

# **SERVICE LEVEL AGREEMENT**

(Section 36 (1) (a)(v))

by and between

**MOGALE CITY LOCAL MUNICIPALITY**

("The Municipality")

and

**ACCESS ENGINEERING CONSULTING PTY (LTD)**

(2015/168475/07)

("Service Provider")

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**WHEREAS:**

- the Municipality had called for service providers to render **Engineering Consulting and Project Management of the Brickvale Initiative as per 36 (1)(a) (v) of the Supply Chain Management Policy for a period of twenty seven (27) months;**
- **ACCESS CONSULTING ENGINEERS (Pty) Ltd** has the necessary expertise and knowledge and was appointed in order to provide services for a period of twenty seven (27) Months and **ACCESS CONSULTING ENGINEERS (Pty) Ltd** has accepted same. (Copies of the 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 **ACCESS CONSULTING ENGINEERS (Pty) (Ltd,** full details of which appear in the Bid Document attached herein as annexure “D” hereto;
- The appointment and execution of the Brickvale Initiative is subject to funding being made available by GDHS. The Brickvale Project funding from **GDHS** amounts to **R70 038 224.00** as per the grant Funding Agreement in Agreement in “Annexure E” attached hereto;
- **ACCESS CONSULTING ENGINEERS (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 **DEFINITIONS**

1.1 The headings to the clauses, schedules and annexure 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 hereto, RFQ, 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 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 16:30, 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 7.2;

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

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- 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 9 March 2023;
- 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 Providers 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 "**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;
- 1.2.14 "**Parties**" means the Service Provider and Mogale City Local Municipality Mogale City Local Municipality and a "Party" shall as the context requires, be either of them;

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- 1.2.15 **“Quotation”** means the written response of a Service Provider to the RFP issued by Mogale City Local Municipality;
- 1.2.16 **“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;
- 1.2.17 **“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;
- 1.2.18 **“Services”** means the services set out in the RFQ, in respect of which Mogale City Local Municipality will set out as and when required in a Service Request;
- 1.2.19 **“Service Location”** means the physical address where the Services will be rendered;
- 1.2.20 **“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;
- 1.2.21 **“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;
- 1.2.22 **“Specifications”** means the requirements for the Service as more fully detailed in the RFQ or in a Service Request;

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- 1.2.23 "Service Provider" means ACCESS CONSULTING ENGINEERS (Pty)Ltd (Registration Number 2015/168475/07), a company duly incorporated with limited liability according to the company laws of the Republic of South Africa and herein represented by EMMANUEL MANENZHE in his capacity as DIRECTOR, (Copy of the Company Resolution is attached herein as annexure "E");
- 1.2.24 "Term" means a period of 27 (TWENTY SEVEN) months from the commencement date;
- 1.2.25 "VAT" means value added tax at the rates specified in the VAT Act;
- 1.2.26 "VAT Act" means the Value Added Tax Act, No. 89 of 1991.
- 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.

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- 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 THE TENDER DOCUMENT;

2.1.2 "THIS AGREEMENT";

2.1.3 "LETTER OF APPOINTMENT";

2.1.4 "LETTER OF ACCEPTANCE";

## **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



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Service Provider will render the Services to Mogale City Local Municipality for a period of 27 (Twenty seven Months).

- 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 RFQ, 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 shall remain in force for a period not exceeding 27 (TWENTY SEVEN) months.
- 4.2 Notwithstanding clause 4.1 above, should any of the projects already assigned to the "Service Provider" not be completed within the term of the contract, the "service provider" shall continue with such project 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 21 herein.

#### 5 SERVICE REQUEST

- 5.1 The true intention and meaning of the Service Request is that the Service Provider will, in all respects, render and complete the Service

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in a workmanlike manner to the satisfaction of Mogale City Local Municipality.

- 5.2 Notwithstanding anything contained herein each Service Request will constitute a separate agreement governed by the terms and conditions of this Agreement.
- 5.3 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.
- 5.4 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.
- 5.5 Immediately after receiving the Service Request the Service Provider will within 7 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.
- 5.6 It is specifically recorded that Mogale City Local Municipality reserves the right to, during the execution of this Agreement, 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 5.7.
- 5.7 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

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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.

- 5.8 Subject to clause 5.7 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 Sec 56 employee of the Municipality in terms of the Municipal Systems Act, in as far as the variation is within the sec 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.
- 5.9 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.
- 5.10 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.

