SERVICE LEVEL AGREEMENT

BID NO: IDS (E) 03/2025

by and between

MOGALE CITY LOCAL MUNICIPALITY

("The Municipality")

and

FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD

(REG. NO: 2015/176951/07)

("Service Provider")

WHEREAS:

- the Municipality had invited bids from **Registered, Qualified and Experienced service provider/s for the supply and delivery of electrical cables and conductors, on an as and when required basis for a period for 3 (THREE) years, under Bid IDS (E) 03/2025.**

- **FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD,** has the necessary expertise and knowledge and was appointed in order to provide services on an as and when required basis for a period of Three (3) years and **FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD,** has accepted same. (Copies of the BAC Resolution, LOA and Acceptance Letter are attached herein as **annexure "A", "B" and "C"** respectively).

- **MOGALE CITY LOCAL MUNICIPALITY** wishes to make use of the Services offered by **FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD,** full details of which appear in the Bid Document attached herein as **annexure "D"**.

- **FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD,** and **THE MUNICIPALITY** have reached an agreement on the terms and conditions which will regulate the provision of the Services and wish to reduce their agreement to writing and as follows:

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1. INTERPRETATION AND DEFINITIONS

1.1. The headings to the clauses, schedules and annexures 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, schedule or annexure thereof.

1.2. Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

1.2.1. **"Agreement"** means the agreement as set out in this document together with any annexure attached hereto, the Tender, the LOA and the Service request,

1.2.2. "**Acceptance Period**" means the period of 30 (thirty) days (or such other period as may have been agreed to in writing), after delivery, during which the Municipality may consider whether the Service complies with the Specifications and/or is not of inferior workmanship,

1.2.3. "**Business Day**" means Monday to Friday between the hours of 08:00 to 15:30, excluding Saturdays, Sundays or a day which, from time to time, is proclaimed a public holiday in South Africa,

1.2.4. "**Calendar Month**" means a period from the first to the last day of a month (e.g., 1 January to 31 January),

1.2.5. "**Checks**" means the background check on the Service Provider's employees, as fully outlined in **Clause 15.2**,

1.2.6. "**Completion Date**" means the date stipulated on the Service Request for the performance and completion of the Services,

1.2.7. "**Contact Person**" means the relevant person(s) appointed by Mogale City Local Municipality from time to time, to oversee the execution of this Agreement and whose name(s) appears on the Service Request,

1.2.8. "**Commencement Date"** means the 01st July 2025,

1.2.9. "**Fault**" includes, but is not limited to, failure to comply with Mogale City Local Municipality's specifications, non-compliance with agreed Service levels, inferior service, and inferior workmanship,

1.2.10. "**Invoice**" means the original tax invoice prepared by the Service Provider reflecting the consideration or the adjusted consideration (if any), owing by Mogale City Local Municipality to the Service Provider and which conforms to the provisions of the VAT Act,

1.2.11. "LOA" means the Letter of Acceptance in terms of which a Service Provider is advised by Mogale City Local Municipality of its conditional appointment as a Service Provider subject to the conclusion of this Agreement,

1.2.12. "**Local Service Provider"** means a Service Provider which has its registered address in South Africa,

1.2.13. "Mogale City Local Municipality" means Mogale City Local Municipality, a Municipality established in terms of section 12(1), read with section 14(2) and section 90(2) of the Local Government: Municipal Structures Act 117 of 1998, **MAKHOSANA MSEZANA** in his capacity as **the MUNICIPAL MANAGER**, duly authorised thereto by Item K(ii) (06/2019) of

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the Council's System of Delegation of Council (Copy of resolution is appended herein as annexure "E").

1.2.14. **"Notice of non-acceptance"** means the written notice to be delivered by Mogale City Local Municipality to the Service Provider in the event that the Service is inferior and/or does not comply with the Specifications,

1.2.15. **"Parties"** means the Service Provider and Mogale City Local Municipality and a "Party" shall as the context requires, be either of them,

1.2.16. **"Quotation"** means the written response of a Service Provider to the RFP issued by Mogale City Local Municipality,

1.2.17. **"Purchase Consideration"** means the price to be paid by Mogale City Local Municipality for the Services as reflected in this Agreement or Annexure thereto and confirmed in the Service Request,

1.2.18. **"RFQ"** means the Request for Quotation, being the formal written invitation issued by Mogale City Local Municipality requesting third parties to submit proposals to Mogale City Local Municipality in respect of the supply of the Services,

1.2.19. **"Services"** means the services set out in the Tender in respect of which Mogale City Local Municipality will set out as and when required in a Service Request,

1.2.20. **"Service Location"** means the physical address where the Services will be rendered,

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1.2.21. **"Service Provider"** means **FABRITECH ENGINEERING AND SUPPLIER GROUP (PTY) LTD,** (Registration Number 2015/176951/07) a Private company duly incorporated according to the company laws of the Republic of South Africa and herein represented by **MOSES MOHALE RASEALA** in his/her capacity as **MANAGING DIRECTOR,** (Copy of the Resolution is attached herein as **Annexure "F"),**

1.2.22. **"Service Request"** means Mogale City Local Municipality 's assignment letter, issued in terms of this Agreement, requesting the Service Provider to render the Services set out in that request to Mogale City Local Municipality on the terms and conditions set out in that request,

1.2.23. **"Specifications"** means the requirements for the Service as more fully detailed in the Tender or in a Service Request,

1.2.24. **"Tender"** means a written offer in the form determined by the an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation.

1.2.25. **"Term"** means a on and as and when required basis and for a period of 36 (THIRTY-SIX) months from the commencement date,

1.2.26. **"VAT"** means value added tax at the rates specified in the VAT Act,

1.2.27. **"VAT Act"** means the Value Added Tax Act, No. 89 of 1991.

