

**AGREEMENT  
(Cover Page)**

This Agreement (“**Agreement**”) is made and entered into between **ONTEC SYSTEMS (PTY) LTD** (“**Ontec**”), and the “**MUNICIPALITY**” specified on this Cover Page. This Agreement consists of this Cover Page, the Terms and Conditions applicable to the Services (and one or several Service Schedules) (Attachment A), the Terms and Conditions applicable to the Software License attached as Attachment B, the Terms and Conditions applicable to the Products attached as Attachment C, the Terms and Conditions applicable to the Maintenance attached as Attachment D and the General Terms and Conditions attached as Attachment E. Capitalized terms not defined on this Cover Page will have the meanings set forth in the Attachments.

<b>Municipality</b>	<b>Drakenstein Municipality</b>
<b>Tender/RFP</b>	INC 4/2023: The Provision and Administration of a Prepaid Electricity and Water Vending System for the Period 01 July 2024 to 30 June 2029
<b>Contract Date</b>	1 July 2024
<b>Effective Date</b>	30 June 2029
<b>Term</b>	60 months from Contract Date (end date 30 June 2029)
<b>Fee</b>	All fees and prices are exclusive of VAT.

Items	Deliverables	Quantity	Restrictions	Fees
	Services			
1	Hosting	1	<ul style="list-style-type: none"> <li>• Hosting Service for Ontec Vending System</li> <li>• Connectivity to Ontec’s GPRS APN’s, Hosted Environment and vending service network</li> </ul>	Included
2	Vending	1	Third party vending solution and service with the following vending channels: <ul style="list-style-type: none"> <li>• Internet Channel</li> <li>• Point-of-Sale Channel (National and direct retailers)</li> <li>• ATM/AVM Channel</li> <li>• Cell phone Channel</li> </ul>	As per Tender Document
3	Communication	1	Monthly data link Communication cost	Included
4	Data Management and TID Implementation Services	1	Detailed meter audits and TID Implementation	As per Tender
5	Professional Services	1	<ol style="list-style-type: none"> <li>1. Training on System and Revenue Administration</li> <li>2. Implementation services as described in the SoW to be agreed on between the Parties</li> </ol>	Included
	Software			
6	Ontec Vending System	1	Hosted term (60 months) license	Included
	Maintenance			
7	Technical Support and Maintenance	1	As described in Attachment D	Included

	<b>DRAKENSTEIN MUNICIPALITY</b>	<b>ONTEC SYSTEMS (PTY) LTD</b>
<b>Name</b>	TBC	Mr. Damian Padachi
<b>Title</b>	Municipal Manager	Chief Executive Officer
<b>Signature</b>		
<b>Date</b>		
<b>Registered Address</b>		Tygerberg Park, 163 Uys Krige Drive, Platteklouf, PO Box 4059, Tygervalley, 7536
<b>Notice Address</b>		Same as above.
<b>Registered nr / Registered capital</b>		1999/017764/07

**ATTACHMENT A.1  
TO THE AGREEMENT**

**A.1.1: TERMS AND CONDITIONS APPLICABLE TO THE PROFESSIONAL SERVICES**

1. **INSURANCE.** Ontec will, during the period provides Professional Services under this Agreement and the SOW, maintain in full force and effect, Liability Insurance in accordance with its Insurance Group Policies. Upon written request, Ontec will provide Certificates of Insurance evidencing the coverage described in this Section.

2. **LIMITED WARRANTY.** Ontec warrants to Municipality that it will perform the Professional Services with reasonable care and in a diligent and competent manner. Ontec's sole obligation and Municipality's exclusive remedy in connection with a breach of the foregoing warranty will be to correct or re-perform the non-conforming Professional Services. If Ontec, in its sole discretion, is unable to correct or re-perform non-conforming Professional Services, its sole obligation will be to refund to Municipality the amount paid for such Professional Services. Municipality must report any deficiencies in the Professional Services to Ontec in writing within 60 days of performance to receive the warranty remedies described herein.

3. **DELAYS.** Municipality will fulfil its responsibilities set forth on the SOW in a timely and professional manner. Municipality will further, upon request from Ontec, provide reasonable assistance to Ontec in connection with Ontec's performance of the Professional Services.

If Ontec's performance under the SOW is delayed on account of Municipality's failure to timely complete its responsibilities in accordance with this Agreement and the SOW, or as otherwise agreed by the parties, Ontec will have the right to (a) issue an invoice and collect respective payments at the time Ontec has fulfilled its Professional Services requirements (with the exception of any requirements that Ontec is unable to fulfil on account of Municipality's failures); and (b) include in such invoice(s) an additional fee for costs and expenses incurred by Ontec (invoiced at Ontec's then-current hourly rates) on account of Municipality's failures.

4. **TARIFE.** The tariffs are outlined and set as per the approved tariffs of the Municipality".

5. **ACCESS.** Municipality agrees to provide Ontec with access to its facilities and personnel as reasonably required for Ontec to provide the Professional Services. All employees and representatives of Ontec that perform Professional Services in Municipality's premises will comply with reasonable guidelines pertaining to employee conduct, including Municipality safety procedures and policies, provided to Ontec by Municipality. Neither Party will require releases or waivers of any personal rights from representatives of the other in connection with visits to its premises, nor do the parties agree not to plead any such releases or waivers in any action or proceeding.

[End of the Terms applicable to the Professional Services]

**ATTACHMENT A.2  
TO THE AGREEMENT  
BUSINESS SERVICES**

**SERVICE SCHEDULE A.2.1: DESCRIPTION OF THE HOSTING SERVICES**

**1. Hosting Services.**

Ontec will, subject to the terms and conditions of the Agreement, provide the following Hosting Services to Municipality:

- Provision of on-line hosted infrastructure with redundancy (including a dedicated backup server, disaster recovery and on-line MPLS, GPRS, 3G, HSDPA, Mobile Broadband and VPN connectivity) for Ontec Vending System;

**2. Implementation Process and Schedule.**

The Hosting Services shall be provided by Ontec for an initial term ("Initial Term") and shall run for duration of the agreement .

The implementation of the Hosting Services shall be defined in and governed as per point 2) of Attachment A.1.

**3. Municipality Obligations.**

Municipality shall provide Ontec with:

- (i) all necessary co-operation in relation to this Agreement; and
- (ii) all necessary access to such information as may be required by Ontec;
- (iii) to render the Services, including but not limited to Municipality Data, security access information and software interfaces to Municipality's other business applications.

Municipality shall provide personnel assistance as may be reasonably requested by Ontec from time to time. Municipality shall carry out its obligations set out in this Agreement or in any of the Attachments in a timely and efficient manner.

Ontec's provision of the Hosting Services described in Section 1 above is conditioned upon Municipality's timely fulfilment of the foregoing obligations and deliverables.

**4. Permitted Users.**

(a) the Municipality shall maintain a written list of current Permitted Users of the Software; and commits to ensure to not allow any unauthorised person to access the hosted system for any reasons. In case the Municipality fails to comply with this obligation, this will entail a breach in terms of the Confidentiality clause (as per Article 7 of Attachment E) and a breach in terms of Article 4 of the Attachment E.

(b) the Municipality shall ensure that each Permitted User keeps a secure password for his use of the Software, that such password is changed no less frequently than every 3 months and that each Permitted User keeps the password confidential.

(c) Ontec may audit the Software regarding the name and password for each Permitted User, at Ontec's expense.

(d) if such audit reveals that passwords have been provided to individuals who are not Permitted Users, and without prejudice to Ontec's other rights, the Municipality shall promptly disable such passwords and shall not issue any new passwords to such individuals, without prejudice of Ontec's rights established in point (a) above.

**5. Fees.** Hosting Services Fees are detailed on the in terms of the tender. Fees shall be paid in the currency and within the term specified.

**6. Additional Terms.**

**6.1 Software License**

The terms and conditions applicable to the use of the Software by the Municipality are specified in Attachment B.

