

## **SERVICE LEVEL AGREEMENT**

Entered into by and between

### **EDEN DISTRICT MUNICIPALITY**

A municipality duly established in terms of Local Government Municipal Structures Act  
117 of 1998

(Herein represented by **GODFREY WINSTON LOUW** in his capacity as **Municipal  
Manager** duly authorised thereto)

(Hereinafter referred to as “**the Municipality**”)

and

### **IGNITE ADVISORY SERVICES (PTY) LTD**

(A private company, duly incorporated in accordance with the laws of the Republic of  
South Africa, with registration number 2006/035577/07, having its main place of  
business at 4<sup>th</sup> Floor, Cento East Wing, Bella Rosa Village, Bellville, 7530, herein  
represented by Attie Butler in his capacity as Managing Director, duly authorised  
thereto)

(Hereinafter referred to as “**IGNITE**”)

**PREAMBLE:**

- A. WHEREAS** the Municipality has appointed IGNITE to provide electronic tools and support to assist with the management of municipal performance and related activities.
- B. AND WHEREAS** IGNITE has accepted such appointment and shall render the services to the Municipality on the terms and conditions as set out in this agreement.

**ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

- 1.1 *"The agreement"* shall mean this Service Level Agreement (SLA), together with the tender documentation, the General Conditions of Contract (GCC), and any other annexures hereto, and *"this agreement"* shall have a corresponding meaning.
- 1.2 *"Active Users"* means the users that the Client Administrator has not terminated on the Product by the 25th day of the calendar month;
- 1.3 *"Client Administrator"* means the person identified at the inception of the service that will:
- be responsible for the administrative functions of the municipal database
  - have access to the administrator profile
  - be tasked with communicating with the Helpdesk.
  - The municipality is responsible for assigning the role to a specific person;
- 1.4 *"Database"* means the independent, encrypted database that is created for the municipality;
- 1.5 *"Monthly Fee"* means the monthly charge excluding VAT (Value Added Tax);

- 1.6 “*Password*” means the password that is assigned to the user to gain access to the electronic tools;
- 1.7 “*Support hours*” means 08h00 to 17h00 (Central Africa Time) from Monday to Thursday and 08h00 to 15h00 (Central Africa Time) on Fridays excluding South African Public Holidays;
- 1.8 “*User*” means the person whom has logged onto the electronic tool and is using an agreed module;
- 1.9 “*Username*” means the username assigned to user of the electronic tool;
- 1.10 The terms and conditions contained in the General Conditions of Contract (GCC), incorporated herein, and annexed hereto as “A”, form part of the agreement between the Parties.
- 1.11 In the event of any inconsistency between the provisions of this Agreement (SLA) and the terms and conditions contained in the GCC, the provisions of this Service Level Agreement shall prevail over the terms and conditions contained in the GCC.

## **2. THE SERVICES**

- 2.1 IGNITE shall render the services as set out in clause 2.2, in respect of the Municipality, and on the terms and conditions as set out in this agreement (hereinafter referred to as “the Services”):
- 2.2 IGNITE shall render the following Services:
  - 2.2.1 Implement the following modules requested by the municipality and provide access to the number of users to these modules (electronic tool) as approved by the municipality;
    - 2.2.1.1 Compliance;

- 2.2.1.2 SDBIP;
  - 2.2.1.3 Annual Performance Report.
  - 2.2.1.4 Eunomia software.
  - 2.2.1.5 Individual Performance;
  - 2.2.2 Availability of the system at least 95% of time per month;
  - 2.2.3 Ongoing user support via Ignite Helpdesk e-mail responding to all system related requests within 48 hours;
  - 2.2.4 Reasonable means to ensure the security of data in the municipality's database;
  - 2.2.5 Daily on-site and bi-weekly off-site backups of data;
  - 2.2.6 Maintenance and updating of modules to comply with minimum legislative requirements; and
  - 2.2.7 Support in terms of section 5.1 below.
- 2.3 The Services shall commence on 1 July 2016 and will terminate on 30 June 2018;
- 2.4 The contract may be extended based on effective delivery of the services and in terms of the municipality's supply chain management policy;
- 2.5 The support services do not include the following
- 2.5.1 Additional uploading of data, e.g. monthly financial data;
  - 2.5.2 Additional training sessions and/or additional onsite support;
  - 2.5.3 Additional requests to change any data such as KPI's; etc;
  - 2.5.4 Preparation of monthly, quarterly or annual performance reports;
  - 2.5.5 Monitoring if updating of actual results take place at municipal level;
  - 2.5.6 Monitoring if actual results were captured correctly by the users;
  - 2.5.7 Compliance module legislative updates; and
  - 2.5.8 Any other consulting services required.

