

# **SERVICE LEVEL AGREEMENT**

Entered by and between

## **THE GEORGE MUNICIPALITY**

(Herein represented by Mr Vernon Petersen in his capacity as Acting Director:  
Protection Services)

(Hereinafter referred to as "the Municipality")

And

## **BAMOGALE ENTERPRISES (PTY) LTD**

with registration number: 2013/042088/07

(Herein represented by Mr Keotshepile Modibedi Tladi in his capacity as  
Financial Director

(Hereinafter referred to as "the Service Provider")

S.W.  
Vernon Petersen

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**PREAMBLE:**

- A. The Municipality has appointed the Service Provider as a specialist GIPTN facilities management and security guarding service provider, for a period of three (3) years, from the Services Commencement Date, defined below, under Bid Number PS 034 of 2021.
  
- B. The Service Provider has accepted such appointment and shall render the Services to the Municipality on the terms and conditions as set out in this Agreement, which includes the Tender Documents as defined below.

**WHEREBY THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.1.1. **"Agreement"** shall mean this Service Level Agreement and includes the Annexures hereto, and **"this Agreement"** shall have a corresponding meaning.

1.1.2. **"Best Industry Practice"** means the exercise of that degree, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in facilities management, including security services (holding himself or herself as being an expert in providing the Services) seeking in good faith to fully comply with his contractual obligations;

1.1.3. **"Business Day"** means any day other than a Saturday, Sunday or public holiday designated as such in the Public

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Holidays Act, No. 36 of 1994 or proclaimed by the President as a public holiday in terms of this Act.

- 1.1.4 **"Calendar Day"** means any day including a Saturday, Sunday and a public holiday and any period of calendar days must be calculated by excluding the first day of the period and including the last day of the period, unless the last day falls on a Saturday, Sunday or a public holiday, in which case the last day will be deemed to be the first Business Day following upon that day.
- 1.1.5. **"Calendar Month"** means the period of time that begins on the first (1<sup>st</sup>) Calendar Day of any given month and shall consist of the number of Calendar Days in such month, ending on the last Calendar Day of the same month.
- 1.1.6. **"Change of Control"** means:
- 1.1.6.1. If a third party acquires ownership of more than 50% of the issued share capital of the Service Provider which confers, in the aggregate, more than 50% of the total voting rights conferred by all the shares in that issued share capital at the time of the acquisition; or
  - 1.1.6.2. If a third party acquires the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of the Service Provider; or
  - 1.1.6.3. If a third party acquires the sole right to control a majority of the voting rights exercisable at any general meeting of the Service Provider, whether pursuant to an agreement with other members of the Service Provider or otherwise; or

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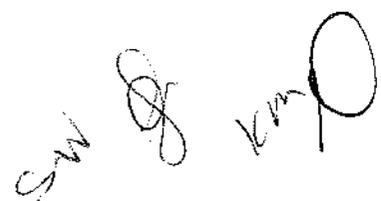
- 1.1.6.4. If the Service Provider sells, transfers or otherwise disposes of all or a greater part of its assets or business; or
- 1.1.6.5. If the Service Provider is placed under any final order of winding-up, business rescue supervision, judicial management or enters into any voluntary winding-up; or
- 1.1.6.6. If an event contemplated in 1.1.6.1 to 1.1.6.5 occurs in relation to the holding company of the Service Provider.

1.1.7. **"Confidential Information"** shall mean –

- 1.1.7.1. any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all Intellectual Property Rights, all trade secrets, all agreements (whether in writing or not) which exists at the time of revealing the content thereof to the Service Provider, the content of all possible future agreements which may be entered into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the Municipality, government in any other sphere, or any government institution or organ of state;
- 1.1.7.2. any information of whatever nature, which has been or may be obtained by the Service Provider, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs,

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- sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;
- 1.1.7.3. analyses, concepts, compilations, studies and other material prepared by or in possession or control of the Service Provider which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 1.1.7.4. all information which a third party has in terms of any agreement made available to the Municipality and which has become known to the Service Provider in the course of rendering the Services; and
- 1.1.7.5. any dispute between the Parties resulting from this Agreement.
- 1.1.8. **"Contracting Authority"** is the Municipality, supported by the Western Cape Provincial Government via its Department of Transport and Public Works ("**Province**").
- 1.1.9. **"Data Subject"** means the person to whom Personal Information relates.
- 1.1.10. **"Date of Appointment"** means the Signature Date.
- 1.1.11. **"Establishment Period"** means the period calculated from the Date of Appointment to the Services Commencement Date, which period shall not be longer than six (6) weeks, wherein the Service Provider shall be required to undertake those actions it requires to enable the Service Provider to provide the Services from the Services Commencement Date.

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- 1.1.12. **"Fees"** means the prices or rates charged by the Service Provider for Services performed under the Agreement in accordance with the prices or rates quoted by the Service Provider in his/her Tender Documents, specifically the bills of quantities in the pricing schedule.
- 1.1.13. **"Force Majeure"** means an event beyond the control of a Party and not involving the Party's fault or negligence and not foreseeable and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport and interruption in product supply, caused by the supplier, flood, storm, fire, epidemics, quarantine restrictions and freight embargoes, or without limitation *eiusdem generis*, any other circumstances beyond the reasonable control of the party claiming *force majeure*.
- 1.1.14. **"GCC"** means the National Treasury General Conditions of Contract.
- 1.1.15. **"GIPTN"** means the George Integrated Public Transport Network implemented by the Municipality, in partnership with the Province.
- 1.1.16. **"GIPTN Information"** means information generated, collected or received in the undertaking of the Services and comprises sufficient content, context and structure to provide proof or evidence of that activity, but does not include the Confidential Information of the Service Provider.

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- 1.1.17. **"GIPTN Manager"** means the person appointed by the Contracting Authority to oversee the implementation of the responsibilities of the Contracting Authority in relation to the GIPTN.
- 1.1.18. **"Information Regulator"** means the juristic person established in terms of the POPI Act.
- 1.1.19. **"Intellectual Property"** means all computer programmes, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, worked protected under the Copyright Act, No. 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and idea of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentations, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indica of origin, regardless of whether Intellectual Property Rights actually exist in any such items, and any other tangible or intangible items in which Intellectual Property Rights may exist, and includes all Intellectual Property Rights in any of the foregoing set out in this clause;
- 1.1.20. **"Intellectual Property Rights"** means all intellectual property rights of whatever nature, including (i) all patents and other patent rights, including divisional and continuation patents, utility models; (ii) rights in and to inventions, whether

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patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs; (vi) rights in internet domains, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and Confidential Information, in each case whether or not registered and including applications for registration, extension, renewal and re-issuance, continuations, continuations in part or per division of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

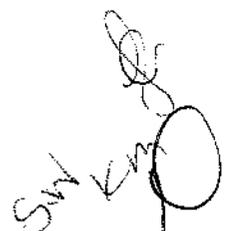
1.1.21. **Letter of Appointment**" means the letter addressed from the Municipality to the Service Provider titled "*Tender: PS034/2021 – Tender for the Appointment of a Specialist GIPTN Facilities Management and Security Guarding Service Provider, for a Period of Three Years, from Date of Appointment*" dated 28 March 2022.

1.1.22. **"Loss"** means all losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims and all related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, interest and penalties) and "Losses" shall have a corresponding meaning.

1.1.23. **"OHAS Act"** means the Occupational Health and Safety Act, 85 of 1993 as amended or substituted.

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- 1.1.24. **“Operator”** means a person who processes Personal Information for the Municipality in terms of a contract or mandate, without coming under the direct authority of the Municipality.
- 1.1.25. **“Parties”** means the Service Provider and the Municipality and **“Party”** means either one of them as the context may indicate.
- 1.1.26. **“Personal Information”** means personal information relating to an identifiable, living natural person, and where it is applicable, an identifiable, existing juristic person including, but not limited to:
- a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - b) information relating to the education or the medical, financial, criminal or employment history of the person;
  - c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - d) the biometric information of the person;
  - e) the personal opinions, views or preferences of the person;
  - f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

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- g) the views or opinions of another Data Subject about the person; and
  - h) the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person.
- 1.1.27. **"Personnel"** means the staff, whether employed on a full-time or part-time basis, of the Service Provider and/or a subcontractor, where such subcontractor is appointed by the Service Provider to assist in the provision of the Services.
- 1.1.28. **"POPI Act"** means the Protection of Personal Information Act, No. 4 of 2013 (including any regulation or code made thereunder).
- 1.1.29. **"Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including—
- a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
  - b) dissemination by means of transmission, distribution or making available in any other form; or
  - c) merging, linking, as well as restriction, degradation, erasure or destruction of information.
- 1.1.30. **"Responsible Party"** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing Personal Information.
- 1.1.31. **"SCC"** means the Special Conditions of Contract.

