



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

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MEMORANDUM OF AGREEMENT

FOR THE

**RENEWAL OF MANDATE FOR SUPPORT OF THE VALUATION BUSINESS
SYSTEM**

MADE AND ENTERED INTO BETWEEN

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

And

[REDACTED]

[REDACTED]

[REDACTED]

Contract No. DP6612Y/2020/21

[REDACTED]

PREAMBLE

WHEREAS the City Manager resolved in terms of resolution CM 01/10/22 dated 2 November 2022 to appoint [REDACTED] to render the services for the Support and Maintenance of the [REDACTED] System in the amount stipulated in accordance with the annual service and escrow fees and the rates for ad hoc support per hour as per the schedule, from **date of commencement until 30 June 2031**, subject to the conclusion of a Section 33 of the MFMA process and Council adopting a resolution in which it approves the entire contract exactly as it is to be executed and in which it authorises the Municipal Manager to sign the contract on behalf of the municipality.

AND WHEREAS it is recorded that this Contract will be governed by the provisions of General Conditions of Contract for the Supply of Goods and Services, Revised July 2010 ("GCC"), read with the Special Condition of Contract ("SCC") annexed hereto marked "PART 2: SPECIAL CONDITIONS OF CONTRACT".

AND WHEREAS the contract will be subject to the Rate in South African Rand, as agreed, with no other Contract Price Adjustment applicable.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. PARTIES

The Parties to this Contract are:

- 1.1 **The City of Cape Town**, a metropolitan municipality, established in terms of the Local Government: Municipal Structures Act, 117 of 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended ("**the City**"), herein represented by the City Manager: City of Cape Town or his nominee duly authorised hereto;

- 1.2 [REDACTED]
with its principal place of business at [REDACTED]
[REDACTED] (the "**Service Provider**"), herein represented by its duly authorised representative, [REDACTED], in his capacity as Director: Client Engagement;

hereinafter jointly referred to as "**Parties**" and in singular, a "**Party**".

2. INTERPRETATION

2.1. In the event of any conflict between the provisions of this Contract, the GCC and any Part attached hereto, or any other document incorporated by reference to this Contract, save to the extent expressly stated to the contrary, such conflict will be resolved by giving precedence to such different parts of this Contract in the following order of precedence:

2.1.1. first, the terms and conditions of the Master Agreement

2.1.2. second, the terms and conditions of the SCC;

2.1.3. third, the terms and conditions of the GCC

2.1.4. fourth, Parts and annexures to this Contract; and

2.1.5. fifth, any other documents incorporated by reference.

3. APPOINTMENT AND DURATION

3.1. The City hereby appoints the Service Provider to perform the Scope of Work for the City from the Commencement Date.

3.2. Unless terminated earlier in accordance with the provisions as set out in the GCC or any other provision in terms of this Contract, this Contract shall commence on commencement date and terminate on 30 June 2031.

4. MUTUAL GOOD FAITH / CO-OPERATION

4.1. The Parties represent and undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the execution of this Contract.

4.2. The Parties shall at all times during the continuance of this Contract observe the principles of good faith towards one another in the performance of their obligations in terms of this Contract.

5. OBLIGATIONS OF THE CITY

- 5.1. The City undertakes to perform its obligations in accordance with the Contract, including but not limited to the Scope of Work (**PART 5: SPECIFICATIONS**), subject to the satisfactory fulfilment of the obligations by the Service Provider as set out in this Contract.
- 5.2. The City shall monitor and evaluate the Service Providers's performance in respect of the Scope of Work:

6. OBLIGATIONS OF THE SERVICE PROVIDER

- 6.1. The Service Provider hereby agrees and undertakes to perform the Services to the City as set out in Scope of Work (**PART 5: SPECIFICATIONS**).
- 6.2. The Service Provider will perform the Works as expeditiously as possible and furthermore agrees and undertakes to perform the services in accordance with the operational requirements of the City.
- 6.3. The Service Provider will ensure that the Works will be of a satisfactory quality and fit for purpose.
- 6.4. The Service Provider shall, ensure that its employees, agents, representatives, sub-contractors and Service Providers comply with this Contract and all applicable Laws in the execution of the Works.

7. PRICING DATA

- 7.1. The Contract Price for the Works shall be as set out in the Pricing Data annexed marked "**PART 4: PRICING SCHEDULE**".
- 7.2. The Service Provider shall not be entitled to any other consideration for the rendering of the Works other than as provided for in this Contract.