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1.3. Any reference in this agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.

1.4. Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.

1.5. The head notes to the clauses to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1.6. The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.

1.7. Where any provision of this Agreement requires a Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or paper-based form. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, are expressly excluded from this Agreement.

1.8. 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 the term has not been defined in this interpretation clause.

1.9. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day.

2. PRECEDENCE

2.1. The documents listed hereunder constitute this Agreement. In the event of a conflict the order of precedence for the interpretation thereof shall be:

2.1.1. BAC REPORT,

2.1.2. THE TENDER DOCUMENT,

2.1.3. LETTER OF APPOINTMENT,

2.1.4. LETTER OF ACCEPTANCE; and

2.1.5. THIS AGREEMENT.

3. AGREEMENT

3.1. The Service Provider agrees to render the Services to Mogale City Local Municipality under the terms and conditions of this Agreement. This Agreement constitutes an agreement on the basis of which the Service Provider will render the Services to Mogale City Local Municipality for a period of 3 (THREE) Years.

3.2. The Service Provider shall not be entitled to impose any terms and conditions on Mogale City Local Municipality other than those contained in this Agreement.

3.3. No claim by the Service Provider for additional payment on any grounds will be allowed, including, without limitation, misunderstanding or misinterpretation in respect of the Tender nor will the Service Provider be released from any risk or obligations imposed on/or undertaken by the Service Provider on any such grounds or on the ground that it could not have foreseen any matter which might affect, or have affected its performance in terms of this Agreement.

4. DURATION

4.1. This agreement shall commence on the commencement date being the **1st August 2025** and shall remain in force for the term of the agreement being the **31st July 2028**.

4.2. Notwithstanding **clause 3.1** above, should any of the services already assigned to the "Service Provider" not be completed within the term of the contract, the "Service Provider" shall continue with such services until it has been completed, unless otherwise the Municipality has a change of priorities.

4.3. Notwithstanding **clause 4.1** above, the parties shall have the right to terminate this Agreement in terms of **Clause 25** herein.

5. REQUIREMENTS

No guarantee of any quantities can be given and it will be required to supply the items under this contract, on an as and when required basis and in such quantities as may be required during the period of this contract.

6. ORDERS FOR REQUIREMENTS

During the period of the contract, official orders for Mogale City's requirements will be placed with the Service Provider by the Finance/Stores Section and these cables and conductors shall only be supplied under this contract on receipt of such official orders in respect of this contract.

7. SERVICE REQUEST

7.1. The true intention and meaning of the Service Request is that the Service Provider will, in all respects, render and complete the Service in a professional manner to the satisfaction of Mogale City Local Municipality.

7.2. Notwithstanding anything contained herein each Service Request will constitute a separate agreement governed by the terms and conditions of this Agreement.

7.3. If there appears to be any conflict or want of agreement and/or contradiction between this Agreement and a Service Request, the Service Provider will refer the matter to Mogale City Local Municipality for a decision before proceeding with the execution of the Service Request, or part thereof, as affected by the conflict or want of agreement.

7.4. All Services and the like, not expressly mentioned in the Service Request or this Agreement, but which are necessary to fulfil its intent, will be performed by the Service Provider only after consultation with the Municipality.

7.5. Immediately after receiving the Service Request the Service Provider shall within 7 (seven) days, in writing, confirm receipt of each Service Request. Failure by the Service Provider to confirm receipt will constitute a material breach of this Agreement.

7.6. It is specifically recorded that Mogale City Local Municipality reserves the right to, during the execution of this Agreement, to require the Service Provider, by notice, to alter, amend, omit, add to, or otherwise vary any Service without invalidating the Service Request and the Service Provider will be obliged to carry out such variations subject to **Clause 7.6**.

7.7. If such variations involve an additional payment or prevent the Service Provider from fulfilling any obligations and/or guarantees, and within 7 (SEVEN) working days of receipt of the notice, the Service Provider will, before proceeding therewith, notify Mogale City Local Municipality in writing of its acceptance of the amendment. In such a case Mogale City Local Municipality will decide whether the Service Provider may proceed. If Mogale City Local Municipality confirms its instructions to proceed with the said

variation, the Service Provider's obligations and guarantees will be varied to such extent.

7.8. Subject to **clause 7.7** above, a variation to a Service Request may only be initiated by an authorised official of the Municipality, the approval of the variation to the original scope shall ensue from the relevant Section 56 employee of the Municipality in terms of the Municipal Systems Act, in as far as the variation is within the Section 56 employees authority, in instances wherein the variation of the scope is beyond the powers of the Executive Manager, the approval of the variation will then be authorised by the Municipal Manager. The onus to ensure that the employee is duly authorised shall vest in the Municipality and not the Service Provider.

7.9. To the extent that the amendment results in an adjustment to the Service costs, the Service Provider shall not give effect to the amendment notice until the Service Provider has received written confirmation, in the form of a letter on Mogale City Local Municipality's official stationery, from Mogale City Local Municipality signed by the Municipal Manager or his duly authorised representative ("the Confirmation Notice") of its approval of such adjusted Service costs. Such Confirmation Notice will constitute a valid variation of the Service Request.

7.10. Mogale City Local Municipality shall, subject to the Service Request that has already been issued, be entitled to source the Services from any service provider of its choice.

8. SCOPE OF SERVICE AND PERFORMANCE OF THE SERVICE PROVIDER

8.1. This contract provides for the supply, delivery and off-loading of:

8.1.1. Low Voltage PVC (Polymerizing Vinyl Chloride) Cable.

8.1.2. 11kV P.I.L.C.D.S.T.A.(Paper Insulated Lead Cable Double Steel Tape Armoured) P.V.C.(Table 18) & X.L.P.E.(Cross Linked Polyethylene) P.V.C. Cable.