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- 1.1.32. **"Services"** means the provision of the facilities management and security guarding services, which includes that specified in the Scope of Work of the Tender Documents to the exclusion of that which is to be performed or provided during the Establishment Period, whether it be a once-off during the Establishment Period or continued thereafter. These services shall mainly be undertaken in the City of George but with services throughout the Municipality.
- 1.1.33. **"Services Commencement Date"** means the date after the Establishment Period on which the Service Provider is required to commence providing the Services from, which shall be 1 June 2022 or on another date as agreed to by the Parties in writing.
- 1.1.34. **"Signature Date"** means the date on which this Agreement is signed by the Party signing last in time.
- 1.1.35. **"Tender Documents"** means, collectively, the original tender document issued by the Municipality under Bid Number PS 034 of 2021, including addendums and the Service Provider's response thereto, the pricing schedule, and the Letter of Appointment, all of which are hereto annexed marked "Annexure A".
- 1.2. Clause headings are not to be referred to in interpreting this Agreement.
- 1.3. Unless the context indicates otherwise, a reference to a person includes natural persons, juristic persons, partnerships, and trusts.
- 1.4. An expression which denotes –
- 1.4.1. Any gender includes the other genders; and
- 1.4.2. The singular includes the plural and *vice versa*.

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- 1.5. Any reference in this Agreement to "days" shall be construed as Calendar Days unless expressly qualified by the word "Business".
- 1.6. Words and expressions defined in this Agreement shall bear the same meanings when used in any schedules or other annexures to this Agreement unless separately defined therein.
- 1.7. When a number of days is specified in this Agreement, it shall be calculated by excluding the first and including the last day, unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.8. When the last day for performance of an obligation falls on a day that is not a Business Day, the obligation shall be performed on the next succeeding Business Day.
- 1.9. A reference to any legislation includes any statutory amendment or substitution thereof.
- 1.10. If any provision in clause 1 confers rights or imposes obligations on any Party, it shall be implemented as if it were a substantive provision in the body of the Agreement, notwithstanding that it is contained in clause 1 of this Agreement.

## **2. APPLICATION OF GCC AND SCC**

- 2.1. Any matter not included in this Agreement shall be governed by the applicable terms of the Tender Documents, specifically the GCC and SCC. In the event of any inconsistencies between this Agreement, including any schedules and annexures, and the GCC and SCC, then the provisions of this Agreement shall prevail and where the Agreement is silent, then the provisions of the SCC and/or GCC shall apply.

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2.2. For interpretation purposes of this Agreement and the GCC and SCC, attached as part of the Tender Documents, -

2.2.1. The terms "Purchaser" and "Supplier", as it appears in the GCC and SCC, shall refer respectively to the "Municipality" and the "Service Provider" as defined in this Agreement; and

2.2.2. The term "goods" in the GCC and/or SCC includes Services as referred to in this Agreement.

### 3. DURATION

The Services shall be rendered for a period of three (3) years, commencing on the Services Commencement Date, subject to earlier termination in terms of Clause 27 hereof ("**the Term**").

### 4. THE SERVICES

4.1 The Service Provider shall render the Services and the services required during the Establishment Period to the Municipality in accordance with the Tender Documents, annexed hereto as Annexure A, and on the terms and conditions set out in this Agreement.

4.2 In addition to the provisions of clause 4.1 and the specific security personnel requirements specified in Annexure A to the Agreement, the following shall also be required:

4.2.1 The security official who witnesses or becomes aware of any criminal activity, or potential criminal activity and/or is responsible for apprehending any person for any criminal activity shall also be required to assist the Municipality with the reporting of such criminal activity to the South African Police Services, including but not limited to providing statements where required or requested.

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## 5. OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1 The Service Provider agrees, subject to the terms and conditions contained herein, to:
- 5.1.1 Provide and perform the Services, which may be varied, modified or extended from time to time by the Parties in accordance with the terms of this Agreement and the Tender Documents;
  - 5.1.2 Assist with ad hoc requests for Services;
  - 5.1.3 Comply with the reporting and recordkeeping requirements of this Agreement and the Annexure A to the Agreement, being the Tender Documents;
  - 5.1.4 Be responsible for all minute-taking and agenda preparation activities related to regular report status meetings between the Service Provider and the Municipality concerning the Services, subject to the requirements of clause 6.5 below;
  - 5.1.5 Provide project management and supervision services in relation to the delivery of the Services to be provided;
  - 5.1.6 Confirm that the Services shall be carried out with reasonable care and skill and performed in a professional, impartial, timely, workmanlike and cost-effective manner using only qualified Personnel sufficiently familiar with the functions and operations of the Service Provider;
  - 5.1.7 Consult with the Municipality regarding the allocation of Personnel, provided that the Service Provider reserves the right to determine the allocation of its Personnel rendering the said Services after such consultation;
  - 5.1.8 Undertake that its Personnel who shall be engaged in connection with the provision of the Services shall have the requisite skill and experience for the task/s allocated to such Personnel. If, after consultation with the Municipality, it is determined that the Service Provider's existing Personnel do not have the requisite skill and experience required for the effective implementation of one or more tasks or projects, or

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should the Municipality request additional Personnel, the Service Provider shall employ suitable candidates and the allocation of costs associated with the employment of such candidates shall be agreed in writing between the Parties from time to time; and

- 5.1.9 The Municipality, following consultation with the Service Provider, shall be entitled to request the Service Provider to remove any Personnel not having the requisite skills or experience or who fail to perform their tasks and responsibilities in accordance with this Agreement. Any dismissal or replacement of such Personnel by the Service Provider must be undertaken by the Service Provider in a substantively and procedurally fair manner in accordance with the provisions of the Labour Relations Act No. 66 of 1995 and any other applicable law. The Service Provider will not unreasonably deny this request by the Municipality.

## 6. OBLIGATIONS OF THE MUNICIPALITY

- 6.1 The Municipality shall be responsible for all its activities referred to in this Agreement and the Tender Documents.
- 6.2 The Municipality hereby undertakes to provide such information as the Service Provider may reasonably require to comply with its obligations in terms of this Agreement.
- 6.3 The Municipality will ensure that their Personnel are available to provide such assistance as the Service Provider may reasonably require and that the Service Provider is given reasonable access to senior management, as well as any members of the Municipality's Personnel to enable the Service Provider to provide the Services.

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6.4 The Municipality will pay the Service Provider the Fees in accordance with the requirements of this Agreement from the Services Commencement Date.

6.5 The Municipality shall check the minutes prepared and submitted by the Service Provider to the Municipality in terms of clause 5.1.4 and be certified as correct or any amendments be made within five (5) Business Days after date of receipt, failing which the contents of the minutes will be accepted as correct by both Parties.

## 7. PERFORMANCE SECURITY

7.1 The Service Provider hereby acknowledges that it is required to provide performance security as required by and in accordance with the terms of the Tender Documents, specifically the GCC and SCC, attached hereto as Annexure A ("**Performance Security**") and in addition agrees that the Municipality may have recourse to the Performance Security, whether before or after the expiry of the Term of the Agreement.

## 8. PAYMENT

8.1 The Service Provider will agree on the contents and format of assignments and budgets with the Municipality prior to the commencement of any work activities comprising the Services.

8.2 Budgets for all ad-hoc assignments will be agreed in writing between the Service Provider and the Municipality prior to commencing with any work activities comprising the Services.

8.3 The Service Provider shall furnish the Municipality with a tax invoice by the third (3rd) Business Day after the end of each Calendar Month accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in this Agreement.

