

<b>CONTRACT AGREEMENT</b>	<b>APPOINTMENT OF SUITABLY QUALIFIED AND EXPERIENCED PANEL OF SERVICE PROVIDERS FOR THE CONSTRUCTION MANAGEMENT SYSTEMS (CMS) IMPLEMENTATION FOR A PERIOD OF THREE (3) YEARS</b>
<b>CONTRACT REFERENCE NUMBER</b>	CIDB/012/2425
<b>ENTERED INTO BETWEEN</b>	

**CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**  
("the cidb")

**XXXXXXXX (PTY) LTD**  
(Registration number: XXXXX)  
("the service provider")

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**1. PARTIES**

The parties to this agreement are:

**1.1. CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**

A Schedule 3A public entity established in terms of the Construction Industry Development Act, 38 of 2000 to provide leadership to stakeholders and to stimulate sustainable growth, reform, and improvement of the construction sector for effective delivery and the industry’s enhanced role in the country’s economy). (Hereinafter referred to as “**the cidb**”)

and

**1.2. XXXXXXXXX**

(Registration No: XXXXXXXX)

(Hereinafter referred to as “**the service provider**”)

**2. BACKGROUND**

It is hereby recorded that:

2.1 The cidb has appointed a service provider to:

2.1.1 **Provide training on the Construction Management Systems (CMS) implementation for a period of three (3) years**

2.2 The Service Provider has the necessary experience, capacity, and knowledge in providing the services as required by the cidb.

2.3 The Service Provider has successfully submitted a bid to the cidb, to provide the cidb with the required Services contemplated in the “Invitation to Bid”.

**3. INTERPRETATION**

3.1 In this agreement, unless otherwise specified or the context clearly indicates the contrary, the following words and expressions shall have the meanings assigned to them below and related words and expressions shall have corresponding meanings:

3.1.1 “**Agreement**” – means this written agreement between the cidb and the service provider, and all its Annexures and Appendices and/or Schedules attached hereto including:

3.1.1.1. Tender Documents, which include the Invitation to Bid/Request for Proposals and Services Specification Documents, attached to the Agreement and marked as “**Annexure A**”.

3.1.1.2. Schedule of rates and fees for the Services, attached to the Agreement and marked as “**Annexure B**”.

3.1.1.3. Letter of Appointment issued by the cidb to the Service Provider, in which the cidb communicates its selection of the Service Provider as its preferred Service Provider for the provision of Good or Services set out in “Invitation to Bid/Request for Proposals” **CIDB/012/2425**, read with “Annexure A” (where applicable) hereof; attached to the Agreement and marked as “**Annexure D**”.

3.1.1.4. Service Provider’s Proposal submitted in response to the “Invitation to Bid/Request for Proposals”, attached to the Agreement and marked as “**Annexure E**”; and

cidb initials

Bidder initials

- 3.1.1.5. Schedule of penalties for service level failures and/or misconducts, attached to the Agreement and Marked as “**Annexure D**”.
- 3.1.2 “**Business Day**” – means a day other than a Saturday, Sunday, or official public holiday in South Africa.
- 3.1.3 “**Commencement Date**” – means the [TO BE ADDED], notwithstanding the date of signing of this agreement.
- 3.1.4 “**Force Majeure**” – means any event which causes the performance due by a party to this agreement to become impossible, which is beyond the control of that party, and which could not have reasonably been foreseen by that party, for example an act of God.
- 3.1.5 “**Intellectual Property**” – means copyright, patents, trademarks, service marks, design rights, rights relating to the protection of trade secrets and confidential information including rights in unpatented know-how, trade or business names and all other intellectual property and proprietary rights, whether registered or not and in whatever form embodied, including all documentation and materials describing or embodying the foregoing.
- 3.1.6 “**Invitation to Bid/Request for Proposals**” - request issued by the cidb under reference no **CIDB/012/2225** to interested parties to submit proposals for a service provider to render [TO BE ADDED], to the Construction Industry Development Board (cidb).
- 3.1.7 “**Proposal**” – proposal(s) submitted by the service provider in response to the Invitation to Bid.
- 3.1.8 “**Tender documents**” – is, subject to any contrary indication, a reference to the cidb’s invitation to prospective service providers to tender for the Services in **CIDB/012/2425**, which documents will include all Standard Bidding Documents, tender specifications and conditions.
- 3.1.9 “**cidb**” – means Construction Industry Development Board, A Schedule 3A public entity established in terms of the Construction Industry Development Act, 38 of 2000 to provide leadership to stakeholders and to stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry’s enhanced role in the country’s economy, with its principal business address **01 Gordon Hood Road, Centurion, Pretoria, 0157, telephone number as (012) 482 7200.**
- 3.1.10 “**Services**” – mean the services and matters incidental thereto to be performed by the service provider in terms of this agreement and as fully set-out in Annexure “**A**” of the tender document.
- 1.1.1 “**Service Provider**” – means [TO BE ADDED],, a private company duly incorporated in terms of laws of the Republic of South Africa, with its principal business address: [TO BE ADDED],.
- 3.2 Any reference to:
- 3.2.1 The singular shall include the plural and vice versa.
- 3.2.2 Any gender shall include the other genders.
- 3.2.3 The natural persons shall include legal persons and vice versa.
- 3.3 Any reference to an enactment is to that enactment as at the date of signing hereof and as amended or re-enacted from time to time.
- 3.4 The headings of clauses in this agreement are for reference purposes only and shall not be considered in construing the contents hereof.
- 3.5 If any word or phrase is defined in any clause hereunder, that word or phrase shall bear the same meaning throughout the remainder of this agreement.
- 3.6 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this agreement.

