

MASTER SERVICES AGREEMENT

MSA_PAM_001

Between
Business Engineering (Pty) Ltd
and
Prince Albert Municipality



MASTER SERVICES AGREEMENT

1. PARTIES

- 1.1 The Parties to this Agreement are –
- 1.1.1 Prince Albert Municipality (hereinafter referred to as “the Customer”); and
 - 1.1.2 Business Engineering (Pty) Ltd. (hereinafter referred to as BE)
- 1.2 The Parties hereby agree as set out below.

2. INTERPRETATIONS AND DEFINITIONS

- 2.1 Word importing:
- 2.1.1 any one gender includes the other gender;
 - 2.1.2 the singular includes the plural and vice versa; and
 - 2.1.3 the singular includes created entities (corporate and unincorporated) and vice versa.
- 2.2 Unless the context otherwise indicates, the following expressions shall have the meanings given to them hereunder and cognate expressions shall have corresponding meanings:
- 2.2.1 “**Act**” means the Electronic Communications Act No 36 of 2005, as amended;
 - 2.2.2 “**Affiliate**” means, the holding company, subsidiary, associated and/or related company of BE, including their successors, permitted assigns, employees and agents as the case may be;
 - 2.2.3 “**Agreement**” means this Master Services Agreement (MSA-PAM-001) and all Statement of Work attached hereto;
 - 2.2.4 “**BE**” means Business Engineering (Pty) Limited, a company duly registered under the company laws of the Republic of South Africa with registration number: **1998/016562/07**; and having its principal place of business at: Unit 23, Garsfontein Office Park, 645 Jacqueline Drive, Garsfontein East, 0042, South Africa.
 - 2.2.5 “**Business Day**” means any day other than Saturday, Sunday or a public holiday officially recognised as such in the Republic of South Africa;
 - 2.2.6 “**Customer**” means Prince Albert Municipality
 - 2.2.7 “**Due Date**” means the date specified in the relevant invoice, or if no such date is specified, the date of payment which is thirty (30) Days from the date of the invoice;
 - 2.2.8 “**Effective Date**” means the date of signature of this Agreement by the Party signing last in time;
 - 2.2.9 “**Intellectual Property Rights**” means and includes:
 - 2.2.9.1 rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any forgoing items and all rights in nature of any of the foregoing items, each for their full term (including any

extensions or renewals thereof) and wherever in the world enforceable

- 2.2.9.2 all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;
- 2.2.10 “**MRC**” or “**Monthly Recurring Charge**” means the monthly charges for the services as set out in applicable Statement of Work(s);
- 2.2.11 “**NRC**” or “**Non-Recurring Charge**” means installation fee for the Service as set out in applicable Statement of Work(s);
- 2.2.12 “**Party**” means either of the signatories to this Agreement and “**Parties**” means both collectively and shall be deemed to mean and include their respective successors and permitted assigns;
- 2.2.13 “**Services**” means any services provided to the Customer under a Statement of Work;
- 2.2.14 “**Service Commencement Date**” means the date on the Statement of Work;
- 2.2.15 “**Service Levels**” means the levels of service required in relation to the provision of the Service by BE as fully set out in the **Statement of Work (SOW)** attached to this Agreement;
- 2.2.16 “**Statement of Work**” or “**SOW**” means the form through which the Customer accepts a quotation for services, setting out the details of the Services requested such as quantities, fees, and charges payable;
- 2.2.17 “**Terminating Services**” means those Services that are terminated in accordance with clause 16 below;
- 2.2.18 “**Termination Date**” means the date upon which this Agreement terminates for any reason whatsoever.
- 2.3 Headings are for convenience only and so not affect the interpretation of this Agreement.
- 2.4 In the event of ambiguity or conflict between any of the constituent parts of the Agreement, the order of precedence in the interpretation of the Agreement shall be:
- 2.4.1 The Master Services Agreement; and
- 2.4.2 Statement of Work(s).
- 2.5 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply.
- 2.6 Any reference to an enactment is to that enactment as at Signature Date and as amended or re-enacted from time to time.
- 2.7 If any provision in a definition is a substantive provision imposing rights or obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.8 When any number of days is prescribed in this Agreement, same shall be reckoned exclusive of the first day and inclusive of 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.
- 2.9 Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.

