



LEBALELO WATER USER ASSOCIATION

REQUEST FOR QUOTATION

EXTERNAL AUDIT SERVICES

NEC3 PROFESSIONAL SERVICES CONTRACT

DATE OF ISSUE	14 August 2023
CLOSING DATE	10:00 on 8 September 2023
E-MAIL ADDRESS FOR SUBMISSIONS & QUERIES	joseph@lebalelo.co.za
REFERENCE NUMBER	LWUA-ABM-GNR-RFQ-0001



Sanlam Building, Floor 2, 4 Daventry Street,
Lynnwood Bridge Office Park, Pretoria

info@lebalelo.co.za (E)
lebalelo.co.za (W)
012 348 4654 (T)

Invitation to Tender

PRIVATE AND CONFIDENTIAL

Client / Association:	The Lebalelo Water User Association established in terms of Section 92(1)(a) of the National Water Act in terms of a notice published in Government Gazette No. 89/23053, and for the purposes of this Agreement, acting on behalf of the still to be established Olifants Management Model, being a fully transformed entity.
Request for Quotation Number:	LWUA-ABM-GNR-RFQ-0001
Services:	Consultancy Services for the annual external audit of the Association

Dear Sirs

INVITATION TO SUBMIT A QUOTATION FOR CONSULTANCY SERVICES FOR THE ANNUAL EXTERNAL AUDIT OF THE ASSOCIATION

We invite you to submit a quotation to provide the above Services as described in more detail in the Scope of Services.

The instructions to bidders specify the actions taken during the process of quoting. Please read this document carefully as it summarises all the variables specific to this request for quotation, it lists the quotation documents and specifies in what form the quotation is to be submitted. This section contains the list of items comprising the quotation, details the documents you return with your quotation, and the tender process that will be followed.

The quotation documents consist of:

- Part 1 Tender requirements
- Part 2 Scope of Services
- Part 3 Pro forma professional services agreement and proposed terms and conditions

We look forward to receiving your quotation and the opportunities of a future business relationship.

Yours faithfully

Joseph Mahapa
Financial Manager



1. Instructions to bidders

Your quotations will be based on the Scope of Services and accompanying pro forma professional services agreement containing the Associations standard terms and conditions.

1.1 Presentation

This document is written in ordinary language:

- you are encouraged to submit your quotations using ordinary language
- please complete all the returnable documents and include it in your submission
- your quotation must comply with the instruction of this document
- if your own terms, conditions or specifications are referred to in papers included with your quotation, then you must make it clear that they do not apply
- all prices and rates should exclude VAT

1.2 General: the pricing option

Bidders are required to submit their proposed rates for the resources that will be utilised to render the services. With an estimated cost for the first audit to be completed, as well as a proposed method of escalation. The rates must be allocated per hour per resource or type/category of resource that will be allocated for the services.

1.3 Extra information

If the bidder requires any additional information to complete the submission, please address all enquiries to the Association's representative. Relevant replies will be reduced to writing with copies of the enquiry and response being distributed to all bidders.

For queries regarding this RFQ, please contact:

Name: Joseph Mahapa

E-mail: joseph@lebalelo.co.za

1.4 Submission of quotations

Prepare your quotation as one original PRICED QUOTATION which shall contain all documentation with the pricing data included.



1.4.1 Requirements for compliance

The services referred to in this RFQ shall be in strict accordance with the Terms and Conditions, Narrative Specifications, Information, Technical Instructions and Requirements stipulated herein.

Any exceptions must be clearly defined and set forth in your quotation to be considered for award of a Contract. All deviations or exceptions to the pro forma terms and conditions shall be set forth in the returnable schedules.

The Association will delete any late quotations unopened.

1.4.2 Quotation opening and evaluation

The *Employer* does not open the quotations publicly neither discloses the Prices nor any other information related to the quotation received.

1.4.3 General

- Please ensure your set of documents and quotations is complete. Contact the Association's representative immediately if you discover any discrepancies or anomalies within the documentation
- The Association will not pay for any of your quotation costs
- Treat all information provided to you by the Association as private and confidential and use the information only for the purposes of preparing your quotation
- Your quotations should be valid for 90 days from the quotation submission date
- According to the Association's policies, all qualified bidders are entitled to receive equal opportunities to secure business that may emanate out of this request for quotation
- The Association prohibits bidders offering any form of gifts, entertainment or payments for the purposes of obtaining any favourable treatment related to the request for quotation. In any such events, the Association may use the remedies under law in dealing with the matters

1.5 Award of Contract

The Association does not undertake to accept the lowest or any quotation. The Association reserves the right not to appoint a service provider, to accept and/or award the whole or any portion of the services required and is also not obliged to provide reasons for the rejection.

All relevant factors are to be taken into consideration in adjudicating quotations, including the standing of the bidder, the extent of actual experience, the amount and suitability of the resources allocated for the services, the favourable completion time and the quotation price.



The Association supports the facilitation of broader participation in the South African economy by historically disadvantaged South Africans via the procurement of goods and services. To this end, the Association will strive to achieve the 5 and 10 year preferential procurement targets in the codes of good practice as gazetted by the Department of Trade and Industry on 09 February 2007.

1.6 Documents to be included in submission

The bidders are required to submit the following documents with their quotations:

Item	Description of Document
1.	Certificate of Registration
2.	Valid SARS Tax Clearance Certificate
3.	BBBEE Rating Certificate and entity ownership status
4.	Organisational chart of bidder's organisation
5.	IRBA Registration Certificate
6.	SAICA Registration Certificate
7.	Audit Partner's IRBA Registration Certificate
8.	Audit Partner's SAICA Registration Certificate
9.	Abridged project proposal that depicts the proposed project methodology and approach
10.	Detailed Curriculum Vitae of Key People that will be utilised when this project is implemented
11.	Submit two (2) contactable references where the bidder has delivered the similar services by simply stating the following: <ul style="list-style-type: none"> • Name of client • Position • Contact telephone numbers • Client's e-mail address • Work performed • Dates when work was performed
12.	Submit details of other similar services rendered
13.	Proposed Deviations and Qualifications
14.	A list of all the categories of human resources that will be utilised on this project with the hourly rate for each resource



15.	A list of all the Key People that will be utilised on this project
16.	Any pricing assumptions by the Bidder
17.	The Bidder's proposed programme for the execution of the Services
18.	Signed Non-Disclosure Agreement

2. Registration to Tender

Any bidders interested in submitting quotations must inform the Association's representative by e-mail and include a copy of the signed Non-Disclosure Agreement (**annexure A**).

Only quotations received from registered bidders will be considered and evaluated.



SCOPE OF SERVICES: ANNUAL EXTERNAL AUDITS

**REQUEST FOR QUOTATION
PROVISION OF EXTERNAL AUDIT SERVICES**

13 August 2023



Table of Contents

1.	Introduction.....	3
2.	Purpose	4
3.	Objective and description of Services to be rendered	4
3.1	Objective / Services	4
3.2	Expected Deliverables	5
4.	Expertise and Capacity of <i>Consultant</i>	5
5.	Information provided by the <i>Association</i>	6



1. Introduction

Lebalelo Water User Association (LWUA or the Association) was established in February 2002 in terms of Chapter 8 of the National Water Act, 1998 (NWA) as a water user association with a mandate to provide raw water to its members.

