

SERVICE LEVEL AGREEMENT

In respect of Tender NO.F(SCM) 04/2023

by and between

MOGALE CITY LOCAL MUNICIPALITY

("The Municipality")

and

MOGATLADI TRADING ENTERPRISE (PTY) LTD

REGISTRATION NR. 2017/133757/07

("Service Provider")

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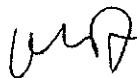
WHEREAS:

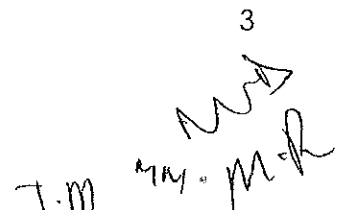
- The Municipality invited Tenderers from Service Providers under Tender no. F(SCM) 04/2023 for the Supply, Delivery and Off-loading of Locally Manufactured 240 (two hundred and forty) Litre Plastic Wheelie Bins with Stipulated Minimum Threshold of 100% Local Production and Content at Municipal Stores at Chamdor on an as and when required basis for a period of 3(three) years. It is envisaged that the annual expenditure for this tender on the 2022/2023; 2023/2024 and 2024/2025 Roads Operational budget will amount to approximately R3 Million per annum.
- **MOGATLADI TRADING ENTERPRISE (PTY) LTD**, as the successful bidder as per their submitted tender, proved to be having the necessary expertise and knowledge and is appointed to provide the above-mentioned service in accordance with their expertise and knowledge. See attached hereto as annexures "A" Letter of Appointment(LOA) and "B" Letter of Acceptance (LA) respectively.
- **MOGALE CITY LOCAL MUNICIPALITY** requires the Services offered by **MOGATLADI TRADING ENTERPRISE (PTY) LTD**, full details of which appears on the Tender Document, Letter of Appointment (LOA) and Letter of Acceptance (LA).
- **MOGALE CITY LOCAL MUNICIPALITY** and **MOGATLADI TRADING ENTERPRISE (PTY) LTD** have now reached an agreement on the terms and conditions which will regulate the provision of the Services and now wish to reduce their agreement to writing as follows: -

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1. 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 hereof.
- 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 this Service Level Agreement (Agreement) as set out in this document together with any annexures hereto, Letter of Appointment (LOA), Letter of Acceptance (LA) and any other annexures which will find expression in this Agreement.
- 1.2.2 **“Acceptance Period”** means the period of thirty (30) days or (such other period as may have been agreed to in writing), after rendering the Service, during which the Municipality may consider whether the Service complies with the Specifications and is not of an inferior workmanship.
- 1.2.3 **“Business Day”** means Monday to Friday between the hours of 07:30 to 16:00, excluding Saturdays, Sundays or a day which, from time to time, is proclaimed a public holiday in South Africa.



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- 1.2.4 **“Calendar Month”** means a period from the first day of the month to the last day of the month (e.g. 1st January to 31st January).
- 1.2.5 **“Completion Date”** means three (3) years from the date of commencement.
- 1.2.6 **“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 at the bottom of this Agreement.
- 1.2.7 **“Commencement Date”** means the date of the letter of accepting this offer.
- 1.2.8 **“Fault”** includes, but is not limited to, failure to comply with the specifications as stipulated, the non-compliance with agreed service levels, inferior service, and inferior workmanship.
- 1.2.9 **“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.
- 1.2.10 **“Local Service Provider”** means a Service Provider which has its registered address in South Africa.

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- 1.2.11 **“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, herein represented by **MAKHOSANA MSEZANA** in his capacity as the Municipal Manager and duly authorised hereto by virtue of the Municipality's System of Delegation, duly approved and adopted by Council on 27th June 2019, copy of such attached hereto as annexure “C”.
- 1.2.12 **“Notice of Non-Acceptance”** means the written notice to be delivered by Mogale City Local Municipality to the Service Provider if the service is of inferior quality and does not comply with the Specifications.
- 1.2.13 **“Parties”** means the Service Provider and the Municipality, and a “Party” shall as the context requires, be either of them.
- 1.2.14 **“Purchase Consideration”** means the price to be paid by the Municipality for the services as reflected in this Agreement or Annexure thereto and confirmed in the Service Request.
- 1.2.15 **“Services”** means the services set out in the Tender Document in respect of which the Municipality has invited Service Providers to submit Tenders, and which are set out in a Service Request.

