

**THE IMPACT CATALYST REQUIRES THE SERVICES OF SPECIALIST HYDROLOGICAL ASSESSMENT ENTERPRISES TO RESPOND TO A REQUEST FOR QUOTATIONS (RFQ) ON:**

**HYDROLOGICAL CENSUS IN THE MUTALE REGION IN THE VICINITY OF THE UNWA DAM, LIMPOPO PROVINCE. (Opportunity number LP-0002-MT2-03)**

## **1. BACKGROUND AND DISCUSSION**

### **ABOUT THE IMPACT CATALYST**

The Impact Catalyst is a collaborative partnership founded by Anglo American, the CSIR, Exxaro, World Vision South Africa, to create mechanisms that drive large-scale, socio-economic development initiatives through public-private partnerships.

The initiatives are designed to leverage collaboration across all sectors and will be selected for impact beyond the scale of individual participants. Joint programmes are established between the Impact Catalyst and the Office of the Premier in the selected provinces through the development of Collaborative Regional Development (CRD) Platforms.

The first regional Socio-Economic Development (SED) platform was launched in the Limpopo Province in partnership with the Office of The Premier (OTP). The focus is on improving the health, wellbeing and living conditions of communities across Limpopo.

### **OUR MISSION**

To deliver positive socio-economic change aligned to the UN sustainable development goals in the regions where the Impact Catalyst is involved throughout South Africa.

### **VISION**

Establishing inclusive, collaborative, cross-sectorial platforms, initiatives, and partnerships to achieve systemic and sustainable socio-economic impact

### **ABOUT THE PROGRAMME**

The Implementing agent, Impact Catalyst, requires the services of an appropriately experienced service provider to undertake a comprehensive hydrological census in the Mutale region in the vicinity of the Unwa dam to determine the agricultural potential for envisaged farming activities in the area. These farming activities are divided into two workstreams:

- a.  $\pm$  100ha to be farmed under irrigation by 8 emerging farmers who produce a variety of vegetable and grain crops. These farmers farm on smallholdings dispersed along the Mutale River.
- b. A consolidated  $\pm$ 200ha unit of commercial tree crop development

Both workstreams require that work be done relating to water availability for irrigation by:

- a. Determining sustainable volume available for abstraction from surface and subsurface water sources.
- b. Designing appropriate irrigation infrastructure required by each of the emerging farmers to ensure least cost delivery, and
- c. Advising actions to be taken to secure legal access to water

## **2. INVITATION TO QUOTE**

Quotations are hereby invited from specialist hydrological assessment agencies to conduct a Hydrological Census in the Mutale Region.

The submissions made in response to the RFP will be used in the assessment of suitable hydrological specialists to conduct the hydrological census. The procurement process will be co-ordinated by the Impact Catalyst's procurement committee at the following address:

**Chair: Procurement Committee**

The Impact Catalyst  
Building 17c, CSIR  
1 Meiring Naude Road  
Brummeria,  
Pretoria, 0001

## **3. BRIEFING SESSION**

A briefing session will be held on **Tuesday, 07 February 2023, at 09h00** via MS Teams. Please email your intention to participate to [fatima@impactcatalyst.co.za](mailto:fatima@impactcatalyst.co.za) and [ignus@impactcatalyst.co.za](mailto:ignus@impactcatalyst.co.za) to receive the link to the online meeting.

## **4. TERMS OF REFERENCE**

- a. Conduct a desktop water balance analysis to determine whether the Mutale and other local water sources have the combined capacity to sustainably irrigate the  $\pm 300$ ha that is being considered for irrigation @  $10,000\text{m}^3/\text{ha}/\text{year}$
- b. Conduct site visits to the 8 emerging farmers (this can happen in parallel with the above desktop study) in order to deliver detailed designs and quotations for implementing new irrigation systems or for improving on existing irrigation systems in support of their production goals; and
- c. Provide a documented guideline on the application process required to legitimise the 8 farmers' irrigation abstraction, as well as that of the 200ha tree crop development, should there be enough water available to support its development.

## Location of the Project

The project is located within a radius of 15km of the Tshikondeni mine on the banks of the Mutale River in the Limpopo Province. 8 Individual farmers<sup>1</sup> have been identified in the respective areas depicted on the map below. The table gives an indication of the extent of their ground as well as the area in which they are located. The exact location of each farmer will be provided to the successful service provider. The service provider will be introduced to each farmer by the IC stakeholder management team.

	Village	Planted under irrigation (ha)	Irrigable Land Available (ha)
Farm 1	Mutale B	1	8
Farm 2	Mutale A	4	15
Farm 3	Mutale A	9	15
Farm 4	Nkotswi	1	8
Farm 5	Tshikuyo	2	10
Farm 6	Nkotswi	2	10
Farm 7	Tshikuyo	2	8
Farm 8	Tshikuyo	1	10
<b>Total Area (ha)</b>		<b>22</b>	<b>84</b>



<sup>1</sup> Names and exact locations of the farmers will be made available to the successful bidder.

## **5. PROJECT ADMINISTRATION**

It is anticipated that the service provider will be appointed by February 2023.

A close relationship between The Impact Catalyst and the appointed service provider must be maintained during the execution of the study. One representative/ project leader should liaise with the relevant Impact Catalyst lead. The leader shall ensure that the work undertaken complies with the scope of work described in this Terms of Reference and that it is delivered in accordance with the schedule which forms part of this contract. Should it become necessary to undertake additional work not described in this Terms of Reference, the work should not be undertaken until full motivation has been submitted to the Impact Catalyst and approval for the work and the associated expenditure has been granted.

The service provider shall be required to attend a kick-off meeting with The Impact Catalyst and should provide for further regular meetings as agreed at kick-off. The service provider shall organise all meetings to be held during the contract including preparation of the agenda and taking of minutes and shall also be responsible for the distribution of the minutes well in advance of the next meeting. Progress reports in the format prescribed by The Impact Catalyst shall accompany all invoices submitted by the service provider, if monthly reports are required, and/or with each deliverable as per the schedule.

Visits by the service provider to all stakeholders during the course of delivery shall be discussed and agreed with the Stakeholder Engagement Manager of The Impact Catalyst, who may accompany the service provider to such meetings, if deemed necessary.

### **5.1 Format of deliverables**

- a. The deliverables shall be prepared according to standards specified by The Impact Catalyst project lead.
- b. Two electronic copies, one (1) MS Word and one (1) PDF of the Draft and Final Reports will be presented to The Impact Catalyst for review.
- c. The service provider should supply a schedule of deliverables in accordance with the standards specified by The Impact Catalyst's Project Lead.
- d. Geospatial data items provided in the ESRI Shapefile format or in ESRI Geodatabase format.
- e. Latest valid BEE Certificate/Affidavit

## 6. CONTENT OF PROJECT PROPOSALS

Potential service providers are required to submit, at their own cost, a separate project proposal, in which they demonstrate their understanding of the work to be undertaken and show their ability to perform the census described in this brief.

Proposals should be concise and cost effective from a compilation and evaluation point of view. The following information, amongst others, must be included in the proposal:

- a) The opportunity number must be clearly indicated on the cover page: **LP-0002-MT2-03**.
- b) A detailed description of the proposed approach and methodology and the associated deliverables.
- c) Delivery team capability and availability.
- d) Detailed project schedule detailing all tasks to be undertaken and associated dependencies, milestones, and deliverables. The service provider must take cognisance of the need for peer and client review of all reports prior to submission of these reports which may also be submitted to the partners of the Impact Catalyst for public review.
- e) Cost details for each of the deliverables, including any specialist studies and anticipated disbursements.
- f) Details, qualifications and relevant experience of all prominent team members, and their CVs.
- g) List of similar projects previously carried out with contact details of the client representative.

## 7. REQUIRED DOCUMENTATION

Potential service providers are required to register to submit proposals or tenders, via this link:

<https://app.smartsheet.com/b/form/ae6bb81eb2da44069e6aa9ae6f9becfa>

Please submit all requested documentation. If service provider is unable to submit requested documentation, for whatever reason, or if you are unable to access the link, contact the Impact Catalyst project lead as mentioned in Par 12, below.

