



SERVICE LEVEL AGREEMENT

between

PIKITUP JOHANNESBURG (SOC) LIMITED
("the Employer")

and

.....
("the Service Provider")

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PARTIES:

This Agreement is made between:

- (i) **PIKITUP JOHANNESBURG (SOC) LIMITED** a wholly owned municipal entity of the City of Johannesburg incorporated under the Companies Act (71 Of 2008), read with the Municipal Systems Act (32 of 2000), with registration number 2000/029899/07 (the “**Employer**”); and
- (ii) a company registered in accordance with the laws of the Republic of South Africa under registration number (the “**Service Provider**”).

WHEREAS

- A. The Employer is a non-profit company that is mandated to provide municipal waste management and minimisation services in the Johannesburg Metropolitan area.
- B. The Service Provider is in the business of, *inter alia*, providing website and intranet development , redesign and maintenance Services.
- C. The Employer requires the abovementioned Services in order to develop, redesign and maintain the website and the intranet for Pikitup.
- D. The Employer wishes to procure services from the Service Provider, and the Service Provider is willing and able to provide services to the Employer, the parties wish to enter into this Agreement to regulate their relationship and matters ancillary thereto.

1. DEFINITIONS AND INTERPRETATION

Definitions

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

- 1.1.1 **Agreement** means this agreement, as amended, replaced or re-stated from time to time, and the schedules and annexures hereto, and the bid documents;
- 1.1.2 **Applicable Law** means any of the following, from time to time, to the extent it applies to a Party or the Services (including, the performance, delivery, receipt or use of the Services, as applicable and wherever occurring): (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law); (b) the common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; or (e) any applicable direction, policy or order that is given by a regulator;
- 1.1.3 **Business Day** means a calendar day, other than a Saturday, Sunday, or public holiday in South Africa;
- 1.1.4 **Charges** means the charges and fees payable by the Employer to the Service Provider as consideration for the performance of the Services, which charges are set out in Annexure B;
- 1.1.5 **Commercially Reasonable Efforts** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;
- 1.1.6 **Confidential Information** means all information relating to the Services and the Employer (including all information relating to the Employer's business,

products, services, affairs and/or finances which is not readily available, in the ordinary course of business, to third parties) and any other information which, by its nature, would reasonably be considered to be confidential;

- 1.1.7 **Drupal** means free and open source software that can be used by individuals or groups of users to do things like content management or any other development work needed for the website or intranet;
- 1.1.8 **Employer's Representative** means the Employer's Representative or any replacement appointed in writing by the Employer and may be an individual or the holder of particular office in the employ of the Employer;
- 1.1.9 **Force Majeure Event** shall have the meaning ascribed thereto in clause 17;
- 1.1.10 **Insolvency Event** means, in relation to either Party, the occurrence of any of the following events or circumstances:
- 1.1.10.1 an order or declaration is made or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up, any form of compromise, business rescue or dissolution, (and whether provisional or final) of it or its estate;
- 1.1.10.2 a Party is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;
- 1.1.10.3 any receiver, administrative receiver, any form of administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, business rescue practitioner or the like (whether provisional or final) is appointed in respect of it or any material part of a Party's assets or it requests any such appointment; or

1.1.10.4 an order is made placing a Party under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act No. 71 of 2008;

1.1.11 **jQuery** means to make documents traversal, animation to be easier and simpler in websites or intranet;

1.1.12 **Parties** means the Service Provider and the Employer and **Party** shall mean either of them as the context requires;

1.1.13 **Performance Standards** means the performance and service levels, as set out in Annexure C and as may be amended by agreement between the Parties from time to time;

1.1.14 **Services** means the services set out in Annexure A;

1.1.15 **Signature Date** means the date of signature of this Agreement by the Party signing it last in time;

1.1.16 **Term** shall have the meaning ascribed thereto in clause 4; and

1.1.17 **VAT** means value-added tax as may be levied in terms of the Value-Added Tax Act, No. 89 of 1991, to the extent applicable;

1.2 Interpretation

1.2.1 In addition to the definitions in clause 0, unless the context requires otherwise:

1.2.1.1 the singular shall include the plural and vice versa;

1.2.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

1.2.1.3 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;

1.2.1.4 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;

1.2.1.5 expressions defined in this Agreement shall bear the same meanings in the schedules and annexures to this Agreement which do not themselves contain their own conflicting definitions;

1.2.1.6 if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;

1.2.1.7 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply; and

1.2.1.8 the words “include”, “including” and “in particular” shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.