- 3.7 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 falls on a day other than a business day, in which case the last day shall be the immediately following business day.
- 3.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.9 Where any term is defined within the context of a particular clause in this agreement, it 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.
- 3.10 The expiration or termination of this agreement shall not affect such of the provisions contained herein which expressly provide that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide, therefore.
- 3.11 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of this agreement, shall not apply.

#### 4. APPOINTMENT AND EXCLUSIVITY

- 4.1 The cidb hereby appoints the service provider to provide Goods or Services in accordance with the cidb's terms and conditions of this Agreement and best practices, and the service provider agrees to and accepts such appointment.
- 4.2 Notwithstanding the above, the cidb reserves the right to appoint or terminate the service provider as and when the services are not required.

#### 5. INDEPENDENT PARTIES AND GOOD FAITH

- 5.1 Both parties shall always show the utmost good faith towards each other for the duration of this agreement.
- 5.2 Notwithstanding the aforesaid, the cidb and the service provider shall always be independent contracting parties, and neither shall be –
- 5.2.1 The partner of the other.
- 5.2.2 The agent or representative of the other, unless specifically so provided in this agreement or in writing.
- 5.2.3 The employee of the other.
- 5.3 It is specifically recorded that the cidb appoints the service provider as an independent contractor to perform the services on the terms and conditions recorded in this agreement and accordingly the service provider is not entitled to any of the benefits, which may be available to the employees of the cidb.
- 5.4 The service provider hereby undertakes not to hold itself out to any third party as cidb's employee or as an agent of the cidb.
- 5.5 The service provider hereby indemnifies the cidb against any liability arising out of the breach of these undertakings.

#### 6. DURATION AND TERMINATION

- 6.1 This agreement shall commence on the Commencement Date and shall terminate on **[TO BE ADDED]**.
- 6.2 Notwithstanding the provisions of **clause 6** above and **clause 16** below, the cidb shall without any prejudice to its rights in law or otherwise in terms of this agreement, be entitled, in its sole and absolute discretion, to terminate this agreement in its entirety with immediate effect in event that the service provider:
- 6.2.1 Commits an act of insolvency as defined in the Insolvency Act 24 of 1936 as amended; or

- 6.2.2 Is subject to an order of provisional or final liquidation or has made an offer of compromise to creditors or gives notice of an application for voluntary liquidation; or
- 6.2.3 Has any of its assets attached in terms of a Writ of Execution; or
- 6.2.4 Suffers a judgement which is not satisfied in full or appealed against (provided that such appeal is timeously and successfully prosecuted) or in respect of which an application to set it aside or rescind it is not made within 14 (fourteen) days after it becomes known to cidb; or
- 6.2.5 Is found guilty on a charge of fraud and corruption in a court of law or is listed in the National Treasury's List of Restricted Suppliers and the Register of Tender Defaulters.
- 6.2.6 If the parties cannot agree on an annual price adjustment in terms of Annexure B, this agreement will remain in force without any amendments and either party can terminate this agreement upon one month written notice.

**7. SCOPE OF SERVICES AND OBLIGATIONS OF THE SERVICE PROVIDER**

**7.1 SERVICES**

- 7.1.1. It is agreed that the service provider shall render the services listed in Annexure's "A" of the Tender documents. The service provider may not tender or perform any services which are not set out in Annexure's "A" without cidb's prior written approval.
- 7.1.2. The service provider undertakes to render the services in a professional and diligent manner strictly in accordance with the provisions contained in this agreement and/or as may be directed by the cidb from time to time.
- 7.1.3. The service provider shall ensure that the referred persons in their bid document form part of the provision of services for the duration of the contract unless a written notification is communicated to the cidb, and approval is obtained for the individual replacement.
- 7.1.4. The service provider shall be responsible for all actions of its staff and shall continue to be responsible in all ways for its own obligations as employer of its employees.
- 7.1.5. In rendering the services, the service provider shall ensure that it conducts its business operations separate and independent and objective from that of the cidb, for which purposes it shall have its equipment and infrastructure, including but not limited to office stationery, telephone, computers(s), internet connectivity, motor vehicles, unless otherwise agreed between the Parties.