8.1.3. Low Voltage Aerial Bundle Conductor Steel Wire Armoured + Concentric Cable + Braided alloy earth, on an as and when required basis for the period of three (3) years.

8.2. The Scope referred to in **8.1** shall be done in compliance with the approved Bid Document submitted by the Service Provider and which is **Annexure "D"** to this agreement.

8.3. The Completion Date or revised agreed date specified in the Service Request is of the utmost importance. Non-compliance with the said date will constitute a material breach of this Agreement. Partial performance will not constitute the provision of the Services.

8.4. The Service Provider assumes professional and technical responsibility for its performance, which will be in accordance with recognised professional standards employed by Service Providers performing work of a comparable nature, and that the qualitative and quantitative value added is to the satisfaction of Mogale City Local Municipality. If the rendering of the Services proves to be not of a satisfactory nature, rework, to improve the Service to conform to the qualitative standards of the Municipality, will not be chargeable. In executing it's duties in terms of this agreement, the Service Provider must comply with all relevant legislation.

8.5. The Service Provider will be an independent Service Provider and not an employee, agent, joint venture or partner of Mogale City Local Municipality. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between Mogale City Local Municipality and the Service Provider.

8.6. A contractor appointed by the Service Provider (Sub-Contractor) will be an independent contractor as defined by the Labour Relations Act, No. 66 of

1995, and the Occupational Health and Safety Act, No. 85 of 1993, amongst others, and will provide the said Services as such. The Service Provider will not have the authority to act on behalf of Mogale City Local Municipality or to bind Mogale City Local Municipality without Mogale City Local Municipality's express written consent and shall not be considered as having employee status for the purpose of any benefit applicable to Mogale City Local Municipality employees generally, other than those stated in this Agreement.

8.7. The Service Provider warrants it has full knowledge of the relevant statutory, collective and other stipulations applicable to the relationship with its contractors and the relationship with Mogale City Local Municipality. This includes, but is not limited to, the Labour Relations Act, No. 66 of 1995, as amended and the Basic Conditions of Employment Act, No. 75 of 1997, or any other employment legislation currently in force or which may come into force during the duration of this Agreement. The Service Provider warrants that it is not and will not in future be in contravention of the said legislation and in the event of such contravention, the Service Provider undertakes to immediately remedy such contravention. If Mogale City Local Municipality advises the Service Provider of a contravention, the Service Provider shall, within 10 (ten) Business Days, remedy such contravention and shall keep Mogale City Local Municipality informed regarding the steps taken and the implementation and the results thereof.

8.8. The Service Provider hereby indemnifies and holds Mogale City Local Municipality harmless against any claim or action whatsoever taken against Mogale City Local Municipality by a contractor of the Service Provider or an independent or agent of his contractor. In the event of the Service Provider or its contractor rendering the Service to Mogale City Local Municipality, becoming involved in arbitration or falling within a collective agreement under a Bargaining Council, then the Service Provider shall immediately inform Mogale City Local Municipality thereof and on request, supply Mogale City Local Municipality with a copy of such award, agreement or any

documentation that the Municipality may request. Non-compliance with this clause will be considered to be a material breach of this Agreement and will entitle the Municipality to terminate this Agreement with the Service Provider, without limiting the Municipality's right to recover damages from the Service Provider resulting from such cancellation, or to take all steps and do all things necessary to remedy such a contravention itself.

8.9. The quoted bid prices shall include delivery charges to and off loading at the Mogale City Local Municipality, Municipal Stores, Technical services Yard, 1 Tudor Road, Chamdor, Mogale City, South Africa (between 7:30 and 15:30 on weekdays).

8.10. Upon any delay beyond the set date, the Municipality may, without terminating this Agreement in its entirety, be entitled forthwith to obtain similar Services from a third party as Mogale City Local Municipality may require.

8.11. Pursuant to **clause 8.12**, the Municipality will be entitled to recover any adverse difference in price it may incur to the Service Provider's non or partial performance of the Services.

8.12. Subject to **clause 16,** If the Service Provider fails to render the Services within the Completion Date, Mogale City Local Municipality will have the right, in its sole discretion to either deduct as a penalty an amount equivalent to 2,5% (two and a half percent) of the Service Request/Agreement value (as the case may be) per week/portion of a week for the period of delay, or to claim any damages or loss suffered in lieu of such penalty, provided that the penalty will be applied to the value of the outstanding portion of the Service Request/Agreement (as the case may be), only where Mogale City Local Municipality has Beneficial Use of the Services.

8.13. The Service Provider shall be given the opportunity to respond in writing within 10 days after having been notified.

8.14. The Service Provider's written response may provide grounds that may allow the Project Manager together with Contract Management to institute corrective actions to remedy poor performance with clear target dates.

8.15. Any work or portion thereof performed under this contract, which has been paid for by the Municipality, shall remain the property of the Municipality.

9. QUALITY

9.1. All materials and standards shall comply with the latest amended specifications as follows:

9.1.1. Low Voltage PVC Cable -- S.A.N.S. 1507 and SANS 1411 specifications & PIESA 003- 1 as the case may be unless otherwise specified.

9.1.2. 11kV P.I.L.C.D.S.T.A. P.V.C. Table 18 (S.A.N.S. 97) & X.L.P.E. P.V.C. (Vultex Type A) (S.A.N.S. 1339) unless otherwise specified.