2. APPOINTMENT

The Employer hereby appoints the Service Provider to provide the Services to the Employer on a non-exclusive basis, and the Service Provider hereby accepts such appointment on the terms and conditions set out herein.

3. RELATIONSHIP OF THE PARTIES

3.1 For the avoidance of any doubt, the Parties record and agree that, pursuant to the implementation of this Agreement, the Parties shall at all times act as independent contractors to one another. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.

3.2 Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind between the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Party and its affiliates other than as specifically set out herein.

3.3 Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

4. COMMENCEMENT AND DURATION

4.1 Subject to clause 4.2 below, this Agreement shall be deemed to have commenced on the Signature Date and shall endure for a period of thirty six (36) months (the "Term") after which it shall terminate automatically.

4.2 Notwithstanding the provisions of clause 4.1 above, this Agreement may be terminated at any time during the Term or any period extended by the Employer by either Party in accordance with the provisions of clause 20.

5. THE SERVICES

5.1 The Service Provider agrees to provide the Services to the Employer as defined in Annexure A [*Services*].

5.2 The Service Provider shall be responsible for performing the Services in accordance with this Agreement and the Performance Standards detailed in Annexure C. The Service Provider undertakes that, in providing the Services, it will employ the necessary diligence, skill and expertise to comply with such Performance Standards.

5.3 The Service Provider shall participate in all meetings and service review sessions reasonably requested by the Employer upon reasonable notice to address performance issues related to this Agreement.

6. GENERAL OBLIGATIONS OF THE EMPLOYER

6.1 The Employer shall, for the duration of this Agreement, provide to the Service Provider such information and documentation as reasonably requested by the Service Provider so as to allow the Service Provider to fulfil its obligations in terms of this Agreement.

6.2 The Employer's use of the Services shall comply with all material Applicable Law.

6.3 In addition, and without derogating from the generality of this clause 6, the Employer shall for the duration of the Term (and during any extension of such Term, if applicable):

6.3.1 co-operate with the Service Provider in all matters relating to the Services;
and

6.3.2 provide, in a timely manner, such input and other information as the Service Provider may reasonably require.

6.4 In addition, the Employer shall be responsible for and undertakes to pay the Charges of the Services rendered.

7. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

7.1 The Service Provider shall:

- 7.1.1 Perform the Services with due care, skill, professionalism, and diligence as would be expected of a reasonable service provider in the position of the Service Provider;
- 7.1.2 co-operate with the Employer in all matters relating to the Services;
- 7.1.3 provide the Services in accordance with the Performance Standards ;
- 7.1.4 strictly and punctually comply with all reasonable requests submitted by the Employer in relation to the Services at any time;
- 7.1.5 work with the Employer to integrate its Services with other service providers, so appointed by the Employer, in order to achieve the main business objects as set out in the Employer's Memorandum of Incorporation;
- 7.1.6 comply with all Applicable Laws in relation to the provision of the Services and conduct itself in a courteous and business-like manner always considering the image and reputation of the Employer; and
- 7.1.7 subject to clause 10 respect the confidentiality of the Employer.

8. CHARGES

- 8.1 As consideration for the provision of the Services, the Service Provider shall be entitled to the Charges in accordance with Annexure B.
- 8.2 The Service Provider shall use Commercially Reasonable Efforts to procure the services of any third party that it elects to use at reasonable rates, bearing in mind criterion such as quality of service, synergies and reliability.

8.3 Within 10 (ten) Business Days after the end of each calendar month, the Service Provider shall deliver its invoices in respect of the Charges to the Employer, which invoices shall set out in sufficient detail what services were provided in any given month and the amount charged for each.

8.4 All payments shall be made by electronic transfer into the bank account nominated by the Service Provider in writing.

9. **SERVICE PROVIDER'S WARRANTY ON ADHERENCE TO ANTI-BRIBERY AND SANCTIONS LAWS OR POLICIES**

9.1 No Party to this Agreement shall engage in any activities in relation to the Services, which would be in contravention of any Applicable Law relating to anti-fraud and corruption.

9.2 The Service Provider hereby warrants that, for the duration of this Agreement, it will comply (and will procure that all its employees, directors, officers or agents comply) with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention and combating of bribery, corruption and money laundering ("Anti-Corruption and Sanctions Regulations"), to which it or the Employer is subject.

