



REQUEST FOR PROPOSAL – TENDER NUMBER: PEG001

MyCiTi Phase2A: CTITT

Public transport surveys in the MyCiTi Expansion

Area to determine travel supply and demand

29th August 2023

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1 Letter of Invitation to Tender

Pegasys (Pty) Ltd hereby invites competent, qualified and registered individuals and/or companies to submit their Bids for the following:

Bid Number	PEG001
Date Advertised	29 th August 2023
Bid Description	MyCiTi Phase2A: CTITT Public transport surveys in the MyCiTi Expansion Area to determine travel supply and demand
Access to Bid Documents	Documents are free to download from SA-tenders at https://www.sa-tenders.co.za/
Closing Date	12 th September 2023 @ 17:00pm (SAST)
Details on Bid Submission	<p>The Request for Proposal response must be submitted electronically in PDF format, via email to the following email address: tenders@pegasys.co.za for the attention of Ahmed Mulla.</p> <p>Please include the following endorsement in the Subject field of the email: Name and address of the tenderer, and <i>“Public transport surveys in the MyCiTi Expansion Area to determine travel supply and demand”</i>.</p> <p>Please note that it remains the tenderer’s responsibility to ensure that the tender is successfully delivered via email.</p>
Pegasys Tender Representative	Mr. Ahmed Mulla +27(21)4615476 ahmed@pegasys.co.za

2 Conditions of Tendering

- 2.1 Pegasys and each tenderer submitting a tender offer shall comply with these Conditions of Tender. In their dealings with each other, they shall discharge their duties and obligations as set out in these Conditions of Tender, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations.
- 2.2 Pegasys, the tenderer and their agents and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of Pegasys and the City of Cape Town shall declare any conflict of interest to Pegasys at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.
- 2.3 Pegasys shall not seek, and a tenderer shall not submit a tender, without having a firm intention and capacity to proceed with the contract.
- 2.4 Pegasys may accept or reject any tender offer and may cancel the tender process or reject all tender offers at any time before the formation of a contract. Pegasys may, prior to the award of the tender, cancel a tender if:
- due to changed circumstances, there is no longer a need for the services, works or goods requested; or
 - funds are no longer available to cover the total envisaged expenditure; or
 - no acceptable tenders are received.
 - there is a material irregularity in the tender process; or
 - the parties are unable to negotiate market related pricing.
- Pegasys shall not accept or incur any liability to a tenderer for such cancellation or rejection but will give written reasons for such action upon receiving a written request to do so.
- 2.5 Unless otherwise stated in the tender conditions, a contract will be concluded with the tenderer who scores the highest number of tender adjudication points.
- 2.6 Pegasys intends to appoint a single tenderer for the allocation of work. If insufficient responsive bids are received, Pegasys reserves the right not to appoint a tenderer at all.

Compliance with POPI

- 2.7 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (hereinafter referred to as 'POPI').

Definitions:

- 2.8 **"Data"** means all data, information, texts, drawings, and other records, which are embodied in any medium, and will include, but not be limited to, Personal Information and Electronic Data;
- 2.9 **"Data Subject"** means any persons to whom personal information relates;
- 2.10 **"Personal Information"** shall mean the race, gender, sex, pregnancy, marital status, national or ethnic origin, colour, sexual orientation, age, physical or mental health, disability, religion, conscience, belief, culture, language and birth of

a person; information relating to the education or the medical, financial, criminal or employment history of the person; any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; the biometric information of the person; the personal opinions, views or preferences of the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; the views or opinions of another individual about the person whether the information is recorded electronically or otherwise;

- 2.11 **“POPI Act”** means the Protection of Personal Information Act 4 of 2013, as amended from time to time; and
- 2.12 **“Processing”** means any operation or set of operations, including collecting, recording, organising, storing, updating, modifying, retrieving, consulting, using, disseminating, analysing, or studying data, including the copying, transmission, distribution or making available to any third party in any form, merging, linking, as well as blocking, erasing, or destroying any such data; and the words: "Process" and "Processed" will have corresponding meanings.

Bidders' Consent:

- 2.13 Pegasys collects information directly from the bidders when submitting the Personal Information of the Data Subject during the submission of the bids. The bidders understand and agree that all information provided, whether personal or otherwise, may be used and processed by Pegasys.
- 2.14 The Bidders' consent to Pegasys collecting and processing the Personal Information pursuant to any of Pegasys's IT policies in place insofar as Personal Information of the Data Subject is contained in relevant electronic communications.
- 2.15 Pegasys respects the right to privacy and therefore aims to ensure that it complies with the legal requirement of the POPI Act in collecting, processing, storing, sharing, and destroying any personal information which is provided to Pegasys.
- 2.16 Pegasys will only collect Personal Information submitted by the bidders, for the purposes of evaluating the submitted proposals for the relevant advertised tender, the awarding of the tender to the preferred bidder and for the purposes of fulfilling its obligations in terms of the awarded contract.
- 2.17 The bidders further agree to the disclosure of the Personal Information for any reason enabling Pegasys to carry out or to comply with its business obligation insofar as it is relevant to the tender.
- 2.18 The Bidders are required to comply with the provisions of the POPI Act fully. Furthermore, where applicable, Pegasys expects that the Bidders should have obtained consent from Data Subjects to release their personal information to third parties.
- 2.19 Pegasys agrees that it will not transfer or disclose the Data Subject's Personal Information to a third party, unless where Pegasys has a legal or contractual duty to disclose such information, or it is required for its legitimate business requirements and shall comply strictly with legislative stipulations in this regard.
- 2.20 Pegasys undertakes that it has adequate controls in place to protect/safeguard the Data Subject's Personal Information it receives from the Bidders.

3 Tenderer's Obligations

- 3.1 Tenderers are obligated to submit a tender offer that complies in all aspects to the conditions as detailed in this tender document. Only those tenders that comply in all aspects with the tender conditions, specifications, pricing instructions and contract conditions will be declared to be responsive.
- 3.2 Only those tenders that are compliant with the requirements below will be declared responsive:
 - a) Bidders are requested to provide a clear agreement regarding joint ventures/consortia. A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
 - b) Bidders are required to submit original Tax clearance and valid B-BBEE Status Level Verification Certificates/or Affidavit or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.
 - c) The tenderer is not an advisor or consultant contracted with Pegasys and the City of Cape Town whose prior or current obligations creates any conflict of interest or unfair advantage,
- 3.3 Pegasys will not be liable for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer comply with requirements.
- 3.4 Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by Pegasys only for the purpose of preparing and submitting a tender offer in response to the invitation.
- 3.5 Acknowledge receipt of notices to the tender documents, which Pegasys may issue, fully comply with all instructions issued in the notices. Notwithstanding any requests for confirmation of receipt of notices issued, the tenderer shall be deemed to have received such notices if Pegasys can show proof of transmission thereof via electronic mail, facsimile or registered post.
- 3.6 Request clarification of the tender documents, if necessary, by notifying Pegasys at least three days before the closing time stated in the Invitation to Tender, where possible.
- 3.7 Comply with all pricing instructions as stated on the Price Schedule.
- 3.8 Submit one tender offer only, either as a single tendering entity or as a member in a joint venture to provide the whole of the works, services or supply identified in the contract conditions and described in the specifications.
- 3.9 This tender must be submitted by email, as stated in the invitation to tender.
- 3.10 Tenders must be properly received by email on or before the closing date and before the closing time. Tenders must be addressed as stated in the Invitation to Tender instructions.
- 3.11 Accept that, Pegasys shall not consider tenders that are received after the closing date and time for such a tender (late tenders).
- 3.12 Warrants that the tender offer(s) remains valid, irrevocable, and open for acceptance by Pegasys at any time for a period of 180 days after the closing date stated on the front page of the tender document.
- 3.13 Provide clarification of a tender offer, or additional information, in response to a written request to do so from Pegasys during the evaluation of tender offers within the time period stated in such request. No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

- 3.14 Note: This clause does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should Pegasys elect to do so.
- 3.15 Failure, or refusal, to provide such clarification or additional information within the time for submission stated in Pegasys' written request may render the tender non-responsive.
- 3.16 Provide, on request by Pegasys any other material that has a bearing on the tender offer, the tenderer's commercial position (including joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by Pegasys for the purpose of the evaluation of the tender. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in Pegasys' request, Pegasys may regard the tender offer as non-responsive.

