





**TENDER NUMBER: 13/18/19**

TENDER FOR THE APPOINTMENT OF SERVICE PROVIDER IN BA-PHALABORWA LOCAL MUNICIPALITY  
FOR THE:

**ONLINE VENDING SYSTEM, THIRD PARTY VENDING SOLUTION FOR A PERIOD OF THREE (3)  
YEARS**

**DETAIL SPECIFICATIONS AND REQUIREMENTS FOR THE ONLINE VENDING SYSTEM, THIRD PARTY  
VENDING**

**1. INTRODUCTION**

The Ba-Phalaborwa Local Municipality herewith invites bidders for a pre-paid electricity vending system / solution that will be fully integrated with the Ba-Phalaborwa Local Municipality's existing financial system with capabilities for credit control and applications and function on the existing electronic infrastructure. The period of appointment will be for a period of 3 years. Bids from suitable service providers will be evaluated according to the set criteria as set out in this document.

**2. DESCRIPTION OF THE SERVICES REQUIRED**

The scope of the contract as detailed in this specification is as follows:

- 2.1. The supply, delivery, installation, training and commissioning of the most optimal vending solution, including a hosted back-end and distributed 3<sup>rd</sup> party 24-hour vending, offered by the tenderer within the framework and performance specification of the Ba-Phalaborwa Local Municipality as detailed in this document.
- 2.2. Stand-by and support required as detailed in this document.
- 2.3. Disaster recovery and business continuity as specified.

**3. REQUIREMENTS**

**3.1. USE OF REASONABLE SKILL AND CARE**

In applying the scope of work it is expected of the service provider(s) to render services that commensurate with the highest expectations of professionals in the industry and to ensure that all legislative requirements are met.

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It is expected of the service provider to take ownership of the project and to facilitate a process that commensurate with the integrity of the municipality as a public institution to ensure successful completion of project within budget estimates and time frames.

It will also be required of the service provider to report back at project management team meetings and to contribute to reports on the process progress and outcomes to the relevant officials and/or committees if need be.

It will be required of the service provider to prepare a detailed phased project program including budget and cash flow for the project within 2 weeks of appointment. This must include a test, parallel system for at least one (1) month. The Service Providers are required to acknowledge the dynamics of proper planning for the practical completion of the project. The completion of the project will be within three (3) months after allocation of the tender.

#### 4. NORMATIVE REFERENCES

The solution offered must be compliant with SABS 1524, the STS Specifications and SABS IEC 1036. The following standards contain provisions which through reference in the SABS 1524 constitute provisions of this specification.

<b>IEC 62055-41 / 62055-51</b>	Standard transfer specification (STS) - Application layer protocol for one-way token carrier systems / Physical layer protocol for one-way numeric and magnetic card token carriers
<b>NRS 009-4-2:1994</b>	National electricity meter cards and associated numbering standards section two national electricity meter number. (Replacing MCI57).
<b>Licensed STS Document</b>	Standard transfer specification documents.
<b>ESKOM XMLVend 2.1</b>	Eskom's specification for standardization of vending client/server protocols
<b>NRS 009-1:1994</b>	Electricity Sales Systems Part 1: Glossary system overview. Preferred requirements for applications in the electricity supply industry.

#### 5. DETAILED SPECIFICATION OF VENDING SYSTEM

##### 5.1 SYSTEM CONFIGURATION

- In making an assessment of the hardware, software, network infrastructure availability and requirements at each of the current vending offices, the tenderer shall keep in mind the system configuration required by the BA-PHALABORWA Local Municipality and utilise the current infrastructure belonging to the BA-PHALABORWA Local Municipality. It will however remain the responsibility of the tenderer to ensure compliance to the tenderer's minimum requirements.
- The vending system must be TCP/IP compliant and functional over Ethernet on a LAN/WAN environment. WIFI, GPRS, ADSL and Diginet lines must also be accommodated.
- The vending solution offered by the tenderer must be capable of being configured by the BA-PHALABORWA Local Municipality for various system requirements.
- A hosted database configuration set is preferable with standby disaster recovery systems in place for business continuity.
- A disaster recovery plan shall be provided with all necessary hardware and infrastructure requirements and costs, should this be borne by the Municipality.

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- Assurance of business continuity in the event of a catastrophic systems and / or communications system breakdown in the Municipal environment must be provided. A description of associated redundancies built in to the offered solution must also be provided.
- The system should provide for a daily update of a local database copy in the BA-PHALABORWA Local Municipality premises.

**5.2 PHYSICAL LOCATION OF WORKSTATIONS**

The configuration envisaged by the municipality is one where the management system server(s) will be located off site in a high availability environment with redundant power and connectivity.

**5.3 SYSTEM CAPACITY**

The system shall be designed to ultimately accommodate a minimum of 200 000 consumers. The system shall have the capacity to retain a five (5) year transaction history (estimated 50 million transactions) in the live database and older transactions in an archive database. Any system limitations shall be indicated by the tenderer.

**6. PERFORMANCE SPECIFICATION**

- A full and detailed functionality description of the system shall be provided by the tenderer.
- The following criteria will receive preference on the BA-PHALABORWA Local Municipality’s decision and choice of a particular system offered:
  - The tenderer shall not focus on provisioning of computer hardware since the BA-PHALABORWA Local Municipality might provide such once the minimum specification of the hardware required is known. It is however required that full specification (and pricing) of equipment is specified to ensure optimum performance of the system. For this reason it is also imperative that tenders should be quite clear on where the BA-PHALABORWA Local Municipality’s hardware and/or networks lack the capability and/or capacity to function properly with the system proposed by the tenderer.

A detailed graphical drawing depicting the proposed network and system layout must be drafted to clarify and indicate solution functionality. Should changes be required, full specifications and pricing must be provided.

- The system proposed by the tenderer should at least make sure that:

Different servers are utilized for different applications such as:

- Database functions
- Management applications
- Transactions
- Encryption / Security
- Disaster recovery

The vending solution should be designed to use a relational database and run as a client server application on a LAN or a WAN. It should be able to run under the Windows Server 20016 and at least Windows XP operating systems. The network for the vending solution is Ethernet. The network protocols shall be TCP/IP and be able to operate real-time over GPRS/3G/EDGE/HSDPA/GPRS/WIFI/ADSL/Diginet as available in certain areas in the on-line mode

- In order to simplify the third party integration process the system will comply with Eskom XMLVend 2.1 (or later). It would be preferred that the system is native XML i.e. that there is no translation

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interface between the system and an XML client and that all client/server interfaces are based on the XML standard.