9.3 The Service Provider further warrants that it has, and will for the duration of this Agreement have, an adequate anti-corruption programme in place to enable compliance with the Anti-Corruption and Sanctions Regulations.

9.4 The Service Provider undertakes not to, and will procure that all its members/employees, directors, officers or agents, do not:

9.5 pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the performance of its obligations that violates any Anti-Corruption and Sanctions Regulations or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or

kickback may or will at any time be paid; or

9.6 offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.

9.7 Any breach by the Service Provider of the provisions of this clause will be a material breach of this Agreement and entitle the Employer to cancel this Agreement immediately on notice to the Service Provider.

10. **CONFIDENTIALITY**

10.1 The Service Provider agrees and undertakes to use the Confidential Information only for the purpose of rendering the Services in terms of this Agreement and for no other purpose whatsoever and not to disclose such Confidential Information to any third party without the consent of the Employer. To this end the Service Provider shall be entitled to disclose the Confidential Information to its employees, directors or subcontractors to the extent necessary for the performance of the Services, provided such persons are subject to confidentiality undertakings which are no less stringent than those applicable to the Service Provider under this Agreement.

10.2 The rights and obligations contained in this clause 10 shall endure for the duration of this Agreement and after the Termination.

11. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

11.1 Each Party hereby warrants and represents to the other that, as at the Signature Date:

11.1.1 it shall use its Commercially Reasonable Efforts to avoid any material conflict between its interests and those of the other Party and, where such conflict is unavoidable, will disclose the details of such conflict to the other Party;

11.1.2 it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein;

11.1.3 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;

11.1.4 it has the capacity and power to provide the representations, warranties and undertakings contained in this Agreement;

11.1.5 the execution of this Agreement and performance of its obligations hereunder does not and shall not, to the best of its knowledge contravene any Applicable Law or contravene any provision of its constitutional documents so as to prevent it from performing its obligations under this Agreement.

12. **PENALTIES**

If the Service Provider fails to achieve or complete an activity, as the case may be, by a date specified in the purchase order, the Employer shall, without prejudice to its other remedies under the Agreement, impose a penalty of 5% of the invoice price deductible on every invoice submitted from the date the Service Provider failed to achieve or complete an activity until the termination of contract.

13. **MATERIALITY OF WARRANTIES AND REPRESENTATIONS**

13.1 Each of the warranties and representations given by the Parties in terms of clause 11 and this clause 13 (or elsewhere in this Agreement) shall:

13.1.1 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 word/s in this Agreement;

13.1.2 continue and remain in force notwithstanding the completion of the transactions contemplated in the Agreement; and

13.1.3 be deemed to be material and to be a material representation inducing the Parties to enter into this Agreement.

13.2 It is recorded and agreed that each Party has entered into this Agreement on the strength of the warranties and undertakings it has received from the other Party and on the basis that such warranties and undertaking will, unless otherwise specifically stated, be correct on the Signature Date.

13.3 A breach by either Party of any warranty, representation or other provision of clause 11 and this clause 13 or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on the other Party the right, in its sole discretion, to utilise any remedy it may have in law or created in this Agreement for the enforcement of its rights, including termination in terms of clause 20.

14. **SUPPORT AND GOOD FAITH**

14.1 The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

14.2 Each Party shall at all times during the continuance of this Agreement observe the principles of good faith towards the other Party in the performance of its obligations in terms of this Agreement. This implies, without limiting the generality of the foregoing, that each Party shall:

14.2.1 at all times during the term of this Agreement act reasonably, honestly and in good faith; and

14.2.2 perform its obligations arising from this Agreement diligently and with care.

15. **LIMITATION OF LIABILITY**

15.1 Nothing in this Agreement shall limit or exclude a Party's liability for deliberate

default, fraud, fraudulent misrepresentation or reckless misconduct.

15.2 Subject to clause 15.1, under no circumstances shall a Party be liable to the other for any of the following, whether in contract, delict (including negligence) or otherwise:

15.2.1 loss of revenue or anticipated revenue;

15.2.2 loss of use;

15.2.3 loss of production;

15.2.4 loss of business opportunity;

15.2.5 loss of profits or anticipated profits;

15.2.6 wasted expenditure; or

15.2.7 any indirect or consequential losses.

15.3 The maximum amount of compensation payable by either Party to the other in respect of liability under this Agreement is limited to the amount of R10 million.