**7.2. SERVICE LEVELS**

- 7.2.1. The service provider acknowledges that, in carrying out the services in terms of this agreement, time shall be of the essence and that the service levels as contained in Annexure "C" shall be strictly adhered to.
- 7.2.2. The service provider shall be obliged to advise the cidb as soon as it is aware that the service levels will not be adhered to and will provide the cidb in writing with:
  - 7.2.2.1. A plan to mitigate the late/poor service delivery; and
  - 7.2.2.2. A revised service levels schedule within thirty (30) days from the date of the service failure.
- 7.2.3. If the cidb is not satisfied with the services rendered by the service provider, it will be entitled to give written notice thereof to the service provider and to require the service provider to take positive steps to remedy the declared failure in service levels within such period as may be stipulated by the cidb, notwithstanding **clause 16**.

7.2.4. Should the service provider fail to remedy the declared problem within the required time, then the cidb will be entitled to cancel this agreement with immediate effect.

7.2.5. The service provider provides an assurance that it has office within the Gauteng region area.

### 7.3. REPORTING

7.3.1. The service provider shall be required to submit regular performance/progress reports as contained in **Annexure "C"** in a manner required by the cidb as and when required to do so by the cidb and which reports shall specify:

7.3.1.1. A description of the services which have been rendered during a specified period.

7.3.1.2. The progresses made in respect of each of the services; and

7.3.1.3. Incorporating such further information as the cidb may reasonably require in relation to the services, from time to time.

### 7.4. WARRANTIES

The service provider hereby warrants that:

7.4.1. It has the necessary and relevant expertise and qualifications to render the services and it can render the services in an efficient and diligent manner, in accordance with the provisions of this agreement.

7.4.2. It shall render the services in a professional manner in accordance with ethical legal norms and obey all regulatory and legislative requirements in terms of any law.

7.4.3. When dealing with cidb's property, to take all reasonable care and precautions to safeguard such property against loss or damage.

7.4.4. It shall comply with all reasonable and lawful requests given to the service provider by the cidb from time to time in relation to the rendering of the services.

7.4.5. No other party has exclusive rights to its services in the specific areas described herein and that the service provider is in no way compromising any rights or trust relationship between any other party and the service provider or creating a conflict of interest for the service provider or for the cidb any possibility thereof.

7.4.6. It is not presently the subject of a Restraint of Trade agreement and is freely able to enter and perform in terms of this agreement.

7.4.7. It will indemnify and hold cidb harmless from all claims of other parties for breach of these warranties and against any claims of whatsoever nature and howsoever arising out of the acts or omissions of the service provider whether negligent, intentional, or otherwise.

### 7.5. CHANGE IN CONTROL

7.5.1. Should there be any change to the structure of the service provider, with reference to directorship, partnership, ownership, and control, alternatively any material changes affecting skills, effected after the date of appointment of the service provider, the service provider shall be obliged to notify the cidb of such change in control in writing and immediately. Failure to do so, may lead to the termination of this agreement.

- 7.5.2. The notice shall set out with sufficient particularity the nature of the change to the structure or otherwise of the service provider.
- 7.5.3. The service provider accepts that such a change to the structure or otherwise may amount to constituting a new corporate entity (the determination of which shall be in the sole and absolute discretion of the cidb).
- 7.5.4. The service provider further accepts that once a determination has been made that the change to the structure amounts to constituting a new corporate entity, the cidb shall at its sole discretion be entitled to proceed with or cancel this agreement.

## 7.6. SECURITY REQUIREMENTS

- 7.6.1 The service provider shall, in the performance of this agreement, comply with the security requirements and regulations as may be undertaken by the cidb from time to time.

## 8. **RIGHTS AND DUTIES OF THE cidb**

- 8.1. The cidb shall:
- 8.1.1. Timeously provide adequate information or all requested information to the Service Provider to enable the Service Provider to render services.
- 8.1.2. Make itself available for consultations with the Service Provider to enable the service provider to render services appropriately; and
- 8.1.3. Render any reasonable assistance to the service provider as may be necessary to enable it to render services.
- 8.2. The cidb shall be entitled, during normal office hours and on reasonable notice to the Service Provider, to carry out such inspections from time to time as the cidb may require, acting reasonably, to ensure that the services are being rendered in accordance with the requirements set out in this agreement.
- 8.3. The cidb acting through its duly authorised representatives, including without any limitation, its external auditors or legal advisors, shall at its own costs and on reasonable notice to the Service Provider, be entitled to inspect during business hours and at the premises of the service provider or such other premises where the services are rendered from, all books, records, and supporting documentation related to the rendering of the services and to make copies of and take extracts from such books, records, and supporting documentation for audit purposes.

