



**CALL FOR PROPOSALS FOR THE LEASE OF THE UMTENTWENI BEACH KIOSK- ERF 89
UMTENTWENI**

NOTICE: 117 OF 2021
BID NO: 8/2/RNM0320

NAME OF THE BIDDER

DEPARTMENT OF CORPORATE SERVICES
P.O. BOX 5
PORT SHEPSTONE
4240

SEPTEMBER 2021

TABLE OF CONTENTS

	Page number
1. Bid Advert	3-5
2. Standard forms	6-9
3. Evaluation Criteria	10-11
4. General conditions of contract	12-25
5. Lease Agreement	26-45
5.1. Schedule A – Site Map	46
5.2. Schedule B – Site Picture	47
6.1. RNM /MBD 3.1. Pricing Schedule (Firm Prices)	48-49
6.2. RNM /MBD 4. Declaration of Interest	50-52
6.3. RNM /MBD 5.1. Past experience(1)	53
6.4. RNM /MBD 6.1. Points claimed (BBBEE certificate)	54-58
6.5 RNM /MBD 8 Declaration past SCM practices	59-60
6.6. RNM /MBD 9 Certificate of Independent Bid Determination	61-63



RAY NKONYENI MUNICIPALITY
NOTICE: 117 OF 2021
BID NO: 8/2/RNM0320

**CALL FOR PROPOSALS FOR THE LEASE OF THE UMTENTWENI BEACH KIOSK- ERF 89
UMTENTWENI**

Bids are hereby invited for the lease of Umtentweni Beach Kiosk situated on Erf 89 Umtentweni within the jurisdiction of Ray Nkonyeni Municipality.

Bid documents can be downloaded for free from the e-tenders portal <https://etenders.treasury.gov.za> and Municipal Website: www.rnm.gov.za from **10 September 2021**.

Reference: "Tender No. 8/2/RNM0320 Ray Nkonyeni Municipality "Lease of the Umtentweni Beach Kiosk – Erf 89 Umtentweni"

Bidders to submit two (2) copies of the bid document together with the original bid document, bidders that fail to submit copies will be disqualified. Fully completed Bid documents must be submitted in a sealed envelope, clearly marked **"CALL FOR PROPOSALS FOR THE LEASE OF THE UMTENTWENI BEACH KIOSK- ERF 89 UMTENTWENI"** and must be deposited in the Bid box at the Municipal offices at 10 Connor Street, Port Shepstone, no later than **12:00 on 11 October 2021** after which all Bids will be opened in public.

A COMPULSORY CLARIFICATION MEETING WILL TAKE PLACE ON 23 SEPTEMBER 2021 AT 10 CONNOR STREET PORT SHEPSTONE, HR BOARDROOM @ 10:00 AM.

Technical enquiries are to be directed to Pumla Tom/Mdu Cele on 039 688 2081/2073.

It should be noted that this Bid will be evaluated on functionality and B-BBEE.

FUNCTIONALITY:

Quality and Criteria	Points
Expertise, Experience	40
Capacity to operate and maintain the Business, Capability, Logistical and Support resources	30
TOTAL	70

It must be noted that service providers who score below 60% will not be further evaluated.

Ray Nkonyeni Municipality subscribes to the Broad-Based Black Economic Empowerment Act (BBBEEA), Act 53 of 2003, Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000), and Preferential Procurement Regulations, 2017.

NOTE TO BIDDERS ON PRE-CONDITIONS OF THE BID:

- The Supply Chain Management Policy of Ray Nkonyeni Municipality will apply. The Council reserves the right not to accept the lowest bid or any bid and reserves the right to accept the whole or part of the bid, or to reject all bids and cancel the notice to bid;
- Bids that are submitted late, incomplete, not initialled on each page, unsigned or by facsimile, electronically or not completed in black ink will be rejected and not accepted for further evaluation;
- Company profile must be furnished with the bid. Failure to submit a company profile and relevant proof of experience (ie past or present business licence) in respect of the said bid will result in the bid not being further evaluated;
- Council reserves the right to inspect the business premises to ensure that they meet all relevant requirements of the company;
- Service providers are required to download bid documents from the e-tenders portal <https://etenders.treasury.gov.za> and Municipal Website: www.rnm.gov.za before the clarification meeting, and present them on 23 September 2021.
- NO late comers will be entertained, and bidders without tender documents will not be permitted to sign the attendance register;
- Only service providers registered in the Central Supplier Database (CSD) will be considered, attach proof of registration failure to attach will result in your bid not evaluated further.
- Members or Directors of Companies or Service Providers who are state employees are not allowed to bid or quote;
- The successful bidder will be required to sign a lease agreement with the Ray Nkonyeni Municipality.
- Unsuccessful bidders will be informed of the Bid outcome through the Municipal website. Aggrieved unsuccessful bidders will be allowed to lodge, within fourteen (14) days

of the decision or action, a written objection or complaint to the Office of the Municipal Manager through email, mm@rnm.gov.za or fax number 0865297195. Complaints or objections received after fourteen (14) days of the date of the notice **will not** be entertained; and

- The original bid document plus TWO **extra** (02) copy must be submitted, failure to submit two copies will result in disqualification.
- Bids submitted are to be valid for a period of **120 days**.

S M Mbili
MUNICIPAL MANAGER

Ray Nkonyeni Municipality
10 Connor Street
P O Box 5
PORT SHEPSTONE
4240

**ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS
(NOT TO BE RE-TYPED)**

NB!!!! Please attach copies of the following documents.

- **Company registration documents.**
- **Certified copy of ID documents of directors/owners/members/ shareholders.**
- **Copy of a valid TAX Compliance Certificate Or Tax Compliance Status PIN Sheet.**
- **CSD Registration**
- **Certified copy of BBEE Certificate / SWORN AFFIDAVIT**
- **Declarations (MBD 4, 6.1, 8 & 9).**
- **Joint Venture agreements (where applicable)**

STANDARD FORMS

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT. THIS BID WILL BE EVALUATED AND ADJUDICATED ACCORDING TO THE FOLLOWING CRITERIA:

1. Relevant specifications
2. Value for money
3. Capability to execute the contract
4. PPPFA & associated regulations

NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE

RAY NKONYENI MUNICIPALITY STANDARD FORM FOR BIDS

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ MUNICIPAL ENTITY)

BID NUMBER: **8/2/RNM0225** CLOSING DATE: CLOSING TIME:

DESCRIPTION **LEASE OF THE UMTENTWENI BEACH KIOSK, ERF 89 UMTENTWENI**

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (MBD7).

