



**Western Cape  
Government**

Local Government

Stall  
+  
Seik  
Mr. K. Makan

Directorate: Municipal Governance

Mr Reynold Stevens  
Cape Agulhas Municipality  
P. O. Box 51  
**BREDASDORP**  
7280

Schunkeite

Witmerh Blachie  
BFD

Dear Mr Stevens

**COMPLIANCE MODEL: MEMORANDUM OF AGREEMENT BETWEEN DEPARTMENT OF LOCAL GOVERNMENT, CAPE AGULHAS MUNICIPALITY AND IGNITE ADVISORY SERVICES (PTY) LTD**

I refer to the above and enclose hereto a copy of the signed Memorandum of Agreement between the afore-mentioned parties in relation to the implementation of the Compliance Model at Cape Agulhas Municipality. Same is enclosed for your records.

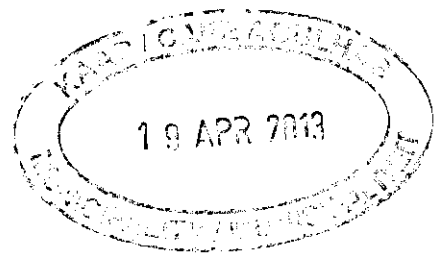
Yours Faithfully

  
.....  
Mr. Kamal Makan

Deputy-Director: Legislation Support

Directorate: Municipal Governance

Date:





**Western Cape  
Government**

Local Government

## **MEMORANDUM OF AGREEMENT**

entered into by and between

### **WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF LOCAL GOVERNMENT**

(Herein represented by **Dr Hildegard Fast** in her capacity as  
Head of Department, duly authorised thereto)

(Hereinafter referred to as "the Department")

and

### **CAPE AGULHAS MUNICIPALITY**

(Herein represented by Reynold Stevens in his / her capacity as  
Municipal Manager, duly authorised thereto)

(Hereinafter referred to as "the Municipality")

and

### **IGNITE ADVISORY SERVICES (PTY) LTD**

(A private company duly incorporated in terms of the Laws of South Africa,  
having its main place of business at 4 Canal Edge Four, Tyger Waterfront,  
Bellville, 7530, with registration number 2006/035577/07, represented herein by  
**Mr Attie Butler** in his capacity as Managing Director, duly authorised thereto)

(Hereinafter referred to as "the Service Provider")

*[Handwritten signatures and initials]*

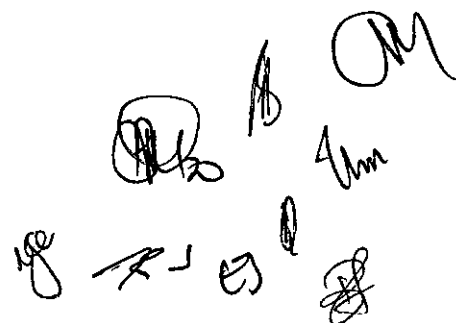
**PREAMBLE:**

**WHEREAS**, the Western Cape Government, in terms of section 154(1) of the Constitution of the Republic of South Africa, 1996, is enjoined to support and strengthen the capacity of municipalities in the Western Cape Province ("the Province") to manage their own affairs, to exercise their powers and to perform their functions.

**AND WHEREAS**, in discharging this mandate, the Department has awarded a bid with order number **LGO-1987** to the Service Provider to render the Services of developing and supplying a software program (more particularly a compliance model) to the Department to be utilised as a tool by the Hessequa, Matzikama, Cape Agulhas and Laingsburg Municipalities (the Municipalities), with the aim of assisting and supporting them in complying with the applicable local government legislation and regulations and which furthermore monitors/gauges their performances in complying with the said legislative prescripts (the Services). The Service Provider has accepted such appointment and has undertaken to implement the compliance model at the Municipalities.

**AND WHEREAS**, the Service Provider shall render the Services to the Department on the terms and conditions as set out in the Service Level Agreement concluded between the Department and the Service Provider which is annexed hereto marked "Annexure B".

**AND WHEREAS**, the Municipality has accepted the implementation of the compliance model and will ensure cooperation with the Service Provider and the Department in allowing them to fulfil their obligations.

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**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Agreement unless the context indicates a contrary intention a word or expression which denotes:

1.1.1 any gender shall include the other genders;

1.1.2 a natural person shall include juristic persons and vice versa; and

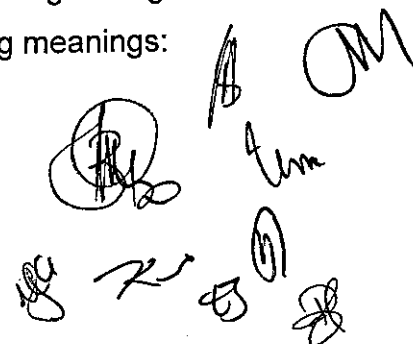
1.1.3 the singular shall include the plural and vice versa.

1.2 The terms and conditions contained in the General Conditions of Contract ("GCC"), incorporated herein, and annexed hereto, marked "Annexure A", as well as all other annexures to this Agreement form part of the Agreement between the Parties.

1.3 In the event of any inconsistency between the provisions of this Agreement and the terms and conditions contained in the GCC or any other annexure to this Agreement, the provisions of this Agreement shall prevail.

1.4 For the sake of clarity, any reference in the GCC to the term "Supplier" shall equate to the term "Service Provider" and any reference in the GCC to the term "Purchaser" shall equate to the term "Department" and/or "Municipality" as contemplated in this Agreement.

1.5 In this Agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

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1.5.1 **"Agreement"** shall mean this Memorandum of Agreement, the GCC, and any other annexures annexed hereto, and "this / the Agreement" shall have a corresponding meaning.

1.5.2 **"GCC"** means the General Conditions of Contract, as set out in "Annexure A".

1.5.3 **"Parties"** means the Department, the Municipality and the Service Provider.