2.10 A law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

3. INTRODUCTION

3.1 the Customer hereby appoints BE to provide the Services, subject to the terms and conditions contained in this Agreement, which appointment the Customer hereby accepts.

3.2 BE shall be entitled to appoint any of its Affiliates to provide the services on written approval from the Customer to such effect, provided that BE shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under this Agreement.

4. COMMENCEMENT DATE AND DURATION

4.1 This Master Services Agreement follows on the Appointment Letter dated 14 May 2021 and Contract Form (MBD 7.1, 7.2 & 7.3) signed between BE and the Customer on 27 May 2021 after the appointment made on Tender: 43/2021: Supply, delivery and installation of an electronic records, document, and workflow system for a contract period of three (3) years.

4.2 The commencement of the Services to be provided shall be in terms of each individual Statement of Works that is completed by BE and will be effective from the Service Commencement Date for the duration specified in the Statement Of Works.

4.3 Service Commencement Date: 1 July 2021

5. PROVISION OF SERVICES

5.1 BE hereby agrees that it will as from the Effective Date, and thereafter continue throughout the duration of this Agreements to, supply the Services as requested by the Customer from time to time, in accordance with the terms and conditions of this Agreement and the SOW's.

5.2 For the duration of this Agreement, the Customer shall obtain the services as it requires from BE in terms of this Agreement and the SOW's concluded from time to time.

5.3 BE shall not be committed to supply any services to the Customer until a SOW in respect of the required services has been signed by the Customer.

5.4 In providing the Services to the Customer pursuant to each of the SOW's, BE reserves the right to utilize any technology which it has available and which it considers at its discretion as the most suitable and reasonable to render Services.

5.5 The Services shall be used by the Customer in accordance with the terms and conditions of this Agreement.

5.6 The Customer shall endeavour to ensure that the Services are not used in a manner which constitutes an infringement of any rights of BE or any third party, or any illegal, fraudulent or any unauthorised activities.

5.7 the Customer shall further endeavour to ensure that it and its customers do not by any act or omission, damage, interfere with or impede the operation of the Service provided by BE.

5.8 Where the Customer is aware that there is any violation or contravention contemplated in this clause 5, it will co-operate and provide BE with the necessary information to assist in identifying, preventing or remedying or rectifying such violation or contravention.

5.9 Where the Customer has a service requirement that is not covered by an existing SOW, the additional or alternate requirement of that customer will be addressed on a case by case basis, provided that this requirement is brought to the attention of BE promptly.



- 5.10 Each SOW shall constitute an agreement between the Parties subject to and regulated by this Agreement.
- 5.11 BE represents and warrants that it will:
- 5.11.1 perform the Services in accordance with the Statement of Work (SOW);
 - 5.11.2 perform the Services with due care and skill, in a proper and professional manner consistent with best industry practices;
 - 5.11.3 ensure the Services comply with the performance criteria and specifications identified in a SOW, are of acceptable quality and fit for the business purposes described in this Agreement or a SOW or otherwise made known to BE by the Customer;
 - 5.11.4 comply with the requirements of all laws of any kind applying to the performance of the Services, including with respect to any authorisations, permits and licences that may be required;
 - 5.11.5 comply with all laws and regulations and assume all liabilities or obligations imposed by such laws, rules and regulations with respect to BE's performance hereunder;
 - 5.11.6 comply with all instructions or directions given to BE or its personnel by the Customer in relation to the performance of the Services including ensuring compliance with all of the Customer's operating standards, policies and procedures (including those relating to security, occupational health and safety and privacy) as they are notified to BE from time to time; and
 - 5.11.7 ensure that all information provided by or on behalf of BE to the Customer before the date of this Agreement, whether in any tender documents, correspondence, negotiations or otherwise, is true, complete and accurate in all respects.