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- 8.4 The Municipality shall pay the Service Provider the Fees, in accordance with the prices charged in the bill of quantities in the pricing schedule in Annexure A to this Agreement, being the Tender Documents, within 30 (thirty) days of receipt of a tax invoice, provided that the Services to which the tax invoice relates have been completed to the satisfaction of the Municipality.
- 8.5 The following details must be reflected on the tax invoice forwarded to the Municipality by the Service Provider:
- 8.5.1 Name, address and VAT registration number of the Service Provider;
  - 8.5.2 Name and address of Municipality and the Municipality's VAT registration number;
  - 8.5.3 Serial number and date of issue of the invoice;
  - 8.5.4 Accurate description of the goods and/or the Services;
  - 8.5.5 Quantity or volume of goods and/or the Services supplied;
  - 8.5.6 Value of the supply, the amount of tax charged and the consideration of the supply (value and the tax);
  - 8.5.7 The claimed escalation showing how it was calculated; and
  - 8.5.8 VAT payable.
- 8.6 The Municipality will verify the correctness of a tax invoice, and notify the Service Provider of any possible discrepancies within 10 (ten) Business Days of receipt of the invoice.
- 8.7 If the Municipality identifies any material discrepancies, the tax invoice will be referred back to the Service Provider, and the amount due will be payable within 30 (thirty) days from receipt of a correct invoice, provided that the Services to which the relevant tax invoice relates have been achieved to the satisfaction of the Municipality.
- 8.8 In the event of an error, unverified or uncertified item on a monthly tax invoice submitted by the Service Provider to the Municipality, the Municipality shall be permitted to alter, certify or verify such item and

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undertake or affect any consequential amendments relating to this item(s) on the monthly tax invoice concerned to future monthly tax invoice(s) submitted by the Service Provider to the Municipality.

- 8.9 Payments will be transferred by the Municipality to the Service Provider through an Electronic Funds Transfer and shall be made into a bank account in South Africa, as identified in writing by the Service Provider to the Municipality in the Tender Documents.
- 8.10 The Service Provider will supply the Municipality with a monthly statement detailing:
- 8.10.1 Funds received by the Service Provider; and
  - 8.10.2 Funds regarded as being outstanding by the Municipality.
- 8.11 The above statement will be submitted to the Municipality within five (5) Business Days after the end of the Calendar Month.
- 8.12 Increases to the Fees accepted by the Municipality in Annexure A to the Agreement being the Tender Documents and charged by the Service Provider, as well as penalties implemented by the Municipality in terms of the Scope of Works contained in Annexure A to this Agreement, being the Tender Documents, shall be implemented on an annual basis commencing on 1 July 2023 at the rate of the Consumer Price Index ("CPI") annual change as most recently published in the Government Gazette by the Statistics South Africa.

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## 9. GOVERNANCE

- 9.1 A team will be established (“**Project Team**”) within thirty (30) days after the Signature Date of this Agreement for the purposes of controlling, monitoring and evaluation of the Services.
- 9.2 Each Party shall appoint at least two (2) representatives but no more than four (4) as members of the Project Team, which will include representatives that hold management roles within the Service Provider and the Municipality, respectively, and shall have the required authority to act on behalf of the Parties in consultation with the Municipality.
- 9.3 All reports and minutes of all meetings of the Project Team will be in writing and copies will be submitted by the Service Provider to the Municipality, within seven (7) Business Days after the relevant meeting.

## 10. WARRANTIES AND REPRESENTATIONS

### 10.1 Services

- 10.1.1 The Service Provider warrants and represents to the Municipality that the Services will be rendered in accordance with and conform in all material respects with the requirements and provisions of this Agreement and the Tender Documents. In respect of unsatisfactory performance, the same shall be remedied by the Service Provider at its own cost provided the unsatisfactory performance is due to the fault of the Service Provider.

### 10.2 New parts

- 10.2.1 The Service Provider warrants that any goods supplied under the Agreement as part of the Services are new, unused, of the most recent or current models, and that they incorporate all

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recent improvements in design and materials unless provided otherwise in the Agreement. The Service Provider further warrants that all goods supplied under this Agreement shall have no defect arising from design, materials, or workmanship (except when the design and/or material is required by the Municipality's specifications, unless reviewed and signed off by the Service Provider), or from any act or omission of the Service Provider, that may develop under normal use of the supplied goods in the conditions prevailing in the area where the goods will be used to provide the required services.

- 10.2.2 This warranty shall remain valid for 12 (twelve) months after the goods, or any portion thereof, as the case may be, or Services have been installed and accepted or for 18 (eighteen) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 10.2.3 The Municipality shall notify the Service Provider promptly, in writing, of any claims arising under this warranty.
- 10.2.4 Upon receipt of such notice, the Service Provider shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the Municipality.
- 10.2.5 If the Service Provider, having been notified, fails to remedy the defect(s) within the period specified in clause 10.2.4, then the Municipality may proceed to take such remedial action as may be necessary, at the Service Provider's risk and expense and without prejudice to any other rights which the Municipality may have against the Service Provider under this Agreement.

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### 10.3 Work standards

- 10.3.1 The Service Provider represents and warrants that it shall perform its obligations under this Agreement with promptness and in accordance with the standards agreed upon in this Agreement, including the Tender Documents, and at the very least in accordance with Best Industry Practice.
- 10.3.2 Without limiting the generality of the foregoing, the Service Provider represents and warrants that it (and including, but not limited to, its employees, agents, representatives and approved subcontractors) shall have the necessary skills, experience, expertise, capacity and knowledge reasonably required to perform the Services in accordance with the requirements set out in this Agreement.

### 10.4 Financial considerations

- 10.4.1 The Service Provider represents and warrants that it shall render the Services under this Agreement in a cost effective manner.

### 10.5 No actual, pending or threatened litigation

- 10.5.1 The Service Provider warrants and represents that there is no actual, pending or threatened litigation against or affecting the Service Provider before any court or administrative body or arbitral tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Agreement.

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## 10.6 Protecting the Municipality's Reputation

10.6.1 The Service Provider represents and warrants that it shall not do, nor omit to do anything which would adversely impact on, or prejudice the Municipality's reputation in any way whatsoever.

## 10.7 Non-Infringement

10.7.1 The Service Provider represents and warrants that it shall perform its responsibilities under the Agreement in a manner that does not infringe any Intellectual Property or other rights of any third party.

10.7.2 Without derogating from clause 10.7.1 above, the Service Provider further warrants and represents that to the extent that there is any such infringement, the Service Provider will negotiate a licence or other agreement with such third party so that there is no longer any infringement.

## 10.8 Authorisation

10.8.1 The Service Provider represents and warrants that:

10.8.1.1 It has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;

10.8.1.2 It has taken all necessary action to authorise the execution, delivery and performance on this Agreement in accordance with the provisions of its governing documents or as applicable;

10.8.1.3 Except as expressly disclosed to the Municipality in the Tender Documents, it is not entering into this Agreement as the trustee of a trust or on behalf of any person; and

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- 10.10.3.1 Throughout the Term and on an ongoing basis, use reasonable endeavours to retain and/or improve its BBBEE Rating;
  - 10.10.3.2 Advise the Municipality in writing within a period of one (1) Calendar Month if its BBBEE Rating changes (not occasioned by changes in the applicable law);
  - 10.10.3.3 Within 30 (thirty) Calendar Days of each anniversary of the Date of Appointment or within 30 (thirty) calendar Days of receipt of its new BBBEE Rating certificate following each anniversary of the Date of Appointment, whichever shall occur last, the Service Provider shall provide to the Municipality a certified copy of such verification certificate confirming its BBBEE Rating issued by an accredited verification agency; and
  - 10.10.3.4 Save for instances due to changes in the current BEE Codes or the applicable law, in the event of an adverse change to its BBBEE Rating, advise the Municipality in writing within a period of three (3) Calendar Months of receipt of the new BBBEE Rating certificate, what steps have been and/or will be taken by the Service Provider to restore its BBBEE status to the required level of the BBBEE Rating or the equivalent BBBEE Rating under the new codes (as the case may be).
- 10.10.4 If the Service Provider fails to restore its BBBEE status to the level of the BBBEE Rating or the equivalent BBBEE Rating under the new codes (as the case may be) within six (6) Calendar Months after the notice contemplated in clause 10.10.3 above, then the Service Provider shall have a further period of three (3) Calendar Months to restore its BBBEE status provided that the Service Provider can demonstrate the

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steps taken in the prior period of the aforesaid six (6) Calendar Months to restore its BBBEE status and the steps still required to attain such compliance. If the Service Provider fails to restore its BBBEE status as aforesaid within the six (6) Calendar Months or (if applicable) the aforesaid three (3) Calendar Months, then the Municipality shall have the right to terminate the Agreement on the basis of such failure, provided that such right shall not be exercisable where the changes to the BBBEE status were solely occasioned by changes in the applicable law.

