



# **TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT**

**ENTERED INTO BY AND BETWEEN**

**THE DEVELOPMENT BANK OF SOUTHERN AFRICA  
LIMITED**

**AND**

**[INSERT NAME OF THE SERVICE PROVIDER]**

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C1: AGREEMENT AND CONTRACT DATA

Facilities Management Conditions of Contract

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## C1.1 FORM OF OFFER AND ACCEPTANCE

### C1.1.1 Offer

The Employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of: **RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.**

The Service Provider, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the Service Provider, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Service Provider under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

#### THE OFFERED TOTAL FOR FIVE (5) YEARS INCLUSIVE OF VALUE ADDED TAX IS:

Item	Description	Mark-up Percentage (Numbers)	Mark-up Percentage (Words)
1.	Conditional Assessment	Cost + [ As per Price Schedule %]	
<b>1.a</b>	<b>Sub-Total A</b>	Cost + [ As per Price Schedule %]	
2.1	TFM Services Threshold 1: R0 – R100m	Cost + [ As per Price Schedule %]	
2.2	TFM Services Threshold 2: R101m – R300m	Cost + [ As per Price Schedule %]	
2.3	TFM Services Threshold 3: R301m and higher	Cost + [ As per Price Schedule %]	
<b>2.a</b>	<b>Sub-Total B</b>	Cost + [ As per Price Schedule %]	
	<b>Total (Sub-Total A + B)</b>	Cost + [ As per Price Schedule %]	

This offer may be accepted by the employer by signing the acceptance part of this form of offer and returning one copy of this document to the Service Provider, whereupon the Service Provider becomes the party named as the Service Provider in the conditions of contract identified in the contract data.

Signature .....

Name .....

Capacity .....

#### **For the Service Provider**

Name of Service Provider .....

Address of Service Provider .....

Name of witness .....

Signature of witness ..... Date .....

	<p align="center"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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C1.1 FORM OF OFFER AND ACCEPTANCE (Continued)

C1.1.2 Acceptance

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

The terms of the contract, are contained in:

Part C1:	Agreements and contract data, (which includes this agreement)
Part C2:	Pricing data
Part C3:	Scope of Services
Part C4:	Site information

and the schedules, forms, drawings (if any) and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the Service Provider and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorized representatives of both parties.

The Service Provider shall deliver the security in terms of Clause 18 of the Facilities Management Conditions of Contract<sup>1</sup>, within the period stated in the contract Data or the period stated in the conditional Letter of Acceptance, whichever period ends earlier, and he shall, immediately after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any other bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data, within 14 days of the date on which this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Employer signs this contract and will provide the Service Provider one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Service Provider within five days of the date of such receipt notified the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature .....

Name .....

Capacity .....

for the  
Employer      **Development Bank of Southern Africa Limited**  
1258 Lever Road, Headway Hill,  
Midrand, Gauteng Province

Name of witness .....

Signature of witness .....      Date .....

**C1.1.3 Schedule of Deviations**

The extent of deviations from the Tender documents issued by the Employer prior to the Tender closing date is limited to those permitted in terms of the Tender Data and the Conditions of Tender.

A Tenderer’s covering letter will not necessarily be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid becomes the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the Tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.

Any change or addition to the Tender documents arising from the above agreements and recorded here shall also be incorporated into the final draft of the Contract.

1 Subject .....

Details .....

.....

.....

2 Subject .....

Details .....

.....

.....

3 Subject .....

Details .....

.....

.....

4 Subject .....

Details .....

.....

.....

5 Subject .....

Details .....

.....

.....

By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Service Provider agree to and accept the foregoing Schedule of Deviations as the only deviations from the amendments to the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, as well as any confirmation, clarification or change to the terms of the offer agreed by the Service Provider and the Employer during this process of offer and acceptance.

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

	<p style="text-align: center;"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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**For the Service Provider:**

Signature(s) .....

Name(s) .....

Capacity .....

Name of Service Provider .....

Address of Service Provider .....

.....

Name of witness .....

Signature of witness ..... Date .....

**For the Employer:**

Signature(s) .....

Name(s) .....

Capacity .....

Name of Employer: **Development Bank of Southern Africa Limited**

Address of Employer 1258 Lever Road, Headway Hill, Midrand, Gauteng Province

Name of witness .....

Signature of witness ..... Date .....

## C1.2 CONTRACT DATA

### C1.2.1 CONDITIONS OF CONTRACT

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**This Framework Agreement is dated** [\[Insert at Contracting\]](#)

## 1. PARTIES

- 1.1. **[DEVELOPMENT BANK OF SOUTHERN AFRICA LTD]** through its Infrastructure Delivery Division (the “**DBSA**”) (Registration Number 1600157FN), a juristic person reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No. 13 of 1997.
- 1.2. **[INSERT]** (“**SERVICE PROVIDER**”), a company, duly registered and incorporated in the Republic of South African, under registration number [\[Insert at Contracting\]](#) with its registered office at [\[Insert at Contracting\]](#).

## 2. BACKGROUND

- 2.1. The Infrastructure Delivery Division (“IDD”) is a division of DBSA, established to support government in accelerating the implementation of infrastructure programmes through the provision of project management support, in key priority sectors critical to the achievement of various national objectives for economic growth, job creation and infrastructure delivery.
- 2.2. The purpose of IDD is to create a centre of excellence that works with key government stakeholders to improve the speed and quality of infrastructure delivery. To this end, the division aims to be a self-financing business offering implementation support, programme management and/or programme co-ordination services in priority sectors and regions.
- 2.3. In executing projects, DBSA uses the services of Professional Services Providers (“**Service Provider**”) in various disciplines and the Contractors to achieve completion of such projects.
- 2.4. The DBSA through various Public Sector clients seeks to engage the services of specialised total facility management (TFM) companies to render relevant services. These services are currently being rendered through various modalities. The intention is, through this process to bring about consistency and a general standard by which TFM services are rendered.
- 2.5. The Framework Agreement shall consist of multiple Service Providers who can provide a full suite of TFM services for IDD on behalf of client departments, to improve the management of infrastructure as mandated by departments. Service requirements will be broken into two (2) sections namely Conditional Assessment Servies and TFM Services.
- 2.6. The Service Provider agrees to provide the Services to the extent provided for in this Agreement.
- 2.7. The DBSA wishes to appoint the Service Provider to provide some or all of the available Services.
- 2.8. When DBSA requests services from the Service Provider, and the Service Provider is able to provide such services within the estimated amount, the relevant Parties will enter into a separate Task Order Contract in accordance with this Agreement.

2.9. Each Task Order Contract will incorporate the terms and conditions set out in this Agreement.

## **AGREED TERMS**

### **3. DEFINITIONS AND INTERPRETATION**

The following definitions and rules of interpretation apply in this Agreement.

#### **3.1. Definitions**

- 3.1.1. **Available Services:** the services, including without limitation any Deliverables, which the Service Provider is willing to provide to DBSA as set out in *SCHEDULE 2*.
- 3.1.2. **Business Day:** a day, other than a Saturday, Sunday or public holiday as gazetted in South Africa.
- 3.1.3. **Confidential Information:** any information or data which by its nature or content is identifiable as confidential and/or proprietary to a Party and/or any third Party, or which is provided or disclosed in confidence, and which such Party or any person acting on its behalf may disclose or provide to it or which may come to the knowledge of such Party by whatsoever means, including all information relating to a Party's current and existing strategic objectives, its business activities, business relationships, technical, scientific, commercial, financial and market information and trade secrets, data concerning its architectural information, demonstrations, processes and machinery, all agreements to which it or its clients is/are a Party, information relating to the Services and information relating to its clients and facilities.
- 3.1.4. **Employer:** means the DBSA as the contracting Party named in the Task Order Contract who appoints the Service Provider;
- 3.1.5. **Task Order Contract:** an agreement for the provision of Services by the Service Provider to DBSA agreed in accordance with clause 5 (Task Order Contract process), and *SCHEDULE 1* (Template Task Order Contract).
- 3.1.6. **Charges:** the charges set out in clause 15.1 or as otherwise specified in the Task Order Contract payable by DBSA for the supply of the Services by the Service Provider. The Charges are the total Direct and Indirect Cost which have been paid by the Service Provider minus the Disallowed Cost plus the Fee.
- 3.1.7. **Commencement Date:** the Signature Date this Agreement, with the last Party signing in time.