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6 SCOPE OF SERVICE AND PERFORMANCE OF THE SERVICE PROVIDER

6.1 The services will be paid from the Brickvale Project grant funding from GDHS.

6.2 The Services Provider shall render professional services for engineering consulting and project management for a period of twenty seven (27) months. The works will comprise the construction of the following civil engineering infrastructure;

6.2.1 This project is implemented on greenfield area and is aimed to yield 6480 houses;

6.2.2. The scope of work to be covered specifically for Water & Sanitation Networks:

6.2.3. Clearing and grubbing the site;

6.2.4. Hand Excavations;

6.2.5. Backfilling and compacting all excavations;

6.2.6. Removing oversize material;

6.2.7. Removing existing concrete and masonry work, irrespective of class and type;

6.2.8. Installation of valves and fire hydrants;

6.2.9 Installation of manholes and valve chambers;

6.2.10 Laying of water and sewer pipes;

6.2.11 Construction of Internal Roads;

6.1.12 Construction of Reservoir

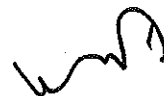
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- 6.3 The project specification and full details of each and every project shall be outlined in the service request to be signed by the Municipal Manager or his delegated official before approved projects commences.
- 6.4 The Completion Date or revised 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.
- 6.5 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 Mogale City Local Municipality, will not be chargeable. In executing Engineering Work, Practitioners must comply with all relevant legislation.
- 6.6 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.
- 6.7 A contractor supplied by the Service Provider 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



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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.

- 6.8 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.
- 6.9 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

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Municipality with a copy of such award, agreement or any documentation that Mogale City Local Municipality may request. Non-compliance with this clause will be considered to be a material breach of this Agreement and will entitle Mogale City Local Municipality to terminate this Agreement with the Service Provider, without limiting Mogale City Local 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.

- 6.10 The Service Provider will render the Services at the address indicated in the Service Request.
- 6.11 Upon any delay beyond the set date, Mogale City Local Municipality may, without terminating this Agreement, be entitled forthwith to obtain similar Services from a third party as Mogale City Local Municipality may require.
- 6.12 Mogale City Local Municipality will recover any adverse difference in price it may incur as well as any other damages that may be suffered by Mogale City Local Municipality due to the Service Provider's non or partial performance of the Services.
- 6.13 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.

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6.14 Any work performed under this contract shall remain the property of the Municipality.

6.15 The Municipality is not obliged to implement the project using the service provider appointed, in the event that the Municipality chooses to use a different method to implement the project. The Municipality shall notify the Service Provider in writing of its intention.

## 7 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

7.1 In accordance with the relevant clauses of the Copyright Act (Act 98 of 1978) relating to assignment, the Service Provider shall retain copyright of all data and factual information prepared and formally issued the purpose of which they are intended and need not obtain the Municipality's permission to copy for such use until when the Municipality has paid for such;

7.2 The ownership of the data and factual information collected by the Service Provider and paid for by the Mogale City Local Municipality shall, after payment by the Mogale City Local Municipality, lie with the Mogale City Local Municipality;

7.3 The Mogale City Local Municipality shall have no right to use any data or factual information referred to in this Clause where any or all of the fees and expenses payable to the Service Provider have not been paid in accordance with this Agreement,

7.4 In the event that the parties agree that the copyright in the documents shall be ceded to the Mogale City Local Municipality then the Service Provider shall not be liable in any way for the use of any of the information other than as originally intended for the project and the Mogale City Local Municipality hereby indemnifies the Service Provider against any claim which may be made against him by any part arising from the use of such documentation for other purposes.

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## 8 EVALUATION OF THE SERVICE PROVIDER'S EMPLOYEES

- 8.1 The Service Provider shall at all times provide Mogale City Local Municipality with qualified employees and ensure that each employee meets the requirements set out in the Service Request.
- 8.2 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:
- 8.2.1 qualifications authenticity;
  - 8.2.2 confirmation that the employee's curriculum vitae is an accurate reflection of his/her profile and career history; and
  - 8.2.3 Reference checks from previous employer.
- 8.3 The Service Provider shall, on request from Mogale City Local Municipality, provide the Checks on any or all of its employees.
- 8.4 The Municipality reserves the right to refuse access, without explanation, to any of the Service Provider's employee who, in the sole discretion of the Municipality, is deemed to be unsuitable or unsatisfactory.

## 9 PERIODIC REVIEW

- 9.1 This contract and the performance of the Service Provider shall be reviewed every quarter and/or half yearly depending on the implementation period of the project;
- 9.2 The service provider shall furnish the municipality with the reports on the progress and completion of each and every milestone of each and every project;

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9.3 The reports stated in 9.2 above shall be inclusive of but not limited to:

9.3.1 The Project Charter, feasibility studies, design options, draft design layouts and drawings, financial estimates, draft business plans as approved by relevant delegated official, technical options, tender documentation, preliminary evaluation reports, project management, milestone certificates, monthly technical reports, project close out reports, As-Built drawings electronically and hard copies.