PART 1: AGREEMENTS

RENEWAL OF MANDATE FOR SUPPORT OF THE VALUATION BUSINESS SYSTEM ACCEPTANCE (TO BE FILLED IN BY THE CITY OF CAPE TOWN)

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

The terms of the contract are contained in:

- Clause 1 to 7, and the sub-clauses therein, cited in pages 1 to 3 above;
- Part 1: Agreement
- Part 2: Special Conditions to Contract
- Part 3: General Conditions of Contract
- Part 4: Pricing Schedule
- Part 5: Specifications
- Part 6: Supporting Documentation

and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the City to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documents to be provided in terms of the conditions of contract identified in the special contract conditions. Failure to fulfil any of these obligations in accordance with these terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date last signed by the parties. The contractor shall within five working days of the agreement coming into effect notify the City in writing of any reason why he cannot accept the contents of this agreement as a complete and accurate memorandum thereof, failing which the agreement presented to the contractor shall constitute the binding contract between the parties.

The Parties	City	Service Provider
Business Name	City of Cape Town	
Business Registration	Not Applicable	
Tax number (VAT)	4500193497	
Physical Address	12 Hertzog Boulevard Cape Town	
Accepted contract sum including tax	As per Part 4; Pricing Schedule	
Accepted contract duration	From date of commencement to 30 June 2031	
Signed — who by signature hereto warrants authority		
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of Witness		

FORM OF OFFER AND ACCEPTANCE (Continued)

(TO BE FILLED IN BY THE CITY OF CAPE TOWN)

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the CCT before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject NONE.....

Details NONE.....

.....

.....

2 Subject NONE.....

Details NONE.....

.....

.....

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

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

PART 2: SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract, referring to the National Treasury – Conditions of Contract (revised July 2010), are applicable to this Contract:

1. Definitions

Delete Clause 1.15 and substitute with the following

- 1.15 The word 'Goods' is to be replaced everywhere it occurs in the GCC with the phrase 'Goods and / or Services' which means all of the equipment, machinery, materials, services, products, consumables, etc. that the Service Provider is required to deliver to the purchaser under the contract. This definition shall also be applicable, as the context requires, anywhere where the words "supplies" and "services" occurs in the GCC.

Delete Clause 1.19 and substitute with the following

- 1.19 The word 'Order' is to be replaced everywhere it occurs in the GCC with the words 'Purchase Order' which means the official purchase order authorised and released on the purchaser's SAP System

Delete Clause 1.21 and substitute with the following:

- 1.21 'Purchaser' means the **City of Cape Town**. The address of the Purchaser is **12 Hertzog Boulevard, Cape Town, 8001**.

Add the following after Clause 1.25:

- 1.26 'Service Provider' means any provider of goods and / or services with whom the contract is concluded.
- 1.27 'Intellectual Property' means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, copyright and rights in the nature of copyright, design rights, rights in databases, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

3. General Obligations

Delete Clause 3.2 in its entirety and replace with the following clauses.

- 3.2 The parties will be liable to each other arising out of or in connection with any breach of the obligations detailed or implied in this contract, subject to clause 28.
- 3.3 All parties in a joint venture or consortium shall be jointly and severally liable to the purchaser in terms of this contract and shall carry individually the minimum levels of insurance stated in the contract, if any.
- 3.4 The parties shall comply with all laws, regulations and bylaws of local or other authorities

having jurisdiction regarding the delivery of the goods and give all notices and pay all charges required by such authorities.

3.4.1 The parties agree that this contract shall also be subject to the CCT's Supply Chain Management Policy ('SCM Policy') that was applicable on the date the bid was advertised, **save that if the City adopts a new SCM Policy which contemplates that any clause therein would apply to the contract emanating from this tender, such clause shall also be applicable to that contract.** Please refer to this document contained on the CCT's website.

3.4.2 Abuse of the supply chain management system is not permitted and may result in cancellation of the contract, restriction of the Service Provider, and/or the exercise by the City of any other remedies available to it as described in the SCM Policy.

3.5 The Service Provider shall:

3.5.1 Arrange for the documents listed below to be provided to the Purchaser prior to the issuing of the order:

- a) Proof of Insurance (Refer to Clause 11) or Insurance Broker's Warrantee n/a
- b) Letter of good standing from the Compensation Commissioner, or a licensed compensation insurer (Refer to Clause 11) n/a
- c) Initial delivery programme n/a
- d) Other requirements as detailed in the tender documents n/a

3.5.2 Only when notified of the acceptance of the bid by the issuing of the order, the Service Provider shall commence with and carry out the delivery of the goods in accordance with the contract, to the satisfaction, of the purchaser

3.5.3 Provide all of the necessary materials, labour, plant and equipment required for the delivery of the goods including any temporary services that may be required

3.5.4 Insure his workmen and employees against death or injury arising out of the delivery of the goods

3.5.5 Be continuously represented during the delivery of the goods by a competent representative duly authorised to execute instructions;

3.5.6 In the event of a loss resulting in a claim against the insurance policies stated in clause 11, pay the first amount (excess) as required by the insurance policy

3.5.7 Comply with all written instructions from the purchaser subject to clause 18

3.5.8 Complete and deliver the goods within the period stated in clause 10, or any extensions thereof in terms of clause 21

3.5.9 Make good at his own expense all incomplete and defective goods during the warranty period

3.5.10 Pay to the purchaser any penalty for delay as due on demand by the purchaser. The Service Provider hereby consents to such amounts being deducted from any payment to the Service Provider.

