

# SERVICE PROVIDER AGREEMENT



**Waterberg**  
District Municipality

*on the Go for Growth*

## **WATERBERG DISTRICT MUNICIPALITY**

Entered into by:

**The Waterberg District Municipality**  
(Herein referred to as 'the Client/ Buyer')

And

**MERCURIUS MOTORS POLOKWANE**  
Registration Number: 1983/009088/06  
(Herein referred to as 'The Service Provider / Seller')

In respect of the procurement of the New Mayoral Vehicle

**Preamble****Whereas:**

Waterberg District has identified a need to procure the new Mayoral Vehicle .

Waterberg District Municipality appointed Mercurius Motors a Division of Imperial Group Limited to sell and service its new Mayoral vehicle .

Mercurius Motors expressed its intention to sell and service the new Mercedes –Benz ML350 Blue Tec to the Waterberg District under the terms and conditions stipulated below .

**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;
  - 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;
- 1.2.5. **'key result'** means an indicator or yardstick in terms of which the Service Provider's successful performance of its obligations may be gauged;
- 1.2.6. **'methodology'** means the professional expertise and the system of methods required by the Service Provider to perform the obligations set out in terms of this Agreement;
- 1.2.7. **'prime rate'** means the variable interest rate as charged and calculated by the Service Provider's bankers from time to time;
- 1.2.8. **'project'** means the services to be performed by the Service Provider in terms of the Tender and the corresponding obligations to be fulfilled by the Client;
- 1.2.9. **'project plan'** means the strategy prepared by the parties for the successful completion of the Project submit within a reasonable time, prior to commencement of project;
- 1.2.10. **'Service Provider'** means Mercurius Motors Polokwane, under the registration name: Mercurius Motors a Division of imperial Group Limited established in 2006 under Registration number 1983/009088/06;
- 1.2.11. **'services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement, as per page 5;
- 1.2.12. **Tender**, means tender No: WDM/2014/15-06 advertised by the client and being in respect of the Supply and delivery of one Mercedes-Benz ML350 BlueTec.

- 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.

## 2. Appointment and Duration

- 2.1. The Client hereby appoints the Service Provider to carry out the services detailed in Paragraph 6 to this Agreement upon the terms and conditions set out herein.
- 2.2. The Service Provider will commence **upon date of signature of service level agreement which is the 22<sup>nd</sup> December 2014** and complete at the end of the end of the maintenance plan( 100000 KM ) as agreed by both parties .
- 2.3. The **warranty period**, shall commence from the official date for handing over the equipment and shall be a minimum period of twelve (12) months .

## 3. Shareholders

- 3.1 In case where the Members of the Close Co-operation changes during the year 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. (a) All tender documents comprising the tender (schedule 1)
- (b) The Services Provider's proposal (Schedule 3)

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- 4.1.2. The Service Provider's quotation (Schedule 2);
- 4.1.3. (a) Letter of appointment (Schedule 3);  
(a) order and,
- 4.1.4. Copy of agreement
- 4.1.5. The National Treasury General Conditions of Contract
- 4.2. In the event of conflict between the provisions of any of the aforesaid documentation and this Agreement, the provisions of this Agreement shall prevail.
- 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. TERMS OF REFERENCE:

- (a) Electronic Stability Program (ESP)
- (b) Brake Assist System (BAS )
- (c) Electronic Traction System ( 4-ETS )
- (d) Anti-lock Brakes (ABS)
- (e) Acceleration Skid control (ASR)
- (f) Dual front & rear side bags
- (g) Full side curtain window bags
- (h) Belt tensioners and two stage limiters for front and for one stage limited for outer rear seats
- (i) Pre –Safe System ,Neck –Pro active head restraints for driver and front passenger
- (j) Front crash centre and rollover sensor for restraint system
- (k) Pre-Safe tyre pressure loss warning system
- (l) Tank capacity of 80/9 litres

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**6. Optional Extras :**

- 6.1. Panoratic electrical sunroof
- 6.2. Reversing camera
- 6.3. Command APDS Navigation with 6 DVD changer & Linguatronic
- 6.4. Media Interface including consumer cable set
- 6.5. Heated front seats
- 6.6. Palladium silver colour
- 6.7. Bi-xenon Headlight with active light system , including headlamp washer system and Daytime driving lights .
- 6.8. Tinting only on the rear windows
- 6.9. Safety window -glasses (anti-smash & grab )
- 6.10.17 inch wheels
- 6.11. Black leather interior

**7. WARRANTY :**

7.1 The warranty period shall commence from the official date in service applicable to the vehicle and shall be a minimum of 24 (twenty four ) months unlimited kms .

**8. MAINTENANCE OF THE VEHICLE :**

8.1. Mercurius Motors will be responsible for the Mercedes –Benz ML350 BlueTec service ,repairs ,replacement of any fitting and the supply of the car with any other required parts including the tyres ,which is not part of the motor plan and also beyond motor plan period through submission of a quotation first .

8.2.The motor plan or maintenance plan of at least 100 000 kilometres will be applicable as per the specification .

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**9. PRICE :**

9.1. The contract price in respect of the tender is as per the pricing schedules provided in by the Mercurius Motors Polokwane bearing the Registration NO:1983/0009088/06 propose as follows :

9.1.1. Mercurius Motors Polokwane is appointed for the supply and delivery of 1(one) Mercedes –Benz BlueTec Palladium Silver---model with all extras as per specification for the Waterberg District Municipality at amount of R89 7300.00 VAT inclusive.

**10. REMUNERATION/PAYMENT :**

10.1. Payment will be done to the Service Provider(Seller)by means of once off Cheque or electronic payment once the vehicle has been inspected and ready for delivery.