4 Pegasys' Undertakings

- 4.1 Unless otherwise stated in the Tender Conditions, respond to a request for clarification.
- 4.2 Pegasys' representative for the purpose of this tender is stated on the Invitation to Tender page.
- 4.3 Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.
- 4.4 Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.
- 4.5 Appoint an internal Bid Evaluation Committee and determine after opening whether each tender offer properly received, complies with the requirements of the Conditions of Tender, and is responsive to all other criteria and requirements of the request for proposal.
- 4.6 Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of any material deviation or qualification.
- 4.7 Pegasys reserves the right to accept a tender offer which does not, in Pegasys' opinion, materially and/or substantially deviate from the terms, conditions, and specifications of the tender documents.
- 4.8 Check the responsive tenders for omissions/arithmetic errors made in completing the Price Schedule.
- 4.9 In the event of tendered rates or lump sums being declared by Pegasys to be unacceptable to it because they are not priced, either excessively low or high, or not in proper balance with other rates or lump sums, the tenderer may be required to produce evidence and advance arguments in support of the tendered rates or lump sums objected to. If, after submission of such evidence and any further evidence requested, Pegasys is still not satisfied with the tendered rates or lump sums objected to, it may request the tenderer to amend these rates and lump sums along the lines indicated by it. The tenderer will then have the option to alter and/or amend the rates and lump sums objected to and such other related amounts as are agreed on by Pegasys, but this shall be done without altering the tender offer in accordance with this clause. Should the tenderer fail to amend his tender in a manner acceptable to and within the time stated by Pegasys, Pegasys may declare the tender as non-responsive.
- 4.10 Pegasys may, after the closing date, request additional information or clarification from tenderers, in writing on any matter affecting the evaluation of the tender offer or that could give rise to ambiguity in a contract arising from the tender offer, which written request and related response shall not change or affect their competitive position or the substance of their offer. Such request may only be made in writing by Pegasys using any means as appropriate.
- 4.11 Reduce each responsive tender offer to a comparative price and evaluate them using the tender evaluation methods and associated evaluation criteria and weightings that are specified in chapter 6, points for price and preference will be allocated in accordance with the formula set out in chapter 6 based on the tender sum / amount as set out in the Price Schedule (Appendix A).
- 4.12 Pegasys may negotiate the final terms of a contract with tenderers identified through this competitive tendering process as preferred tenderers provided that such negotiation:

- a) does not allow any preferred tenderer a second or unfair opportunity;
- b) is not to the detriment of any other tenderer; and
- c) does not lead to a higher price than the tender as submitted.

4.13 If negotiations fail to result in acceptable contract terms, Pegasys may terminate the negotiations and cancel the tender, or invite the next ranked tenderer for negotiations. The original preferred tenderer should be informed of the reasons for termination of the negotiations. If the decision is to invite the next highest ranked tenderer for negotiations, the failed earlier negotiations may not be reopened by Pegasys.

5 Terms of Reference

INTRODUCTION

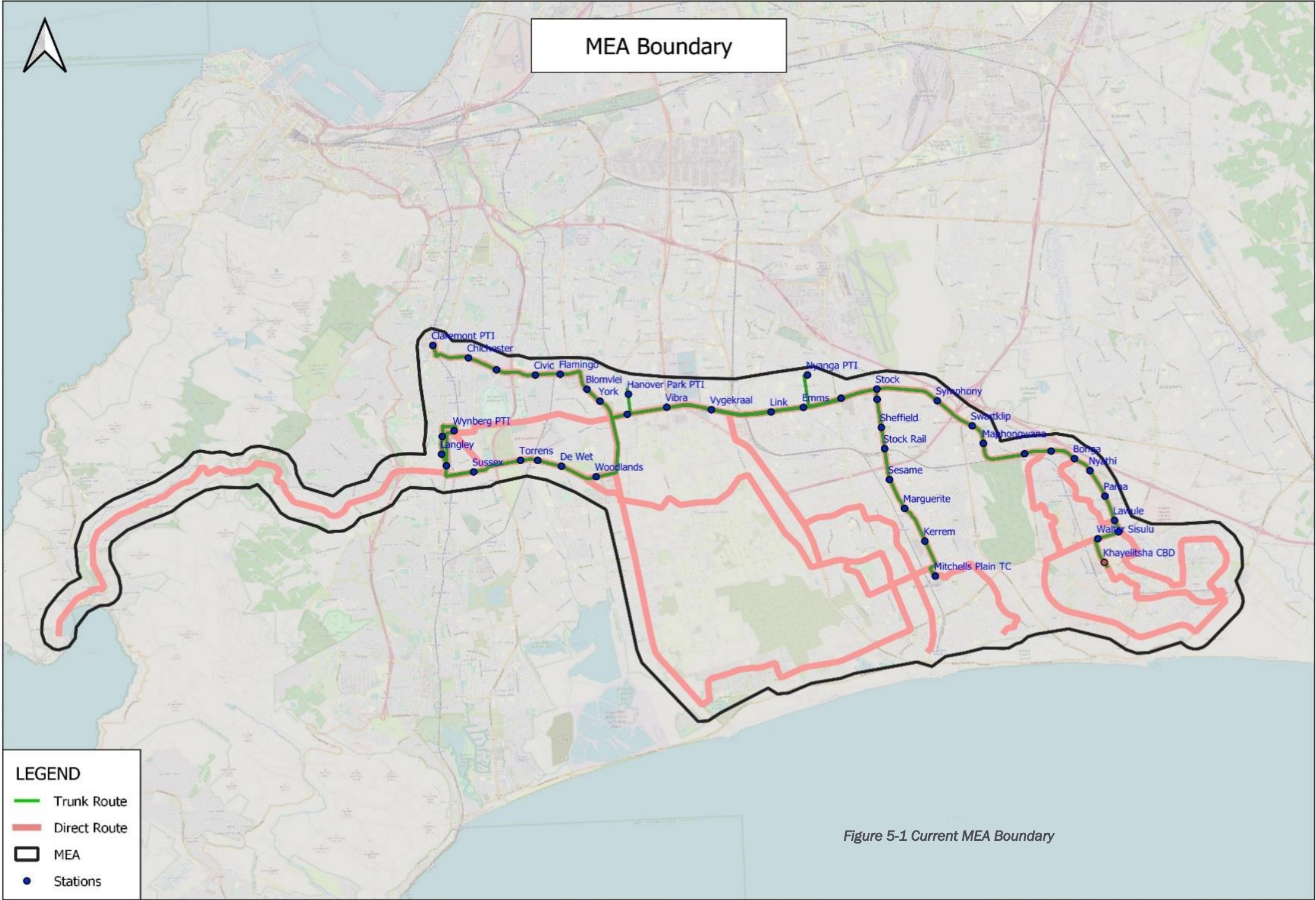
The City of Cape Town (“City” hereafter) is in the process of implementing Phase 2A of its MyCiTi bus service. The Metro-southeast will be the primary area served by this phase, which will connect Wynberg and Claremont to Khayelitsha and Mitchells Plain and areas in between.

Existing minibus-taxi and Golden Arrow Bus Services (GABS) operating in the area will be impacted as activity along certain routes will be reduced or incorporated entirely into MyCiTi operations. The area in which operators will be impacted is called the MyCiTi Expansion Area (MEA) - its current boundary is shown in Figure 5.1. Therefore, it is important to understand the existing travel supply and demand in the MEA.

The Phase 2A transport model provides estimated travel supply and demand information; however, its last update was in 2016, so it may no longer accurately reflect the current travel patterns. To ensure accurate and up-to-date information, conducting new travel supply and demand surveys is necessary to determine if any significant changes have occurred within the MEA.



MEA Boundary



LEGEND

- Trunk Route
- Direct Route
- MEA
- Stations

Figure 5-1 Current MEA Boundary

SCOPE OF WORK

Public Transport Interchange (PTI) surveys and screen line counts are required at various key positions to provide a broad understanding of the existing supply and passenger demand within the MEA.

1. Preparation for surveys

To enable the surveys the following items must be undertaken:

- Project start-up meeting
- Liaise with City officials to notify taxi association of surveys and provide security, where required.
- Conduct site visits of survey locations to make observations, confirm PTI and road layouts and confirm the number of surveyors required.
- Prepare a detailed survey programme.
- Project team meeting with the City to agree on the survey programme.

2. Public Transport Interchange (PTI) surveys

Surveys are to be undertaken at key PTIs within the MEA, namely:

- Claremont
- Wynberg
- Hanover Park
- Nyanga
- Mitchell's Plain
- Khayelitsha

The surveys are to be conducted from 05h00 until 19h00 (14-hours):

- Month 1: one full week (Mon – Sun)
- Months 2 to 6: one weekday per month (Tues/Wed/Thurs)

The rank survey sheet should, at minimum, include:

- General info such as date; day of the week; PTI name; time period; the name of surveyor, weather and so on.
- Route number
- Vehicle registration
- Destination
- Operating Licenses (OL) number
- Arrival time
- Number of passengers boarding
- Number of passengers alighting
- Vehicle capacity
- Total number of passengers departing
- Departure time
- Single fare

3. Screen line counts

Screen line count surveys must be undertaken at certain locations to understand supply and demand along roads. The screen line count survey sheet must, at minimum, include:

- General info: date; day of the week; survey location; direction; time period; the name of surveyor, weather and so on.
- Time of vehicle passing
- Vehicle registration
- Observed capacity of vehicle (e.g., 15-seater minibus-taxi or 60 seat bus and so on)
- Number of occupants (estimate percentage of capacity by observation increments of 25%).

The surveys are to be conducted from 05h00 until 19h00 (14-hours):

- Month 1: one full week (Mon – Sun)
- Months 2 to 6: one weekday per month (Tues/Wed/Thurs)

4. Onboard Surveys

Onboard surveys are to be undertaken to understand supply/demand of GABS/minibus-taxis along routes.

The survey sheet/app should at minimum include:

- General info: date; day of the week; route name; time period; name of surveyor, weather and so on.
- GPS-based, record location and quantity of passengers boarding and alighting at each stop is to be recorded.

The Surveys are to be conducted from 05h00 until 19h00 (14-hours) as follows:

- Month 1: one full week (Mon – Sun)
- Months 2 to 6: one weekday per month (Tues/Wed/Thurs)

5. Survey locations

The required surveys are summarised in Table 5-1 below. A composite map of the PTI and screen line count locations are shown below in Figure 5-2: Survey Locations.

6. Meetings and reporting of survey results

Monthly meetings (up to 2) must be held during the project to report progress. A final meeting is to be held in which the summarised survey results must be presented.