**6.2 Maintenance Window**

From time to time, Ontec may perform application and server maintenance or scheduled downtime (“**Maintenance Window**”) using reasonable procedures to minimize service outages to the Services.

**6.3 Technical Support**

Ontec, or a third-party agent of Ontec, will provide Technical Support services and will assist the Municipality with problems arising from Municipality’s access and use of the Hosting Services. Hours of operations for Technical Support are described in Attachment D. Technical Support does not include any onsite services, product training or assistance with hardware or software questions or issues unrelated to access and use of the Hosting Services.

**6.4 Service levels**

KPI	Method
The Hosted Services will be available 98% (ninety-nine-point eight percent) of the operating hours 24 x 7 in any month	Monthly statistics, clearly indicating total down time perservice with detail of each down time event.

Relevant period: Unless stipulated otherwise below, all Service Levels will be determined with reference to performance during a calendar month.

**6.5 Security**

Ontec will use commercially reasonable efforts to maintain industry standard (and update the same to keep pace with changes in industry practices) physical and data security systems to prevent unauthorized access to the Ontec servers that make available the Hosting Services.

**ATTACHMENT A.2**  
**TO THE AGREEMENT**  
**BUSINESS SERVICES**

**SERVICE SCHEDULE A.2.2: DESCRIPTION OF THE VENDING SERVICES**

**1. Vending Service.**

Ontec will, subject to the terms and conditions of the Agreement, provide the following Vending Service to Municipality:

- Provision of third-party vending solution with the following vending channels over the contract period:
  - Internet Channel
  - Point-of-Sale Channel (Direct and National retailers)
  - ATM Channel
  - Cell phone Channel

**2. Definition**

The definitions used in this Appendix have the meaning here below described:

**“EFT” or “Electronic Funds Transfer”** means the electronic funds transfer for settlement between various account drawers and beneficiary payees.

**“Collector”** means the various entities with whom Ontec has contracted, or will in the future contract, by signing a Collector Agreement.

**“Collector Agreement”** means the agreement entered into by and between the Collector(s) and Ontec regulating the use and implementation of the Ontec System.

**“Collector’s Nominated Account”** means an account in the name of the Collector, whereby the Receiver has permission to pay into the account, vending fees and bank charges for money collected on behalf of the Receiver, in terms of this agreement in paragraph 4.

**“Collector system(s)”** means systems that connect to the Ontec system via the Ontec Receiver Technical Specification.

**“Day”** means business day, excluding public holidays and weekend.

**“Ontec System”** means the software application “electronic payment system” under which Ontec owns rights which facilitates the collection and switching of Receiver payments from the Collector(s) nominated bank account(s) to the Receiver and which is downloaded onto the Payment System in accordance with the Ontec Receiver Technical Specification.

**“Ontec Receiver Technical Specification”** means the technical specification and any amendments thereto from time to time to which the Receiver shall adhere and with which it shall comply, details whereof shall be furnished to the Receiver by Ontec prior to or on signature hereof and amendments thereto as soon as reasonably possible.

**“Ontec Receiver Number”** means a number or series of numbers allocated to the Receiver and reflected by it in accordance with the format specified in the Ontec Receiver Technical Specifications, and in terms of which it is described more fully.

**Payments**” means any payments, made using the Ontec System, including, but not limited to pre-payments, post-payments, or account payments.

“**Payment System**” means the Collectors system(s), being electronically linked to the Ontec System (e.g., Point of sales)

“**Receiver**” means the Municipality, as defined in the Agreement.

“**Receiver’s Nominated Account Number**” means an account in the name of the Receiver, whereby Ontec has permission to pay into the account, money collected on behalf of the Receiver, in terms of this agreement.

“**Transaction Data**” means data described in detail in the Ontec Receiver Technical Specifications.

“**Transaction Deposit**” means the reference to the payment made by Collector into the Ontec’s Control Account.

“**Ontec’s Control Account**” being part of the Ontec System means an internal Ontec account, on which is reflected all Transaction Deposits, and from which instructions are issued to debit the Collector(s) Nominated Account(s) via EFT with amounts due in terms of this Agreement by the Collector and to credit these amounts via EFT to the Receiver’s Nominated Bank Account and to Ontec where appropriate.

### **3. Scope**

The present Attachment A.2 establishes the terms and conditions of the vending service to be provided by Ontec to the Receiver. This will include the establishment and management of a vending footprint to include direct vendors, 3<sup>rd</sup> party collectors, dispensing of electricity prepaid tokens, the receiving of payments for electricity pre-paid tokens and the settlement of these payments into the Receiver’s Bank Account

### **4. Vending Fees and bank charges**

ONTEC will furnish the Receiver an invoice based on the previous month’s commercial agreement. The invoice should be paid by the Receiver within 30 days from the date of invoice into Ontec’s Nominated Account.

### **5. Receiver’s obligation**

The Receiver hereby agrees and undertakes:

5.1 to use the Ontec System to collect Payments;

5.2 to comply with and adhere to the Ontec Receiver Technical Specifications;

5.3 to deal with Receiver’s customer queries and to advise the Receiver’s customers not to raise queries with any Collector or with Ontec, but to direct such queries to the Receiver; and

5.4 should a Collector instruct Ontec to reverse a Payment, which payment has in error been transferred via EFT to the Receiver (e.g.: that the error has arisen due to a technical problem or a duplication of Transaction Data resulting in the Receiver receiving a payment to which it is not entitled), Ontec shall immediately initiate a reversal or refund with the Receiver. The Receiver undertakes to do whatsoever may be necessary to ensure in such successful reversal or refund by hereby authorising Ontec to debit the Receiver’s Nominated Bank Account via EFT with the appropriate amount;

5.5 to reimburse Ontec, in respect of payments made to the Collector by a Receiver’s customer using a credit or debit card;

5.6 to reimburse Ontec, in respect of cash payments made to the Collector

5.7 to immediately reimburse Ontec, in respect of any cheques returned to the Collector by its banker for any reason whatsoever or in respect of any credit or debit card reversal, the amount of said cheque returned, credit or debit card reversal and the bank charges relating thereto;

5.8 to reimburse Ontec, upon notification by Ontec, of any amounts owing in terms of the provisions of paragraphs 5.5, 5.6 and 5.7 above, by allowing Ontec to debit the Receivers Nominated Bank Account via EFT with the appropriate amount; and

5.9 to reimburse the bank charges as specified in Annex A2.1 of the Agreement.

## **6. Obligation and Duties of Ontec**

Ontec hereby agrees and undertakes:

6.1 to approach where Ontec agrees, any prospective Collector introduced by the Receiver with a view to signing them up as an Ontec Collector;

6.2 to ensure that all new Collectors sign a Collector agreement and in so doing adhere to certain risk and management criteria and standards set by Ontec;

6.3 to notify the Receiver of Ontec's selection of existing national branded Collectors prior to or on signature hereof and of all new national branded Collectors appointed by Ontec within 30 days of any such appointment being made, on the agreement that Ontec will discuss the appointment of new national branded Collectors with the Receiver before allowing such Collector to perform vending on behalf of Ontec;

6.3.1 manage the levels of sub-aggregation and to ensure that Ontec's Collectors are informed and adhere to the conditions as set by the receiver from time to time.

6.3.2 It is Ontec's prerogative to add and remove Collectors as deemed required. Ontec will however notify the receiver of a required decision in this regard and manage the impact it may have on the receiver and its consumers.

6.4 to furnish the Receiver by no later than close of business on the 07th day of each month, with a consolidated report of all transactions that occurred in the preceding month, detailing *inter alia*:

6.4.1 details of Receiver Payments transmitted via EFT from The Collectors Nominated Bank Account to the Receivers Nominated Bank Account.

6.4.2 transaction volumes.

6.4.3 those aspects of the Transaction Data detailing consolidated data pertaining to all the previous month's transactions.