3.5.11 Comply with the provisions of the OHAS Act & all relevant regulations.

3.5.12 Comply with all laws relating to wages and conditions generally governing the employment of labour in the Cape Town area and any applicable Bargaining Council agreements.

3.5.13 Deliver the goods in accordance with the contract and with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.

3.6 The purchaser shall:

3.6.1 Issue orders for the goods required under this Contract. No liability for payment will ensue for any work done if an official purchase order has not been issued to the Service Provider.

3.6.2 Make payment to the **Service Provider** for the goods as set out herein.

3.6.3 Take possession of the goods upon delivery by the Service Provider.

3.6.4 Regularly inspect the goods to establish that it is being delivered in compliance with the contract.

3.6.5 Give any instructions and/or explanations and/or variations to the Service Provider including any relevant advice to assist the Service Provider to understand the contract documents.

3.6.6 Grant or refuse any extension of time requested by the Service Provider to the period stated in clause 10.

3.6.7 Inspect the goods to determine if, in the opinion of the purchaser, it has been delivered in compliance with the contract, alternatively in such a state that it can be properly used for the purpose for which it was intended.

3.6.8 Brief the Service Provider and issue all documents, information, etc. in accordance with the contract.

5. Use of contract documents and information; inspection, copyright, confidentiality, etc.

Add the following after clause 5.4:

5.6 Publicity and publication

The Service Provider shall not release public or media statements or publish material related to the services or contract within two (2) years of completion of the services without the written approval of the purchaser, which approval shall not be unreasonably withheld.

5.7 Confidentiality

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

5.8 Intellectual Property

5.8.1 The Service Provider acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of the City.

5.8.3 The Service Provider shall, and warrants that it shall:

5.8.3.1 not be entitled to use the City's Intellectual Property for any purpose other than as contemplated in this contract;

5.8.3.2 not modify, add to, change or alter the City's Intellectual Property, or any information or data related thereto, nor may the Service Provider produce any product as a result of, including and/or arising from any such information, data and Intellectual Property, and in the event that it does produce any such product, the product shall be, and be deemed in law to be, owned by the City;

5.8.3.3 not apply for or obtain registration of any domain name, trademark or design which is similar to any Intellectual Property of the City;

5.8.3.4 comply with all reasonable directions or instructions given to it by the City in relation to the form and manner of use of the City Intellectual Property, including without limitation, any brand guidelines which the City may provide to the Service Provider from time to time;

5.8.3.5 procure that its employees, directors, members and contractors comply strictly with the provisions of clauses 5.8.3.1 to 5.8.3.3 above;

unless the City expressly agrees thereto in writing after obtaining due internal authority.

5.8.4 The Service Provider represents and warrants to the City that, in providing goods, services or both, as the case may be, for the duration of the contract, it will not infringe or make unauthorised use of the Intellectual Property rights of any third party and hereby indemnifies the City from any claims, liability, loss, damages, costs, and expenses arising from the infringement or unauthorised use by the Service Provider of any third party's Intellectual Property rights.

5.8.5 In the event that the contract is cancelled, terminated, ended or is declared void, any and all of the City's Intellectual Property, and any and all information and data related thereto, shall be immediately handed over to the City by the Service Provider and no copies thereof shall be retained by the Service Provider unless the City expressly and in writing, after obtaining due internal authority, agrees otherwise.

7. Performance Security

Delete clause and replace with the following:

Not Applicable

8. Inspections, tests and analyses

Delete clause and replace with the following:

Not Applicable

10. Delivery and documents

Delete clauses 10.1 and 10.2 and replace with the following:

- 10.1 Delivery of the goods shall be made by the Service Provider in accordance with the terms specified in the contract. The time for delivery of the goods shall be the date as stated on the order. Orders for the supply and delivery of goods may be raised up until the expiry of a framework agreement bid, provided that the goods can be delivered within 30 days of expiry of the framework contract. All orders, other than for the supply and delivery of goods, must be completed prior to the expiry of the contract period.

11. Insurance

Add the following after clause 11.1:

- 11.2 Without limiting the obligations of the Service Provider in terms of this contract, the Service Provider shall effect and maintain the following additional insurances:

- a) Registration / insurance in terms of the Compensation for Occupational Injuries and Disease Act, Act 130 of 1993. This can either take the form of a certified copy of a valid Letter of Good Standing issued by the Compensation Commissioner, or proof of insurance with a licenced compensation insurer, from either the bidder's broker or the insurance company itself (see **Proof of Insurance / Insurance Broker's Warranty** section in document for a pro forma version). Not applicable

In the event of under insurance or the insurer's repudiation of any claim for whatever reason, the CCT will retain its right of recourse against the Service Provider.

