

Bid 79/2012



**C a c a d u**  
DISTRICT MUNICIPALITY  
Province of the Eastern Cape  
progress through development

**SERVICE LEVEL AGREEMENT**

**NATIONAL TREASURY UNIT STANDARD  
TRAINING AND RPL ASSESSMENT**

Entered into by and between:

**CACADU DISTRICT MUNICIPALITY**

And

**SOLSTICE NETWORKS CC**

87

<u>INDEX</u>	<u>PAGE</u>
DEFINITIONS	4
INTRODUCTION	5 - 6
1. APPOINTMENT OF THE SERVICE PROVIDER	6
2. LEGISLATION	6 - 7
3. REGISTRATION	7
4. IMPLEMENTATION OF THE REGULATIONS	7
5. ESTABLISHMENT OF THE PROJECT TEAM	7 - 8
6. UNDERTAKING THE INITIAL ASSESSMENT	8 - 9
7. DEVELOPMENT OF ASSESSMENT TOOLS AND CONFIRMATION OF THE RPL PROCESS	9
8. CONDUCT TRAINING AND RPL ASSESSMENTS	9 - 10
9. PRESENT FINAL TRAINING AND RPL PROJECT REPORT	10
10. REPORTING	10
11. WARRANTIES BY THE CONSULTANT	10 - 11
12. TERM AND DURATION	11
13. REMUNERATION	11
14. CDM OBLIGATIONS	12
15. MISREPRESENTATION, NON-PERFORMANCE AND UNDER-PERFORMANCE	13
16. FORCE MAJEURE	13
17. ARBITRATION	14
18. BREACH OF CONTRACT	14 - 15
19. RECORDS AND ACCESS TO INFORMATION	15
20. ENTIRE AGREEMENT	16
21. NO VARIATION	16
22. NO INDULGENCE	16

23.	INVALID, UNLAWFUL & UNENFORCEABLE PROVISIONS SEVERABLE	16
24.	NO ASSIGNMENT	16
25	DOMICILIUM CITANDI ET EXECUTANDI	16 -18

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**DEFINITIONS:** In this Service Level Agreement, unless the context indicates otherwise, the following words and expressions shall have the meaning assigned to them below:

- "Agreement" means this Service Level Agreement entitled 'National Treasury (NT) Unit Standard Training and RPL Assessment;
- "The Client" means the Cacadu District Municipality;
- "Consultant" means Solstice Networks CC;
- "Deliverable" Project Plans and implementation for the compliance to Minimum Competency Regulations by the Consultants as required in terms of this Service Level Agreement and in the original Tender Document marked "Tender 79/2012;
- "Project Steering Committee" means a Committee constituted by the Client for the purpose of monitoring and overseeing the implementation of the project;
- "Project work plan" means the work plan for the implementation of the project, prepared by the Consultant;
- "Period of Contract Agreement" means the period commencing on 15 February 2013 until 1 July 2014.



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**SERVICE AGREEMENT ENTERED INTO BY AND BETWEEN**

**CACADU DISTRICT MUNICIPALITY**

Duly represented herein by Mr MD Pillay

**(Hereinafter referred to as "CDM" and the Municipality")**

Of the one part

And

**SOLSTICE NETWORKS CC**

**REGISTRATION NUMBER:**

Duly represented herein by PATRICK FLUSK

**(Hereinafter referred to as "The Consultant")**

of the second part

**WHEREAS** the National Treasury (NT) published the Municipal Regulations on Minimum Competency Levels on 15 June 2007 in Government Gazette No.29976, prescribing the higher education qualifications, work related experience and financial and Supply Chain Management competency areas to be met by 31 of December 2012 by all officials of South African Municipalities who exercise financial responsibilities;

**AND WHEREAS** the NT Circular 60 allows municipalities to apply to NT for a Special Merit Case in which an extension may be granted until 30 June 2014 for full compliance in terms of the Regulations;

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**AND WHEREAS** the CDM is a municipality exercising financial responsibilities and therefore needs to assess the competence of its officials operating in the designated categories as published in the said Government Gazette and further described in the agreement hereunder ensuring at all times that recognition of prior learning is given in the process;

**AND WHEREAS** the Municipality has invited bids for a suitably qualified and experienced consultant to undertake training and competence assessments and coordinate the Recognition of Prior Learning of the designated groups in the CDM;