- 2.6 The municipality will be responsible to:
- 2.6.1 assign a Client Administrator to deal with all correspondence, communication, account queries, product selection, user activation and maintenance on the municipal database created for the municipality. The municipality agrees not to give any unauthorised third parties access to the modules who do not comply with the agreed requirements.
  - 2.6.2 maintain the confidentiality of the municipality's data. The approval of users and changes in passwords must be done by taking due care of the required security matters. The Client Administrator is also a User in his/her own right and agrees to accept the responsibility for all activities that occur under his / her Username and Password.
  - 2.6.3 The User is responsible for maintaining the confidentiality of his/her Username, Company code and Password and for restricting access to their computer, and the User agrees to accept responsibility for all activities that occur under their Username and Password.
  - 2.6.4 IGNITE has no control over internet service providers who manage municipal intranet and internet and the municipality acknowledges and agrees that IGNITE is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content or other materials on or available from such sites or resources. IGNITE will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

**3. REPORTING AND LEVELS OF SERVICE TO BE RENDERED BY IGNITE**

- 3.1 The services referred to in clause 2 must be incorporated herein to form an integral part of this agreement.
- 3.2 IGNITE will report to the Performance Management Official.

**4. WARRANTIES**

- 4.1 IGNITE warrants that the services will be performed in a professional and workmanlike manner, consistent with industry standards reasonably applicable to such services.

**4.2 REMEDIES FOR BREACHES**

In the event of any defective performance from IGNITE or failure to furnish the agreed level of service, IGNITE will make reasonable efforts to restore the service to a sufficient operating condition on an urgent basis.

- 4.3 Should IGNITE fail to fulfill their obligations under this agreement or fail to furnish the agreed level of service, the Municipality may, without limitation to any other legal remedies available to it, give IGNITE 21 (twenty one) days written notice to attend to the matter to the Municipality's satisfaction or to comply with the terms of this agreement, failing which this agreement will be cancelled.

**4.4 INDEMNIFICATION**

If, as a result of IGNITE's negligence, the Municipality suffer loss or property damage, IGNITE will reimburse the Municipality for the portion of any damages for which IGNITE is found to be liable.

- 4.5 Should IGNITE wish to reproduce any reports it produced in the execution of this Agreement, it will obtain prior written approval from the Municipality, which approval shall not be unreasonably withheld.

## 5. PAYMENT SCHEDULE

5.1 The Municipality will remunerate IGNITE the following fees (exclusive of VAT) on inception:

| ACTIVITY   |                      | FEES    |
|--|----------------------|---------|
| Data management fees (one fee for all modules)   | Monthly              | R1 000  |
| User fees for SDBIP  | Per user per month   | R100    |
| User fees for Compliance   | Per user per month   | R100    |
| Facilitate the drafting of the SDBIP and uploading   | Annually             | R87 800 |
| Facilitate the drafting of the SDBIP system descriptions   | Annually             | R37 000 |
| Updating of the policy framework, PM manual and two workshops  | Once-off             | Done    |
| PM system implementation   | As required          | R56,000 |
| S57 Performance agreements   | Annually             | R14,000 |
| S57 Performance Report support   | Annually             | R4,000  |
| Performance Management for staff - facilitate implementation and alignment with skills development plans | As and when required | R94,000 |
| Facilitate performance reviews of individual staff   | As and when required | R39,000 |
| Training to staff  | Per day              | R7,480  |
| Hands-on support   | Per day              | R6,800  |
| Facilitate the drafting of the annual performance report   | Annually             | R31,570 |
| Additional: Consulting work and out of scope work  |                      |         |
| ** Excludes: individual performance charged at fixed fee   | Quarterly            | R3,300  |
| The above fees include 25 MB of data per module per month.   | Additional MB        | R0.75   |
| A sliding scale can be negotiated for high volumes of users  |                      |         |

5.2 The fees referred to in paragraph 5.1 will be subject to an annual increase which will not exceed 8% per annum which proposed increase will be agreed with the Municipality before implementation.