- 11.3 The Service Provider shall be obliged to furnish the CCT with proof of such insurance as the CCT may require from time to time for the duration of this Contract. Evidence that the insurances have been effected in terms of this clause, shall be either in the form of an insurance broker's warranty worded precisely as per the pro forma version contained in the **Proof of Insurance / Insurance Broker's Warranty** section of the document or copies of the insurance policies.

15. Warranty

Delete Clause 15 in its entirety and replace with the following:

Not Applicable

16. Payment

Delete Clause 16.1 in its entirety and replace with the following:

- 16.1 A monthly payment cycle will be the norm. All invoices which are dated on or before the 20th of a particular month will typically be paid between the 23rd and 26th of the following month. The Service Provider may submit a fully motivated application regarding more frequent payment to the City's Director: Expenditure for consideration. Requests for more frequent payments will be considered at the sole discretion of the City and is not a right in terms of this contract.

Delete Clause 16.2 in its entirety and replace with the following:

- 16.2 The Service Provider shall furnish the purchaser's Accounts Payable Department with an original tax invoice, clearly showing the amount due in respect of each and every claim for payment.

Add the following after clause 16.4

- 16.5 Notwithstanding any amount stated on the order, the Service Provider shall only be entitled to payment for goods actually delivered in terms of the Project Specification and Drawings, or any variations in accordance with clause 18. Any contingency sum included shall be for the sole use, and at the discretion, of the purchaser.

The CCT is not liable for payment of any invoice that pre-dates the date of delivery of the goods.

17. Prices

Add the following after clause 17.1

- 17.2 If as a result of an award of a contract beyond the original tender validity period, the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then the contract may be subject to contract price adjustment for that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Director: Supply Chain Management if such was not included in the bid documents. **[Not applicable]**.

- 17.3 If as a result of any extension of time granted the contract execution will be completed beyond a period of twelve (12) months from the expiry of the original tender validity period, then contract price adjustment may apply to that period beyond such twelve (12) months. An appropriate contract price adjustment formula will be determined by the Director: Supply Chain Management if such was not included in the bid documents. **[Not applicable]**.

18. Contract Amendments

Delete the heading of clause 18 and replace with the following:

18. Contract Amendments and Variations

Add the following to clause 18.1:

Variations means changes to the goods, extension of the duration or expansion of the value of the contract that the purchaser issues to the Service Provider as instructions in writing, subject to prior approval by the purchaser's delegated authority. Should the Service Provider deliver any goods not described in a written instruction from the purchaser, such work will not become due and payable until amended order has been issued by the purchaser.

20. Subcontracts

Add the following after clause 20.1:

- 20.2 The Service Provider shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the Service Provider.
- 20.3 Any appointment of a subcontractor shall not amount to a contract between the CCT and the subcontractor, or a responsibility or liability on the part of the CCT to the subcontractor and shall not relieve the Service Provider from any liability or obligation under the contract.

21. Delays in the Service Provider's performance

Delete Clause 21.2 in its entirety and replace with the following:

- 21.2 If at any time during the performance of the contract the Service Provider or its subcontractors should encounter conditions beyond their reasonable control which impede the timely delivery of the goods, the Service Provider shall notify the purchaser in writing, within 7 Days of first having become aware of these conditions, of the facts of the delay, its cause(s) and its probable duration. As soon as practicable after receipt of the Service Provider's notice, the purchaser shall evaluate the situation, and may at his discretion extend the time for delivery.

Where additional time is granted, the purchaser shall also determine whether or not the Service Provider is entitled to payment for additional costs in respect thereof. The principle to be applied in this regard is that where the purchaser or any of its agents are responsible for the delay, reasonable costs shall be paid. In respect of delays that were beyond the reasonable control of both the Service Provider and the purchaser, additional time only (no costs) will be granted.

The purchaser shall notify the Service Provider in writing of his decision(s) in the above regard.

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

22. Penalties

Delete clause 22.1 and replace with the following:

The penalty for this contract shall be: Not applicable

- 22.2 The purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, financial penalties as contained on the **Preference Schedule** relating to breaches of the conditions upon which preference points were awarded.

23. Termination for default

Delete the heading of clause 23 and replace with the following:

23. Termination

Add the following to the end of clause 23.1:

if the Service Provider fails to remedy the breach in terms of such notice

Add the following after clause 23.7:

23.8 In addition to the grounds for termination due to default by the Service Provider, the contract may also be terminated:

23.8.1 Upon the death of the Service Provider who was a Sole Proprietor, or a sole member of a Close Corporation, in which case the contract will terminate forthwith.