- 3.1.8. **Deliverables:** all documents, products and materials developed by the Service Provider or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation data, reports and specifications (including drafts).
- 3.1.9. **Direct Cost:** means costs which are all materials, supplies, labour, and equipment and further detailed in *SCHEDULE 3* [Charges & Payments]. These costs are evaluated according to the market standard at the time of assessing the Charges.
- 3.1.10. **Disallowed Costs:** means costs which appear as Direct Cost and/or Indirect Cost but have been incurred as a result of the Service Providers failure or default.
- 3.1.11. **Force Majeure Event:** are events which are:
- 3.1.11.1. beyond the reasonable control of the Party affected by that event;
  - 3.1.11.2. causes or results in prevention of the performance by the affected Party of any of its obligations under this Agreement; and
  - 3.1.11.3. could not have been prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with that of a State-Owned Entity (as the case may be);
  - 3.1.11.4. which might (if it satisfies the requirements of clauses 3.1.11.1 to 3.1.11.4) in certain circumstances may include, but is not limited to, an act of God, acts of authorities, epidemics or pandemics declared by applicable governments or the World Health Organisation, war, riot, civil disturbance, cyclone, flood, storm, fire, explosion, a legal or illegal strike, protest, picket or industrial dispute, embargo, or other event whatsoever beyond that Party's reasonable control.
- 3.1.12. **Framework for Infrastructure Delivery and Procurement Management (FIDPM):** means National Treasury's Standard for Infrastructure Procurement and Delivery Management, effective from 1 October 2019
- 3.1.13. **Infrastructure Delivery Management System (IDMS):** means the model that describes the processes that make up public sector delivery and procurement management as it applies to the construction industry.
- 3.1.14. **Insolvency Event:** the happening of any one or more of the following events in respect of a Party -

- 3.1.14.1. it convenes a meeting of its creditors and makes an offer of compromise or makes a proposal for any other composition or scheme of arrangement with its creditors generally; or
- 3.1.14.2. it commits an act of insolvency in terms of Section 8 of the Insolvency Act, 1936; or
- 3.1.14.3. it is unable to pay its debts as contemplated in Section 345 of the Companies Act, 1973 read with schedule 5(9) of the Companies Act, 2008 (as amended); or
- 3.1.14.4. it is sequestrated or liquidated, as the case may be;
- 3.1.15. **Contract Period:** means a period of 5 years commencing on the Commencement Date;
- 3.1.16. **Intellectual Property Rights/ IPR:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 3.1.17. **Parties:** means the Parties to this Agreement and "Party" refers to either one of them.
- 3.1.18. **Personal Information:** means "personal information", as such term is defined in the Protection of Personal Information Act, 2013.
- 3.1.19. **Services:** the services, including without limitation any Deliverables, to be provided by the DBSA pursuant to a Task Order Contract.
- 3.1.20. **Signature Date:** the date of signature of this Framework Agreement by the last Party signing in time.
- 3.1.21. **Personal Information:** means "personal information", as such term is defined in the Protection of Personal Information Act, 2013;
- 3.1.22. **Laws:** means any constitution, statute, ordinance, treaty, decree, proclamation, by-law, regulation, notice, circular, code, rule, direction, delegated or subordinated legislation or other legislative measure, as well as the common law and customary law and any

judgment, decision, order or ruling of any court or tribunal with relevant jurisdiction, in each case having the force of law in the Republic of South Africa. For the purposes of this definition, “customary law” means those customs and practices which, in terms of the common law, have gained the force of law in the Republic of South Africa.

### 3.2. Interpretation

- 3.2.1. The head notes to the various clauses of this Agreement and the index are inserted for reference purposes only and shall in no way govern or affect the construction of the Agreement.
- 3.2.2. This Agreement and its Schedules shall be deemed to constitute the sole agreement between the Parties, with reference to its subject matter, including letter of appointment and thereafter any amendments must be reduced into writing, signed and executed as an addendum to the Agreement.
- 3.2.3. The words signifying the singular shall include the plural and *vice versa*; and words and expressions to any one gender shall include the other gender;
- 3.2.4. A reference to a natural person shall include a juristic person, bodies corporate and *vice versa*;
- 3.2.5. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 3.2.6. Any reference to a statutory provision shall include a reference to that provision as modified, amended, replaced or re-enacted from time to time.
- 3.2.7. In the event of a conflict between the provisions of this Agreement and its annexures, the provisions of this Agreement will supersede those of the annexures, unless otherwise directed by the DBSA.
- 3.2.8. When any number of days is prescribed in this Agreement, and unless referred to as Business Days, they shall be calendar days. Both the calculation of days and Business Days and shall be calculated exclusively of the first and inclusively of the last day, or Business Day, as applicable.
- 3.2.9. In the event that the day for performance of any obligation in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the immediately subsequent Business Day.
- 3.2.10. Expressions defined in this Agreement shall bear the same meanings in any schedule or annexure to this Agreement, which does not itself contain its own definitions.

- 3.2.11. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.2.12. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 3.2.13. The rule of construction that if general words or terms are used in association with specific words or terms that are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class 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.
- 3.2.14. References containing terms such as "best endeavours" when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to fulfil the obligation at the earliest possible time, including doing all that a reasonable contracting Party in comparable circumstances would do.
- 3.2.15. Unless otherwise provided for in this Agreement, a reference to writing or written includes email.
- 3.2.16. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 3.2.17. A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.
- 3.2.18. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 3.2.19. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 3.2.20. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

#### **4. APPOINTMENT OF THE SERVICE PROVIDER**

- 4.1. DBSA hereby appoints the Service Provider to provide the Services for the projects or programmes stated in the Task Order Contract. The Service Provider accepts the appointment on the terms and conditions stated in this Agreement.
- 4.2. The Service Provider shall act as an independent party and has no authority to enter into agreements binding DBSA outside the terms of this Agreement.
- 4.3. In so far as it is necessary for the Service Provider to perform its functions under this Agreement, DBSA delegates to the Service Provider the authority necessary to carry out the functions, as stated in the Task Order Contract.
- 4.4. DBSA agrees to pay the Service Provider a Fee, as stated in the Task Order Contract.

#### **5. UTILISATION AND ROTATION PRINCIPLES**

- 5.1. The Service Provider shall be issued with a Task Order on based the Principles of Rotation. For the avoidance of any doubt, the Task Order will be issued in order of the first listed Service Provider to the last Service Provider on the DBSA list.
- 5.2. The Task Order may consist of one or several Available Services, in which the Service Provider must provide all of the Services required in the Task Order.
- 5.3. Where a Task Order is issued and the Service Provider is unable to accept the Task Order or perform the Services, the Service Provider shall within 2 Business Days of receiving the Task Order, inform the DBSA of its decision to reject the Task Order. The Service Provider shall provide reasons for its rejection. Rejection a Task Order shall be documented by the DBSA. If the Service Provider rejects a maximum of 3 Task Orders, the DBSA shall suspend the Service Providers services from the Agreement and request that it provides reasons to be reinstated. Failure to provide adequate reasons, as determined by the DBSA, the DBSA shall, at its own discretion, terminate this Agreement.
- 5.4. If a Service Provider is unable to perform its Services due to the agreed Charges being low, according to the Service Provider, the DBSA shall deem this as a rejection and breach of the Agreement. The DBSA shall exercise its discretion on whether or not to terminate the Service Provider.
- 5.5. Allocation of the Task Orders are based on an equitable distribution in terms of monetary value per individual Province Framework, to ensure a fair and transparent process. This is subject to the next in order Service Providers being able to provide the service required.

- 5.6. A separate Task Order will be applicable for Conditional Assessments and TFM Services. It is the DBSA's intention to use the same Service Provider for Conditional Assessments and TFM Services, as the Service Provider is required to take full ownership of each aspect.
- 5.7. Allocation of the Conditional Assessment Task Order, does not imply or guarantee the Service Provider to be allocated the TFM Services Task Order. The DBSA reserves the right to award the scope in full or part thereof, or not at all.
- 5.8. The DBSA will initiate an independent quality review and detailed project and cost inspection of every Task Order scope, prior to payment and works initiation.