**AND WHEREAS** the Consultant has represented to the Municipality that it is experienced and skilled in the provision of Unit Standard Training programmes and competence assessment and coordination services;

**AND WHEREAS** the Consultant has submitted a bid of its services to the Municipality, which bid of services was accepted by the Municipality subject to the terms and conditions herein contained;

## 1. APPOINTMENT

the Municipality hereby appoints the Consultant to provide training and competence assessments and co-ordination of Recognition of Prior Learning (hereinafter referred to as RPL) for designated officials in line with the Municipal Finance Management Act Regulations on Minimum Competencies. This appointment is made subject to the provisions of the Municipal Finance Management Act (Act 56 of 2003), hereafter referred to as the MFMA.

## 2. LEGISLATION

- 2.1 The consultant warrants that it is familiar with the Regulations to the MFMA as published in the Government Gazette 29967 on 15 June 2007, the MFMA, as well as the Municipal Performance Regulations issued in terms of the Municipal Systems Act.

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2.2 The Consultant undertakes to conduct the Services in accordance with the requirements as set out in the Regulations and MFMA contemplated in this clause ensuring implementation of Training Programmes and RPL to the prescribed minimum competency levels by the CDM officials.

2.3 The Consultant shall in exercising the services make the Municipality aware of additional legislation which the consultant is aware of and which is applicable to the competence assessment and RPL which should be complied with.

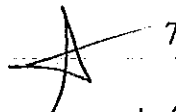
### 3. REGISTRATION

The Consultant warrants that it has full accreditation as a training provider with NT and LGSETA and that it has been awarded full programme approval from LGSETA for the Municipal Finance Management Programme. The consultant further warrants that it has registered constituent assessors and moderators accredited by LGSETA in terms of the SAQA guidelines and NQF-registered Unit Standards and criteria.

### 4. IMPLEMENTATION OF THE REGULATIONS

The Consultant acknowledges that the CDM is obliged in terms of the Regulations to *inter alia*:

- 4.1 train and assess the competencies of managers referred to in the regulations;
- 4.2 identify any inadequacy and implement a plan prior to the expiry of this agreement to address all the inadequacies before 1 July 2014;
- 4.3 provide overall project management within the contract period to ensure full compliance by 1 July 2014; and
- 4.4 regularly report to the Project Steering Committee.

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## 5. ESTABLISHMENT OF A PROJECT TEAM

The parties hereto will, as soon as possible thereafter, establish a Project Team comprising of key players from both the CDM and the Consultant. The Project Team will be composed of the following members:

- CDM Skills Development Officer (Project Champion)
- Manager Corporate Services
- Departmental Heads
- Chief Financial Officer
- Representative appointed by the Consultant

The Project Team will be responsible for *inter alia*, the following:

- 5.1 overall planning and coordination of the project;
- 5.2 agreeing on the process of project delivery;
- 5.3 operational planning in terms of activities, responsibilities, timeframes, logistics, resource requirements and indicators of success;
- 5.4 monitoring the project implementation process;
- 5.5 continued briefing and debriefing; and
- 5.6 risk management to ensure uninterrupted project implementation.

## 6. UNDERTAKING THE INITIAL ASSESSMENT

The Consultant:

- 6.1 shall communicate with all staff covered by the regulations to confirm the level of understanding and collect data through document requests to form a high-level overview of the officials' perceptions regarding their current competence obtained;
- 6.2 shall identify any potential problem areas and immediately report these to the Project Team;

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- 6.3 obtain copies of Curriculum Vitae, job descriptions and certified copies of all qualifications and course certificates for which competence has previously been assessed;
- 6.4 analyse the gathered information per class of official as defined in the Regulations against all three of the following areas:
- (i) Higher education qualifications
  - (ii) Work related experience
  - (iii) Assessment of previously-obtained confirmed competence in Financial and Supply Chain Management unit standards;
- 6.5 prepare and present a high level report of the present status quo against the minimum competency regulations. This report will *inter alia* reflect the high-level compliance of each official, his/her higher educational qualifications, work-related experience as well as the recommended route to be followed for each official assessed against the specific unit standards.