## 8. EVALUATION OF PROPOSALS

The Impact Catalyst draft procurement policy has reference. Note that service providers are required to comply with the processes outlined the evaluation criteria and failure will result in the disqualification of proposals:

This evaluation will be conducted in two stages:

A. The first stage will evaluate functionality according to the criteria listed in the table below:

<b>Criteria for measuring Functionality</b>	<b>Weight</b>	<b>Documents Required</b>
1. Merit and approach of proposal (A proposal detailing the approach, methodology, time and deliverables)	50	A detailed proposal
2. Experience of the service provider and all team members in the execution of similar projects/studies.	30	CVs of key personnel
3. Capacity, expertise, and competencies of the service provider (qualifications, registrations, awards, references)	20	References from companies where similar work was conducted
<b>TOTAL</b>	<b>100</b>	

\*\* Service providers who fail to score a minimum of 70 points out of a possible 100 points on functionality criteria will not be eligible for further consideration.

B. The second stage will evaluate the price and BBBEE points of those bids that meet the minimum threshold for functionality on an 80:20 principle. The Impact Catalyst will implement the 80/20 (Price/BBBEE Level) preferential point system for bids with a Rand value up to R50,000,000 (all applicable taxes included). Price consideration will be evaluated against expected market-related costs for the same work and a preference will be shown to service providers with higher BBBEE levels.

Sufficient information must be provided to allow the procurement committee to score quotations against all these criteria. Failure to do so may result in the disqualification of quotations.

## **9. FORM OF CONTRACT**

The Impact Catalyst will cover the fee agreed upon with the consultant.

The Impact Catalyst service provider agreement shall be the form of contract, as attached hereto.

## **10. INFORMATION TO BE PROVIDED BY IMPACT CATALYST**

Any information relevant to this scope of work will be supplied by The Impact Catalyst, to the service provider.

The relevant Impact Catalyst representatives (specifically the provincial operations manager, the project lead, and/or any appointed programme manager/s) will avail themselves for agreed meetings and will review and make comments on all draft documents as per the schedules agreed upon with the successful service provider.

## **11. TIME FRAMES**

The scope of work specified in this Terms of Reference must be **completed within a period of 2 months**. A proposed programme for the required processes must be provided in the proposal, including key milestones and deliverables.

It should be noted that while the employer has every intention of completing the full scope of work making full use of the budget provision given, the Impact Catalyst's budget is subject to periodic review. Should it become necessary to vary the scope of work or even suspend or terminate this contract, such variation, suspension or termination shall be dealt with in accordance with the provisions of the Standard Professional Services Contract.

## **12. CLOSING DATE FOR QUOTATIONS**

The closing date for submission of responses is **Friday, 10 February 2023 at 12h00 midday**.

Submissions should be e-mailed to [fx.limpopo@impactcatalyst.co.za](mailto:fx.limpopo@impactcatalyst.co.za) with a copy to [ignus@impactcatalyst.co.za](mailto:ignus@impactcatalyst.co.za).

For technical information, contact Jan Alberts on [jan@impactcatalyst.co.za](mailto:jan@impactcatalyst.co.za) with copy to Ignus Potgieter on [ignus@impactcatalyst.co.za](mailto:ignus@impactcatalyst.co.za).

For administrative queries please contact Fatima Ahmed on [fatima@impactcatalyst.co.za](mailto:fatima@impactcatalyst.co.za)

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# SERVICE PROVIDER AGREEMENT

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Entered into between:

**THE IMPACT CATALYST NPC**

(Registration No.: 2020/822332 /08)

a Non-Profit company duly incorporated under the laws of the Republic of South Africa  
(**“the Impact Catalyst”**)

and

an entity duly incorporated under the laws of the Republic of South Africa

(the **“Service Provider”**)



**WHEREAS:**

The Impact Catalyst requires the Services to be provided in order to enable it to further its business;

the Service Provider has experience in the provision of services similar to, or the same as, the Services;

The Impact Catalyst has agreed to appoint the Service Provider to provide the Services on the terms and conditions stipulated in this Agreement, and the Service Provider has agreed to accept this appointment.

**IT IS AGREED:****A1. DEFINITIONS AND INTERPRETATION**

- A1.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of, nor modify nor amplify the terms of this Agreement nor any clause hereof.
- A1.2 Unless the context of this Agreement indicates otherwise, the words and terms set out in Annexure A shall have the meanings indicated in that annexure throughout this Agreement.
- A1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- A1.4 Unless inconsistent with the context, an expression which denotes:
- A1.4.1 any one gender includes the other genders;
  - A1.4.2 a natural person includes an artificial person and vice versa; and
  - A1.4.3 the singular includes the plural and *vice versa*.
- A1.5 The schedules and annexures to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedules and annexures. In the event of a conflict in meaning between the Commercial terms and any terms used in the schedules and/or annexures, the provisions of the schedules and/or annexures shall take precedence.

- A1.6 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively 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 immediately following Business day.
- A1.7 In the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, then the relevant date for payment shall be the following Business Day.
- A1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- A1.9 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- A1.10 The use of the word “*including*” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example or examples.
- A1.11 Any reference to an enactment in this Agreement is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- A1.12 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- A1.13 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **A2. APPOINTMENT**

The Impact Catalyst appoints the Service Provider, who accepts such appointment, to provide the Services to the Impact Catalyst on the terms and conditions set out in this Agreement.

### **A3. COMMENCEMENT AND DURATION**

Notwithstanding the Signature Date, this Agreement shall commence on the Commencement Date and, subject to the provisions for earlier termination, shall continue in full force and effect until the Completion Date or the completion of the Services, whichever occurs later.

### **A4. THE SERVICE PROVIDER'S OBLIGATIONS**

The Service Provider shall:

- A4.1 provide and execute the Services strictly in accordance with this Agreement, including, without limitation, the provisions set out in Parts B and Part C of the Agreement Schedule;
- A4.2 carry out its duties and functions under this Agreement with due care, skill and diligence, in a professional manner and in conformity with any timetables set by the Impact Catalyst and the standards required by the Impact Catalyst as set out in this Agreement and in accordance with best practice and best quality standards in the industry;
- A4.3 avoid any material conflict between its own interests and those of the Impact Catalyst;
- A4.4 not derive any personal economic benefit to which it is not entitled by reason of its Services to the Impact Catalyst or the provisions of this Agreement, from the Impact Catalyst or from any other person in circumstances where that benefit is obtained in conflict with the interests of the Impact Catalyst;
- A4.5 procure that its personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
- A4.6 assist the Impact Catalyst with all problems, questions and other matters which the Impact Catalyst may reasonably refer to the Service Provider, from time to time, in connection with the provision of the Services;
- A4.7 ensure that the Services are executed in a timely manner and in accordance with the Budget, according to specification or scope of work, and Schedule;
- A4.8 ensure that each expense is within the Budget (and secured or contracted at best price and terms). If any expense is not contemplated in the Budget or exceeds that expense set out in the Budget, the Service Provider shall obtain the prior written approval of the Impact Catalyst before incurring same,