6. FEES AND CHARGES

- 6.1 All payments payable by the Customer in terms of the SOW shall be paid in full without deduction or demand, free of exchange, to BE, and the Customer shall not be entitled to withhold any part of such payments or to make anything but the full payments due to BE in terms of the SOW unless disputed as per 6.5. The Customer acknowledges and agrees that any breach of the whole or any part of this Clause 6 shall be a breach of this Agreement and BE shall be entitled to terminate this Agreement and to enforce whatever rights it has against the Customer in terms of this Agreement.
- 6.2 Charges or fees for the provision of the Service shall be paid to BE in accordance with the SOW.
- 6.3 Payment will be inclusive of VAT.
- 6.4 BE shall be entitled to adjust the monthly fees and charges as a result of any regulatory, economical, or government-imposed factors that impact on such fees and charges. BE shall inform the Customer in writing of these changes thirty (30) days prior the changes coming into effect, to allow the Customer to comment.
- 6.5 The rates payable by the Customer to BE as set out in the SOW hereof shall escalate annually on the annual anniversary date of the Commencement Date of the SOW to such rates as may be agreed between the parties or indicated in the SOW. The rates will escalate by CPI + 1% (one per centum) as published in March on the Statistics South Africa Website. Any charges incurred by BE in the provision of the Service/s will be increased when increases are applied by the suppliers of these services and products to BE.
- 6.6 The Customer may withhold payment of any fees that the Customer disputes in good faith, until the dispute has been resolved. Should any part of an invoice be disputed, BE will reissue the invoice for the non-disputed portion to enable payment.

7. INVOICING

- 7.1 BE will invoice the Customer for each Service provided under this Agreement from the Service Commencement Date.
- 7.2 BE shall in relation to all fees due under this Agreement, provide the Customer with a detailed monthly statement of account (together with all related tax invoices) setting the amount due and payable by the Customer.
- 7.3 BE may include on any invoice any amount not previously billed for calendar months prior to the current month.
- 7.4 If any amount is overdue, the Customer shall pay interest on the overdue amount at prime rate plus 2% (two per centum), such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).
- 7.5 Invoices shall be provided electronically to the Customer as soon as possible after the invoice date.

8. THE CUSTOMER'S OBLIGATIONS

The Customer shall ensure that, in making use of the Services, it shall:

- 8.1 comply with this Agreement and such other terms and conditions as may be agreed by the Customer for the purpose of continuous and secure provision of the Services or to comply with any applicable law;
- 8.2 secure that the Customer's customers do not infringe the rights of any person, including but not limited to, intellectual property rights and rights of confidentiality;
- 8.3 not do anything which is unauthorised or illegal under any applicable law; and
- 8.4 adhere to applicable laws and obtain such permissions and approvals necessary for the Customer to use the Services thereunder.
- 8.5 Shall use reasonable endeavours to not commit nor attempt to commit any act or omission which directly or indirectly:
- 8.5.1. Impairs or precludes BE from being able to provide the Service in a reasonable and business-like manner;
 - 8.5.2. constitutes an abuse or malicious misuse of the Service;
- 8.6 Is prohibited from selling, reselling or otherwise dealing with the Service/s in any manner whatsoever, except for purposes of its own business. Without limitation to the foregoing, any consideration, which the Customer may receive whilst acting in breach of this prohibition, shall be forfeited to BE.

9. RETAINED RESPONSIBILITIES

- 9.1 In connection with the Services provided by BE under this Agreement and any SOW, the Customer undertakes to provide to BE or retain responsibility for, as applicable, the functions and requirements listed in the relevant Services description.
- 9.2 BE's non-performance of any obligation under this Agreement shall be excused if and to the extent such BE's non-performance results from the Customer failing to perform its retained responsibilities.

