



**BA-PHALABORWA LOCAL MUNICIPALITY**

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

Pool of Attorneys (Public Law and municipal Services, Town Planning and Environmental Law Services, Building and Construction Law Services, Labour Law services, Debt Collection Services, Property law, conveyancing and notarial registration services for a period of three (3) years

**TENDER NUMBER: 08/22/23**

**CLOSING DATE: 23/09/2022**

**CLOSING TIME: 10H00**

**BA-PHALABORWA LOCAL MUNICIPALITY**

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Phalaborwa

1390

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**TENDER NUMBER: 08/22/23**

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

Pool of Attorneys (Public Law and municipal Services, Town Planning and Environmental Law Services, Building and Construction Law Services, Labour Law services, Debt Collection Services, Property law, conveyancing and notarial registration services for a period of three (3) years

Ba-Phalaborwa Municipality hereby invites suitable professional services providers to render service), for the below listed project in the Ba-Phalaborwa Municipality of the Mopani District in Limpopo Province.

Tender documents are obtainable from Ba-Phalaborwa Municipality website and e-portal for free of charge.

TENDER NUMBER	C I D B GRADING	DESCRIPTION	COMPULSORY BRIEFING SESSION			FUNCTIONALITY	EVALUATION CRITERIA	CLOSING DATE AND TIME	Minimum Score for functionality	CONTACT PERSON
			DATE	VENUE	COST					
08/22/23	N/A	Pool of Attorneys (Public Law and municipal Services, Town Planning and Environmental Law Services, Building and Construction Law Services, Labour Law services, Debt Collection Services, Property law, conveyancing and notarial registration	15/09/2022 @11H00	Municipal Activity Hall	Free at the municipal website and E-tender portal	Bidder's Capacity (20) Lead attorneys Qualification (30) Lead attorneys public sector Experience (20) Experience of key support staff (20)	N/A	23/09/2022 @ 10H00	70%	TS Mashale (015) 780 6300

		services for a period of three (3) years								
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**1. SPECIFICATIONS**

**1. INTRODUCTION / BACKGROUND**

Tenders are hereby invited from suitably qualified and experienced law firms employing admitted attorneys, conveyancers and notaries (the latter where applicable) to tender for the rendering of professional legal and advisory services to the Ba-Phalaborwa Municipality (“the Municipality”) as required from time to time for a period of three years.

The Municipality intends to establish a panel of attorneys comprising of sub – categories to render legal and advisory services in respect of the various categories of services as set out herein. The allocation of work will be issued as and when required from time to time and on rotational basis. No assurance is given that any service provider on the panel will receive instructions during the term of the contract.

**2. SCOPE**

2.1. Services required will be divided into the following 6 (six) categories of law. All categories of law include services related to Magistrate and High Court litigation, Labour Law, dispute resolution matters, as well general including specialist conveyancing and notarial services.

2.2. **Safe for regulated rates, prospective bidders will be required to indicate applicable rates as charged by the firm for time based and non-time based rates for contract purposes, which will be subject of negotiations.**

2.3. Prospective bidders may tender for any or all of the categories of legal and advisory services required.

N.B. **A separate tender document in a separate file must be submitted for each category tendered for clearly marked as such e.g. Tender for a panel of attorneys for three years, Tender number.....: Category: Town Planning and Environmental Law Services etc. Do not, under any circumstances lump everything in one file.**

2.4. General Legal and advisory services:

General legal services are required in the following categories of service:

#### **2.4.1 Public and Municipal Law Services**

The Municipality requires the services of law firms who have extensive capacity and experience in Public and Municipal Law.

#### **2.4.2 Town Planning and Environmental Law Services**

The Municipality requires the services of law firms who have extensive capacity and experience in town planning and environmental law.

#### **2.4.3 Building and Construction Law Services**

The Municipality requires the services of law firms who have extensive capacity and experience in building and construction law matters.

#### **2.4.4 Labour Law Services**

The Municipality requires the services of law firms who have extensive capacity and experience in labour law matters.

#### **2.4.5 Debt Collection Services**

The Municipality requires the services of law firms to attend to debt collection services, to ensure that monies due and payable to the Municipality are duly collected. This service shall also include taking the necessary actions against debtors placed under administration or debt review and deceased estate collections and act on behalf of the Municipality in business rescue and liquidation matters and executions and deregistration/re-registration of legal entities where the Municipality has a vested interest.

#### **2.4.6 Property Law, Conveyancing and Notarial Registration Services: housing, General and Specialised**

The Municipality requires conveyancing and notarial registration services, which includes, but are not limited to:

- a) Registration of General Plans and/or servitudes and other real rights in the Deeds Office;
- b) Registration and/or cancellation of bonds in favour of the Municipality;
- c) Registration of low cost housing transactions allocated to approved beneficiaries, which includes, but is not limited to the drafting and signing of deeds/sale agreements and other documents necessary to effect transfer; preparation and lodgement of deeds at the Deeds Office.
- d) Monthly reporting on progress with transfers.
- e) Drafting of contracts, where applicable;
- f) Registration of transfer of immovable property (General Conveyancing), including vesting transfers in terms of section 16 to 31 of the Deeds Registry Act ("the Act") and exchange transfers;
- g) Cancellation of bonds in favour of the Municipality;
- h) Drafting and registration of Certificates of Registered Titles;
- i) Drafting and registration Certificates of Consolidated title under section 40, Certificates of amended Title and Uniform Title under sections 41 and 42 and Certificates in terms of section 38 of the Act;
- j) Applications for endorsement(s) in terms of section 46 of the Act for the layout of a township or settlement;
- k) Applications for the issuing of a certified copy of a deed in terms of regulation 68(1);
- l) Drafting of notarial deeds of contracts and other documents and attending to the registration thereof;
- m) Communicating and engaging with the Office of the Surveyor – General, with regard to the metrication or amendment of any diagram or obtaining a copy of any diagram or certificate of remainder-including instructions;
- n) Attending to the upliftment of attachment interdicts in the Deeds Office;
- o) Attending to investigations in the Deeds Office, and other related matters.

### **3. GENERAL**

#### **3.1. Contract period**

The contract period will commence on the date of signing the contract, and will expire after three years with the proviso that all work not finalised by the end of the contract term be finalised as soon as possible thereafter on the same terms and conditions of this tender.

### 3.2. **Validity period of tender**

The tender shall remain irrevocably open for acceptance by the Municipality for a period of at least 90 (ninety) days calculated from the date of the closing of tenders.

Notwithstanding the above period the tender shall be deemed to remain valid until formal acceptance by the Municipality of an offer at any time after the minimum validity period, unless the Municipality is notified in writing of anything to the contrary by the bidder.

### 3.3. **Implementation timetable**

3.3.1. The Municipality will, within 5 (five) days from date of formal allocation of work to a successful bidder, furnish all the necessary documents/copies of the Municipality's file relating to the matter, in order to proceed with the instruction.

3.3.2. The successful bidder shall at all times maintain and operate ICT capabilities as required by the Municipality and shall inform the Municipality within 24 (twenty-four) hours of any breakdown or other issues which may impact email or telephonic communications between the successful bidder and the Municipality.

3.3.3. The minimum time period specified in the Rules of Court for the delivery of applications, notices and pleadings must be adhered to.

3.3.4. A file will be closed once the deliverables as set out in the instruction have been met.

## 4. **EVALUATION AND ADJUDICATION**

### **Bidders will firstly be evaluated on their responsiveness as follows:**

A bid not complying with the peremptory requirements stated hereunder will be regarded as not being an "Acceptable bid", and as such will be rejected.

"Acceptable bid" means any bid which, in all respects, complies with the conditions of bid and specifications as set out in the bid documents, including conditions as specified in the Preferential Procurement Policy Framework Act (Act 5 of 2000) and related legislation as published in Government Gazette number 22549, dated 10 August 2001, in terms of which provision is made for this policy.

- If a tax clearance certificate, tax pin or certified copy thereof not older than three months (or in the case of a joint venture, of all the partners in the joint venture) has not been submitted with the bid document on closing date of the bid.
- If any pages have been removed from the bid document, and have therefore not been submitted, or a copy of the original bid document has been submitted.
- Failure to complete the schedule of quantities as required, i.e only lump sums provided.
- Scratching out, writing over or painting out rates, without initialling next to the amended rates or information, affecting the evaluation of the bid.
- The use of correction fluid (i.e. tippex) or any erasable ink, e.g. pencil.
- Non-attendance of mandatory/compulsory briefing session
- The Bid has not been properly signed by a party having the authority to do so, according to the example of "Authority for Signatory"
- No authority for signatory submitted – See example, where it is stated that a duly signed and dated original or certified copy of the company's relevant resolution (for each specific bid) of their members or their board of directors, must be submitted.
- The bidder attempts to influence, or has in fact influenced the evaluation and/or awarding of the contract
- The bid has been submitted either in the wrong bid box or after the relevant closing date and time
- If any municipal rates and taxes or municipal service charges owed by the bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months.
- The accounting officer must ensure that irrespective of the procurement process followed, no award may be given to a person –
  - who is in the service of the state, or;

- if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder, is a person in the service of the state; or;
  - who is an advisor or consultant contracted with the municipality in respect of contract that would cause a conflict of interest.
- Bid offers will be rejected if the bidder or any of his directors is listed on the Register of Bid Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
  - Bid offers will be rejected if the bidder has furnished the municipality with fraudulent documents.
  - Failure to attach a copy of a valid signed Joint Venture/Consortium agreement (if applicable) to the bid document.
  - Form of offer not completed and signed by the authorized signatory.
  - Certified ID copies of the directors/ members/ proprietors not older than three months
  - BBB-EE certificate (optional)/In case of joint venture consolidated BBB-EE certificate must be submitted
  - Latest registration report of Central Supplier Database (CSD) with valid reference number.

- 4.1. Thereafter the ability of bidders will be assessed in terms of functionality in terms of each category of service tendered for. This exercise will assess capacity of the bidder firm and experience of lead attorneys and key support staff as per Annexure A hereof. Bidders must score at least 70% in this assessment in order to be evaluated further.
- 4.2. **Bidders who do not comply with these requirements will be regarded as non – responsive.**
- 4.3. All successful bidders will be placed on an overall panel of service providers and categorised as such. Selection will be based on the highest point scoring in each category of service. The maximum number of service providers per category will be determined by the Municipality in its own discretion.
- 4.4. Work will generally be allocated on a rotation basis with regard all categories of services to service providers on the respective categories.
- 4.5. The Municipality reserves the right to deviate from a strict rotation and to allocate work to any successful bidder from any category, after taking into account factors such as previous involvement in a matter, continuity, nature and complexity of the matter and when expertise and experience in a specific field of law is required, or in exceptional cases, to make appointments outside of the panels, to ensure that the best interest of the Municipality is served.

**5. ELIGIBILITY CRITERIA**

The evaluation of bids will be done in terms of compliance with the following criteria. Tenders that do not comply with all the criteria below will not be evaluated further.

Description of requirements	Please indicate with an “X” whether the offer complies with the requirements.		
	Yes	No	Comments and Attachments
5.1. Bidders must submit a memorandum setting out the capacity of the law firm, and the qualifications, and experience of each leading practitioner/attorney/conveyancer/notary and key support staff member in the law firm who offer the service in respect of any one or more of the categories of legal services required.			
5.2. Bidders bidding for conveyancing and notarial services must provide proof of access to deeds office search software (proof of license to be attached).			