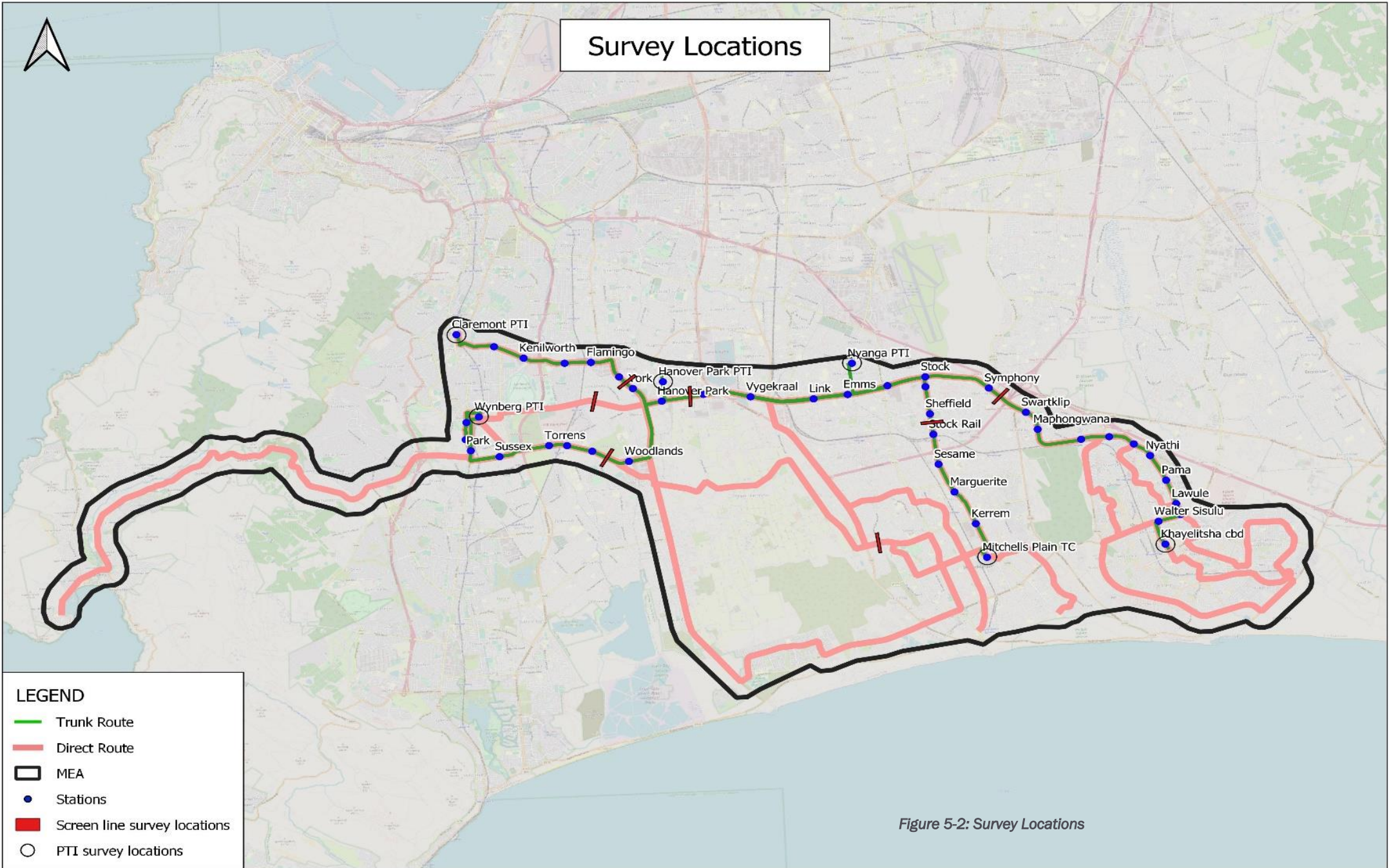
The survey data is to be captured and a brief report prepared summarising the results. The report should include:

- Summary of the methodology followed.
- Graphs.
- Results in a tabular format in excel.

Table 5-1: Summary of Survey Locations

Item	Location	Type of Survey	Duration	
			Days	Time
1	PTI surveys			
1.1	Claremont PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
1.2	Wynberg PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
1.3	Nyanga PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
1.4	Hanover Park PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
1.5	Mitchell's Plain PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
1.6	Khayelitsha PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2	Screen line surveys			
2.1	Jan Smuts Dr - between Govan Mbeki Rd and Blomvlei Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.2	Wetton Rd - between Plantation Rd and Dolphin Way	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.3	New Ottery Rd - between Ottery Rd and Link Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.4	Govan Mbeki Rd - between Heinz Rd and Hanover Park Ave	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.5	Govan Mbeki Rd - between Symphony Way and Ngqwangi Dr	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.6	Stock Rd - between Sheffield Rd and Market Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
2.7	Morgenster Rd - between Weltevreden Pkwy and Jakes Gerwel Dr	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)
3	Onboard surveys			
3.1	Provisional no. Final no. of routes to be confirmed.	Onboard survey	1 full week, then monthly on 1 weekday Tues/Wed/Thurs	05:00-19:00 (14 hours)

Survey Locations



LEGEND

- Trunk Route
- Direct Route
- MEA
- Stations
- Screen line survey locations
- PTI survey locations

Figure 5-2: Survey Locations

Final Deliverables and Project Duration

The following deliverables are:

- Draft survey report and results
- Final survey report and results
- Detailed captured survey results (.xlsx)

The report and drawings are to be submitted in high-resolution portable document format (.pdf) and the data in MsExcel (.xlsx).

Any maps prepared in GIS must be submitted in an editable/electrical format.

Project Duration

It is anticipated that the service provider will be appointed for a period of 3 years.

7. Evaluation Criteria

PHASE 1: FUNCTIONAL/TECHNICAL

The bidder is expected to achieve a minimum required score of 80% for functionality in order to qualify for further evaluation. Bids that do not meet the minimum required score will be disqualified. The Functional/Technical criteria are:

Table 7-1 Technical Evaluation Criteria

Evaluation Criteria	Guideline	Points
Proposed methodology and workplan to undertake traffic surveys.	<p>Points 20 – Clear, robust, and defensible methodologies and approach demonstrating excellent knowledge, understanding and experience of the activities, time and processes to achieve the tasks and deliverables of the assignment, including a robust workplan detailing all activities in a logical sequence, in parallel and demonstrating understanding of interdependencies between activities and deliverables and how these roll up to milestones.</p> <p>Points 11 - Reasonable methodologies and approach demonstrating good knowledge, understanding and experience of the activities, time and processes to achieve the tasks and deliverables of the assignment, with a reasonable programme detailing all activities in a logical sequence and demonstrating understanding of interdependencies between activities and deliverables and how these roll up to milestones..</p> <p>Points 0 – unclear, poor and/or inadequate methodologies and approach of the assignment and no workplan provided.</p>	20
Company experience in conducting traffic surveys for infrastructure projects.	<p>Points 40 – At least (15) fifteen traffic surveys studies completed</p> <p>Points 30 – At least (10) ten traffic survey studies completed</p> <p>Points 20 - At least (5) five traffic survey studies completed</p> <p>Points 0 – Less than three (3) traffic survey studies completed</p> <p><i>List client, duration, and value and contact reference details.</i></p> <p>(Proof of experience to be provided if requested).</p>	40
	<p>Points 20 - At least 5 projects should have a value of R500k or more</p> <p>Points 10 – At least 3 projects have a value of R500k or more</p> <p>Points 5 – At least 1 project has a value of R500k or more</p> <p>Points 0 – No project has a value of R500k or more</p>	20
	<p>Points 10 – Project experience with at least 5 different clients</p> <p>Points 5 – Project experience with at least 3 different clients</p> <p>Points 0 – Project experience with only 1 client</p>	10

Evaluation Criteria	Guideline	Points
Project Manager / Administration	A Project Manager with at least a Bachelor's degree and with: <ul style="list-style-type: none"> - Registered with relevant professional body, or similar. - At least 10 (ten) years' verifiable post registration experience, and a minimum of 3 (three) completed projects, in the relevant role, providing project management and administration support in the management of traffic surveys. 	10
Total		100

Only bidders who obtain at least 80 points under Functional/Technical evaluation will be considered for further evaluation. Where the entity tendering is a Joint Venture the tender must be accompanied by a statement describing exactly what aspects of the work will be undertaken by each party to the joint venture.

PHASE 2: PRICE AND B-BBEE PREFERENCE POINT SCORING

The 80/20 price/preference points system will be applied to the evaluation of responsive tenders, where the award will be placed with the tenderer(s) scoring the highest total number of adjudication points.

Price shall be scored as follows:

$$P_s = 80 \times \left(1 - \frac{(P_t - P_{min})}{P_{min}}\right)$$

Where:

- Ps is the number of points scored for price;
- Pt is the price of the tender under consideration;
- Pmin is the price of the lowest responsive tender.

Preference points shall be scored as follows:

Points will be awarded to tenderers who are eligible for preferences in respect of the B-BBEE level of contributor attained in terms of the below **Preference Schedule Table**.

A maximum of 20 tender adjudication points will be awarded for preference to tenderers with responsive tenders who are eligible for such preference, in accordance with the criteria listed below. Up to **20** adjudication points (N_P) will be awarded for the level of B-BBEE contribution, in accordance with the tables below:

B-BBEE Status Level of Contributor	Number of Points for Preference
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor*	0

*A non-compliant contributor is one who does not meet the minimum score for a level 8 contributor.

or, in respect of Exempted Micro Enterprises (EMEs):

Black Ownership of EME	Deemed B-BBEE Status Level of Contributor	Number of Points for Preference
less than 51%	4	12
at least 51% but less than 100%	2	18
100%	1	20

or, in respect of Qualifying Small Enterprises (QSEs):

Black Ownership of QSE	Deemed B-BBEE Status Level of Contributor	Number of Points for Preference
at least 51% but less than 100%	2	18
100%	1	20

The total number of adjudication points (N_T) shall be calculated as follows:

$$N_T = P_S + N_P$$

Where: P_S is the number of points scored for price;
 N_P is the number of points scored for preference.