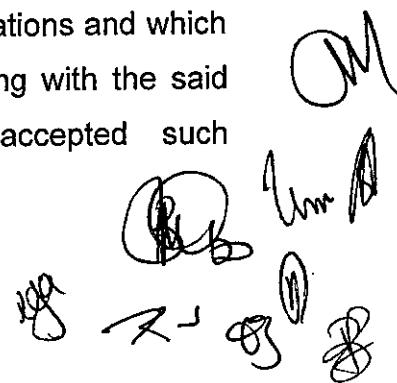
1.5.4 **Service Level Agreement** shall mean the agreement concluded by and between the Department and the Service Provider relating to the development and supply of a compliance model to be implemented at the Municipalities, annexed hereto, marked "Annexure B".

1.5.5 **"Services"** shall mean the Services as set out in clause 4.

1.6 Words and expressions defined in any clause shall, for purposes of that clause, bear the meaning assigned to such words and expressions in that clause.

## 2. APPOINTMENT & COMMENCEMENT

2.1 The Department hereby appoints the Service Provider to render the Services of developing and supplying a software program (more particularly a compliance model) to the Department to be utilised as a tool by the Municipality with the aim of assisting and supporting it in complying with the applicable local government legislation and regulations and which furthermore monitors/gauges its performance in complying with the said legislative prescripts. The Service Provider has accepted such

A collection of handwritten signatures and initials in black ink, located in the bottom right corner of the page. The signatures are stylized and appear to be of various individuals, possibly representing the parties to the agreement.

appointment on the terms and conditions as contained in this Agreement and shall implement the compliance model at the Municipality.

2.2 The Department and Service Provider have concluded a Service Level Agreement annexed hereto as "Annexure B" in respect of the Services which are to be rendered by the Service Provider.

2.3 This Agreement shall commence on **12 September 2012**, notwithstanding the signature date, and shall, unless otherwise provided for in this Agreement, terminate upon the discharge of all the obligations by the Parties.

### 3. PREMATURE TERMINATION

3.1 The Department and/or the Municipality shall be entitled to terminate this Agreement forthwith by written notice if the Service Provider:

3.1.1 enters into insolvency;

3.1.2 commits a fraudulent or dishonest act;

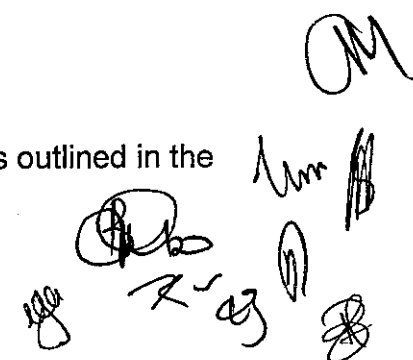
3.1.3 is prevented from performing or unable to perform its duties hereunder for a period exceeding two (2) months;

3.1.4 is guilty of any conduct which is prejudicial to the Department's and/or Municipality's interests; or

3.1.5 has a judgment entered against the Service Provider.

### 4. OBLIGATIONS OF THE SERVICE PROVIDER

4.1 The Service Provider shall only perform the Services as outlined in the

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Service Level Agreement between the Department and the Service Provider, subject to the terms and conditions as contained therein.

4.2 Services rendered by the Service Provider to the Municipality beyond those contained in the Service Level Agreement, shall be for the Municipality's own account. The discharging of all such obligations shall be applicable only between the Municipality and the Service Provider.

4.3 The Service Provider shall render the following Services:

4.3.1 Facilitate an overview workshop at the Municipality to determine the specific legislation and other checklists to be monitored and included in the compliance model,

4.3.2 Submit the legislative list to the Municipality to assign responsibility to each action required by the legislation,

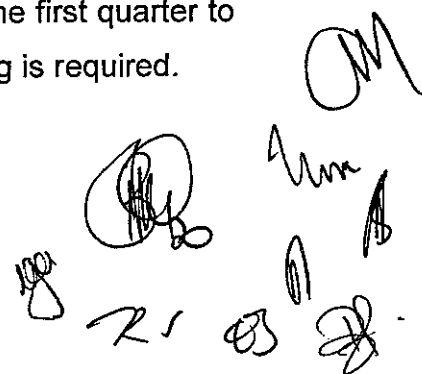
4.3.3 Ensure that the Municipality set its compliance profile based on responsibilities, focus area, reminder dates and deadline dates,

4.3.4 Review the legislative list for accuracy and completeness,

4.3.5 Ensure that the legislative list is signed-off by the Municipality and uploaded on the system,

4.3.6 Ensure that users are loaded on the system and efficiently trained to use the system.

4.3.7 Review the usage of the compliance model after the first quarter to determine the usage and whether additional training is required.

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4.3.8 Update the applicable legislation on a regular basis and inform the Municipality of the applicable legislative changes.

4.3.9 Ensure that the web-based system is available to the Municipality for at least 95% of business hours.

4.3.10 Provide daily and weekly off-site back-ups.

4.3.11 Set up a help desk to assist the Municipality during office hours and address queries within 48 hours.

4.3.12 Submit Progress Reports to the Department in terms of clause 5 of the Service Level Agreement.

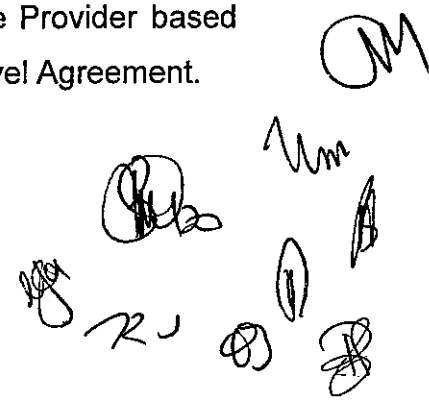
4.3.13 Ensure that the compliance model is fully implemented in accordance with the timeframes outlined in the Service Level Agreement.

