

SERVICE LEVEL AGREEMENT

In respect of Tender NO. F(V) 16/2023

by and between

MOGALE CITY LOCAL MUNICIPALITY

("The Municipality")

and

NDK VALUERS (PTY) LTD

REGISTRATION NR. 1981/06082/07

("Service Provider")

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WHEREAS:

- The Municipality called for experienced and suitably qualified registered Property Valuers for the compilation of the general valuation roll for the period 2025/2030 for Mogale City Local Municipality as well as the supply of other valuation related services in compliance with the Local Government: Municipal Property Rates Act, 2004 (Act NO.6 of 2004) for three (3) financial years, under Tender NO. F (V) 16/2023
- NDK Valuers (Pty) Ltd , as the successful bidder as per their submitted tender, have the necessary expertise and knowledge and was appointed in order 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 **NDK VALUERS (Pty) Ltd** full details of which appear on the Tender Documents, Letter of Appointment and Letter of Acceptance.
- **MOGALE CITY LOCAL MUNICIPALITY** and **NDK VALUERS (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 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 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;
- 1.2.4 **“Calendar Month”** means a period from the first day of the month to the last day of a month (e.g. 1 January to 31 January);

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- 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 last party signing this Agreement.
- 1.2.8 **"Fault"** includes, but is not limited to, failure to comply with the specifications as stipulated in, 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;
- 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 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 in the event that 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 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;
- 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 **"Specifications"** means the requirements for the service as more fully detailed in the Tender Document;
- 1.2.18 **"Service Provider"** means **NDK VALUERS (PTY)LTD,(Registration NUMBER 1981/06082/07)**, a company duly registered with limited liability according to the company laws of the Republic of South Africa and herein represented by **QUINTIN DE KLERK** in his Capacity as **DIRECTOR** of the company, and duly authorised

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thereto by virtue of the Company resolution dated ~~7~~
NOVEMBER 2022 (Copy of the resolution attached herein as
annexure "D").

1.2.19 "Term" means a period three (3) years from the commencement
date

1.2.20 "VAT" means value added tax at the rates specified in the VAT
Act;

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

1.7 Where any provision of this Agreement requires a Party to perform any
act in writing, this requirement will only be satisfied if such performance

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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 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 **THIS AGREEMENT;**
- 2.1.2 **THE TENDER DOCUMENT**
- 2.1.3 **LETTER OF APPOINTMENT (LOA); and**
- 2.1.4 **LETTER OF ACCEPTANCE (LA).**

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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 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).
- 3.3 The pricing of the tender document is based on an approximate summary of 72751 number of entries appearing in the valuation roll as per page 53(fifty-three) of the tender document.
- 3.4 The schedule of fees will be the basis as per page 71 of the tender document.
- 3.5 The bidder shall provide the municipality with documented proof of the total number of entries contained in the property master file.
- 3.6 The pro-rata adjustment of the additional properties will be calculated on the actual amount of properties contained in the property master file calculated on the price tendered per category under Schedule of Quantities from paragraph 21.1 on page 71 to paragraph 25 on page 72 of the tender document.
- 3.7 No **further** claim by the Service Provider for additional payment on any grounds will be allowed, including, without limitation, misunderstanding or misinterpretation in respect of the Tender, nor will the Service Provider be released from any risk or obligations imposed on/or undertaken by the

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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.

5. SERVICES TO BE RENDERED BY THE SERVICE PROVIDER

5.1 SCOPE OF WORK

5.1.1 The Service Provider's scope of work is the provision of Compilation of the General Valuation Roll 2025/2030, as well as the first Supplementary Valuation Roll 1 as well as the supply of other valuation related services in compliance with the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004 as amended)

5.1.2 All other services and dates to be complied with, due to them being voluminous, will be as detailed in the tender document and the extract thereto is attached hereto as annexure "E".