Description of requirements	Please indicate with an "X" whether the offer complies with the requirements.		
	Yes	No	Comments and Attachments
5.3. Bidders bidding for both conveyancing and notarial services must provide proof of access to conveyancing software (proof of licenses to be attached).			
5.4. In terms of conveyancing and notarial services, the necessary proof of admission as a conveyancer and notary of the lead attorneys of bidding law firm must be provided.			
5.5. Bidders bidding for each of the category of services listed in this tender, with the exception of conveyancing and notarial services, must provide the necessary lead attorneys' proof of admission to appear in the High Court.			
5.6. Bidders bidding for each of the category of services listed in this tender must provide certified copies of the admission certificates as attorney of the High Court for each lead attorney and their qualifications.			
5.7. Bidders for each of the category of services listed in this tender must provide certified copies of each lead attorney's fidelity fund certificate.			
5.8. Bidders bidding for each of the category of services must complete annexure A (which equates to a memorandum) in full to enable an assessment of the capacity and experience of each bidder.			
5.9. Bidders bidding for each of the category of services must complete Annexure B (Bidders reference) in full.			
5.10. Bidders for each of the category of services must provide a certificate of good standing from the applicable regulatory body.			

## 6. FUNCTIONALITY CRITERIA

It is required of bidders to submit a memorandum as per Annexure A setting out the capacity and level of experience as represented by the Lead Attorney/s listed in respect of each category of service tendered for. It is the responsibility of bidders to ensure that sufficient information is submitted for such assessment.

### 6.1 Contents of Memorandum – Annexure A

Please note that separate memoranda (clearly marked "Memorandum – Annexure A") must be submitted for each category of service tendered for.

**6.1.1 The memorandum must start with detailed paragraphs containing motivations for registration on the panel first** i.e. a brief outline (200 words or less) of the issues considered to be pertinent to the rendering of the services in the category as tendered for.

**and then the following in a chronological order:**

**6.1.2 Bidder's capacity**

The scoring of the bidder's capacity will be as set out below. In order to perform this assessment, a company/firm profile comprising at least of the following, as required in this tender:

- (a) Name, physical and postal address and other contact details of bidder firm;
- (b) Registration number;
- (c) Firm structure (details of partners, associates, consultants, professional assistants, candidate attorneys);
- (d) Teams and technical / administrative support;
- (e) Service capacity (pertains to the category of service tendered for);
- (f) Focus and speciality areas of support staff;
- (g) Technology infrastructure and software programs / online law products;
- (h) Office infrastructure;
- (i) Office building/s and ownership / lease status;
- (j) Other relevant information in this category.

**6.1.3 Qualifications and knowledge of Lead attorneys**

For the purpose of this assessment, the Bidder will be required to attach the following information and support documentation to the memorandum:

- (a) Curriculum Vitae's for each of the Lead Attorney(s) who will be rendering the service must be provided to be comprised of not more than 4 (four) pages;
- (b) Certified copies of each of the Lead attorney(s) qualifications and admittance who will be rendering the service

**6.1.4 Experience of key support staff**

For the purpose of the above assessment, the Bidder will be required to submit support documentation detailing the education, training, skills, and experience of other key technical and administrative support personnel in the category as tendered for.

**6.1.5 Local Government Experience**

- (a) The local government experience of Lead Attorney(s) in respect of each category of service tendered for (See Pricing Schedule) will be assessed as set out below.
- (b) For the purpose of this assessment, the bidder will be required to submit sufficient information and support documentation detailing the following:
  - (i) The lead attorney(s) specific experience with regard to local government matters relating to the category as tendered for.
  - (ii) List key examples of High Court and Magistrate Court litigation on behalf of local authorities, as well as other key work instructions performed for local authorities during the past three years. (The examples should only relate to the categories of services in respect of which a bid is submitted in terms of this tender).
  - (iii) List key work instructions performed for local authorities pertaining to conveyancing and notarial services.
  - (iv) The variety of local government matters in which the Lead Attorney has knowledge of experience.

**6.2 Evaluation of Functionality criteria**

A total score of 70% (63 points) must be achieved to proceed to the next level of evaluation.

In order to determine the overall experience of bidders, the scoring method as set out below will be used. An assessment will be made in respect of each of the categories of service tendered separately.



**6.2.1 FUNCTIONALITY CRITERIA – PUBLIC LAW AND MUNICIPAL LAW SERVICES**

	Description	Points attainable	Maximum points attainable	Points Awarded
<b>A</b>	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
i	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good	20	20	
ii	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
iii	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have litigation capacity and reasonable experience.	10		
iv	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		

<b>B</b>	<b>Lead Attorney qualifications</b>			
i	Relevant NQF 9/10 Qualification	30	<b>30</b>	
ii	Relevant NQF 7/8 Qualification	20		
<b>C</b>	<b>Lead Attorney public sector experience</b>			
i	>10 years local government experience	20	<b>20</b>	
ii	8-10 years local government experience	15		
iii	4-7 years local government experience	10		
iv	1-3 years local government experience	5		
<b>D</b>	<b>Experience of key support staff</b>			
i	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	<b>20</b>	
ii	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
iii	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
iv	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

**6.2.2 FUNCTIONALITY CRITERIA – TOWN PLANNING AND ENVIROMENTAL LAW SERVICES**

	Description	Points attainable	Maximum points attainable	Points Awarded
	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good.	20	20	
	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have litigation capacity and reasonable experience.	10		
	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		
	<b>Lead Attorney qualifications</b>			

	Relevant NQF 9/10 Qualification	30	30	
	Relevant NQF 7/8 Qualification	20		
	<b>Lead Attorney public sector experience</b>			
	>10 years local government experience	20	20	
	8-10 years local government experience	15		
	4-7 years local government experience	10		
	1-3 years local government experience	5		
	<b>Experience and training of key support staff</b>			
	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	20	
	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

**6.2.3 FUNCTIONALITY CRITERIA – BUILDING AND CONSTRUCTION LAW SERVICES**

	<b>Description</b>	<b>Points attainable</b>	<b>Maximum points attainable</b>	<b>Points Awarded</b>
	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good.	20	20	
	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have litigation capacity and reasonable experience.	10		
	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		
	<b>Lead Attorney qualifications</b>			

	Relevant NQF 9/10 Qualification	30	30	
	Relevant NQF 7/8 Qualification	20		
	<b>Lead Attorney public sector experience</b>			
	>10 years local government experience	20	20	
	8-10 years local government experience	15		
	4-7 years local government experience	10		
	1-3 years local government experience	5		
	<b>Experience of key support staff</b>			
	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	20	
	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

**6.2.4 FUNCTIONALITY CRITERIA – LABOUR LAW SERVICES**

	<b>Description</b>	<b>Points attainable</b>	<b>Maximum points attainable</b>	<b>Points Awarded</b>
	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good.	20	<b>20</b>	
	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have litigation capacity and reasonable experience.	10		
	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		
	<b>Lead Attorney qualifications</b>			

	Relevant NQF 9/10 Qualification	30	30	
	Relevant NQF 7/8 Qualification	20		
	<b>Lead Attorney public sector experience</b>			
	>10 years local government experience	20	20	
	8-10 years local government experience	15		
	4-7 years local government experience	10		
	1-3 years local government experience	5		
	<b>Experience of key support staff</b>			
	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	20	
	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

#### 6.2.5 FUNCTIONALITY CRITERIA – DEBT COLLECTION SERVICES

	Description	Points attainable	Maximum points attainable	Points Awarded
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	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good.	20	20	
	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have litigation capacity and reasonable experience.	10		
	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		
	<b>Lead Attorney qualifications</b>			
	Relevant NQF 9/10 Qualification	30	30	
	Relevant NQF 7/8 Qualification	20		

	<b>Lead Attorney public sector experience</b>			
	>10 years local government experience	20	20	
	8-10 years local government experience	15		
	4-7 years local government experience	10		
	1-3 years local government experience	5		
	<b>Experience of key support staff</b>			
	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	20	
	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

<b>6.2.6 Property Law, Conveyancing and Notarial Registration Services.</b>				
	<b>Description</b>	<b>Points attainable</b>	<b>Maximum points attainable</b>	<b>Points Awarded</b>

	<b>Bidder's capacity – Assessment of facilities, organisation and staffing</b>			
	The proposed team is well integrated; most members have worked together extensively in the past (6 plus years). Teams have law related speciality areas. Facilities / Infrastructure are very good.	20	20	
	Staff are well balanced i.e. they show good coordination, complimentary skills, support capacity, clear and defined duties and responsibilities. Some members of the project team have worked together for considerable time (3 – 5 years). Teams focus on certain law related areas. Facilities and infrastructure are good.	15		
	The organisational chart is complete and detailed, the technical level and composition or the staffing arrangement is reasonable. Team members have worked together for short period (1 – 2 years). Facilities / Infrastructure are adequate. The Bidder does have capacity and reasonable conveyancing and notary experience.	10		
	The organisation chart contains limited information, the staffing plan is weak in important areas. There is limited capacity / infrastructure and limited support staff. Limited litigation capacity. Team members have worked together for less than 1 year	5		
	<b>Lead Attorney qualifications</b>			
	Relevant NQF 9/10 Qualification	30	30	
	Relevant NQF 7/8 Qualification	20		
	<b>Lead Attorney public sector experience</b>			

	>10 years local government experience	20	<b>20</b>	
	8-10 years local government experience	15		
	4-7 years local government experience	10		
	1-3 years local government experience	5		

	<b>Experience of key support staff</b>			
	Other key Personnel have high levels of education, skills, training and experience (9 and more years).	20	<b>20</b>	
	Other key support staff have extensive levels of education, skills, training and experience (6 to 8 years).	15		
	Other key support staff have reasonable levels of education, skills, training and experience (3 to 5 years).	10		
	Other key support staff have limited levels of education, skills, training and experience (1 to 2 years).	5		
<b>TOTAL POINTS AWARDED</b>				

**7. TECHNICAL REQUIREMENTS FOR EACH CATEGORY OF SERVICE**

7.1 The following technical requirements / deliverables must all be complied with: **Public and Municipal Law services**

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.1.1	Assist the Municipality in the drafting and preparation of by – laws and policies.			
7.1.2	Rendering of impartial legal opinions pertaining to public and municipal law following a detailed assessment of all documents and correspondence pertaining to a municipal law matter			
7.1.3	Representing the municipality in civil litigation proceedings pertaining to public and municipal law matters			
7.1.4	Represent the municipality in review applications			

7.2 The following technical requirements / deliverables must all be complied with: **Town Planning and Environmental Law services**

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
	Represent the Municipality in civil and commercial litigation pertaining to town planning and environmental law matters			
	Represent the Municipality in review applications			
	Provide impartial legal opinions on town planning and environmental law			

7.3 The following technical requirements / deliverables must all be complied with: **Building and Construction Law services**

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.3.1	Represent the Municipality in matters pertaining to unlawful building works			
7.3.2	Represent the Municipality in review applications			
7.3.3	Provide impartial legal opinions on building and construction law matters			

7.4 The following technical requirements / deliverables must all be complied with: **Labour law matters**

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.4.1	The rendering of legal opinions pertaining to labour law matters			
7.4.2	Representing the Municipality in review applications in the Labour Court			
7.4.3	Representing the Municipality in Disciplinary Hearings			
7.4.4	Representing the Municipality in arbitration hearings (Bargaining Council i.e. condonation applications)			
7.4.5	Representing the Municipality in Labour Court and Labour Appeal Court hearings			
7.4.6	To investigate serious misconduct of a forensic nature.			