**6. THE TASK ORDER ALLOCATION IS SUBJECT TO BUDGET AND/OR CLIENT ACCEPTANCE.  
TASK ORDER CONTRACT PROCESS**

- 6.1. This clause 5 sets out the procedure for DBSA to request the provision of Services from the Service Provider under separate Task Order Contracts, in accordance with the template set out in *SCHEDULE 1* (Template Task Order Contract), containing all the Task Order terms, to be entered into by the DBSA and the Service Provider.
- 6.2. DBSA shall be entitled from time to time to request in writing the provision of any and/or all of the Available Services from the Service Provider.
- 6.3. DBSA is not obliged to engage the services of the Service Provider on Task Order or identified projects. The DBSA may, by itself, through another service provider or through the Service Provider effect the services/works under Task Order.
- 6.4. Identified projects will only be executed by the Service Provider after receipt of a written instruction from the DBSA. If no prior written authorisation, as required in this clause, has been obtained, the DBSA shall not reimburse the Service Provider for the Task Order so executed, and the Service Provider agrees that it shall not have a claim for payment for such Task Order.
- 6.5. Within 05 Business Days of receipt of a written request from DBSA, the Service Provider shall:
  - 6.5.1. either notify DBSA that it is not able to provide the requested Available Services; or
  - 6.5.2. accept its appointment by completing the letter appointing it to perform the Services noted in the Task Order Contract in *SCHEDULE 1* (Template Task Order Contract) and submit the Task Order Contract to DBSA for its written approval.
- 6.6. A Task Order Contract shall not enter into force, be legally binding or have any other effect unless:
  - 6.6.1. the Task Order Contract has been signed by the authorised representatives of both Parties to it;

6.6.2. as at the date the Task Order Contract is signed, this Agreement has not been terminated; and

6.6.3. the Service Provider has not been placed in breach on another Task Order Contracts.

6.7. Each Task Order Contract:

6.7.1. shall be entered into by the Service Provider and the DBSA; and

6.7.2. forms a separate contract between its signatories.

6.8. Any amendments to this Agreement agreed by Service Provider and the DBSA shall be deemed to apply to all future Task Order Contracts entered into after the date of such amendment, unless otherwise agreed between the Parties in writing.

6.9. If the Service Provider fails to complete the Task Order by the completion date specified in the Task Order Contract, then the Service Provider will be liable for a penalty, at the rate stated in the Task Order, for every day that lapses from the due completion date of the relevant date of the actual completion of such Task Order.

## **7. EXTENSION OF TIME FOR TASK ORDER CONTRACT**

7.1. If the Task Order is delayed by variations, omissions, additions, substitutions or organised work stoppages by any workman not due to any action on the part of the Service Provider, exceptionally inclement weather, any substantial increase in provisional quantities or any other cause beyond the Service Provider's control, including delays caused by the DBSA, then the Service Provider shall be entitled to apply in writing within 21 days of the cause of delay arising to the Service Manager for extension of the due completion date of the relevant Task Order stating the cause of delay and period of extension applied for.

7.2. If during the period for completion of the Task Order or any extension thereof abnormal rainfall or wet conditions occur, the formula below shall be used to calculate separately the delay for each calendar month or part thereof. It shall be calculated each month during the period referred to herein above, or until the issue date of the certificate of completion for the relevant Task Order, whichever is the shorter period. The delay calculated for a given month shall be used to determine the interim extension of time granted for the month. At the end of the applicable period referred to above, the aggregate of the monthly delays will be taken into account for the final determination of the total extension of time for the Task Order Contract:

$$V = (Nw - Nn) + (Rw - Rn) / X$$

V = Delays due to rain in calendar days in respect of the calendar month under consideration.

Nw = Actual number of days during the calendar month on which a rainfall of Y mm or more per

day has been recorded

$R_w$  = Actual rainfall in mm for the calendar month under consideration.

$N_n$  = Average number of days in the relevant calendar month (as derived from existing rainfall records provided in the project specifications) on which a rainfall of  $Y$  mm or more per day has been recorded.

$R_n$  = Average rainfall in mm for the calendar month, as derived from the rainfall records supplied in the project specifications.

$X = 20$ , unless otherwise provided in the project specifications

Conditions of Contract: PA-10 (FM)

$Y = 10$ , unless otherwise provided in the project specifications.

The total delay that will be taken into account for the determination of the total extension of time for the Task Order Contract shall be the algebraic sum of the monthly totals for the period under consideration. But if the grand total is negative, the time for completion shall not be reduced on account of abnormal rainfall. The total extension of time for any calendar month shall not exceed

$(N_c - N_n)$  calendar days,

where  $N_c$  = number of days calendar days in the month under consideration

The factor  $(N_w - N_n)$  shall be considered to represent a fair allowance for variations from the average number of days during which rainfall equals or exceeds  $Y$  mm per day.

The factor  $(R_w - R_n) \div X$  shall be considered to represent a fair allowance for variations from the average for the number of days during which rainfall does not equal or exceed  $Y$  mm per day, but when wet conditions prevent or disrupt work.

- 7.3. This formula does not take into account any flood damage, which could cause further or concurrent delays and which should be treated separately in so far as extension of time is concerned.
- 7.4. Accurate rain gaugings shall be taken at a suitable point on the site daily at 08:00 unless otherwise agreed to by the Service Manager, and the Service Provider shall, at his own expense, take all necessary precautions to ensure that the rain gauges cannot be interfered with by unauthorized persons.
- 7.5. Information regarding existing rainfall records, if available from a suitable rainfall station near the site, will be supplied in the project specifications, together with calculations of rain delays for previous years in accordance with the above formula. The average of these delays will be regarded

as normal rain delays which the Service Provider shall accommodate in his programme, and for which no extension of time will be considered.

- 7.6. Upon receipt of such written application, the Employer may in writing extend the due completion date of the relevant Task Order by a period to be determined by the DBSA or may refuse to extend the due completion date of the relevant Task Order. The due completion date of an Task Order may not be extended beyond the end of the Task Order contract period stated in the Task Order
- 7.7. Any decision given by the Employer, in terms of 7.5, shall be final and binding on the Parties.
- 7.8. Should the Service Provider fail to apply in writing for an extension of the due completion date of the relevant Task Order within the 21 days, or should the Employer not grant an extension of the due completion date then the due completion date stipulated in the relevant written instruction shall not be extended nor the Service Provider exonerated from liability to pay the penalty stipulated in Task Order or from specific performance of the service/works within the period in the relevant written instruction.

## 8. **CONFLICT**

If there is an inconsistency between any of the provisions of this Agreement and the provisions of any Task Order Contract, the provisions of this Agreement shall prevail, unless the DBSA directs otherwise.

## 9. **COMMENCEMENT AND DURATION**

This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with 29 (Termination), for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.

## 10. **INDEPENDENT SERVICE PROVIDER**

The Service Provider performs its functions as an independent contractor, and neither the Service Providers nor its personnel are employees, consultants, sub-contractors, or other representatives of DBSA.

## 11. **APPOINTMENT**

- 11.1. DBSA hereby appoints the Service Provider to render the Services and the Service Provider hereby accepts such appointment. The Service Provider shall render the Services in accordance with the terms and conditions contained in this Agreement.

## **12. SERVICE PROVIDER'S OBLIGATIONS AND UNDERTAKINGS**

- 12.1. The Service Provider's obligations specific to the Task Order Contract are specified in the Task Order Contract.
- 12.2. The Service Provider shall provide the Services to DBSA in exchange for the Charges.
- 12.3. The Services included in the Task Order Contract will be implemented in line with FIPDM stages as outlined in IDMS to the extent applicable.
- 12.4. In general, in supplying the Services, the Service Provider shall:
  - 12.4.1. carry out all its obligations in terms of this Agreement in a professional manner with due care, skill and diligence, in accordance with generally accepted professional techniques and practices, and, in doing so, employ appropriate technology;
  - 12.4.2. ensure that the Services are executed in a timeously manner and according to the agreed specifications and in a proper and professional manner with due diligence, skill and care;
  - 12.4.3. ensure that its personnel do not have a criminal record or a record of poor performance, particularly those which hold positions such as Key Personnel;
  - 12.4.4. be solely responsible for the administration of its own business affairs;
  - 12.4.5. conduct itself in a professional manner;
  - 12.4.6. perform all Services promptly and without delay;
  - 12.4.7. ensure that the Services are, at all times, conducted in accordance with the requirements of all applicable Laws in force and applicable to the Services, as may be issued or amended from time to time;
  - 12.4.8. it has full power and authority to enter into and fully perform its obligations under this Agreement;
  - 12.4.9. ensure that any employees, agents or subcontractors of the Service Provider who enter the premises of where the Services will be performed adhere to the safety standards, policies and procedures of the Client, DBSA and the relevant premises adhere to Local Content (as per Department of Trade Industry and Competition) which shall be applicable with each Task Order. comply with:
    - 12.4.9.1. all applicable laws, statutes, regulations in force as at date of this Agreement subject to DBSA communicating same, observe all reasonable health and safety rules and regulations and security requirements provided.