10. BE'S OBLIGATIONS

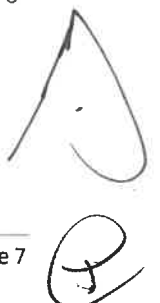
BE shall not do, or permit to be done, anything in relation to the Services which may reasonably be expected to damage or materially interfere in any way whatsoever with the proper normal operation of the Customer's business.

11. SAFETY AND SECURITY

- 11.1 Each Party agrees to comply with safety and security procedures notified to them by the other Party and with the requirements of the Work Health and Safety Act.
- 11.2 All access to the Customer sites by BE and its employees, agents and contractors shall be in terms of the Customer's safety and security procedures, as amended from time to time.
- 11.3 The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligation and rights in terms of this Agreement and applicable laws to ensure the health and safety of the other Parties' employees, agents, directors, sub-contractors and members of the public.
- 11.4 The Customer shall be entitled to request BE to remove any employee, agent or contractor from its team if it is of the reasonable opinion that such person is a security or safety risk. Any such request shall be in writing and shall stipulate the reasons why the Customer believes the requested removal is necessary.

12. FORCE MAJEURE

- 12.1 A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement in so far as it is able to prove that:
- 12.1.1 such failure was due to an impediment beyond its reasonable control;
 - 12.1.2 it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of this Agreement; and
 - 12.1.3 it could not reasonable have avoided or overcome the impediment or at least its effects and, for purposes of this clause 12, the following events (which enumeration is not exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely:
 - 12.1.3.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
 - 12.1.3.1.2 natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
 - 12.1.3.1.3 acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed risk; and
 - 12.1.3.1.4 acts and omissions of any third party telecommunications provider or any utility.
- 12.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date on which the Party seeking relief gives notice of the impediment relied upon and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than 30 (thirty) consecutive days, the other Party shall be entitled to terminate this Agreement by written notice to the Party seeking relief.



13. INDEMNITY

- 13.1 BE will at all times indemnify and will continue to indemnify the Customer and each of their members, partners, principals, agents and employees from and against all liabilities, costs and expenses suffered or incurred (including all legal fees) arising out of or in relation to any of the following:
- 13.1.1 any infringement, or an allegation that any of the Services infringe upon the Intellectual Property Rights or any other proprietary right of any third party;
 - 13.1.2 any unauthorised use or disclosure of the Customer's Confidential Information by BE or its personnel;
 - 13.1.3 any personal injury, death or damage to tangible property caused or contributed by BE or its personnel;
 - 13.1.4 any claims which may be made by any tax authority or any authority administering workers' compensation laws in relation to the personnel, BE or payments made to BE under this Agreement;
 - 13.1.5 any breach of this Agreement (including breach of any warranty, representation or covenant of BE); and
 - 13.1.6 any act or omission of BE or its personnel.

14. LIMITATION OF LIABILITY

- 14.1 Indirect damages: Subject to clause 14.3, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall not be liable to the other Party for any losses which constitute indirect, special and/or consequential damages, including but not limited to loss of business, loss of profits, loss of anticipated savings, business interruption and loss of goodwill.
- 14.2 Without in any way limiting or derogating from above provisions, the Parties agree that the total amount arising out of the performance of its obligations under and in terms of this Agreement and whether in contract, delict, breach of statutory duty or otherwise, shall, during the term of this Agreement, be limited to the fees paid by the Customer in respect of a 3 (three) month period.
- 14.3 The limitation in clause 14.2 will not apply to any damages caused by a breach of any Intellectual Property Rights, Confidentiality or Privacy laws.

15. SUSPENSION OF SERVICES

- 15.1 BE may lawfully suspend, withdraw all or part of any Service on a SOW at any time until further notice to the Customer if, in BE's reasonable discretion:
- 15.1.1 the continued provision of the Service will cause BE to breach an applicable law or be in contravention of its Licenses;
 - 15.1.2 the Customer is in material breach of or otherwise is not complying with any of the provisions of this Agreement and has not remedied the breach or non-compliance within 14 days of receiving notice of the breach or non-compliance; and
 - 15.1.3 Any overdue invoice for charges billed by BE to the Customer remains unpaid.
- 15.2 The exercise of BE's right to suspend the Services under this clause 15 is without prejudice to any other remedy available to BE under the Agreement and does not constitute a waiver of BE's right to subsequently terminate the Agreement.
- 15.3 Where BE has suspended the services in terms of clause 15.1, BE may refuse to provide the Services unless precluded by any law or order of court.