7.5 The following technical requirements / deliverables must all be complied with: **Debt Collections**

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.5.1	Represent the Municipality in debt collection matters where the Municipality was not able to collect the debt itself or the debtor opposes the legal action taken (including correspondence, default judgment, attachments, court appearances, and dealing with sales in execution)			
7.5.2	Taking the necessary actions against debtors placed under administration or debt review and deceased estate collections and act on behalf of the Municipality in business rescue and liquidation matters and executions and deregistration/re-registration of legal entities where the Municipality has a vested interest.			
7.5.3	Acting on behalf of the Municipality in Arbitration and dispute resolution forums			

7.6 The following technical requirements / deliverables must all be complied with: Property Law, Conveyancing and Notarial Registration Services.

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.6.1	Registration of General Plans and / or servitudes and other real rights in the Deeds Office			
7.6.2	Registration and /or cancellation of bonds in favour of the Municipality			
7.6.3	Attend to the registration of low cost housing allocated to identified and approved beneficiaries, which includes, the drafting and signing of sale agreements and other documents necessary to effect transfer, preparation and lodgement of deeds at the Deeds Office			
7.6.4	Provide monthly reports on progress with transfers			

Description of requirements / deliverables		Please indicate with an "X" whether the offer complies with the requirements.		
		Yes	No	Comment
7.6.5	Attend to registration of transfer of immovable property (general conveyancing), including vesting transfers in terms of section 16 to 31 of the Deeds Registry Act ("the Act") and exchange transfers			
7.6.6	Cancellation of bonds in favour of the Municipality			
7.6.7	Drafting and registrations of Certificates of Registered Title			
7.6.8	Drafting and registration of certificates of consolidated title under section 40, certificates of amended title and uniform title under sections 41 and 42 and a certificate in terms of section 38 of the Act			
7.6.9	Applications for endorsements in terms of section 46 of the Act for the layout of a township or settlement			
7.6.10	Applications for the issuing of a certified copy of a deed in terms of regulation 68 (1)			
7.6.11	Drafting of notarial deeds of contracts and other documents and attending to the registration thereof			
7.6.12	Communicate and engage with the Office of the Surveyor – General, for metrication or amendment of any diagram or obtaining a copy of any diagram or certificate or remainder or any other general information.			
7.6.13	Attend to the upliftment of attachment interdicts in the Deeds Office			
7.6.14	Attending to investigations in the Deeds Office, and all other relates matters.			

## 8. INFORMATION TO BE PROVIDED BY BIDDER

### Bidders who do not submit the information will be deemed as non-responsive

- 8.1. It is required of bidders to submit a memorandum setting out the firm's profile and comprising of the information listed in clause 6.1.1 to 6.1.5 to assess the capacity of each bidder in respect of each category of service;
- 8.2. The Lead Attorney(s) qualifications, admission certificate(s), relevant training, skills, knowledge and experience of matters relating to the category of services as tendered for (must present certified copies);
- 8.3. Curriculum Vitae's for each of the Lead Attorney(s) rendering the service comprising of not more than 4 (four) pages, excluding supporting documents;
- 8.4. Submission of support documentation detailing the education, training, skills, and experience of other key technical and administrative support personnel in the category as tendered for (Must present certified copies);
- 8.5. The memorandum (Annexure A) must contain an outline of each Lead Attorneys' knowledge and experience of issues which he or she considers pertinent to the tendering for the service;
- 8.6. The memorandum (Annexure A) must include examples of key relevant assignments undertaken / matters attended to by the Lead Attorney(s) for Municipalities, with contact details of references to enable the Municipality to contact them. The Municipality undertakes to maintain strict confidentiality as to the information provided;



- 8.7. The Memorandum (Annexure A) must reflect each Lead Attorney(s) specific local government experience (in years) relating to the category of services as tendered for;
- 8.8. The Memorandum (Annexure A) must list key examples of High Court and Magistrate Court litigation on behalf of Local Municipalities as well as other key work instructions performed for Local Municipalities during the past three years (the examples should only relate to the category of services in respect of which a bid is submitted in terms of this tender);
- 8.9. The Memorandum (Annexure A) must list key work instructions performed for Municipalities pertaining to Conveyancing and Notarial Services;
- 8.10. Certified copy of the fidelity fund certificate for each of the Lead Attorney(s) who will be rendering the service must be submitted;
- 8.11. Certified copy reflecting each of the Lead Attorney(s) right of appearance in the High Court must be submitted;
- 8.12. Certified copy of each Lead Attorney(s) admission as a conveyancer and notary must be submitted if a bid is submitted for the relevant category of service;
- 8.13. The memorandum (Annexure A) must reflect a brief outline (200 words or less) of the issues considered pertinent to the rendering of the services in the category of services tendered for.
- 8.14. The bidder must provide a completed Annexure B which is to be completed by the nominated referee of the bidder.

## **9. GENERAL CONDITIONS AND SERVICE STANDARDS**

- 9.1 Successful bidders with whom a service level agreement (see draft as Annexure C) is entered into must report on a monthly basis as to work progress on all matters/work allocated. The report must contain relevant information as required by the Municipality in respect of each service category.
- 9.2 The acceptance of bids for a particular category of service should not be construed as assurance that any work or any amount of work will be awarded to a successful bidder during the contract term.
- 9.3 A service level agreement will be entered into with all law firms appointed to the category for each category of service.
- 9.4 The successful bidders, by acting as agents for the Municipality will be required to adhere to the principles and conditions of all legislation and policy and frameworks applicable to the relevant category of service.
- 9.5 Existing service providers, who are not placed on the panel of service providers for this tender, will continue with and complete all matters which have been allocated to them prior to the award of this tender.
- 9.6 Work allocated to successful bidders up to after expiry of the term may be continued after the aforesaid date until the allocated work is concluded, provided that the same rates tendered for will apply. Such work will be deemed to form part of the procurement contract and must be finalized as soon as possible after expiry date.
- 9.7 Any conflict of interest that may develop or be discovered during the contract term, will affect work allocation. In such event the Municipality reserves the right to cancel the existing service level agreement and demand that all information, documents, and property of the Municipality be returned forthwith. No awards will be made where, in the view of the Municipality, a conflict of interest exist at the time of allocation of work.
- 9.8 It is required of successful bidders, prior to the acceptance of any work, to declare any interest it has in an assignment as well as declare any possible conflicts of interest that may prohibit it from performing the work.
- 9.9 The successful bidder must have the necessary infrastructure, a sound knowledge of relevant legislation, experience and proven success record in the category services tendered for, in order to be in a position to protect the Municipality's interest in work allocated to it by the Municipality.
- 9.10 The successful bidder must conduct its business between ordinary business hours Monday to Friday and must be readily accessible to the Municipality pertaining to the category of service it tendered for. In the event of emergencies after hours' work may be required in which case the tendered rates will apply.
- 9.11 The successful bidder will at all times comply with the provisions of the POPI Act, Act 4 of 2013, to the extent required, once fully implemented.
- 9.12 Subsequent to work having been allocated, the performance of a successful bidder will be monitored throughout the contract term. The Municipality reserves the right to terminate, reduce, or suspend the allocation of work.
- 9.13 Successful bidders shall not be entitled to cede, assign or subcontract their position on the panel or any brief received pursuant thereto, or any portion thereof, nor shall the Bidder be entitled to allocate any brief or any portion thereof to any person or entity not listed herein. The prohibition shall not be applicable to the appointment of correspondent attorneys provided that the Bidder remains responsible for and in control of the rendering of the professional service.

- 9.14 In the event that there are any changes to the Bidder's Lead Attorney or other key personnel, the Bidder shall be required to inform the Municipality in writing within 30 (thirty) days of such a change, accompanied by a detailed Curriculum Vitae of the new person. The Curriculum Vitae of the new person will be evaluated in accordance with the specifications of this tender.
- 9.15 Successful bidders will be required to be registered on the Municipality's database of service providers before work will be allocated.
- 9.16 An invoice must be submitted on completion of litigation / labour law work or on a monthly basis, as per clause 10. Should work not be completed by 30 June of each year, the service provider must render an account in respect of services rendered prior to 30 June in order to ensure the Municipality is in a position to settle invoices as part of the financial year end procedures (Year end 30 June).
- 9.17 For conveyancing and notarial work, invoices will only be paid once the transaction has been duly registered in the Deeds office, or the investigation in the Deeds Office has been finalized and in the case of a lost title deed application, once the certified copy has been received by the Municipality.
- 9.18 The Municipality reserves the right to terminate the appointment of a successful bidder and to remove such service provider from the panel on any of the grounds set forth in the service level agreement.
- 9.19 Counsel or other experts (legal or otherwise) may not be formally briefed by the successful bidder without the prior obtained written approval from the Municipality. For this purpose, the successful bidder will submit to the Municipality at least 2 (two) options containing the following information in respect of each: name, experience in the matter at hand, hourly charge out rate, and day fee. In the case of junior counsel, an indication whether junior counsel will be used, must be duly motivated.

ANNEXURE A: PRO – FORMA MEMORANDUM

To: Ba-Phalaborwa Municipality

**INFORMATION FOR ASSESSMENT OF CAPACITY AND EXPERIENCE: TENDER NO 08/22/23: APPOINTMENT OF A PANEL OF ATTORNEYS FOR THE RENDERING OF LEGAL SERVICES FOR A CONTRACT PERIOD ENDING 2025**

The following information must be submitted in order to enable the Municipality to perform the above assessment. This memorandum is submitted in respect of the following category of Legal Services (**Please select from the categories of services as listed in the pricing schedule**).

See supporting information attached pages \_\_\_ to \_\_\_\_\_

**1. Bidder's capacity – Assessment of facilities, organisation and staffing**

See supporting information attached page \_\_\_ to \_\_\_\_\_

**2. Lead Attorneys qualifications**

See supporting information attached page \_\_\_ to \_\_\_\_\_

**3. Lead Attorney/s Local government experience**

See supporting information attached page \_\_\_\_\_ to \_\_\_\_\_

**4. Experience of key support staff**

See supporting information attached page \_\_\_\_\_ to \_\_\_\_\_

**2. ANNEXURE B: BIDDERS REFERENCE**

BIDDERS REFERENCE: TENDER ...08/22/23.....: APPOINTMENT OF A PANEL OF ATTORNEYS FOR THE RENDERING OF LEGAL SERVICES FOR A CONTRACT PERIOD THREE YEARS.

Background information of Nominated Referee for bidder.

Referee name (Individual):	
Referee name (Organisation):	
Capacity:	
Postal address:	
Contact number of referee:	
Email address:	
Name of bidder evaluated:	
Contract and description of work in respect of the bidder preformed services for the referee:	

1. Delivery of services on time	
Question: Did the bidder provide the services on time as required	
	Excellent
	Very Good
	Good
	Fair
	Poor

2. Quality	
Question: What was the quality of the service provided	
	Excellent
	Very Good
	Good
	Fair
	Poor

3. Professionalism	
Question: Professional behaviour towards the client and all role players.	
	Excellent
	Very Good
	Good
	Fair
	Poor

4. Availability	
Question: Was the bidder readily available for consultation / advice when requested.	
	Excellent
	Very Good
	Good
	Fair
	Poor

5. Does the referee recommend the bidder for appointment by Ba-Phalaborwa Municipality? Please motivate.

I, the undersigned, hereby certify that the above information, is to the best of my knowledge, correct and a true reflection.

\_\_\_\_\_  
Signature of Referee

\_\_\_\_\_  
Date of declaration

(Who declares that he / she is authorised to act as referee

The Municipality reserves the right to contact the referee if deemed necessary.