The Department of Water and Sanitation (DWS) conceptualised in the late 1990's the Olifants River Water Resource Development Project (ORWRDP) to address the water needs of the middle Olifants River catchment area in the Limpopo Province. The aim of the project was to release pressure off Flag Boshielo Dam, the key regional source of water in the area, to provide water to the water-stressed city of Polokwane, and, in doing so, free up water for the water-stressed Mogalakwena municipal area.

The ORWRDP has only partially been implemented over the past two decades placing increasing pressure on DWS to meet social and industry expansion water needs. Additionally, potable water infrastructure development has been very slow in the Eastern Limb despite bulk raw water having been available since 2002 through the Lebalelo Water User Association scheme. The delivery of potable water services in the Northern Limb area of Mogalakwena has also been hindered due to delays in the ORWRDP implementation.

Levels of social unrest and incidences of asset destruction have increased due to the slow progress in delivery of water services to communities together with unmet expectations of job creation from mines. This has resulted in vandalism of water infrastructure and mining operations being disrupted, particularly in the Eastern Limb.

Government has also had funding constraints with competing priorities for water and other infrastructure services. The outbreak of the Covid-19 pandemic has placed additional financial and organisational pressure on DWS to fast-track water supply to communities to prevent the spread of the disease.

There is also currently a regional economic expansion opportunity to take advantage of a favourable commodity cycle.

The original ORWRDP plan, from a technical, financial and socio-economic perspective, was no longer optimal neither was it fit-for-purpose and was amended in the OMM Programme for the following reasons:

1. The ORWRDP plan did not include the construction of a raw water pipeline from Pruisen to Mokopane and Sekuruwe which is required to meet social and commercial users' requirements;
2. Flag Boshielo Dam is already over allocated and Northern Limb water supply phases would place additional pressure on the system. This pressure could be released through augmentation strategies and the abstraction of water from De Hoop Dam to meet Eastern Limb requirements allowing water from Flag Boshielo Dam to support the Northern Limb requirements;
3. The ORWRDP plan to construct Phase 2D and 2E before phase 2F in the Eastern Limb, will provide no additional water to the water stressed Polokwane area. The construction of Phase 2F, before these two phases, would however significantly accelerate the provision of additional water to Polokwane;
4. The Association's water scheme infrastructure remains under-utilised and, with some minor modifications, can be used to link the De Hoop Dam to Polokwane;



5. Technical specifications have not been revised to account for the reduced dam yields (De Hoop Dam and Flag Boshielo Dam) highlighting concerns over estimated cost; and
6. The synchronisation of bulk raw water infrastructure development with potable water infrastructure development is part of the OMM Programme. This is a critical consideration in delivering potable water and requires an integrated approach.

Addressing the pressing social and commercial needs Government and Commercial Members agreed to collaborate by entering into a joint venture arrangement. In terms of this arrangement the Association, has been tasked with financing, building, operating, maintaining and managing the development of a defined OMM Programme for the accelerated delivery of bulk raw and potable water services in the region. The implementing entity for this OMM Programme is Lebalelo Water User Association (Association) which is in the process of being transformed and rebranded.

The Government consisting of the National Department of Water and Sanitation together with the affected WSA as the institutional members and the commercial members will have equal interest in the transformed Association on a 50:50 basis.

2. Purpose

The purpose of this Request for Quotation (RFQ) is to appoint a suitable independent External Audit Service Provider, registered with the Independent Regulatory Board for Auditors (IRBA) that can establish and maintain an appropriate External audit Service to the *Association* for a period of 5 years commencing in the Financial year ending 30 June 2024.

The quotations must respond to an audit of the *Association's* financial statements and the audit is to be performed in accordance with International Standards on Auditing and the financial statements are to be prepared in accordance with International Financial Reporting Standards.

Quotations must be submitted in accordance with the conditions detailed in the invitation to tender.

3. Objective and description of Services to be rendered

3.1 Objective / Services

The objective of the audit is to express an opinion, as to whether the financial statements of the Association present fairly, in all material respects, the financial position, results of operations and changes in cash flow in accordance with IFRS. The Association will prepare the financial statements that will be subject to audit.



During the engagement, the Auditor should be watchful of and report:

- Any significant or unusual transactions entered by the *Association* that Management and/or the Board of Directors and/or Members of LWUA should be made aware of;
- Any deficiencies in internal controls that are of sufficient importance to merit the attention of Management and/or the Board of Directors;
- Any disagreements with Management about matters which are significant to the organization's financial statements;
- Any lack of compliance with the Financial Management and Controls Policy;
- Any lack of compliance with the Association's procedures and policies;
- Any lack of compliance with financial or other relevant legislation; and/or
- Any lack of accountability in the use and management of the Association's assets.

Any such instances should be reported in the management letter.

3.2 Expected Deliverables

The Auditor will:

- Prepare an auditor's report and management letters in a format consistent with International Standards on Auditing;
- Discuss the auditor's report and management letters with the Association's Management and the Audit and Risk Committee prior to their distribution;
- Meet audit or reporting requirement dates as set out below;
- Provide a management letter that identifies areas of concern or weaknesses found, recommendations for improvement, management's response on any concerns identified;
- Complete scope of work;
- Schedule in-person meetings with the *Association*;
- Provide required reporting to the *Association* (weekly updates, project milestone reports);
- Assist the Association in any tax disputes or submissions to be made to SARS in respect of the Association's tax obligations.

4. Expertise and capacity of Auditor

The Auditor shall comply with the standards of the Independent Regulatory Board for Auditors (IRBA), including:

- Possess the knowledge, skills and technology essential to perform external audit work;
- Be skilled in dealing with people and communicating effectively;
- Maintain competence through continuous training and education;
- Be registered with IRBA and SAICA; and
- Having the relevant quality assurance review processes in place.

The delivery of services will be at the *Association's* offices in Polokwane, Havercroft, and in Pretoria.



5. Information provided by the Association

The Association's previous auditors, for the past ten years, have been DZB. During the last AGM held in September 2022, however, it was decided that new auditors would be appointed to conduct the external audit of the Association. The appointment of new auditors is based on good practice and to ensure that LWUA remains a transparent and compliant entity.