16. INDEMNITY

The Service Provider hereby indemnifies the Employer, its directors, servants, employees, agents, advisors, representatives, contractors and any other person for whom the Employer may be liable in law harmless against any and all loss, liability, damage, injury, costs (including attorney-own-client costs), claim, fine, penalty, interest or expense of whatsoever nature or howsoever arising which may be incurred or sustained by, or imposed on the Employer by reason of or pursuant to: (a) a breach by the Service Provider (or any of its employees agents, contractors and/or consultants) of any of the provisions of this Agreement; and (b) a breach by the Service Provider (or any of its employees, agents, contractors and/or consultants) of

any Applicable Law which relates to the Service Providers obligations in terms of this Agreement.

17. **FORCE MAJEURE**

17.1 Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent that a Force Majeure Event occurs. In such event, subject to the provisions of this clause the non-performing Party is excused from further performance for as long as such circumstances prevail and the Party continues to use its Commercially Reasonable Efforts to mitigate the effect of the Force Majeure Event and recommence performance of the Services, as soon as possible.

17.2 A Force Majeure Event is any event or circumstance or combination of events and circumstances which fulfils all of the following 3 (three) criteria:

17.2.1 is beyond the reasonable control of the Party affected by that event or circumstance or both;

17.2.2 wholly or partially prevents the performance by the affected Party of any of its obligations under this Agreement; and

17.2.3 cannot be prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with that of a service provider experienced in projects or activities of a similar nature to the Services (as the case may be).

17.3 If a Force Majeure Event occurs, in relation to the Service Provider's obligations to provide the Services, the Service Provider must immediately notify the Employer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement.

18. INDEPENDENT AUDIT

18.1 The Service Provider shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Employer on reasonable request.

19. DISPUTE RESOLUTION

19.1 General Dispute Resolution

19.1.1 Any dispute (“a dispute”) between the Parties arising in connection with this Agreement or the subject matter hereof shall be submitted to and determined by binding arbitration in terms of this clause 19. For the purpose hereof the term “dispute” shall be interpreted in the widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties’ respective rights and/or obligations in terms of and/or arising out of this Agreement and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.

19.1.2 The Parties shall use Commercially Reasonable Endeavours to resolve amicably by direct informal negotiation any disagreement or dispute arising between them out of or in connection with this Agreement.

If, after 10 (ten) days from the commencement of such informal negotiation, the Parties have been unable amicably to resolve any disagreement or dispute arising out of or in connection with this Agreement, including any question regarding its existence or validity, either Party (the “Referring Party”) shall be entitled, by notice in writing to the other Party, to refer a dispute to arbitration in accordance with the rules of the Association of Arbitrators (Southern Africa). Such arbitration shall be held in [Johannesburg].

19.1.3 The number of arbitrators in respect of a dispute shall be 1 (one) and the appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between the Parties, the appointment shall be made by the Chairman of the Association of Arbitrators at the time of referral.

19.1.4 The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act, 1965, as amended, or re-enacted in some other form from time to time, but shall not be obliged to follow the procedures described in that Act and shall be entitled to decide on such procedures as he may consider desirable for the speedy determination of the dispute, and in particular he shall have the sole and absolute discretion to determine whether and to what extent it shall be necessary to file pleadings, make discovery of documents or hear oral evidence.

19.1.5 The decision of the arbitrator shall be final and binding on the Parties.

19.1.6 The language of the arbitration shall be English.

19.1.7 Nothing in this clause 19 shall preclude either Party from obtaining urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged. To this end, the Parties submit to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg, of the High Court.

20. TERMINATION

20.1 The Parties acknowledge that, in relation to the Services, time is of the essence and if a Party commits a material breach of this Agreement and/or fails to comply with any of the provisions hereof (the "Defaulting Party"), then the other Party/s (the "Innocent Party") shall be entitled to give the Defaulting Party 15 (fifteen) Business Days' notice in writing, or such shorter period as is reasonable if time is of the essence, to remedy such breach and/or failure and if the Defaulting Party fails to comply with

such notice, then the Innocent Party shall forthwith be entitled but not obliged, without prejudice to any other rights or remedies which the Innocent Party may have in law, including the right to claim damages:

- 20.1.1 to cancel this Agreement; or
- 20.1.2 to claim immediate performance of the provisions of this Agreement.
- 20.2 Either Party may, by giving 14 (fourteen) days' written notice to the other Party, terminate this Agreement, in whole or in part, immediately if any Insolvency Event occurs in relation to the other Party, in which case such termination shall be deemed to have occurred 1 (one) day prior to the occurrence of the Insolvency Event.
- 20.3 Notwithstanding any other provision contained in the Agreement the Employer may, without cause and in its sole and absolute discretion, terminate the Agreement by giving at least 30 days' notice in writing to the Service Provider at any time and for any reason or no reason.