**7. DEVELOPMENT OF ASSESSMENT TOOLS AND CONFIRMATION OF THE RPL PROCESS**

The consultant shall, after initial assessment, design, develop and package customised RPL assessment tools. These tools are all designed to gather "proof" of competence of the officials through the development of Portfolios of Evidence.

**8. CONDUCT TRAINING AND RPL ASSESSMENTS**

The consultant shall, based on the outcome of the initial assessment and feedback from the officials on their perceived competence:

- 8.1 present each official who is an RPL candidate with a personal proposed assessment plan;
- 8.2 have one-on-one meetings with RPL candidates to discuss the required Portfolio of Evidence (PoE);

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- 8.3 provide the RPL candidates with time frames for completion of their PoEs;
- 8.4 on completion of the PoEs, proceed to assess same;
- 8.5 on a one-on-one basis provide feedback regarding the assessment outcome. Where candidates are found not yet competent, additional remedial evidence required will be discussed and agreed upon. Where PoEs are sufficient, dates for presentation meetings will be confirmed where the candidate will present specific evidence to the assessor;
- 8.6 moderate assessment results internally prior to communicating the final outcomes to the candidates;
- 8.7 request LGSETA to undertake an external moderation of the process and the results in order to confirm the assessment outcomes;
- 8.8 present the overall results of the assessment in a training and RPL Assessment Outcome Report to the CDM.

**9. PRESENT FINAL TRAINING AND RPL PROJECT REPORT**

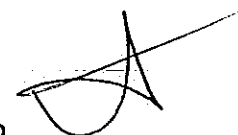
The consultant shall at the commencement of the NT Training and RPL Project present a consolidated implementation plan to the CDM. This will *inter alia* include a status quo report reflecting the confirmed competence against the regulations to date and Individual Personal Development Plans to ensure the remaining competencies are achieved by 1 July 2014.

**10. REPORTING**

In addition to the reports referred to in clauses 6.6; 8.8 and 9 above, the Consultant shall provide detailed monthly written reports to the Project Team and the office of the MM of the CDM indicating training undertaken, POEs submitted and the status of confirmed competence per official per Unit Standard (US).

The monthly reports will be presented by no later than the last working day of each month. The reports will be presented in an agreed format by the consultant to the designated official /employee in the office of the MM of the CDM.

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Where necessary, the Consultant will be expected to, at the request of the CDM, attend formal meetings to *inter alia* discuss the progress and reporting on the project.

#### 11. WARRANTIES BY THE CONSULTANT

The Consultant records that it has duly considered its tasks and obligations in terms of this agreement, taking into account the relevant infrastructure, activities and premises of the Municipality and the Consultant warrants that it has the capacity and resources (financial and non-financial) to adequately perform the Services as set out herein.

#### 12. TERM AND DURATION

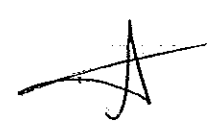
This agreement shall commence on 15 February 2013 ("the commencement date") irrespective of the date of signature hereof and shall endure to 1 July 2014, unless otherwise resolved by the Bid Adjudication Committee, subject to the outcome of the initial assessment.

#### 13. REMUNERATION

The CDM shall remunerate the Consultant for the Services as contained herein at prices quoted for training per employee and RPL assessment per employee inclusive of disbursements and VAT as more fully detailed below:

- R4750.00 (Training per US per participant inclusive of VAT and disbursements, to be invoiced following facilitation of the training process for the number of confirmed participants<sup>1</sup>);
- R3000.00 (RPL Assessment per unit standard per participant inclusive of VAT and disbursements, payable following the assessment and completion of the presentation meeting with the RPL candidate).

<sup>1</sup> Where a learner does not attend the training, the learner will still be issued the learner guide and POE for completion and assessment thereafter.

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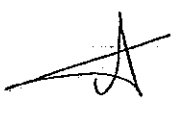
Payment of any amount will only be made on recommendation of the Project Team to the Office of the MM of the CDM to do so and on receipt of a duly and proper completed tax invoice, with the further understanding that the sum of all payments made to the Consultant, will not exceed the contract price amounting to R1 440 000.00.

Payment will be made within 30 days of receipt of a proper invoice into the bank account of the Consultant nominated in writing, unless otherwise agreed to in writing by the parties.