5.3 The Municipality shall pay IGNITE on a monthly basis within 30 (thirty) days of receipt of a monthly invoice.

5.4 Payments by the Municipality to IGNITE shall be made into a bank account in South Africa, as identified in writing by IGNITE to the Municipality.

5.5 The following details must be reflected on the invoice forwarded to the Municipality by IGNITE:

5.5.1 VAT payable; and

5.5.2 Total amount payable with reference to the activities and outputs referred to in clause 2 of this agreement, as well as details of time spent on such activities.

5.6 The Municipality will verify the correctness of an invoice, and notify IGNITE of any possible discrepancies within 10 (ten) days of receipt of the invoice. If the invoice is correct the amount due shall be payable within 30 (thirty) days from receipt of the invoice. If the Municipality identifies any material discrepancies the invoice will be referred back to IGNITE, and the amount due will be payable within 30 (thirty) days from receipt of a corrected invoice.

## **6. INDEPENDENT CONTRACTOR**

6.1 IGNITE is appointed as an independent contractor, and not as an employee, and at all relevant times during the currency of this Agreement no employer/employee relationship shall exist between the parties. The Municipality shall not be liable for any injury, loss or damage directly or indirectly incurred by IGNITE, as an independent contractor, arising out of or in connection with the Services rendered by IGNITE in accordance with this Agreement.

6.2 This Agreement replaces any other previous verbal or written agreement entered into between the parties.



## **7. ENTIRE AGREEMENT**

7.1 This Agreement constitutes the entire agreement between the parties and no amendment, alteration, addition or variation of any right, term or condition of this Agreement will be of any force or effect unless reduced to writing and signed by the parties to this Agreement.

7.2 The parties agree that there are no conditions, variations or representations, whether oral or written and whether expressed or implied or otherwise, other than those contained in this Agreement.

## **8. WAIVER**

8.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.

8.2 No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

8.3 No indulgence, leniency or extension of time which any party ("*the Grantor*") may grant or show the other party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

## **9. SETTLEMENT OF DISPUTES**

9.1 Without detracting from either party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in the

Republic of South Africa in respect of any dispute that may arise out of or in connection with this agreement, the parties may, by mutual consent, follow the mediation and/or arbitration procedure as set out in clauses 9.2 and 9.3.

## 9.2 Mediation

9.2.1 Subject to the provisions of clause 9.1, any dispute arising out of or in connection with this agreement may be referred by the parties without legal representation to a Mediator in the Republic of South Africa.

9.2.2 The dispute shall be heard by the Mediator at a place and time to be determined by him or her in consultation with the parties.

9.2.3 The Mediator shall be selected by agreement between the parties.

9.2.4 If an agreement can not be reached upon a particular Mediator within 3 (three) business days after the parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall be requested to nominate the Mediator within 7 (seven) business days after the parties have failed to agree.

9.2.5 The Mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.

9.2.6 The parties shall have 7 (seven) business days within which to finalise their representations. The Mediator shall within 7 (seven) business days of the receipt of the representations express in writing an opinion on the matter and furnish the parties each with a copy thereof by hand or by registered post.

9.2.7 The opinion so expressed by the Mediator shall be final and binding upon the parties unless either party is unwilling to accept the opinion expressed by the Mediator. In such event, the aggrieved party may institute legal proceedings in a court of competent jurisdiction, unless the parties agree to refer the dispute to arbitration in accordance with clause 9.3. The expressed opinion of the mediator shall not prejudice the rights of either party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.

9.2.8 The costs of mediation shall be determined by the Mediator.

9.2.9 Liability for such costs shall be apportioned by the Mediator and shall be due and payable to the Mediator on presentation of his or her written account.

### 9.3 Arbitration

9.3.1 Subject to the provisions of clause 9.1, the parties may agree to refer any dispute arising out of or in connection with this agreement, to arbitration.

9.3.2 Arbitration shall be held in George informally and otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that if possible it shall be held and concluded within 10 (ten) business days.

9.3.3 Save as otherwise specifically provided herein, the Arbitrator shall be if the matter in dispute is:

- (a) primarily a legal matter, a practicing Senior Advocate of the Cape Bar;
- (b) any other matter, an independent and suitably qualified person as may be agreed upon between the parties to the dispute.