21. NOTICES

- 21.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

- 21.1.1 Employer: Pikitup Johannesburg SOC Ltd
Physical: 66 Jorissen Street
Braamfontein
E-mail:
Attention:

- 21.1.2 Service Provider:
Physical:.....
E-mail:
Attention:

21.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.

21.3 Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address the relevant jurisdiction or its email address, provided that the change shall become effective *vis-à-vis* that addressee on the 10th (tenth) Business Day from the receipt of the notice by the addressee.

21.4 Any notice to a Party:

21.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium* to which post is delivered shall be deemed to have been received on the 10th (tenth) Business Day after posting (unless the contrary is proved); or

21.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

21.5 Notwithstanding anything to the contrary herein contained a written notice or communication (including by email) actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

22. SUBCONTRACTING, CESSION AND ASSIGNMENT

22.1 The Service Provider shall not be entitled to sub-contract or assign more than 25% of its rights and obligations under this Agreement to a third party unless:

22.1.1 the Service Provider has obtained the prior written consent of the Employer;

22.1.2 the third party is qualified to provide the Services; and

22.1.3 the Service Provider remains responsible for the performance of the Services in accordance with the provisions of this Agreement.

23. GOVERNING LAW AND SUBMISSION TO JURISDICTION

23.1 This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.

23.2 Subject to clause 19, the Parties hereby consent to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg of the High Court of South Africa in respect of all matters and proceedings arising out of, pursuant to or in connection with this Agreement.

24. WHOLE AGREEMENT, NO AMENDMENT

24.1 No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver, or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension). Any such extension, waiver, relaxation or suspension which is so given or made shall be construed strictly as relating only to the matter in respect whereof it was made or given.

24.2 No oral *pactum de non petendo* shall be of any force or effect.

24.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

24.4 To the extent permissible under Applicable Law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

25. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

26. STIPULATIO ALTERI

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

27. EXECUTION IN COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that signs its counterpart last in time.



28. **COSTS**

Each Party will bear its own costs in relation to the drafting and finalisation of this Agreement (including but not limited to attorneys' fees, financial advisers' fees, expenses, etc.) and attendances incidental thereto.

SIGNED at _____ on this the _____ day of _____ 2023

For and on behalf of

PIKITUP JOHANNESBURG (SOC) LIMITED

Signatory:

Capacity:

Who warrants his/her authority hereto

SIGNED at _____ on this the _____ day of _____ 2023

For and on behalf of

[INSERT NAME OF SERVICE PROVIDER]

Signatory:

Capacity:

Who warrants his/her authority hereto

ANNEXURE A

A. The Service Provider must:

1. SCOPE OF WORK

1.1. WEBSITE RE-DESIGN AND LAYOUT

- Re-design the website on by making changes to its look and feel, following Pikitup corporate identity guidelines and should be easy to navigate in terms of what customers are looking for, e.g. Human resources, supply chain management, billing, depots information, campaigns, lodging of complaints, legal, operational information etc. This must link to various social media platforms. The website can be based on an open source platform. In this regard, the service provider will be required to provide 3 x creative examples to choose from and allow for 5 reverts on the creatives.
- Website Layout – ensure professional pages' layout in terms of page margins, text, image positioning, etc. The website should be responsive on various devices (mobile/laptop). The information should be displayed in such that it fits together in a sequence, so it is easy to scan, find and use.
- The design elements must be easy to integrate or be used in Pikitup's intranet platform that operates on share point.
- The site needs to incorporate and link the City of Johannesburg's new payment app.
- The site should be in a position to enable customers to register on the site and log enquiries/complaints to be actioned by Pikitup.
 - It is expected that customers will have to register on the new site.
 - The customer registration process should be taken care of within the platform and within all the necessary security and legal requirements, and no form of integration to an existing database will be required.
 - At the end of the contract Pikitup must be in a position to extract the data and migrate all information to Pikitup.
 - Predefined list of enquiries to be discussed at time of implementation.