6.5 to provide the Receiver with the Ontec Receiver Technical Specifications if required.

6.6 to ensure, subject to the provisions of paragraph 5.7 above, that each Payment collected by a Collector is deposited via EFT transfer into the Receiver's Nominated Bank Account within 3 days after a Collector has receipted such Payment.

6.7 to ensure, subject to the provisions of paragraph 5.4 above and if the aforesaid period of 3 days falls on a weekend or a public holiday, that the deposit referred to in paragraph 6.6 above is done on the next business day thereafter.

6.8 to immediately terminate an Ontec Collector Agreement with any Collector that has been liquidated, voluntarily or compulsory, and whether such liquidation is provisional or final;

6.9 to make available to the Receiver daily those aspects of the Transaction Data detailing payments received.

## **7. Method of Payment**

7.1 Upon receiving from the Collectors, Ontec shall consolidate the Transaction Data and transmit it to the Receiver in such manner and by such method as is elected by the Receiver, in accordance with the manner and method specified in the Ontec Receiver Technical Specification.

7.2 The consolidated total of all Receiver's customer payments reflected in the Transaction Data, and collected by the respective Collectors, shall be transferred daily, 3 days after the sale was affected, by Ontec to the Receiver via EFT and by debiting the respective Collectors Nominated Bank Accounts and crediting the Receivers Nominated Bank Account.

7.3 The Receiver hereby agrees and undertakes to allow Ontec access to the Receiver's Nominated Bank Account via EFT in order to pass a credit of the consolidated totals and to pass the debits of the Revenue Management Fees.

## **8. Late payment**

8.1 In the event Ontec is unable to deposit Payments via EFT on time in terms of the provisions of paragraphs 7.1 and 7.2 above or at all, except in case of Force Majeure (as defined in the Agreement), Ontec shall, subject to compliance with paragraph 8.2 below, be entitled to an automatic extension of 7 (seven) working days within which to effect such deposit; provided that Ontec shall only be entitled to such an extension 4 times per annum; and provided further that Ontec shall be liable to the Receiver for interest on said deposit, calculated at the prime bank overdraft rate charged by the South African Standard Bank Limited from time to time, reckoned from the Day the deposit should have been done, until the Day on which it is done. Any such interest owing shall be calculated by Ontec and paid to the Receiver.

8.2 In the event that Ontec is unable to deposit Payments on time, or at all, Ontec shall immediately upon becoming aware of this fact, notify the Receiver in writing thereof, together with a written explanation, therefore.



It is specifically recorded and acknowledged by Ontec that this notification is essential as the Receiver might otherwise disconnect or discontinue services to the Receiver's customers.

## **9. Ontec Collector Agreement**

The Receiver acknowledges that it is acquainted with the provisions of the Ontec Collector Agreement.

## **10. Use of other payment systems**

10.1 Should the Receiver wish to use another payment system it may do so provided it notifies Ontec with at least 30 days' notice prior to commencing use of said other payment system; provided further that Ontec shall not be responsible or liable for any problems that might occur in the proper functioning of the Ontec System as a result of the Receiver using such other system.

10.2 Unless otherwise provided for herein the Receiver agrees and expressly undertakes that it shall not under any circumstance whatsoever deal directly with any Ontec Collector.

10.3 The Receiver agrees and expressly undertakes that it shall not under any circumstances do anything or cause anything to be done which would jeopardize the relationship between Ontec and its respective Collectors and furthermore agrees that breach of this sub-paragraph would be a breach of this Agreement as per the terms of Article 4.2 of Attachment E below.

## **II. SPECIFIC TERMS AND CONDITIONS – PREPAID PAYMENTS**

The below terms and conditions would apply if the Receiver will be using Ontec System for collection of prepayments.

### **1. Specific definitions**

**"Ontec prepaid"** means a software application on which Ontec owns certain rights, being a by-product of Ontec, in terms of which payment for prepaid coupons is switched between the Receiver and the Collector.

**"Prepayment/Prepaid Coupon"** means a coupon purchased by a Receiver's Municipality entitling him to prepaid services/utilities from the Receiver.

**"Receiving Terminal"** means a terminal from which a Prepaid Coupon is issued which is interfaced with Ontec Prepaid, and which is owned/managed by an Ontec Collector.

**"Prepaid Payment"** means a payment made by a Receiver's Municipality when purchasing a Prepaid Coupon.

**"Receiver's Customer"** means a person who has been issued a Receiver Account, or a person who purchases Prepaid Coupons.

### **2. Ontec Prepaid**

The Receiver wishes to implement Ontec Prepaid as part of the integrated service provided by Ontec, and Ontec agrees to provide such a service.

### **3. Receiver's Obligation**

3.1 The Receiver shall comply with the Ontec Receiver Technical Specifications insofar as they relate to the implementation and installation of Ontec Prepaid and installation of Receiver Receiving Terminals.

3.2 Any cost incurred in complying with paragraph 3.1 above shall be borne by the Receiver.

3.3 The Receiver shall allow Ontec electronic access to such of the Receiver's prepayment data and information as is required by Ontec to operate the Ontec Prepaid system.

**ATTACHMENT A.2**  
**TO THE AGREEMENT**  
**BUSINESS SERVICES**

**SERVICE SCHEDULE A.2.3: DESCRIPTION OF DATA MANAGEMENT AND TID IMPLEMENTATION SERVICES**

The following Data Management and TID Implementation Services will be provided by Ontec to the Municipality according to the following restrictive list of activities. Any other activity related to Data Management and TID Implementation Services will be out of the scope of this Agreement:

**1. TID Implementation Services**

Ontec will do everything in its control to ensure the Municipality STS prepaid meters are successfully converted from KRN1 to KRN2 before the TID Rollover Deadline of November 2024. In its sole discretion, Ontec can use one or all of the below strategies in the execution of the TID implementation.

- a) First vend option, as the consumer purchases electricity tokens, they will be issued with key change tokens in addition to the credit token, whereby the consumer will have to insert the key change tokens into the meter before inserting the credit token
- b) TID Rollover Audits, Ontec's (or Ontec's Subcontractor's) staff would have access to generate TID rollover key change tokens from a mobile application on the Hand-Held Unit (HHU) while doing inspections and audits in the field.

In the event where there is no access gained to the meter, the meter will be revisited again and after two visits of not gaining access, the meter will be reported and handed over to the municipality for action.

**2. Sweep Audits**

Alongside TID rollover, sweep audits will be conducted by Ontec's (or Ontec's Subcontractor's) staff. Field sweep audits of a defined set of pre-paid meter installation points located within a neighbourhood or suburb, a visual inspection of the meter, recording important information related to each endpoint (linked to a spatial GPS coordinate), capturing photo of installation, seal meters with colour-coded barcode seals and importing the information into a central repository.

Ontec's (or Ontec's subcontractor's) staff will conduct a full visual field audit in line with relevant Revenue Protection standards to confirm meters are technically configured and in working order. Ontec will ensure that all audited meters (tampered or not) are sealed according to the agreed sealing policy.

This Audit will include, but not limited to:

- a) Inserting of TID (Token Identifier) roll-over key change tokens into meters.
- b) Sweep/ Visual inspection of visited meters
- c) Targeted audit based on the customer purchase patterns
- d) Recording tamper fines for approval
- e) GPS co-ordinates of audited meters.
- f) Capturing of customer details
- g) Provision of audit findings for each visited meter

In consultation with the Municipality, Ontec will capture the following information:

- a) GPS Waypoints (latitude, longitude);
- b) Customer details;
- c) POD details (address information);
- d) Meter details (Type, Manufacturer, reading);
- e) Inspector details;
- f) Audit details (Time and findings);
- g) Seal details;

Ontec will return all findings to confirm if meters have been tampered with; meters are faulty and needs to be replaced; meters are not correctly sealed in accordance to the relevant sealing procedure and standards. In the event where there is no access gained to the meter, the meter will be revisited again and after two visits of not gaining access, the meter will be reported and handed over to the municipality for action.

