

SERVICE LEVEL AGREEMENT



on the Go for Growth

WATERBERG DISTRICT MUNICIPALITY

Entered into by:

The Waterberg District Municipality

(HEREIN REFERRED TO AS 'the Client')

And

PricewaterhouseCoopers Incorporated

(HEREIN REFERRED TO AS 'the Service Provider')

in respect of the compilation of 15/16 Annual Financial Statements and
Audit support for Waterberg District Municipality

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QK
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Preamble**Whereas:**

Waterberg District is required to compile financial statements for the year ending 30 June 2016 and would require subsequent support during the 15/16 audit and WHEREAS Waterberg District Municipality appointed PricewaterhouseCoopers Incorporated to render these services.

It is therefore agreed as follows:

1. Interpretation

The headings of the paragraphs in this Agreement are for the purposes of reference only and shall not be used in the interpretation of this Agreement. In this Agreement, unless a contrary intention clearly appears:

- 1.1. the singular includes the plural and vice versa;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely :
 - 1.2.1. '**business day**' means any working day, excluding Saturdays, Sundays and public holidays;
 - 1.2.2. '**Client**' means the Waterberg District Municipality (also referred to as WDM), represented herein by **MS MABOTJA**, in his duly authorized capacity as Municipal Manager of Waterberg District Municipality;
 - 1.2.3. '**commencement date**' means the date on which the parties commenced with the performance of their obligations, namely **date of signature of service level agreement** ;
 - 1.2.4. '**contract price**' means the total amount of fees that will be charged by the Service Provider, including disbursements and VAT, for the performance of the services in terms of this Agreement;

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- 1.2.5. **'prime rate'** means the variable interest rate as charged and calculated by the Service Provider from time to time;
- 1.2.6. **'project'** means the services to be performed by the Service Provider in terms of the project deliverables and the corresponding obligations to be fulfilled by the Client;
- 1.2.7. **'project plan'** means the strategy prepared by the parties for the successful completion of the Project submitted within a reasonable time, prior to commencement of project, as stipulated in the project specifications;
- 1.2.8. **'Remuneration schedule'** means the details of remuneration as submitted in the Service Provider's proposal.
- 1.2.9. **'Service Provider'** means PricewaterhouseCoopers Incorporated, Registration number 1998/012055/21 , a company incorporated under the laws of South Africa, represented herein by **PIERRIE CRONJE**, in duly authorized capacity as Director of PricewaterhouseCoopers Incorporated.
- 1.2.10. **'Services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement and the Proposal;
- 1.2.11. **'Tender'** means the project specifications, submitted by the Client and being in respect of the compilation of financial statements for the year ending 30 June 2016 and subsequent support during the 15/16 audit to Waterberg District Municipality.
- 1.3. figures are referred to in numerals and in letters and if there is any conflict between the two then the letters shall prevail; and,
- 1.4. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement, which do not themselves, contain their own definitions.

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2. Appointment and Duration

2.1. The Client hereby appoints the Service Provider, which hereby accepts the appointment, to render the Services to the Client on the terms and conditions of this Agreement set out herein.

2.2. This Agreement will commence upon date of signature of this Agreement and shall thereafter remain in full force and effect for a period of approximately **5 months** calculated from the commencement date, subject to the right of either Party to terminate it in terms of the provisions of this Agreement.

3. Shareholders

In case where the holding company of the Service Provider changes, the Client must be informed of such changes.

4. Extent of terms and conditions

4.1. This Agreement consists of the terms and conditions set out in the documentation listed as follows:

4.1.1. All bid documents comprising the Service Provider's proposal;

4.1.2. Letter of appointment;

4.1.3. This Agreement;

4.1.4. The National Treasury General Conditions of Contract; and

4.1.5. Acceptance of appointment.

4.2. In the event of conflict between the provisions of any of the afore-stated documentation and this Agreement, the provisions of this Agreement shall prevail.

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- 4.3. Any additional work which is not part of the initial agreement will have to be requested in writing and approval be given prior to work done.

5. Scope of Services

- 5.1. The Service Provider shall compile financial statements for the year ending 30 June 2016 and coordinate and provide support during the 15/16 audit, as required by and as envisaged by the Tender.
- 5.2. Services shall be rendered with regard to all requirements of The Client as per the proposal.
- 5.3. The Services that the Service Provider shall render to the Client in terms of this Agreement are set out in the specifications and the Service Provider's proposal and include, without limitation, the following:
- a) Review of the 15/16 trial balance and reconciliations for accuracy, completeness and validity and giving guidance to WDM staff on corrections to be made
 - b) Preparation of GRAP complaint annual financial statements (AFS) for the year ending 30 June 2016.
 - c) Assistance with preparation of the audit file for the year ending 30 June 2016 that has to be submitted with the AFS.
 - d) Audit support relating to drafting audit responses and addressing BTO related audit queries and responding to requests for information:
 - a. This is limited to approximately 100 hours spread over a period from September to November 2016).
 - b. Engaging the Auditor General on technical accounting issues and issues that impacts on the audit and audit opinion.