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX
SITUATED AT (STREET ADDRESS)

RAY NKONYENI MUNICIPALITY

PO BOX 5

PORT SHEPSTONE (10 Connor Street)

4240

SUPPLIER INFORMATION

NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE	NUMBER	
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE	NUMBER	
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
TAX COMPLIANCE STATUS	TCS PIN:	OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE	R
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED			
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT	TREASURY SCM	CONTACT PERSON	PUMLA TOM
CONTACT PERSON	SBUSISO GCUMA	TELEPHONE NUMBER	039 688 2081/4
TELEPHONE NUMBER	039 312 8304	FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	Pumla.Tom@rnm.gov.za
E-MAIL ADDRESS	sbusiso.gcuma@rnm.gov.za		

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. THE BID OFFER MUST BE SIGNED BY A PERSON AUTHORIZED TO SIGN ON BEHALF OF THE BIDDER;</p> <p>1.5. A BIDDER WHO SUBMITTED A BID AS A JOINT VENTURE HAS INCLUDED AN ACCEPTABLE JOINT VENTURE AGREEMENT WITH HIS/HER BID;</p> <p>1.6. ONLY A CONSOLIDATED B-BBEE CERTIFICATE, ISSUED BY A SANAS APPROVED VERIFICATION AGENCY, WILL BE ACCEPTABLE FOR THE CLAIMING OF PREFERENCE POINTS WHERE BIDDERS SUBMITTED THEIR BID AS A JOINT VENTURE / CONSORTIUM;</p> <p>1.7. A BIDDER WHO IS A JOINT VENTURE HAS INCLUDED MBD 4, 8 & 9 FOR EACH ENTITY IN THE JOINT VENTURE / CONSORTIUM WITH HIS/HER BID</p> <p>1.8. THE BIDDER OR A COMPETENT AUTHORISED REPRESENTATIVE OF THE CONTRACTOR WHO SUBMITTED THE BID HAS ATTENDED THE COMPULSORY CLARIFICATION MEETING OR SITE INSPECTION;</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR THE TAX COMPLIANCE STATUS (TCS) CERTIFICATE OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 FOREIGN SUPPLIERS MUST COMPLETE THE PRE-AWARD QUESTIONNAIRE IN PART B:3.</p> <p>2.5 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.6 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.7 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
<p>3.1. IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4. DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.5. IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE.**

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

DATE:

.....

a) Financial Offer

The financial offer will be scored using the following formula:

$$Nf = W1 \times [1 + (P - P_m) / P_m]$$

Where:

W1 = **80** for financial values up to R 50, 000, 000.00 (inclusive of VAT) of all responsive tenders received:

P_m = the value of the comparative offer of the most favourable tender;

P = the value of the comparative offer under consideration;

Ray Nkonyeni Municipality subscribes to the preferential Procurement Policy Framework Act 2000 (Act No 5 of 2000) and its associated Preferential Procurement Regulations.

In the application of the 90/10 preference point system, if all bids received are below R 50, 000, 000.00, the bid must be cancelled. If one or more of the acceptable bid(s) received are above R 50, 000, 000.00 threshold, all bids received must be evaluated on the 90/10 preference point system.

b) Evaluation

It should be noted that quality and functionality are included in this bid as criteria, and will be assessed in terms of the evaluation criteria below. Any bid which fails to meet the minimum threshold of 60% for the functionality will be disqualified.

i) Functionality

Quality and Criteria	Points
Expertise, Experience	40
Capacity to operate and maintain the Business, Capability, Logistical and Support resources	30
TOTAL	70

Aspect	Criteria	Maximum Points	Verification Method
Expertise, Experience	Has previously operated a food and beverage kiosk/tuck shop with three (3) years' experience.	40	<p>Attach all past and present Business Licenses – 20 points</p> <p>Lease agreement for more than three (3) years – 20 points</p> <p>OR</p> <p>Proof of ownership of place of business – 20 points</p>

	Has previously operated a food and beverage kiosk/tuck shop with two (2) years' experience.	30	<p>Attach all past and present Business Licenses – 15 points</p> <p>Lease agreement for two (2) years or more – 15 points</p> <p>OR</p> <p>Proof of ownership of place of business – 15 points</p>
	Has previously operated a food and beverage kiosk/tuck shop with at least one (1) years' experience.	20	<p>Attach past or present Business Licenses</p> <p>Lease agreement</p> <p>OR</p> <p>Proof of ownership of place of business</p>
Capacity to operate and maintain the Business and Support resources (Company profile, business Plan/ Business proposal)	Company Profile & Business Plan/Proposal must be detailed, clear, innovative, logical and show knowledge and understanding of the business.	10	Planning & Strategy
		10	Layout, Design & timeframe
		5	Product & Service
		5	SWOT analysis

c) Preferences

Preference will only be given to bidders with full **B-BBBEE Status**.

A bidder will be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBBEE status level of contribution.

GENERAL CONDITIONS OF CONTRACT TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information inspection
6. Patent Rights
7. Performance security
8. Inspections, tests and analyses
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental Services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Variation orders
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Anti-dumping and countervailing duties and rights
25. Force Majeure
26. Termination for insolvency
27. Settlement of Disputes
28. Limitation of Liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. Transfer of contracts
34. Amendments of contracts
35. Prohibition of restrictive practices

General Conditions of Contract

- 1. Definitions**
- 1.1 The following terms shall be interpreted as indicated:
- 1.2 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
- 1.3 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.4 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.5 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.6 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.7 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.8. “Database application form” means the application form required by the Ray Nkonyeni Municipality to be filled in by the successful Bidder, following the award of the contract, for inclusion on the RNM database before payment is made.
- 1.9 “Day” means calendar day.
- 1.10 “Delivery” means delivery in compliance of the conditions of the contract or order.
- 1.11 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
- 1.12 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the goods are so delivered and a valid receipt is obtained.
- 1.13 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.14 "Force majeure" means an event beyond the control of the

supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.15 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.16 "GCC" means the General Conditions of Contract.
- 1.17 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.18 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the goods covered by the bid will be manufactured.
- 1.19 "Local content" means that portion of the bidding price, which is not included in the imported content provided that local manufacture does take place.
- 1.20 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.21 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.22 "Project site," where applicable, means the place indicated in bidding documents.
- 1.23 "Purchaser" means the organization purchasing the goods.
- 1.24 "Republic" means the Republic of South Africa.
- 1.25 "SCC" means the Special Conditions of Contract.
- 1.26 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

- 1.27 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.28 “Tort” means in breach of contract.
- 1.29 “Turnkey” means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.30 “Written” or “in writing” means hand-written in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific goods, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a nonrefundable fee for documents may be charged.
- 3.2 Invitations to bid are usually published in locally distributed news media and on the municipality/municipal entity website.
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information inspection**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specifications, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned

(all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

- 6. Patent rights** 6.1 The supplier shall indemnify the purchaser against all third party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

- 6.2 When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

- 7. Performance security** 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque.

- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

- 8. Inspections, tests and analyses** 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that goods to be produced or services to be rendered should at any stage be subject to inspections, tests and analyses, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or organization acting on behalf of the purchaser.

- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the

contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Goods and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract goods may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods, which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the supplier in accordance with the terms specified in the contract.

11. Insurance

- 11.1 The goods supplied under the contract shall be fully

insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified.

- 12. Transportation**
 - 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified.
- 13. Incidental services**
 - 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any:
 - (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
 - 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts**
 - 14.1 As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
 - (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty**
 - 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further

warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated.
- 16.5. Payment will only be made if the supplier has filled in and submitted the necessary database application form to the satisfaction of the Chief Financial Officer.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.

18. Variation orders

- 18.1 In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable

quantities, the contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.

- 19. Assignment** 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts** 20.1 The supplier shall notify the purchaser in writing of all sub-contracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
 - 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
 - 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
 - 21.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the goods are required, or the supplier's services are not readily available.
 - 21.4 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of penalties.
 - 21.5 Upon any delay beyond the delivery period in the case of a goods contract, the purchaser shall, without cancelling the contract, be entitled to purchase goods of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
- 22. Penalties** 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed

goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

- 23. Termination for default**
- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) if the supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5 Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchaser actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (a) the name and address of the supplier and / or person restricted by the purchaser;
- (b) the date of commencement of the restriction;
- (c) the period of restriction; and
- (d) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Bid Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the supplier to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the supplier in regard to goods or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

25. Force majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination

- 26.1 The purchaser may at any time terminate the contract by giving

	for insolvency		written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the purchaser.
27.	Settlement of disputes	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
		27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
		27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
		27.4	Notwithstanding any reference to mediation and/or court proceedings herein,
		(a)	the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
		(b)	the purchaser shall pay the supplier any monies due the supplier for goods delivered and / or services rendered according to the prescripts of the contract.
28.	Limitation of liability	28.1	Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
		(a)	the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
		(b)	the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
29.	Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30.	Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified.
31.	Notices	31.1	Every written acceptance of a bid shall be posted to the Supplier

concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

- | | | | |
|------------|---|------|---|
| | | 31.2 | The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice. |
| 32. | Taxes and duties | 32.1 | A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country. |
| | | 32.2 | A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser. |
| | | 32.3 | No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order. |
| | | 32.4 | No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears. |
| 33. | Transfer of contracts | 33.1 | The contractor shall not abandon, transfer, cede assign or sublet a contract or part thereof without the written permission of the purchaser. |
| 34. | Amendment of contracts | 34.1 | No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing. |
| 35. | Prohibition of restrictive practices | 35.1 | In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998 as amended, an agreement between, or concerted practice by , firms or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding. |
| | | 35.2 | If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998. |
| | | 35.3 | If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned. |

No contract will be awarded to a person who has failed to submit a copy of Tax Compliance Certificate with a PIN from the South African Revenue Service (“SARS”) certifying that the taxes of that person to be in order or that suitable arrangements have been made with SARS.

I certify that I have the appropriate authority to furnish the above-mentioned information and that the above information is correct at the time of completion.

Name:	Signature:
Designation:	Date:

.....

LEASE AGREEMENT

Entered into by and between

RAY NKONYENI LOCAL MUNICIPALITY

Herein represented by **NOMUSA CYNTHIA PRINCESS MQWEBU** in her capacity as Mayor and
SIHLE MAXWELL MBILI in his capacity as Municipal Manager
(hereinafter referred to as the Council)

And

.....

Registration Number:

Herein represented by

Identity Number:

in his capacity as, he being duly authorized hereto
(hereinafter referred to as the Lessee)

And the parties declared that they have agreed to enter into an agreement of lease on the terms and conditions set out hereunder:-

1. INTERPRETATION/DEFINITIONS

1.1 In this lease agreement, except in a context indicating that some other meaning is intended,

1.1.1 **“The parties”** to this agreement are:

Ray Nkonyeni Local Municipality, duly represented by Nomusa Cynthia Mqwebu in her capacity as Mayor and Sihle Maxwell Mbili in his capacity as Municipal Manager;

And

....., hereinafter referred to as Lessee

1.1.2 **“Adjustment Date”** means the anniversary of the date of the signature of the last party to this agreement on which the escalation rate will come into effect;

- 1.1.3 **"Commencement Date"** means the date of the signature of the last party to this agreement, on which date this lease agreement shall commence;
- 1.1.4 **"the Property"** Portion of Erf 89 Umtenwteni in extent approximately 400 m², situated within the Ray Nkonyeni Local Municipality, Province of KwaZulu-Natal.
- 1.1.5 **"day"** means any day of the week, excluding Sundays and public holidays;
- 1.1.6 **"the Lease Period"** means the period for which this lease subsists, including any period for which it is renewed ;
- 1.1.7 **"month"** means a calendar month, and more specifically:-
- 1.1.7.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- 1.1.7.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and "monthly" has the corresponding meaning;
- 1.1.8 **"the Rates"** means the assessment rates and levies (excluding special levies) payable on the Property and includes any other charges payable by the Lessee to the local authority (such as, but not limited to, refuse removal charges or sanitary fees), but not charges for water, electricity or gas;
- 1.1.9 **"the Rental"** means the rental payable by the Lessee to the Council for the hire of the Property in terms of this lease agreement;
- 1.1.10 **"year"** means a period of 12 consecutive months commencing on the date on which this lease agreement comes into operation or any anniversary of that date;
- 1.1.11 expressions in the singular also denote the plural, and *vice versa*;
- 1.1.12 words and phrases denoting natural persons refer also to juristic persons, and *vice versa*; and
- 1.1.13 pronouns of any gender include the corresponding pronouns of the other gender.
- 1.2 Any provision of this agreement imposing a restraint, prohibition or restriction on the Lessee shall be so construed that the Lessee is not only bound to comply therewith but is also obliged

to procure that the same restraint, prohibition, or restriction is observed by everybody occupying or entering the Property or any part thereof through, under, by arrangement with, or at the invitation of the Lessee, including (without limiting the generality of this provision) the patrons, guests and employees of the Lessee.

- 1.3 Clause headings appear in this agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.
- 1.4 This lease agreement shall be interpreted and applied in accordance with South African law.

2. LETTING AND HIRING

The Council lets and the Lessee hires the Property on the terms and conditions of this lease agreement and it is specifically recorded, notwithstanding anything to the contrary contained in this agreement, that the only persons who are mandated to negotiate, enter into, amend or otherwise agree to the terms and conditions of this agreement are the Council and the Lessee.