#### 14. CDM OBLIGATIONS

The CDM shall;

- 14.1 provide the Consultant with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services;
- 14.2 inform all officials that are affected by the NT Regulations of the strategic nature of the project and the requirement for their full co-operation and prioritisation of attendance at workshops/ information sessions, training and RPL sessions, as well as inputs and submissions of documentation required in order to ensure the successful and timeous roll-out of the project;
- 14.3 within a reasonable time, give a decision on any matter properly referred to CDM in writing by the Consultant, so as not to delay the performance of Services;
- 14.4 co-operate with the Consultant and not interfere with or obstruct the proper performance of the Services. The employer shall as soon as practicable:
  - (a) authorise the Consultant to act as his agent insofar as may be necessary for the performance of the Services;
  - (b) provide all relevant data, information, reports, correspondence and the like, which become available;
  - (c) procure the Consultant's ready access to premises, or sites, necessary for the performance of the Services;
- 14.5 immediately advise the Consultant on becoming aware of:

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- (a) any matter other than a change in legislation which will materially change, or has changed, the Services; or
  - (b) a material defect or deficiency in the Services;
- 14.6 pay the Consultant the Contract Prices in accordance with the provisions of the contract;
- 14.7 arrange the training / RPL assessment venues and cater for refreshments;
- 14.8 arrange the printing of the Learner Guide as well as PoEs and RPL Guides;
- 14.9 facilitate communication with local municipalities from within the district to invite them to join the process under S32 of the Supply Chain Management regulations.

**15. MISREPRESENTATION, NON-PERFORMANCE AND UNDER-PERFORMANCE**

- 15.1 In the event of any misrepresentation, non-performance or under-performance of the Consultant, the Municipality may terminate this agreement by giving 2 (two) weeks written notice of its intention to so terminate.
- 15.2 If at any stage during the term of this agreement, the Municipality is of the opinion that the Consultant does not possess the relevant skills, expertise, capacity or resources to adequately provide the services as contemplated herein, the Municipality may cancel this agreement by giving the Consultant 2 (two) weeks written notice of its intention to so terminate.
- 15.3 upon termination of this agreement for any reason whatsoever, notwithstanding anything contained herein, the Consultant shall continue to render the services which it would have been required to render but for the termination of this agreement, for the risk and benefit of the Municipality until the Municipality confirms in writing that it has arranged for the alternate continued provision of such services.

## 16. FORCE MAJEURE

A party shall not be liable for its failure to perform any of its obligations in terms of this agreement if it is established that the failure was due to an event which was beyond its control, which event could not reasonably have been expected at the time of conclusion of this agreement and the event could not reasonably have been overcome.

16.1 the events contemplated in the clause above include but are not limited to:

- war, civil war, armed conflict or terrorism;
- natural disasters such as violent storms, floods, earthquakes, destruction by lightning;
- explosion and fires;
- official or unofficial boycotts, strikes, lock-outs, go slows.

## 17. ARBITRATION

17.1 Any dispute arising in connection with this agreement which cannot be resolved by the parties in accordance with the terms and conditions of this agreement shall be settled by arbitration in accordance with this clause.

17.2 The parties agree to comply with the awards resulting from arbitration.

17.3 Judgement upon the award rendered in any arbitration proceedings may be entered in any court having jurisdiction by any parties or application may be made to such court for a judicial acceptance of the award and an order for enforcement, as the case may be.

17.4 If a dispute arises between the parties pertaining in any manner to this agreement, the dispute shall first be referred to the respective relevant managers of the parties or their nominated delegates, who shall attempt to resolve the dispute through negotiations conducted in good faith.

- 17.5 If the parties are unable to resolve the dispute in accordance with the clause above, the dispute shall be referred to arbitration by an arbitrator to be nominated by the Arbitration Foundation of South Africa (AFSA).
- 17.6 In all respects the arbitration shall be in accordance with the rules, requirements and procedures determined by AFSA.
- 17.7 The decision of the arbitrator shall be final and binding upon the parties and shall be carried into effect by them and made an order of competent court, including any decision regarding the costs of the arbitration which the arbitrator shall be empowered to make.
- 17.8 The parties shall without prejudice to their rights, procure the continuation of the execution of the services of this agreement pending the settlement of any any disputes.
- 17.9 This clause is severable from the rest of the agreement and shall remain in effect even if this agreement is terminated.