### **13. DBSA'S OBLIGATIONS AND UNDERTAKINGS**

- 13.1. DBSA's obligations specific to the Task Order Contract are specified in the Task Order Contract.
- 13.2. In general, DBSA shall:
- 13.2.1. perform its obligations, set out in this Agreement, diligently, in a timely manner, and in accordance with the instructions and requirements of the Service Provider and any time schedules set in any applicable Task Order Contract;
  - 13.2.2. co-operate with the Service Provider in all matters relating to the Services;
  - 13.2.3. provide such information as the Service Provider may reasonably request and DBSA considers reasonably necessary, in order to carry out the Services in a timely manner;
  - 13.2.4. provide the necessary information, documentation, records, research reports and data as may be reasonably required by the Service Provider to enable it to provide the Services and comply with its obligations set out in this Agreement;
  - 13.2.5. ensure that any third Party, over which it has direct control, performs its duties and functions as may be reasonably required by the Service Provider to enable the Service Provider to provide the Services.
  - 13.2.6. provide all the necessary information pertaining to the Services to be provided by the Service Provider 3 (three) business days after the signature of the Task Order Contract.
- 13.3. If the Service Provider's performance of its obligations under this Agreement or any Task Order Contract is prevented or delayed by any act or omission of DBSA, its agents, subcontractors, consultants or employees, the Service Provider shall:
- 13.3.1. not be liable for any costs, charges or losses sustained or incurred by DBSA that arise directly or indirectly from such prevention or delay;
  - 13.3.2. be entitled to payment of the charges despite any such prevention or delay;
  - 13.3.3. be entitled to a change order in accordance with the applicable Task Order Contract, for any extension of time or costs associated with the delay; and
  - 13.3.4. be entitled to recover any additional costs, charges or losses the Service Provider sustains or incurs that arise directly or indirectly from such prevention or delay provided that it is proven and does not include consequential loss (of any kind) or loss of profit.

### **14. NO TEMPORARY EMPLOYMENT SERVICES**

- 14.1. Nothing in this Agreement shall be construed as giving rise to a relationship of a temporary

employment service as contemplated in section 198 of the Labour Relations Act, 1998 (Act No. 66 of 1995), sections 82 and 83A of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), and any other relevant legislation.

## **15. SUB-CONTRACTING**

- 15.1. The Service Provider is required to support and develop TFM SMME's through subcontracting. A TFM must subcontract a minimum of 30% of TFM Services (excluding Conditional Assessments) to a local TFM SMME (subcontractors/ suppliers) which has a BBBEE level that is equal or better to the Service Providers' unless the subcontractor is an EME i.e. local meaning the province in which the project is located and/or area to be approved by the DBSA for use. The Service Provider shall, with each appointment to a Task order, provide the subcontractors BBBEE certificate. Failure to adhere to the BBBEE requirement shall constitute a material breach of this Agreement.
- 15.2. The Service Provider may not subcontract any part of the Services without the DBSA's written consent. The subcontracts shall incorporate the applicable terms, conditions and requirements of this Agreement. The Service Provider shall supply copies of subcontracts to the DBSA and such other information as may be requested by the DBSA in respect of any subcontractor.
- 15.3. Subcontracting by the Service Provider shall not be construed as relieving the Service Provider from any obligations under the Agreement or imposing any liability on the DBSA.
- 15.4. The DBSA reserves its rights to nominate or in conjunction with the Service Provider select a subcontractor or provide a prescribed list of subcontractors in respect of certain of the Services' components, as the case may be, for the benefit of the project that shall be managed by the Service Provider. This shall not be construed as relieving the Service Provider from any obligations under the Agreement or imposing any liability on the DBSA.
- 15.5. All works performed by the Subcontractor shall be construed as work performed by the Service Provider. The Service Provider shall be liable for the Subcontractor's works as if it performed the work itself.

## **16. CHARGES AND PAYMENT**

- 16.1. Payment obligations specific to the Task Order are specified in the Task Order Contract.
- 16.2. In general, in consideration for the provision of the Services, DBSA shall pay the Service Provider the Charges in accordance with the applicable Task Order Contract. The Task Order Contract shall be charged on a Cost-plus Fee payment mechanism. Therefore the Service provider shall be reimbursed the Direct Costs incurred in performing the Task Order minus the Disallowed costs, plus a predetermined fixed additional amount (the "**Fee**").

- 16.3. The payment of the Charge as set out in clause 16.2 shall be made by DBSA against invoices submitted by the Service Provider. Subject to the approval of the submitted invoices, payment shall be made 30 (thirty) days from date of invoice. No payment shall be made on provisional invoices.
- 16.4. All amounts payable to the Service Provider in terms of this Agreement shall be inclusive of any taxes applicable in South Africa. Value Added Tax ("VAT") is levied in terms of the Value Added Tax Act 91 of 1989, as amended and to any other applicable exchange control legislation.
- 16.5. The Service Provider acknowledges that the DBSA will not be in a position to make any payments to the Service Provider until such time as the Service Provider has provided the DBSA with all such documents as are reasonably required by the DBSA in order to facilitate payment, and undertakes to supply all such documents timeously, including but not limited to:
- 16.5.1. proof of the Service Provider's banking details;
  - 16.5.2. the Service Provider's as well as any of the Subcontractor's broad based black economic empowerment certificate;
  - 16.5.3. tax clearance certificates;
  - 16.5.4. duly completed supplier information forms: and
  - 16.5.5. backup documents pertaining to the Direct Costs and/or Indirect Cost (where applicable).
- 16.6. Failure to comply with the above instructions may result in a delay in payment for which the DBSA will not be held responsible.
- 16.7. If the DBSA fails to make any payment due to the Service Provider under a Task Order Contract by the due date for payment, then, without limiting the DBSA's remedies under clause 28.1 (Termination):
- 16.7.1. DBSA shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest under this clause will accrue each day at the applicable prescribed rate of interest under the Prescribed Rate of Interest Act 55 of 1975.
  - 16.7.2. the Service Provider may suspend any and all Services or a portion of the Services until payment has been made in full.
- 16.8. If the DBSA is unable to pay the invoice timeously due to the Service Providers own fault, having not adhered to clause 16.5 or any other reason, the Service Provider shall not be entitled to the recourse noted in clause 16.7.

## **17. LIMITATION OF LIABILITY**

- 17.1. The restrictions on liability in this clause 177 apply to every liability arising under or in connection with this Agreement including but not limited to liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.
- 17.2. Nothing in this Agreement shall limit or exclude the DBSA's or the Service Provider's liability which cannot legally be limited.
- 17.3. Subject to 17.2 (Liabilities which cannot legally be limited):
- 17.3.1. neither Party to this Agreement shall have any liability to the other Party for any indirect or consequential loss arising under or in connection with this Agreement;
- 17.3.2. The DBSA shall only be liable to pay compensation to the Service Provider arising out or in connection with the Agreement if a breach of this Agreement is established and proved.

## **18. INSURANCE AND GUARANTEES**

- 18.1. It is the responsibility of the Service Provider to assess his risks on this project and to ensure that he obtains and maintains the adequate insurances as required in terms of the law to cover such risks, but as a minimum should have public liability insurance of R5,000,000.00 (five million rand) for each event with no limit on the number of events.
- 18.2. The Service Provider will on an annual basis on the anniversary of the Commencement Date provide copies of all insurance contracts in respect of the Services to the Employer.
- 18.3. The Service Provider shall, which each task order issued to them, provide the DBSA with an on-demand performance and/or construction guarantee provided by a reputable bank or insurer for acceptance.

## **19. INDEMNITY**

- 19.1. To the fullest extent permitted by law, the Service Provider shall indemnify and hold harmless DBSA and its officers, and employees from and against any and all claims, actions, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by DBSA, or for which liability may be asserted against, DBSA or any of its officers, or employees arising out of any activities undertaken by Service Provider, for, or on behalf of DBSA in the execution or implementation of this Agreement, unless such liability arises due to an act, or omission by DBSA.
- 19.2. The provisions of this clause will survive the termination or expiry of this Agreement.

## 20. JOINT VENTURE AND CONSORTIUMS

20.1. If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the DBSA, which shall not be unreasonably withheld.

20.2. If the Service Provider is a consortium / joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the Service Provider shall be joint and several.