6 Structure of Technical Proposal

a) Signed cover letter by authorised representative

b) Approach and Methodology

Bidder's must demonstrate a comprehensive understanding of the assignment and must include but not limited to:

- Detailed and comprehensive approach and methodology to be adopted for the assignment.
- A clear workplan

c) Background of the Organisation

The tenderer is expected to give background information of their organisation and staff, which must at minimum cover the following:

- A brief company profile overview and with years of experience and location
- Table of similar projects completed, indicating client and contact details, duration and value.

d) Team Skills

The tender should provide the Curriculum Vitae(s) of the Project Manager capabilities listing their qualifications, years of experience and number of projects undertaken.

e) Pricing Proposal/Schedule

The tenderer should provide a pricing table (in the excel format provided with this tender) in both PDF and Excel format.

f) Compulsory statutory returnable documents

The tenderer shall provide with their response the following mandatory documentation attached:

1. Evidence of Tax Compliance: Tenderers shall be registered with the South African Revenue Service (SARS). Each party to a Consortium/Joint Venture shall submit a separate Tax Clearance Certificate.
2. Company registration documents
3. Valid B-BBEE Status Certificate or Sworn Affidavit as prescribed in terms of the B-BBEE Act, of its B-BBEE status level of contribution in accordance with the applicable Codes of good practise as issued by the Department of Trade and Industry.
4. Statement confirming there is no conflict of interest in performing these services.

APPENDIX A Pricing Schedule

Pricing Schedule

Item No.	Location	Type of Survey	Duration		Unit	Quantity	Rate	Amount (Rands)
			Days	Time				
1	Preparation for surveys							
1.1	Start up meeting	-	-	-	Lump sum	1		
1.2	Liaison with City to obtain permission at PTIs and security	-	-	-	Lump sum	1		
1.3	Pre-surveys inspections	-	-	-	Lump sum	1		
1.4	Detailed survey programme.	-	-	-	Lump sum	1		
1.5	Meeting to agree on work plan and programme.	-	-	-	Lump sum	1		
2	PTI surveys							
2.1	Claremont PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
2.2	Wynberg PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
2.3	Nyanga PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
2.4	Hanover Park PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
2.5	Mitchell's Plain PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
2.6	Khayelitsha PTI	PTI survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3	Screen line surveys							
3.1	Jan Smuts Dr - between Govan Mbeki Rd and Blomvlei Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.2	Wetton Rd - between Plantation Rd and Dolphin Way	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.3	New Ottery Rd - between Ottery Rd and Link Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.4	Govan Mbeki Rd - between Heinz Rd and Hanover Park Ave	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.5	Govan Mbeki Rd - between Symphony Way and Ngqwangi Dr	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.6	Stock Rd - between Sheffield Rd and Market Rd	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
3.7	Morgenster Rd - between Weltevreden Pkwy and Jakes Gerwel	Screen line count	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Lump sum	12		
4	Onboard surveys							
4.1	Final no. of routes to be determined	Onboard survey	1 full week, then monthly on 1 weekday Tues/Wed/Thu	05:00-19:00 (14 hours)	Sum Per Route	12		
5	Meetings and reporting							
5.1	Progress meetings	-	-	-	Lump sum	5		
5.2	Final presentation of results	-	-	-	Lump sum	1		
5.3	Report including results	-	-	-	Lump sum	1		
SUBTOTAL								
VALUE ADDED TAX (15%) IF APPLICABLE								
TOTAL SUM								
* The above total will be used for adjudication purposes								

6 The Rates table below is to be populated by the service provider, which will form the basis from which on-going work will be priced over the 3 year period					
	Description				Rate (in Rands)
6.1	Rate per PTI Survey				
		Small	05:00-19:00 (14 hours)	Lump sum	
		Medium	05:00-19:00 (14 hours)	Lump sum	
		Large	05:00-19:00 (14 hours)	Lump sum	
6.2	Rate per Screen Line Survey		05:00-19:00 (14 hours)	Lump sum	
6.3	Resources				
	Project Manager	To attend monthly meetings, progress reporting		Hourly Rate	
	Data Capturer			Hourly Rate	
	Field Surveyor			Hourly Rate	

APPENDIX B Pegasys Standard Conditions of Contract

PEGASYS STANDARD CONDITIONS OF CONTRACT

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1 Definitions

- 1.1 In this Agreement, the following definitions, as capitalised, shall have the meanings assigned to them:-
- 1.1.1 **"Agreement"** means the agreement embodied in this document and its annexes;
 - 1.1.2 **"Business Day"** means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.1.3 **"Calendar Day"** means any day of the week and includes weekends and statutory public holidays in the Republic of South Africa;
 - 1.1.4 **"Commencement Date"** means the date set out in the Services annexure, notwithstanding the Signature Date;
 - 1.1.5 **"Due Diligence Onboarding"** means the Pegasys supplier due diligence onboarding portal as completed and submitted by the Subcontractor to Pegasys;
 - 1.1.6 **"Good Industry Practice"** means the standards, practices, methods and procedures set out in applicable law, the exercise of reasonable skill, care, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced Subcontractor (who is locally engaged in the same type of undertaking and under the same or similar circumstances and the conditions as that in which the relevant matter relates or arises), seeking in good faith to comply with its contractual obligations and to discharge any liability arising under any duty of care that might be owed by that Subcontractor;
 - 1.1.7 **"Insolvency Event"** means when a Party is unable to pay its debts, is sequestrated, becomes insolvent or bankrupt, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances analogous or equivalent to the foregoing;
 - 1.1.8 **"Intellectual Property"** means all intellectual property and similar proprietary rights, howsoever arising in any jurisdiction worldwide, whether registered or not and in whatever form or embodiment, made or discovered solely or in collaboration with others, including (without limitation) patents, inventions, discoveries, industrial designs, design rights, models, topography rights, copyright, moral rights, compilations of data, database schemas, customer lists, records, diagrams, documents, drawings, specifications, schematics, applications, software (including source code and object code), registered and common law trademarks, service marks, trade names, business names, trade dress, domain names, logos, branding, goodwill, performer's rights, plant breeder's rights, trade secrets, confidential information, know-how, business processes, technical data and specifications, customer and supply lists, pricing and cost information, business and marketing plans and proposals, adaptations, improvements and/or derivatives of the foregoing, and in respect of all of the foregoing, any applications (or entitlement to make application) for the protection or registration of the aforesaid rights and all renewals and extensions thereof throughout the world (to the extent possible);
 - 1.1.9 **"Parties"** means the parties to this Agreement as set out in clause **Error! Reference source not found.** and **"Party"** refers to any one of them as the context may indicate;
 - 1.1.10 **"Prime Rate"** means the publicly-quoted prime overdraft rate charged by Absa Bank Limited from time to time, calculated daily and compounded monthly, and in the event of a dispute arising between the Parties as to the aforesaid rate of interest, a certificate issued by any branch manager of the said bank confirming the rate shall be evidence of such rate until proven otherwise (i.e. prima facie proof);
 - 1.1.11 **"Services"** means the services to be rendered by the Subcontractor to Pegasys in terms of this Agreement, as set out in Annexure B;
 - 1.1.12 **"Service Charges"** means the all-inclusive fees and expenses payable by Pegasys to the Subcontractor in consideration for the rendering of the Services, as set out in Annexure B;
 - 1.1.13 **"Signature Date"** means the date of signature by the last Party in time to do so;
 - 1.1.14 **"Term"** means the period commencing with the Start Date and ending with the Termination Date, both dates inclusive; and
 - 1.1.15 **"Termination Date"** means the date, set out in the Services annexure, on which the Subcontractor ends its performance of the Services on the Project.

2 Introduction

- 2.1 Pegasys has entered into an agreement (hereafter **"Principal Agreement"**) with its principal and counterparty thereto (hereafter **"Principal"**) to undertake work in respect of a defined scope of work



(hereafter "**Project**").

- 2.2 Pegasys wish to engage the Subcontractor to render the Services in respect of the Project.
- 2.3 The Parties agree as set out herein.

3 Appointment and duration

- 3.1 Pegasys hereby appoints the Subcontractor to render the Services on the terms and conditions set out in this Agreement. The Subcontractor accepts such appointment.
- 3.2 Pegasys shall pay the Subcontractor the Service Charges in return for the rendering of the Services in accordance with the terms of this Agreement.
- 3.3 This Agreement will come into effect on the Commencement Date and continue for the Term, unless terminated earlier as provided for in this Agreement.
- 3.4 The Subcontractor shall have no expectation of renewal of this Agreement beyond the Term.