**3. Reporting**

Ontec will provide regular reports for operational oversight, along with a Monthly Management report providing an overview of the TID rollover progress and audit findings. On request, the report can also be customised to suite the operational needs.

The Monthly Management report may include the following information:

- a) Snapshot of total audits
- b) Completed key changes (Successful TID rollover)
- c) Failed key change with possible reasons
- d) Audit Findings Breakdown
- e) Conclusion and Recommendations

#### **4. Remedial Action.**

Remedial meter actions linked to the findings of the sweep audits, specifically meter disconnections and/or re-installation, removal of tampers or bridges are out of scope. Meters that are found to be tampered with, faulty and/or require disconnection will be reported to the municipality for final action.

#### **5. Project Resources**

The following professional resources will be supplied by Ontec during the operational phase of the project:

- a) Project Manager – located at the Ontec Johannesburg office  
Responsible for the Coordination of initial project and system setup and operations, incorporating both the field work and the back-office functions.
- b) Operations Manager – Located at the Ontec Johannesburg Office  
Responsible for the entire operation management including;
  - a. Coordination & assurance of TID rollover and meter audits
  - b. Coordination & assurance of data input and analysis
  - c. Regular KPI reports to the Municipality
  - d. Management of all field staff
  - e. Coordination of the field activities with project management office and the business intelligence office
- c) Team Leader  
Responsible for coordination of in-field teams
- d) Residential meter audit and remedial action teams  
Responsible for the audit of pre-paid meter installations with an approved electronic GPS equipped Hand Held Units.

**ATTACHMENT A.2**  
**TO THE AGREEMENT**

**A.2.4: TERMS AND CONDITIONS APPLICABLE TO THE BUSINESS SERVICES**

**1. Business Services.** Ontec will make available to Municipality the services described in this Attachment that is identified on the Cover Page and that is separately agreed upon and signed by the parties (the “**Business Services**”).

**2. Use of Business Services.** Unless otherwise specified in this Attachment, Municipality may access and use the Business Services solely for its own benefit. Municipality may access and use the Business Services solely in accordance with the terms of this Agreement, the end user technical documentation provided with the Business Services (“**Documentation**”) and any use restrictions designated in this Attachment. Use of and access to the Business Services is permitted only by employees of Municipality specified as per Attachment A.2.1 (“**Permitted Users**”). If Ontec provides passwords to access the Business Services, Municipality will require that all Permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Municipality will be responsible for any and all actions taken using Municipality’s accounts, passwords and required segregation of duties. Municipality may permit its independent contractors and consultants who are not competitors of Ontec (“**Contractors**”) and Affiliates (as defined below) or third party beneficiaries (strictly within the limitations defined in this Attachment) to serve as Permitted Users, provided Municipality remains responsible for compliance by each such Contractor, Affiliate or third party beneficiaries with all of the terms and conditions of this Agreement and any such use of the Business Services by such Contractor, Affiliate or third party beneficiary is for the sole benefit of Municipality, unless otherwise explicitly permitted in this Attachment. “**Affiliate**” means any entity under the control of Municipality where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity.

**3. Use Restrictions.** Municipality will not: (a) rent, lease, copy, provide access to or sublicense the Business Services to a third party; (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or APIs to the Business Services or any software utilized thereof, except to the extent expressly permitted by applicable law (and then only upon advance notice to Ontec); (c) modify the Ontec Property or any Documentation, or create any derivative product from any of the foregoing; (d) remove or obscure any identification, proprietary, copyright or other notices contained in Business Services (including any reports or data printed from the Business Services); (e) incorporate the Ontec Property into any other offering (whether software as a service or otherwise); or (f)

publicly disseminate information or analysis regarding the performance of Business Services.

**4. Business Service Warranties.** Ontec warrants that, during the term of the Agreement, the Business Services provided hereunder will be performed substantially in accordance with this Attachment.

**5. Regulatory compliance/Data Protection**

5.1 If Ontec processes any Municipality Data (as defined below) on Municipality’s behalf when performing its obligations under this Agreement, the Parties record their intention that Municipality shall be the data controller and Ontec shall be a data processor and in any such case:

(a) Municipality shall ensure that Municipality is entitled to transfer the relevant Municipality Data to Ontec so that Ontec may lawfully process the personal data in accordance with this Agreement on Municipality’s behalf;

(b) Ontec shall process Municipality Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by Municipality from time to time; and

(c) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Municipality Data or its accidental loss, destruction or damage.

5.2 Ontec will process Municipality data only under the Municipality’s instructions from time to time and solely for the purpose of processing, distributing and displaying the Municipality Data as authorized by the Municipality. Municipality remains responsible for the compliance with its own regulatory obligations. Municipality shall be considered as the data controller pursuant to the applicable data protection laws and shall comply with the obligations inherent with that status, including but not limited to the obligation to obtain the consent of the persons whose personal data may be processed as part of the Business Services. For the avoidance of doubt, Ontec does not determine the purpose and means of the data processing.

5.3 “Municipality Data” means any business information, personally identifiable Municipality information, or other data of any type that Ontec may receive in connection with providing the Business Services, including without limitation data that Municipality inputs or provides to Ontec, or that is collected on behalf of Municipality for inputting into the Business Services. Municipality will ensure that Municipality’s use of the Business Services and all Municipality Data is at all times compliant with Municipality’s privacy policies and all applicable local, state, federal and international law, regulations and

conventions, including, without limitation, those related to data privacy, international communications, and the exportation of technical or personal data. Municipality is solely responsible for the accuracy, content and legality, reliability, integrity and quality of all Municipality Data. Municipality represents and warrants to Ontec that Municipality has sufficient rights in the Municipality Data to authorize Ontec to process, distribute and display the Municipality Data as contemplated by this Agreement and the functionality of Business Services, and that the Municipality Data does not infringe the rights of any third party nor does its use as contemplated herein violate any applicable laws, rules or regulations.

5.4 Rights on Municipality Data. As between the parties, Municipality will retain all right, title and interest (including any and all intellectual property rights) in and to the Municipality Data as provided to Ontec. Subject to the terms of this Agreement, Municipality hereby grants to Ontec (and its subcontractors) a non-exclusive, worldwide, royalty-free right to use, copy store, transmit, modify, create derivative works of and display the Municipality Data solely to the extent necessary to provide the Business Services (and the Municipality warrants it can provide such rights). Municipality further grants to Ontec (and its subcontractors) a non-exclusive, worldwide, royalty-free right to use, copy store, transmit, modify, create derivative works of, and display the Municipality Data on a de-identified aggregate basis for Ontec's internal and/or other commercial purposes deemed appropriate by Ontec (and the Municipality warrants it can provide such rights).

5.5 Municipality Requirements. Municipality will (a) designate a technical focal point with the appropriate functional knowledge and skills to work with Ontec during the activation of the Business Services; (b) be solely responsible for creation, updating, deletion, control, and support of Municipality Data; and (c) be solely responsible for providing the data used in the creation of Municipality Data.

5.6 Ontec warrants to the Municipality that it will process Municipality Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments valid at the time of the signature of this Agreement. Any modification on the above that may substantially impact the provision of the Business Services will be discussed and negotiated between the Parties.

5.7 Ontec guarantees that, having regard to the state of the technological development and the cost of implementing any measures, it will:

- (i) take appropriate technical and organizational measures against the unauthorized or unlawful processing of Municipality Data and against the accidental loss or destruction of, or damage to, Municipality Data to ensure an appropriate level of security. In the event of any loss or damage to Municipality Data, Municipality's sole and exclusive remedy shall be for Ontec to use reasonable commercial endeavours to restore the lost or damaged Municipality Data from the latest back-up of such Municipality Data maintained by Ontec in accordance with its archiving procedure. Ontec shall not be responsible for any loss, destruction, alteration or disclosure of Municipality Data caused by any third party (except those third parties sub-contracted by Ontec to perform services related to Municipality Data maintenance and back-up), and
- (ii) take reasonable steps to ensure compliance with those measures.