9.1.3. Low Voltage Aerial Bundle Conductor SWA + Concentric Cable + Braided alloy earth:

9.1.3.1. The Bundle Conductor must comply with SANS 1418 Part 1 and 2. The voltage rating must be 600/1000V.

9.1.3.2. The AIRDAC cable shall be circular stranded hard drawn copper phase conductor, XLPE insulated with concentrically arranged identified neutral and bare earth conductors. Polyethylene sheathed 600/1000V service connection cable. Nylon ripcord laid under sheath. Manufactured to SANS 1507 and NRS 063. Mink ACSR Cable (38.71mm^2).

9.1.3.3. The Mink ACSR Cable shall be an Aluminium Conductor with a steel support core with a 260 Amp rating for use in

overhead transmission and distribution lines. Manufactured to SANS 182.

9.1.3.4. The Braided Alloy Earthing Wire (Equivalent to Kwena) must be manufactured with a cross sectional area resistance as per SANS 1411 part 1/1986.

10. SITE CONDITIONS:

Site conditions shall be in compliance as follows:

Altitude:	1 738 meters above sea level.
Temperature: Max: Min:	 35°C -6°C
Humidity: During the night: During the day:	 100 % relative humidity 25 % relative humidity
Lightning:	Severe lightning storms prevail.

11. SPECIAL CONDITIONS

11.1. All conductors must have a unique coded Cable Marking inside the cable on the conductor for the limiting of cable theft, specific details to identify conductors as Mogale City Local Municipality property must be provided.

11.2. Certification of manufactured Products in accordance with SANS Specifications and Regulations from a SANAS accredited body must be provided.

11.3. The delivery period for items tendered shall not exceed eight (8) weeks

which is the normal industry practice.

11.4. Manufacturers –

a) A copy of Certificate for ISO 9001:2000 or latest version Quality Management System from a SANAS accredited Certification Body

11.5. Distributors: -

a) A signed and dated letter of intent on the manufacturer's company letterhead that confirms a supply agreement with an ISO 9001:2000 or latest version certificate attached

12. DESCRIPTION OF PRODUCTS/ITEMS

12.1. Details of Low Voltage Aerial Bundle Conductor Steel Wire Armoured + Concentric Cable + Braided Alloy Earth Conductors required under Section C of this Contract

a) 35 mm² x 1 + BN ABC 400 V as per SANS 1418 Part 1 and 2

b) 35 mm² x 3 + BN ABC 400 V as per SANS 1418 Part 1 and 2

c) 50 mm² x 3 + BN ABC 400 V as per SANS 1418 Part 1 and 2

d) 70 mm² x 3 + BN ABC 400 V as per SANS 1418 Part 1 and 2

e) 95 mm² x 3 + BN ABC 400 V as per SANS 1418 Part 1 and 2

f) 35 mm² x 3 + BN + SL ABC 400 V as per SANS 1418 Part 1 and 2

g) 50 mm² x 3 + BN + SL ABC 400 V as per SANS 1418 Part 1 and 2

h) 70 mm² x 3 + BN + SL ABC 400 V as per SANS 1418 Part 1 and 2

i) 95 mm² x 3 + BN + SL ABC 400 V as per SANS 1418 Part 1 and 2

j) 16 mm² AIRDAC SNE Cable as per SANS 1507

k) MINK ACRS Conductor as per SANS 182

l) Braided Alloy Earthing Wire (Equivalent to Kwena) conductor 95mm² as per SANS 1411 part 1/1986

13. PRICING AND INVOICING

13.1 The following rates (Including VAT) shall apply from 1 July 2025 to 30 June 2028

SECTION C:

PRICING SCHEDULE

Item	Description	Delivery period (Weeks)	Price per 100 meter (Excl. VAT)	Price per 100 meter (Incl. VAT)
1	35 mm² x 1 + BN ABC 400 V	4-6 WEEKS	R2 777.60	R3 194.24
2	35 mm² x 3 + BN ABC 400 V	4-6 WEEKS	R5 728.80	R6 588.12
3	50 mm² x 3 + BN ABC 400 V	4-6 WEEKS	R8 977.60	R10 324.24
4	70 mm² x 3 + BN ABC 400 V	4-6 WEEKS	R9 796.00	R11 265.40
5	95 mm² x 3 + BN ABC 400 V	4-6 WEEKS	R13 020.00	R14 973.00
6	35 mm² x 3 + BN + SL ABC 400 V	4-6 WEEKS	R7 440.00	R8 556.00
7	50 mm² x 3 + BN + SL ABC 400 V	4-6 WEEKS	R9 213.20	R10 595.18
8	70 mm² x 3 + BN + SL ABC 400 V	4-6 WEEKS	R11 631.20	R13 375.88
9	95 mm² x 3 + BN + SL ABC 400 V	4-6 WEEKS	R14 508.00	R16 684.20
10	16 mm² AIRDAC SNE Cable	4-6 WEEKS	R12 772.00	R14 687.80
11	MINK ACRS Conductor	4-6 WEEKS	R2 517.20	R2 894.78
12	Braided Alloy Earthing Wire (Equivalent to Kwena) conductor 95mm²	4-6 WEEKS	R40 585.20	R46 672.98
		TOTAL	**R138 966.80**	**R159 811.82**

13.2 The consideration and rates that the Municipality will pay to the Service Provider in respect of the rendering of the Services shall be fully outlined in the Service Request to be issued to the Service Provider.

13.3 The Service Provider warrants that the prices, charges and fees to Mogale City Local Municipality as contained in this Agreement are at least as favourable as those offered by the Service Provider to any of its other customers that are of the same or similar standing as Mogale City Local Municipality.

13.4 After due completion of the services, and upon request by the Service Provider, the Municipality will supply the Service Provider with a written acknowledgement to the effect that the Services have been rendered in accordance with this Agreement.