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- 1.2.16 "Service Location" means the physical address where the Services will be rendered or where proof that the services have been executed will be submitted.
- 1.2.17 "Service Request" means Municipality's written request to the Service Provider, issued in terms of this Agreement, requesting the Service Provider to render the Services set out in that request to the Municipality on the terms and conditions set out in that request.
- 1.2.18 "Specifications" means the requirements for the service as more fully detailed in the Tender Document.
- 1.2.19 "Service Provider" means **MOGATLADI TRADING ENTERPRISE (PTY)LTD, (Registration NO. 2017/133757/07)**, a company duly registered with limited liability according to the company laws of the Republic of South Africa and herein represented by in his MOKGOTHO MATIME DONALD Capacity as **MANAGING DIRECTOR** of the company, and duly authorised thereto by virtue of the Company resolution dated 15th JUNE 2003 (Copy of the resolution attached herein as annexure "D").
- 1.2.20 "Term" means a period three (3) months from the commencement date.
- 1.2.21 "VAT" means value added tax at the rates specified in the VAT Act.




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1.2.22 "VAT Act" means the Value Added Tax Act, No. 89 of 1991 as amended.

- 1.3 Any reference in this agreement to legislation or subordinate legislation is to such legislation or subordinate legislation as 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 In the event of ambiguity, the rule that 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.



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1.8 Where any term is defined within the context of any 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

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 (LOA); and
- 2.1.4 LETTER OF ACCEPTANCE (LA).

3. AGREEMENT

3.1 The Service Provider agrees to render the services to the Municipality under the terms and conditions of this Agreement. This Agreement

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constitutes an agreement based on which the Service Provider will render the services to the Municipality.

- 3.2 The Service Provider shall not be entitled to impose any terms and conditions on the Municipality other than those contained in this Agreement (Parole Evidence).

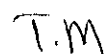
No claim by the Service Provider for additional payment other than the one agreed to, on any grounds will be allowed, including, without limitation, misunderstanding or misinterpretation in respect of the Tender, nor will the Service Provider be released from any risk or obligations imposed on/or undertaken 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 and shall thereafter remain in full force for the term as stipulated in the Agreement as the Completion date.
- 4.2 Notwithstanding clause 4.1 above the Parties shall have the right to terminate this Agreement in terms of clause 18, herein.



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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 in a workmanlike manner to the satisfaction of the Municipality.
- 5.2 Notwithstanding anything contained herein each Service Request will constitute an instruction to proceed with the subsequent phase.
- 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 the Municipality for a decision before proceeding with the execution of the Service Request, or part thereof, 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, will be performed by the Service Provider only after consultation with the Municipality.
- 5.5 Immediately after receiving the Service Request as per clause 5.4 the Service Provider will, in writing, confirm receipt of each Service Request. Failure by the Service Provider to confirm receipt of the Service Request will constitute a material breach of this Agreement.
- 5.6 It is specifically recorded that the 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



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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 5 (five) working days of receipt of the notice, the Service Provider will, before proceeding therewith, notify the Municipality in writing of its acceptance of the amendment. In such case the Municipality will decide not later than 5 (five) working days whether the Service Provider may proceed. If the 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 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
- 5.9 of a letter on the Municipality's official stationery, from the 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 The Municipality shall, subject to the Service Request that has already been issued, be entitled to source the Services from any Service



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Provider of its choice only in the event of an emergency, which emergency has been communicated to the Service Provider.

