that if any sentence, paragraph, clause or combination of the same is in violation of the Law of the Republic of South Africa, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this agreement shall remain binding upon the parties hereto. The parties further acknowledge that it is their intention that the provisions of this agreement be binding only to the extent that they may be lawful under existing applicable law of the Republic of South Africa, and in the event that any provision hereof is determined to be overly broad or unenforceable, the parties hereto agree to the modification of such provisions to the minimum extent required to make them valid and enforceable.

15.8 CONTRACT COSTS

The parties shall each pay their own costs of negotiating, drafting, preparing and implementing this agreement and the appendices to it.



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Signed for and on behalf of BE, who by his signature warrants that he is duly authorised to commit the organisation, on this ~~1st~~ day of JULY..... 2014, at 645 Jacqueline Drive, Unit 23 Garsfontein Business Park, Garsfontein, Pretoria, Gauteng, South-Africa

[Handwritten signature]

PP

Name: P R de Bruin

ESTELLE BRINK

Position: Executive Director

REGIONAL MANAGER

AS WITNESSES:

1.

[Handwritten signature]
Name: Marilyn Stone

2.

[Handwritten signature]
Name: Antoinett Jansen

BUSINESS ENGINEERING (PTY) LIMITED

Registration Number: 1998/016562/07
Income Tax Reference: 9807018644 | VAT Number: 4380190795
Garis Business Centre, 1st Floor, Tygervalley Chambers
Nr. 3, 27 Willie van Schoor Avenue, Bellville, 7530
PO Box 3954, Tygervalley, 7536
Directors: A.R. Yaxley / D.A. Yaxley / P.R. de Bruin (Managing)
Telephone Number: 021 949 9297 / Fax Number: 011 388 5606
Email Address: admin@be.co.za / Website: www.be.co.za



[Handwritten initials]



Signed for and on behalf of the customer, who by his signature warrants that he is duly authorised to commit the organisation, on this 6th day of July 2014, at:

.....
.....
.....

Sean O'Neill

Name: DGI O'Neill

Position: Municipal manager

AS WITNESSES:

1. *[Signature]*
Name: Willeen van Zyl

2. *[Signature]*
Name: Melanie Boatjes



[Handwritten initials/signatures]



16 APPENDIX ONE (1): CONTRACTED SERVICES

16.1 TERMS AND CONDITIONS:

- 16.1.1 The services as detailed in this Appendix One (1) will be available, delivered and executed as per the terms and conditions of this agreement – Monday through Friday from 08:00 until 16:00 of every week for the duration of this agreement.
- 16.1.2 Services as detailed in this Appendix One (1) shall not be available after 16:00 or before 08:00 on any normal working day as per 16.1.1, supra.
- 16.1.3 Services as detailed in this Appendix One (1) shall not be available on Saturday's, Sunday's, or any public / religious holiday's as published in the Government Gazette and or proclaimed from time to time by the State President of the Republic of South Africa.
- 16.1.4 Work outside of normal hours and as defined in 16.1.1, 16.1.2 and 16.1.3, supra, will be chargeable at the prevailing BE time and material rates as published in Appendix Two (2) of this agreement, and amended from time to time in accordance with the provisions of this agreement.
- 16.1.5 No work outside normal working hours shall be commenced with, unless an official instruction has been received from a duly authorised representative from the customer and this instruction being reduced to writing and presented to BE for acceptance.
- 16.1.6 Notwithstanding the provisions of 16.1.5 "emergency" and/or "critical" maintenance and other work shall be quantified, evaluated and commenced with (if so determined / required) at the sole discretion of BE and the customer agrees to incorporate payment for such work under the normal Emergency Procurement Procedures of the customer's Supply Chain Management Policy on receipt of an invoice from BE.
- 16.1.7 Under this agreement "Support Services" will be regarded as those professional services required to provide or restore a service previously available to the customer or its employees in accordance with the definitions contained in this agreement.
- 16.1.8 Under this agreement "Support Services" shall not be regarded as to indicate or imply to include or provide the supply, installation, commissioning or configuration of any hardware or software to rectify a faulty part or function or to restore the operational functionality of an application through the procurement or supply of additional software or new release of software other than that which the customer has legally purchased including those components agreed to be specifically required and relating to the Collaborator Foundation System.