- 10.10.5 The Service Provider undertakes that it shall annually deliver to the Municipality its original and valid BBBEE Certificates for the then current year.

#### 10.11 Tax Compliance

- 10.11.1 The Service Provider warrants and represents that at the Date of Appointment it is in full compliance with, and throughout the Term shall remain in full compliance with, all applicable laws relating to taxation in South Africa. Copies of the Service Provider's Tax Compliance Status, valid as on the Date of Appointment, to be submitted.

#### 10.12 Occupational Injuries and Diseases Act 13 of 1993

- 10.12.1 The Service Provider warrants and represents that all its employees (including employees of any of its subcontractors that may be appointed) are covered in terms of the Compensation for Occupational Injuries and Diseases Act 13 of 1993 and that such cover shall remain in force for the duration of this Agreement.

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10.12.2 The Municipality may from time to time request the Service Provider to submit documentary proof of the Service Provider's (and its subcontractor's) registration and "good standing" with the Compensation Fund.

#### 10.13 OHAS Act

10.13.1 The Service Provider warrants and represents that it shall at all times be compliant with the provisions of the OHAS Act for the duration of the Agreement.

#### 10.14 Pass-Through Warranties

10.14.1 Without limiting the generality of this other warranty obligation under this Agreement, with respect to elements or components of the Services purchased or licenced by the Service Provider from third parties, the Service Provider shall pass through to the Municipality any warranty provided by such third party, except to the extent prohibited by the terms of such warranty. The Service Provider shall not take, and shall ensure that none of its Personnel takes any action or fails to take any action that may result in the cancellation or diminishment of any such warranties.

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## 10.15 Tender Documents

10.15.1 Without prejudice to any specific warranty furnished above, the Service Provider warrants and represents in favour of the Municipality that –

10.15.1.1 It has complied with the terms of any statement of compliance provided by the Service Provider in the Tender Documents;

10.15.1.2 All of the information, including representations and statements, communicated in writing to the Municipality, or its authorised persons or advisers, by or on behalf of the Service Provider in relation to the bid in the Tender Documents, was, at the time of communication to the Municipality and the Date of Appointment, in all material respects accurate, complete and not misleading;

## 10.16 General

10.16.1 Without prejudice to any specific warranty furnished above, the Service Provider warrants and represents in favour of the Municipality that it –

10.16.1.1 Will perform the Services diligently, in a timely manner, and in accordance with any applicable time schedules set forth in the Agreement or relating to the Services. The Service Provider will promptly notify the Municipality upon becoming aware of any circumstances that may reasonably be expected to jeopardise the performance or timely performance of any part of the Services;

10.16.1.2 Will provide the agreed numbers of personnel to meet its Service obligations, and that the personnel that the Service Provider assigns to

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perform the Services will be adequately trained and qualified to perform the Services;

10.16.1.3 Is and shall remain compliant with all statutory requirements specified in the Tender Documents, being Annexure A to the Agreement and that its Personnel are legally employed with no criminal record; and

10.16.1.4 Is and shall remain compliant with all registration and licensing requirements specified in the Tender Documents, being Annexure A to the Agreement and that neither the security provider company, whether it be the Service Provider or a subcontractor, nor its owners or directors shall be under investigation which would preclude or prejudice its participation in the provision of this Service.

#### 10.17 Further Acknowledgements

10.17.1 This Agreement constitutes legal, valid and binding obligations between the Parties and is enforceable in accordance with its provisions.

10.17.2 The Service Provider remains bound by any warranties or terms of any statement of compliance provided by the Service Provider and contained in the Tender Documents.

10.17.3 The Parties acknowledge that, before entering into this Agreement, it made all enquiries it wanted to make in relation to the Services and its obligations under this Agreement and that in entering into this Agreement, it did not rely on any representation, warranty, guarantee, assurance, undertaking or other statement made by or on behalf of the other Party, except those expressed in writing and contained in this Agreement.

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- 10.17.4 A breach by the Service Provider of any warranty, representation or other provision of this clause 10 or of any other warranty or representation contained elsewhere in this Agreement shall confer on the Municipality the right, in its sole and absolute discretion, to utilise any remedy it may have in law or under this Agreement for the enforcement of the Municipality's rights.
- 10.17.5 The Municipality has entered into this Agreement, inter alia, on the strength of the warranties and representations outlined herein and on the basis that these warranties and representations will be complete, accurate, correct and not misleading and shall be repeated on each day as at the Date of Appointment and throughout the Term of this Agreement.
- 10.17.6 Nothing contained in this Agreement shall relieve the Service Provider from its obligation to make those disclosures which the Service Provider is in law obliged to make but which are not recorded herein.
- 10.17.7 The Service Provider shall be obliged to notify the Municipality as soon as possible if it becomes aware of a fact, circumstance or event which causes, or may cause, any warranty or representation to become untrue, inaccurate, incomplete or misleading in any material respect.
- 10.17.8 Each of the warranties and representations given by the Service Provider in terms of this clause 10, shall be a separate warranty and will in no way be limited or restricted by interference from the terms of any other warranty or representation of by any other words in this Agreement.
- 10.17.9 Any warranty or representation given by the Service Provider in terms of this clause 10 may not be delegated or transferred without the prior written consent of the Municipality.

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## 11. INDEPENDENT CONTRACTOR

11.1 The Service Provider is appointed as an independent contractor, and not as an employee of the Municipality, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the Parties.

11.2 This Agreement replaces any other previous verbal or written agreement entered between the Parties.

## 12. NO AGENCY

No provision of this Agreement shall be construed as constituting an agency, partnership, or joint venture between the Parties, and neither Party shall have any express or implied authority to bind the other Party in any way or to represent the other Party unless specifically provided to the contrary in this Agreement. It is specifically recorded that the Service Provider contracts as an independent contractor and not as an employee or agent of the Municipality and does not have the authority to bind the Municipality to any other party.

## 13. SUBCONTRACTORS

13.1 The Service Provider hereby acknowledges that it is bound by the provisions of the Tender Documents, specifically the GCC and SCC, in relation to subcontracting and in addition thereto agrees to the following, which shall be read in conjunction with the provisions of Annexure A to the Agreement:

13.1.1 It is recorded that the primary responsibility for the rendering of Services, including those services performed during the Establishment Period, in terms of this Agreement vests with the Service Provider and no sub-contractors shall be deemed to have given any warranties or made any representations in relation thereto nor shall they be liable for the obligations of

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- the Service Provider, save as expressly set out herein;
- 13.1.2 It is hereby recorded that the Service Provider remains entirely responsible and accountable to the Municipality for compliance with the obligations of the Service Provider in terms of this Agreement and for the quality of the Services, including those services performed during the Establishment Period, rendered to the Municipality by the Service Provider, in terms of this Agreement, including that performed by any approved subcontractors of the Service Provider; and
- 13.1.3 In addition to the requirements of the Tender Documents, in the event of a subcontractor included in the Tender Documents not being appointed or appointed but thereafter their services being terminated for whatever reason, the appointment of another such subcontractor shall be subject to the written approval by the George Municipality prior to appointment of such subcontractor.

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**14. RECRUITMENT OF PERSONNEL**

14.1 The provisions of Annexure A to the Agreement, being the Tender Documents, in relation to the recruitment of Personnel shall be binding between the Parties and in addition the Service Provider agrees to the following:

14.1.1 That it shall keep in its employ at all times those key personnel listed in Schedule 1 (Key Personnel) to this Agreement ("**Key Personnel**");

14.1.2 In the event of any changes to the Key Personnel, written notification thereof and supporting documentation evidencing the skills and qualifications of the candidate or candidates as well as an updated organogram shall be submitted to the Municipality prior to appointment. The Municipality shall assess such candidates to determine compatibility thereof with the GIPTN. The Municipality shall be permitted to request any further information or documentation to undertake its assessment.