16. TERMINATION

16.1 Termination for convenience

- 16.1.1 Either Party shall be entitled to terminate the Agreement by providing the other Party with 60 (sixty) days' prior written notice to that effect.
- 16.1.2 Termination in accordance with clause 16.1.1 above shall not affect the term of any SOW, which shall continue, in full force and effect, in accordance with the terms and conditions of this Agreement as if this Agreement had not been terminated, until the end of the term of the SOW.
- 16.1.3 Notwithstanding the Contract Term set out in the SOW, the Customer shall be entitled in its sole discretion and without cause, to terminate one or more SOW's (the "Terminating Services") by giving BE 30 (thirty) days' prior written notice, which termination shall be subject to the early termination charges set out in the SOW.

16.2 Termination for cause

Without prejudice to any rights and remedies that may have accrued, Either Party may terminate this Agreement by providing the Other Party with 30 (thirty) days written notice of its intention to do so if the other Party:

- 16.2.1 ceases to trade (either in whole, or as to any part involved in the performance of this agreement);
- 16.2.2 becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; or
- 16.2.3 Makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts under any applicable law relating to bankruptcy or the relief of debtors.

16.3 Breach

- 16.3.1 In the event that there is a breach by any Party of any of the terms of this Agreement, either Party shall be entitled to provide the Party in breach with a written notice of 30 (thirty) days to remedy such breach as set out below:
- 16.3.1.1 a meeting of that entity convened to consider or pass a resolution, or a declaration is made in respect of that entity, a petition is presented in respect of that entity, legal proceedings are commenced by or in respect of that entity or any other step is taken, for the provisional or final winding-up, sequestration, judicial management, curatorship or dissolution of such entity's assets, business, undertaking or estate or with a view to a composition, assignment or arrangement with such entity's creditors;
- 16.3.1.2 entity being or becoming unable (or admitting its inability) to pay its debts generally as they fall due or being (or admitting to being) otherwise insolvent or stopping, suspending or threatening to stop or suspend payment of all or a material part of its debts or making a general assignment or arrangement or composition with, or for the benefit of, its creditors (or any class of them);
- 16.3.1.3 such person's or entity's liabilities exceed its assets (fairly valued);
- 16.3.1.4 any business rescue proceedings under the Companies Act being commenced against it or a resolution being proposed to place that entity under supervision under the Companies Act at any duly convened meeting of the shareholders or board of directors of that entity;
- 16.3.1.5 a meeting of that entity being convened to consider or pass a resolution, or a declaration is made in respect of that person or entity, a petition is presented in respect of that person or entity, legal proceedings are

commenced by or in respect of that person or entity or any other step is taken, to commence business rescue proceedings in respect of that person or entity;

16.3.1.6 any liquidator, curator, judicial manager, business rescue practitioner or similar officer being appointed in respect of such entity or any part of its assets, undertaking, business or estate or such entity (or any organ of that person or entity) requests such appointment;

16.3.1.7 that entity committing any act which, if it were a natural person, would be an act of insolvency as contemplated in the Company Act;

16.3.2 Either Party shall be entitled to terminate this Agreement, where either Party:

16.3.2.1 commits a material breach of any its obligations under this Agreement which is incapable of remedy; or

16.3.2.2 fails to remedy, where it is capable of remedy, or persists in, any breach of any of its obligations under this Agreement after having been required in writing to remedy or desist from such breach within a period of 30 (thirty) days.

17. SERVICES VARIATIONS

If either of the Parties wishes to make a change, modification or adjustment to any element of any Service, the following procedure will apply:

17.1 The Party who requests the change will forward a change request to the other Party, setting out the details of the change request.