- The system shall be a single database solution from which both management functions and vending take place. All updates to customer data must be immediately available at vending terminals and all transactions made at all sales outlets must be immediately available for reporting on.
- The vending terminal solution shall be web based or a web application which automatically updates from the host server should updates be posted. Security and data encryption will be provided by mutually authenticated SSL between the vending terminal and the server.
- The solution should have the capability to provide pre-paid vending services over the internet/intranet. Customers should be able (should the BA-PHALABORWA Local Municipality wish to activate these options) to purchase prepaid electricity either via the Internet or a cell phone as follows:
  - A registered service on the web where the customer registers for the service. This includes providing the required financial information and then simply authenticating on every transaction. The BA-PHALABORWA Local Municipality's vending rules must still be applicable and transactions must be made against the BA-PHALABORWA Local Municipality local vending system not an offline copy.
- The system should cater for integration the existing ADO AVM self-service terminals utilizing the ADO on-line infrastructure.
- The solution shall be able to function on low-bandwidth requirement between remote vending points (credit dispensing units) and the central prepaid system (system master station) and optimized to run over networks (such as GPRS), with the maximum packet size being minimal and clearly indicated. GPRS/WIFI/ADSL/DIGINET connection points should be created on the BA-PHALABORWA Local Municipal infrastructure to directly serve transactions on this type of networks.
- The vending system shall cater for integration with the systems/applications in use. The BA-PHALABORWA Local Municipality uses the EVENUS/Sebata system as the financial system of choice. The nature of the integration catered for by the solution shall be as follows:
  - Periodic bulk export/ import of arrears balances / collections to / from the billing system;
  - system must cater for storage of all information to comply with financial services regulations (e.g. the storage of all sales/vending transactions).
  - The vending system will provide a web based interface to allow for management functionality and reporting over the BA-PHALABORWA Local Municipal Intranet and internet. Connections will be secured by mutually authenticated SSL between the management terminals and the web server. The standard Microsoft Internet Explorer will be used for this. The system must ensure that the program supports the latest version of Microsoft Internet Explorer and always keep up with updates by Microsoft. The currently deployed version of Microsoft Internet Explorer is IE8.
  - Tamper monitoring and specific technologies to effect notifications in this regard should be catered for in the solution. This includes and integrated mobile audit application which should record GPS coordinates and picture evidence of audit data and should run on any Android based smart phone. Tenderers should describe his solution in detail and be prepared to demonstrate it.

**7. SYSTEM / OPERATION REQUIREMENTS**

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**7.1 GENERAL**

The administrator(s) must have the option to link directly into the server from their offices for e.g. management, reports, etc. Maintenance staff must have the option to link into the system over a 3G data connection from remote locations to perform customer maintenance functions.

All licenses required must be clearly defined and a list provided with license cost. All limitations must clearly be indicated.

All current data on the current vending systems used by the municipality must be catered for on the supposed vending system. The last 3 years data must be migrated into the supposed vending system from the current vending system.

**7.2 ACCESS**

It must be possible to allocate access rights into the system into users and user groups. Access rights allocations shall be transferred during the data migration process and distributed throughout the system. The vending system must allow for activation of password ageing functionality. If this function is activated, the password of the particular user shall expire after a definable amount of time. Early password expiry warnings must be available. In addition, a concurrent log-in limit for log-in attempts is also required. User IDs not used or disabled permanently must not be able to be removed from transaction history data. A full audit trail on user IDs and movement must be kept. Access rights must be configured by the BA-PHALABORWA Local Municipality.

**7.3 ARREARS**

The vending system offered by tenderer shall make it possible for the municipality to deduct arrears from moneys tendered by consumers to purchase pre-paid electricity. The vending system must be able to define within the applicable arrears scheme and/or credit control policy of the municipality different arrears recovery categories/indexes. Within each category/index, the system shall allow for various recovery alternatives. This must be included and enforced in all electricity dispensing strategies and/or systems, inclusive of third party vending systems.

The system shall allow for at least:

- Fixed percentage of transaction recovery
- Service based recovery
- Full arrear payment recovery
- Partial arrear recovery and limited sales

**7.4 BLOCKING**

The vending system offered by the tenderer will allow for profiled blocking of purchases by customers based on arrears balances in specific account types. Blocking will be configurable by account type and will allow for either no sales or limited monthly sales to customers with arrears balances.

Customers with shared service accounts will all be unblocked simultaneously when any one blocked account is paid in full.

**7.5 FREE BASIC ELECTRICITY**

The vending system software offered shall allow preferential treatment of individual consumers [Indigents] through application discount indexes. Discounts will be given to the specific consumers by adding “free” utility units to the purchase value. The customer must be able to receive such a “free” token (BSST token) without

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purchasing electricity or water or paying his arrears. Should such “free” token (BSST token) be re-issued/re-printed, the receipt must clearly indicate that this is a duplicate receipt.

## 7.6 ENGINEERING

The system must make provision for the generation of all engineering vouchers directly from the system master station and these vouchers can be printed, viewed (without printing) or sent via SMS.

- The vending system should support different types of engineering vouchers, which includes:
  - STS tokens (non meter specific)
  - Meter specific tokens for STS – require password authorization
  - All other STS-specified engineering tokens
  
- The non-meter specific vouchers for all meters are:
  - Initiate dispenser test
  - Test breaker/disconnect mechanism
  - Test display
  - Display totals
  - Display key revision number
  - Display tariff index
  - Test voucher input device
  - Display power limit
  - Display tamper status
  - Display power consumption
  - Display meter version
  - Display phase power unbalance limit
  
- The meter specific vouchers for all meters are:
  - Set power limit
  - Set LED levels
  - Clear credit
  - Tamper reset
  - Key change

## 7.7 FREE ISSUES

The vending system should allow the issuing of vouchers free of charge.

## 7.8 GENERAL DATA IMPORT / EXPORT

The vending system must have a general data import/export interface capable of reading ASCII files created by other applications. This import interface can be used to upload or download registration data from existing databases and/or billing systems. It covers meters, consumers, credit dispensing units and their connections with each other and to the various charges such as tariffs, taxes, etc. All transaction data must be transferred to the billing system on at least a daily basis. This includes arrear payments, current account payments, linked account payments and “free” vouchers (BSST issues).

## 7.9 KEY MANAGEMENT

The vending system must support the upload of key management files (KMF) into the system database to configure and connect encryption devices, for STS encryption algorithms. This can be used to load details of new area keys into the encryption device. STS certification is required for Key Management.

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**7.10 MESSAGES**

The vending system should allow the utility to define voucher messages that are printed at the bottom of the printed voucher. The municipality must have the option to change the messages according to requirements.

**7.11 REGISTRATION**

The vending system must be able to track any historical connections between the meter, point of connection and the consumer.

**7.12 GENERAL ISSUES**

Vending to a consumer shall only be possible when a point of connection and meter are linked to the consumer and a tariff has been selected. The customer must still be able to do payments although blocked for pre-paid electricity sales.

Should the information on the database differ from the information on the meter card, no token must be generated

The Service provider shall provide front end and back end infrastructure and also maintain the infrastructure.

The Service provider shall be responsible for soft and Physical security of the systems.

The service provider shall ensure higher availability of the systems.

The service provider should ensure compliance POPIA in all respect

The Data processed on the systems is the Property of Council therefore it should be given to the Council upon termination or end of the service.

**7.13 SEARCH AND FILTER**

The vending system should support full search for the following items in registration:

- Consumer surname, first names, ID number, postal address details, comments, blocking codes, account number, point of connection, meter serial number.
- All of these searches can be incremental searches or full word searches. Once the search criteria are entered, the system must display the first record matching the search condition or the closest field at any one time for the search.

**7.14 REPORTS**

The vending system should support a set of standard reports and the capability to customize and / or create new Reports. The tenderer undertakes to add or alter reports according to the needs of the Municipality for at least the first six months free of charge.