**3. ANNEXURE C: DRAFT SERVICE LEVEL AGREEMENT**

**SERVICE LEVEL AGREEMENT**

**ENTERED INTO:**

**BA-PHALABORWA MUNICIPALITY**

**("THE MUNICIPALITY")**

**AND**

**\_\_\_\_\_  
XXX**

**("THE FIRM")**

**IN RELATION TO TENDER NUMBER ...08/22/23.....: APPOINTMENT OF A PANEL OF ATTORNEYS FOR THE  
RENDERING OF LEGAL SERVICES FOR A CONTRACT PERIOD OF THREE YEARS.**

## CONTENTS

### SCHEDULE

1. THE PARTIES
2. INTERPRETATION AND DEFINITIONS
3. RECORDAL
4. GOVERNING PRINCIPLES
5. PROCEDURAL REQUIREMENTS AND DOCUMENTS
6. WARRANTIES
7. DURATION
8. ACTING AGAINST THE MUNICIPALITY (CONFLICT OF INTEREST)
9. FURNISHING OF INSTRUCTIONS
10. SUSPENSION OF NEW INSTRUCTIONS
11. BREACH
12. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE MUNICIPALITY
13. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FIRM
14. DISPUTE RESOLUTION
15. ARBITRATION
16. PAYMENT
17. REPORTING
18. CONTRACT MANAGEMENT
19. GIFTS, INDUCEMENTS AND REWARDS
20. CONFIDENTIAL INFORMATION
21. DOMICILUM CITANDI ET EXECUTANDI
22. MISCELLANEOUS
23. CESSION AND ASSIGNMENT
24. NON – EXCLUSIVE AGREEMENT
25. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS AND CONSENSUAL EFFORT AND RESOLUTIONS
26. LIMITATION OF LIABILITY AND INDEMNIFICATION
27. INSURANCE
28. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS
29. SEVERABILITY
30. SCOPE OF WORKS AND PROCEDURE
31. BRIEFING COUNSEL AND OTHER LEGAL EXPERTS
32. SOCIAL RESPONSIBILITY
33. FEE STRUCTURE

# SERVICE LEVEL AGREEMENT

## SCHEDULE

This Service Level Agreement records the agreement entered into by and between the Municipality and its panel attorney, which is recorded in this Schedule. The standard South African Government Procurement General Conditions of Contract are incorporated into this Service Level Agreement by reference only.

### **1. THE PARTIES**

#### 1.1 The Ba-Phalaborwa Municipality ("the Municipality")

(a statutory entity as described in section 2 of the Municipal Systems Act 56 of 2003, with its principal place of business at Corner Nelson Mandela and Selati Road, Phalaborwa, herein represented by \_\_\_\_\_XXXX\_\_\_\_\_ in his/her capacity as \_\_\_\_\_XXXX\_\_\_\_\_.

Physical address: Corner Nelson Mandela and Selati Road, Phalaborwa

Contact person: Mr. Mashale, T.S.

Tel: 015 780 6300

And

#### 1.2 \_\_\_\_\_XXXX\_\_\_\_\_ ("the Firm")

herein represented by \_\_\_\_\_XXXX\_\_\_\_\_ duly authorised thereto, and in his or her capacity as \_\_\_\_\_XXXX\_\_\_\_\_

Tel: \_\_\_\_\_XXXX\_\_\_\_\_

Fax: \_\_\_\_\_XXXX\_\_\_\_\_

Email: \_\_\_\_\_XXXX\_\_\_\_\_

### **2. INTERPRETATION AND DEFINITIONS**

2.1 The headings to the clauses are for the purpose and convenience and reference only and shall not be used in the interpretation of or to modify the terms of the Service Level Agreement, nor any clause thereof.

2.2 The Service Level Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2.3 The rule of construction that the Service Level Agreement shall be interpreted against the party responsible for the drafting or preparation of the Service Level Agreement shall not apply to this Service Level Agreement.

2.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.5 Terms other than those defined within the Service Level Agreement will be given their plain English meaning and those terms, acronyms, abbreviations and phrases known in the relevant profession to which this Service Level Agreement applies shall be interpreted in accordance with their generally known meaning in such profession.

2.6 Any reference to any organisation, institution, office, body, organ or person vested with certain powers and authority shall include a reference to its successor(s) in title.

2.7 The parties shall initial the annexures for the purposes of identification and the same shall form part of this Service Level Agreement as if specifically included herein.

2.8 The expiration or termination of this Service Level Agreement shall not affect those provisions of this Service Level Agreement which expressly provide that they will remain operative after any such expiration or termination or which necessarily must continue to have effect after such termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.

2.9 The following words bear the meaning set out below and cognate expressions bear a like meaning:

2.9.1 **Category of Services** means any and/ or all of the following as tendered for by the Firm (*\*DELETE WHICH IS NOT APPLICABLE*):

2.9.1.1 \*Public and Municipal Law Services

2.9.1.2 \*Town Planning and Environmental Law Services

2.9.1.3 \*Building and Construction Law Services



- 2.9.1.4 \*Labour Law Services
- 2.9.1.5 \*Debt Collection Services
- 2.9.1.6 \*Property Law, Conveyancing and Notarial Registration Services: housing, General and Specialised
- 2.9.2 **Day(s)** shall mean calendar day(s), unless specifically stated to the contrary.
- 2.9.3 **Effective Date** means the ..... irrespective of the date of signature of this Service Level Agreement by the authorised and delegated representatives
- 2.9.4 **Firm** means .....XXX....., located at.....XXX.....
- 2.9.5 **Manager: Legal** means the official of the Municipality holding the position of Legal Manager.
- 2.9.6 **Lead Attorney** means the attorney at the firm primarily responsible for the provision of legal services to the Municipality and who is responsible for the overall conduct of the Firm in dealing with and supervising the work in respect of municipal matters to the signature of this Service Level Agreement.
- 2.9.7 **Panel of Attorneys** means the firms of attorneys appointed to provide legal services to the Municipality.
- 2.9.8 **Panel Attorney** means a firm duly appointed to the Panel of Attorneys of the Municipality.
- 2.9.9 **Professional person** means a person employed by the Panel Attorney, and holding the position of Director, Partner or Professional Assistant, or other similar position, and who is admitted to practice as an attorney.
- 2.9.10 **Service Level Agreement** means the Service Level Agreement set out in this document, together with the annexures hereto, as well as any directives issued by the Municipality from time to time.

### **3. RECORDAL**

3.1 The Municipality hereby appoints the Firm to its Panel of Attorneys, to perform the following Categories of Services subject to the terms and conditions of this Service Level Agreement and in accordance with all annexures and directives that may be issued by the Municipality from time to time.

\*Public and Municipal Law Services;

\*Town Planning and Environmental Law Services;

\*Building and Construction Law Services;

\*Labour Law Services;

\*Debt Collection Services;

\* Property Law, Conveyancing and Notarial Registration Services: housing, General and Specialised

3.2 The Firm accepts that the Municipality may, at any stage, distribute or redistribute instructions in any manner that will ensure equitable work allocation to the Firms appointed to its Panel of Attorneys.

3.3 The Firm hereby accepts the appointment and undertakes to perform all services subject to the terms and conditions of this Service Level Agreement and approved tender document and in accordance with all annexures and directives that may be issued by the Municipality from time to time.

3.4 In the event of the Firm having more than one office, only the office located at the address reflected in this Service Level Agreement is appointed to the Municipality's Panel of Attorneys.

3.5 This Service Level Agreement serves to record the agreement entered into by and between the Parties and to regulate all aspects of the services to be supplied by the Firm, as well as the general business relationship between the Parties.

3.6 Such scope of work or specifications is / are incorporated into the provisions of this Service Level Agreement as if specifically referred to mentioned and is / are binding and enforceable on the Parties.

### **4. GOVERNING PRINCIPLES**

The relationship between the Parties shall at all times be governed by, and in the spirit of the following principles.

#### **4.1 Good faith**

The parties shall at all times deal with each other in a manner which is fair and honest, and shall not act in any way to the detriment of the other party, where such detriment could reasonably have been avoided by the exercise of reasonable care.

#### **4.2 Mutual trust**

A party shall not conduct itself in its dealings with other and/or third parties in a manner detrimental to the relationship of trust and confidence between the Parties and thereby detrimentally prejudice the interest of the other party.

The Firm shall through its best endeavours and in all its dealings with, for and on behalf of the Municipality, protect the reputation image and interest of the Municipality.

#### 4.3 **Ethical dealings**

The Firm shall at all times act in accordance with the professional and ethical rules of the legal profession and shall adhere to ethical standards of it by virtue of the professional nature of its business.

The Parties shall:

- 4.3.1 Timeously recognise and deal with potential conflicts of interest;
- 4.3.2 Protect the financial integrity of the Municipality by being scrupulous with their use of financial resources of the Municipality, as these finances are derived from public sources.

#### 4.4 **Protection of Public Funds**

The Firm in particular and all the staff of the Firm who will deal with the Municipality shall ensure that:

- 4.4.1 The Municipality receives services and / or advice which is suitable and appropriate to the circumstances, and which meet the requirements of the Municipality;
- 4.4.2 It maintains the necessary levels of skills in order to continuously provide the Municipality with the best quality of service;
- 4.4.3 It continuously pursues the successful discharge of services in order to ensure as far as reasonably possible given the complexities of law, that a positive outcome for the Municipality is achieved;
- 4.4.4 It will not overcharge the Municipality for the services provided and keep within the tendered fees;
- 4.4.5 Matters are finalised as speedily and cost effectively as possible.

#### 4.5 **Accountability and Reporting**

The Parties shall ensure that effective measures are in place to report regularly to each other on issues of mutual interest.

The Firm further acknowledges that it will be held accountable for its actions and the actions of its employees. For this purpose, the Firm shall at all times report to the Municipality in an open and transparent manner.

### **5. PROCEDURAL REQUIREMENTS AND DOCUMENTS**

5.1 On date of signature of this Service Level Agreement the Manager: Legal of the Municipality will be in possession of the following in respect of each Lead Attorney or Professional person who will, on behalf of the Firm, be rendering services to the Municipality on behalf of the Firm:

- 5.1.1 Full names and surname;
- 5.1.2 Professional qualifications;
- 5.1.3 Date of admission as an Attorney of the High Court;
- 5.1.4 A valid certified copy of Fidelity Fund Certificate of the Lead Attorney that will render the professional service;
- 5.1.5 Proof of indemnity insurance to the value of R 5 000 000.00 (Five Million Rand);
- 5.1.6 Date of admission as a Conveyancer and Notary (where applicable);
- 5.1.7 Position in the Firm;
- 5.1.8 Cell phone number, and
- 5.1.9 Email address.

5.2 In the event of the Lead Attorney becoming unable to perform his or her responsibilities for whatever reason, the Lead Attorney shall notify the Municipality of same within 5 (five) Days of the Lead Attorney being unable to perform the professional service.

5.3 If the Lead Attorney's ability to perform is of a temporary nature, the Firm shall within 30 (thirty) Days appoint a temporary substitute Lead Attorney with equivalent or better experience as that of the Lead Attorney being substituted.

5.4 If the Lead Attorney's ability to perform is of a permanent nature, the Firm shall within 30 (thirty) Days appoint a temporary substitute Lead Attorney with equivalent or better experience as that of the Lead Attorney being substituted, provided that the Firm must appoint a new permanent Lead Attorney with equivalent or better experience as that of the Lead Attorney being substituted within 60 (sixty) days from the date the substituted Lead Attorney informed the Municipality of his or her inability to perform.