17.2 BE will investigate the feasibility, cost implications and of the change request on the services and notify the Customer thereof ("Impact Study").

17.3 If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give BE a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the Agreement shall be deemed to be amended accordingly.

17.4 If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

18. DISPUTE RESOLUTION

18.1 In the event of any Dispute arising between the Parties under this Agreement or any Service, the Parties will act in good faith to attempt to settle the Dispute through discussions between senior representatives of the Parties within 30 (thirty) days of a Party notice of the issue in dispute.

18.2 Notwithstanding the provisions of this clause 18, either Party shall have the right to seek relief by way of interim relief from any court of competent jurisdiction.

19. CONFIDENTIALITY

19.1 Each Party must:

19.1.1 use the other Party's confidential information only for the purposes of this Agreement and must keep confidential and not disclose to any person the other Party's confidential information; and

19.1.2 not make press or other public announcements or issue press releases about the Services, the Agreement or the transactions related to it without the approval of the other Party ("Announcement").

- 19.2 Clause 19.1 does not apply to confidential information that is in the public domain other than such information that has entered the public domain because of a breach of this Agreement or any obligation of confidence.
- 19.3 A party may disclose the confidential information of the other Party if that disclosure is to the employees, contractors or professional advisers of that Party or its affiliates who have a need to know that information in relation to provision of the Services and who have agreed to keep it confidential.
- 19.4 A Party may disclose confidential information of the other Party or make an Announcement that is required in accordance with any applicable law.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Nothing contained in this agreement shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.
- 20.2 Each party indemnifies the other party against all crimes, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement of any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the infringement by a Party of the intellectual Property Rights of the other Party.

21. INFORMATION SECURITY

- 21.1 **Definition of Personal Information and Confidential Information.**
All client information or information or data provided by the Customer to BE (inclusive of Personal Information) is to be treated as "Confidential Information" unless otherwise noted in writing by the Customer. "Personal Information" means information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable that the Customer or a client provides to BE or that BE otherwise acquires from or on behalf of the Customer, its affiliates, clients or any of their respective personnel or agents in connection with this Agreement, whether in written, oral, electronic, or other form, and any copies thereof. An identifiable person is a person who can be identified, directly or indirectly, by reference to an identification number or factors specific to his or her physical, physiological, mental, economic, cultural or social identity. Examples of Personal Information include, but are not limited to, the following: name, signature, telephone number, medical records, account number (bank account, credit card, etc.), address, biometric identifier, license or identification number, date of birth, government identifiers (such as Identity numbers), name, personnel number, photograph or video identifiable to an individual, vehicle identifier or serial number, and may also include other information related to an individual that may directly or indirectly identify the individual (e.g. salary, performance rating, purchase history, call history, etc.).
- 21.2 **Using and Copying Confidential Information.**
BE shall use Confidential Information only for the specific purpose for which it was provided to BE or as otherwise authorised in writing by the Customer and shall only reproduce Confidential Information to the extent necessary for these purposes.
- 21.3 **Protection of Confidential Information.**
BE will, and must ensure that its Personnel will implement and maintain appropriate administrative, technical, and physical safeguards to (i) ensure the security and confidentiality of the Customer Confidential Information; (ii) protect against anticipated threats or hazards to the security or integrity of Confidential Information; and (iii) protect against unauthorised access to or use of Confidential Information. These safeguards shall include, without limitation, a written information security plan; information access controls that require appropriate authorization, generate audit trails of approvals and require periodic reviews by asset owners; systems protections (e.g., intrusion protection); physical security measures; and a security awareness program, including employee training.
- 21.4 **Security Breach.**
BE will notify the Customer promptly after BE learns of any potential, actual or suspected misappropriation or unauthorised access to, or disclosure or use of, Confidential Information



or other compromise of the security, confidentiality or integrity of Confidential Information (collectively, Security Breaches). BE will promptly investigate each potential, actual or suspected Security Breach and assist the Customer, its Clients, affiliates and their respective agents in connection with any investigation that the Customer may desire to conduct with respect to such Security Breach. BE will take all steps requested by the Customer to limit, stop or otherwise remedy any potential, actual or suspected Security Breach.