Printer selection and formatting according to operating system availability must be supported. Exporting of all reports to at least Excel or PDF must be supported. The standard reports required should include:

Note: The reports must be made available also on request at any time

Standard operator reports

- Operator actions between dates grouped by date
- List of all users registered on the system
- List of all the user's groups and their functions
- List of all the groups and their respective functions

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Standard transaction reports

- List of transactions grouped by date between dates
- Sum of transactions grouped by transaction type and tariff
- List of credit and debit card transactions between dates
- Total electricity bought between dates by consumer
- Free issues between dates per meter
- Cheque List between dates
- Low purchases of electricity over a specified period
- Total electricity bought in the last 30 and 90 days
- Breakdown of consumer's purchase times between dates
- Balancing report of credit amounts used against physical transactions
- Reversals between dates
- Summary of all end of shifts for a user between dates
- All transactions for a meter between custom dates
- Arrears owed by consumer
- Daily cash reconciliation report
- All transactions for a account between dates
- Low consumption report
- Indigent high purchase report
- Total sales by town
- Total sales by operator
- All transactions for one shift on one user
- Shift details for one user
- IBT customer purchase breakdown with graph
- IBT month sales analysis by Tariff Class

Engineering Reports

- Current power limit for a meter
- Current power limit for all meters
- Audit trail on Amperage changes
- Reports in the vending system must be able to be previewed before printing.

7.15 SOFTWARE

The vending system should be able to use/support the following software/operating systems:

- Windows XP Professional. Windows 7, Windows 8 and preferably Windows 10

7.16 TARIFFS

The vending system must support the use of vending based tariffs. The system must cater for pre-defined tariffs by date to be created in advance. Tariff structure of current vending systems must be accommodated.

Meter Tariff Index and Customer Tariff Class musty not be linked in the system in order to avoid key changes when tariffs are changed, for instance from an Indigent to Domestic tariff.

7.17 BLOCK TARIFFS

A block tariff module or stepped tariffs must be able to be defined.

7.18 VAT

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The vending system shall support the use of vending based VAT where the VAT is calculated at the time of vending.

### 7.19 ACCOUNT PAYMENTS

In vending, it should be possible to pay off arrears amounts or portions thereof separately from the purchase of actual electricity.

The solution shall also allow for debtor payments and sundry payments if and when required by the BA-PHALABORWA Local Municipality. This functionality will allow and provide the BA-PHALABORWA Local Municipality the capability of collecting account payments, arrear amounts as well as sell pre-paid services.

The solution will make provision for configurable blocking codes.

The system must automatically remove the blocking code once the full arrear amount has been paid should the system be set to this configuration. Once credit control amounts were used to allow for special credit and payments other than the original arrear amount, the system should automatically revert back to the original arrear amount and blocking code taking the once-off payment into consideration. This option must only be available for that specific day and must only be a once-off transaction. This option must be controlled by specific access rights.

The system should provide for current account payment, linked account payment as well as arrear payment and pre-paid electricity sales. The full amount tendered should be entered and the amounts paid should be automatically deducted from this tendered amount. The full arrear amount should automatically be deducted from any amount tendered before any sale or any other payments can be done. The remainder should be defaulted to electricity pre-paid sales with the cashier having the option to change this amount and the change must then be displayed. Should the customer wish to also pay a current amount, the operator must be able to manually have the option to accommodate this payment.

The solution will have the capability to accommodate linked accounts e.g. a rates account on a pre-paid account and be able to force payment on linked account should linked account be in arrears before any pre-paid services will be allowed on the pre-paid account.

All different amounts must be clearly displayed on the vending system screen.

The business rules of the municipality will apply at all times. Current account amounts, arrear amounts, linked account amounts and blocking codes will be transferred from the financial system to the vending system.

The system must make provision for capturing of debit- and credit cards payments and cancellation of payments (not tokens). Cancellation options must be linked to access rights.

**NOTE:** The debit card and credit card options must be configurable for each workstation.

The system must make provision for linked accounts with different account numbers and it must be possible to pay different amounts on all or some of these linked accounts in one transaction. The total of all the accounts payable will be entered and the amounts paid deducted from the amount tendered.

The system must work in such a manner that the pre-paid electricity sales as well as the account payment amount be deducted from the credit amount on the dispensing unit.

The system must make provision for account payments on conventional meter accounts and rates accounts.

The cashier must be warned before a transaction is finally accepted.

The system must allow the cashier different search options but at least the following:

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- Swipe meter card
- Manually key in meter number
- Manually key in billing account number

**7.20 VENDING AMOUNTS**

For each workstation in a vending system, a list of predefined typical purchase amounts must be able to be setup individually.

**7.21 IMPLEMENTATION AND COMMISSIONING**

The tenderer shall be responsible for the conversion of current BA-PHALABORWA Local Municipal system data, static as well as historical transaction as well as all meter related data to the new system of which the cost must be included in the bid.

**7.22 SYSTEM CHANGES AND ENHANCEMENTS**

The tenderer shall indicate corporate policy requirements on system enhancements and changes

**8. SYSTEM SITE VISIT/DEMONSTRATION**

The BA-PHALABORWA Local Municipality retains the right to request a full system demonstration and/or site visit. The tenderer undertake to arrange as such. A full list of current system users with contact details should be supplied by the tenderer. The municipality reserves the right to contact any of these users and the tenderer undertakes to arrange a site visit to any user(s) as indicated by the Municipality within a specified timeframe as agreed on.

**9. CUSTOMER REFERENCES**

The BA-PHALABORWA Local Municipality may wish to contact one or more of the tenderer’s reference clients during the tender evaluation period. Please provide contact names and details of the individuals who should be contacted in this regard.

Contact with your reference clients will be arranged through the tenderer, but the BA-PHALABORWA Local Municipality reserves the right to conduct these information sharing sessions without representatives from the tenderer being present.

**10. THIRD PARTY VENDING**

The system shall be integrated with third party vending platforms such as ADO, EasyPay and Blue Label Technologies.

The tenderer must demonstrate this capacity and must supply documentation form third party channels to validate the partnership.

Only real-time sales will be considered, the sale of scratch cards or the like requiring conversion to electricity vouchers will not be accepted.

The tenderer must describe in detail the remittance process to be followed between the parties and the periods over which monies will be paid to the Municipality.

**11. CONVENIENCE CHARGES**

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The system shall be capable of charging convenience fees to customers utilising selected sales channels based on the day of the week and the time of the day. The charges will be in the form of a fixed fee per transaction.

**12. DATA OWNERSHIP**

All the information on consumers and related data in the hosted databases will remain the property of the BA-PHALABORWA Local Municipality at all times and will not be disclosed as a whole or in part to any third party without the express permission of the BA-PHALABORWA Local Municipality.

Any data archived and warehoused on behalf of the BA-PHALABORWA Local Municipality shall be accessible at any time by the BA-PHALABORWA Local Municipality or its appointed auditor.