14.1.3 Where the Municipality determines that the proposed candidate or candidates are not compatible with the GIPTN, the Service Provider shall be required to provide an alternative candidate or candidates for assessment by the Municipality.

**15. INSURANCE**

The Service Provider shall affect and maintain the insurance as required in terms of the Tender Documents, being Annexure A to this Agreement.

**16. CONTRACT PARTICIPATION PERFORMANCE BONUS AND PENALTIES**

The provisions of the SCC in relation to Contract Participation Performance bonus and penalties shall be applicable to the Parties.

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## 17. PERFORMANCE PENALTIES

- 17.1 The Service Provider hereby acknowledges that penalties will be imposed by the Municipality on the Service Provider in terms of and in accordance with Annexure A of this Agreement, being the Tender Documents, unless a formalised list of penalties is agreed to and signed by both Parties.
- 17.2 Penalty notices will be issued by the GIPTN Manager or his authorised representative for each penalty, in writing or as a notification issued by the electronic monitoring system of the GIPTN to the Authorised Representative of the Service Provider, appointed in terms of clause 30.6 of this Agreement.
- 17.3 The Service Provider may request a meeting on a date and time suitable to the Municipality to verify any penalties imposed during a preceding week.
- 17.3.1 Only those penalties for which notices have been issued to the Service Provider will be verified at this meeting.
- 17.3.2 The Service Provider may contest penalty notices at this meeting by submitting a written notice to the GIPTN Manager or his authorised representative, to that effect, stating the reason that the penalty is being contested and requesting a review of the penalty.
- 17.3.3 The decision to grant the penalty will be at the sole discretion of the GIPTN Manager or his authorised representative.
- 17.3.4 In the event that the Service Provider is not satisfied with the outcome, the Service Provider shall have recourse to the dispute resolution procedure provisions contained in clause 26 of this Agreement.

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- 17.4 Once penalties have been finalised, the following invoicing procedure shall thereafter apply:
- 17.4.1 The Service Provider shall incorporate the penalties into the tax invoice furnished in terms of clause 8 of this Agreement, based on notices received;
  - 17.4.2 The Municipality shall verify the penalties incorporated into the invoice;
  - 17.4.3 Where a change to the penalties included in the invoice is required, the Municipality shall communicate in writing such change to the Service Provider within ten (10) Business Days of receipt of the invoice, including reasons; and
  - 17.4.4 The resultant additional or reduced penalties shall be incorporated into the next month's invoice.
- 17.5 The imposition of any penalties shall be without prejudice to any of the Municipality's other remedies under this Agreement or in law.

**18. DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE OF THE SERVICES**

The Parties hereby acknowledge that the provisions of Annexure A, specifically the GCC and SCC, in relation to delays in the Service Provider's performance of the Services shall be applicable to the Parties.

**19. LIMITATION OF LIABILITY**

The provisions of Annexure A to the Agreement, being the Tender Documents, specifically the GCC, shall be applicable as between the Parties.

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**20. INJURY OR DAMAGE TO PERSON OR PROPERTY**

In addition to any provisions in Annexure A to the Agreement concerning indemnification, the Service Provider shall indemnify and keep indemnified the Municipality against all Losses and against all claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the Service Provider or Service Provider's employees, directors, service providers or agents providing the Services and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever, in respect thereof or in relation thereto.

**21. CONFIDENTIAL INFORMATION**

21.1 The Service Provider shall not, during the currency of this Agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Municipality, government in any other sphere, or any government institution or organ of state.

21.2 The Service Provider shall –

21.2.1 use the Confidential Information only for rendering the Services, including those services performed during the Establishment Period;

21.2.2 treat and safeguard the Confidential Information as private and confidential during the currency of this Agreement and at any time thereafter;

21.2.3 not without the prior written consent of the Municipality communicate or disclose any part of such Confidential Information to any person except –

21.2.3.1 to those employees, consultants and agents on a need to know basis and who are directly involved in connection with the provision of the Services,

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including those services performed during the Establishment Period;

21.2.3.2 their auditors, professional advisors and any persons or bodies having the legal right or duty to or knowledge of the Confidential Information;

21.2.4 ensure that all persons are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Service Provider and the Municipality; and

21.2.5 ensure proper and secure storage of all Confidential Information.

21.3 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are to be provided to the Municipality or which come into the Service Provider's possession during the currency of this Agreement, are deemed to be the property of the Municipality and shall be surrendered to the Municipality on demand, and in the event of the expiry or termination of this Agreement, howsoever caused, the Service Provider will not retain any copies thereof or extracts therefrom without obtaining the prior written permission of the Municipality.

21.4 The Service Provider –

21.4.1 acknowledges that he/she has carefully considered the provisions of this clause;

21.4.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Municipality and the Government of the Republic of South Africa and that if he/she should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on the Service Provider; and

21.4.3 acknowledges that he/she has entered into this Agreement freely and voluntarily and that no circumstances exist and/or

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existed for him/her alleging, either now or at any future time, that he/she was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the Municipality in agreeing thereto.

21.5 The provisions of this clause shall not apply to all or any information which is:

21.5.1 Publicly available without breach of this Agreement; or

21.5.2 Required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.

21.6 The Service Provider shall maintain the confidentiality recorded in clause 21.1 for two (2) years after expiry or termination of this Agreement, howsoever caused, subject to law.

## 22. PROTECTION OF PERSONAL INFORMATION

22.1 The Service Provider must in relation to the processing of Personal Information for or on behalf of the Municipality comply with:

22.1.1 The requirements of the POPI Act applicable to the Municipality as a Responsible Party, with due alteration;

22.1.2 The requirements of the POPI Act applicable to the Service Provider as an Operator;

22.1.3 Any applicable notice of the Information Regulator under the POPI Act; and

22.1.4 Any directive given by the Municipality.

22.2 The Service Provider acknowledges that it is familiar with the requirements of the POPI Act governing Personal Information that are applicable to the Municipality as a Responsible Party and to the Service Provider as an Operator.

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- 22.3 The Service Provider must only Process Personal Information on behalf of the Municipality with the knowledge or written authorisation of the Municipality. Failure to do so will constitute a material breach of this Agreement.
- 22.4 The Service Provider must only collect Personal Information that is necessary for the performance of its obligations or in the course of exercising its rights under this Agreement. This must be done in a lawful and reasonable manner that does not infringe on the privacy of a Data Subject.
- 22.5 The Service Provider must only use the Personal Information for the performance of its obligations or in the course of exercising its rights under this Agreement.
- 22.6 The Service Provider shall establish and maintain security measures to safeguard Personal Information being processed on behalf of the Municipality in accordance with the requirements of the POPI Act and the Municipality.
- 22.7 The Service Provider must notify the Municipality immediately in the event that there are reasonable grounds to believe or suspect that Personal Information has been accessed or acquired by or disclosed to an unauthorised person or where the Personal Information has been lost, damaged or destroyed without authorisation.

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**23. REPORTING AND INFORMATION**

- 23.1 All GIPTN Information is the property of the Municipality and must be made available to the Municipality, as reasonably required by the Municipality.
- 23.2 The Service Provider shall store all GIPTN Information for a period of at least three (3) years, or for a period permitted in terms of applicable law, in a form and manner accessible to the Municipality and its service providers.
- 23.3 The Service Provider must ensure compliance with the provisions of the OHAS Act and any other applicable law relating to health and safety with regards to any maintenance work performed by the Service Provider, or any subcontractor, under this Agreement.
- 23.4 The Service Provider must immediately inform the Municipality, and confirm in writing:
- 23.4.1 Any legal action instituted against it or any of its directors or executive managers; and/or
  - 23.4.2 Any changes to the Service Provider's shareholders, directors and executive managers.
- 23.5 The Service Provider must comply with all reporting and recordkeeping obligations specified in Annexure A to this Agreement, being the Tender Documents.

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**24. CHANGE OF CONTROL**

- 24.1 In the event of a Change of Control of the Service Provider, the Municipality's prior written consent needs to be obtained by the Service Provider prior to the Change of Control occurring, which consent shall not be unreasonably withheld by the Municipality.
- 24.2 Without derogating from the foregoing, the Service Provider shall upon written demand by the Municipality, ensure that any party acquiring control, agrees in writing to be bound by all the provisions of this Agreement, on the same basis as the Service Provider is bound to this Agreement, prior to the implementation of the aforesaid Change of Control.