- A4.9 report to and communicate with the Impact Catalyst on a regular basis. The Service Provider shall compile and submit to the Impact Catalyst monthly and additionally, as and when changes are made under the terms of this Agreement or where requested by the Impact Catalyst, a report setting out the activities and expenditure incurred versus budget by item and category of spend. The Service Provider acknowledges that all items not included in the Budget, or any overspend on items contained in the Budget (subject to the specific exceptions and/or written approvals granted as set out in this Agreement) shall be for the Service Provider's own account, unless agreed to by the Impact Catalyst in the form of an approved change request, which shall be proven as (both) unforeseen and necessary for the completion of the scope of work;
- A4.10 pursuant to the provisions of this clause A4.9 above, ensure that any agreed change to the Services in scope, cost, time or quality must consider the impact of the change on the other project parameters, and such impact must be quantified and agreed by the Parties before proceeding.
- A4.11 devote such time and resources as shall be reasonably necessary for the proper execution and delivery of all the Service Provider's duties and obligations in relation to the Services as set out in this Agreement;
- A4.12 in carrying out the Services, the Service Provider shall execute and carry out all reasonable directions, instructions, suggestions and adhere to relevant policies of the Impact Catalyst;
- A4.13 ensure that proper planning in respect of the delivery of the Services is effected;
- A4.14 ensure that neither the nor any of its employees, agents, officers, shareholders or directors shall do anything which may bring the Impact Catalyst into disrepute or which may damage the interests of the Impact Catalyst;
- A4.15 aims, as far as reasonably practicable, to follow the Impact Catalyst requirements in terms of the use of local service providers, and local and inclusive procurement.
- A4.16 The Service Provider agrees in terms of Section 37(2) of the Occupational Health and Safety Act, 1993, ("**OHASA**") to -  
 comply with OHASA and accept sole responsibility for all health and safety matters relating to the provision of the Services; and  
 ensure that neither Impact Catalyst Staff's nor any third party's health and safety is endangered in any way by the Supplier's activities or conduct when providing the Services.
- A14.7 The Service Provider will always meet or exceed the applicable Service Levels and will procure that Authorised Sub-Contractors at all times meet or exceed the applicable Service Levels

- A14.8 If at any time any failure to meet any Service Level occurs, or if in the reasonable opinion of the Service Provider, is likely to occur, the Service Provider will notify Impact Catalyst of the failure or potential failure and of the steps that the Service Provider will take to fully remedy the failure or, as applicable, to prevent the failure from occurring, provided that Impact Catalyst rights and remedies in terms of the Agreement and common law in general will remain reserved.
- A14.9 The Service Provider will not, without the relevant third party's prior written consent use a third party's Personal Information, Intellectual Property, or Confidential Information in the provision of the Services.
- A14.10 The Service Provider will maintain (or improve) its BEE rating provided as at the Effective Date and advise Impact Catalyst in writing of the improved rating.
- A14.11 The Service Provider will notify Impact Catalyst as soon as practically possible but not later than one day, following the discovery of a IT Incident and/or Cyber Incident on its systems, that may affect, disrupt or violate Impact Catalyst operations, systems, and policies.

## **A5. THE IMPACT CATALYST' OBLIGATIONS**

The Impact Catalyst shall:

- A5.1 make available to the Service Provider all relevant information and data at the Impact Catalyst' disposal which may be reasonably required by the Service Provider for the performance of the Services;
- A5.2 designate in writing such persons to act as representatives of the Impact Catalyst with respect to the Services, and such representatives shall have complete authority to transmit instructions and to receive information on behalf of the Impact Catalyst within the scope and limitations of this Service Agreement.

## **A6. DISRUPTION TO SERVICES**

- 6.1 All difficulties that may arise in connection with the duties of the Service Provider shall be brought to the attention of the Impact Catalyst in writing and immediately discussed with the Impact Catalyst with a view to precluding or mitigating satisfactorily such difficulties beforehand. In order to mitigate such difficulties, the Service Provider shall identify and assess in respect of the Services, any risk, event or circumstance or non-occurrence which would have a negative impact or negative influence on the success of the provision of the Services and devise and present to the Impact Catalyst, for the Impact Catalyst' approval, a backup plan that can be implemented practicably and at short notice. Such plan shall, inter alia, make provision for the non-availability or non-attendance (for whatsoever reason) of any performers, presenters, speakers or other persons key to the success of the Services.

## **A7. MARKETING AND ANNOUNCEMENTS**

- A7.1 The Service Provider shall not use any promotional, advertising, marketing or publicity material, whether sourced from the Impact Catalyst or any other persons, unless the Impact Catalyst has provided its prior written approval in respect thereof.
- A7.2 The Service Provider shall not make any public announcement about the Services or this Agreement without the Impact Catalyst' prior written approval.
- A7.3 The Service Provider shall not, during the currency of this Agreement or at any time thereafter, use, utter, publish or cause to be published by way of the internet, social media, press, radio, television or in any other manner, any comments likely to discredit or damage the reputation of the Impact Catalyst, its officers, directors, contractors or employees or any of their activities.

## **A8. PERSONNEL**

- A8.1 In the event that the Impact Catalyst, on reasonable grounds, is of the view that any member of the Service Provider's personnel ("Personnel") is incapable of performing the tasks assigned to him or her, does not follow the reasonable instructions of the Impact Catalyst or generally acts in a manner inconsistent with the obligations of the Service Provider as set out in this Agreement, then the Impact Catalyst shall inform the Service Provider of same and afford the Service Provider a period of 5 (five) Business Days within which to remedy the non-performance or mal-performance of the relevant Personnel member.
- A8.2 In the event that the non-performance or mal-performance is not remedied within the aforesaid 5 (five) Business Day period, the Service Provider shall remove such Personnel member from the Services permanently and immediately replace the Personnel member with another person capable of performing the tasks of the replaced Personnel member. Any additional costs incurred by the Service Provider in connection with the replacement of any member of the Personnel shall be borne by the Service Provider.

## **A9. CONSIDERATION AND PAYMENT**

- A9.1 In consideration for providing the Services, the Impact Catalyst shall pay the Service Provider the Consideration as per the Annexures.
- A9.2 The Service Provider shall:
- A9.2.1 keep records of the time spent on the Services by the Service Provider; and

- A9.2.2 invoice the Impact Catalyst for the Services on or before the 25th of the following month unless earlier payment is approved at the sole discretion of The Impact Catalyst management in writing.
- A9.3 The cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by employees of the Service Provider in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Service Provider for rendering of the Services shall be invoiced by the Service Provider to the Impact Catalyst at cost cost as proven by supporting TAX invoice(s), provided that the Impact Catalyst shall not be liable for such expenses unless the Impact Catalyst has given specific prior written approval for such expenses, or such expense is agreed and detailed in the Budget.
- A9.4 The Impact Catalyst shall pay, into the Service Provider's bank as detailed in Part A of the Schedule, the Consideration in the manner specified in Part A of the Agreement Schedule.
- A9.5 Invoices covering payment in respect of materials purchased by, or services provided to, the Service Provider, or for reimbursement of expenses, shall be payable by the Impact Catalyst only if accompanied by relevant receipts, TAX invoices and other documentary proof or deliverables as per the contractual Statement of Work as may be requested by the Impact Catalyst.
- A9.6 The Service Provider shall not charge the Impact Catalyst any fees if it exceeds or is not contained in the Budget, unless the Impact Catalyst has given its prior written approval.
- A9.7 The Service Provider shall not be entitled to claim or receive any benefits or rewards, other than those specifically provided for in this Agreement.
- A9.8 In the event of a payment dispute between the Parties, the Impact Catalyst shall be entitled to withhold any payment due to the Service Provider until such dispute has been settled in full.

## **A10. WARRANTIES BY THE SERVICE PROVIDER**

The Service Provider warrants that:

- A10.1 it has the requisite skill, knowledge and experience to provide the Services;
- A10.2 the Services shall be rendered with a high degree of professional skill and it shall exercise the utmost skill, care and diligence in the performance of the Services;
- A10.3 the Services shall be rendered in a timely manner and shall be completed on or before the Completion Date;