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**COMPLIANCE SCHEDULE**

No.	Question	Yes / No	Comments
1	Does the system comply with all the STS specifications as listed in the tender, including certification for STS water? STS certificate to be supplied.		
2	Does the system allow for configuration by the municipality for various system requirements?		
3	Is a list of system limitations attached?		
4	Is a full, detailed functionality description of the system attached?		
5	Is a full specification of required equipment for optimum performance attached?		
6	Is a detailed graphical drawing of the proposed network and system attached?		
7	Is a detailed disaster recovery plan attached?		
8	Is a comprehensive 3rd Party payment remittance process attached?		
9	Are different servers utilized for the different applications e.g. transaction server, management server, etc.?		
10	Is this a single database solution with no data transfer or replication required?		
11	Does the system have the capability to provide pre-paid services according to the municipality's rules over the internet/intranet?		
12	Does the system integrate to other vending mechanics such as the ADO AVM and other third party service providers using Eskom XMLVend as an interface language?		
13	Is the system native XML or does it require a translation interface for XML based vending?		
15	Does the system allow for convenience charges to be charged at specific vending outlets over specific periods?		
16	Does the system provide for integration to the other systems in use at the municipality through the following options: periodic bulk export/import/registration of data/meter to and from other business systems, on-line real-time per transaction synchronization of data?		
17	Does the system comply with financial services regulations regarding storage of data?		
18	Does the system provide WEB integration for management functionality and reporting? Specify what standard will be used.		
19	Can the administrators log into the servers directly from their offices? Can admins log in remotely over the internet?		
20	Is a list of license requirements with limitations attached?		
21	Does the system provide for smart metering?		
22	Does the system provide for access rights into the system for users and groups?		
23	Does the system provide for user ID disabled or removed to remain in history transaction data?		
25	Does the system provide for arrear recovery in line with the credit control policy of the municipality?		
26	Does the system provide for at least the following arrear recovery alternatives: fixed percentage of transaction		

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	recovery; service based recovery; full arrear payment recovery; partial arrear payment recovery with limited electricity sales?		
27	Does the system provide for “free issues” (EBSST token) to specific customers like indigents?		
28	Does the system allow a “free issue” (BSST token) to indigents without having to purchase electricity or water or pay arrear amounts even if system is set to full arrear recovery?		
29	Does the system print “duplicate invoice” or “copy invoice” on a receipt if the “free issues” (BSST token) is requested more than once in a calendar month?		
30	Does the system allow the generation of all engineering tokens directly from the system master station?		
31	Does the system allow all engineering tokens to be either printed, viewed without printing or sent through SMS?.		
32	Does the system support all the different types of engineering vouchers as specified the tender?		
33	Can the abovementioned amount be defined per workstation?		
34	Does the system provide for up-front vending?		
35	Does the system provide for messages at the bottom of the token voucher which can be changed by the municipality according to the municipality’s requirements?		
36	Does the system keep all historical connections between the meter, point of connection and the customer?		
37	Does the system allow vending when a point of connection, meter or tariff is not linked to a customer?		
38	Does the system allow payment of accounts although a blocking code is active that does not allow the customer to purchase pre-paid electricity tokens?		
39	Does the system provide for at least the standard reports as stipulated in the tender?		
40	Does the system allow for preview of reports before printing?		
41	Does the system support the use of vending based tariffs?		
42	Does the system provide for pre-defined tariffs by date to be created in advance?		
43	Does the system accommodate the current vending structures of the municipality?		
44	Does the system support IBT (stepped tariffs)?		
45	Does the system support vending based VAT that is calculated at time of vending?		
46	Does the system provide for batch numbers to follow sequentially and print a breakdown of all money received separately?		
47	Does the system provide for the payment of arrear amounts, current amounts or linked account separately from purchasing pre-paid electricity tokens?		
48	Does the system provide for users with specific access rights to change the full arrear amount to a specific amount and then allows a limited electricity sales amount after which the system must automatically revert back to the original arrear amount taking into consideration the amount paid by the transaction?		

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49	Does the system provide for the cashier to enter the full amount from which the arrear amount will automatically be deducted and the remainder of the money will then automatically be allocated towards pre-paid electricity sales?		
50	Does the system make provision to warn the cashier before finalizing any transaction?		
51	Does the system provide for integration of historical data?		
52	Does the system provide for user lock-out after a number of wrong password entries?		
53	Is a list of current system users with full contact details supplied?		
54	Was an assessment of current infrastructure done and an optimum solution recommendation attached?		
55	Is the system TCP/IP compliant and be able to operate real-time over Ethernet on a LAN/WAN/WIFI/GPRS/3G/EDGE/HSDPA/ADSL/DIGINET environment as available in certain areas?		
56	Does the system support vending stations running on at least Windows XP?		
55	Are all communications between client and server secured by mutually authenticated SSL certificates?		
57	Is provision made for periodic data synchronization with an off-line database in the municipal environment?		
58	Does the system support the latest version of The standard Microsoft Internet Explorer and always keep up with updates by Microsoft.		
59	Does the system function under low-bandwidth requirements with minimum packet size? Please specify the band-width.		
60	Is an integrated audit application included in the offer?		

**13. DURATION OF PROJECT**

Three (3) years.

**14. EVALUATION OF TENDER OFFERS**

The procedure for the evaluation of responsive tender offer will be dealt at the Supply Chain Offices together with the relevant Directorate: Budget and Treasury. A successful service provider will be the one that most closely matches the goals and objectives for the proposed of the works; the procedure for the evaluation of responsive tender offer is the **80/20** preference. **Pricing Low does not guarantee appointment.**

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Witness 1

Witness 2

Description			Maximum points to be allocated	Scoring	BLM SCORE	Reference	
<b>Bid Amount (Vat Incl.) (From pricing Data)</b>							
<b>Price Points {80*(1-(Pt-Pm)/Pm)}</b>			<b>80</b>				
<b>Specific project applicable expertise (FUNCTIONALITY)</b>	<b>Infrastructure of Firm</b>	Single interface ,Integrated Multi – utility system , vending for electricity	15				
		Broad based third party vending footprint	15				
		Hosted on-line vending provided to municipalities	15				
		Disaster recovery and business continuity plan	10				
		Letters from municipalities confirming third party vending and arrears collection	15				
		Detailed MSCOA implementation method	10				
		Overview of approach to STS key rollover	10				
		Mobile Engineering application of field staff	10				
	<b>Total (Specific project applicable expertise)</b>			<b>100</b>			
	<b>Minimum quality point to be achieved in order to be considered for further evaluation is 60 points</b>						
	PRICE		<b>80</b>				
	BBBEE LEVEL CERTIFICATE		<b>20</b>				
	<b>Total Points</b>		<b>100</b>				

**NB:** Bidders must score a minimum score of 60% on functionality to qualify for further evaluation on price and preference points. Bidders that score less than minimum of 60% or 60 points will be disqualified.

#### 15. ALTERATIONS TO DOCUMENTS

Not make any alterations or additions to the Term of Reference, except to comply with instructions issued by the employer, or necessary to correct errors made by the Service Provider. All signatories to the Bid offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



No alternative Bid officer will be considered

**16. FORMAL AGREEMENT AND CONDITIONS OF CONTRACT**

The award of the contract is subject to the successful bidder entering into an agreement with the Ba-Phalaborwa Municipality.

**17. DECLARATION OF CONFIDENTIALITY**

The Service Provider(s) shall regard all information in, or in support of the project as confidential and may not use any information for personal or 3<sup>rd</sup> party gain

**18. CONTACTABLE OFFICIALS FOR CLARIFICATION** compulsory site briefing will be held on the \_\_\_\_\_ starting time at. Prospective bidders are required to meet with the representative of the Employer at Ba-Phalaborwa Municipality, Head Office. Only a single representative per company will be required as signatory on the date of compulsory briefing.