## 9. **FINANCIAL CONSIDERATIONS**

- 9.1. In consideration for the rendering of the services, the cidb shall pay the service provider as set forth in Annexure "B" hereof.
- 9.2. The Service Provider acknowledges that as an independent contractor it will be remunerated for delivery of a specific services as set forth in Annexure "A" hereof.
- 9.3. Where the Service Provider is a registered VAT vendor, payment of the fees shall be payable to the Service Provider within 30 (thirty) days of receipt of a duly completed VAT invoice, less applicable financial penalties and disputed amounts, provided the invoice is accurate and meets the requirements of this Agreement
- 9.4. Each invoice shall contain-
- 9.4.1. A description of the Services rendered; and

- 9.4.2. Any such details as may reasonably be requested by the cidb, from time to time.
- 9.5. Should the cidb query an item in an invoice, the Service Provider shall within seven (7) days after a written request by the cidb, provide the cidb with any other documentation or information reasonably required by the cidb in order to verify the accuracy of the amounts due on an invoice.
- 9.6. The Service Provider shall for the contract term and for a period of three (3) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof.
- 9.7. Unless otherwise agreed in writing, the cidb shall not be responsible for any subsistence, accommodation, and travel allowances that the service provider may incur in rendering the services. Any extraordinary expenses if payable by the cidb will require cidb's prior approval before they are incurred by the service provider.
- 9.8. The cidb will pay the Service Provider for work completed by direct transfer into the following bank account of the Service Provider or such other bank account designated by the Service Provider from time to time.

**Account holder** : xxxxxx  
**Name of Bank** : xxxxx  
**Account number** : xxxxx  
**Branch Code** : xxxx

- 9.9. The cidb may withhold payment of fees that the cidb disputes in good faith or, if the disputed fees have already been paid, the cidb may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If the cidb withholds any such amount-
- 9.9.1. The cidb shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale therefore and the Parties shall promptly first address such dispute in accordance with this **Clause 16**;
- 9.9.2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then the cidb shall pay the undisputed amount in accordance with **Clause 11.5 above**; and
- 9.9.3. If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid
- 9.10. Should the service provider be in breach of any of its obligations in terms hereof, or the service levels not being at an acceptable level, and the service provider has failed to rectify such a breach, after receipt of a notice and within the period referred to in **clauses 7.2 and 16**, the cidb shall be entitled to withhold any payment which may be payable to the service provider until the service levels are once again within acceptable limits. If the cidb elects to exercise its rights in terms of this clause, then the cidb shall be obliged to notify the service provider thereof in writing.
- 9.11. Any amount payable in terms of this agreement, which is not paid on the due date for payment, shall attract interest of not more than the prevailing rates.

## 10. REVIEW AND PENALTIES

- 10.1. The performance of the Service Provider shall be reviewed periodically.
- 10.2. The cidb is entitled, without prejudice to its remedies under this Agreement, to:
- 10.2.1. Subject to **clauses 10.2 and 10.3** hereof deduct from the Fees, as penalty, a sum calculated on the total Fees payable to the Service Provider using the current prime interest rate calculated for each day of the

incident referred to in **clause 7.2** hereof, until same is corrected by the Service Provider or the Agreement is terminated or cancelled, whichever occurs first.

- 10.2.2. Notify the Service Provider in writing of its dissatisfaction, who shall meet with the cidb's contact person or project manager and other persons representing the cidb, to resolve the cidb's dissatisfaction; or
- 10.2.3. Act in accordance with clauses of the Agreement (being the breach or termination clauses of the Agreement)
- 10.3. For the purposes of imposing a penalty as contemplated in **clause 10.1** hereof, the cidb shall firstly and in writing communicate to the Service Provider, the basis of the Service Provider's non-performance as contemplated in clause 10.1 hereof and its intention to impose a penalty on the service provider:
  - 10.3.1. The Service Provider shall within a period of three (3) days of receipt of the said notice submit written representations, if any, to the cidb as to why the cidb should not impose a penalty on it
  - 10.3.2. within a period of three (3) days of receipt of the Service Provider's written representations, the cidb shall consider and communicate its decision to the Service Provider on whether it will impose a penalty or not. The decision of the cidb pertaining to the imposition of a penalty shall be final and binding on the Service Provider and shall not be subjected to the dispute resolution mechanisms set out in **clause 18** of this Agreement.
- 10.4. No penalty shall be imposed on the Service Provider by the cidb if the Service Provider is unable to perform its obligations under this Agreement, and such failure to perform, failure to meet timeframes, non-performance or poor work performance is caused by either a failure of the cidb to comply with its obligations under this Agreement, conduct of another Service Provider contracted by the cidb whose work bears on the Service Provider's performance or influence of a Force Majeure