3. COMMENCEMENT, DURATION AND RENEWAL OF LEASE

- 3.1 This lease agreement shall commence from the date of signature of the last party to this agreement and shall subsist for a period of nine (9) years and eleven (11) months from that date with an option to renew for a further period of nine (9) years and eleven (11) months subject to both parties agreeing that such lease shall be renewed as well as agreeing on the terms and conditions of any proposed further lease.
- 3.2 This Lease Agreement is subject to periodic review once every 3 years in terms of Section 116 (1)(b)(iii) of the Municipal Finance Management No. 56 of 2003 / once a year in terms of the Public Finance Management Act.
- 3.3 **“periodic review”** means in this agreement re-visitation of the lease agreement after a period of three years with a view to monitoring compliance with the terms and conditions of the agreement by both parties. This exercise shall influence possible or necessary modification of the agreement by both parties, which shall be reduced to writing and assented to by both parties.

4. RENTAL

- 4.1 The rental payable in respect of the lease of the premises shall be the market related value of the property.
- 4.2 The Lessee shall, prior to taking occupation, if the Lessee was not in occupation prior to the commencement of this agreement, or if the Lessee is already in occupation of the premises, within one month of the commencement of this agreement, pay the Council as a security deposit for the due and proper fulfilment of its obligations, an amount equivalent to the first month's rental, which amount shall be retained by the Council until such time as this Agreement terminates, provided that the Council shall not be required to pay any interest on the amount paid in terms hereof.
- 4.2.1 The Lessee waives any claim for interest on the security deposit.
- 4.2.2 It is hereby recorded that, upon termination of this agreement, the Council shall be entitled to set off any claim it may have against the Lessee for any breach of this Agreement, including any damage to the site, against the security deposit.
- 4.2.3 The Lessee further acknowledges that should any damage or loss exceed the security deposit, the Lessee will be liable for the full extent of such damage or loss.
- 4.2.4 The Lessee shall under no circumstances be entitled to appropriate the security deposit, or any part thereof, towards payment of its rental obligations under this Agreement. In this regard, it is specifically recorded that the Lessee's failure to pay the final rental in terms of this Agreement on the basis that the Council retains the security deposit, shall entitle the Council to cancel this agreement forthwith and sue for the Lessee's eviction from the site, apart from the Lessee's other remedies at law.
- 4.2.5 Upon termination of this Agreement, the Lessee shall be entitled to a refund of the security deposit, provided that the Council shall be entitled to deduct therefrom such amount(s) as may have been incurred by the Council in respect of damage or loss to the site.

- 4.3 The Rental is payable monthly from the first day of each month without deduction or demand and free of bank exchange to the Chief Financial Officer, Ray Nkonyeni Local Municipality;
- 4.4 The parties herein agree that the rental shall escalate at a rate of ten per cent (10%) per annum with effect from the anniversary of the conclusion of this agreement and thereafter on each successive anniversary of this agreement, compounded during the currency of this agreement.
- 4.5 Should the Lessee fail to become operational in terms of its business, as per this Lease Agreement, then the Lessee shall be liable for rental for the duration of the two (2) months cancellation notice period in terms of clause 17 below.

5. WATER, ELECTRICITY AND SERVICES CHARGES

The Lessee shall be responsible for the payment of all charges levied in respect of water, electricity and any other service charges payable as a result of Municipal services rendered to the premises during the period of the lease. The Lessee shall liaise directly with Ugu District Municipality and Eskom Distribution for water and electricity connection to the property respectively.

6. PAYMENTS

- 6.1 All payments due by the Lessee to the Council under this lease shall be made to the Council at Newton Road, 1000 Dan Pienaar Square, Margate or to such other person, if any, at such other place, if any, as the Council has designated for the time being by written notice to the Lessee.
- 6.2 The Lessee shall not withhold, defer, or make any deduction from any payment due to the Council, whether or not the Council is indebted to the Lessee or in breach of any obligation to the Lessee.
- 6.3 The Rental and all other amounts payable by the Lessee under this agreement shall be exclusive of value-added tax in so far as it is applicable.
- 6.4 If the Lessee fails to pay any outstanding rental or any other amount due to the Council by the Lessee on the due date, the Council shall charge the Lessee, and the Lessee shall pay on demand, an interest rate on the overdue sums at a rate of 10.25% per annum on the decreasing balance, or a rate as determined by the Minister of Finance in accordance with Section 80(1)(b) of

the Public Finance Management Act (PFMA) from time to time. This right to charge interest on overdue amounts shall not in any way detract from any other of the Council in terms of this Agreement. The Lessee shall be liable for any costs incurred by the Council in enforcing any of its rights or the Lessee's obligations under this Agreement on an Attorney and own Client Scale (which shall include collection charges), whether such costs were incurred prior to any such action or application, during the course of any such action or application, in enforcing any judgment, in regard to any appeal against any judgment, or otherwise.

7. SPECIAL CONDITIONS

- 7.1 The Lessee shall be obliged to take all steps to obtain such licences, consents, authorities, services or permits as may be necessary for the conduct of this business on the premises. The Lessee shall be obliged to produce proof of having applied for such licence or licences within sixty (60) days of date of signature hereof, failing which the Council shall be entitled to cancel this Agreement in the manner contemplated in clause 17.
- 7.2 This Lease shall furthermore be construed as permission to occupy the subject property (ies) for the cleaning/permissible clearing studies/preparation thereof regardless of date of operation of the business of the premises.
- 7.3 The Officials of the Technical Services Department or any other department of Council shall have authority to enter upon and inspect the premises, pertaining to the technical progress of such development as well as request any information, diagrams, technical progress reports or plans in conjunction herewith, and any notification received by the Estates or Legal Section of Council by such officials of the Technical Services Department of Council pertaining to a material breach or deviation of the project plan, may constitute grounds for termination of this lease, if the Lessee is found to be in breach of this Lease Agreement.
- 7.4 The Lessee shall keep the property open for business at all business hours, i.e. weekdays and weekends as well as public holidays between 8h00 to 16h00.

8. INSURANCE

- 8.1 During the currency of this agreement, the Lessee shall take out a public

liability insurance policy with an insurance company for any claims which may arise as a result of any damage to the property by anyone, including any loss of life, accident or injury sustained or suffered by anyone on the property.