**25. FORCE MAJEURE**

- 25.1 The Service Provider shall not be liable for forfeiture of its Performance Security, damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under this Agreement is the result of an event of Force Majeure.
- 25.2 If a Force Majeure situation arises, the Service Provider shall notify the Municipality as soon as possible, and in any case not later than seven (7) Calendar Days following the occurrence of such event, in writing of such condition and the cause thereof, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- 25.3 Unless otherwise directed by the Municipality in writing, the Service Provider shall continue to perform its obligations under the Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the event of Force Majeure.

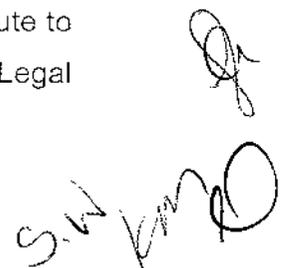
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- 25.4 Where directed by the Municipality in writing, the obligations of Service Provider shall be suspended for so long as the Force Majeure event continues, and to the extent that the Service Provider is so prevented, hindered or delayed, provided that all other obligations not affected by the Force Majeure event shall continue to be performed.
- 25.5 In the Services cannot be provided due to the *Force Majeure* continuing for more than thirty (30) Business Days, then the Municipality shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a consequence of the *Force Majeure*.

## 26. DISPUTE RESOLUTION

In event of a dispute arising out of this Agreement between the Parties, it will be resolved as follows:

- 26.1 Resolution of this dispute must be attempted by the way of consultation between the Parties. A written notice of dispute must be given to the other Party. The consultation must be held between the Directors in the Parties' organisations that are responsible for the Agreement and the Services. If the consultation process does not lead to a resolution of the dispute, within ten (10) Business Days of notice of the dispute being given to the other Party, then the Parties agree to refer the dispute for arbitration.
- 26.2 The Parties agree that the following procedure set out below shall apply when a matter is referred for arbitration:
- 26.2.1 All arbitration proceedings shall be conducted in George.
  - 26.2.2 If possible, arbitration proceedings shall be concluded within ten (10) Business Days of referral of the dispute.
  - 26.2.3 Disputes will be referred by the party declaring the dispute to a suitably qualified legal practitioner, as defined in the Legal

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Practice Act, No. 28 of 2014 as agreed to by both Parties ("**Arbitrator**"), who will be briefed by the Parties to resolve any such dispute. If an agreement cannot be reached upon a particular Arbitrator within three (3) Business Days after the Parties have agreed to refer the matter to arbitration, the Chairperson for the time being of the Cape Bar Council shall be requested to appoint the Arbitrator within seven (7) Business Days after the Parties have failed to agree.

- 26.2.4 Such Arbitrator shall evaluate the dispute, make a finding relative to the interpretation of this Agreement and/or the tender and his finding shall be final and binding on the Parties.
- 26.2.5 The Parties must agree as to the procedure to be followed in arriving at the Arbitrator's decision, failing which the Arbitrator's ruling on this shall be final and binding on the Parties. It shall not be necessary for the Arbitrator to observe or carry out either the strict rules of evidence or any other legal formalities or procedures, but the Arbitrator shall be bound to follow principles of law in deciding matters submitted to him.
- 26.2.6 The arbitration shall be conducted informally, but in accordance with the provisions of the Arbitration Act, No. 42 of 1965.
- 26.2.7 The Parties shall instruct the Arbitrator to give his or her decision within fourteen (14) Calendar Days after completion of the arbitration.
- 26.2.8 The Parties acknowledge and agree that the decision of the Arbitrator shall, save in the case of a manifest error, be final and binding on the Parties and may at the election of either Party be made an order of the High Court of South Africa, Western Cape Division, Cape Town.
- 26.2.9 The costs of the Arbitrator will be borne by the Parties equally or as the Arbitrator may otherwise determine.
- 26.2.10 Any resolution made and agreed to by both Parties or as determined the Arbitrator, on the any issue contemplated above must be recorded in writing and shall be binding,

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whether or not such resolution or determination constitutes a deviation from the Tender Documents.

26.2.11 The dispute resolution provided for in this clause 26 does not prevent any Party from exercising any other right or following any other remedy available in terms of this Agreement nor from approaching a court of law, vested with the necessary jurisdiction, for urgent relief.

26.2.12 If any dispute arises in relation to this Agreement, the Parties will continue to perform their obligations under this Agreement.

## **27. TERMINATION**

### **27.1 Termination for default**

27.1.1 The Municipality, without prejudice to any other remedy for breach of contract in terms of this Agreement or in law, by written notice of default sent to the Service Provider, may terminate this Agreement in whole or in part, provided that the Municipality shall give the Service Provider thirty (30) days written notice; and that all work performed by the Service Provider to date is paid for in full, including pro rata payment for partially completed deliverables and related costs if the Service Provider:

27.1.1.1 fails to deliver any or all of the goods or Services within the period(s) specified in the Agreement, or within any extension thereof granted by the Municipality where if at any time during performance of this Agreement, the Service Provider or its subcontractor or subcontractors should encounter conditions impeding timely delivery of the goods and performance of Services, the Service Provider shall promptly notify the Municipality in writing of the fact of the

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delay, its likely duration and its cause(s). As soon as practicable after receipt of the Service Provider's notice, the Municipality shall evaluate the situation and may at its discretion extend the Service Provider's time for performance, with or without the imposition of penalties in terms of clause 17, in which case the extension shall be ratified by the Parties by amendment of this Agreement;

27.1.1.2 fails to perform any other obligation(s) under this Agreement;

27.1.1.3 in the judgement of the Municipality, has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement;

27.1.1.4 Made a covenant or warranty or representation in terms of this Agreement that is found to be untrue or incorrect in any material respect or is breached; or

27.1.1.5 undergoes a Change of Control, without the prior written approval of the Municipality or if the proposed Change of Control is not acceptable to the Municipality.

27.1.2 In the event the Municipality terminates this Agreement in whole or in part, the Municipality may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the Service Provider shall be liable to the Municipality for any excess costs for such similar goods, works or services, in compliance with the applicable supply chain management policies and/or legislation. However, the Service Provider shall continue performance of the Agreement to the extent not terminated.

27.1.3 Where the Municipality terminates the Agreement in whole or in part, the Municipality may decide to impose a restriction penalty on the Service Provider by prohibiting such supplier

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from doing business with the public sector for a period not exceeding ten (10) years.

27.1.4 If the Municipality intends imposing a restriction on the Service Provider or any person associated with the Service Provider, the Municipality will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the Service Provider fail to respond within the stipulated fourteen (14) days the Municipality may regard the Service Provider as having no objection and proceed with the restriction.

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

27.1.6 If a restriction is imposed, the Municipality must, within five (5) Business Days of such imposition, furnish the National Treasury, with the following information:

27.1.6.1 the name and address of the Service Provider and/or person restricted by the Municipality;

27.1.6.2 the period of restriction; and

27.1.6.3 the reasons for the restriction.

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

27.1.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 ("the Act"), the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a

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person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five (5) years and not more than ten (10) years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act, the Register must be open to the public. The Register can be perused on the National Treasury website.

**27.2 Termination for insolvency**

27.2.1 The Municipality may at any time terminate the Agreement by giving written notice to the Service Provider if the Service Provider becomes bankrupt or otherwise insolvent. In this event, 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 Municipality.

**28. INTELLECTUAL PROPERTY RIGHTS**

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

28.2 In addition to that contained in clause 28.1, the following shall also be applicable:

28.2.1 Nothing contained in this Agreement shall be construed to confer or to be deemed to confer on either Party the Intellectual Property Rights of the other Party.

28.2.2 It is hereby recorded that any Intellectual Property created prior to the Date of Appointment shall vest exclusively with the Party or Parties who created same.

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28.2.3 Notwithstanding anything to the contrary contained herein, all Intellectual Property Rights relating to any item of Intellectual Property developed pursuant to or in connection with any component of the Services shall vest exclusively in the Municipality.

28.3 The Service Provider shall not publish its rendering of the Services for marketing and advertising purposes without the prior written consent of the Municipality.

**29. MARKETING**

The Service Provider shall not publish its rendering of the Services for marketing and advertising purposes or make or release any statements or material to the media or the public without the prior written consent of the Municipality.