The Association shall furnish the Auditor with the following information to conduct its audit, as attached hereto:

- Details of the Association, including the Association's registered address, date of incorporation and registered address, as well as details of all its subsidiaries, branches or divisions that must be included in the audit;
- An organizational chart showing the hierarchy of employees and reporting lines;
- A description of any significant changes in the company structure during the previous year;
- Details of the regulatory framework and details of all applicable legislation, as well as any specific industry-specific regulations, compliance requirements or reporting obligations;
- The annual financial statements for the previous financial year, including the balance sheet, income statement, cash flow statement, and notes to the financial statements;
- An overview of the Association's tax status and history, tax returns and assessments of the previous year and details of recent or ongoing tax disputes or audits;
- Documentation related to the Association's internal controls, such as its policies, procedures and manuals as well as any internal audit reports. This would also include any control deficiencies identified in previous audits and actions taken to address them;
- Details of any ongoing or pending legal disputes, litigation or regulatory investigations;
- Description of significant accounting policies and estimates used in financial reporting;
- Information about any significant changes in accounting policies during the previous year;
- Disclosure of any related-party transactions or significant events that may impact financial statements.

AGREEMENT FOR SERVICES

Between

**THE LEBALELO WATER USERS ASSOCIATION
(REPRESENTED BY THE CEO AS DULY AUTHORISED)
(Known as the “the Association”)**

And

(Known as the “Supplier”)

FOR THE PROVISION OF SERVICES

FORMAL INSTRUMENT OF AGREEMENT

BETWEEN THE ASSOCIATION	Represented by the CEO who is duly authorised hereto
AND	
THE SUPPLIER	_____

IT IS AGREED THAT:

1. The Supplier shall provide the Services as more fully set out in the attached scope of services and perform all other obligations in accordance with the Agreement.
2. The Association shall pay the Supplier the fees and costs as set out in Schedule B and perform all other obligations in accordance with the Agreement.

AGREEMENT PARTICULARS		
1	Commencement Date (G.C.1):	1 January 2024
2	The Association's Representative	Name: Mr Bertus Bierman Telephone: 012 3484654 Cell Phone: 083 455 7109 Email: bierman@lebalelo.co.za
3	Completion Date (G.C.1):	31 December 2028 (5 years)
4	Supplier:	_____ Cell Phone: _____ Email: _____
5	Description of Services (G.C.1):	As set out in the scope of services attached hereto
7	Relevant Jurisdiction (G.C.1):	South Africa
8	Site (G.C.1):	The Supplier to provide the Services to the Association.

AGREEMENT PARTICULARS		
9	Working Hours (G.C.4):	As per the scope of services
11	Payment (G.C.9)	Within 30 days from submission of invoice.
12	Time period for submission of invoices (G.C.9):	By the 25 th of each month.
12	Time period for payment of invoices (G.C.9):	Within 30 days from submission of invoice.
13	Notice period for termination for convenience (G.C.16)	90 days' notice
14	Domicilium address (G.C.21): The Association	Physical address: Building A, 2nd Floor Portion 2 4 Daventry Road Lynnwood Manor Pretoria 0081
	Supplier:	_____ _____ _____

EXECUTED AS AN AGREEMENT

**SIGNED for and on behalf of the Association by a duly authorised representative
on the _____ day of _____ 2023.**

JA Bierman (CEO)

Signature of authorised representative

Name of Authorised Representative

Witness

**SIGNED for and on behalf of the Supplier by a duly authorised representative on
the _____ day of _____ 2023.**

Signature of authorised representative

Name of authorised representative

Witness

SCHEDULE OF FEES AND COSTS

Specialist Consultancy services <i>To be agreed with Auditor</i>	
Hourly Rate Excluding VAT	
Travelling	
Reasonable incidental travelling expenses and accommodation as per Association Policy	

AGREEMENT FOR SERVICES

GENERAL CONDITIONS ("G.C")

G.C.1 DEFINITIONS AND INTERPRETATION

G.C.1.1 Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in this Agreement.

'Agreement' means:

the Formal Instrument of Agreement (including the Agreement Particulars) and the Schedules; the General Conditions and all Purchase Orders and any other document stated in a Purchase Order to be part of the Agreement.

'Agreement Particulars' means the details specified in the Formal Instrument of Agreement and the Schedules attached thereto.

'Anti-Corruption Laws' means any Relevant Law which prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or advisor of such person; and is applicable in the jurisdiction in which the Association or the Supplier are registered or conduct business or in which the Services are to be performed.

'Background IP' means the protected intellectual property or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing or developed other than in the supply and delivery of the Services and which are made available to the other party for the purposes of the Agreement.

'Business Day' means a calendar day, other than a Saturday, Sunday or public holiday in the Relevant Jurisdiction.

'Business Integrity' means the standard of integrity expected of parties in respect of combating corrupt behavior including such behavior among those with whom the Association does business.

'Change in Law' means:

the adoption, enactment or application to the Association or the Supplier of any Relevant Law not existing, foreseeable or otherwise applicable to the Association or the Supplier on the Commencement Date; or any change in a Relevant Law or the application or interpretation of a Relevant Law, after the Commencement Date, in either case that materially and adversely affects (in time and/or cost) the ability of the Association or the Supplier to perform their obligations under the Agreement, provided that the following do not constitute a Change in Law:

- (a) a change in a Relevant Law imposing a tax or rate of tax; or
- (b) the application to the Association or the Supplier, of a Relevant Law that was in existence at the Commencement Date that by its terms became applicable to the Association or the Supplier after the Commencement Date.

‘Change in Requirements’ means the amendment or alteration of any of the Association Policies or SHE Requirements; or the notification by the Association of any additional Policies or SHE Requirements that are not referred to in the Agreement or otherwise notified by the Association to the Supplier at Commencement Date, after Commencement Date, in either case that materially and adversely affects (in time and/or cost) the ability of the Supplier to perform its obligations under this Agreement.

‘Commencement Date’ means the date set out in the Agreement Particulars.

‘Completion Date’ means the date set out in the Agreement Particulars.

‘Data Subjects’ means the Association, including its members, its Staff, authorised representatives and contractors.

‘Defect’ means Services not in accordance with the terms of the Agreement and/or Purchase Order and includes omissions.

‘Government Consent’ means an approval, consent, waiver, authorisation, permit, clearance, license or other precondition required under Relevant Law or from government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government in relation to performance of the Services.

‘Income Tax Act’ means the South African Income Tax Act, 58 of 1962.

‘Losses’ includes losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

‘Materials’ means the supplies, spare parts, oil, chemicals and other materials used by the Supplier in the performance of the Services.

‘Personal Information’ means information relating to the Data Subject, including but not limited to -

- (a) views or opinions of another individual about the Data Subjects; and
- (a) information relating to the Data Subjects’ –
 - (i) race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;
 - (ii) education, medical, financial, criminal or employment history;
 - (iii) names, identity number and/or any other personal identifier, including any number(s), which may uniquely identify a data subject, account or client number, password, pin code, customer or data subject code or number, numeric, alpha, or alpha-numeric design or configuration of any nature, symbol, e-mail address,

domain name or IP address, physical address, cellular phone number, telephone number or other particular assignment;

- (iv) blood type, fingerprint or any other biometric information;
 - (v) personal opinions, views or preferences;
 - (vi) correspondence that is implicitly or expressly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence); and
- (b) corporate structure, composition and business operations (in circumstances where the data subject is a juristic person) irrespective of whether such information is in the public domain or not.