Enquiries regarding clarification of aspects mentioned in this TOR can be addressed to Mr. Tshishonga N during office hours at Tel. no: **(015) 780 6328** or Supply Chain Office 015 780 6362.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**BA-PHALABORWA LOCAL MUNICIPALITY**

**TENDER NUMBER 13/18/19**

**TENDER FOR THE APPOINTMENT OF SERVICE PROVIDER IN BA-PHALABORWA LOCAL MUNICIPALITY FOR THE:**

**ONLINE VENDING SYSTEM, THIRD PARTY VENDING SOLUTION FOR A PERIOD OF THREE (3) YEARS**

**(All Documents and Schedules MUST BE SUBMITTED for the Tender to Qualify)**

The bidder must submit the following documents:

<b>T2.1 Returnable Schedules required for Bid evaluation purposes</b>		
1	Form 1.1	General Information
2	Form 1.2	Certificate of attendance at Briefing Session
	Form 1.3	Authority for Signatory
3	Form 1.4	Schedule of Work Carried Out by Bidder
4	Compulsory municipal bid documents	Full Completion of MBD Forms
5		Valid TAX Clearance
6		Proof of Company Registration (CK)
7		Certified copies of municipal accounts / lease agreement / tribal authority confirmation letter of the company and owners not older than 3 months
8		Certified ID copies of owners and company not older than 3 months
9		Company Profile
11		BBB-EE -CERTIFICATE
13		CSD Registration Report

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**FORM 1.1 GENERAL INFORMATION**

Details of person responsible for the tender process:

Name: \_\_\_\_\_

Contact number \_\_\_\_\_

Address of office submitting the tender:

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone no: \_\_\_\_\_

Fax no: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**SIGNED ON BEHALF OF TENDERER: .....      DATE: .....**

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**FORM1.2 CERTIFICATE OF ATTENDANCE AT SITE VISIT**

This is to certify that (*Tenderer*) .....

of (*address*) .....

..... was represented by the person(s) named below at the compulsory meeting held for all tenderers at Head Office, for project No: ..... on \_\_\_\_\_ at \_\_\_\_\_

I / We acknowledge that the purpose of the meeting was to acquaint myself / ourselves with the site of the works and / or matters incidental to doing the work specified in the tender documents in order for me / us to take account of everything necessary when compiling our rates and prices included in the tender.

**Particulars of person(s) attending the meeting:**

Name: .....

Signature: .....

Capacity: .....

Name: .....

Signature: .....

Capacity: .....

**Attendance of the above person(s) at the meeting is confirmed by the Employer's representative, namely:**

Name: .....

Signature: .....

Capacity: .....

Date and Time: .....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**FORM 1.3 CERTIFICATE FOR AUTHORITY OF SIGNATORY**

Signatories for Companies must establish their authority by attaching a copy of the relevant Resolution of the Board of Directors, duly signed and dated, to this form.

AN EXAMPLE IS SHOWN BELOW:

"By Resolution of the Board of Directors at a meeting on .....

..... 2019

Mr/Mrs/Ms. ....

Has been duly authorised to sign all documents in connection with the Tender on behalf of (Block capitals)

.....

SIGNED ON BEHALF OF COMPANY.....

IN HIS CAPACITY AS.....

SIGNATURE OF SIGNATORY

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**SCHEDULE 1: EVALUATION SCHEDULE: TENDERER'S EXPERIENCE**

- 1.1 The bid will be evaluated according to the Preferential Procurement Regulations of 2011 which prescribe the application of the 80/20 points system.
- 1.2 Where BBBEE points are claimed, a certified copy of BBBEE certificate must be attached.
- 1.3 The points for this bid are allocated as follows:

	<b>COMPONENT</b>	<b>POINTS</b>
1.	<b>Price:</b>	80
1.3.1	<b>Preferential points: BBBEE</b>	20
1.3.2	<b>TOTAL:</b>	<b>100</b>

The functionality evaluation points for this bid are allocated as follows: Functionality will be evaluated separately from price and preference points.

**EVALUATION ON QUALITY/FUNCTIONALITY = 100**

Item	Description	Value		
1	Single Interface, Integrated multi-utility system, vending for electricity	15	Full Comprehensive description and STS approval	15
			Description and STS approval	10
			No description and/or STS approval	
2	Broad based third-party vending footprint provided to municipalities including retail, banks, informal sector and web vendors	15	5 years or more	15
			3 - 4 years	10
			1 – 2 years	5
			No Experience	0
3		15	5 years or more	15

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

	<b>Hosted on-line vending provided to municipalities</b>		<b>3 - 4 years</b>	<b>10</b>
			<b>1 – 2 years</b>	<b>5</b>
			<b>No Experience</b>	<b>0</b>
<b>4</b>	<b>Disaster recovery and business continuity plan</b>	<b>10</b>	<b>Comprehensive Plan Included</b>	<b>10</b>
			<b>Plan Included</b>	<b>5</b>
			<b>No Plan</b>	<b>0</b>
<b>5</b>	<b>Letters from Municipalities confirming third party vending and arrears collection (either Reference Letter or/and appointment letter)</b>	<b>15</b>	<b>3 letters or more</b>	<b>15</b>
			<b>2 letters</b>	<b>10</b>
			<b>1 letter</b>	<b>5</b>
			<b>No plan</b>	<b>0</b>
<b>6</b>	<b>Detailed MSCOA implementation approach</b>	<b>10</b>	<b>Plan Included</b>	<b>10</b>
			<b>No Plan Included</b>	<b>0</b>
<b>7</b>	<b>Overview of approach to the STS key rollover</b>	<b>10</b>	<b>Plan included</b>	<b>10</b>
			<b>No plan</b>	<b>0</b>
<b>8</b>	<b>Mobile Engineering application of field staff</b>	<b>10</b>	<b>Comprehensive Tool</b>	<b>10</b>

**NB:** Bidders must score a minimum score of 60% on functionality to qualify for further evaluation on price and preference points. Bidders that score less than minimum of 60% points will be disqualified.

Bids will then be evaluated in accordance with the prescripts of the Preferential Procurement Policy Framework Act (PPPFA) and the associated Preferential Procurement Regulations of 2017, which stipulate a 80/20 point split for requirements less than R50 000 000.00.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

# COMPULSORY MUNICIPAL BID DOCUMENTS



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2



INVITATION TO BID

(a) YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE BA-PHALABORWA LOCAL MUNICIPALITY

BID NUMBER: ..... CLOSING DATE: ..... CLOSING TIME: .....  
DESCRIPTION.....

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).

BID DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT:

Cnr Nelson Mandela & Sealane Street  
Phalaborwa  
1390

Bidders should ensure that bids are delivered timeously to the correct address inside the relevant bid box. If the bid is late or not inside the correct bid box, it will not be accepted for consideration.

- (b) The bid box is generally open 24 hours a day, 7 days a week.
- (c) ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

(d) NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER .....

FACSIMILE NUMBER CODE .....NUMBER.....

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED? (MBD 2) YES/NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (MBD 6.1) YES/NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

- AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)
- A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACCREDITATION SYSTEM (SANAS)
- A REGISTERED AUDITOR

(Tick applicable box)

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)**

ARE YOU THE ACCREDITED REPRESENTATIVE  
IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED? YES/NO  
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED .....

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED.....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Municipality / Municipal Entity:** Ba-Phalaborwa Local Municipality

**Department:** Finance

**Contact Person:** Mr. TJ Mogano

**Tel:** (015) 780 6303

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

**AS PER THE ADVERT.**



Contractor



Witness 1



Witness 2



Employer



Witness 1



Witness 2

**TAX CLEARANCE CERTIFICATE**

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

1. In order to meet this requirement bidders are required to complete in full form TCC001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids. Copies of form TCC 001 are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).
6. Exemption to the provision of a Tax Clearance Certificate will be granted provided that:
  - a) The bidder is registered on the vendor database of the municipality and a valid tax clearance certificate was submitted together with the application for registration
  - b) If the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the municipality's possession.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**DECLARATION OF INTEREST**

- 1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
- 1. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favoritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorized representative declare their position in relation to the evaluating/adjudicating authority.