9.3.2 The status quo of the matter;

9.4 Should the Municipality not be satisfied with the performance of the Service Provider, the Municipality will be entitled to terminate this agreement in terms of Clause 21 herein.

## 10 PRICING/PAYMENT/INVOICING

10.1 The consideration that Mogale City Local Municipality will pay to the Service Provider in respect of the rendering of the Services is as stated in clause 9.2 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.

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

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## 11 PAYMENT

11.1 There shall be a deduction of 2% Corporate Responsibility contribution from all payments to be made to the Service Provider.

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

11.3 The Service provider shall submit its tax invoices monthly to the Municipality and payment shall be effected within 30(thirty) days from receipt of invoices. A correct and original monthly statement reflecting the above Invoices must be submitted to Mogale City Local Municipality.

The monthly statements, Invoices and all supporting documentation must be received before payment can be effected. Should the Service Provider's documentation be incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received.

11.4 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 Mogale City Local 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 Mogale City Local Municipality 's VAT Registration Number on each and every tax invoice, above R1 000.00 (one thousand rand), that the Service Provider issues to Mogale City Local Municipality.

11.5 Settlement discounts shall not apply,

  
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- 11.6 Mogale City Local 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 20.
- 11.7 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.
- 11.8 All original Invoices must be forwarded to Mogale City Local Municipality to the address stated below:

**THE MOGALE CITY LOCAL MUNICIPALITY**

**THE MANAGER: REVENUE SERVICES**

**CIVIC CENTRE: NO. 38**

**CORNER COMMISSIONER & MARKET STRT**

**THE MANAGER: REVENUE SERVICES**

**P.O. BOX 94**

**KRUGERSDORP**

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- 11.9 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 or 5 (five) years from date of payment, whichever is the longer.

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13 **INDEMNITY**

The Service Provider agrees to indemnify, hold harmless and defend Mogale City Local 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:

- 13.1 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;
- 13.2 any Liability arising out of intentional or negligent acts, or omissions to act, of the Service Provider;
- 13.3 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
- 13.4 any Liability arising from any loss of, or damage to, property (including Mogale City Local Municipality property and/or equipment of the Service Provider).

14 **LIMITATION OF LIABILITY**

- 14.1 Notwithstanding anything to the contrary contained in this Agreement, Mogale City Local Municipality shall not be liable to the Service Provider for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business

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transactions or goodwill or other contracts whether arising from negligence or breach of contract by the Service Provider.

- 14.2 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.
- 14.3 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.
- 14.4 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 Engineering Standards.
- 14.5 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.
- 14.6 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 14.3 or for the full amount of any such claims after the period stated in 14.2.

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15 **SAFETY AND SECURITY**

- 15.1 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.
- 15.2 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.
- 15.3 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.

16 **CANVASSING AND INDUCING MOGALE CITY LOCAL MUNICIPALITY EMPLOYEES**

- 16.1 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.
- 16.2 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.



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17 **FRAUD**

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:

- 17.1 acted dishonestly and/or in bad faith; and/or
- 17.2 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.

18 **LIENS AND CLAIMS BY THIRD PARTY**

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

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

18.2.1 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

18.2.2 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.

18.3 If Mogale City Local Municipality incurs any fair and reasonable expenses or makes any disbursements in terms of this clause 16, such expenses may be set-off against moneys owed to the Service Provider.

**19 MOGALE CITY LOCAL MUNICIPALITY PROPERTY IN POSSESSION OF THE SERVICE PROVIDER**

19.1 Mogale City Local Municipality's property supplied to a Service Provider for the execution of this Agreement remains the property of Mogale City Local Municipality and will at any time be available for inspection by a Mogale City Local Municipality representative. Any such property in the possession of the Service Provider on completion of this Agreement will, at the Service Provider's expense, be returned to Mogale City Local Municipality forthwith.

19.2 The Service Provider will be responsible at all times for any loss of or damage to Mogale City Local Municipality's property in its possession, and if required the Service Provider will furnish such security for the payment of any such loss or damage as Mogale City Local Municipality may require.

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**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.

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21 BREACH AND TERMINATION

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

21.1.1 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

21.1.2 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

21.1.3 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.

21.2 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.

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21.3 Notwithstanding the provisions of clause 21.2, 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:

21.3.1 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;

21.3.2 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;

21.3.3 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

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

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21.4 The termination of this Agreement will not prejudice the rights of Mogale City Local Municipality 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.

21.5 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:

21.5.1 terminate this Agreement forthwith; and

21.5.2 acquire the Services from any third party and recover such additional expenditure (if any), in relation to the cost of the Service incurred by Mogale City Local Municipality and damages (if any), from the Service Provider; or

21.5.3 deduct from any amount owing to the Service Provider by Mogale City Local Municipality, as a penalty, an amount equal to 2.5% (two point five percent) of the service consideration (or the adjusted service consideration) for every week or part thereof during which delivery remains outstanding or incomplete or during which the product fails to comply with the specifications, provided that such penalty amount shall not be in excess of the service consideration or the adjusted service Consideration; or

21.5.4 claim damages or loss suffered in lieu of such penalty.