5.8 Municipality acknowledges that Ontec is reliant on the Municipality for direction as to the extent to which Ontec is entitled to use and process Municipality Data. Consequently, Ontec will not be liable for any claim brought by any person whose personal data may be processed as part of the Business Services, arising from any action or omission by Ontec, to the extent that such action or omission resulted directly from the Municipality's instructions.

[End of the Business Services Terms]

## ATTACHMENT B

### TO THE AGREEMENT

#### **TERMS AND CONDITIONS APPLICABLE TO THE SOFTWARE LICENSE**

##### 1. DEFINITIONS

**"Municipality Materials"** means information, content, data, Personal Information, equipment, software and other materials that Municipality makes available to Ontec for use in connection with this Agreement.

**"Delivery"** with respect to Software, means that Ontec has either made the Software available to Municipality via electronic means or has provided the Software to a carrier on physical media for delivery to Municipality.

**"Documentation"** means the standard printed or electronic materials provided by Ontec to Municipality that describe the functional, operational or performance capabilities of the Software.

**"Endpoint"** means (a) a physical device (e.g., a meter, encoder-transmitter-receiver or other measuring or monitoring device) that is the source of data used in the Software application; or (b) a virtual device created in the Software application to simulate the existence of a physical device. An example of a virtual device that is an Endpoint would include a single electricity meter that serves 10 apartment units. If the consumption data from that electricity meter was divided between the 10 units (e.g., on the basis of square footage) and used in the Software application as if that single electricity meter was actually 10 electricity meters, it would count as 10 Endpoints. Further, each account, whether active or inactive, in the application that is associated with a single physical device counts as a separate Endpoint.

**"Personal Information"** means any information provided by Municipality to Ontec (a) that identifies or can be used to identify, contact, or locate the person to whom such information pertains; or (b) from which identification or contact information of an individual person can be derived.

**"Production Environment"** means a single instance of the Software used in an environment other than a Test Environment.

**"Software"** means software identified on the Cover Page that is owned by Ontec and any modifications, corrections, improvements or enhancements thereto provided by Ontec that are designated by Ontec as being licensed to Municipality under this Agreement.

**"Specifications"** means the applicable published Ontec functional specifications for an item of Software.

**"Test Environment"** means a single instance of the Software used solely for test purposes to verify the correct installation, operation, and integration of the Software and/or components.

**"Third Party Software"** means software that is not owned by Ontec but is identified on the Cover Page as being provided by Ontec.

**"Use"** means the ability to run, execute, display and, subject to the restrictions described below, duplicate and distribute internally.

**"Warranty Period"** with respect to an item of Software, means the term of this agreement (36 Months).

##### 2. LICENSE AND RESTRICTIONS

2.1 **Grant to Municipality.** Subject to Municipality's strict compliance with the terms and conditions of this Agreement, Ontec grants Municipality a nonexclusive, non-transferable, term, object code license to allow Authorized Users to access the Software through the Hosting Service and to Use the Software and Documentation solely for Municipality's internal business purposes.

2.2 **Use Restrictions.** Municipality will not (a) violate any Additional Restrictions set forth on the Cover Page; (b) modify or create any derivative work from the Software; (c) include the Software in any other software; (d) use the Software to provide processing services to third parties or on a service bureau basis; (e) subject to Section 2.3, reverse assemble, decompile, reverse engineer or otherwise attempt to derive source code (of the underlying ideas, algorithms, structure or organization) from Software; (f) use the Software to process business information concerning customers derived through merger, asset acquisition or other entity combination; or (g) circumvent or attempt to circumvent any technological mechanism (such as digital rights management technology) that is designed to restrict access or limit copying and this is included in or applied to any Software.

2.3 **Reverse Engineering.** Municipality may not reverse engineer any Software, except to the extent that this restriction is expressly prohibited by applicable law.

2.4 **Copy and Installation Restrictions.** Except as expressly permitted in this Agreement, (a) the Software may not be installed on a computer that is not part of the Municipality's computer network; (b) Municipality may not copy the Software other than to make a machine readable copy or copies for disaster recovery or archival purposes only, strictly within the limits of what is expressly permitted by applicable law; and (c) installation of the Software will be limited to one Production Environment. Municipality may only make copies of Documentation as reasonably necessary for the use contemplated herein. Municipality will not remove any copyright, trademark or confidentiality notices placed on the Software and Documentation and will reproduce all such notices when making copies of the Software and/or Documentation.

2.5 **Reporting.** Municipality will provide Ontec with an annual report, in a form and delivery manner designated by Ontec, specifying the number of Endpoints utilized in connection with the Software and such other information that may be requested by Ontec regarding Municipality's use of the Software. In addition, Municipality will promptly notify Ontec of any increase in the number of Endpoints.

**2.6 Software Updates.** Ontec will provide updates and error corrections to the Software in accordance with the terms established in Attachment D. In any event, Municipality will direct any and all maintenance requests to Ontec or an Ontec Affiliate. For clarity, except for repair or replacement in accordance with this Agreement or any applicable Maintenance Agreement, Ontec reserves the right to designate enhanced, modified, new release and other versions of the Software as being subject to additional or separate license terms, including additional License Fees.

**2.7 Grant to Ontec.** Municipality grants Ontec a non-exclusive license to use, copy, modify and create derivative works of the Municipality Materials during the Term and solely in connection with Ontec's fulfilment of its obligations under this Agreement.

### **3. LIMITED SOFTWARE WARRANTY**

**3.1 Warranty and Remedy.** Ontec warrants to Municipality that the Software will perform substantially in accordance with the Specifications for the duration of the Warranty Period. Ontec does not warrant that the Software will operate uninterrupted or error-free. Ontec's sole obligation and Municipality's exclusive remedy in connection with the breach of a warranty provided under this Section will be for Ontec to repair or replace the non-conforming Software. If Ontec, in its sole discretion, is unable to repair or replace non-conforming Software, Ontec will refund the amount paid to Ontec for such Software on a pro-rata basis calculated over a three (3) year period (e.g., if Municipality paid R10,000 for the Software and used it for three (3) years the refund amount would be R4,000). Software that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty

period or thirty (30) days, whichever is longer. Municipality's license to Software for which it has received a refund hereunder will terminate upon its receipt of a refund.

**3.2 Exclusions.** The warranty provided in this Section will not apply to the extent that non-compliance relates to or is the result of (a) use of the Software in combination with software, equipment or communications networks not provided by Ontec, (b) a change to the Software's operating environment not made or authorized by Ontec, (c) Municipality's failure to install any correction or enhancement provided by Ontec, (d) viruses introduced through no fault of Ontec, (e) any use of the Software not authorized by this Agreement. The warranty provided in this Section is valid only if Municipality has complied with the terms of this Agreement the Municipality has paid to Ontec the applicable Software License Fees and will be void to the extent of any modification to the Software not authorized by Ontec.

**3.3 Third Party Software and Documentation.** Ontec will provide the Third-Party Software, if any, identified on the Cover Page and any related documentation. Any Third-Party Software and related documentation provided by Ontec in connection with this Agreement will be subject to a separate license agreement between the Municipality and the third-party software provider and will be subject to separate third-party warranties, if any. Municipality agrees that it will be bound by and will abide by all such third-party software licensing arrangements. Municipality is solely responsible for acquiring any software that is required to use the Software or Third-Party Software.

[End of License terms]

**ATTACHMENT C**  
**TO THE AGREEMENT**  
**TERMS AND CONDITIONS APPLICABLE TO PRODUCTS**

**1. PRODUCTS.** In consideration of the related Fees to be paid by the Municipality, Ontec shall supply to the Municipality the Products specified in the Cover Page.