Limitation of contractual liability:

20.3. Neither Party shall be liable to the other Party for any indirect or direct consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act, omission or gross negligence of the other.

## 21. PROTECTION OF PERSONAL INFORMATION

21.1. The Parties acknowledge their respective obligations under POPI. Where either Party receives any Personal Information from the other Party (the “disclosing Party”) it shall:

21.1.1. process such Personal Information only with the knowledge and authorisation of the disclosing Party;

21.1.2. not disclose Personal Information to any third parties without the written consent of the disclosing Party unless required by law;

21.1.3. have due regard to generally accepted information security practices and procedures which may apply generally or be required in terms of specific industry or professional rules and regulations;

21.1.4. notify the disclosing Party immediately where there are reasonable grounds to believe that Personal Information has been accessed or acquired by any unauthorised person;

21.1.5. establish and maintain security measures to secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to, or processing of, Personal Information and shall take reasonable measures to:

21.1.6. identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;

- 21.1.7. establish and maintain appropriate safeguards against the risks identified;
- 21.1.8. regularly verify that the safeguards are effectively implemented; and
- 21.1.9. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

21.2. The Recipient expressly acknowledges, agrees and consents that the DBSA holds and Processes its Personal Information for compliance and business-related purposes including but not limited to FICA, procurement, tax, payment and sanction compliance checks and Record keeping related to the procurement process, service delivery, payment and/or project implementation Records.

21.3. The Recipient warrants that were it has supplied the DBSA with third party Personal Information, including information of any shareholder, director, employee, agent or sub-contractor that it has the necessary authorisations to do so.

21.4. The Recipient's failure to comply with this clause shall constitute a material breach of this Agreement. In such event, the DBSA may terminate this Agreement, effective immediately, upon written notice to the Recipient, without further liability, or obligation, to the Recipient.

21.5. Notwithstanding any other provision in this Agreement, the Recipient indemnifies the DBSA against any losses, damages, liabilities, deficiencies, actions, judgments, interests, awards, penalties, fines, costs or expenses, of whatever kind, incurred or suffered by the DBSA, its employees, representatives and/or agents, as a result of the Recipient's warranties in this clause or its failure to comply with its statutory obligations contained in POPI.

## **22. GENERAL WARRANTIES**

22.1. Each of the Parties hereby warrants to and in favour of the other that –

22.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

22.1.2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

22.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not –

22.1.3.1. contravene any law or regulation to which that Party is subject;

22.1.3.2. contravene any provision of that Party's constitutional documents; or

22.1.3.3. Conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and

- 22.1.4. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
- 22.1.5. it is entering into this Agreement as principal (and not as agent or in any other capacity);
- 22.1.6. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
- 22.1.7. no other Party is acting as a fiduciary for it; and
- 22.1.8. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

22.2. Each of the representations and warranties given by the Parties in terms of clause 22 shall –

- 22.2.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
- 22.2.2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
- 22.2.3. prima facie be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.

### **23. ACCESS TO THE FACILITIES AND COMMENCEMENT OF THE SERVICES**

- 23.1. The Service Provider shall provide the DBSA, within 1 days of the Commencement Date, with an acceptable health and safety plan and such other information required in terms of the Occupational Health and Safety Act (85 of 1993), in terms of D7 [Security and Safety, Occupational Health and Safety Act] of the Project Specification, taking into account any existing Health and Safety Plans and evacuation procedures applicable at each of the facilities.
- 23.2. The Service Period shall commence within 7 days from Commencement Date, or on such other date as maybe specified in the Contract Data or agreed to by the Parties in writing.
- 23.3. Notwithstanding the provision of 21.2, the Service Provider shall be given access to the Facilities or portions thereof, only after the provision by the Service Provider of an acceptable health and safety plan and of security clearance being obtained in terms of Clauses 21.1.
- 23.4. The Service Provider shall be given access to the Facilities or portions thereof and shall render the Services in accordance with its programme, referred to in this clause or after the receipt by him of a written instruction to this effect.

- 23.5. If the DBSA fails to give the Service Provider access to the facility or any portion thereof for any reason other than default by the Service Provider or a delay in security clearance of employees and the Service Provider suffers additional costs as a result thereof, the Service Provider shall be entitled to make a claim therefor provided that the Service Provider is able to prove his claim and that he has taken all reasonable steps to mitigate the additional costs.

#### **24. PROGRAMME**

- 24.1. The Service Provider shall deliver to the Service Manager within 7 days from Commencement Date, a realistic programme and a cash flow for the delivery of the Services. The programme shall describe and detail the order in which the Services are to be rendered and shall be subject to the approval of the DBSA, which written approval shall not be unreasonably withheld.
- 24.2. The Service Provider shall, on receipt of a written request from the Service Manager, furnish the DBSA with any documents or information, of whatever nature, in support of the programme and/or in relation to the manner in which the Services are to be rendered and/or the resources to be supplied and used in the rendering of the Services and/or progress of the various parts of the Agreement; and/or a detailed cash flow forecast.
- 24.3. A programme and the cash flow forecast will be submitted in terms of 24.1 and reviewed quarterly or as circumstances may require.
- 24.4. Agreement to the programme by the Employer or any adjustment thereto will not alter the responsibilities of the Service Provider in terms of this Contract.

#### **25. FORCE MAJEURE**

- 25.1. If, by reason of any Force Majeure Event, any of the Parties to this Agreement will be delayed in, or prevented from, performing any of its obligations in terms of this Agreement (otherwise than as to the payment of money), then such delay or non-performance shall not be deemed to be a breach of this Agreement and no damages may be claimed by the other Party by reason thereof.
- 25.2. Should a Force Majeure Event occur then the invoking Party will forthwith give written notice thereof to the other Party specifying the cause and anticipated duration of the Force Majeure Event; and promptly upon termination of the Force Majeure Event, stating that such Force Majeure Event has terminated.
- 25.3. Should the exercise of the rights and obligations under this Agreement be materially hampered, interrupted or interfered with by reason of any Force Majeure Event, then the obligation to the delayed Party shall be suspended during the period of such hampering, interruption or interference consequent upon such event or events and shall be postponed for a period of time equivalent to the period or periods of suspension before being reinstated, and both Parties shall use their best

endeavours to minimize and reduce any period of suspension occasioned by any of the aforesaid events ("**Suspension Period**").

25.4. The invoking Party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the Force Majeure Event during the Suspension Period, nor be entitled to any additional costs or additional time, provided that –

25.4.1. the invoking Party uses and continues to use its best efforts to perform such obligations;

25.4.2. if the Force Majeure Event shall continue for more than 180 (one hundred and eighty) consecutive days, the other Party will be entitled to terminate 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 Event; and

25.4.3. the Party not invoking a Force Majeure will be entitled to elect, by giving written notice within 10 (ten) days of the termination, as to whether or not it requires the invoking Party to perform any obligations incurred prior to the Force Majeure.

25.5. Notwithstanding the above, such Force Majeure Events shall only be relevant if they take place within the borders of the Republic of South Africa and have a direct effect on the Services to be rendered in terms of this Agreement.

## 26. **NON-SOLICITATION**

Neither Party shall, without the prior written consent of the other Party, either during the term of this Agreement, or within [12 (twelve)] months after termination or expiration of this Agreement, solicit for employment, whether directly or indirectly, any person who, at any time during the duration of this Agreement, was a member of the other Party's Staff who was directly involved with any activity relating to the Services.

## 27. **BREACH**

27.1. In the event of any breach by the Service Provider of the terms and conditions of this Agreement, and in the event that the Service Provider fails to rectify such breach within 7 (seven) Business Days of written notice calling for rectification of the breach, DBSA shall be entitled to exercise all or any of the following rights:

27.1.1. itself, or through a third party of its choice, assume and take control of the completion of any uncompleted Service;

27.1.2. the Service Provider agrees to permit DBSA or its nominee to assume responsibility for all contracts in place for the Service in question where there is a contract in place between the Service Provider and third parties.

27.1.3. Should the Service Provider dispute the existence of a breach entitling DBSA to the above-mentioned rights and remedies, the matter shall be dealt with in terms of clause 28 below.

27.2. Neither Party shall be liable to the other for any failure to perform its obligations under this Agreement, where such performance is rendered impossible by circumstances beyond its control: Provided that nothing in this Agreement shall limit the obligations of the parties to use their best endeavours to fulfil their obligations under this Agreement.