- 8.2 The Lessee shall lodge a certified copy of the policy with the Council within 7 days after the signature of this agreement, and thereafter, annually on or before the policy anniversary, deposit with Council a certified copy of the receipt for the following year'
- 8.3 The Lessee shall indemnify the Council against all costs, losses, actions and claims, including claims for damages, injury to person or damage to property and all costs, including costs between attorney and client, which the Council may be called upon or compelled to pay and which may arise directly/indirectly from any act/omission by any person or persons pursuant to this Agreement, or as a result of any act or omission carried out on the site by the Lessee or its servants, employees, contractors or clients in terms of this agreement.
- 8.4 The Council shall not be liable for any loss and/or damages sustained to any improvements or other services and/or structures erected with the permission of the Council by the Lessee by reason of any burglary or fire, of whatever nature on the site/for any damages and/or loss suffered by the Lessee as a result of any act or omission on the part of the Council and/or its agents/as a result of any defect in the premises, unless such damage occurred due to the Councils negligence.

9. ASSIGNMENT AND SUBLETTING

- 9.1 The Lessee shall not, except with the prior written consent of the Council and subject to 9.3:-
- 9.1.1 cede or assign all or any of the rights and obligations of the Lessee under this lease;
 - 9.1.2 sublet the Property in whole;
 - 9.1.3 give up possession of the Property to any third party;
- 9.2 The Council shall not, however, unreasonably withhold its consent to the subletting of the whole of the Property.
- 9.3 If the Lessee is permitted to sub-lease the Property or portion of the Property,

the sub-lease shall incorporate and be subject to the terms and conditions of this agreement.

10. USE OF PREMISES

The Lessee shall not use the Property or allow it to be used, in whole or part, for any purpose other than that of carrying on business as kiosk, including any activities reasonably or necessarily ancillary, provided that the onus shall be on the Lessee to show that any such activity is reasonably and necessarily ancillary.

11. HOURS OF BUSINESS

11.1. The Lessee shall keep the property open for business during normal hours on all permissible days.

11.2 The Lessee shall not operate the kiosk outside of normal business hours without the express prior written consent of Council.

11.3 Proof that the Lessee is trading during normal hours on all permissible days shall rest on the Lessee.

12. SUNDRY DUTIES OF THE LESSEE

12.1 The Lessee shall:-

- 12.1.1 keep the Property and all parts thereof clean, tidy and habitable;
- 12.1.2 take all reasonable measures to protect the Property, all parts thereof, from abuse, damage, destruction, and theft;
- 12.1.3 not bring onto the Property any article which, by reason of its weight or other characteristics, is likely to cause damage to any part of the Property;
- 12.1.4 not contravene any of the conditions of title of the Property or any of the laws, rules or regulations affecting owners or occupiers of the Property;
- 12.1.5 not cause or commit any nuisance on the Property or cause any annoyance or discomfort to neighbours or the public;
- 12.1.6 not leave refuse or allow it to accumulate in or about the Property except in adequate refuse bins suitably placed;
- 12.1.7 not do/display anything which causes the Property to appear unsightly;
- 12.1.8 not be entitled to sell or store any narcotic drugs or fireworks on the premises, nor provide and supply for consumption on the premises intoxicating liquor

save in accordance with applicable legislation and unless the requisite liquor licences are obtained;

- 12.1.9 not to place or display advertisements or notices of whatever nature on any part of the site/premises without written consent of the Council;
- 12.1.10 not to deface, mark, paint or drive nails, hooks or screws into the doors, walls, ceilings or floors of the premises, or place or display advertisement or notices of whatever nature on any part of the premises, without the written consent of the Council;
- 12.1.11 not to interfere in any manner whatsoever with the existing electrical installation on the premises or to connect any electrical equipment to the electrical current, which may in any way damage the electrical installation or cause it to short circuit;
- 12.1.12 not to keep or store any dangerous or hazardous material or substance on the site / premises or do or permit anything which may pose a threat to the safety and security of the premises or its occupiers or any third parties, save as permitted by the Council;
- 12.1.13 not to hold, or permit the holding of, any sale by public auction whatsoever in or about the premises;
- 12.2 The Lessee shall erect or cause to be erected:
 - 12.2.1 clearly visible signs informing patrons / visitors to the site / premises that they are entering same at their own risk;
 - 12.2.2 clearly visible signs warning patrons / visitors of hazardous conditions on / in the site / premises, whenever such conditions are present;

13. DEFECTS, MAINTENANCE & REPAIRS

- 13.1 It is hereby recorded that at the time of conclusion of this Agreement the building premises is in a structurally sound and refurbishable condition meaning that no major structural development will be necessary to render the premises operational, and that all keys, locks, glass windows, electrical installations, sanitary ware, sewerage pipes, stoves, water taps, geysers, and other appurtenances including any movable items, that is broken or missing or in a state of disrepair, will be fixed or fitted by the Lessee at its own cost and without recourse to Council, and should the Lessee at the time of taking occupation of the premises, discover any major structural defects in the

premises that would warrant demolition or major structural development and / or any of the goods, it shall within 7 (seven) days of such occupation give written notice of any such defect to the Council. Failure on the part of the Lessee to give such notice shall be deemed to be an acknowledgement on its part that the whole of the premises including all the goods are in the above-stated condition.

- 13.2 It is specifically recorded that any notice given by the Lessee in terms of 13.1 supra shall not place any obligation on the Council to repair the premises or the goods concerned, the intention being that such notice will serve only to record the state of repair in which the Lessee took occupation of the premises and the goods. It is furthermore specifically recorded that save as is otherwise provided in this Agreement, the Council shall not be obliged to effect repairs to or maintain the premises or the goods, and the Lessee shall not be entitled to with-hold the rental or to claim any refund in respect of rental paid, by reason of any defect whatsoever in / on the premises or goods or any upgrades attended to the premises;
- 13.3 The Lessee shall at its own expense and without recourse to the Council, throughout the Lease Period maintain in good order the entire leased premises, including the interior and exterior condition the Property;
- 13.4 Upon Inspection, if the Council notifies the Lessee in writing within 7 days of the need for any maintenance to or in the Property or of the fact that any part of the Property or any other improvement on or to the Property is damaged, missing or out of order, the Lessee shall promptly cause the necessary repair or replacement to be effected at the Lessee's own expense. If or in so far as the Council does not give such notice after such inspection, the Council shall be deemed to have acknowledged that the Property, the Buildings, all parts thereof and all items thereof, were intact, in place, and in good order, condition and repair as at the date of inspection of the Property, which may occur periodically and without notice.
- 13.5 The Lessee shall be responsible for the structural maintenance as well as the interior and exterior maintenance, at its own cost of, and for all repairs and replacements becoming necessary from time to time in or to the property and shall keep the exterior, including the roof or any existing improvements on the site in a state of good repair for the full duration of this agreement, fair wear and tear excepted and the Council shall not be held liable to the Lessee for any damages, which the Lessee may suffer by reason of any repairs effected

by the Lessee not being effected timeously or at all.