6. SERVICES TO BE RENDERED BY THE SERVICE PROVIDER

6.1 SCOPE OF WORK

Sub clause	Description	Schedule A
1.1	Geographical Position	Mogale City
1.2	Contract period	Three (3) year period on an as and when required basis
1.3	Material used	HDPE-Virgin high-density polyethylene, Stabilized against ultraviolet light attack – resistant to chemicals manufactures from raw material
1.4	Container body (upper edge comb)	Injection molded Lids must be assembled to the body of the bin on delivery
1.5	Wheel hubs	Injection molded
1.6	Hinge pins	Injection molded
1.7	Wheels	Solid pressed rubber, first grade only
1.8	Axle	Solid steel and galvanized yellow chrome plates

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1.9	Appearance	All molded parts must not show any foreign substances, shrink or blow holes, shrinkages, shrinking or blow holes and crack. There should not be any obvious visible colour streaks
1.10	Colour	Black, red, blue, green, & yellow
1.11	Front acceptance lifting lip	The lifting lip of the container must be reinforced with a locking lip, honeycomb reinforcing with minimum of 5 reinforcing webs. The design thereof should be fully compatible to the approved lifting mechanisms
1.12	Serial numbering	Serial must be hot foiled in white on one side of the body not less than 8mm in size incorporated in the number is the month and year of manufacturing, which is visible when the container is nested.
1.13	Branding	The Authority's name, Mogale City must be hot foiled in white on the front face of the bin body approximately 40 mm in size
1.14	Specification	SABS 1494/2014

7. PERFORMANCE

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- 7.1 The completion date specified in the service request is of the utmost importance. Non-compliance, because of the negligence of the Service Provider, with the said date will constitute a material breach of this agreement. Partial performance will not constitute the provision of the services.
- 7.2 In the event of the Service Provider or its contractor rendering the Service to the Municipality, becoming involved in arbitration falling within a collective agreement under a Bargaining Council, then the Service Provider shall immediately inform the Municipality thereof and on request, supply the Municipality with a copy of such award, agreement, or any documentation that the Municipality may request. Non-compliance with this clause will 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.
- 7.3 The Service Provider will render the services at the address indicated on the Service Request.
- 7.4 Upon any delay beyond the set date, the Municipality may, without terminating this Agreement, engage the Service Provider on how the

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delay is going to be remedied. Should the Service Provider refuse to come on board on how the delay is going to be remedied, the Municipality will be entitled forthwith to obtain similar Services from a third party as the Municipality may require mitigating the risk emanating from the delay.

- 7.5 The Municipality will recover any adverse difference in price it may incur from the Service Provider, as well as any other damages that may be suffered by the Municipality due to the Service Provider's non or partial performance of the services and such damages will exclude insurance and consumables.
- 7.6 If the Service Provider fails to render the Services within the Completion Date, the Municipality will have the right, in its sole discretion to either deduct as a penalty an amount equivalent to 2,5% (two comma five percent) of the Service Request (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 (as the case may be), only where the Municipality has Beneficial Use of the Services.

8. PRICING / PAYMENT / INVOICING

- 8.1 The consideration that the Municipality will pay to the Service Provider in respect of rendering of Services is as per the Pricing on page 71 of

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the tender document, an extract from the Tender Document is attached hereto as annexure "E".

- 8.2 The Service Provider warrants that the prices, charges, and fees to the 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 the Municipality.
- 8.3 Rates will be fixed for the first twelve (12) months, thereafter the rate will be increased annually as per SEIFSA escalation formula based on the Producer Price Index (PPI) for the 2nd and 3rd year. All rates are inclusive of VAT.
- 8.4 Payments of fees shall only be made for the services rendered and verified.
- 8.5 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.

9. PAYMENT

- 9.1 Payment of Invoices for the Service Provider will be made not later than thirty (30) days from receipt of a correct and original Invoice.
- 9.2 The monthly statements, invoices and all supporting documentation must be received before payment can be made. The monthly



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only be made the month following the month during which the correct documents were received.

- 9.3 2% (Two percent) Social Responsibility Contribution levy will be deducted from all payments to the Service Provider because the Company is not based within the jurisdiction of Mogale City.
- 9.4 The Service Provider, if 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 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 tax invoice, above R1 000.00 (one thousand rand), that the Service Provider issues to the Municipality.
- 9.5 Settlement discounts, if any, agreed upon shall be deducted from payments.

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9.6 The Municipality may set-off any amounts owed by the Service Provider from any amount due, except for payment being withheld in terms of clause 18.

9.7 Payment will be effected by bank transfer and the Municipality's liability towards the Service Provider will be deemed to have been met when the bank transfer is made into the bank account furnished by the Service Provider to the Municipality. The Service Provider assumes the entire risk

upon transfer being made. The Service Provider will ensure that the Municipality, always, has the correct banking information to make a bank transfer.