## **28. DISPUTE RESOLUTION**

### **28.1. Notice of dispute**

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

### **28.2. Meeting of executive officers or heads**

Within 10 Business Days after the service of a Notice of Dispute:

28.2.1. the executive officers or heads of the parties; or

28.2.2. delegates of the executive officers, who have not been directly involved in the management of the Agreement,  
must meet in an attempt to resolve the Dispute.

### **28.3. Arbitration**

28.3.1. If a dispute has not been settled by the chief executive officers of the Parties 30 (thirty) Business Days after notice is served under clause 28.1, then the dispute must be referred to and settled by an arbitrator (Arbitrator) in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (AFSA), within 30 Business Days

28.3.2. The seat of the arbitration is Johannesburg.

### **28.4. Appointment of Arbitrator**

28.4.1. 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):

28.4.1.1. in the case of a financial or accounting matter, the President for the time being of the South African Institute of Chartered Accountants; and

28.4.1.2. for all other matters, the President of the AFSA.

### **28.5. Arbitrator's decisions**

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

### **28.6. Arbitrator's costs**

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

28.7. **Continued performance**

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

**29. TERMINATION**

29.1. Save for instances of breach of the Agreement where less notice is required, either Party may terminate this Agreement by giving 30 days written notice to the other.

29.2. Should either Party give notice of termination of this agreement, then, the Service Provider shall, on payment of all outstanding Fees incurred under the Agreement, deliver to DBSA all Deliverables as at date of the termination.

29.3. Should either Party terminates this agreement for whatever reason, DBSA shall:

29.3.1. immediately assume the Service Provider's rights and obligations under the Task Order Contract; and

29.3.2. be liable for the payment of all outstanding Fees incurred under the Agreement as at the date of termination.

29.4. In the event DBSA cancels the implementation of a Task Order Contract, the Service Provider shall quantify the actual costs incurred at date of termination including the support evidence and provide same to the DBSA within 15 days of the termination. The Service Provider shall submit this claim for costs on termination to DBSA for payment within 30 (thirty) days of the date the Task Order Contract is cancelled.

**30. SURVIVAL**

30.1. On termination (or expiry) of this Agreement, howsoever arising, each Task Order Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Task Order Contract, unless terminated earlier in accordance with the terms of such Task Order Contract.

30.2. The termination of any Task Order Contract shall not affect any other Task Order Contracts or this Agreement.

30.3. On termination of the Agreement, the following clauses shall continue in force: clauses **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., 28, Error! Reference source not found., Error! Reference source not found. and Error! Reference source not found..**

- 30.4. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of this Agreement which existed at or before the date of termination.

### **31. CONFIDENTIALITY**

- 31.1. Each Party undertakes that it shall not at any time during the term of this Agreement, disclose to any person any confidential information concerning the business, affairs, clients of the other Party or any member of the group of companies to which the other Party belongs, except as permitted clause 31.2.

- 31.2. Each Party may disclose the other Party's confidential information:

31.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 31.2; and

31.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 31.3. No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

### **32. INTELLECTUAL PROPERTY**

- 32.1. The DBSA and its licensors shall retain ownership of all DBSA IPRs, and all Intellectual Property Rights generate in the performance of the Services.

- 32.2. The DBSA retains all right, title and interest in all Intellectual Property which may be developed as part of the Services.

- 32.3. Service Provider acknowledges that any and all DBSA IPRs and Intellectual Property Rights accrued as a result of performing the Services are proprietary to the DBSA and shall remain the property of the DBSA.

- 32.4. The DBSA grants the Service provider or shall procure the direct grant to Service Provider of non-exclusive, royalty-free, licence to use the DBSA IPRs for the purpose of receiving and using the Services in Service Provider's business during the term of the applicable Task Order Contract.

### 33. **MEDIA LIAISON**

- 33.1. The Service Provider undertakes that it will make no statement of any kind, whether written or verbal, to the media in connection with the Programme or any project, without first obtaining DBSA's written approval of such statement.

### 34. **GENERAL**

#### 34.1. **VARIATION**

- 34.1.1. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

#### 34.2. **WAIVER**

- 34.2.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 34.2.2. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 34.2.3. A Party that waives a right or remedy provided under this Agreement or by law in relation to one Party or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

#### 34.3. **RIGHTS AND REMEDIES**

- 34.3.1. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### 34.4. **SEVERABILITY**

- 34.4.1. Any provision in this Agreement, which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from this Agreement, without invalidating the remaining provisions.

#### 34.5. **WHOLE AGREEMENT**

- 34.5.1. This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representatives, warranties or promises not recorded in this Agreement.

#### 34.6. **LIMITATION ON CESSION**

34.6.1. The rights and obligations for the Parties in terms of this Agreement shall not be ceded, assigned or delegated by either party to a third party or any other person, save with the prior written consent of the other Party.

#### 34.7. **NO PARTNERSHIP**

34.7.1. The relationship of the Parties in terms of this Agreement shall involve a close collaboration between two independent contracting parties, and in the circumstances shall not imply any partnership in the legal sense, nor shall it constitute either Party being the authorised representative of the other Party, particularly so with regard to the Service Provider's dealing with third parties.

#### 34.8. **NOTICES**

34.8.1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be:

34.8.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email specific below.

The Service Provider {insert at contracting} chooses as its *domicilium citandi et executandi* for all purposes arising from this Agreement:

Address: {insert at contracting}

Email: {insert at contracting}

Tel: {insert at contracting}

Fax: {insert at contracting}

The DBSA chooses as its *domicilium citandi et executandi* for all purposes arising from this Agreement:

Office of the Group Executive: Infrastructure Delivery Division

The Development Bank of Southern Africa SOC Limited

1258 Lever Road

MIDRAND

1685

Tel: (011) 313 3422

Fax No. (011) 206 3422

Email: [insert]

- 34.8.2. Either party may change its *domicilium citandi et executandi* by means of a written notice to the other party, provided that such *domicilium* shall be a physical address within the Republic of South Africa.
- 34.8.3. All notices contemplated under this Agreement shall be delivered by hand or sent by pre-paid registered post, in which event such notice shall be deemed to have been received by the addressee 14 (fourteen) days after the proven date of posting.
- 34.8.4. Any notice or communication shall be deemed to have been received:
- 34.8.4.1. if delivered by hand, at the time the notice is left at the proper address;
- 34.8.4.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 34.8.4.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this 34.8.4.3, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 34.8.5. Any notice sent by hand or pre-paid post, must also be issued to the email address stated above.
- 34.8.6. This clause 34.8.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 34.8.7. A notice given under this Agreement is not valid unless and until it is sent via email.

#### 34.9. COUNTERPARTS

- 34.9.1. This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 34.9.2. No counterpart shall be effective until each Party has provided or delivered to the other at least one executed counterpart.

This Agreement has been entered into on the date stated at the beginning of it.

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

	<p align="center"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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**Signed for, and on behalf of:** Error! No text of specified style in document.

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**Signed in the presence of the following witnesses:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Full Name: \_\_\_\_\_

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**Signed for, and on behalf of:** Service Provider

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**Signed in the presence of the following witnesses:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Full Name: \_\_\_\_\_

	<p><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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**SCHEDULE 1 - TEMPLATE TASK ORDER CONTRACT**

(Page is intentionally left blank – refer to separately attached Schedule 1)

## SCHEDULE 2 - AVAILABLE SERVICES

CATEGORY	DEFINITION
<b>Assessments</b>	
Conditional Assessments and Reports	Refers to capability statement to conduct asset verification and conditional assessments
<b>Schedule Maintenance for Soft and Hard Services</b>	
Soft Services	Refers to services of a non-technical nature i.e. mechanical and electrical
Technical Services	Refers to mechanical and electrical related services. All services must comply to the Standards of Uniformity
<b>Minor Works</b>	
Minor Works - unplanned	Facilities project management services typically funded with operating expenditure and below a value threshold set by DPW from time to time.  This excludes any major and refurbishment projects.
<b>Maintenance</b>	
Planned Maintenance	Applies to planned maintenance for Hard Services. The nature of such services will be determined post the conditional assessments and will be contracted for at the time of site handover and contracting.  Note: Any major refurbishments are excluded from this process and contract.
Unplanned Maintenance	Refers to breakdown maintenance and based on the type/nature of the event may form part of Minor Works
<b>Management &amp; Support Services</b>	
IT Systems	Provision of an IT system and platform that allows for effective management of facility management data, processes, integration and reporting
Call Centre Operations and	Offer call center operations to manage facility management process and service
Data Consolidation and	Credible data management and reporting capability

Total facilities management for the facilities including procurement and management of the subcontractors, IT infrastructure Operations, preparation of the monthly performance monitoring report, Management and implementation of maintenance plans, Management of maintenance systems & record.