23.8.2 The parties by mutual agreement terminate the contract.

23.8.3 If an Order has been issued incorrectly, or to the incorrect recipient, the resulting contract may be terminated by the purchaser by written notice

23.8.4 If a material irregularity vitiates the procurement process leading to the conclusion of the contract, rendering the procurement process and the conclusion of the resulting contract unfair, inequitable, non-transparent, uncompetitive or not cost-effective, provided the City Manager follows the processes as described in the purchasers SCM Policy.

23.8.5 After providing notice to the Service Provider, if the implementation of the contract may result in reputational risk or harm to the City as a result of (inter alia):

- 23.8.5.1 reports of poor governance and/or unethical behaviour;
- 23.8.5.2 association with known family of notorious individuals;
- 23.8.5.3 poor performance issues, known to the City;
- 23.8.5.4 negative social media reports; or
- 23.8.5.5 adverse assurance (e.g. due diligence) report outcomes..

23.9 If the contract is terminated in terms of clause 23.8, all obligations that were due and enforceable prior to the date of the termination must be performed by the relevant party.

26. Termination for insolvency

Delete clause 26.1 and replace with the following:

26.1 The purchaser may make either of the following elections to ensure its rights are protected and any negative impact on service delivery is mitigated:

26.1.1 accept a Service Provider proposal (via the liquidator) to render delivery utilising the appropriate contractual mechanisms; or

26.1.2 terminate the contract, as the liquidator proposed Service Provider is deemed unacceptable to the purchaser, at any time by giving written notice to the Service

Provider (via the liquidator).

- 26.2 Termination will be without compensation to the Service Provider, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

Amend clause 27.1 as follows:

- 27.1 If any dispute or difference of any kind whatsoever, with the exception of termination in terms of clause 23.1 (c), arises between the purchaser and the Service Provider in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.

Delete Clause 27.2 in its entirety and replace with the following:

- 27.2 Should the parties fail to resolve any dispute by way of mutual consultation, either party shall be entitled to refer the matter for mediation before an independent and impartial person appointed by the parties via mutual agreement. Failing which parties may approach the Chairperson of the Cape Bar to appoint a mediator with atleast 15 years experience. Such referral shall be done by either party giving written notice to the other of its intention to commence with mediation. No mediation may be commenced unless such notice is given to the other party.

Irrespective whether the mediation resolves the dispute, the parties shall bear their own costs concerning the mediation and share the costs of the mediator and related costs equally.

The mediator shall agree the procedures, representation and dates for the mediation process with the parties. The mediator may meet the parties together or individually to enable a settlement.

Where the parties reach settlement of the dispute or any part thereof, the mediator shall record such agreement and on signing thereof by the parties the agreement shall be final and binding.

Save for reference to any portion of any settlement or decision which has been agreed to be final and binding on the parties, no reference shall be made by or on behalf of either party in any subsequent court proceedings, to any outcome of an amicable settlement by mutual consultation, or the fact that any particular evidence was given, or to any submission, statement or admission made in the course of amicable settlement by mutual consultation or mediation.

28. Limitation of Liability

Delete clause 28.1 (b) and replace with the following:

- (b) [REDACTED] liability for damages of any kind, regardless of the form of action or theory of liability, shall not exceed: (a) in the event of damages associated with a service or hardware product, the fee paid by customer for that service or hardware product under the applicable schedule; or (b) in all other cases, the license fee paid by customer for use of the software. In no event shall [REDACTED] be liable under any contract, negligence, strict liability, or other [REDACTED]

legal or equitable theory for any special, incidental, punitive, exemplary, or excess costs of procurement ("cover cost"), indirect or consequential damages of any kind, including damages resulting from interruption of use, loss or corruption of data, lost revenue, losses resulting from system shutdown, failure to accurately transfer, read, or transmit information, failure to update or provide correct information, stolen or misused passwords, system incompatibility or providing incorrect compatibility information, or breaches in system security, whether or not [REDACTED] has, or should have had, any knowledge, actual or constructive, of the possibility of such damages, and notwithstanding any failure of essential purpose of any remedy, arising out of or in connection with this agreement.

Add the following after clause 28.1:

28.2 Without detracting from, and in addition to, any of the other indemnities in this contract, the Service Provider shall be solely liable for and hereby indemnifies and holds harmless the purchaser against all claims, charges, damages, costs, actions, liability, demands and/or proceedings and expense in connection with:

- a) personal injury or loss of life to any individual;
- b) loss of or damage to property;

arising from, out of, or in connection with the performance by the Service Provider in terms of this Contract, save to the extent caused by the gross negligence or wilful misconduct of the purchaser.

28.3 The Service Provider and/or its employees, agents, concessionaires, Service Providers, sub-contractors or customers shall not have any claim of any nature against the purchaser for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether or not such loss, damages, injury or death is caused through negligence of the purchaser or its agents or employees.