13.5 The rates set out above will be fixed for the first twelve (12) months, however the following may apply for year 2 and 3:-

13.5.1 Should the bid prices be subject to contract price adjustments during the contract period for labour and for raw materials, the bid shall include details for calculating above adjustments in accordance with an industry recognized contract price adjustment formula, such as that of Steel and Engineering Industries Federation of South Africa (SEIFSA).

13.5.2 That the consumer price index to be used with the SEIFSA formula based on those published two months prior to the month of bid closing; as an example, own manufacture price increase shall not be accepted as a form of cost price adjustment.

13.5.3 Should no price adjustment or variation clauses be included in the tender documents, the prices tendered/quoted will be considered as being fixed and the Municipality will not under any circumstances, accept, for its account, any increase in the prices tendered during the duration of the contract.

13.6 Payments of fees shall only be made for the services rendered and verified.

13.7 After due completion of the services, and upon request by the Service Provider, the Municipality will supply the Service Provider with a written acknowledgement to the effect that the Services have been rendered in accordance with this Agreement.

13.8 Payment of invoices for the Service Provider will be effected not later than 30 (thirty) days from receipt of a correct and original invoice.

13.9 The monthly statements, invoices and all supporting documentation must be received before payment can be effected. The monthly statement must be accompanied by a summary page indicating invoices, date, value and the department and work done for payments received from commencement date of the Tender. Should the Service Provider's documentation be incomplete or incorrect, payment will only be effected the month following the month during which the correct documents were received.

13.10 The Service Provider, in the event that it is registered as a VAT vendor in terms of the VAT Act, shall ensure that the Invoice complies with the provisions of the VAT Act, failing which the Municipality shall not make any payment in respect thereof until such time as it receives an invoice from the Service Provider which complies with the aforementioned provisions. The Service Provider acknowledges that, in accordance with Section 20(4) of the VAT Act, it is mandatory for the Service Provider to print the Municipality's VAT Registration Number on each and every tax invoice, above R1000.00 (one thousand rand), that the Service Provider issues to the Municipality.

13.11 Settlement discounts shall not apply.

13.12 The municipality may set-off any amounts owed by the Service Provider from any amount due, with the exception of payment being withheld in terms of **clause 23**.

13.13 Payment will be effected by bank transfer. Mogale City Local Municipality's liability towards the Service Provider will be deemed to have been met when the bank transfer is made. The Service Provider assumes the entire risk for bank transfer, upon transfer being made. The Service Provider will ensure that Mogale City Local Municipality, at all times, has the correct banking information in order to make a bank transfer.

13.14 All original invoices with relevant supporting documentation must be forwarded to Mogale City Local Municipality, using the following email address:
supplierinvoice@mogalecity.gov.za

13.15 All payments are provisional and are subject to audit by Mogale City Local Municipality. The Service Provider will preserve its records for such a period as the South African Revenue Services may require, 5 (five) years from date of payment, whichever is longer.

14. CORPORATE SOCIAL RESPONSIBILITY

A Corporate Social Responsibility Contribution of two percent (2%) inclusive of VAT shall be levied on all payments made to the Service Provider as the Service Provider is **not** based in the area of jurisdiction of Mogale City Local Municipality.

15. CRITERIA TO MONITOR AND SCORE PERFORMANCE OF THE SERVICE PROVIDER

15.1 The criteria to monitor and evaluate performance of the Service Provider as per Section 27 of the Supply Chain Policy shall be as follows:

KEY PERFORMANCE AREAS	KEY PERFORMANCE INDICATORS	PORTFOLIO OF EVIDENCE
• **Leadtime**	• Service provider to deliver within 8 weeks	• Signed Delivery Note by both parties. The delivery note must be on a letter head of the Service Provider
KEY PERFORMANCE AREAS	**KEY PERFORMANCE INDICATORS**	**PORTFOLIO OF EVIDENCE**
• **Quality**	• Al material must comply with the latest amended specifications	• A copy ISO certificate 9001:2000
• **Quantity**	• The delivered material must be as per the order	• Signed Delivery Note • Pictures • Works Order

15.2 The following shall be the scoring guidelines for the monitoring of the Service Provider's performance:

(a) 1 = Poor (59%) Unacceptable Performance, the performance does not meet the expected, the Service Provider has failed to demonstrate commitment level expected.

(b) 2 = Average (60-69%) Performance full not effective, performance is below standard required, it meets some expectations.

(c) 3 = Above average (70-79%) Performance fully effective, performance fully meets standards expected as per scope.

(d) 4 = Good (80-89%) Performance significantly above expectations performance is significantly higher than expected standard.

(e) 5 = Excellent (90-100%) Outstanding performance, performance far exceeds the standard expected.

16 PENALTIES FOR UNSATISFACTORY PERFORMANCE

16.1 The Municipality is responsible for monitoring and assessing the implementation of this agreement, including the performance of the Service Provider in accordance with Section 41 of the Municipal Systems Act.

16.2 The performance of the Service Provider in executing this agreement shall be monitored and reported on in accordance with Section 116 of the Municipal Finance Management Act.

16.3 The Service Provider's performance must be assessed within the context of the scope of services as indicated in the Tender.

16.4 The respective roles and obligations of the Municipality and Service Provider under this agreement must be considered in the assessment of the performance of the Service Provider.

16.5 In reviewing the performance of the Service Provider, the Municipality must consider whether satisfactory progress or completion of a project/services has been affected by any matter(s) which are:

16.5.1 outside the service provider's control, or

16.5.2 the result of some action by the Municipality.