9.8 All original Invoices must be forwarded to the Municipality to the address stated below:

9.8.1 BY HAND

The Mogale City Local Municipality

THE MANAGER: REVENUE SERVICES

Civic Centre; No. 38

Corner Commissioner & Market Streets

Krugersdorp; 1739

9.8.2 **THE MANAGER: REVENUE SERVICES**

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P O Box 94
Krugersdorp
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9.9 All payments are provisional and are subject to audit by the Municipality. The Service Provider will preserve its records for such a period as the South African Revenue Services may require or five (5) years from date of payment, whichever is the longest.


10. NON-EXCLUSIVITY

This Agreement is not exclusive. Notwithstanding the delivery of the Letter of Appointment (LOA) and Letter of Acceptance (LA) and the signing of this Agreement, the 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 Provider or not.

11. INDEMNITY

The Service Provider agrees to indemnify, hold harmless and defend Mogale City Local Municipality (Municipality) and its officers, employees, agents, and representatives from and against the following damages, loss, and liabilities



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(hereinafter collectively referred to as "Liability") arising because of the negligence or fault of the Service Provider:

- 11.1 any liability regarding claims by governmental authorities or others for non-compliance by the Service Provider with any Act of Parliament, Law, Ordinances, Regulations, or By-laws made by a lawful authority provided that such compliance therewith was required for the execution of this Agreement.
- 11.2 any Liability arising from claims with regards 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 the Municipality's employees in respect of whom the Municipality holds the Service Provider harmless); and
- 11.3 any Liability arising from any loss of, or damage to property (including Mogale City Local Municipality property and/or equipment of the Service provider.
- 11.4 any liability arising out of intentional or negligent acts, or omissions to act by the Service Provider.

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12. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, the Municipality shall not be liable to the Service Provider for any indirect or consequential losses or damages, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

13. SAFETY AND SECURITY

13.1 The Service Provider agrees to comply with the Municipality's security and safety procedures, without limiting the generality hereof, the Service Provider will specifically comply with the Occupational Health and Safety Act as amended.

14. CANVASSING AND INDUCING MOGALE CITY LOCAL MUNICIPALITY EMPLOYEES

14.1 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.

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



15. FRAUD

If, at any time during the duration of this Agreement, the 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 to:

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

15.2 has made any intentional or negligent misrepresentation to the Municipality, whether in any negotiations preceding the conclusion of, or in the execution of the Agreement between the parties:

15.2.1 Then the Municipality will be entitled by written notice to the Service Provider forthwith to terminate this Agreement. Upon such termination the 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.

15.2.2 If, at any time of such termination, Mogale City Local Municipality be indebted to the Service Provider for any amounts whatsoever, the 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

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and any damages suffered by the Municipality because of the Service Provider's conduct after the lapse of such period shall preclude the Municipality, thereafter, from recovering from the Service Provider any such damages as it may have suffered.

16. LIENS AND CLAIMS BY THIRD PARTY

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

16.2 If a third party makes a claim on the Municipality to anything connected with these services, the Service Provider will:

16.2.1 after notification by the Municipality, deal with such a claim in such a manner as to avoid all prejudice to the Municipality and keep the Municipality fully informed; or

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

16.3 If the 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.

17. FORCE MAJEURE

17.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including



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but not limited to, by reason of strike, lock-out, fire, explosion, floods, riots, 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,

17.2 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 and

17.3 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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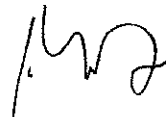
18. BREACHES AND TERMINATIONS

18.1 A Party to this Agreement shall be in breach if it:

18.1.1 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

18.1.2 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

18.1.3 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



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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.

18.2 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.

18.3 Notwithstanding the provisions of clause 18.2, 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:

18.3.1 the 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;

18.3.2 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 the Municipality;



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18.3.3 the Service Provider fails to satisfy a judgement against it 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 the 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

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

18.4 The termination of this Agreement will not prejudice the rights of the 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.

18.5 Notwithstanding any other provision contained in this Agreement, in the

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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 the Municipality shall, at its election, be entitled, but not obliged to:

18.5.1 terminate this Agreement forthwith; and

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

18.5.3 deduct from any amount owing to the Service Provider by the 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 the service to be rendered 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

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

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18.6 This Agreement shall automatically come to an end at the end of its term.