5.2 DELIVERABLES

STAGE	DESCRIPTION	START DATE	COMPLETION DATE	NO.OF MONTHS
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1	Initial data collection, deeds download, updating of master file, comparison between newly created property master and existing Municipal valuation records or where no roll exists, creation of property master. Obtaining the aerial photography.	1 st March 2023	31 st July 2023	5 Months
2	Obtaining of data necessary to compile valuations: including inspections, data capture sales, measurements, rentals expense ratios etc. Newly registered properties as and when they become available.	1 st March 2023 1 st March 2023	1 st September 2023 30 th June 2025	7 28
3	Updating changes in compiled data and Compilation of valuations.	1 st May 2023	30 th September 2024	5
4	Internal Monitoring of valuations including final accuracy check of data, final review of sales and valuations between date of commencement and date of valuation.	1 st March 2023	31 st October 2024	20

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5	Submission of draft General Valuation Roll.	1 st November 2024	1 st November 2024	
6	Corrections and submission of certified and reconciliation between property master file and existing valuation records of the municipality, including Public Safety Infrastructure(PS).	1 st November 2024	3 rd January 2025	2
7	Delivery of Printed General Valuation Roll to Valuation Division.	11 th January 2025	11 th 2025	
8	Deliver General Valuation Roll to MM.	13 th January 2025	13 th January 2025	
9	MM to publish & gazette the GV for Public Inspection and Lodging of Objections.	13 th Jan 2025	31 st Jan 2025	1
10	Bidder to compile and send Section 49 Notices.	1 Feb 2025	13 th April 2025	2
11	Bidder to promptly process Objections as per Act and issue relevant notifications on outcomes and compile changes to be submitted in	March 2025	May 2025	3

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	addition to the close out report.			
12	Bidder/MCLM Managers: Valuations together with ITC must upload the GV on the Municipal Billing System (Bulk Loading).	March 2025	March 2025	
13	Bidder to submit supplementary valuations monthly to be contained in supplementary 1.	1 st July 2024	7 th July 2025	
14	Submission of draft Supplementary Valuation Roll.	7 th July 2025	7 th July 2025	
15	Delivery of printed Supplementary Valuation Roll to Valuation Division.	22 nd July 2025	22 nd July 2025	
16	Deliver Supplementary Valuation Roll to MM.	31 st July 2025	31 st July 2025	
17	MM to Publish and Gazette the Supplementary Roll for public Inspection and Lodging of objections.	22 nd August 2025	22 nd August 2025	
18	Bidder to compile and send Section 49 Notices.	22 nd July 2025	31 st August 2025	
19	Bidder to promptly process the Objections as per the Act	1 st October 2025	30 th November 2025	2

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	and issue relevant notifications on outcomes and compile changes to be submitted in addition to the close out report.			
20	Managers: Revenue to run test . Billing and provide exception reporting.	March/July 2025	March/July 2025	5
21	Exception lists to be dealt with by the Bidder and Valuation Division for supplementary inclusions.	March/July 2025	March/July 2025	5
22	Submission of all data or copies thereof to Municipality and the issuing of final delivery certificate.	February-March 2025	November/December 2025	10

6. PERFORMANCE

6.1 The completion date specified in the service request is of the utmost importance. Non-compliance, as a result 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.

6.2 In the event of the Service Provider or its contractor rendering the Service to the Municipality, becoming involved in arbitration falling within a

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

- 6.3 The Service Provider will render the services at the address indicated on the Service Request.
- 6.4 Upon any delay beyond the set date, the Municipality may, without terminating this Agreement, engage the Service Provider on how the 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 so as to mitigate the risk emanating from the delay.
- 6.5 The Municipality will recover any adverse difference in price it may incur 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.
- 6.6 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

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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 the Municipality has Beneficial Use of the Services.