28.4 Notwithstanding anything to the contrary contained in this Contract, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall any party or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever, whether or not the loss was actually foreseen or reasonably foreseeable), sustained by the other party, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.

28.5 Each party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amounts payable.

31. Notices

Delete clauses 31.1 and 31.2 and replace with the following:

31.1 Any notice, request, consent, approvals or other communications made between the Parties pursuant to the Contract shall be in writing and forwarded to the addresses

specified in the contract and may be given as set out hereunder and shall be deemed to have been received when:

- a) hand delivered – on the working day of delivery
- b) sent by registered mail – five (5) working days after mailing
- c) sent by email or telefax – one (1) working day after transmission

32. Taxes and Duties

Delete the final sentence of 32.3 and replace with the following:

In this regard, it is the responsibility of the Service Provider to submit documentary evidence in the form of a valid Tax Clearance Certificate issued by SARS to the CCT at the Supplier Management Unit located within the Supplier Management / Registration Office, 2nd Floor (Concourse Level), Civic Centre, 12 Hertzog Boulevard, Cape Town (Tel 021 400 9242/3/4/5).

Add the following after clause 32.3:

32.4 The VAT registration number of the City of Cape Town is **4500193497**.

ADDITIONAL CONDITIONS OF CONTRACT

Add the following Clause after Clause 34:

35. Reporting Obligations.

- 35.1 The Service Provider shall complete, sign and submit with each delivery note, all the documents as required in the Specifications. Any failure in this regard may result in a delay in the processing of any payments.

36. Protection Of Personal Information

- 36.1 The Service Provider acknowledges that, for the purposes of this agreement, they may come into contact with or have access to personal information and other information that may be classified or deemed as private or confidential and for which Purchaser is responsible in terms of Protection of Personal Information Act ("POPIA"). Such personal information may also be deemed or considered as private and confidential as it relates to POPIA.
- 36.2 The Service Provider agrees that they will at all times comply with POPIA and Purchaser's Privacy Notice, and that it shall only collect, use and process personal information it comes into contact with pursuant to this agreement in a lawful manner, and only to the extent required to execute the services, or to provide the goods and to perform their obligations in terms of the service level agreement.
- 36.3 The Service Provider agrees that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of the personal information that it, or its employees, its contractors or other authorised individuals comes into contact in relation to the service level agreement.
- 36.4 The Service Provider agrees that it shall notify the Purchaser immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

- 36.5 Unless so required by law, the Service Provider agrees that it shall treat the personal information as confidential and further not disclose any personal information as defined in POPIA to any third party without the prior written consent of the Purchaser.
- 36.6 The Service Provider hereby indemnifies and holds the Purchaser harmless against all claims, losses, damages and costs of whatsoever nature suffered by the Purchaser arising from or in relation to the Service Provider's (and/or its employees', agents' and sub-contractors') non-compliance with applicable data protection laws and/or other legislation.
- 36.7 The Service Provider agrees that the Purchaser may conduct regular data protection audits on the Service Provider and undertakes to give its full co-operation in this regard.

37. Performance Monitoring

- 37.1 As required by section 116(2)(b) of the Local Government: Municipal Financial Management Act 56 of 2003, the City shall monitor the performance of the Service Provider on at least a monthly basis, and the Service Provider agrees to provide the City with its full cooperation in this regard.

PART 3: GENERAL CONDITIONS OF CONTRACT

(National Treasury - General Conditions of Contract (revised July 2010))

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1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 'Closing time' means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 'Contract' means the written agreement entered into between the purchaser and the Service Provider, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

- 1.3 'Contract price' means the price payable to the Service Provider under the contract for the full and proper performance of his or her contractual obligations.
- 1.4 'Corrupt practice' means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 'Countervailing duties' are imposed in cases in which an enterprise abroad is subsidised by its government and encouraged to market its products internationally.
- 1.6 'Country of origin' means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7 'Day' means calendar day.
- 1.8 'Delivery' means delivery in compliance with the conditions of the contract or order.
- 1.9 'Delivery ex stock' means immediate delivery directly from stock actually on hand.
- 1.10 'Delivery into consignee's store or to his site' means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the Service Provider bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11 'Dumping' occurs when a private enterprise abroad markets its goods on its own initiative in the RSA at lower prices than that of the country of origin, and which action has the potential to harm the local industries in the RSA.
- 1.12 'Force majeure' means an event beyond the control of the Service Provider, not involving the Service Provider's fault or negligence, and not foreseeable. Such events may include, but are not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 'Fraudulent practice' means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 'GCC' means the General Conditions of Contract.
- 1.15 'Goods' means all of the equipment, machinery, and/or other materials that the Service Provider is required to supply to the purchaser under the contract.
- 1.16 'Imported content' means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the Service Provider or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South