4.3.14 Ensure that the software installed at the Municipality is compatible with a future Provincial Portal at the Department to monitor compliance by the Municipality.

## **5. OBLIGATIONS OF THE DEPARTMENT**

5.1 The Department shall remain financially responsible for all payments that are due and payable to the Service Provider in respect of the Services rendered in terms of the Service Level Agreement.

5.2 The Department shall only make payment to the Service Provider based on the terms and conditions of clause 8 of the Service Level Agreement.

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## 6. OBLIGATIONS OF THE MUNICIPALITY

### 6.1 The Municipality shall:

6.1.1 Co-operate with the Service Provider and the Department by allowing them to fulfil their obligations in respect of the implementation of the compliance model.

6.1.2 Enable the Service Provider to meet the terms and conditions set out in the applicable clauses of the Service Level Agreement pertaining to the Municipality.

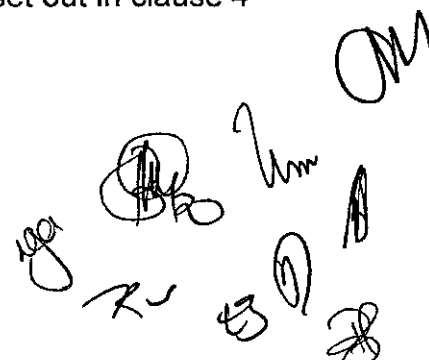
6.1.3 Permit the Department to have the compliance model linked to a future Provincial Portal based at the Department in order to monitor and review municipal compliance with relevant legislative prescripts.

6.1.4 Allow officials of the Department to conduct an inspection of the compliance model implemented at the Municipality's offices.

6.1.5 Select a minimum of sixteen (16) key pieces of legislation [from a set of twenty three (23)] made available by the Service Provider for the implementation of the compliance model.

## 7. PAYMENT

7.1 The Department shall pay the Service Provider a total amount of **R47 548.00 (forty seven thousand five hundred and forty eight rand and zero cents)** for rendering the Services to the Municipality as set out in clause 4 above.

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7.2 The above total amount of **R47 548. 00** is comprised of the following three sub-total amounts:

7.2.1 **R36 400. 00 (thirty six thousand four hundred rand and zero cents)** for consultations, training and the implementation of the compliance model;

7.2.2 **R6 000. 00 (six thousand rand and zero cents)** for hosting and maintaining the installed website and for supporting 10 users; and

7.2.3 **R5 148.00 (five thousand one hundred and forty eight rand and zero cents)** for travelling and accommodation.

7.3 The disbursement fee for travelling and accommodation indicated in clause 7.2.3 above shall be limited to only two visits to the Municipality. Should the Municipality require additional support, the disbursement for such additional support shall be for the Municipality's own account.

7.4 The payment for hosting, maintenance and support for 10 users indicated in clause 7.2.2 above shall be applicable for a limited period of twelve (12) months only. Should the Municipality select additional users, payment for such additional users shall be for the Municipality's own account. After the lapsing of the twelve (12) month period, the further hosting and maintenance of the website and support for users shall be for the Municipality's own account.

## 8. LIAISON

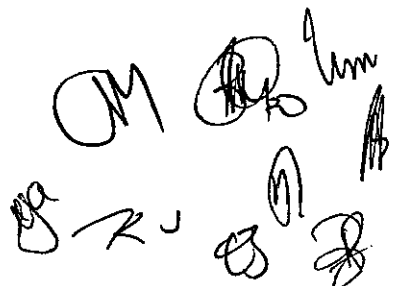
8.1 The liaison person for the Department shall be: **Mr Kamal Makan**

Designation : *Deputy-Director*

Contact Number : (021) 483-4365

Fax Number : (021) 483 4058

Email address : [Kamal.Makan@westerncape.gov.za](mailto:Kamal.Makan@westerncape.gov.za)



8.2 The liaison person for the Municipality shall be: **Mr Blackie Swart**

Designation : *Internal Audit*

Contact Number : (028) 425 5549

Fax Number : 086 776 6910

Email address : BlackieS@capeaqualhas.com

8.3 The liaison person for the Service Provider shall be: **Mr Attie Butler**

Designation : *Managing Director*

Contact Number : 082 4657270

Fax Number : 086 626 1404

Email address : abutler@igniteconsult.co.za

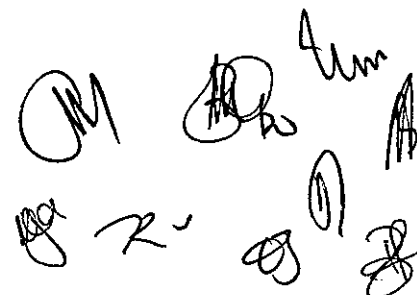
## 9. BREACH

9.1 In the event of a breach by a Party of any of the terms and conditions of this Agreement, the non-defaulting Party(ies) may, without detriment to any other remedy available to it in law, cancel the Agreement if the other Party(ies) fails to remedy the breach within fourteen (14) calendar days, calculated from the date of receipt of a written notice calling for the remedying of the alleged breach.

## 10. DISPUTE RESOLUTION

10.1 Any dispute, which arises between the Department and the Municipality, shall be resolved amicably through consultation and negotiation.

10.2 Should any dispute, contemplated in clause 10.1 remain unresolved, the provisions of sections 41 to 45 of the Intergovernmental Relations Framework Act, No. 13 of 2005, shall apply.

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- 10.3 Any dispute, which arises between the Department and the Service Provider, shall be resolved in accordance with the provisions of the Service Level Agreement.