**2. DELIVERY.**

2.1 Products shall be deemed to be delivered and the title and risk of loss or damage passed to the Municipality once the products are placed at the Municipality's disposal. Products delivered in conformity with the purchase order accepted by Ontec shall not be returned or exchanged.

2.2 Except where otherwise agreed in writing by the Ontec and the Municipality, any delivery period quoted by Ontec is a best estimate only and Ontec shall not be liable to the Municipality for any failure to deliver on a particular date.

**3. LIMITED PRODUCT WARRANTY.**

For any third-party products provided by Ontec ("Third Party Products"), Ontec is not the manufacturer and makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, quality, performance or non-infringement of the third-party equipment. With respect to Ontec, Municipality purchases Third Party Products "as is." Third Party Products shall be subject to any warranties provided by the Third-Party Products manufacturer. Modifications may void or otherwise limit any warranty applicable to Third Party Products. Ontec agrees to act as a liaison with the Third-Party Products providers in regard to the Third-Party Products warranties, if any, and will use commercially reasonable efforts to assist Municipality in enforcing those warranties.

[End of the terms applicable to Products]



## ATTACHMENT D

### TO THE AGREEMENT

#### **TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE**

#### **1. Technical Support**

##### **a. Support Services.**

Ontec will make available qualified technical representatives by telephone, email or other remote means during its then-current normal business hours to assist Municipality Coordinators (defined below) with the operation of and answer questions related to the software (the "**Software**") and equipment (the "**Equipment**") identified on Annex D.1 (together, the "**Products**"), which are covered by the services described herein (the "**Maintenance**"). Such technical support shall include, but is not limited to, troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Products. Ontec's current Support Services contact and support hours are described in AnnexD.2. Municipality will not use Support Services technical representatives in lieu of having qualified and trained support personnel of its own.

##### **b. Language.**

Ontec customer support through telephone, email and web support interfaces will primarily be delivered to Municipality in English language.

##### **c. Field Support.**

Upon mutual agreement of the Parties, Ontec will dispatch support personnel to Municipality's location to provide technical support.

In case of Field support, the Municipality agrees to provide Ontec with access to its facilities and personnel as reasonably required for Ontec to provide the Maintenance Services. Ontec will recharge to the Municipality any expenses or supplementary expenditures due to any access denied, prevented or postponed.

##### **d. Categorisation of Incidents and Fault Logging**

The Parties shall categorise all incidents / problems relating to the availability of the Hosted Services as Severity 1, 2 or 3 as defined in Annexure 2.

1. Ontec's Support Hotline, in consultation with the Municipality, will assign an appropriate Severity Level (1, 2, 3), based on a reasonable analysis of the business impact on Municipality's operation.

2. If any disagreement on Severity Level exists, Ontec's Support Hotline will treat the issue with the Municipality designated Severity Level, however this will also be escalated to the Support Services Manager of Ontec to conduct any further negotiations with the

Municipality about the designated Service Levels, if necessary.

3. Any change in Severity Level of an open issue should be advised promptly by the Municipality to the Ontec's Support Hotline. Ontec shall use reasonable effort to meet the following response times. Response times are different from Resolution of a problem, which might require additional time to be performed, depending on the identification of the problem by Ontec.

##### **e. Municipality Coordinator and Service Request**

Municipality will identify no more than 2 supervisory level employees (each a "Municipality Coordinator") for each Ontec product line, to serve as administrative liaisons to Ontec for all matters pertaining to the Maintenance Services for such product line. Municipality Coordinators shall report problems with Software or Equipment (each such report, a "Service Request") as soon as practicable for entry into Ontec's support tracking system. Before a Municipality Coordinator interfaces with Ontec, he or she will attend training sessions offered by Ontec to ensure that he or she is (a) knowledgeable about the operation of the Products, and (b) qualified to perform problem determination and remedial functions with respect to the Products. Such training sessions will be at Ontec's then-current rates. Municipality will be solely responsible for all travel and other expenses incurred in connection with such training sessions. If Ontec notifies Municipality that additional training is necessary, Municipality will promptly ensure that all applicable employees and/or Municipality Coordinators receive such training

##### **f. Exclusions.**

The Support Service on the Products described herein does not include:

i. damage due to external causes, including accident, abuse, misuse, inadequate maintenance, problems with electrical power, acts of God; usage not in accordance with product instructions or in a configuration not approved by Ontec;

ii. service (including installation or de-installation) not performed or authorized by Ontec;

iii. use of parts, configurations or repair depots not certified by Ontec;

iv. Municipality's failure to perform Municipality responsibilities in accordance with this Agreement, including caring for Products in accordance with user documentation; or

v. Products for which Ontec has

discontinued the Support Services.

## 2. Software Maintenance

### a. Definitions.

"*Business hours*" means the hours during which Ontec will perform the Maintenance (as described in Annex D.2).

"*Error*" means a failure of the Ontec product to substantially comply with the applicable published Ontec specifications.

"*Fix*" means a correction of an Error, including a work-around, in order for the Ontec Software to function in accordance with the applicable published Ontec specifications.

"*Improvement*" means an update, modification, enhancement, extension, new version (regardless of name or number), new module, or other change to the Ontec Software that is developed or otherwise provided by Ontec.

"*Ontec Software*" means Software identified on Annex D.1 as "Ontec Software."

"*Software Release*" means a collection of Fixes or Improvements made available to Ontec customers (either via physical media or download access).

### b. Fixes.

Ontec shall make commercially reasonable efforts to provide Fixes for Errors identified in a Service Request.

### c. Interoperability.

Ontec makes no representation or warranty regarding the ability of the Ontec Software to interoperate with third party hardware or software other than software or hardware identified as compatible with the Ontec

Software in Ontec's published documentation for such Ontec Software (the "**Documentation**").

### d. Exclusions.

Ontec shall have no obligation to Municipality to the extent any Ontec Software is adversely affected by: (i) use of the Ontec Software in combination with other software, equipment or communications networks that are not referenced in the Documentation; (ii) any modification to the software or operating environment that is made other than through the fault of Ontec, after the Effective Date; (iii) the use of a version of the Ontec Software that is not supported by Ontec; (iv) Municipality's failure to implement a Fix provided by Ontec; (v) the operation or maintenance of the Ontec Software other than through the fault of Ontec; (vi) viruses introduced through no fault of Ontec; (vii) use of the Ontec Software other than as permitted by Ontec; or (viii) Municipality's failure to perform Municipality responsibilities in accordance with this Agreement.

Any Service Request based on any exclusion will be performed, at Ontec discretion, at Ontec's then-current hourly rates.

## 3. Support for Third Party Products

For any Product identified on Annex D.1 as a "Third-Party Product" (each, a "**Third Party Product**") Ontec shall provide first-tier Municipality support by handling all initial Municipality inquiries, identifying the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Ontec shall make commercially reasonable efforts to facilitate Municipality's receipt of maintenance and support for such Third-Party Products consistent with the maintenance terms identified on this Section. Ontec's sole obligation with respect to maintenance and support for Third Party Products shall be as set forth in this Section.

Annex D.1

1. Products

<b>Ontec Equipment</b>	Hosted Hardware and Networks
<b>Ontec Software</b>	Ontec Vending System
<b>Third Party Products (if Applicable)</b>	N/A
<b>Monitoring of the performance of de system</b>	As described in point 5 below

2. Hourly rates applicable for the Field Support as defined in point 1c (Annex D.2)
3. Special Conditions for the Maintenance on the Equipment: Not Applicable
4. Loan of Equipment: Not Applicable
5. Monitoring of system performance
  - a. System covered: Hosted Infrastructure
  - b. Performance: 98% Uptime of Vending Service.
  - c. Other specific conditions: Monthly system usage and activity report
6. Currency and Payment term: According to the currency and term indicated in the Cover Page or in the invoice.