- A10.4 its methodologies, processes and manner of work are in accordance with international best practice;
- A10.5 the product of the Services shall be suitable for its intended purpose, having due regard to the assumptions that the Service Provider can be reasonably expected to make in accordance with sound engineering practice after having first consulted with the Impact Catalyst Contract Manager who should agree with such assumptions made.
- A10.6 the provision of the Services in terms of this Agreement shall not contravene any act of parliament, statutory instrument, regulation or by-law and shall not infringe any patent, trade mark, copyright or any rights of any third party;
- A10.7 all material and/or works contained in or used in connection with the Services shall not infringe the rights of any third party and shall not contain any defamatory or injurious matter;
- A10.8 in respect of any work carried out for the Impact Catalyst, the Service Provider shall irrevocably secure all rights and consents of owners of material featured or used in the Services or the product of the Services and of performers and other persons supplying rights, services and facilities in respect of the Services to allow the Impact Catalyst the unrestricted and unlimited exploitation of the Services and the product of the Services. The Service Provider shall provide documentation or other evidence as proof of such consents if requested by the Impact Catalyst to do so;
- A10.9 the Service Provider has not and shall not assign, license, mortgage, charge or otherwise deal with or encumber any rights whatsoever in any material or works developed for the Impact Catalyst;
- A10.10 all rights acquired by the Service Provider in terms of this Agreement are or shall be capable of assignment without restriction;
- A10.11 it has the full right, power and authority to enter into and to perform this Agreement, and has not granted and shall not grant or attempt to grant to any other person, firm or corporation, rights of any kind inconsistent with this Agreement and which rights would derogate from the rights of the Impact Catalyst under this Agreement;
- A10.12 all Services provided hereunder will be performed in accordance with the applicable laws and regulations applicable within the Republic of South Africa, including, without limitation, the *Consumer Protection Act 68 of 2008* (CPA);
- A10.13 the members of its personnel designated by it to perform the Services are suitably qualified and have the necessary practical experience and disposition to enable them to fulfil the obligations of the Service Provider in terms of this Agreement; and



A10.14 it is a B-BBEE entity as defined in the B-BBEE Act and has achieved and complied with the minimum targets and score lines outlined under the generic scorecard published in the Codes of Good Practice and any other relevant transformation charters as defined in the B-BBEE Act and any replacements thereof (the “Relevant Legislation”) and that it shall continue to comply with the Relevant Legislation and retain this status for the duration of this Agreement.

## **A11. TERMINATION**

A11.1 Despite the provisions of clause B1, the Impact Catalyst may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if:

A11.1.1 the Service Provider commits a breach of any of the provisions of this Agreement which is not capable of being remedied;

A11.1.2 the Service Provider, for any reason whatsoever, fails or is unable to perform all the Services as may be specified in this Agreement;

A11.1.3 the Service Provider fails to observe the standards of care as specified in this Agreement;

A11.1.4 the Service Provider fails to achieve any deadline set in respect of the Services;

A11.1.5 the Service Provider fails to fulfil any of its obligations in terms of this Agreement;

A11.1.6 the Service Provider breaches any of the warranties which it has provided in terms of this Agreement;

A11.1.7 the Service Provider is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under receivership or under the equivalent of any of the foregoing;

A11.1.8 a final and unappealable judgement against the Service Provider remains unsatisfied for a period of 10 (ten) Business Days or more after it comes to the notice of the Service Provider;

A11.1.9 the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business; or

A11.1.10 The Impact Catalyst may terminate this Agreement at any time by giving reasonable written notice to the Service Provider

should anticipated funding for this Service and Statement of Work as per Annexed B from the Impact Catalyst donor(s) be cancelled.

- A11.2 The Service Provider acknowledges that in the event of a breach of this Agreement by the Impact Catalyst, any application to interdict or restrain the production of the Impact Catalyst or any of its business activities would be excessively disruptive and unreasonably damaging to the Impact Catalyst and third parties' interests therein. Consequently, the Service Provider agrees not to apply for any such relief and accepts that the provisions of clause B1 and the recovery of damages in an action at law shall provide a full and appropriate remedy for any loss or damage incurred by the Service Provider as a result of any such breach.
- A11.3 The Service Provider acknowledges that the rights herein granted are of a unique character, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the Service Provider shall cause the Impact Catalyst irreparable injury and damage. The Impact Catalyst shall be entitled to injunctive and other equitable relief to prevent any breach by the Service Provider.
- A11.4 Any termination of this Agreement pursuant to the provisions of this clause A11.1 shall be without prejudice to any claim which the Impact Catalyst may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.
- A11.5 The remedies of the Parties under this clause A11 shall not be exhaustive and shall be in addition and without prejudice to any other remedies in law which they might have, whether under this Agreement or at common law.

## **A12. LIABILITY AND INDEMNITY**

- A12.1 The Service Provider shall have no claim against the Impact Catalyst, its employees, directors, shareholders, associates and affiliates (the "Indemnified Parties") and the Indemnified Parties shall not be liable for any claims, loss, liability, damage, penalty or expense which the Service Provider may suffer in relation to this Agreement or the performance or provision of the Services.
- A12.2 The Service Provider hereby indemnifies the Indemnified Parties and holds them harmless against all and any claims which may at any time be made against the Indemnified Parties in respect of any injury, claim, loss, liability, damage, cost or expense (including legal fees) which the Service Provider or a third party may incur or suffer as a result of the performance or provision of the Services by the Service Provider or any of its contractors, employees, agents or officers.
- A12.3 The Service Provider shall be liable to the Indemnified Parties, and the Service Provider hereby indemnifies the Indemnified Parties against all claims, loss,

liability, injury, damage, cost or expense (including legal fees) attributable to or arising, directly or indirectly, from any action or omission of the Service Provider or its employees, contractors, agents or officers.

A.12.4 The Service Provider's aggregate liability is limited to twice the professional fees payable to the Service Provider under this appointment. Neither Party shall be held liable for indirect or consequential damages.

### **A13. INSURANCE AND RISK**

A13.1 The Service Provider shall fulfil its obligations in terms of this Agreement at the Service Provider's own risk.

A13.2 Without derogating from or limiting any indemnity, liability, responsibility or other obligations of one Party to the other, each Party shall, at its own cost, maintain public liability insurance and or any other insurance that will be reasonably necessary for the Service Provider to provide their service to the Impact Catalyst for a minimum amount of twice the value of the service that the Service Provider provides to the Impact Catalyst, so as to provide indemnity in respect of all claims for which that party may be liable.

### **A14. CONFIDENTIALITY**

A14.1 Subject to sub-clause A14.2, the Service Provider shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement, including information which relates to:

A14.1.1 the provisions of this Agreement;

A14.1.2 the negotiations relating to this Agreement;

A14.1.3 the Services;

A14.1.4 the subject matter of this Agreement; or

A14.1.5 the Impact Catalyst.

A14.2 The Service Provider may disclose information which would otherwise be confidential if and to the extent:

A14.2.1 required by law;

A14.2.2 the information has come into the public domain through no fault of the Service Provider; or

A14.2.3 The Impact Catalyst has given prior written approval to the disclosure, provided that any such information disclosed

pursuant to paragraphs A14.1.1 and A14.1.2 shall be disclosed only after notice to and consultation with the Impact Catalyst.

A14.3 The Service Provider shall ensure that its employees, officers, consultants, contractors and agents comply with the provisions of this clause A14.

A14.4 The restrictions contained in this clause A14 shall continue to apply after the termination or expiry of this Agreement without limit in time.

## **A15. INTELLECTUAL PROPERTY**

A15.1 The Service Provider assigns to the Impact Catalyst all its rights, title and interest in and to any Intellectual Property, present and in the future, created by it or its employees in the performance of its Services in terms of this Agreement, including copyright in reports, manuals, budgets, indices, letters or other similar documents, with effect from the time of creation or use, whichever is the earlier.

A15.2 In respect of any Intellectual Property developed or created by any employee, contractor or sub-contractor of the Service Provider pursuant to the performance of the Services and that the Service Provider may acquire from that contractor, the Service Provider assigns to the Impact Catalyst all its rights, title and interest in and to that Intellectual Property with effect from the date of its acquisition.

A15.3 In respect of any materials forming the subject of any Intellectual Property and that has been developed or created or may in future be developed or created by any contractor of the Service Provider pursuant to the performance of the Services, the Service Provider shall not use those materials until it has acquired the right, title and interest in and to that Intellectual Property from that contractor and it has, as a consequence, been assigned to the Impact Catalyst in terms of clause A15.6.

A15.4 The Service Provider warrants that, at the effective dates of the assignments referred to in paragraphs A15.1 and A15.2, it will be the owner of the Intellectual Property that is assigned and will not be aware of any person who has the right to prevent the assignments.

A15.5 The provisions of clauses A15.1 to A15.4 shall not apply in respect of any materials if those materials are used in terms of a licence agreement between the Impact Catalyst and a third party.