- a. The Service Provider will maintain all his office buildings, temporary accommodation and ablutions clean and tidy throughout the contract period.
- b. Maintain condition related information, Compliance with statutory requirements & client rules, Compliance with the occupational Health and Safety Act.
- c. Conduct Annual building inspections, Conduct Annual statutory inspection.
- d. Energy management and utilities supply management.
- e. Establishment of prioritized preventive maintenance & life cycle replacement control plan.
- f. Establishing a performance monitoring system.
- g. Establishing a maintenance/services regime.
- h. Establishing an emergency repair plan.
- i. Establishing a planned maintenance program.
- j. Establishing a built preparation as facilities management software (including uploading of data).

The service Provider will be expected to perform building Services, Electrical/Electronic Services, Mechanical Services, Fire protection/ prevention services, Cleaning and related Services, Minor Works Services and various training to the end user.

### **SCHEDULE 3 - CHARGES AND PAYMENT**

#### **Part A**

#### **(TASK ORDER A)**

#### **Price schedule as per the scope of works for the Conditional Assessment**

##### **Description**

Asset Verification (Asset Register) assessment

Developing a User Immovable Asset Management Plan (UIAMP) – Once-Off Cost

The development of a FM Service Plan and implementation over the full contract period – Once-Off

Development of Maintenance Plans including both planned and unplanned maintenance

Scheduled Services – Soft Services

Scheduled Maintenance – Hardcore / Technical Services

Development of a Minor Project Works schedule & costing – unplanned

Call Centre/ Help Desk Operations and Management (CAFM)

#### **PART B1 - DIRECT COSTS**

#### **(TASK ORDER B)**

#### **PART B2 - INDIRECT COSTS**

#### **(TASK ORDER B)**

*Indirect costs forms part of the following -*

<b>Facilities Management</b>
CAFM and Admin (Facilities Management software, include uploading of data)
<b>Building services</b>
Building fabric
External Façade
Access gates
Shop Fronts
Ramps and Staircases
Rainwater Goods

<b>Management fee for the Procurement and Management of subcontractors</b>
Insurances & Guarantees
IT Infrastructure Operational Costs
Vehicles & Travel Expenses.
All general Offices / Overhead Expenses (related to internal operations).
Disbursements
Professional Service Providers (PSP) – Discipline Consultation

Interior Sitting benches and rubbish bins
Roof Top wooden patio
Boundary Walls
Fencing
Road Markings
Handrails and Bumper rails
Sundries
Mortuary
Helipad
Louvres
<b>Electrical/Electronic services</b>
Electrical Services and Distribution - high tension electrical maintenance including COC (incl. DB board maintenance)
Low tension electrical maintenance including Lumeries, Theatre Lights and COC
Energy management
Standby generator
UPS
Access Control
Solar PV heating
Fixed TV Screens
Coffee machines
Public Address system and music system
Flood Lights
Alarm system
Security scanner
Electrical sockets & wiring
CCTV
<b>Mechanical services</b>
Air conditioning, Ducting, Supply and return air system (Incl Testing and balancing)

Preparation of monthly Performance Monitoring Report
Management and Implementation of Maintenance Plans.
Management of Maintenance Systems & Records.
Management of the works
<b>General Maintenance of Call Centre and Offices</b>
The contractor shall maintain and keep all his offices, temporary accommodation, ablutions, etc. clean and neat for the duration of the contract
Maintain Condition Related Information.
Compliance with Statutory Requirements & Client Rules and Regulations.
Compliance with Statutory Requirements & Client Rules and Regulations.
Compliance with OHS Act.
Annual building inspection
Annual building plan.
Portfolio Management plan.
Statutory Inspection.
<b>Mobilisation Cost</b>
<b>Mobilisation Costs</b> (A fixed one-off cost for all activities leading up to the services commencement date) such as:
Establishment of a Performance Monitoring System.
Establishment of a maintenance / services regime.

Self-Contained air-condition (including smoke vents, toilet extractor fans etc.)
Water cooling tower
Domestic Water tank
Ventilation and Exhaust systems
Chillers
Pumps
Drainage and Sewer Pumps
Lifts
Kitchen Equipment
Refrigeration
Boilers
Generators and Fuel (Diesel Tank)
Wet Services
Kitchen Equipment
Ablutions and Sanitary fittings
Portable water treatment
Boiler(s)
Bed Head Units
Fridges
Therapeutic pool
Geysers/ Hydroboil
Heat Pumps
Sump Pumps
Sewage
Storm water
Gas Storage and Distribution
Medical Gas
Fat Traps
Air dryers
Building Management System (BMS)

Establishment of a prioritised Preventative Maintenance & Life Cycle Replacement control plan.
Establishment of an Emergency Repair Plan.
Establishment of a Planned Maintenance Program.
<b>Operation:</b>
Establishment of necessary accommodation for contractors, including temporary storage, ablution facilities, etc (over and above the call centre)
Staff Recruitment / Mobilisation - Salaries.
Office Set-Up - Rental furniture etc.
IT Infrastructure Set-Up.
24 Hr/365 days Call centre Establishment (See detail requirements elsewhere) (Including all temporary arrangement to such a time that the call centre is fully operational. Including the de-establishment of all temporary structures)
Equipment.
Vehicles.
Uniforms.
Detailed Asset Survey / Facilities Audit.
As Built preparation - buildings, building services, site plans and infrastructure.
Taking over existing service contracts
Management of existing guarantees on installed items
Property Management
Space Planning and Interior design
Sundries

Water tanks incl. Water pumps
<b>Fire protection / prevention</b>
Fire protection, Detection and alarms (Fire hydrants; Fire Hose Reels; Fire Water Supply and Storage Tank; Portable Fire Extinguishers; Fire Sprinkler System; CO2 Gas Suppression System, Booster Pump, HFC 227a Gas Suppression System), Water Supply, Water Supply valves including testing.
Smoke detection/PA System including testing
Fire Drill/Evacuations (including setup to OHS signages, evacuation doors for compliance)
Indoor air quality testing
<b>Cleaning and related services</b>
General Cleaning
Specialised Deep Cleaning
External Window cleaning
Hygiene Services
Pest control
Waste management / Compactors
Landscaping
<b>Minor Work</b>
Painting
HVAC Equipment parts replacement
Generator parts replacement
Globes
Waterproofing to roofs
Waterproofing to basement
Windows and sky light
Wallpaper
Ceilings & Cornices (incl. painted concrete ceilings)
Carpets

Any other costs, please attach a schedule detailing additional items priced for.
<b>De Mobilisation Costs</b> (A fixed one-off cost for all activities to demobilise at the end of the contract period) such as:
Management related items. Please attach a schedule detailing items priced for.
<b>Operation:</b>
Return all copies of information, data, manuals, drawings etc.
Return all keys and access tags etc.
Return all equipment belonging to DPW.
Operation related items. Please attach a schedule detailing items priced for.
<b>Transition Period</b>
<b>Transition Period</b> (A fixed once-off cost for all activities transferring information and skills after the contract period such as:
Management related items. Please attach a schedule detailing items priced for

External Façade Cleaning
Tiles/Vinyl floor and concrete floors
Glass Panes
Fencing
Draining of Water in basement
Sanitary fittings
Doors (Wooden and Aluminium)
Open Parking
Blinds
Dry Walls
Carpentry and Joinery
Roads
Boilers
Access Control
Security scanner
UPS parts replacement
Building Management System (BMS)
Portable water tanks/ boreholes
Water pumps
<b>Sundries</b>
Signage
Handy man services (24/7 services)
Lock Smith
<b>Items not covered in Proposal</b>
Any other costs.-Please attach a schedule detailing additional items priced for.
<b>Training</b>
Allow an amount of R 1 500 000 (One Million Five Hundred Thousand Rands) for Training of Staff Members & Client officials of FM related training for 3 Years.
Allow 5% for the contingencies to be used as directed by the Implementing Agent and deducted in part or in whole if not required (Contingencies for any unforeseen FM related item)

	<p align="center"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024:</b> Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</p>
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### C1.2.2 CONTRACT SPECIFIC DATA

#### Part One - Data provided by the *Employer*

- i. **The Employer is:** the Development Bank of Southern Africa Limited  
The address of the Employer is:  
**Address (physical):** 1258 Lever Road, Headway Hill, Midrand, 1685  
**Address (postal):** P.O. Box 1234, Halfway House, Midrand, 1685  
**Telephone:** (011) 313 3911  
**Facsimile:** (011) 313 3086
  
- ii. **The Service Manager:** (Only to be inserted at contracting)  
**Telephone:** (Only to be inserted at contracting)  
**Facsimile:** (Only to be inserted at contracting)  
**Address (physical):** (Only to be inserted at contracting)  
**Address (postal):** (Only to be inserted at contracting)

	<p align="center"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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C1.2 CONTRACT SPECIFIC DATA (Continued)

Part Two – Data provided by the *Service Provider*

Statements given in all contracts.