- 13.5.1 Notwithstanding the generality of clause 13.3 *supra* the Lessee specifically undertakes to:-
 - 13.5.1.1 keep and maintain all gutter, sewerage pipes, water pipes and drains on the site / premises free from obstruction and / or blockage;
 - 13.5.1.2 keep the grounds (if any) of the premises in a clean and tidy condition, free from all litter and rubbish, and to keep the hedges trimmed, lawns mowed and flowerbeds (if any) neat and tidy;
 - 13.5.1.3 keep the electrical system in good working order and condition;
 - 13.5.1.4 preserve the historical nature of any existing improvements, if applicable; and
 - 13.5.1.5 clean any carpets and other floor coverings and tile regularly, (if any) it being understood that it shall be replaced completely at the expense of the Lessee should they be damaged beyond reasonable wear and tear.
- 13.6 Should the Lessee fail to carry out any of its obligations under this agreement with regard to any maintenance, Council shall be entitled, without prejudice to any of their other rights or remedies, to affect the required maintenance, repair, or replacement and to recover the cost thereof from the Lessee on demand.

14. IMPROVEMENTS AND CONSTRUCTION

- 14.1 The Lessee shall not effect any alterations, improvements, renovations or other structural changes to the existing premises, save with the prior written consent of the Council first had and obtained.
- 14.2 Any buildings or structures to be erected on the site shall comply with the **National, Provincial and local Building Regulations**. Should the Lessee fail to comply with the applicable Building Regulations, such failure shall be construed as a breach of this Agreement, and the Council shall be entitled to invoke any remedy it may have under this agreement and / or by law, whereafter the Council shall have the right to demolish the unlawful improvements, the costs whereof shall be for the Lessee's account.
- 14.3 Any new improvements effected by the Lessee on or to the site/Premises during the period of the lease shall become the property of the Council on termination of the lease without compensation to the lessee and the Lessee

shall not be entitled to remove any such improvement or claim from the Council any compensation, in respect thereof. The Lessee shall furthermore be responsible for the complete maintenance of any such improvement(s) effected by the Lessee on the site for the full duration of the period of the lease.

14.4 Notwithstanding the provisions of **14.3** above, the Council shall be entitled at the termination of the lease to demand in writing that any improvement or addition made by the Lessee be removed by the Lessee at its own cost. The Lessee shall at its own expense and to the satisfaction of the Council repair all damage and/or defects caused by such removal.

14.5 Should the Lessee fail to comply with a demand made by the Council in terms of **14.4**, the Council shall be entitled, in addition to any other remedy or right available to it in terms of this Agreement, to have the relevant improvement and/or addition removed and to recover the costs thereof from the Lessee, including the cost of repair of all damage and/or defects caused by such removal.

15. EXCLUSION OF COUNCIL FROM CERTAIN LIABILITY AND INDEMNITY

15.1 The Lessee shall have no claim for damages against the Council and may not withhold or delay any payment due to the Council by reason directly or indirectly of

15.1.1 a breach by the Council of any of its obligations under this agreement;

15.1.2 any act or omission of Council or any agent or servant of or contractor to the Council, whether or not negligent, or otherwise actionable at law, and including (without limiting the generality of the afore going) any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard, or commissionaire;

15.1.3 any failure or suspension of, or any interruption in the supply of water, electricity, air-conditioning, heating or any other amenity or service to the Property or any of the Buildings, whatever the cause;

15.1.4 any unreasonable interruption of or unreasonable interference with the enjoyment or beneficial occupation of the Property caused by any building operations or other works on or about the Property, whether

carried out by the Council or by anybody else; or

15.1.5 any other event or circumstance whatever occurring, or failing to occur, upon, in, or about the Property, whether or not the Council could otherwise have been held liable for such occurrence or failure, and the Lessee indemnifies the Council against all liability to members of the Lessee's household, the Lessee's servants, guests and other invitees, and all other persons who may occupy or be entitled to occupy the Property or any parts thereof through or under the Lessee, in consequence of any such matter as is referred to in clauses 15.1.1 to 15.1.5 above.

15.2 The Council shall not, however, be excused from specific performance of any of its obligations under this agreement, whether express or implied, and particularly (but not only) its obligations to afford the Lessee occupation and enjoyment of the Property as contemplated by this agreement;

16. COUNCIL'S RIGHT OF ENTRY AND CARRYING OUT OF WORKS

The Council's representatives, agents, servants and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Lessee or any other occupier of the Property or any part thereof, enter the Property or any of the Buildings in order to inspect them, to carry out any necessary studies, or to perform any other lawful function in the *bona fide* interests of the Council or the Lessee; but the Council shall ensure that this right is exercised with due regard for and a minimum of interference with the beneficial enjoyment of the Property by those in occupation thereof.

17. CANCELLATION/TERMINATION

17.1 Notwithstanding the provisions of clause 3 hereof, either party to this Agreement shall be entitled to terminate this Agreement, subject to the provisions of clause 17.3 below, by furnishing written notice of such intention to the other party at least **two (2) calendar months** prior to the proposed date of termination : Provided that the Lessee shall not be entitled to exercise any rights in terms of this clause should the Council have served formal notice to the Lessee of its intention to exercise its rights in terms of clauses 18 *infra*.

17.2 This agreement shall, where applicable, be terminated in

terms of clause 18 hereunder.

- 17.3 The Council shall at all times have the right to terminate the Agreement of Lease after **two (2) calendar months** written notice to the Lessee should the site(s) or any portion thereof be required for public, or Government purposes, however, this right shall not be exercised lightly and Council will have to show that such action by it is the only viable solution or weigh up the importance of the required use of the property against the interests of the lessee, in considering termination and compensation may be considered under certain circumstances.
- 17.4 Notwithstanding any provision to the contrary herein contained, the Council reserves the right to terminate or suspend this Agreement without prior notice in the event of a national emergency.
- 17.5 The decision of the Minister of Public Works as to what constitutes a public or Government purposes or a national emergency shall be conclusive and binding.

**18. COMPENSATION PAYABLE IN TERMS OF EARLY TERMINATION OR SUSPENSION
THE COUNCIL:**

- 18.1 Save as herein provided, the Lessee shall not acquire any right or lawful claim in respect of the site/Premises by virtue of this Agreement, nor any legitimate expectation in respect thereof and any compensation which may be considered by Council in lieu of early termination, is at the sole discretion of the Council after due deliberation and Council Resolution approving such compensation.
- 18.2 Upon termination of this Agreement as contemplated in terms of clauses **6, 17 or 25** hereof, the Lessee shall not be entitled to any compensation for any structures or improvements effected by it on the site, and such structures and improvements shall become the property of the Council.
- 18.3 On termination of this Agreement for any reason whatsoever the Lessee shall vacate the site/Premises and remove all obsolete equipment and machinery,

refuse, litter and any other such material as the Council may determine in writing, and leave the site in a neat and clean condition. An inspection will then be undertaken by the Council who, if not satisfied with the condition of the vacated site, will advise the Lessee in writing to comply with the Council's additional requirements within **ten (10) working days**. However, should the Lessee fail to comply with written instructions issued by the Council within the period so specified therein, the Council shall have the right to immediately undertake the said clearing, and recover such expense from the Lessee.