10.2. Maintenance and or repair of vehicle shall be paid by means of an order or cheque and will be paid once the service has been rendered as per the quotation submitted.

**11. TRANSFER OF OWNERSHIP/REGISTRATION/ LICENSING OF THE NEW VEHICLE :**

11.1 The seller (Service provider) shall be responsible for the registration and licensing of the vehicle. The seller shall liase with the proxy of the municipality to collect the necessary registration documents and completion of registration forms thereof.

11.2 The Seller (Service Provider) shall within 5 days upon receipt of the agreed full sale price transfer ownership of the Mercedes-Benz BlueTec Palladium Silver to the names of the Client (Buyer) Waterberg District Municipality.

11.3. The Seller shall with 5 days upon receipt of the full agreed sale price at its own costs register the sold vehicle into the names of the client (Buyer) .

11.4. After licensing, the seller shall be responsible for the purchasing of the number plates and the installation thereof.

## 12. Obligations of the Service Provider (Seller)

12.1. Service Provider must within 5 days upon receipt of the full purchase price deliver to the Client's principal place of business 01 Harry Gwala street in Modimolle Palladium Silver Mercedes-Benz ML350 BueTec .

12.2 The Service Provider register the vehicle at any nearest Traffic Department and insure that the purchased vehicle is road worthy.

12.3 The Service Provider will be responsible for the service ,repairs and or replacement of any fittings and the supply of the of the vehicle with any other parts including the tyres, which are not part of the motor plan and even beyond motor plan period through the submission of quotations first .

## 13. Obligations of the Client

13.1 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 fulfil its obligations.

13.2 The Client appoints Mrs M Ngoepe in her capacity as the Senior Admin Officer of Waterberg District Municipality as the project manager and key point of contact and liaison for all matters relating to the project by and between the Service Provider and the Client.

13.3 To pay the Service Provider the agreed purchase price within 5 days upon conclusion of the sale agreement and or Service Level Agreement (whatever is signed first ) .

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#### 14 Variations and cancellations

- 14.1 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.

#### 15 Limitation of liability

- 15.1 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.

- 15.2 The maximum liability of the Service Provider in respect of the aforestated claims 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.

#### 16 Amicable Settlement

- 16.1 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.

#### 17 Disputes

- 17.1 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:
- 17.1.1 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,
- 17.1.2 The parties shall seek ways and means to resolve the dispute in the most expedient manner.

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- 17.1.3 Should the dispute not be resolved within 10 (ten) business days of the commencement of mediation it shall be referred to arbitration. Accordingly :
- 17.1.4 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,
- 17.1.5 The rules of AFSA shall govern the conduct of the arbitration.

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

## 18 Breach

- 18.1 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.
- 18.2 Should the party in breach have failed to rectify the breach within the aforesaid time period, the other party may cancel this Agreement and claim recovery of damages.
- 18.3 Timeframe for this project is **Four (04)** months upon date of signature of service level agreement.
- 18.4 Any request for an extension on timeframe must be done in writing and be approved by the Accounting Officer as an addendum to this agreement or penalties will be imposed on the Service Provider.

## 19 Termination

- 19.1 This Agreement may be terminated upon 20 (twenty) business days' written notice, after the terminating party has consulted the other about its intention.
- 19.2 The aforesaid termination shall not prejudice either party's rights in respect of the obligations
- 19.3 Already performed or to be performed as at the date of termination.

## 20 Severability

- 20.1 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.

## 21 Whole agreement

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

## 22 Amendments and alterations

- 22.1 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.

## 23 Penalty Clause

Penalty will be imposed on the following cases:-

- Late delivery.
- Non- compliance to scope of work

The expiry date of the implementation period for this project is **Four (04) months after the date of service level agreement signature.**

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 will automatically result in penalties to be effected by WDM.

The penalties will be calculated ranging from **2% to 25%** of the total project amount on the discretion of the municipality. Penalty percentage may be above 25% if the offence is severe.

All penalties will be on the discretion of the Accounting Officer.

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

## 24 Confidentiality

**21.1** 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:

21.1.1 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;

21.1.2 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;

21.1.3 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

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

**21.2** All Parties shall:

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

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

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21.2.3 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.

21.3 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.

21.4 The Parties' obligation in terms of this clause will survive the termination of this Agreement including the termination thereof by the effusion of time.

21.5 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.

**25 Warrant of Authority**

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

**26 *Domicilium citandi et executandi***

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

**26.1.1 Client :**

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



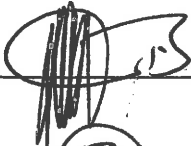
26.1.2 Service Provider :



Mercurius Motors  
Cnr Grobblers & Nelson Mandela Drive  
Polokwane  
0700

26.2 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 22<sup>nd</sup> day of December 2014.

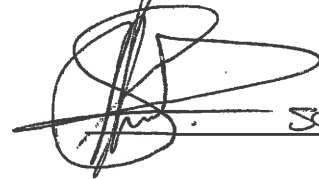
AS WITNESSES:

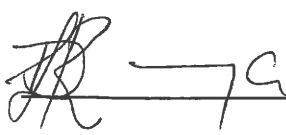
1.  \_\_\_\_\_ For and on behalf of the Client

2.  \_\_\_\_\_  \_\_\_\_\_  
SM Mabotja  
Municipal Manager

Signed at Modimolle this 22<sup>nd</sup> day of December 2014.

AS WITNESSES:

1.  \_\_\_\_\_ Samuel Mookosi For and on behalf of the  
Service Provider  
6917574070015  
**Mercurius**  
Polokwane  
C/O N1 & Nelson Mandela Drive  
PO. Box 1637 Polokwane 0700  
Tel: 015 299 9500 Fax: 299 9597/8  
Mercurius Motors Polokwane

2.  \_\_\_\_\_