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- e) Any additional ad hoc work which is not part of the initial agreement as requested in writing and approval granted.

6. Time Frames

- 6.1 The compilation of financial statements will be from 21 July to 26 August 2016;
- 6.2 The coordination of the 15/16 audit and provision of audit support will be from the commencement of the project for 5 months until 30 November 2016, or such later date that the parties might agree to, when the audit is concluded.

7. Deliverables

- 7.1 GRAP compliant 15/16 financial statements
- 7.2 GRAP and MFMA compliant 15/16 audit file
- 7.3 Effective coordination and conclusion of the 15/16 audit

8. Responsibilities of Waterberg District Municipality

- 8.1. The Client shall ensure that the Service Provider has reasonable access to and the support of whatever information or personnel, respectively, may be necessary for the Service Provider to fulfill its obligations.
- 8.2. The Client shall effect remuneration to the Service Provider upon the latter's performance of its obligations in terms of the tender document. Payment of the Contract Value will be made in tranches on completion of deliverables as tabled in section 5 above.

9. Responsibilities of Service Provider

- 9.1. The afore-stated services shall be rendered diligently and to acceptable industry standards.

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The Service Provider shall:

- 9.1.1. perform the Services in accordance with the Service Level Agreement;
 - 9.1.2. use the appropriate level of skill, care and diligence in performing the Services;
 - 9.1.3. utilize staff that is adequately trained, qualified and skilled to perform the Services;
 - 9.1.4. notify the Client within a reasonable time should the Service Provider be unable to render the Services for any reason whatsoever and will also notify the Client on how such situation will be remedied;
 - 9.1.5. use suitable systems (hardware and software) to provide the Services;
 - 9.1.6. assume professional and technical responsibility for the performance of the Services, which will be in accordance with recognized professional standards employed by service providers performing work of a comparable nature; and
- 9.2. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between any employee, or contractor, or agent, of the Client and the Service Provider.
- 9.3. Any consultant or contractor supplied by the Client to assist in the rendering of the Services in terms of this Agreement shall not be considered as having employee status for the purpose of any benefit applicable to the Service Provider's employees generally.
- 9.4. Where the Service Provider has to render the Services at the Client's premises, the Service Provider will render the Services at the address(es) notified to the Service Provider by the Client in writing.

10. Price / fees

- 10.1. In consideration for the rendering of the Services, the Client shall pay to the Service provider the Fees as set out in the Proposal.
- 10.2. The approved cost is R 502 751.22 (Vat exclusive).

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- 10.3. The Parties acknowledge that the Fees are based on the scope of the Services and the service levels as stipulated in the Proposal.
- 10.4. The Client hereby agrees to pay the Service Provider in accordance with this agreement after the delivery of goods or services as per the scope of work.
- 10.5. Upon receipt of the invoice, the Client will pay the Service Provider the invoiced amount within (30) days of receipt of an invoice.
- 10.6. If the Client defaults or falls into arrears with any payment the Service Provider reserves its right to claim payment of interest at the prime rate, calculated from 30 (thirty) days after date of invoice to actual date of payment.

11. Variations and cancellations

- 11.1. No agreement varying to, deleting from or cancelling this agreement shall be of force or legal effect unless reduced in writing and signed by or on behalf of the parties.

12. Limitation of liability

- 12.1. The Service Provider hereby protects and secures the Client against all legal liability with regard to any claims that may arise as a result of a breach of contract or negligence on the part of the Service Provider in respect of its obligations in terms of this Agreement.
- 12.2. The maximum liability of the Service Provider in respect of such claims (stated in clause 12.1 above) shall be limited to the aggregate of fees that have accrued to the Service Provider for the obligations that form the subject of the breach of contract or negligence as at the time that the cause of action arose.

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13. Amicable Settlement

If any dispute arises in terms of this contract, either party may give five (5) days written notice to the other of such dispute, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.

14. Disputes

14.1. In the event that a dispute arises between the Client and the Service Provider it shall be referred to mediation within 5 (five) business days of either party declaring such a dispute. In this regard:

14.1.1. A mediator shall be appointed by the parties, alternatively by the chair of the Attorneys Association in the Province where the dispute arose, to preside over the mediation; and,

14.1.2. The parties shall seek ways and means to resolve the dispute in the most expedient manner.

14.1.3. Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration.

14.1.4. An arbitrator shall be appointed by the parties, alternatively by the chair of the Arbitration Foundation of South Africa ('AFSA'), to preside over the arbitration; and,

14.1.5. The rules of AFSA shall govern the conduct of the arbitration.

14.2. Nothing in this paragraph shall prevent either party from approaching the High Court for suitable judicial relief.

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15. Breach

- 15.1. If either party breaches this Agreement or fails to perform any of its obligations, then the other party shall provide written notice, calling upon the first party to rectify its breach within a period of not less than 10 (ten) business days.
- 15.2. Should the party in breach have failed to rectify the breach within the afore-stated time period, the other party may cancel this Agreement and claim recovery of damages.
- 15.3. Any request for an extension on timeframe must be done in writing and be approved by the Accounting Officer of the Client as an addendum to this agreement or penalties will be imposed on the Service Provider.