9.3.4 If agreement cannot be reached on whether the question in dispute falls under 9.3.3(a) or 9.3.3(b) and/or upon a particular Arbitrator within 3 (three) business days after the parties have agreed on arbitration, then the Chairperson for the time being of the Cape Bar Council shall be requested to:

- (a) determine whether the question in dispute falls under 9.3.3(a) or 9.3.3(b); and/or
- (b) nominate the Arbitrator within 7 (seven) business days after the parties have failed to agree.

9.3.5 The Arbitrator shall give his or her decision within 5 (five) business days after the completion of the arbitration. The Arbitrator may determine that the costs of the arbitration are to be paid either by one or the other or both of the parties.

9.3.6 The decision of the Arbitrator shall be final and binding and may be made an order of the Cape of Good Hope Provincial Division of the High Court upon the application by any party to the arbitration.

9.4 Notwithstanding the provisions contained in clause 17 of the GCC, disputes between the parties shall be governed exclusively by, and settled in terms of, clause 9.1 to 9.3 of this Service Level Agreement.

## **10. CONFIDENTIAL INFORMATION**

10.1 IGNITE shall not, during the currency of this agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Municipality, government in any other sphere, or any government institution or organ of state.

10.2 The Municipality shall hold in confidence all Confidential Information received from IGNITE and not divulge the Confidential Information to any person, including any of its employees, save for the employees directly involved with the execution of this agreement.

10.3 For purposes of this clause "Confidential Information" shall mean –

10.3.1 Any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights, all trade secrets, all agreements, the content of all possible future agreements which may be entered into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the other party;

10.3.2 Any information of whatever nature, which has been or may be obtained by the other party, whether in writing or in electronic form or

pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;

10.3.3 Analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;

10.3.4 All information which a third party has in terms of any agreement made available to either party and which has become known to the other party in the course of rendering the Services; and

10.3.5 Any dispute between the parties resulting from this Agreement.

10.4 The parties shall -

10.4.1 use the Confidential Information only for the purpose of giving effect to the terms and conditions of this Agreement;

10.4.2 treat and safeguard the Confidential Information as private and confidential; and

10.4.3 ensure proper and secure storage of all Confidential Information.

10.5 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are provided to IGNITE or which come into IGNITE's possession during the currency of this Agreement, are deemed to be

the property of the Municipality and shall be surrendered to the Municipality on demand, and in the event of the expiry or termination of this Agreement, IGNITE will not retain any copies thereof or extracts there from without obtaining the prior written permission of the Municipality.

## 10.6 IGNITE –

10.6.1 acknowledges that he/she has carefully considered the provisions of the clause;

10.6.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Municipality and the Government of the Republic of South Africa and that if he/she should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on IGNITE; and

10.6.3 acknowledges that he/she has entered into this Agreement freely and voluntarily and that no circumstances exist and/or existed for him/her alleging, either now or at any future time, that he was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the Municipality in agreeing thereto.

## 11. NOTICE AND DOMICILIUM

11.1 The parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in term of this Agreement, the following addresses:

**THE MUNICIPALITY:**

Eden District Municipality

54 York Street.

George

6530

**IGNITE:**

IGNITE Advisory Services

4<sup>th</sup> Floor

Cento East Wing

Bella Rosa Village

BELLVILLE

7530

- 11.2 Each of the parties shall be entitled, from time to time by written notice to the other, to vary its *domicilium* to any other address within the Western Cape Province of the Republic of South Africa which is not a post office box or *poste restante*.
- 11.3 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the party's chosen *domicilium citandi et executandi*.
- 11.4 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) business days after the date of posting.
- 11.5 Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by one of the parties from the other party, shall be adequate written notice of communication to such party.



**SIGNED AT**                                      **ON THIS**                      **DAY OF**                                      **2016.**

\_\_\_\_\_  
**THE MUNICIPALITY** represented by  
Godfrey Winston Louw.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

**SIGNED AT BELLVILLE ON THIS**                      **DAY OF**                                      **2016.**

\_\_\_\_\_  
**IGNITE** represented by  
Attie Butler.

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

**Annexure “A”**

**LOCAL GOVERNMENT PROCUREMENT**

**GENERAL CONDITIONS OF CONTRACT**

**1. Definitions**

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the Municipality and IGNITE, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to IGNITE under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “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.
  - 1.5 “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 recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.6 “Day” means calendar day.