4 Subcontractor's general obligations and duties

- 4.1 The Subcontractor shall render the Services and shall in the performance of its obligations under the Agreement:
 - 4.1.1 carry out all its obligations in terms of this Agreement in a professional manner with due care, skill and diligence, in accordance with Good Industry Practice and generally accepted professional techniques and practices applicable to the Services, and in doing so, employ appropriate technology and systems;
 - 4.1.2 provide and furnish all labour, resources, materials, supplies, equipment, ancillary services, facilities, supervision and administration as necessary and required by the Subcontractor for the proper and complete performance of the Services;
 - 4.1.3 if expressly included as part of the scope of the Services, use the assets of Pegasys as may be made available to the Subcontractor from time to time for the purposes of the Services with the utmost care and in accordance with Pegasys' instructions;
 - 4.1.4 perform the Services promptly and without delay, and in any event in accordance with this Agreement and the Services in particular;
 - 4.1.5 provide Pegasys with such information, support and access as Pegasys may reasonably require for the purposes of the Project;
 - 4.1.6 maintain frequent, effective and reasonable communication with Pegasys so as to enable Pegasys to perform its obligations under the Principal Agreement efficiently and expeditiously, which includes (but is not limited to) communication by phone and email, and such other forms of online communication and at such frequencies as directed by Pegasys from time to time;
 - 4.1.7 attend such meetings as may be agreed or otherwise reasonably required by Pegasys at the place designated by Pegasys so as to ensure the successful rendering of the Services and execution of the Principal Agreement;
 - 4.1.8 ensure that the Services are carried out in a timeous, efficient, cost-effective and professional manner;
 - 4.1.9 comply with such other reasonable instructions and specifications in relation to the Services as Pegasys may provide from time to time and observe and comply with all financial, operational and other procedures as required in the delivery of Services;
 - 4.1.10 devote so much of its time, attention and abilities to the Project, as may be reasonably required for the rendering of the Services in accordance with the foregoing requirements; and
 - 4.1.11 always act to support and safeguard the legitimate and lawful interests of Pegasys in any dealings with third parties.
- 4.2 The Subcontractor shall complete the Services within the time period specified by Pegasys from time to time. It will constitute a material breach of this Agreement should the Subcontractor, by reason of its failure to apply the necessary resources or effort, fail to ensure the timeous completion of the Services.
- 4.3 The Subcontractor shall complete the online Supplier Due Diligence Onboarding questionnaire and represents as at the Signature Date and during the Term hereof that the contents of the Due Diligence Onboarding portal are true, accurate and complete, as well as not misleading in any way.
- 4.4 If the Subcontractor is permitted access to Pegasys' electronic communications facilities, the Subcontractor shall at all times adhere to the provisions of Pegasys' applicable policies and procedures, as may be amended from time to time.
- 4.5 To the extent that the provisions of the Occupational Health and Safety Act, No. 85 of 1993 (as amended) may be applicable to the rendering of the Services, the Subcontractor hereby assumes full responsibility



in terms of section 37(2) of the aforesaid act for compliance with all applicable provisions contained therein.

5 Pegasys' general obligations

- 5.1 Pegasys shall:-
 - 5.1.1 pay the Service Charges to the Subcontractor as provided for in Annexure B in consideration for the due performance of the Services; and
 - 5.1.2 provide the Subcontractor with all the information, support and access it reasonably requires to render the Services effectively.

6 Alterations to Services

- 6.1 Pegasys may at any time, by way of written notice effected on the Subcontractor, request a variation to the Services (hereafter "Variation Notice").
- 6.2 The Parties shall correspond and/ or meet within seven (7) Calendar Days of delivery of the Variation Notice to discuss the Variation Notice and, if necessary, to compile and sign an amendment to the Services. Should it be necessary, the Parties shall furthermore agree on an amendment to the Service Charges which amendments shall equitably reflect the change in Services.
- 6.3 The Subcontractor shall have fourteen (14) calendar days to implement the Variation Notice.

7 Service Charges and payment

- 7.1 Pegasys shall become liable for payment of the Service Charges to the Subcontractor within 7 (seven) Business Days of receipt of:
 - 7.1.1 payment from the Principal in terms of the Principal Agreement for the rendering of the Services;
 - 7.1.2 a tax invoice duly rendered in terms of this Agreement from the Subcontractor; and
 - 7.1.3 such supporting information as Pegasys may reasonably request.
- 7.2 Payment will be made by electronic transfer into the Subcontractor's bank account as nominated in Service Charges annexure.
- 7.3 Pegasys shall be entitled to set-off all amounts owing by the Subcontractor to Pegasys, directly or indirectly, arising from or in connection with this Agreement against any fees, expenses or other amounts owing to the Subcontractor, and for that purpose any invoice issued by a person duly authorised by Pegasys shall be prima facie evidence of the correctness of such claim.
- 7.4 The Subcontractor shall not, except where an agreement is concluded in writing to the contrary, be entitled to any additional fees, expenses or other amounts for services rendered hereunder, regardless of the time spent or expenses incurred in rendering such services.

8 Services rendered as independent contractor and tax status

- 8.1 The Services will be rendered by the Subcontractor to Pegasys as an independent contractor. Without limiting the generality of the foregoing, the Parties agree and record that:
 - 8.1.1 the Subcontractor is not an employee for the purposes of the Labour Relations Act, No. 66 of 1995, the Basic Conditions of Employment Act, No. 75 of 1997, the Unemployment Insurance Act, No. 63 of 2001 or any other applicable legislation that is normally applicable to an employer-employee relationship;
 - 8.1.2 Pegasys will not be responsible for any unemployment insurance, medical-aid cover or accident insurance, or any other benefits for the Subcontractor; and
 - 8.1.3 the Subcontractor will be liable for the payment of PAYE (if applicable), income tax or any other tax payable in respect of or arising from the rendering of the Services under this Agreement.
- 8.2 The Subcontractor warrants and represents that it is not a personal service provider (hereafter "PSP") as contemplated in the Fourth Schedule of the Income Tax Act, No. 58 of 1962 and that under no circumstances shall Pegasys become liable for the deduction or payment of any tax (other than value-added tax charges on the Service Charges, if applicable), penalty or interest in respect of the Subcontractor.
- 8.3 The Subcontractor will on or before the Commencement Date supply Pegasys with an affidavit in a format acceptable to Pegasys confirming that it is not and shall not for the Term be deemed to be a PSP.

9 Organisation of staff by Subcontractor



- 9.1 The Subcontractor agrees to use all reasonable efforts to ensure the continuity of its staff assigned to perform the Services.
- 9.2 The Subcontractor shall not assign any of its staff to perform the Services, unless with Pegasys' prior written consent. If Pegasys, in good faith, objects to the proposed assignment of a staff member, the Parties shall attempt to resolve Pegasys' concerns on a mutually agreeable basis. If the Parties are not able to resolve Pegasys' concerns within five (5) Business Days, the Subcontractor shall demobilise that staff member from the project and shall propose to Pegasys the assignment of another staff member with sufficient ability, knowledge and expertise who is acceptable to Pegasys.
- 9.3 Where the performance or conduct of any staff member of the Contactor is not in compliance with the provisions of the Agreement, Pegasys shall be entitled, by giving no less than 48 (forty-eight) hours' written notice thereof to the Subcontractor, to require the Subcontractor to address the issue to the reasonable satisfaction of Pegasys (and the Principal, if applicable). The Subcontractor shall take such steps as may be necessary to give effect to such notice, including promptly addressing the performance or conduct of the relevant staff member or replacing such staff member with another with sufficient ability, knowledge and expertise to perform the Services in accordance with the Agreement.

10 Subcontracting

- 10.1 The Subcontractor shall not be entitled to subcontract, assign or delegate any obligation in terms of this Agreement without the prior written approval of Pegasys, which approval may be conditional on such conditions as Pegasys may impose.
- 10.2 Notwithstanding Pegasys consenting to the subcontracting of any part of the Services by the Subcontractor, the Subcontractor shall remain principally liable to ensure that any of its Subcontractors comply with the obligations of the Subcontractor and promptly provide reasonable assurance in this regard upon request from Pegasys.

11 Conflict of interest and restraint of trade

- 11.1 The Subcontractor shall as a material term of this Agreement maintain at all times the highest degree of good faith towards Pegasys, and shall not engage, either directly or indirectly, in any business or activities which would be or are likely to be in conflict with, detract from or otherwise prejudice the activities and obligations assigned to it in terms of this Agreement, or place Pegasys at jeopardy or give rise to any other adverse event. Instances of such adverse events or conflicts of interest include, but without limitation:
 - 11.1.1 Where the Subcontractor, or any of its employees or shareholders, their family or extended family members, had or has a direct or indirect financial relationship with the Principal. A "financial relationship" for the purposes of this clause 11 includes:
 - 11.1.1.1 serving as employee, Subcontractor or board member;
 - 11.1.1.2 being entitled to receive income, royalties, or payments; or
 - 11.1.1.3 having a significant investment or ownership interest.
 - 11.1.2 Where the Subcontractor, or any of its employees or shareholders, their family or extended family members, is or was able to benefit personally, directly or indirectly, from their relationship with the Principal.
 - 11.1.3 Where the Subcontractor, or any of its employees or shareholders, their family members or extended family members, solicited, influenced or induced the Principal, or offered any personal gift, gratuity, favour, service, monies, discount or other benefit to the Principal, to secure its appointment as Subcontractor under this Agreement.
 - 11.1.4 Where any action by the Subcontractor results in the direct or indirect unlawful hindering of free and open competition.
 - 11.1.5 Where the Subcontractor is, or is suspected of being, in contravention of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.
 - 11.1.6 Where the Subcontractor is, or is suspected of being, involved in any fraudulent, corrupt or unlawful practices.
 - 11.1.7 Where the Subcontractor engages, or is suspected of engaging, in any activity which may harm or impact upon the reputation or goodwill of Pegasys or the Principal.
- 11.2 The Subcontractor shall not for duration of the Term, unless by written agreement with Pegasys, enter into a contract with or provide services to the Principal or any other party that:
 - 11.2.1 are the same or similar to the Services being rendered under this Agreement;
 - 11.2.2 are in conflict with or in opposition to the Services being rendered under this Agreement;



- 11.3 The Subcontractor shall not for the duration of the Agreement employ, or seek to employ, any personnel from Pegasys or the Principal, without express written permission from either Pegasys or the Principal, as the case may be.