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**30. NOTICE AND DOMICILIUM**

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

**THE MUNICIPALITY:**

For the attention of: Mr V Petersen  
Acting Director: Protection Services  
Municipality  
71 York Street  
George  
6530

Email: [vpetersen@george.gov.za](mailto:vpetersen@george.gov.za)

**THE SERVICE PROVIDER:**

For the attention of: Mr KM Tladi  
Bamogale Enterprises (Pty) Ltd  
556 Makou Street  
Monument Park  
Pretoria  
0181

Email: [tshepi@bamogale.co.za](mailto:tshepi@bamogale.co.za)

30.2 Each Party shall be entitled from time to time, by written notice to the other to vary its domicilium to any other address which is not a post office box or poste restante.

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- 30.3 Notices in terms of this Agreement shall be given in writing at the addressee's chosen *domicilium citandi et executandi* and, unless the contrary is proved, a notice shall be deemed to have been received by the addressee:
- 30.3.1 If delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the date of delivery; or
  - 30.3.2 If sent by prepaid registered post to the addressee at the addressee's domicile for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh (7<sup>th</sup>) Business Day after the date of posting; or
  - 30.3.3 If transmitted by electronic mail message, on the date of transmission.
- 30.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.
- 30.5 The Director of the department for public transport, alternatively the Municipal Manager, is the Authorised Representative of the Municipality.
- 30.6 The Financial Director which for the time being is Keotshepile Tladi is the Authorised Representative of the Service Provider.
- 30.7 Each Party shall ensure that its Authorised Representative, or their designee, is available to be contacted at all time by the other Party's Authorised Representative.

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**31. CO-OPERATION**

The Parties undertake to co-operate with each other in all respects in order to give effect to the intent and import of this Agreement.

**32. GOOD FAITH**

In the implementation of this Agreement, the Parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of any other(s) of them.

**33. INDEPENDENT ADVICE**

33.1 Each of the Parties hereby respectively agrees and acknowledges that:

33.1.1 It has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

33.1.2 Each provision of this Agreement (and each provision of the Annexures and Schedules hereto) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

**34. JURISDICTION OF SOUTH AFRICAN COURTS**

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town for any legal proceedings arising out of or in connection with this Agreement.

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**35. ASSIGNMENT, CESSION AND DELEGATION**

The Service Provider and the Municipality may not assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.

**36. WAIVER AND INDULGENCES**

- 36.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the Party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.
- 36.2 No failure or delay on the part of either Party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.
- 36.3 No indulgence, leniency or extension of time which any Party ("the **Grantor**") may grant or show the other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement in the future.

**37. GOVERNING LAW**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

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K.M.

**38. SEVERABILITY**

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any clause of the Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pronon scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties hereto declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**39. SURVIVAL OF OBLIGATIONS**

Any provision of this Agreement that contemplates performance or observance after the termination or expiry of this Agreement or that of necessity must survive termination or expiry shall remain binding and enforceable after termination or upon expiry.

**40. ENTIRE AGREEMENT**

40.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties to this Agreement or their duly authorised representatives.

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

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**41. NO STIPULATION FOR THE BENEFIT OF A THIRD PERSON**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

**42. COSTS**

Each Party shall bear its own costs of and incidental to the preparation of this Agreement, the drawing and redrafting and sundry attendance incidental hereto.

**43. SIGNATURE IN COUNTERPARTS**

This Agreement may be signed in one or more counterparts and the signature of a counterpart by any Party shall have the same effect as if that Party had signed the same document as the other Party/ies.

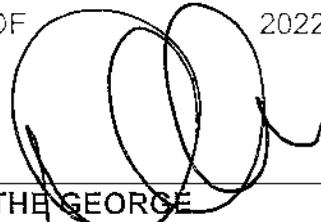
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SIGNED AT

ON THIS

DAY OF

2022




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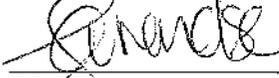
THE GEORGE  
MUNICIPALITY

Who warrants that he is duly authorised hereto

**CAPACITY: ACTING  
DIRECTOR: PROTECTION  
SERVICES**

**NAME: MR V PETERSEN**

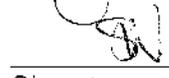
AS WITNESSES:




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Signature

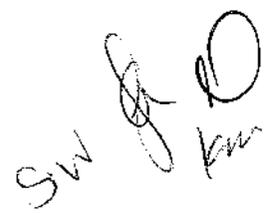
Tammy Arendse  
Name also in capital letters




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Signature

Shantel Willem  
Name also in capital letters

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SIGNED AT

ON THIS

DAY OF

2022



**BAMOGALE ENTERPRISES  
(PTY) LTD**

Who warrants that he is duly  
authorised hereto

**CAPACITY:** Financial Director

**NAME:** Keotshepile Modibedi  
Tladi

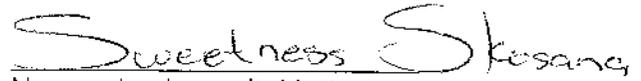
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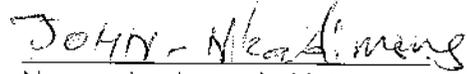
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Signature



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**ANNEXURE A: TENDER DOCUMENTS**

[To be inserted]

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**ANNEXURE B: REBALANCED TENDER PRICING SCHEDULE**

The Pricing Schedule as rebalanced to correct for errors and omissions is as included in the attached.

[To be inserted]

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Facilities Management

Bill of Quantities

Item	Description	Unit	Quantity	Rate	Amount
<b>1.0 ESTABLISHMENT</b>					
1.1	Set-up of Facilities Management office at the Transport Hub, including office furniture, computer with email and MS Office, printer, etc.	Lump sum	1	R 200 000,00	R 200 000,00
1.2	Start-up, including recruitment of personnel or staff as required, training, setting up Facilities Management systems and processes.	Lump sum	1	R 50 000,00	R 50 000,00
<i>Establishment of facilities</i>					
1.3	Delivery and placement on a secure footing of the 6m office container, as specified. (no.)	No	8	R 6 500,00	R 52 000,00
1.4	Installation of anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with anti-climb spikes, as specified (rate per metre)	per m	120	R 1 500,00	R 180 000,00
1.5	Installation of treated wooden pole, as specified (8 no.)	No	8	R 5 700,00	R 45 600,00
1.6	Establishment of self-standing plastic portable flushable chemical toilet with washbasin on a concrete base (no.)	No	18	R 18 500,00	R 333 000,00
1.7	Installation of electrical connection and alarm systems at each facility	No	8	R 11 000,00	R 88 000,00
1.8	Installation of 1m wide pedestrian access gate within fencing as specified, anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with anti-climb spikes.	No	3	R 15 000,00	R 45 000,00
1.9	Installation of 5m wide vehicular sliding access gate within fencing as specified, including mechanisms and structure with anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with anti-climb spikes.	No	2	R 15 000,00	R 30 000,00
1.10	Installation of alarm and communication equipment in each of the temporary office container facilities as well as the Field Monitoring office at the Transport Hub.	No	9	R 5 400,00	R 48 600,00
<b>SUB-TOTAL: 1.0 ESTABLISHMENT</b>					<b>R 1 072 200,00</b>

Item	Description	Unit	Quantity	Rate	Amount
<b>2.0 GENERAL</b>					
2.1	Full-time Facilities Manager for the Transport Hub and other precincts, to manage and coordinate all guarding and cleaning services, procurement and management of as-and-when required maintenance and gardening works, provision of satellite offices, inspections, regular reporting, etc. as required by Scope of Works.	month	36	R 30 000,00	R 1 080 000,00

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2.2	Transport costs, including for all staff, equipment and materials transport needs and any other sundry matters, including incidents around the network.	month	36	R 50 000,00	R 1 800 000,00
2.3	Making copies of keys for Service Provider's own use at Transport Hub and precincts	Provisional Sum	1	R 5 000,00	R 5 000,00
2.4	Administration and handling fee on (2.3) making copies of keys; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 5 000,00	15%	R 750,00
<b>SUB-TOTAL: 2.0 GENERAL</b>					<b>R 2 885 750,00</b>