African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

- 1.17 'Local content' means that portion of the bidding price which is not included in the imported content, provided that local manufacture does take place.
- 1.18 'Manufacture' means the production of products in a factory using labour, materials, components and machinery, and includes other, related value-adding activities.
- 1.19 'Order' means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 'Project site', where applicable, means the place indicated in bidding documents.
- 1.21 'Purchaser' means the organisation purchasing the goods.
- 1.22 'Republic' means the Republic of South Africa.
- 1.23 'SCC' means the Special Conditions of Contract.
- 1.24 'Services' means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance, and other such obligations of the Service Provider covered under the contract.
- 1.25 'Written' or 'in writing' means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance Security

Delete clause and replace with the following:

Not Applicable.

8. Inspections, tests and analyses

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

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

9. Packing

Delete clause and replace with the following:

Not Applicable

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

Delete clause and replace with the following:

Not Applicable

14. Spare parts

Delete clause and replace with the following:

Not Applicable

15. Warranty

Delete clause and replace with the following:

Not Applicable

16. Payment

- 16.1 The method and conditions of payment to be made to the Service Provider under this contract shall be specified in the SCC.
- 16.2 The Service Provider shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of any other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than 30 (thirty) days after submission of an invoice or claim by the Service Provider.
- 16.4 Payment will be made in Rand unless otherwise stipulated in the SCC.

17. Prices

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

18. Contract Amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the Service Provider's performance

- 21.1 Delivery of the goods and performance of services shall be made by the Service Provider in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during the performance of the contract, the Service Provider or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the Service Provider shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s).
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 Delete clause and replace with the following:
Not Applicable
- 21.5 Delete clause and replace with the following:
Not Applicable
- 21.6 Delete clause and replace with the following:
Not Applicable.

22. Penalties

- 22.1 Delete clause and replace with the following:
Not Applicable

23. Termination for default

- 23.1 Delete clause and replace with the following:
Not Applicable

24. Anti-dumping and countervailing duties and rights

- 24.1 Delete clause and replace with the following:
Not Applicable

25. Force majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the Service Provider shall not be liable for forfeiture of its, or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the Service Provider shall notify the purchaser promptly, in writing, of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the Service Provider shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the Service Provider if the Service Provider becomes bankrupt or otherwise insolvent, to the Service Provider, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the Service Provider in connection with or arising out of the contract, the parties shall make every effort to resolve such dispute or difference amicably, by mutual consultation.
- 27.2 If, after 30 (thirty) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the Service Provider may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
(b) the purchaser shall pay the Service Provider any monies due to the Service Provider.

28. Limitation of Liability

- 28.1 Delete clause and replace with the following:

Not Applicable

29. Governing language

- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable Law

- 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in the SCC.

31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the Service Provider concerned by registered or certified mail, and any other notice to him shall be posted by

ordinary mail, to the address furnished in his bid or to the address notified later by him in writing; and such posting shall be deemed to be proper service of such notice.

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

32. Taxes and Duties

- 32.1 A foreign Service Provider shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local Service Provider shall be entirely responsible for all taxes, duties, licence fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

- 33.1 Delete clause and replace with the following:
- Not Applicable

PART 4 : PRICING SCHEDULE

Year	Fixed annual Support Fee	Fixed Annual Escrow Fee	Rates based portion for System Enhancements (Time & Material)
2022/2023	R3 089 736	R42 127.00	R3 770
2023/2024	R3 213 326	R43 812.00	R3 770
2024/2025	R3 341 859	R45 565.00	R3 770
2025/2026	R3 475 533	R47 387.00	R3 770
2026/2027	R3 753 576	R51 177.96	R3 770
2027/2028	R4 053 862	R55 272.20	R3 770
2028/2029	R4 378 171	R59 693.97	R3 770
2029/2030	R4 728 424	R64 469.49	R3 770
2030/2031	R5 106 698	R69 627.05	R3 770

PART 5 : SPECIFICATIONS

5.1 Maintenance and Support Specifications:

5.1.1 Adhoc Remote Support:

The Service Provider is required to engage with the designated liason(s) of the purchaser. The remote support channels will include telephonic support to designated users between 1pm – 9pm local (SA) time, as well as email communication with the Service Provider's support section.

5.1.2 Bug Fixes and Error Corrections:

The Service Provider is expected to provide support in performing bug fixes and configuration guidance when correcting errors within the system.

5.1.3 Intergration support with 3rd party infrastructure and services:

The Service Provider is expected to provide guidance with integrating it's software with 3rd party solutions. Third Party software and hardware may include operating systems, database servers and reporting tools.

5.1.4 Compliance and Compatibility Updates:

The Service Provider is expected to provide support for updates which are in compliance with South African Legislation, as well as updates required to maintain 3rd party hardware and software compatibility.