## **11. CO-OPERATION AND GOOD FAITH**

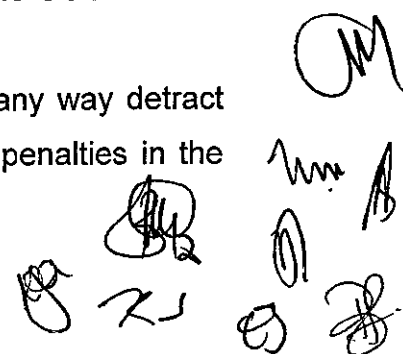
- 11.1 The Parties undertake to fully co-operate with each other in order to give full effect to the intent and purpose of this Agreement and to take all the necessary steps to implement the terms, conditions and import of this Agreement.

## **12. COPYRIGHT / INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The ownership of any and all rights in and to intellectual property owned by the Party prior to the commencement of this Agreement shall remain vested with the Party who as at the commencement of this Agreement is the owner thereof.
- 12.2 The Service Provider hereby warrants that the Service Provider either owns or obtained the right to use all intellectual property in all material used by the Service Provider in the course of providing the services to the Department in terms of the Service Level Agreement.

## **13. DAMAGES IN LIEU OF PENALTIES**

- 13.1 It is recorded and agreed that, in the event that the Service Provider fails to deliver goods or render Services within the period stipulated in this Agreement, the Department shall be entitled to impose penalties on the Service Provider in the manner as set out in clause 22 of the GCC.
- 13.2 The Department's right to impose penalties shall not in any way detract from the Department's right to claim damages in lieu of penalties in the

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event of a breach by the Service Provider of any or all of the terms and conditions of this Agreement.

#### 14. NOTICE AND DOMICILIUM

- 14.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

**THE DEPARTMENT:**

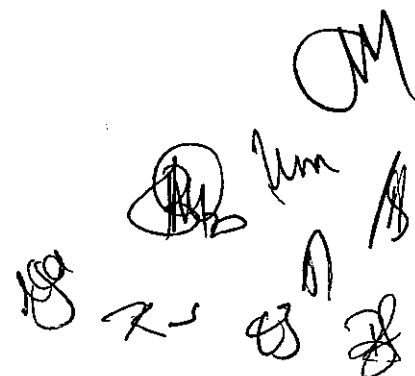
The Accounting Officer  
Department of Local Government  
27 Wale Street  
Cape Town  
8001

**THE SERVICE PROVIDER:**

Mr Attie Butler  
Ignite Advisory Services (Pty) Ltd  
4 Canal Edge Four  
Tyger Waterfront  
Bellville  
7530

**THE MUNICIPALITY:**

The Municipal Manager  
Cape Agulhas Municipality  
1 Dirkie Uys Street  
Bredasdorp  
7280

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14.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.

14.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received seven (7) business days after the date of posting.

14.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

## 15. WAIVER

15.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

15.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

15.3 No indulgence, leniency or extension of time which any Party ("the Grantor") may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

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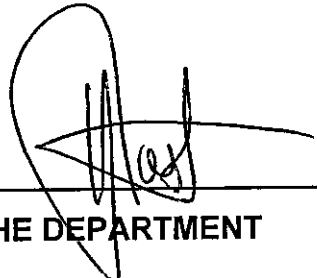
## 16. ENTIRE AGREEMENT

16.1 This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.


16.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

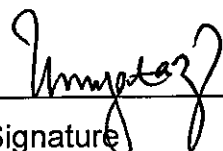
SIGNED AT Cape Town ON THIS 04 DAY OF April

2013

  
\_\_\_\_\_  
THE DEPARTMENT

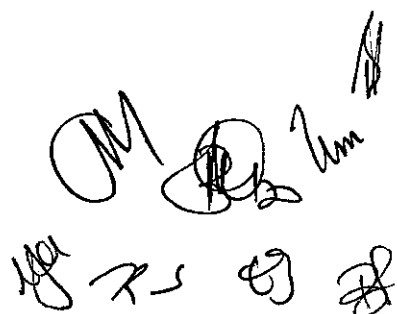
AS WITNESSES:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

BUKIWE GOBO  
\_\_\_\_\_  
Name also in capital letters

NEELISA MYATAZA  
\_\_\_\_\_  
Name also in capital letters



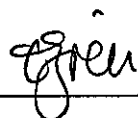
SIGNED AT Bredasdorp ON THIS 27<sup>th</sup> DAY OF March

2013



THE MUNICIPALITY

AS WITNESSES:



Signature

Elsabé Zieff

Name also in capital letters



Signature

RUGAYA ADAMS

Name also in capital letters

SIGNED AT CAPE TOWN ON THIS 12<sup>th</sup> DAY OF APRIL

2013



THE SERVICE PROVIDER

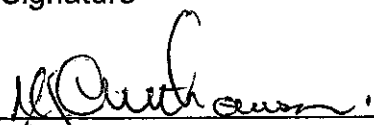
AS WITNESSES:



Signature

CYNTHIA MINNAAR


Name also in capital letters



Signature

LJ Anthonissen

Name also in capital letters





"A"

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

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RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

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obligations of the supplier covered under the contract.

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

**2. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**4. Standards**

- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

**5. Use of contract documents and information; inspection.**

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

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**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

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analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

## **11. Insurance**

- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

## **12. Transportation**

- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

## **13. Incidental services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### 14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### 15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

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such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

**16. Payment**

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

**18. Contract amendments**

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

**19. Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

**20. Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

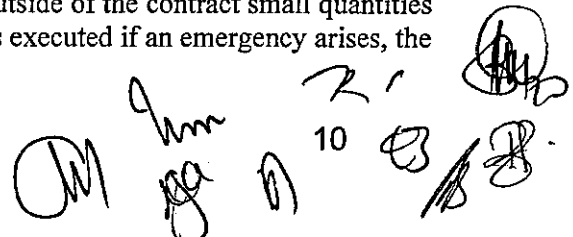
**21. Delays in the supplier's performance**

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## 22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## 23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

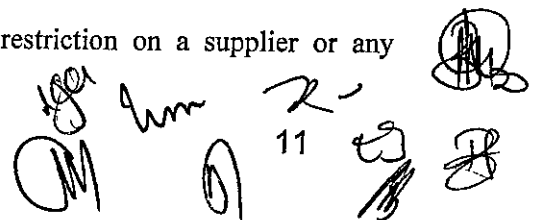
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