16.6 If there is evidence that the underperformance or non-performance of the Service Provider is due to factors caused by the Municipality then:

16.6.1 there will be no penalization of the Service Provider;

16.6.2 the Municipal Manager, or delegated official, must take corrective action where necessary.

16.7 The Service Provider may be notified of the assessment.

16.8 The Service Provider may respond to the assessment, in writing, and this must be filed with the assessment.

16.9 The following penalty measures must be considered where there's continuous non-performance or unsatisfactory performance for a period of more than three (3) months:

16.9.1 Levy of 2.5% for poor performance as penalty.

16.9.2 Credit notes.

16.9.3 Non-Payment.

16.9.4 Reporting the Service Provider to National Treasury to be grey listed.

16.9.5 Invoke the termination clause.

16.10 The above will be considered after Contract Management ensured that corrective measures were put in place to assist the Service Provider to improve or comply with its contractual obligations as required by the Municipal Systems Act.

16.11 The documents set out in **clause 2** of this the agreement will assist in determining what action will be taken against the Service Provider if underperformance or non-performance is detected.

17 EVALUATION OF THE SERVICE PROVIDER'S EMPLOYEES

17.1 The Service Provider shall at all times ensure that its employees are qualified employees and ensure that each employee meets the requirements set out in the Service Request.

17.2 The Service Provider shall further ensure that background checks ("Checks") on such employees have been conducted, and such Checks shall include those set out in the Service Request, and in any event, the following:

17.2.1 qualifications authenticity.

17.2.2 confirmation that the employee's Curriculum Vita is an accurate reflection of his/her profile and career history; and

17.2.3 Reference checks from previous employer.

17.3 The Service Provider shall, on request from Mogale City Local Municipality, provide the Checks on any or all of its employees.

17.4 The Municipality reserves the right to refuse access, without any explanation, to any of the Service Provider's employee who, is deemed to be unsuitable or unsatisfactory.

18 NON-EXCLUSIVITY

This Agreement is not exclusive. Notwithstanding the delivery of the LOA and the signing of this Agreement, Mogale City Local Municipality reserves the right to procure the Services from any other Service Provider irrespective of whether such Service Provider has been appointed as the Service Providers or not.

19. INDEMNITY

19.1 The Service Provider agrees to indemnify, hold harmless and defend the Municipality and its officers, employees, agents and representatives from and against the following damages, loss and liabilities (hereinafter collectively referred to as "Liability") arising as a result of the negligence or fault of the Service Provider:

19.1.1 any Liability with regard to claims by governmental authorities or others for non-compliance by the Service Provider with any Act of Parliament, law, ordinance, regulation or by-law made by a lawful authority provided that such compliance therewith was required for the execution of this Agreement;

19.1.2 any Liability arising out of intentional or negligent acts, or omissions to act, of the Service Provider;

19.1.3 any Liability arising from claims with regard to the death of, or injury to, the Service Provider or the death of, or injury to, third parties due to the Service Provider's negligence (excluding Mogale City Local Municipality 's employees in respect of whom Mogale City Local Municipality holds the Service Provider harmless); and

19.1.4 any Liability arising from any loss of, or damage to, property (including Mogale City Local Municipality property and/or equipment of the Service Provider).

20. LIMITATION OF LIABILITY

20.1 Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract by either Party.

20.2 Notwithstanding in terms of the Prescription Act No 68 of 1969 (as amended) or any other applicable statute of limitation neither Mogale City Local Municipality nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is made within 12 months from the date of termination or completion of this Agreement.

20.3 The parties agree that the maximum amount of compensation payable by either parties to the other in respect of liability arising out of or in connection with this Agreement, is limited to the gross fees payable to the Service Provider under this Agreement save for costs incurred as set out above.

20.4 The Service Provider's limitation of liability herein is excluding the limitation covered by Public Liability Insurance, Professional Indemnity Insurance and liability in terms of the associated Professional standards.

20.5 Save for conditions stated in **20.4** above, notwithstanding this limit, neither Party shall be liable to other Party for any indirect, incidental, special, punitive, consequential or exemplary loss or damages suffered and/or incurred by the other Party pursuant to this Agreement.

20.6 Mogale City Local Municipality shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the rendition of the services save to the extent that such claims do not in the aggregate exceed the limit of compensation stated in **20.3** or for the full amount of any such claims after the period stated in **20.2**.

20.7 Any liability (including latent defects liability) or obligation of the Service Provider under this Agreement, shall terminate upon expiration of the Warranty Period.

21. SAFETY AND SECURITY

21.1 The Service Provider agrees to comply with Mogale City Local Municipality's security and safety procedures. Without limiting the generality hereof, the Service Provider will specifically comply with the Occupational Health and Safety Act.

21.2 Mogale City Local Municipality may allow the Service Provider access to Mogale City Local Municipality's premises in terms of its security procedures as amended from time to time.

21.3 Mogale City Local Municipality will be entitled to request the Service Provider to remove any employee, agent, consultant or subcontractor from its team if Mogale City Local Municipality is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the Parties. The Service

Provider will remove such a person within the time period stipulated by Mogale City Local Municipality. The Service Provider indemnifies Mogale City Local Municipality against any claims that might arise due to such removal.

22. CANVASSING AND INDUCING MOGALE CITY LOCAL MUNICIPALITY EMPLOYEES

22.1 The Service Provider will not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of Mogale City Local Municipality's employees.

22.2 Such an act will constitute a material breach of the Agreement and Mogale City Local Municipality will be entitled to terminate this Agreement forthwith, without prejudice to any rights.