## Annex D.2

### 1a Support Hours:

For the purpose of categorizing delivery of the services documented herein, the following schedules will be in effect. All times are GMT+2 for this contract:

Business Hours: 08:00 to 17:00, Monday through Friday  
Overtime Hours: 17:00 to 08:00, Monday through Thursday  
17:00 to 24:00, Fridays and days preceding Ontec holidays  
Weekend/Holiday Hours: 00:00 to 24:00 Saturday and Sundays  
00:00 to 08:00 Mondays and days following an Ontec holidays  
00:00 to 24:00 Ontec holidays

Ontec Holidays for the following year will be listed and communicated at Municipality's request during each year of this agreement.

### 1b Support Services contacts:

During Service Hours, Ontec will make available an Ontec's Support Hotline for questions, problem reporting, and service requests. Ontec's Local Support Hotline number is +27219281800 and is staffed during Business Hours. In addition to Ontec's Support Hotline, Municipality personnel may contact Ontec via Ontec's Support e-mail address: [servicedesk@ontec.co.za](mailto:servicedesk@ontec.co.za)

### 1c Incident response categories:

Ontec shall respond to such problems in the manner and within the time periods set out in the table below:

Severity	Response	Description
Severity 1 "Show Stopper"	1 (one) hour response with status update every hour.	Shall be a Fault which makes the System totally unusable;
Severity 2	4 (four) hour response with status update every 2 (Two) hours (business)	Shall be a Fault which has a material effect upon the functionality, accuracy, or performance of any function of the System upon which the Municipality relies for the efficient conduct of the relevant part of its business however does continue in a restrictive fashion.
Severity 3	These calls are to be managed according to completion dates as agreed between the parties.	Minor loss of service, impact is inconvenience

Annex D.3

**Additional ICT Terms and Conditions:**

1. Change Management Process
  - a. All Prepayment System changes must be approved by the Municipality prior for it to be actioned by Ontec.
  - b. All approvals must be in writing.
2. User Account Management
  - a. All Prepayment System User Account requests must be approved by the Municipality prior for it to be actioned by Ontec.
  - b. All approvals must be in writing.
  - c. Ontec will have quarterly user account reviews with the Municipality.
3. Backups
  - a. Ontec will provide frequent back up results to the Municipality.
4. Disaster Recovery
  - a. Ontec will share with the Municipality the annual results of the Disaster Recovery simulation tests.

[End of the additional ICT Terms and Conditions]

**ATTACHMENT E  
TO THE AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

**1. OWNERSHIP.** Except for the limited access and use rights described in this Agreement, Ontec and its licensors and suppliers own and retain all right, title, and interest in and to the following (collectively, "**Ontec Property**"): (a) the Services and all other software, hardware, technology, Documentation, and information provided by Ontec in connection with the Services; (b) all ideas, know-how, and techniques that may be developed, conceived, or invented by Ontec during its performance under the Agreement; and (c) all worldwide patent, copyright, trade secret, trademark and other intellectual property in and to the property described in clauses (a) and (b) above.

**2. PAYMENTS AND TAXES**

**2.1 Payments.** Ontec will invoice the Fees set forth in the Cover Page/Award letter/Tender Document. Municipality shall pay all the amounts invoiced within thirty (30) days from the date of the applicable invoice. All amounts payable by Municipality will be made without setoff or counterclaim and without deduction or withholding. No endorsement or statement on any check or payment or in any letter accompanying a check or payment elsewhere will be construed as an accord or satisfaction. Unless otherwise agreed in writing by the parties, all Fees are due and payable in ZAR.

**2.2 Taxes.** All Fees and any other amounts payable by Municipality are exclusive of applicable taxes and duties, including VAT and applicable sales tax. Municipality will provide any information reasonably requested by Ontec to determine whether Ontec is obligated to collect VAT from Municipality, including Municipality's VAT identification number. If any deduction or withholding is required by law, Municipality will notify Ontec and will pay any additional amounts necessary to ensure that the net amount that Ontec receives, after any deduction and withholding, equals the amount Ontec would have received if no deduction or withholding had been required. Additionally, Municipality will provide Ontec with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority. If Municipality is a tax-exempt entity, or pays taxes directly to the state, Municipality will provide Ontec with a copy of its tax exemption certificate or Direct Pay Permit, as applicable, upon execution of this Agreement.

**3. TERM AND TERMINATION**

**3.1 Term.** The term of this Agreement is set forth on the Cover Page of the Service Level Agreement.

**3.2 Termination for Cause.** To the maximum extent permitted by applicable law, either party may terminate this Agreement (including all related Attachments) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within 30 days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding,

or if any such proceeding is instituted against that party (and not dismissed within 60 days thereafter).

**3.3 Effect of Termination.** Upon any termination of this Agreement, Municipality will immediately cease any and all use of and access to the Services and delete (or, at Ontec's request, return) any and all copies of the Documentation, any Ontec passwords or access codes and any other Ontec Confidential Information in its possession. Municipality acknowledges that, unless provided otherwise in a specific Attachment, following termination, Municipality will have, except as retained by Municipality on reports provided to Municipality as part of the Services, no further access to any Municipality Data input into the Services, and that Ontec may delete any such data at any time.

Termination of this Agreement is not an exclusive remedy and the exercise of either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**3.4 Transfer of Undertakings.** The parties agree that this Agreement or the termination of this Agreement shall not be regarded as a transfer of undertakings causing a transfer of employees (the "**Transfer of Undertakings**"). However, in the event that this Agreement is regarded as a Transfer of Undertakings under applicable law, the parties agree, to the maximum extent permitted by applicable law, to apply the provisions set forth in this section to the potential or actual transfer of employees or subcontractors (the "**Transferring Personnel**") from one party (the "**Transferor**") to the other party (the "**Transferee**") or their sub-contractors: (a) The Transferee shall indemnify and hold harmless the Transferor and their sub-contractors from and against all claims, liabilities, demands, proceedings, damages, costs, charges and expenses suffered or incurred by the indemnified party arising directly or indirectly from, or in connection with (i) any claim by any Transferring Personnel in respect of any factor matter to the extent that such claim concerns or arises from the employment after the point in time at which they transfer under Transfer of Undertakings; and (ii) any claim by any employee arising from the resignation of such person connected with detrimental changes to their working conditions or contract of employment which occur, will occur or they anticipate will occur after the transfer of his employment.

(b) During the six months prior to a potential transfer, the Transferor shall (i) provide upon written request and within reasonable time information concerning Transferring Personnel reasonably required for the purpose of establishing the terms and conditions, the seniority and start date of the Transferring Personnel and assessing any payroll or other similar costs at the written request of the Transferee, (unless doing so would place the Transferor in breach of any legislation including, without limitation, any applicable data protection legislation), and (ii) not appoint potential

Transferring Personnel (whether on a full time, part time, temporary or permanent basis) or dismiss, or alter any material terms of employment (except rates of remuneration pursuant to the normal pay review process) of any Transferring Personnel without prior written consent from the Transferee (such consent shall not to be unreasonably withheld or delayed) except where necessary to comply with service obligations under existing agreements or, in the case of redeployment, where redeployment was agreed to with the relevant employee prior to such six month period as part of that employee's personal career development or in a case of gross misconduct.

(c) In the event that the Transferring Personnel is employed by the Transferor's sub-contractors, then the Transferor shall use its reasonable endeavours to ensure that such sub-contractor complies with the provisions contained in this section.

Both parties shall observe and comply with any other mandatory obligations under the applicable laws and regulations regarding the Transfer of Undertakings regulation or law and shall indemnify the other party for any claims, liabilities, demands, proceedings, damages, costs, charges and expenses suffered or incurred due to their failure to do so.

In the event that the provisions of this section contradict relevant laws and regulations regarding the Transfer of Undertakings, the parties undertake to negotiate in good faith with each other and any related sub-contractors to seek and agree mutually acceptable solution.