'POPI' means the Protection of Personal Information Act, 4 of 2013 (as amended from time to time) and all regulations promulgated in terms of it.

'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 by electronic communications or other means; or
- (c) merging, linking, blocking, degradation, erasure or destruction.

'Process' has a corresponding meaning.

'Purchase Order' means the request or order from the Association to the Supplier to supply Services.

'Relevant Jurisdiction' means the jurisdiction specified in the Agreement Particulars.

'Relevant Law' includes statutes, ordinances, regulations, by-laws, orders and awards of any authority and proclamations applicable in connection with the performance of the Services.

'Services' means the Services to be provided by the Supplier to the Association as set out in this Agreement and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services as described.

'SHE Requirements' means all Relevant Law, codes, standards and Government Consents relating to workplace health and safety, and the environment that apply to the Site; and the Association SHE policies within the Site referred to in the Agreement or as otherwise notified by the Association to the Supplier.

'Site' means the area within which the Association operates.

'Staff' means permanent, fixed term and temporary employees as well as sub-contractors, agents, consultants, independent contractors to the Association.

'Supplier' means the party so named in the Formal Instrument of Agreement.

'Term' means the period from the Commencement Date to the Completion Date and any agreed extension by the parties.

'the Association' means the Lebalelo Water User Association, which is a statutory institution established on 1 February 2002, in terms of Chapter 8 of the National Water Act 1998 (Act 36 of 1998) Sections 91(1)(f), 93 (1) and 94 (2).

'the Association Policies' means the most current version of the policies, codes and principles referred to in this Agreement (and such other policies, codes and principles as may be notified by the Association to the Supplier) as amended from time to time, but which does not include the SHE Requirements, copies of which are available on request from the Association.

'VAT Act' means the Value-Added Tax Act, 89 of 1991.

G.C.1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- headings are for ease of reference only and do not affect the meaning of the Agreement;
- the singular includes the plural and vice versa;
- words importing a gender include other genders;
- the words 'include' and 'including' are to be construed without limitation;
- other grammatical forms of defined words or expressions have corresponding meanings,

a reference to:

- a clause, schedule, part or appendix is a reference to a clause, schedule, part or appendix to or of the Agreement and a reference to the Agreement includes any schedules and appendices;
- any legislation, statutory instrument or regulation is a reference to that legislation, instrument or regulation as amended, modified, substituted or re-enacted from time to time;
- a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
- a party includes its executors, administrators, successors and permitted assigns;
- a day means a period of 24 (twenty four) consecutive hours from midnight;
- a week means 7 (seven) consecutive days commencing and ending at midnight on Sunday;
- a month means a calendar month;
- if the due date for anything to be done under the Agreement falls on a day that is not a Business Day, then it must be done on the next Business Day;

- no provision herein shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have structured, drafted or introduced such provision;
- references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

G.C.1.3 Precedence of documents:

- for the avoidance of doubt, in the event of any conflict or inconsistency relating to the description of the Services between the provisions of a Purchase Order on the one hand and the Formal Instrument or General Conditions, as the case may be, on the other hand, the provisions of the Formal Instrument or General Conditions shall prevail.
- for the avoidance of doubt, in the event of any conflict or inconsistency relating to any legal provisions between a Purchase Order on the one hand and the Formal Instrument or General Conditions, as the case may be, on the other hand, the provisions of the Formal Instrument or General Conditions shall prevail; and
- the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

G.C.2 DURATION

This Agreement shall commence on the Commencement Date and endure for the Term, unless terminated earlier in accordance with the provisions of this Agreement.

The Term may be extended on the same terms and conditions (unless otherwise agreed by the parties) by mutual agreement in writing between the parties.

G.C.3 PURCHASE ORDER

Services shall be provided to the Association as confirmed by a Purchase Order placed by the Association. All Purchase Orders are subject to this Agreement and the Association shall not be bound by any terms and conditions that may appear on a quotation or any other order and/or delivery documentation provided by the Supplier to the Association in relation to the Services.

The Supplier must provide the Services in accordance with this Agreement to the Association by the dates set out in the Agreement or Purchase Order.

G.C.3.1 No exclusivity

Notwithstanding any other provision of this Agreement, the Association is not obliged to use the Supplier to provide the Services and may obtain the Services from other suppliers at any time, without reference to the Supplier. As such, the appointment of the Supplier is on a non-exclusive basis.

G.C.4 WORKING HOURS

The Supplier must provide services during the working hours as set out in the Agreement Particulars or a Purchase Order unless the prior approval of the Association to a change in the working hours is obtained.

G.C.5 SERVICE DELIVERY DELAYS

If any delay in providing the Services occurs or is foreseen, the Supplier must immediately notify the Association of the cause and anticipated length of the delay.

If the Supplier gives such notice or if it comes to the attention of the Association that the Supplier may not be able to reasonably rectify the delay, the Association shall be entitled but not obliged to seek assistance of another supplier to remedy such delay.

G.C.6 ACCEPTANCE OR REJECTION OF SERVICES

G.C.6.1 Services that do not accord with the Agreement

Without limiting any other rights of the Association or the responsibilities of the Supplier, if Services performed are not in accordance with the Agreement, the Association may direct the Supplier, at the Supplier's cost, to re-perform the Services within the reasonable time specified by the Association.

G.C.6.2 Failure to comply with direction

If the Supplier fails to comply with a direction given in terms of this Agreement within the time specified, the Association may, after notifying the Supplier, retain another person for that purpose and costs incurred by the Association as a result will be for the account of the Supplier.

G.C.7 VARIATION OF SERVICES

Variations may be instructed by the Association at any time prior to the Completion Date.

Within 10 (ten) Business Days of the direction of a variation, the Supplier must submit an estimate of the effect of the variation on the price and service delivery. If the Supplier does not submit an estimate, the Supplier is barred from claiming any compensation or an extension of time in relation to a variation.

The Supplier shall not alter the Services or deviate from the requirements of the Agreement unless and until the Association instructs or approves a variation in writing. Any action taken by the Supplier prior to receiving such written approval from the Association shall be for its own account and at its own risk.

G.C.7.1 Change in Law

If a Change in Law necessitates a change to the method of carrying out the Services or an increase or decrease in a fee or charge included in the contract price or the payment of a new fee or charge not included in the contract price then:

- the Supplier must promptly notify the Association of all relevant details of the Change in Law (including the Supplier's calculation of the impact of the Change in Law on the contract price);
- the Supplier must promptly provide the Association with all information (including documents and reports) reasonably requested by the Association that is relevant to the Supplier's claim;
- the Supplier must use its best endeavours to mitigate or offset any increase in the contract price resulting from the Change in Law, including seeking and applying for any exemption, adjustment or compensation available to the Supplier in relation to the Change in Law; and
- the Association must adjust the contract price as agreed by the parties.