- 18.4 Upon expiration or early termination of this lease in terms of the provision of this lease, the Lessee shall immediately vacate the property and shall deliver all keys and duplicate keys to Council.

19. SPECIAL REMEDY FOR BREACH

- 19.1 Should the Lessee default in any payment due under this lease or be in breach of its terms in any other way, and fail to remedy such default or breach within 30 (thirty) days after receiving a written demand that it be remedied, the Council shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Council under the circumstances without further notice, to cancel this lease with immediate effect, be repossessed of the Property and the Council's Equipment, and recover from the Lessee damages for the default or breach and the cancellation of this lease.
- 19.2 Clause 19.1 shall not be construed as excluding the ordinary lawful consequences of a breach of this lease by either party (save any such consequences as are expressly excluded by any of the other provisions of this lease) and in particular any right of cancellation of this lease on the ground of a material breach going to the root of this lease.
- 19.3 In the event of the Council having cancelled this lease justifiably but the Lessee remaining in occupation of the Property, with or without disputing the cancellation, and continuing to tender payments of the Rental and any other amounts which would have been payable to the Council but for the cancellation, the Council may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the Council by reason of the unlawful holding over on the part of the Lessee.
- 19.4 The Council shall not be in breach of any clause in so far as any of their obligations

thereunder are not or cannot be fulfilled by reason of any *vis major* or the acts or omissions of others over whom the Council has no direct authority or control, and where the Council is indeed in breach of a clause, the Lessee's only remedy against the Council shall be a right of action for specific performance.

- 19.5 Should the Lessee fail to occupy the property within 48 hours of signing of this agreement, the Lessee shall be in breach of the lease agreement and Council shall have the right to terminate this lease agreement in terms of clause 17.

20. RESOLUTION OF DISPUTES

- 20.1 Any dispute which the parties are unable to resolve by negotiation between themselves within sixty (60) days of one party having received notice alternatively knowledge of the dispute and following reference of such dispute(s) to the Municipal Manager or his designate of each of the parties, shall, at the instance of either party, be submitted to and decided by arbitration if it concerns:

20.1.1. any matter arising out of; or

20.1.2 the interpretation of; or

20.1.3 the termination of; or

20.1.4 any matter arising out of the termination of this Agreement.

- 20.2 The arbitration referred to in clause 20.1 above shall be held:

20.2.1 at Port Shepstone;

20.2.2 in English and in accordance with the provisions of the
Arbitration Act in force in South Africa;

20.2.3 and within ten(10) days of the expiration of the time period
enunciated in "20.1" above, failing which, the parties will be
deemed to have waived their rights of referral of their dispute(s) to
arbitration, unless the parties agree otherwise in writing;

- 20.2. a party waiving their rights in 20.2.3 above, shall then be entitled to refer its dispute and or claim as enunciated in clause 19 *infra*.

20.3. The arbitrator shall be a person agreed between the parties and, failing agreement, a person nominated for such purpose by the President (or failing him, the Secretary) for the time being of the KwaZulu-Natal Law Society (or, if applicable, the successor to the KwaZulu-Natal Law Society), subject to the following provisions –

20.3.1 if the question in issue is primarily a financial one, the arbitrator shall be an independent accountant of not less than 10 (TEN) years standing as such;

20.3.2. if the question in issue is primarily a legal matter or is not a matter which falls within the category contemplated in clause 0 above, the arbitrator shall be a practising Senior Counsel at the KwaZulu-Natal Bar.

20.4. The arbitrator shall determine, *inter alia*, which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.

20.5. The parties irrevocably agree that the decision of the arbitrator shall, in the absence of manifest error :

20.5.1. be binding on them;

20.5.2. be carried into effect;

20.5.3. be capable of being made an Order of any Court of competent jurisdiction.

21. NEW TENANTS AND NOTICES ON PREMISES

The Lessee shall at all reasonable times:-

21.1 during the last 3 (three) months of the Lease Period, allow prospective tenants of the Property, to enter and view the Property, the interiors of the Buildings.

21.2 The Council shall be entitled to affix and show in the windows of the premises, "TO LET" notices during the period of 3 (three) months preceding the expiration of this Agreement.

21.3 The Council shall be entitled to exhibit, on behalf of any new tenant of the premises, any notices required in connection with any town planning

application or application for a licence or permit to carry on business in the Premises during the period of 3 (three) months.

- 21.4 The Lessee shall not be entitled to remove, relocate or damage any notice referred to in clause 21.2 and 21.3 *supra*.

22. DOMICILIA AND NOTICES

- 22.1 The parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 22.2 below, but such *domicilium* of either party may be changed by written notice from such party to the other party with effect from the date of receipt or deemed receipt by the latter of such notice.

22.2	THE COUNCIL	THE LESSEE
	POSTAL	POSTAL
	Ray Nkonyeni Local Municipality	_____
	P O Box 5	_____
	PORT SHEPSTONE	_____
	4240	
	PHYSICAL	PHYSICAL
	10 Connor Street	_____
	PORT SHEPSTONE	_____
	4240	_____
	E-MAIL	E-MAIL
	Pumla.Tom@rnm.gov.za	
	Jillian.Pholoma@rnm.gov.za	
	TELEPHONE/FAX NUMBERS	
	039 688 2081/2/4	
	039 682 0327 (F)	

- 22.3 Any notice, demand or other communication properly addressed by either party to the other party at the latter's *domicilium* in terms hereof for the

time being and delivered by hand shall be deemed to be received by the latter on the day of delivery. This provision shall not be construed as precluding the utilisation of other means and methods (including facsimile) for the transmission or delivery of notices, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

23. CONSENT TO JURISDICTION AND CONSUMER ENQUIRY

- 23.1 Subject to clause 20.2.3, any action or application concerning or arising out of this Agreement may be brought in any Magistrate's Court having jurisdiction in respect of the Lessee notwithstanding that the amount in issue may exceed the jurisdiction of such Court.
- 23.2 The Lessee hereby consents to a Consumer enquiry and / or a credit check being conducted of his or her business and / or personal capacity(ies) in order to, but not limited to, establishing the Lessee's credit worthiness and affordability.