23. FRAUD

23.1 If, at any time during the duration of this Agreement, Mogale City Local Municipality, in its reasonable discretion determines, based on *prima facie* evidence, that the Service Provider has, in respect of this Agreement to which they were or are Parties:

23.1.1 acted dishonestly and/or in bad faith; and/or

23.1.2 has made any intentional or negligent misrepresentation to Mogale City Local Municipality, whether in any negotiations preceding the conclusion of, or in the execution of the Agreement between the parties,

Then Mogale City Local Municipality will be entitled by written notice to the Service Provider forthwith to terminate this Agreement. Upon such termination Mogale City Local Municipality shall be entitled, in addition to all other remedies available to it, to recover from the Service Provider all damages it has suffered

by virtue of such conduct by the Service Provider. If, at any time of such termination, Mogale City Local Municipality be indebted to the Service Provider for any amounts whatsoever, Mogale City Local Municipality shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the Service Provider's conduct and any damages suffered by Mogale City Local Municipality. No payment by Mogale City Local Municipality to the Service Provider after the lapse of such period shall preclude Mogale City Local Municipality, thereafter, from recovering from the Service Provider any such damages as it may have suffered.

24. LIENS AND CLAIMS BY THIRD PARTY

24.1 The Service Provider waives all liens and rights of possession relating to the Services.

24.2 If a third party makes a claim on Mogale City Local Municipality to anything connected with the Services, the Service Provider will:

24.2.1 after notification by Mogale City Local Municipality, deal with such a claim in such a manner as to avoid all prejudice to Mogale City Local Municipality and keep Mogale City Local Municipality fully informed; or

24.2.2 Alternatively, Mogale City Local Municipality may deal with such a claim at its discretion, in which event the Service Provider will render to Mogale City Local Municipality all necessary assistance.

24.3 If Mogale City Local Municipality incurs any fair and reasonable expenses or makes any disbursements in terms of this **clause 24**, such expenses may be set-off against moneys owed to the Service Provider.

25. FORCE MAJEURE

If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including but not limited to, by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party. Any Party invoking *force majeure* shall, upon termination of such event giving rise thereto forthwith give written notice thereof to the other Party. Should such *force majeure* continue for a period of more than 90 (ninety) days then either Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.

26. BREACH AND TERMINATION

26.1 A Party to this Agreement shall be in default if it:

26.1.1 fails to supply the ordered items on time and with the expected quality, or

26.1.2 fails to pay any amount due by it in terms of this Agreement, by the due date, and fails to remedy such breach within 7 (seven) days of written notice to do so; or

26.1.3 commits a material breach of any provision of this Agreement and fails to remedy such breach within 5 (five) days (or such

period as may be reasonable in the circumstances) written notice to do so; or

26.1.4 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No. 24 of 1936, is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act, No. 61 of 1973, alternatively Section 69 of the Close Corporations Act, No. 69 of 1984, as the case may be, finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act, alternatively Section 68 of the Close Corporations Act, as the case may be, is deregistered or applies for deregistration in terms of Section 73 of the Companies Act, alternatively Section 26 of the Close Corporations Act, as the case may be, or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party.

26.1.5 If a Party is in default, the aggrieved party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this Agreement, to terminate this Agreement by giving 30 (thirty) days written notice.

26.2 Notwithstanding the provisions of **clause 26.1.5**, Mogale City Local Municipality may, without prejudice to any other rights herein, at any time and by giving written notice, forthwith terminate the Agreement if:

26.2.1 Mogale City Local Municipality has any reason to believe that the Service Provider or anyone employed by it or acting on its behalf, whether with or without the Service Provider's knowledge, engages in a fraudulent practice in connection with this Agreement;

26.2.2 there is a substantial change of the ownership in or in the control of the Service Provider (save in the event of the restructuring of

the group of companies of which the Service Provider forms part), without prior notification of such change to Mogale City Local Municipality;

26.2.3 the Service Provider fails to satisfy a judgement against the Service Provider within 21 (twenty one) days after the Service Provider becomes aware of the judgement, except if the Service Provider provides evidence on an ongoing basis to the reasonable satisfaction of Mogale City Local Municipality that steps have been initiated within the 21 (twenty one) days to appeal or rescind the judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued. The period of 21 (twenty-one) days shall run from the date succeeding the date on which judgement becomes final, or the date on which the attempts to procure the suspension of the execution fail; or

26.2.4 The Service Provider acts against the expressed policies and instructions of Agreement as expressed in terms of this Agreement.

26.2.5 The termination of this Agreement will not prejudice the rights of either Party to claim damages or to obtain any other relief in respect of any antecedent breach of the terms and conditions of this Agreement prior to such termination.

26.2.6 Notwithstanding any other provision contained in this Agreement, in the event that the Service Provider fails to complete the Services on the Completion Date (or such later date as the Parties may have agreed to in writing), or fails to deliver the Services in compliance with the Specifications, then Mogale City Local Municipality shall, at its election, be entitled, but not obliged to:

26.2.6.1 terminate this Agreement forthwith.

C.W P.C A.N.D M.M

26.2.6.2 Claim damages or loss suffered in lieu of such penalty.

27. DISPUTE RESOLUTION

27.1 All disputes between the Parties shall, when all efforts to resolve such dispute by negotiation have failed, be referred to the High Court of South Africa, Gauteng Local Division, Johannesburg save if the Parties agree to refer the dispute to arbitration.

27.2 The Party declaring the dispute shall be obliged, prior to referring the matter to the High Court or to arbitration, to deliver written notice to the other Party giving full details in respect of the alleged disputes to enable the other Party to fully appreciate the nature and extent of the alleged dispute.

28. ARBITRATION

28.1 In the event that the Parties agree to refer a dispute to arbitration, such arbitration shall be held subject to the provisions of this clause:

28.1.1 at Krugersdorp,

28.1.2 Informally,

28.1.3 otherwise in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended, and

28.1.4 it being the intention that, if possible, it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.