3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number: .....

3.3 Position occupied in the Company (director, trustee, hareholder<sup>2</sup>):.....

3.4 Company Registration Number: .....

3.5 Tax Reference Number:.....

3.6 VAT Registration Number: .....

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars. ....

.....

<sup>1</sup>MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<sup>2</sup> Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? ..... **YES / NO**

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

3.9.1 If yes, furnish particulars.....  
.....

3.10 Do you have any relationship (family, friend, other) with persons  
In the service of the state and who may be involved with  
The evaluation and or adjudication of this bid? ..... **YES / NO**

3.10.1 If yes, furnish particulars.  
.....  
.....

3.11 Are you, aware of any relationship (family, friend, other) between  
Any other bidder and any persons in the service of the state who  
May be involved with the evaluation and or adjudication of this bid? ..... **YES / NO**

3.11.1 If yes, furnish particulars  
.....  
.....

3.12 Are any of the company's directors, trustees, managers,  
Principle shareholders or stakeholders in service of the state? ..... **YES / NO**

3.12.1 If yes, furnish particulars.  
.....  
.....

3.13 Are any spouse, child or parent of the company's directors?  
Trustees, managers, principle shareholders or stakeholders  
In service of the state? ..... **YES / NO**

3.13.1 If yes, furnish particulars.  
.....  
.....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

3.14 Do you or any of the directors, trustees, managers, Principle shareholders, or stakeholders of this company Have any interest in any other related companies or Business whether or not they are bidding for this contract.

**YES / NO**

3.14.1 If yes, furnish particulars:

.....  
 .....

**(a) 4. Full details of directors / trustees / members / shareholders.**

Full Name	Identity Number	State Employee Number

.....  
**Signature**

.....  
**Date**

.....  
**Capacity**

.....  
**Name of Bidder**

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL  
CERTIFICATES**

**Bidders are required to submit original and valid B-BBEE Status Level Verification  
Certificates or certified copies thereof together with their bids, to substantiate their B-  
BBEE rating claims.**

Bidders who do not submit B-BBEE Status T Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the bidding process. They will score points for out of 90 or 80 for price only and zero points out of 10 or 20 for B-BBEE.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2011**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution.

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.**

---

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the.....system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.3.1 The maximum points for this bid are allocated as follows:

**POINTS**

**1.3.1.1 PRICE.....**

**1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION.....**

**Total points for Price and B-BBEE must not exceed 100**

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**2. DEFINITIONS**

- 2.1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less.
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



**5. Points awarded for B-BBEE Status Level of Contribution**

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	8	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

**6. BID DECLARATION**

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

**7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1.**

7.1 B-BBEE Status Level of Contribution: ..... = ..... (maximum of 10 or 20 points)

**(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).**

**8 SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted? .....%
- (ii) the name of the sub-contractor?.....
- (iii) the B-BBEE status level of the sub-contractor? .....
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

**9 DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of firm :

9.2 VAT registration number :

9.3 Company registration number :.....

**9.4 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
  - One person business/sole propriety
  - Close corporation
  - Company
  - (Pty) Limited
- [TICK APPLICABLE BOX]

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.  
[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated

.....

Registered Account Number

.....

Stand Number

.....

9.8 TOTAL NUMBER OF YEARS THE COMPANY/FIRM HAS BEEN IN BUSINESS?

.....

9.9 I/we, the undersigned, who is / are duly authorized to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct;
- (ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation;

[Signature Box]

Contractor

[Signature Box]

Witness 1

[Signature Box]

Witness 2

[Signature Box]

Employer

[Signature Box]

Witness 1

[Signature Box]

Witness 2

- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

**WITNESSES:**

1. ....

2. ....

.....

(S)

DATE: .....

ADDRESS: .....

.....

..

.....

..

.....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Municipal Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be rejected if that bidder, or any of its directors have:
  - a) abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
  - b) been convicted for fraud or corruption during the past five years;
  - c) willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d) been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
4. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?  (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).  <b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?  <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.5.1	If so, furnish particulars:		

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME) .....**  
**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Municipal Bidding Document (MBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
  - a. take all reasonable steps to prevent such abuse;
  - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
  - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

**<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.**

**<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.**

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_  
(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of:

\_\_\_\_\_ that:  
(Name of Bidder)

1. I have read and I understand the contents of this Certificate.
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect.
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder.
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder.
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Witness 2

- (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation);
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

**<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

TENDER FOR THE APPOINTMENT OF SERVICE PROVIDER IN BA-PHALABORWA  
LOCAL MUNICIPALITY FOR THE:

ONLINE VENDING SYSTEM, THIRD PARTY VENDING SOLUTION FOR A PERIOD  
OF THREE (3) YEARS

**BILL OF QUANTITIES**

ITEM	Description	Rate (Excl. VAT)
1	Vending of prepaid electricity tokens and the revenue collection thereof. (% excluding VAT on face value of tokens vis system)	
2	Bill payment services per transaction collected through third party	
	<b>TOTAL</b>	R
	<b>ADD VAT @ 15%</b>	R
	<b>GRAND TOTAL</b>	R
	<p>..... Signature</p> <p>..... Date</p> <p>..... Position</p> <p>..... Name of Bidder</p>	

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**TENDER NUMBER: .....**

**TENDER FOR THE APPOINTMENT OF SERVICE PROVIDER IN BA-PHALABORWA LOCAL MUNICIPALITY FOR THE:**

**ONLINE VENDING SYSTEM, THIRD PARTY VENDING SOLUTION FOR A PERIOD OF THREE (3) YEARS**

**Form of Offer and Acceptance**

**C1.1 FORM OF OFFER AND ACCEPTANCE**

**C1.1.1: Form of Offer**

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

**ONLINE VENDING SYSTEM , THIRD PARTY VENDING SOLUTION FOR A PERIOD OF THREE (3) YEARS (BUDGET AND TREASURY)**

**TENDER NUMBER: .....**

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

**\*THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:**

.....  
..... Rand (in words);

**R** ..... (in figures)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Signature Block: Tenderer	
Signature .....	Date .....
Name .....	
Capacity .....	
Name of organization .....	
Address of organization .....	
.....	
Signature of witness .....	Date .....
Name of witness .....	

**\* BIDDERS HAVE TO COMPLETE THE OFFERED TOTAL OF THE PRICES IN WORDS AS WELL AS IN FIGURES**

**C1.1.2: Form of Acceptance**

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1: Agreements and contract data, (which includes this agreement)
- Part C2: Pricing data
- Part C3: Scope of work.
- Part C4: Site information and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C4 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) for delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five working days of the date of such receipt notifies the employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Signature Block: Employer	
Signature .....	Date .....
Name .....	
Capacity .....	
<b>for the Employer</b>	Ba-Phalaborwa Local Municipality Private Bag X01020, Phalaborwa, 1390
Signature of witness .....	Date .....
Name of witness .....	

**C1.1.3: Schedule of Deviations**

1 Subject: .....  
Details:  
.....  
.....  
.....  
.....

2 Subject: ..... Details:  
.....  
.....  
.....  
.....

3 Subject: .....  
Details:

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2



.....  
.....  
.....  
.....  
4. Subject: .....  
Details:  
.....  
.....  
.....  
.....

