

# 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

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*RT*

*[Signature]*

*MM*

**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 GLE 350 d (W166) ZA to the Waterberg District Municipality 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 ;

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- 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 1983 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/2016/17-04 advertised by the client and being in respect of the Supply and delivery of one Mercedes-Benz GLE350 d (W166) ZA.

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- 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 14<sup>th</sup> September 2017 and complete at the end of the maintenance plan( 160 000 KM ) as agreed by both parties .
- 2.3. The warranty period, shall commence from the official date for handing over the vehicle and shall be a minimum period of thirty-six (36) 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 afore-stated 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:

1 x 3.0 litre Diesel SUV (2017 Model) with the following specifications:

<b>Engine</b>	
Engine capacity	2 987cc
Engine size	3.0 litre
Cylinders	6
Charger	Turbocharger
Power maximum	190 kw
Power Peak Revs	3 600r/min
Torque Max	620 Nm
Torque Peak Revs	1 600-2 400r/min
Transmission type	Automatic
<b>Features</b>	
Engine auto Stop/Start	Yes
Gear shift paddles	Yes
ABS	ABS
Electronic brake distribution (EBD)	Yes
Brake Assist BASEBA	Yes
Traction control	Yes
Stability Control	Yes
Hill descent control/downhill brake control	Yes

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Alloy wheels rims	Yes
Front tyres	255/50R19
Rear tyres	255/50R19
Tyre pressure sensor	Yes
Air conditioning	Yes
Climate control/automatic air con	Yes
Power steering	Yes
Multifunction steering wheels control	Yes
On board computer multi information display	Yes
Navigation	Yes
Cruise control	Yes
Bluetooth connectivity	Yes
CD player	Yes
Multi disc CD Player shuttle	Yes
Auxillary input	Yes
USB port	Yes
Power socket 12v	Yes
Central locking	Remote
Cup bottle holders	Yes
Leather upholstery	Yes
Electronic windows	Yes
Rain sensor wipers	Yes
Electric adjust mirrors	Yes
Heated exterior mirrors	Yes
Electric fold retractable mirrors	Auto
Panoramic Sunroof	Yes
Daytime driving running lights	LED
Xenon headlights	Yes
Directional turning headlights	Yes
Adaptive headlights	Yes
High beam assist	Yes
High level 3 <sup>rd</sup> brake light	Yes
Rear fog lamps	Yes
Camera for park distance control	Yes
<b>Specifications</b>	
Doors	5
Body Shape	SUV
Fuel type	Diesel
Start Stop button	Yes
Driven wheels	All
Gear ratios quantity	7
Gearshift	Automatic
Folding rear seat	Yes
Length	4 804 mm
Width	1 925 mm
Height	1 796 mm
Wheel base	2 915 mm
Fuel tank capacity including reserve	93 litres
Colour paint	Metallic

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<b>Safety</b>	
Driver airbag	Yes
Front passenger airbag	Yes
Driver knee airbag	Yes
Front side airbags	Yes
Rear side airbags	Yes
Curtain airbags	Yes
Airbag quantity	9
<b>Warranty</b>	
Warranty time years	Minimum of 3years
Maintenance plan distance	100 000km ( must be extended to 160 000km)
Maintenance plan time (years)	6 years

### EXTRAS

Blue lights – supply and install  
 Smash and grab on all windows  
 Standard tracker – supply and install.

NB. Trade in of Mercedes Benz ML 350 Blue Tech, Palladium Silver, 2014 model.

### **6. WARRANTY :**

The warranty period shall commence from the official date in service applicable to the vehicle and shall be a minimum of 36 (thirty-six) months.

### **7. MAINTENANCE OF THE VEHICLE :**

7.1 Mercurius Motors will be responsible for the Mercedes –Benz GLE350 d (W166) ZA's 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 .

7.2 The extended motor plan or maintenance plan of at least 160 000 kilometres will be applicable as per the specification.

### **8. PRICE :**

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 purchase price is as follows :

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Mercurius Motors Polokwane is appointed for the supply and delivery of 1(one) Mercedes –Benz GLE350 d (W166) ZA 2017model with all extras as per specification for the Waterberg District Municipality at amount of R999 355.40 VAT inclusive.

**9. REMUNERATION/PAYMENT:**

9.1 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.

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

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

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

10.2 The Seller (Service Provider) shall within 5 days upon receipt of the agreed full sale price, transfer ownership of the Mercedes-Benz d (W166) ZA Obsidian black to the names of the Client (Buyer) Waterberg District Municipality.