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person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

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may be due to him

**25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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- ## 29. Governing language

### 30. Applicable law

### 31. Notices

## 32. Taxes and duties

**33. National Industrial Participation Programme (NIP)**

### 34 Prohibition of Restrictive practices

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- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)

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**Western Cape  
Government**

Local Government

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## **SPECIAL CONDITIONS OF CONTRACT**

### **SERVICE LEVEL AGREEMENT**

entered into by and between

#### **WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF LOCAL GOVERNMENT**

(Herein represented by **Dr Hildegard Fast** in her capacity as  
Head of Department, duly authorised hereto)

(Hereinafter referred to as "the Department")

and

#### **IGNITE ADVISORY SERVICES (PTY) LTD**

(A private company duly incorporated in terms of the Laws of South Africa,  
having its main place of business at 4 Canal Edge Four, Tyger Waterfront,  
Bellville, 7530, with registration number 2006/035577/07, represented herein by  
**Mr Attie Butler** in his capacity as Managing Director, duly authorised hereto)

(Hereinafter referred to as "the Service Provider")

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**PREAMBLE:**

- A. The Department has awarded a bid, with order number LGO-1987, to the Service Provider to render the services as set out in clause 4 of this agreement.
- B. The Service Provider has accepted such appointment and shall render the services to the Department on the terms and conditions as set out in this Agreement.

**WHEREBY THE PARTIES AGREE AS FOLLOWS:****1. INTERPRETATION**

- 1.1 In this agreement unless the context indicates a contrary intention a word or expression which denotes:
  - 1.1.1 any gender shall include the other genders;
  - 1.1.2 a natural person shall include juristic persons and vice versa; and
  - 1.1.3 the singular shall include the plural and vice versa.
- 1.2 The terms and conditions contained in the General Conditions of Contract ("GCC"), incorporated herein, and annexed hereto, marked "Annexure A", as well as all other annexures to this Agreement form part of the agreement between the Parties.
- 1.3 In the event of any inconsistency between the provisions of this Agreement and the terms and conditions contained in the GCC or any other annexure to this Agreement, the provisions of this Agreement shall prevail.

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- 1.4 For the sake of clarity, any reference in the GCC to the term "Supplier" shall equate to the term "Service Provider" and any reference in the GCC to the term "Purchaser" shall equate to the term "Department" as contemplated in this Agreement.
- 1.5 In this Agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
- 1.5.1 **"Agreement"** shall mean this Service Level Agreement, together with the bid documents, the GCC, and any other annexures annexed hereto, and "this / the Agreement" shall have a corresponding meaning.
- 1.5.2 **"GCC"** means the General Conditions of Contract, as set out in "Annexure A".
- 1.5.3 **"Services"** shall mean the services as set out in clause 4.
- 1.5.4 **"Parties"** means the Department and the Service Provider.
- 1.6 Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in that clause.

## 2. APPOINTMENT & COMMENCEMENT

- 2.1 The Department hereby appoints the Service Provider to render the Services and the Service Provider accepts the appointment on the terms and conditions as contained in this Agreement. The Service Provider will be responsible for providing the Services in accordance with the deliverables outlined in clause 4 below.

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2.2 This Agreement shall commence on **12 September 2012**, notwithstanding the signature date, and shall, unless otherwise provided for in this Agreement, terminate on **28 February 2013**.

### 3. TERMINATION

3.1 The Department shall be entitled to terminate this Agreement forthwith by written notice if the Service Provider:

3.1.1 enters into insolvency;

3.1.2 commits a fraudulent or dishonest act;

3.1.3 is prevented from performing or unable to perform its duties hereunder for a period exceeding two (2) months;

3.1.4 is guilty of any conduct which is prejudicial to the Department's interests; or

3.1.5 has a judgment entered against the Service Provider.

### 4. THE SERVICES

4.1 The Service Provider shall develop and supply a software program (more particularly a compliance model) to the Department to be utilised as a tool by the Municipalities of Hessequa, Matzikama, Cape Agulhas and Laingsburg (hereafter "the Municipalities") with the aim of assisting and supporting them in complying with the applicable local government legislation and regulations and which furthermore monitors/gauges their performance in complying with the said legislative prescripts (hereinafter referred to as "the Services"). The Service Provider shall implement the compliance model at the Municipalities.

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4.2 The aforesaid development and supply of the compliance model as well as the implementation thereof at the Municipalities shall be in accordance with the terms and conditions set out in this Agreement.

4.3 The Service Provider shall ensure that the compliance model is:

4.3.1 Compatible and configured to integrate with similar systems which were implemented at other municipalities.

4.3.2 Capable of measuring the performance of municipalities in complying with the applicable local government legislation and regulations.

4.3.3 Regularly reviewed and updated. Subsequent thereto, the Municipalities should be informed accordingly.

4.3.4 Programmed to monitor the level of compliance by municipalities.

4.3.5 Capable of assigning responsibility to individuals with deadlines, reminder emails, formatted in the form of a dashboard with reporting structuring and which provides a function whereby the Department may access and monitor progress in the performance of attaining compliance. A helpdesk during office hours to address all queries should be included.

4.3.6 Web-based and has been developed and tested against proven methodologies.

4.3.7 Tailored to the specific needs of a particular municipality.

4.3.8 Available for a link to be developed to a Provincial Portal for the Department which would eventually allow it to monitor and review municipal compliance.