G.C.8 QUALITY OF SERVICES

G.C.8.1 Supplier's warranty

The Supplier warrants that:

- it will at all times provide adequate and suitably qualified and experienced personnel to perform the Services;
- its obligations will be performed in accordance with the Agreement and to best practice standards of diligence, skill, care and efficiency to be expected of a competent contractor providing services of a similar nature to the Services;
- it will comply with all the requirements of this Agreement, Relevant Laws, government requirements and any applicable codes or standards;
- it has the full power and authority to enter into this Agreement and to grant the rights granted in this Agreement to the Association.

G.C.9 PAYMENT

G.C.9.1 Payment

The Association shall pay the cost for the Services as set out in the Agreement or the Purchase Order.

G.C.9.2 Submission of Invoices

The Supplier must submit invoices at the times stated in the Agreement Particulars in the format approved by the Association.

G.C.9.3 Other information

The Supplier must provide any information required to substantiate an invoice if reasonably required by the Association.

If the Supplier fails to provide the information requested, the invoice will be rejected.

G.C.9.4 VAT

All prices for taxable supplies of services quoted in the Agreement are deemed to be exclusive of VAT, unless specifically stated otherwise.

G.C.9.5 Payment by the Association

Subject to the approval of the invoice by the Association, the Association shall pay the Supplier at the time specified in the Agreement Particulars.

G.C.9.6 Taxes, duties and levies

The Supplier must pay any fees, charges, levies and taxes imposed by a government entity in relation to the Services.

G.C.9.7 Income Tax Act

The Supplier warrants that it understands the criteria that apply to distinguish independent contractors from personal service providers as envisaged in the Income Tax Act.

The Supplier shall provide the Association with written confirmation that it is not a personal service provider as envisaged in the Income Tax Act in the format prescribed by the Association from time to time. Such confirmation must be provided on signature of the Agreement. The Supplier will notify the Association immediately should the status of any statement in the written confirmation change during the duration of the Agreement. The Supplier shall absolve the Association of any liability on its part should such confirmation be found to be false or incorrect. The Association will notify the Supplier as soon as practicable if it is required to withhold employees' tax from amounts due under the Agreement.

The Supplier indemnifies the Association against all losses, claims, liabilities, damage or expense which the Association may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Agreement. For these purposes "tax" includes PAYE and all other forms of duties or taxation, and any penalties or interest.

In the event that the Association suffers any claim, loss, liability, damage or expense, the Association may deduct the amount of such claim, loss, liability, damage or expense from any amount payable by the Association to the Supplier in terms of this Agreement.

G.C.9.8 Association's right to withhold

Notwithstanding any other provision to the contrary, if the Association considers it necessary to satisfy its obligations under the Income Tax Act and the regulations, interpretation notes or practice notes issued by the South African Revenue Service (the Regulations), the Association may:

- withhold an amount from a payment made to the Supplier; and

- pay the withheld amount directly to the Commissioner of the South African Revenue Services (Commissioner);
- and that amount is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.

G.C.10 RIGHT TO SET-OFF

G.C.10.1 Association's rights

The Association may at any time, deduct moneys from any amount due or becoming due to the Supplier under this Agreement in order to meet all debts and amounts due from the Supplier to the Association under or in connection with this Agreement (including any penalty amounts).

G.C.10.2 Notice of amount deducted

The Association must notify the Supplier in writing of any amounts deducted and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Supplier.

G.C.11 COMPLIANCE WITH POLICIES AND LEGISLATION

G.C.11.1 Supplier's obligations and acknowledgement – SHE Requirements

The Supplier:

- must acquaint itself, and fully comply with the SHE Requirements applicable to the Association;
- acknowledges the extreme importance that the Association places on establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships; and
- acknowledges that there is a commitment to eliminating work related injuries and occupational illnesses with a view to achieving the vision of 'Zero Harm'.

G.C.11.2 Supplier's obligations and acknowledgement – Association's Policies

The Supplier:

- acknowledges the extreme importance that the Association places on compliance with the Association's Policies;
- must acquaint itself with the Association's Policies and use its reasonable endeavours when performing the Services to comply with the Association's Policies; or where full compliance is not immediately practicable, take action to continuously improve compliance with the Association's Policies;
- acknowledges that the Supplier's compliance with Association's Policies during the Term of the Agreement may be a factor taken into account by the Association when determining whether the Association will, extend or vary the term of the Agreement; invite the Supplier to tender or offer to

supply to the Association in the future; or enter further arrangements, agreements or relationships with the Supplier after the end of the term of the Agreement;

- must, if reasonably requested by the Association, complete a self-assessment questionnaire supplied by the Association and, if required by the Association, provide proof of statements made.

G.C.11.3 Effect of Change in Requirements

If the Supplier believes that a Change in Requirements would necessitate a change to the method of carrying out the Services or otherwise amounts to a variation, the provisions of this Agreement must be followed.

G.C.11.4 Reporting of incidents

The Supplier must:

- report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to the Association as soon as reasonably possible and in any event, within a time period that ensures the Association can comply with Relevant Law; and
- provide the Association with reasonable assistance (including access to relevant documents and the Supplier's and subcontractor's employees) in investigating such incident.

G.C.11.5 Legislation

Without limiting the Supplier's obligations under the general conditions, the Supplier agrees that it is compliant with all laws and is acquainted with and understands the implications of, and, where applicable, complies with and will carry on complying with (but not limited to) the:

Occupational Health and Safety Act, 85 of 1993 (OHSA);

Compensation for Occupational Injuries and Diseases Act, 130 of 1993;

The Basic Conditions of Employment Act, 75 of 1997 (as amended) (BCEA);

The Labour Relations Act, 66 of 1995 (as amended) (LRA);

all environmental legislation including those laws and regulations governing water and regulations promulgated pursuant to any of the foregoing.

G.C.11.6 Assistance to the Association

The Supplier:

- acknowledges that certain legislation referred to above imposes obligations on the Association which may require the Supplier's compliance or the Supplier's assistance whilst within the Site to achieve compliance; and

- shall comply with such procedures and/or such instructions as the Association may require or give from time to time, orally or in codes of practice, to enable the Association and/or the Supplier to comply with their respective duties under the legislation listed above.

G.C.11.7 Undertaking in terms of the LRA

The Supplier undertakes to notify the Association of all disputes and claims against the Supplier and/or the Association which may result in any liability to the Association, whether jointly or severally.

G.C.12 INTELLECTUAL PROPERTY

Subject to each party retaining title to its Background IP, title to, copyright in and other intellectual property rights in any documents or other property created by the Supplier for or in connection with the Services (the "Documents") vests in the Association on creation and the Supplier hereby cedes and assigns all such rights to the Association with effect from the date of creation in order to vest such intellectual property in the Association. The Association grants the supplier a revocable licence to use the Documents for the performance of the Services and for the Term of this Agreement.

G.C.13 INDEMNITY

G.C.13.1 Indemnity by the Supplier

Without limitation to any other provisions of this Agreement, the Supplier hereby indemnifies the Association against all Losses arising in connection with:

- any damage within the Site or any property;
- death or injury to any person;
- a breach by the Supplier of a Government Consent or Relevant Law in connection with the performance of the Services;
- any actual or alleged infringement of any intellectual property rights, caused by the performance of the Services or the use of any process, work, material, matter, thing or method used or supplied by the Supplier;
- the breach by the Supplier of an obligation contained in the Agreement,
- if the Losses arise in connection with any act, error or omission of the Supplier or a subcontractor or their employees, agents, subcontractors or assigns.