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. Any intellectual property including, copyright, patents or trademarks that may accrue to the service provider arising from any work or products created as a result of the performance under this agreement, shall vest in the cidb and the service provider herewith irrevocably cedes all such rights to cidb.
- 11.2. The Service Provider undertakes to sign and/or execute all documents and all other actions necessary and required to transfer to the cidb all such intellectual property rights accrued as a result of performing his/her obligations under this agreement. and appoints cidb as its agent exclusively for this purpose, and grants to cidb an irrevocable power of attorney in *rem suam*, to execute all such documents and/or undertake such actions on behalf of the Service Provider where relevant.

## 12. INDEMNITY AND LIMITATION OF LIABILITY

- 12.1. The Service Provider indemnifies the cidb, its officers, servants, employees or agent against all costs and liability arising out of the presence of the first party's representatives upon or about the premises of the other Party and against all liability for their injury or death whilst carrying out their duties for the purpose of the agreement and for all loss or damage to their personal effects.
- 12.2. Notwithstanding the generality of the foregoing the service provider shall not hold the cidb responsible for any loss or damage to property or for any injury or death to third parties, consequential damages, or loss of profit in the course of the service provider performing its obligations in terms of the agreement or thereafter.
- 12.3. The Service Provider shall be liable for all losses incurred by the cidb as a result of a negligent omission or commission on the part of the service provider whilst providing services to the cidb and/or because of the wilful breach of the terms of this agreement by the service provider.

**13. INSURANCE**

- 13.1. The Service Provider hereby warrants that it possesses, as at the commencement date, sufficient indemnity insurance against any liability that it may incur in terms of this agreement.
- 13.2. The Service Provider shall, upon demand by the cidb, be obliged to furnish proof of such indemnity insurance to the cidb, and, if reasonably directed to do so, shall increase such indemnity insurance in accordance with such directive by the cidb.

**14. RESTRAINT**

- 14.1. The Service Provider shall not during the term of this agreement and of any extension of it and for a period of 12 (twelve) months after this agreement terminates for any reason whatsoever, either for itself or on behalf of anyone else, except with the prior written approval of the cidb, directly or indirectly persuade, induce, solicit, encourage, or procure any employee of the cidb when this agreement terminates to:
  - 14.1.1. Become employed by or interested in any manner whatever in anyone other than cidb and its subsidiaries, nor shall the service provider itself employ any such person in that period on either a full-time or part-time basis in any capacity whatsoever or engage the services of any such person as an independent contractor on either a full-time or part-time basis in that period; or
  - 14.1.2. Terminate his or her employment with the cidb.
  - 14.1.3. If the service provider violates this clause, it shall pay to the cidb an amount equal to 1 (one) year’s salary for any solicited employee of the cidb, as liquidated damages and not as a penalty. The amount of the annual salary shall be the total annual ‘cost to company’ in effect at the date the employee was solicited.

**15. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 15.1. In this clause the following words shall have the following meaning unless otherwise provided or indicated by the context:
  - 15.1.1. **"The Disclosing Party"** - the party disclosing the Confidential Information.
  - 15.1.2. **"The Receiving Party"** - the party to which the Confidential Information is disclosed.
  - 15.1.3. **"Company Confidential"** - information, technical data, or know-how including but not limited to the parties' research, products, software services development, inventions, processes, designs, marketing, or finances, disclosed by the Disclosing Party to the Receiving Party either directly, indirectly, in writing or orally. It shall furthermore include, but not be limited to all materials marked as "Company Confidential".
- 15.2. The Receiving Party agrees not to disclose Confidential Information of the Disclosing Party to any person or entity and agrees to use good efforts to prevent inadvertent disclosure of Confidential Information to others. Each party agrees to treat the Confidential Information of the other party with at least the degree of care that it treats similar material of its own.
- 15.3. All materials, including without limitation, documents, designs, software, listings, and source code, furnished to the Receiving Party by the Disclosing Party shall remain the property of the Disclosing Party.
- 15.4. The Receiving Party shall refrain from making any copies of any confidential information of the Disclosing Party without prior, written consent of the Disclosing Party and the Receiving Party shall return to the Disclosing Party, promptly at its request all confidential information.
- 15.5. For the purpose of the Agreement, Confidential Information shall not include:

cidb initials



Bidder initials

- 15.5.1. Information which was in the Receiving Party's possession at the time of disclosure, and which was not acquired from the Disclosing Party.
- 15.5.2. Information which had entered the public domain at the time of disclosure or which after disclosure enters the public domain, in either case through no action or fault of the Receiving Party.
- 15.5.3. Information which was developed independently by the Receiving Party before or, if unrelated to the information disclosed, subsequent to the date of disclosure.
- 15.5.4. Information which was independently received before the date of disclosure by the Receiving Party from a third party having the right to disclose the same; or
- 15.5.5. Information which is published or otherwise made known to the public by the Disclosing Party.
- 15.6. The burden of providing any exemption provided for in this agreement shall rest on the Receiving Party.
- 15.7. Upon termination or expiry of this agreement, the parties will deliver to each other or, at each party's option, destroy all originals and copies of Confidential Information in their possession.
- 15.8. Without prejudice to any other rights or remedies which either party may have, each party acknowledges and agrees that damages are not an adequate remedy for any breach by either party of the provisions of this clause 14 and either party shall accordingly be entitled to the remedies of interdict, specific performance and other equitable relief for any threatened or actual breach of any such provision of this clause 14 by the other party or by any other relevant person.
- 15.9. Each party shall impose the same confidentiality obligations set out in this clause 14 upon its employees, sub-contractors, vendors and other third parties who are in association with it and who may have access to any Company Confidential Information.
- 15.10. No announcement or other publicity shall be issued or given concerning the subject matter of this agreement by any of the parties unless in a form agreed to in writing between the parties, save as may be required by any applicable law or by any applicable regulatory authority.

**16. BREACH**

- 16.1. Should any party ("the defaulting party") breach any terms of this agreement, the other party ("the innocent party") shall be obliged to notify the defaulting party in writing to remedy such breach, and should the defaulting party fail to do so within 7 (Seven) days of receipt of such notification, the innocent party shall without prejudice and in addition to any other remedies it may have, be entitled to:
  - 16.1.1. Give a 30 days' notice of termination and cancel this agreement and to claim damages from the defaulting party: or
  - 16.1.2. Claim specific performance of any or all the terms and conditions of this agreement.

**17. NO CESSION AND SUB-CONTRACTING**

- 17.1. The service provider shall not be entitled to cede, delegate, transfer or otherwise assign its rights or obligations under this agreement to any third party without the prior written consent of the cidb, which consent may not be unreasonably withheld.
- 17.2. The service provider shall not be entitled to sub-contract any of the services in terms of this agreement, except with the prior written consent of the cidb, and on such terms and conditions as may be stipulated by the cidb.

**18. DISPUTES**

- 18.1. Any dispute arising from or in connection with this agreement, its validity, the parties' rights and/or obligations hereunder or its termination shall in the first instance be referred to the respective senior representatives of the parties, who are responsible for them, who shall use their best endeavours to settle the dispute as expeditiously as is practically possible.
- 18.2. If the dispute cannot be settled as provided for in clause 18.1 within 14 (fourteen) business days or within such period as agreed upon by the parties in writing, anyone of the parties may refer the matter for determination in terms of clause 19 below.

## 19. ARBITRATION

- 19.1. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration consistent with the following:
- 19.1.1. **"Arbitration Rules"**. The arbitration shall be conducted in accordance with the Arbitration Foundation of Southern Africa (AFSA) rules.
- 19.1.2. **"Selection of Arbitrator"**. Within seven days of the service of the notice of arbitration, the parties shall mutually agree upon a single arbitrator. If at the conclusion of those seven days, the parties have not agreed upon a single arbitrator, the parties shall petition AFSA to provide a list of five qualified arbitrators with experience presiding over claims substantially similar to those pled in the notice of arbitration. Within five days of receiving the list of qualified arbitrators, each party shall submit to the administering organization a numerical ranking of their preference as between these five arbitrators. The highest mutually ranked arbitrator shall preside over the parties' dispute.
- 19.1.3. **"Venue"**. The arbitration shall take place in a neutral location in Tshwane (Pretoria).
- 19.1.4. **"Duration"**. A hearing shall be held within 90 days of the filing of the notice of arbitration. Such hearing shall last no more than three business days. Within 14 days of the conclusion of the hearing, the arbitrator shall issue a brief, but reasoned award.
- 19.1.5. **"Governing Law"**. Any arbitral dispute amongst the parties shall be governed by the substantive laws of the Republic of South Africa.
- 19.1.6. **"Pleading"**. To instate an arbitration under this paragraph, a notice of arbitration must be filed and personally served upon the opposing party. This notice shall contain a short and plain statement of the claim(s) for relief sought. In response, the responding party may assert a counterclaim but must file an answer to the notice of arbitration admitting or denying all facts and allegations contained therein and asserting any affirmative defences.
- 19.1.7. **"Discovery"**. Within 45 days of service of the notice of arbitration, the parties shall mutually exchange all documents which they reasonably believe are relevant to any claim or defence in the action, regardless of whether such documents are helpful or hurtful to the producing party's case. No document requests, interrogatories, or requests to admission shall be permitted.
- 19.1.8. **"Sanctions"**. Upon motion or at the arbitrator's discretion, discovery sanctions may be awarded in an amount up to the amount in controversy for failing to comply with the mandatory disclosure obligations or engaging in other dilatory or unethical practices.
- 19.1.9. **"Costs"**. The prevailing party, as determined by the arbitrator, may be awarded all reasonable costs and fees of the arbitration including, without limitation, the arbitrator's fees, and reasonable attorneys' fees, at the sole discretion of the arbitrator.
- 19.1.10. **"Confidentiality"**. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

- 19.2. Nothing in clause 18 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.
- 19.3. The cancellation of this contract by either party for whatever reason shall not affect the validity of this clause.