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- 4.3.9 A fully integrated system that is accessible from anywhere (web-based).
- 4.3.10 Compatible in importing reports from existing systems into the web-based system.
- 4.3.11 Built on a Microsoft platform and is compatible with the systems operating at the Municipalities.
- 4.3.12 Capable of allowing multiple users to simultaneously operate/perform functions on the system.
- 4.3.13 Programmed to provide closing dates to promote a reporting culture and accurate reporting.
- 4.3.14 Capable of allowing regular updates that is fully compliant with future legislative requirements.
- 4.3.15 Configured to measure the level of legislative compliance of municipalities.
- 4.3.16 Functional for assurance providers to audit compliance levels.
- 4.3.17 Linked to all applicable legislation and regulations.
- 4.3.18 Configured to expressly state the requirements of specific sections.
- 4.3.19 Programmed to assign the said requirements to particular municipal officials as well as indicating the actions required for each specific section.

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4.3.20 Capable of capturing reports on progress made regarding specific sections as well as attaching evidence of compliance.

4.3.21 Functional for auditors to document audit procedures.

4.3.22 Programmed to develop various reports on attainment of required action and graphs to support reporting on compliance against legislative requirements.

4.3.23 Set up with strict security management and user control and backup with sufficient capacity.

4.3.24 Configured to accommodate for deadline dates and reminder dates, which can automatically send reminder messages to the responsible official and his/her supervisor.

4.3.25 Loaded with a minimum of 16 significant pieces of legislation, required by municipalities for good governance and which must be implemented at the Municipalities.

## 5. REPORTING AND LEVELS OF SERVICE TO BE RENDERED BY THE SERVICE PROVIDER

5.1 The Services shall be performed in a professional and impartial manner.

5.2 The Service Provider shall submit written progress reports to the Department, for the attention of the **Deputy Director: Legislation Support, Mr Kamal Makan**, or his replacement, every fortnight commencing on 12 September 2012.

5.3 The progress reports, contemplated in clause 5.2, should set out the progress made by the Service Provider in rendering the Services.

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5.4 The Department reserves the right to request additional information pertaining to any matter raised in a report or relevant matters omitted from the said report.

5.5 It shall be required that after implementation of the compliance model at every second municipality, the Department shall be invited as part of the progress reporting to inspect the compliance model implemented at the Municipalities.

## 6. OBLIGATIONS OF THE SERVICE PROVIDER

6.1 The Service Provider shall:

6.1.1 Exercise reasonable skill, care and diligence in performing the Services.

6.1.2 Ensure that Services are performed in accordance with the deliverables and obligations as set out in clause 4 above.

6.1.3 Appoint a person with the necessary skill and expertise to supervise and co-ordinate the performance of the Services.

6.1.4 Ensure that 23 pieces of relevant legislation is made available to the municipalities, with a minimum of 16 significant pieces of legislation implemented at the Municipalities.

## 7. COPYRIGHT / INTELLECTUAL PROPERTY RIGHTS

7.1 The ownership of any and all rights in and to intellectual property owned by either party prior to the commencement of this Agreement shall remain vested with the party who as at the commencement of this Agreement is the owner thereof.

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7.2 The Service Provider hereby warrants that the Service Provider either owns or obtained the right to use all intellectual property in all material used by the Service Provider in the course of providing the services to the Department in terms of this Agreement.

7.3 The Service Provider must ensure that the software installed is compatible to a future Provincial Hub at the Department to monitor compliance by the Municipalities.

## 8. PAYMENT

8.1 The Department shall pay the Service Provider an all-inclusive amount of **R198 899. 00 (one hundred ninety eight thousand and eight hundred ninety nine rand and zero cents)**, also inclusive of VAT, for the Services rendered in terms of this Agreement.

8.2 The Department shall pay the Service Provider in the following three tranches, within thirty (30) days of receipt of a detailed tax invoice, provided that the Services to which the tax invoice relates have been completed to the satisfaction of the Department:

8.2.1 An amount of **R60 000. 00 (sixty thousand rand and zero cents)**, inclusive of VAT, after completion of the Services rendered as per the Compliance Project: Work Plan Timeline annexed hereto, marked "Annexure B", read together with the Compliance Project: Work Plan annexed hereto, marked "Annexure C".

8.2.2 An amount of **R70 000. 00 (seventy thousand rand and zero cents)**, inclusive of VAT, after completion of the Services rendered as per "Annexure B", read together with "Annexure C".

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- 8.2.3 An amount of **R68 889. 00 (sixty eight thousand eight hundred and eighty nine rand and zero cents)**, inclusive of VAT, after completion of the Services rendered as per "Annexure B", read together with "Annexure C".
- 8.3 The following details must be reflected on tax invoices forwarded to the Department by the Service Provider, as contemplated in clause 8.2 above:
- 8.3.1 The total amount payable with reference to the activities and outputs referred to in "Annexure B" read with "Annexure C" of this Agreement, as well as details of time spent on such activities.
- 8.3.2 VAT payable on the aforesaid total amount.
- 8.4 The Department will verify the correctness of a tax invoice, and notify the Service Provider of any possible discrepancies within ten (10) days of receipt of the tax invoice. Provided that the tax invoice is correct the amount due shall be payable within thirty (30) days from receipt of the tax invoice.
- 8.5 If the Department identifies any material discrepancies, the tax invoice will be referred back to the Service Provider, and the amount due will be payable within thirty (30) days from receipt of a corrected tax invoice, provided that the provisions of clauses 8.2 and 8.3 have been complied with.
- 8.6 No payment will be made in respect of deliverables that are incomplete and not in line with the requirements of this Agreement.
- 8.7 Payments by the Department to the Service Provider shall be made by electronic funds transfer into a banking account in South Africa, as nominated in writing by the Service Provider.

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- 8.8 The Department shall not reimburse the Service Provider for expenses such as parking, computer consumables and telephone calls, that are incurred by the Service Provider in order to render the Services.

**9. INDEPENDENT CONTRACTOR**

- 9.1 The Service Provider is appointed as an independent contractor, and not as an employee, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the Parties.
- 9.2 The Department shall not be liable for any injury, loss or damage directly or indirectly incurred by the Service Provider, as an independent contractor, arising out of or in connection with the services rendered by the Service Provider in accordance with this Agreement.