A15.6 Subject to clause A15.5, the Impact Catalyst accepts the assignments referred to in clauses A15.1 to A15.3 and accepts the warranties given in clause A15.4.

- A15.7 When called upon to do so by the Impact Catalyst, the Service Provider shall promptly sign all documents, perform all acts and render all assistance that may be required by the Impact Catalyst in order to confirm the assignments and to enable the Impact Catalyst to record the assignments and to apply for, prosecute, obtain and enforce registered rights in the Intellectual Property that are assigned to it in terms of this Agreement, without requiring any further compensation or consideration in respect of those acts.
- A15.8 This Agreement and its implementation shall not transfer to the Service Provider any Intellectual Property rights of the Impact Catalyst.

## **A16. AUTHORISED REPRESENTATIVE**

- A16.1 The Service Provider shall, in writing, appoint the Authorised Representative (who may be replaced from time to time on 14 days' written notice, or in unforeseen circumstances within a reasonable time, to the Impact Catalyst) to represent the Service Provider in its dealings with the Impact Catalyst. The Authorised Representative shall, in that capacity, be accountable and responsible for ensuring that the Services will be provided to the Impact Catalyst in accordance with the terms and conditions of this Agreement.
- A16.2 The Service Provider appoints the Authorised Representative to be the sole point of contact between the Service Provider and the Impact Catalyst, unless the Impact Catalyst is advised otherwise in writing by The Service Provider.
- A16.3 The Authorised Representative shall ensure that:
- A16.3.1 an agenda in respect of all meetings, including those of steering committees, and minutes of any previous meeting and all reports pertaining to or required for any meeting are provided to the Impact Catalyst not less than 72 (seventy two) hours in advance of the meeting and shall also ensure that minutes are kept for each meeting and are distributed within 72 (seventy two) hours of the meeting;
  - A16.3.2 all decisions of the Parties are accurately recorded, in writing, and are available to the Impact Catalyst's management representative(s) or the Contract Manager;
  - A16.3.3 all process controls, procedures, policies, guidelines, asset registers, security policies and approval frameworks relating to the Services are in place at all times; and
  - A16.3.4 problems relating to or arising from the provision of the Services are identified and monitored and that remedial action is taken by the Service Provider expeditiously.

**A17. CONTRACT MANAGER**

- A17.1 The Impact Catalyst shall, in writing, appoint a Contract Manager (who may be replaced from time to time on 14 (fourteen) days' written notice to the Service Provider, or in unforeseen circumstances within a reasonable time) to represent the Impact Catalyst in its dealings with the Service Provider. The Contract Manager shall, in that capacity, be responsible for contact with the Service Provider with a view to ensuring that the Service Provider provides the Services to the Impact Catalyst in accordance with the terms and conditions of this Agreement.
- A17.2 The Impact Catalyst shall appoint the Contract Manager to be the sole point of contact between the Impact Catalyst and the Service Provider, for the purposes of this Agreement, unless the Service Provider is advised otherwise in writing by the Impact Catalyst.
- A17.3 The Contract Manager may accept the Services or reject the Services if they do not conform to the service levels and/or standards specified in this Agreement, including but not limited to the service levels, and or acceptance criteria, specified in Part B of the Schedule.

**A18. ASSIGNMENT**

The Service Provider shall not cede or delegate all or any portion of its rights, obligations or liabilities under this Agreement without the prior consent of the Impact Catalyst, which shall not unreasonably be withheld. The Impact Catalyst shall have the right to cede, delegate or assign any of its rights or obligations under this Agreement to any person in the Impact Catalyst's absolute discretion without the Service Provider's prior written consent.

**A19. SUB-CONTRACTING**

- A19.1 The Service Provider shall not sub-contract the Services or appoint any sub-contractor and/or agents without first notifying and obtaining the prior written approval from the Impact Catalyst, which consent the Impact Catalyst may withhold in its sole and absolute discretion.
- A19.2 If the Impact Catalyst approves the appointment of a sub-contractor or agent, the Service Provider shall remain liable and accountable for the provision of the Services. The Service Provider shall be liable and accountable towards the Impact Catalyst for any actions or omissions of the Service Provider's agents or sub-contractors.

**A20. SUSPENSION**

- A20.1 Rights to Suspend

The Service Provider may by written notice to the Impact Catalyst suspend the performance of the whole or any part of the Services if the Impact Catalyst is late in making a payment to the Service Provider, if:

- A20.1.1 within 10 (Ten) Business Days of payment being due for the Service(s), the Service Provider notifies the Impact Catalyst of the failure to pay, and
- A20.1.2 the Impact Catalyst does not make the payment to the Service Provider for those invoiced Services within 30 (thirty) Business Days after receiving the Service Provider's notice.

#### A20.2 Resumption of Performance

Pursuant clause A20.1, the Service Provider will resume performance when the Impact Catalyst pays all the amount(s) invoiced for the Services provided.

#### **A21. ANTI KICK-BACK**

A21.1 A director, employee or agent of the Service Provider must not:

- (i) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
- (ii) enter into any business agreement with,

any director, employee or agent of the Impact Catalyst other than as a representative of the Impact Catalyst or in the ordinary and proper course of business between any of those parties.

A21.2 The Service Provider must not undertake any activity that may constitute a breach of any provision of the Anti-Corruption Laws. The Service Provider shall furthermore, in the performance of its obligations under this Agreement, comply at all times and act in a manner consistent with the Impact Catalysts Ethics policy.

## **PART B – RECIPROCAL RIGHTS AND OBLIGATIONS**

This part of the Agreement sets out the rights and obligations of one Party in relation to the other Party. The intention is to treat both Parties equally and in good faith.

### **B1. BREACH**

Should either Party (“the Defaulting Party”) commit a breach of any of the provisions hereof, then the other Party (“the Aggrieved Party”) shall be obliged to give the Defaulting Party 14 (fourteen) Business Days written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement against the Defaulting Party or to claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law; provided always that, notwithstanding anything to the contrary contained in this Agreement, the Aggrieved Party shall not be entitled to cancel this Agreement for any breach by the Defaulting Party unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment in money or if it is capable of being remedied by a payment in money, the Defaulting Party fails to pay the amount concerned within 14 (fourteen) Business Days after such amount has been determined.

### **B2. EFFECTS OF TERMINATION**

If this Agreement is terminated for any reason:

- B2.1 all amounts owing to the one Party by the other Party shall within 30 (thirty) Business Days of the termination become due and payable as outlined and agreed in the annexures to this Agreement;
- B2.2 the termination shall not affect or detract from any rights or obligations existing at the time of termination, nor shall it affect provisions of this Agreement that expressly provide that they will survive termination or, by their nature, continue to have effect after termination, even if the clauses themselves do not expressly provide for this;
- B2.3 the one Party may claim immediate performance by the other Party of all of the other Party's obligations, whether or not the due date for performance has arrived, without prejudice to the one Party's right to claim damages;
- B2.4 the provisions of clause B2.1 are without prejudice to any other legal rights that the one Party may have.



**B3. SET-OFF**

In the event that the Parties are indebted to one another in terms of this Agreement and the amounts of indebtedness are agreed upon in writing by the Parties, the Parties will be entitled to set-off the agreed amounts against one another.

**B4. FORCE MAJEURE**

- B4.1 If one Party is unable to carry out all or any of its obligations in terms of this Agreement by any cause beyond its control (“*force majeure*”), including strike, lock out, fire, explosion, riot, war, accident, act of God, embargo, legislation, civil commotion, unrest or disturbances, and gives written notice of any such inability to perform, the one Party shall be relieved of those obligations from the date of the notice and during the period that the cause and its consequences continue but only to the extent that they are prevented or restricted. The one Party shall not be liable for any delay or failure in the performance of any of those obligations or resulting loss or damages in that period.
- B4.2 If such *force majeure* continues for more than 30 (thirty) days and the Parties are unable to reach Agreement on a manner of avoiding its consequences within that period, either Party may terminate this Agreement immediately on written notice.
- B4.3 Pursuant to clause B4.2 and in consideration of the provisions of clause B2, if the Service Provider issues a notice to terminate due to *force majeure*, or if the Service Provider issues a notice of suspension pursuant to clause A20, then the Service Provider will be required to protect, store and secure all started and all completed part(s) of the Services against any deterioration, loss or damage. In the case of a suspension of performance, the Service Provider will be required to protect, store and secure all started and all completed part(s) of the Services for a period equal to the duration of the suspension, until such a time that the suspension is resolved between the Parties.
- B4.2 Within the 30 (thirty) day period referred to in clause B4.2, the one Party shall be entitled to perform or to maintain the appointment of a third party to perform the obligations of the other Party until such time as the *force majeure*, in the one Party’s opinion, has been satisfactorily and finally resolved, provided that the one Party or the third party may complete any performance that was commenced during the 30 (thirty) day period.