- The *Service provider* is:

Name:

[insert]

Address:

[insert]

Postal Address:

[insert]

[insert]

Contact Person:

[insert]

Telephone:

[insert]

Email:

[insert]

	<p style="text-align: center;"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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## C1.3 SECURITY GUARANTEE

### Pro-Forma Total Facilities Management Variable On Demand Performance Guarantee

To: The Development Bank of Southern Africa Limited

Dear Sirs

Reference No. [●] *[Drafting Note: Guarantor/Bank reference number to be inserted]*

Performance Bond: *[Drafting Note: Name of Service Provider to be inserted]*

Employer: Contract Reference - [●] *[Drafting Note: Contract reference number to be inserted]*

#### 1. In this Guarantee

##### 1.1 The following words and expressions have the following meanings:

- 1.1.1 “Guarantor” - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Guarantor to be inserted]* [□] **Financial Services Board Registration number**
- 1.1.2 “Guarantor’s Address” - means [●]; *[Drafting Note: Guarantor’s physical address to be inserted]*
- 1.1.3 “Contract” - means the written agreement entered into between the Employer and the Service Provider on or about [●] [●] 201[●] (Contract Reference No. [●]), as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: signature date and Contract reference number to be inserted]*
- 1.1.4 “Service Provider” - means [●] a [●] registered in accordance with the laws of [●] with registration number [●]; *[Drafting Note: Name and details of Service Provider to be inserted]*
- 1.1.5 “Employer” - means The Development Bank of Southern Africa Limited, a juristic person in terms of section 2 of The Development Bank of Southern Africa Limited Act, 13 of 1979;
- 1.1.6 “Expiry Date” - means the [●] day of [●] *[Drafting Note: This date should align with the date of final completion]*;
- 1.1.7 “this Guarantee” - means this document;
- 1.1.8 “This Guaranteed Sum” – means this document;

1.1.9 “Guaranteed Sum” – means, subject to clause 4, the sum of [● - figure] ([● - words]) a maximum aggregate Guarantee amount (not exceeding 5% of the total of the Contract Sum.

1.2 Words or expressions capitalised shall bear the same meaning as assigned to them under the Contract albeit that the Contract itself, and any terms as defined therein, are merely referenced for convenience and not to create an accessory obligation.

2. At the instance of the Service Provider, the Guarantor hereby confirms that we hold the Guaranteed Sum at the disposal of the Employer, as security for the proper performance by the Service Provider of all of his obligations in terms of and arising from the Contract, and hereby irrevocably and unconditionally both agree and undertake to pay to the Employer, on written demand from the Employer envisaged in paragraph 3 below and received prior to the Expiry Date, any amount or amounts as may be so demanded from time to time, subject to a maximum of the Guaranteed Sum in the aggregate.

3. A demand for payment under this Guarantee shall be made in writing at the Guarantor’s address or by email to the following email [.....insert..] and shall:

3.1 state the amount claimed (“the Demand Amount”);

3.2 state that the Demand Amount is payable to the Employer in the circumstances contemplated in the Contract:

4. The Guaranteed Sum may be reduced from time to time upon receipt by the Guarantor of the Employer’s written certificate certifying the amount of such reduction and the Service provider’s entitlement thereto under the Contract.

5. Notwithstanding the reference herein to the Contract the Guarantor acknowledges that:

5.1 the liability of the Guarantor in terms hereof is as principal and not as surety and the Guarantor’s obligation/s to make payment:

5.1.1 is and shall be absolute and unconditional in all circumstances; and

5.1.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever;

5.2 the Employer shall be entitled to arrange its affairs with the Service provider in any manner which it sees fit, without advising us and without affecting the Guarantor’s liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Service provider or any variation under or to the Contract or termination of the Contract.

5.3 should the Employer cede its rights against the Service provider to a third party where such cession is permitted under the Contract, then the Employer shall be entitled to cede to such third party the rights of the Employer under this Guarantee on written notification to the Guarantor of such cession.

**6. The Guarantor's obligations in terms of this Guarantee:**

6.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

6.2 shall not be discharged and compliance with any demand for payment received by the Guarantor in terms hereof shall not be delayed, by the fact that a dispute may exist between the Employer and the Service Provider.

**7. This Guarantee:**

7.1 shall expire on the Expiry Date until which time it is irrevocable;

7.2 is, save as provided for in 5.3 above, personal to the Employer and is neither negotiable nor transferable;

7.3 shall be returned to the Guarantor upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

7.4 shall be regarded as a liquid document for, firstly, the purpose of demonstrating and/or determining the amount due by the Guarantor to the Employer and, secondly, obtaining any court order; and

7.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

**8. The Guarantor chooses the *domicilium citandi et executandi* for all purposes in connection with this Guarantee at the Guarantor's Address.**

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Guarantor, which signatories by appending their signatures warrant that they are authorised to bind the Guarantor as above stated:

	<p align="center"><b>TOTAL FACILITIES MANAGEMENT FRAMEWORK AGREEMENT</b></p>	<p><b>RFR/TFM/2024: Establish a Framework of specialized Total Facilities Management firms for a period of 5 years, with an option of extending for further 1 year after expiry of the initial project period.</b></p>
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Guarantor Signatory 1: \_\_\_\_\_ Guarantor Signatory 2: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Capacity of Guarantor Capacity of Guarantor

Signatory 1: \_\_\_\_\_ Signatory 2: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

(Printed Name of Witness) (Printed name of witness)  
 \_\_\_\_\_

Guarantor’s seal or stamp \_\_\_\_\_

**C 2: PRICING DATA**

**TOTAL FACILITIES MANAGEMENT PRICING INSTRUCTIONS**

Document reference	Title	No of pages
C2.1	Pricing Instructions	1
Total number of pages		1

## **C2.1 PRICING INSTRUCTIONS**

1. Tenderers are required to adhere to the Pricing Instructions as detailed and cost every line item in full, failing which will result in the offer being deemed non-compliant.
2. Bidders are required to offer one Cost Percentage for Conditional Assessment and three Cost Percentages for TFM Services, one per cost threshold.
  - a. (Value Threshold 1: R0-R100m/ Value Threshold 2: R101m-R300m/ Value Threshold 3: R301m and higher
3. The Individual and Combined Threshold Cost Percentages will be for evaluation purposes only and in no way represents a contract amount.
4. Percentages will be fixed for the full period of the framework.
5. Percentages should be inclusive of VAT.
6. Percentage for Conditional Assessment must cover full scope as detailed, but not limited to those only.
7. Percentage for TFM Services, must cover full scope as detailed, but not limited to those only.
8. TFM services contains breakdown of Allowable cost in a form of direct and indirect cost as listed under *SCHEDULE 3 – Charges & Payments*.
9. Tenderers are to ensure that full provision for all health and safety measures have been provided, as required by the Department of Labour.
10. The Price Schedule as provided in C1.1.1 Offer, must be utilised and populated in full. Any additional pricing information or breakdowns must be provided separately and may not contradict the values in the Offer.
11. The per kilometer rate for the reimbursement of travel expenses shall be limited to the kilometer rates published by the Department of Public Works from time to time for vehicles with engine capacities of various capacities but not exceeding the maximum of 2500cc for the purpose of this contract. If 4x4 vehicles or other vehicles exceeding 2500cc are required due to accessibility or poor road conditions, the applicable rate needs to be agreed between the Service Provider and the Employer upfront before trips are undertaken. The prices tendered should be on the basis of a vehicle with 2500cc engine capacity.

I, \_\_\_\_\_ of \_\_\_\_\_,  
(Authorised Signatory) (Company Name)

Hereby acknowledge having read, understood and agree to requirements as set out in C2.1 and warrant that the documents submitted are true and accurate.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)