**10. BREACH**

Should a Party breach any or all of the terms and conditions of this Agreement, and remain in such breach fourteen (14) days after receipt of a written notice calling upon it to remedy such breach, then the Party who served such notice shall be entitled, in addition to any remedy which it may have in law, to cancel this Agreement, or to remedy the breach itself, and to impose penalties or claim damages in lieu of penalties, as contemplated in clause 11 below.

**11. DAMAGES IN LIEU OF PENALTIES**

- 11.1 It is recorded and agreed that, in the event that the Service Provider fails to deliver goods or render services within the period stipulated in this Agreement, the Department shall be entitled to impose penalties on the Service Provider in the manner as set out in clause 22 of the GCC.

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- 11.2 The Department's right to impose penalties shall not in any way detract from the Department's right to claim damages in lieu of penalties in the event of a breach by the Service Provider of any or all of the terms and conditions of this Agreement.

## 12. SETTLEMENT OF DISPUTES

- 12.1 Without detracting from a Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of or in connection with this Agreement, the Parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 12.2 and 12.3 below.

### 12.2 Mediation

- 12.2.1 Subject to the provisions of clause 12.1 above, any dispute arising out of or in connection with this Agreement may be referred by the Parties without legal representation to a Mediator.
- 12.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the Parties.
- 12.2.3 The Mediator shall be selected by agreement between the Parties.
- 12.2.4 If an agreement cannot be reached upon a particular Mediator within three business days after the Parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the Mediator within seven business days after the Parties have failed to so agree.
- 12.2.5 The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or

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verbal representations, provided that in making this determination he or she shall consult with the Parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

12.2.6 The Parties shall have seven business days within which to finalise their representations. The Mediator shall within seven business days of the receipt of the representations express in writing an opinion on the matter and furnish the Parties each with a copy thereof by hand or by registered post.

12.2.7 The opinion so expressed by the Mediator shall be final and binding upon the Parties unless a Party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved Party may institute legal proceedings in a court of competent jurisdiction, unless the Parties agree to refer the dispute to arbitration in accordance with clause 12.3 below. The expressed opinion of the mediator shall not prejudice the rights of either Party in any manner whatsoever in the event of legal proceedings or arbitration proceedings, as the case may be.

12.2.8 The costs of mediation shall be determined by the Mediator.

12.2.9 Liability for such costs shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

### 12.3 Arbitration

12.3.1 Subject to the provisions of clause 12.1 above, the Parties may agree to refer any dispute arising out of or in connection with this Agreement, to arbitration.

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- 12.3.2 Arbitration proceedings shall be held in Cape Town informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within ten (10) business days.
- 12.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be:
- 12.3.3.1 A practising Senior Advocate of the Cape Bar, if the matter in dispute is primarily a legal matter; or
- 12.3.3.2 An independent and suitably qualified person as may be agreed upon between the Parties to the dispute, if any other matter is in dispute.
- 12.3.4 If agreement cannot be reached on whether the dispute in question falls under 12.3.3.1 or 12.3.3.2 and/or upon a particular Arbitrator within three (3) business days after the Parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall be requested to:
- 12.3.4.1 Determine whether the dispute in question falls under 12.3.3.1 or 12.3.3.2; and/or
- 12.3.4.2 Nominate the Arbitrator within seven (7) days after the Parties have failed to agree.
- 12.3.5 The Arbitrator shall give his or her decision within five (5) business days after the completion of the arbitration proceedings. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or by both of the Parties.

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12.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, pursuant to an application lodged with the aforesaid Court by any Party to the arbitration.

12.4 Notwithstanding the provisions contained in clause 27 of the GCC, disputes between the Parties shall be governed exclusively by, and settled in terms of clauses 12.1 to 12.3 of this Service Level Agreement.

### 13. CONFIDENTIALITY

The Service Provider shall not, during the currency of this Agreement, or at any time thereafter, utilize or cause to be utilized, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Department, government in any other sphere, or any government institution or organ of state, unless compelled by law to disclose such information.

### 14. NOTICE AND DOMICILIUM

14.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

#### THE DEPARTMENT:

The Accounting Officer  
Department of Local Government  
27 Wale Street  
Cape Town  
8001

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**THE SERVICE PROVIDER:**

Mr Attie Butler  
Ignite Advisory Services (Pty) Ltd  
4 Canal Edge Four  
Tyger Waterfront  
Bellville  
7530

- 14.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.
- 14.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received seven (7) business days after the date of posting.
- 14.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.
- 15. WAIVER**
- 15.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.
- 15.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

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15.3 No indulgence, leniency or extension of time which any Party (*the Grantor*) may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

## 16. ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.
- 16.2 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.
- 16.3 This Agreement replaces any other previous verbal or written agreement entered into between the Parties.
- 16.4 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement.
- 16.5 The Parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

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SIGNED AT Cape Town ON THIS 8 DAY OF January

2013  
2012

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*[Signature]*  
\_\_\_\_\_  
THE DEPARTMENT

AS WITNESSES:

*[Signature]*  
\_\_\_\_\_  
Signature

IC ADAMS  
\_\_\_\_\_  
Name also in capital letters

*[Signature]*  
\_\_\_\_\_  
Signature

W. Daboyi  
\_\_\_\_\_  
Name also in capital letters

SIGNED AT CAPE TOWN ON THIS 8 DAY OF JANUARY 20123

*[Signature]*  
\_\_\_\_\_  
THE SERVICE PROVIDER

AS WITNESSES:

*[Signature]*  
\_\_\_\_\_  
Signature

KAMAL MAKAN  
\_\_\_\_\_  
Name also in capital letters

*[Signature]*  
\_\_\_\_\_  
Signature

S. Gnanapavan  
\_\_\_\_\_  
Name also in capital letters

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# ANNEXURE "A" – GENERAL CONDITIONS OF CONTRACT

## GOVERNMENT PROCUREMENT

### GENERAL CONDITIONS OF CONTRACT

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Restriction from bidding
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

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## 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the Parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad markets its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
  - 1.12 "Force majeure" means an event beyond the control of the

enterprise abroad market its  
at lower prices than that of  
the potential to harm the  
beyond the control of the

supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organisation purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening,

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them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque

- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organisation acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

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- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## 9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## 10. Delivery and documents

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

## 11. Insurance

- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery

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in the manner specified in the SCC.