**B5. CAPACITY**

- B5.1 Each Party warrants that it has the capacity and is authorised and permitted to enter into this Agreement.

B5.2 Each of the Parties shall pass and procure the passing of all resolutions that may be required to give effect to this Agreement and its implementation.

## **B6. SUPPORT**

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions or import of this Agreement. For this purpose, each of the Parties hereby undertakes to, at all reasonable times and upon request, avail itself to the other Party for regular meetings to discuss all matters pertaining to the Services and this Agreement.

## **B7. RELATIONSHIP**

B7.1 The relationship between the Parties in terms of this Agreement is one of independent contractors dealing at arm's-length. No partnership, general agency or employment relationship, of any nature whatsoever, is created by this Agreement.

B7.2 One Party may not bind, enter into Agreements on behalf of or incur any liabilities or obligations on behalf of the other Party without the other Party's prior written consent.

## **B8. DISPUTE RESOLUTION**

B8.1 If a dispute between the parties arises out of or is related to this Agreement, including any matter relating to the breach of any of the provisions of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after 30 (thirty) days from the date upon which the dispute was declared by a Party by written notice, the dispute is not resolved the matter shall be determined in accordance with the following provisions.

B8.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with this Agreement will be finally resolved by arbitration as follows:

- B8.2.1 the arbitrator shall be a practising attorney or practising advocate of not less than 15 (fifteen) years standing. The Party calling the dispute (“the referring Party”) shall nominate in writing, 3 (three) arbitrators of its choice to determine the dispute and shall furnish such nomination to the other Parties. The other Party shall, within 14 (fourteen) days after receipt of the nomination, nominate 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated in this clause 11. In the event that the other Party fails to nominate or fail to agree on the arbitrator to be appointed as contemplated herein, the referring Party shall, in its sole discretion, be entitled to appoint 1 (one) out of the 3 (three) arbitrators nominated to act as an arbitrator as contemplated herein;
- B8.2.2 the arbitration shall be held at Pretoria.
- B8.2.3 the arbitration shall otherwise be held in accordance with the rules of the Arbitration Foundation of South Africa (“**AFSA**”), or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and the provisions of the *Arbitration Act, 1965*;
- B8.2.4 the arbitrator shall be entitled to:
- B8.2.4.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
  - B8.2.4.2 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate; and
  - B8.2.4.3 the arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- B8.3 This clause 8 shall be severable from the rest of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.

B8.4 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall in such circumstances continue to comply with their obligations in terms of this Agreement.

## **B9. ADDRESSES**

B9.1 Each Party chooses the addresses set out opposite its name below as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* (“*Domicilium*”) at which all documents in legal proceedings in connection with this Agreement must be served:

B9.1.1 **The Impact Catalyst:**     *Domicilium:*  
Meiring Naude Road  
Brummeria  
Pretoria,0002

*For attention:*  
Charl Harding

*Postal address:*  
CSIR, Building 17a  
Meiring Naude Road  
Brummeria  
Pretoria,0002

E mail: [info@impactcatalyst.co.za](mailto:info@impactcatalyst.co.za)

B9.1.2     **Service Provider:** As provided for in Part A of the Schedule.

B9.2 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address, telefax number or e-mail address in accordance with the provisions of clauses B9.4 or B9.5, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s *Domicilium*.

B9.3 Any Party may by written notice to the other Parties, change its chosen address, telefax number or e-mail address to another address, telefax number or e-mail address, provided that:

B9.3.1     the change shall become effective on the 10th (tenth) Business Day after the receipt or deemed receipt of the notice by the addressee in accordance with the provisions of clause 9.4; and

B9.3.2 any change in a Party's *Domicilium* shall only be to an address in the Republic of South Africa, which is not a post office box or a *poste restante*.

B9.4 Any notice to a Party contained in a correctly addressed envelope and:

B9.4.1 sent by prepaid registered post to it at its chosen address in clause B8.1; or

B9.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen address in clause B9.1,

shall be deemed to have been received in the case of clause B9.4.1 on the 5th (fifth) Business Day after posting (unless the contrary is proved) and, in the case of clause B9.4.2 on the day of delivery.

B9.5 Any notice by telefax or e-mail to a Party at its telefax number or e-mail address shall be deemed, unless the contrary is proved, to have been received on the 1st (first) Business Day after the date of transmission.

B9.6 Notwithstanding anything to the contrary contained in this clause B9, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address, telefax number or e-mail address as set out in clause B8.1.

## **B10. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa. Furthermore, the Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria, in regard to all matters arising from this Agreement.

## **B11. COUNTERPARTS**

This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

## **B12. PROTECTION OF PERSONAL INFORMATION**

B12.1 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' )and confirms herewith that Data Subject, Operator ,Personal Information, Processing ,and Responsible Party as well as any other relevant terminology that is contained in the relevant Data Protection Laws and must be applied in reading this clause).

- B12.2 The Parties undertake that they will Process the Data Subjects' Personal Information to the extent that such Personal Information is necessary for purposes of discharging its obligations in terms of the Agreement or such other purposes as the Data Subjects may consent to from time to time.
- B12.3 The Parties undertake that each of them will keep the Data Subjects' Personal Information that it Processes secure and confidential, and it will maintain the integrity and confidentiality of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures in line with international best practice to prevent the loss of, damage to, unauthorised destruction of or unlawful access to the Personal Information.
- B12.4 Once the purpose for which the Personal Information was initially collected and processed no longer applies or becomes obsolete, each of the Parties will ensure that it is deleted, destroyed or de-identified so that a third party cannot re-identify such Personal Information.
- B12.5 In addition, each of the Parties undertakes not to send Personal Information of the Data Subjects to any jurisdiction outside of the Republic of South Africa without the prior notification of the other.
- B12.6 Each Party (Indemnifier) hereby indemnifies and holds the other (Indemnified) harmless against all which the Indemnified may incur as a result of any claim lodged against it in connection with a breach of this clause and related clauses by the Indemnifier except where the any one of the parties is negligent. This obligation to indemnify shall continue notwithstanding the termination or expiration of this Agreement.
- B12.7 The Parties specifically record that all Personal Information provided by the Responsible Party to the Operator, or to which the Operator may have access to, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Responsible Party.
- B12.8 The Operator hereby warrants and undertakes in favour of the Responsible Party that, it shall:
- B12.8.1 at all times strictly comply with all applicable Data Protection Laws which may be in force from time to time.
  - B12.8.2 Process Personal Information of Data Subjects, with the knowledge or authorisation of the Responsible Party, in connection with and for the purposes of the provision of the Services and will only act as the Operator for purposes of POPIA. It is recorded that the Operator shall in no way be considered as the Responsible Party in relation to Personal Information and shall Process Personal Information in accordance with any lawful and reasonable written instructions

received from the Responsible Party and as permitted by applicable Data Protection Laws;