21.5 **Termination for Security Breach.**

Without limiting any other right that the Customer may have to terminate this Agreement or any other remedy available to the Customer, upon the occurrence of any Security Breach affecting Client Information or any uncured breach of BE's obligations under this Schedule, the Customer may immediately terminate this Agreement for breach by BE by the delivery of written notice of termination effective as of the date specified in the notice of termination.

21.6 **Disposal or Return of the Customer Confidential Information.**

Promptly upon the earlier of the completion of the services under this Agreement or the written request of the Customer but in no event for a period to exceed forty-five days from the date of termination or expiration of the Agreement, all the Customer Confidential Information in any form, in BE's possession or under its control shall be (i) destroyed in a manner that prevents its recovery or restoration or, (ii) returned to the Customer in a secure manner without BE retaining any actual or recoverable copies thereof. Notwithstanding the immediately preceding sentence, BE may retain copies of the Customer Confidential Information to the extent required by applicable law or regulation; provided that BE notifies the Customer Confidential Information to be so retained.

21.7 **Requests to Access and Correct Personal Information.**

If BE receives a request from a third party to access any Personal Information in BE's possession, BE will promptly forward a copy of such request to the Customer. Except as expressly permitted under Section 4 of this Schedule, BE shall not disclose any Personal Information to a third party, whether in response to a request or otherwise. Upon the Customer's request, BE will make Personal Information in its possession available to the Customer, or any third party designated in writing by the Customer and will correct Personal Information in BE's possession in accordance with the Customer's written instructions.

21.8 **Cooperation.**

BE will provide the Customer with information as may be reasonably requested by the Customer from time to time regarding BE's compliance with its obligations under this Schedule.

21.9 **Audits.**

The customer will have the right to audit the service described in the SOW.

22. CONFLICT OF INTEREST, RESTRAINT AND NON-SOLICITATION

22.1 BE warrants that to the best of its knowledge, at the date of signing this Agreement, no conflict of interest exists or is likely to interfere with BE's obligations under this Agreement.

22.2 In the event that the Customer identifies circumstances that could cause a conflict of interest, the Customer will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it. However, BE acknowledges that the Customer may need to terminate this Agreement if the Customer is unable to resolve or manage a conflict of interest satisfactorily.

23. CESSION AND ASSIGNMENT

23.1 No rights, duties or liabilities under this Agreement may be ceded, assigned, transferred, conveyed or otherwise disposed of by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.



24. DOMICILIA AND NOTICES

- 24.1 A notice, consent, information or request that must or may be given or made to a party under this Agreement is only given or made if it is delivered, emailed or posted to that party at the address stated below:
- 24.2 If to the Customer: Prince Albert Municipality, 33 Church Street, Prince Albert, 6930; Private Bag X53, Prince Albert, 6930; or info@pamun.gov.za
- 24.3 If to BE: The Managing Director, Business Engineering. Unit 23, Garsfontein Office Park, 645 Jacqueline Drive, Garsfontein East, 0042, South Africa, or
The Managing Director, Business Engineering, PO Box 40743, Garsfontein East, 0060, or admin@be.co.za
- 24.4 A notice, consent, information or request is to be treated as given or made, if it is delivered, at the time left at the above address, if emailed, at the time the recipient's server receives the email and, if posted, 2 business days after posting. Either party may change their notice details in writing.