**12. Transport**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the Parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the supplier for similar services.

**14. Spare parts**

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or

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omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## 16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

## 17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

## 18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the Parties concerned.

## 19. Assignment

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

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## 20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## 21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the Parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## 22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay

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until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination  
for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, pursuant to GCC Clause 24.1, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen<sup>14</sup> days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will at the discretion of the Accounting Officer/ Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first- mentioned person, is or was in the opinion of the Accounting Officer/ Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five(5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and/or person restricted by the purchaser.
  - (ii) The date of the commencement of the restriction
  - (iii) The period of restriction

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(iv) The reason for the restriction

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7. If a court of Law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, no.12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with its own merits. According to section 32 of the Act the Register must be open to the public. The register can be perused on the National Treasury website.

**24. Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

**25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22, 23, and 24, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or

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- Several other initials and signatures, including "M.", "VA", and "M.Y.", some with checkmarks.

## 27. Settlement of Disputes

## 28. Limitation of Liability

## 29. Governing Language

**30. Applicable**

lish. All correspondence and  
contract that is exchanged by  
nglish.

in accordance with South

## **Law**

African laws, unless otherwise specified in SCC.

### **31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

### **32. Taxes and Duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

### **33. National Industrial Participation Programme (NIPP)**

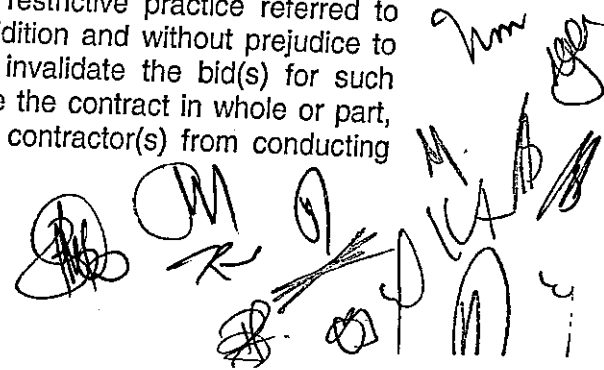
33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

### **34 Prohibition of Restrictive practices**

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between Parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting



business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

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Jm  
My  
R. A  
N. A  
K. A  
A. A  
A. A  
A. A

Annexure B

Annexure B

B

Compliance Project: Workplan Timeline									
Activity	Day	Month	Year	Activity	Day	Month	Year	Activity	Day
14 Project engagement	5	Progress Report		2 Progress Report				4 Progress Report	1
14 - 28 Project awareness	17	Project setup meeting		1 - 30 Matzikama mun. to determine responsibilities and actions				Nov to 25 Jan Hessequa mun. to determine responsibilities and actions	1-6
21 Progress Report	19	Progress Report		1 - 30 Cape Agulhas mun. to determine responsibilities and actions				Nov to 25 Jan Laingsburg mun. to determine responsibilities and actions	1-6
	25	Information sessions and compliance overview workshops		15 Progress Report				Nov to 25 Jan Laingsburg mun. to determine responsibilities and actions	1-6
				21 Setup the compliance model for Matzikama mun.				18 Municipal training workshop: Matzikama	4
				28 Setup the compliance model for Cape Agulhas mun.				18 Progress Report	11
				30 Progress Report				25 Municipal training workshop: Cape Agulhas	13
								28 Progress Report	15
								28 Final project review and sign-off: Matzikama	15
								28 Final project review and sign-off: Cape Agulhas	15
								28 Site visits: Hessequa / Laingsburg	18
								28 Final project review and sign-off: Hessequa	28
								28 Final project review and sign-off: Laingsburg	28
								28 Final project closure report and sign-off	28
									Total: R 198 889.00

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# Annexure C

## Compliance Project: Workplan

Activities in phases	Department / Municipality	Proposed Timeframes
Engagement meeting	Dept. Local Government	30-Sep-12
Project awareness	Ignite	30-Sep-12
Project setup meeting	Dept. Local Government	17-Oct-12
Information sessions and compliance overview workshops	Matzikama, Cape Agulhas, Hessequa, Laingsburg	25-Oct-12
Municipalities to determine compliance responsibilities and actions	Matzikama	30-Nov-12
	Cape Agulhas	30-Nov-12
	Hessequa	25-Jan-13
	Laingsburg	25-Jan-13
Setup of compliance system and information review and upload	Matzikama	14-Dec-12
	Cape Agulhas	14-Dec-12
	Hessequa	06-Feb-13
	Laingsburg	06-Feb-13
Municipal training workshops	Matzikama	18-Jan-13
	Cape Agulhas	25-Jan-13
	Hessequa	11-Feb-13
	Laingsburg	13-Feb-13
Final review and municipal sign-off	Matzikama	15-Feb-13
	Cape Agulhas	15-Feb-13
	Hessequa	28-Feb-13
	Laingsburg	28-Feb-13
Project progress reports	September	21-Sep-12
	October	05-Oct-12
		19-Oct-12
		02-Nov-12
	November	16-Nov-12
		30-Nov-12
	December	14-Dec-12
	January	04-Jan-13
Site visits		18-Jan-13
	February	01-Feb-13
		15-Feb-13
	Matzikama / Cape Agulhas	04-Feb-12
Project sign-off	Hessequa / Laingsburg	18-Feb-13
	Dept. Local Government	28-Feb-13

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