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## 22 DISPUTE RESOLUTION

- 22.1 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 (Witwatersrand Local Division), save if the Parties agree to refer the dispute to arbitration as envisaged in clause 23.
- 22.2 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.

## 23 ARBITRATION

- 23.1 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:

23.1.1 at Krugersdorp;

23.1.2 informally;

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

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

- 23.2 The arbitrator shall be if the question in issue is:

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

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

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

23.3 If the Parties cannot agree upon a particular arbitrator in terms of 23.2 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of 23.2.1, 23.2.2 or 23.2.3, as the case may be, shall be made by the President of the Law Society of the Northern Provinces (or its successor), within 7 (seven) days after the Parties have so failed to agree.

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

23.4.1 shall be binding on them;

23.4.2 shall be carried into effect;

23.4.3 shall have right for review;

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

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

## 24 NOTICES AND DOMICILIUM

24.1 The Parties choose as their domicilium citandi et executandi (address for purpose of legal proceedings), their respective addresses set out in clause 25.2 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.



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24.1.1 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**

**Telephone Number: 011 668 1635**

**CELL NUMBER: 083 262 6420**

**CONTACT PERSON: TEFO KELEBONYE**

as regards the "Service Provider" at:

**PHYSICAL: 03 BASAM ROAD  
ALLEN GROVE  
KEMPTON PARK  
GAUTENG  
1620**

**POSTAL: PRIVATE BAG X87453  
JOHANNESBURG  
2041**

**Telephone Number: 010 449 398**

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Telephone Number: 010 449 398

CELL NUMBER: 076 770 5485

Fax Number: 086 675 2575

**CONTACT PERSON: EMMANUEL MANENZHE**

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.

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

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

24.2.2 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;

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

24.2.4 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.

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24.3 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.

## 25 JURISDICTION

25.1 The Parties irrevocably agree that the Magistrates Court Krugersdorp shall have jurisdiction 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 Magistrates Court.

25.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in clause 25.1 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.

25.3 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.

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**26 ASSIGNMENT AND CESSION**

The Service Provider shall not:

- 26.1 cede or assign any rights and/or obligations arising out of this Agreement without the written permission of Mogale City Local Municipality; and
- 26.2 make or allow any change to the shareholding or management control of the Service Provider as it is at the time of signature of this Agreement in the absence of prior notification of such change to Mogale City Local Municipality.

**27 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.

**28 WAIVER**

- 28.1 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.
- 28.2 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.

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28.2 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.

28.3 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.

**29 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.

**30 APPLICABLE LAW**

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

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31 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, with respect to the supply of the Services.

SIGNED AT KRUGERSDORP ON THE 23 DAY OF June 2023

WITNESSES:

1. 

2. 

  
duly authorised for and on behalf of ACCESS CONSULTING ENGINEERS (PTY) LTD

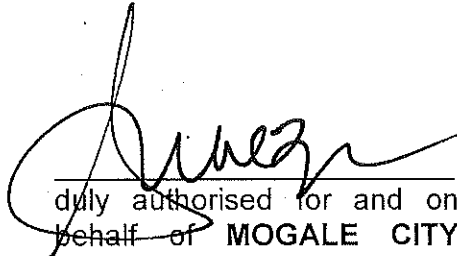
SIGNED AT KRUGERSDORP 2023

ON THE DAY OF

WITNESSES:

1. P. Mofane

2. T. Molwane

  
duly authorised for and on behalf of MOGALE CITY LOCAL MUNICIPALITY




31 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, with respect to the supply of the Services.

SIGNED AT KRUGERSDORP ON THE 23 DAY OF June 2023

WITNESSES:

1. 

2. 

  
duly authorised for and on  
behalf of ACCESS  
CONSULTING ENGINEERS  
(PTY) LTD

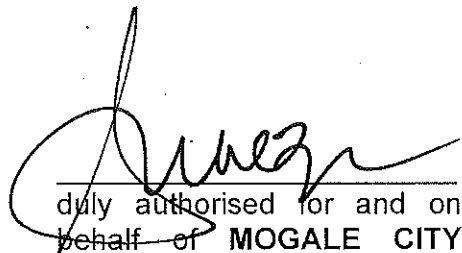
SIGNED AT KRUGERSDORP  
2023

ON THE DAY OF

WITNESSES:

1. P. (Mofane)

2. T. Molokane

  
duly authorised for and on  
behalf of MOGALE CITY  
LOCAL MUNICIPALITY

