

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

Absa Bank Limited

(HEREIN REFERRED TO AS 'the Service Provider')

in respect of the provision of banking services for Waterberg District
Municipality

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Preamble

Whereas:

Waterberg District has identified a need for the provision of banking services.
Waterberg District Municipality appointed Absa Bank 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;
 - 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 Tender 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 submit within a reasonable time, prior to commencement of project, as stipulated in the tender specifications;
- 1.2.8. **'Remuneration schedule'** means the details of remuneration as submitted in the Service Provider's tender document.
- 1.2.9. **'Service Provider'** means **Absa Bank Limited**, Registration number 1986/004794/06, a company incorporated under the laws of South Africa and a bank duly registered as such under the Banks Act, 1990.
- 1.2.10. **'Services'** refers to the professional work to be performed by the Service Provider in terms of this Agreement and the Tender;
- 1.2.11. **'Tender'** means Tender No. WDM/2014/15-10, advertised by the Client and being in respect of the provision of banking services 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 5 (five) years (60 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 tender documents comprising the Service Provider's proposal;

4.1.2. Letter of appointment;

4.1.3. This Agreement; and

4.1.4. 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.


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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 provide banking services, as required by and as envisaged by the Tender.
- 5.2. Services shall be rendered with regard to all banking 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 tender document and the Service Provider's proposal and include, without limitation, the following:

5.3.1 Physical Banking and Service Administration

- a) Branches, service points and support staff within the Waterberg District Municipal area.
- b) Specific resources and personnel that will be allocated by the Service Provider to the Client.

5.3.2 Technological Innovations

- a) Online Cheque Stopping Facility
- b) Online Security
- c) Online Customer Transactions
- d) High volume transactions
- e) Online Banking Facility and Security measures

5.3.3 Investment Portfolio

- a) Products
- b) Charges

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- i. Administration
 - ii. Commission
 - iii. Switching Funds
- c) Administration of the Portfolio

5.3.4 Banking Services and Product Range

- a) Cash Handling Services
- b) Cheque Account
- c) Overdraft Facilities
- d) Daily aggregation of deposit accounts and cheque cashing facilities
- e) The provision of interfaces between the bank's electronic system and the municipality to enable electronic reconciliations
- f) Electronic / Online banking
- g) Dropbox / other offsite deposit cash facilities at other municipal locations (e.g. Modimolle Abattoir)
- h) Optional Overdraft facility

5.3.5 Non-Financial and Additional Services

- a) General Advice
- b) Financial Training / Guidance for municipal staff
- c) Risk Management

5.3.6 Project and Asset Financing Products

- a) Leasing
- b) Financing
- c) Rentals
- d) Fleet Management Services
- e) Maintenance
- f) Hire Purchase
- g) Capital Projects

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5.4 As indicated in the tender document and specifications, Waterberg District Municipality reserves the right to extend this appointment to our municipal entities, if and when they are established, as well as to extend this appointment scope to include fleet management services, if and when we decide to implement such a service.

6. Time Frames

6.1 PROJECT PLAN / IMPLEMENTATION SCHEDULE

Actions /Phases	TIME FRAMES FOR COMPLETION (MONTHS)												
	1	2	3	4	5	6	7	8	9	10	11	...	60
Provision of banking services													
1. Inception meeting	*												
2. Opening of the primary bank account	*	*											
3. Installation of online banking application		*	*										
4. Migration of information from current to new bank system			*										
5. Integration of financial systems to the online banking application			*	*									
6. Training of users			*	*	*								
7. Banking Application maintenance, support to users, assistance with legislative compliance and adherence to internal controls					*	*	*	*	*	*	*	*	*

6.2 Failure to effectively transfer and implement the full banking services function (as stipulated in the above project plan) from the current to the successful bidder, within 4 months (preparatory / probation period) from the commencement date, to be fully operational and effective could result in the appointment being revoked, with no cost to the municipality.