### 3.0 CAPACITY BUILDING

3.1	Accredited training, as per approved Training and Development Plan Administration and handling fee on	Provisional Sum	1	R 750 000,00	R 750 000,00
3.2	(3.1) Accredited training; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 750 000,00	15%	R 112 500,00
<b>SUB-TOTAL: 3.0 CAPACITY BUILDING</b>					<b>R 862 500,00</b>

Item	Description	Unit	Quantity	Rate	Amount
<b>4.0 GUARDING SERVICES</b>					
4.1	Provision of security guarding services as described in the scope of works including section 4.5, covering the daily operational hours required (meaning that more than 1 guard is required on shifts to cover each month's services at each location).	month / guard location	324 (36 months and 9 guard locations each month)	R 13 250,00	R 4 293 000,00
4.2	Provision of security supervisor services covering the hours and duties described in the scope of works including section 4.5.	month	36	R 16 500,00	R 594 000,00
4.3	Monthly security alarm monitoring and armed response, as described.	month	36	R 9 500,00	R 342 000,00
4.5	Extra-over items 4.1 and 4.2 - Additional Security Guard provided on a 12-hour shift during weekdays (Monday to Saturday), including for Supervision, transport, and all sundries	day	156	R 350,00	R 54 600,00
4.6	Extra-over items 4.1 and 4.2 - Additional Security Guard provided on a 12-hour shift during Sundays and/or public holidays, including for Supervision, transport, and all sundries	day	30	R 350,00	R 10 500,00
4.7	Extra-over items 4.1 and 4.2 - Additional Supervisor provided on a 12-hour shift during weekdays (Monday to Saturday), including for transport, and all sundries	day	52	R 350,00	R 18 200,00
4.8	Extra-over items 4.1 and 4.2 - Additional Supervisor provided on a 12-hour shift during Sundays and/or public holidays, including for transport, and all sundries	day	10	R 344,00	R 3 440,00

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4.9	Extra-over items 4.1 and 4.2 - Additional Security Guard and dog-handler with a registered and graded Patrol Dog provided on a 12-hour shift during weekdays (Monday to Saturday), including for Supervision, transport and all sundries.	day	52	R 380,00	R 19 760,00
4.10	Extra-over items 4.1 and 4.2 - Additional Security Guard and dog-handler with a registered and graded Patrol Dog provided on a 12-hour shift during Sundays and/or public holidays, including for Supervision, transport, and all sundries.	day	10	R 350,00	R 3 500,00
4.11	Ad-hoc security and guarding services as and when required, appointed through quotations process as specified.	Provisional Sum	1	R 300 000,00	R 300 000,00
4.12	Administration and handling fee on (4.3) Ad-hoc cleaning as and when required; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 300 000,00	15%	R 45 000,00
<b>SUB-TOTAL: 4.0 GUARDING SERVICES</b>					<b>R 5 684 000,00</b>

Item Description Unit Quantity Rate Amount

5.0 CLEANING SERVICES					
5.1	Regular daily and monthly cleaning of the Cradock Street Transport Hub precinct and the George Transport Hub as described in the scope of works sections 4.6 and 4.6.3.	month	36	R 15 000,00	R 540 000,00
5.2	Quarter-yearly cleaning of the Cradock Street Transport Hub building structure, façade and signage, as described in the scope of works section 4.6.4.	quarter-yearly	12	R 26 500,00	R 318 000,00
5.3	Once daily cleaning of precincts (x8) excluding the Hub, as described in the scope of works sections 4.6 and 4.6.5.	month	36	R 25 000,00	R 900 000,00
5.4	Materials /equipment for cleaning, as described in the scope of works section 4.6.	month	36	R 12 525,00	R 450 900,00
5.5	Cleaning of bus stop platforms with shelters (minimum 150), as per scope of works sections 4.6 and 4.6.6.	week	156	R 27 000,00	R 4 212 000,00
5.6	Cleaning of bus stop platforms without shelters (minimum 250), as per scope of works sections 4.6 and 4.6.6.	month	36	R 62 500,00	R 2 250 000,00
5.7	Ad-hoc cleaning as and when required, appointed through quotations process as specified.	Provisional Sum	1	R 300 000,00	R 300 000,00
5.8	Administration and handling fee on (5.7) Ad-hoc cleaning as and when required; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 300 000,00	15%	R 45 000,00
<b>SUB-TOTAL: 5.0 CLEANING SERVICES</b>					<b>R 9 015 900,00</b>

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### 6.0 AD-HOC MINOR WORKS MAINTENANCE SERVICES

6.1	As-and-when minor works Maintenance Services, appointed through quotations process as specified.	Provisional Sum	1	R 450 000,00	R 450 000,00
6.2	Administration and handling fee on (6.1) As and when Minor Works Maintenance Services; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 450 000,00	15%	R 67 500,00
<b>SUB-TOTAL: 6.0 AD-HOC MINOR WORKS MAINTENANCE SERVICES</b>					<b>R 517 500,00</b>

Item	Description	Unit	Quantity	Rate	Amount
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### 7.0 AD-HOC GARDEN SERVICES

7.1	As-and-when Garden Services, appointed through quotations process as specified.	Provisional Sum	1	R 200 000,00	R 200 000,00
7.2	Administration and handling fee on (7.1) As and when Garden Services; including liaison, correspondence, drawing up quotation specifications, managing quotation process, evaluating and reporting, managing and handling the work done.	Percentage	R 200 000,00	15%	R 30 000,00
<b>SUB-TOTAL: 7.0 AD-HOC GARDEN SERVICES</b>					<b>R 230 000,00</b>

### 8.0 SATELLITE OPERATIONAL OFFICES

	<b>Monthly provision and maintenance of facilities</b>				
8.1	6m office container, as specified. (per month per unit provided)	Unit Months	288	R 12 000,00	R 3 456 000,00
8.2	Self-standing plastic portable chemical flush toilet on a concrete base (per month per unit provided)	Unit Months	648	R 2 500,00	R 1 620 000,00
	<b>Removal of facilities</b>				R -
8.3	Removal of the 6m office container, with installations, fittings, furniture and demolition of the footing / base.	No	8	R 15 000,00	R 120 000,00
8.4	Removal of anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with access gate and anti-climb spikes, as specified.	m	120	R 250,00	R 30 000,00
8.5	Removal of treated wooden pole, as specified (7no.)	No	8	R 500,00	R 4 000,00
8.6	Removal of self-standing plastic portable flushable chemical toilet with washbasin on a concrete base (no.)	No	18	R 3 000,00	R 54 000,00
8.7	Removal of 1m wide pedestrian access gate within fencing as specified, anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with anti-climb spikes.	No	3	R 1 500,00	R 4 500,00
8.8	Removal of 5m wide vehicular sliding access gate within fencing as specified, including mechanisms and structure with anti-climb and anti-cut fine mesh fencing to a height of 2.1m above ground with anti-climb spikes.	No	4	R 2 000,00	R 8 000,00

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SUB-TOTAL: 8.0 SATELLITE OPERATIONAL OFFICES	R	5 296 500,00
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Description		Amount
<b>SUMMARY</b>		
SUB-TOTAL: 1.0 ESTABLISHMENT	R	1 072 200,00
SUB-TOTAL: 2.0 GENERAL	R	2 885 750,00
SUB-TOTAL: 3.0 CAPACITY BUILDING	R	862 500,00
SUB-TOTAL: 4.0 GUARDING SERVICES	R	5 684 000,00
SUB-TOTAL: 5.0 CLEANING SERVICES	R	9 015 900,00
SUB-TOTAL: 6.0 AD-HOC MINOR WORKS MAINTENANCE SERVICES	R	517 500,00
SUB-TOTAL: 7.0 AD-HOC GARDEN SERVICES	R	230 000,00
SUB-TOTAL: 8.0 SATELLITE OPERATIONAL OFFICES	R	5 296 500,00
Total, excluding VAT	R	25 564 350,00
Add: VAT (15%)	R	3 834 652,50
<b>TOTAL (including VAT)</b>	<b>R</b>	<b>29 399 002,50</b>

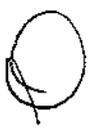
*BA*

*31-05-2022*

*S.W. P. Q. K. M.*

**SCHEDULE 1: KEY PERSONNEL**

<b>Position</b>	<b>Tendered personnel</b>
Facilities Manager	Bongiwe Ngcobo
Security Supervisor	Michael Mditshwa
Cleaning Supervisor	Sandile Jele

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