7. PRICING / INVOICING

- 7.1 The consideration that the Municipality will pay to the Service Provider in respect of rendering of Services is as per the Schedule of Quantities attached hereto as annexure "F".
- 7.2 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.
- 7.3 Rates will be fixed for the first twelve (12) months, thereafter the rate will be increased annually as per the South African Reserve Bank CPIX issued in January of each year, for the 2nd and 3rd year. All rates are inclusive of VAT.
- 7.4 Payments of fees shall only be made for the services rendered and verified. A Progress basis of payment measured against performance of each stage (refer to tender document paragraph 23, titled Progress Payments on page 73 as well as in the below paragraph 8.9.1 of this agreement, together with the schedule of quantities will be the

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determining documents for the calculation of payments on the types of properties valued.

- 7.5 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.

8. PAYMENT

- 8.1 Payment of Invoices for the Service Provider will be effected not later than 30 (THIRTY) days from receipt of a correct and original Invoice.
- 8.2 The monthly statement, invoices and all supporting documentation must be received before payment can be effected. The monthly statement must be accompanied by a summary page indicating invoices, date value and the department work done for payments received from commencement date of tender. 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.
- 8.3 2% (two percent) Social Responsibility Contribution levy will be deducted from all payments to the Service Provider
- 8.4 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 the Municipality shall not make any payment in respect thereof until such time as it receives an invoice from the Service Provider which complies with the aforementioned

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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 the Municipality.

- 8.5 Settlement discounts, if any, agreed upon shall be deducted from payments.
- 8.6 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.
- 8.7 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, at all times, has the correct banking information in order to make a bank transfer.
- 8.8 All original Invoices must be forwarded to the Municipality to the address stated below:

8.8.1 BY HAND

The Mogale City Local Municipality

THE MANAGER: REVENUE SERVICES

Civic Centre; No. 38

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Corner Commissioner & Market Streets;

Krugersdorp; 1739

8.8.2 THE MANAGER: REVENUE SERVICES

P O Box 94

Krugersdorp; 1740

8.9 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 5 (five) years from date of payment, whichever is the longest.

8.9.1 Payments will be effected as per the following Progress Payment:

	DESCRIPTION	% PAYMENT	PAYABLE ON COMPLETION	PAYABLE IN MONTHLY PAYMENTS
1	Stage 1 Procurement/commencement phase of data and photography and delivery to MCLM of draft data sets.	10%		1 x payment
2	Stage 2	40%		5 x payments

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	Valuation Roll Compilation			
3	Stage 3 Submission of completed General Valuation Roll	10%		2 x payments
4	Stage 4 Data Handover	10%		2 x payments
5	Stage 5 Objection Management	10%		1 x payment
	Appeals Management	10%	At conclusion of the hearings on the GV, or if the date of the appeal board hearings has not been se down within six months after the certified roll has been implemented, then six months after the date of objection decision implementation.	
6	Stage 6 GV and system alignment	10%		1 x payment
		100%		

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7	Stage 7 Supplementary Roll 1 Objection and Appeals	Calculated amount of the number of properties contained in the Supplementa ry valuation roll (over and above the stated contracted price)		2 x payments At the conclusion of the hearings on the Supplementar y, or if the date of the appeal board hearings has not been set down within six months after objection period has closed, then six months after the date of objection decision implementati on.
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9. NON-EXCLUSIVITY

This Agreement is not exclusive. Notwithstanding the delivery of the LOA 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.

Special conditions shall be as incorporated in the tender document, specifically from page 74 to page 75, annexed hereto as annexure "G".

10. 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 (hereinafter collectively referred to as "Liability") arising as a result of the negligence or fault of the Service Provider:

- 10.1 any liability regarding 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;
- 10.2 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



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

10.4 any liability arising out of intentional or negligent acts, or omissions to act by the Service Provider.

11. 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.

12. SAFETY AND SECURITY

12.1 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.

13. CANVASSING AND INDUCING MOGALE CITY LOCAL MUNICIPALITY EMPLOYEES

13.1 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.

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~~13.2~~ 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.

14. 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:

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

14.2 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:

14.2.1 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.

14.2.2 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 and any damages suffered by the Municipality because of the Service Provider after the lapse of such period



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shall preclude the Municipality, thereafter, from recovering from the Service Provider any such damages as it may have suffered.