5.1.5 Version Upgrade Support:

The Service Provider will extend support for version updates to the system, with timely communications.

5.1.6 Change Requests:

The Service Provider will provide support to the purchaser in the scoping and defining of change requests, where needed.

5.1.7 System Configuration:

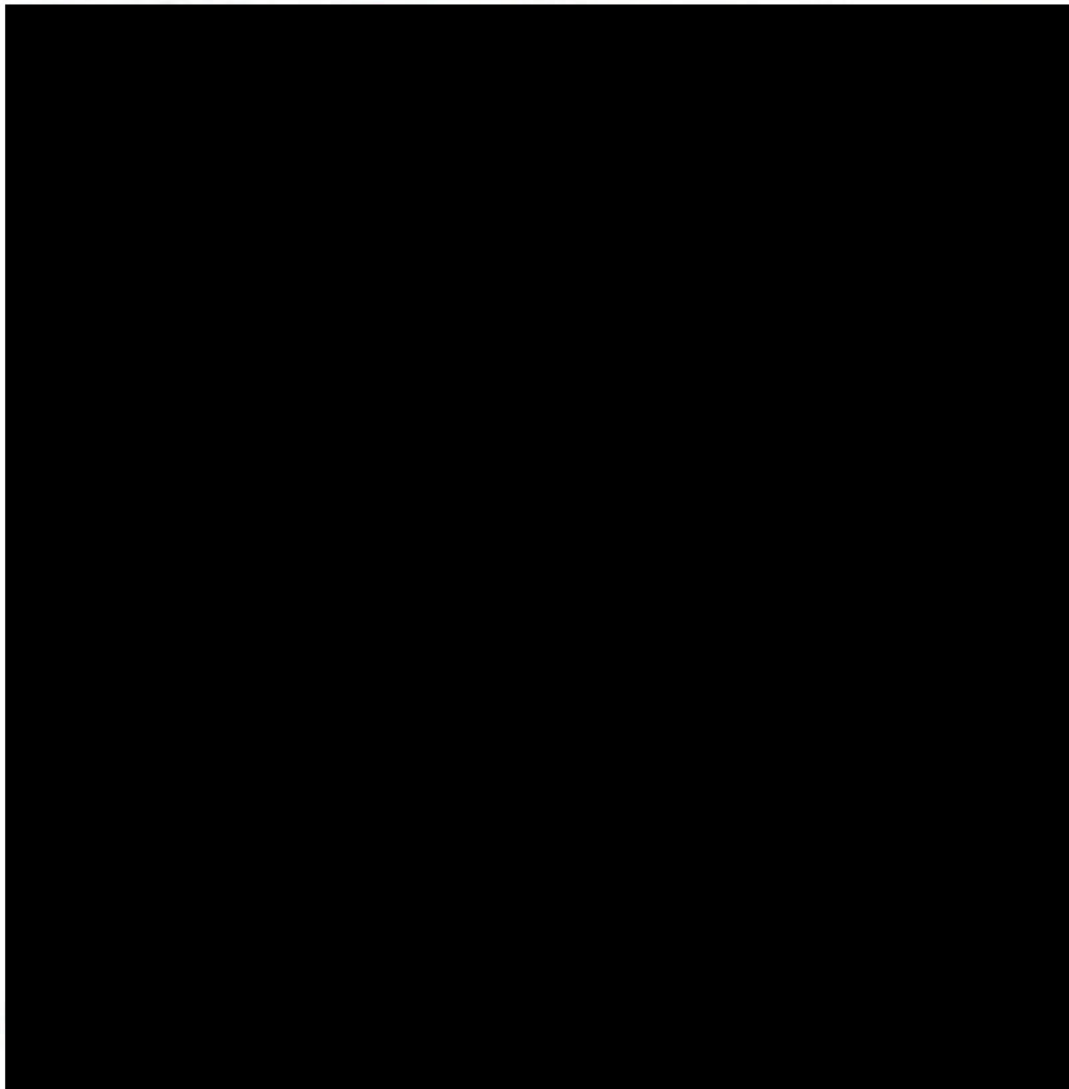
The Service Provider will provide support to the purchaser in the setting up of the system and the configuration of the system, where needed.

PART 5 : SUPPORTING DOCUMENTATION

MASTER AGREEMENT FOR LICENSED SOFTWARE, HARDWARE, AND SERVICES

Effective as of the date that this Agreement is last signed by either party (the "Effective Date").

By and Between	And
Manatron, Inc. [REDACTED] ("Aumentum Technologies" or "Aumentum Tech")	Cape Town, South Africa Cape Town Civic Center 14 Hertzong Blvd., 14 th Floor Cape Town, South Africa ("Customer")
[REDACTED]	Attention: Telephone No.: E-mail Address:



GENERAL TERMS AND CONDITIONS