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 W, D, B, AT



- 16.1.9 The customer agrees to assist and to make any and all infrastructure components available to BE to ensure that BE support staff has access to the Collaborator Foundation System Server via – either ISDN / PSTN Dial-UP or VPN or Internet Connection. BE agrees to provide any and all equipment required to establish such connectivity, such as modems / routers, at it's own cost and the customer agrees to ensure that all on-going operational costs associated with this mandatory service is provided for in an appropriate and relevant budget.
- 16.1.10 Business Engineering operates an electronic support request / incident management system and the customer shall be expected to log and/or lodge all "calls" through the use of the electronic Support Request Workflow processes – the customer agrees to use this process of logging support requests with Business Engineering representatives.
- 16.1.11 In the event of a complete system failure or in the vent that non compliance needs to be reported the customer shall have the right to at any time contact Business Engineering's central Help Desk at 0860 104 888 to report such system unavailability and/or non compliance.
- 16.1.12 Any professional services provided under this agreement which is required and or as a result of misuse, malicious damage, lack of proper systems or IT maintenance or caused by or resulting from power failure, lighting strike or the like shall be invoiced outside of the scope of this agreement and shall be payable on presentation of an invoice by BE.
- 16.1.13 Where applicable – all costs relating to subsistence, accommodation, travelling, travel time and staff allowances have been included in the contract costs. This agreement and the associated costs does not make provision for subsistence, accommodation, travelling, travel time and staff allowances to other customer sites that may comprise or be included in the jurisdiction of the client and are located further than Ten (10) kilometres from the primary site of support, unless it has been agreed by all parties in writing and have been included in Appendix Two (2) of this agreement.
- 16.1.14 All professional services contracts will be subject to a minimum duration of twelve (12) months,
- 16.1.15 All price(s) quoted are Nett and exclusive of VAT – unless otherwise indicated and/or so reduced to writing.



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16.2 SERVICE DELIVERY METHODOLOGY:

16.2.1 Business Engineering shall ensure that a suitably qualified resource(s) is provided on-site in Bredasdorp, every Thursday, of every week. Providing Cape Agulhas Municipality with one (1) On-Site Support Day every week.

Please note that pricing as quoted per appendix two includes all costs relating to labour, accommodation, staff allowances, travelling, VPN connection service fees etc.

16.2.2 Business Engineering shall ensure that a link to the Business Engineering Support Network is installed and commissioned in the computer room of the Cape Agulhas Municipality, so as to enable Business Engineering to respond to service requests from Cape Agulhas Municipality within 2 Hours from receiving any such request from Cape Agulhas Municipality, on a as and when required basis, eight (8) hours per day, five (5) days per week basis.

16.2.3 The following services shall be provided on a pre-arranged and/or appointment driven basis commensurate with the outstanding support instructions / requests for the site, for the duration of this agreement:

- 16.2.3.1 Site Health Management,
- 16.2.3.2 Pro-Active / Re-Active Support,
- 16.2.3.3 Training to new and existing users,
- 16.2.3.4 General System Administration,

16.2.4 Business Engineering shall provide the following services on an Ad-Hoc as and when required basis, for duration of this agreement:

- 16.2.4.1 Workflow Optimisation,
- 16.2.4.2 Technical Support,

16.2.5 Any work not completed within the designated support day, excluding Ad-Hoc and As and When required assignments, shall be carried over and scheduled for the NEXT SUPPORT DAY,



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17 APPENDIX TWO (2)- INVESTMENT SCHEDULE(S)

17.1 DETAILED BREAKDOWN:

The following charges will be applicable to the services as detailed in this agreement:

- 2014 / 2015 – Professional Services: Provisioning of Support Services as per this agreement R 21, 815.00 per month
- 2015 / 2016 – Professional Services: Provisioning of Support Services as per this agreement R 23, 975.00 per month
- 2017 / 2018 – Professional Services: Provisioning of Support Services as per this agreement R 26, 300.00 per month

The following charges will be applicable to all services required and provided outside of normal working hours as per the clauses, agreements, definitions and provisions of this agreement:

- Professional Services: Time & Material / Overtime rate: @ R, 550.00 per hour or part thereof, exclusive of VAT.
- Professional Services: Sunday and Public Holiday rate: @ R 1,250.00 per hour or part thereof, exclusive of VAT.
- Travelling: Outside of the agreed 25 km travel radius: @ R 3.50 per kilometre or part thereof, exclusive of VAT.
- Accommodation, Staff Allowances & Subsistence: @ R 850.00 per night, exclusive of VAT.



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