25. GENERAL

- 25.1 The Parties shall co-operate and consult with each other in good faith regarding the implementation of this Agreement with a view to achieving the aims and objectives of this Agreement.
- 25.2 No Party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this Agreement by reason of any Party having at any time granted an extension of time for, or having shown any indulgence to the other Parties with reference to any payment or performance hereunder, or having shown any indulgence to the other Parties with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the other Parties.
- 25.3 Neither Party relies in entering into this Agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings.
- 25.4 No variation, modification or consensual cancellation of this Agreement shall be of any force or no effect unless reduced to writing and signed by both Parties.
- 25.5 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 25.6 If any provision of this Agreement is construed to be illegal or invalid, it will not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provisions will be treated as being deleted from this Agreement and no longer incorporated, but all other provisions of this Agreement will continue to be binding on the Parties.
- 25.7 The validity of this Agreement, its interpretation rights and obligations of the Parties and all other matters arising out of it or its termination, for any reason whatsoever shall be determined in accordance with the laws of the South Africa.
- 25.8 Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 25.9 Each party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

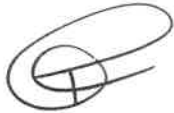
26. TERMS AND CONDITIONS

- 26.1 This agreement is not tied to any individual person, providing any specific service to the client.
- 26.2 This agreement pre-determines a service delivery framework as indicated in the Statement of Work(s) to be provided to the client by Business Engineering, as per the exact conditions and stipulations, laid out herein
- 26.3 The services as detailed in the Statement of Work(s) will be available, delivered and executed as per the terms and conditions of the Statement of Work, Monday to Friday from 08:00 until 17:00 of every week for the duration of this agreement.
- 26.4 Services as detailed in the Statement of Work(s) shall not be available after 17:00 or before 08:00 on any normal working day as per Clause 26.3, supra.
- 26.5 Services as detailed in the Statement of Work(s) shall not be available on Saturday's, Sunday's, or any public / religious holidays as published in the Government Gazette and/or proclaimed from time to time by the President of the Republic of South Africa.
- 26.6 Work outside of normal hours and as defined in Clauses 26.3, 26.4 and 26.5, supra, will be chargeable at the prevailing BE time and material rates as published in Appendix One (1) of this agreement, and amended from time to time in accordance with the provisions of this agreement.
- 26.7 No work outside normal working hours shall be commenced with unless an official instruction has been received from a duly authorised representative from the client and this instruction being reduced to writing and presented to BE for acceptance.
- 26.8 Notwithstanding the provisions of Clause 26.4 "emergency" and/or "critical" maintenance and other work shall be quantified, evaluated and commenced with (if so determined / required) at the sole discretion of BE and the client agrees to incorporate payment for such work under the normal Emergency Procurement Procedures of the client's Supply Chain Management Policy on receipt of an invoice from BE.
- 26.9 The client agrees to assist and to make any and all infrastructure components available to BE to ensure that BE support staff has access to the Collaborator Foundation System Server via either VPN or other suitable Internet Connection.
- 26.10 Any professional services provided under this agreement which is required as a result of misuse, malicious damage, lack of proper systems or IT maintenance or caused by / or resulting from power failure, lighting strike or the like shall be invoiced outside of the scope of this agreement or any of the Statement of Work(s) and shall be payable on presentation of an invoice by BE.
- 26.11 Where applicable, all costs relating to subsistence, accommodation, travelling, travel time and staff allowances have been included in the contract costs (Statement of Work(s)). This agreement and the associated costs do not make provision for subsistence, accommodation, travelling, travel time and staff allowances to other client sites that may comprise or be included in the jurisdiction of the client and are located further than fifty (50) kilometres from the primary (Head Office) of the Customer.
- 26.12 All price(s) quoted are Nett and exclusive of VAT, unless otherwise indicated and/or so reduced to writing.

ACCEPTANCE

SIGNED at _____ on _____ 20__

For and on behalf of
THE CUSTOMER



Signature

A Vorster

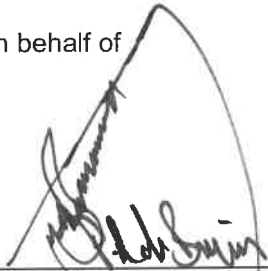
Name of Signatory

Municipal Manager

Designation of Signatory

SIGNED at Prins Albert on 27th May 2021

For and on behalf of
BE



Signature

Philip R. de Swaan

Name of Signatory

Director

Designation of Signatory