G.C.13.2 Exclusion of Consequential Loss

A party ('**First Party**') shall not be liable to the other party ('**Second Party**') in contract (including under any indemnity), delict (including negligence or for breach of statutory duty) or otherwise for any:

- special, indirect or consequential loss or damages of any nature; or
- loss of profit, revenue, business, contracts or anticipated savings,
- ('**Consequential Loss**') related to or connected with this Agreement except Consequential Loss:

incurred as a result of the fraud, gross negligence or willful, reckless or deliberate breach of the Agreement by the First Party, its employees, agents or contractors in respect of claims by third parties for personal injury or death or which cannot be excluded by law.

G.C.14 EVENTS OF FORCE MAJEURE

G.C.14.1 Notice

Should either the Association or the Supplier (hereinafter referred to as "**the invoking Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of any act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo, strikes or any economic or other cause beyond the reasonable control of such party (any such event hereinafter called "**force majeure**") then the invoking party will forthwith give written notice thereof to the other party specifying the cause and anticipated duration of the force majeure; and promptly upon termination of the force majeure, stating that such force majeure has terminated.

G.C.14.2 Suspension of performance

Performance of any such obligations will be suspended from the date on which notice is given of force majeure until the date on which notice is given of termination of force majeure (hereinafter referred to as the "Suspension Period"), subject always to the remaining provisions of this clause.

The invoking party will not be liable for any delay or failure in the performance of any obligation hereunder, or Losses or damage due to or resulting from the force majeure during the Suspension Period.

The invoking party must use and continue to use its best efforts to perform such obligations during the Suspension Period.

If the force majeure shall continue for more than 60 (sixty) consecutive days, the other party will be entitled to cancel this Agreement on the expiry of such period, but will not be entitled to claim damages against the invoking party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the force majeure.

The party not invoking force majeure will be entitled to elect, by giving written notice within 10 (ten) days of the termination thereof, as to whether or not it requires the invoking party to perform any obligations incurred prior to the force majeure.

G.C.15 DEFAULT BY SUPPLIER

G.C.15.1 Insolvency Event

An insolvency event occurs if:

- the Supplier disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- the Supplier ceases to carry on business or is deregistered;

- the Supplier ceases to be able to pay its debts as they become due;
- any step is taken to enter into any arrangement between the Supplier and its creditors;
- any step is taken to appoint a receiver, a liquidator, a business rescue practitioner, an administrator or other like person to the whole or part of the Supplier's assets, operations or business;
- where the Supplier is a partnership, any step is taken to dissolve that partnership or a partner dies;
- the Supplier is a natural person and commits an act which is an act of insolvency under section 8 of the Insolvency Act, 1936,

then the Supplier must advise the Association of same in writing within 7 (seven) days of its occurrence. The Association may then terminate this Agreement immediately by written notice to the Supplier or the person in whom this Agreement is vested as a result of the insolvency event.

G.C.15.2 Breach

If the Supplier fails to perform or comply with any of its obligations under the Agreement, then the Association may provide the Supplier with 7 (seven) days written notice to remedy such failure. In the event that the Supplier fails to remedy the failure within such period, then the Association may, without prejudice to any other rights of the Association, terminate the Agreement.

In the event that the Supplier consistently breaches the terms of this Agreement, the Association may, terminate this Agreement immediately without providing any notice to remedy to the Supplier. For the purposes of this clause, 'consistently breaches' is defined as more than 2 (two) breaches within a consecutive 6 (six) month period.

G.C.16 TERMINATION FOR CONVENIENCE

G.C.16.1 Right of the Parties

In addition to any other rights that the Parties may have under the Agreement, either Party may at any time, in its discretion, terminate the Agreement in whole or in part by giving written notice for the time period as set out in the Agreement Particulars to the Supplier of its intention to terminate.

G.C.16.2 Remedies

If the Agreement is terminated as above, then subject to the Association's rights under the Agreement to deduct and withhold amounts owing to the Supplier, the Association must pay the Supplier, as the Supplier's remedy in relation to the termination, all amounts due and unpaid for the Services at the date of termination.

G.C.16.3 Continued performance

Notwithstanding the foregoing provisions of this clause, the Supplier must continue to supply any part of the Services in respect of which the Agreement is not terminated.

G.C.16.4 Obligations of the Supplier after termination

The Supplier shall furnish to the Association, within a reasonable time after this Agreement is terminated or ceases to have any effect, copies of all drawings, data sheets and other documentation and information relating to the Services.

The Supplier shall at no cost to the Association, give all such reasonable assistance and explanations to the Association and to any third party which has been appointed by the Association to provide the Services in place of the Supplier, if any, to enable that third party to understand what has been done to date by the Supplier regarding the Services.

G.C.17 ANTI CORRUPTION

G.C.17.1 Receipt of benefits

The Supplier must not, give or receive any commission, fee, rebate, gift or entertainment of significant value from; or enter into any business agreement with, any director, employee or agent of the Association other than as a representative of the Association or in the ordinary and proper course of business between any of those parties.

G.C.17.2 Compliance with Anti-Corruption requirements

The Supplier must (and must ensure that the Supplier's employees and its subcontractors and their employees), when performing its obligations under this Agreement, comply with, all applicable Anti-Corruption Laws; and Business Integrity standards.

G.C.17.3 Dealings with Public Officials

Without limiting the above clause, the Supplier must not receive or offer, pay or promise to pay, give or promise to give, either directly or indirectly, anything of value to a Public Official; or any person with the knowledge or being aware of a high probability, that all or a portion of such money or thing of value will be unlawfully offered, given or promised, directly or indirectly, to any Public Official, in connection with any aspect of the Supplier's obligations under the Agreement, for the purpose of:

- influencing any act or decision of such Public Official in their official capacity;
- inducing such Public Official to do or omit to do any act in violation of their lawful duty;
- securing any improper advantage;
- inducing such Public Official to influence any act or decisions of any entity or enterprise owned or controlled by government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government; or
- assisting the Supplier in obtaining or retaining business for or with or directing business to the Supplier.

For the purposes of this clause, a Public Official is, any official or employee of government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government or government-owned or controlled entity; any person performing a public function; any

official or employee of a public international organisation such as the World Bank; any candidate for political office; or any political party or an official of a political party.

G.C.17.4 Provision of information regarding corruption

From Commencement Date, the Supplier must immediately notify and provide full particulars to the Association upon becoming aware of information regarding corruption, or been found guilty by a court of, or has admitted guilt or accepted liability in relation to, a contravention of any Anti-Corruption Law.

G.C.17.5 Conflict of interest

The Supplier represents that at Commencement Date, there is no relationship between it and the Association, between any of the Supplier's directors or employees and the Association, or between the Supplier and a director or employee of the Association that gives rise to an actual or potential conflict of interest.