Indemnities provided for under this section are conditioned upon (i) written notice by the requesting party, as soon as reasonably practicable, of any claim which it believes is covered by an indemnity under this section (including material details of the claim); and (ii) the right of the requested party to obtain express authority to conduct or control the defence, settlement or other resolution of any claim in respect of the matter at hand (subject to proper consideration by the requested party of any reasonable needs of the requesting party), to obtain information and assistance as reasonably required from the requesting party, and the requesting party's abstaining to admit or settle any claim without the prior written consent of the requested party.

3.5 Service Transition. Ontec shall use commercially reasonable efforts to assist Municipality to transition to a new service provider. The Services Transition shall be billed by Ontec on a time and material basis pursuant to Ontec's then-current standard rates or on fees to be mutually agreed upon by the parties.

3.6 Survival. The following Sections will survive any expiration or termination of this Agreement: Ownership, Municipality Data, Payments (solely to the extent amounts remain owing), Effect of Termination, Transfer of Undertakings, Services Transition, Survival, Warranties and Limitations, Indemnification, Confidentiality and General Terms. Except for fees that remain due pursuant to the content of an Attachment, any Attachment will not survive the expiration or termination of this Agreement.

#### **4. WARRANTIES AND LIMITATIONS**

4.1 Mutual Warranties. Ontec and Municipality

each hereby represents, warrants, and covenants to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; and

(b) it will comply with all applicable laws and regulations that may be in effect during the term of the Agreement as they apply to such party's obligations under the Agreement.

4.2 Limitation of Warranty. THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES PROVIDED BY ONTEC HEREUNDER. ONTEC SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES OR ANY OTHER ITEMS OR SERVICES COVERED BY OR FURNISHED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY (A) OF MERCHANTABILITY; (B) OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. ONTEC DOES NOT WARRANT THAT ANY ITEMS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

4.3 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR LIABILITY ARISING UNDER SECTIONS RELATED TO PROPERTY, INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION, INDEMNIFICATION OR FOR FRAUD, WILFUL MISCONDUCT, OR AMOUNTS OWED HEREUNDER:

(A) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ANY LOSS OF DATA, LOSS OF REPUTATION, LOSS OF PROFITS OR REVENUE IN CONNECTION WITH THE AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

(B) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY UNDER THE AGREEMENT, FOR WHATEVER CAUSE, WHETHER IN AN ACTION IN CONTRACT OR IN TORT OR OTHERWISE, WILL BE LIMITED TO GENERAL MONEY DAMAGES AND WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF ALL FEES ACTUALLY PAID OR OWING HEREUNDER BY MUNICIPALITY TO ONTEC DURING THE TWELVE-MONTH PERIOD PRECEDING THE TIME THAT THE CLAIM AROSE.

#### **5. OBLIGATION TO INDEMNIFY / DEFEND**

5.1 By Ontec. Subject to the terms of the Agreement, Ontec will defend Municipality from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by an unaffiliated third party to the extent that the Ontec Property made available as part of the Services or any other item or service provided under this Agreement, as provided by Ontec and used in accordance with the terms of the Agreement, infringes upon

any valid patent, copyright, trademark, trade secret, or other proprietary right of such third party in the country where the Municipality is located. Notwithstanding the above, Ontec will have no liability for any infringement claim which: (i) pertains to any Ontec Property that has been altered or modified without Ontec's prior written approval; or (ii) is based on use of the any Ontec Property in conjunction with any item not provided by Ontec, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by Ontec.

**5.2 By Municipality.** Subject to the terms of the Agreement, Municipality will indemnify and hold harmless Ontec and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by any third party to the extent: (a) alleging that the Municipality Data, or Municipality's use of the Services or any other item or service provided under this Agreement, in violation of the terms of the Agreement, infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms, such third party; or (b) resulting from the failure of Municipality to comply with its obligations under the Agreement or from the acts or omissions of Municipality or its employees, agents, successors or assigns.

**5.3 Defence; Procedure.** For any indemnifiable claim described in this Section 5: (a) the indemnifying party will have the sole responsibility, at its expense, to defend and, at its sole discretion, to settle any such claim, provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Services), then such settlement will require the indemnified party's prior written consent, which consent will not be unreasonably withheld; and (b) each indemnified party will provide the indemnifying party with prompt written notice of any such claim brought against it, together with copies of all related court documents involving such claim. An indemnified party's failure to provide prompt notice to the indemnifying party of any such claim will not relieve the indemnifying party from any liability under this Section 5 with respect to such claim, unless the indemnifying party is materially prejudiced by such failure, in which case the indemnifying party will have no obligation under this Section 5 with respect to such claim. If any compromise or settlement is made with respect to such claim, the indemnifying party will pay all amounts in settlement of such claim. The indemnified party will provide the indemnifying party with such information and assistance for the defence of such claim as the indemnifying party reasonably requests.

**6. CONFIDENTIAL INFORMATION.** Each party agrees that all code, inventions, know-how, business, technical and financial information, and personally identifiable Municipality Data it obtains ("**Receiving Party**") from the disclosing party ("**Disclosing Party**") will constitute the confidential property of the Disclosing Party ("**Confidential Information**"), if it is identified as confidential at the time of disclosure. Any Ontec Property, performance information relating to the Services, and the terms and conditions of this Agreement will

be deemed Confidential Information of Ontec without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation will not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## **7. GENERAL TERMS**

**7.1 Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Municipality may not assign this Agreement except upon the advance written consent of Ontec. Any attempt by Municipality to transfer or assign this Agreement will be null and void.

**7.2 Subcontract.** Ontec shall notify The Municipality in writing of all subcontractors awarded under this contract, if not already specified in the Bid/Tender Documents. Ontec shall at all times be responsible for the performance of subcontractors.

**7.3 Severability.** If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

**7.4 Governing Law; Jurisdiction and Venue.** This Agreement will be governed by the laws of South Africa. The jurisdiction and venue for actions related to the subject matter hereof will be the Court in Cape Town and both parties hereby submit to the personal jurisdiction of such courts.

**7.5 Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**7.6 Ontec's List.** Municipality agrees that Ontec may disclose Municipality as a customer of Ontec and use Municipality's name and logo on Ontec's web site and in Ontec's promotional materials.

**7.7 Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth on the Cover Page or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, the first business day following dispatch; (c) if given by registered or certified mail, postage prepaid and return



receipt requested, the second business day after such notice is deposited in the mail.

**7.8 Amendments; Waivers.** No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Municipality will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

**7.9 Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

**7.10 Audit Rights.** Upon Ontec's written request, Municipality will furnish Ontec with a signed certification certifying that Services are being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice of at least 10 days, Ontec may audit Municipality's use of Services provided such audit is during regular business hours. Municipality is responsible for such audit costs only in the event the audit reveals that Municipality's use of the Services is not in accordance with this Agreement.

**7.11 Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural

disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

**7.12 Feedback.** Municipality may from time to time provide suggestions, comments, or other feedback ("**Feedback**") to Ontec regarding the Services or other Ontec products or services. Municipality agrees that Feedback is and will be given entirely voluntarily. Feedback, even if designated as confidential by Municipality, will not create any confidentiality obligation for Ontec. Municipality will not provide any Feedback to Ontec that (a) Municipality has reason to believe is subject to any patent, copyright, or other intellectual property claim or right of any third party; or (b) is subject to license terms that seek to require any Ontec product incorporating or derived from such Feedback, or other Ontec intellectual property, to be licensed or otherwise shared with a third party. Ontec will be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

**7.13 Non-Solicitation.** For twelve (12) months following the termination of this Agreement, both Parties agree not to encourage or solicit any employee or consultant to leave the employ of the other Party, provided that the foregoing shall not be construed to prohibit mass media advertising not specifically directed towards employees or consultants of the other Party

**7.14 Governing Language.** This Agreement is executed in the English language which will be the sole and controlling language used in interpreting or construing its meaning.

[End of the General Terms and Conditions]