18.7 This contract may terminate by mutual consent of both parties.

19. DISPUTE RESOLUTION

19.1 All disputes between the Parties shall, when all efforts to resolve such dispute by negotiation have failed, be referred to the South Gauteng High Court of South Africa (Witwatersrand Local Division), save if the Parties agree to refer the dispute to arbitration as envisaged in clause 20.

19.2 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.

20. ARBITRATION

20.1 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:

20.1.1 at Krugersdorp;

20.1.2 informally;

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20.1.3 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.

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

20.2.1 primarily an accounting matter, an independent accountant agreed upon between the Parties.

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

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

20.2.4 If the Parties cannot agree upon a particular arbitrator in terms of clause 19 above within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of 19.1 and 19.2 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.

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

20.3.1 shall be binding on them.

20.3.2 shall be carried into effect.

20.3.3 shall have right for review.

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

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

21. NOTICES AND DOMICILIUM

21.1 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), their respective addresses set out in clause 21.2.1 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.

21.2 For the purposes of this Agreement the Parties' *domicilium citandi et executandi* is:

21.2.1 as regards **Municipality** at:

PHYSICAL:

CIVIC CENTRE, NO. 38

Cnr. Market and Commissioner

Streets



Krugersdorp
1739
POSTAL : P.O. BOX 94
KRUGERSDORP
1740

PHONE NUMBER:
CELLPHONE NUMBER:
PROJECT MANAGER:

21.2.2 As regards the Service Provider

Physical address 1: 471 TROW STREET
CAPITAL PARK
PRETORIA
0084

Telephone number: 082 293 8307/082 855 3381

Email Address: info@mogatladi.co.za

Cell Number: 079 811 1134

PROJECT DIRECTOR: DONALD MATIME MOKGOTHO

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.

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

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

21.3.2 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.

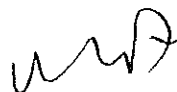
21.3.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch.

21.3.4 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.

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

22. JURISDICTION

22.1 The Parties irrevocably agree that the South Gauteng High Court 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 High Court.

22.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in clause 22.1 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.

22.3 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, the 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.



22.4 The submission to the jurisdiction of the court referred to in clause 22.1 shall not be construed 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.

23. ASSIGNMENT AND CESSION

The Service Provider shall not:

23.1 cede or assign any rights and/or obligations arising out of this Agreement without the written permission of the Municipality; and

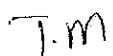
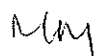
23.2 make or allow any change to the shareholding or management control of the Service Provider as it is at the time of signature of this Agreement in the absence of prior notification of such change to Mogale City Local Municipality.

24. 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.

25. WAIVER

25.1 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.

25.2 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.

25.3 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.

26. 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



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recorded in a written document signed by the duly authorized representatives of the Parties.

27. 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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ENTIRE AGREEMENT

The Agreement and the incorporated annexures represent the entire Agreement between the Service Provider and the 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 24 July DAY OF
_____ 2023

WITNESSES:

1. [Signature]
2. B. Mokoena

[Signature]
Duly authorised for and on behalf of
MOGALE CITY LOCAL MUNICIPALITY

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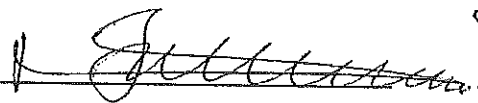
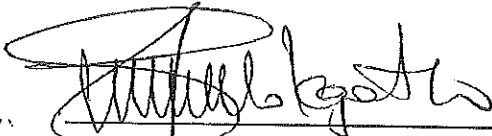

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ENTIRE AGREEMENT

The Agreement and the incorporated annexures represent the entire Agreement between the Service Provider and the 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 _____ ON THE 24/ July DAY OF _____ 2023

WITNESSES:

1.  
Duly authorised for and on behalf of
**MOGATLADI TRADING ENTERPRISE
(PTY)LTD**
2. 

ENTIRE AGREEMENT

The Agreement and the incorporated annexures represent the entire Agreement between the Service Provider and the Municipality, cancelling and



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