15. LIENS AND CLAIMS BY THIRD PARTY

- 15.1 The Service Provider waives all liens and rights of possession relating to the Services.
- 15.2 If a third party makes a claim on the Municipality to anything connected with the services the Service Provider will:
- 15.2.1 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
- 15.2.2 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.
- 15.3 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.

16. FORCE MAJEURE

- 16.1 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

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disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party,

16.2 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

16.3 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.

17. BREACHES AND TERMINATIONS

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

17.1.1 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

17.1.2 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

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17.1.3 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.

17.2 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.

17.3 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:

17.3.1 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;

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- 17.3.2 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;
- 17.3.3 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
- 17.3.4 the Service Provider acts against the expressed policies and instructions of Agreement as expressed in terms of this Agreement.
- 17.4 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.
- 17.5 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

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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:

17.5.1 terminate this Agreement forthwith; and

17.5.2 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

17.5.3 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

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

17.6 This Agreement shall automatically come to an end at the end of its term. Notwithstanding final payments made, the Service Provider will be liable to complete all processes relating to the services provided.

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

18. DISPUTE RESOLUTION

18.1 All disputes between the Parties shall, when all efforts to resolve such dispute by negotiation have failed, be referred to the South Gauteng High

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~~Court of South Africa (Witwatersrand Local Division), save if the Parties agree to refer the dispute to arbitration as envisaged in clause 19.~~

18.2 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.

19. ARBITRATION

19.1 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:

19.1.1 at Krugersdorp;

19.1.2 informally;

19.1.3 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.

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

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

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

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~~19.2.3 any other matter, an independent person agreed upon between the Parties.~~

19.2.4 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 18.1 and 18.2 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.

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

20.3.1 shall be binding on them;

19.3.2 shall be carried into effect;

19.3.3 shall have right for review;

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

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

20. NOTICES AND DOMICILIUM

20.1 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), their respective addresses set out in clause 20.2.1 and 20.2.2 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.

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

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20.2.1 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:
CELL PHONE :083 788 4370
PROJECT MANAGER: CHRISTEL KUHN

20.2.2 As regards the Service Provider at:

Physical address: UNIT 3 WASTELAND OFFICE PARK
28 HERTZ BOULEVARD
VANDERBIJLPARK
1911

Telephone number: 016-931 2972
Current fax no: 016-981 2973
Email Address: info@ndk.co.za

Postal address: P.O. BOX 1273
VANDERBIJLPARK
1900

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Cell Number:

082 592 6565

PROJECT DIRECTOR: QUINTON DE KLERK

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.

- 20.3 Any notice given in terms of this Agreement shall be in writing and shall, unless the contrary is proven:
- 20.3.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
 - 20.3.2 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;
 - 20.3.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch;
 - 20.3.4 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.
 - 20.3.5 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.

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21. JURISDICTION

- 21.1 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.
- 21.2 Each of the Parties irrevocably waives any objection which it might now or hereafter may have to the court referred to in clause 21.1 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.
- 21.3 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.
- 21.4 The submission to the jurisdiction of the court referred to in clause 21.1 shall not be construed to limit the rights of either Party to take

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proceedings against the other Party in any other court of competent jurisdiction for the purposes of obtaining urgent or interdictory relief.

22. ASSIGNMENT AND CESSION

The Service Provider shall not:

- 22.1 cede or assign any rights and/or obligations arising out of this Agreement without the written permission of the Municipality; and
- 22.2 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.

23. 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.

24. WAIVER

- 24.1 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.
- 24.2 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

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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.

24.3 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.

25. 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.

26. 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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27. 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 10th DAY OF July 2023

WITNESSES:
1. [Signature]
2. _____

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

SIGNED AT _____ ON THE _____ DAY OF _____ 2023

WITNESSES:
1. [Signature]
2. _____

[Signature]
Duly authorised for and on behalf of
NDK VALUERS (PTY) LTD

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