The Supplier must immediately notify the Association upon becoming aware that any such relationship exists. The Supplier must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under the Agreement.

G.C.18 DISPUTE RESOLUTION

G.C.18.1 Resolution of disputes

A party must not commence court proceedings (except proceedings seeking urgent interdictory or interlocutory relief) in respect of any dispute under the Agreement unless it has complied with this clause.

G.C.18.2 Notice of dispute

If a party considers that a dispute exists in connection with the Agreement, that party may give the other party notice detailing the nature of the dispute (**Notice of Dispute**).

G.C.18.3 Meeting of representatives

Within 10 (ten) Business Days after the service of a Notice of Dispute, representatives of the parties must confer at least once to attempt to resolve the dispute.

G.C.18.4 Arbitration

If a dispute has not been settled by the representatives 30 (thirty) Business Days after notice is served then the dispute must be referred to and settled by an arbitrator in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (AFSA).

G.C.18.5 Appointment of Arbitrator

The arbitrator must be selected by agreement between the parties, or if the parties fail to agree, the person nominated by (which nomination binds the parties), in the case of a financial or accounting matter, the

President for the time being of the South African Institute of Chartered Accountants; and for all other matters, the President for the time being of AFSA.

G.C.18.6 Arbitrator's decisions

The arbitrator's decision is final and binding on the parties who must give effect to the decision immediately.

G.C.18.7 Arbitrator's costs

The arbitrator's costs are payable by the party determined by the arbitrator or, in the absence of a determination, equally by the parties.

G.C.18.8 Continued Performance

Notwithstanding the existence of a dispute, the parties must continue to perform in terms of the Agreement.

G.C.19 CONFIDENTIALITY

G.C.19.1 Definition

Each party acknowledges and agrees that all material and information which has or will come into its possession or knowledge in connection with this Agreement, or the performance hereof, or relating to the party's business or operations consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging to the other of them.

Confidential and proprietary information does not include any information which, at the time of disclosure, is generally known by the public and any competitors of the disclosing party; or which is developed independently by a party without reference to information provided by the other party; or was made available on a non-confidential basis by a third party who is not prohibited from providing the information to the recipient.

G.C.19.2 Disclosure

Both parties, therefore, agree to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to employees or sub-contractors reasonably requiring such information and who are bound by written confidentiality obligations no less stringent than those contained in this Agreement prior to such release, and not to release or disclose it to any other party.

If the disclosing party is required by a Relevant Law or any applicable stock exchange listing rule to disclose any confidential information to a third person, the disclosing party must, notify the other party before doing so; give the other party a reasonable opportunity to take any steps that the party considers necessary to protect the confidentiality of that information; notify the third person that the information is confidential information; and if the recipient or any of its representatives makes any disclosure pursuant to this clause, disclose only that portion of the confidential information which it is legally required to disclose.

No provision of the Agreement shall be construed in such a way that a disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the confidential information notwithstanding that, the receiving party receives a request for the whole or any part of the confidential information in terms of the provisions of the Promotion of Access to Information Act, 2 of 2000 (the PAIA); or the disclosing party has previously disclosed any of its confidential information to a third party in terms of the provisions of the PAIA or any other law or court order.

G.C.19.3 Media releases and photography

The Supplier must not, without the prior approval of the Association, issue any information, publication, document or article for publication concerning the Services in any media; advertise at the Site; or participate in a media interview that mentions or refers to the Services.

G.C.20 PROTECTION OF PERSONAL INFORMATION

G.C.20.1 Consent to Processing of Personal Information

The Association consents to the Supplier using its Personal Information to the extent that such Personal Information is necessary for purposes of discharging its obligations in terms of the Agreement.

The Data Subjects may withdraw their consent, or object to the Supplier Processing their Personal Information at any time.

The Supplier will ensure that it will Process Personal Information only for purposes of discharging its obligations in terms of the Agreement or such other purposes as the Data Subjects may consent to from time to time, and the Supplier will not Process any Personal Information for any other further purposes which the Association or Data Subject as the case may be, not consented to.

G.C.20.2 Storage of Personal Information

The Supplier warrants that it will keep the Data Subjects' Personal Information that it Processes secure and confidential and it will maintain the integrity and confidentiality of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures in line with international best practice to prevent the loss of, damage to, unauthorised destruction of or unlawful access to the Personal Information.

The Supplier will provide the Association with sufficient proof, to the satisfaction of the Association, that it has implemented physical, organisational, contractual and technological security measures to keep all Personal Information secure, including protecting any Personal Information from loss or theft, and unauthorised access, disclosure, copying, use or modification.

The Supplier will notify the Association in writing in the event of a security breach (or a reasonable belief of a security breach) in respect of the Associations' Personal Information. The Supplier will provide such notification as soon as reasonably possible after it has become aware of any security breach of the Association's Personal Information, and immediately upon notifying the Association, at its own cost, take

all necessary steps as well as the reasonable steps directed by the Association to mitigate the continuation of the compromise, the repetition of a similar compromise, and mitigate the extent of the loss occasioned by the compromise of the Personal Information.

G.C.20.3 Retention of Personal Information

The Supplier will Process Personal Information for as long as necessary to fulfil the purposes for which that Personal Information was collected and/or as permitted or required by applicable law.

The Supplier may retain Personal Information for longer periods for statistical, historical or research purposes, and should this occur, the Supplier will ensure that appropriate safeguards have been put in place to ensure that all recorded Personal Information will continue to be Processed in accordance with this Agreement and POPI.

Once the purpose for which the Personal Information was initially collected and processed no longer applies or becomes obsolete, the Supplier will ensure that it is deleted, destroyed or de-identified so that a third party cannot re-identify such Personal Information.

G.C.20.4 Providing Personal Information to Third Parties

The Supplier may disclose Personal Information to third party service providers provided that it will enter into agreements with such third party service providers to ensure that they Process all Personal Information in accordance with the provisions of this Agreement and POPI and only to fulfil the purposes for which that Personal Information was collected.

In addition, the Supplier may not send Personal Information to any jurisdiction outside of the Republic of South Africa without the prior written consent of the Association.

G.C.20.5 Access to Personal Information

The Data Subjects may, at any time, request access to its Personal Information held by the Supplier and request the correction or deletion of such Personal Information.

The Data Subjects can challenge the accuracy or completeness of its Personal Information in the Supplier's records. If the Data Subjects successfully demonstrate that their Personal Information in the Supplier's records is inaccurate or incomplete, the Supplier will ensure that such Personal Information is amended or deleted as required by the Data Subjects.

G.C.21 NOTICES

G.C.21.1 *Domicilium citandi et executandi*

The parties choose as their *domicilium citandi et executandi* for court process the addresses specified in the Agreement Particulars.