- 1.7 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.8 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.9 "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, IGNITE bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.10 "Force majeure" means an event beyond the control of IGNITE and not involving IGNITE's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the Municipality in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.11 "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.
- 1.12 "GCC" means the General Conditions of Contract.
- 1.13 "Goods" means all of the equipment, machinery, and/or other materials that IGNITE is required to supply to the Municipality under the contract.

- 1.14 "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 IGNITE 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 supplies covered by the bid will be manufactured.
- 1.15 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.16 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.17 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.18 "Project site," where applicable, means the place indicated in bidding documents.
- 1.19 "The Municipality" means the organisation purchasing the goods.
- 1.20 "Republic" means the Republic of South Africa.
- 1.21 "SCC" means the Special Conditions of Contract.
- 1.22 "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 IGNITE covered under the contract.

1.23 "Written" or "in writing" means handwritten 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, 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 supplies, 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 Municipality shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

## **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 IGNITE shall not, without the Municipality's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Municipality in connection therewith, to any person other than a person employed by IGNITE in the performance 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 IGNITE shall not, without the Municipality'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 Municipality and shall be returned (all copies) to the Municipality on completion of IGNITE's performance under the contract if so required by the Municipality.

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

**6. Patent rights**

6.1 IGNITE shall indemnify the Municipality 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 Municipality.

**7. Performance security**

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

7.2 The proceeds of the performance security shall be payable to the Municipality as compensation for any loss resulting from IGNITE'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 Municipality 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 Municipality's country or abroad, acceptable to the Municipality, in the form provided in the bidding documents or another form acceptable to the Municipality; or
- (b) a cashier's or certified cheque

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

**8. Delivery and documents**

8.1 Delivery of the goods shall be made by IGNITE in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by IGNITE are specified in SCC.

8.2 Documents to be submitted by IGNITE are specified in SCC.

**9. Transportation**

9.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

**10. Incidental services**

10.1 IGNITE may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (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 IGNITE of any warranty obligations under this contract; and
- (e) training of the Municipality's personnel, at IGNITE's office and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

10.2 Prices charged by IGNITE 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 IGNITE for similar services.

## **11. Payment**

11.1 The method and conditions of payment to be made to IGNITE under this contract shall be specified in SCC.

11.2 IGNITE shall furnish the Municipality with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

11.3 Payments shall be made promptly by the Municipality, but in no case later than thirty (30) days after submission of an invoice or claim by IGNITE.

11.4 Payment will be made in Rand unless otherwise stipulated in SCC.



**12. Prices**

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

**13. Assignment**

13.1 IGNITE shall not assign, in whole or in part, its obligations to perform under the contract, except with the Municipality's prior written consent.

**14. Delays in the  
supplier's  
performance**

14.1 Delivery of the goods and performance of services shall be made by IGNITE in accordance with the time schedule prescribed by the Municipality in the contract.

14.2 If at any time during performance of the contract, IGNITE or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, IGNITE shall promptly notify the Municipality in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of IGNITE's notice, the Municipality shall evaluate the situation and may at his discretion extend IGNITE'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.

14.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

14.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, IGNITE's point of supply is not situated at or near the place where the supplies are required, or IGNITE's services are not readily available.

**15. Force Majeure**

15.1 Notwithstanding the provisions of GCC Clauses above, IGNITE 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.

15.2 If a force majeure situation arises, IGNITE shall promptly notify the Municipality in writing of such condition and the cause thereof. Unless otherwise directed by the Municipality in writing, IGNITE 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.

**16. Termination  
for insolvency**

16.1 The Municipality may at any time terminate the contract by giving written notice to IGNITE if IGNITE becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to IGNITE, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Municipality.

**17. Settlement of  
Disputes**

17.1 If any dispute or difference of any kind whatsoever arises between the Municipality and IGNITE 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.

17.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Municipality or IGNITE 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.

17.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

17.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

17.5 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 Municipality shall pay IGNITE any monies due IGNITE.

**18. Limitation of liability**

18.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) IGNITE shall not be liable to the Municipality, 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 IGNITE to pay penalties and/or damages to the Municipality; and

(b) the aggregate liability of IGNITE to the Municipality, 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.

**19. Governing Language**

19.1 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.

**20. Applicable law**

20.1 The contract shall be interpreted in accordance with South

African laws, unless otherwise specified in SCC.

**21. Notices**

- 21.1 Every written acceptance of a bid shall be posted to IGNITE 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
  
- 21.2 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.