16. Termination

- 16.1. This Agreement may be terminated upon thirty (30) days' written notice, after the terminating party has consulted the other about its intention and reasons for termination.
- 16.2. The afore-stated termination shall not prejudice either party's rights in respect of the obligations already performed or to be performed as at the date of termination.

17. Severability

- 17.1. Any provision of this agreement found or held invalid or unenforceable, such terms shall be severable and the validity of all other terms shall not be affected thereby.

18. Whole agreement

- 18.1 This Agreement constitutes the whole agreement between the parties unless supplemented by further agreements, which shall be in writing.

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19. Amendments and alterations

19.1 No amendments and/or alterations to the terms this Agreement shall be valid or binding unless reduced to in writing and signed by all Parties.

20. Penalty Clause

21.1 No penalties will be imposed in instances where the WDM is solely or partly to blame for the default or delays on the part of the Service Provider. Penalty will be imposed on the following cases:

- Poor Quality (not capable of being remedied within a reasonable period of time);
- Non- compliance with the agreed scope (penalty only to be imposed in instances where the Service Provider fails to remedy this failure within a reasonable period of time)
- Non – compliance to agreed project plan timeframes

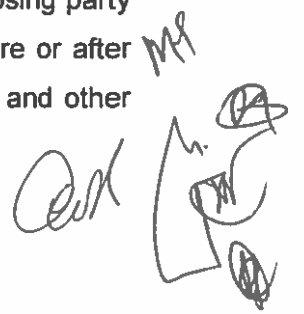
21.2 No extension will be granted for this project without good motivation and any failure to deliver the expected results before or on the specified deadline date could result in penalties to be effected by WDM.

21.3 The penalties will be calculated from 2% to the maximum of 25% of the total project amount on the discretion of the municipality. Penalty percentage can be increased from 25% depending on the severity of the penalty.

21.4 National Treasury Conditions of Contract will also apply in terms of penalties imposed.

22. Confidentiality

22.1 For the purposes of the agreement confidential information means any and all information, including but not limited to, technical, financial, product and commercial information – disclosed in writing or otherwise by the disclosing party to the receiving party, whether disclosed in view of the purpose before or after the date of Agreement and shall be deemed to include all documents and other



material (including samples, models and computer software) containing or embodying or based on the confidential information (or part thereof) together with all notes, summaries and other material derived there from and all copies or reproductions of the foregoing. Such Confidential Information shall not include information:

22.1.1 which is generally available to the public, or which will become generally available to the public other than by breach by the Receiving Party of its obligation hereunder;

22.1.2 which was or is already known to the Receiving Party before it had been or will be disclosed by the Disclosing Party, provided that such information may not reasonably be considered by the Receiving Party as confidential;

22.1.3 which the Receiving Party has received or will receive on a non-confidential basis from any party (including any third party) which is not in breach an obligation of confidentiality towards the Disclosing Party or any party (including any third party), provided that such information may not reasonably be considered by the Receiving Party as confidential; and

22.1.4 which is independently developed by or on behalf of the Receiving Party.

22.2 All Parties shall:

22.2.1 hold the other parties Confidential Information in the strictest confidence;

22.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and

22.2.3 only release such Confidential Information on a "need to know" basis subject thereto that the persons to whom such Confidential Information is released shall undertake to be bound by the confidentiality obligations contained herein.

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- 22.3 No parties shall be entitled to use the name of the other Party in publicity releases or advertising or for other promotional purposes without procuring the prior written approval of the Party concerned.
- 22.4 The Parties' obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.
- 22.5 In the case of a release, announcement or document which is require to be given, made or published by law or under the rules of the JSE Securities Exchange South Africa or any other relevant stock exchange, the Party liable so to give, make or publish the same shall give to the other Party as much advance warning thereof as is reasonable in the circumstances together with drafts or a copy thereof as soon as it is at liberty to do so.

23. Warrant of Authority

The persons signing this agreement on behalf of the parties warrant their authority to do so.

24. *Domicilium citandi et executandi*

- 24.1. The parties choose as their *domicilia citandi et executandi* the addresses set out hereunder :

24.1.1. Client :

Office of the Municipal Manager
Waterberg District Municipality
Harry Gwala Street
Modimolle
0510



24.1.2. Service Provider :

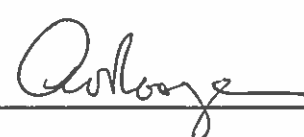

PricewaterhouseCoopers Incorporated
73 Biccard Street
Maneo Building
Polokwane
0700

24.2. Either party may change its *domicilium citandi et executandi* by giving written notice to the other, the new address becoming effective at the expiry of 10 (ten) business days from the communication of notification.

Signed at Modimolle on this 27 day July of 2016.

AS WITNESSES:

1.  _____ For and on behalf of the Client

2.  _____  _____
MS Mabotja
WDM Municipal Manager

Signed at Nelspruit this 28 day July of 2016.

AS WITNESSES:

1.  _____ For and on behalf of Service Provider

2.  _____  _____
Pierrie Cronje
Director