- 5.5 Within 10 (ten) Days of appointing a temporary or permanent substitute Lead Attorney the Firm shall deliver to the Municipality's Manager: Legal either by hand or email the following in respect of the Lead Attorney to be contained in a curriculum vitae:
- 5.5.1 Full names and surname;
  - 5.5.2 Professional Qualifications;
  - 5.5.3 Date of admission as an Attorney of the High Court;
  - 5.5.4 A valid certified copy of Fidelity Fund Certificate of the Lead Attorney that will render the professional service;
  - 5.5.5 Proof of indemnity insurance to the value of R5,000,000.00 (Five Million Rand);
  - 5.5.6 Date of admission as a Conveyancer and Notary (where applicable);
  - 5.5.7 Position in the Firm;
  - 5.5.8 Cell number;
  - 5.5.9 Email address; AND

in order for the Municipality to evaluate the new Lead Attorney in terms of the specifications contained in the tender. The Municipality will inform the Firm within 10 (ten) Days from date of receipt of the documentation of the outcome of this evaluation.

- 5.6 In the event that there are any other changes to the Firm's Lead Attorney or Other key Personnel, the Firm shall be required to inform the Municipality in writing within 30 (thirty) days of such a change, accompanied by a detailed Curriculum Vitae of the new person. The Curriculum Vitae of the new person will be evaluated in accordance with the specifications of the tender and the Municipality will inform the Firm within 10 (ten) Days from date of receipt of the documentation of the outcome of this evaluation.
- 5.7 In the event of the Lead Attorney or any other Professional person or other key personnel in the employ of the Firm leaving the Firm, the Firm shall notify the Manager: Legal of this fact in writing and delivered by hand, or by email, not less than 30 (thirty) Days prior to such person leaving the Firm and the conditions included in 5.4 to 5.6 above will be applicable.
- 5.8 The Firm hereby consents to and authorises the Municipality to conduct credit checks with regard to the Firm and on each Professional person, Lead Attorney and Candidate Attorney of the Firm who will be rendering services to the Municipality.
- 5.9 The Firm hereby consents to and authorises the Municipality to conduct criminal record checks on each Professional person, Lead Attorney, candidate attorney, and key support personnel of the Firm who will be responsible for rendering services to the Municipality, and further agrees to obtain the necessary consents from such persons.
- 5.10 The Municipality has the right, based on the information obtained from the credit and criminal record checks, to instruct the Firm that a Professional person, Lead Attorney, candidate attorney or other key personnel may not render services to the Municipality.
- 5.11 Within 30 (thirty) Days of date of signature of this Service Level Agreement and thereafter on or before 31 March of each succeeding year, the Firm undertakes to deliver in writing to the Manager: Legal of the Municipality either by hand, certified copies of the following:
- 5.11.1 Certificate of Good Standing issued by the relevant professional body in respect of the Professional persons and Lead Attorneys;
  - 5.11.2 A Valid Fidelity Fund Certificate issued by the relevant professional body in respect of the Firm.
  - 5.11.3 Proof of indemnity insurance to the value of at least R5,000,000.00 (five million rand).

## **6. WARRANTIES**

The Firm hereby warrants that:

- 6.1 Unless authorised by the Municipality, the **services** required by the Municipality shall at all times be performed by the Lead Attorney in the direct employ of the Firm and / or by such other persons who are in the direct employment of the Firm and under the direct supervision and control of the Lead Attorney.
- 6.2 No litigation, arbitration or administrative proceedings are pending or threatened against the Firm which may have an adverse effect upon its financial condition its business and / or ability to perform its obligations under the Service Level Agreement.
- 6.3 The Lead Attorney who will be rendering **services** to the Municipality is in the full time employ of the Firm; and
- 6.4 Each Lead Attorney rendering services to the Municipality under this **Service Level Agreement** shall for the duration of this Service Level Agreement have a valid Certificate of Good Standing issued by the **relevant professional body**.

## **7. DURATION**

- 7.1 This Service Level Agreement shall commence on the 1<sup>st</sup> of July 2022 and shall, subject to clause 12 below, endure until 30 June 2025.
- 7.2 The Municipality reserves the right in its sole discretion to extend the term of this Service Level Agreement.
- 7.3 The extension of the term of this Service Level Agreement will be subject to the required Supply Chain Management process.

## **8. ACTING AGAINST THE MUNICIPALITY**

- 8.1 The Firm agrees that from 1 July 2022, it shall not act in any way which may give rise to a conflict of interest between it and the Municipality or the services to be rendered by it in terms of this Service Level Agreement.
- 8.2 From the 1<sup>st</sup> of July 2022 and for the duration on this Service Level Agreement, the Firm may not accept any instruction to institute proceedings or bring applications against the Municipality, or defend actions or oppose applications instituted or brought by the Municipality or in any other manner against the Municipality.
- 8.3 In addition to paragraph 8.1 above, in instances where the Firm accepted an instruction to act against the Municipality prior to the 1<sup>st</sup> of July 2022 of this Service Level Agreement, the Firm shall terminate such mandate(s) within a period of 30 (thirty) Days from the 1<sup>st</sup> of July 2022 of this Service Level Agreement and furnish the Municipality with proof thereof.

## **9. FURNISHING OF INSTRUCTIONS**

- 9.1 The Municipality will on an as and when basis appoint the Firm to represent the Municipality in the categories of services the Firm tendered for.
- 9.2 Such instructions will be furnished by the Manager: Legal upon approval by the Municipal Manager.
- 9.3 The Municipality reserves the right to determine the manner in which the instructions will be distributed between the Panel of Attorneys. In furnishing instructions, the Municipality will consider inter alia:
  - 9.3.1 The fact that the Panel Attorney is under suspension in terms of clause 10 below;
  - 9.3.2 The fact that the matter involves a point of law that has previously been considered by a particular Panel Attorney;
  - 9.3.3 Where, in the view of the Municipality, the value and / or complexity of the matter warrants a particular Panel Attorney;
  - 9.3.4 The performance of a particular Panel Attorney; and
  - 9.3.5 Any other consideration which the Municipality may deem relevant.

## **10. SUSPENSION OF NEW INSTRUCTIONS**

- 10.1 The Municipality may at any time on good cause shown suspend the furnishing of new instructions to a Firm on the Panel of Attorneys.
- 10.2 **Reasons for Suspension**

In deciding to suspend instructions, the Municipality will have regard to, amongst other considerations, the following:

  - 10.2.1 Any breach or breaches of the terms of this Service Level Agreement;
  - 10.2.2 The capacity of the Firm;
  - 10.2.3 The level of service delivery by the Firm or any of the Professional Persons or other key personnel in its employ;
  - 10.2.4 The performance of the Firm;
  - 10.2.5 A violation by the Firm of the Governing Principles contained in clause 4 above.
  - 10.2.6 Any other reason which in the Municipality's opinion warrants the suspension of new instructions to the Firm.
- 10.3 **Period of suspension**
  - 10.3.1 The initial period of suspension will be determined by the Municipality but shall not be less than 3 (three) months.
  - 10.3.2 The Municipality may extent the initial period of suspension for a further 3 (three) month period should the Municipality deem this to be appropriate and in its best interest.
  - 10.3.3 At any time during or after the period of suspension, the Municipality may terminate the Service Level Agreement in accordance with clause 12 below.

#### 10.4 **Process of suspension**

- 10.4.1 Notice of suspension and the duration of the initial period for which instructions are to be suspended will be delivered to the Lead Attorney in writing by the Municipality's Manager: Legal and shall contain the reason(s) for the suspension of new instructions.
- 10.4.2 The suspension will become effective on the same day that the notice referred to in clause 10.4.1 above is delivered in writing to the Firm.
- 10.4.3 In the event of the initial period of suspension being extended by the Municipality, this will be conveyed to the Lead Attorney by the Municipality's Manager: Legal in writing, at least 10 (ten) Days prior to the initial period of suspension expires and shall contain the reason(s) for the extension.

#### 10.5 **Disputes arising from suspension**

- 10.5.1 Within 5 (five) Days of receipt of either of the notices referred to in clause 10.4 above, the Lead Attorney may deliver to the Municipality's Manager: Legal written response to such notice, addressing the reasons for the suspension or the extension of the suspension period.
- 10.5.2 The Municipality will consider and review the response including all relevant factors and within 10 (ten) Days of receipt of the response contemplated in clause 10.5.1 above, and will notify the Lead Attorney in writing whether the initial or extended suspension period will remain in effect; or if the initial or extended suspension period will be varied, in which event the Firm will be advised of the new period of suspension.
- 10.5.3 In the event of the Firm remaining dissatisfied with the decision of the Municipality, the Lead Attorney may, within 3 (three) Days of receipt of the notification referred to in clause 10.5.2 above, in writing, send a meeting request to the Municipality's Manager: Legal to discuss the suspension.
- 10.5.4 Such meeting will be held within 10 (ten) Days from receipt of the request referred to in clause 10.5.3 above, or such longer period as agreed to between the Parties.
- 10.5.5 Within 3 (three) Days of the meeting having been held, the Municipality's Manager: Legal will notify the Lead Attorney of the decision regarding the suspension.
- 10.5.6 Instructions to the Firm will remain suspended during the process contemplated in this clause 10.

#### 10.6 **Relationship between the Parties during the period of suspension**

- 10.6.1 All the terms of the Service Level Agreement with the exception of the issuing of new instructions will remain in full force and effect for the duration of the period of suspension.
- 10.6.2 The Firm shall ensure that all instructions received by the Firm prior to the suspension are dealt with in accordance with the relevant provisions of the Service Level Agreement.
- 10.6.3 The Firm shall ensure that the level of service standards expected of the Firm prior to the suspension is maintained during the period of suspension.

### 11. **BREACH**

- 11.1 In the event of either one of the Parties (the defaulting party) committing a breach of any of the provisions of this Service Level Agreement and failing to remedy such breach within a period of 14 (fourteen) Days after receipt of a written notice from the other party (the aggrieved party) calling upon the defaulting party to remedy the breach complained of, then the aggrieved party shall be entitled at its sole discretion and without prejudice to any of their other rights in law and or in terms of this agreement, either to claim specific performance in terms of the agreement, or cancel the agreement forthwith with without further notice and recover damages from the defaulting party.
- 11.2 In the event that the defaulting party being in breach of any provision of this Service Level Agreement and the aggrieved party having to take legal action / dispute resolution steps against the defaulting party as a result thereof (please refer to the arbitration clause), the defaulting party shall be liable to pay the aggrieved party's legal cost as well as all disbursements and other expenses reasonably incurred in having to had to take such action.

### 12. **TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE MUNICIPALITY**

- 12.1 The Municipality may at any time terminate this Service Level Agreement by giving 30 (thirty) Days written notice to the Firm.