12 Warranties

- 12.1 Pegasys warrants to the Subcontractor that:
- 12.1.1 it is a company duly incorporated, validly existing and in good standing;
 - 12.1.2 it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; and
 - 12.1.3 the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorised by the requisite company action.
- 12.2 The Subcontractor hereby warrants that:
- 12.2.1 the execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree, a material default under any material contract by which it or any of its material assets are bound, or an event that would, with notice or lapse of time, or both, constitute such a default;
 - 12.2.2 there is no pending claim, suit or proceeding against or affecting the Subcontractor that would reasonably be expected to adversely affect the Subcontractor's ability to perform and fulfil its obligations under this Agreement;
 - 12.2.3 it shall as part of the Services at its cost obtain, provide and employ all the necessary equipment, licences, permits, infrastructure, means, consumables, materials, and services to perform the Services to the satisfaction of Pegasys in terms of the Agreement;
 - 12.2.4 it has the experience, ability, expertise and means to perform the Services in accordance with Good Industry Practice and the standards of care and diligence customary to the type of services performed in terms of the Agreement; and
 - 12.2.5 it will perform the Services diligently, in a timely manner, and in accordance with any applicable time schedules set forth in the Agreement or relating to the Services.
- 12.3 The Parties record and agree that the warranties set out in clause 12.2 are material to the Agreement.

13 Confidentiality

- 13.1 It is recorded that by virtue of this Agreement, the Subcontractor may have access to Pegasys' confidential information, know-how and trade secrets (hereafter "Confidential Information"), which shall include (without limitation) for purposes hereof:
- 13.1.1 the terms of this Agreement, the Principal Agreement, the identity of the Principal and any disputes arising from this Agreement;
 - 13.1.2 all confidential information of the Principal that the Subcontractor may gain access to, either through Pegasys or the Principal;
 - 13.1.3 processes and techniques, technical detail, method of operating, cost and source of material, pricing and purchasing policies;
 - 13.1.4 the names of and financial arrangements for, suppliers of services and information;
 - 13.1.5 the contractual and financial arrangements between Pegasys and its related and interrelated companies and persons;
 - 13.1.6 the Intellectual Property rights of Pegasys and the Principal; and
 - 13.1.7 other matters which relate to the business of Pegasys and in respect of which information is not readily available in the ordinary course of business to a competitor.
- 13.2 The Subcontractor irrevocably and unconditionally agrees and undertakes: –
- 13.2.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
 - 13.2.2 to protect the Confidential Information by using the same degree of care, but no less than a high degree of care, to prevent the dissemination to third parties or publication of the Confidential Information as the Subcontractor uses to protect its own confidential information of a like nature;
 - 13.2.3 not to use or permit the use of the Confidential Information for any purpose other than for the performance of its obligations under this Agreement and not to use or permit the use of the Confidential Information whether directly or indirectly to obtain a commercial, trading, investment, financial or other advantage over Pegasys or otherwise use it to the detriment of Pegasys or the Principal;
 - 13.2.4 not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of Pegasys and/ or the



Principal, as may be applicable in the circumstances, which consent may be granted or withheld in the sole and absolute discretion of Pegasys and/or the Principal; and

- 13.2.5 to keep all Confidential Information safe and secure and to take such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.
- 13.3 Without prejudice to the other rights of Pegasys, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Subcontractor shall:
 - 13.3.1 immediately notify Pegasys in writing and take such steps as Pegasys may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and
 - 13.3.2 use reasonable commercial endeavours to assist Pegasys in recovering and preventing the use, dissemination, sale or disclosure of the Confidential Information.
- 13.4 In the event that the Subcontractor is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:
 - 13.4.1 advise Pegasys thereof in writing prior to disclosure;
 - 13.4.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
 - 13.4.3 afford Pegasys a reasonable opportunity, if possible, to intervene in the proceedings;
 - 13.4.4 comply with Pegasys' reasonable requests, if allowable, as to the manner and terms of any such disclosure; and
 - 13.4.5 notify Pegasys of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.
- 13.5 On the date of the termination or expiry of this Agreement, the Subcontractor shall forthwith restore to Pegasys and the Principal their Confidential Information and at the request of Pegasys or the Principal, delete and/or destroy all electronic and physical copies of the Confidential Information held by it and confirm such deletion and/or destruction in writing to Pegasys or the Principal, as the case may be.
- 13.6 Notwithstanding clause 13, the confidentiality obligations of the Subcontractor contained in the clause, with respect to each item of Confidential Information, shall commence on the date on which such information is disclosed or otherwise received and shall endure indefinitely.

14 Intellectual property

- 14.1 All right, title and interest in any Intellectual Property created prior to the Signature Date or unrelated to the Services shall vest in the Party responsible for its creation or who is owner thereof.
- 14.2 Unless otherwise agreed in writing and subject to clause 14.1; ownership of all right, title and interest in any Intellectual Property created in the course and scope of rendering the Services ("the Created Intellectual Property") shall vest in the Principal in order for Pegasys to comply with its obligations in terms of the Principal Agreement.
- 14.3 The Subcontractor hereby grants to Pegasys and the Principal an irrevocable, perpetual, royalty-free license to use, disclose, reproduce, publish, distribute and adapt the Intellectual Property used or improved by the Subcontractor in the rendering of the Services.
- 14.4 Neither Party shall have the authority to use the other Party's name, nor any Intellectual Property, save for the purposes of carrying out its duties and obligations under this Agreement, subject at all times to the prior written approval of such Party, as the case may be, and for no other purpose whatsoever.
- 14.5 The right of the Subcontractor to use any Intellectual Property of Pegasys shall:-
 - 14.5.1 be subject at all times to the instructions, standards and specifications of use issued by Pegasys; and
 - 14.5.2 terminate upon termination of this Agreement for whatsoever reason, in which event the Subcontractor shall have no further right, title or interest in the Intellectual Property of Pegasys.

15 Protection of Personal Information

- 15.1 In this clause 15, the following definitions, as capitalised, shall have the meanings assigned to them:-
 - 15.1.1 "Personal Information" has the same meaning as defined in POPI, as may be augmented by applicable Privacy Law;
 - 15.1.2 "POPI" means the Protection of Personal Information Act, No. 4 of 2013, as amended;
 - 15.1.3 "Privacy Law" means POPI and any other privacy law or legislation that may apply to Personal Information under this Agreement; and



- 15.1.4 "Process" has the same meaning as defined in POPI.
- 15.2 The Parties record that in the execution of this Agreement the Subcontractor may Process certain Personal Information of Pegasys and in doing so, needs to comply with applicable Privacy Law. The Subcontractor accordingly undertakes, warrants and represents in favour of Pegasys that it will in the execution of this Agreement:
- 15.2.1 comply with the Subcontractor's legal compliance obligations arising from applicable Privacy Law and where the aforesaid compliance obligations so require, give reasonable assistance to enable Pegasys to comply;
- 15.2.2 take the required level of care and implement appropriate organisational and technical information security measures to procure the security and confidentiality of Personal Information, including (without limitation) as more fully set out in clause 15.7 below;
- 15.2.3 provide reasonable evidence of its compliance with applicable Privacy Law upon request by Pegasys;
- 15.2.4 immediately notify Pegasys in the event of any fact, circumstance or eventuality that will or may have caused a breach of the compliance obligation set out in clause 15.2.1, 15.2.2, or a change in the applicable Privacy Law; and
- 15.2.5 procure that any third party which may be granted access to Personal Information by the Subcontractor complies with the obligations of this clause 15.
- 15.3 Without prejudice to any other right or remedy, the Subcontractor agrees to provide all reasonable assistance to Pegasys in the event of a breach of the security and/or confidentiality of Personal Information, which assistance shall include (without limitation) appropriate steps to comply with the applicable provisions of Privacy Law if Personal Information has been compromised.
- 15.4 Ownership of the rights in and to any data exchanged between the Parties that contains Personal Information shall remain reserved to Pegasys and the Subcontractor shall only use such data strictly for the performance of its duties in terms of this Agreement.
- 15.5 Unless Pegasys' prior written consent is first obtained, the Subcontractor shall not:
- 15.5.1 allow any third party to Process the Personal Information; nor
- 15.5.2 transfer Personal Information outside of the Republic of South Africa.
- 15.6 Unless otherwise required by applicable law, upon termination or expiry of this Agreement, or upon earlier request by Pegasys, the Subcontractor shall return the Personal Information to Pegasys or, at the instance of Pegasys, destroy any record or embodiment of such Personal Information and provide reasonable proof thereof to Pegasys.
- 15.7 The Subcontractor shall in the execution of this Agreement:
- 15.7.1 identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
- 15.7.2 establish and maintain appropriate safeguards against the risks identified;
- 15.7.3 regularly verify that the safeguards are effectively implemented;
- 15.7.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
- 15.7.5 have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations, as well as the data and privacy policy of Pegasys.
- 15.7.6 **Consent:**
- 15.7.6.1 Pegasys may carry out further processing on the Subcontractor's personal information for historical, research and statistical purposes or to comply with Pegasys' legal and contractual obligations. Pegasys will not engage the Subcontractor in any electronic direct marketing unless the Subcontractor has given Pegasys the relevant consent.
- 15.7.6.2 Where necessary, Pegasys may share the Subcontractor's personal information within Pegasys and with other third-party service providers that process the Subcontractor's personal information in conjunction with Pegasys or on Pegasys' behalf. These third-party providers, whether local or trans-border, are contractually obligated to process the Subcontractor's personal information in line with Pegasys' privacy and security policies. Pegasys' third parties may be located within the Subcontractor's country of residence or in another country.
- 15.7.6.3 Pegasys will keep the Subcontractor's personal information only for as long as Pegasys have to in terms of applicable laws and regulations. After this time, the Subcontractor's personal information will be securely destroyed or de-identified.
- 15.7.6.4 To the extent that local legislation permits or if the Subcontractor is a resident of the European Union



or United Kingdom, the Subcontractor have the following rights regarding his/her/its personal information:

- 15.7.6.4.1 To access his/her/its personal information that Pegasys have on record.
- 15.7.6.4.2 To ask Pegasys to correct any incorrect personal information. These requests must be sent to Pegasys in writing.
- 15.7.6.4.3 To ask Pegasys to delete or destroy your personal information. The Subcontractor can also object to Pegasys processing his/her/its personal information. These requests must be sent to Pegasys in writing. However, if the Subcontractor asks Pegasys to do this, Pegasys may have to suspend this agreement for a period of time, or even terminate its relationship with the Subcontractor. The records Pegasys holds are subject to regulatory retention periods, which means Pegasys may not be able to delete or destroy the Subcontractor's personal information immediately upon request. The Subcontractor may also ask Pegasys to port his/her/its personal information to another party in terms of applicable European Union and United Kingdom data privacy legislation.
- 15.7.6.5 If the Subcontractor has a complaint relating to the protection of his/her/its personal information, including the way in which Pegasys collected or processed it, he/she/it must contact Pegasys. If the Subcontractor believes that the complaint was not dealt with satisfactorily, he/she/it may lodge a complaint with the local privacy regulator.
- 15.7.6.6 The Subcontractor agrees that the personal information provided is accurate and complete to the best of his/her/its knowledge and the Subcontractor consents to Pegasys processing his/her/its personal information for this purpose.

16 Good faith

- 16.1 The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations under this Agreement. This implies, without limiting the generality of the foregoing, that they: –
 - 16.1.1 will at all times during the term of this Agreement act reasonably, honestly and in good faith;
 - 16.1.2 will perform their obligations arising from this Agreement diligently and with reasonable care; and
 - 16.1.3 make full disclosure to each other of any matter that may affect the execution of this Agreement.

17 Breach and termination

- 17.1 If a Party:-
 - 17.1.1 breaches any provision of this Agreement and remains in breach for 7 (seven) Business Days after the non-defaulting Party has given written notice to rectify that breach; or
 - 17.1.2 breaches a material term or warranty set out in this Agreement that is not capable of remedy; or
 - 17.1.3 repudiates this Agreement by acting in a manner that evidences the intent not to be bound to this Agreement; or
 - 17.1.4 being the Subcontractor, suffers an Insolvency Event,
 - then subject to the limitations set out in this Agreement, the non-defaulting Party shall be entitled without prejudice to any other rights or remedies which such Party may have in law or otherwise (including the right to claim damages) to sue for the immediate specific performance of any obligations under this Agreement or to cancel this Agreement, which cancellation shall take effect on the giving of the notice of cancellation.
- 17.2 Any overdue payments shall attract interest at the Prime Rate plus 2 (two) percent, calculated daily and capitalised monthly.
- 17.3 Pegasys shall be entitled to terminate this Agreement at any time on notice in writing to the Subcontractor, in which case Pegasys shall pay such portion of the Service Charges as may be equitable as agreed between the Parties in writing, failing such agreement, as determined by an independent expert in terms of clause 21 (expert determination).
- 17.4 In the event of termination of this Agreement howsoever arising:
 - 17.4.1 The Subcontractor shall immediately cease any further use of Pegasys' Intellectual Property.
 - 17.4.2 The Subcontractor shall not disparage or do anything calculated or likely to disparage or damage or refrain from doing anything which has the effect of disparaging or damaging Pegasys' goodwill, name or reputation.
- 17.5 Pegasys shall be entitled to withhold any payment due to the Subcontractor while the Subcontractor remains in breach of any of the terms of this Agreement, including (without limitation) the Subcontractor's



failure to present the affidavit set out in clause 8.3 above.

18 Risk, liability and indemnity

- 18.1 The Subcontractor hereby agrees that it will render the Services of its own volition and entirely at its own risk.
- 18.2 To the fullest extent permitted by law and subject to clauses 18.3 and 18.4 below, the cumulative maximum liability of Pegasys to the Subcontractor, whether in contract or delict (including negligence) for all breaches of this Agreement and all other events, acts, omissions, claims and causes of action of whatever nature and however arising, relating to or arising directly or indirectly from this Agreement, shall be limited, in the aggregate, to 1.5 times the total value of the Service Charges under this Agreement.
- 18.3 To the fullest extent permitted by law and subject to clause 18.4, in no event will one Party be liable to the other for:
 - 18.3.1 any loss of profits, loss of revenue or savings, loss of goodwill, loss of data, or loss of business opportunities, whether direct or indirect; or
 - 18.3.2 any indirect, incidental, special, punitive, exemplary or consequential losses of any kind.
- 18.4 Nothing in this Agreement shall limit or exclude the liability of any Party for any matter to the extent to which such liability cannot be lawfully excluded or limited. Notwithstanding anything to the contrary, nothing in this Agreement shall limit or exclude either Party's liability for:
 - 18.4.1 death or personal injury resulting from negligence; or
 - 18.4.2 any fraud or fraudulent representation or for any sort of other liability which cannot be limited or excluded under applicable law.
- 18.5 Subject to clause 18.6 below, the cumulative maximum liability of the Subcontractor to Pegasys whether in contract or delict (including negligence) for all breaches of this Agreement and all other events, acts, omissions, claims and causes of action of whatever nature and however arising, relating to or arising directly or indirectly from this Agreement shall be limited, in the aggregate, to 1.5 times the total value of the Service Charges.
- 18.6 The limitation of the Subcontractor's liability as set out in clause 18.5 shall not apply to the losses resulting from any breaches by the Subcontractor of its obligations in terms of the Intellectual Property and Confidentiality clauses.
- 18.7 The Subcontractor agrees to take out and maintain insurance against claims arising from this Agreement to the value of not less than the value set out in Annexure B from a reputable insurer and to maintain such cover for a period of at least 6 (six) months after the Term or 6 (six) months after the termination of the Agreement however arising. Pegasys may from time to time request the Subcontractor to provide evidence of its compliance with these obligations, which the Subcontractor shall promptly do.
- 18.8 Should the Subcontractor not strictly comply with clause 18.7 above, Pegasys' insurer may exercise its right of subrogation against the Subcontractor for any claims arising from a breach of the Subcontractor's obligations in terms of this Agreement.

19 Penalties

- 19.1 In the event of the Principal imposing a penalty on Pegasys in terms of the Principal Agreement which penalty is either wholly or partially as a result of the Subcontractor's negligence or for any reason whatsoever over which the Subcontractor had reasonable control, Pegasys will be entitled to claim the penalty from the Subcontractor in proportion to the Subcontractor's contributory conduct. Where the penalty is wholly attributable to the conduct of the Subcontractor, whether negligently or otherwise, Pegasys may claim the full penalty amount from Subcontractor, and the amount of the penalty shall not exceed the penalty imposed by the Principal on Pegasys.

20 Dispute resolution

- 20.1 Save as expressly otherwise provided for in this Agreement, any dispute arising out of or pursuant to this Agreement, its termination or cancellation, shall at the request of any Party be finally resolved in accordance with the Expedited Rules of the Arbitration Foundation of South Africa (hereafter "AFSA"), by an arbitrator or arbitrators agreed to between the Parties and failing such agreement within 3 (three) Business Days of a request therefor by any Party, appointed by AFSA, by means of arbitration to be held in Cape Town.
- 20.2 Notwithstanding the provisions of clause 20.1, any Party may approach a court on an urgent basis for interim relief or for such other relief not capable of being obtained by way of arbitration proceedings in



general.

- 20.3 If any dispute arises between the Principal and Pegasys (the "Principal Dispute") affects or concerns the Services, Pegasys may, by notice to the Subcontractor, request that any dispute under this Agreement related to the Principal Dispute (the "Related Dispute") be dealt with jointly and in accordance with the dispute resolution clause in the Principal Agreement. In connection with such joint dispute, the Subcontractor shall be bound in the same manner as Pegasys by any award or judgment made in terms of such joint dispute resolution.