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7. Deliverables

- 7.1 Effective primary bank account
- 7.2 Effective internet / online banking application
- 7.3 Migration of information from current to new bank system
- 7.4 Integration of financial system to the online banking application
- 7.5 Online banking application maintenance
- 7.6 Training and subsequent support of municipal users
- 7.7 Assistance with compliance to MFMA and other legislative requirements involving bank accounts
- 7.8 Ensure adherence to internal controls established by the Client for the bank accounts (e.g. maintenance of signatories)

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.

9. Responsibilities of Service Provider

- 9.1. The aforesaid services shall be rendered diligently and to the standard required by the Client.

The Service Provider shall:

- 9.1.1. perform the Services in accordance with the Service Levels;
- 9.1.2. use the appropriate level of skill, care and diligence in performing the Services;
- 9.1.3. utilise staff that is adequately trained, qualified and skilled to perform the Services;

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A large signature on the right side.
Below it, the initials "MFSE" and "NAR" are written.
To the right of "NAR", there are initials "MS." and another signature.

- 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 the proper 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
 - 9.1.7. endeavour to constantly improve and enhance the quality of the Services during the course of this Agreement.
- 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 Fees shall be fixed and firm for a period of 1 (one) year from the date on which such Fees become effective. The Service Provider shall be entitled to increase the Fees annually, provided that such increase of the Fees shall not

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exceed CPIX and that the initial increase shall take effect as determined by the Service Provider's acts and policies.

- 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 strictly in accordance with this agreement the 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.

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 the aforesated 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.

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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 aforesaid 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 twenty (20) business days' written notice, after the terminating party has consulted the other about its intention.
- 16.2. The aforesaid 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

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 Penalty will be imposed on the following cases:

- Poor Quality
- Non- compliance to scope of work
- Non – compliance to 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 will automatically result in penalties to be effected by WDM as stipulated in 21.2.1.

21.2.1 Failure to effectively transfer and implement the full banking services function (as stipulated in the above project plan in paragraph 6.1) from the current to the successful bidder, within 4 months (preparatory / probation period), to be fully operational and effective could result in the appointment being revoked, with no cost to the Client.

21.3 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

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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

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released shall undertake to be bound by the confidentiality obligations contained herein.

- 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

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24.1.2. Service Provider :

ABSA Bank
7th Floor Barclays Towers West
15 Troye Street
Johannesburg
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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.

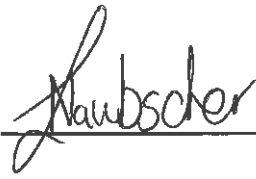


25. Sanctions

- 25.1 The Service Provider is part of a global financial institution that complies and will in future comply with international and local anti-money laundering, counter terrorist financing, financial sanctions and prohibited business activity laws, regulations, policies and requirements.
- 25.2 The Service Provider may screen, verify and process information of the Client and thereafter monitor all information, instructions and transactions by and on behalf of the Client in relation to all transactions and to the business relationship on a continuous basis.
- 25.3 This may result in the prohibition, limitation, delay in the execution of instructions or transactions and even in the declining or terminating any transaction or the business relationship with the Client.
- 25.4 To the extent permitted, the Service provider shall advise the Client of any action it intends to take in terms hereof.
- 25.5 The Client acknowledges and confirms that neither the Service Provider nor its affiliates, employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, costs or expenses whatsoever that may be suffered or incurred by the Client as a result of, arising from or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause.

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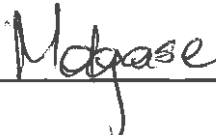
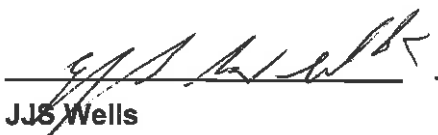

Signed at Modimolle on this 12 day MARCH of 2015.

AS WITNESSES:

1.  For and on behalf of the Client
2.  
MS Mabotja
WDM Municipal Manager

Signed at Modimolle this 10th day March of 2015.

AS WITNESSES:

1.  For and on behalf of Absa Bank Limited
2.  
JJS Wells
Provincial Head : Business Banking
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NA Rasebotsa
Provincial Manager: Public Sector Banking