#### 12.2 **Reasons for termination**

In deciding to terminate this Service Level Agreement, the Municipality will have regard to, amongst other considerations, the following:

- 12.2.1 A breach or breaches of the terms and conditions of the Service Level Agreement;
- 12.2.2 The Firm failing to uphold the attorney / client relationship;

- 12.2.3 The Firm acting against the Municipality;
  - 12.2.4 Operational requirements of the Municipality;
  - 12.2.5 The Lead Attorney, Professional Person, candidate attorney or other key personnel employed by the Firm being found guilty of a fraudulent act;
  - 12.2.6 An attorney delivering services to the Municipality having been suspended by the relevant professional body for any reason;
  - 12.2.7 The Firm failing to provide the Municipality with Fidelity Fund certificates as required in this agreement.
  - 12.2.8 Instructions to the Firm having been suspended and on the expiration of the initial or extended suspension period, the cause or causes for suspension not having been remedied by the Firm to the satisfaction of the Municipality;
  - 12.2.9 A *de bonis propriis* cost order granted against the Firm in a matter in which the Firm had been instructed to attend to on behalf of the Municipality;
  - 12.2.10 An adverse cost order granted against the Municipality, or any of its employees in their personal capacities, which could have been avoided had the Firm taken reasonable care in the handling of the matter;
  - 12.2.11 A court having found that the Firm, or any of the Professional Persons in its employ, had acted unprofessionally in discharging its duties in relation to any matter where the Firm held instructions on behalf of the Municipality;
  - 12.2.12 A judgment by default having been granted against the Municipality in a matter in which the Firm was instructed by the Municipality and the sole cause of the default judgment being that the Firm failed to timeously or **adequately** enter an Appearance to Defend;
  - 12.2.13 A judgment by default having been entered against the Municipality due to the Firm's failure to timeously or adequately deliver a plea;
  - 12.2.14 A writ of execution having been served on the Municipality the sole cause of the writ being that the Firm failed to provide the Municipality with the court order within 3 (three) Days of the order having been granted, as required in terms of Annexure B;
  - 12.2.15 The Firm having been instructed to oppose a taxation of a bill of costs failed to do so;
  - 12.2.16 The capacity of the Firm;
  - 12.2.17 The level of service delivery by the Firm;
  - 12.2.18 The performance of the Firm;
  - 12.2.19 A violation by the Firm of the governing principles contained in clause 4 above, particularly, but not limited to the principle of **trust**;
  - 12.2.20 Distribution or redistribution of instructions by the Municipality in any manner that will ensure equitable file allocation to the firm's appointed to its Panel of Attorneys.
  - 12.2.21 Any other reason in which the Municipality's opinion warrants the termination of the Service Level Agreement;
- 12.3 **Process of termination**
- 12.3.1 Notice of termination of the Service Level Agreement will be delivered to the Lead Attorney in writing by the Municipality's Manager: Legal and shall contain the reasons for termination of the Service Level Agreement.
  - 12.3.2 The termination of the Service Level Agreement will become effective on the 31<sup>st</sup> day following the receipt by the Firm of the notice referred to in clause 12.3.1.
  - 12.3.3 Any termination will be subject to the provisions of clause 12.4 of this Service Level Agreement.
- 12.4 **Disputes arising from termination of the Service Level Agreement by the Municipality**
- 12.4.1 Within 5 (five) Days of receipt of the notice referred to in clause 12.3 above, the Lead Attorney may deliver to the Municipality's delegated Manager: legal a written response to such notice, addressing the reasons for the termination of the Service Level Agreement.
  - 12.4.3 The representations made by the Firm will be considered by the Municipality and within 10 (ten) Days of receipt of the response referred to in clause 12.4.1 above, the Municipality's Manager: Legal will in writing notify the Lead Attorney of the outcome of the representations made.
  - 12.4.4 In the event of the Firm remaining dissatisfied with the decision of the Municipality, the Lead Attorney may, within 3 (three) Days of receipt of the notice referred to in clause 12.4.2 above, in writing, furnish a meeting request to the Municipality's Manager: Legal to discuss the termination of the Service Level Agreement.
  - 12.4.5 Such meeting will be held within 10 (ten) Days from receipt of the request referred to in clause 12.4.3 above, or such longer period as agreed to between the Parties in writing.

- 12.4.6 Within 3 (three) Days of the meeting having been held, the Municipality's Manager: Legal will notify the Lead Attorney of the Municipality's decision regarding the termination of the Service Level Agreement.
- 12.4.7 Should the Firm be dissatisfied with the decision of the Municipality, the Firm may refer the dispute for arbitration in terms of clause 14 below.

**12.5 Relationship between the Parties after termination of the Service Level Agreement**

- 12.5.1 The firm, upon receipt of the notice contemplated under clause 12.1 above, shall be deemed to be under suspension as contemplated in clause 10 above for the duration of the 30 (thirty) Days' notice period, with the proviso that all the terms of clause 10.6 above shall apply to it.
- 12.5.2 During the 30 (thirty) Days' notice period, irrespective of whether the Firm agrees with the termination or not, the Firm shall prepare all un-finalized files for handover to the Municipality as contemplated in clause 13 below.
- 12.5.3 The Firm shall also ensure that the service standards expected of the Firm prior to the termination of the Service Level Agreement are maintained during the period of deemed termination.
- 12.5.4 The governing principles of good faith, mutual trust and ethical conduct shall endure after termination of the Service Level Agreement.
- 12.5.5 Upon the Service Level Agreement with the Firm having been finally terminated, the Firm shall be disqualified from consideration for any tender issued by the Municipality for a period of **3 (three) years** subsequent to the date of termination.

**13. TERMINATION OF THE SERVICE LEVEL AGREEMENT BY THE FIRM**

- 13.1 The Firm may terminate the Service Level Agreement by giving the Municipality 60 (sixty) Days' notice in writing.

**13.2 Process of termination**

- 13.2.1 Notice of termination of the Service Level Agreement by the Firm must be delivered in writing to the Municipality's designated Manager: Legal and shall contain the reasons for the termination of the Service Level Agreement.
- 13.2.2 The termination of the Service Level Agreement will become effective on the 61<sup>st</sup> day following the receipt by the Municipality of the notice referred to in clause 13.2.1.

**13.3 Relationship between the Parties after termination of the Service Level Agreement by the Firm**

- 13.3.1 Upon receipt by the Municipality of a notice contemplated under clause 13.2.1 above, the Firm shall be deemed to be under suspension as contemplated in clause 10 above for the duration of the 60 (sixty) Days' notice period contemplated in clause 13.2.1 above.
- 13.3.2 During the 60 (sixty) Days' notice period, the Firm shall prepare all un-finalized files for handing over to the Municipality as contemplated in clause 13.4 below.
- 13.3.3 The Firm shall also ensure that the service standards expected of the Firm prior to the termination of the Service Level Agreement are maintained during the period of deemed suspension.

**13.4 Handover process (By termination)**

- 13.4.1 Upon termination of the Service Level Agreement by either the Municipality or the Firm, the Firm will be obliged to hand over all un-finalized files to the Municipality.
- 13.4.2 The Firm waives any and all rights of retention over **any** and all documents in respect of any work done by it on behalf of the Municipality.

**13.5 Procedure upon receipt of notice of termination**

- 13.5.1 Immediately upon date of the notice of termination having being furnished by either of the Parties, the Firm shall commence preparations for handover of the un-finalized files.
- 13.5.2 Within 30 (thirty) Days of notice of termination and subsequent to the delivery of all un-finalized files to the Municipality by the Firm, the Firm shall in terms of clause 13.5.4 below, prepare, serve and file the notices of withdrawal as attorneys of record for all un-finalized matters in the Firm's possession which shall be delivered to the Municipality's Legal Services Department, and signed for by the Senior Manager: Legal Services.
- 13.5.3 The Firm shall remain responsible for all un-finalized matters which have not yet been handed over to the Municipality.
- 13.5.4 Within 30 (thirty) Days of notice of termination, the Firm shall make copies of the files of all un-finalized files in its possession. The original files shall be delivered by hand to the Municipality's Legal Services Department, and signed for by the Senior Manager: Legal Services. The files shall be accompanied by:

- 13.5.4.1 An inventory of all matters handed over;
- 13.5.4.2 Copies served and filed and notices of withdrawal as attorneys of record attached to each file;
- 13.5.4.3 A written confirmation by the Lead Attorney that all un-finalized files have been handed over, and that no documents or files have been withheld for whatever reason.

#### **13.6 Procedure in respect of cost after termination of the Service Level Agreement**

- 13.6.1 Within 90 (ninety) Days of termination, but not prior to the date on which the files are handed over, the Firm shall present the Municipality with bills of cost (actual) in respect of each matter handed over to the Municipality.
- 13.6.2 These bills of cost shall be delivered by hand to the Legal Services Department of the Municipality, and signed for by the Senior Manager: Legal Services.
- 13.6.3 The bills of cost shall be accompanied by:
  - 13.6.3.1 A list of the matters to which the bills pertain;
  - 13.6.3.2 A written confirmation by the Lead Attorney that the bills represent the full value of outstanding fees and disbursements due to the Firm; and
  - 13.6.3.3 A consolidated statement of account of outstanding fees and disbursements due to the Firm.

#### **14. DISPUTE RESOLUTION**

- 14.1 All disputes with regards to or arising from this Service Level Agreement shall come into being from the date of notification thereof by one party to the other which notice shall contain the nature of the dispute to be resolved. The parties must refer any dispute to be resolved by:
  - 14.1.1 Negotiation, and if not successful;
  - 14.1.2 Mediation; and if not successful;
  - 14.1.3 Arbitration
- 14.2 Dispute resolution shall not preclude any party from approaching the High Court of South Africa for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of the dispute resolution process. The Parties irrevocably submit to the jurisdiction of the High Court of South Africa.
- 14.3 During the dispute resolution process, the Lead Attorney must continue with the professional service for all existing matters, and maintain the required service standard.
- 14.4 This clause furthermore constitutes the irrevocable confirmation that the parties submit to the dispute resolution proceedings in terms hereof and neither of the parties shall be entitled to withdraw therefrom or to claim at any negotiation, mediation or arbitration proceedings that they are not bound by the dispute resolution provisions of this agreement.
- 14.5 Within 10 (ten) Days of notification, the parties must seek an amicable resolution to the dispute by referring the dispute to designated and authorised representatives of each of the parties to negotiate and attempt to resolve the dispute. If an amicable resolution to the dispute is arrived at, the authorised representatives of the parties must sign, within the 10 (ten) day period an agreement confirming that the dispute has been resolved.
- 14.6 In the event of negotiations in terms of clause 14.5 having failed, the parties must, within 15 (fifteen) Days of the negotiations having failed refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of South Africa or its successor or body nominated in writing by it in its stead.
- 14.7 The period for negotiation or for referral of the dispute for mediation, may be decreased or increased by written agreement between the parties.

#### **15. ARBITRATION**

- 15.1 Should any dispute arise between the parties in connection with the interpretation or application of the provisions of this Service Level Agreement or a breach, or termination, or any other matter excluding suspension and cost issues, such disputes will, unless resolved between the parties, be referred to and be determined by arbitration in terms of this clause, as expediently as may be reasonably possible.
- 15.2 During the arbitration process the Lead Attorney must continue with the professional service for all existing matters, and maintain the required service standard.
- 15.3 The referral of a dispute to arbitration will take place in the event of mediation contemplated in clause 14.5 having failed. The referral will take place within 15 (fifteen) Days of the mediation having failed, for resolution by expedited arbitration under the current rules of the Arbitration Foundation.