21 Expert determination

- 21.1 In the event of any dispute arising from this Agreement, which is expressly reserved for expert determination, such dispute shall be referred for expert determination in accordance with the terms set out in this clause 21.
- 21.2 The Parties shall refer the dispute to an independent third-party expert agreed between the Parties or failing agreement within 7 (seven) Business Days from the date any Party called for expert determination in writing, an expert nominated by AFSA which in its reasonable discretion is suitably qualified given the nature of the dispute.
- 21.3 The expert shall, as a precondition to his or her appointment, undertake to the Parties in writing to keep confidential the dispute and any information submitted to him or her pursuant to the process of expert determination, except if disclosure is essential for application in judicial action, in which case the expert shall notify the Parties in writing as soon as possible of the intention to make such disclosure, unless such notification itself would be unlawful in terms of a binding ruling of a competent court or regulatory body.
- 21.4 The appointment shall stipulate that the expert shall endeavour to make his or her determination as soon as reasonably possible but not longer than within 14 (fourteen) Business Days from their appointment, unless the expert is of the view in its reasonable discretion that the determination requires additional time, in which case the expert may extend the aforesaid time, having due regard however to the detriment being suffered by any of the Parties.
- 21.5 The Parties agree that the expert shall be in control of the process of expert determination, setting timelines and being entitled to call for further information from any Party before making his or her determination.
- 21.6 The Parties undertake to give their full and timely co-operation to the expert to enable him or her to make a timely determination.
- 21.7 The appointment shall require the expert to make a written determination, acting as expert and not as arbitrator.
- 21.8 The decision of the expert (including his or her decision with regard to the proportions in which the Parties shall bear the costs of his or her determination) shall be in writing and in the absence of manifest error be final and binding on the Parties and be deemed to form part of this Agreement.
- 21.9 If the expert becomes incapable or unwilling to give his or her determination in accordance with the provisions of this clause 23, the expert's appointment may be terminated, and a new expert appointed following the same procedure.

22 Force majeure

- 22.1 Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves:-
- 22.1.1 that the failure was due to an impediment beyond its reasonable control;
- 22.1.2 that it could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and
- 22.1.3 that it could not reasonably have avoided or overcome the impediment or at least its effects.
- 22.2 Relief from liability for non-performance by reason of the provisions of this clause 24 shall commence on the date upon which the Party seeking relief gives written notice of the impediment relied upon (hereafter "Impediment") and shall terminate upon the date upon which such Impediment ceases to exist, unless the Agreement is terminated in accordance with clause 22.4.
- 22.3 The Party suffering the Impediment shall take all reasonable steps to mitigate the adverse effects arising from the Impediment and to procure the same as may be required from third parties to the extent within its control.
- 22.4 In the event that the Impediment cannot or will not be resolved within 30 (thirty) days from when it arose, then the Parties will within 10 (ten) Business Days negotiate with one another in good faith and agree on a substantially equivalent agreement in writing that removes the Impediment, failing which any Party may terminate the Agreement on notice in writing. Service Charges payable under this Agreement shall be



equitably adjusted to reflect those terminated Services, provided that the Subcontractor shall not have the right to any additional payments from Pegasys for costs or expenses incurred by the Subcontractor as a result of any Impediment. Any dispute pertaining to the aforesaid adjustment that cannot be resolved between the Parties within a period of 7 (seven) Business Days shall be resolved by binding expert determination in terms of clause 21. In the event that the ruling of the expert pursuant to the foregoing expert determination is not more than 10% (ten percent) of the amount tendered by Pegasys, then the Subcontractor shall pay the costs of expert determination.

23 Audit rights

- 23.1 Upon Pegasys' request, the Subcontractor shall allow Pegasys and/or auditors selected by Pegasys to audit the Subcontractor's books and records to the extent necessary to verify any amounts paid or payable by Pegasys hereunder, and otherwise to determine compliance by the Subcontractor with its obligations under the Agreement.
- 23.2 Such auditors shall be provided with full access to the Subcontractor's premises, and to such information, books and records as may be necessary to confirm the accuracy of the Subcontractor's invoices, documents, and other information supporting such invoices.

24 Notices and address for service

- 24.1 The Parties choose as their address for service and/or receipt of notices (i.e. *domicilia citandi et executandi*) for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses set forth in this Agreement, provided that any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and delivered to the relevant Party's physical address or email address (hereafter each a "Notice Address").
- 24.2 Any Party may by notice in writing to the other change its Notice Address, provided that in respect of its physical address, such address should be in the Republic of South Africa and not a forwarding address. The change shall become effective on the 7th (seventh) Business Day from the deemed receipt of the notice in accordance with the clauses under this heading.
- 24.3 Unless the contrary is proved by a recipient, any notice to a Party to a Notice Address on Business Days:
 - 24.3.1 delivered by hand to a responsible person at its physical address shall be deemed to have been received on the day of delivery; or
 - 24.3.2 sent by email shall be deemed to have been received on the date the message left the sender's email system, as may be optionally evidenced by a delivery or read receipt emanating from the recipient's email system.
- 24.4 In the event a facsimile or email notice to a Party is delivered later than 17h00 in the recipient's time zone, delivery shall be deemed to have taken place on the next Business Day.
- 24.5 Notwithstanding anything to the contrary, a written notice or communication actually received by a Party's nominated reference or functionary in this Agreement shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at a Notice Address.

25 Interpretation

- 25.1 Definitions in this Agreement shall bear the same meanings in any annexes to this Agreement, unless and to the extent that such annexes contain conflicting definitions, in which case the latter will apply in such annexes.
- 25.2 Definitions added in the body of this Agreement (including by using words such as "hereafter") shall be interpreted as if contained in clause 1 (definitions).
- 25.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it was a substantive provision in the body of the Agreement.
- 25.4 Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 25.5 When any number of days is prescribed in this Agreement, it shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the following Business Day.
- 25.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words



shall prevail.

- 25.7 Unless the context shows otherwise, words importing:
- 25.7.1 the singular shall include the plural;
 - 25.7.2 the masculine gender shall include the feminine and neutral genders; and
 - 25.7.3 natural persons shall include juristic persons, partnerships and any other bodies corporate, and in all cases, the other way around (i.e. vice versa) shall likewise apply.
- 25.8 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 25.9 The rule of interpretation that the contract shall be interpreted against the Party responsible for the drafting and preparation thereof (the contra proferentem rule) shall not apply.
- 25.10 Unless the context shows otherwise, a clause which includes a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it (i.e. the application of the eiusdem generis rule of interpretation is excluded).
- 25.11 The termination or expiry of this Agreement shall not affect those provisions which expressly provide that they will continue to operate after such termination or expiry, or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide for this.
- 25.12 In the event that any right or remedy is expressly stated to be available to any of the Parties in particular circumstances, such right or remedy shall be available without prejudice to or limitation of any other right or remedy that may be available to that Party in such circumstances, unless the contrary is expressly stated.

26 General

- 26.1 **No assignment.** No Party is entitled to transfer any right or obligation in terms of this Agreement, including transfer by way of assignment, sale, merger, consolidation, operation of law or otherwise, without the prior written consent of the other.
- 26.2 **Applicable law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa. Unless and to the extent expressly agreed otherwise in this Agreement, the Parties agree that the High Court of South Africa, Western Cape Division, shall have exclusive jurisdiction to hear any disputes that may arise from this Agreement.
- 26.3 **Independent advice.** Each of the Parties acknowledges that it has been free to secure independent legal advice and that it has either taken such independent legal advice or dispensed with the necessity of doing so at its own risk.
- 26.4 **Binding on successors-in-title.** This Agreement shall be binding on and enforceable against any successor-in-title or other legal representatives of the Parties as fully and effectually as if they had signed this Agreement in the first instance.
- 26.5 **Independent Subcontractors.** The Parties agree and acknowledge that the relationship between the Parties is that of independent Subcontractors. This Agreement shall accordingly not create a partnership or joint venture, nor constitute any Party as the other's agent, partner, employee or representative. The Subcontractor agrees that it is responsible for ensuring compliance with all labour and employment laws with regards to its staff.
- 26.6 **No representation.** No Party shall be entitled to represent any other Party, unless and only to the extent expressly provided otherwise in this Agreement.
- 26.7 **Third party rights.** Unless expressly otherwise agreed herein, this Agreement is not intended to be for the benefit of (and shall not be enforceable by) any person other than the Parties.
- 26.8 **Whole Agreement.** This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof. None of the Parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.
- 26.9 **Variation.** No addition, change, supersession or cancellation of this Agreement, nor any waiver of any right arising from this Agreement, shall be of any force or effect unless reduced to writing and signed by the Parties with a wet ink signature.
- 26.10 **Relaxation.** No failure or delay on the part of any Party to enforce its rights shall in any circumstances be construed as a consent, election, limitation or waiver of rights by such Party.
- 26.11 **Severability.** Should any provision be found by a court of competent jurisdiction or regulatory authority to be illegal, invalid or unenforceable for any reason, the Parties will as soon as reasonably possible negotiate with one another in good faith in order to agree on a substantially equivalent, legally compliant alternative



provision, failing which:-

- 26.11.1 if the provision is material, the Agreement shall be cancelled, and Parties shall be restored to their previous position as if the Agreement had not been concluded (the status quo ante); or
- 26.11.2 if the provision is not material, the offending provision shall be severed from the Agreement and the remainder of the Agreement shall remain binding on the Parties,
- 26.11.3 it being agreed between the Parties that notwithstanding anything to the contrary, a dispute as to whether a provision is material or not shall be referred for binding determination in terms of clause 22 above.
- 26.12 **Cost of legal services.** Each Party will pay its own costs and expenses incurred by it in connection with the negotiation, drafting, re-drafting, entering into and implementation of legally binding documents. Should any Party instruct attorneys to take any steps to enforce any rights in terms of this Agreement arising from a breach thereof, then the breaching Party shall be liable for all legal and incidental costs, including legal fees on the attorney and own client scale, collection commission and tracing charges.
- 26.13 **Authority to sign.** The person signing this Agreement on behalf of any one of the Parties expressly warrants his or her authority to do so. The signature of witnesses is not a precondition to the validity of this Agreement.
- 26.14 **Signature in separate counterparts.** This Agreement may be executed in separate counterparts which together shall constitute one and the same Agreement as at the Signature Date.



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