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

## GENERAL CONDITIONS OF CONTRACT

### 1. DEFINITIONS

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

#### **Contract**

The Contract signed by the Parties and of which these General Conditions of Contract form part.

#### **Contract Data**

Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**Contract Price**

The price to be paid for the performance of the Services in accordance with the Pricing Data.

**Day**

A calendar day.

**Defect**

A part of the Services, as performed, which does not comply with the requirements of the Contract.

**Deliverable**

Any measurable, tangible, verifiable outcome, result or item that must be produced or completed;

**Employer**

The contracting party named in the Contract who employs the Service Provider.

**Force Majeure**

An event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**Key Persons**

Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

**Others**

Persons or organizations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

**Parties**

The Employer and the Service Provider.

**Period of Performance**

The period within which the Services are to be performed and completed.

**Personnel**

Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

[Empty box for Contractor signature]

Contractor

[Empty box for Witness 1 signature]

Witness 1

[Empty box for Witness 2 signature]

Witness 2

[Empty box for Employer signature]

Employer

[Empty box for Witness 1 signature]

Witness 1

[Empty box for Witness 2 signature]

Witness 2

**Personnel Schedule**

A schedule naming all Personnel and Key Persons.

**Pricing Data**

Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up the Contract price.

**Project**

The project named in the Contract Data for which the Services are to be provided.

**Scope of Work**

The document which defines the Employer’s objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

**Service Provider**

The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provider and legally permitted assignees.

**Services**

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work.

**Subcontractor**

A person or body corporate who enters into a subcontract with the Service Provider to perform part of the Services.

**2. INTERPRETATION**

2.1 Unless inconsistent with the context, an expression which denotes :

- a) any gender includes the other genders;
- b) a natural person includes a juristic person and vice versa;
- c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

**3. GENERAL**

**3.1 Governing law**

Law governing the Contract shall be the law of the Republic of South Africa.

[Empty signature box]

Contractor

[Empty signature box]

Witness 1

[Empty signature box]

Witness 2

[Empty signature box]

Employer

[Empty signature box]

Witness 1

[Empty signature box]

Witness 2

**3.2 Change in legislation**

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 Days of first having become aware of the change, the Provider furnished the Employer with detailed justification for the adjustment to the Contract Price or Period of Performance (or both)..

**3.3 Language**

3.3.1 The language of the Contract and of all communications between the Parties shall be English.

3.3.2 All reports, recommendations and reports prepared by the Service Provider under the Contract shall be in English.

**3.4 Notices**

3.4.1 Any notice, request, consent, approvals or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract Data. Such communication shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or one week after having been sent by registered post, or unless otherwise indicated in the Contract Data, when sent by e-mail or facsimile to such Party

3.4.2 A Party may change its address for receipt of communications by giving the other Party 30 Days advance notice of such change.

**3.5 Location**

The Services shall be performed at such locations as are specified in the Contract Data, and where the location of a particular task is not so specified, at such locations as the Employer may approve.

**3.6 Publicity and publication**

Unless otherwise stated in the Contract Data, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval by the Employer shall not be unreasonably withheld.

**3.7 Confidentiality**

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

**3.8 Variations**

3.8.1 The Employer may, without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Service Provider to submit proposals, including the time and cost implications, for variations to the Services.

[Empty signature box]

Contractor

[Empty signature box]

Witness 1

[Empty signature box]

Witness 2

[Empty signature box]

Employer

[Empty signature box]

Witness 1

[Empty signature box]

Witness 2

3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.

3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

**3.9 Sole agreement**

The Contract constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall be of any force or effect. No September amendments will be of any force or effect unless reduced to writing and signed by both Parties.

**3.10 Indemnification**

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any negligent act or omission by the Service Provider in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trade marks and other forms of intellectual property such as copyrights.

**3.11 Penalty**

3.11.1 If due to his negligence, or for reasons within his control, the Service Provider does not perform the Services within the Period of Performance, the Employer shall without prejudice to his other remedies under the Contract or in law, be entitled to levy a penalty for every Day or part thereof, which shall elapse between the end of the period specified for performance, or an extended Period of Performance, and the actual date of completion, at the rate and up to the maximum amount stated in the Contract Data.

3.11.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.11.1, he may after giving notice to the Service Provider :

- a) terminate the Contract
- b) complete the Services at the Service Provider's cost.

**3.12 Equipment and materials furnished by the Employer**

3.12.1 Equipment and materials made available to the Service Provider by the Employer, or purchased by the Service Provider with funds provided by the Employer for the performance of the Services shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Employer an inventory of such equipment and materials and shall dispose of them in accordance with the Employer's instructions.

3.12.2 The Service Provider shall, at his own expense, insure the equipment and materials referred to in 3.12.1 for their full replacement value.

**3 Illegal and impossible requirements**

The Service Provider shall notify the Employer immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

**3.14 Programme**

3.14.1 The Service Provider shall, within the time period set out in the Contract Data, submit to the Employer a programme for the performance of the Services which shall, *inter alia*, include:

- a) the order and timing of operations by the Service Provider and any actions required of the Employer and Others;
- b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them; and
- c) other information as required in terms of the Scope of Work or Contract Data.

3.14.2 The Employer may, during the course of the Contract, request the Service Provider to amend the programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.14.3 The Service Provider shall regularly update the programme to reflect actual progress to date and expected future progress.

**4. EMPLOYER'S OBLIGATIONS**

**4.1 Information**

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

**4.2 Decisions**

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

**4.3 Assistance**

4.3.1 The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

- a) authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;
- b) provide all relevant data, information, reports, correspondence and the like, which become available;
- c) procure the Service Provider's ready access to premises, or sites, necessary for the performance of the Services;
- d) assist in the obtaining of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated in the Contract Data;

4.3.2 Unless otherwise communicated, the authorised and designated person named in the

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

Contract Data has complete authority in giving instructions and receiving communications on the Employer's behalf and interpreting and defining the Employer's policies and requirements in regard to the Services.

**4.4 Services of Others**

The Employer shall, at his own cost, engage such Others as may be required for the execution of work not included in the Services, but which is necessary for the completion of the Project.

**4.5 Notification of material change or defect**

The Employer shall immediately advise the Service Provider on becoming aware of:

- a) any matter other than a change in legislation which will materially change, or has changed the Services; or
- b) a material defect or deficiency in the Services.

**4.6 Issue of instructions**

Where the Service Provider is required to administer the work or services of others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

**4.7 Payment of Service Provider**

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

**5. SERVICE PROVIDER'S OBLIGATIONS**

**5.1 General**

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

5.1.2 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

**5.2 Exercise of authority**

The Service Provider shall have no authority to relieve Others appointed by the Employer to undertake work or services on the Project of any of their duties, obligations, or

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

responsibilities under their respective agreements or contracts, unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

**5.3 Designated representative**

Unless otherwise communicated, the authorised and designated person named in the Contract Data has complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

**5.4 Insurances to be taken out by the Service Provider**

5.4.1 The Service Provider shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract Data.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

**5.5 Service Provider's actions requiring Employer's prior approval**

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

- a) Appointing Subcontractors for the performance of any part of the Services,
- b) Appointing Key Persons not listed by name in the Contract Data.
- c) Any other action that may be specified in the Contract Data.