- 15.4 Either Party to this Service Level Agreement may demand that a dispute be determined in terms of this clause by written notice to the other party, provided that any resolution measures referred to in this Service Level Agreement has been exhausted.
- 15.5 Written demand for a dispute to be referred to arbitration must be delivered by the Firm to the Municipality's Manager: Legal by hand; or by the Municipality to the Lead Attorney by electronic mail.
- 15.6 The parties shall be entitled to legal representation during the arbitration process.
- 15.7 The arbitration shall be held in Cape Town, or elsewhere by agreement, with only the parties and their legal representatives being present, and in accordance with the formalities and procedures to be determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings, and discovery or the strict rules of evidence, it being the intention that the arbitration be held and completed as expediently soon as possible.
- 15.8 A single arbitrator will be appointed by agreement between the parties within 10 (ten) Days of the dispute having been referred to arbitration. The arbitrator will be an advocate of not less than 7 (seven) years' experience, acceptable to both parties.
- 15.9 Should the parties fail to agree on the arbitrator within 5 (five) Days after the arbitration was demanded, the arbitrator will be appointed at the request of either party by the Chairperson for the time being of the Cape Bar Council, his or her successor in title or assigns.
- 15.10 Each party shall be liable to pay an equal share of the arbitration costs, subject to the provisions of clause 15.12 below.
- 15.11 The decision of the arbitrator will be final and binding on the parties.
- 15.12 The arbitrator will be entitled to make such award, including an award for specific performance, damages or a penalty or otherwise as he/she, in his/her sole discretion, may deem fit and appropriate and to deal with as he/she deems fit and with regard to the question of costs, if applicable, costs on an attorney and client scale and his/her own fees.
- 15.13 This arbitration clause does not prohibit a party from seeking relief in a dispute where urgency can be proved, and where, as a result, application can be made for an urgent interdict, urgent declaratory order or other urgent relief to any court of competent jurisdiction on condition that such urgent relief is only of an interim nature pending the final determination by the arbitrator.
- 15.14 The provisions of this clause constitute an irrevocable confirmation by both parties that they submit to proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions. These provisions are severable from the remainder of this Service Level Agreement and will remain in effect until the dispute pertaining to the termination of or invalidity of the Service Level Agreement has been finally resolved.

## **16. PAYMENT**

- 16.1 The Municipality shall pay the Firm for the due, full and proper performance and fulfilment by the Firm of its obligations.
- 16.2 Payment of invoices shall be subject to the review and sign-off by the delegated official of the Municipality, which sign-off shall not be unreasonably withheld.
- 16.3 The Firm shall ensure that the invoices submitted to the Municipality are sufficiently detailed and shall include such supporting documentation as is necessary for the Municipality to be able to confirm the correctness of the amounts being invoiced as well as to be able to tie the invoice to the matter.
- 16.4 For conveyancing and notarial work, invoices will only be paid once the transaction has been duly registered in the Deeds office, or the investigation in the Deeds Office has been finalized and in the case of a lost title deed application, once the certified copy has been received by the Municipality
- 16.5 The Firm must be registered on the Municipality's Supply Chain Management database before any payment can be made.
- 16.6 An original and detailed tax invoice must be submitted after the Municipality has acknowledged receipt rendered in writing.
- 16.7 A verification of bank details, must be received before payment may be effected.
- 16.8 The Firm shall be required to verify its bank account by furnishing the Municipality with a letter with a bank stamp.
- 16.9 The following bank details must be verified.
  - 16.9.1 Account holder and the trading names
  - 16.9.2 Bank Name
  - 16.9.3 Branch Name
  - 16.9.4 Branch Code

- 16.9.5 Account Number
- 16.9.6 Type of Account
- 16.10 Payment will be made within 30 (thirty) Days from date of receipt of the invoice on condition that the documentation listed in 16.2 and 16.3 above is furnished to the Municipality. The Firm shall be responsible for the payment of its service providers involved in the case, i.e. correspondents, advocates, etc. provided that the involvement of other services providers has been preapproved by the Manager: Legal of the Municipality.
- 16.11 Should the documentation be incomplete, incorrect or late, payment shall only be effected once the correct and complete documents have been received and shall be made in terms of the provisions 16.5 and 16.6 above.
- 16.12 Payment shall be effected by electronic bank transfer or any other method of payment decided to be used by the Municipality from time to time in its sole discretion.
- 16.13 Value Added Tax (VAT) shall be charged on all invoices (where applicable), which must include the Firm's VAT registration number, in terms of the South African Value Added Tax Act.
- 16.14 Any disputes that may arise between the Firm and the Municipality regarding:
  - 16.14.1 the non-payment, under payment or erroneous payment of fees and disbursements, and/or
  - 16.14.2 the misrepresentation and consequent over-payment of fees and disbursements,will be dealt with in terms of clause 14 above.

## **17. REPORTING**

- 17.1 In addition to general feedback, monthly status reports must be furnished to the Municipality by the Firm on the last day of each month.
- 17.2 The monthly reports must be delivered by electronic mail to the addressed provided to the Firm from time to time in respect of each relevant department and office.
- 17.3 The Municipality may from time to time give the Firm notice of new electronic mail addresses to which the monthly status reports must be delivered.
- 17.4 In the monthly status reports the Firm must report on each un-finalized matter and each matter finalised during the month preceding the reporting date.
- 17.5 Written Monthly status reports must be submitted, and contain the following information:
  - 17.5.1 File reference number;
  - 17.5.2 Date firm received file content;
  - 17.5.3 Contact person at Firm;
  - 17.5.4 Details of Parties involved;
  - 17.5.5 Status of matter
- 17.6 The Municipality may during the term of this Service Level Agreement implement new ICT technologies which may necessitate a change in the format which the Firm must submit monthly reports to the Municipality. The Firm undertakes to abide by any change in the reporting format as required by the Municipality.
- 17.7 In addition to the monthly reports outlined above, the Municipality may at any time require the Firm to report more frequently, or on matters not dealt with above.
- 17.8 The Firm recognises that the Municipality is entitled to any and all information held by the Firm relating to matters handled by the Firm on behalf of the Municipality.
- 17.9 The Firm acknowledges that the failure to comply with any of its reporting obligations will constitute a material breach of its obligations in terms of this Service Level Agreement, and may warrant suspension, or termination of the Service Level Agreement.

## **18. CONTRACT MANAGEMENT**

- 18.1 The parties acknowledge the need for proper monitoring of their obligations in terms of this Service Level Agreement.
- 18.2 The Firm undertakes to at all times have a dedicated person assigned to the Municipality as a contact person in respect of contract management issues.
- 18.3 To this end the Firm designates the following person / persons as ultimately responsible for the contract management of this Service Level Agreement.
  - 18.3.1 Lead Attorney
  - 18.3.2 Name:

18.3.3 Tel No:

18.3.4 Email:

## **19. GIFTS, INDUCEMENTS AND REWARDS**

- 19.1 The Firm shall not, under any circumstances, offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of the Municipality's employees.
- 19.2 Such an act shall constitute a material breach of the Service Level Agreement and the Municipality shall be entitled to terminate the Service Level Agreement forthwith, without prejudice to any of its rights in terms of this Service Level Agreement or otherwise in law.

## **20. CONFIDENTIAL INFORMATION**

- 20.1 Notwithstanding and without limitation to the common law relationship between the Parties regarding the confidential nature of information made available to the Firm, the Firm acknowledges and accepts that it will have access to and be placed in possession of client information, financial information, statistics, procedures, processes and procedures of the Municipality.
- 20.2 The Firm acknowledges and accepts that it is reasonable for the Municipality to protect its rights in and to the confidential information.
- 20.3 The Parties acknowledge and accept that disclosure of the confidential information could, if disseminated to or used by any person without prior authorisation of the Municipality, cause the Municipality to suffer material harm.
- 20.4 The Firm will not disclose any portion of the confidential information to any third party other than to persons who are required to obtain such information by virtue of being appointed to provide a professional service in the matter.
- 20.5 The management of information must be in accordance with the provisions of POPI (when it comes into effect).
- 20.6 The Firm will procure all persons in its employ and any third party it may appoint who will have access to the confidential information as a result of such appointment, to bind themselves to the provisions of this clause.
- 20.7 The entire clause shall survive the termination of this Service Level Agreement for whatever reason and remain binding to the Firm indefinitely.
- 20.8 The Parties agree that they shall protect each other's confidential information using the same standard of care that each party applies to safeguard its own confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 20.9 Within 30 (thirty) Days after the termination of this Service Level Agreement for whatever reason, the receiving party of confidential information shall return same, including the original documentation.
- 20.10 The disclosing party of confidential information may at any time request the receiving party of such confidential information to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Service Level Agreement, and may in addition request the receiving party to furnish a written statement to the effect, that upon such return, the receiving party has not retained in its possession or under its control either or indirectly such material.
- 20.11 It is recorded that the following information shall, for the purposes of this Service Level Agreement, not be considered to be confidential information: Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or information which become known to the public or become generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such information.

## **21. DOMICILIUM CITANDI ET EXECUTANDI**

- 21.1 The parties hereby choose as their respective *domicilium citandi et executandi* for all purposes of this Service Level Agreement, whether in respect of court processes, notices or other documentation or communications of whatever nature, the following address:

**21.1.1 The Municipality:**  
Corner Nelson Mandela Drive and Selati Road  
Phalaborwa  
1390

**21.1.2 The Firm:**  
.....  
.....  
.....

- 21.2 Any notice or communication required or permitted to be given in terms of this Service Level Agreement shall be valid and effective only if in writing.
- 21.3 Notice shall be deemed to be given:
  - 21.3.1 7 (seven) Days after posting by registered mail;
  - 21.3.2 If delivered by hand, at the time of delivery;
  - 21.3.3 On dispatch of successful transmission by electronic mail with a delivery receipt.

**22. MISCELLANEOUS**

- 22.1 This Service Level Agreement constitutes the whole agreement between the Parties and there are no terms, conditions, obligations, oral or written, express or implied other than those contained in this Service Level Agreement.
- 22.2 This Service Level Agreement replaces all previous agreements with a similar content between the Firm and the Municipality. There are no prior agreements with a similar subject to this Service Level Agreement that is binding on the Parties.
- 22.3 No amendment, addition, or variation, nor any extension of time of this Service Level Agreement shall have any force or effect unless same has been reduced to writing and signed by both Parties to this Service Level Agreement.
- 22.4 No extension of time or waiver of any of the provisions or terms of this Service Level Agreement shall constitute a novation or operate as an estoppel against any party in respect of its rights under this Service Level Agreement **nor** shall it operate so as to preclude such party from exercising its rights strictly in accordance with this Service Level Agreement.
- 22.5 If any provision of this Service Level Agreement is unenforceable in law, such provision shall be severed from the remaining provisions of this Service Level Agreement and the remaining provisions of this Service Level Agreement shall not be affected and shall remain in full force and effect.
- 22.6 The Municipality and the Firm warrant to each other that their respective signatories and representatives have the delegated power, authority, and legal right to conclude and sign this Service Level Agreement and perform in terms of this Service Level Agreement, and that this Service Level Agreement has been duly authorised by all necessary actions of their respective governing organs and management on them in accordance with the provisions of this Service Level Agreement.

**23. CESSION AND ASSIGNMENT**

- 23.1 The Firm shall not cede, assign or transfer any of its rights and obligations in terms of this Service Level Agreement whether in part or in whole, or delegate any of its obligations in terms of this Service Level Agreement.
- 23.2 The prohibition shall not be applicable to the appointment of correspondent attorneys provided that the Firm remains responsible for and in control of the rendering of the professional service.

**24. NON – EXCLUSIVE AGREEMENT**

- 24.1 The acceptance of the Firm's tender and the placement of the Firm for a particular category of service must not be construed as an assurance that any work will be awarded to it during the contract term. The Municipality is not obligated to make exclusive use of the Firm.
- 24.2 Nothing in this Service Level Agreement shall be interpreted as precluding the Municipality from referring similar category of legal services to other firms.

**25. CONTRACTUAL RELATIONSHIP – COMMUNICATIONS AND CONSENSUAL EFFORTS AND RESOLUTION**

The Firm may not make any statement or furnish any information or cause any information to be furnished to news media, on or regarding any matter relating to the contractual relationship between the Parties, except with the prior **written consent** of the Municipal Manager of the Municipality.