## 20. DOMICILIA AND NOTICES

- 20.1. The parties hereby select for all purposes of this agreement as their respective *domicilia citandi et executandi* the addresses mentioned next to their names in clause 3.1 hereof or any such other address as the parties may notify each other of in writing from time to time, for the delivery of all notices and/or processes thereto.
- 20.2. Any notice addressed by any party to the other party shall:
- 20.2.1. If delivered by hand at the address of its *domicilium* in terms of this clause, be deemed to have been duly received by the addressee on the date of delivery; or
- 20.2.2. If posted by prepaid registered post to the addressee's *domicilium* in terms of this clause, be deemed to have been received by the addressee on the fifth day following the date of such posting; or
- 20.2.3. If sent by email or telefax to their telefax number in terms of this clause be deemed to have been duly received by the addressee on date of successful transmission thereof.
- 20.3. Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication received by one of the parties from another including by way of email or facsimile transmission shall be adequate written notice or communication to such party.

## 21. FORCE MAJEURE

- 21.1. If the performance of this agreement is suspended due to force majeure, which renders the performance of this Agreement impossible, that party shall give the other party written notice of the condition of *force majeure* within 5 (five) business days of the date on which the condition of *force majeure* takes effect and shall do its utmost to reinstate the performance due in terms of this agreement in the shortest possible time.
- 21.2. If the period of 6 (six) weeks has elapsed, and if the condition of *force majeure* persists, either party shall be entitled to cancel this agreement with immediate effect and without prejudice to the party's rights obtained in terms of this agreement or otherwise.

## 22. LANGUAGE

All correspondence, data and information exchanged between the parties and all meetings held between the parties regarding or arising under the agreement shall be in English.

## 23. GOVERNING LAW AND JURISDICTION

- 23.1. The validity of this agreement, its interpretation, implementation, enforcement, the respective rights and obligations of the parties and all other matters arising in any way out of it, or its expiry or earlier termination for any reason, shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 23.2. The parties hereby submit to the jurisdiction of the Gauteng High Court for the purposes of any proceedings for urgent relief arising out of or in connection with this agreement and for the purposes of enforcing any award made by an arbitrator under clause 19

## 24. SEVERABILITY

If any provision of this agreement is found by a court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this agreement and the remaining provisions of this agreement shall continue in full force and effect. Notwithstanding a foregoing, the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be so void or unenforceable.

**25. ENTIRE AGREEMENT**

- 25.1. The parties hereby acknowledge that the agreement concluded between them constitutes the entire agreement between them and that no other conditions, stipulations, warranties nor representations whatsoever, have been made by any party or that party's agent, other than as specifically included herein.
- 25.2. This agreement (together with any documents referred to in this agreement) supersedes any previous agreement between the parties in relation to the matters dealt with in this agreement and represents the entire agreement between the parties in relation to the matters dealt with in this agreement.

**26. WAIVER AND VARIATION**

- 26.1. No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment provided for in this agreement or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of or otherwise affect any of that party's rights in terms of or arising from this agreement, or prevent such party from importing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 26.2. The parties agree that no variation of, addition to, consensual cancellation or novation of this agreement in its entirety or of any term or condition thereof shall be of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the parties or their authorised representatives hereto.

**27. SUCCESSORS-IN-TITLE**

Without prejudice to any other provision of this agreement, any successor-in-title of any party shall be bound by this agreement.

**28. COSTS**

Each party shall be responsible for its own costs, legal fees and other expenses incurred in the negotiation, preparation, and execution of this agreement, unless otherwise expressly agreed to in writing between the parties.

**29. POPIA CLAUSE**

- 29.1. All parties agree that they will comply with POPIA, and the Regulations issued in terms thereof and process all the information and/or personal data in respect of this Agreement being in accordance with POPIA and only for the purpose of fulfilling their obligations in terms of this Agreement. Furthermore, until such time as POPIA becomes fully operational, they will also comply with any other applicable data protection legislation. The definitions as used in section 1 of the POPIA and the ECT Act shall apply to this clause.
- 29.2. All Parties to this Agreement confirm that any Personal Information collected in terms of this Agreement shall be processed lawfully in compliance with POPIA. Any Personal Information processed in terms of this Agreement shall be minimal, adequate, relevant and not excessive.
- 29.3. Without prejudice to the generality of Clause 29.1, with respect to any processing of Personal Information under this Agreement, each Party to this Agreement shall take appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Information supplied to it by

another Party to this Agreement, and against accidental loss or destruction of, or damage to, that Personal Information in accordance with Condition Seven as set out in the POPIA.