G.C.21.2 Notice requirements and time of receipt

A notice under this Agreement must be in writing, in English and addressed to the receiving party, and will be deemed to have been received, if posted, on the 10th day after posting; if delivered personally, upon delivery; or if sent by email on a Business Day, on dispatch of the transmission; or on a day other than a Business Day, on the next Business Day, unless proved otherwise.

G.C.21.3 Notice details

A party may specify another address for the purposes of this clause by notice to the other party.

G.C.21.4 Actual receipt

A notice actually received by a party is adequate service of such notice even if the notice is received at an address or facsimile number or email address different to the address or facsimile number or email address specified in the Formal Instrument of Agreement or a later notice.

G.C.22 ASSIGNMENT AND SUBCONTRACTING

The Supplier must not subcontract, cede, assign and/or delegate any or all of its rights and obligations (including liabilities) under this Agreement to any person, without the prior written consent of the Association.

The Supplier shall not subcontract any part of the Services other than to subcontractors approved by the Association, which approval may be withheld in the absolute discretion of the Association. The Supplier shall be responsible for the acts or defaults of any subcontractor, its agents or employees, as if they were the acts or defaults of the Supplier.

G.C.23 MISCELLANEOUS PROVISIONS

G.C.23.1 Governing Law

The Agreement is governed by and must be construed and enforced in accordance with the laws of the Relevant Jurisdiction and the parties unconditionally submit to the exclusive jurisdiction of the courts of the Relevant Jurisdiction (and courts of appeal from them).

G.C.23.2 Entire Agreement

The Agreement contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Services or the Agreement.

G.C.23.3 Severability

If any provision contained in the Agreement is void, illegal or unenforceable, that provision is severable from the Agreement and the remainder of the Agreement has full force and effect.

G.C.23.4 Non-waiver

No failure by a party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future.

G.C.23.5 Amendment

The Agreement may be altered only in writing signed by both parties. This requirement will only be satisfied if such amendment or variation is made in a written, paper based form on which the signatures of the parties are reflected. .

G.C.23.6 No other relationship

Nothing contained in the Agreement is to be construed as constituting a joint venture, agency or partnership between the Supplier and the Association.

G.C.23.7 Agency

The Supplier warrants to the Association that it has concluded this Agreement as a principal and not as an agent whether for an undisclosed principal or an unnamed principal or otherwise.

G.C.23.8 Survival

Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

G.C.23.9 Counterparts

This Agreement may be executed in any number of counterparts but will not be binding until executed counterparts are exchanged. Counterparts may be exchanged by facsimile transmission or email of executed copies of this Agreement.



LEBALELO WATER USER ASSOCIATION

NON-DISCLOSURE AGREEMENT [“NDA” / “Agreement”]

Between

The LEBALELO WATER USER ASSOCIATION, established on 1 February 2002 in terms of Chapter 8 of the National Water Act of 1998 (Act 36 Of 1998) Section 92(1)(f) and 94(2), Schedule 4 (Management and Planning of Water Management Institutions) and Schedule 5 sections 79(2) and 84(1) of the Act, represented herein by Mr J A Bierman in his capacity as Chief Executive Officer of the Association, he being duly authorised hereto;

(hereafter referred to as the ‘**Disclosing Party**’) –

and

_____ [insert name of Bidder], with Registration No. _____, an organisation having its principal place of business at _____, duly represented herein by _____ in his capacity as _____, he/she being duly authorised hereto;

(hereafter referred to as the ‘**Receiving Party**’).

1. In consideration of the provision of access by the Disclosing Party to the Receiving Party, of confidential information pertaining to the content of the **Request for Proposal** (RFP) issued by the Disclosing Party which Information is / shall be disclosed to the Receiving Party (hereinafter referred to as "Information"), the Receiving Party hereby agrees to hold in trust and confidence and not to disclose to any unauthorised third party or to use for any purpose other than as authorized in writing, in advance, by the Disclosing Party any and all Information disclosed to it by the Disclosing Party, or obtained by access to the facilities of the Disclosing Party **except Information which:**
 - a) at the time of disclosure is in the public domain, or after disclosure becomes part of the public domain by publication or otherwise through no fault of the Receiving Party; or



LEBALELO WATER USER ASSOCIATION

- b) was in the possession of the Receiving Party prior to the time of disclosure hereunder, and which was not acquired directly or indirectly from the Disclosing Party; or
- c) was received by the Receiving Party, after the time of disclosure hereunder from a third party under no obligation of confidentiality to the Disclosing Party and who did not acquire any such Information directly or indirectly from the Disclosing Party.

The onus of proving any one of the exceptions contained in clauses 1a) to 1c) rests with the Receiving Party. Any combination of several items of Information shall not be deemed to be within the foregoing exceptions in clauses 1a) to 1c) merely because individual items of Information are within one or more of the exceptions but only if the combination itself falls into one of the foregoing exceptions.

- 2. This Agreement shall not be construed as granting the Receiving Party any claim of any nature to such Information, nor any license rights or any proprietary rights relating to the Information and the Disclosing Party retains all right, title and interest in and to such Information. The Receiving Party shall not copy, reproduce, publish or circulate any of the Information unless the Disclosing Party provides its prior written consent in such instance.
- 3. The Receiving Party agrees to assume responsibility for the compliance with the terms of this Agreement of all of its employees who may be given access to Information and shall be responsible for any breach of the provisions of this Agreement by such employee. The Receiving Party agrees to inform an employee of the confidential nature of the Information and shall only disclose the Information to an employee who has a legitimate interest therein.
- 4. Subject to the exceptions in clause 1, the provisions of this agreement shall commence on signature of this Agreement and shall continue in perpetuity thereafter .On termination of this Agreement, the Receiving Party shall deliver up to the Disclosing Party all documents and/or material containing Information of the Disclosing Party in its possession or control, including any such documents and/or material that an employee may have become privy to or be in possession of.
- 5. The Receiving Party indemnifies the Disclosing Party, including any of its employees and/or contractors against any claim for loss or damage of whatever nature or kind, which may arise as a result of the unauthorised disclosure of the Information to a third party.



LEBALELO WATER USER ASSOCIATION

6. No amendment, alteration, addition, variation, or consensual cancellation of this Agreement will be valid unless in writing and signed by both the Disclosing and Receiving Parties.

7. Any disputes arising out of or in connection herewith shall be referred to the respective authorised signatories of the Disclosing Party and Receiving Party or their successors in title, who shall meet within **14 days** of such referral to attempt to resolve the dispute and should they fail to resolve the dispute within **10 days** of such meeting, either of the Parties shall be entitled to request the Chairperson for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have regard to the nature of the dispute. The arbitrator shall have the powers conferred upon an arbitrator under the Rules. The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the South Gauteng High Court, Republic of South Africa should any other Party wish to make the arbitrator's decision an order of Court.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives on the date written below.

<p>For and on behalf of the Receiving Party:</p> <p>Signature:</p> <p>Name:</p> <p>Date:</p> <p>Place:</p>	<p>For and on behalf of the Disclosing Party:</p> <p>Signature:</p> <p>Name:</p> <p>Date:</p> <p>.....</p> <p>Place:</p>
--	--