## 18. BREACH OF CONTRACT

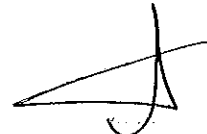
- 18.1 In the event that the Consultant breaches any term of this agreement, the Municipality shall notify the Consultant of such default or breach and call upon the Consultant to remedy such default or breach within 7 (seven) days of such notice.
- 18.2 Should the Consultant not remedy the said default or breach within the seven-day time period, the Municipality may forthwith cancel this agreement in writing.
- 18.3 Termination in terms of this clause does not affect any resource that either party may have in terms of law.

18.4 Notwithstanding anything contained herein, a repeated breach by the Consultant, will entitle the Municipality to cancel this agreement in writing forthwith without giving such defaulting party the opportunity to remedy same.

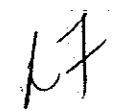
## 19 RECORDS AND ACCESS TO INFORMATION

- 19.1 The Consultant shall to the extent that is reasonably practical, at all times maintain a full and accurate set of records and details of the Services performed in terms of this agreement, including attendances made for a period of five years after the expiry of this agreement.
- 19.2 The Municipality shall have the right to access information to satisfy itself as to the accuracy of any determination of calculation and generally as to the compliance by the Consultant of the terms of this agreement for performance monitoring purposes. The Consultant shall provide the Municipality with any information that the Municipality so requests for purposes hereof.
- 19.3 Any information provided by the CACADU District Municipality to the service provider and any studies, reports, and documentation produced by the service provider in the performance of services (hereinafter materials) shall belong to and remain the property of the CACADU District Municipality and the service provider may not utilise such without prior consent of the CACADU District Municipality.
- 19.4 Upon termination of the agreement for any reason whatsoever, the Service Provider must return to CACADU District Municipality all materials in its possession which belong to the CACADU District Municipality, regardless of whether or not such materials were originally supplied by the CACADU District Municipality to the service provider.

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**20 ENTIRE AGREEMENT**

This document contains the entire agreement between the parties and the parties record that no terms, warranties, conditions or representations whatsoever have been made or agreed upon apart from those contained in this document.

**21. NO VARIATION**

No variation of this agreement has any force or effect unless it has been reduced to writing and signed by or on behalf of both parties.

**22. NO INDULGENCE**

No indulgence that the parties may grant to each other with regard to compliance with any of the obligations in terms of this agreement prejudices or constitutes a waiver of parties' rights in terms of this agreement.

**23. INVALID, UNLAWFUL & UNENFORCABLE PROVISIONS SEVERABLE**

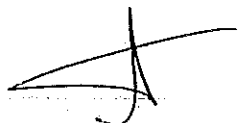
In the event that any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such terms will be severable and the remaining provisions shall remain in full force and effect.

**24. NO ASSIGNMENT**

The Contractor shall not be entitled to assign this agreement to any third party without the prior written consent of the Municipality.

**25. DOMICILIUM CITANDI ET EXECUTANDI**

25.1 The parties choose as their respective domicilium citandi et executandi for purposes of this agreement, whether in respect of court process, notices or other documents, the following addresses:

  
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**CACADU DISTRICT MUNICIPALITY**

Physical Address

**Standard Bank Building  
32 Govan Mbeki Avenue  
Port Elizabeth  
6001**

Postal Address

**P O Box 318  
PORT ELIZABETH  
6000**

**CONSULTANT: SOLSTICE NETWORKS CC**

Physical Address

**8 Shashi Street  
Kelland  
Johannesburg  
2194**

Postal Address

**P O Box 676  
FERNDALE  
2160**

25.2 Any party shall have the right from time to time to change their domicilium under this paragraph by providing written notice thereof to the other party, provided that such change shall only be valid and effective on the other party acknowledging receipt of same.

25.3 Any Notice to a party correctly addressed sent by prepaid registered post shall be deemed to be received by such other party on the 4th business day after posting.

Thus signed at PORT ELIZABETH this 25<sup>TH</sup> day of MARCH 2013

As witnessed

1 [Signature]

87 [Signature]

2. *K. F. T.*

*[Signature]*  
For and on behalf of the CDM

Thus signed at ..... this ..... day of ..... 2013

As witnessed:

1. ....

2. ....

.....  
For and on behalf of the  
CONSULTANT

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