- B12.8.3 secure the integrity and confidentiality of Personal Information under its control or in its possession, by taking appropriate, reasonable, technical and organisational measures to prevent loss of damage to or unauthorised destruction of the Personal Information and unlawful access to or Processing of the Personal Information and shall only disclose Personal Information in its possession when required to do so by law or in the course of the proper performance of the Operator's duties;
  - B12.8.4 not transfer any of the Personal Information to any third party in a foreign country unless such transfer is to its Representatives and is subject to appropriate intra-group agreements or other Representative agreements which provide an adequate level of protection for the Personal Information under the relevant provisions of POPIA or another Data Protection Law regarding transborder information flows; and
  - B12.8.5 not retain any Personal Information for longer than is necessary for delivering the Service ("Authorised Purpose") in terms of this Agreement or in fulfilment of any other lawful requirement.
- B12.9 The Operator undertakes to ensure that all reasonable measures are taken to:
- B12.9.1 regularly verify that the security safeguards are effectively implemented;
  - B12.9.2 establish and maintain appropriate security safeguards against identified threats;
  - B12.9.3 ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - B12.9.4 provide notification to the Responsible Party without undue delay if it becomes aware of a breach in information security or any other applicable security safeguard occurs;
  - B12.9.5 use reasonable endeavours to remedy any breach of a security safeguard and provide the Responsible Party with the details of the breach, and if applicable, the reasonable measures implemented to address the security safeguard breach and any adverse effects caused thereby;
  - B12.9.6 provide notification to the Responsible Party where Personal Information has been processed outside of the Authorised Purpose;
  - B12.9.7 provide the Responsible Party, upon request, with information of any nature whatsoever relating to the processing of Personal

Information for the purpose in terms of this Agreement and any Data Protection Laws; and

- B12.9.8 notify the Responsible Party, if lawful, of receipt of any request for access to Personal Information in its possession and relating to the Responsible Party.
- B12.10 Nothing in this Agreement shall detract from the obligations, responsibilities and duties of the Responsible Party under POPIA or other applicable Data Protection Laws, who shall retain all obligations, responsibilities and duties under such laws to lawfully Process Personal Information in accordance with its obligations as set out in POPIA.
- B12.11 The Responsible Party warrants that all the Personal Information provided to the Operator complies with the conditions for lawful Processing of Personal Information as set out in POPIA, and the Responsible Party hereby indemnifies and holds harmless the Operator, its respective Representatives, successors, cessionaries, delegates and assigns, from any and all losses of both a patrimonial and non-patrimonial nature and from all costs, expenses, fines and damages, arising solely and directly from the Responsible Party's non-compliance with the provisions of this clause, POPIA or other applicable Data Protection Laws.
- B12.12 It is hereby recorded and agreed that in order for the Operator to be able to fulfil its obligations in terms of this Agreement, it may be necessary for the Operator to transfer Personal Information to a sub-processor for Processing for the purposes agreed to in the Agreement.
- B12.13 **Notification of a security breach**
- The Service Provider will-
- notify Impact Catalyst Information Officer by sending an email to Rory Baker [rbaker@impactcatalyst.co.za](mailto:rbaker@impactcatalyst.co.za) (as referred to in the Impact Catalyst PAIA (Promotion to Access of Information) Manual as posted on Impact Catalyst website) immediately but no later than 24 hours of becoming aware or suspecting any unauthorised or unlawful use, disclosure or Processing of Personal Information;
- at its own cost, take all necessary steps to mitigate the extent of the loss or compromise of the Personal Information and restore the integrity of the affected information systems as quickly as possible, and will -
- provide Impact Catalyst with any and all necessary information that Impact Catalyst may request pursuant the security breach and to assist Impact Catalyst to meet any regulatory requirements and obligations in respect of the Personal Information;
- in consultation with Impact Catalyst and where required by law, notify any legally mandated authority or Data Subjects; and



assist Impact Catalyst (in any format as will be required by Impact Catalyst from time to time) to comply with any requests for access to Personal Information from Data Subjects.

#### **B13. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION**

- B13.1 The Service Provider will immediately return and/or destroy any Confidential Information in its possession or control or that which is in possession or control of its Authorised Sub-Contractors/ Sub-Processor, obtained from Impact Catalyst, once such Confidential Information has served its purpose in accordance with the POPIA and/or any other equivalent legislation.
- B13.2 Impact Catalyst may, at any time, request the Service Provider to immediately return and/or destroy Confidential Information obtained from Impact Catalyst at the Service Provider possession or control, and/or possession or control of Authorised Sub-Contractor/Sub-Processor notwithstanding that such Confidential Information has not yet served the purpose it was acquired for.
- B13.3 The Service Provider will immediately, but no later than 5 (five) days following the events in 0 and 0, furnish Impact Catalyst with a written confirmation and/or destruction certificate confirming the return and/or destruction of the Confidential Information. The Supplier shall ensure that destruction of data occur in such a way that the data cannot be recovered.
- B13.4 The Service Provider shall fully co-operate with Impact Catalyst in managing any risk associated with Confidential Information shared with the Service Provider

#### **B14. GENERAL**

- B14.1 Unless expressly provided to the contrary, this Agreement constitutes the sole record of the Agreement between the Parties in regard to its subject matter and cancels and supersedes all prior agreements and negotiations between the Parties.
- B14.2 Neither Party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded in this Agreement unless it is reduced to writing and signed by the Parties or their representatives.
- B14.3 No addition to, variation of or agreed cancellation of this Agreement shall be of any force or effect unless it is in writing and signed by or on behalf of the Parties.
- B14.4 No indulgence, leniency or extension of time that one Party may grant to the other Party shall in any way prejudice the one Party or preclude it from exercising any of its rights in the future.
- B14.5 The provisions in this Agreement are severable from one another. Any provision of this Agreement that is or becomes unenforceable in any jurisdiction shall, only to the extent that it is unenforceable, be treated as *pro*

*non scripto* and the remaining provisions of this Agreement shall be of full force and effect.

**For the Impact Catalyst:**

SIGNED at Pretoria on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES:**

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

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

**FOR: THE IMPACT CATALYST NPC**

\_\_\_\_\_  
\_\_\_\_\_

Impact Catalyst Representative  
*Who warrants his authority hereto*

**Impact Catalyst Contract Number:** \_\_\_\_\_

**For the Service Provider:**

SIGNED at Insert location of signature on this Insert day of month numerically day of Choose a month 20 Click or tap here to enter text.

**AS WITNESSES:**

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

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

**FOR**

\_\_\_\_\_

Insert Full name of Service Provider Representative  
Insert Service Provider Representative role title

Who warrants his authority hereto

**ANNEXURE A****DEFINITIONS**

Unless the context clearly indicates a contrary intention, throughout this Agreement, the words or phrases defined below shall have the meanings assigned to them:

- “Acceptance Criteria”** A prioritised list of criteria that the project products must meet before the product is deemed complete or presented to the Impact Catalyst as per the Statement of Works and Services in Part B;
- “Agreement”** means this agreement, together with any attachments hereto;
- “Annexure”** means any annexure to the Agreement including any annexures to the Annexures;
- “Affiliate”** means any other entity which is a subsidiary or a holding company or a subsidiary of the holding company of such entity and or controls, is controlled by or is under common control of such entity. In regard to this definition the terms “subsidiary” and “holding company” will have the meaning assigned thereto in the Companies Act, of 2008, provided that they will also include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of such term;
- “Anti-Corruption Laws”** means any laws or international conventions relating to anti-corruption, including but not limited to *The Prevention and Combating of Corrupt Activities Act 12 of 2004*;
- “Authorised Representative”** means a person appointed by the service provider in terms of clause A16, and being a duly qualified and competent adult person employed by the service provider, having a valid South African Identity Document or a valid work permit in South Africa, who has not been convicted or charged with any criminal activity in South Africa or anywhere in the world and who is able and willing to represent the service provider for the duration of the services;
- “B-BBEE Act”** means the *Broad-Based Black Economic Empowerment Act, 2003*, as amended;
- “BEE rating”** means the rating status of enterprises in terms of broad-based black economic empowerment compliance provided for in the Broad-Based Black Economic Empowerment Act No 53 of 2003;