**5.6 Co-operation with Others**

If the Service Provider is required to perform the Services in co-operation with Others he may make recommendations to the Employer in respect of the appointment of such Others. The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

**5.7 Notice of change by Service Provider**

On becoming aware of any matter which will materially change or has changed the Services, the Service Provider shall within 14 Days thereof give notice to the Employer.

**6. CONFLICTS OF INTEREST**

**6.1 Service Provider not to benefit from commissions, discounts, etc.**

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

**6.2 Royalties and the like**

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The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

### **6.3 Independence**

The Service Provider shall refrain from entering into any relationship which could be perceived as compromising his independence of judgement, or that of Subcontractors or Personnel.

## **7. SERVICE PROVIDER'S PERSONNEL**

### **7.1 General**

7.1.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.1.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract Data to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.1.3 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement to a named Key Person shall not exceed that which would have been payable to the person replaced.

7.1.4 The Service Provider shall bear all additional costs arising out of or incidental to replacement of Personnel, except where such replacement is otherwise provided for in the Contract.

7.1.5 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

### **7.2 Provision of Personnel in terms of a Personnel Schedule**

7.2.1 The Service Provider shall, where required in terms of the Contract Data, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.2.2 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 Days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

7.2.3 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.2.1 above as

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may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.2.4 The Service Provider shall, if required in terms of Clause 7.2.1:

- a) forward to the Employer for approval, within 15 Days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
- b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
- c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

## **8. COMMENCEMENT, COMPLETION, MODIFICATION, SUSPENSION AND TERMINATION**

### **8.1 Commencement of Services**

The Service Provider shall commence the performance of the Services within the period stated in the Contract Data.

### **8.2 Completion**

8.2.1 Unless terminated in terms of the Contract, or otherwise specified in the Contract Data, the Contract shall be concluded when the Service Provider has completed all Deliverables in accordance with the Scope of Work.

8.2.2 The Service Provider may request an extension to the Period of Performance if he is or will be delayed in completing the Contract by any of the following causes:

- a) additional Services ordered by the Employer;
- b) failure of the Employer to fulfill his obligations under the Contract;
- c) any delay in the performance of the Services which is not due to the Service Provider's default;
- d) *Force Majeure*; or
- e) suspension.

8.2.3 The Service Provider shall within 14 Days of becoming aware that a delay may occur or has occurred, notify the Employer of his intention to make a request for the extension of the Period of Performance to which he considers himself entitled and shall within 30 days after the delay ceases deliver to the Employer full and detailed particulars of the request.

8.2.4 The Employer shall, within 30 Days of receipt of a detailed request, grant such extension to the Period of Performance as may be justified, either prospectively or retrospectively, or inform the Service Provider that he is not entitled to an extension. Should the Service Provider find the decision of the Employer to be unacceptable he shall, nevertheless, abide by such decision in the performance of the Services and the matter shall be dealt with as a dispute in terms of Clause 12.

### **8.3 Force Majeure**

8.3.1 The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order

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to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.3.2 in the event that the performance of the Services has to be suspended on the grounds of *Force Majeure*, the Period of Performance shall be extended by the extent of the delay plus a reasonable period for the resumption of work.

8.3.3 During the period of his inability to perform the Services as a result of an event of *Force Majeure*, the Service Provider shall be entitled to any payment due in terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

#### **8.4 Termination**

8.4.1 The Employer may terminate the Contract:

- (a) where the Services are no longer required;
- (b) where the funding for the Services is no longer available;
- (c) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
- (d) if the Service Provider becomes insolvent or liquidated; or
- (e) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;

8.4.2 The Employer shall give the Service Provider not less than thirty (30) Days written notice of any termination made in terms of 8.4.1 (a) or (b).

8.4.3 The Service Provider may terminate the Contract, by giving not less than thirty (30) Days written notice to the Employer after the occurrence of any of the following events:

- (a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of *Force Majeure*, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
- (c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds the period stated in the Contract Data, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded the period stated in the Contract Data; or
- (d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

8.4.4 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.3, the Employer shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Service Provider any reasonable cost incident to the prompt and orderly termination of the Contract, except in the case of termination pursuant to events (c) and (d) of Clause 8.4.1.

8.4.5 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances

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beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

**8.5 Suspension**

8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimize further expenditure.

8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incident to the prompt and orderly suspension of the Contract.

**8.6 Rights and liabilities of the Parties**

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

**9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT**

9.1 Copyright of all documents prepared by the Service Provider in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to Project shall be vested in the party named in the Contract Data. Where copyright is vested in the Service Provider, the Employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Project and need not obtain the Service Provider's permission to copy for such use. Where copyright is vested in the Employer, the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the Project and the Employer hereby indemnifies the Service Provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.

9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

**10. SUCCESSION AND ASSIGNMENT**

10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.

10.2 An assignment shall be valid only if it is a written agreement, by which the Service Provider transfers his rights and obligations under the Contract, or part thereof, to others.

10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest there under, except in the following cases:

- (a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or

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(b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract and the third party will have no claim against the Employer resulting from such termination.

**11. SUBCONTRACTING**

11.1 A Service Provider may not subcontract any work which he has the skill and competency to perform, unless otherwise permitted in the Contract Data.

11.2 A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to Others.

11.3 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 Days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

11.4 The Employer shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Employer to be incompetent; the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.

11.5 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.

11.6 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

**12. RESOLUTION OF DISPUTES**

**12.1 Settlement**

12.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

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12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

**12.2 Mediation**

12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than 14 Days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data.

**12.3 Adjudication**

12.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.

12.3.2 The adjudicator shall be appointed in terms of the Adjudicator’s Agreement bound in the Construction Industry Development Board’s Adjudication Procedure.

12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed in accordance with the Adjudicator’s Agreement contained in the CIDB Adjudication Procedure.

12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 Days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

**12.4 Arbitration**

12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations published by the Association or Arbitrators current at the date the arbitrator is appointed.

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12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

**13. LIABILITY**

**13.1 Liability of the Service Provider**

13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

13.1.3 All persons in a joint venture or consortium shall be jointly and severally liable to the Employer in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Contract Data, if any.

**13.2 Liability of the Employer**

The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate Legal right of action against the Employer.

**13.3 Compensation**

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

- (a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.
- (b) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

**13.4 Duration of Liability**

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract.

**13.5 Limit of Compensation**

13.5.1 Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

- a) the sum insured in terms of 5.4 in respect of insurable events; and
- b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to twice the amount of fees payable to the Service Provider under the Contract, excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of

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compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

- 13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

### **13.6 Indemnity by the Employer**

Unless otherwise indicated in the Contract Data, the Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5, if applicable, or are covered by the insurances arranged under the terms of Clause 5.4.

### **13.7 Exceptions**

- 13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.
- 13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or
  - b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

## **14. REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER**

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data. If not otherwise stated in the Pricing Data, the following shall apply:

- 14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due shall be based on progress.
- 14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) Days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the prime interest rate charged by his bank and certified by such bank, plus 2% per annum, and calculated from the due date of payment.
- 14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.
- 14.4 In respect of Services charged for on a time basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of twenty four months after the completion or termination of the Contract. Within this

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period the Employer may, on not less than 14 Days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

**15 AMOUNTS DUE TO THE EMPLOYER**

Amounts due to the Employer shall be paid by the Service Provider within thirty (30) Days of receipt by him of the relevant invoices. If the Employer does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Service Provider, at the rate stated in the Contract Data, calculated from the due date for payment.

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