**26. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 26.1 The Municipality shall not be liable for any damages arising out of any injuries sustained by the Firm's employees whilst such person(s) is on any premises or in any vehicle owned or used by the Municipality or arising out of any damage or loss of any property belonging to such person(s) on or in such premises or property, whether such injury or damage or loss is caused by the negligence by the Municipality or any of its employees.
- 26.2 The Firm indemnifies the Municipality against any claims that may arise from the performance of their functions in terms of this Service Level Agreement and that of their employees.

**27. INSURANCE**

- 27.1 Without limiting the Firm's liabilities or responsibilities in terms of this Service Level Agreement, the Firm shall provide insurance to cover its liabilities and responsibilities in terms of the Service Level Agreement.

**28. COMPLIANCE WITH LAWS AND TAX OBLIGATIONS**

- 28.1 The Firm warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and to its obligations contained in this Service Level Agreement as well as with all applicable requirements.
- 28.2 The Firm warrants that any of its undertakings in terms of this Service Level Agreement do not constitute a contravention in terms of any statute, regulation, or regulating body rules that it is bound by, and undertakes to take all reasonable to ensure that this remains so.
- 28.3 The Firm furthermore specifically warrants that it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax, value added tax, skills development levies, unemployment insurance fund levies, workmen's compensation fund levies, council levies and all other taxes payable now or in future and whether it is liable in in the Republic of South Africa, and undertake to continue to take all reasonable and necessary steps to ensure that this remains so.

**29. SEVERABILITY**

- 29.1 If any term, condition or performance, or any part thereof, in this Service Level Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent, then the provision shall be removed from the remaining provisions of this Service Level Agreement, or amended to make it valid, legal or enforceable, in such a manner as to leave the amended agreement substantially the same in essence, and the Service Level Agreement so amended shall remain in force and effect.
- 29.2 If any provision of this Service Level Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent above, such provision shall be deemed to be severable from the rest of the provisions of this Service Level Agreement, and shall not in any way affect the validity and enforceability of the rest of the provisions of this Service Level Agreement and the Service Level Agreement as a whole.

**30. SCOPE OF WORK AND PROCEDURE**

- 30.1 Within 5 (five) Days of the Municipality furnishing instructions, the Municipality will provide the firm with a copy of the Municipality's file.
- 30.2 In the event of the Firm not receiving copies of the Municipality's file content within the time period referred to above, the delegated department head from which the instruction was received must be notified of this in writing.
- 30.3 The Firm shall at all times maintain and operate ICT capabilities as required by the Municipality and shall inform the Municipality within 24 (twenty-four) hours of any breakdown or other issues which may impact electronic mail or telephonic communications between the Firm and the Municipality.
- 30.4 The minimum time period specified in the Rules of Court for the delivery of applications, notices and pleadings must be adhered to at all times.

**31. BRIEFING OF COUNSEL OR OTHER LEGAL EXPERTS**

- 31.1 The Firm must first obtain written instructions/approval from the Municipality through its Manager: Legal to brief counsel or other experts, legal or otherwise.

- 31.2 Counsel or other experts will not be instructed for matters to be dealt with in the Magistrates Court, unless the prior written consent is obtained from the Municipality through its Manager: Legal.
- 31.3 When counsel or other experts has or have been instructed on trial, the Firm shall not, without the prior written approval of the Municipality through its Manager: Legal, brief counsel or other experts to provide written opinions on any aspect of the matter.
- 31.4 The written consent referred to above must be obtained from the Manager: Legal.

**32. FEE STRUCTURE**

**32.1 General fee structure for litigation**

- 2.5.2 Save for regulated fees, all other work will be based on pre – negotiated fixed fees to escalate annually by consumer price index.

**SIGNED AT**     XXX     **ON THIS**     XXX     **DAY OF**     XXX     **2022**

          XXXXXX          

Witness  
Name:

          XXXXXX          

Name:  
For: Ba-Phalaborwa Municipality  
Name  
Capacity

          XXXXXX          

Witness  
Name:

**SIGNED AT**     XXX     **ON THIS**     XXX     **DAY OF**     XXX     **2022**

          XXXXXX          

Witness  
Name:

          XXXXXX          

Name:  
For: Firm  
Name  
Capacity

          XXXXXX          

Witness  
Name:

**4. PRICING SCHEDULE**

**NOTE:**

1. Only firm prices will be accepted. Non-firm prices will not be considered.
2. All delivery costs MUST be included in the bid price, for delivery at the prescribed destination.
3. Document MUST be completed in non-erasable black ink.
4. NO correction fluid/tape may be used.
  - a. In the event of a mistake having been made, it shall be crossed out in ink and be accompanied by an initial at each and every alteration.
5. The Bidder MUST indicate whether he/she/the entity is a registered VAT Vendor or not.
  - a. In the case of the Bidder not being a registered VAT Vendor, both columns (amount/rate excluding AND including VAT) must reflect the same amount.

					INDICATE WITH AN 'X'					
Are you/is the firm a registered VAT Vendor					YES		NO			
If "YES", please provide VAT number										

I / We \_\_\_\_\_

(full name of Bidder) the undersigned in my capacity as \_\_\_\_\_

of the firm \_\_\_\_\_

hereby offer to Ba-Phalaborwa Municipality to render the services as described, in accordance with the specification and conditions of contract to the entire satisfaction of the Ba-Phalaborwa Municipality and subject to the conditions of tender, for the amounts indicated hereunder:

**PRICING SCHEDULE:**

**10.1 Categories of Legal Services**

- 10.1.1 Bids prices in terms of this tender will be for contract purposes and subject to negotiations. They will reflect time bases fees and non-time bases fees. An escalation based on consumer price index per annum effective on July of each year will apply.
- 10.1.2 Bidders may insert only one fee under a category of service in cases where more than one Lead Attorney offer services in the same category of service.
- 10.1.3 Time based fees will also apply to after-hours work in cases of emergency.

10.2 Please indicate the time based fee quoted for the category of service offered.

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.1	Public and Municipal Law			

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.2	Town Planning and Environmental Law			

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.3	Building and Construction Law			

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.4	Labour Law			

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.5	Debt Collection			

Item #	Description	Name and position of the lead attorney	Experience in this field	Rate per Hour (Incl. VAT)
10.2.6	Property Law, Conveyancing and Notarial Registration Services.			



**DOCUMENTS REQUIRED**

DOCUMENTS REQUIRED	SOLE PROPRIETOR	CC'S AND PRIVATE COMPANIES	PARTNER-SHIPS	PUBLIC COMPANY	BUSINESS TRUST	NON PROFIT ORGANIZATIONS (NPO)	WHERE TO GET DOCUMENTS
<b>COMPANY REGISTRATION CERTIFIED COPIES</b>	N/A	Certificate of incorporation CK 1/ CK 2	Partnership agreement	Certificate of Incorporation CM 3	Trust agreement	Certificate of Incorporation Section 21	Registrar of CC's & Companies
<b>PROOF OF OWNERSHIP CERTIFIED COPIES</b>	N/A	Shareholding CK 1/ CK 2	Partnership agreement	Shareholding CM 3	Trustees details : Letter of Authority	Auditor's letter no shareholding	Registrar of CC's & Companies
<b>PROOF OF BANKING</b>	Bank statement / cancelled cheque	Bank statement/ cancelled	Bank statement/ cancelled cheque	Bank statement/ cancelled cheque	Bank statement/ cancelled	Bank statement/ cancelled cheque	Branch of bank at which Account is.

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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<b>TAX CLEARANCE CERTIFICATE</b>	For the Owner or the business	For the company / cc	For each individual shareholder	For the company	For the trust	For the NPO	SARS
<b>P.A.Y.E</b>	If staff are employed	If staff are employed	If staff are employed	If staff are employed	If staff are employed	If staff are employed	SARS
<b>VAT REGISTRATIO N</b>	Yes	Ye s	Yes	Ye s	Ye s	Yes	SARS
<b>U.I.F Certificate</b>	YES	YE S, if staff remuneration	YES, if staff remuneration	YE S, if staff remuneration	YE S, if staff remuneration	YES, if staff remuneration	Departm ent of Labour
<b>Workman's Compensation</b>	YES, if staff remuneration	YE S, if staff remuneration	YES ,if staff remuneration	YE S, if staff remuneration	YE S, if staff remuneration	YES, if staff remuneration	Departm ent of Labour
<b>Security Officer' s Board</b>	If appli cabl e –for secu rity	If applicabl e – for se	If appli cabl e –for secu rity	If applicabl e – for se	If applicabl e – for se	If applica ble – For securit y industr y	Security Service Regulator y Authority







Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

	industry	cur ity ind ust ry	indus try	cur ity ind ust ry	cur ity ind ust ry		
<b>Proof of Disability</b>	If own er is disab led	If Sh are hol der is dis abl e	If Shar ehol der is disa bled	If Is Sh are hol der is dis abl e	If Sh are hol der is dis abl e	If Share holder is disable d	
<b>Proof of Identity CERTIFIED</b>	Own er	Dir ect ors / Me mb ers	Partn ers	Dir ect ors	Tru ste es	Directo rs	

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 BAPHALABORWA LOCAL MUNICIPALITY

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

DESCRIPTION.....

The successful bidders will be required to fill in and sign a written Contract Form.

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)

Empty signature box for Contractor

Empty signature box for Witness 1

Empty signature box for Witness 2

Empty signature box for Employer

Empty signature box for Witness 1

Empty signature box for Witness 2

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

.....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

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.....

**ANY ENQUIRIES**

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

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

**Department:** Finance

**Contact Person:** Mr. Selepe NW

**Tel:** (015) 780 6303

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

**AS PER THE ADVERT.**

[Signature box]

[Signature box]

[Signature box]

[Signature box]

[Signature box]

[Signature box]

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**

3.9.1 If yes, furnish particulars.....

Contractor

Witness 1

Witness 2

Employer

Witness 1

Witness 2

.....  
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 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  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017**

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 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 R50 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.

**2. DEFINITIONS**

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

- 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;
- 2.16 “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;

2.17 “trust” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

2.18 “trustee” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. **ADJUDICATION USING A POINT SYSTEM**

3.1 The bidder obtaining the highest number of total points will be awarded the contract.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.

3.3 Points scored must be rounded off to the nearest 2 decimal places.

3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. **POINTS AWARDED FOR PRICE**

4.1 **THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{c}
 \frac{80}{20} \qquad \qquad \qquad \text{or} \qquad \qquad \qquad \frac{90}{10} \\
 \\
 \frac{Ps - P_t}{Ps - P_{min}} \times 1 \times \frac{Ps}{Ps} \times 80 \qquad \text{or} \qquad \frac{Ps - P_t}{Ps - P_{min}} \times 1 \times \frac{Ps}{Ps} \times 90 \\
 \\
 \frac{Ps - P_{min}}{Ps - P_{min}} \times 1 \times \frac{Ps}{Ps} \times 80 \qquad \text{or} \qquad \frac{Ps - P_{min}}{Ps - P_{min}} \times 1 \times \frac{Ps}{Ps} \times 90
 \end{array}$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

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: □ □□1□ \_\_\_\_\_Pt □

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
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 BBBEE 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.

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness



- 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.
- 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**

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

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

**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.

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

- (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;
  - (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. .... SIGNATURE(S) OF BIDDER(S)

DATE: .....

ADDRESS: .....

.....

..

.....

..

.....

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

**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).

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

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

Item	Question	Yes	No
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"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
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"/>

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

4.7.1	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**

**MBD 9**

**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.

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

- 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.

**OF INDEPENDENT BID DETERMINATION**

**MBD 9 CERTIFICATE**

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.

Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness

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:
  - (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  
2

Witness 1

Witness 2

Employer

Witness 1

Witness



Contractor  
2

Witness 1

Witness 2

Employer

Witness 1

Witness