<b>“Budget”</b>	means the budget set by the Service Provider and agreed with the Impact Catalyst in respect of the Services, which budget shall be revised and amended from time to time by the Parties, attached to this Agreement as <b>Part C</b> of the Schedule;
<b>“Business Day”</b>	means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;
<b>“Change Request”</b>	A written document submitted from one Party to the other Party detailing the reasons for any change and provides a mitigation plan and/or project exception plan associated with the change, from the originally agreed and approved Service Agreement Schedule.
<b>“Codes of Good Practice”</b>	means the Codes of Good Practice issued by the Minister of Trade and Industry in terms of the B-BBEE Act;
<b>“Commencement Date”</b>	means the date specified as such in <b>Part A2</b> of the Agreement Schedule;
<b>“Commercial Terms”</b>	means the provisions of this Agreement, excluding the Agreement Schedule and Annexures;
<b>“Completion Date”</b>	means the date specified as such in Part A2 of the Agreement Schedule;
<b>“Confidential Information”</b>	<p>means data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and or proprietary to either Party provided or disclosed in confidence or which may come to the knowledge of the other Party by whatsoever means. The Confidential Information will include the following even if it is not marked as being “confidential”, “restricted” or “proprietary” (or any similar designation) –</p> <p>information relating to Data Subjects, business activities and relationships;</p> <p>technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets;</p> <p>architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications, and the data relating thereto;</p>

Intellectual Property, including third party Intellectual Property, as the context may indicate; and Personal Information;

- “Consideration”** means the amount payable to the Service Provider by the Impact Catalyst for the provision of the Services, which amount is indicated in **Part A3** of the Agreement Schedule;
- “Contract Manager”** means a person appointed by the Impact Catalyst in terms of clause A17 and being a duly qualified and competent adult person employed by the Impact Catalyst, having a valid South African Identity Document or a valid work permit in South Africa, who has not been convicted or charged with any criminal activity in South Africa or anywhere in the world and who is able and willing to represent the Impact Catalyst for the duration of the services;
- “CPA ”** means the *Consumer Protection Act, 2008*;
- “Cyber incident”** means any observable occurrence in an information system that jeopardises the cybersecurity of an information system or the information processed, store or transmitted by the system; or violates the security policies, security procedures or acceptable use policies, whether resulting from malicious activity or not;
- “Data Subjects”** means **Impact Catalyst** Affiliates, customers, Staff, ex-Staff and any other person/s to whom Personal Information relates;
- “Data Exporter”** means the person who transfers the Personal Information to the Data Importer who for purposes of this Agreement shall be **Impact Catalyst** .
- “Data Importer”** means the person who agrees to receive from the Data Exporter, the Data Subject’s Personal Information intended for processing on the Data Exporter’s behalf after the transfer in accordance with the Data Exporter’s instructions and the terms of this Agreement (For purposes of this Agreement Data Importer shall be the **Supplier**);
- "Developed IP"** means any subject matter developed, created or comes into existence during the term of this Agreement through the activities of a Party in pursuit of the Services and/or the Deliverables in which any Intellectual Property subsists or is

embodied, or any improvements, changes, enhancement or derivatives, modifications or similar adjustment to such subject matter during or after the term of the Agreement;

**"Documentation"** means the documentation (and all updates thereto) that Impact Catalyst reasonably requires to be provided by the Supplier relating to the Services and/or the Deliverables;

**"Initiative lead"** shall, for this Agreement, have the same meaning as "Contract Manager";

**"Intellectual Property" or "IP"** means all intellectual property rights owned by either Party subsisting anywhere in the world and relating to the Services and/or the Deliverables, which is in any way capable of protection in law (whether registered or not), including without limitation, any patent, design, trade mark (whether or not registered), or copyright and related rights (including copyright in software, source code, object code and computer algorithms); database rights, patents, designs, confidential information, and all proprietary rights in and to ownership of any idea, discovery, artwork, design, concept, technique or improvement, industry information, know how, system, methodology, data model, report, correspondence, documentation, flow chart, table, calculation, spread sheet, schematic plan, photograph, presentation or invention (whether patented or not) and all other intellectual and industrial property rights which subsist or will subsist now or in the future anywhere in the world whether registered or not or capable of registration or not, including all applications for and the right to apply for, claim priority and be granted any such rights; any renewals, extensions or restorations, and divisional, continuation and reissued applications of any such rights;

**"IP Owner"** means the Party determined to be the proprietor of an Intellectual Property

**"Material"** means all forms of the written word, images, audio recordings and audio-visual recordings, regardless of how such is captured or recorded and the media on which it is recorded, whether it is tangible or intangible, whether it is machine readable or directly accessible by humans and includes but is not limited to all written and printed material, devices, logos, artworks, micro-graphic and other reproductions, depictions and pictorial material, software code and machine readable data and information;

**"Parties"** means the parties to this Agreement and "Party" means either one of them;

**‘Personal Information’**

shall mean information relating to the Data Subject, including but not limited to-

- (a) views or opinions of another individual about the Data Subjects; and
- (b) information relating to the Data Subjects’–
  - (i) race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;
  - (ii) education, medical, financial, criminal or employment history;
  - (iii) names, identity number and/or any other personal identifier, including any number(s), which may uniquely identify a data subject, account or client number, password, pin code, customer or data subject code or number, numeric, alpha, or alpha-numeric design or configuration of any nature, symbol, e-mail address, domain name or IP address, physical address, cellular phone number, telephone number or other particular assignment;
  - (iv) biometric information;
  - (v) personal opinions, views or preferences;
  - (vi) correspondence that is implicitly or expressly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence); and
- (c) corporate structure, composition and business operations (in circumstances where the data subject is a juristic person) irrespective of whether such information is in the public domain or not.

**‘POPIA’**

shall mean the Protection of Personal Information Act, No. 4 of 2013;

<b>'Processing'</b>	shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including –  (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use.  (b) dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or  (c) merging, linking, blocking, degradation, erasure or destruction.
<b>“Product”</b>	An input or output, whether tangible or intangible, that can be described in advance, created and tested as per the Statement of Works and Services in Part B;
<b>“Responsible Party”</b>	means impact Catalyst who, alone or in conjunction with others, determines the purpose of and means for Processing Personal Information.
<b>“Statement of Work”</b>	shall, for this Agreement, have the same meaning as “Services”;
<b>“Services”</b>	means the services to be performed by the Service Provider in terms of this Agreement, as detailed in <b>Part B</b> of the Schedule.
<b>“Signature Date”</b>	means the date of signature of this Agreement by the Party signing last; and
<b>“VAT”</b>	means value added tax levied in terms of the <i>VAT Act, 1991</i> .



**AGREEMENT SCHEDULE****PART A: TRANSACTION SCHEDULE****A1. SERVICE PROVIDER'S DETAILS AND DOMICILLIUM**

Physical Address:

Postal Address: [Click or tap here to enter text.](#)[Click or tap here to enter text.](#)Email: [riaan.rossouw@gmail.com](mailto:riaan.rossouw@gmail.com)*\* Please append to this section in the Annexures the general contracting information.***A2. TERM OF AGREEMENT**Commencement Date: [Click or tap to enter a date.](#)

Completion Date

**A3. CONSIDERATION AND PAYMENT**

As consideration for the provision of the Services by the Service Provider in terms of this Agreement, The Impact Catalyst shall pay the Service Provider the sum of R [\\_\\_\\_\\_\\_](#), (*Insert value in text*), Incl VAT which sum shall be payable into the Service Provider's bank account, which account details are listed in A4, as follows:

*(Please insert manner of payment, eg. If payment will be effected in tranches, ect.)***A4. SERVICE PROVIDER'S BANK DETAILS AND SARS DETAILS***\*You are required to supplement this annexure with a bank certified copy of proof of the account as well as a SARS TAX compliant certificate.*Account Number: [Click or tap here to enter text.](#)Branch Code: [Click or tap here to enter text.](#)Bank: [Choose an item.](#)Account Holder: [Click or tap here to enter text.](#)**PART B: SERVICES**

*\* Please add services/attach statement of works – refer to the Impact Catalyst handbook reference PMO for requirements to be included.*

**PART C: BUDGET**

The Service Provider herewith supplements the Services as detailed in **Part B** with the following Budget, as listed in an attachment(s) headed (***Budget for Services / Statement of Works***).

**PART D: SCHEDULE (PROJECT PLAN AND WORK BREAKDOWN STRUCTURE)**