10.3 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).

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

**11. OBLIGATIONS OF THE SERVICE PROVIDER (SELLER)**

11.1 The Service provider appoints Ms Mokgadi Senyatsi in her capacity as Sales Executive of Mercurius Motors Polokwane, as the project manager and key

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point of contact and liason for all matters relating to the project by and between the Service Provider and Client

- 11.2. 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, an Obsidian Black Mercedes-Benz GLE350 d (W166) ZA .
- 11.3 The Service Provider must register the vehicle at any nearest Traffic Department and insure that the purchased vehicle is roadworthy.
- 11.4 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 .

## 12. OBLIGATIONS OF THE CLIENT (BUYER)

- 12.1 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.
- 12.2 The Client appoints **Ms Maureen Ngoepe** in her capacity as **Senior Admin Officer of Waterberg District Municipality** and 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.
- 12.3 To pay the Service Provider the agreed purchase price within 5 days upon conclusion of the sale agreement and or Service Level Agreement (whichever is signed first).

## 13. VARIATIONS AND CANCELLATIONS

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.

## 14. LIMITATION AND LIABILITY






14.1 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.

14.2 The maximum liability of the Service Provider in respect of the aforesaid 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.

### 15. 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.

### 16. DISPUTES

16.1 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:

16.1.1 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,

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

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

16.1.4 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,

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

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

**17 BREACH**

17.1 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.

17.2 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.

17.3 Timeframe for this project is **ONE (01)** month upon date of signature of service level agreement.

17.4 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.

**18 TERMINATION**

18.1 This Agreement may be terminated upon 20 (twenty) business days' written notice, after the terminating party has consulted the other about its intention.

18.2 The aforesaid termination shall not prejudice either party's rights in respect of the obligations

18.3 Already performed or to be performed as at the date of termination.

**19 SEVERABILITY**

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.

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## 20 WHOLE AGREEMENT

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

## 21 AMENDMENT 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.

## 22 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 **one (01) month 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.

## 23 CONFIDENTIALITY

23.1 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

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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:

- 23.1.1 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;
- 23.1.2 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;
- 23.1.3 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
- 23.1.4 which is independently developed by or on behalf of the Receiving Party.

23.2 All Parties shall:

- 23.2.1 hold the other parties Confidential Information in the strictest confidence;
- 23.2.2 not make use thereof other than for the performance of its obligations under the Agreement; and
- 23.2.3 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.

23.3 No parties shall be entitled to use the name of the other Party in publicity

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releases or advertising or for other promotional purposes without procuring the prior written approval of the Party concerned.

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

23.5 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.

**24. Warrant of Authority**

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

**25. Domicilium citandi et executandi**

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

i. Client :

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

ii. Service Provider :

Mercurius Motors  
Cnr Groblier & Nelson Mandela Drive  
Polokwane

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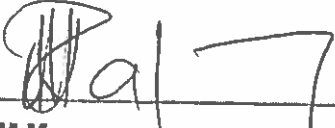
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- b. Either party may change its *domicilium citandi et executandi* by giving written notice to the other, the new address becoming effective at the expiry of 10 (ten) business days from the communication of notification.

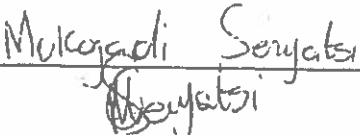
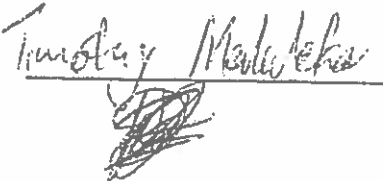
Signed at Polokwane on this 14<sup>th</sup> day of September 2017.

**AS WITNESSES:**

- 1.  \_\_\_\_\_ For and on behalf of the Client
- 2.  \_\_\_\_\_  \_\_\_\_\_  
M Mampa  
Acting Municipal Manager

Signed at Modimolle this 14<sup>th</sup> day of September 2017.

**AS WITNESSES:**

- 1.  \_\_\_\_\_
  - 2.  \_\_\_\_\_
- MERCURIUS**  
 Serjatsi of the  
**POLOKWANE**  
 8917574070015  
 C/O N1 & NELSON MANDELA DRIVE  
 P.O. BOX 1637, POLOKWANE. 0700  
 TEL: 015 299 9500  
 FAX: 015 299 8598  
 Modimolle Polokwane  
 VAT: 4670110032