-Ability for the site to redirect enquiries/complaints to the relevant Pikitup users via e-mail, the enquiry will be sent to relevant Pikitup users or Group email address which will be defined at the time of implementation.

- The site should be able to generate reference numbers for customer complaints, with an email confirmation sent to customers.
- Queries should be able to be sent to relevant department/contact persons, as they cannot call the Contact Centre with the reference number.
- No integration required to the existing SAP CRM system used at the City of Johannesburg. Future integration should however be possible should Pikitup wish to go this route at some point in time.
- Pikitup must have the ability to use the platform to send Broadcast messages to their registered customers/uploaded database. The intention is to make use of existing services provided by Network the operator, from where a broadcast message can be initiated from the platform to send messages to customers using the Network Operator's services. This will require integration to these Network operators.

1.2. SECURITY

- Manage all aspects of website security (SSL Certificates) to protect information and existing content (data, project information, contact details, etc.) and prevent hacks, defacing, etc.
- Identifying and responding to all website security breaches.
- Ensuring that the website is protected by enabling the appropriate security measures.

1.3. DATA BACK-UP

- Ensure data and the entire website is backed-up on a weekly/daily basis and that code backups are done as needed.
- In case of a serious incident, the website should be able to be restored from the most recent back-up.

1.4. REGULAR TECHNICAL SITES AND CODE MAINTENANCE

- Install, upgrade or modify existing modules on site, where necessary.
- Produce analytics reports of website traffic. Responding to and troubleshooting all website issues.

1.5. CONTENT MANAGEMENT AND PHOTOGRAPHY

- Integrate relevant content to Pikitup's social media platforms (Twitter/Facebook/Youtube).
- Photo editing - Use relevant software to edit, photoshop and professionalise existing and new photographs, as and when needed. Provide a cache of industry related images for the website in the related areas. Upload content to the website, as and when needed. Content to be provided by Pikitup.
- The site should be able to expose video content that will be made available by Pikitup and link these to Pikitup's social media platforms.

1.6. HOSTING

- The bidder would need to provide hosting services in accordance with the requirements of the website.

1.7. WEB ANALYTICS, SEARCH ENGINE OPTIMISATION AND REPORTING

- The bidder must provide efficient Search Engine Optimisation for the website.
- The bidder must in a position to compile web analytics and must not require any data to be sent to any other system/s. The platform should however be able to do this in future should Pikitup decide to have this data made available to other systems.
 - Reporting will be for:
 - The customer that created the enquiry
 - Name, surname, email address and mobile (if maintained)
 - Enquiry type
 - Enquiry detail
 - Geo location
 - Data to be reported on for:
 - Number of queries logged in a defined period
 - Number of enquiry types logged as well as the geo-location of these enquiries

1.8. TRAINING AND HANDOVER

There must be a hand-over and training of the solution to Pikitup to ensure business continuity after the 3-year period.

- There must be a comprehensive handover (manual guideline booklet) and hosting migration to Pikitup towards the end of the 3-year engagement to ensure that Pikitup can carry on with site maintenance post rolling off the engagement.

1.9. INTRANET

- The bidder must provide handover files on the creative design with the open files used for the design of the website, that can be adopted in the Pikitup intranet platform.
- The building and coding of this type of website with this type of functionalities/services is what would set service providers apart in terms of the expertise that they can provide:
- The web platform must natively provide user management with user roles for user permissions.
- Must be able to email users and send updates.
- It must provide marketing functionality for broadcast messages.
- Must be able to perform service request and query management only for registered users.
- Must have the potential for future integration into SAP ERP.
- Must be able to tailor the user experience for different user types i.e., corporate vs consumer.
- If any integration has been setup, this functionality should continue to work as per normal after the 3-year period.
- Ability to provide payment gateway integration for certain services.
- Ability to book a service via an online booking tool.

The Charges Annexure B

Pricing

Implementation Cost

Project Phase	Start Date	Weeks	Cost excl. VAT	VAT	Total Consulting & Travel (incl. VAT)
1. Prepare and onboarding					
2. Explore					
3. Realise (build)					
4. Release (test)					
5. Deploy (production setup)					
Deploy (go-live and intensive care support)					
Total					

PRODUCT	DESCRIPTION	COST P/M	VAT 15%	COST INCL. VAT
Solution Support Cost	Site maintenance & management			



Application Support Cost	Incl New Relic & Fastly services & bug fixes & new requirements			
TOTAL				



ANNEXURE C

Performance Standards