- 29.4. Under no circumstances may any of the Parties share the Personal Information of the other Party with a third party without the written consent of the Party to whom the Personal Information belongs.
- 29.5. All the Parties to this Agreement confirm that one or more of the Parties to this Agreement will possess and will continue to possess information that may be classified or may be deemed as private, confidential, or as personal information. Such information may be deemed as the private, confidential, or as personal information in so far as it relates to any Party to this Agreement. Such information may also be deemed as private, confidential, or as personal information of any third person who may be directly or indirectly associated with this Agreement. Further, it is acknowledged and agreed by all Parties to this Agreement, that such private, confidential, or as personal information may have value and such information may or may not be in the public domain.
- 29.6. Each Party to this Agreement undertakes:
- 29.6.1. To obtain the relevant consent as prescribed within the Protection of Personal Information Act 4 of 2013 unless there is an applicable exemption.
- 29.6.2. To treat the Personal Information as confidential information in accordance with this Agreement.
- 29.6.3. Not to use, or knowingly permit any Third Party to use, or have access to, the Personal Information for any purpose other than as is expressly permitted by this Agreement; and
- 29.6.4. That it shall not use the Personal Information held by it pursuant to this Agreement, for any purpose that is inconsistent with those purposes notified to the relevant data subject, on or before the time of collection of that Personal Information.
- 29.6.5. Each Party shall promptly inform the other of any actual or suspected unauthorised access, use or other abuse of the Personal Information and/or any information technology systems relating thereto ("Unauthorised Use / access") of which it or any of its employees become aware of. Each Party will ensure that they have a proper breach process in place to deal with any unauthorised access or use of Personal Information in terms of this Agreement.
- 29.7. Each Party shall at its own cost provide at the other Party's request all reasonable assistance to the requesting Party in relation to the preparation and presentation of the relevant information to the Regulator, or as otherwise required by the applicable legislation for the purpose of prosecuting those individuals responsible for an incident of unauthorised use for any legal actions that the requesting Party may bring against third Parties responsible for an incident of unauthorised use or co-operate with any inquiry from any regulator or authority.
- 29.8. No Party may transfer Personal Information about a data subject to a third party who is in a foreign country unless they have obtained the relevant consent of the other Party and there is full compliance with section 72 of POPIA.

### 30. TAX COMPLIANCE

- 30.1. The Service Provider warrants that, as of the Effective Date, it is and will for the duration of the Agreement remain compliant with all Applicable Laws relating to taxation in the Republic of South Africa.
- 30.2. A failure to comply with the provisions of this Clause will constitute a material breach and will entitle the cidb to terminate the Agreement forthwith. The cidb will have no liability to the Service Provider with respect to such termination.

### 31. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- 31.1. The Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereafter referred to as the “B-BBEE Act”] as will be amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
- 31.2. During the currency of this Agreement, the Service Provider shall remain BEE compliant and maintain or improve the minimum B-BBEE status level of contributor it had when it submitted the RFP.
- 31.3. The cidb may, in writing, from time-to-time call upon the Service Provider to provide proof of its B-BBEE Status.
- 31.4. A failure to comply with the provisions of Clause 31.2 above is a material breach and will entitle the cidb to terminate the Agreement.

**SIGNED AT.....ON THE..... OF..... 2024**

XXXXXXXXXXXXXXXXXXXX  
 CEO: **CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**,  
 duly authorised thereto.

**AS WITNESSES FOR cidb - Name and Signature:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

SIGNED at.....on the..... of..... 2024

\_\_\_\_\_  
 SANDY WARDLE  
 on behalf of **XXXXX** duly authorised thereto

**AS WITNESSES FOR XXXXX - Name and Signature:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

DRAFT

*cidb initials*

*Bidder initials*

**FINANCIAL CONSIDERATIONS - ANNEXURE "B"**

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**SLA: CIDB/012/2425: APPOINTMENT OF SUITABLY QUALIFIED AND EXPERIENCED PANEL OF SERVICE PROVIDERS FOR THE CONSTRUCTION MANAGEMENT SYSTEMS (CMS) IMPLEMENTATION FOR A PERIOD OF THREE (3) YEARS**

*cidb initials*

*Bidder initials*

DRAFT

*cibd initials*

*Bidder initials*

DRAFT

*cidb initials*

*Bidder initials*