28.2 The arbitrator shall be if the question in issue is:

28.2.1 primarily an accounting matter, an independent accountant agreed upon between the Parties;

28.2.2 primarily a legal matter, a practising senior counsel with no less than 10 (ten) years standing agreed upon between the Parties; or

28.2.3 any other matter, an independent person agreed upon between the Parties.

28.3 If the Parties cannot agree upon a particular arbitrator in terms of **28.2** above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of **28.2.1, 28.2.2** or **28.2.3**, as the case may be, shall be made by the Chairperson of the Legal Practice Council having jurisdiction (or its successor), within 7 (seven) days after the Parties have so failed to agree.

28.4 The Parties irrevocably agree that the decision in these arbitration proceedings:

28.4.1 shall be binding on them,

28.4.2 shall be carried into effect,

28.4.3 shall have right for review,

28.4.4 may be made an order of any Court of competent jurisdiction; and

28.4.5 shall not exclude the Parties' right to urgent relief.

29. NOTICES AND *DOMICILIUM*

29.1 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), their respective addresses set out in **clause 28.2**. below, at which addresses all processes and notices arising

out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

29.2 For the purposes of this agreement the Parties' *domicilium citandi et executandi* is:

as regards **Mogale City Local Municipality** at:

PHYSICAL: CIVIC CENTRE NO 38 Cnr Market and Commissioner Streets, Krugersdorp, 1739

POSTAL: P.O. BOX 94, KRUGERSDORP, 1740

E-MAIL: Makhosana.Msezana@mogalecity.gov.za

TELEPHONE NUMBER: (011)-951-2037

MUNICIPAL MANAGER

as regards the "**Service Provider**" at:

PHYSICAL: 444 TULIP LANE
KYALAMI BOULEVARD ESTATE
KYALAMI, 1684

POSTAL: 444 TULIP LANE
KYALAMI BOULEVARD ESTATE
KYALAMI, 1684

Telephone Number: 061 521 7275

CELL NUMBER: 073 262 4060

E-MAIL ADDRESS: info@fabritech.co.za

MANAGING DIRECTOR

M.M

29.3 or at such other physical address, not being a post office box or *poste restante*, of which the Party concerned may notify the other in writing.

29.4 Any notice given in terms of this Agreement shall be in writing and shall, unless the contrary is proven:

29.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

29.4.2 if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting;

29.4.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch;

29.4.4 if sent electronically, be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt.

29.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above, shall be an adequate written notice of communication to such Party.

30. JURISDICTION

30.1 Each of the Parties hereby submits itself to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with the Agreement and for such purpose irrevocably submit to the jurisdiction of the High Court.

30.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in **clause 30.1** being

nominated as a forum to hear and determine any suit, action or proceedings and to settle any disputes which may arise out of or in connection with this Agreement and agrees not to claim that any such court is not a convenient or appropriate forum. The Parties agree that the process by which any suit, action or proceeding is begun may be served on it by being delivered in connection with any suit, action or proceeding at its registered office for the time being.

30.3 The Service Provider shall, if its registered address is not in South Africa, as soon as any suit, action or proceeding is brought against it, appoint an address in South Africa for purposes of service and failing such appointment within 15 (fifteen) days after such suit, action or proceeding is instituted, Mogale City Local Municipality shall be entitled to appoint such address by notice to the Service Provider. Nothing contained herein shall affect the right to serve process in any other manner permitted by law.

30.4 The submission to the jurisdiction of the court referred to in **clause 30.1** shall not be construed so as to limit the rights of either Party to take proceedings against the other Party in any other court of competent jurisdiction for the purposes of obtaining urgent or interdictory relief.

31. CESSION OR ASSIGNMENT

31.1 The Parties shall not:

31.1.1 cede or assign any rights and/or obligations arising out of this Agreement without the written permission to either Party; and

31.1.2 make or allow any change to the shareholding or management control of either party as it is at the time of signature of this

Agreement in the absence of prior notification of such change to either Party.

32. SEVERABILITY

If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable there from and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

33. WAIVER

33.1 The waiver (whether expressed or implied), by a Party of any breach of the terms or conditions of this Agreement by the other Party shall not prejudice any remedy of the waiving Party in respect of any continuing or other breach of the terms and conditions hereof.

33.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this Agreement.

33.3 The expiry or termination of this Agreement shall not prejudice the rights of either Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions hereof.

34. MODIFICATION

No amendment, variation or consensual cancellation of this Agreement or any provision or term hereof or of any other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any other document issued pursuant to or in terms of this Agreement shall be binding unless made in accordance with the terms of this Agreement and recorded in a written document signed by the duly authorized representatives of the Parties.

35. APPLICABLE LAW

This Agreement shall be governed exclusively, in all respects, by and shall be interpreted in accordance with the laws of the Republic of South Africa.

36. ENTIRE AGREEMENT

The Agreement and the incorporated documents represent the entire Agreement between the Service Provider and Mogale City Local Municipality, cancelling and taking the place of all prior oral, written or implied agreements between them.

SIGNED AT KRUGERSDORP **ON THE** 08 **DAY OF** SEPTEMBER **2025**

WITNESSES:

1. _____

_____
duly authorised for and on behalf of Fabritech Engineering and Supplier Group (Pty) Ltd
MOSES MOHALE RASEALA
(Managing Director)

2. _____

SIGNED AT **KRUGERSDORP** ON THE 30 DAY OF October 2025

WITNESSES:

1. _____

_____
duly authorised for and on behalf of the **MUNICIPALITY**

2. _____