24. WHOLE AGREEMENT

- 24.1 This is the entire agreement between the parties.
- 24.2 Neither party relies on entering into this agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this lease as warranties or undertakings.
- 24.3 No variation or consensual cancellation of this lease shall be of any force or effect unless reduced to writing and signed by both parties.

25. NON-WAIVER

- 25.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this agreement by reason of such party having at any time granted any extension of time for, or having shown any indulgence to the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.
- 25.2 The failure of either party to comply with any non-material provision of this

lease shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

26. SURETYSHIP

- 26.1 In the event of the Lessee being a registered Company or Close Corporation duly incorporated in terms of the Laws of the Republic, the directors and members, as the case may be, shall respectively bind themselves as sureties and co-principal debtors for the due and proper fulfilment of the Lessee's obligations in terms of this Agreement.
- 26.2 The Suretyship contemplated above shall be furnished to the Council prior to the commencement date of this Agreement; upon failure thereof the Council shall have the right to cancel this Agreement in terms of the provisions of this agreement.
- 25.3 The Council may, in its sole discretion accept a bank guaranteed cheque in an amount equivalent to 3 (three) months initial rental in lieu of any Suretyship by the Lessee.

THUS SIGNED at ----- this----- day of----- 2021.

AS WITNESSES

1. _____

2. _____

FOR LESSEE

THUS SIGNED at PORT SHEPSTONE this-----day of -----2021.

AS WITNESSES

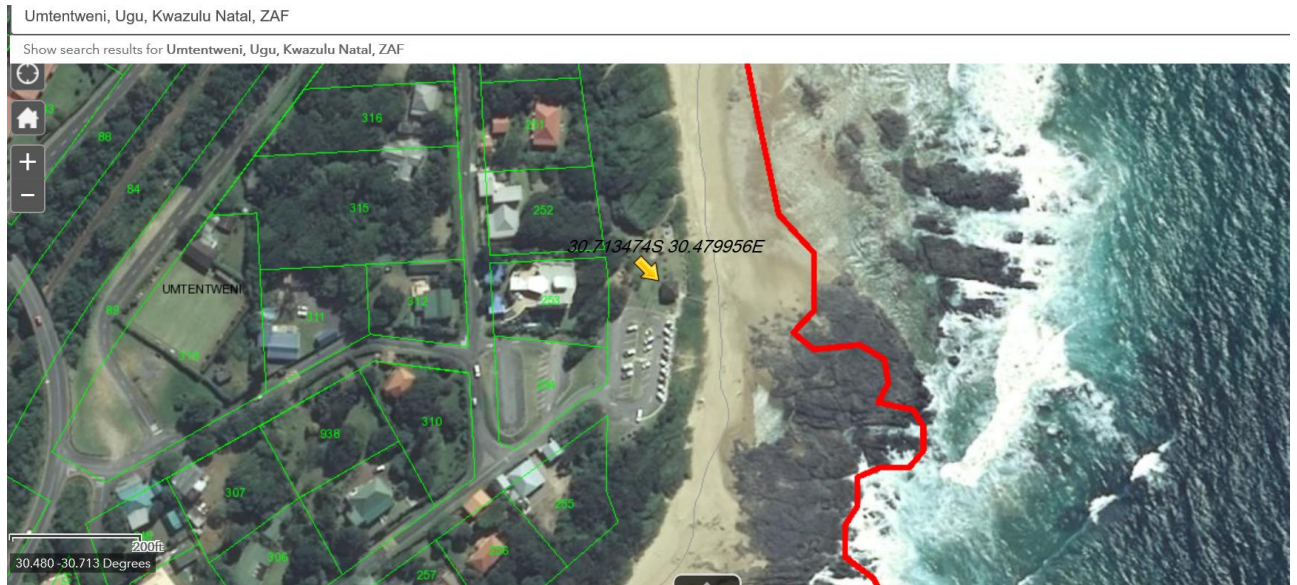
1. _____

MUNICIPAL MANAGER

2. _____

MAYOR

SCHEDULE A – MAP



SCHEDULE B - Site Picture



PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....

Bid Number.....

Closing Time

Closing Date

OFFER TO BE VALID FOR...120.....DAYS FROM THE CLOSING DATE OF BID.

CALL FOR PROPOSALS FOR THE LEASE OF THE UMTENTWENI BEACH KIOSK- ERF 89 UMTENTWENI

No.	Description of Item	Quantity	Price	Total
	Call for proposal for the lease of the Umtentweni beach Kiosk – Erf 89 Umtentweni		Rental per month	
1.				
2.				
3.				
4.				
			Sub-total R	
			Plus 15% VAT R	
			TOTAL R	

BIDDER'S SIGNATURE _____

DATE _____

- Required by:
- Does offer comply with specification?

*YES/NO

- If not to specification, indicate deviation(s)

- Period required for delivery

*Delivery: Firm/not firm

- Delivery basis (all delivery costs must be included in the bid price)

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

*** “ all applicable taxes “ includes value added tax, pay as you earn(PAYE), income tax , unemployment insurance fund (UIF) and skills development levies.

***Delete if not applicable**

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.

3 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name of bidder or his or her representative:.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, shareholder²):.....

3.4 Company Registration Number:

3.5 Tax Reference Number:.....

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars

.....

¹MSCM Regulations: "in the service of the state" means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the national Assembly or the national Council of provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES / NO**

3.9.1 If yes, furnish particulars

.....
.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.

.....
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars

.....
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:

.....

.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

CERTIFICATION

I, _____ THE UNDERSIGNED CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS CORRECT.

ACCEPT THAT THE COUNCIL MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

CONTRACT FORM – PAST EXPERIENCE

Bidders must furnish hereunder details of similar works / service, which they have satisfactorily completed in the past. The information shall include a description of the works, the contract value and the name of the employer.

EMPLOYER	NATURE OF WORK	VALUE OF WORK	DURATION AND COMPLETION DATE	EMPLOYER CONTACT NO

DATE

SIGNATURE OF BIDDER

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included);
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ P_s = 80 \left(1 + \frac{P_t - P_{\min}}{P_{\min}} \right) & \text{or} & P_s = 90 \left(1 + \frac{P_t - P_{\min}}{P_{\min}} \right) \end{array}$$

Where

- P_s = Points scored for price of bid under consideration
- P_t = Price of bid under consideration
- P_{min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

- 6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(***Tick applicable box***)

YES		NO	
-----	--	----	--

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....
.....
.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;

- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Bid Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.7.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
3. Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - (a) take all reasonable steps to prevent such abuse;
 - (b) reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - (c) cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
4. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation);

- (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

SIGNATURE

DATE

POSITION

NAME OF BIDDER

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.